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EIGHTH ITEM ON THE AGENDA

328th Report of the Committee on Freedom of Association

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Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva on 30 and 31 May, and 7 June, under the chairmanship of Professor Paul van der Heijden.

2. The members of Japanese, Mexican and Venezuelan nationality were not present during the examination of the cases relating to Japan (Cases Nos. 2114 and 2139), Mexico (Case No. 2136) and Venezuela (Cases Nos. 2160 and 2161) respectively.

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3. Currently, there are 95 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 23 cases on the merits, reaching definitive conclusions in 16 cases and interim conclusions in seven cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

New cases

4. The Committee adjourned until its next meeting the examination of the following cases: Nos. 2179 (Guatemala), 2180 (Canada), 2182 (Canada), 2183 (Japan), 2184 (Zimbabwe), 2185 (Russian Federation), 2186 (China), 2187 (Guyana), 2188 (Bangladesh), 2189 (China), 2191 (Venezuela), 2192 (Togo), 2193 (France), 2194 (Guatemala), 2195 (Philippines), 2196 (Canada), 2197 (South Africa), 2198 (Kazakhstan), 2199 (Russian Federation), 2200 (Turkey), 2201 (Ecuador), 2202 (Venezuela), 2203 (Guatemala), 2204 (Argentina), 2205 (Nicaragua) and 2206 (Nicaragua), 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

5. The Committee is still awaiting observations or information from the governments concerned in the following cases: Nos. 1865 (Republic of Korea), 1962 (Colombia), 2105 (Paraguay), 2127 (Bahamas), 2130 (Argentina), 2132 (Madagascar), 2134 (Panama), 2138 (Ecuador), 2157 (Argentina), 2162 (Peru), 2166 (Canada), 2168 (Argentina), 2170 (Iceland), 2171 (Sweden), 2172 (Chile), 2173 (Canada), 2176 (Japan) and 2177 (Japan).

Partial information received from governments

6. In Cases Nos. 1888 (Ethiopia), 1986 (Venezuela), 2088 (Venezuela), 2096 (Pakistan), 2097 (Colombia), 2103 (Guatemala), 2111 (Peru), 2144 (Georgia), 2153 (Algeria), 2169 (Pakistan) and 2178 (Denmark), 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

7. As regards Cases Nos. 1948 (Colombia), 1955 (Colombia), 2046 (Colombia), 2079 (Ukraine), 2090 (Belarus), 2123 (Spain), 2131 (Argentina), 2150 (Chile), 2151 (Colombia), 2159 (Colombia), 2163 (Nicaragua), 2174 (Uruguay), 2175 (Morocco), 2181 (Thailand) and 2190 (El Salvador), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Urgent appeals

8. As regards Cases Nos. 2133 (The former Yugoslav Republic of Macedonia), 2140 (Bosnia and Herzegovina) and 2154 (Venezuela), 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.

Request for a direct contacts mission

9. At its March 2002 meeting, the Committee had asked the Government of Venezuela to agree to the extension of the mandate of the direct contacts mission requested 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), which was mainly limited to legislative aspects, so that it could cover all cases currently pending before the Committee (Nos. 1986, 2088, 2154, 2160, 2161 and 2191). In a communication dated 11 April 2002, the Government announced its decision not to extend the mandate of the mission. *The Committee deplores this decision, which demonstrates a clear lack of cooperation on the part of the Government in the special procedure for the examination of complaints concerning violations of freedom of association. It notes that the mission requested by the Committee on the Application of Standards took place from 6 to 10 May 2002*

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

10. The Committee has requested its Chairperson to hold consultations during the 90th Session of the International Labour Conference in June 2002 with the Government delegation of Chad, due to its lack of cooperation in respect of the special procedure on the examination of complaints concerning violations of freedom of association, and the Government delegation of Morocco, because of the numerous complaints brought against it involving unsettled collective labour disputes, in order to examine the possibilities of technical assistance or other appropriate measures to overcome these respective difficulties. The Committee further recalls that, at its meeting in March 2002, it had requested its Chairperson to hold consultations with the Government delegation of Canada.

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

11. The Committee once again 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. It also draws the Governing Body's attention to the pending cases concerning Venezuela because of the Government's refusal to extend the mandate of the direct contacts mission to these cases, as well as on the cases concerning Croatia (Case No. 1938) and Cuba (Case No. 1961) in which the governments have not yet given effect to the Committee's recommendations.

Transmission of cases to the Committee of Experts

12. 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: Colombia (Case No. 2068), Japan (Case No. 2114) and Uruguay (Case No. 2087).

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

Case No. 1963 (Australia)

13. The Committee last examined this case, which concerns actions related to the 1998 waterfront dispute affecting workers in stevedoring operations at various Australian ports, at its November 2002 meeting. It requested the Government to continue to provide information on relevant court proceedings [326th Report, paras. 11-12]. In a communication dated 3 May 2002, the Government states that the two related suits filed against one of the companies involved (Container Terminal Management Services Ltd.) have been completed, one action (*McKellar and Murray* v. *CMTS*) being stayed by reason of the applicant's bankruptcy, and the other one (*Batten and Grahame* v. *CMTS*) being concluded by an out-of-court settlement.

14. *Recalling that the legislative issues concerning this case are now being dealt with by the Committee of Experts on the Application of Conventions and Recommendations, the Committee takes note of this information.*

Case No. 2083 (Canada/New Brunswick)

15. The Committee last examined this case, which concerns the rights of association and collective bargaining of casual workers, at its March 2002 session, and requested to be kept informed of developments [327th Report, paras. 39-41].

16. In a communication dated 16 April 2002, the Government of New Brunswick states that it is continuing its survey of the education and hospital sectors in other Canadian jurisdictions in order to ascertain how they address the situation of casual employees, and that replies have been received from 17 of the 28 jurisdictions surveyed.

17. *While taking note of this information, the Committee points out that, irrespective of how other Canadian jurisdictions may address this issue, casual workers should have the right to establish and join organizations of their own choosing and to bargain collectively. The Committee expresses, once again, the hope that the Government will take rapidly the*

necessary legislative measures, and requests it to keep it informed of developments in this respect.

Case No. 2141 (Chile)

18. The Committee examined this case at its March 2002 meeting, and on that occasion:

– expressed the hope that the judicial proceedings initiated in relation to the death of Mr. Luis Lagos and the serious injuries sustained by Mr. Donaldo Zamora during the strike held in the FABISA enterprise 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; and

– requested 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 requested the Government to keep it informed of any steps taken in this respect [see 327th Report, paras. 312-326].

19. In a communication dated 27 March 2002, the Government states that:

(a) the judicial proceedings filed under No. 1086-3 with the 18th Criminal Court of Santiago, against the driver of the vehicle that caused the accident leading to the death of the worker Mr. Luis Lagos and injuring Mr. Donaldo Zamora, are now in the pre-trial investigation stage. The driver faces charges of homicide and causing serious injury and has been released on bail for the payment of a sum of money; and

(b) the FABISA enterprise, employer of the dismissed workers, in spite of the good offices of the Labour Directorate, represented by the Regional Labour Director of the Metropolitan Region, did not fulfil its commitment to review the dismissals of the workers with a view to their reinstatement but, on the contrary, dismissed them for reasons that removed their entitlement to compensation. Legal action concerning possible anti-union practices at the time of the events should have been taken by the persons affected, but they failed to take the issue to the competent judicial authorities. In this respect, it should be noted that, through the reforms introduced by Law No. 19759, the legislation concerning anti-union practices has been amended, giving the Labour Directorate the power to take a more active role when it becomes aware of situations or activities that could be classed as anti-union practices. The law provides an obligation for the Directorate to investigate, ex officio or at the request of an interested party, the facts at its disposal and, if appropriate, to transfer them to the competent judicial authority. It shall also enclose the report of the Inspectorate, which constitutes a significant procedural improvement in comparison with previous legislation. Moreover, it is provided with the power to become a party, if it considers it necessary, in trials pertaining to this issue. The recent legal amendments also establish a new judicial procedure for examining cases concerning anti-union and unfair practices, designed to speed up proceedings, to the benefit of the workers concerned. A significant increase in the fines imposed to sanction anti-union practices, which will consist of sums of between 10 and 150 monthly tax units, will act as a disincentive to discrimination. These labour reforms will have a positive impact on labour relations, discouraging practices that hinder the effective exercise of trade union rights and collective negotiation, and enhancing the protection offered to those concerned.

20. *Taking note of this information, the Committee requests the Government to keep it informed of the outcome of the judicial proceedings under way concerning the death of Mr. Luis Lagos and the serious injuries sustained by Mr. Donaldo Zamora during the strike held in the FABISA enterprise in May 2001. Moreover, the Committee deeply regrets that the FABISA enterprise has failed to respect the agreement to review the dismissals of 23 workers following the strike. In this respect, the Committee requests the Government to carry out an investigation concerning these dismissals and, if it is found that the workers were dismissed for exercising their trade union activities, to take all necessary measures within its power to ensure that they are reinstated. The Committee requests the Government to keep it informed in this regard.*

Case No. 1925 (Colombia)

21. The Committee last examined this case at its November 2001 meeting [326th Report, paras. 47-48]. It noted on that occasion that a negotiation meeting had been held on 13 February 2001 between AVIANCA and SINTRAVA under the auspices of the Labour Ministry and that, as a result, the complainant organization would submit an agreement proposal to AVIANCA. The Committee requested the Government to continue to keep it informed of progress achieved in the negotiations.

22. In a communication of 25 September 2001, the National Trade Union of AVIANCA workers (SINTRAVA) refers once more to the large numbers of workers dismissed by AVIANCA in 1993 (more than 400) and objects to the judgements of the Supreme Court of Justice, which has not ruled that these workers should be reinstated in their jobs. In a communication of 21 January 2002, the Government states that article 113 of the Political Constitution provides for the separation of powers, which means that the decisions made by judges and superior courts which are the judiciary branch must be recognized and accepted by the other public branches; therefore, the Government cannot interfere in the abovementioned court decisions which emanate from another branch. The Government adds that the workers of AVIANCA have enjoyed all the guarantees of due process and right to an adequate defence; they have used all the recourses they were entitled to in each of the instances, which have been settled in conformity with the law.

23. *The Committee notes this information. It requests the Government to keep it informed on the results of the negotiation process undertaken in February 2001 under the auspices of the Labour Ministry.*

Case No. 1938 (Croatia)

24. The Committee last examined this case, which concerns the division of assets and property owned by trade unions before the Second World War, at its November 2001 meeting [see 326th Report, paras. 70-72]. The Committee requested the Government, inter alia, to rapidly determine the criteria for the division of assets and property and to provide it with substantive information on developments in this respect.

25. In a communication dated 25 February 2002, the Government indicates that the New Associations Act (*Narodne novine*, No. 88/01) entered into force on 1 January 2002. However, the provisions of the act concerning division of assets are not applicable to workers' organizations, which are still governed by article 38 of the old Associations Act.

26. The Government also insists on the fact that a working meeting was held on 5 December 2001 with representatives of namely five trade union confederations and the Ministry of Justice, Public Administration and Local Self-Government. During the meeting, the Government's representatives expressed the opinion that an appropriate act should

determine the transfer of all the trade unions' immovable assets. Following the meeting, the Government requested the trade union confederations to submit to the Office for Social Partnership a complementary list of assets and their observations on the principles regarding the criteria for the division of such assets.

27. *The Committee takes note of the information provided by the Government. The Committee notes that the trade unions have not yet reached agreements between themselves and regrets that neither negotiations nor agreement have taken place to determine clearly the division of the assets. Furthermore, the Committee notes that no specific time frame has been scheduled for the division and transfer of the assets. The Committee notes with regret that no significant progress has been made to date, more than four years after the filing of the complaint. Recalling that the transmission of trade union assets is an extremely serious issue for the viability and free functioning of trade unions, the Committee urges, once again, the Government to determine the criteria for the division of assets in consultation with the workers' organizations and to fix a specific time frame for completing the division of the property. The Committee requests the Government to keep it informed in this respect.*

Case No. 1961 (Cuba)

28. As part of the follow-up to the recommendations in this case, which was presented by the World Confederation of Labour (WCL), in a communication dated 8 December 2000 the WCL presented new specific allegations concerning detentions of journalists and members of the Single Council of Cuban Workers (CUTC), obstruction of the functioning and activities of the latter organization (holding of a congress), attacks on freedom of expression, intimidation and threats. The Government replied in general terms to these allegations in a communication dated 16 September 2001. At its November 2001 meeting, the Committee requested the Government to reply specifically to each of the allegations presented by the WCL [see 326th Report, paras. 73-74].

29. The WCL indicates in its communication of 8 December 2000 that, in previous communications to the Committee on Freedom of Association, it has described the restrictions placed by the Government on freedom of association in Cuba, consisting of repeated acts of harassment, detention and blacklisting, and in particular the fact that there are no independent unions in Cuba and no freedom of association outside the official trade union established by the Government. Furthermore, it has repeatedly drawn attention to the systematic harassment and persecution of CUTC leaders, in their legitimate exercise of trade union activities.

30. The WCL adds that the Single Council of Cuban Workers (CUTC) – affiliated to the Latin American Central of Workers (CLAT) – set the dates for a congress to be held on 20 and 21 October 2000 and began to make the relevant preparations during the first week of August 2000. The Department of State Security (DSE) renewed its harassment of CUTC members, with a view to preventing a second preparatory meeting, due to be held on 8 August, from taking place. Some leaders were detained, while some remained under house arrest and others were intercepted as they reached the meeting place and forced to go back to their homes under threat of arrest. Despite these acts of repression and interference in trade union activities, the CUTC confirmed that its congress would go ahead on 20 and 21 October. For example, in October, Mr. Sixto Rolando Calero (delegate for Camagüey Province) and his wife were detained and their documents confiscated, in a police operation ordered by the chief state security official in Esmeralda District.

31. According to the WCL, the CUTC planned to organize a press conference at 11 a.m. on Friday, 13 October 2000, with a view to giving public notice of its intention to hold a congress. Before it took place, early in the morning of 12 October, state security agents

arrested Mr. Pedro Pablo Alvarez Ramos, general secretary of the CUTC, as he was leaving home. He was later released in the evening of the same day. While he was under arrest, security agents attempted to coerce him into abandoning both the plans to hold a press conference on the following day, and the preparations for the congress. On the morning of 13 October, Mr. Pedro Pablo Alvarez Ramos and his colleagues travelled to the place where the press conference was due to be held at 11 a.m. (627 calle San Francisco, between 12 and 13 October, 10 de Octubre District, Havana Province), but found it completely surrounded by state security agents. Once again, Mr. Pedro Pablo Alvarez Ramos was arrested, detained by security agents and taken to Detention Centre No. 10 in the same district. The security forces also confiscated the trade union documents he was carrying with him, as well as a Cuban flag. On the same morning of 13 October, Ms. Gladys Linares Blanco, another leading CUTC official, and her husband, Mr. Humberto Mones Lafita, the owners of the house in which the press conference was due to take place, were arrested. Another of the CUTC leaders detained during this wave of repression was Mr. Carmelo Agustín Días Fernández, who was also a representative of the independent press intending to cover the conference. Numerous journalists from the independent press on their way to attend the press conference were stopped by security agents and forced to turn back. For instance, in Güines, Mr. Pedro Pablo Hernández Mijares and Mr. Víctor Rolando Arroyo (a well-known independent journalist from Pinar del Río) were detained as they travelled to the capital. During their detention, they were beaten and subsequently taken to the western province of Pinar del Río. Eventually, they were released and abandoned at the roadside between Guanajay and Artemisa.

32. On Friday night, all of the CUTC leaders detained at Detention Centre No. 10, in Havana, were released, except for Mr. Pedro Pablo Alvarez Ramos. According to information received by the WCL, Mr. Pedro Pablo Alvarez Ramos was arrested under Order No. 0999-2000 for resisting arrest. However, Mr. Pedro Pablo Alvarez Ramos offered no resistance to the security forces on either of the occasions he was arrested, despite the fact that the arrests constituted clear violations of his most basic human rights. He was singled out simply because he was trying to organize, by peaceful means, a trade union congress, official notice of which had already been given to the authorities.

33. In its communication of 14 September 2001, the Government, with regard to the alleged detention of various persons carrying out trade union activities referred to in the complaint, states that inquiries have shown that none of the persons mentioned in the document are in prison, and that all of them are living comfortably at home, undisturbed by the "security forces", as the WCL alleges. The persons concerned are described by the WCL as "leaders or unionists". Yet the Government points out that this supposed trade union organization has never proven its involvement in any union activity, in any recognized workplace. In the absence of a labour relations framework, it is impossible to describe the persons concerned as union representatives, given that they neither represent nor lead any body of workers in any of the recognized workplaces throughout the country. In Cuba, 98 per cent of the workforce are affiliated to central trade union organizations which group together 19 national sectoral unions. In response to the doubts cast by the WCL on the freedom of workers to establish trade unions of their own choosing, there are 19 national sectoral trade unions in Cuba, all freely established by the workers, which were neither imposed by law, nor introduced by force, pressure, repression or violence from the public authorities.

34. This mass, widespread trade union activity takes place without any interference, repression or coercion. Thus, public freedoms are recognized, protected and exercised in accordance with the law.

35. Article 14 of the Labour Code establishes "the right of workers to meet, discuss and freely express their views on all issues or matters affecting them".

36. Responding to the allegations concerning freedom of expression, the Government states that the aforementioned trade union activity presents a wide range of channels for the exercise of freedom of expression by workers and their legitimate leaders in all trade union, business and administrative structures – channels that are recognized and protected by the Constitution and the Labour Code.

37. The ILO monitoring bodies have repeatedly stated the importance of assessing the practical application of ratified Conventions, therefore it would be inappropriate for the Committee to ignore the reality and practical application of trade union rights in Cuba, by focusing solely on cases derived from the unreliable testimony of individuals who have flouted the law and have no connection with genuine trade union activity in the country.

38. In its communication of 20 February 2002, the Government further states that the persons named in the communication from the WCL have failed to prove their involvement in any trade union activity. In the absence of a labour relations framework, it is impossible to describe the persons concerned as union representatives, given that they neither represent nor lead any body of workers in any of the recognized workplaces throughout the country.

39. The allegation presented by the WCL that trade unions in Cuba were founded by the Government is false; the WCL ignores the fact that, following a long process of unification dating back to the nineteenth century, the Central Organization of Cuban Workers was established in 1938 by the workers themselves, rather than being imposed by law. It was subsequently endorsed by all trade union congresses. There is no climate of violence, pressure or intimidation in Cuba, as is demonstrated by the workers' participation in the aforementioned trade union activities, and by the rate of union membership, which stands at 98 per cent. The arrest of unionists or trade union leaders does not occur. In Cuba 98 per cent of the workforce are members of trade unions of their own choosing. The right to form or to join trade unions freely and without prior authorization is guaranteed by article 13 of the Labour Code. Allegations concerning acts of violence or the existence of blacklists such as those presented by the WCL are totally false; in fact, the persons referred to by the WCL are attempting to use the argument of their supposed union membership in order to flout the law. These individuals do not represent any body of workers, have not been elected in any workplace, and have failed to furnish proof, at any time during the examination of the case by the Committee on Freedom of Association, of their involvement in trade union activities.

40. *The Committee notes that, according to the Government, none of the persons referred to in the complaint are in prison. The Committee further notes that the Government contends that the persons concerned have failed to prove their involvement in any trade union activity, questions their status as "leaders or trade unionists", describes the CUTC as a "supposed" trade union organization and asserts that these persons neither represent nor lead any body of workers, and have failed to furnish proof of their involvement in trade union activities. In this regard, the Committee stresses that the CUTC is affiliated to CLAT and WCL, international trade union organizations, that over 400 signatures of Cuban workers are contained in the annexes to the membership application to the WCL (sent by the complainant), and that the annexes also include a communication sent by the CUTC in 1995 to the Register of Inscriptions of the Ministry of Justice, seeking "to be entered in the corresponding register of inscriptions" and subsequently mentioning four workplaces; the Committee also points out that the allegations by the WCL relate to events surrounding the organization of a national congress. The Committee notes that, according to the Government, the arrest of unionists or trade union leaders does not occur, and the allegations concerning acts of violence or the existence of blacklists are totally false. The Committee is bound to note nonetheless that the Government has not referred specifically to the detention or arrest of Mr. Sixto Rolando Calero and his wife, Mr. Pedro Pablo Alvarez Ramos (several times), Ms. Gladys Linares Blanco and Mr. Humberto Mones*

Lafito (her husband), Mr. Carmelo Agustín Díaz Fernández and Mr. Pedro Pablo Hernández Mijares, all of whom, according to the WCL, were trade union members or leaders, detained in the circumstances described by the complainant, or to that of the journalist, Mr. Víctor Rolando Arroyo. The Committee is therefore bound to regret deeply these detentions, as well as the ill-treatment suffered by the persons named by the WCL.

41. *Furthermore, the Committee is bound to note that the Government still refuses to recognize the CUTC, in spite of the fact that more than six years have elapsed since it requested official registration, and requests the Government to ensure that the CUTC can operate freely and that the authorities refrain from any interference such as restricting the organization's fundamental rights. The Committee draws the Government's attention to the fact that "the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party" and that "the detention of trade union leaders or members for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 1996, paras. 273 and 71].*

42. *Moreover, the Committee notes that the Government failed to reply explicitly to other specific acts allegedly committed by the authorities in order to prevent the national congress of the CUTC from taking place (harassment of CUTC members, threats of arrest, confiscation of documents, pressure to prevent the holding of a press conference, police intimidation through the deployment of state security agents around the site of the press conference). The Committee is therefore bound to deplore these threats and acts of intimidation which, together with the arrests and detentions referred to above, demonstrate that the exercise of trade union rights of organizations independent of the official union structure is extremely difficult, if not impossible. With regard to the alleged restrictions on the freedom of expression, the Committee notes that the Government again makes only general comments. The Committee stresses that "the right to express opinions without previous authorization through the press is one of the essential elements of the rights of occupational organizations" and that "the right of an employers' or workers' organization to express its opinion uncensored through the independent press should in no way differ from the right to express opinions in exclusively occupational or trade union journals" [see* ***Digest****, op. cit., paras. 153 and 156].*

43. *Lastly, the Committee requests the Government to ensure that, in future, the CUTC can operate freely in a climate free from threats and intimidation, that the freedoms of opinion and expression of workers' organizations independent of the official union structure are guaranteed, and that the confiscated documents are returned to the persons mentioned in the allegations. Given the insufficient information provided by the Government, the Committee requests it to provide full information on all the issues raised in this case.*

Cases Nos. 1987 and 2085 (El Salvador)

44. When it last examined this case, the Committee requested the Government to keep it informed on the following points: (1) the reform of the Labour Code provisions setting out excessive formalities for recognition of trade unions and acquisition of legal personality, contrary to the principle of free establishment of trade union organizations (requirement that trade unions of independent institutions should be works unions), that make it difficult to set up a trade union (minimum number of 35 workers to establish a works union) or that make it temporarily impossible to establish a trade union (requirement to wait for six months before applying for recognition of a new trade union when a first request is rejected); (2) any initiative taken by the complainant FESTSA to obtain legal personality and; (3) of measures taken to amend the national legislation, so that it would recognize the

right of association of state workers, with the sole possible exception of the armed forces and police, in conformity with freedom of association principles [327th Report, paras. 54-57].

45. In a communication of 8 May 2002, the Government states that, as already mentioned in its communication of 7 January 2002 and reflected in the 327th Report of the Committee, the legal framework will be adapted, taking into account the requirements of national and international labour markets. As regards the request on initiatives taken by FESTSA to obtain legal personality, the Government points out that, since its legal personality was refused for the reasons already indicated, FESTSA has not to this day taken any steps in this respect with the Secretariat of Labour and Social Protection.

46. In a communication of 28 May 2002, the General Secretary of the Trade Union Federation of Salvadorian Workers of the Food, Beverage, Restaurants, Hotels and Food Sectors (FESTSABRHA), formerly FESTSA, requested its registration with the Ministry of Labour; this organization regroups five trade unions.

47. *The Committee takes note of this information. As regards the reform of the Labour Code provisions concerning the recognition of the trade union rights of state workers, the Committee regrets that the Government merely reiterates its previous comments on this issue. Taking into account the importance of the right to establish and register trade unions for these workers, such prohibition being incompatible with the generally accepted principle that all workers, without distinction, should have the right to establish trade unions of their own choosing [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 215], the Committee requests the Government to take the necessary measures to amend the legislation on the points mentioned above, so as to bring it into conformity with freedom of association principles. The Committee requests the Government to keep it informed in this respect. Finally, the Committee requests the Government to keep it informed of the results of the request of registration presented by FESTSABRHA; it hopes that this federation will be rapidly granted legal personality.*

Case No. 1854 (India)

48. The Committee last examined this case at its March 2002 meeting [see 327th Report, paras. 67-69]. On that occasion, the Committee recalled the seriousness of this case, i.e. the murder of a trade unionist (Ms. Ahilya Devi) who was organizing rural workers, expressed its deep concern regarding the excessive delays already intervened, and requested to be kept informed of developments. In communications of 16 April and 21 May 2002, the Government states that two of the accused (Messrs. Shri Munna Punjabi, alias Jai Prakash, and Shri Shrawan Giri) have been declared absconders. The Chief Magistrate in charge has issued show-cause notices against the accused's guarantors. The case concerning the other accused (Messrs. Bhirigunath Gupta, Rattan Gosh, Papan Chaki and Narsingh Singh) has been referred to the District Session Court, Purnea, where the trial is likely to begin soon.

49. *The Committee takes note of this information. Recalling once again that this very serious case goes back to 1995, the Committee reminds the Government that justice delayed is justice denied and hopes that it will be able to report in the near future on the conclusion of these proceedings. The Committee requests the Government to provide it with the judgement of the court as soon as it is issued, and to keep it informed of developments concerning the arrest of the two absconding parties.*

Case No. 1877 (Morocco)

50. The Committee last examined this case, which concerns dismissals of strikers and various acts of anti-union discrimination, at its meeting in March 2001. On that occasion, the Committee had requested the Government to continue to keep it informed of developments in the judicial proceedings filed by workers of the Somadir company in Casablanca and El Jadida [see 324th Report, para. 59].

51. In a communication dated 28 February 2002, the Government states that the competent courts have handed down rulings on all the proceedings filed by the Somadir workers. The Government provides a list of the names of the 25 workers of the company, giving details of the compensation received by each worker. The company has been duly informed of these rulings, which are all enforceable. The Government states that it will forward these rulings to the ILO.

52. *The Committee takes due note of this information, and trusts that the Government will supply the court rulings in question without delay.*

Case No. 2109 (Morocco)

53. The Committee last examined this case, which concerns dismissals of trade unionists following the creation of a trade union office and acts of anti-union repression, at its meeting of March 2002 [327th Report, paras. 77-80]. On this occasion, the Committee noted that more than 18 months had elapsed since the dismissals, held as unlawful by the Labour Inspectorate, of eight trade union officers at the Fruit of the Loom company. Accordingly, the Committee once again requested 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 a worker said to have received compensation of 3,000 dirhams. Finally, the Committee requested 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.

54. In a communication of 6 May 2002, the Government indicates on this last point that, according to an inquiry made by the Ministry of the Interior, local authorities intervened in this dispute as part of the Prefectoral Commission of Investigation and Reconciliation, which resulted in a strengthening of stability and of labour relations. The Government thus concludes that the allegations of anti-union attitude by the Governor of Salé are totally unfounded.

55. *The Committee notes this information. It requests the Government to continue to keep it informed of developments on all other pending issues.*

Case No. 2113 (Mauritania)

56. The Committee last examined this case, which concerns in particular the arbitrary arrest of trade unionists, at its session in November 2001. On that occasion, the Committee had requested the Government to provide clarification on the alleged arrest of trade union leaders following a fishermen's protest march. In the event that the anti-union nature of those arrests were confirmed, the Committee had requested the Government to ensure that instructions were given to prevent such arrests recurring in the future [see 326th Report, paras. 363-375].

57. In a communication dated 10 January 2002, the Government states that, in the case in question, the fishermen did not apply to the authorities for permission to carry out the march, and the arrest of the trade unionists is therefore not connected with their trade union activities. Nevertheless, investigations are under way, and the law enforcement authorities will be made more aware of trade union rights and the obligation to respect them.

58. *The Committee takes note of this information and requests the Government to keep it informed of the outcome of the investigations now under way into the matter.*

Case No. 1965 (Panama)

59. At its November 2001 meeting, the Committee requested the Government to keep it informed of: (a) the investigation into the raid on SUNTRACS headquarters and the alleged ill-treatment suffered by a number of workers of the Aribesa enterprise; and (b) the judicial proceedings initiated by the dismissed workers Mr. Porfirio Beitia, Mr. Francisco López, Mr. Eugenio Rivas, Mr. Julio Trejos and Mr. Darío Ulate, and the fund to compensate those workers who cannot be reinstated (the enterprise is facing a judicial process of forced liquidation) [see 326th Report, paras. 124-126].

60. In its communication of 1 March 2002, the Government sent information and documents, according to which the complaint presented by SUNTRACS to the Procurator-General of the Nation did not refer to the alleged raid on the trade union's headquarters, nor to the alleged ill-treatment inflicted on workers during their detention.

61. *The Committee notes this information. The Committee recalls that the Government had requested the Procurator-General of the Nation to carry out investigations into the allegations of a raid on SUNTRACS headquarters and ill-treatment suffered by unionists during their detention, and requests the Government to ensure that this investigation is carried out quickly, and to keep it informed of the results thereof. The Committee also requests the Government to keep it informed of the judicial proceedings concerning the dismissal of the five aforementioned workers, and of the fund to compensate the Aribesa workers who cannot be reinstated.*

Case No. 2059 (Peru)

62. At its March 2002 meeting, the Committee requested the Government to keep it informed of the outcome of the appeal lodged by the Banco Continental with regard to the ruling on the dismissal of Mr. Oliveros Martínez.

63. In a communication dated 5 April 2002, the Government indicated that following the ruling of 30 January 2002, the Banco Continental has reinstated Mr. Oliveros Martínez in his previous post.

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

Case No. 2076 (Peru)

65. The Committee last examined this case at its November 2001 meeting [see 326th Report, paras. 133-135]. On that occasion, the Committee requested the Government: (1) to confirm whether the trade union leaders Mr. Rey Fernández Patiño and Mr. Adriel Vargas Cáritas had in fact been reinstated in their posts with full compensation, as ordered by the courts; and (2) to communicate the final outcome of the proceedings concerning trade union officials Mr. Heraldo Torres Osnayo and Mr. Juan Ayulo Petzoldt.

66. In a communication dated 24 January 2002, the Government states that a letter was sent to the Shogang Hierro Perú S.A. enterprise requesting it to inform it whether trade union leaders Mr. Rey Fernández Patiño and Mr. Adriel Vargas Cáritas had in fact been reinstated in their posts, and that the Committee would be kept informed. As regards the actions for revocation of dismissal filed by Mr. Heraldo Torres Osnayo and Mr. Juan Ayulo Petzoldt against the Compañía Peruana de Radiodifusión S.A. enterprise, information has been requested from the judicial authority concerning their outcome, which will be forwarded to the Committee as soon as it is received.

67. *The Committee notes this information, while it regrets that more than two years after the alleged events took place, the Government does not have the information requested of the enterprise, and requests it to ensure without delay that it be provided to the Committee.*

Case No. 1972 (Poland)

68. The Committee last examined this case at its November 2001 meeting, where it expressed once again the hope that the judicial proceedings concerning Mr. Grabowski, chairperson of Sprawiedliwosc, would be concluded soon and requested to be provided with the text of the Act on the Social and Economic Commission as soon as it was adopted [see 326th Report, para. 150].

69. In a communication of 28 February 2002, the Government provides the text of the Act of 6 July 2001 on the Tripartite Commission for Socio-economic Affairs. The Government further indicates that the Appellate Circuit Court has returned the case of Mr. Grabowski for retrial to the District Court for Warsaw-Praga South, where it is now pending. The District Court is examining an expert opinion and has set a date for the hearing on 19 April 2002; a final ruling is not expected at the Court's next session.

70. *The Committee takes note of the Act on the Tripartite Commission for Socio-economic Affairs and hopes that it will provide a sound framework for social dialogue. The Committee requests the Government to keep it informed of judicial developments concerning Mr. Grabowski and to provide a copy of the judgement as soon as it is issued.*

Case No. 1843 (Sudan)

71. The Committee examined the substance of this case at its meetings in March 1997, March 1998 and November 1998 [see 306th Report, paras. 601-618, 309th Report, paras. 371-386 and 311th Report, paras. 81-84, respectively]. The Committee also drew the Governing Body's attention to this case due to the seriousness and urgency of the issues raised [see 309th Report, para. 9], namely dismissals, arrest, detention, torture and death of trade unionists.

72. When it last examined this case, the Committee had deplored the fact that the Government again provided only very partial information and insisted that the Government provide specific and detailed information on the situation of each of the workers listed in the appendices to the 306th Report, who were allegedly dismissed for carrying out union activities, were prevented from carrying out these activities by the authorities, or were subjected to anti-union measures. The Committee also requested the Government to forward copies of any written reasons or recommendations of the appeal board set up to re-examine the complaints of unfair dismissal [see 320th Report, paras. 76-82].

73. In communications dated 14 January and 20 October 2001, the complainant organization alleged that the abusive dismissals of workers continued in Sudan (3,000 workers from the Bank of Khartoum were wrongfully dismissed in December 2000) and that the new Trade

Union Act 2001 was merely an old version of the 1992 Trade Union Act which had been severely criticized by the free trade union organizations as well as by the ILO.

74. In a communication dated 26 February 2002, the Government indicates that concerning the alleged abusive dismissal of 3,000 workers from the Bank of Sudan, the information provided by the complainant organization is not accurate. The Government explains that the Bank of Khartoum, in accordance with a declared policy of the Bank of Sudan, decided to retrench 749 jobs. This was done after lengthy negotiations between the Bank's administration, the concerned trade union and the Workers' Federation. During the negotiations, it was agreed to introduce a programme of voluntary retirement, in which the retired employee was given special benefits plus loans to start a productive business to compensate for the loss of his job. Accordingly, 500 workers applied for the voluntary retirement and were granted the agreed benefits.

75. *While taking note of this information, the Committee observes that these elements only reply to the complainant's latest communications and that the Government has not provided any information on the workers listed in the appendices to the 306th Report. The Committee deeply deplores this fact and once again urges the Government to provide specific and detailed information on the situation of each of the said workers who were allegedly dismissed for carrying out union activities, were prevented from carrying out these activities by the authorities, or were subjected to anti-union measures. The Committee also once again requests the Government to forward copies of any written reasons or recommendations of the appeal board set up to re-examine the complaints of unfair dismissal.*

76. With respect to the allegations of arrest and detention of trade unionists, often accompanied by acts of torture, the Committee had urged the Government to open an inquiry into the precise circumstances in which Messrs. Abdel Moniem Suliman, Abdel Moniem Rahma, Mohamed Babiki, Yousif Hussain, Osman Abdel Gadir and Daoud Suliaman were detained, tortured or killed. The complainant in a communication of 23 March 2000 states that the detention of active trade unionists continues. *Once again, deeply regretting that the Government does not appear to have opened an inquiry as requested, and has to date not addressed the specific and very serious allegations of detention and torture concerning Messrs. Osman Abdel Gadir and Daoud Suliaman, the Committee strongly urges the Government to open an inquiry to establish the precise circumstances in which the above-noted persons were detained, tortured or killed, to take the necessary steps for legal proceedings against those responsible, to punish the guilty parties and for the redress of the prejudice suffered. The Committee requests the Government to keep it informed in this regard.*

77. Finally, the Government states in its latest communication that the Trade Union Act 1992 was revised by a tripartite committee taking into consideration the observations made by the ILO. The new Trade Union Act 2001 was approved by the National Assembly and under this new Act, new elections took place for the trade unions and the Trade Union Federation in a democratic spirit.

78. *While taking note of this information, the Committee observes that none of the ILO's supervisory bodies has received a copy of the new Trade Union Act 2001 and therefore requests the Government to provide the Office with a copy of the said Act in order to examine its conformity with the principles of freedom of association.*

Case No. 2018 (Ukraine)

79. The Committee last examined this case at its March 2002 meeting when it requested the Government to ensure that the criminal proceedings against the president of the

Independent Trade Union of Workers of the Ilyichevsk Maritime Commercial Port (the NPRP) are carried out with diligence [see 327th Report, paras. 113-117].

80. In a communication dated 5 March 2002, the complainant stated generally that its trade union rights continue being violated and that continual refusal of the port administration to transfer trade union dues deteriorates the financial situation of the NPRP.

81. In communications dated 15 March and 25 April 2002, the Government indicated that the Ministry of Labour and Social Policy of Ukraine asked the port management to settle the problem concerning the payment of trade union dues. It also recognized that according to the national legislation and existing collective agreement, the employer is under the obligation to make the necessary transfers and has no right to delay or hamper the process. The Government also indicated that disputes concerning the non-observance by the employer of this obligation are examined by the court.

82. *The Committee notes the information provided by the Government. While noting the Government's indication that it has requested the port administration to take the necessary measures to resolve the question concerning the transfer of trade union dues to the NPRP's account, the Committee regrets that no information was provided concerning the proceedings instigated against the president of the complainant's organization. It once again recalls that trade union leaders, like anyone lese, 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 are carried out with diligence and requests to be kept informed of developments.*

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83. Finally, as regards Cases Nos. 1581 (Thailand), 1618 (United Kingdom), 1769 (Russian Federation), 1785 (Poland), 1796 (Peru), 1813 (Peru), 1851 (Djibouti), 1880 (Peru), 1890 (India), 1900 (Canada), 1922 (Djibouti), 1937 (Zimbabwe), 1942 (China/Hong Kong Special Administrative Region), 1943 (Canada), 1951 (Canada), 1952 (Venezuela), 1957 (Bulgaria), 1970 (Guatemala), 1973 (Colombia), 1975 (Canada), 1978 (Gabon), 1989 (Bulgaria), 1992 (Brazil), 1995 (Cameroon), 1996 (Uganda), 2009 (Mauritius), 2014 (Uruguay), 2017 (Guatemala), 2027 (Zimbabwe), 2031 (China), 2042 (Djibouti), 2043 (Russian Federation), 2047 (Bulgaria), 2048 (Morocco), 2050 (Guatemala), 2051 (Colombia), 2052 (Haiti), 2053 (Bosnia and Herzegovina), 2067 (Venezuela), 2075 (Ukraine), 2078 (Lithuania), 2081 (Zimbabwe), 2091 (Romania), 2100 (Honduras), 2102 (Bahamas), 2118 (Hungary), 2119 (Canada), 2125 (Thailand), 2126 (Turkey), 2135 (Chile), 2142 (Colombia), 2145 (Canada), 2146 (Yugoslavia), 2147 (Turkey), 2148 (Togo) and 2156 (Brazil), 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. 1826 (Philippines), 1991 (Japan), 2006 (Pakistan), 2084 (Costa Rica), 2098 (Peru), 2104 (Costa Rica), 2106 (Mauritius) and 2115 (Mexico), which it will examine at its next meeting.

CASE NO. 1787

INTERIM REPORT

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

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

84. The Committee last examined this case at its March 2002 meeting [see 327th Report, paras. 327-344]. The International Confederation of Free Trade Unions (ICFTU) sent new allegations in communications dated 6 February, 5 March and 4 April 2002; the World Federation of Trade Unions in communications dated 17 January, 15 and 26 February and April 2002; the Union of State Workers of Colombia (UTRADEC) in a communication of 5 March 2002; the Single Confederation of Workers of Colombia (CUT) in a communication of 19 March 2002 and the National Union of Workers in the Rubber, Plastic, Polyethylene, Polyurethane, Synthetic Substances Processing Industry, and Parts and Derivatives of Such Processes (SINTRAINCAPLA) dated 5 April 2002. The Government sent its observations in communications dated 15 March and 9 April 2002.

85. 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

86. At its March 2002 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 acts of anti-union discrimination [see 327th Report, para. 344]:

(a) the Committee once again 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: (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 or to speak of trade union matters; (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 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 petroleum industry, the health services, as well as municipal and departmental administrations. Information should also refer to regions where violence occurs most frequently, such as the departments of Valle del Cauca and Antioquía and the municipality of Barrancabermeja, especially 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 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 proper factual and analytical assessment of each and every crime committed. The Committee suggests that the complainants and the Government seek technical assistance from the Office for this assessment.

B. New allegations

87. The new allegations refer to the following matters:

Murders

(1) Jaime Ramírez, member of the Union of Local Government Officials and Public Employees of Antioquía (SINTRAOFAN), on 2 June 2001 in Antioquía, by paramilitaries;

(2) Libardo de Jesús Usme Salazar, member of the Union of Official Workers (SINTRAOFICIALES), on 5 June 2001 in Villavicencio;

(3) Armando Buitrago Moreno, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 6 June 2001;

(4) Julián Ricardo Muñoz, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 6 June 2001 in Bogotá;

(5) Carlos Alberto Vidal Hernández, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 11 June 2001 in Bogotá;

(6) Edgar Thomas Angarita Mora, activist of the Arauca Teachers' Association (ASEDAR), on 11 June 2001 in Barrancones;

(7) Fabio Eliécer Guio García, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 19 June 2001 in Neiva by FARC;

(8) Luz Marina Torres, Riseralda Teachers' Union, on 22 June 2001 in Risaralda;

(9) Cristóbal Uribe Beltrán, member of the National Association of Workers and Employees in Hospitals, Clinics, Dispensaries and Community Health Units (ANTHOC), on 28 June 2001 in Tibu, by paramilitaries;

(10) Eduardo Edilio Alvarez Escudelo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 2 July 2001 in Antioquía, by guerrillas;

(11) William Mario Upegui Tobón, member of the Antioquía Teachers' Association, on 9 July 2001, in Antioquía;

(12) Luciano Zapata Agudelo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 10 July 2001;

(13) Hernando Jesús Chica, activist in the Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES), on 13 July 2001, by paramilitaries;

(14) Luis María Rubio Espinel, member of the North Santander Teachers' Trade Union Association (ASINORTH), on 15 July 2001 in Cúcuta;

(15) Margort Pisso Rengifo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 17 July 2001 in Popayán;

(16) Ramón Chaverra Robledo, member of the Union of Local Government Officials and Public Employees of Antioquía (SINTRAOFAN), on 19 July 2001 in Antioquía, by paramilitaries;

(17) Fidel Seguro, member of the Union of Local Government Officials and Public Employees of Antioquía (SINTRAOFAN), on 19 July 2001 in Antioquía, by paramilitaries;

(18) Prasmacio Arroyo, activist of the Magdalena Teachers' Union (SINTRASMAG), on 26 July 2001 in Magdalena;

(19) Hernando Arcila Ramírez, member of the Guaviare Teachers' Association (ADEG), on 1 August 2001 in Guaviare;

(20) Luz Amparo Torres Agudelo, member of the Antioquía Teachers' Association (ADIDA), on 2 August 2001 in Antioquía;

(21) Efraín Toledo Guevara, member of the Caquetá Teachers' Association (AICA), on 5 August 2001 in Caquetá;

(22) Nancy Tez, activist of the El Valle Single Union of Education Workers (SUTEV), on 5 August 2001 in Valle del Cauca, by paramilitaries;

(23) Jorge Antonio Alvarez Vélez, member of the Single Union of Workers in the Construction Materials Industry (SUTIMAC), on 6 August 2001 in Antioquía;

(24) Angela Andrade; activist in the Union of Workers in Children's Homes of Colombia, on 6 August 2001 in Nariño, by paramilitaries;

(25) José Padilla Morales; member of the César Teachers' Association, on 8 August 2001 in Aguachica;

(26) Luis Pérez Ríos, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 9 August 2001 in Quindío;

(27) Hugo López Cáceres, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 14 August 2001 in Barranquilla;

(28) Gloria Isabel García, member of the Risaralda Teachers' Union (SER), on 16 August 2001 in Risaralda;

(29) Miryam de Jesús Ríos Martínez, member of the Antioquía Teachers' Association, on 16 August 2001 in Antioquía;

(30) César Bedoya Ortiz, activist of the Association of University Teachers (ASPU), on 16 August 2001 in Bolívar;

(31) César Arango Mejía, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 24 August 2001 in Risaralda;

(32) Ricardo Monroy Marín, official of the Incora Workers' Union (SINTRADIN), on 25 August 2001 in Tolima;

(33) Jorge Freite Romero, member of the Association of Pensioners of Atlántico University (ASOJUA), on 29 August 2001 in Barranquilla, by paramilitaries;

(34) Luis Ernesto Camelo, activist of the Santander Teachers' Union (SES), on 2 September 2001 in Santander, by paramilitaries;

(35) Marcelina Sladarriaga, activist of the Antioquía Teachers' Association (ADIDA), on 5 September 2001 in Antioquía;

(36) Rafael Pineda, President of the Barbosa Branch of the Union of Bank Employees (UNEB), on 8 September 2001 in Santander;

(37) Juan Eudes Molina Fuentes, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 9 September 2001 in Guajira;

(38) Gilberto Arbeláez Sánchez, member of the subcommittee of the Antioquía Teachers' Association (ADIDA), on 9 September 2001 in Antioquía;

(39) Luis Alfonso Aguirre, activist of the Single National Federation of Workers in the Mining, Power, Engineering, Chemical and Similar Industries of Colombia (FUNTRAENERGETICA), on 10 September 2001 in Antioquía;

(40) Juan Diego Londoño Restrepo, Secretary of the Continental Ceramic Workers' Union, on 11 September 2001 in Antioquía, by paramilitaries;

(41) Hernando de Jesús Montoya Urrego, activist of the Antioquía Teachers' Association (ADIDA), on 13 September 2001 in Antioquía, by paramilitaries;

(42) Alga Rosa García Marín, member of ANTHOC, on 17 September 2001 in Antioquía;

(43) Jacobo Rodíguez, member of the Caquetá Teachers' Association, on 18 September 2001 in Caquetá, by paramilitaries;

(44) Yolanda Cerón Delgado, member of the Nariño Teaching Union (SIMANA), on 18 September 2001, by paramilitaries;

(45) Juan David Corzo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 20 September 2001 in Cúcuta, by paramilitaries;

(46) Bibiana María Gómez Bedoya, member of the Antioquía Teachers' Association (ADIDA), on 22 September 2001 in Antioquía;

(47) Jenny Romero Rojas, ANTHOC, on 23 September 2001 in Meta;

(48) Antonio Mesa, member of the Union of University Workers (SINTRAUNICOL), on 25 September 2001 in Barranquilla, by paramilitaries;

(49) Germán Elías Madrigal, member of the Antioquía Teachers' Association, on 28 September 2001 in Antioquía;

(50) Plutarco Herrera Gómez, member of the Claims Committee of the National Union of Cargo Handlers in Colombian Maritime Ports, on 30 September 2001 in Valle del Cauca, by paramilitaries;

(51) Servando Lerma, member of the Petroleum Industry Workers' Trade Union (USO), on 10 October 2001 in Santander;

(52) Luz Mila Rincón, ANTHOC, on 10 October 2001 in Tolima, by paramilitaries;

(53) Gustavo Castellón Fuentes, activist of the Union of Family Benefit Fund Workers of Barrancabermeja (SINALTRACOFAN), on 20 October 2001 in Barrancabermeja, by paramilitaries;

(54) Jesús Agreda Zambrano, activist of the Nariño Teaching Union (SIMANA), on 20 October 2001, by paramilitaries;

(55) Expedito Chacón, ANTHOC, on 24 October 2001 in Santander;

(56) Milena Pereira Plata, ASINORTH, on 30 October 2001 in Santander, by FARC;

(57) Edith Manrique, activist of Caldas Teachers' United (EDUCAL), on 6 November 2001 in Caldas, by paramilitaries;

(58) Eriberto Sandoval, member of the National United Federation of Agricultural Workers (FENSUAGRO), on 11 November 2001 in Ciénaga, by paramilitaries;

(59) Eliécer Orozco, FENSUAGRO, on 11 November 2001 in Ciénaga, by paramilitaries;

(60) Jorge Julio Céspedes, activist of Caldas Teachers' United (EDUCAL), on 24 November 2001 in Caldas, by paramilitaries;

(61) María Leida Montoya, activist of the Antioquía Teachers' Association, on 30 November 2001 in Antioquía;

(62) Luis Alfonso Gaviria Meneses, activist of SINTRAEMSDES, on 30 November 2001 in Antioquía, by paramilitaries;

(63) Luz Carmen Preciado, activist of the Nariño Teaching Union (SIMANA), on 30 November 2001 in Nariño, by FARC;

(64) Santiago González, SIMANA, 30 November 2001 in Nariño, by FARC;

(65) Herlindo Blando, member of the Union of Teachers and Lecturers of Boyacá, on 1 December 2001 in Boyacá, by paramilitaries;

(66) Generoso Estrada Saldarriaga, member of the Union of Electricity Workers of Colombia (SINTRELECOL), on 4 December 2001 in Antioquía;

(67) Germán Dario Ortiz Restrepo, member of the Antioquía Teachers' Association (ADIDA), on 7 December 2001 in Antioquía;

(68) Alberto Torres, member of the Antioquía Teachers' Association (ADIDA), on 12 December 2001 in Antioquía;

(69) James Estrada, activist of the Antioquía Teachers' Association (ADIDA), on 13 December 2001 in Antioquía;

(70) José Raúl Orozco, President of the Continental Ceramic Workers' Union, on 14 December 2001 in Antioquía, by paramilitaries;

(71) Jairo Antonio Chima, SINTRAEMSDES, on 22 December 2001 in Antioquía, by paramilitaries;

(72) Eduardo Alfonso Suárez Díaz, delegate of the Petroleum Industry Workers' Trade Union (USO), on 23 December 2001 in Antioquía, by paramilitaries;

(73) Iván Velasco Vélez, Union of University Workers, on 27 December 2001 in Valle del Cauca, by paramilitaries;

(74) Bertilda Pavón, member of ANTHOC, on 2 January 2002 in Valledupar, by paramilitaries;

(75) Carlos Arturo Alarcón, member of the Antioquía Teachers' Association (ADIDA), on 12 January 2002 in Antioquía;

(76) Rubén Arenas, member of the Antioquía Teachers' Association (ADIDA), on 16 January 2002 in Antioquía;

(77) Rubí Moreno, member of ANTHOC, on 20 January 2002 in César, by paramilitaries;

(78) Víctor Alberto Triana, Association of Employees of ECOPETROL (ADECO), on 21 January 2002, by paramilitaries; Carlos Padilla, President of the Union of Workers in the Fray Luis de León Hospital, member of the General Confederation of Democratic Workers and UTRADEC, on 28 January 2002, in the municipality of Plato Magdalena, after being the victim of threats;

(79) Carmen Elena García Rodríguez, organization secretary of the Municipal Executive Board of the César Health Union (SIDESC), shot dead when she was leaving her work at the Eduardo Arredondo Daza Hospital in the town of Valledupar, on 29 January 2002;

(80) Walter Oñate, in the same circumstances as the previous;

(81) Jairo Alonso Giraldo, activist of the Antioquía Teachers' Association, on 1 February 2002, in Antioquía;

(82) Gloria Eudilia Riveros Rodríquez, teacher at the Inocencio Chincá College in the municipality of Tame, in a FARC attack on the police station in the municipality of Tame, on 2 February 2002;

(83) Oscar Jaime Delgado Valencia, teacher at the Camilo Torres de Armenia College, department of Quindío, shot dead on 4 February 2002;

(84) Oswaldo Enrique Borja Martínez, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 6 February 2002 in Sucre, by paramilitaries;

(85) Henry Mauricio Neira, member of ANTHOC, on 7 February 2002 in Arauca;

(86) Nohora Elsy López, official of the National Union of Childcare Workers in Welfare Homes, on 7 February 2002 in Antioquía, by paramilitaries;

(87) Adolfo Florez Rico, activist of the National Union of Workers in the Construction Industry (SINDICONS), on 7 February 2002 in Antioquía, by paramilitaries;

(88) Julio Galaneo, community leader and former employee of EMCALI, shot dead on 11 February 2002. His wife, also a trade union activist, escaped unhurt from the attack;

(89) Angela María Rodríquez Jaimes, member of the Santander Teachers' Union (SES-CUT), in the municipality of Piedecuesta, Department of Santander, shot dead on 12 February 2002;

(90) Néstor Rincón Quinceno, Riseralda Teachers' Union, on 14 February 2002;

(91) Alfredo González Páez, member of the Association of Employees of INPEC (ASEINPEC), on 15 February 2002 in Tolima, by paramilitaries;

(92) Oswaldo Meneses Jiménez, ASEINPEC, on 15 February 2002 in Tolima, by paramilitaries;

(93) Barqueley Ríos Mena, member of the Antioquía Teachers' Association, on 16 February 2002 in Antioquía;

(94) Juan Manuel Santos Rentería, member of the Antioquía Teachers' Association, on 16 February 2002 in Antioquía;

(95) Fernando Cabrales, President of the National Haulage Federation, on 18 February 2002 in Valle del Cauca, by paramilitaries;

(96) José Wilson Díaz, member of the Union of Electricity Workers of Colombia (SINTRAELECOL), on 21 February 2002 in Huila, by FARC;

(97) Cecilia Gallego, Secretary for Women's Affairs of the Executive Committee of Colombian Farmers' Action (ACC), in the municipality of Macarena, on 25 February 2002;

(98) Hugo Ospina Ríos, member of the Risaralda Teachers' Union (SER), on 26 February 2002 in Risaralda;

(99) Marcos Antonio Beltrán, activist of SUTEV, on 1 March 2002 in Valle del Cauca;

(100) Roberto Carballo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 6 March 2002 in Bolívar;

(101) Juan Montiel, member of the Ciénaga subcommittee of the National Union of Farmworkers (SINTRAINAGRO), Department of Magdalena, on 7 March 2002;

(102) Emilio Villeras Durán, member of the Ciénaga subcommittee of the National Union of Farmworkers (SINTRAINAGRO), Department of Magdalena, on 7 March 2002;

(103) Alirio Garzón Córdoba, member of the National Union of Workers in the Registry of Births, Marriages and Deaths (SINTRAREGINAL), on 10 March 2002 in Huila;

(104) Carlos Alberto Molano, SINTRAREGINAL, on 10 March 2002 in Huila;

(105) Eduardo Chinchilla Padilla, activist of the Union of Workers in the Oil Palm and Related Industries (SINTRAPALMA-CUT), on 11 March 2002;

(106) Luis Omar Castillo, member of the Union of Electricity Workers of Colombia (SINTRAELECOL), at the Río Bobo Electricity Generating Station, in the Department of Nariño, on 20 March 2002, by paramilitaries;

(107) Juan Bautista Cevallos, member of the Union of Electricity Workers of Colombia (SINTRAELECOL), at the Río Bobo Electricity Generating Station, in the Department of Nariño, on 20 March 2002, by paramilitaries;

(108) Rafael Jaimes Torra, Treasurer of the Barrancabermeja subcommittee was accompanied by his 16 year-old nephew, Germán Augusto Torres Martínez, who also died, in Barrancabermeja, Department of Santander, on 20 March 2002;

(109) Ernesto Alfonso Giraldo Martínez, prosecutor delegate of the Antioquía Teachers' Association (ADIDAS-CUT), was shot and seriously wounded on 21 March 2002. On 22 March, when he was being transferred to the San Vicente Hospital in Medellín, he was taken from the ambulance and murdered by FARC;

(110) Alfredo Zapata Herrera, official of the of the Single Union of Workers in the Construction Materials Industry – Santa Bárbara Branch (SUTIMAC-CUT), was abducted on 2 April and found dead on 3 April in Santa Bárbara; the trade union is being threatened by paramilitaries;

(111) Oscar Alfonso Jurado, official of the Union of Chemical Industry Workers, Yumbo Branch, Department of El Valle, on 8 April 2002, by extreme right groups;

(112) Hernán de Jesús Ortiza, member of the national board of the Single Confederation of Workers of Colombia, on 12 April 2002 in Celda, by paramilitaries;

(113) José Robeiro Pineda, former official of SINTRAELECOL, on 12 April 2002 in Celda, by paramilitaries.

Abductions and disappearances

(1) Gilberto Torres Martínez, Secretary-General of the single oil-pipeline subcommittee of the Petroleum Industry Workers' Trade Union (USO), in the municipality of Monterrey by paramilitaries on 25 February 2002, and released on 7 April 2002;

(2) Hugo Alberto Peña Camargo, President of the Arauca Farmers' Association (ACA), detained in the *corregimiento* (municipal zone) of Caño Verde, Department of Arauca, without a judicial warrant on 13 March 2002;

(3) José Orlando Céspedes García, official of the Arauca Teachers' Association (ASEDAR), was abducted on the road to Tame, Department of Arauca, on 23 March 2002;

(4) José Pérez, member of the Petroleum Industry Workers' Trade Union (USO), in Quebrada la Nata, Department of Casanare, on 25 March 2002, by paramilitaries;

(5) Hernando Silva, member of the Petroleum Industry Workers' Trade Union (USO), in Quebrada la Nata, Department of Casanare, on 25 March 2002, by paramilitaries.

Attempted murders

(1) Albeiro Forero, official of the Cartago Municipal Workers' Union (SINTRAMUNICIPIO), on 13 February 2002, was the victim of a shot fired by a paramilitary. He had already been a victim of murder attempts;

(2) A shot was fired on 14 February 2002 at the offices of the National Union of Food Industry Workers (SINTRAINAL).

Threats

(1) Alexander López Amaya, candidate for the Chamber of Representatives, and former President of SINTRAEMCALI;

(2) Luis Hernández, President of SINTRAEMCALI.

C. The Government's reply

88. In its communications dated 15 March and 9 April 2002, the Government sent extensive information in which it reiterates its previous observations on the causes of the violence, the perpetrators and their complexity, their efforts to combat this scourge, the policy of dialogue with insurgent groups (and the recent developments with the suspension of the dialogue with FARC and the progress in discussions with the ELN), the programme of protection for witnesses and persons under threat (which affects a very large number of trade unionists), the measures to combat impunity, the policy of respect for human rights and the independent institutional framework to contribute to political stability and respect for those human rights. Violence and armed conflict are phenomena which must be resolved peacefully.

89. The Government recalls that the State has been weighed down by the scale of the prolonged general violence for over 40 years, and this is reflected in many aspects of social development which, despite the efforts of the Government to find a path to peace, has taken a dramatic turn for the worse.

90. The Colombian nation is the setting for grave internal armed conflict, further complicated by the simultaneous occurrence of different types of violence, including drug trafficking and paramilitary activity, which has damaged and undermined the fundamental rights of many sections of Colombian civil society, such as businessmen, workers, politicians, members of parliament, members of the Government, and the Church, as in the recent cases of the murder of the Bishop of Cali, Monsignor Isaías Duarte Cancino, the parish priest of Argentina, Department of Huila, Father Juan Ramón Núñez, as well as the general resurgence of terrorism and murder of many Colombians: as witness the recent cases of car-bombs and explosive charges in the cities of Villavicencio and Bogotá.

91. As is clear from the previous paragraph, the various types of violent acts (murder, abduction, massacres, forcible disappearances, physical injury and other assaults) against workers belonging to trade unions, are all different expressions of the internal violence faced by the country.

92. The authors of acts of violence against the legal order and fundamental rights are diverse, with distinct ideologies and different political, social and economic interests. The means used to achieve their objectives are contrary to the constitutional and legal framework of the Colombian State, the principles of humanity and justice, and the institutional policies of the democratically elected governments of Colombia.

93. The involvement of state agents in the overall pattern of violations of fundamental human rights is exceptional and outside official policy. It runs counter, moreover, to the duties inherent in those offices and is contrary to orders as well as to state policy.

94. The Government reiterates that in Colombia there is no government policy of harassment, either of workers and trade union leaders or the trade union movement. The structure of the Colombian State, its institutions and mechanisms for control of the public authorities make it impossible for a policy of repression of citizens' rights and freedoms to exist or be pursued. The acts of violence against workers and trade union leaders are the product of the complex pattern of violence in the country, against which the State has been taking significant measures.

95. Those responsible for violations of the fundamental human rights of the Colombian people, as well as the consequent injury to other civil rights, including freedom of association and the right to organize, include: (a) armed groups on the extreme right or self-styled "private justice" or self-defence groups, commonly known as paramilitaries; (b) guerrilla groups; (c) drug traffickers; and (d) in some cases agents of the State. The armed conflict experienced by the country is stoked by the guerrillas, the paramilitaries, drug trafficking and ordinary crime.

96. Despite the great complexity of Colombian violence, state institutions, led by the Public Prosecutor's Office, have an inescapable obligation to comply with constitutional law, since no State can call itself democratic and social if it tolerates violation of fundamental rights. The statistics based on the number of investigations, between 900 and 1,000, carried out by the National Human Rights Unit in the Attorney-General's Office vary from day to day, because day by day the situation of internal armed conflict in Colombia is worsening and because it is precisely in the course of armed conflict that violations of human rights occur most frequently.

97. The figures given below, according to sources from the Attorney-General's Office, cover the period from July 1997 to February 2001. During this period, the Human Rights Unit in the Attorney-General's Office issued 533 prosecutions, 777 detention orders, 953 arrest warrants and placed 1,475 people under investigation in various cases. During this period, 44 advance sentences resulted.

98. Of the 777 detention orders, 404 were against members of self-defence groups, 99 against guerrillas, 95 against civilians, 82 against members of the National Police, 74 against members of the Army, 10 against members of the Navy, 6 against personnel of the Technical Investigation Section, 4 against members of the National Prison Service (INPEC) and 3 against members of the Department of Administrative Security (DAS).

99. As to the 533 prosecutions, 253 were against members of self-defence groups, 93 against members of the Army, 68 against guerrillas, 54 against the police, 44 against civilians, and 12 against members of the DAS, 5 against personnel of the Technical Investigation Section and 4 against members of the Navy.

100. With respect to the 1,475 people under investigation, 659 were members of self-defence groups, 324 guerrillas, 164 civilians, 147 police officers, 135 members of the army, 21 DAS officials, 12 naval personnel, 7 Technical Investigation Section and 6 INPEC.

101. The investigations into massacres and guerrilla kidnappings are among the most difficult for the National Unit's investigators.

102. The threats that investigators are liable to receive in the course of their inquiries, the difficulty of getting witnesses' collaboration, the "law of silence" which reigns in many areas of the country, and the complex task of identifying and bringing to trial those alleged to be responsible for an incursion, whether guerrillas or self-defence groups, make these proceedings extremely difficult. During the administration of the previous Attorney-General, there were 93 investigations into massacres, which included guerrilla actions, capture of towns and attacks on military bases. This heading also covers attacks on the civilian population by self-defence groups or paramilitaries. In recent years, massacres have become one of the characteristics of the worsening internal Colombian conflict.

103. Killing defenceless people living in areas disputed by those engaged in the armed conflict seeks not only the physical elimination of supposed sympathisers of one band or another, but also to generate fear and insecurity among the survivors, who become forcibly displaced persons, a matter condemned by humanitarian law.

104. The courage displayed in investigations characterized by the high risk generated by the state of violence in the country cost the lives of 98 officials of the Attorney-General's Office murdered between 1996 and February 2001. In addition, and no less to be condemned, was the situation experienced by 36 officials of the Attorney-General's Office who were deprived of their liberty during the same period, eight of whom are still in captivity.

105. The Government also underlines that in Colombia there are over 2,500 company, industry, sectoral and other trade unions grouped in 57 regional or specialized federations and three trade union confederations or central federations. This is also reflected in the signing during 2001 of 481 collective agreements, affecting over 2 million workers; so far in 2002, 155 new collective agreements have been signed, most of them with the mediation and support of the Ministry of Labour and Social Security. The Government has guaranteed all workers the right of social protest and for this reason no stoppage has been declared illegal. Confirmation of the Government's determination not to allow any act harmful to the trade union movement, from whatever quarter, can also be seen in its countless condemnations

of acts of violence. The Ministry of Labour has condemned threats, abductions and murders of trade union leaders. The Government points as a positive development the release on 7 April 2002 of Gilberto Torres, a trade union official in the Petroleum Industry Workers' Trade Union (USO), who had been held by paramilitary groups.

106. The Government underlines the concern of the Colombian State with respect to the issue of impunity, and the failure to bring to trial or capture the majority of those responsible for crimes against trade unionists. Such levels of impunity and inefficiency in the judicial system are also to be found in relation to the majority of violent deaths that occur in Colombia, including those of businessmen, political and social leaders, journalists, as well as the majority of people abducted in Colombia. The Government expresses its desire to establish a more direct relationship between the Committee on Freedom of Association, the Attorney-General's Office and the Central Trade Union Confederations in Colombia by appointing delegates to gain a much closer knowledge of the Government's efforts to end impunity and punish those responsible for murders and threats against trade unionists. To this end, it invited the Attorney-General and the Prosecutor-General to take part in the Colombian delegation to the next session of the ILO Conference and the Governing Body, in order to establish joint measures to reduce impunity.

107. The National Human Rights Unit in the Attorney-General's Office is also responsible for investigating acts of violence against trade union leaders. In order to improve law enforcement and the administration of justice, the Attorney-General's Office created 11 support units for the National Human Rights Unit, under resolution No. 0-1561 of 22 October 2001 (Annex 4).

108. In addition, the "Subcommittee on the Unification of the List of Victims", formed on a temporary basis from members of the Attorney-General's Office, the Official Defending Attorney's Office, the Vice-Presidency of the Republic, the Office of the United Nations High Commissioner for Human Rights, the Single Confederation of Workers of Colombia (CUT) and the Office for the Defence, Promotion and Protection of Human Rights in the Ministry of Labour and Social Security, presented a consolidated report on murder victims covering ten years (1991-2000), noting the provisional nature of the information for 2000. Finally, the Government highlights the importance of different forms of ILO cooperation with special mention of the current technical cooperation programme.

109. Developments in the process of investigation pursued by the Internal Human Rights Unit in the Ministry of Labour and Social Security are set out below, with the related monitoring report submitted by the Attorney-General's Office:

1. Javier Suárez, President of the Truck-drivers' Association of Colombia (ACC), murdered on 5 January 2000, in the town of Buenaventura, Valle del Cauca. File No. 1147. On 30 August 2000, a person was charged. On 7 February 2001, Criminal Court No. 2 of the Buenaventura Circuit acquitted the accused. The decision was appealed by the Prosecutor's Office. It is at present before the Buga High Court for a decision on the appeal. According to the certification issued on 16 June 2001 by the Director of the "Trade Union Registry" of the Ministry of Labour and Social Security, "The Truck-drivers' Association of Colombia is not registered as a trade union in the Trade Union Registry of the Ministry of Labour and Social Security".

2. Germán Valderrama Soto, who was murdered in Florencia, Department of Caquetá, on 15 January 2000. The Attorney-General's Office reports: "under File No. 5605, Prosecutor's Office No. 6 before the Criminal Circuit Court. On 18 January 2000, the case was notified and examination of evidence commenced. On 9 August 2000, the investigation was suspended pursuant to article 326 of the Penal Procedures Code, on

the grounds that there was insufficient evidence to initiate an investigation. Ordinary crime, motorcycle accident".

3. Guillermo Adolfo Parra López, murdered on 24 January 2000 in the municipality of Montebello, Department of Antioquía. File No. 1288, Santa Bárbara Prosecutor's Office. On 1 February 2000, the investigation was assigned to the Medellín Special Prosecutor. Examination of evidence. At present, eight people have been charged: two are in detention and in the case of the remaining six, the Office decided not to order detention.

4. Mauricio Vargas Pabón, murdered on 27 January 2000, in Bogotá. Case No. 41998. The proceedings opened in the Bogotá Prosecutor's Office, 18th section and were then transferred to Special Terrorist Unit 1. So far, his membership of any trade union has not been established.

5. Jesús Orlando Crespo García, murdered on 31 January 2000, in the municipality of Bugalagrande, Department of Valle. Report of non-governmental human rights organizations (NGOs), the People's Centre for Investigation (CINEP) and *Justicia y Paz* (Justice and Peace): "at 17h.30, paramilitaries of the Frente Calima of the AUC executed the President of the Bugalagrande Workers' Union and member of the CUT Solidarity Committee". File No. 186. The proceedings are being conducted by the Special Prosecution Unit. Statements were taken from Jorge Humberto Crespo, among others. According to the Programme for the Protection of trade union leaders and defenders of human rights in the Ministry of the Interior, it had no record of a request for protection for Jesús Orlando Crespo.

6. Danilo Francisco Maestre Montero, murdered on 2 February 2000 in the town of Valledupar, Department of César. Case No. 122175. Valledupar Prosecutor's Office, *Unidad de Vida* ("Life Unit"). Valledupar Special Prosecution Unit 14. The Attorney-General's Office reported that the investigation was suspended on 23 August 2000, under article 326 of the Penal Procedures Code.

7. Marelvis Esther Solano, wounded, according to information provided by CINEP, as a result of political persecution on 12 February 2000 in Valledupar, Department of César. She appears as Marelvis Maestre and is reported as wounded. CINEP and *Justicia y Paz* report "a woman died and four more were wounded when they were attacked in their own home, situated at …, San Martín district, by a bomb containing 25 kilos of dynamite. There are paramilitary and guerrilla groups in the area". "Murdered: María Canchana". "Wounded (sic) by political persecution: Marelvis Meastre". The Attorney-General's Office reports that the case is recorded as File No. 122327. Valledupar Prosecutor's Office 7, special unit. Examination of evidence is in progress.

8. Leominel Campo Núñez, murdered on 23 March 2000 in Apartadó, Department of Antioquía. On 29 May 2001, the President of INTRAINAGRO communicated a list of "… murdered comrades and members of this organization", including Mr. Campo Núñez. Recorded as File No. 44056. The Medellín Special Prosecutor, by decision of 11 June 2001, ordered examination of evidence. The Technical Investigation Section (CTI) was ordered to establish the possible motive of the perpetrators of the acts. The Attorney-General's Office states: "There is no document indicating that the deceased belonged to any trade union. He was the brother of the former local mayor, Nelson Campo Núñez."

9. Franklyn Moreno Torres, killed on 23 February 2000 in Apartadó, Department of Antioquía. According to the SINTRAINAGRO report, Franklyn Moreno Torres was a member of the trade union and one of those assumed to be murdered by paramilitary

groups. The investigation was opened in the Apartadó Prosecutor's Office, File No. 6386, and the preliminary investigations alleged that the act was committed by a former policeman. The Technical Investigation Section (CTI) was ordered to investigate on 6 March 2000. Its report is awaited.

10. Fabio Santos Gaviria, murdered on 24 February 2000, in Medellín, Department of Antioquía. CINEP and *Justicia y Paz* report that "A lecturer in the Mechanical Engineering Faculty of the National University, Medellín Campus, was murdered when he was with his fiancée in a public establishment". According to the source "the fiancée had been the victim of extortion of 200 million dollars. On the day of the crime, the lady received a telephone call in the afternoon, in which a person said that they were going to kill someone she loved, which happened a few hours later".

11. Anibal Zuluaga, killed in Medellín, Department of Antioquía, on 28 February 2000. The Secretary-General of SINTRALANDERS, Medellín, on 21 May 2001, stated: "in the case of the death of our comrade and colleague Anibal Zuluaga, his death was a matter of chance since it was a robbery on leaving a bank …".

12. Guillermo Molina Trujillo, murdered on 1 March 2000 in the municipality of Yarumal, Department of Antioquía. The National Trade Union School (ENS) and CINEP report that he was a trade union leader, without stating to which organization he belonged. The proceedings are being conducted by the Medellín Special Prosecutor. It is registered as File No. 3637 and currently at the investigative stage.

13. Darío de Jesús Agudelo Bohórquez, the Colombian Teachers' Federation (FECODE) reported that he was murdered in the municipality of Chigorodó, Department of Antioquía on 6 March 2000. The proceedings have been conducted by the Medellín Special Prosecutor since 13 March 2000, under File No. 3595, examination of evidence, assigned to the investigation unit of the judicial police. The information will be checked through intelligence operations and collection of technical evidence.

14. Melva Muñoz López, murdered in the municipality of Neira, Department of Caldas, on 7 March 2000. According to CINEP, "Paramilitaries executed the 42-year-old teacher Melva after abducting her from the Juan José Neira school, on the La Cristalina estate. The teacher was with her students, when the murderers took her off and executed her 40 yards from the school". It adds that the perpetrators of the crime were "paramilitaries" and the job "professional". Melva Muñoz López is not on the "list of teachers murdered in 2000", prepared by the Colombian Teachers' Federation (FECODE). According to the Attorney-General's Office, statements were taken from the family and neighbours of the deceased in the region where she worked as a teacher and where the incident occurred, but nothing was known of the motives or identity of the attackers. It was not established that she belonged to any trade union.

15. Juan José Neira, in the "list of murders" for 2000, prepared by the CUT. Mr. Neira was killed on 9 March 2000, in the municipality of Neira, Department of Caldas and listed as a member of the Association of University Teachers (ASPU), Manizales Branch. In its verification of cases in the year 2000, the Internal Unit for the Defence, Promotion and Protection of Workers' Human Rights, in the Ministry of Labour and Social Security, it was established that ASPU does not have a branch in the Department of Caldas. It should be clarified that Juan José Neira is the name of the school where Melva Muñoz López worked. In addition, according to his birth certificate, Mr. Juan José Neira was born in 1793. Consequently, it is evident that the person mentioned has no connection with the alleged facts in file 1787.

16. Justiniano García, murdered on 11 March 2000, in the town of Cali, Department of Valle del Cauca. The case is with Prosecutor's Office 39, *Unidad de Vida*, File

No. 360435, which determined that he was not an active trade unionist because he had retired six years before his death, according to statements by members of his family.

17. Iván Francisco Hoyos, was wounded on 15 March 2000 and died three days later in the town of Cartagena, Department of Bolívar. The proceedings are with the Special Prosecutor's Office 5, Cartagena Section. File No. 48531, under examination of evidence. Documents have been received and orders have been issued to the Judicial Intelligence Service (SIJIN), the Department of Administrative Security (DAS) and the Technical Investigation Section (CTI), to obtain more information about the incident.

18. José Atanasio Fernández Quiñónez, San Rafael Prosecutor's Office, Department of Antioquía, File No. 1302. The investigation was suspended on 10 October and archived on 23 October 2000. The President of the Executive Board of the Department of Antioquía Workers' Union (SINTROFAN), in a letter dated 16 May 2001, stated that Mr. Fernández Quiñónez was not a member of the trade union.

19. Margarita María Pulgarín Trujillo, murdered on 3 April 2000 in the town of Medellín, Department of Antioquía. CINEP reported that "Unknown persons on a motorcycle murdered a prosecutor with four shots when she was leaving her home … she was acting as an undercover prosecutor and was then a member of the Terrorist Unit …". The case is with the National Unit for Human Rights and International Humanitarian Law of the Attorney-General's Office, File No. 757; arrest warrants were issued against two absent persons. The Attorney-General's Office states that there is no evidence in the investigation that she belonged to any trade union. The Colombian Government therefore requests that Ms. Pulgarín should be excluded from the present case.

20. Julio César Betancourt, murdered on 3 April 2000, in the municipality of Yumbo, Department of Valle del Cauca, a member of the Yumbo Workers' Union, according to the CUT. The proceedings are with the Yumbo Prosecutor's Office 157, File No. 116491, which established that there was no link with any trade union. In a document signed by 24 trade unions and social organizations in Valle del Cauca, including the Yumbo Workers' Union (SINTRAYUMBO), on 1 November 2000, Julio César Betancourt did not belong to that organization.

21. Islem de Jesús Quintero, abducted on 6 April 2000 in the town of Pereira, Department of Risaralda and found dead on 7 April. Secretary-General of the Association of Telephone Engineers (ATT). The proceedings are with the Prosecutor's Office 8, *Unidad de Vida*, File No. 827. The investigation was opened on 12 April 2000. A special action group was formed to clarify the facts, together with investigators from the Department of Administrative Security (DAS). The proceedings are at present at the examination of evidence stage in the National Unit for Human Rights and International Humanitarian Law of the Attorney-General's Office. The Attorney-General's Office adds that as the perpetrators have not been identified, the evidence indicates that the motives for the killing were unrelated to the company or the trade union, but of a personal nature. Based on this, the Colombian Government requests that Mr. Quintero should be excluded from the present case.

22. Alejandro Alvarez Isaza, murdered on 7 April 2000 in the municipality of Argelia, Department of Antioquía, as reported by the CUT. According to the same source, Mr. Alvarez Isaza was a member of the Colombian Electricity Workers' Union (SINTRAELECOL). The name of Mr. Alvarez Isaza does not appear in the "list of violations of human rights" signed by SINTRAELECOL, and dated May 2001, therefore it is requested that he should be excluded from the present case.

23. Cesar Wilson Cortes, murdered on 8 April 2000, in the municipality of Trinidad, Department of Casanare. He was a worker in the Boyacá Power Company, and a member of SINTRAELECOL. The proceedings are with the Paz de Ariporo Prosecutor's Office, File No. 354-18, and is at the examination of evidence stage.

24. Rómulo Gamboa, murdered on 8 April 2000, while repairing an electrical circuit in the municipality of Trinidad, Department of Casanare. The proceedings are with the Paz de Ariporo Prosecutor's Office, File No. 354-18, in conjunction with DAS, and is at the examination of evidence stage.

25. José Antonio Yandú. Deceased on 10 April 2000 in San Roque, Department of Antioquía. The CUT reported that Mr. Yandú was a member of the Association of Street Traders. CINEP stated that: "Paramilitaries caused the disappearance of three people. The incident occurred when the paramilitaries intercepted a bus in the *corregimiento* of San José Nuestra Señora and after identifying the victims, made them get off and took them away in an unknown direction." One of the people was José Antonio Yandú. The Attorney-General's Office reported that the proceedings are in progress under File No. 9246, the investigation was initiated ex officio and as no trade union link was established, the motive for the murder was recorded as "past political activities" about which several statements were received. According to the certification of the Director of the Trade Union Registry of the Ministry of Labour and Social Security, the San Roque Association of Street Traders of Antioquía, is not registered as a trade union organization.

26. Gonzalo Serna, murdered on 10 April 2000, in the municipality of San Roque, Department of Antioquía. The CUT reported that Mr. Yandú was a member of the Association of Street Traders. CINEP stated that: "Paramilitaries caused the disappearance of three people. The incident occurred when the paramilitaries intercepted a bus in the *corregimiento* of San José Nuestra Señora and after identifying the victims, made them get off and took them away in an unknown direction." One of the people was Mr. Gonzalo Serna. According to the certification of the Director of the Trade Union Registry of the Ministry of Labour and Social Security, the Association of Street Traders of San Roque, Antioquía, is not registered as a trade union organization.

27. James Antonio Pérez Chima, murdered on 17 April 2000 in the town of Montería, Department of Córdoba. The CUT reported that he was a member of the Association of University Teachers (ASPU). CINEP and *Justicia y Paz* reported that he was murdered on 10 April 2000 and that "members of an armed group ... murdered with three gunshots … the Dean of the Faculty of Social Sciences of the University of Córdoba …" under File No. 7718. The Prosecutor's Office ordered certain measures and interviewing of several witnesses. The Association of University Teachers stated in writing that Mr. Pérez Chima was not on a list of victims of human rights violations belonging to that organization.

28. Jesús María Cuellar, murdered on 13 April 2000, in the town of Florencia, Department of Caquetá. The CUT reported that he was a member of the Caquetá Teachers' Association (AICA-FECODE). The investigation is being conducted ex officio by Florencia Prosecutor's Office 4, File No. 7718. According to the DAS report, the deceased was involved in murder and extortion. The investigation was suspended on 20 March 2001. The Colombian Teachers' Federation (FECODE) prepared a document called "list of teachers murdered in 2000", on which the name of Jesús María Cuellar did not appear.

29. Juan Cástulo Jiménez Gutiérrez, murdered on 23 April 2000 in the *corregimiento* of Mesopotamia, municipality of La Unión, Department of Antioquía, according to the

complainant organization. The CUT stated that he was a member of the Antioquía Teachers' Association (ADIDA-FECODE). CINEP and *Justicia y Paz* stated that: "AUC paramilitaries executed five people and wounded two more ... in the *corregimiento* of Mesopotamia and fired at a group of people in a potato store ...". It adds that the incidents occurred in the municipality of La Unión, Department of Valle del Cauca, and records one of the victims as Juan Cástulo Jiménez Gutiérrez. File No. 2438. The Subunit reports that it was not filed in the La Unión Prosecutor's Office No. 23, the place where the incidents may have occurred. FECODE does not record Mr. Jiménez as a murder victim in its "list of teachers murdered in 2000".

30. Anibal Pemberty, murdered on 27 April 2000 in the municipality of Puerto Nare, Department of Antioquía. The CUT stated that he was a member of the Single Union of Workers in the Construction Materials Industry (SUTIMAC). Anibal Pemberty does not appear in a document prepared by SUTIMAC on "Violation of trade union rights", which reports on violations from August 1986 to 24 March 2001. File No. 361198. The Puerto Nare Prosecutor's Office reports that the Empresa Cementos Nare does not mention Mr. Anibal Pemberty as one of its workers. There is no evidence that he belonged to a trade union.

31. Esneda de las Mercedes Monsalve Holguín, murdered on 27 April 2000 in the municipality of Uramita, Department of Antioquía. The CUT stated that he was not a member of the Antioquía Teachers' Association (ADIDA-FECODE). File No. 809. The investigation was suspended on 6 December 2000 and ordered to be archived under article 326 of the Penal Procedures Code. The Attorney-General's Office states that "it does not know if she belonged to any trade union group. ELN presumed to be involved". Ms. Monsalve Holguín does not appear as a murder victim in the "list of teachers murdered in 2000" prepared by the Colombian Teachers' Federation (FECODE).

32. Humberto Guerrero Porras, murdered on 27 April 2000, in the town of Barrancabermeja, Department of Santander, according to a report by the Petroleum Industry Workers' Trade Union (USO). Prosecutor's Office 9 received witness statements. An investigation was begun on 27 April 2000 under File No. 19013. The Technical Investigation Section is pursuing the investigation, which is at the preliminary and examination of evidence stage.

33. Milton Cañas Rojas, murdered on 27 April 2000, in the municipality of Yondó, Department of Antioquía, an activist of the Petroleum Industry Workers' Trade Union (USO). The case is being conducted by Prosecutor's Office 4, Barrancabermeja. File No. 19104. It is at the examination of evidence stage.

34. Yimi Alexander Hincapié Acevedo, murdered on 27 April 2000 in the municipality of Puerto Nare, Department of Antioquía. The CUT reported that he was a member of SUTIMAC, Puerto Nare. He does not appear in the document of the Single Union of Workers in the Construction Materials Industry (SUTIMAC) "Violation of trade union rights, which reports these violations for the period from August 1996 to 24 March 2001. The case is being conducted by the Puerto Nare Prosecutor's Office, under File No. 361198, which reports that inquiries at the Empresa Cementos Nare confirmed that Mr. Hincapié was not one of its workers.

35. Gloria Nubia Uran Lezcano, murdered on 3 May 2000, in the San Antonio estate in the municipality of Betulia, Department of Antioquía. The CUT states that she was a member of the Antioquía Teachers' Association (ADIDA-FECODE). File No. 1526. The proceedings are being conducted by the Special Investigative Sub-unit. Gloria Nubia Uran Lezcano does not appear as a murder victim in the "list of teachers murdered in 2000" prepared by the Colombian Teachers' Federation, therefore she

did not belong to any trade union and the removal of Ms. Uran from the present case is requested.

36. Ramiro de Jesús Zapata, murdered on 3 May 2000, in the town of Medellín, Department of Antioquía, was an activist in the Colombian Teachers' Federation (FECODE). The proceedings are being conducted in the Attorney-General's Office, File No. 782, by the National Human Rights and International Humanitarian Law Unit. Examination of certain evidence was ordered by decision of 1 June 2001.

37. Carmen Emilia Rivas, murdered on 17 May 2000, in the town of Cartago, Department of Valle Del Cauca. She was President of the National Association of Workers and Employees in Hospitals, Clinics, Dispensaries and Community Health Units (ANTHOC). The proceedings are being conducted by the Cartago Prosecutor's Office. File No. 20793, opened on 19 May 2000, under investigation by the Technical Investigation Section. A considerable amount of evidence has been examined and steps taken to clarify the matter, but so far nothing is known of the motives and the attackers.

38. Omar Darío Arias Salazar, murdered on 21 May 2000, in the town of Bugalagrande, Department of Valle del Cauca. The CUT stated that he was a member of the Bugalagrande Branch of SINALTRAINAL. "On 21 May this year, Omar Darío Arias Salazar, former trade union official of SINALTRAINAL in Bugalagrande, disappeared and was found drowned on 26 May 2000. At present, the possibility that it was a political murder is not ruled out, bearing in mind his activity in the Solidarity Committee of CUT Valle Branch, the departmental board and other municipal community activities." Document signed by 24 trade unions and social organizations in Valle del Cauca, on 1 November 2000, including the Bugalagrande Branch of SINALTRAINAL. The investigation is being conducted by the Tulúa Prosecutor's Office, Section, File No. 936. A decision to terminate the proceedings was issued in resolution No. 287 of 18 December 2000.

39. Nelson Arturo Romero Romero, murdered on 1 June 2000, in the town of Villavicencio, Department of Meta, official of the Meta Teachers' Association (ADEM-FECODE). The proceedings are being conducted by the Prosecutor's Office, Section 10, File No. 22343. Examination of evidence is in progress.

40. Abel María Sánchez Salazar, murdered on 2 June 2000, in the town of Florence, Department of Caquetá, a teacher and member of the Colombian Teachers' Federation. The proceedings are being conducted by Prosecutor's Office, Section 6, delegated to the Florencia Criminal Circuit Court, File No. 8829, examination of evidence in progress.

41. Luis Hernán Campano Guzmán: the Committee should note that Mr. Campano is not dead as alleged by the complainant organization. He was wounded in the attack on his companion Abel María Salazar, in incidents at a public establishment in the early hours of the morning on 2 June 2000. File No. 8829. The matter was notified on 6 June 2000, and examination of evidence was ordered. The Prosecutor's Office collected several statements seeking to obtain information on the perpetrators of the crimes under investigation. According to the Attorney-General's Office, it has not been established that he belonged to any trade union.

42. José Arístides Velásquez Hernández, murdered on 11 June 2000, in the municipality of Ansa, Department of Antioquía, a member of SINTRAMUNICIPIO, according to the CUT. CINEP and *Justicia y Paz* reported that: "AUC paramilitaries executed three people in the *corregimiento* of Guintar and ordered all its inhabitants to leave the municipality immediately." One of the victims of the self-defence group was

Mr. José Arístides Velásquez Hernández, who worked as a small farmer in the *corregimiento* of Guintar, municipality of Ansa.

43. Candelaria Florez, murdered on 17 June 2000, in the town of Montería, Department of Córdoba, the wife of teacher Alberto Ruiz Guerra, member of the Córdoba Teachers' Union (ADEMACOR-FECODE). The proceedings are being conducted by Unit 17 of the Montería Rapid Reaction Force, File No. 12926, examination of evidence in progress.

44. Robert Cañarte Montealegre, murdered on 29 June 2000, in the town of Bugalagrande, Department of Valle del Cauca. The proceedings are being conducted by the Buga Prosecutor's Office, Special Section 4, and examination of evidence is in progress, File No. 391082. The proceedings involve witnesses, verbal descriptions and the evidence is being evaluated to arrest the suspects. The proceedings for threats and murder were combined.

45. Basislides Quiroga, murdered on 2 July 2000 in the town of Bugalagrande, Department of Valle del Cauca. The CUT stated that he was a member of the Bugalagrande Municipal Workers' Union, adding that: "On 1 July 2000, the farmworkers' leader displaced from the *corregimiento* of Galicia, Basislides Quiroga, was taken away 7.30 p.m. from the farmhouse situated two blocks from the police station by heavily armed men and found murdered on 2 July of this year." Document "Protection measures and human rights situation in Valle del Cauca", signed by over 20 trade union and social organizations in Valle del Cauca, dated Cali, 1 November 2000. The proceedings are being conducted by the Cali Prosecutor's Office, File No. 395570. Eduardo Antonio Salgado Pérez has been charged.

46. Miguel Angel Barreto Racine, murdered on 2 August 2000, in the municipality of Ovejas, Department of Sucre. According to the CUT, he belonged to the Sucre Teachers' Association (ADES-FECODE). The proceedings are being conducted by the Sincelejo Prosecutor's Office, Section 7, File No. 10517, suspended by decision of 4 June 2001. Mr. Barreto was not listed in FECODE's "list of teachers murdered in 2000".

47. Vicente Romaña, murdered on 5 August 2000, in the town of Medellín, Department of Antioquía. He was an official delegate of FECODE. The proceedings are being conducted by the Medellín Prosecutor's Office, Section 128, under File No. 371419. The Prosecutor's Office, Section 128, was asked to assign the investigation to the Special Investigative Subunit.

48. Cruz Orlando Benítez Hernández, murdered on 5 August 2000, in the town of Medellín, Department of Antioquía. He was a member of the Antioquía Teachers' Association (ADIDA-FECODE). The proceedings are being conducted by the Medellín Prosecutor's Office, Section 125, under File No. 402080. The Attorney-General's Office was asked to assign the investigation to the Special Investigative Subunit.

49. Rubén Darío Guerrero Cuentas, murdered on 20 August 2000 in the municipality of Guacamaya, Department of Magdalena. The CUT stated that he was an official of the National Union of Workers in the National Department of Taxation and Customs (SINTRADIAN), Barranquilla Branch. CINEP and *Justicia y Paz* reported that: "The DIAN official was murdered … in an incident presumed to have occurred at 7.00 in the evening. He was a prosecutor and until the previous year had occupied the post of prosecutor in the DIAN Workers' Union", File No. 18690. The investigation is being conducted by the Prosecutor's Office, Special Section 3, and its examination of evidence is in progress.

50. Sergio Uribe Zuluaga, murdered on 5 August 2000, in the town of Medellín, Department of Antioquía. The proceedings are being conducted by the Medellín Prosecutor's Office, Section 125. A request was made to assign the investigation to the Special Investigative Subunit.

51. Moisés Sanjuán López, murdered on 29 August 2001, in the town of Cúcuta, Department of North Santander. The family benefit review, *Revista Súper Subsidio Familio*, Year 6, No. 68 of August 2000, in an article dedicated to Moisés Sanjuán, recorded that: "The Vice-Minister of Labour and Social Security … deplored the vile murder of the Administrative Director of the North Santander Family Benefit Fund … his career was recognized by the Executive Board in 1991 when it appointed him Administrative Director …". File No. 24906.

52. Alejandro Vélez Jaramillo, murdered on 30 August 2000, in the municipality of Turbo, Department of Antioquía. According to the CUT, he belonged to the Association of Civil Servants and Judicial Employees (ASONAL). A document of the ASONAL National Secretariat of 11 May 2001 stated: "Mr. Alejandro Vélez Jaramillo is not listed in ASONAL's records …".

53. Argemiro Albor Torregrosa, murdered on 5 September 2000, in the municipality of Piojó, Department of Atlántico, a member of the Galana Farmworkers' Union, according to the Single Confederation of Workers, File No. 3491. The proceedings were suspended on 23 April 2001. According to CINEP and *Justicia y Paz*: "Armed men on a red motorcycle shot dead with two shots a candidate for the Piojó (Atlántico) Council, member of the Galapa (Atlántico) Farmworkers' Association and of the National Federation of Farmworkers, FANAC (sic)."

54. Hugo Alfonso Iguaran Cotes, murdered on 11 September 2000, in the town of Montería, Department of Córdoba, a member of the Union of Workers in the University of Colombia (SINTRAUNICOL), Córdoba Branch, according to the CUT. According to the Association of University Teachers, he was "murdered on 10 September 2000. He was a former official and active member of the Córdoba Branch of ASPU".

55. Efraín Becerra, murdered on 12 September 2000, in Bogotá, Department of Cundinamarca. According to the CUT, he was a member of the Union of Workers in the University of Colombia (SINTRAUNICOL), Córdoba Branch. Mr. Efraín Becerra does not appear in the "List of violent acts against SINTRAUNICOL" prepared by SINTRAUNICOL in March 2001. File No. 50324, examination of evidence is in progress.

56. Omar de Jesús Noguera, murdered on 24 September 2000, in the town of Cali, Department of Valle del Cauca, member of the Cali Municipal Enterprises Union (SINTRAEMCALI). File No. 390310 in Cali Prosecutor's Office, Section 19, *Unidad de Vida*. Examination of evidence is in progress.

57. Reynaldo Acosta Celemin, murdered on 3 October 2000 in the town of Buga, Department of Valle del Cauca. According to the Single Confederation of Workers, he was Vice-President of the Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia, Valle del Cauca Branch. CINEP and *Justicia y Paz* report that: "armed men killed … a former worker of the Buga Municipal Enterprises, the incident occurring at around 13.00 hours".

58. Alfredo Castro Haydar, murdered on 5 October 2000 in the town of Barranquilla, Department of Atlántico. A member of the Association of University Teachers (ASPU), Atlántico Branch, according to the Single Confederation of Workers.

"Alfredo Castro Haydar, murdered on 5 October 2000, former treasurer of ASPU Atlántico, former academic vice-rector of Atlántico University": File No. 946 National ASPU. The Attorney-General's Office reports that the investigation against Oscar Guillermo Rodríguez Herrera was partially closed by a decision of 10 September 2001, and is in the process of notification. At the time of the attack that cost him his life, he had no links with the trade union to which ASPU claimed he belonged.

59. María Nelcy Mora Hincapié, murdered on 23 October 2000, in the town of Copacabana, Department of Antioquía, member of the Antioquía Teachers' Association (ADIDA-FECODE). File No. 457155 in the Special Prosecutor's Office, Trade Union Subunit, Medellín. Examination of evidence is in progress. The Technical Investigation Section is tasked with identifying the perpetrators.

60. Hernán Betancourt, murdered on 15 December 2000 in the town of Cali, Department of Valle del Cauca. According to the CUT, he was a member of the National Union of Workers in the University of Colombia (SINTRAUNICOL), Valle Branch. Hernán Betancourt does not appear in the "List of violent acts against SINTRAUNICOL" prepared by SINTRAUNICOL in March 2001. Once new information has been obtained on progress in the penal proceedings, it will be provided to that organization.

61. Luis Arcadio Ríos Muñoz, murdered on 27 March 2000 in the town of San Carlos, Department of Antioquía. He was a member of the Union of Electricity Workers of Colombia (SINTRAELECOL), according to a written statement by that trade union. File No. 1304. The Attorney-General's Office reported that the proceedings were suspended in October 2000 and were ordered to be archived on 23 October. San Rafael Section, Department of Antioquía.

62. Oscar Darío Zapata Muñoz, murdered on 8 April 2000 in the town of Giradota, Department of Antioquía. He was an activist in the National Union of Workers in the Weaving, Textiles and Clothing Industry (SINALTRADIHITEXCO), according to a written report from CINEP and *Justicia y Paz*. Attorney-General's National Office, File No. 2536. On 6 March 2001, the proceedings were suspended and the case archived on 20 March 2001.

63. Pedro Amado Manjarres, murdered on 29 May 2000, in the town of Fonseca, Department of Guajira, member of the Colombian Teachers' Federation (FECODE). Attorney-General's Office, File No. 587. The investigation is in the preliminary stage and examination of evidence is in progress. The investigative proceedings are being conducted in Attorney-General's Office, Section 003, San Juan del César Riohacha.

64. Luis Mesa Almanza, murdered in the town of Barranquilla, Department of Atlántico, on 26 August 2000. The Association of University Teachers (ASPU), in a document signed by the National Treasurer dated 30 May 2001, refers to Mr. Meza as: "the former student representative on the High Council of Atlántico University, former student representative to the CESU and former Secretary-General of Atlántico University, an outstanding student leader who left the administration because of disagreements with administrative policy". File No. 962. Under a decision of 3 August 2001, Eduardo Enrique Vengoecha Mola and Mario Alberto Silva Vargas were declared absent persons. The conclusion of this legal situation is pending. A witness statement was received on 16 August 2001. It has not, however, been established that he belonged to any trade union.

65. Bayron de Jesús Velásquez Durango, murdered on 10 April 2000, in the municipality of San Roque, Department of Antioquía. José Antonio Yandú and Gonzalo Serna were killed in the same incident, according to the CUT report, and were registered as

members of the Association of Street Traders. CINEP reports that: "Paramilitaries caused the disappearance of three people. The incident occurred when the paramilitaries intercepted a bus in the *corregimiento* of San José Nuestra Señora and after identifying the victims, made them get off and took them away in an unknown direction." One of the victims was Bayron de Jesús Velásquez Durango. As certified by the Director of the Trade Union Registry of the Ministry of Labour and Social Security, the San Roque Association of Street Traders, Antioquía, is not registered as a trade union organization.

66. Luis Alfonso Páez Molina, murdered on 1 February 1997 in the municipality of Turbo, Antioquía, listed as a member of SINTRAINAGRO. It should be noted that in the paragraph "Acts of violence against trade union officials" in 2000, in Report No. 327 of the Committee on Freedom of Association, it is recorded that the murder of Mr. Páez Molina occurred on 12 August 2000.

67. Gustavo Enrique Gómez Gómez, murdered on 9 May 2000, in the municipality of Maceo, Department of Antioquía, member of the Antioquía Teachers' Association (ADIDA-FECODE), File No. 1496. The investigation is being conducted by the Special Investigative Subunit and examination of evidence is currently in progress.

68. Luis Rodrigo Restrepo Gómez, murdered in the town of Medellín, Department of Antioquía, on 8 February 2000, member of the Antioquía Teachers' Association (ADIDA-FECODE). The proceedings are being conducted under File No. 1755, and are at the preliminary stage and examination of evidence by the Medellín Special Prosecutor.

69. Lázaro Gil Alvarez, murdered on 29 September 2000, in the municipality of San Francisco, Department of Antioquía, member of the Antioquía Teachers' Association (ADIDA-FECODE). File No. 2452. The investigation is being conducted by the Investigative Subunit of the Special Committee and is currently at the examination of evidence stage.

70. Bernardo Vergara Vergara, murdered in the town of Medellín, Department of Antioquía, member of the Antioquía Teachers' Association (ADIDA-FECODE). The proceedings are being conducted under File No. 398184, and the investigation is being conducted by the Medellín Special Prosecutor.

71. Elizabeth Cañas Cano, murdered on 11 July 2000 in the municipality of Barrancabermeja, Department of Santander. The Office of the United Nations High Commissioner for Human Rights states that "according to information provided by ASFADDES, Barrancabermeja Branch, the *Brigadas de Paz* (Peace Brigades) and the press, on 11 July 2000, at about 13.00 hours, two assumed paramilitaries … murdered Ms. Elizabeth Cañas with three shots. She was an active member of ASFADDES, Barrancabermeja Branch and participated in meetings and activities of that institution …" Ms. Elizabeth Cañas did not belong to a trade union, but to the Association of Families of Detained and Disappeared Persons (ASFADDES).

72. Alexander Mauricio Marín Salazar, murdered in the municipality of Envigado, Department of Antioquía, on 12 April 2000. According to a document of 16 May 2001 signed by the President of the Central Executive Board of the Union of Local Government Officials and Public Employees of Antioquía (SINTRAOFAN), "between 2000 and now two members of our trade union, SINTRAOFAN, have been murdered, namely: José Gildardo Uribe García … and on 10 January this year … Edgar Orlando Marulanda Ríos …". The source does not include Mr. Alexander Marín among the members of SINTRAOFAN who died violently during the year 2000.

73. José Gildardo Uribe García, murdered on 12 June 2000, in the municipality of Vegachí, Department of Antioquía, member of the Union of Local Government Officials and Public Employees of Antioquía (SINTRAOFAN). The proceedings are being conducted by the Subunit for the investigation of trade union cases, File No. 363378. By a decision of 30 August 2001, the Investigative Subunit ordered the investigation into this murder to be combined with the preliminary proceedings in 363378.

74. Francy Uran Molina, murdered in the municipality of Caicedo, Department of Antioquía. The Attorney-General's Office reports: "the Special Investigative Subunit for trade union cases did not find any records, and will notify the matter to the Urrao Prosecutor's Office, and if there is an investigation there, will request its referral to the special subunit".

75. Francisco Espadil Medina, murdered in the municipality of Turbo, Department of Antioquía, on 7 September 2000. The Attorney-General's Office reports: "The Special Investigative Subunit for trade union cases did not find any records, and will refer the matter to the Turbo Prosecutor's Office, and if there is an investigation there, will request its referral to the Special Subunit."

76. Hector Acuña, murdered on 12 June 2000 in the municipality of Barrancabermeja, Department of Santander. He was President of the Union of Automobile Drivers (UNIMOTOR). The investigation was conducted by the Barrancabermeja Prosecutor's Office, under File No. 19645, and was suspended on 22 December 2000.

77. Gil Bernardo Rojas Olachica, murdered on 2 September 2000 in the municipality of Barrancabermeja, Department of Santander. He was a member of the Santander Teachers' Union (SES). The Barrancabermeja Special Prosecutor is conducting the investigation under File No. 93976, which is at the preliminary and examination of evidence stage.

78. Jairo Herrero, murdered in the municipality of Puerto Wilches, Department of Santander, on 15 September 2000. The Attorney-General's Office reports that "the Bucaramanga Trade Union Investigative Subunit has notified the respective registries in order to request the registration of the decease of the victim".

79. Candelario Zambrano, murdered on 15 September in the municipality of Puerto Wilches, Department of Santander. File No. 22283, in the Barrancabermeja Prosecutor's Office. A decision to terminate proceedings was issued on 24 August 2001.

80. Alejandro Tarazona, murdered on 26 September 2000 in the town of Bucaramanga, Department of Santander, member of the Bucaramanga Municipal Workers' Union (SINTRAMUNICIPIO). The investigation is being conducted by the Prosecutor's Office, *Unida de Vida*, under File No. 93169, and is at the preliminary and examination of evidence stage.

81. Humberto Peña Riaño, murdered on 28 September 2000, in the municipality of Florencia, Department of Caquetá. CINEP reports that: "Armed men fired several shots and murdered a person in the El Pará estate. There are paramilitary and guerrilla groups in the area." File No. 10921. The investigation is being conducted by the Prosecutor's Office, Special Section 3 and examination of evidence is in progress.

82. Edgar Arturo Burgos Ibarra, murdered on 13 November 2000 on the road between the town of Pasto and the municipality of Linares in Nariño Department. File No. 27094.

The investigation is being conducted by the Pasto Prosecutor's Office, Special Section 4. Evidence has been examined, but without so far identifying the murderers.

83. Hernando Cuartas Agudelo, murdered on 1 September 2000 in the municipality of Dos Quebradas, Department of Risaralda, member of the National Union of Workers in the Food Industry (SINALTRAINAL). File No. 5323, Dos Quebradas Prosecutor's Office. The investigation was ordered to be suspended by a decision of 16 May 2001.

84. Clovis Florez, murdered on 15 September 2000 in the town of Montería, Department of Córdoba. He was President of the farmworkers' organization, AGROCOSTA, Córdoba Branch. As certified on 3 April 2002 by the Director of the Trade Union Registry of the Ministry of Labour and Social Security, the farmworkers' organization, AGROCOSTA, Córdoba Branch, is not registered as a trade union in the Trade Union Registry of the Ministry of Labour and Social Security.

110. The Colombian Government reiterates that it is fully committed to helping to reduce the widespread violence that plagues the country and will continue to provide protection to members of trade union organizations who so request, and likewise requests the Committee on Freedom of Association that before comparing this list with that of the trade unions, it should determine which cases do not strictly relate to trade union leaders and activists.

111. The information set out below relates to investigations conducted by the Attorney-General's Office. The Office of Human Rights in the Ministry of Labour and Social Security is already engaged in checking the list for 2001, which must be an inter-institutional task in order to establish with certainty the data on each of the victims of human rights violations. In this connection, the Attorney-General's Office was charged on Thursday, 4 April 2002, with establishing the status of members, leaders or activists of the National Association of Civil Servants and Judicial Employees (ASONAL), officers of the Technical Investigation Section (CTI) or prosecutors murdered in the years 2001 and 2002. So far, we have been able to obtain preliminary information in the following cases:

85. Valmore Locarno, murdered on 12 March 2001 in the town of Valledupar, Department of César. He was President of the Workers' Union of the DRUMOND Company. File No. 996. The proceedings are being conducted by the National Human Rights and International Humanitarian Law Unit in the Attorney-General's Office and are at the probatory stage. Under decisions of 14 May and 27 August 2001, investigations were ordered to establish the motive for the murder.

86. Ricardo Luis Orozco Serrano, murdered on 2 April 2001 in the municipality of Soledad, Department of Atlántico. He was Vice-President of the National Association of Workers and Employees in Hospitals, Clinics, Dispensaries and Community Health Units (ANTHOC). File No. 1009. The proceedings, at the preliminary stage, are being conducted in the National Human Rights and International Humanitarian Law Unit by the Attorney-General's Office. The Attorney-General's Office reported in a written communication on "Latest measures: Examination of evidence. Request to ANTHOC on whereabouts of witnesses and family members. Certain investigations ordered by decision of 31 August 2001."

87. Lisandro Vargas Zapata, murdered in the town of Barranquilla, Department of Atlántico, on 23 February 2001. He was a teacher at the University of Atlántico. The proceedings, at the preliminary stage, are being conducted in the National Human Rights and International Humanitarian Law Unit in the Attorney-General's Office. File No. 1017. The Attorney-General's Office reported in a written communication on: "Examination of evidence. By decision of 4 September 2001, the DAS was ordered to submit the results of the mission assigned to it on 11 July 2001".

88. María del Rosario Silva Ríos, murdered on 28 July 2001 in the town of Cúcuta, Department of North Santander. Cúcuta Special Prosecutor. The proceedings are under File No. 1074 in the National Human Rights and International Humanitarian Law Unit in the Attorney-General's Office and the Attorney-General's Office reports that the most recent steps have been the examination of evidence.

89. Jairo Valbuena, murdered in the town of Buga, Department of Valle del Cauca, on 10 October 2001. According to the written report from the Attorney-General's Office, his death occurred during a massacre. The case is with the Cali Human Rights and International Humanitarian Law Unit. Filing pending. The proceedings are at the examination of evidence stage.

90. César Daniel Rivera Riveros, a teacher at Atlántico University, murdered in the town of Barranquilla, Department of Atlántico, on 3 February 2001. File No. 88912 of the Prosecutor's Office, Section 1, Rapid Reaction Unit (URI). The proceedings at the examination of evidence stage.

91. Manuel Enrique Charris Ariza, murdered in the municipality of Soledad, Department of Atlántico, on 11 June 2001. He was a member of SINTRAMIENERGETICA. The proceedings are in the Prosecutor's Office, Section 37, File No. 97529, examination of evidence in progress.

92. Darío de Jesús Silva, teacher, murdered in the municipality of Sabaneta, Department of Antioquía, on 2 May 2001. The proceedings are in the Prosecutor's Office, Section 132, File No. 436463, examination of evidence in progress.

93. Walter Dione Perea Díaz, murdered in the municipality of Copacabana, Department of Antioquía, on 26 January 2001. He was a teacher, trade union delegate of the Antioquía Teachers' Association (ADIDA) and the Colombian Teachers' Federation (FECODE). Proceedings are being conducted by the Medellín Special Prosecutor, Section 21, File No. 3436. Examination of evidence is in progress. According to the Attorney-General's Office, examination of evidence and other legal measures were ordered by a decision of 16 July 2001.

94. Juan Carlos Castro Zapata, murdered on 9 May 2001 in the municipality of Copacabana, Department of Antioquía, member of ADIDA-FECODE. The preliminary proceedings are being conducted by the Medellín Special Prosecutor, File No. 3525. The Attorney-General's Office in a written report states: "examination of evidence. The investigators of the Technical Investigation Section (CTI) assigned to the Special Subunit are carrying out intelligence work to identify possible authors of the crime".

95. Rubén Darío Orozco Grajales, murdered in the municipality of Santafé de Antioquía, Department of Antioquía, on 24 July 2001. The proceedings are being conducted by the Medellín Special Prosecutor, File No. 463501, and examination of evidence is in progress.

96. Silvia Rosa Alvarez Zapata, a member of ADIDA-FECODE, murdered in the municipality of Barbosa, Department of Antioquía, on 24 July 2001. The proceedings are being conducted by the Special Prosecutor, File No. 463627, and examination of evidence is in progress.

97. Edgar Orlando Marulanda Ríos, member of SINTRAOFAN, murdered in the municipality of Segovia, Department of Antioquía, on 10 January 2001. The Segovia Prosecutor's Office, in a written report, states that: "The Medellín Special Trade Union Investigative Unit requested the Segovia Prosecutor's Office to investigate this

murder, in conjunction with preliminary proceedings in File No. 363378 involving victims who were members of SINTRAOFAN." At present, various evidence and intelligence work has been ordered in order to identify possible authors of the crime.

98. Rodion Peláez Cortes, member of ADIDA-FECODE, murdered in the municipality of Cocorná, Department of Antioquía, on 13 March 2001. The preliminary proceedings and examination of evidence are being conducted by the Medellín Special Prosecutor, under File No. 432675. The Special Investigative Subunit will request the prosecutor in charge to assign the investigation to the special subunit.

99. Jairo Domínguez, member of SUTIMAC, murdered on 10 July 2001 in the municipality of Montebello, Department of Antioquía. The proceedings are being conducted by the Special Prosecutor in the Medellín Section, under File No. 1675. Examination of evidence is in progress.

100. Ciro Arias Blanco, murdered in the municipality of Capitanejo, Department of Santander, on 24 March 2001. He was Branch President of the Tobacco Company Union (SINTRAINTABACO). The investigation is being conducted by the Paz de Ariporo Prosecutor's Office, under File No. 354-18 and is at the preliminary and examination of evidence stage.

101. Nelson Ramón Narváez, member of SINTRAUNICOL, murdered on 29 May 2001 in the town of Montería, Department of Córdoba. File No. 19922. The investigation is being conducted by the Prosecutor's Office, Section 1, *Unidad de Vida* and is at the preliminary and examination of evidence stage.

102. Miguel Ignacio Lora Hernández, murdered on 11 July 2001, in the town of Montería, Department of Córdoba. He was Head of the Information and Analysis Section of the Technical Investigation Section of the Montería Prosecutor's Office. The Prosecutor's Office is awaiting the results of missions assigned to the State Security Agencies before taking decisions on the evidence collected. The investigation is being conducted under File No. 21082 by the Prosecutor's Office, Section 17, rapid reaction unit.

D. The Committee's conclusions

112. *The Committee notes with deep concern that since the last examination of this case, taking account of the new murders, abductions, disappearances, attempted murders and threats reported, the situation of violence in Colombia which affects all sectors of society shows no sign of improving, and, on the contrary, continues to worsen from day to day. Indeed, in the first quarter of 2002, over 40 murders of trade union leaders and members and five abductions have been reported, in addition to other acts of violence against trade union leaders.*

113. *In general, the Committee takes note of the Government's observations reiterating previous statements on the causes of violence and the difficulties in combating it in the context of violence prevalent in the country and perpetrated by paramilitaries, guerrillas, drug traffickers and ordinary criminals, as well as the measures adopted to put an end to the violence. The Committee welcomes the release of the USO trade union official, Mr. Gilberto Torres, on 7 April 2002.*

Murders addressed in previous examinations of the case

114. *The Committee notes with interest the list of investigations undertaken by various state agencies in respect of 102 murders provided by the Government (see Annex II). The*

Committee observes that this list contains information on certain investigations which had already been reported by the Government. The Committee deeply regrets to note the lack of progress in these investigations. The Committee further regrets that there is not more information on the other (129) previously alleged murders … and acts of violence against trade unionists, especially those that date back a long way (see Annex I). 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" and that "Justice delayed is justice denied" [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 51 and 56]. The Committee urges the Government to continue to send its observations on progress in investigations already begun (Annex II) and to take steps promptly to initiate investigations into the reported murders, abductions, disappearances, attempted murders and threats (Annex I) and into new allegations.*

115. *In addition, the Committee also observes that with respect to some of the murders, the Government indicates that the victims were not trade union officials or members of the trade unions mentioned (Mauricio Vargas Pabón, Leominel Campo Núñez, Melva Muñoz López, Juan José Neira, Justiniano García, José Atanasio Fernández Quiñónez, Margarita María Pulgarín Trujillo, Julio César Betancourt, Islem de Jesús Quintero, Alejandro Alvarez Isaza, James Antonio Pérez Chima, Jesús María Cuellar, Juan Cástulo Jiménez Gutiérrez, Aníbal Pemberty, Esneda de las Mercedes Monsalve Holguín, Gloria Nubia Urán Delgado, Luis Hernán Campano Guzmán, Miguel Angel Barreto Racine, Alejandro Vélez Jaramillo, Efraín Becerra, Alfredo Castro Haydar, Luis Mesa Almanza, Alexander Mauricio Marín Salazar). The Committee requests the complainants to comment on these statements by the Government and, if applicable, provide further information on the allegations that these people were not members of trade unions.*

New murders

116. *The Committee observes with deep concern that the 113 new murders reported by the complainant organizations (see section on new allegations), of which 40 relate to 2002, show that the situation of violence against trade union members and leaders in Colombia continues to be extremely serious.*

117. *The Committee notes the statements of the Government that the acts of violence of different types (murders, abductions, massacres, forcible disappearances, physical injury and other assaults) against workers belonging to trade unions are different expressions of the internal situation of violence experienced in the country and that the authors of these acts of violence are varied, profess different ideologies and have different political, social and economic interests. The Committee notes that according to the Government, the present situation is due to the action of guerrilla and paramilitary groups and that there is no state policy against trade unions or workers belonging to trade unions. The Government states that if in some cases members of state bodies take part in paramilitary activities, these are isolated occurrences, held to be illegal by the Government, and prosecuted as such. In this context, the Government indicates that prosecutors and others responsible for investigating murders and other violent acts are also victims of paramilitary and guerrilla groups. Nevertheless, the Committee observes with regret that it is clear from the facts that the efforts made are inadequate and reiterates what it stated in its previous examination of the case, that "freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed" and "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**, op. cit., paras. 46 and 47].*

118. *Furthermore, the Committee observes with regret that it cannot be inferred from the Government's observations that there is an active policy of disbanding paramilitary and other violent revolutionary groups responsible on many occasions for acts of violence against trade unionists. In these circumstances, the Committee once again urges the Government in the strongest terms to take the steps necessary to achieve provable results in disbanding such paramilitary and other violent revolutionary groups.*

Impunity

119. *The Committee also notes the various bodies created to investigate the acts of violence, including the 11 support units of the National Unit for Human Rights created by the Attorney-General's Office in resolution No. 0-1561 of 22 October 2001 to allow better application of the law and administration of justice. The Committee also notes that between 1997 and 2001, the National Unit for Human Rights in the Attorney-General's Office issued 533 charges, 777 detention orders, 953 arrest warrants and placed 1,475 people under investigation in various cases. During this period, 44 advance sentences resulted. Of the 777 detention orders, 404 were against members of self-defence groups, 99 against guerrillas, 95 against civilians, 82 against members of the National Police, 74 against members of the Army, 10 against members of the Navy, 6 against personnel of the Technical Investigation Section, 4 against members of the National Prison Service (INPEC) and 3 against members of the Administrative Security Department (DAS). As to the 533 charges, 253 were against members of self-defence groups, 93 against members of the Army, 68 against guerrillas, 54 against members of the police, 44 against civilians, 12 against members of the DAS, 5 against personnel of the Technical Investigation Section and 4 against members of the Navy. With respect to the 1,475 people under investigation, 659 were members of self-defence groups, 324 were guerrillas, 164 were civilians, 147 were police officers, 135 were members of the army, 21 were DAS officials, 12 were naval personnel, 7 were from the Technical Investigation Section and 6 from INPEC. The Committee observes, however, that the Government does not provide information on those responsible for acts of violence actually convicted and concludes, as it has done previously, that there have been no convictions for murders of trade unionists. In these circumstances, the Committee once again and in the strongest terms urges the Government to take steps to put an end to the intolerable situation of impunity and to punish those responsible for the innumerable acts of violence.*

Measures to protect trade unionists

120. *The Committee notes the Government's communications, especially the list of persons protected by the "Programme of protection of witnesses and threatened persons" for the year 2001, which includes many members of ASODEFENSA. In this respect, the Committee requests the Government to provide clear information about the programme of protection for the year 2002 and expresses the firm hope that this protection will be extended to all workers who are members and officials of trade unions whose personal safety is threatened, including members of ASODEFENSA, to which the Committee referred in its previous report [see 327th Report, para. 344(e)]. The Committee observes that in some reported murder cases, the victims reported the threats they had received to the Government and had requested protection under the abovementioned programmes, but this was refused. The Committee considers that the assessment of risk must be carried out by the Government with the utmost care and speed, since the very lives of trade union leaders and their families are at stake, and an error in assessing the risk run by these people could be irreparable. In consequence, the Committee requests the Government to*

take the necessary steps to carry out an unrestricted assessment of the risk run by threatened trade unionists and to provide adequate protection measures.

Discrepancies between the Government and complainant organizations on the actual number of trade unionists murdered in recent years

121. *The Committee notes the Government's information that the Sub-Committee on the Unification of the List of Victims prepared a consolidated list for the period 1991-2000. The Committee observes, however, that the list sent to the ILO only relates to the year 2000. In consequence, the Committee requests the Government to take steps to send a new consolidated list prepared by the Sub-Committee on the Unification of the List of Victims for the period 1991-2002.*

Other concerns of the Committee

122. *The Committee once again recalls [see 327th Report, para. 344(g)] that 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. Such information should also refer to regions where acts of violence occur most frequently, such as the departments of Valle del Cauca and Antioquía and the municipality of Barrancabermeja, especially in the Empresa de Petróleo de Colombia and the Empresa de Gas de Barrancabermeja. The Committee also requests the Government to send all the information available to it which could help better to combat impunity and examine the causes 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 finally for a proper factual and analytical assessment of each and every crime committed. The Committee again suggests that the complainants and the Government seek technical assistance from the Office for this assessment.*

Other allegations to which the Government did not reply

123. *The Committee observes with regret that the Government did not submit its observations concerning the outstanding allegations made by ASODEFENSA. The Committee reiterates in the following paragraph the recommendations that it formulated at its meeting of March 2002 [see 327th Report, para. 344].*

The Committee's recommendations

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

(a) The Committee expresses its deep concern at the worsening of the situation of violence against trade union leaders and members and emphasizes that freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed.

(b) The Committee urges the Government to continue to send its observations on progress in investigations already begun (Annex II) and to take steps promptly to begin investigations into the murders, abductions, disappearances, attempted murders and death threats reported in Annex I and those mentioned in the section "new allegations" of this report.

(c) The Committee requests the complainants to formulate comments on the Government's statements that certain murdered persons were allegedly not members of trade unions and, if applicable, provide further information.

(d) The Committee once again in the strongest terms urges the Government 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 provable results in disbanding the paramilitary and other violent revolutionary groups.

(e) The Committee requests the Government to provide clear information about the programme of protection for 2002 and expresses the firm hope that this protection will be extended to all workers who are members and officials of trade unions whose personal safety is threatened, including members of ASODEFENSA.

(f) The Committee requests the Government to take the necessary steps to carry out an unrestricted assessment of the risk run by threatened trade unionists and to provide adequate protection measures.

(g) The Committee requests the Government to take steps to send a new consolidated list prepared by the Sub-Committee on the Unification of the List of Victims for the period 1991-2002.

(h) The Committee once again recalls that 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 petroleum industry, the health services as well as municipal and departmental administrations. Such information should also refer to regions where acts of violence occur most frequently, such as the departments of Valle del Cauca and Antioquía and the municipality of Barrancabermeja, especially in the Empresa de Petróleo de Colombia and the Empresa de Gas de Barrancabermeja. The Committee also requests the Government to send all the information available to it which could help better to combat impunity and examine the causes 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 finally for a proper factual and analytical assessment of each and every crime committed. The Committee again suggests that the complainants and the Government seek technical assistance from the Office for this assessment.

(i) Regarding the allegations of ASODEFENSA, the Committee reiterates its previous recommendations which are reproduced below:

(i) Regarding the allegations of 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 or to speak of trade union matters; (c) the anti-union dismissals, transfers and harassment for belonging to ASODEFENSA of Delfirio Peñalosa Ruiz, Fernando Matiz Olaya,

Alberi 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 requests the Government to take the steps necessary to ensure that permission for trade union activities is not arbitrarily refused, that workers are guaranteed the right to publish notices and information, put up posters and meet in the workplace, and respect the trade union rights of Ms. Graciela Martínez and Ms. Cenelly Arias Ortiz.

(ii) Regarding the refusal to extend protection to trade union offices, trade union officials and their families against threats of violence and death, alleged by ASODEFENSA, 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.

Annex I

Alleged acts of violence against trade union officials or members up to the Committee's meeting of March 2002 for which the Government has not sent its observations

Murders

(1) Alberto Alvarez Macea, 8 April 2000;

(2) Gerardo Raigoza, member of SER-FECODE, 19 April 2000 in the town of Pereira (Risaralda);

(3) Edgar Marino Pereira Galvis, official of CUT-META, 25 June 2000 in the COFREM housing development;

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

(5) Arelis Castillo Colorado, 28 July 2000, in the municipality of Caucasia;

(6) Iván Franco, 19 March 2000, member of SINTRAELECOL;

(7) Javier Carbono Maldonado, July 2000, member of SINTRAELECOL;

(8) Jesús Antonio Posada Marín, 11 May 2000, member of ADIDA;

(9) Jaime Enrique Barrera, 11 June 2000, member of ADIDA;

(10) Jorge Andrés Ríos Zapata, 5 January 2000, member of ADIDA;

(11) Aristarco Arzallug Zúñiga, 30 August 2000, member of SINTRAINAGRO;

(12) Bernardo Olachica Rojas Gil, 2 September 2000, member of SES;

(13) Julián de J. Durán, January 2000, member of SINTRAISS;

(14) Eliécer Corredor, January 2000, member of SINTRAISS;

(15) Miguel Angel Mercado, January 2000, member of SINTRAISS;

(16) Diego Fernando Gómez, 13 July 2000, member of SINTRAISS;

(17) Víctor Alfonso Vélez Sánchez, 28 March 2000, member of EDUMAG;

(18) Edgar Cifuentes, 4 November 2000, member of ADE;

(19) Juan Bautista Banquet, 17 October 2000, member of SINTRAINAGRO;

(20) Edison Ariel, 17 October 2000, member of SINTRAINAGRO;

(21) Víctor Alfonso Vélez Sánchez, January 2000, member of the Córdoba Teachers' Association;

(22) Darío de Jesús Borja, 1 April 2000, member of ADIDA;

(23) Henry Ordóñez, 20 August 2000, member of the Meta Teachers' Association;

(24) Leonardo Betancourt Méndez, 22 August 2000, member of the Risaralda Teachers' Union;

(25) Luis Hernán Campano Guzmán, member of AICA, affiliate of FECODE, in the municipality of Florencia, 8 June 2000, in the Department of Caquetá by paramilitaries;

(26) Javier Jonás Carbono Maldonado, Secretary General of SINTRAELECOL, in Santa Marta, 9 June 2000;

(27) Candelaria Florez, wife of Alberto Ruiz Guerra, member of ADEMACOR, affiliate of FECODE, 17 June 2000, by paramilitaries;

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

(29) William Iguarán Cottes, member of SINTRAUNICOL, 11 September 2000, in Montería by paramilitaries;

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

(31) Alfredo Germán Delgado Ordóñez, member of SIMANA, affiliate of FECODE, 13 November 2000, in the Department of Nariño, presumed by paramilitaries;

(32) Jairo Vicente Vallejo Champutics, member of SIMANA, affiliate of FECODE, 13 November 2000, in the Department of Nariño;

(33) Carlos Cordero, member of ANTHOC, 6 December 2000, in Peñas Blancas, by paramilitaries;

(34) Gabriela Galcano, official of ANTHOC, 9 December 2000, in Cúcuta, by paramilitaries;

(35) Ricardo Florez, member of SINTRAPALMA, 8 January 2001;

(36) Arturo Alarcón, member of ASOINCA, affiliate of FECODE, 18 January 2001, in the municipality of Piendamó, by paramilitaries;

(37) Jairo Cubides, member of SINTRADEPARTAMENTO, 21 January 2001, in Cali, the murder coincided with the change in the executive board of the union, when the previous executive board was in the process of being recognized by the Ministry of Labour;

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

(39) Elsa Clarena Guerrero, member of ASINORT, 28 January 2001, in the municipality of Ocaña at a military roadblock;

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

(41) Alfonso Alejandro Naar Hernández, member of ASEDAR, affiliate of FECODE, 8 February 2001, in the municipality of Arauca;

(42) Alfredo Florez, member of SINTRAPROACEITES, 11 February 2001, in the municipality of Puerto Wilches, by paramilitaries;

(43) Nilson Martínez Peña, member of SINTRAPALMA, 12 February 2001, in the municipality of Puerto Wilches, by paramilitaries;

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

(45) Pablo Padilla, Vice-President of SINTRAPROACEITES, San Alberto Branch, in the municipality of San Alberto, 16 February 2001, by paramilitaries;

(46) Julio Cesar Díaz Quintero, member of SINTRAISS, in Barrancabermeja, 16 February 2001, by paramilitaries;

(47) Cándido Méndez, member of SINTRAMIENERGETICA, La Loma Branch, in the municipality of Chiriguaná, on 18 February 2001;

(48) Edgar Manuel Ramírez Gutiérrez, Vice-President of SINTRAELECOL, North Santander Branch, in Concepción, on 22 February 2001. He had been abducted by paramilitaries the previous day and had received threats because he was a prominent leader at the time of the crime;

(49) Víctor Carrillo, official of SINTRAELECOL, in the municipality of Málaga, on 1 March 2001, at a paramilitary roadblock;

(50) Darío Hoyos Franco, trade union official and supporter of farmworkers' struggles, on 3 March 2001, in the municipality of Fusagasugá;

(51) Jaime Orcasitas, Vice-President of SINTRAMIENERGETICA, in the Loma de Potrerillo coal mine, on 12 March 2001, in the same circumstances and conditions as the previous trade union official;

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

(53) Jaime Sánchez, member of SINTRAELECOL, on 20 March 2001, in the municipality of Sabana by paramilitaries;

(54) Andrés Granados, member of SINTRAELECOL, on 20 March 2001, in the municipality of Sabana by paramilitaries;

(55) Juan Rodrigo Suárez Mira, member of ADIDA, delegate to the Congress of the Colombian Teachers' Federation, in Medellín, on 21 March 2001 by paramilitaries;

(56) Alberto Pedroza Lozada, on 22 March 2001;

(57) Luis Pedraza, member of USO, in the municipality of Arauca, on 24 March 2001, by paramilitaries;

(58) Robinson Badillo, official of SINTRAEMSDES, in Barrancabermeja, on 26 March 2001, by paramilitaries;

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

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

(61) Aldo Mejía Martínez, President of SINTRACUEMPONAL, Codazzi Branch, in the municipality of Codazzi, on 4 April 2001, by paramilitaries;

(62) Saulo Guzmán Cruz, President of the Aguachica Health Workers' Union, in the municipality of Aguachica, on 11 April 2001, by paramilitaries;

(63) Francisco Isaías Cifuentes, member of ASIOINCA, affiliate of FECODE, in Popayán, on 26 April 2001, by paramilitaries. He had been displaced from the municipality of Cajibío due to his activities as a leader of the farmworkers' march in 1999 in the Colombian highlands region;

(64) Leyder María Fernández Cuellar, wife of the above, on 26 April 2001;

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

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

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

(68) Eugeniano Sánchez Díaz, President of SINTRACUEMPONAL, in the municipality of Codazzi, on 10 May 2001;

(69) Julio Alberto Otero, member of ASPU-CUT, in Santa Marta, on 14 May 2001, by paramilitaries;

(70) Miguel Antonio Zapata, President of ASPU, Caquetá Branch, in Valledupar, on 16 May 2001, by paramilitaries;

(71) Carlos Eliécer Prado, member of SINTRAEMCALI, in Cali, on 21 May 2001, by paramilitaries;

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

(73) Nelson Narváez, official of SINTRAUNICOL, in Montería, on 29 May 2001, in the Department of Córdoba;

(74) Humberto Zárate Triana, member of SINTRAOFICIALES, in Villavicencio, on 5 June 2001, in the Department of Meta;

(75) Gonzalo Zárate Triana, official of ASCODES, in Villavicencio, on 5 June 2001, in the Department of Meta;

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

(77) Edgar Thomas Angarita Mora, member of ASEDAR and FECODE, in the Department of Arauca, on 12 June 2001, after taking part in a barricade on the Vía Fortul Sarabena in protest against draft law 012;

(78) Samuel Segundo Peña Sanguino, member of SINTRAMIENERGETICA, disappeared on 17 June 2001 in the Department of Magdalena, and was found dead on 19 June 2001 in the Department of Magdalena;

(79) Oscar Darío Soto Polo, President of SINALTRAINBEC and Vice-President of COMFACOR, in Montería, on 21 June 2001, in the Department of Córdoba, while he was discussing a package of conditions with the multinational Coca Cola, where he was participating as a negotiator before the break-off of discussions on the trade union demands concerning the employer's responsibility for security measures for trade union officials in performing their functions and guaranteeing freedom of association in the company;

(80) Germán Carvajal Ruiz, President of the executive subcommittee of SUTEV, Obando Branch, FECODE-CUT, on 6 July 2001, in the Department of Valle del Cauca. Because of his dedication to the trade union movement, he was declared a military target in the Department of Caquetá, for which reason he was forced to arrange his transfer to the Department of Valle del Cauca where he was finally executed;

(81) Isabel Pérez Guzmán, member of SINTRAREGINAL, on 8 July 2001, Department of Sucre;

(82) Hugo Cabezas, member of SIMANA-FECODE, on 9 July 2001, in the Department of Nariño;

(83) James Urbano, official of the El Valle Workers' Trade Union, affiliate of the CGTD, on 12 July 2001, in the Department of Valle del Cauca;

(84) Saúl Alberto Colpas Castro, President of SINTRAGRICOLAS-FENSUAGRO, on 13 July 2001, in the Department of Atlántico;

(85) Lucila Rincón, activist in ANTHOC-CUT, on 16 July 2001, in the Department of Tolima, by paramilitaries together with other members of her family when they were searching for another family member in captivity;

(86) Obdulia Martínez, member of EDUCESAR-FECODE-CUT, on 22 July 2001, in the Department of César;

(87) María Helena Ortiz, special prosecutor, member of ASONAL-CUT, on 28 July 2001, in the Department of Santander; her husband, Néstor Rodríguez, and her son were seriously wounded;

(88) Segundo Florentino Chávez, Secretary-General of the Union of Local Government Officials and Public Employees of the municipality of Dagua, on 13 August 2001, in the Department of Valle del Cauca. He had been the victim of numerous threats and had urgently requested the establishment of security arrangements for trade union officials. A scheme was approved on 10 July 2001, but subject to budgetary approval;

(89) Miryam de Jesús Ríos Martínez, member of ADIDA, on 16 August 2001, in the Department of Antioquía;

(90) Manuel Pájaro Peinado, Treasurer of the Barranquilla District Union of Civil Servants (SINDIBA), on 16 August 2001, in the Department of Atlántico. He had asked to be included in the Ministry of the Interior's protection programme but had not received any reply. His murder occurred at a time when the trade union was making a series of protests against the application of Law No. 617 by the district administration, aimed at mass dismissals of workers;

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

(92) Héctor Eduardo Cortés Arroyabe, member of ADIDA-CUT, disappeared on 16 August 2001 and was found dead on 18 August 2001 in the Department of Antioquía;

(93) Fernando Euclides Serna Velásquez, member of the collective security scheme of national CUT in Bogotá, disappeared on 18 August 2001, and was found murdered the following day in the Department of Cundinamarca. He was a member of the CUT collective security scheme;

(94) Evert Encizo, member of the Meta Teachers' Association (ADEM-CUT), on 22 August 2001, in the Department of Meta. He was a teacher working with forcibly displaced persons;

(95) Yolanda Paternina Negrete, member of ASONAL-CUT, on 29 August 2001, in the Department of Sucre. She was a special judge for public order matters and was responsible for numerous high-risk proceedings;

(96) Miguel Chávez, member of ANTHOC-CUT, on 30 August 2001, in the Department of Cauca;

(97) Manuel Ruiz, CUT trade union official, on 26 September 2001, in the Department of Córdoba;

(98) Ana Ruby Orrego, member of the El Valle Single Education Workers' Trade Union (SUTEV-CUT), on 3 October 2001, in the Department of Valle del Cauca;

(99) Gustavo Soler, official of the National Union of Workers in the Mining and Power Industry, on 6 October 2001, in the Department of César;

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

(101) Cervando Lerma, member and prominent activist in USO-CUT, on 10 October 2001, in the Department of Santander;

(102) Ramón Antonio Jaramillo, prosecutor, member of SINTRAEMSDES-CUT, on 10 October 2001, in the Department of Valle del Cauca, when paramilitaries were carrying out a massacre in the region;

(103) Jairo Valbuena, prosecutor, member of SINTRAEMSDES-CUT, on 10 October 2001;

(104) Luis López and Luis Anaya, President and Treasurer of the San Silvestre Union of Transport Drivers and Workers (SINCOTRAINDER-CUT), on 16 October 2001, in the Department of Santander;

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

(106) Luis José Mendoza Manjares, member of the executive board of the Trade Union Association of University Teachers (ASPU-CUT), on 22 October 2001, in the Department of César;

(107) Martín Contreras Quintero, prosecutor and founder of SINTRAELECOL-CUT, on 23 October 2001, in the Department of Sucre;

(108) Ana Rubiela Villada, member of the El Valle Single Education Workers' Trade Union (SUTEV-CUT), disappeared on 27 September 2001 in the Department of Valle del Cauca and was found dead on 26 October 2001;

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

(110) Carlos Arturo Pinto, member of the National Association of Civil Servants and Judicial Employees (ASONAL-CUT), on 1 November 2001, in Cúcuta, Department of North Santander;

(111) Pedro Cordero, member of the Nariño Teachers' Trade Union, on 9 November 2001, in the Department of Nariño;

(112) Luis Alberto Delgado, member of the Nariño Teachers' Trade Union (SIMANA-CUT), on 10 November 2001, in the Department of Nariño. Mr. Delgado had been the victim of an attempted murder the previous day in the municipality of Tuquerres, Department of Nariño;

(113) Edgar Sierra Parra, member of ANTHOC-CUT, was abducted on 3 October 2001 in the municipality of Tame, Department of Aranca and was found dead on 10 November 2001 in the municipality of Rondón, Department of Arauca, with signs of torture;

(114) Hoover de Jesús Galeanúm, member of the Pereira subcommittee of the Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES-CUT), workers' delegate and great activist, on 11 November 2001, in the Department of Risaralda;

(115) Tirso Reyes, member of the Bolívar Single Teachers' Union (SUDEB-CUT), on 2 November 2001, in the Department of Bolívar;

(116) Emiro Enrique Pava de la Rosa, official of the Magdalena Medio subcommittee of USO, on 13 November 2001, in the Department of Antioquía;

(117) Diego de Jesús Botero Salazar, trade unionist in Valle del Cauca, prosecutor in the municipal subcommittee, on 14 November 2001, in Valle del Cauca;

(118) Gonzalo Salazar, President of the Single Union of Policemen of Colombia, SINUVICOL-CUT, on 24 November 2001, in Cali;

(119) Jorge Eliécer González, President of the Natagaima Branch of ANTHOC-CUT, was abducted and murdered on 25 November 2001, with signs of severe torture, in the Department of Tolima;

(120) Javier Cote, Treasurer of the National Association of Civil Servants and Judicial Employees (ASONAL-CUT), on 3 December 2001, in the Department of Magdalena;

(121) Aury Sará Marrugo, President of the Cartagena Branch of the Petroleum Industry Workers' Trade Union (USO), found dead at the beginning of December 2001, after being abducted on 30 November 2001 by paramilitaries of the AUC (Autodefensas Unidas de Colombia) in the presence of two police officers in the town of Cartagena. The AUC leader called him a member of the guerrillas and demanded the presence of the High Commissioner for Peace for his release. Mr. Sará Marrugo always stood out for his leadership in defence of workers' rights;

(122) Enrique Arellano, bodyguard of the above, found dead at the beginning of December 2001;

(123) Magnolia Plazas Cárdenas, member of ASONAL-CUT, on 5 December 2001, in the Department of Caquetá;

(124) Francisco Eladio Sierra Vásquez, President of the executive committee of the Andean Branch of the Antioquía Union of Municipal Officials (SINTRAOFAN-CUT). The members of the executive committee had been summoned by the AUC in Farallones de Bolívar (Department of Antioquía). At that meeting, each of the officials was called by name and interrogated about his function in the trade union and his union responsibilities, after which Mr. Sierra Vásquez was taken away and murdered. At the same meeting, the commander, "Manuel", a member of that paramilitary organization interrogated and questioned José David Taborda, a second member of the central executive committee. All the members of the committee are constantly threatened;

(125) Edgar Herrán, President of the National Union of Drivers (SINDINALCH), Villavicencio Branch, on 26 December 2001;

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

(127) Luis Alfonso Jaramillo Palacios, delegate of the Medellín Branch of the Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES-CUT), on 11 January 2002, in Medellín, Department of Antioquía, murdered for his defence of the workers;

(128) Enoc Samboni, CUT official, on 12 January 2002, in the Department of Cauca, by paramilitaries who stole his trade union papers. Enoc Samboni was involved in the Ministry of the Interior protection programme and the Inter-American Human Rights Commission of the Organization of American States, and had asked for protection measures;

(129) Sister María Ropero, former President of the Community Mothers Trade Union (SINDIMACO-CUT), on 16 January 2002, in Cúcuta by paramilitary groups. Sister Ropero was noted for her hard work in support of the human rights of workers and children and had received several death threats.

Attempted murders

(1) Albeiro González García, President of ASODEFENSA, coffee sector, was ordered to a war zone although he was not a soldier, and refused. He was then victim of an attack on 24 September 1998; he is now in exile in Europe;

(2) Ricardo Herrera, official of SINTRAEMCALI, was the victim of an attack in Cali, on 19 September 2000;

(3) Wilson Borja Díaz, President of the Federation of Workers in the State Service (FENALTRASE), on 14 December 2000 was intercepted by hired assassins who shot at him, causing serious injuries. He is now in a critical condition under medical supervision;

(4) Gustavo Alejandro Castro Londoño, official of the Region 1 executive committee of CUT in Meta. An attempt was made on his life on 15 January 2001 in the town of Villavicencio. He is in hospital;

(5) Ricardo Navarro Bruges, President of the Union of Workers of the University of Santa Marta (SINTRAUNICOL), on 12 January 2001;

(6) Ezequiel Antonio Palma, former official of the Yumbo Union of Municipal Workers, on 11 January 2001;

(7) César Andrés Ortiz, member of the CGTD, on 26 December 2000;

(8) Héctor Fabio Monroy, member of AICA-FECODE, was the victim of a gunshot attack on 23 February 2001;

(9) María Elisa Valdés Morales, President of SINDESS, Dauga Branch, Valle del Cauca, on 26 March 2001;

(10) Attack on the executive board of SINTRAEMCALI in the outskirts of the town of Cali, when they were attending a working group to make proposals concerning the Cali Enterprise Recovery Plan, on 10 June 2001;

(11) María Emma Gómez de Perdomo, member of ANTHOC, was the victim of an attack in which she was wounded by four bullets, in the town of Honda, on 13 June 2001;

(12) Clemencia del Carmen Burgos, member of ASONAL-CUT, was investigating the financing networks of the AUC self-defence groups, on 11 July 2001;

(13) Jhon Jairo Ocampo Franco, trade union official and teacher, on 9 August 2001;

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

(15) Carlos Arturo Mejía Polanco, member of the Yumbo Branch subcommittee of the Single Union of Workers in the Construction Materials Industry (SUTIMAC-CUT), on 16 November 2001;

(16) Daniel Orlando Gutiérrez Ramos, member of the Cali Municipal Enterprises Union (SINTRAEMCALI), on 3 January 2002;

(17) Sigilfredo Grueso, activist in the Cali Municipal Enterprises Union (SINTRAEMCALI), on 10 January 2002.

Abductions and disappearances

(1) Alexander Cardona, USO official;

(2) Ismael Ortega, Treasurer of SINTRAPROACEITES, San Alberto (César);

(3) Walter Arturo Velásquez Posada, of the Nueva Floresta School, in the municipality of El Castillo, in the El Ariari Educational District, Department of Meta;

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

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

(6) Roberto Cañarte M., member of SINTRAMUNICIPIO, Bugalagrande, in the Paila Arriba estate (Valle);

(7) Germán Medina Gaviria, member of the Cali Municipal Enterprises Union (SINTRAEMCALI), on 14 January 2001, in the neighbourhood of El Porvenir, town of Cali;

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

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

(10) Jaime Duque Castro, President of the Single Union of Workers in the Construction Materials Industry (SUTIMAC), Santa Barbara Branch, abducted on 24 March 2001;

(11) Paula Andrea Gómez Mora (daughter of Edinson Gómez, member of SINTRAEMCALI, who was threatened on several occasions), abducted on 18 April 2001 and released on 20 April 2001;

(12) Eumelia Aristizabal, member of ADIDA, disappeared on 19 April 2001;

(13) Rosa Cecilia Lemus Abril, official of FECODE, attempted abduction foiled on 14 May 2001;

(14) William Wallens Villafañe, member of USO, disappeared on 29 May 2001, in the Department of Santander;

(15) Six workers in public enterprises in Medellín belonging to SINTRAEMSDES, were abducted in the Department of Antioquía on 12 June 2001;

(16) William Hernández, disappeared on 22 June 2001 in the Department of César;

(17) Rodrigo Aparicio, disappeared on 22 June 2001 in the Department of César;

(18) Eduardo Franco, disappeared on 22 June 2001 in the Department of César;

(19) Jaime Sampayo, disappeared on 22 June 2001 in the Department of César;

(20) Julio Cabrales, disappeared on 22 June 2001 in the Department of César;

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

(22) Diego Quiganas González, member of SINTRAEMCALI, disappeared on 29 June 2001;

(23) Cristina Echeverri Pérez, member of EDUCAL-CUT, on 1 July 2001, near the town of Manizales;

(24) Alfonso Mejía Urión, member of ADUCESAR-FECODE-CUT, disappeared on 4 July 2001;

(25) Jairo Tovar Díaz, member of ADUCESAR-FECODE-CUT, on 29 July 2001, near the municipality of Galeras;

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

(27) Winston Jorge Tovar, member of ASONAL-CUT, abducted near the municipality of Dagua;

(28) Alvaro Alberto Agudel Usuga, member of ASONAL-CUT, disappeared on 20 August 2001;

(29) Jorge Feito Romero, member of the Association of Pensioners of the University of Atlántico (ASOJUA), on 28 August 2001;

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

(31) Alvaro Laiton Cortés, President of the Boyacá Teachers' Union, on 2 September 2001, released shortly after being abducted;

(32) Marco Tulio Agudero Rivero, ASONAL-CUT, in the municipality of Cocorna, on 5 October 2001;

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

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

(35) Carlina Ballesteros, member of the Bolívar Single Teachers' Union (SUDEB-CUT), on 5 November 2001;

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

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

(38) Leonardo Avendaño, activist of the Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES-CUT), on 5 January 2002;

(39) Carlos Arturo Alarcón Vera, member of the Antioquía Teachers' Association (ADIDA-CUT), on 12 January 2002.

Death threats

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

(2) María Clara Baquero Samiento, President of ASODEFENSA;

(3) Giovanni Uyazán Sánchez;

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

(5) Reinaldo Villegas Vargas, member of the "José Alvear Restrepo" Society of Lawyers;

(6) The following officials and members of 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) Numerous officials and members of FECODE;

(9) Jorge Nisperuza, President of the CUT subcommittee, Córdoba;

(10) María de Jesús Castañeda, President of the CUT subcommittee, Huila;

(11) Gerardo Rodrigo Genoy Guerrero, President of the National Union of Workers, SINTRABANCOL;

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

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

(14) Against SINTRHOINCOL workers on 9 July 2001;

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

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

(17) Edgar Púa and José Merino, Treasurer and Prosecutor of ANTHOC, on 16 August 2001;

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

(19) Jesús Tovar and Ildis Jarava, ANTHOC officials, were followed by heavily armed men from 16 August 2001;

(20) Workers in the Union of Local Government Officials and Public Employees of Antioquía (SINTRAOFAN) were intimidated by paramilitaries to make them give up their trade union membership;

(21) Aquiles Portilla, FECODE official, victim of pursuit 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 AUC members;

(23) Hernando Montoya, official of SINTRAMUNICIPIO, Cartago, received threats on 7 September 2001 from a security cooperative allegedly responsible for the murder of other officials;

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

(25) Julián Cote, Fredys Rueda and Rafael Jaime of USO received 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 threats and were the victims of pursuit;

(27) Jaime Goyes, Jairo Roseño, Rosalba Oviedo, Pedro Layton, Ricardo Chávez, Diego Escandón, Luis Ortega, trade union officials in the Department of Nariño, were threatened with death by the AUC on 8 October 2001;

(28) On 26 October 2001, the entire executive board of SINTRAVIDRICOL-CUT was threatened with death;

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

(30) Carlos Alberto Florez Loaiza, member of the national executive board of the Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES), on 5 January 2002;

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

Harassment

(1) Esperanza Valdés Amortegui, Treasurer of ASODEFENSA, victim of illegal espionage through the installation of microphones in her workplace;

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

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

(4) Freddy Ocoro, President of the Bugalagrande Union of Municipal Workers, assaulted by police, on 1 May 2001;

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

Sending civilians to war zones

In the Ministry of Defence, as a means of anti-trade union harassment, civilians continue to be forced to go to war zones wearing military uniform, without weapons or military training. The following people have been subjected to this;

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

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

(3) Edgardo Barraza Pertuz;

(4) Carlos Rodríguez Hernández;

(5) Juan Posada Barba.

Detentions

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

Annex II

Acts of violence against trade union officials or members for which the Government has sent its observations

Javier Suárez, Germán Valderrana Soto, Guillermo Adolfo Parra López, Mauricio Vargas Pabón, Jesús Orlando Crespo García, Danilo Francisco Maestre Montero, Marelvis Esther Solano, Leominel Campo Núñez, Franklyn Moreno Torres, Fabio Santos Gaviria, Aníbal Zuluaga, Guillermo Molina Trujillo, Darío de Jesús Agudelo Bohórquez, Melva Muñoz López, Juan José Neira, Justiniano García, Iván Francisco Hoyos, José Atanasio Fernández Quiñónez, Margarita María Pulgarín Trujillo, Julio César Betancourt, Islem de Jesús Quintero, Alejandro Alvarez Isaza, César Wilson Cortes, Rómulo Gamboa, José Antonio Yandú, Gonzalo Serna, James Antonio Pérez Chima, Jesús María Cuellar, Juan Castulo Jiménez Gutiérrez, Esneda de las Mercedes Monsalve Hoguín, Humberto Guerrero Porras, Milton Cañas Rojas, Yimi Alexander Hincapié Acevedo, Gloria Nubia Uran Lezcano, Ramiro de Jesús Zapata, Carmen Emilia Rivas, Omar Darío Arias Salazar, Nelson Arturo Romero Romero, Abel María Sánchez Salazar, Luis Hernán Campano Guzmán, José Aristides Velásquez Hernández, Candelaria Florez, Robert Cañarte Montealegre, Basislides Quiroga, Miguel Angel Barreto Racine, Vicente Romaña, Crus Orlando Benítez Hernández, Rubén Darío Guerrero Cuentas, Sergio Uribe Zuluaga, Moisés Sanjuán López, Alejandro Vélez Jaramillo, Argemiro Albo Torregrosa, Hugo Alfonso Iguarán Cotes, Efraín Becerra, Omar de Jesús Noguera, Reynaldo Acosta Celemín, Alfredo Castro Haydar, María Nelcy Mora Hincapié, Hernán Betancourt, Luis Arcadio Ríos Muñoz, Oscar Darío Zapata Muñoz, Perdo Amado Manjarres, Luis Mesa Almanza, Bayron de Jesús Velásquez Durango, Luis Alfonso Páez Molina, Gustavo Enrique Gómez Gómez, Luis Rodrigo Restrepo Gómez, Lázaro Gil Alvarez, Bernardo Vergara Vergara, Elizabeth Cañas Cano, Alexander Mauricio Marín Salazar, José Gildardo Uribe García, Francy Uran Molina, Francisco Espadil Medina, Héctor Acuña, Gil Bernardo Rojas Olachica, Jairo Herrera, Candelario Zambrano, Alejandro Tarazaona, Humberto Peña Riaño, Edgar Arturo Burgos Ibarra, Hernando Cuartas Agudelo, Clovis Florez, Aníbal Pemberty.

CASE NO. 2068

INTERIM REPORT

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

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

125. The Committee examined this case at its meeting in May-June 2001 [see the Committee's 325th Report, paras. 269-337]. The Official Employees' Association of the Municipality of Medellín (ADEM) and the Public Employees' Trade Union of the Municipality of Medellín (SIDEM) presented new allegations in communications dated 20 April 2001, the Trade Union Association of Employees of the National Penitentiary and Prison Institute (ASEINPEC) presented new allegations in a communication dated 18 May 2001, the Colombian Association of Banking Employees (ACEB) presented new allegations in a communication dated 17 August 2001, the Trade Union of Workers of Sintéticos S.A. (SINTRASINTETICOS) presented new allegations in a communication dated 10 December 2001 and the National Union of Textile Industry Workers (SINTRATEXTIL) presented new allegations in a communication dated 11 June 2001.

126. The Government sent partial observations in communications dated 23 May, 12 and 22 June, 4 September and 19 November 2001 and 8 January 2002.

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

A. Previous examination of the case

128. In its previous examination of the case in May 2001, the Committee made the following recommendations on the allegations that remained pending [see 325th Report, para. 337]:

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

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

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

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

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

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

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

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

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

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

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

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

(m) As regards section 14 of Act No. 549, which obliges the employer to modify unilaterally the content of signed collective agreements, the Committee requests the Government to take the necessary measures to repeal it so as to ensure that the right to free and voluntary collective bargaining is respected. In addition, the Committee draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

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

(o) As regards the allegations concerning non-compliance with the collective agreement by the Bogotá Water Supply and Sewerage Enterprise (failure to pay the agreed wage increase, dismantling of the Ramón B. Jímeno High School, recruitment of new employees displacing former workers, non-recognition of the staff committee) and American Airlines (failure to hire Colombian employees, imposition of flight itineraries, adjustment of the basic wage and remuneration for Sundays and holidays other than that agreed upon), presented by SINTRACUEDUCTO and the Colombian Association of Flight Attendants (ACAV), the Committee requests the Government to keep it informed of the results of the inquiry made into the allegations presented by the SINTRACUEDUCTO, and to initiate the necessary inquiries into the allegations presented by ACAV and, if the allegations are found to be true, to ensure compliance with the terms of the agreements. The Committee requests the Government to keep it informed in this respect.

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

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

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

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

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

(u) As regards the allegations of anti-union discrimination in restructuring processes presented by the Association of Workers of Banco Central Hipotecario (ASTRABAN) and SINTRASMAG, the Committee requests the Government to take the necessary measures to ensure that an inquiry is initiated and, in the light of the information obtained, to communicate its observations in this respect.

B. New allegations

129. In their communication of 20 April 2001, the Official Employees' Association of the Municipality of Medellín (ADEM) and the Public Employees' Trade Union of the Municipality of Medellín (SIDEM) state that, on 31 January 2001, 153 public servants in the employment of the Municipality of Medellín founded the Public Employees' Trade Union of the Municipality of Medellín (SIDEM). On 1 February 2001, the Constitution or Statute of the founding members, with their signatures, was sent to the Mayor of Medellín and the Ministry of Labour and Social Security of Antioquia Region. Since the union was founded, a total of 1,740 public servants in the employment of the Municipality of Medellín had joined. On 8 February 2001, the documents required by national law for the registration of the organization as a trade union had been sent to the Ministry of Labour and Social Security. On 22 February 2001, SIDEM's legal representative had been notified of an edict from that Ministry requiring SIDEM to bring its statutes into compliance with the legislation. On 20 April 2001, SIDEM sent the amendments and the documentation necessary for the Ministry to enter the union into the official register of trade unions.

130. The complainant organization states that, in accordance with Act No. 617 of 2000, regulating financial matters in the regional and municipal entities of Colombia, the Mayor of Medellín issued Decrees Nos. 165 and 300, both dated 2001, abolishing the posts of 2,200 public employees. The Mayor ordered the dismissal of 83 public servants in the employment of the Municipality of Medellín, although notification had already been made to the effect that they were founders or members of the newly established Public Employees' Trade Union of the Municipality of Medellín (SIDEM). (Under article 406, as amended by Act No. 50/90, article 57, the founders of a trade union enjoy trade union immunity from the day of its foundation until two months following its registration; the overall period shall not exceed six months.)

131. The complainant organization states that SIDEM, jointly with other trade unions (ADEM, ANDAT and ASDEM) embarked on a series of trade union activities to favour dialogue and cooperation between the Mayor and the trade unions. Consequently, on 20 February 2001, the Mayor signed a memorandum of understanding with the unions; notably, this committed the former to respect workers' rights and freedom of association. During the negotiations, the Mayor admitted that the administration had agreed to dismiss the 83 workers who were members of SIDEM and, under paragraph 7 of the Memorandum, agreed to order that they be reinstated in their posts; however, this has still not been done.

132. The complainant organization also alleges that the Mayor ordered that an application be made to the district labour court for authorization or permission to dismiss 1,320 SIDEM members. This was an attempt to eliminate SIDEM for, if the labour authorities authorize the removal of immunity, the organization will be reduced to a minimal membership, which will seriously damage freedom of association.

133. As regards the 83 workers who were dismissed despite the fact that they had trade union immunity because of their status as SIDEM founders or members, the complainant organization states that 55 had applied for protection of their basic right to freedom of association. Initially these cases had been decided against the workers and SIDEM because the judges of the Colombian courts considered that there was another judicial means of determining whether the public servants in question enjoyed trade union immunity. The functional superiors of the judges were now processing the refutation brought by the union members and SIDEM; in the final instance, the decisions could be reviewed by the Constitutional Court, in keeping with the importance of the subject.

134. According to the complainant organization, the Mayor was abolishing posts that were essential to the proper service of the municipality and community, in order then to have the same functions that were previously carried out by the dismissed workers conducted through the conclusion of a service contract with individuals or legal entities. This legal mechanism of a service contract is used to prevent or impede the exercise of freedom of association and avoid the payment of salaries and social benefits as established by article 32 of Act No. 80 (1993), which provides that under no circumstances do service contracts give rise to a worker-employer relationship or social benefits and shall be concluded strictly for the essential objective. This is in violation of Act No. 2400 (1968), article 2, paragraph 5, which provides that appropriate posts shall be established for ongoing functions and service contracts may not be used to cover such functions.

135. An example of the above is that article 1, paragraph (c) of Decree No. 300 dated 23 February 2001 provides for the abolition of the posts of two guards and 177 caretakers and, in the same month that the decree was issued, the administration advertised in a periodical, stating that it was "interested in receiving proposals from prospective contractors for the dog patrol and armed guard service at the Municipal Administrative Centre and the external offices of the Municipality of Medellín", with an assigned budget of 3,002,000,000 million pesos. It should be noted that the 177 dismissed caretakers previously worked at the external offices of the Municipality of Medellín.

136. The Official Employees' Association of the Municipality of Medellín (ADEM) has used various approaches to ask the administration to allow it to participate in the administrative restructuring under the powers granted it by the Council of Medellín under Agreement 03 of 2001, but this request was refused.

137. The complainant organization states that, if the Mayor does not comply with the Memorandum of Understanding concluded with the trade unions, ADEM, SIDEM, ANDAT and ASDEM made use of the right of assembly and peaceful demonstration granted them under article 37 of the National Constitution to call for a 24-hour stoppage of

work on 6 March 2001, which benefited the working class considerably by drawing attention to the labour situation in the city.

138. ADEM adds that, on 5 March 2001, one day before the stoppage, the Mayor threatened through the media (press, radio and television) that an example would be made of any public servants who participated in such activities. Indeed, some 150 public servants are now the subject of disciplinary investigations under Act No. 200 of 1995 or the Unified Disciplinary Code, in violation of the due process to be followed in all judicial or administrative cases (National Constitution, article 29).

139. In its communication dated 18 May 2001, the Trade Union Association of Employees of the National Penitentiary and Prison Institute (ASEINPEC) observes that, in exercise of the legal powers granted by the 1991 Political Constitution of Colombia, article 39 of which establishes the workers' right to found trade unions and, as public employees of the National Penitentiary and Prison Institute (INPEC) (article (3), it proceeded to establish ASEINPEC in accordance with the law and, having met the legal requirements, received approval from the Ministry of Labour and Social Security and the registration number 000449 on 22 February 1994.

140. It adds that, in the past six years, 6,000 members throughout Colombia have joined ASEINPEC, including over 90 per cent of the INPEC workforce. Since the union has been active, there has been a considerable improvement in the working conditions of Colombian prison staff, which were precarious and violated the human dignity not only of the staff but also of the prisoners. Important agreements had been reached with previous national governments and INPEC administrations, leading to improvements in salaries, benefits, social and working conditions, trade union guarantees and benefits, social security and health and safety matters.

141. Four of the trade union's directors, Jesús Arley Escobar, Fabio Humberto Burbano Córdoba, Jorge Ignacio Bohada Palencia and Jaime García had been murdered by outside groups for carrying out their trade union functions and denouncing corruption ranging from directors-general to prison employees.

142. According to the complainant organization, the state authorities, including the Public Counsel, the Office of the Public Prosecutor and the National Controller's Office were fully aware of these actions. In view of the continual death threats against national and regional trade union leaders, INPEC had asked previous administrations to provide personal protection and personal weapons to trade union leaders.

143. Some trade union leaders had received death threats directly, in writing and by telephone; there had been harassment and the organization's authorities had been reported to be breaking the law.

144. The trade union leaders had been tried, disciplined, transferred and denied state protection, and the source of these anti-trade union activities was not known. They had been cleared of wrongdoing in all cases.

145. It is stated that the current Director-General of INPEC has, jointly with the Ministry of Justice, begun a clean-up operation within INPEC, targeting the trade union for elimination by dismissing selectively the ASEINPEC union leaders at national and local level, failing to follow the legal procedures and violating freedom of association, trade union immunity, the trade union guarantees and freedoms laid down by the National Political Constitution, internal legal provisions and international ILO instruments. The Director-General was appointed on 15 February 2000 and proceeded on 16 February to suspend 120 trade union leaders throughout the country because of a peaceful one-day action in support of prison

security, conducted by ASEINPEC in all of the country's prisons to protest against repressive labour policies used to the detriment of workers, as well as a prison privatization and amalgamation project that would increase numbers by 150 per cent at the cost of poorer working conditions, inhuman working situations involving high-risk activities that violate human rights within prisons abandoned by the State, overpopulation, unhealthy conditions and a lack of medical and legal assistance. According to the complainant organization, the Director-General of INPEC proceeded, under Resolution No. 0873 dated 17 February 2000, to suspend over 120 trade union leaders without pay for a period of 90 days, amending their working conditions without the prior authorization of the relevant labour tribunal. Following the 90-day suspension and the peaceful protest, the Director-General of INPEC proceeded, on 16 May 2000, to strip of their posts 80 trade union leaders who were members of the National Governing Council and section councils in order to eliminate ASEINPEC.

146. A campaign was embarked upon to pressure workers into renouncing their union membership, and over 3,000 workers left the union, leading to the closure of branches in cities including Medellín, Valledupar, Manizales, Calarca, Pereira, Cali and Baranquilla. As a result of these attempts to destroy the union, its surviving leaders, including Elver Sultan Correa, María Elsa Paez García, Luis Fernando Sanabria Amaya, Rafael Gómez Mejía and Oscar Tarazona Guarin were transferred to other locations without the prior authorization required by the national labour legislation. They were transferred to regions with a high paramilitary presence, such as Puerto Boyacá, Puerto López and Jericó (Antioquia), which placed their lives in serious danger.

147. The complainant organization adds that ASEINPEC has lost its leaders because of the illegal dismissals by the Director-General of INPEC, has had its capacity for trade union action reduced and has lost over 3,000 members, arbitrarily removed by the INPEC administration, whose Director-General has, in violation of the trade union's autonomy and the statutory and legal proceedings, taken it upon himself to strip members of their trade union affiliation, without the prior consent of the National Governing Council of ASEINPEC, purely in order to reduce the number of members. The following action has been taken in response to such aggression against the union:

- a criminal prosecution against the Director-General of INPEC and others for violation of trade union guarantees; this is currently at the appeal stage;

- an administrative labour dispute brought before the Ministry of Labour and Social Security concerning violation of the provisions of the Substantive Labour Code and international labour standards. The inspector responsible for examining the case was never willing to carry out legal inspections in the sections where restrictions were in place, even where sufficient evidence was produced, including 13 cases referred to a higher court in which the reinstatement of the trade union officials had been ordered. Likewise, no account was taken of the protection orders granted in the union's favour on the grounds of violation of freedom of association, nor the findings of the single judicial inspection, which established that ASEINPEC's leaders were not permitted access to the union office at the headquarters of INPEC. Similarly, it was verified by the Ministry of Labour and Social Security that the Director of INPEC had arbitrarily cut the union's single telephone line, which it used to communicate with its 6,000 members. On 27 April, the judge pronounced resolution No. 00452 to the effect that no measures be taken against INPEC; an appeal is currently under way;

- appeals to the judicial authorities for trade union rights and other legal guarantees deriving from trade union immunity to be protected: both the individual cases and the collective case brought by ASEINPEC as a legal entity to seek protection of the right to work and freedom of association, trade union immunity and due procedure were

rejected by all of the Colombian judicial authorities. These cases were thrown out by the Constitutional Court of Colombia, with the exception of a collective case brought on behalf of ASEINPEC and currently under consideration before the Constitutional Court under the number 332879/2000, which has not yet been reviewed.

148. The ordinary labour court was called upon to settle the various individual cases for reinstatement under trade union immunity, which it has taken between three and five years to settle.

149. Finally, ASEINPEC states that the Director-General of INPEC, aware that the National Governing Council of ASEINPEC needs to rent premises in order to conduct its trade union activities and that the cost will be met by the Bogotá members, has begun steps to transfer the members to locations far from the capital, leading many members to leave the union: from 700, the membership has fallen to less than 250.

150. In its communication dated 17 August 2001, the Colombian Association of Banking Employees (ACEB) alleges that, since the neo-liberal policies began, there has been a wave of dismissals in banks and financial corporations, in which a total of some 35,000 employees lost their jobs, in many cases in violation of the existing precarious labour legislation. One of the most serious cases is that of Mr. Hugo Leonel Gándara Martínez, an employee of Banco BBVA Ganadero, a subsidiary of the Spanish consortium Banco Bilbao Vizcaya Argentaria. The manager of the bank in Corozal, Sucre administrative district, and the regional vice-president accused Mr. Gándara and other workers of committing an illegal act and made a criminal complaint. However, it was impossible to provide proof of these false allegations and the ordinary court therefore cleared Mr. Gándara of the charges, as a result of which the bank dismissed him. According to the complainant, this is clearly a case of trade union harassment, since the worker's only offence was that he belonged to a trade union which had been subjected to similar acts previously, always involving the regional vice-president.

151. In a communication received on 10 December 2001, the Trade Union of Workers of Sintéticos S.A. (SINTRASINTETICOS) alleges that, for a period of approximately three years, the enterprise has clearly been persecuting the trade union's members and representatives. The management has pressured and forced certain workers to leave the union; as a result, the union now has only 29 members where it previously had 150.

152. There have been mass resignations from the union: between May and June 2000, 26 workers gave up their membership, all of them because they had been threatened by the management and feared dismissal if they did not leave the union. Such dismissals are carried out in a particular way, with the workers first being sent a letter of dismissal and then a letter of voluntary resignation.

153. The following workers were dismissed in this manner: Gabriel Arturo Martínez Tirado, Gildardo Antonio Arboleda Suárez, Jaime González, Rafael Pareja, Carlos Ruiz, Joel Cardona, José Abad García, Guillermo Márquez, Diego Obando, Gabriel Martínez, Fabian Taborda and Mario de Jesús Sánchez.

154. The complainant adds that, a few days before the trade union assembly that elected the Governing Council took place in April 2000, the dismissal of Mr. Gabriel Arturo Martínez was announced by the enterprise in order to gain votes for one of the candidates who supported the position of the enterprise. Since the votes were not forthcoming, a programme of dismissals and reprisals began against all workers associated with the trade union.

155. The workers who participated in the assembly on 2 April 2000 were pressured into voting for the enterprise's candidates and dismissed if they did not agree. This led to the dismissal of Rafael Pareja, Gabriel Martínez, Gildardo Arbolera and John Jairo Pulgarin. Mr. Pulgarin's dismissal was in any case unlawful because he was a member of the Council and enjoyed trade union immunity. All trade union leaders were dismissed as soon as their six-month immunity expired, including Juan Manuel Córdoba Usuga and Antonio María Carvajal Rueda.

156. All of the dismissals were wrongful since the only argument was that they had been preceded by various calls and pressure by the enterprise management for the workers to leave the union, renounce the benefits of membership or vote in the Governing Council elections for candidates selected by the enterprise. All of the unionized workers who were dismissed were replaced by temporary staff without any job security, who can be dismissed at any time even though they belong to the union. The objective is to ensure that the current collective agreement applies only to union members.

157. Although the various complaints have been presented to the Ministry of Labour, no proper investigation was carried out and no steps have been taken to address the problem. The enterprise continues to ignore the regulations prohibiting the harassment of unionized staff and union-related dismissals.

158. Particularly alarming for the union are the threats made against a number of Governing Council members, including Carlos Vasquez and Miguel Angel Pérez (killed in a transport accident), who received death threats by telephone and in writing; although they made complaints to the Office of the Public Prosecutor, nothing was done to address the problem.

159. A complaint was made to Branch No. 67 of the Office of the Public Prosecutor, in Medellín, against various members of the enterprise management. It was alleged that they had violated freedom of association and exerted illegal pressure on Gustavo Tobon Clavijo, Jorge Ivan Arredondo and Guillermo Márquez, but to date there has been no outcome.

160. The union and the confederation to which it is affiliated have written to the enterprise to report all of these anomalies, but it has not been possible to arrange a meeting.

161. The enterprise does not wish to enter into any communication with the union or hold meetings of the industrial relations committee, housing committee or sports committee. There is total apathy as regards anything relating to the union. Some labour requests have also been presented.

162. On 29 June 2000, an application was made to protect the union's basic rights of freedom of association and collective bargaining, but it was rejected.

163. A number of trade union leaders were recently called for questioning after making use of trade union leave and were then punished in an illegal and unjust manner that violated the collective agreement. Moreover, the fact that many workers have been forced to leave the union has left the latter short of resources, although all of the enterprise's workers are covered by the collective agreement.

164. In its communication dated 11 June 2001, the Girardota and Itagüí branches of the SINTRATEXTIL union allege the following:

– **Fabricato company**. (1) There is violation of the collective agreement, including in its provisions relating to medical assistance, average salaries and the failure to

increase salaries in 2000; (2) workers are subjected to anti-union harassment (denial of trade union leave needed to ensure the smooth running of the organization and granting of such leave only on an unpaid basis; hindrances to meetings of members and workers within the enterprise); (3) the imposition of a compensatory shift, which it is claimed is permitted by the Ministry of Labour and based on article 175 of the Labour Code, when there are no continuous production processes in Fabricato; (4) creation of associated labour cooperatives as a front for exploiting temporary workers even more and avoiding any possible claims or demands; (5) failure to pay social security dues and VAT and deduction of monies from workers with failure to forward them to the relevant body, creating pension problems.

– **Enka de Colombia S.A. company**. (1) Non-fulfilment of agreements between the president of the company and the SINTRATEXTIL union regarding the relocation of workers transferred from Itagüí to Girardota, which provided for the relocation of trade union branches in offices equivalent or similar to those in Itagüí with retention of the category of offices listed in the agreement. There are currently some workers who are not assigned or work in shifts that leave them disadvantaged economically and in terms of their trade union work, since they are required to remain inside the enterprise all day long. The administration is trying to wear the workers out so that they leave the enterprise; (2) violation of the collective agreement through the conclusion of contracts with companies to conduct work directly covered by the collective agreement, of an ongoing nature and integral to the production process; (3) working days that are so long that they violate the overtime legislation because there are continuous production processes in the enterprise and the machinery cannot be allowed to stop; (4) changes of shift that do not allow workers to rest sufficiently between shifts, especially given that some workers have to commute two hours to work; (5) fixed-term contracts of 15, 20 or 25 days used continuously for a period of years; (6) perceived persecution and discrimination against SINTRATEXTIL workers in Enka, who are given the hardest tasks and blocked when they participate in committees establishing benefits under agreements; and (7) persecution of the workers who participate in the occupational health committee, who are prevented from carrying out their functions as part of the committee, to the point that they are not allowed to participate in investigations into accidents leading to less than 20 days of invalidity. The complainant organization considers that these workers are elected democratically by their colleagues and deserve to be protected by law in order that they can carry out their functions with full autonomy; this could be achieved by granting them trade union immunity.

– **Coltejer company**. The complainant states that there are countless problems with labour legislation violations at Coltejer, the most serious being dismissals. Since late 1998, the enterprise has been pursuing a policy of dismissals on the grounds of a supposed economic crisis. Some 600 workers have seen their weekly wage shrink sharply by between 20 and 40 per cent as a result of the loss of rights acquired through agreements, such as production bonuses, shift and night-time bonuses and mechanical inspection bonuses. It is alleged that, 15 days after signing an agreement in 2000, the company applied Act No. 550 on economic restructuring to freeze certain provisions in the agreement on non-legal services, although the workers through their trade unions had made a considerable contribution of some 4,000 million pesos over three years. The company did not stop at this: despite its commitment to pay the money owed in full, it once again failed to fulfil the restructuring agreement once it was concluded. To date, the company has not deposited the severance pay of the workers under Act No. 50, has not paid trade union dues since 19 February 2001 and has not paid social security, pension and compensation dues, etc. The money is deducted from workers' weekly wages but is not forwarded to the relevant funds.

– **Textiles Rionegro company**. Of the company workforce of 3,200, only 1,200 workers remain employed at the factories that are closing. While the enterprise is in the process of amalgamating, there remain two trade unions (one industrial union and one enterprise-based union), as permitted under Colombian law. The industrial trade union currently has less support than the enterprise-based union because of the company's favour for the latter, shown clearly in its dealings with workers. The company violates the collective agreement and the law as it sees fit; for example, workload distribution is regulated by the collective agreement but disregarded by the company; the dismissed workers have been replaced by four times as many workers from Medellín at a higher cost, who are covered by a different collective agreement to carry out tasks (without any special qualification) that have been carried out by local staff, in some cases for up to 30 years. The complainant states that Textiles Rionegro is breaking the law by wrongfully withholding pay for social security and trade union dues when it has not forwarded the dues to the relevant funds since 19 February 2001. It currently has a pensions backlog of up to two years. In 1999, it withheld salaries for three consecutive weeks and the workers complained to the Ministry of Labour, after which 32 workers were dismissed, 25 of them union members. Some of the judicial proceedings had been settled in the workers' favour at the second hearing, but the company had appealed successfully to the High Court.

C. The Government's reply

165. In its communications dated 23 May, 12 and 22 June, 4 September and 19 November 2001 and 8 January 2002, the Government states, as regards the allegations presented by SINTRATEXTIL concerning the serious violation of the right of assembly and freedom of association through the illegal and arbitrary suspension of labour contracts at the Quintex S.A. enterprise, that the enterprise is in forced liquidation and thus decided to suspend its workers' labour contracts indefinitely as of 31 October 1996, on the basis of article 51, subsection 1(a) of the Substantive Labour Code on force majeure that prevents execution of a contract, article 64 of the Civil Code and article 1 of Act No. 95 of 1990, which regards as grounds for force majeure acts of authority exercised by a public servant. In accordance with the above, Quintex S.A. availed itself of resolution No. 410-4350 dated 3 September 1996 of the Societies Supervision Office, which ordered the forced liquidation of the enterprise for the sole purpose of selling the debtor's assets in order to ensure the due payment of the monies owed (article 95 of Act No. 222 of 1995).

166. The Government adds that article 51 of the Substantive Labour Code, as amended by Act No. 50 of 1990, article 4, subsection 1, indicates that the labour contract is suspended, amongst other reasons, "as a result of force majeure or fortuitous events that temporarily prevent its execution …".

167. The grounds envisaged in subsection 1 require notification to be provided to the Ministry of Labour and Social Security, with justification; this was provided by Quintex S.A. subsequent to the suspension of the labour contracts. Consequently, the Ministry of Labour and Social Security, in resolution No. 002798 dated 23 November 1998, issued by the Chief of the Supervision and Control Division, fined the enterprise 20 statutory minimum salaries, the equivalent of 4,076,520 pesos. Effectively, the enterprise submitted its notification to the administrative authorities on 1 November 1996, when the receiver of Quintex S.A. had informed the workers on 25 October of the indefinite suspension of their contracts as of 31 October, although according to the regulations the notification should have been made immediately.

168. The Government emphasizes that the purpose of the notification is to verify the facts that give rise to the suspension of labour contracts; on this basis, its immediateness is dependent on the extent to which the responsible authorities attain the objective of

verifying the cause of the suspension. Although the deputy inspector of the Cundinamarca Regional Directorate of the Ministry of Labour and Social Security declared through resolution No. 000371 dated 24 February 1997 that the force majeure or fortuitous occurrence had not been verified (a resolution that remains in force in view of the fact that the proceedings begun against it were settled in favour of the decision made by the inspector in question), Quintex S.A. is continuing to suspend contracts indefinitely. This suspension process affects the members of the SINTRATEXTIL Governing Council, who enjoy trade union immunity. An application for reinstatement has therefore been submitted to the judicial authorities. In most cases, judges and magistrates order Quintex S.A. to pay the salaries and benefits outstanding, but not to reinstate the workers, since the employer-worker relationship is considered not to have been broken as the labour contracts are merely suspended.

169. The Government states that, given the dismissals by Quintex S.A. during its forced liquidation between 24 August and 21 September 1999, the Antioquia Regional Directorate of Labour and Social Security issued resolution No. 1112 dated 13 July 2000, fining Quintex S.A., in forced liquidation, the sum of 1,300,500 pesos, equivalent to five minimum legal salaries, for failing to pay interest on severance pay since 31 January 1999 and not paying for legal services for the staff dismissed on 24 August and 21 September 1999. At the same time, it refrained from ruling on the status of the dismissals and on the collective dismissals, since the civil servants of the Ministry of Labour and Social Security are not competent to recognize "the benefits stemming from trade union immunity, such as protection from dismissal without just cause previously established by the labour judge, as provided for by article 405 of the Substantive Labour Code, as amended by article 1 of Decree No. 204 of 1957, in accordance with article 406 of the same Decree, in turn amended by article 57 of Act No. 50 of 1990".

170. As regards the allegations submitted by SINALTRAMINTRABAJO, SINTRAINFANTIL, SINSPUBLIC-SINTRABENEFICENCIAS and SINTRAFAVIDI on the refusal of the public administration to participate in collective bargaining, the Government states that it is obliged to respond concerning the implementation of Conventions Nos. 151 and 154 only from 8 December 2001 onwards, i.e. one year after the relevant ratification instruments were deposited, and in most cases the Ministry of Labour and Social Security has prevailed on the parties to reach amicable settlements.

171. As regards the use of arbitration tribunals to settle differences between enterprises and trade unions, the Government states that, in Colombia, no collective labour dispute can remain unresolved. In the case in question, relating to Banco Bancafé, the Government of Colombia applied article 61 of Act No. 50 of 1990, in accordance with articles 452, 453 and subsequent of the Substantive Labour Code and Decree Law No. 525 of 1956. Where relevant, Decree No. 801 of 1998 is also applicable: this facilitates the settlement of collective labour disputes involving minority trade unions. None of this conflicts with ILO Convention No. 98, since this legal mechanism is applied at the end of the collective bargaining process when the parties have been unable to reach total or partial agreement.

172. As regards the lack of trade union consultation in cases of restructuring, as alleged by SINALMINTRABAJO, the Government states that it consulted the union in December 1999 on the best way of managing the restructuring. The union did not agree to a solution of the issue because of the Government's refusal to consider in entirety a petition sent to the administration responsible for applying ILO Convention No. 154, which at that time had not been ratified by Colombia.

173. As regards the request for the reinstatement of Mr. Alvaro Rojas, vice-president of the Santander branch of SINALMINTRABAJO, the Government reports that he was reinstated by the Ministry of Labour in November 2000.

174. As regards the Government's refusal to register the Executive Committee and National Council of UTRADEC, the Government states that the Ministry of Labour and Social Security registered the relevant bodies on 4 August 2000 in resolution No. 001748 of the Cundinamarca Regional Labour Directorate, which was duly executed.

175. As regards the refusal to grant trade union leave at the Evaristo García University Hospital in Valle, as alleged by SINSPUBLIC, the Ministry of Labour resolved this dispute through the Valle regional administration by means of resolution No. 1782 dated December 2000, in which the University Hospital was fined. Likewise, on 29 December 2000, the Government promulgated Decree No. 2813, which provides an interpretation of article 13 of Act No. 584 of 2000. The Decree stipulates that trade union representatives in public services, working for public bodies in all parts of the state sector, have the right to paid trade union leave in order to manage the union.

176. As regards the dismissal of trade union leaders for having used trade union leave in the Santa Fe de Bogotá administration, as alleged by the Trade Union of Public Transport Employees of Santa Fe de Bogotá (SETT), the Government states that the technical support group for the cases made representations on 15 August last to the Cundinamarca regional administration in order to announce an administrative labour dispute with the Santa Fe de Bogotá Transit and Transport Executive for violation of freedom of association. A report on the final result of the investigation will be sent later.

177. As regards the allegations of violation of the right to strike, as submitted by SINTRACUEDUCTO, the Government states that, in resolution No. 00863 dated 16 May 2001, the Ministry of Labour and Social Security revoked in entirety resolution No. 01438 dated 4 July 2000, which declared illegal the partial stoppages of work by staff at the Water Supply and Sewerage Enterprise of Bogotá.

178. As regards the allegations of anti-trade union discrimination (dismissals, prohibition on entering the workplace) at the Cervecería Unión brewery, presented by SINTRACOAN, the Government states that, in resolution No. 00233 dated 16 February 2001, the Ministry of Labour and Social Security declined to fine the Cervecería Unión S.A. for violation of freedom of association, given that resolution No. 194 dated 12 May 1998, which represented the final stage of the administrative labour investigation No. 5285 of 15 December 1997 does not contradict resolution No. 00233 dated 16 February 2001 and the grounds for not fining the enterprise are the existence of a previous verdict on the same facts by the same regional administration. That resolution was the subject of an application for review by the complainants, which gave rise to resolution No. 00575 dated 4 April 2001, upholding in entirety resolution No. 00233 dated 16 February 2001, which was duly executed.

179. As regards the dismissal of the SINTRAYOPAL trade union leaders, Ms. Sandra Patricia Russi and Ms. María Librada García, the Government states that the technical support group for cases under consideration and submitted to the ILO made representations to the Yopal regional administration on 16 August 2001 in order to seek an administrative labour investigation against Yopal municipality and observations on the final result of the investigation will be sent in due course.

180. As regards the dismissal of the trade union leader Ms. Gladys Padilla, of Arauca town hall, the Government reports that the Mayor of Arauca states that his administration, in accordance with its constitutional and legal powers and the instructions of the Municipal Council, expressed in Agreement No. 012 of 1998 and with the purpose of attaining the social objectives of the State, restructured the municipal administration in its functions, organization and development and in the public interest, which required the abolition of tasks and posts, affecting not only career public servants but also holders of official posts.

181. This difficult situation, which affects most municipalities, was analysed by the Congress of the Republic. The latter issued Act No. 508 of 1999, article 15 of which granted local administrations powers to implement taxation and financial reorganization programmes, ordering that the earmarked income of local administrations be applied to such programmes rather than to its usual target until the financial situation was resolved. Such restructuring could not fail to affect certain public servants and their union, whose interests would have to give way to the greater public or social interest. The plan for personnel reorganization presented in 1999 was governed, amongst other things, by the impossibility of self-financing, given the disparity between income (taxes) and operating costs. This, and the parameters established by the Ministry of Finance, gave rise to the priority need to reduce such costs, including staffing costs, and consequently, in fulfilment of the existing regulations and the constitutional and legal framework, certain labour contracts were terminated unilaterally, giving priority to the public interest over individual interests and following the legal precedents adopted by the High Court in labour appeal session sentence No. 10779 dated 17 July 1998. In fulfilment of Decrees Nos. 1572 and 2504 of 1998, and following the relevant technical investigations, the central administration adjusted the staffing levels to the available financing and abolished a large number of posts as of 5 May 2001.

182. Some posts, naturally, are occupied by trade union leaders. In the case of the particular three trade unionists, the posts will be abolished as soon as the trade union immunity is lifted by the relevant labour judge and the matter is being handled by the municipal administration. Consequently, to date, the union's governing council has, despite the various staffing reorganization processes, continued to press the case.

183. As regards the dismissal of trade union leaders and members in the Puerto Berrío municipality, the Government states that the technical support group for cases under consideration and submitted to the ILO made representations to the Puerto municipal labour inspectorate (Antioquia) on 16 August in order to seek an administrative labour investigation against Puerto Berrío municipality for the dismissal of 32 members of the municipal employees' association and 57 members and associates of the Governing Council of the Union of Municipal Workers of Puerto Berrío. Once information becomes available, it will be sent to the Committee. As regards the dismissal and refusal to reinstate the leaders of FAVIDI, the Government reports that the autonomy granted to public authorities under the National Constitution means that it is the courts that have the right to decide on the reinstatement of Ms. Lucy Jannet Sánchez Robles and Ms. Ana Elba Quiroz de Martín, who have not exhausted governmental remedies for their respective cases.

184. As regards the proceedings to lift trade union immunity at Textiles Rionegro and Radial Circuito Todelar de Colombia, the Government is unaware of the grounds for the respective applications to lift trade union immunity.

185. As regards the persecution, harassment and intimidation at the Lorencita Villega de Santos University Children's Hospital, the Government reports that the technical support group for cases under consideration and submitted to the ILO made representations to the Cundinamarca regional administration on 16 August in order to seek an administrative labour investigation against the Lorencita Villega de Santos University Children's Hospital for anti-union harassment and observations on the final result of the investigation will be sent in due course.

186. As regards the physical aggression against the trade unionist Ms. Claudia Fabiola Díaz Riascos by the security staff of the Banco Popular and the militarization of the Julio Méndez Barreneche Central Hospital, the Government reports that a letter was sent by the technical support group for cases under consideration and submitted to the ILO to the

Coordinator of the Office for the Defence of Human Rights of the Ministry of Labour and Social Security, who is the competent official to examine and report on such cases.

187. As regards the dismissal of the trade union leader Juan de la Rosa Grimaldos and other Medellín branch leaders, as alleged by ASEINPEC, the Government, though the Coordinator for Inspection and Control of the Cundinamarca regional administration of the Ministry of Labour and Social Security, issued resolution No. 000452 dated 26 April 2001, which declines to apply administrative sanctions against INPEC because there is insufficient evidence that the staff members were dismissed as a consequence of their union membership or that the dismissals were intended to impede freedom of association. Consequently, the president of ASEINPEC appealed and the appeal was upheld by the Coordinator for Inspection and Control in a Decree dated 30 May 2001. The Cundinamarca regional administrator used the following criteria to settle the matter: the first step was to take into account article 405 of the Substantive Labour Code, which deals with the guarantee afforded these workers; and the second was to apply Act No. 584 of 2000, article 12, which identifies which workers enjoy trade union immunity. It was found that there was no qualification issued by a labour judge relating to the dismissal or transfer of the given workers (in this case the ASEINPEC trade union leaders) since, in this case, there is no document providing authorization by a competent judge in the terms established by article 405 of the Substantive Labour Code. By removing and transferring these workers without fulfilling the requirements of article 405, INPEC was impacting on the trade union organization and was evidently in violation of article 39 of Act No. 50 of 1990, subsection 2(b), which covers acts committed by employers against freedom of association, in this case dismissal or impairment of working conditions in connection with activities carried out to facilitate trade union operation. For the above reasons, the Cundinamarca regional director revoked resolution No. 000452 dated 26 April 2001 and decided to fine INPEC 50 statutory minimum salaries through Administrative Decree No. 001072 dated 24 July 2001, which was duly executed.

188. As regards the allegations of repression against trade unionists in connection with the presentation of a petition to Citibank by UNEB, the Government reports that the technical support group for cases under consideration and submitted to the ILO made representations to the Cundinamarca regional administration on 15 August 2001 in order to seek an administrative labour investigation against Citibank and observations on the final result of the investigation will be sent in due course.

189. As regards the allegations of interference presented by UNEB, the Government states that the technical support group made representations to the Cundinamarca regional director on 15 August 2001 to ask him to open an administrative labour investigation against Banco Popular and observations on the final result of the investigation will be sent in due course.

190. The Committee had asked the Government and the CGTD to send a copy of the government document which, according to the CGTD, prevented salary increases being agreed where a worker earned more than the equivalent of two minimum salaries. The Government states that it does not know to which document the complainant organization is referring and would be pleased to receive a copy. Nevertheless, the Government states that it is fulfilling an order for the protection of constitutional rights that requires it to raise all salaries on the central government scale by the current rate of inflation and that it is doing so within the limits of its tax and financial framework. Thus, public employees who earn less than two minimum salaries receive the full increment retroactively from 1 January 2001, while public servants who earn more than two minimum salaries receive 2.5 per cent from the same date. The payment is pending awaiting approval by the legislative authority of the relevant budget increment sought by the national Government.

191. As regards article 14 of Act No. 549 of 1999, which obliges the employer to amend unilaterally the content of the collective agreements, the Government reports that Judgement No. 1187 dated 13 September 2000 declares that articles 13 and 14 of that Act cannot be executed.

192. As regards the failure to implement the collective agreement, as alleged by SINTRACUEDUCTO and ACAV, the Government states that, in connection with the investigation under way in the EEAB, the technical support group for cases under consideration and submitted to the ILO made representations to the Cundinamarca regional administration on 15 August 2001 in order to seek the final result of disputes Nos. 0917 and 27915, of January and November 2000, which are currently under consideration. The response will be sent once it is available.

193. As regards the failure to conclude contracts with Colombian employees, the imposition of flight itineraries, the amendment of the basic salary and pay for work on Sundays and public holidays in a different form to that agreed by American Airlines, a collective agreement has been signed between ACAV, SAVAA and American Airlines, valid from 19 April 2001 to 30 April 2003, which includes, amongst other subjects, the contracting of Colombian employees; American Airlines commits itself to continuing its policy of contracting Colombian flight assistants for flights into and out of Colombia. In any case, American Airlines will comply with the prescriptions of Colombian law relating to the proportion of Colombian employees. The agreement also contains provisions on flight itineraries, amendment of the basic salary and pay for work on Sundays and public holidays.

194. As regards the allegations presented by SINTRATEXTIL, Medellín branch, regarding the conclusion of a collective agreement in Leonisa S.A., the company's legal representative replied in letter No. 033682 dated 9 August 2001 to the technical support group for cases under consideration and submitted to the ILO to the effect that the Leonisa company observes equality of pay and benefits, so that there is no difference between the economic benefits, salary and other benefits contained in the national collective agreement and those in the enterprise collective labour agreement. This is based on the results of the proceedings for the protection of constitutional rights undertaken by the SINTRATEXTIL union in 1995, which obliged the enterprise retroactively to recognize the salary increase of the unionized staff members in keeping with the fact that the national collective agreement and enterprise collective labour agreement were concluded on different dates and the annual salary rise differed from one to the other. As regards collective bargaining rights, the enterprise reports that SINTRATEXTIL exercises that right, recognized by the enterprise, such that, every two years since 1980, a new collective labour agreement has been signed. It adds that the enterprise has never denied the workers' right to freedom of association; indeed, it actively supports that right and has always made the relevant deductions for union dues and forwarded them promptly to SINTRATEXTIL. As regards trade union leave, the legal representative mentions that the enterprise has applied the legal requirements and the provisions of Conventions rigorously and promptly and hence this subject is included in the collective labour agreement.

195. As regards the dismissal of trade union leaders in the Magdalena district administration, the Magdalena health service and the Julio Méndez Barreneche Central Hospital of Santa Marta, as alleged by SINTRASMAG, the technical support group for cases under consideration and submitted to the ILO made representations to the Magdalena district director on 15 August 2001 in order to seek an administrative labour investigation against the Julio Méndez Barreneche Central Hospital. Observations on the final result of the investigation will be sent in due course.

196. As regards the allegations of anti-union discrimination in the restructuring processes, the technical support group for cases under consideration and submitted to the ILO made representations to the Cundinamarca regional director on 15 August in order to seek an administrative labour investigation and observations on the final result of the investigation will be sent in due course.

197. As regards the dismissed workers of Alcalis de Colombia Ltd., for whom the Committee had requested immediate compensation, the Government reports that the Alcalis de Colombia Ltd. company was established in 1970 as a joint venture to refine salt, manufacture products from sodium chloride and operate limestone deposits and coalmines, thus obtaining a monopoly on the import and export of these products. It was unable to operate productively because of high labour costs and obsolete technology and machinery, which caused the national industry to operate very inefficiently and led to serious environmental damage.

198. In February 1993, the National Planning Department presented a document analysing the historical situation of the enterprise to date and recommended that it be liquidated because of its unprofitability.

199. Article 370 of the Commercial Code states that, in addition to the general reasons for liquidation, a limited company shall be liquidated when it incurs losses that reduce its capital to below 50 per cent or the number of partners exceeds 25. This was the reason for the liquidation of Alcalis de Colombia Ltd., which took place in March 1993 under registration No. 650, registered with notarial office No. 30 of Bogotá. In compliance with article 127 of the collective labour agreement, the trade union was notified of the company's liquidation and the termination of the labour contracts; for this reason, conciliation agreements were concluded between the company and its employees before the Ministry of Labour and Social Security. The agreements provided for the payment of benefits, salaries and compensation, in compliance with article 61(e) of the Substantive Labour Code, which establishes that the liquidation or permanent closure of an enterprise or establishment shall provide grounds for the termination of the labour contract.

D. The Committee's conclusions

200. *The Committee notes that, in analysing this case in connection with acts of anti-union discrimination and persecution at its meeting in May-June 2001, it had requested the Government to take certain measures or communicate information in respect of these matters [see 325th Report, paras. 269-337].*

201. ***Paragraph (a) of the Committee's*** *recommendations* ***at its meeting in May-June 2001****. As regards the allegations concerning refusal to register the executive committee and the national board of UTRADEC, the Committee notes with interest that the Ministry of Labour and Social Security, in resolution No. 001748 of the Office of the Labour Coordinator of the Cundinamarca Regional Labour Directorate, registered those bodies on 4 August 2000.*

202. ***Paragraph (b) of the Committee's recommendations****. As regards the allegations concerning denial of trade union leave in Evaristo García ESE Valle University Hospital, the Committee notes that the Ministry of Labour resolved this dispute through the Valle regional administration by means of resolution No. 1782 dated December 2000, in which the University Hospital was fined. Likewise, in December 2000, the Government promulgated Decree No. 2813, which provides an interpretation of article 13 of Act No. 584 of 2000. The Decree stipulates that trade union representatives in public services, working for public bodies in all parts of the state sector, have the right to paid trade union leave in order to manage the union.*

203. ***Paragraph (c) of the Committee's recommendations****. As regards the allegations concerning denial of trade union leave and subsequent dismissal of trade union officers for having taken such leave in the Santa Fe de Bogotá administration, presented by the Trade Union of Public Employees of the Transit and Transport Secretariat of Santa Fe de Bogotá (SETT), the Committee notes that the Government states that as of 15 August 2001, an administrative labour dispute was launched against the Santa Fe de Bogotá Transport Executive. The Committee requests the Government to keep it informed of the final result.*

204. ***Paragraph (d) of the Committee's*** *recommendations. As regards the allegations concerning violation of the right to strike and aggression against and detention of union leaders and members at the Water Supply and Sewerage Enterprise of Bogotá, presented by SINTRACUEDUCTO, the Committee takes note of the Government's information to the effect that, in resolution No. 00863 dated 16 May 2001, the Ministry of Labour and Social Security revoked in entirety resolution No. 01438 dated 4 July 2000, which declared illegal the partial stoppages of work by staff at the Water Supply and Sewerage Enterprise of Bogotá. The Committee notes that the resolution does not concern the issues of aggression against and detention of leaders and members of SINTRACUEDUCTO and, consequently, requests the Government without delay to take measures to carry out the necessary investigations and keep it informed of the result.*

205. ***Paragraph (f) of the Committee's*** *recommendations. As regards the allegations of anti-union discrimination (dismissals of officers and members and denial of access to the workplace) in the Cervecería Unión enterprise, presented by SINTRACOAN, the Committee takes note of the Government's information to the effect that, in resolution No. 00233 dated 16 February 2001, the Ministry of Labour and Social Security declined to fine the Cervecería Unión S.A. for violation of freedom of association, given that the allegations had already been the subject of a similar investigation which had upheld the position of the enterprise and been confirmed.*

206. ***Paragraph (g)(1) of the Committee's*** *recommendations. As regards the dismissal of the trade union officers of SINTRAYOPAL, Ms. Sandra Patricia Russi and Ms. María Librada García, the Committee notes that the Government has asked the Yopal district directorate to conduct the relevant administrative labour investigation. The Committee requests the Government to keep it informed of the results of the investigation and, if the dismissals are found to be anti-union, to take measures immediately to reinstate the two officers in their posts with payment of lost salary.*

207. ***Paragraph (g)(2) of the Committee's recommendations****. As regards the dismissal of Ms. Gladys Padilla of the Arauca town hall, the Committee takes note of the Government's information to the effect that this is part of the municipal administration's restructuring, which required the abolition of a large number of posts, including that of the union leader. As regards the remaining leaders, the Government states that the raising of trade union immunity is being awaited in order to dismiss them. The Committee recalls that, in restructuring, priority should be given to the continuing employment of workers' representatives in order to guarantee their effective protection [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 1996, paras. 960 and 961]. In these circumstances, the Committee requests the Government to take this principle into account and reconsider the situation of the trade union leader, Ms. Gladys Padilla.*

208. ***Paragraph (g)(3) of the Committee's recommendations****. As regards the alleged dismissal of nine union leaders and other members at Quintex S.A., presented by SINTRATEXTIL, the Committee notes the Government's information to the effect that the enterprise is in forced liquidation and thus decided to suspend its workers' labour contracts indefinitely as of 31 October 1996, on the basis of article 51, subsection 1(a) of the Substantive Labour Code, claiming force majeure. However, according to the Government, the enterprise*

failed to comply with the requirement to notify the Ministry of Labour and Social Security and was thus fined by the chief of the Supervision and Control Division. Moreover, the deputy inspector of the Cundinamarca Regional Directorate of the Ministry of Labour and Social Security declared that the force majeure or fortuitous occurrence had not been verified (a resolution that remains in force) and yet the enterprise is continuing to suspend contracts indefinitely. The trade union leaders have begun proceedings and judges and magistrates have ordered Quintex S.A. to pay the salaries and benefits outstanding. However, according to the Government, they have not ordered the enterprise to reinstate the workers, since the employer-worker relationship is considered not to have been broken as the labour contracts are merely suspended. As regards the dismissals by Quintex S.A. during its forced liquidation between 24 August and 21 September 1999, the Government reports that the Antioquia Regional Directorate of Labour and Social Security pronounced on 13 July 2000, fining Quintex S.A the equivalent of five minimum legal salaries, for failing to pay interest on severance pay since 31 January 1999 and not paying for legal services for the staff dismissed on 24 August 1996 and 21 September 1999. However, it refrained from ruling on the status of the dismissals and on the collective dismissals, finding these issues beyond its competence. The Committee recalls that protection from acts of anti-union discrimination should include not only hiring and dismissal, but also any discriminatory measures adopted during the period of employment and, in particular, those involving transfers, non-promotion and other prejudicial acts [see ***Digest****, op. cit., para. 695]. The Committee requests the Government to take measures to reinstate the suspended union leaders and members in their posts, with payment of lost salary and, where reinstatement is impossible because of the liquidation of the enterprise, to ensure that they are fully compensated.*

209. ***Paragraph (g)(4) of the Committee's recommendations****. As regards the dismissal of trade union leaders and members in the Puerto Berrío municipality, the Committee takes note that the Government states that there have been representations to the Puerto Berrío municipal labour inspectorate in order to seek an administrative labour investigation. The Committee requests the Government to keep it informed of the development of these proceedings and ensure that the workers dismissed for anti-union reasons be reinstated in their posts, with payment of lost salary.*

210. ***Paragraph (g)(6) of the Committee's recommendations****. As regards the dismissal and refusal to reinstate the leaders of FAVIDI, Ms. Lucy Jannet Sánchez Robles and Ms. Ana Elba Quiroz de Martín, the Committee notes that the Government reports that they have not exhausted governmental remedies for their respective cases. The Committee requests the Government to provide information on the actions taken by the two leaders to date and the results.*

211. ***Paragraph (g)(7) and (8) of the Committee's recommendations****. As regards the proceedings to lift trade union immunity at Textiles Rionegro and Radial Circuito Todelar de Colombia, the Committee takes note of the Government's statement that it is unaware of the grounds for the respective applications to lift trade union immunity. The Committee requests the complainant organizations to send more information on the allegations in order that the Government may conduct the necessary investigations.*

212. ***Paragraph (g)(10) and (11) of the Committee's recommendations****. As regards the physical aggression against the trade unionist Ms. Claudia Fabiola Díaz Riascos by the security staff of the Banco Popular and the militarization of the Julio Méndez Barreneche Central Hospital, the Committee takes note that the Government reports that a letter was sent to the Coordinator of the Office for the Defence of Human Rights of the Ministry of Labour and Social Security, who is the competent official to examine and report on such cases. The Committee requests the Government to send the response from the Coordinator as soon as it is received.*

213. ***Paragraph (h) of the Committee's recommendations****. As regards the dismissal of the trade union leader Juan de la Rosa Grimaldos and other Medellín branch leaders, as alleged by ASEINPEC, the Committee takes note of the Government's information that, the Cundinamarca regional director, in response to the trade union's appeal, fined INPEC 50 statutory minimum salaries because there was no qualification issued by a labour judge relating to the dismissal or transfer of the given workers, which is a requirement of article 405 of the Substantive Labour Code and hence INPEC was violating freedom of association. The Committee requests the Government, on the basis of this decision, to take the necessary measures with a view to reinstating the dismissed union leaders and members in their posts, with payment of lost salary.*

214. ***Paragraphs (g)(9), (i), (j), part one, (o), part one, (t) and (u) of the Committee's recommendations****. As regards the allegations of: (a) persecution, harassment and intimidation at the Lorencita Villega de Santos University Children's Hospital; (b) repression against trade unionists in connection with the presentation of a petition to Citibank and interference at the Banco Popular, presented by UNEB; (c) failure to comply with the collective agreement presented by SINTRACUEDUCTO; (d) the dismissal of trade union leaders in the Magdalena district administration and the Julio Méndez Barreneche Central Hospital, presented by SINTRASMAG; and (e) anti-union discrimination in restructuring processes presented by the Association of Workers of Banco Central Hipotecario (ASTRABAN), the Committee takes note of the Government's information that the relevant investigations have been opened by the Cundinamarca regional director. The Committee requests the Government to keep it informed of the final result of the investigations.*

215. ***Paragraph (k) of the Committee's recommendations****. As regards the allegations submitted by SINALTRAMINTRABAJO, SINTRAINFANTIL, SINSPUBLIC-SINTRABENEFICENCIAS and SINTRAFAVIDI on the refusal by the public administration to participate in collective bargaining, the Committee takes note that the Government states that it is obliged to respond concerning the implementation of Conventions Nos. 151 and 154 only from 8 December 2001 onwards and in most cases the Ministry of Labour and Social Security has prevailed on the parties to reach amicable settlements. The Committee repeats its observation that, while a number of other categories of public servants should enjoy the right of collective bargaining under Convention No. 98, this right has been recognized in generalized form for all public servants through the ratification of Conventions Nos. 151 and 154. In these circumstances, the Committee, recalling that collective bargaining in the public administration requires particular forms of application, requests the Government once again to take the necessary measures to ensure that the right of public servants to collective bargaining is respected.*

216. ***Paragraph (l) of the Committee's recommendations****. As regards the copy of the document which, according to the CGTD, prevents wage increases from being agreed upon for persons receiving more than twice the statutory minimum wage, a copy of which was requested by the Committee from the Government and the CGTD, the Committee notes that the Government states that it does not know of such a document but is fulfilling an order for the protection of constitutional rights that requires it to raise all salaries on the central government scale by the current rate of inflation and that it is doing so within the limits of its tax and financial framework.*

217. ***Paragraph (m) of the Committee's recommendations****. As regards article 14 of Act No. 549 of 1999, which obliges the employer to amend unilaterally the content of the collective agreements, the Committee notes that Government reports that Judgement No. 1187 dated 13 September 2000 declares that articles 13 and 14 of that Act cannot be executed. The Committee requests the Government to inform it as to whether this judgement creates a general precedent in case law. The Committee draws this aspect of the*

case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

218. ***Paragraph (n) of the Committee's recommendations****. As regards the use of arbitration tribunals to settle a collective labour dispute at Banco Bancafé, imposed by the Ministry of Labour and Social Security, the Committee takes note of the Government's statement that, in Colombia, no collective labour dispute can remain unresolved and that, in the case in question, the legal mechanism that facilitated settlement was applied at the end of the collective bargaining process when the parties had been unable to reach total or partial agreement. In this connection, the Committee recalls that recourse to compulsory arbitration when the parties cannot reach a settlement through collective bargaining is admissible in the framework of essential services in the strict sense of the term (those the interruption of which would endanger the life, personal safety or health in all or part of the population) and in cases of conflict in the public services in connection with public servants exercising authority in the name of the State. The Committee repeats its previous observation that the Banco Bancafé workers do not fall into any of these categories or agree with the company that an arbitration tribunal should be established. Consequently, the Committee once more requests the Government to take the necessary measures to reverse the appointment of the compulsory arbitration tribunal at Banco Bancafé in order to respect the will of the parties regarding the settlement of the collective dispute.*

219. ***Paragraph (o)(2) of the Committee's recommendations****. As regards the allegations presented by ACAV concerning the failure to conclude contracts with Colombian employees, the imposition of flight itineraries, the amendment of the basic salary and pay for work on Sundays and public holidays in a different form to that agreed by American Airlines, the Committee takes note of the information provided by the Government to the effect that a collective agreement has been signed between ACAV, SAVAA and American Airlines that complies with the prescriptions of Colombian law relating to the proportion of Colombian employees and the other issues raised by the complainant organization.*

220. ***Paragraph (p) of the Committee's recommendations****. As regards the dismissed workers of Alcalis de Colombia Ltd., for whom the Committee had requested the Government to take measures to ensure compensation, the Committee notes that the Government reports that the enterprise was liquidated in March 1993 in compliance with the provisions of article 370 of the Commercial Code relating to reduction of the capital to below 50 per cent, the union was informed of the reason and the labour contracts were terminated through an act of conciliation concluded with the participation of the Ministry of Labour and Social Security renouncing the payment of the relevant benefits, salaries and compensation.*

221. ***Paragraph (q) of the Committee's recommendations****. As regards the allegations presented by SINTRATEXTIL, Medellín branch, concerning the conclusion of a collective contract in the Leonisa S.A. enterprise, the Committee notes the Government's statement to the effect that, according to the enterprise, the beneficiaries of the two types of collective agreement are equal; in compliance with the order made as a result of the proceedings to protect constitutional rights initiated by SINTRATEXTIL in 1995, the enterprise was obliged retroactively to reverse the salary increase of the unionized personnel. As to collective bargaining rights, the Government states that the enterprise has concluded collective agreements every two years since 1980. Finally, with regard to trade union leave, the Government states that, according to the enterprise, there has been timely and rigorous compliance with the relevant legal and Convention requirements.*

222. ***Paragraph (s) of the Committee's recommendations****. As regards the dismissal of Mr Alvaro Rojas, vice-president of the Santander branch of SINALMINTRABAJO, in respect of whom the Committee had requested the Government to examine the possibility*

of reinstatement in his post, the Committee notes with interest that the Government reports that he was reinstated by the Ministry of Labour in November 2000.

223. *The Committee notes with regret that the Government has not sent observations on the following recommendations of the Committee at its meeting in May-June 2001 [see 325th Report, para. 337]:*

224. *(a)* ***Paragraph (d) of the recommendations.*** *As regards the allegations of violation of the right to strike, presented by UNEB, the Committee had requested the Government to take the necessary measures to ensure that inquiries were initiated immediately.*

(b) ***Paragraph (e) of the recommendations****. As regards the allegations concerning failure to transfer to the trade union the dues withheld by the Textiles Rionegro enterprise, presented by SINTRATEXTIL, the Committee had requested the Government to take measures to ensure that the necessary inquiries were carried out and, if the allegations are found to be true, to ensure that the Textiles Rionegro enterprise transferred without delay to SINTRATEXTIL the withheld dues, as well as to keep it informed in this respect.*

(c) ***Paragraph (g)(5) of the recommendations****. As regards the allegations relating to the dismissal of 34 workers of Textiles Rionegro who had peacefully and legally demanded their wages, the Committee had requested the Government to take the necessary measures to ensure that inquiries were initiated immediately in order to ascertain whether the allegations were true and communicate its observations.*

225. *The Committee requests the Government to send its observations relating to these allegations without delay.*

226. *Finally, the Committee regrets that the Government has not sent its observations on new allegations presented by the complainant organizations since the latest examination of the cases involving:*

– **the Official Employees' Association of the Municipality of Medellín (ADEM) and the Public Employees' Trade Union of the Municipality of Medellín (SIDEM)**: *(a) the dismissal by the Municipality of Medellín of 83 employees with trade union immunity; (b) failure to comply with a memorandum of understanding signed on 20 February 2001 agreeing to their reinstatement; (c) the subcontracting of new employees, deprived of the right to freedom of association, to do the work formerly done by the dismissed workers; (d) the lack of consultation in the administrative restructuring process launched by the Council of Medellín in March 2001; and (e) the mayor's threats to punish all participants in the strike called for 6 March 2001 in response to the failure to comply with the memorandum of understanding;*

– **Trade Union Association of Employees of the National Penitentiary and Prison Institute (ASEINPEC)**: *(a) the murder of four of the trade union's directors, Jesús Arley Escobar, Fabio Humberto Burbano Córdoba, Jorge Ignacio Bohada Palencia and Jaime García; (b) the constant threats received by the union's leaders; (c) anti-union persecution through measures against union leaders including sanctions, disciplinary proceedings and transfers; (d) the dismissal of union leaders in violation of trade union immunity; (e) the suspension of trade union leaders without pay for having conducted a peaceful demonstration; and (f) pressure on members to leave the union;*

– **Colombian Association of Banking Employees (ACEB)**: *the dismissal of a union leader, Mr. Hugo Leonel Gándara Martínez, following criminal proceedings against him in which he was cleared;*

– **Trade Union of Workers of Sintéticos S.A. (SINTRASINTETICOS)**: *(a) pressure and threats by the Odissey Ltd. enterprise to force workers to leave the union; (b) interference by the enterprise in internal union matters; (c) delays in the settlement of proceedings before tribunals relating to violation of freedom of association; (d) sanctions against trade union leaders for making use of trade union leave; and (e) the enterprise's refusal to hold meetings for collective bargaining;*

– **National Union of Textile Industry Workers (SINTRATEXTIL): (a) at the Fabricato company**: *(1) there is violation of the collective agreement; (2) trade union leave is denied; and (3) trade union leaders are denied access to the premises; (b)* ***at the Enka company:*** *(1) non-fulfilment of agreements between the President of the company and the union; (2) violation of the collective agreement through the conclusion of contracts with companies to conduct work directly covered by the collective agreement; (3) distribution of the hardest tasks to unionized workers; (c)* ***at the Coltejer company:*** *dismissals on the grounds of restructuring, in violation of a collective agreement; and (d)* ***at the Textiles Rionegro company:*** *(1) favouritism towards one of the enterprise trade unions to the detriment of the industry trade union; and (2) violation of the collective agreement.*

227. *The Committee requests the Government to send its observations without delay regarding these allegations, and urgently in respect of the allegations of murder, in order that it may formulate its recommendations in full possession of the facts.*

The Committee's recommendations

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

(a) As regards the allegations of violation of the right to strike, presented by UNEB, the failure to transfer to the trade union the dues withheld by the Textiles Rionegro enterprise, presented by SINTRATEXTIL and the dismissal of 34 workers of Textiles Rionegro who had peacefully and legally demanded their wages, in respect of which the Committee had requested the Government to take certain measures to communicate information, the Committee requests the Government to send its observations relating to these allegations without delay.

(b) As regards the allegations concerning denial of trade union leave and subsequent dismissal of trade union officers for having taken such leave in the Santa Fe de Bogotá administration, the Committee requests the Government to keep it informed of the final result of the administrative labour dispute against the Bogotá Transport Executive.

(c) As regards the allegations concerning aggression against and detention of union leaders and members at the Water Supply and Sewerage Enterprise of Bogotá, presented by SINTRACUEDUCTO, the Committee requests the Government without delay to take measures to carry out the necessary investigations and keep it informed of the result.

(d) As regards the dismissal of the trade union officers of SINTRAYOPAL, Ms. Sandra Patricia Russi and Ms. María Librada García, the Committee requests the Government to keep it informed of the results of the investigation and, if the dismissals are found to be anti-union, to take

measures immediately to reinstate the two officers in their posts with payment of lost salary.

(e) As regards the dismissal of Ms. Gladys Padilla of the Arauca town hall, the Committee requests the Government to take into account the principle that, in restructuring, priority should be given to the continuing employment of workers' representatives and reconsider the situation of the trade union leader.

(f) As regards the alleged dismissal of nine union leaders and other members at Quintex S.A., presented by SINTRATEXTIL, the Committee requests the Government to take measures to reinstate the suspended union leaders and members in their posts, with payment of lost salary and, where reinstatement is impossible because of the liquidation of the enterprise, to ensure that they are fully compensated.

(g) As regards the dismissal of trade union leaders and members in the Puerto Berrío municipality, the Committee requests the Government to keep it informed of the development of these proceedings and ensure that the workers dismissed for anti-union reasons be reinstated in their posts, with payment of lost salary.

(h) As regards the dismissal and refusal to reinstate the leaders of FAVIDI, Ms. Lucy Jannet Sánchez Robles and Ms. Ana Elba Quiroz de Martín, the Committee requests the Government to provide information on the actions taken by the two leaders to date and the results.

(i) As regards the proceedings to lift trade union immunity at Textiles Rionegro and Radial Circuito Todelar de Colombia, the Committee requests the complainant organizations to send more information on the allegations in order that the Government may conduct the necessary investigations.

(j) As regards the physical aggression against the trade unionist Ms. Claudia Fabiola Díaz Riascos by the security staff of the Banco Popular and the militarization of the Julio Méndez Barreneche Central Hospital, the Committee requests the Government to send the response from the Coordinator of the Office for the Defence of Human Rights of the Ministry of Labour and Social Security as soon as it is received.

(k) As regards the dismissal of the trade union leader Juan de la Rosa Grimaldos and other Medellín branch leaders, as alleged by ASEINPEC, the Committee requests the Government to take the necessary measures with a view to reinstating the dismissed union leaders and members in their posts, with payment of lost salary.

(l) As regards the allegations of: (a) persecution, harassment and intimidation at the Lorencita Villega de Santos University Children's Hospital; (b) repression against trade unionists in connection with the presentation of a petition to Citibank and interference at the Banco Popular, presented by UNEB; (c) failure to comply with the collective agreement, presented by SINTRACUEDUCTO; (d) the dismissal of trade union leaders in the Magdalena district administration and the Julio Méndez Barreneche

Central Hospital, presented by SINTRASMAG; and (e) anti-union discrimination in restructuring processes presented by the Association of Workers of Banco Central Hipotecario (ASTRABAN), the Committee requests the Government to keep it informed of the final result of the investigations by the Cundinamarca regional director.

(m) As regards the allegations submitted by SINALTRAMINTRABAJO, SINTRAINFANTIL, SINSPUBLIC-SINTRABENEFICENCIAS and SINTRAFAVIDI on the refusal by the public administration to participate in collective bargaining, the Committee, recalling that collective bargaining in the public administration requires particular forms of application, requests the Government once again to take the necessary measures to ensure that the right of public servants to collective bargaining is respected.

(n) As regards article 14 of Act No. 549 of 1999, which is pronounced non-executable under Judgement No. 1187 dated 13 September 2000, the Committee draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

(o) As regards the allegations presented by UNEB concerning the use of arbitration tribunals to settle a collective labour dispute at Banco Bancafé, imposed by the Ministry of Labour and Social Security, the Committee once more requests the Government to take the necessary measures to reverse the appointment of the compulsory arbitration tribunal at Banco Bancafé in order to respect the will of the parties regarding the settlement of the collective dispute.

(p) As regards the new allegations presented by ADEM, SIDEM, SINTRASINTETICOS and SINTRATEXTIL, the Committee requests the Government to send its observations without delay regarding these allegations, and urgently in respect of the allegations of murder, in order that it may formulate its recommendations in full possession of the facts.

CASE NO. 2165

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

Complaints against the Government of El Salvador presented by
— the Federation of Public Service Workers' Trade Unions of El Salvador (FESTRASPES)
— the International Confederation of Free Trade Unions (ICFTU)
— Public Services International (PSI)
— the International Transport Workers' Federation (ITF) and
— the Workers' Union of the National Institute for Public Employees' Pensions (SITINPEP)

Allegations: Mass unfair dismissals following strike action and violence against demonstrators

229. The complaints in this case are contained in communications from the Federation of Public Service Workers' Trade Unions of El Salvador (FESTRASPES), dated 22 October 2001, and the Workers' Union of the National Institute for Public Employees' Pensions (SITINPEP), dated 10 and 11 January and 6 and 14 February 2002. Public Services International (PSI), the International Confederation of Free Trade Unions (ICFTU) and the International Transport Workers' Federation (ITF) expressed their support for the complaint presented by FESTRASPES, in communications dated 26 October and 10 December 2001 and 21 January 2002. The Government sent its observations in communications dated 7 February and 8 May 2002.

230. El Salvador has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

231. In its communication dated 22 October 2001, the Federation of Public Service Workers' Trade Unions of El Salvador (FESTRASPES) alleges that at 11 p.m. on 23 September 2001, a contingent of Salvadoran armed forces, combined with military and riot police from the National Civil Police (PNC), burst without warning into El Salvador International Airport, in the municipality of San Luis Talpa, La Paz, and ordered workers to leave the terminal on the grounds that they had been dismissed. The complainant adds that on 24 September 2001, the armed and police forces prevented workers of the cargo and maintenance departments, all of whom were members of the El Salvador International Airport Workers' Union (SITEAIES), which is affiliated to FESTRASPES, from entering the airport; on 25 September, the military personnel in charge informed the workers that only those from the maintenance department could enter the premises, and that the other 159 members of the cargo and security departments had been dismissed (according to FESTRASPES, all of the workers affected were members of SITEAIES and therefore their dismissal constituted a violation of the collective agreement with regard to the provisions on labour stability). There are approximately 500 workers at the international airport, 296 of whom, on 23 September, were members of SITEAIES.

232. The complainant also contends that, at the same time, the airport administration began an intimidation campaign to attempt to force workers to withdraw from SITEAIES, and

informed all those who had been suspended that their compensation cheques were available for collection or, in other words, that they had been dismissed, rather than suspended. The same applied to four trade union leaders and two members of the SITEAIES Honour and Justice Commission, who also enjoyed trade union immunity.

233. The complainant asserts that, at the request of SITEAIES, an inspection was carried out by the Inspectorate of the Ministry of Labour, in which a series of violations of labour rights were found, including anti-union discrimination through the restriction of access to union premises and threats to trade union leaders. The complainants add that they requested a further inspection but that the Inspector-General of Labour refused to carry it out. They further allege that, at the same time, they lodged a complaint with the judicial authorities, with a view to achieving a ruling that the lockout was illegal. However, the civil court judge of Zacatecotuca, in an unlawful procedure, ruled that no lockout had occurred, and the Court of Appeal rejected the subsequent appeal to that decision.

234. FESTRASPES also alleges that, on 12 October 2001, a cordon of armed military and riot police attempted to prevent the regular general meeting of SITEAIES from taking place; the union, in accordance with the collective agreement in force, had informed the airport administration that the meeting would take place in the landscaped area, away from the central area of airport activity. Eventually, the union held its meeting on a private lot of land, at the side of the road.

235. Lastly, the complainant states that meetings have been held between SITEAIES, FESTRASPES and the Autonomous Port Executive Commission (CEPA) in the Ministry of Labour, with a view to securing the mediation of the Ministry in the dispute, but that the parties have yet to reach an agreement. The complainant contends that during the dispute, threats have been made to trade union leaders and, at the time the complaint was presented, 159 members of SITEAIES had been dismissed, more than 40 workers had received compensation and more than 100 were refusing to give in, without having been paid throughout the whole period, thereby placing themselves and their families in a very vulnerable situation; furthermore, 35 members of SITEAIES, having held on to their jobs, have taken steps to resign from the union as a result of pressure from the administration.

236. In its communications of 10 and 11 January and 6 and 14 February 2002, the Workers' Union of the National Institute for Public Employees' Pensions (SITINPEP) alleges that on 21 December 2001, a total of 92 workers, 56 of whom were members of the union, were dismissed from the National Institute for Public Employees' Pensions (INPEP). Of the 56 members of the union, three were federal leaders enjoying trade union immunity, and 24 were members of the Honour and Justice and Finance Commissions, the Family Sustenance Committee, the Labour Relations Committee, the Women's Affairs Committee or the Department Union Representatives Committee.

237. SITINPEP describes how the dismissal notice reads as follows: "You are hereby informed that, in accordance with administrative and financial measures, within the legal framework of INPEP's new role pursuant to the law concerning the pension savings system, having regard to government staff-reduction policies for this institution, your post of employment has been terminated, as from 31 December 2001, as part of the administrative cost-reduction plan adopted by the board of governors in resolution No. 289/2001 at the meeting of 17 December 2001. You are therefore invited to collect your compensation cheque from the counter at the San Miguelito branch of Cuscatlán bank, from 2 January 2002." The complainant adds that, while the advice of the Human Rights Procurator was to attempt to engage in dialogue with government officials, this turned out to be impossible, owing to the failure to make contact with the officials responsible for the dismissals.

238. Lastly, SITINPEP alleges that the authorities violated the collective labour agreement in force, particularly with regard to the following clauses: No. 5, concerning "trade union representatives", which guarantees the immunity of union representatives; No. 27, concerning the "creation and abolition of posts", which stipulates that no post of employment may be abolished without prior notice from the INPEP Labour Relations Committee, and a consensus being reached between the parties, rendering null and void any such measure that does not respect the agreed conditions; No. 16, concerning "meetings with the administration of INPEP", which provides for meetings to be held to address problems requiring urgent attention – a measure that has not been taken in the present case; No. 1, concerning "name, object, purpose and domicile", which stipulates that the trade union must be informed of any changes to the institution, without prejudice to any of the rights and obligations of the parties to the agreement; No. 14, concerning "special rights for trade union leaders", which grants union leaders the right to enter INPEP premises outside working hours, on non-working days and public holidays; No. 37, concerning the "right to a hearing regarding the motive for dismissal", which stipulates that every worker has the right to be heard; and No. 39, concerning "voluntary or involuntary retirement payments", which stipulates that the Labour Relations Committee or the competent judge shall decide whether or not a dismissal is justified.

B. The Government's reply

239. In its communication dated 7 February 2002, the Government refers to the complaint presented by the trade union SITINPEP, concerning the dismissal, through notification from the INPEP employers, of a group of workers on 21 December 2001, including three trade union leaders who were currently enjoying a year of union immunity. The Government states that the public pension system was created in 1975, with a view to providing civil servants with the means to retire comfortably from working life and to offer protection to their families, through the pension scheme administered by the National Institute for Public Employees. The law concerning the pension savings system for private, public and municipal workers entered into force in 1997, which persuaded 80 per cent of contributors to switch to the new pension system. This caused a dramatic reduction in revenue for social security, which has led to a reliance on the "technical reserve" since 1999. In view of this situation, as well as the possible issuance of a decree on the retirement of public servants, which would lead to an even greater reduction in social security revenue and an increase in the expense of pension payments, the board of governors decided to carry out a study with a view to establishing a new organizational structure, designed to make the Institute sustainable in the light of INPEP's new role, and in accordance with the law concerning the pension system for private, public and municipal workers.

240. The Government further points out that the new organizational structure of INPEP, designed to adapt to its new role and financial situation, made it essential to abolish superfluous posts. Thus, on 21 December 2001, a note was sent out to each one of the persons affected, informing them that, from 31 December, they would be made redundant and that they would be entitled to compensation according to the terms of the collective labour agreement between the National Institute for Public Employees' Pensions and the Workers' Union of the National Institute for Public Employees' Pensions, a measure which was taken in due course.

241. According to the Government, three federal trade union leaders during their year of union immunity were part of the group of workers made redundant, but at no time did they make their status known in the course of labour relations with the Institute; nevertheless, the Institute subsequently paid them, in addition to their compensation entitlement, lost wages for the remainder of the period of their union immunity, on the basis of a written agreement dated 31 January 2002, signed at the Ministry of Labour and Social Security by

Mr. Roger Hernán Gutiérrez and Mr. Elías Misael Cáceres López, on behalf of the Federation of Independent Trade Unions and Associations of El Salvador (FEASIES) and representing the workers and union leaders Mr. José Antonio Menjivar Crespín, Ms. Clelia Evelyn Velásquez de Corvera and Ms. Marta Guadalupe Zaldaña, and by Ms. Mercedes Guadalupe Payes Valdez, on behalf of INPEP. The amounts paid, corresponding to compensation and wages lost owing to the action of the employers, are as follows: (1) José Antonio Menjivar Crespín $8,633.90; (2) Clelia Evelyn Velásquez de Corvera $17,947.75; (3) Marta Guadalupe Zaldaña $9,632.84. The Government adds that once the trade union leaders received these sums, their working relationship with INPEP was deemed terminated.

242. Lastly, the Government maintains that at no time have trade union rights been violated in respect of officials of the Workers' Union of the National Institute for Public Employees' Pensions, since those concerned continue to work at the Institute as usual and maintain good labour relations with their employer.

243. As regards the alleged dispute at the El Salvador International Airport, in a long communication of 8 May 2002, the Government states that: (1) following the work interruption in the airport's cargo and maintenance areas on 24, 25 and 26 September 2001, the contracts of 159 workers have been suspended; (2) 95 of these workers have opted for the "voluntary retirement" provided for in the collective agreement, and the remaining 64 workers concluded an agreement with the General Directorate of Labour, which put an end to the labour dispute (the Government attaches a copy of the settlement); (3) the SITEAIES also undertook to withdraw all claims that would be outstanding with any official institution (according to the Government, this commitment is included in the complaint submitted to the Committee).

C. The Committee's conclusions

244. *The Committee observes that in this case the complainants' allegations concern (1) various acts of anti-union discrimination at El Salvador International Airport (the dismissal of 159 unionized workers, persecution and threats against leaders and members of the trade union SITEAIES, and the impossibility of gaining access to union premises as a result of the airport's militarization), and (2) the dismissal of 92 workers (of whom 56 were members of the trade union SITINPEP, three were covered by trade union immunity and 24 occupied posts in various union committees and commissions) from the National Institute for Public Employees' Pensions (INPEP), violating the terms of the collective agreement in force.*

245. *With regard to the alleged dismissal of 92 workers (three of whom were union leaders and many of whom were unionists and members of SITINPEP) from the National Institute for Public Employees' Pensions (INPEP), violating the terms of the collective agreement in force, the Committee notes that, according to the Government, (1) the new organizational structure of INPEP, designed to adapt to its new role and financial situation, made it essential to abolish superfluous posts and thus, on 21 December 2001, the persons concerned were informed of their dismissal and granted compensation in accordance with the terms of the collective agreement; (2) on the basis of an agreement dated 31 January 2002, signed at the Ministry of Labour and Social Security between representatives of the Federation of Independent Trade Unions and Associations of El Salvador, the union leaders affected and INPEP, payments were made, corresponding to compensation and lost wages for the remainder of the period of union immunity, to the three dismissed federal trade union leaders; and (3) at no time were trade union rights violated in respect of SITINPEP officials, who continue to work at the Institute as usual and maintain good labour relations with their employer.*

246. *Firstly, with regard to the financial situation at INPEP that created the need for staff reductions, the Committee has indicated on previous occasions that "it can examine allegations concerning economic rationalization programmes and restructuring processes, whether or not they imply redundancies or the transfer of enterprises or services from the public to the private sector, only in so far as they might have given rise to acts of discrimination or interference against trade unions. In any case, the Committee can only regret that in the rationalization and staff-reduction process, the Government did not consult or try to reach an agreement with the trade union organizations" [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 935]. Furthermore, "in cases of staff reductions, the Committee has drawn attention to the principle contained in the Workers' Representatives Recommendation, 1971 (No. 143), which mentions amongst the measures to be taken to ensure effective protection to these workers, that recognition of a priority should be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce (article 6(2)(f))" [see* ***Digest****, op. cit., para. 960].*

247. *The Committee observes that the Government has not denied that over half of the workers dismissed (56 out of a total of 92) were members of SITINPEP, and that 24 of them were workers' representatives in various commissions and committees. In this context, the Committee requests the Government to take the necessary measures urgently to ensure that an investigation is carried out to determine the reasons why such a high proportion of unionists were dismissed and, if it transpires that any of these dismissals were due to the worker's trade union membership or legitimate union activities, that it takes the necessary measures urgently to ensure the reinstatement of those workers in their jobs without loss of pay. The Committee requests the Government to keep it informed in this regard as a matter of urgency.*

248. *The Committee further notes that the Government has not referred to the alleged violation of the collective contract in force at INPEP (specifically the clauses relating to the non-abolition of posts without prior notice from the INPEP Labour Relations Committee, the right to a hearing regarding the motive for dismissal, etc.). In this context, the Committee underlines "that mutual respect for the commitment undertaken in the collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground" [see 308th Report, Case No. 1919, Spain, para. 326] and that "agreements should be binding on the parties" [see* ***Digest****, op. cit, para. 818]. Under these circumstances, the Committee regrets that the terms of the collective agreement have not been respected and requests the Government to take the necessary measures to ensure that, in future, INPEP fully respects the terms of the collective agreements in force and, if it considers staff reductions to be necessary, that it holds in-depth consultations on the matter with the corresponding trade union organization.*

249. *Lastly, concerning the allegations of anti-union discrimination acts at El Salvador International Airport (the dismissal of 159 unionized workers, persecution and threats against leaders and members of the trade union SITEAIES and the impossibility of gaining access to union premises as a result of the airport's militarization), the Committee notes that, according to the Government: (1) following the work interruption in the airport's cargo and maintenance areas on 24, 25 and 26 September 2001, the contracts of 159 workers have been suspended; (2) 95 of these workers have opted for the "voluntary retirement" provided for in the collective agreement, and the remaining 64 workers concluded an agreement with the General Directorate of Labour, which put an end to the labour dispute (the Government attaches a copy of the settlement); (3) the SITEAIES also undertook to withdraw all claims that would be outstanding with any official institution (according to the Government, this commitment is included in the complaint submitted to the Committee).*

250. *Finally, as concerns the allegations of the militarization of the El Salvador International Airport, the Committee requests the Government to take measures to carry out an investigation to determine the reasons for the militarization and the extent to which it interfered with trade union activities. The Committee requests the Government to keep it informed urgently of the outcome of this investigation.*

The Committee's recommendations

251. ***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 ensure that, in future, the National Institute for Public Employees' Pensions (INPEP) fully respects the terms of the collective agreements in force and, if it considers staff reductions to be necessary, that it holds in-depth consultations on the matter with the corresponding trade union organization.

(b) The Committee requests the Government to take the necessary measures urgently to ensure that an investigation is carried out to determine the reasons why such a high proportion of unionists and workers' representatives were dismissed and, if it transpires that any of these dismissals were due to trade union membership or legitimate union activities, that it takes the necessary measures to ensure the reinstatement of those workers in their jobs, without loss of pay. The Committee requests the Government to keep it informed in this regard as a matter of urgency.

(c) As concerns the allegation of the militarization of the El Salvador International Airport on 24 and 25 September 2001, the Committee requests the Government to take measures to carry out an investigation to determine the reasons for this militarization and the extent to which it interfered with trade union activities and to keep it informed urgently of the outcome of this investigation.

CASE NO. 2128

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

Complaint against the Government of Gabon presented by the Free Federation of Industries and Processing Activities (FLIT-CGSL)

Allegations: Refusal to recognize and protect trade union delegates in enterprises

252. The complaint in the present case is set out in a communication from the Free Federation of Industries and Processing Activities (FLIT-CGSL) dated 11 May 2001.

253. The Government sent its observations in a communication dated 28 January 2002.

254. Gabon has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

255. In its communication of 11 May 2001, the Free Federation of Industries and Processing Activities (FLIT-CGSL) alleges the refusal by the Minister of State for Labour and Employment to recognize trade union delegates in enterprises, as a result of which the employers have persisted in their efforts to stop all the activities of those representatives.

256. In a circular letter dated 7 May 2001 (which the complainant supplies with the allegations), the Minister of Labour seeks an end to the threat to good industrial relations allegedly posed by the unregulated appointment of trade union delegates, citing sections 301 and 302 of the Labour Code, and states that while trade unions may be represented within the enterprise by trade union delegates, the fact that the way in which they are appointed and carry out their mandate and their periods in office must be established by collective agreement, implies that in the absence of such an agreement, the presence of such representatives would be illegal throughout the enterprise. Under those circumstances, the trade union delegates would be unable to exercise rights not actually provided for under any agreement or regulations, and it would not be justified to extend to them the protection enjoyed by staff delegates under the Labour Code.

257. In a letter sent in reply to the Minister's circular, the complainant expresses the view that the official refusal to recognize and protect trade union leaders throughout the country is tantamount to restricting their role, functions and mandate.

B. The Government's reply

258. In its communication of 28 January 2002, the Government explains that, in its circular of 7 May 2001, the Minister of Labour had indicated that too many workers enjoyed trade union immunity, a state of affairs that threatened to undermine peace in the workplace and the employer's disciplinary prerogatives. For this reason, the Minister called on the leaders of employers' and workers' organizations to comply with the law concerning the presence of trade union delegates in enterprises.

259. Under the relevant provision (section 301) of the Labour Code, that presence is tolerated within enterprises, but on condition that the way in which delegates are appointed and exercise their mandate and their periods in office are all established by collective agreements. The applicable collective agreement was last negotiated ten years ago, and did not include the notion of "trade union delegate". The Government concludes from this that, since the legal existence of the delegates in question is thus contingent on the conclusion of a new collective agreement, these representatives do not enjoy the same legal recognition or protection (section 302 of the Labour Code) as staff delegates.

260. The Government states that, consequently, it has repeatedly invited the social partners to negotiate a new agreement in this area, but its appeals have gone unheeded in an international and domestic economic environment that was not propitious to such an initiative. In this context, the Government intends shortly to launch a broad national debate on collective bargaining and the representativeness of trade union organizations with a view, among other things, to finding a way out of the present impasse, which has led to the absence of recognition or protection for trade union representatives in enterprises.

C. The Committee's conclusions

261. *The Committee notes that this case concerns allegations of refusal by the Government to recognize and protect trade union delegates in enterprises. It notes in particular that the Minister of Labour in a circular letter seeks an end to the threats to good industrial relations allegedly posed by an excessive number of workers enjoying trade union immunity. The Government considers that, unless the collective agreement (now more than ten years old) which would govern the status of trade union delegates is brought up to date, the presence of those delegates would be illegal throughout the enterprise and they would therefore not enjoy the legal protection accorded to staff delegates.*

262. *The Committee notes that the Labour Code recognizes the presence of trade union delegates in enterprises, and makes their legal existence, and thus any protection enjoyed, subject to the negotiation of a collective agreement. In this respect, the Committee would remind the Government that, where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures should be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives (see Article 4 of Convention No. 135). The Committee further reminds the Government that the right of workers' organizations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interests of their members. For this right to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair the exercise of this right, whether it be in determining conditions of eligibility of leaders or in the conduct of the elections themselves [see* ***Digest of decisions and principles of the Freedom of Association Committtee****, 4th edition, 1996, para. 353].*

263. *The Committee also notes that the Government initially, on more than one occasion, called on the social partners to negotiate, but in the face of their inaction subsequently endeavoured to launch a broad national debate on collective bargaining and the representativeness of the trade union organizations. Under these circumstances, the Committee requests the Government to take legislative or other measures as soon as possible to grant legal recognition and adequate protection to trade union delegates in enterprises. The Committee recalls in this respect that trade union delegates should be designated by the trade union themselves, without interference from employers or public authorities. The Committee requests to be kept informed of developments in this regard.*

The Committee's recommendation

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

> ***The Committee requests the Government to take legislative or other measures as soon as possible to grant legal recognition and effective protection to trade union delegates in enterprises. The Committee further requests to be kept informed of developments in this regard.***

CASE NO. 2167

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

Complaint against the Government of Guatemala presented by the International Organisation of Employers (IOE)

Allegations: Failure of the Government to maintain dialogue with employers; harassment and repression of employers and their leaders owing to a stoppage of activity in the manufacturing sector; threats against employers' leaders

265. The complaint is contained in a communication from the International Organisation of Employers (IOE) dated 21 December 2001. The Government replied in a communication of 18 January 2002.

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

A. The complainant's allegations

267. In its communication of 21 December 2001, the International Organisation of Employers (IOE), on behalf of itself and the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), alleges that the Government of Guatemala has taken repressive measures against Guatemalan employers and their leaders, with a view to intervening in, restricting and hindering the freedom of association of employers in defence of their interests and in exercise of the right to peaceful demonstration. The repressive measures include the physical and psychological harassment of Guatemalan employers, targeting their leaders in particular.

268. The complainant alleges that the current Government of Guatemala has consistently shown its authoritarian character. It has systematically ignored all of the endeavours to maintain dialogue made by employers, especially in forums where their participation is guaranteed by law, such as the Tripartite Committee on International Affairs (COTAI) and the Joint Committee on Minimum Wages for Agricultural Activities (CPSMAA). In the COTAI, the Government has delayed examination of the draft code of labour procedure proposed in 2000 and, in the CPSMAA, it has unilaterally overruled the agreements reached between workers and employers. Moreover, it should be noted that CACIF has repeatedly requested the Government to endeavour to reach a consensus on taxation policies, within the framework of the Fiscal Pact, the body appointed under the peace accords to discuss taxation issues. The authorities have never responded to this request.

269. The complainant further states that the organized employers' movement joined other groups of society, such as the ecclesiastical sectors, cooperative movements and universities, in calling for the people of Guatemala to bring manufacturing activity to a standstill on 1 August 2001, in protest at the corruption, insecurity, abuse and imposition of national policies. It also draws attention to the participation of the following trade unions: the General Workers' Confederation of Guatemala (CGTC) and the Rural Workers' Central (CTC), among others. The initiative was supported by most of the private sector in Guatemala, as well as by other groups which, taking advantage of the stoppage of activity, took to the streets of the capital and the various towns of Guatemala

in peaceful and orderly demonstration, in full compliance with the law. It should be pointed out that the employers gave special emphasis to the obligation not to affect the rights and interests of workers, in order that the latter should not be prejudiced in any way by the stoppage of activity.

270. However, following the stoppage of activity in the manufacturing sector, the Government carried out acts of harassment and repression against employers and their leaders. On the day of the stoppage, the Minister of Labour accused the members of the executive committee of the CACIF of the crime of insurrection, making clear the threat of possible arrest. The accusation was made in the official journal of Central America *(Diario de Centro América)*, the official information channel used by the Government, on 31 July (a cutting is contained in the annexes). It was later announced that warrants for the arrest of two members of the executive committee of the CACIF had been issued. The situation was particularly dangerous at that time, owing to the fact that a state of emergency had been declared by the Government, which had suspended the constitutional guarantee requiring law enforcement authorities to take detained prisoners before an investigating judge within six hours of their arrest.

271. On the day that manufacturing activity was brought to a standstill, the Ministry of Labour ordered labour inspectors to visit some of the enterprises supporting the stoppage, to announce that they were being closed down as a penalty for the illegal stoppage of activity. This measure constituted a violation of the freedom of association in several enterprises, including the following: Piedriteca, Agua Salvavidas, S.A., Inmecasa, Talleres Maco, Talleres Ojeda, Sistek, Gica, S.A., Constructora Saens, Tecnoin, Cervecería Centroamericana, S.A.

272. Furthermore, a smear campaign was launched against the President of the Chamber of Commerce of Guatemala. On 6 August 2001, the Vice-President of the Republic gave the order, through his personal assistant, for officials at the national printing works (an agency of the Ministry of the Interior) to print several hundred thousand posters and flyers, designed to discredit the President of the Chamber of Commerce (an affiliated member association of CACIF), through the use of adulterated reproductions of the association's internal correspondence (of which copies are contained in the annexes). The following day, officials from the Office of the Vice-President of the Republic, including his personal assistant, collected the posters and flyers from the national printing works. On 8 August 2001, they were distributed all around the country in just a few hours, with the use of vehicles belonging to the Ministry of the Interior, as well as national army helicopters. This information has been corroborated by the United Nations Verification Mission in Guatemala (MINUGUA). Moreover, an inquiry conducted by the Office of the Human Rights Procurator of Guatemala (the resolution is attached herewith) established "violations of the human rights to dignity and security, resulting from the abuse of authority and threats directed at the President of the Chamber of Commerce of Guatemala". With regard to the perpetrator of these violations, the inquiry found "the State of Guatemala institutionally responsible for the prevailing climate of insecurity in the country, which makes threats the modus vivendi of those who seek to gain from inspiring fear in others". It also found that the Vice-President of the Republic had abused his authority by ordering the posters and flyers to be printed.

273. The President of the Chamber of Commerce was also the victim of harassment. On 2 August 2001, Mr. Juan Daniel Castillo and Mr. Edgar Arnoldo Medrano arrived at the Chamber of Commerce and asked to see the President, Mr. Jorge Briz. The two men identified themselves as national police officers, claiming to have been sent to offer protection to Mr. Briz. Given the atmosphere of distrust, the latter informed the Office of the Human Rights Procurator, which subsequently carried out the relevant inquiries. It

discovered that the two men did not work for the national police force, as was confirmed by the police personnel department (the relevant documents are contained in the annexes).

274. The IOE asserts that, in the light of the events described above, the Government of Guatemala has taken repressive measures against Guatemalan employers and their leaders, with a view to intervening in, restricting and hindering the legitimate activities carried out by employers in defence of their interests and in the exercise of their right to peaceful demonstration.

275. The IOE requests the Committee on Freedom of Association to urge the Government of Guatemala to provide its effective cooperation to ensure that the relevant inquiries are carried out in exhaustive fashion, in order to determine and sanction those responsible for violating the freedom of association of employers' associations and their leaders, and to abstain from repression of the legitimate activities of employers' associations in future.

B. The Government's reply

276. In its communication of 18 January 2002, the Government states that it abides by the precedence of ratified international treaties over domestic law, which includes the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It is therefore surprised by the complaint presented by the International Organisation of Employers on behalf of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), and by its attempt to misuse the mechanisms provided by the International Labour Organization by making unfounded allegations.

277. Ever since the current Government came to power, Guatemalan employers have set out to oppose the decisions taken by the Executive with a view to streamlining the economy, enhancing tax collection, improving the efficiency of public administration and ensuring strict compliance with the law, particularly with regard to labour legislation. They have attempted to block the adoption of necessary measures leading to free competition among employers, by opposing steps taken by the Government to liberalize sugar, cement and chicken imports, distribute fertilizers to low-income farmers, and raise taxes through the reform of legislation in accordance with the peace accords. The Government has also pledged to pursue a policy of wage increases, by raising the minimum wage and introducing bonuses for Guatemalan workers with a view to recovering the lost purchasing power of their wages. The Government has also continued its policy of revising labour standards and introducing the necessary reforms for the enhanced protection of labour rights; in this regard, streamlining measures have been taken to improve the activity of the Ministry of Labour in the following areas:

– an increase in the number of labour inspectors, in both the capital and the provinces;

– creation of the Office of the Workers' Protection Procurator, the role of which is to give advice to low-income workers;

– setting up of a telephone hotline to receive complaints concerning violations of labour rights;

– plans to appoint a public prosecutor with special responsibility for offences against journalists and trade unionists;

– organization of the National Occupational Health and Safety Council (CONASSO);

– creation of the Directorate of Vocational Training and Development, the role of which is to provide workers with human resource development services, vocational training, employment promotion and the official certification of employment skills;

– drafting of a code of labour procedure, the discussion and adoption of which remains pending, designed to increase the speed and efficiency of legal proceedings;

– opening of an office for dealing with affairs related to the application of ILO Convention No. 169, with the appointment of a head official of Maya ethnic origin;

– acquisition of vehicles to enhance the efficiency of the work of the Ministry; 63 motorcycles assigned to the 21 provinces of Guatemala and three minibuses for the capital city;

– revision under way of the substantive part of the Labour Code, with the participation of agricultural workers', disabled persons', women's, children's, adolescents' and general workers' organizations;

– drafting of a government agreement to afford protection to agricultural workers who migrate internally towards farming areas, especially during the coffee and sugar harvest periods.

278. These measures have naturally upset the most powerful sector in the country, which has been running a systematic smear campaign against the present Government.

279. According to the Government, the complaint is false, and the recent history of Guatemala demonstrates, as everyone well knows, that Guatemalan employers enjoy complete freedom to arrange meetings of their associations wherever and whenever they wish, without any attempt having been made by the Government to restrict that freedom.

280. The complainants allege that the endeavours of the employers to maintain dialogue have been ignored, for instance in the Tripartite Committee on International Affairs; it should be pointed out that this Committee, as the ILO knows, has a set of rules and procedures, according to which agenda items must be adopted unanimously. The code of labour procedure is still in its drafting stage, which means that employers still have the right to enter into a relevant discussion, in accordance with articles 103 to 115, Chapter II of the Labour Code (contained in the annexes). The Joint Committee on Minimum Wages for Agricultural Activities is one of three bodies involved in setting the new minimum wage. However, in the present case, employers and workers conducted negotiations outside of the Joint Committee on a range of issues besides just the minimum wage, as the (attached) document signed by workers and employers testifies. The document and the agreement were declared illegal by the National Wage Commission, the second body with responsibility for setting the wage (more precisely by the workers' delegation at the Commission), because the discussion did not take place on a tripartite basis. Consequently, the discussion was reopened. Eventually, as the parties failed to reach an agreement, the Executive, the third body in the process, was called on to take the decision. In real terms, this amounted to an attempt to recover the purchasing power of the quetzal, which had been under pressure from inflation during the year in question, rather than an increase in the minimum wage as such. Thus, the Government has acted consistently with the legal framework by which it is bound. The most telling evidence to counter the allegations made by the complainant is that the agreement signed between employers and workers outside of the Joint Committee froze the agricultural workers' wage at a 4 per cent increase until April 2002, whereas the Government introduced increases of 8 and 9 per cent on 1 January 2002; subsequently, after the decision taken by the Executive, the same workers who had signed the bipartite agreement complained that the declared increase was insufficient to provide for the needs of their families (documentation sent in the annexes).

281. With regard to the alleged threats to members of the executive committee of CACIF, the Minister of Labour and Social Welfare simply acted in accordance with his mandate to protect labour, by issuing a warning to employers to remind them of their obligation to pay wages and benefits for the day of the stoppage organized by the employers. This cannot be interpreted as a threat, either to the life or the freedom of a single employer, and it is well known that the Minister enjoys an excellent reputation for his respect for human rights and life. In any case, the Ministry of Labour does not have the authority to issue warrants of arrest. This complaint was also brought by the employers to the Supreme Court of Justice, in an application for habeas corpus. The Supreme Court ruling of 15 October, notified to the Ministry on 13 November, declared the application for habeas corpus against the Minister of Labour and Social Welfare by the CACIF officials inadmissible, owing to the lack of evidence of harassment of the employers in question. Once again, this demonstrates that the allegations are false (the Government attaches the Supreme Court ruling as an annex, which contains a statement by the Minister of Labour, claiming that at no time did he "threaten or denounce the employers as they allege", and maintaining that he never uttered the threats they suggest he made).

282. With regard to the alleged harassment of private enterprises, the Government recalls that, in accordance with article 281, paragraph 1, of the current Labour Code, "whenever they discover violations of labour laws or regulations, labour inspectors or social workers shall issue an official warning to the employer or legal representative of the enterprise responsible that he or she is required to bring the situation into conformity with the law within the time frame they establish. If, once that period has elapsed, the enterprise responsible has failed to comply with the demand, they shall make an official denouncement of the violation, seeking an explanation from the guilty party, and call for the administrative sanction provided for in this Code. In cases where a warning would not be appropriate, they shall make the official denouncement immediately. However, the guilty party may prove that it has complied with the demand before the corresponding administrative sanction is imposed, in which case the lowest administrative sanction may be imposed, subject to the decision of the General Labour Inspectorate". The General Labour Inspectorate, in the interests of protecting workers' rights, visited some of the enterprises closed for the day of the stoppage of activities promoted by CACIF, with a view to reminding enterprises of their obligations towards their workers, particularly since some workers had lodged complaints concerning allegations of threats and the deduction of wages or leave to account for the day of the stoppage. It should be recalled that the employers had widely publicized the fact that they were planning to carry out an employers' strike, and that such a step can only be taken within the framework of domestic labour legislation, with significant repercussions on workers. Thus, the authorities took action in order to protect workers' labour rights, irrespective of the fact that the stoppage was part of the employers' political campaign against the Government.

283. In response to the allegations that a smear campaign took place against the President of the Chamber of Commerce of Guatemala, the Government states that, as it informed the ILO in September 2001, the case has been examined in the law courts; the Vice-President of the Republic, who has always maintained his innocence, has been the most prominent protagonist in efforts to resolve the case as quickly as possible, and has been fully vindicated by the ruling of *amparo* (enforcement of constitutional rights) in his defence taken by the Constitutional Court. The Government draws attention to the fact that the employers are trying to involve the ILO in the affair now that they have failed to achieve a favourable verdict in the courts, and to the fact that the Vice-President has not been found guilty of any offence and should therefore be considered innocent until proven otherwise.

284. The Government contends that the allegations of harassment are no more than part of the publicity campaign currently being waged by Mr. Jorge Briz Abularach, President of the Chamber of Commerce, with a view to achieving his well-known aspirations to becoming

President of the Republic. Further evidence of this campaign came in a recent poll to name the personality of the year, organized by one of the national daily newspapers. Mr. Briz Abularach used this poll to gain overnight celebrity, tricking the public by his use of the following strategy: first, he invited the public to respond by telephone to one of two simple questions; if they rang the number corresponding to the correct answer, they were greeted automatically by a recorded message, informing them that they had registered a vote for Mr. Briz Abularach in the poll for personality of the year. Thus, he deceived the public in order to achieve celebrity by his subsequent election as personality of the year (an annex is attached containing the relevant evidence). He even emphasized that each individual caller should call from a different telephone in order to ensure that their call was properly registered. We should be aware, therefore, that the present complaint might be just another ruse, designed to deceive the ILO.

285. Thus, the Government hopes to have made it clear that the employers' allegations of a violation of ILO Convention No. 87 by the State of Guatemala are false, precisely because the employers themselves have been responsible for violations of the Convention, in view of their failure to respect the workers' freedom of association and right to collective negotiation. The fundamental problem that the complainants fail to mention, and that the rest of Guatemalan society can see quite clearly, is the fact that the employers, who for so long dictated economic, taxation and labour policy in the country, have decided to resist all endeavours to modernize labour, taxation and banking legislation. This resistance is in contrast to the determination of the present Government to pursue measures designed to combat poverty, secure the rule of law, and fulfil the commitments given by the State in the peace accords of December 1996 that followed the end of armed conflict.

286. The complainants' allegations concerning the refusal of the Government to engage in dialogue are also false, since the Government has always been open to dialogue with the legitimate representatives of civil society (an annex is attached containing press cuttings attesting to this openness).

287. At the ceremony in December 2001 to commemorate the signing of the peace accords in Guatemala, the President of the Republic made an appeal for dialogue through the Ministry for Strategic Analysis under the Office of the President. The Minister met personally with various civil society organizations, including representatives of the complainants, and continues to maintain a transparent process of dialogue. In this light, it is difficult to see on what grounds the above allegations have been made.

288. The general consensus is that the sector of society responsible for this false complaint to the ILO is seeking to deny the State of Guatemala its sovereign right to govern. What they hope to achieve through their complaint, and what they propose a priori to impose on the people of Guatemala, would be equivalent to the destruction of the concept of democratic government. A recent newsletter published by the Inter-American Development Bank, entitled "Latin American Economic Policies, Volume 15, Third Quarter 2001" contained the results of surveys (on pages 11 and 12, attached in an annex) indicating "the percentage of employees that believe employers are honest" and "the quality of relations between employers and employees". Guatemala was rated as one of the worst countries in this regard. In the first table, it came 14th out of 17 countries, with only 9 per cent of employees responding positively and, in the second, it came in 15th place, with only 8 per cent of favourable replies, thereby confirming international opinion of Guatemalan employers.

C. The Committee's conclusions

289. *The Committee notes that in this case the complainant organization alleges the systematic failure of the Government to engage in dialogue with employers in the official forums*

intended for social dialogue, concerning the determination of the minimum wage in the agricultural sector and the draft code of labour procedure (according to the complainant, workers and employers had reached agreements on both of these issues), as well as the Government's refusal to seek a consensus on taxation polices. The complainant makes further allegations concerning the harassment and repression of employers and their leaders, owing to the stoppage of activity in the manufacturing sector in August 2001 in protest at the corruption, insecurity, abuse and imposition of national policies.

290. *The Committee takes note of the Government's general observation that Guatemalan employers are seeking to deny the State of Guatemala its sovereign right to govern, hoping to achieve through their complaint what they propose a priori to impose on the people of Guatemala, and that they have consistently opposed steps taken by the Executive with a view to reforming the economy, enhancing tax collection and streamlining public administration, particularly with regard to strict compliance with labour legislation, and to the pursuit of a policy of wage increases and reforms designed to afford greater protection to labour rights. The Government points out that the employers, who for so long dictated economic, taxation and labour policy, have been resisting the modernization and harmonization of labour, taxation and banking laws.*

291. *The Committee intends to examine each of the allegations separately.*

Allegations concerning the systematic failure of the Government to engage in dialogue with employers in the official forums intended for social dialogue

292. *The complainant alleges that the Government has consistently shown its authoritarian character, by ignoring all of the endeavours to maintain dialogue made by employers, by delaying examination of a draft code of labour procedure, proposed in 2000 by the Committee on International Affairs, by unilaterally overruling the agreements reached between workers and employers in the Joint Committee on Minimum Wages for Agricultural Activities and by refusing the request by CACIF to endeavour to reach a consensus on taxation policies within the framework of the Fiscal Pact (the body appointed under the peace accords).*

293. *The Committee observes generally that the Government denies that it refuses to engage in dialogue, states that it has held meetings with various civil society organizations and sends press cuttings containing reports of an invitation to social dialogue extended to CACIF (December 2000) and the subsequent failure of CACIF to take part in that dialogue (January 2001). Responding to the allegations, the Government claims that: (1) according to the rules and procedures of the Tripartite Committee on International Affairs, agenda items must be adopted unanimously and, in any case, the code of labour procedure is still in its drafting stage, which means that the employers still have the right to enter into a relevant discussion; (2) the negotiations carried out between employers and workers outside of the Joint Committee on Minimum Wages for Agricultural Activities (first of three bodies responsible for setting minimum wages) were declared illegal by the National Wage Commission (second body); the negotiations exceeded the mandate of discussions on the minimum wage and did not take place on a tripartite basis; the workers' delegation at the National Commission opposed their representatives on the Joint Committee and declared both the document and the agreement illegal; given the failure of subsequent discussions in the National Commission to reach an agreement, the Executive was called on to take a decision and, in real terms, this amounted to an attempt to recover the purchasing power of the quetzal, which had been under pressure from inflation during the year in question, rather than an increase in the minimum wage as such; the Government attaches a copy of legislation governing the determination of minimum wages, which establishes that the Joint Committee on Minimum Wages and the National Wage Commission are advisory*

bodies, but that the Ministry (of Labour) has sole responsibility for endorsing or rejecting the relevant agreement; (3) the employers have consistently opposed steps taken by the Executive with a view to enhancing tax collection and fulfilling its commitments under the peace accords.

294. *The Committee concludes that the issues raised concern matters that need to be resolved by law or, in the case of minimum wages, by the application of procedures provided for by law and that require consultations.*

295. *The Committee strongly emphasizes that employers' and workers' organizations should be consulted fully by the authorities on matters of mutual interest, including the preparation and application of legislation which affects their interest and the determination of minimum wages. This helps to give laws, programmes and measures adopted or applied by public authorities a firmer justification and helps to ensure that they are well respected and successfully applied. The Government should seek general consensus as much as possible, given that employers' and workers' organizations should be able to share in the responsibility of securing the well-being and prosperity of the community as a whole. This is particularly important given the growing complexity of the problems faced by societies. No public authority can claim to have all the answers, nor assume that its proposals will naturally achieve all of their objectives.*

296. *In this particular case, the Committee observes that, even though the Government denies its refusal to engage in dialogue, the complainant claims that the public authorities have no genuine desire to listen to their views or to take them into account. The Committee underlines the importance of consultations taking place in good faith, confidence and mutual respect, and of the parties having sufficient time to express their views and discuss them in full with a view to reaching a suitable compromise. The Committee requests the Government to take these principles into account on social and economic matters, particularly with regard to setting minimum wages, drafting the code of labour procedure and developing tax laws, and to ensure that it attaches the necessary importance to agreements reached between workers' and employers' organizations. The Committee underlines the importance it attaches to the principle of consultation and cooperation between public authorities and employers' and workers' organizations at the industrial and national levels. In this connection, the Committee has drawn attention to the provisions of the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113) [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 933*].

Harassment and repression of employers owing to a stoppage of activity in the business sector

297. *As regards the harassment and repression of employers and their leaders owing to the stoppage of activity in the manufacturing sector in August 2001 (the Minister of Labour's accusation of the executive committee of CACIF of the crime of insurrection; the IOE has sent press cuttings to support its allegation in this respect) with the threat of possible detention; visits by labour inspectors to certain enterprises with a view to imposing sanctions for the allegedly illegal stoppage of activity; a smear campaign against the President of the Chamber of Commerce, following the order issued by the authorities (Vice-President of the Republic) for state officials to print and distribute thousands of flyers and posters (500,000 flyers and 20,000 posters, according to documentation sent by the IOE), using adulterated reproductions of the Chamber's internal correspondence; and the harassment of the President of the Chamber of Commerce through a visit from two individuals falsely claiming to be national police officers, the Government states that: (1) the accusations of threats against CACIF members are untrue, since employers were simply warned of their obligation to pay wages and benefits for the day of the stoppage*

organized by employers; (2) on 15 October 2001, the Supreme Court of Justice declared the application for habeas corpus (an application to prevent the violation of fundamental rights) against the Minister of Labour, presented by members of CACIF, inadmissible (the Government attaches the text of the court ruling, declaring the application inadmissible owing to insufficient evidence); (3) labour inspectors visited several of the enterprises closed on the day of the stoppage of activity because a number of workers had lodged complaints concerning allegations of threats and the deduction of wages or leave to account for the day of the stoppage; (4) with regard to the alleged smear campaign against the President of the Chamber of Commerce carried out at the order of the Vice-President of the Republic, the Constitutional Court has issued a (provisional, according to the press cutting provided by the Government) ruling of amparo *(enforcement of constitutional rights) in defence of the Vice-President, who has denied any involvement in the events alleged by the complainant; moreover, the case has been examined in the law courts; (5) the allegations concerning the harassment of the President of the Chamber of Commerce are no more than part of the publicity campaign currently being waged by Mr. Briz with a view to achieving his well-known aspirations to becoming President of the Republic.*

298. *In this regard, the Committee takes note of the Government's observations on the various aspects of this complaint (accusation of CACIF leaders of the crime of insurrection, labour inspections of enterprises, smear campaign against the employers' leader Mr. Briz, harassment of Mr. Briz) but observes that they differ from the allegations.*

299. *Nevertheless, the Committee observes that the complainant has transmitted a resolution by the Human Rights Procurator, finding:*

> I. Violations of the human rights to dignity and security, resulting from the abuse of authority and threats directed at the President of the Chamber of Commerce of Guatemala, Mr. Jorge Eduardo Briz Abularach, as well as the flyers and posters distributed to the Guatemalan people with a view to damaging his image. While it is true that most of the document (the flyer) is original, it is also true that annotations have been added on both sides of the paper, and that Mr. Jorge Briz has been alluded to at the bottom of the page, constituting an affront to his private life and personal image. II. A violation of the human right to security and abuse of authority against the former Director of the national printing works, Ms. Silvia Josefina Méndez Recinos, who fled the country as a result of the threats she received; and Members of the National Congress, Ms. Gladis Anabella De Léon Ruiz and Ms. Magda Estela Arceo Carrillo, who also received threats from unknown persons. III. A misuse of administrative capacity by the Minister of the Interior, Mr. Byron Humberto Barrientos Díaz and by Mr. Carlos Rafael Soto Rosales, Director of the national printing works and of the daily newspaper *Diario de Centro América*, for having misused state resources in order to print libellous material and undermine the image of Mr. Jorge Eduardo Briz Abularach. IV. The institutional responsibility of the State of Guatemala for the prevailing climate of insecurity in the country, which makes threats the modus vivendi of those who seek to gain from inspiring fear in others, in view of the abuse of authority by Mr. Juan Francisco Reyes López, Vice-President of the Republic, who was responsible for ordering the aforementioned flyers and posters to be printed; the Minister of the Interior, Mr. Byron Humberto Barrientos Díaz, whose Ministry is responsible for the activity of the national printing works; and the private secretary of the Vice-President of the Republic, Mr. Luz Arminda Barrios Méndez, who took part as an intermediary in the printing of the flyers and posters.

300. *The United Nations Verification Mission in Guatemala (MINUGUA) had previously informed the Human Rights Procurator (according to documents sent by the IOE) that "the series of tasks taken together show clear signs that the national printing works was used for the design and printing of the flyers and posters denounced by Mr. Briz" (President of the Chamber of Commerce of Guatemala), supporting that assertion with a range of evidence. The Committee awaits the findings of the judicial authorities on these issues.*

301. *The following comments are made in the findings of the inquiry carried out by the Office of the Human Rights Procurator of Guatemala:*

> On 31 August 2001, staff from this Office visited the Chamber of Commerce of Guatemala, where they conducted separate interviews with each of the two receptionists, Ms. Doro Elizabeth Olmedo and Ms. Denise Cotón. They confirmed that, on 2 August 2001, two strangers arrived, introducing themselves as Mr. Juan Daniel Castillo and Mr. Edgar Arnoldo Medrano, according to photocopies of the visitors' book, and asked to speak to Mr. Jorge Eduardo Briz Abularach, supposedly to offer him protection, in their capacity as national police officers. However, staff from this Office later confirmed with the personal department of the national police force that the two individuals did not belong to that institution.

302. *In this context, the Committee deplores the harassment and intimidation of employers, and draws the Government's attention to the fact that employers' and workers' organizations must be allowed to conduct their activities in a climate that is free from pressure, intimidation, harassment, threats or efforts to discredit them or their leaders, which includes the adulteration of documents. The Committee requests the Government to ensure respect for this principle in future.*

303. *Lastly, the Committee requests the Government to keep it informed of any judicial decisions taken with regard to this case.*

The Committee's recommendations

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

(a) Strongly emphasizing the importance that employers' and workers' organizations should be consulted by the authorities on matters of mutual interest, including the preparation and application of legislation which affects their interest and the determination of minimum wages, as well as the importance of consultations taking place in good faith, confidence and mutual respect, and of the parties having sufficient time to express their views and discuss them in full, the Committee requests the Government to take these principles into account on social and economic matters, particularly with regard to setting minimum wages, drafting the code of labour procedure and developing new tax laws, and to ensure that it attaches the necessary importance to agreements reached between workers' and employers' organizations.

(b) Deploring the harassment and intimidation of employers, the Committee draws the Government's attention to the fact that employers' and workers' organizations must be allowed to conduct their activities in defence of their interests in a climate that is free from pressure, intimidation, harassment, threats or efforts to discredit them or their leaders, which includes the adulteration of documents. The Committee requests the Government to ensure respect for this principle in future.

(c) Lastly, the Committee requests the Government to keep it informed of any judicial decisions taken with regard to this case.

CASE NO. 2158

INTERIM REPORT

Complaint against the Government of India presented by the Pataka Biri Karmachary Union

Allegations: Various acts of anti-union discrimination

305. In communications dated 28 September and 16 October 2001, the Pataka Biri Karmachary Union presented a complaint of violations of freedom of association against the Government of India.

306. The Government furnished its observations in communications dated 10 January and 7 May 2002.

307. India 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

308. In its communication of 28 September 2001, the complainant organization explains that the Pataka Biri Co. Ltd. has three factory units in West Bengal, located in the towns of Amangabad, Jangipur and Dhuliyan, with a total of about 710 permanent workers. The complainant alleges, firstly, that the management of the company dismissed six workers in 1998 for joining the trade union and presenting a list of demands. The union then lodged a complaint and the case was referred to the Labour Directorate. The case of these six dismissed workers has now been pending with the Labour Commissioner for over two-and-a-half years, while such cases can normally be resolved within six months.

309. Secondly, the complainant organization explains that nine trade unionists from its rank presented on 1 July 1999, a complaint to the Ministry of Labour against the management of Pataka Biri Co. Ltd., for exploitation of worker and unfair labour practices and demanded the enforcement of a ten-point list of demands concerning basic working rights. While the Labour Directorate did order an investigation into the matter, over two years have passed and no action has been taken so far on this matter. Moreover, the complainant alleges that within 45 days of sending the ten-point list of demands, the management illegally dismissed the nine trade unionists. While the nine workers filed an appeal to the competent tribunal, the matter is still pending before the Calcutta High Court.

310. Thirdly, the complainant organization alleges that the Labour Directorate did everything it could to harass it by refusing to issue its registration certificate for 24 months. The Labour Directorate kept requesting unnecessary documents and the registration certificate was only granted on 29 June 2001 following the ILO's intervention. In addition, the management of the company, in collusion with the district police, filed three false and fabricated cases against one of the trade union leaders. This leader was sent to jail for 70 days and then released when the investigation showed that the charges were unfounded. The trade union leader was not allowed to file a complaint in order to obtain compensation.

311. Finally, the complainant organization alleges several acts of intimidation from the management, often in collusion with the local police, against members of the union. In March 2001, eight workers were retrenched for keeping close contact with the union. The

leader of the union has been constantly harassed by the police and both the management and the police forces are pressuring union members to quit the trade union. Moreover, the management openly declared that it would damage the union's office. The complainant organization insists that it has complained on numerous occasions to the Labour Directorate and to the state Government but that no effective measures have been taken to stop these acts.

312. In its most recent communication, the complainant organization alleges that since lodging the complaint, the leader of the union was charged on false evidence but was released on bail the next day following the intervention of the Jangipur Bar Association. The complainant organization therefore apprehends yet again other acts of anti-union discrimination from the management or the local police.

B. The Government's reply

313. In its communication of 10 January 2002, the Government explains firstly, that trade union rights and unfair labour practices are matters falling under the various state/provincial governments. The Government of West Bengal, which is the competent government in this case, was thus asked to take the necessary action on the complaint made by the Pataka Biri Karmachary Union against the management of Pataka Biri Co. Ltd. On the basis of the reports received from the Government of West Bengal, the following observations could be made.

314. With regard to the first allegation concerning the case of six dismissed workers, the state Government of West Bengal reported that this issue had been taken up for conciliation at various levels, from the Assistant Labour Commissioner in Jangipur, to the Labour Commissioner in Calcutta. The issue is presently before the Labour Commissioner in Berhampur who is the Appellate Authority under the Bidi and Cigar Workers (Conditions of Employment) Act of 1966. Further developments in the matter will be furnished as soon as they are received.

315. With regard to the alleged dismissal of 9 members of the complainant organization, only 45 days after having requested the enforcement of a ten-point list of demands concerning basic working rights, the Government acknowledges that the management has indeed dismissed these workers but on grounds of alleged misconduct, and after having respected the normal procedure in such cases. The workers challenged their dismissal to the Appellate Authority, which dismissed their appeal on 9 February 2000. The workers filed a writ petition to the Calcutta High Court, which is still pending.

316. Concerning the allegation that the Labour Directorate delayed the union's registration, the Government indicates that after completion of the required formalities, the union was registered on 29 June 2001 and denies any form of harassment on its part. With regard to the allegation that the management of the company, in collusion with the local police, filed three false and fabricated cases against a trade union leader, the Government acknowledges that three charge sheets were filed before the appropriate court and that no further observations could be made at this stage.

317. Concerning the allegation of acts of anti-union discrimination and in particular the retrenchment of eight workers, the Government indicates that the management denied these allegations and further stated that the workers concerned were engaged on a contractual basis for a period of one year and on completion of the said period, their services stood automatically terminated. However, the matter was now under conciliation. As regards the other allegations of harassment and anti-union discrimination from the management and the local police, a report from the Government of West Bengal is awaited and will be furnished as soon as it is received.

C. The Committee's conclusions

318. *The Committee observes that this case concerns allegations of various acts of anti-union discrimination which would have taken place at the Pataka Biri Co. Ltd., located in the State of West Bengal. The Committee notes the Government's explanations according to which trade union rights and unfair labour practices in India are matters falling under the various state/provincial governments and that in this case, the Government's observations were solely based on the reports provided by the Government of West Bengal. While acknowledging the specificity of political structure and organization of each country, the Committee wishes to recall, as a preliminary remark, that by freely becoming a member State of the ILO, the Government has the responsibility to ensure the full respect of freedom of association principles throughout its territory.*

319. *Concerning the first allegation regarding the dismissal of six workers in 1998 for joining the ranks of the complainant organization and presenting a list of demands to the company's management, the Committee notes that the Government does not refute this allegation and merely indicates that the issue had been taken up for conciliation at various levels and was currently before the Labour Commissioner in Berhampur, who is the Appellate Authority in that case. The Committee further observes that the case of these dismissed workers has been pending for over three years. In this regard, the Committee recalls that the Government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties. Indeed, 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 and inexpensive [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 738 and 741]. Moreover, the Committee recalls that justice delayed is justice denied. Therefore, the Committee, trusting that the pending cases of the six dismissed workers will be resolved without any further delays, requests the Government, in case the anti-union nature of the dismissals were confirmed, to rapidly take the necessary measures to ensure that these workers are reinstated in their jobs, without loss of pay, and to guarantee the application against the enterprise of corresponding legal sanctions. The Committee asks the Government to be kept informed in this regard.*

320. *Concerning the allegation regarding the dismissal of nine members of the complainant organization only 45 days after having requested the enforcement of a ten-point list of demands, the Committee notes that the Government acknowledges the dismissals but that the management claimed to have done it on grounds of alleged misconduct and respecting the normal procedure in such cases. The Committee further observes that the case is still pending before the Calcutta High Court. Once again, regretting the long delays in the procedure – nearly three years since the dismissals – and recalling that in no case should it be possible to dismiss a trade union officer merely for having presented a list of dispute grievances since it constitutes an extremely serious act of anti-union discrimination, the Committee requests the Government to keep it informed of the outcome of the case of the nine workers dismissed pending before the Calcutta High Court. As stated previously, if the anti-union nature of the dismissals were established, the Committee requests the Government to rapidly take the necessary measures to ensure that these workers are reinstated in their jobs, without loss of pay, and that the enterprise faces the corresponding legal sanctions. The Committee asks to be kept informed in this regard.*

321. *Concerning the allegation regarding the delay in the registration of the complainant organization by the Labour Directorate, the Committee notes the Government's indication that after completion of the required formalities, the union was registered in June 2001.*

The Committee also notes that the Government refutes any form of harassment from the Labour Directorate in this matter. While taking good note of the complainant's registration, the Committee insists that registration procedure should only consist of a mere formality and when the relevant authorities have more or less discretionary powers in deciding whether or not an organization meets all conditions required for registration, this can create a serious obstacle for the establishment of a trade union and lead to a denial of the right to organize without previous authorization.

322. *With regard to the allegation that fabricated and false charges were brought against one of the leaders of the complainant organization, the Committee notes that the Government acknowledges that the charges were brought and made no particular comment on this matter. However, the Committee notes with deep concern that following the allegedly fabricated charges, the trade union leader in question was sent to jail for 70 days, before being released, and was not allowed to file a complaint in order to obtain compensation. In this regard, the Committee recalls that the arrest of trade union leaders against whom no charge is brought involves restrictions on freedom of association and that such arrests can create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities [see* ***Digest****, op. cit., para. 80]. The Committee asks the Government to take steps to ensure that the authorities concerned have appropriate instructions to eliminate the danger which arrest for trade union activities implies. It asks to be kept informed in this regard.*

323. *Concerning the allegation of acts of anti-union discrimination and in particular the fact that eight workers were retrenched in March 2001 for keeping close contact with the union, the Committee notes that according to the Government, the management denied these allegations and stated that the said workers had been engaged on a contractual basis of one year and that their contract was simply terminated after that period. The Committee notes that the Government indicates that the matter is now under conciliation and therefore requests the Government to keep it informed of the outcome of the conciliation. The Committee also asks the Government to forward its observations on all the other allegations of anti-union discrimination namely, the pressure on union members to quit the union, threat of damaging the union's office, as well as on the most recent arrest of the leader of the complainant organization who, apparently, was only released on bail following the intervention of the Jangipur Bar Association.*

The Committee's recommendations

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

(a) The Committee, trusting that the pending cases of the six dismissed workers of the Pataka Biri Co. Ltd. will be resolved without any further delays, requests the Government, in case the anti-union nature of the dismissals were confirmed, to rapidly take the necessary measures to ensure that these workers are reinstated in their jobs, without loss of pay, and to guarantee the application against the enterprise of corresponding legal sanctions. The Committee asks the Government to be kept informed in this regard.

(b) Recalling that in no case should it be possible to dismiss a trade union officer merely for having presented a list of dispute grievances, the Committee requests the Government to keep it informed of the outcome of the case of the nine dismissed workers pending before the Calcutta High Court. As stated above, if the anti-union nature of the dismissals were established, the Committee requests the Government to rapidly take the

necessary measures to ensure that these workers are reinstated in their jobs, without loss of pay, and that the enterprise faces the corresponding legal sanctions. The Committee asks to be kept informed in this regard.

(c) Recalling that the arrest of trade union leaders against whom no charge is brought involves restrictions on freedom of association, the Committee asks the Government to take steps to ensure that the authorities concerned have appropriate instructions to eliminate the danger which such arrest implies. It asks to be kept informed in this regard.

(d) The Committee requests the Government to keep it informed of the outcome of the conciliation regarding the eight allegedly retrenched workers. It also asks the Government to forward its observations on all the other allegations of anti-union discrimination, namely, the pressure on union members to quit the union, threat of damaging the union office, as well as on the most recent arrest of the leader of the complainant organization.

CASE NO. 2116

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

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

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

325. The Committee already examined the substance of this case at its meeting in November 2001 when it presented an interim report to the Governing Body [326th Report, paras. 321-362, approved by the Governing Body at its 282nd Session (November 2001)].

326. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) transmitted new allegations and additional information in communications dated 15 and 16 October, 2 and 13 November and 14 December 2001, 11 January, 14 February and 15 April 2002.

327. At the request of the Committee, the Employers' Association of Indonesia (APINDO), as a national employers' organization involved in the matter, transmitted its observations on the case in a communication dated 14 December 2001. The Government sent additional observations in communications dated 7 and 24 January, 14 February and 16 May 2002.

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

A. Previous examination of the case

329. At its November 2001 meeting, in the light of the Committee's interim conclusions, the Governing Body made the following recommendations:

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

(b) The Committee reminds the Government that the arrest and detention, even if only briefly, of trade union leaders and trade unionists for exercising legitimate trade union activities constitute a violation of the principles of freedom of association, and that measures depriving trade unionists of their freedom on grounds related to their trade union activity, even where they are merely summoned or questioned for a short period, constitute an obstacle to the exercise of trade union rights.

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

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

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

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

330. The complainant's allegations of 24 July 2001 were set forth in the Committee's previous examination of this case [326th Report, paras. 336-340]. In particular, the IUF had alleged that the dismissal of Mr. Halilintar Nurdin was the first in a series of steps, taken by the management and supported by the Ministry of Manpower and Transmigration, aimed at breaking up the union. It provides testimony to support this contention from workers who stated that they were intimidated to sign affidavits conveying their resignation from the Shangri-La Hotel Workers' Independent Union (SPMS) when they were summoned for registration for re-employment. Furthermore, the IUF contests all innuendos that the workers' protest caused the cessation of hotel activities, since the majority of SPMS members kept working as usual until the company had executed a lock-out and sent them home or dismissed them on 23 December 2000, evacuating the guests and cancelling various functions and events. The IUF adds that the workers had not caused the slightest physical damage to hotel facilities and the broken glass door and other damage was caused by the police when searching the premises.

B. The complainant's additional allegations

331. In its communication dated 15 October 2001, the complainant alleges that a police squad from Central Jakarta Resort dispersed a peaceful action taken by 18 Shangri-La union members on the sidewalk in front of the Shangri-La Hotel on 25 August 2001. According to the IUF and its affiliate, the Shangri-La Hotel Independent Workers' Union (SPMS), 60 police officers equipped with guns and trucks dispersed the union action for allegedly

disturbing hotel activity and public order. While the vice-commander said that the union was not authorized to picket, the union states that it had notified the authorities of the impending picket on 17 August 2001. Fourteen workers were taken to the police station in police trucks, were held until midnight and were asked to return the following Wednesday.

332. On a more general note in its communications of 16 October 2001 and 11 January 2002, the complainant provides documentation of public interviews with the Minister of Manpower and Transmigration and with the Shangri-La Hotel legal adviser, separately, the content of which, in its view, demonstrates that trade union rights violations are a normal course of affairs in Indonesia and the Government can do very little to intervene. In some cases, according to the Minister's statement to the press transmitted by the complainant, ministry officials even collude with employers to thwart workers' efforts to set up labour unions.

333. In its communication of 2 November 2001, the complainant provides additional information concerning developments in this case. The complainant refers in particular to the judgement of the South Jakarta District Court on 1 November 2001 ordering seven members and supporters of the Shangri-La Hotel Union to pay some US$2 million in compensation to the Shangri-La Hotel for allegedly causing losses in connection with the protest demonstration on 22 December 2000. A copy of this judgement in Indonesian was transmitted with its communication of 13 November 2001. The complainant contends that this judgement effectively deprives the SPMS of its freedom of association and collective bargaining rights through the imposition of exorbitant economic penalties. Furthermore, the complainant provides documentation to attest to the union's efforts to seek a peaceful resolution of the dispute, which have only met with refusal on the part of the hotel management.

334. In its communication of 14 December 2001, the complainant provides a list of the 81 employees who continue to seek reinstatement following their unjustified dismissal.

335. In its communication dated 14 February 2002, the complainant submits documentation, by way of example, of one specific case of dismissal of a SPMS officer who, although on leave and not even in Jakarta at the time the events took place, was dismissed by the hotel allegedly for defamation and criminal acts. According to the complainant, the fact that the Government merely rubber-stamped this dismissal demonstrates that it has failed in its responsibility to uphold the trade union rights of a dismissed union officer, no matter how ridiculous and unproven the charges.

336. In its communication of 15 April 2002, the IUF indicates that the State Administrative Court ruled on 26 March that the mass dismissal of the SPMS members following the December 2000 lockout was illegal, thus overturning the P4P decision and clearing the way for the reinstatement of at least the 81 union members who had refused the compensation offered in return for the loss of their jobs and livelihood. The IUF adds that the hotel owners and the P4P have lodged separate appeals against this ruling. According to the IUF, the normal time for such an appeals process to be heard is one-and-half years. For the 81 workers awaiting reinstatement, this is a case of "justice delayed, justice denied". The IUF considers that the decision of the P4P to appeal this ruling, which was similar to the Committee's recommendation in November 2001, displays the continuing practice of favouring employers over the rights of workers and the Government's unwillingness to effectively implement Conventions Nos. 87 and 98.

C. The Government's reply

337. In its communication dated 24 January 2002, the Government provides the following additional information. The Government states that it has been consistent in the

implementation of the existing labour legislation, including efforts made to encourage the establishment of trade unions and to secure workers' rights to associate and to bargain collectively. It has ratified the ILO core Conventions Nos. 87 and 98 and issued respective national laws and regulations. Referring to the case of the Shangri-La Hotel, Jakarta, the Government has encouraged companies to secure freedom of establishment and of development of trade unions. The progress in the era of a single union up to the current multi-trade unions has indicated that the Government fully guarantees the implementation of these ILO Conventions.

338. In reply to allegations made by the IUF, the Government indicates that the case of the Shangri-La Hotel has been settled in accordance with the prevailing legislation. Application of permit for employment termination of those who are members of the SPMS was submitted by the company. The company claimed that the members of the SPMS carried out activities classified as "grave offences" as stipulated under points 21, 30, 35 and 39 of the Classification of Grave Offence of the valid Collective Labour Agreement (CLA) (sent by government communication of 7 January 2002). The permit was issued by the District Committee for Labour Disputes Settlement (P4D) as an independent institution responsible for this case. Members of P4D are derived from representatives of the tripartite constituents.

339. The permit for employment termination of Mr. Halilintar Nurdin (decision of the Central Office of Labour Disputes Settlement (P4P) of 11 April 2001) was issued in accordance with the procedure and mechanism as regulated under Act No. 22 of 1957 in view of Act No. 2 of 1964. Based on the statement of resignation of Mr. Halilintar Nurdin on 12 July 2001 through mass media, industrial disputes between Mr. Nurdin and the Shangri-La Hotel were completely finished and settled. Another permit for employment termination of two workers was issued since they had completed their annual leave but refused to continue their work and joined the protect action instead.

340. The prohibition of instalment of poster, banner and so forth by the workers in the company's premises is the right of the management/company as the owner of the business area. This action is contrary to section 29 of Act No. 21 of 2000. Inviting other parties or affiliates of trade unions to attend an internal meeting, without prior notification to the respective management/company as the owner of the business area, is obviously not in accordance with universal ethics.

341. The workers went on strike without prior notification to the competent authority (District Office of the Ministry of Manpower and Transmigration). This action was considered as an offence against section 6 of Act No. 22 of 1957. In this regard, the District Office of the Department of Manpower and Transmigration (DOMT) issued a letter in which it mentioned that the strike on 30 December 2001 was illegal. So, the permit for employment termination of 509 employees involved in this serious action was issued by the P4P, and not by the Government.

342. The presence of the police and the number of security guards within the company area was requested by the company/management subject to secure the company's assets and to prevent criminal actions.

343. The issue of contention concerned the valid Collective Labour Agreement (CLA) which states that 93 per cent of the service charge shall be paid to the respective workers in accordance with the "point system" of the company. The distribution may be changed based on consensus of the management and the trade union concerned. The workers' claim on "pro rata distribution" of service charge should be negotiated between both parties to reach a consensus as regulated under article 21.4 of the company's CLA signed on 13 December 1999 and shall not be contrary to the Minister of Manpower Decision of

1999 on the payment of service charge in hotel, restaurant and other tourism business activities.

344. On the issue of intimidation, the Government states that appropriate evidence and witnesses should be able to prove, under Indonesian law, the allegations in respect of those who had been dismissed and from whom withdrawal of their membership from the SPMS had allegedly been required in order to obtain their reinstatement.

345. The Government adds the following precisions in reply to the Committee's queries in its previous recommendation. The number of members of the Shangri-La Hotel Independent Workers' Union (SPMS) who were terminated under the decision of the Central Committee of Labour Disputes Settlement (P4P) on 11 April 2001, and who still claim reinstatement is, actually, 79 workers (list enclosed with Government's communication). This number differs from that which was reported by the IUF to the ILO in that the IUF includes two workers who, while not having taken their severance payment following the P4D's decision, did not make a further appeal against the decision. Therefore, the Government did not include their names on the list. Their severance payment will be processed in due time.

346. In line with the recommendation of the Committee that the Government take measures to guarantee reinstatement of those dismissed workers, the Government has tried to settle the case to the mutual satisfaction of both disputing parties beyond the legal action. The Government invited them in several meetings to seek fair settlement that may be mutually accepted. Four meetings were held in August, October and November 2001 (chaired by the Minister of Manpower and Transmigration). In those meetings, the Government suggested to the employer to reinstate some or all of the dismissed workers, particularly those who requested to be reinstated. However, the employer rejected reinstatement of the dismissed workers but offered as an alternative to provide compensation in cash higher than that decided by P4P. Unfortunately, the disputing parties have so far not agreed. Furthermore, immediately after the Committee's examination of the case, the Government again invited the disputing parties on 23 November and 6 December 2001 to seek a mutually satisfactory settlement. In those meetings, the Government acted as the facilitator and asked them to re-discuss the case peacefully.

347. This meeting was held on 23 November 2001, chaired by the Minister of Manpower and Transmigration, and attended by the company's owner, union officials of the SPMS, the president of the Federation of Independence Trade Union and the representatives of the Indonesian Employers' Association (APINDO). Similar to the previous meetings, the Government asked both parties to reach the best solution. The spokesperson of the respective workers, however, stood by his complaint that all of the 79 workers must be reinstated which the employer kept rejecting. In principle, the employer agreed to negotiate all disputed issues peacefully through a deliberation to reach consensus and based on clear and proportional ways. The Government gave time to both parties in order to be able to reconsider and to negotiate as well.

348. A follow-up meeting was held on 6 December 2001 and the management's position, as well as the position of the workers' representatives had not changed. In its communication dated 14 February 2002, the Government adds that the management has offered better severance pay for the dismissed workers and is ready to withdraw the summons which is being appealed by the workers in the Civic Court of Central Jakarta.

349. The Government asserts that it is pursuing the improvement of all national labour laws and regulations, particularly those dealing with the protection of labour's and employer's rights. But, all parties, including the Government, are obliged to maintain public interest and/or order. Therefore, when all legal activities dealing with labour and employment are

not limited, if those activities are assumed to disturb the public order, then the police and the judicial machinery should take appropriate action. The arrest and detention by the police of a number of workers of the Shangri-La Hotel are not violations against the legitimate exercise of trade union activities but merely meant to deal with criminal actions by some workers that caused damage to the hotel's assets and disturbed public order.

350. The Government tried to seek information either from the employer or the SPMS on the physical assault against Mr. Muhammen Zul Rachman (not Mr. Mohammed Zulharman), treasurer of the SPMS. On 7 January 2002, ministry officials met Mr. Halilintar Nurdin, according to whom the physical assault against Mr. Rachman happened outside the hotel complex (on the left side of the hotel gate). This case was processed by the Tanah Abang police sector which investigated the matter and submitted an investigation report to the Office of Prosecutors, Central Jakarta, on 6 March 2001. The State Court of Central Jakarta issued a decision on 3 May 2001 which mentioned that the suspect was found guilty and sentenced to three months' imprisonment reduced by the detention period.

351. Referring to the Committee's request on clarification on the allegation of bribery surrounding the dismissal of Mr. Halilintar Nurdin, the Government asked Mr. Nurdin directly for clarification on 7 January 2001. In that meeting, Mr. Nurdin explained that such an accusation of bribery is untrue and a slander against him. He said that the decision to accept his dismissal was under a long and careful consideration and that he took his decision after he resigned as president of the SPMS. He pledged that he never received anything as a bribe dealing with his decision to accept the termination of his employment. He also explained that it is true that he withdrew his appeal to P4P and accepted the decision of P4D. Mr. Halilintar Nurdin said that he would be ready to give a direct explanation about this matter to the ILO.

352. In relation to the Committee's request concerning the observations of the national organizations of workers and employers involved in this dispute, the Government indicated that it submitted the Committee's recommendation to these respective organizations for observations on 23 November 2001. To date, only the employers' organization (APINDO) has replied by way of a copy of the communications it sent to the ILO concerning this case.

353. In reply to the complainant's communication of 15 October 2001 concerning the police interventions in the action taken by the 18 dismissed workers who, on 25 August 2000, claimed their rights to be re-employed, the Government asserts that this intervention was in conformity with Act No. 9 of 1998 on the freedom of expression before public. Based on this Act, any party who wishes to exercise peaceful demonstrations/actions shall convey a notification letter to the authorized institutions seven days prior to the starting date of such demonstrations/actions. The police, in accordance with the valid laws, must take security action, since the said action had not been reported as required. The SPMS sent its late notification to the Central Jakarta Police Resort on 27 August 2001 mentioning that they will exercise a peaceful demonstration in front of the Shangri-La Hotel in Jakarta from 1 to 21 September 2001 (copy of letter enclosed).

354. In reply to the complainant's allegation of the Minister's statement concerning trade union rights violations, the Government contends that this was merely a public statement to take cognisance of the importance of improving the performance of the Government's apparatus in creating sound industrial relations. The Government adds that it is fully aware of the difficulties encountered by the Government, workers and employers in this respect which present challenges that have to be faced and cannot be realized in a short time. Therefore, the Government welcomes and expects the involvement of the ILO through its activities in Indonesia to assist in the creation of sound industrial relations.

355. In its communication dated 16 May 2002, the Government indicates that this case is being settled in accordance with the national laws and regulations in force and refers to the latest decision of the State Administrative Court on 26 March 2002. The Government adds that the Central Industrial Dispute Settlement Committee (P4P) has appealed this decision to the Supreme Court and that, while the Minister of Manpower and Transmigration may give an opinion, he does not have the right to interfere in the decision made by the P4P which is an independent judicial body. The Government also transmits a resignation letter of a Shangri-La Hotel employee dated 29 April 2002 indicating that all outstanding issues have been resolved.

D. Comments from a national employers' organization

356. At the request of the Committee, the Employers' Association of Indonesia (APINDO), an organization representing the employers in Indonesia, communicated the following information on 14 December 2001. In conjunction with the industrial dispute which occurred at the Shangri-La Hotel, Jakarta, APINDO was actively involved in finding amicable solutions to the dispute. The management of the Shangri-La Hotel, Jakarta, came to APINDO to report the dispute and APINDO is a member of the tripartite institutions for the resolution of labour disputes (P4D and P4P), which heard the matters of the dismissal of Mr. Halilintar Nurdin and the 579 employees of the Shangri-La Hotel.

357. Before the labour dispute, according to APINDO, there had been discussion between the management and the union on the service charge issue and pension plan questions with the aim of amending the current Collective Labour Agreement (CLA) at the union's demand. As no agreement had been reached, an invitation was made to the Central Jakarta Manpower Office. Two persons who were not employees of the Shangri-La Hotel, Jakarta, were also present at these meetings. The attendance of those two persons created more demands on the part of the union which increased from two to 13 demands. Management's refusal of the 13 demands subsequently caused the work stoppage coordinated by the union with the support of outsiders.

358. According to APINDO, the work stoppage did not follow the existing law and acted against the Collective Labour Agreement. Furthermore, the union also conducted actions of damaging the hotel's assets in the form of deviations from work stoppage.

359. The management filed the request for employment termination of Mr. Halilintar Nurdin at the P4D (tribunal) because, inter alia, he posted posters describing a "bomb" in several places throughout the hotel. Another reason was the damaging of the good name of the hotel's general manager. Such actions were contrary to the Collective Labour Agreement. The management also proceeded to file the dismissal notice of 579 workers at the tribunal (P4P) by reason of their illegal actions of putting the hotel in non-operation. The damaging of the good name of the hotel and work stoppage were against the prevailing laws and the existing CLA. The tribunals accepted all requests by management. Mr. Halilintar Nurdin, who accepted the P4D decision, admitted that there was an involvement of foreigners in this labour dispute, in particular the IUF, which contributed a fund of US$10,000.

360. Currently, 79 persons are appealing through the Administrative High Court the decision made by P4P (tribunal) and the management of the Shangri-La Hotel, Jakarta, has put forward a proposal to settle the dispute with the remaining 79 persons.

E. The Committee's conclusions

361. *The Committee notes that the pending allegations in this case concern acts aimed at union busting on the part of the management of the Shangri-La Hotel, Jakarta, in particular through the dismissal of Mr. Halilintar Nurdin, chairperson of the Shangri-La Hotel Independent Workers' Union (SPMS) and the intimidation of the subsequently dismissed workers for whom re-employment was conditioned on the signing of affidavits conveying their resignation from the SPMS. The allegations further refer to a subsequent break-up of a peaceful demonstration by 18 of the dismissed workers in front of the hotel on 25 August 2001 and a US$2 million compensation award made by the South Jakarta District Court in November 2001 against seven members and supporters of the Shangri-La Hotel Union for damages allegedly caused in connection with the protest demonstration on 22 December 2000.*

362. *As concerns the question of union busting within the overall context of the large-scale dismissals at the Shangri-La Hotel following the protest action taken by SPMS members, the Committee would first recall that, when it previously examined this case in November 2001, it requested the Government to take steps to ensure the reinstatement of those dismissed workers from the Shangri-La Hotel who were still seeking their reinstatement [see 326th Report, paras. 356 and 362]. In reply to its query as to the number of those dismissed workers who are still seeking reinstatement, the Committee notes that the complainant has provided a list of 81 dismissed employees, while the Government refers to 79 employees, indicating that two of the employees on the complainant's list, although not having accepted severance payments, had not continued their appeal of the dismissal.*

363. *While duly noting the efforts made by the Government to find a peaceful solution to the case of those workers still seeking reinstatement, the Committee also notes that, on 26 March 2002, the State Administrative Court overturned the decision of the Central Committee for the Settlement of Industrial Disputes (P4P) which had approved these dismissals, apparently clearing the way for the reinstatement of at least those 81 workers dismissed during the dispute and who had not accepted compensation. Furthermore, according to a Jakarta press release, the judgement has, inter alia, found that the criminal action upon which the lay-offs were justified had not been proven. The Committee requests the Government to furnish a copy of the State Administrative Court's judgement and, noting that the Hotel and the P4P have appealed this judgement to the Supreme Court, requests the Government to expedite these proceedings. If the Supreme Court judgement confirms the reinstatement order, the Committee requests the Government, in the light of this judgement and its previous recommendations on this point, to keep it informed of the measures taken to reinstate all those dismissed Shangri-La Hotel employees who still wish to return to their jobs.*

364. *More generally, the Committee notes that, as concerns the overall allegation of union-busting tactics on the part of the employer, particularly the conditioning of resignation from the union in order to obtain reinstatement, the Government merely refers to the fact that appropriate evidence should be able to prove these allegations under Indonesian law. In this respect, the Committee nevertheless notes that the complainants have transmitted affidavits from workers stating that they were forced to sign papers indicating that they would resign from the union in order to obtain their reinstatement. The Committee recalls that Article 1(2)(a) of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratified by Indonesia), sets out clearly that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment, in particular, in respect of acts calculated to make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership. Where cases of alleged anti-union discrimination are involved, competent authorities dealing with labour issues should begin an inquiry immediately and*

*take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see **Digest of decisions and principles of the Freedom of Association Committee**, 1994, para. 754]. The Committee requests the Government to take the necessary steps to ensure that these allegations are thoroughly investigated and if they prove to be true, to take the appropriate measures to remedy any effects of the anti-union discrimination for the workers and the union concerned and to ensure that such anti-union acts are not perpetrated in the future. The Government is requested to keep the Committee informed of the outcome of this investigation.*

365. *As concerns its previous request to the Government to institute an independent judicial inquiry into the physical assault on Mr. Muhammad Zulharman (according to the Government, actually Mr. Zul Rachman), treasurer of the SPMS [see 326th Report, paras. 358 and 362] the Committee takes due note of the Government's indication that an investigation was carried out by the Tanah Abang Police Sector, a report was submitted to the Prosecutor's Office and the State Court of Central Jakarta condemned the person responsible for the assault to three months' imprisonment. The Committee requests the Government to transmit a copy of the report of the investigation into the assault of Mr. Zulharman.*

366. *As concerns the allegation of bribery surrounding the dismissal of Mr. Halilintar Nurdin, president of the SPMS, the Committee notes the Government's indication that it contacted Mr. Nurdin, who has denied this allegation, adding that his decision to accept the dismissal was taken after long and careful consideration and after he resigned as president of the SPMS. The Committee further notes that the complainant has not provided any further information in respect of this matter.*

367. *As concerns the dispersal of the peaceful protest on 25 August, the Committee notes that the complainant's and the Government's versions of the events significantly differ. On the one hand, the Government limits itself to indicating that the intervention was in conformity with national legislation as the protesters had not provided notification of their action as required by law. The complainant, on the other hand, states that the union had notified the authorities on 17 August, in accordance with legal requirements. Furthermore, the complainant alleges that the 18-person demonstration was dispersed by 60 fully armed police officers and that 14 of the demonstrators were taken to the police station. The Committee wishes to emphasize in this respect that measures depriving trade unionists of their freedom on grounds related to their trade union activity, even where they are merely summoned or questioned for a short period, constitute an obstacle to the exercise of trade union rights [see **Digest**, op. cit., para. 77]. While unable to pronounce itself in respect of the eventual non-compliance of this protest action with procedural requirements given the contradictory information provided in this respect, the Committee nevertheless considers that the proportion of the intervention and the brief detention of the unionists at the police station would appear to be excessive in light of the number of the demonstrators and the fact that the peaceful nature of the action has not been disputed. The Committee therefore requests the Government to investigate the precise circumstances surrounding the protest action which took place on 25 August 2001 on the sidewalk in front of the Shangri- La Hotel and to take the necessary measures to avoid recourse to excessive police interference in respect of the exercise of legitimate trade union activity.*

368. *Finally, the Committee notes with regret that the Government has not provided any information in respect of the US$2 million compensation award granted by the South Jakarta District Court against six members of the Shangri-La Hotel union and an IUF representative. The Committee must recall in this respect that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests [see **Digest**, op. cit., para. 474]. The Committee further recalls that any assistance or support that an international trade union organization might*

provide in setting up, defending or developing national trade union organizations is a legitimate trade union activity, even when the trade union tendency does not correspond to the tendency or tendencies within the country [see ***Digest****, op. cit., para. 629]. The Committee considers that the imposition of penalties for economic losses that might be linked to strike action and/or peaceful protest action constitutes a serious restriction of the right to strike and is further reinforced in this position by the State Administrative Court's decision which apparently concluded that no criminal action was proven on the part of the protesting workers. Aware that this award has been appealed by the unionists who have been held liable, the Committee expresses the firm hope that its conclusions and recommendations will be taken into account in the review of the compensation award made by the South Jakarta District Court and requests the Government to keep it informed of the outcome of the appeal.*

369. *The Committee encourages the Government to avail itself of ILO technical assistance to facilitate the establishment of a sound industrial relations system in which collective labour disputes can be rapidly and effectively addressed at an early stage and to the satisfaction of all parties concerned.*

The Committee's recommendations

370. ***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 furnish a copy of the State Administrative Court's judgement ordering the reinstatement of the Shangri-La Hotel dismissed employees and, noting that the Hotel and the P4P have appealed this judgement to the Supreme Court, requests the Government to expedite these proceedings. If the Supreme Court judgement confirms the reinstatement order, the Committee requests the Government, in the light of this judgement and its previous recommendations on this point, to keep it informed of the measures taken to reinstate all those dismissed Shangri-La Hotel employees who still wish to return to their jobs.

(b) The Committee requests the Government to take the necessary steps to ensure that the allegations of union-busting tactics on the part of the employer, particularly as concerns the conditioning of re-employment upon resignation from the union, are thoroughly investigated and if they prove to be true, to take the appropriate measures to remedy any effects of the anti-union discrimination for the workers and the union concerned and to ensure that such anti-union acts are not perpetrated in the future. The Government is requested to keep the Committee informed of the outcome of this investigation.

(c) The Committee requests the Government to transmit a copy of the report of the investigations into the assault of Mr. Zulharman

(d) The Committee requests the Government to investigate the precise circumstances surrounding the protest action which took place on 25 August 2001 on the sidewalk in front of the Shangri-La Hotel and to take the necessary measures to avoid recourse to excessive police interference in respect of the exercise of legitimate trade union activity.

(e) The Committee expresses the firm hope that its conclusions and recommendations will be taken into account in the review of the compensation award made by the South Jakarta District Court and requests the Government to keep it informed of the outcome of the appeal.

(f) The Committee encourages the Government to avail itself of ILO technical assistance to facilitate the establishment of a sound industrial relations system in which collective labour disputes can be rapidly and effectively addressed at an early stage and to the satisfaction of all parties concerned.

CASE NO. 2114

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

Complaint against the Government of Japan presented by the Okayama Prefectural High-School Teachers' Union

Allegations: Restrictions on the right to bargain collectively of public employees; absence of adequate, impartial and speedy conciliation and arbitration proceedings in case of a breakdown in negotiation

371. In communications dated 20 December 2000, 18 January 2001 and 15 February 2002, the Okayama Prefectural High-School Teachers' Union presented a complaint of violations of freedom of association against the Government of Japan.

372. The Government furnished its observations in communications dated 13 July and 31 October 2001, and 6 February and 2 May 2002.

373. Japan 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

374. In its communications dated 20 December 2000 and 18 January 2001, the complainant alleges that the Okayama Prefectural Government violated the principles of freedom of association by deciding to delay the implementation of recommendations made by the Okayama Prefectural Personnel Commission relating to wage increases for local public employees including teachers working in public high schools and schools for disabled students, who are members of the Okayama Prefectural High-School Teachers' Union. These wage increases were recommended for the 1997 and 1998 fiscal years, but the Okayama Prefectural Government delayed their implementation for nine months.

375. The complainant then gives a detailed explanation of the background to this situation. In the 1997 fiscal year, the implementation of the Okayama Prefectural Personnel Commission's recommendation to increase wages by 0.98 per cent (3,793 yen on average) was deferred until January 1998 whereas it should have been implemented in April 1997. Similarly, in the 1998 fiscal year, the implementation of the Personnel Commission's recommendation to increase wages by 0.71 per cent (2,801 yen on average) was deferred until January 1999 whereas it should have been implemented in April 1998. In the complainant's view, these measures are unfair and due to the delay in the implementation

of the recommendations, 51,964 yen on average equivalent to the wage increase for 13.7 months in the 1997 fiscal year and 38,373 yen on average equivalent to the wage increase for 13.7 months in the 1998 fiscal year have yet to be paid. The complainant demands that the recommendations be implemented in full to recover the losses caused by the delay in their implementation by the Okayama Prefectural Government.

376. Moreover, although the Government cites the financial situation as a reason for the delay, the complainant does not consider this motive to be a sound justification at all. In both the 1997 and 1998 fiscal years, the financial situation facing the national Government was the same as that of the Okayama Prefectural Government. However, the national Government fully implemented the recommendation of the National Personnel Authority (NPA) for a wage increase for national public employees. Moreover, all local governments, except for the Okayama and Osaka governments, fully implemented recommendations for wage increases for local public employees. In addition, the complainant agrees that it cannot be denied that the Okayama Prefectural Government is in a dire financial situation with its outstanding prefectural bond amounting to 963,575,000,000 yen in 1997 and 1,010,426,000,000 yen in 1998. But the dire financial situation is not because personnel expenses for public employees are high, but because the Government has invested in sloppy and useless public works. This also reflects what is mentioned in the report of the Okayama Prefectural Financial Reform Council, the consultative body to the Okayama Governor (a copy of this report is attached to the complaint). Judging from this report alone, the Okayama Governor and the national Government should take political responsibility and the Okayama Prefectural Government should not cite its financial difficulties as a pretext for delaying the implementation of personnel recommendations. The complainant goes on to describe in detail cases which demonstrate how ineffectively the Okayama Prefectural Government invests in public works (a copy of such examples is attached to the complaint and reproduced in Annex I).

377. The complainant points out that, pursuant to the decision to delay the implementation of the wage increase, 999 members of its organization submitted "request statements" (a copy of such a statement is reproduced in Annex II) to the Okayama Prefectural Personnel Commission in order for it to issue once again its recommendation relating to the wage increase to the Okayama Prefectural Government. Given that, on 17 December 1997, the Personnel Commission had expressed its regret to the Okayama Prefectural Assembly that its recommendation was not fully implemented, the complainant had believed that the Personnel Commission would once again issue its recommendation to the Okayama Prefectural Government. Instead, in a decision dated 5 August 1998, the Personnel Commission decided to reject the complainant's request (a copy of the Okayama Prefectural Personnel Commission's decision is reproduced in Annex III). The Personnel Commission sympathized with the request statements indicating, "We express our sincere regret (at the delay in implementation of our recommendation) even considering the financial difficulties" and that "it is needless to say that a salary recommendation by the Personnel Commission should be fully respected". However, the Commission rejected the complainant's petition indicating that its recommendation had no legal power to influence the Governor in his right to present bills, or the Prefectural Assembly in its right to vote.

378. By not issuing its recommendation to the Okayama Prefectural Government once again, the complainant contends that the Personnel Commission abdicated its official responsibility as an institution set up to compensate public employees for the restrictions placed on their basic labour rights. In the complainant's view, this decision clearly demonstrates the Personnel Commission's inability to correct the measures taken by the Okayama Prefectural Government and shows that the personnel recommendation system does not adequately serve as a compensation for the restrictions placed on public employees' basic labour rights.

379. This point of view is reinforced by the fact that for the 1999 fiscal year, the National Personnel Authority and each local personnel commission recommended a 0.3-month reduction in the lump-sum payment not only for national public employees, but also for all local public employees including the Okayama public employees. As a result, even if the recommendation for a 0.26 per cent raise in basic wages were carried out, the recommended reduction in the lump-sum payment would bring about a serious situation in which the total annual remuneration would be reduced. While recommendations for a reduction in lump-sum payment have been made in the past, the complainant contends that this is the first time that such a recommendation had been made under which the total annual remuneration had fallen as a result of the decrease in the lump-sump payment exceeding the rise in the basic pay rate. According to the complainant, it is totally incompatible with the purpose of the personnel recommendation system for the Personnel Commission to issue a recommendation to reduce the remuneration of those who do not have any say regarding their remuneration because they are prohibited from participating in direct labour-management negotiations. Moreover, the Personnel Commission went ahead in issuing this recommendation despite repeated requests by the complainant not to do so. In relation to the components of remuneration such as lump-sump payment, the complainant points out that it is customary for each local personnel commission to follow the NPA's recommendation. In Japan, negotiations by public employees are not accompanied by the right to conclude collective agreements or by procedures for mediation and arbitration in case of a breakdown in negotiations. If public employees try to exercise the right to strike, they will be punished. In light of these restrictions, the above recommendation to reduce their remuneration is extremely unfair.

380. Furthermore, the complainant points out that as the current members of the Okayama Prefectural Personnel Commission are appointed by the Governor, so the neutrality and impartiality of the Commission (as well as the prefectural personnel commissions) are questionable. In addition to that, a system whereby the opinion of labour is heard, is yet to be developed adequately. The members of the Okayama Prefectural Personnel Commission are appointed by the Okayama Governor, with the approval of the Okayama Prefectural Assembly, from among the candidates selected by the Governor. These candidates are nominated by the personnel section of the Okayama Prefectural Government. When the personnel section nominates the candidates, there are no procedures which allow a labour union to nominate the candidates, to recommend personnel commission members or submit its own opinions on the matter. In addition, it is only once a year that the complainant has an opportunity to personally see the members of the Personnel Commission and submit claims to them. Moreover, only one out of the three members of the Personnel Commission attends this meeting. Although the complainant has been requesting the executive office of the Personnel Commission for two or more meetings to submit its claims and that all three members of the Commission attend such meetings, its requests have not been accepted as yet.

381. Finally, the complainant contends that the recommendation to reduce remuneration is unfair in light of the current working conditions of public school teachers. According to the complainant, 57 per cent of all high-school teachers in Okayama Prefecture go to work during their holidays. Eighty-two per cent work overtime on working days, and 23 per cent work overtime for ten hours or more during the week. In Japan, teachers in the public service do not get paid overtime allowance or for working during holidays. Moreover, they cannot easily take a day off due to the shortage of teachers. This has been the situation for a long period of time. Finally, the complainant anticipates more recommendations from the Personnel Commission to reduce remuneration in the future. Hence, the complainant questions the fundamental purpose or usefulness of such a personnel recommendation system. It demands a full recovery of the right to bargain collectively including the right of public employees to conclude collective agreements as well as the guarantee of speedy and

impartial procedures for mediation and arbitration leading to a decision binding on both parties in case of a breakdown in negotiations.

382. In its communication of 15 February 2002, the complainant organization comments on the impending civil service reform which, in its opinion, does not guarantee the rights of public servants as provided for in Conventions Nos. 87 and 98.

B. The Government's reply

383. In its communication dated 13 July 2001, the Government first of all proceeds to describe in detail the system of determination of wages of local public service personnel. It points out that employees of prefectural high schools, including members of the Okayama Prefectural High-School Teachers' Union can organize employee organizations and negotiate with the proper authorities. However, they are obliged to attend to their duties in the public interest as servants of the whole community. Moreover, their salaries and other working conditions are stipulated in by-laws established by the local assembly composed of public representatives. Therefore, they do not have the right to conclude collective agreements and are prohibited from carrying out strikes. However, compensatory measures to make up for the restrictions on such fundamental labour rights have been sufficiently provided through the following laws (Local Public Service Law, sections 14, 24, 26, 46 and 49-2 and others).

384. First of all, salaries, working hours and other working conditions are guaranteed by by-laws established by the local assembly composed of public representatives. Secondly, the law stipulates that local public bodies shall take the appropriate measures as the occasion arises so that salaries, working hours and other working conditions are adapted to the prevailing social conditions (section 14, Local Public Service Law) and that the Personnel Commission, which is an independent and impartial agency, shall make recommendations to the chief executive and assembly to ensure that the employees' salary scales are adapted to the prevailing social conditions in accordance with the so-called principle of meeting prevailing conditions. Moreover, the local public employees' status, appointment and dismissal, service discipline, etc., are prescribed by the Local Public Service Law. Their status is therefore guaranteed by the law. Furthermore, local public employees may submit a request to the Personnel Commission so that the appropriate measures may be taken regarding salaries, working hours and other working conditions. The law prescribes that salaries shall be determined by taking account of living expenses, and the salaries of national and other local public employees, salaries in the private sector and other circumstances (section 24, Local Public Service Law). In advance of making recommendations, the Personnel Commission carries out fact-finding surveys concerning salaries in the public and private sectors. At the same time, when requested, the Commission accepts opinions and requests for concrete improvements by interviewing employee organizations.

385. The Government emphasizes that the prefectural governments have been endeavouring to implement the recommendations of personnel commissions under a basic policy that such recommendations are to be respected. In such matters, local public employees enjoy the benefit of appropriate salaries as a matter of both legislation and fact. While the prefectures attempt to implement salaries in accordance with the recommendations of personnel commissions, there are some cases however in which the recommendations cannot be implemented completely. Yet even in such cases, instead of entirely suppressing the recommended raise in salaries, the prefectures just postpone the implementation of the wage increase recommended for a certain period. Thus, personnel commissions' recommendations are respected as much as possible. In any event, from now on, the Government expects that the Prefectures will implement raises in salaries recommended by personnel commissions.

386. The Government then goes on to explain the circumstances that led up to the delay in the implementation of the Okayama Prefectural Personnel Commission's recommendation for the 1997 fiscal year. On 3 October 1997, the Okayama Prefectural Personnel Commission made a recommendation to the Okayama Prefectural Assembly and the Governor of Okayama by virtue of the provisions of the Local Public Service Law, regarding reform of the salary scales respecting employees in the regular service. This recommendation was to raise the average monthly salary including allowances of the administrative service personnel of the Okayama Prefecture, which was 385,288 yen as of 1 April 1997, by an average of 3,793 yen (0.98 per cent). The source of revenue necessary in implementing the salary reform as the Commission had recommended was about 3 billion yen. After the recommendation was made, the Okayama Prefecture authorities carefully examined how to treat the recommendation. However, after comprehensively examining such factors as the prevailing socio-economic conditions, critical financial conditions, and in view of promoting administrative and financial reforms, it was decided to postpone the implementation of the recommendation for nine months until 1 January 1998 as an unavoidable measure in view of the financial crisis.

387. The Okayama Prefecture authorities notified this decision to the Okayama Prefecture Quadripartite Joint Struggle Congress on 2 November 1997, and to the complainant on 1 December and asked for their understanding. The Government explains that the Okayama Prefecture Quadripartite Joint Struggle Congress is an organization made up of the Okayama Prefecture Employees' Labour Union (membership: 4,868), Okayama Prefecture Public Enterprise Bureau Labour Union (110), Okayama Prefecture Teachers' Union (8,588) and Okayama Prefecture Public School Teachers' Union (40). A great majority of the Okayama prefectural personnel are members of this organization, although the Okayama High-School Teachers' Union (2,565 members) is not a part of this Congress. Before notifying the above decision, the Okayama Prefecture authorities had negotiated repeatedly with the Quadripartite Congress, its constituent unions, and the complainant, to explain the Prefecture's severe financial conditions. Finally, on 28 November 1997, the Okayama Prefecture authorities reached an agreement on the above decision with the Quadripartite Congress, although it could not reach an agreement with the complainant. The Governor of Okayama then submitted an ordinance bill to the Okayama Prefectural Assembly on 17 December 1997 which was adopted on the same day, and the Prefecture implemented the salary increase by an average of 0.98 per cent from 1 January 1998. Due to the postponement in the implementation of the salary increase to 1 January 1998, the source of revenue necessary in reforming the salary scales decreased to about 1.2 billion yen.

388. The Government then describes the circumstances that led up to the delay in the implementation of the Okayama Prefectural Personnel Commission's recommendation for the 1998 fiscal year. Based on the provisions of the Local Public Service Law, on 6 October 1998, the Okayama Prefectural Personnel Commission made a recommendation to the Okayama Prefectural Assembly and the Governor of Okayama respecting reform of the salary scales for employees in the regular service. This recommendation was to raise the average monthly salary of the administrative service personnel of Okayama Prefecture, which was 392,647 yen as of 1 April 1998 by an average of 2,801 yen (0.71 per cent). The source of revenue necessary in implementing the salary reform as the Commission had recommended was about 1.8 billion yen. After the recommendation was made, the Okayama Prefecture authorities carefully examined how to treat this recommendation. After a comprehensive examination of such factors as the prevailing socio-economic conditions, critical financial conditions, and the need to promote administrative and financial reforms, it was decided to postpone the implementation of the recommendation for nine months until 1 January 1999 as an unavoidable measure in view of the financial crisis.

389. The Okayama Prefecture authorities notified this decision to the Okayama Prefecture Quadripartite Joint Struggle Congress on 26 November 1998 and to the complainant on 30 November 1998, and asked for their understanding. The Okayama Prefecture authorities reached an agreement on the above decision with the Quadripartite Congress. The Governor of Okayama then submitted an ordinance bill to the Prefectural Assembly on 10 December 1998. The Bill was adopted on 16 December 1998, and the Prefecture implemented the salary increase by an average of 0.71 per cent from 1 January 1999. Due to the postponement in the implementation of the salary increase to 1 January 1999, the source of revenue necessary in implementing the reform decreased to about 500 million yen.

390. The Government then turns to the issue of the "request statements" submitted by the complainant to the Okayama Prefectural Personnel Commission. The Government refers to this as an "Application for action on working conditions" and explains that this is a system whereby prefectural personnel may submit a request to the Personnel Commission to recommend that the authorities concerned can take the appropriate measures concerning salaries, working hours and other working conditions (section 46, Local Public Service Law). It is one of the compensatory measures for the restrictions on the basic trade union rights of local public employees. The Okayama Prefectural Personnel Commission rejected the application for action on working conditions though it saw it regrettable that the Prefecture did not implement the recommendation as is. According to the Government, the decision of whether or not to accept the application for action on working conditions is to be made voluntarily by the Personnel Commission by taking into account this system's purpose. The fact that the Commission rejected this application filed by the complainant does not constitute any ground for claiming that the said system is not functioning to compensate for the restrictions placed on the basic trade union rights of local public employees.

391. The Government then describes the circumstances that led to the recommendation of the Okayama Prefectural Personnel Commission for the 1999 fiscal year. The Okayama Prefectural Personnel Commission had conducted various surveys on salaries of employees in the private sector, those of national and other local public employees, as well as on the cost-of-living expenses. The results were as follows: (1) in April 1999, the salaries of private sector employees exceeded those of local public employees by an average of 861 yen (0.22 per cent); (2) during the period from May 1998 to April 1999, the average annual amount of bonuses and other special benefits of private sector employees was lower than the average annual amount of the term-end allowance and the diligence allowance paid to local public employees.

392. On 11 August 1999, the National Personnel Authority (NPA) submitted a report on and made a recommendation to revise the salaries of national public service employees to the Diet and the Cabinet. This recommendation mainly proposed that the average annual salary of administrative service personnel, which was 6.423 million yen, be decreased by about 95,000 yen (1.5 per cent) to 6.328 million yen. The recommendation suggested that this be done, inter alia, by reducing the term-end allowance and special allowances by the equivalent of 0.3 months.

393. Based on the abovementioned survey results and the NPA remuneration recommendation, the Okayama Prefectural Personnel Commission made the following recommendations: (1) to increase the average monthly salary including allowances of administrative service personnel by 1,033 yen (0.26 per cent) from the present 398,128 yen; and (2) to reduce the term-end allowance and the term-end special allowances by 0.3-month equivalent to ensure balance with the payment of bonuses and other special benefits of private sector employees and national public service personnel. According to the Government, if the salaries are revised based on this recommendation, the average annual salary of the

administrative service personnel, which is 6.533 million yen at present, will decrease by about 97,000 yen (1.5 per cent) to 6.436 million yen. However, even if employees' annual salary should decrease as a result of this recommendation, the resultant salary levels are in harmony with the prevailing social conditions and are reasonable and appropriate. In other prefectures also, more or less the same recommendations have been made. Therefore, this recommendation is compatible with the purpose of the system of recommendation by the Personnel Commission. It shows that the function of the Personnel Commission to take measures to compensate for the restrictions on public employees' basic trade union rights is fully operational, and the recommendation is not an unfair one.

394. As regards the contention that teachers are not paid holiday allowances and overtime allowance, the Government points out that teachers are not paid these allowances, in view of the special nature of their duties and mode of work. In place of these allowances, they are entitled to a system whereby their salaries are increased (by 4 per cent of their monthly salary) which is not granted to general administrative service personnel. Therefore, there is no ground to the contention that the teachers are not paid fairly in view of their working conditions.

395. Concerning the procedure for the appointment of the members of the Personnel Commission, the Government explains that the Personnel Commission is an agency of the local public body, main duties of which are, in addition to making recommendations in respect of salary scales, to ensure public employees' rights and benefits by investigating their working conditions and actions detrimental to their interests taken by the employer. For this reason, the members of the Personnel Commission are required to be persons of the highest moral standing and integrity, in known sympathy with the principle of local autonomy and democratic and efficient administration, and possessing knowledge and sound judgement concerning personnel administration. Moreover, their appointment requires "the consent of the assembly" (section 9, Local Public Service Law). In view of the function of the Personnel Commission, such a procedure is appropriate, and there is no need to change this procedure. Furthermore, in the Okayama Prefecture and in line with the above procedure, a university professor, a lawyer, and a former prefectural employee have been appointed as members of the Prefectural Personnel Commission. Moreover, the Okayama Prefectural Personnel Commission meets with the complainant twice a year, at the time of the Shunto spring offensive (usually March) and sometime before issuing the recommendation (usually September). These meetings are attended by one Commission member and the Secretary-General, respectively. The contents of these meetings are reported in the meeting of the Personnel Commission held immediately afterwards. The contents of the requests made by the complainant are reported by the secretariat in detail to the Commission members.

396. In conclusion, the Government contends that, in Japan, with respect to local public employees, employee organizations have the right to negotiate with the authorities concerned regarding working conditions. These negotiations are designed for employee organizations to discuss working conditions and to request the authorities to take the appropriate measures, and for the authorities to discuss the demands with the employees' organizations with sincerity. If the two reach an agreement, the authorities concerned are required to implement the agreement with sincerity (section 55, Local Public Service Law). Moreover, salaries and other working conditions are regulated by ordinances. There is also the personnel commission recommendation system. For these and other reasons, although local public employees do not have the right to conclude collective agreements, the compensatory measures for the restrictions placed on their basic trade union rights are fully guaranteed by law. Finally, in a communication dated 31 October 2001 the Government indicates that reform of the public service personnel system is under consideration in Japan at this moment in time. An outline of this reform is expected. Consideration of this reform covers all aspects of the public service personnel system.

397. In a communication dated 6 February 2002, the Government indicates that the Cabinet adopted "the Plan for Civil Service Reform" on 25 December 2001. The Plan sets forth that the Government reform the civil service system by:

– establishing a new appointment system that properly reflects competence and achievement;

– securing diverse human resources from the private sector;

– establishing appropriate rules of outplacement, which has been an issue of great public criticism.

The Government adds that taking into consideration concerns about ensuring the stable and continuous management of the public service, it has decided to retain the current restrictions on the fundamental labour rights of civil servants. Hence, the recommendation system of the NPA and the Personnel Commission, which is one of the compensatory measures for the restrictions on the fundamental labour rights of national and local public employees, will be maintained. The Government recognizes the importance of making full and adequate use of the system and intends to request the local governments to respect the recommendation for a proper implementation of the salary revision. The Government recalls that the Okayama Prefecture did not entirely suppress the salary increase but only postponed its implementation for nine months. For the 1997 postponement, the Prefecture has made agreements with the Okayama Prefecture Quadripartite Joint Struggle Congress which represents a great majority of the Okayama Prefectural employees. As regards 1998 and 1999, the prefectural authorities has received the agreement of the complainant itself. This case is isolated and concerns a minority union and the prefectural authorities. In spite of this fact, the allegations deny the local public service employees system that has so far functioned properly as a whole, which is hardly acceptable. The Supreme Court of Japan has ruled that even if salary scales are not revised as the commission recommends, it should not be concluded that the Personnel Commission is not serving its compensatory function if it was truly unavoidable in the prefectural financial conditions.

398. In its communication of 2 May 2002, the Government states that it is still in the process of preparing its observations on the complainant's communication and that, as two more complaints have been filed by other trade unions concerning the Civil Service Reform, it would rather submit its observations on all these cases at once, in time for the November 2002 meeting of the Committee.

C. The Committee's conclusions

399. *The Committee notes that since its last session, it has not received any substantive reply from the Government, which has merely asked the Committee to adjourn the case once again. The Committee recalls that, when it considered and adjourned this case at its March 2002 meeting, it requested the Government "to send urgently its observations on the latest communication of the complainant [i.e. that of 15 February 2002] so that it may take these into account when it examines the case at its next meeting" [327th Report, para. 8].*

400. *The Committee notes that the allegations in this case concern the failure on the part of the Okayama Prefectural Government to implement in full the recommendations made by the Okayama Prefectural Personnel Commission relating to wage increases for local public employees, including teachers working in public high schools and schools for disabled students, who are members of the Okayama Prefectural High-School Teachers' Union (the complainant). The allegations additionally relate to the recommendation of the Okayama Prefectural Personnel Commission to reduce the lump-sum allowance for local public*

employees for the 1999 fiscal year resulting in a reduction of the total annual remuneration of those employees. According to the complainant, these recommendations undermine the fundamental purpose and usefulness of the personnel commission system which was set up to compensate public employees for restrictions imposed on their trade union rights. Accordingly, the complainant demands a full recovery of the right to bargain collectively, including the right to conclude collective agreements, as well as the guarantee of speedy and impartial procedures for mediation and arbitration leading to a decision binding on both parties in case of a breakdown in negotiations.

401. *As regards the alleged delay in the implementation of the recommendations of the Okayama Prefectural Personnel Commission for the 1997 fiscal year, the Committee notes in effect that the Personnel Commission's recommendation to increase wages by 0.98 per cent was deferred until January 1998 whereas it should have been implemented in April 1997. The same thing happened in 1998 when the Personnel Commission's recommendation to increase wages by 0.71 per cent was deferred until January 1999 whereas it should have been implemented in April 1998. According to the complainant, due to the delay in the implementation of these recommendations, 51,964 yen per person on average, equivalent to the wage increase for 13.7 months in the 1997 fiscal year, and 38,373 yen per person on average, equivalent to the wage increase for 13.7 months in the 1998 fiscal year, were not paid to the complainant's members, amongst others. The Committee observes that the Government does not dispute these figures; rather it acknowledges in its own reply that, due to the postponement in the implementation of these salary increases, the source of revenue needed to reform the salary scales decreased from 3 billion yen to 1.2 billion yen for the 1997 fiscal year and from 1.8 billion yen to 500 million yen for the 1998 fiscal year. According to the Government, however, these measures were unavoidable in view of the financial crisis and the Okayama Prefectural Government carefully considered a number of factors such as the prevailing socio-economic conditions, critical financial conditions and the need to promote administrative and financial reforms before deciding not to implement in full the Personnel Commission's recommendations.*

402. *The Committee notes that the Personnel Commission is an independent regulatory body set up under the Local Public Service Law to make recommendations concerning wages, working hours and other working conditions as a compensatory measure for the prohibition on the right to strike of local public employees. This personnel commission system follows much the same objectives and functions as the system set up for national public servants in the form of the National Personnel Authority which is regulated under the National Public Service Law.*

403. *At the outset, the Committee considers it appropriate to recall that teachers should have the right to bargain collectively [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 793].*

404. *The Committee notes that, in the present case, while referring to the right of collective bargaining that teachers should enjoy, the complainant organization makes allegations on the system of wage fixing for this category of personnel and on the system of recommendations by the personnel commissions.*

405. *So far as the impartiality of the personnel commissions is concerned, the Committee notes that, according to the complainant, all three members of the Okayama Prefectural Personnel Commission (as well as other local personnel commissions) are appointed by the Okayama Governor with the approval of the Okayama Prefectural Assembly. The candidates for the Personnel Commission are nominated by the personnel section of the Okayama Prefectural Government. Furthermore, during the course of these nominations, there are no procedures which provide for employees' organizations to nominate any such*

candidates, to recommend personnel commission members or submit their own views on the candidates selected. The Government does not contest these observations but confines itself to asserting that members of the personnel commissions are required to be persons of the highest moral standing and integrity, in known sympathy with the principle of democratic and efficient administration, and possessing sound knowledge and judgement concerning personnel administration.

406. *In this regard, the Committee would recall that in mediation and arbitration proceedings it is essential that all the members of the bodies entrusted with such functions should not only be strictly impartial but, if the confidence of both sides on which the successful outcome even of compulsory arbitration really depends is to be gained and maintained, they should also appear to be impartial both to the employers and to the workers concerned [see* ***Digest,*** *op. cit., para. 549]. The Committee has also stated on another occasion that the appointment by the minister of all five members of the Essential Services Arbitration Tribunal calls into question the independence and impartiality of such a tribunal, as well as the confidence of the concerned parties in such a system. The representative organizations of workers and employers should, respectively, be able to select members of the Essential Services Arbitration Tribunal who represent them [see* ***Digest****, op. cit., para. 550]. Finally, the Committee would refer to the views of the Fact-Finding and Conciliation Commission on Freedom of Association concerning persons employed in the public sector in Japan which stated:*

> *The commissions (personnel commissions), with few exceptions, consist of three members each and it would appear from the evidence that no substantive or practical safeguards have been provided to ensure that the members chosen for those commissions possess and are generally recognized to possess the requisite impartiality. As the Committee on Freedom of Association has pointed out, consideration should be given to providing that the composition of these commissions should not be merely impartial but such that their impartiality commands general confidence, and to ensuring that the workers' organizations should have some voice in their appointment. The law provides that all members of each commission are appointed by the head of the local public body with the consent of the local assembly but this arrangement can hardly be accepted as conforming to the recommendations of the Committee [Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning persons employed in the public sector in Japan, para. 2152, ILO* ***Official Bulletin*** *(Special Supplement), Vol. XLIK, No. 1].*

407. *In light of the principles enunciated above and with regard to the issue of the impartiality of the personnel commissions concerned, the Committee would request the Government to take the necessary steps to ensure that: (i) the members of personnel commissions are persons whose impartiality commands general confidence; and (ii) workers' organizations have a meaningful voice in the appointment of the members of these personnel commissions.*

408. *As regards the issue of how far the personnel commissions can be regarded as arbitration bodies which compensate the local public employees for the prohibition on basic trade union rights, the Committee notes the complainant's contentions that the Okayama Prefectural Personnel Commission clearly demonstrated its inability to correct the measures taken by the Okayama Prefectural Government through its decision of 5 August 1998. The complainant contends that, pursuant to the decision of the Okayama Prefectural Government to delay the implementation of the wage increase recommended by the Okayama Prefectural Personnel Commission for the 1997 fiscal year, 999 members of its organization submitted "request statements" to the Personnel Commission in order for it to issue its recommendation once again (a copy of a request statement is reproduced in Annex II). The complainant had believed that the Personnel Commission would once again issue its recommendation to the Okayama Prefectural Government since it had expressed its regret to the Okayama Prefectural Assembly that its recommendation had not been fully*

implemented. Instead, in a decision dated 5 August 1998, the Personnel Commission decided to reject the complainant's request (a copy of the Personnel Commission's decision is reproduced in Annex III). The Government's viewpoint is that the fact that the Personnel Commission rejected this application filed by the complainant does not constitute any ground for claiming that the said system is not functioning to compensate for the restrictions placed on the basic trade union rights of local public employees.

409. *The Committee, for its part, notes that in its decision the Okayama Prefectural Personnel Commission recognizes that the personnel commission recommendation system is maintained as compensation for the restrictions imposed on the trade union rights of public employees and that it is virtually the only means of salary improvement for those public employees who may not be involved in the conclusion of their own salaries. The Personnel Commission further regrets in its decision that the date of commencement of the revised salaries differs from the date set out in its own recommendation, even considering the financial difficulties of the Prefecture. The Committee notes that the Personnel Commission nevertheless decided to reject the complainant's application because:*

> *Although it is without question that a salary recommendation by the Personnel Commission should be fully respected,* ***it is also clear that, in the light of the system of salary recommendation, such a recommendation has no legal power*** *to influence the Governor in his right to propose bills, or the Assembly in its right to vote (see Annex III; emphasis added).*

The Committee notes that the Okayama Prefectural Personnel Commission itself acknowledges that its recommendations are not legally binding upon the parties concerned even if its recommendations are the only means through which public employees may see an improvement in their salaries. The Committee therefore is bound to conclude that, with regard to salaries, working hours and other working conditions, the Personnel Commission does not appear to be an arbitration body but an advisory body. The Committee reached similar conclusions in a previous case concerning Japan [58th Report (Case No. 179), paras. 204-431] wherein it stated that:

> *For this purpose it is necessary to consider the sections of the Local Public Service Law referred to by the Government (see paragraph 246 above). Sections 46-48 of the Local Public Service Law relate, according to the general heading, to the powers of the Personnel Commission with regard to "an appreciation for action on working conditions". Section 46 gives the personnel the right to apply to the Personnel Commission with regard to pay, working hours and other working conditions. Section 47 provides that the Commission must examine the case, pass judgement thereon and "take actions on its own accord with regard to matters within its powers, or, with regard to other matters, make necessary recommendations to the agency of the local public body which has powers over the matter under consideration". Section 48 enables the Commission to fix the rules for its own procedure.*
>
> *It has been made quite clear both in the complaints and by the Government that* ***the fixing of salaries, hours and general conditions of work is a matter over which the local public body has exclusive powers*** *(see paragraph 255 above)* ***and that this is a matter on which the Commission can only make recommendations*** *(see paragraph 246 above). It would appear, therefore, that, so far as these matters are concerned, the Personnel Commission is an advisory and not an arbitral body.*
>
> *Sections 49-51 and 60 of the Local Public Service Law cited in part by the Government (see paragraph 246 above) related to quite another matter. Under the heading of "appeal for review of adverse action"* ***these sections give the Personnel Commission power to give binding decisions in cases in which "a member of the personnel" has been subjected to a disciplinary punishment or other adverse action****.*
>
> *The Committee considers, therefore, that, on the evidence before it and according to the provisions of the Local Public Service Law, the Personnel Commission does not appear to be an arbitration body but an advisory body so far as representations on wages and other conditions of employment are concerned. The Government states that no other arbitration machinery exists or is envisaged.*

410. *The Committee notes from the above that sections 49-51 and 60 of the Local Public Service Law give the Personnel Commission power to give binding decisions in cases in which the local public employees consider that they have been subjected to an adverse action against their will and appeal to the Personnel Commission for review of that action. In view of what the Committee stated earlier on its conclusions about the need to provide for adequate, impartial and speedy conciliation and arbitration proceedings in which the awards are binding on both parties in the event that the right to strike is prohibited in the public service, the Committee considers that personnel commissions should have the power to give binding decisions not only in cases where local public employees have been subjected to a disciplinary punishment or other adverse action (sections 49-51 of the Local Public Service Law) but also with regard to salaries working hours and other working conditions (sections 46-48 of the Local Public Service Law). The Committee accordingly requests the Government to take the appropriate measures to amend the relevant provisions of the Local Public Service Law so that personnel commissions have the power to give binding decisions with regard to salaries, working hours and other working conditions of local public employees. It also requests the Government to keep it informed of developments in this regard and draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case.*

411. *As mentioned earlier by the Committee, in addition to being denied the right to strike, local public employees do not enjoy any right to participate in any negotiating machinery for the determination of their terms and conditions of employment, including wages. The sole compensatory factor for the denial of these rights would appear to be, for the time being, the existence of the Personnel Commission and the benefits that the workers enjoy as a result of the implementation of the recommendations of that Commission to increase wages. The adequacy of this compensatory factor, accordingly, depends on the full and prompt implementation of wage increases recommended by the Personnel Commission. The Committee accordingly can only express its regret that, in the case before it, the recommendations of the Okayama Prefectural Personnel Commission were not fully implemented for two years successively. While fully appreciating that, in times of economic crisis or difficulty, governments may judge it necessary to impose restrictions on the normal process of wage determination, nevertheless, in the present case, where public employees in the non-operational sector (i.e. all national and local public employees other than those employed in public corporations or enterprises) are denied not only the right to strike, but also the right to bargain collectively, it considers it all the more important that the recommendations of the Personnel Commission be fully implemented. In this regard, the Committee takes due note of the Government's assurances that, from now on, the prefectural governments will implement the personnel commissions' recommendations. The Committee therefore expresses the firm hope that future recommendations of the personnel commissions will be fully and promptly implemented.*

412. *Finally, the Committee notes the complainant's demand that it be given the right to bargain collectively including the right to conclude collective agreements in view of the fact that the personnel recommendation system does not serve as adequate compensation for the restrictions placed on its basic trade union rights. The Government points out that employees of prefectural high schools, including members of the Okayama Prefectural High-School Teachers' Union can negotiate with the proper authorities. However, they are obliged to attend to their duties in the public interest as servants of the whole community. Moreover, their salaries and other working conditions are stipulated by by-laws established by the local assembly composed of public representatives. Therefore, they do not have the right to conclude collective agreements and are prohibited from carrying out strikes.*

413. *In this regard, the Committee would recall that similar arguments had been put forward by another Government regarding the special status and responsibility of teachers in society*

to justify restrictions on their basic trade union rights [see 286th, 291st and 294th Reports (Case No. 1629) and 304th 306th, 307th and 311th Reports (Case No. 1865)]. The Committee had emphasized then, as it does now, the importance of teachers being able to exercise freely: (i) the right to organize; and (ii) the right to bargain collectively their terms and conditions of employment, notwithstanding their special status under national law.

414. *Moreover, the Committee has drawn attention to the importance of promoting collective bargaining, as set out in Article 4 of Convention No. 98, in the education sector [see **Digest**, op. cit., para. 804]. Article 4 provides that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations with a view to the regulation of terms and conditions of employment **by means of collective agreements**. Finally as regards public school teachers (including those who are members of the complainant organization) the Committee is of the view 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 [see **Digest**, op. cit., para. 793]. In view of the foregoing, the Committee requests the Government to take appropriate measures to encourage and promote the full development and utilization of machinery for voluntary negotiation with a view to the regulation of terms and conditions of employment by means of collective agreements for public school teachers, in conformity with Articles 4 and 6 of Convention No. 98. It asks the Government to keep it informed of any developments in this regard*

415. *Finally, the Committee notes the various communications concerning the reform of the public service personnel system, whereby the Government explains that the whole system is under consideration (letter of 31 October 2001), that the Cabinet adopted a plan of reform on 25 December 2001 (letter of 6 February 2002) and that, as two other complaints have been presented by other trade unions on this issue, it would rather submit its observations on all these cases at once (letter of 2 May 2002). Considering that the present case may be dealt with independently of the reform of the public service personnel, the Committee will address these issues in the two other complaints concerning specifically and directly said reform.*

The Committee's recommendations

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

(a) The Committee recalls that teachers should have the right to bargain collectively.

(b) So far as the impartiality of the personnel commissions are concerned, the Committee requests the Government to take the necessary steps to ensure that the members of personnel commissions are persons whose impartiality commands general confidence and that workers' organizations have a meaningful voice in the appointment of the members of these commissions; it further requests to be kept informed of developments in this regard.

(c) The Committee requests the Government to take the appropriate measures to amend the relevant provisions of the Local Public Service Law so that personnel commissions have the power to give binding decisions with regard to salaries, working hours and other working conditions of local public

employees. It also requests the Government to keep it informed of developments in this regard and draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case.

(d) The Committee expresses the firm hope that future recommendations of personnel commissions will be fully and promptly implemented.

(e) The Committee requests the Government to take appropriate measures to encourage and promote the full development and utilization of machinery for voluntary negotiation with a view to the regulation of terms and conditions of employment by means of collective agreements for public school teachers, in conformity with Articles 4 and 6 of Convention No. 98. It asks the Government to keep it informed of developments in this regard.

Annex I

Examples provided by the complainant of large-scale and ineffective public spending by the Okayama Prefectural Government

Okayama Airport

Okayama Airport opened with a 2000 metre runway in March 1998 and the runway was extended to 2,500 metres in March 1993. The catchphrase at this extension of the runway was "This extension will make possible international airline flights to Beijing, Hong Kong, Manila, Bangkok and Honolulu." But now the only remaining international airline is the one to Seoul with four flights a week and no more than 100 passengers on one flight.

In spite of this situation, under the slogan "Aim to be the leading airport in western Japan", the Okayama Prefectural Government is extending the runway to 3,000 metres at a cost of as much as 34.7 billion yen. The demand forecast that the number of passengers will be 470,000, about seven times the present number of 70,000 or more per year, is completely unrealistic. In addition, because the Japanese Government ranks Okayama Airport as a third class airport (a local airport), it will pay only 3.5 billion yen of the 34.7 billion yen extension cost. So the burden of the Okayama Prefectural Government will amount to 31.2 billion yen.

Port construction

The Okayama Prefectural Government is now advancing work to construct an artificial island (a base for cargo containers) including two berths with water depths of 12 metres, as a cost of 100 billion yen, at Tamashima in Okayama Prefecture.

But because of the current economic slump, there is no prospect that demand for containers will increase, and bitter competition among existing ports is lowering the utilization ratio of each port. The Japanese Shipowners' Association, a representative body of port users, is taking a negative attitude toward the construction of new port facilities, saying "We don't need deep-water berths. Making a new wharf will only bring about high charges." There are already large port facilities such as Okayama Port, Mizushima Port and Uno Port in Okayama Prefecture, and dozens of large ports (Kobe Port and Hiroshima Port have berths with water depths of 14 metres) in the Seto Inland Sea. So container ports are already in excess of supply.

In addition to the abovementioned artificial island at Tamashima, the Okayama Prefectural Government has a plan to construct another artificial island at Saidaiji, but it is clear that these are not necessary at all.

Expressway construction

The Okayama Prefectural Government has started the construction of the Okayama-Mimasaka Way (an expressway) on a budget of 100 billion yen.

The Okayama Prefectural Government already ranks fifth in expressway construction ratio out of 47 prefectural and city governments throughout Japan. Even if the Okayama-Mimasaka Way is completed, drivers will be able to save at most 15 minutes in the area between Okayama City and Tsuyama City which is expected to be used the most. We cannot help but say that it is a waste of money to pay out as much as 100 billion yen for the convenience of 15 minutes.

Tomada Dam

In spite of strong objections from local residents, the Okayama Prefectural Government is going to construct Tomada Dam in the upper reaches of the Yoshii River in Okustu Town, Tomada County, Okayama Prefecture at a cost of 200 billion yen.

At the beginning of the plan, Tomada Dam was designed to be used for power generation and agricultural water, but later in the high-growth period, the purpose of it was changed to a multi-purpose dam laying stress on industrial water, and further changed to a regional water system laying stress on public water supply. Such a frequent change in the purpose of the Tomada Dam construction in itself reflects the thoughtlessness of the plan. That is to say, the construction of the dam is not a real necessity.

Even as to the present purpose of the dam as a regional water system, because as much as 123,000 tons of water out of 400,000 tons of estimated water supply is in excess, the Okayama Prefectural Government is paying 16.4 billion yen per year to the Okayama Prefectural Regional Water Service Centre as advance money. The Okayama Prefectural Government will have to send water to the municipal governments on the border of Hiroshima Prefecture far away from Tomada Dam in order to sell the planned volume of water. Moreover, it will take another 100 billion yen to construct such a long waterline.

Kibi Plateau City

Kibi Plateau City was constructed at a cost of 70 billion yen in its first stage to make a city with a population of 30,000, destroying the precious natural environment of Kibi Plateau, but the present number of residents in Kibi Plateau City is only 1,600. In regards to building lots which have been put on sale recently, only 46 lots were bought out of 420 lots.

In spite of this situation, the Okayama Prefectural Government is going to start its second stage of construction work at twice the cost of its first stage.

Kurashiki Tivoli Park

“Tivoli Park” was originally planned to be constructed in Okayama City under the sponsorship of Mr. Nagano, then Governor of Okayama, but met with strong opposition from Okayama citizens. At last it was constructed in Kurashiki City.

Though Tivoli Park is only a leisure facility and essentially not a business for a municipal government to be engaged in, the Okayama Prefectural Government had already paid out 40 billion yen and paid another 4.4 billion yen in 1999.

Annex II

A "request statement" submitted by the complainant to the Okayama Prefectural Personnel Commission to reissue its recommendation once again to the Okayama Prefectural Government

Petition for action

I hereby request, in accordance with section 46 of the Local Public Service Law, that actions be taken pertaining to working conditions as stated below.

Record

1. Petitioner

Title of position: Teacher

Name:

Address:

Date of birth: 6 July 1938

Place of employment: Okayama School for Handicapped Children

2. Actions requested

That the salary of the petitioner be revised as indicated below:

- Let the monthly salary for the position of teacher in the grade _____ and pay step _____ be 479,700 yen retroactively to April (month) 1997.
- Let the monthly salary for the position of teacher in the grade _____ and pay step _____ be _____ yen retroactively to _____ (month) 1997.
- Let the monthly salary for the position of teacher in the grade _____ and pay step _____ be _____ yen retroactively to _____ (month) 1997.

3. Reasons for petition for action

The reference for determining the wages of local public employees is provided in section 24 of the Local Public Service Law. Cost of living, clearly indicated to be a part of such reference by the result of the investigation conducted by your esteemed Personnel Commission, has undoubtedly been increasing. In addition, the salaries of those employed by private enterprises within the Prefecture surpass the standard of the salaries of those employed by the Prefecture by 0.98 per cent, as evident from your esteemed Commission's investigation. Therefore, your esteemed Commission recommended the prefectural authorities and the Chairperson of the Prefectural Assembly to raise the salaries of employees of the Prefecture by 0.98 per cent retroactively to April 1997. However, the prefectural authorities unilaterally concluded to postpone implementation of this recommendation for nine months until 1 January 1998 on the basis of "financial difficulties". This constitutes an unlawful act infringing on your esteemed Commission's rights as provided in paragraph 1 of section 8, section 25 and section 26 of the Local Public Service Law. Further, implementation of such a recommendation, where the recommendation is made as a "compensational action" for the limitations of the basic labour rights of public employees, to the full extent thereof, is a matter of course in advanced nations, as is often pointed out by the ILO.

Therefore, in the light of the principle of adaptation to general social conditions, as provided in section 14 of the Local Public Service Law, it is only natural to raise the petitioner's monthly salaries.

4. Description of the bargaining by petitioner or employees' organization

The employees' organization (Okayama Prefectural High-School Teachers' Union, Executive Committee Chairperson: Takashi Uchida), of which the petitioners are members, conducted bargaining with the Okayama Prefectural Board of Education for the implementation of the recommendation by your esteemed Personnel Commission. However, the prefectural authorities showed no intention of changing their position, in which they claimed the date of implementation of the recommendation should be delayed. As such, the bargaining broke down and has not recommenced since 1 December of last year.

5. Attachments

_____ (month) _____ (day), 1998

Name of the petitioner: _____ (seal here)

(Submitted to:) The Personnel Commission of Okayama Prefecture

(Attention:) Mr. Tsutomu Yokota, Chairperson

Annex III

Decision by the Okayama Prefectural Personnel Commission to reject the "request statement" submitted by the complainant

Petitioner: High-school teachers in Okayama Prefecture, 999 persons in all

With reference to the petition for action received on 17 June 1998, which was submitted by the abovementioned party concerning their employment conditions, the Personnel Commission of Okayama Prefecture has made its decision as follows.

Decision

The abovementioned petition for action is unacceptable.

Reasons

1. The aim of the petition

The petitioners have requested, with reference to the grades and pay steps of salaries that were granted them in and after April 1997, to revise, retroactively to April 1997 or any month thereafter in which a salary raise was granted, the salaries to corresponding values in the salary schedule provided in the 1997 Recommendation of Salaries which the Committee had presented to the Chairperson of the Prefectural Assembly and to the Governor.

The petitioners assert the following as the reasons for the petition:

1. that the unilateral decision by the prefectural authorities to postpone implementation of the recommendation for nine months until January 1998 on the basis of financial difficulties was an unlawful act infringing on the rights of the Personnel Commission;

2. that an implementation of a recommendation by the Personnel Commission, where such recommendation is made as a "compensational action" for the limitations of the basic labour

rights of public employees, to the full extent thereof, is a matter of course in advanced nations, as is often pointed out by the ILO; and

3. that, in the light of the principle of adaptation to general social conditions, it is only natural to raise the petitioners' monthly salaries according to the recommendation.

2. Decision of the Commission

1. The Commission, having surveyed the actual salaries of prefectural employees and those of private enterprises within the Prefecture, the cost of living, and the National Personnel Authority's recommendation on salaries, and having considered the matter comprehensively on the basis of provisions in the Local Public Service Law (Law No. 261, 1950), presented its report on 3 October 1997 to the Chairperson of the Prefectural Assembly and to the Governor concerning the salaries of Okayama prefectural employees in regular service, and recommended that their salaries be raised by 0.98 per cent on the average retroactively to April 1997.

2. The prefectural authorities, in response to the recommendation, duly recognized and considered the importance of the system of salary recommendation and, as a result of prudent discussions in the light of the critical financial condition of the Prefecture, presented a Bill to revise the Remuneration Law on 17 December 1997, in which a revised salary scheme was recommended to commence on 1 January 1998 as an emergency evasion measure to avoid the financial crisis the Prefecture was faced with at the time.

   Upon receipt of the Bill, the Prefectural Assembly underwent deliberations based upon the recommendation by the Commission and conducted hearings with the Commission, and reached an approval thereof as drafted.

3. The Commission, recognizing that the system of salary recommendation is maintained as a compensational action for the limitations of the basic labour rights of public employees, and that it is virtually the only measure of salary improvement for those public employees who may not be involved in the conclusion of their own salaries, requested that the recommendation of salaries be respected and that the content thereof be fully implemented. The Commission regrets that the date of commencement of the revised salaries differed from the Commission's recommendation, even considering the financial difficulties of the Prefecture.

   However, the Governor of the Prefecture received the salary recommendation, prepared a bill to revise the law based on a comprehensive judgement encompassing various conditions relevant to the setting of remuneration of public employees as stated in the Local Public Service Law, with due appreciation of the importance of the salary recommendation system, and presented the Bill to the Prefectural Assembly where a final decision was reached taking general conditions and circumstances into consideration.

   Although it is without question that a salary recommendation by the Personnel Commission should be fully respected, it is also clear that, in the light of the system of salary recommendations, such a recommendation has no legal power to influence the Governor in his right to propose bills, or the Assembly in its right to vote. In this sense, it does not constitute an unlawful act, as asserted by the petitioners, if the outcome of the salary revision, concluded via the above-explained process, did not agree with the salary recommendation presented by the Committee; rather, it was inevitable.

   Therefore, while the aim of the petitioners is duly understandable, the petition for action is unacceptable.

   Thus the judgement stands as stated in the Decision above.

5 August 1998.

Personal Committee of Okayama Prefecture,
Tsutomu Yokota, Committee Chairperson,
Hiroshi Fukuda, Committee member,
Jungo Sugita, Committee member.

CASE NO. 2139

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

Complaint against the Government of Japan presented by the National Confederation of Trade Unions (Zenroren)

Allegations: Anti-union discrimination preventing a union from fulfilling its duty of representation

417. The National Confederation of Trade Unions (Zenroren) presented a complaint of violations of freedom of association against the Government of Japan in communications dated 19 June and 19 July 2001.

418. The Government forwarded its observations in a communication dated 31 January 2002.

419. Japan 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

420. In its communication of 19 June 2001, Zenroren explains that it is one of the Japanese national trade union centres. Established in 1989, it is composed of 22 national industrial federations/unions and 47 local federations, with a total membership of 1.5 million members.

421. Since Zenroren's inauguration, the Government has nominated only candidates recommended by unions affiliated to the Japanese Trade Union Confederation (Rengo) as worker members of the Central Labour Relations Commission (CLRC) which are appointed by the Prime Minister, and of other national tripartite councils and commissions, while excluding those recommended by Zenroren-affiliated unions. Similar practices have been adopted for the nomination of worker members to local prefectural labour relations commissions (PLRCs), which are appointed by the governors of prefectures, and to local tripartite councils and commissions. As a result, with a few exceptions, Zenroren candidates have been excluded nationwide from these bodies. Furthermore, when two additional worker members were appointed in April 2001 to the CLRC following the creation of independent administrative institutions (IAIs), a candidate recommended by one of Zenroren affiliates (Kokkororen) was not nominated, and the candidates recommended by two Rengo affiliates (Zennorin and Zenrinya) were chosen; as a result, the right to organize and to conclude collective agreements of IAIs' workers, members of Zenroren and Kokkororen have been violated.

422. As regards appointments to the CLRC, while Rengo and Zenroren have 7,314,000 and 1,036,000 members respectively, all 15 member workers of the CLRC are Rengo members and none is a Zenroren member. In PLRCs, 257 member workers come from Rengo ranks and only three from Zenroren, in spite of the fact that the latter has local centres in all 47 prefectures.

423. As regards appointments to various governmental tripartite bodies, Rengo is represented on 78 out of 151 tripartite councils, and representatives of independent unions are appointed to eight such bodies: for example a union member from the construction sector

(Zenkensoren) has been appointed to the Central Construction Industry Council. By contrast, not a single Zenroren member is nominated to any of these tripartite bodies.

424. Concerning the situation in independent administrative institutions (IAIs), Zenroren explains that the Government, as part of the ongoing administrative reform, has created two types of such bodies: "non-specified IAIs" and "specified IAIs". Employees in the former have the right to organize, to bargain collectively and the right to strike. While employees in the latter have the right to organize and to bargain collectively, they do not have the right to strike and are subject to the compulsory arbitration system through the CLRC, which the Government considers as a compensatory measure for the denial of the right to strike. The Government thus decided to increase the number of workers' representatives on the CLRC. With the support of 24 unions, Zenroren recommended Mr. Kumagai (vice-president of Zenroren and member of Kokkororen's Central Executive Committee); a Rengo affiliate (Zenteishin) recommended three other workers as joint Rengo candidates. The membership in specified IAIs stands approximately as follows: Kokkororen, 4,500; independent unions, 1,000 (850 of whom recommended Mr. Kumagai); Rengo, 6,500. Again in this case, and although numbers are not significantly different, Mr. Kumagai was not selected, without any reasons being given by the Ministry of Labour, other than "the selection of CLRC members is a matter at the discretion of the administration". That Mr. Kumagai was a victim of discrimination and not selected as worker member of the CLRC can only be explained by the fact that the Government dislikes the activities of Zenroren and its affiliate Kokkororen.

425. The CLRC can be considered as a body responsible for granting remedy to victims of unfair labour practices within IAIs. However, those organizations whose representatives are excluded from the CLRC without any legitimate reason cannot trust it as being a reliable machinery for the protection of their right to organize. Moreover, while the Government considers the CLRC as a compensatory mechanism for the denial of the right to strike, the complainant organization points out that under Article 8 of Convention No. 151 (not ratified by Japan), the settlement of disputes "shall be sought … through negotiations between the parties or through independent and impartial machinery … established in such a manner as to ensure the confidence of the parties involved" and that the Committee of Experts has emphasized in its 1996 General Survey that appropriate measures should be taken to compensate restrictions of the right to strike. For the CLRC compulsory arbitration system to function effectively, it is necessary that the unions' demands be reflected correctly. For instance, the demands regarding wages differ in nature between Zenroren and Rengo affiliates. As a result of the monopolization of Rengo affiliates on the CLRC structure, some workers feel that they cannot expect much the CLRC compulsory arbitration system, which should compensate them for the restriction of fundamental labour rights. This discriminatory selection of workers' representatives constitutes a serious violation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which threatens the right of workers to organize themselves and conclude collective agreements. In addition, by not presenting the reasons for the non-selection of Mr. Kumagai, the Government has failed to fulfil in good faith the obligations it has accepted as an ILO Member by ratifying the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

426. Zenroren adds that the Government's approach to selecting worker members has changed through the years, in three stages. They were initially chosen in proportion of union membership by groups of tendencies and industries, thus respecting the legislator's original intention, notably as reflected in the procedures for appointment of members of prefectural labour relations commissions (Notice No. 54 of 29 July 1949). Subsequently, proportional nominations were made according to the four existing labour organizations (Sohyo, Domei, Churitsu-Rohen and Shin-Sanbetsu), to the exclusion of others. Finally, the Government's attitude changed dramatically after the foundation of Zenroren and

Rengo; since November 1989, the Government has nominated exclusively Rengo members and excluded Zenroren members. Various interventions in Parliament did not change the situation, and numerous lawsuits challenging this discriminatory treatment were dismissed by high courts and district courts. This shows that Japan's laws have not matured yet and that anti-union discrimination by the Government is rampant, contrary to Article 8 of Convention No. 87, which provides that "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention".

427. As regards the nomination of worker members to different tripartite councils and commissions, Zenroren has requested for ten years, during all spring negotiations, to be included in these bodies, particularly the Central Minimum Wages Council and the Examination Committee of Social Insurance, but its demands have been consistently rejected.

428. In its communication of 19 July 2001, Zenroren reiterates some of its previous arguments and provides: (a) statistical data on the number of complaints of unfair labour practices, the number and percentages of complaints presented to the Tokyo Labour Relations Commission, and the number and percentages of cases of labour dispute arbitration, broken down by confederations; (b) information on the nature of duties, qualifications and performance expected from worker members sitting on labour relations commissions; and (c) excerpts from a debate on this subject in Parliament between the Government and an opposition MP.

429. The complainant organization concludes that the ILO should point out the failure of the Government of Japan to implement its obligations arising out of the ratification of Conventions Nos. 87 and 98, and recommend that it correct the acts of discrimination against Zenroren by nominating worker members to the Central Labour Relations Commission, the prefectural labour relations commissions, and the other governmental tripartite bodies in proportion to the membership by trade union currents and groups, including in the context of the CLRC re-election which will take place in October 2002.

B. The Government's reply

430. In its communication of 31 January 2002, the Government explains the system of labour relations commissions established under the Trade Union Law. The Central Labour Relations Commission (CLRC) is a national organization mandated to: (1) examine cases of unfair labour practices, and labour disputes in national enterprises and specified independent administrative institutions (specified IAIs); (2) re-examine remedy decisions issued by prefectural labour relations commissions (PLRCs) regarding unfair labour practices in private companies and local public enterprises. The CLRC and PLRCs are independent administrative bodies which exercise the powers prescribed in the various applicable laws, without any control from the minister in charge nor from the governors of prefectures. The legislation provides rules for the composition of commissions, procedures for the selection of members and describes their duties.

431. Labour relations commissions are composed in equal numbers of persons representing employers, workers and the public. Employer and worker members are appointed among those recommended, respectively, by employers' and workers' organizations. This aims at ensuring the appointment of candidates familiar in each field and enables the selection of persons suitable to represent the interests of workers and employers in general. However, this system does not seek to represent particular interests of the organization which made the recommendation. Once a person is selected as worker member, he must act in the interest of workers in general, regardless of the opinions or interests of the trade union or affiliate to which he belongs, or which nominated him. The complainant's views in this respect are based on a misunderstanding of the role of labour relations commissions, and

on the false assumption that worker members should advocate the individual interests of workers in individual cases. In fact, while worker members do reflect the interest of workers when examining cases of unfair labour practices, the "interests" in question here are not the individual interests of the trade union lodging the complaint, but those of workers in general. In other words, worker members are expected to act as specialists in labour affairs, impartial to either side or tendency.

432. Concerning the appointment of members of the CLRC, the Prime Minister, upon recommendation by trade unions, appoints persons suitable to represent the interests of workers in general, taking various factors into consideration. These members then exercise their duties with that general interest in mind, and neither for the interests of the specific trade union which recommended them, nor the interests of an individual worker. The courts have confirmed this principle. As regards the appointments made in April 2001 to the CLRC, the Government states that cases concerning national enterprises and those concerning other enterprises are treated by different members appointed on an ad hoc basis, because the rights and circumstances differ; the objective is to manage cases rapidly and properly by designating members who are well informed of the labour relations framework in each type of enterprise. SIAIs fall under the competence of the CLRC because their labour relations are considered similar to those of national enterprises. When SIAIs were established in April 2001, the number of CLRC worker members was increased by two; these two new members deal not only with cases concerning SIAIs but also with those concerning national enterprises. Therefore, the complainant's allegation is again based on the false assumption that these two new members manage only cases concerning SIAIs.

433. The Government states that members of PLRCs are appointed by the governor of each prefecture, at his own discretion and without intervention from the Prime Minister or the Central Government. The governors' competence has even been strengthened by Law No. 87 of 2000 on decentralization reform. When giving figures for PLRCs, the complainant merely added the numbers of worker members of PLRCs all over Japan, and based its complaint on the general tendency (incidentally, a person recommended by Zenroren was recently appointed in the Prefecture of Nagano, which brings their total to four, not three as mentioned in the complaint). In Tokyo, which has the largest number of worker members in Japan, three members out of 13 are appointed on recommendations made by unions other than Rengo or Zenroren.

434. As regards the complainant's arguments based on the procedures for appointment of members of prefectural labour relations commissions (Notice 54 of 29 July 1949), the Government points out that this notice was issued by the Ministry of Labour to provide governors with an interpretation of the law, explaining the various factors to be taken into consideration for the appointment of worker members; it is not an order given to governors to appoint PLRCs' worker members based on this standard. Governors are independent officials, elected locally, to whom the Central Government can only explain the Trade Union Law; it cannot give them orders or control their decisions.

435. With respect to the alleged failure to appoint Zenroren candidates to various councils and commissions, the Government states that councils are established by law or ordinance to deal with issues that require specialized knowledge. For those councils dealing with labour-related issues, the legislation provides that they shall consist of persons representing the interests of workers, employers and the public; worker representatives are appointed by taking into account the specific objects of each council. In some councils, trade union members may be appointed not by reason of their affiliation, but rather because of their knowledge and experience: for instance, the member of the Central Construction Industry Council mentioned by the complainant was appointed not as representative of workers' interests, but as a person having the appropriate knowledge and experience. Therefore, the

complainant's argument based on the trend in the total number of members of various councils is inappropriate.

436. As regards the complainant's argument based on the respective memberships, the Government already explained that the number of members in each workers' organization is only part of the factors taken into account, but not the only criterion, when appointing worker members to labour relations commissions and other councils. Even then, the figure quoted from the Trade Union Basic Survey is not appropriate because it incorporates public employees in the non-operational sector, whose disputes are not covered by the Labour Relations Commission. According to the Government, the respective memberships in IAIs are approximately as follows: Rengo-affiliated unions, 6,800; Zenroren-affiliated unions, 3,800; other unions, 1,300. The Government adds that the memberships of Rengo and Zenroren-affiliated unions are respectively: 260,000 and 5,950 in national enterprises; and 5,756,952 and 602,833 in other enterprises.

437. Concerning the practical effects of non-appointments of Zenroren candidates, the Government states that the fact that a person recommended by a certain trade union is not appointed to a labour relations commission does not mean that complaints for unfair labour practices submitted by that union will not be entertained; the workers' rights in this respect are protected irrespective of their affiliation. In the CLRC procedures, no trade union has ever suffered injustice because of its affiliation to Zenroren. As regards the wage decision for the year 2001 concerning national enterprises, both Rengo and Zenroren-affiliated unions applied for mediation; that mediation being unsuccessful, an arbitration award was issued, which granted an amount of ¥60 in addition to the standard 0.05 per cent wage increase. The award was issued and applied uniformly for both Rengo and Zenroren-affiliated unions.

438. The Government concludes as follows:

– as regards the appointment of worker members to the CLRC, in accordance with the Trade Union Law, the Prime Minister appointed competent persons to represent the general interest of workers, based on trade unions' recommendations, by taking various factors into consideration; these appointments were fair and there was no violation of Conventions Nos. 87 and 98. In future, the organizational situation of each trade union will be taken into account as one factor, but future appointments cannot be predicted;

– as regards the appointment of worker members to PLRCs, the Government declares that the governors acted in accordance with their mandate and in conformity with the provisions of the Trade Union Law, and that these appointments were made appropriately;

– as regards the appointment of members to various councils, where the law provided that workers' representatives must sit on a certain council, competent persons were appointed in the light of the objects of that body, by taking into account various factors. In future, the Government will continue to appoint members properly on that basis; it is however impossible to predict the affiliations of persons who will be so appointed in the future.

C. The Committee's conclusions

439. *The Committee notes that this complaint concerns allegations by the National Confederation of Trade Unions (Zenroren) that the central and local authorities gave preferential treatment to another workers' organization (Rengo) by appointing systematically the latter's nominees as worker members of the Central Labour Relations*

Commission, the prefectural labour relations commissions and various tripartite local and central councils and commissions, thereby practically excluding Zenroren candidates from these bodies, in spite of the fact that it represents a large number of workers. The complainant alleges that in so doing, the Government acted in a discriminatory fashion, prevented it from fulfilling its representational duties, and that its members' rights to organize and bargain collectively have been violated. The complainant further alleges that some workers might lose confidence in these bodies, whose functions include adjudicating unfair labour practices at various levels, but where Zenroren nominees are almost absent due to the preferential treatment afforded to Rengo candidates by the Government.

440. *The Committee notes that the Government replies in essence: that membership is only one of the factors to be taken into account when making such appointments; that once appointed, worker members act in the general interest of all workers, irrespective of their affiliation; and that, in any event, no trade union or worker ever suffered injustice in CLRC procedures because of their affiliation to Zenroren.*

441. *The Committee observes that no evidence has been adduced to substantiate the alleged negative consequences that might have been experienced by Zenroren, its affiliated organizations, or their individual members or representatives. The statistics submitted by the complainant on the number of unfair labour practices complaints, broken down by confederation, are not conclusive in this regard. In the one specific and concrete instance mentioned (the wage decision for the year 2001 concerning national enterprises) mediation was requested by Rengo and Zenroren and the supplementary arbitration award was applied uniformly to both. On the basis of evidence submitted, this aspect of the complaint therefore fails.*

442. *As regards the respective memberships of Rengo and Zenroren, in spite of the sometimes contradictory statements made by the parties (which are probably not deliberate but may be due more to the fact that their figures are based on different data and calculations) the Committee observes that while Rengo clearly has a much larger membership, Zenroren, just as clearly, was chosen by a sizeable number of workers to represent their interests. And the evidence shows an obvious imbalance in the numbers of Rengo and Zenroren worker members appointed to the Central Labour Relations Commission (all 15 member workers come from Rengo ranks), the prefectural labour relations commissions (256 worker members are from Rengo and four only from Zenroren) and various tripartite local and central councils and commissions (Rengo is represented on 78 of 151 councils; Zenroren has no representative).*

443. *The Committee notes that the Government does not deny that an imbalance exists, but justifies it on the grounds that membership is only one of the factors to be taken into account for such nominations and that, once appointed, worker members represent the general interest of workers irrespective of affiliation. There lies the crux of the matter. The fact that a workers' organization is debarred from membership of, or seriously under-represented on joint committees does not necessarily imply infringement of the trade union rights of that organization, but for there to be no infringement, the reason for such debarment or under-representation should lie in its non-representative character, determined by objective criteria [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 1996, para. 946].*

444. *The bodies whose composition is challenged in this instance exercise extremely important functions from a labour relations perspective. It is therefore of the utmost importance that they gain and maintain the confidence of those workers whose rights they are called to arbitrate. The Committee appreciates the Government's arguments above, but emphasizes that whilst the principles of freedom of association do not require that there be an absolute proportional representation (which might prove impossible, and indeed is not advisable*

due to the risks of excessive representational fragmentation) the authorities should at the very least make some allowance to recognize the plurality of trade unions, reflect the choice of workers, and demonstrate in practice that fair and reasonable efforts are made to treat all representative workers' organizations on an equal footing. The Committee recalls that when setting up joint committees dealing with matters affecting the interests of workers, governments should make appropriate provision for the representation of different sections of the trade union movement having a substantial interest in the questions at issue [see ***Digest****, op. cit., para. 944] and 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****, op. cit., para. 943].*

445. *The Committee recalls that when a government can grant an advantage to one particular organization, there is a risk, even if such is not the government's intention, that one trade union will be placed at an unfair advantage or disadvantage in relation to the others, which would thereby constitute an act of discrimination. More precisely, by giving preferential treatment to a given organization, a government may directly or indirectly influence the choice of workers regarding the organization to which they intend to belong, since they will undeniably want to belong to the union best able to serve them, even if their natural preference would have led them to join another organization for occupational, religious, political or other reasons [see* ***Digest****, op. cit., para. 303]. In addition, a government which deliberately acts in this manner violates the principle laid down in Convention No. 87 that public authorities shall refrain from any interference which would restrict the rights provided for in the Convention or impede their lawful exercise; more indirectly, it would also violate the principle that the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention [see* ***Digest****, op. cit., para. 304].*

446. *The Committee notes with interest that the Government stated in its concluding remarks that, although it is impossible to predict future appointments, the organizational situation of each trade union will be taken into account as one factor. The Committee strongly encourages the Government to pursue this avenue and deepen its reflection in that direction, preferably on the basis of tripartite consultations that would include all representative organizations. The Committee requests the Government to take the above principles into account when embarking in the next rounds of appointments to labour commissions and councils, including the October 2002 exercise at the CLRC, with a view to restoring the confidence of all workers in the fairness of the labour relations commissions system. It requests the Government to keep it informed of developments in this regard.*

The Committee's recommendation

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

> ***The Committee requests the Government to take appropriate measures, based on freedom of association principles regarding the necessity to afford fair and equal treatment to all representative trade union organizations, with a view to restoring the confidence of all workers in the fairness of the composition of labour relations commissions and other councils. It requests the Government to keep it informed of developments in this regard.***

CASE NO. 2124

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

Complaint against the Government of Lebanon presented by — the Federation of Road Transport Taxi Drivers' Trade Unions and — the Professional Federation of Chemical Industry Workers

Allegations: Interference by the administrative authorities in trade union affairs in favour of one faction

448. This complaint is contained in a joint communication from the Federation of Road Transport Taxi Drivers' Trade Unions and the Professional Federation of Chemical Industry Workers, dated 29 March 2001.

449. The Government sent its observations in a communication dated 4 January 2002.

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

A. The complainants' allegations

451. In their communication of 29 March 2001, the Federation of Road Transport Taxi Drivers' Trade Unions and the Professional Federation of Chemical Industry Workers explain that on 21 February 2001, some members of the Executive Council of the General Labour Confederation (CGTL) requested the Ministry of Labour to set a date for the election of a new Bureau for the Confederation. An authorization for holding these early elections (the mandate of the previous Bureau was not supposed to end until two-and-a-half years after 21 February) was granted by the Ministry of Labour through Decision No. 24/1 (of 1 March), violating several articles of the internal rules and regulations of the Confederation.

452. Pursuant to article 21 of CGTL rules, the Bureau's mandate, renewed one-and-a-half years ago, lasts for four years. Furthermore, in accordance with article 22 of the CGTL rules, only the President of the Confederation has the right to chair and convene meetings of the Executive Council, the Bureau and the General Conference (…), in consultation with the Secretary-General, who, together with the President, signs statements and correspondence. In spite of this, the request to hold elections was made by certain members of the Bureau, none of whom were competent to make such a request, and the previous Bureau was not duly convened to take the necessary decision for such a step. Lastly, the provisions of article 23 of the rules, which state that a member of the Bureau can only be removed from office if he or she is absent without a legitimate excuse on three consecutive or five separate occasions during a single year, or through resignation or decease, were ignored by the Bureau when it decided to dissolve itself.

453. Thus, since the requested elections were eventually held on 15 March 2001, and won by the dissident faction, the previous Bureau alleges that the elections and results thereof are null and void.

454. The complainants add that, consequently, they made appeals for the annulment of Decision No. 24/1 to the Council of State as well as to the Ministry of Labour, and that they will make further appeals to the competent judicial authorities.

B. The Government's reply

455. In a communication of 4 January 2002, the Government contends that none of the anomalies alleged by the complainants applied to the contested elections, since they were held in accordance with procedures and the internal rules of the General Labour Confederation. The Government attaches for information the decisions issued by the Council of State dismissing the complainants' allegations.

456. The Council of State, after examining the appeal seeking to defer implementation of Decision No. 24/1, which granted an authorization for early elections to be held, ruled that a deferral was not justified. None of the evidence presented by the complainants to the Council of State, a judicial body, proved that the decision subject to the appeal "would cause serious prejudice to the complainant or that there were serious and important grounds for appeal". Furthermore, the decision is fully justified from a legal perspective, since it aims at protecting the public interest by preventing an electoral delay that might lead to serious disturbances within the Confederation. The Council of State thus confirmed the validity of the elections and the legitimacy of their results.

C. The Committee's conclusions

457. *The Committee notes that this case concerns alleged interference by the public authorities in the internal affairs of the General Labour Confederation. It notes in particular that, according to the complainants, the Ministry of Labour granted an authorization for early elections of the trade union Bureau to be held, in violation of the rules and constitution of the Confederation, and that these elections were won by a dissident faction of the trade union. The Committee further notes that the complainants' appeal seeking to defer implementation of the authorization was rejected by the Council of State, which, instead of issuing judgement on the legality of holding the elections, made its decision on the basis of the electoral process itself, thereby confirming the election results.*

458. *Noting that this case relates to disputes between two rival factions within the same trade union organization, the Committee indicates first of all that it is not competent to make recommendations on internal dissensions within a trade union organization, so long as the Government did not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organization [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 965].*

459. *The Committee recalls that at its November 1997 meeting [308th Report, paras. 501-585] it examined a previous case involving Lebanon (No. 1920), in which the complainant denounced, inter alia, the Government's promulgation of Decree No. 8275 of 19 April 1996, which empowered the Government to intervene, in certain circumstances, to set the date of trade union elections. The Committee had specifically recalled that excessively detailed government regulation of union elections may be regarded as a limitation of the right of trade unions to elect their own representatives freely.*

460. *Noting further that, in this case, in Decision No. 24/1 of 1 March 2001, the Government authorized the dissident faction of the CGTL Bureau to hold early elections two-and-a-half years before the end of the mandate of the previous, duly established, Bureau, the Committee reminds the Government that respect for the principles of freedom of association requires that public authorities exercise great restraint in relation to*

intervention in the internal affairs of trade unions and that it should not do anything which might seem to favour one group within a union at the expense of another [see ***Digest****, op. cit., para. 761].*

461. *Noting finally that the complainants appealed to the Council of State to defer implementation of Decision No. 24/1, and that the Council of State rejected their appeal on the grounds that the contested Decision did not cause them serious prejudice and that there were no serious or important grounds for the appeal, without issuing judgement on the alleged violation of the constitution and rules, the Committee considers that the rejection of the appeal effectively endorses the alleged interference of the authorities in trade union affairs.*

462. *Under these circumstances, the Committee reminds the Government, as it already did in Case No. 1920, that trade union elections should be held in accordance with the procedures and modalities for electing trade union leaders freely established in union constitutions, without interference from public authorities. Noting that, in this case, the interference of the authorities was based on provisions that are contrary to freedom of association principles, giving the Ministry of Labour the power to authorize and confirm trade union elections, the Committee requests the Government to ensure that the principles of non-interference by the authorities in the internal affairs of trade unions are respected and reflected in national legislation, so that in future administrative intervention in a manner which might affect the course of trade union elections may be avoided, from the moment elections are called until their results are announced. The Committee therefore requests the Government to avoid having recourse to decrees allowing interference by the authorities. It requests the Government to keep it informed of any steps taken in this regard.*

The Committee's recommendations

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

(a) The Committee reminds the Government that respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions and that they should not do anything which might seem to favour one group within a union at the expense of another.

(b) The Committee requests the Government to ensure that the principles of non-interference by the authorities in the internal affairs of trade unions are respected and reflected in national legislation, so that in future administrative intervention in a manner which might affect the course of trade union elections may be avoided, from the moment elections are called until their results are announced.

(c) The Committee requests the Government to avoid having recourse to decrees allowing interference by the authorities.

(d) The Committee requests the Government to keep it informed of any steps taken in this regard.

CASE NO. 2082

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

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

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

464. The Committee already examined the substance of this case at its May-June 2001 meeting, when it presented an interim report to the Governing Body. [See 325th Report, paras. 433-447, approved by the Governing Body at its 281st Session (June 2001).] The Government provided additional information in its communications dated 21 September 2001, and 5 February and 6 May 2002.

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

A. Previous examination of the case

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

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

B. The Government's new reply

467. In its communication dated 21 September 2001, the Government states that, as part of the efforts of the Department of Labour to settle disputes and promote social dialogue, the National Commission of Inquiry and Conciliation convened a meeting on 19 July 2001 in an attempt to bring the parties to the dispute closer to an agreement. However, the Oulmès company did not attend the meeting and rejected all the Commission's proposals for an amicable settlement, preferring that the workers involved in the dispute take their case to the courts.

468. In addition, in a communication dated 5 February 2002, the Government forwards documents related to the strikers' takeover of the workplace at the outset of the dispute, and in particular:

– a copy of the company lawyer's request to the court of first instance to appoint a bailiff to carry out an official verification; and

– a copy of the official verification report by the bailiff.

The bailiff's report notes that the striking workers had put up shelters next to the factory warehouse and that a group of workers had taken up a position in front of the company's outer gate. The bailiff also recorded statements by workers alleging that they had been threatened by the workers who had occupied the factory premises.

469. Finally, in a recent communication of 6 May 2002, the Government transmitted a copy of a letter from the Oulmès company which explains that 20 persons were hired, from March 2000 to February 2002, with a view to improving productivity and quality and that, unfortunately, people living in the area of the enterprise did not have the required qualifications.

C. The Committee's conclusions

470. *The Committee recalls that this case concerns various incidents, in particular a police intervention and the arrests and sentencing of trade unionists during a labour dispute in a private company. The Committee had already pointed out in this respect several contradictions between the versions of the complainant and the Government as regards respective responsibilities during this dispute, in particular as concerns the police intervention and the company's use of labour from outside the enterprise during the strike. Furthermore, the Committee had noted that the Government referred to a judicial decision justifying the police intervention without giving further details about this decision. In these circumstances, the Committee had considered itself obliged to request additional information on the allegations, including the matters noted above, both from the Government, after consultation with the company concerned, and from the complainant.*

471. *The Committee notes with regret that, despite its request, the Government has only sent a bailiff's report certifying the sit-in held by the striking workers but has not forwarded the judicial decision justifying the police intervention in February 2000. The Committee also regrets that the complainant has not provided any additional information on this case.*

472. *In these circumstances, the Committee would like first of all to make several preliminary remarks. The Committee notes with concern that in the last five years, seven complaints have been presented against the Government of Morocco (Cases Nos. 1877, 2000, 2048, 2055, 2082, 2109, 2164). Several of these complaints concern the arrest or dismissal of trade unionists following strikes, as well as police intervention in labour disputes. On a number of occasions, as in the present case, while the workers alleged that acts of violence had been committed against them by the police, the Government asserted that members of the police force had been injured by striking workers.*

473. *The Committee deplores that, in many of these cases, it had not been possible to find a peaceful solution to the collective labour disputes and that the Government considered it necessary to have recourse to police intervention which, in the Committee's opinion, is not conducive to harmonious labour relations. This situation would appear to reveal a lack of sufficient and effective machinery to enable solutions to be rapidly found to this type of dispute. The Committee therefore considers that it would be desirable for the Government to examine, with the social partners, the possibility of establishing an effective system for the settlement of collective labour disputes. It underlines that the technical assistance of the Office is at the Government's disposal in this respect.*

474. *In the present case, the Committee takes note of the declaration of the Government according to which the enterprise had not attended the meeting convened by the National Commission of Inquiry and Conciliation aimed at bringing the parties closer to an agreement. The Committee expresses the hope that, in the future, the company will participate, where there are disputes, in the established procedures aimed at facilitating settlement of these disputes. It requests the Government to spare no efforts to encourage a*

settlement of the dispute in the Oulmès company. It requests the Government to keep it informed in this regard.

475. *As regards the allegation that the company had called in labour from outside the enterprise to take out existing stocks under the protection of the authorities charged with public order, the Committee observes that the Government, for its part, states that around 50 managers and technicians of the company continued to guarantee production. In addition, the company states that 20 persons were hired from March 2000 to February 2002, for reasons of productivity, and that people living in the area of the enterprise did not have the required qualifications. Nevertheless, as concerns the specific allegation of the use of labour from outside the enterprise to replace striking workers in a sector which cannot be regarded as an essential sector in the strict sense of the term – which is clearly not the case of a mineral water bottling company – the Committee cannot but recall that recourse to striker replacements entails a risk of derogation to the right to strike which may affect the free exercise of trade union rights [see* ***Digest****, op. cit., para. 574]. The Committee trusts that the Government will take this principle fully into account in the future.*

The Committee's recommendations

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

(a) Recalling that the use of police intervention during collective labour disputes is not conducive to harmonious labour relations, the Committee considers that it would be desirable for the Government to examine, with the social partners, the possibility of establishing an effective system for the settlement of collective labour disputes. It underlines that the technical assistance of the Office is at the Government's disposal in this respect.

(b) The Committee requests the Government to spare no effort to encourage a settlement of the dispute in the Oulmès company. It requests the Government to keep it informed in this regard.

CASE NO. 2164

INTERIM REPORT

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

Allegations: Sanctions imposed following the exercise of the right to strike; transfer of trade union officers; refusal to engage in social dialogue

477. The complaint in this case is contained in communications from the Democratic Confederation of Labour (CDT) dated 3 and 28 December 2001.

478. The Government sent its observations in a communication dated 5 February 2002.

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

A. The complainant's allegations

480. In a communication dated 3 December 2001, the CDT explains that the *Caisse nationale du Crédit agricole* (CNCA) is a public establishment governed by Act No. 1-60-106 of 4 December 1961, whose board of directors consists of representatives of the management and of farmers. Its core business is financing agriculture and promoting rural development. The CNCA employs some 3,500 staff, and the CDT is the only trade union in the enterprise. Following trade union elections in January 2001, a 29-member executive committee was elected and recognized by the CNCA management.

481. The CDT continues with an account of the emergence of the labour dispute in the CNCA. On 6 April 2001, at the first meeting between the trade union and the CNCA management, the latter put forward a draft collective agreement which fell short of the workers' demands and was therefore not approved by the staff. On Thursday, 12 April 2001, the trade union called a strike. The CDT alleges that on the following day, 13 April, 34 temporary workers were expelled or suspended for having participated in the strike on 12 April. Among these 34 workers were two members of the trade union executive committee, Mr. Karim Rachid and Mr. Aziz Youssef. In addition, Mr. Chatri Abdelkader, another member of the trade union committee, was allegedly suspended following fabricated disciplinary proceedings against him. On 18 April, the executive committee declared a 48-hour strike, which was postponed after management promised to negotiate. However, the meeting that was held failed to produce a favourable outcome, as management refused to discuss the case of the 34 expelled and suspended workers. Following management's refusal to negotiate, another 48-hour strike was held on 13 and 14 June 2001.

482. Lastly, the CDT alleges that, following these strikes, a number of sanctions were imposed on the striking workers, including wrongful transfers of the following trade union officers: Mr. Kamar Bensalem, Mr. Faiçal Balafrej, Mr. Jawad El Amrani, Mr. Jamal Boudina, Mr. Ahmed Arrout, Mr. Abdessamad Mammad, Mr. Mustapha Hafidi, Mr. Mustapha Kounech, Mr. Mahjoube Ennaji, Mr. Said Banjamae, Mr. Lahcem Chkha, Ms. Naja Mimouni and Ms. Ouafae Chmaou. The CDT asserts that both its own executive committee and the executive committee of the CNCA staff made every effort to renew dialogue with management, in particular by sending numerous letters to senior CNCA managers and the Ministry of Agriculture, but to no avail.

483. In a subsequent communication dated 28 December 2001, the CDT states that Mr. Chatri Abdelkader, a member of the trade union executive committee who was initially suspended on 13 April 2001, was definitively dismissed from the CNCA on 7 December 2001. Moreover, Mr. Kamar Bensalem, General Secretary of the executive committee, was summoned to the police station on 25 December 2001 following a complaint brought by the CNCA management accusing him of having called an illegal strike, on the pretext that the strike had not been approved by the National Union of Bank Employees (SNB).

B. The Government's reply

484. In its communication dated 5 February 2002, the Government forwarded the reply of the *Caisse nationale du Crédit agricole* concerning the CDT's complaint. Firstly, the representatives of the CNCA state that all the decisions it has taken are in conformity with the laws and regulations in force and that they are surprised at the complainant's allegations. The CNCA asserts that it is being asked to negotiate with so-called staff

representatives (Mr. Kamar Bensalem and Mr. Faiçal Balafrej), whereas in fact these two individuals had been explicitly expelled by the CDT. In a communication from the CDT to the CNCA dated 25 April 2001, the CDT states that "these two persons are not members of the National Union of Bank Employees/Democratic Confederation of Labour (SNB/CDT), that they do not have legal representative status and that any action they may undertake does not involve any commitment on the part of the trade union to anything" (a copy of this letter is attached to the Government's reply).

485. The CNCA states further that, in a letter dated 15 May 2001 to the executive committee of the CDT, it denounced all the action taken by these persons who were excluded from membership of the CDT, and in particular their decision to declare a strike just before meeting with the CNCA management, as well as their denunciation of an agreement concluded the day before in the presence of their General Secretary. In this connection, the CNCA attaches a copy of a press release issued by the SNB/CDT criticizing the call for a strike sent out on SNB/CDT letterhead stationery and confirming that Mr. Kamar Bensalem, who signed it was no longer a member of the SNB. Lastly, the CNCA affirms its willingness to pursue dialogue with all of the democratically elected staff representatives and states that it does not understand the attitude of the CDT officials in this case.

C. The Committee's conclusions

486. *The Committee observes that this case concerns a dispute in the Caisse nationale du Crédit agricole (CNCA) and, in particular, allegations relating to various sanctions imposed on workers following a strike, transfers of trade union officers and refusal to engage in social dialogue. At the outset, the Committee notes with regret that the Government, through the reply it obtained from the CNCA, has only provided very incomplete observations on the allegations put forward in the complaint.*

487. *The Committee notes that following trade union elections in the CNCA in January 2001, a 29-member executive committee was elected and recognized by the CNCA management. The Committee notes that representatives of the trade union and the CNCA management met for the first time on 6 April 2001, then, following a 24-hour strike held on 12 April, the parties met again on 18 April. According to the complainant, these meetings failed to produce a favourable outcome with regard to the demands that had been put forward. The Committee nonetheless observes that it is difficult to conclude that there has been a refusal or absence of social dialogue, given that the parties met twice to negotiate in April 2001. Nonetheless, the Committee recalls the importance for both employers and trade unions to bargain in good faith and make every effort to reach an agreement, as genuine and constructive negotiations are necessary components to establish and maintain a relationship of confidence between the parties.*

488. *As regards the strike on 12 April 2001, the Committee notes that, according to the complainant, 34 CNCA employees, including two members of the trade union executive committee (Mr. Karim Rachid and Mr. Aziz Youssef), were expelled or suspended for having participated in this strike. Moreover, following the strike held on 13 and 14 June 2001, the complainant alleges that a large number of trade union officers were wrongfully transferred. The complainant alleges further that Mr. Chatri Abdelkader, a member of the CNCA trade union executive committee, who was suspended on 13 April 2001, was definitively dismissed from the CNCA. The Committee notes that neither the Government nor the CNCA have provided information on all of these allegations. The Committee therefore requests the Government to send, without delay, detailed information on all the allegations and in particular on the persons mentioned by the complainant as having been victims of acts of anti-union discrimination following their participation in the strikes of 12 April and 13 and 14 June 2001.*

489. *As regards the case of Mr. Kamar Bensalem, who, according to the complainant is General Secretary of the trade union executive committee of the CNCA, the Committee observes that this aspect of the case appears to raise a number of questions. The Committee notes that, according to a communication from the CDT to the CNCA dated 25 April 2001 (which the Government attaches to its reply), the CDT points out that Mr. Kamar Bensalem and Mr. Faiçal Belafrej are not members of the National Union of Bank Employees/CDT, that they do not have legal representative status and that any action they may undertake does not involve any commitment on the part of the trade union. In addition, a copy of a press release issued by the SNB/CDT (also enclosed with the Government's reply) denounces the call to strike sent out by Mr. Kamar Bensalem and confirms that the latter is not a member of the National Union of Bank Employees. However, the complainant does not refer in its complaint to these communications or their implications. In these circumstances, the Committee requests the complainant to provide, without delay, additional information on the status in the SNB/CDT of Mr. Kamar Bensalem and Mr. Faiçal Belafrej, as the latter appears to have played an important role in the labour dispute in the CNCA.*

The Committee's recommendations

490. ***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 send, without delay, detailed information on all the allegations and, in particular, on the persons mentioned by the complainant as having been victims of acts of anti-union discrimination following their participation in the strikes of 12 April and 13 and 14 June 2001.

(b) The Committee requests the complainant to provide, without delay, additional information on the status in the SNB/CDT of Mr. Kamar Bensalem and Mr. Faiçal Belafrej, as the latter appears to have played an important role in the labour dispute in the CNCA.

CASE NO. 2136

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

Complaint against the Government of Mexico presented by the Trade Union Association of Airline Pilots of Mexico (ASPA)

Allegations: Denial of collective bargaining rights and anti-union dismissals

491. The Trade Union Association of Airline Pilots of Mexico presented the complaint in communications dated 14 and 26 June 2001.

492. The Government sent its observations in communications dated 19 October 2001 and 6 March 2002.

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

A. The complainant's allegations

494. In its communications dated 14 and 26 June 2001, the Trade Union Association of Airline Pilots of Mexico (ASPA) states that it is an occupational trade union for airline pilots which complies with the requirements of Mexican legislation and is registered with the State Office for the Registration of Associations at the Ministry of Labour and Social Security. Under its charter, membership is open only to those working as airline pilots and its legal representative is its secretary-general.

495. It adds that the Consorcio Aviaxsa, S.A. de C.V. (AVIACSA) company and the Trade Union of Workers in Aeronautics, Similar and Related Industries of the Mexican Republic (STIAS) have concluded a collective labour agreement, which has been endorsed by the Federal Council for Conciliation and Arbitration. Initially, the collective agreement in question was divided into occupations and covered only the cabin crew and ground crew unions, excluding pilots. Subsequently, however, the pilots were incorporated into the collective agreement, without ever being consulted about it. Clearly, this collective agreement does not represent the will of the AVIACSA workforce, and nor have the pilots asked to be incorporated in it or affiliated to STIAS. The incident demonstrates a complicity between the Mexican labour authorities and the enterprises and employer-controlled trade union: although this was an occupational agreement that did not originally include pilots, the pilots' union was subsequently incorporated without being consulted. This is contrary to the statement by the labour authorities that if an agreement is divided into occupations from the beginning then it cannot be made to cover further occupations.

496. The complainant adds that, on 20 March 2000, ASPA submitted to the Federal Council for Conciliation and Arbitration an application to conclude a collective labour agreement exclusively for the pilots of the Consorcio Aviaxsa, S.A. de C.V. company, which is being processed as No. IV-67/2000. At the hearing, ASPA confirmed its request and evidence, indicating the issues that needed to be addressed and stating the justification for a ballot to be held among the pilots alone, pointing to similar cases, such as those of AEROCANCUN, SARO and AEROMEXPRESS. The respondents, for their part, contested the application and produced their own evidence; they argued that the ballot should include all of the company's workers. They also stated that ASPA did not have the authority to take over from an industrial trade union the collective agreement for an occupational group when the collective labour agreement was indivisible. ASPA's application was accompanied by another, submitted by a different trade union and processed as No. IV-99/2000. On 17 August 2000, the Federal Council for Conciliation and Arbitration issued a ruling that the trial ballot should be held on 22 August 2000 and cover the entire AVIACSA workforce, including pilots, cabin crew, mechanics and other ground crew and rejecting ASPA's proposal for an occupational ballot for pilots only. Given the illegal nature of such a company-wide ballot and the impossibility of winning (even if the majority of pilots voted for ASPA it would lose the case because it would not have the overall majority of votes, and if the majority of the company's workforce voted for ASPA it would also lose, because it only covers pilots and cannot offer membership to other categories). ASPA decided not to support the ballot and instructed pilots not to vote, or, if they did, to give their vote to another union in order to avoid being dismissed unjustly.

497. It adds that, following ASPA's decision to apply for a collective agreement for pilots at AVIACSA, a number of pilots had been unfairly dismissed purely because they supported

ASPA, including Captain Emilio Alberto Zárate González, Captain Andrés Flores López, Captain Gerardo Gorría Carmona, Captain Ismael Cruz Román, Captain Marcos Guillermo Mendoza Escobar, Captain Luis Fernando del Río Leal, Captain Manuel Tostado Almazán, Captain José Eduardo Rodríguez Normandía, Captain Gerardo Serrato Sala, Captain Jorge Eduardo Moreno Aguirre, Captain Ari Rafael Rose Errejón and Captain Mario Rafael Escalera Cárdenas. As a consequence of the unfair dismissals, individual appeals against dismissal were lodged and are being processed by Special Council No. 2 of the Federal Council for Conciliation and Arbitration under case numbers 332/2000, 333/2000, 334/2000, 336/2000 and 350/2000.

498. The complainant states that, on 16 October 2000, the Federal Council for Conciliation and Arbitration absolved the respondents of ASPA's demand to be allowed to conclude a collective agreement, ruling that it was not appropriate for the pilots of AVIACSA to have their own collective agreement. ASPA disagreed and launched an appeal, which was upheld by the Sixth Collegiate Tribunal on Labour of the First Circuit in document DT 2566/2001. In granting the appeal and the protection of federal justice on 17 May 2001, it ordered the Federal Council for Conciliation and Arbitration not to execute the ruling of 16 October 2000 and to disregard the results of the ballot held on 22 August 2000. It ruled that a new ballot should be held because of the illegality of the ballot for the entire AVIACSA workforce. Article 388 of the Federal Labour Law provides that, in the conclusion of collective labour agreements within a company, there may be both an industrial and an occupational trade union involved and that a collective agreement should be signed with the occupational trade union for its members and with the other trade union for the remaining categories of workers. Article 389, for its part, stipulates that the loss of the majority referred to in article 388 entails the loss of the collective labour agreement. The provisions of article 388 read as follows:

> Article 388. … III. If occupational and enterprise or industrial trade unions are competing, the occupational trade unions shall be allowed to conclude a collective agreement for their occupational group, as long as the number of their members is greater than that of workers in the same occupational group holding membership of the enterprise or industrial trade union.

499. Article 389 provides that:

> The loss of the majority referred to by the previous article, as declared by the Council for Conciliation and Arbitration, entails the loss of the collective labour agreement.

The Federal Council for Conciliation and Arbitration applied the principles contained in articles 388 and 389 of the Federal Labour Law and it was hence taken that, where conflicts over the right to sign the collective agreement arose because an occupational trade union wished to take over from an industrial union the professional representation of a given category, it was appropriate to take action. In recognition of the greater professional interest of the occupational trade union, it was decided to hold an occupational ballot in which only the members of the disputed category would participate. That rule had been applied by the Federal Council for Conciliation and Arbitration in all such conflicts over the right to sign in the airline industry, where, because of the industry's special nature, workers were organized in occupational unions on the basis of a natural division of activities.

500. The complainant states that the Federal Council for Conciliation and Arbitration suddenly amended its rules for the airline industry. In order to protect the unions favoured by the employers and the employers themselves, and since the current collective agreements were of a company-wide nature, it adopted a new rule, namely that the right to sign a collective agreement could not be claimed on behalf of a specific occupational group, but only on behalf of all categories covered under the agreement, which left the occupational trade

unions without any rights at all. However, this rule, put forward by the Federal Council for Conciliation and Arbitration, was declared illegal by the High Court of Justice, which ruled that it was appropriate for an occupational trade union to claim from an industrial trade union the right to sign the collective agreement on behalf of a specific occupational group and that the trial ballot should be held only among the workers in that category.

501. Despite the fact that ASPA's appeal was upheld and it was deemed illegal to hold a company-wide ballot on a conflict over the right to sign on behalf of only one occupational group, on 30 May 2001 the Federal Council for Conciliation and Arbitration once again ordered a general ballot, to be held on 18 June 2001, dismissing ASPA's representations to the effect that an occupational ballot should be held for pilots only.

502. In every country, airline-industry workers are organized into occupational trade unions corresponding to the different occupational groups, namely ground crew, cabin crew and pilots. This is the general rule because each of these occupations has its own features, on the basis of which its workers have sought to organize their own unions, and the respective unions are affiliated to international federations for each of the relevant occupations. In the case of pilots, both in the Americas and in Asia, Europe, Africa and the Pacific Rim, there are occupational unions, which in turn belong to supra-national organizations of a regional or global nature, such as the OIP or IFALPA.

B. The Government's reply

503. In its communications dated 19 October 2001 and 6 March 2002, the Government states that, according to the Trade Union Association of Airline Pilots of Mexico (ASPA), the alleged violation took place during the legal case over the right to sign the collective agreement, brought against Consorcio Aviaxsa, S.A. de C.V. (AVIACSA) and the Trade Union of Workers in Aeronautics, Similar and Related Industries of the Mexican Republic (STIAS).

504. It adds that the events related by ASPA took place during the legal dispute over the right to sign a collective agreement, and, as such, fall under the provisions governing collective bargaining rights contained in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which has not been ratified by Mexico.

505. In connection with the dispute, the Government states that on 18 March 1992 AVIACSA concluded a collective labour agreement with STIAS in order to regulate worker-employer relations, which, according to the agreement, should be conducted through a trade union. The clauses of the contract were applicable to all AVIACSA workers. The only distinction drawn among workers was the basic salary payable to each category. The latest version of the salary scale contained 38 different post types.

506. The Government adds that, on 29 March 1995, an agreement was concluded on the revision of the salaries contained in the collective labour agreement between AVIACSA and STIAS. This established the categories of ground crew and air crew and laid down different working conditions for each category. The only reference to grades of workers is in the scale of minimum salaries payable according to post, which includes different types of pilots.

507. The collective labour agreement between AVIACSA and STIAS and the salary revision agreement were not divided into occupations. The salary revision agreement drew a distinction between ground crew and air crew in order to be able to provide benefits over and above those required by law in accordance with the special conditions of service, such as the provision of food vouchers, payment of meal expenses, family discounts and annual

passes providing discounts or free flights. Workers belonging to ASPA enjoy the same rights as members of STIAS, even though they are not part of the latter union, which holds the signing rights for the collective labour agreement (article 396 of the Federal Labour Law).

508. The Government states that ASPA applied to AVIACSA and STIAS for the right to sign the collective labour agreement on behalf of pilots on 20 March 2000. The case was turned over to Special Council No. 2 of the Federal Council for Conciliation and Arbitration under case No. IV-67/2000. The application by the Trade Union of Labourers and Employees in Transport, Communications and Similar Industries of the Mexican Republic was later added, since it sought the right to sign the same collective labour agreement.

509. The Council ordered a trial ballot among the entire AVIACSA workforce. It was held on 17 August 2000. ASPA received no votes.

510. It is emphasized that 738 workers voted, including 76 pilots of the total of 97 pilots actively working for AVIACSA.

511. The collective labour agreement concluded with STIAS covers all labour issues affecting the AVIACSA workforce. While article 338, Section III of the Federal Labour Law provides for the hypothetical occurrence of competition between occupational and enterprise or industrial trade unions, the hypothesis is not applicable where there is an existing agreement covering all labour relations.

512. The Council pronounced final judgement on 16 October 2000 to the effect that ASPA's case was dismissed and the defence of AVIACSA and STIAS was upheld. The respondents were absolved of all of the claims by ASPA and the Trade Union of Labourers and Employees in Transport, Communications and Similar Industries of the Mexican Republic. ASPA applied for leave to appeal against the final judgement to the Sixth Collegiate Tribunal on Labour of the First Circuit and was granted leave to appeal in order first to resolve the dispute surrounding the trial ballots proposed by the parties before such a ballot be conducted. The dispute centres around the fact that AVIACSA and STIAS propose to ballot the entire AVIACSA workforce, while ASPA would ballot only the pilots. The Council fulfilled the appeal judgement through an agreement dated 30 May 2001 in which it settled the dispute surrounding the ballot. After analysing the evidence put forward by the parties, the Council decided that, since a collective labour agreement was already registered with an industrial trade union and covered all the company's workforce, that existing collective agreement regulated all labour relations in the relevant company under the terms of article 396 of the Federal Labour Law. The Council also considers that, while article 388, section III of the Federal Labour Law provides for the hypothetical occurrence of competition between occupational and enterprise or industrial trade unions in the conclusion of a collective labour agreement, where, as in this case, there is an existing agreement covering all labour relations, it is essential to ballot all workers and not only the members of the pilots' trade union. Failure to follow this procedure would be a violation of the rights not only of the members of STIAS, which concluded the collective labour agreement, but of those of every worker in the service of AVIACSA. The Council also noted that the ballot was undoubtedly the ideal test of which organization should be accredited to conclude and administer the collective labour agreement, for which the successful union would need to demonstrate that it had the majority support both of the trade union members and of the remaining workers at the company.

513. The Council announced a new date, 18 June 2001, for the balloting of all workers. ASPA did not obtain any votes in the ballot. STIAS obtained 740 votes and the Trade Union of Labourers and Employees in Transport, Communications and Similar Industries of the Mexican Republic obtained one vote.

514. As regards the five claims of unfair dismissal, the Government states that they were submitted to the labour authorities by Emilio Zárate González, Ari Rafael Rose Errejón, Mario Rafael Escalera Cárdenas, Marcos Guillermo Mendoza Escobar and Gerardo Serrato Sala and are still being examined by the Federal Council for Conciliation and Arbitration, and therefore it has not yet been established whether they were dismissed unjustly or whether the reason was their trade union activities.

515. As regards ASPA's claim that the High Court of Justice declared illegal the rule set by the Federal Council for Conciliation and Arbitration, namely that the right to sign a collective agreement could not be claimed on behalf of a specific occupational group, but only on behalf of all categories covered under the agreement, the Government states that the collegiate tribunals of the labour circuit that deal with appeals against final rulings by the Federal Council for Conciliation and Arbitration are not qualified to "declare illegal the rules" of the Council. Their competence extends to upholding or rejecting the complainant's appeal against specific acts of authority that are perceived to violate his individual constitutional rights. The rulings of appeal cases refer only to the individuals that brought the case and are limited to providing them with recourse and protection, if appropriate, in the specific circumstances that motivated the appeal, without making a general declaration concerning the law or act that gave rise to it (article 76 of the Law on Recourse, regulating articles 103 and 107 of the Constitution of the United Mexican States). Contrary to ASPA's claim, the Federal Council for Conciliation and Arbitration upheld the rule that all the workers at the company and to whom the collective labour agreement applied should be balloted. It is not sufficient for the union to gain the majority of votes from a single occupational group; it must take into account the votes of all workers covered by the collective labour agreement. The Federal Council for Conciliation and Arbitration has applied this rule in the airline industry and to all similar cases brought by occupational trade unions to obtain the right to sign collective labour agreements.

516. The Government emphasizes that there is no legal substance to the arguments that: (a) the collective agreement is breaking up of its own accord because each of the occupations to which it applies is governed by its own specific standards; (b) a collective agreement should be considered for each individual occupation; and (c) the AVIACSA collective agreement should be divided into three sections for the different occupations that it covers, each with its own field of application. As regards the argument that the AVIACSA pilots are not covered by the general provisions of the Federal Labour Law and enjoy special working conditions because they are governed by standards applicable exclusively to their profession, the Federal Labour Law establishes the working conditions for all workers, including pilots, and its Chapter IV lays down special provisions for the "work of air crew". Pilots are governed by the provisions of Chapter IV and the general provisions of the Federal Labour Law.

517. Finally, the Government states that, during the legal dispute over the right to sign the AVIACSA collective labour agreement, ASPA has been able to exercise its rights under the law and have recourse to remedies against the resolutions by which it considered itself affected. 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 pronounce. Moreover, if the federal legal authorities uphold ASPA's case, this communication will be groundless.

518. To conclude, the Government has acted in accordance with the principles of freedom of association and collective bargaining established by the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association of the ILO in the sphere of exclusive bargaining rights:

- There is an objective and previously established criterion, the balloting procedure contained in article 931 of the Federal Labour Law, to determine the right to sign the collective labour agreement.

- Special Council No. 2, respecting the principle of "the most representative organization" contained in article 3, paragraph 5, of the ILO Constitution, ordered a ballot among the entire AVIACSA workforce to determine which trade union had the right to sign the collective labour agreement.

- The balloting procedure was carried out before Special Council No. 2, which is an independent body, with tripartite membership.

- ASPA freely exercised its right to seek the right to sign the collective labour agreement.

- STIAS obtained the majority of the votes in the two ballots: 729 votes in the first and 740 in the second. The Trade Union of Labourers and Employees in Transport, Communications and Similar Industries of the Mexican Republic obtained one vote each time and the Trade Union Association of Airline Pilots of Mexico (ASPA) received no votes. Hence, the most representative trade union was selected on the basis of the vote of the majority of the workers in the unit concerned.

- The pilots can participate in collective bargaining relating to their conditions of work through the union that holds the right to sign the collective labour agreement.

C. The Committee's conclusions

519. *The Committee notes that in this case the Trade Union Association of Airline Pilots of Mexico (ASPA) alleges that the Consorcio Aviaxsa, S.A. de C.V. (AVIACSA) company has failed to recognize its collective bargaining rights as a trade union organization exclusively representing pilots by signing a collective agreement with the Trade Union of Workers in Aeronautics, Similar and Related Industries of the Mexican Republic (STIAS), which is applied to all the company's workers.*

520. *The Committee takes note that, according to ASPA, on 20 March 2000 the complainant organization submitted to the Federal Council for Conciliation and Arbitration an application to conclude a collective labour agreement exclusively for the pilots of the Consorcio Aviaxsa, S.A. de C.V. company, in accordance with the provisions of article 388 of the Federal Labour Law, according to which, if occupational and enterprise or industrial trade unions are competing, the occupational trade unions shall be allowed to conclude a collective agreement for their occupational group, as long as the number of their members is greater than that of workers in the same occupational group holding membership of the enterprise or industrial trade union. According to the complainant organization, a group of pilots was dismissed unjustly as soon as the application was made. The Committee notes that a ballot was held on 22 August 2000, but was open to all of the AVIACSA workforce. As a result, ASPA decided not to support it. Since the majority was won by STIAS, the Federal Council for Conciliation and Arbitration rejected on 16 October 2000 the application for the right to sign the collective agreement submitted by ASPA. The latter submitted an appeal, which was upheld on 17 May 2001. The Collegiate Tribunal on Labour of the First Circuit ordered the Federal Council for Conciliation and Arbitration not to execute the ruling of 16 October 2000 and to hold a new ballot. However, the new ballot held on 30 May 2001 again included the entire workforce, despite ASPA's request to the contrary.*

521. *The Committee also notes that, according to the Government, the events alleged by ASPA took place during the legal dispute over the right to sign a collective agreement, and, as such, fall under the provisions governing the right to collective bargaining contained in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which has not been ratified by Mexico. The Government states that the AVIACSA company concluded a collective agreement with STIAS in March 1992, which was applicable to all AVIACSA workers. The only distinction drawn among workers was the basic salary payable to each category. The agreement was revised in 1995, when different working conditions were established for each category of workers, though they were not at any time divided into occupational groups.*

522. *The Committee takes note of the Government's statement that the Federal Council for Conciliation and Arbitration upheld the rule that the ballot should include all those who work in the company and are covered by the collective agreement. According to the Council, it is not sufficient for the union to gain the majority of votes from a single occupational group; it must take into account the votes of all workers covered by the collective labour agreement. Hence, when ASPA applied for the right to sign the collective agreement, there were two company-wide ballots, in which STIAS won the majority, not only of workers overall, but also of the company's pilots: it obtained 729 votes in the first ballot and 740 votes in the second; the Trade Union of Labourers and Employees in Transport, Communications and Similar Industries of the Mexican Republic obtained one vote in both ballots and the Trade Union Association of Airline Pilots of Mexico (ASPA) received no votes.*

523. *The Government also states that, according to case law, article 388 of the Federal Labour Law on the hypothetical occurrence of competition between occupational and enterprise or industrial trade unions is not applicable in the present case where there is an existing agreement covering all labour relations, and that, in the event of a dispute between two trade unions, the ballot should be open to all the company's workers since its outcome may affect them all.*

524. *The Committee observes that, in order to be able to bargain collectively on behalf of the pilots, who are not represented by the enterprise trade union, ASPA (which refers to different legal precedents than those put forward by the Government) asked for the pilots alone to be balloted, but the Federal Council for Conciliation and Arbitration ruled that the ballot should include all the company's workers and for this reason the pilots who were members of ASPA decided not to participate. The Committee observes that the Council rejected ASPA's claim to the right to sign the collective agreement because the latter, by not participating in the vote, was not seen to enjoy greater representativity and because there was already a signed collective agreement in force between the company and STIAS, which covered all workers.*

525. *On previous occasions the Committee has indicated the following principles relating to exclusive bargaining rights: "where, under the system in force, the most representative union enjoys preferential or exclusive bargaining rights, decisions concerning the most representative organization should be made by virtue of objective and pre-established criteria so as to avoid any opportunities for partiality or abuse" [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 827]. It is not necessarily incompatible with the Convention to provide for the certification of the most representative union in a given unit as the exclusive bargaining agent for that unit. This is the case, however, only if a number of safeguards are provided. The Committee has pointed out that in several countries in which the procedure of certifying unions as exclusive bargaining agents has been established, it has been regarded as essential that such safeguards should include the following: (a) certification to be made by an independent body; (b) the representative organizations to be chosen by a majority vote of*

the employees in the unit concerned; (c) the right of an organization which fails to secure a sufficiently large number of votes to ask for a new election after a stipulated period; (d) the right of an organization other than the certified organizations to demand a new election after a fixed period, often 12 months, has elapsed since the previous election [see ***Digest****, op. cit., para. 834].*

526. *The Committee concludes that as the Government has demonstrated that the most representative trade union at AVIACSA is STIAS (the holder of the collective agreement), it does not appear that the principles of collective bargaining have been violated by denying the complainant organization the right to negotiate a specific collective agreement for the pilots. The Committee notes that systems of collective bargaining with exclusive rights for the most representative trade union and those where it is possible for a number of collective agreements to be concluded by a number of trade unions within a company are both compatible with the principles of freedom of association. This is a matter to be decided on the basis of national legislation and practice.*

527. *As regards the alleged dismissal of a group of workers because they supported ASPA's application for the right to sign the collective agreement, the Committee notes that the Government reports that the cases of dismissal have been submitted to the judicial authority, which has not yet issued a ruling. The Committee requests the Government to keep it informed of the rulings issued. If it transpires that the dismissal of these workers was due to legitimate trade union activity, the Committee requests the Government to ensure that the workers concerned are reinstated in their posts, without loss of pay.*

528. *As regards the Government's declaration 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 pronounce, 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 recommendation

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

> ***As regards the cases brought by a group of workers allegedly dismissed because they supported ASPA's application for the right to sign the collective agreement, the Committee requests the Government to keep it informed of the rulings issued. If it transpires that the dismissal of these workers was due to legitimate trade union activity, the Committee requests the Government to ensure that the workers concerned are reinstated in their posts, without loss of pay.***

CASE NO. 2120

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

Complaint against the Government of Nepal presented by
— the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)
— the All Nepal Trade Union Congress (ANTUC)
— the Nepal Independent Hotel Workers' Union (NIHWU) and
— the Nepal Tourism & Hotel Workers' Union (NT&HWU)

Allegations: Violations of the right to strike in the hotel sector

530. In a communication dated 19 March 2001, the All Nepal Trade Union Congress (ANTUC) submitted a complaint of violations of freedom of association against the Government of Nepal. The Nepal Independent Hotel Workers' Union (NIHWU) and the Nepal Tourism & Hotel Workers' Union (NT&HWU) submitted additional information in respect of this complaint in a communication also dated 19 March 2001, and the ANTUC further supported its complaint with documentation submitted on 20 April 2001. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) also submitted a complaint concerning these same matters in a communication dated 20 April 2001.

531. The Committee has already been obliged to postpone its examination of this case on three occasions, since no reply had been received from the Government. At its meeting in March 2002 [see 327th Report, para. 9), the Committee issued an urgent appeal and drew the Government's attention to the fact that, in accordance with the procedural rules set forth in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of this case, even if the Government's observations or information have not been received in due time. No reply has yet been received from the Government.

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

A. The complainants' allegations

533. In its communication dated 19 March 2001, the All Nepal Trade Union Congress (ANTUC) stated that, after having completed all necessary legal requirements, hotel employees went on a nationwide strike on 15 March 2001 demanding a 10 per cent service charge in the hotel sector. Before going on strike, the unions had engaged in numerous tripartite discussions on the matter. Halfway through the first day of the strike action, the Government applied the Essential Services Act No. 2014, banning strikes in nine other service sectors and the hotel sector.

534. By a communication of the same date, the Nepal Independent Hotel Workers' Union (NIHWU), affiliated to the General Federation of Nepalese Trade Unions (GEFONT), and the Nepal Tourism & Hotel Workers' Union (NT&HWU), affiliated to the Nepal Trade Union Congress (NTUC), submitted additional information concerning this complaint. These two hotel unions have indicated that the inclusion of a 10 per cent service charge into collective bargaining agreements in the hotel, restaurant and catering services has been

a demand of the unions for almost 21 years. The demand came recently into the forefront with the unified force of the workers in the hotel sector with the joining of these two unions into a Central Joint Struggle Committee. Workers were ready to go on strike in November 2000 with all legal procedures for carrying out a general strike being completed, but the Cabinet and the Deputy Prime Minister had requested them in writing to wait for two months for the implementation of the service charge. After three months, however, no results could yet be seen and the Central Joint Struggle Committee decided to launch the general strike on 15 March 2001. As soon as the Hotel Association of Nepal had been notified of the strike action, it filed an injunction petition in the Appellate Court, but the court decided in favour of the workers and recognized the strike as lawful. At the end of the first day of the strike, the Home Ministry issued a notice in the *Official Gazette* of 15 March declaring that the services related to hotel, motel, restaurant and tourist accommodation fall under essential services and that strikes are therefore prohibited in these services by virtue of the Essential Services Act of 1957. Thus, just within 24 hours of the court verdict, the Government directly contradicted the spirit of the court judgement by declaring these services as essential services. The complainants find this position of the Government all the more perplexing given that the hotels had staged a lock-out on 11 December 2000 without any intervention on the part of the Government. The complainants conclude that this step on the part of the Government is clearly against fundamental human rights, the spirit of the Nepalese Constitution and laws and ratified and unratified core ILO Conventions.

535. Finally, the International Union of Food, Agricultural, Hotel, Restaurant, Catering Tobacco and Allied Workers' Associations (IUF) recalls that the hotel workers' unions had submitted its demands concerning the 10 per cent service charge in autumn 2000. Mass actions demonstrated the support of the 200,000 hotel and tourism workers for this demand. The hotel owners refused to open negotiations on this issue, however, and closed their hotels for one day on 11 December 2000 to show their opposition to workers' demands. The IUF then reiterates the events of 15 March 2001 and concludes that the Government's action to ban strikes in these sectors is a clear violation of Article 3 of Convention No. 87.

B. The Committee's conclusions

536. *The Committee notes that the allegations in this case concern violations of the right to strike for workers in the hotel industry and other related sectors through the application of the Essential Services Act of 1957 to these sectors.*

537. *In the first instance, the Committee regrets that, despite the time that has elapsed since the complaint was first presented, the Government has not responded to any of the allegations made by the complainants, even though it has been urged to do so on a number of occasions, including by means of an urgent appeal.*

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

539. *The Committee reminds the Government that the purpose of the whole procedure is to promote respect for trade union freedoms in law and in fact. The Committee is convinced that, if the procedure protects governments against unreasonable accusations, governments on their side should recognize the importance of formulating for objective examination detailed factual replies to the allegations made against them [see First Report, para. 31].*

540. *As concerns the substance of the case, 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. The right to strike may be restricted or prohibited for public servants exercizing authority in the name of the State or in essential services in the strict sense of the term. The principle regarding the prohibition of strikes in essential services might lose its meaning if a strike were declared illegal in one or more undertakings which were not performing an "essential service" 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 [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 1994, paras. 475, 526 and 542]. In this regard, the Committee has indicated on previous occasions that hotel services do not constitute essential services in the strict sense of the term [see* ***Digest****, op. cit., para. 545]. The Committee therefore requests the Government to take the necessary measures to repeal its notification in the* ***Official Gazette*** *of 15 March 2001 declaring hotel, motel, restaurant and tourist accommodation as falling within the scope of essential services and thus prohibiting strikes in these services by virtue of the Essential Services Act of 1957. The Committee requests the Government to keep it informed of all developments in this respect.*

The Committee's recommendation

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

> ***The Committee requests the Government to take the necessary measures to repeal its notification in the*** *Official Gazette* ***of 15 March 2001 declaring hotel, motel, restaurant and tourist accommodation as falling within the scope of essential services and thus prohibiting strikes in these services by virtue of the Essential Services Act of 1957. The Committee requests the Government to keep it informed of all developments in this respect.***

CASE NO. 2036

DEFINITIVE REPORT

Complaint against the Government of Paraguay presented by — the Trade Union Confederation of State Employees of Paraguay (CESITEP) and — Public Services International (PSI)

Allegations: Dismissals and transfers of trade union officials; threats to dissolve a trade union confederation

542. The Committee last examined this case at its March 2001 meeting and on that occasion submitted an interim report to the Governing Body [see 324th Report, paras. 779-802, approved by the Governing Body at its 280th Session (March 2001)].

543. In the absence of a reply from the Government, the Committee has twice had to postpone the examination of this case. Therefore, at its March 2002 meeting [see 327th Report, para. 9], the Committee issued an urgent appeal to the Government drawing its attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of

the case at its next meeting even if the information and observations of the Government have not been received in due time. To date the Government has not sent its observations.

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

A. Previous examination of the case

545. At its March 2001 meeting, following its examination of the allegations concerning the transfer and dismissal of trade union officials, as well as of the threat to dissolve the CESITEP and dismiss its president, Mr. Barreto Medina, the Committee formulated the following recommendations [see 324th Report, para. 802]:

> The Committee requests the Government: (1) to keep it informed of the result of the appeal lodged before the Office of the Attorney-General of the Republic in respect of the transfer of Ms. Blanca Alvarez; (2) in the proceedings of the administrative inquiry into Mr. Rigoberto Gómez's failure to observe his obligations, to verify the charges made against him and, if these are related to the exercise of his trade union activities, to take the necessary measures to have him reinstated in his job. In addition, the Committee requests the Government and the complainants to forward additional information with respect to the allegations concerning the threats to dissolve the trade union CESITEP and to dismiss Mr. Barreto Medina, president of CESITEP.

B. The Committee's conclusions

546. *The Committee regrets the fact that, despite the time which has elapsed since the last examination of this case, the Government has not sent the information requested, although it has repeatedly been urged to do so, including by means of an urgent appeal. In accordance with the applicable rule of procedure [see 127th Report of the Committee, para. 17, approved by the Governing Body at its 184th Session], the Committee is obliged to submit a report on the substance of the case without being able to take into account the information it had hoped to receive from the Government.*

547. *The Committee reminds the Government that the purpose of the whole procedure is to promote respect for trade union rights in law and in fact. If this procedure protects governments against unreasonable accusations, governments on their side will recognize the importance of formulating for objective examination detailed factual replies concerning the substance of the allegations brought against them [see First Report of the Committee, para. 31].*

548. *With regard to the alleged anti-union transfer of the trade union official Ms. Blanca Alvarez, the Committee urges the Government to ascertain whether the Office of the Attorney-General of the Republic has handed down a decision in this respect, and if it has been concluded that her transfer was a result of her trade union status or the exercise of legitimate trade union activities, to take the necessary measures to have her reinstated in her job without loss of pay.*

549. *Concerning the dismissal of the trade union official Mr. Rigoberto Gómez, the Committee once again urges the Government to verify the grounds for his dismissal and if these are related to the exercise of his trade union activities, to take the necessary measures to have him reinstated in his job, without loss of pay.*

550. *Lastly, with respect to the alleged threat by the Government to dissolve the trade union CESITEP and to dismiss Mr. Barreto Medina, its president, the Committee regrets that*

neither the Government nor the complainant organizations have sent the additional information requested.

The Committee's recommendations

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

(a) The Committee, regretting that it has not received the information repeatedly requested, urges the Government to ascertain whether the Office of the Attorney-General of the Republic has handed down a decision concerning the alleged anti-union transfer of the trade union official Ms. Blanca Alvarez, and if it has been concluded that her transfer was a result of her trade union status or the exercise of legitimate trade union activities, to take the necessary measures to have her reinstated in her job without loss of pay.

(b) The Committee once again urges the Government to verify the grounds for the dismissal of the trade union official Mr. Rigoberto Gómez, and if these are related to the exercise of his trade union activities, to take the necessary measures to have him reinstated in his job, without loss of pay.

CASE NO. 2086

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

Complaint against the Government of Paraguay presented by
— the Workers' Union of the Ministry of Public Health and Social Welfare (SITRAMIS)
— the Trade Union Confederation of State Employees of Paraguay (CESITEP)
— the Single Confederation of Workers (CUT) and
— the Paraguayan Confederation of Workers (CPT)

Allegations: Anti-union dismissals – Criminal proceedings, sentencing in the first instance and detention of trade union officials

552. The Committee last examined this case at its March 2001 meeting, on which occasion it presented an interim report to the Governing Body [see 324th Report, paras. 814-828].

553. In a communication dated 12 June 2001, the Single Confederation of Workers (CUT), the Paraguayan Confederation of Workers (CPT) and the Trade Union Confederation of State Employees of Paraguay (CESITEP) presented a complaint containing allegations relating to this case. Subsequently, new allegations and further information were received in communications dated 15 August, 5 and 25 September, 10 October, 3 and 20 December 2001.

554. The Government sent its observations in communications dated 5 and 28 November 2001 and 31 January 2002.

555. At its March 2002 meeting, the Committee noted that the Government had accepted the proposal formulated by the complainant organizations to the effect that a direct contacts mission visit the country in order to gather information and prepare a report so that the Committee could examine the case with all the elements at its disposal [see 327th Report, para. 11]. In this respect, the direct contacts mission took place in Asunción from 18 to 22 March 2002. It was led by Dr. Jaime Malamud Goti, Professor of Ethics, University of San Andrés, Buenos Aires, Argentina, and University of Arkansas, United States, and former Professor of Criminal Law, Faculty of Law and Social Sciences, University of Buenos Aires, Argentina. The report of the direct contacts mission is attached as Annex I.

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

A. Previous examination of the case

557. At its March 2001 meeting, the Committee examined the allegations relating to the dismissal of a trade union member and made the following recommendations on the allegations that remained outstanding [see 324th Report, para. 828(b)]:

> … concerning the dismissal of Ms. Florinda Insaurralde (who was dismissed, according to the complainant organization, solely on the basis of her involvement in the labour claims and her defence of the rights of other colleagues), the Committee requested the Government and the complainant organizations to forward additional information in order to clarify the matter.

B. New allegations from CUT, CPT and CESITEP

558. In communications dated 12 June, 15 August, 5 and 25 September and 10 October 2001, the Trade Union Confederation of State Employees of Paraguay (CESITEP), the Single Confederation of Workers (CUT) and the Paraguayan Confederation of Workers (CPT) state that as a result of anti-union persecution the presidents of the three organizations (Reinaldo Barreto Medina, Alan Flores and Jerónimo López) were brought before the criminal courts and charged with fraud in the bankruptcy of the National Workers' Bank (BNT). According to the complainant organizations, the Government used the law to persecute its opponents, and the legal process did not take into account the declarations of the accused, nor did it assess the evidence. The complainant organizations add that the fact that other trade union leaders representing other organizations and carrying out the same tasks as the accused were not included in the criminal procedures provides clear evidence that the three presidents were the object of anti-union discrimination. (The complainants deny the accusations put forth in the legal proceedings and state that they are not responsible for the bankruptcy and stripping of assets of the BNT.) Finally, the complainant organizations state that, on 8 October 2001, Penal Court No. 7 for Liquidation and Settlement sentenced Alan Flores and Jerónimo López to seven years' imprisonment and Reinaldo Barreto Medina to four years' imprisonment, having found them guilty of being accessories to a breach of trust.

559. In communications dated 3 and 20 December 2001, CUT, CPT and CESITEP refer to the records of the bankruptcy of the BNT, and in particular emphasize the fact that they were tried in the framework of the bankruptcy following a complaint made by third parties not linked to the proceedings (trade union organizations). The complainant organizations categorically deny having committed fraud, embezzlement or illegal collaboration in the alleged asset-stripping of the BNT, for which they were tried, and they provide a detailed explanation of their activities in relation to the bank. They state that the press took advantage of this fact and circulated it widely, undermining the image of the trade union movement and unleashing conflict within the organizations, and that this was a political

matter in that, while the principal trade union officials were thus occupied, a radical reform of the State was being promoted. Moreover, they state that the law was acting as a smokescreen to protect the well-known defrauders of the BNT and of the country. The complainant organizations point out that a number of irregularities occurred during the legal proceedings. The complainant organizations state that currently Alan Flores (president of CUT), Jerónimo López (president of CPT) and Reinaldo Barreto Medina (president of CESITEP) are in prison. Finally, the complainant organizations request that, taking into account the complexity of the case and the seriousness of the facts, a direct contacts mission be sent to the country so that the Committee can examine this case with all the elements at its disposal.

C. The Government's reply

560. In communications dated 5 and 28 November 2001, the Government confirmed that the trade union leaders in question had been prosecuted in the criminal courts for fraudulent asset-stripping of the National Workers' Bank (BNT) and had been sentenced to seven and four years' imprisonment. Furthermore, the Government emphasized that: (i) each and every one of the legal requirements for the proceedings were observed and that these proceedings took place without any involvement from the State; (ii) the defendants benefited from the procedural guarantees laid down in the National Constitution, the Penal Code and the Procedural Penal Code. The Government denies that anti-union persecution took place and states that the legal proceedings took place under constitutional and procedural guarantees laid down in law. Finally, in its communication dated 31 January 2002, the Government states that, given the complexity of the case, it has no objection to a direct contacts mission being sent to the country.

561. With regard to the matter outstanding from the previous examination of the case of the dismissal of Florinda Insaurralde, the Government states that, according to information received from the Department of Human Resources of the Ministry of Public Health and Social Welfare, the Director of the Maternity and Paediatric Hospital of the Paraguayan Red Cross made a formal complaint and, following an administrative inquiry into the situation by the legal office of the Ministry, it was decided to dismiss Ms. Insaurralde from her employment under resolution No. 321/99 and Decree No. 7081/2000.

D. The Committee's conclusions

562. *The Committee notes the report of Dr. Jaime Malamud Goti of the direct contacts mission. The Committee expresses its thanks for the technical information submitted, which will allow it to examine this case with additional elements of information.*

563. *The Committee notes that the trade union organizations CUT, CPT and CESITEP state that anti-union persecution of the presidents of these organizations (Alan Flores, Jerónimo López and Reinaldo Barreto Medina) led to their being tried and sentenced to imprisonment by the Criminal Court of First Instance for being accessories to a breach of faith during the bankruptcy of the National Workers' Bank (BNT). Moreover, the Committee notes that the complainant organizations state that there were irregularities in the proceedings.*

564. *The Committee notes that the Government confirms that the trade union officials were tried in the criminal courts for fraudulent asset-stripping of the BNT and that they were sentenced to imprisonment for seven and four years and that it states that: (i) all legal requirements for the proceedings were observed and that the judicial process took place without any involvement from the State; and (ii) the defendants were tried under the*

procedural guarantees laid down in the National Constitution, the Penal Code and the Procedural Penal Code.

565. *Nonetheless, the Committee notes that the report of the direct contacts mission confirms that there were serious procedural flaws (also with regard to the fundamental legal questions) in the legal proceedings involving the presidents of the trade union organizations. The report summarizes these flaws as follows:*

(a) With regard to the procedural matters, the following measures seem inappropriate:

(1) The decision of the court to authorize the trade organizations to act as private plaintiffs [the claim that these trade unions had a direct interest in the activities that caused damage to the BNT is inadequate and it is not proven that the complainant organizations had a direct interest in the criminal proceedings].

(2) The inappropriate – and entirely unjustified – decision, by a court with no jurisdiction, to hold Alan Flores, Jerónimo López and Reinaldo Barreto Medina [the Court of First Instance that sentenced the defendants stated that it did not know why the other court decided to continue to hold the trade union officials].

(3) The excessive delay (more than five months at the time of the direct contacts mission) in forming a Court of Second Instance with competency to hear the appeal that was granted in October 2001. This situation leaves two matters outstanding: (a) the appeal against the sentence of the first instance; and (b) the decision to continue to hold the defendants. Needless to say, the latter issue is of urgent importance.

(b) With regard to the fundamental legal questions:

(1) Rules of criminal law have been applied retroactively in violation of the principle of *nullum crimen nulla poena sine lege*.

566. *However, regarding the allegation of the trial and sentencing of the presidents of the trade union organizations in question by the Criminal Court of First Instance being a result of anti-union persecution, the Committee notes that the report of the direct contacts mission states, as follows:*

With regard to the social and political context of anti-union discrimination alleged by the complainant organizations to the ILO, it should be pointed out that:

(1) Most of those people interviewed believe that a number of important sections of the media, especially the press, carried out a campaign to establish the opinion that the defendants were unquestionably guilty even before the legal proceedings confirmed this. According to this majority opinion, all of this was translated in the decision to impose long sentences on the trade union officials, and to continue to hold them in custody in spite of the sentences having been appealed.

(2) Although the direct contacts mission is not able to conclude that the judiciary or the Government were acting in a clearly anti-union manner, it is convinced that the flaws described above, and the media campaign, have been prejudicial to the defendants.

567. *In these circumstances, and taking into account the serious flaws that took place in the legal proceedings, both procedural and of substance, and in particular the lengthy duration of pre-trial detention, as well as the fact that there was a denial of justice since no tribunal issued a decision concerning the requests of provisional or final release of the trade union leaders, the Committee believes that all necessary measures should be taken to ensure the release of Alan Flores, Jerónimo López and Reinaldo Barreto Medina. Furthermore, the Committee hopes that the judicial bodies will speed up the legal proceedings, requests the Government to keep it informed of any judicial decision issued in this respect, and hopes that these decisions will be made in conformity with Conventions Nos. 87 and 98.*

568. *Finally, the Committee notes that, when it examined this case at its March 2001 meeting, it had requested the Government and the complainant organization to forward additional information concerning the dismissal of Florinda Insaurralde. In this respect, the Committee notes the Government's statement that, following an official complaint by the Director of the Maternity and Paediatric Hospital of the Paraguayan Red Cross, the legal office of the Ministry of Public Health and Social Welfare carried out an administrative inquiry, the results of which led to the decision to dismiss the employee under resolution No. 321/99 and Decree No. 7081/2000. In these circumstances, at the same time as it regrets that the complainant organization has not sent additional information (when the complaint was presented it indicated only that there had been a dismissal solely on the basis of the employee's involvement in labour claims and her defence of the rights of other colleagues), the Committee requests the Government to keep it informed of any proceedings that Florinda Insaurralde may bring against the resolution and the Decree that led to her dismissal.*

The Committee's recommendations

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

(a) Taking into account the serious flaws in the legal proceedings, both procedural and of substance, and in particular the lengthy duration of pre-trial detention, as well as the fact that there was a denial of justice since no tribunal ruled on the requests for conditional or final release of trade union leaders, the Committee believes that all necessary measures should be taken to ensure the release of Alan Flores, Jerónimo López and Reinaldo Barreto Medina. Furthermore, the Committee hopes that the judicial bodies will speed up the proceedings, requests the Government to keep it informed of any judicial decision issued in this respect, and hopes that these decisions will be made in accordance with Conventions Nos. 87 and 98.

(b) The Committee requests the Government to keep it informed of any proceedings that Florinda Insaurralde may bring against resolution No. 321/99 and Decree No. 7081/2000, which led to her dismissal.

Annex I

Report on the direct contacts mission to Paraguay from 18 to 22 March 2002

A. Introduction

At its March 2002 meeting, the Committee on Freedom of Association (CFA) noted that the Government accepted the proposal of the complainant organizations in a complaint presented against the Government of Paraguay (Case No. 2086) that a direct contacts mission visit the country [see 327th Report, para. 11]. The objective of the mission was to obtain information relating to the allegations referring to the trial and detention of the presidents of the Paraguayan Confederation of Workers (CPT), the Single Confederation of Workers (CUT) and the Trade Union Confederation of State Employees of Paraguay (CESITEP) and to prepare a report for the Committee so that it might examine the case with all the elements of information at its disposal.

The direct contacts mission took place in Asunción from 18 to 22 March 2002 and was led by Dr. Jaime Malamud Goti, Professor of Ethics, University of San Andrés, Buenos Aires, Argentina,

and University of Arkansas, United States, and former Professor of Criminal Law, Faculty of Law and Social Sciences, University of Buenos Aires, Argentina. He was accompanied by Mr. Horacio Guido from the Freedom of Association Branch of the International Labour Standards Department.

The mission thanks the Minister of Justice and Labour, Mr. Diego Abente Brun, and the Deputy Minister of Labour, Mr. Jorge Luis Bernis, for their acceptance of the mission and for their cooperation. Moreover, the mission acknowledges the Chief of International Affairs of the Vice-Ministry of Labour, lawyer Gloria Bordón, for her efficiency in preparing for and supporting the mission.

The Minister of Justice and Labour emphasized the importance of the independence of public authorities. Moreover, he stated that the authorities of the Executive had not interfered in the legal proceedings. This was confirmed by the magistrates and employees of the judiciary. Finally, the Minister stated that he had visited the trade union officials in Tacumbú prison, and that he had also taken measures to ensure that the prisoners were able to take full advantage of the facilities and the conveniences available. When the mission visited the trade union officials, they confirmed what the Minister had said, with the exception of the few resources of the penitentiary system.

On Monday, 18 March 2002, the mission found that the file for the trade union leaders Reinaldo Barreto Medina (CESITEP), Alan Flores (CUT) and Jerónimo López (CPT) consisted of 36 volumes (150 tomes of 200 pages each). The judge in the case, Hugo López, stated that the trial took up 70 per cent of the court's time over a period of two years. The mission consulted the main parts of the file, received copious documentation and interviewed the principal judges involved. The mission spoke with the Ombudsman and with various prestigious judges. It also interviewed a number of trade union organizations and the most representative employers' organization. The mission thanks, in particular, Judges Ramiro Barboza and Fernando Barriocanal for their frankness and their impartiality in directing the mission in its inquiry into the relevant facts.

On 20 March, the direct contacts mission met with the President of the Supreme Court of Justice, Carlos Fernández Gadea, and with another of its members, Judge Paredes. Judge Paredes, referring to the trade union officials in the legal proceedings, stated that they were "responsible for having committed criminal acts" and added that they were "judged guilty of breach of trust". Judge Paredes stated that the trade union members were not persecuted but were judged "for common law crime", adding that the poor reputation of the trade union organizations arose from actions such as those that had resulted in the complaint to the ILO. He also referred to the existence of "fake trade unions", representing the "informal sector", that had obtained credit from the National Workers' Bank (BNT). He confirmed that the trade union organizations CPT and CNT were the ones through which this credit had been extended (the former is one of the complainant organizations in the case before the Committee on Freedom of Association). Judge Paredes indicated that the trade union members were part of the "executive council" of the BNT, among other things, with the competency to oversee the development of the operation with the building company that represented the means by which the crimes had been committed. He added that the defendants were in prison because they did not hand themselves over to the authorities, who had to find the "fugitives" in order to arrest them.

With regard to the statements of Judge Paredes that the trade union officials in question were fugitives, the mission wishes to point out that the most accepted version of events indicates that, once the arrest of the trade union officials was decreed, the latter were easily located by Prosecutor Contreras. The Prosecutor was extremely clear on this issue. With regard to the reasons for arresting the defendants and the reasons for not releasing them, the mission must emphasize that it was not able to substantiate what Judge Paredes said with regard to the trade union officials being classified as fugitives. From the statements of Prosecutor Contreras and other similar statements (from Judge Hugo López, among others) the mission infers that, at the time of arrest, the accused were carrying out normal activities. This must have influenced the arrest or the decision not to release the trade union officials as there was no proof that the defendants were evading legal action.

There are three views arising out of the interviews with trade union organizations regarding the case that gave rise to the visit of the direct contacts mission. One group, to which the complainant organizations headed by the defendants belong, defend the trade union leaders and put the legal process down to political ends in persecuting trade union members. A second group, comprising basically those trade union organizations that are private plaintiffs in the proceedings, maintain that the defendants are criminally responsible. This group believes that the trade union officials accused were part of a plan to commit fraud, which consisted of obtaining funds from the BNT through illegal expenditure. The Pegasus construction enterprise, the final recipients of credits

of millions, was created to divert funds illegally from the BNT. (The most clear and detailed explanation of how this might have taken place was presented by the lawyer, representing the plaintiff trade union organizations, Pedro Lobo.) The third group, whose most eloquent representative is the trade union official, Sonia Legizamón, of the CGT, was keen for due process to take place and for the revelation of the truth behind the facts to be revealed. In the interview, Ms. Legizamón confirmed her interest that the outcome of the proceedings would reveal the truth of the facts and would absolve or condemn the defendants according to this truth. At the same time she stated that she did not want a conviction if this resulted from infringement of due process. Procedural flaws in the proceedings should not be accepted.

B. Criminal proceedings and sentencing by the Court of First Instance of the presidents of the trade union organizations CUT, CPT and CESITEP

1. Rules applicable to the case

Criminal law in Paraguay is in a transition period with regard to regulations. Many legal decisions, this one among them, have been complicated by the recent reform of the Penal Code (1997) and the Procedural Penal Code (1998). This situation has made the proceedings considerably more complex than they might have been at another time. It should be pointed out that Judge Fernando Barriocanal, a member of the Civil Appeals Court who, for the moment, seems to be the judge who will take over with regard to the appeals lodged, believes that the process was "anarchic".

The trial court judge, Hugo López, ruled against the trade union leaders, citing their action as typical of those falling under article 192, subsection 2, of the new Penal Code (in agreement with article 31 of this Code, which governs the necessary complicity). The text of the regulation in question is as follows: article 192 of the 1997 Code states: "Any person who, with regard to a law, an administrative resolution or a contract, has assumed responsibility to protect an important proprietary interest for a third party and causes or does not prevent, within the sphere of protection granted to him/her, damage to this interest will be punished with imprisonment of up to five years or with a fine. (2) In particularly serious cases, imprisonment may be increased to up to ten years. The preceding paragraph is not applicable when damages amount to a value of less than ten days' wages. (3) The preceding paragraphs are applicable even when the legal basis for responsibility for the property lacks force."

It is perhaps useful to clarify that the incriminating action consists of abuse of the position of agent or administrator of property of a third party while undertaking management or arrangement of affairs that are contrary to the interests of the principal or owner of the property. This is why this is described as a *statutory crime*. A statutory crime means that, in order to commit the crime, the person responsible must have some special condition. In this case, the condition is one of a legitimate agent, custodian, etc., of another party's property. The person who commits the crime must have incurred a breach of trust with regard to the owner of the property. In this way, and taking as a basis the detrimental management of the assets of the BNT, the trade union officials of the complainant organizations can only be accused of being accessories to the plans of the executive management of this bank. It is the executive management that officially has the authority to manage and dispose of the assets of the institution.

It is also important to note the applicable article from the previous Code. This Code was in force at the time that the acts attributed to the trade union officials were committed and it is the Code under which they were tried. Its application was compulsory unless the legislation that was substituted was less harsh for the defendants. As can be seen, this is not the case: article 401 of the 1914 Penal Code in force between 1993 and 1996, during which the crimes under investigation were allegedly committed, states: "Any person who takes possession of property not belonging to him/her, which has been given in trust or handed over for bailment or administration or for any other reason to which is attached the obligation to return it or to make a specific use of it, and invests it to his/her own benefit with a third party, will be sentenced to imprisonment for a period of one to two months if the damage does not exceed $500.00. If the damage caused exceeds this amount, punishment shall be calculated on the basis of one day of imprisonment for every $10-30 worth of damage in excess of the sum mentioned." It should be stated that this crime can be

committed by anyone acting as an agent or a bailiff, etc. It is important to point out that the maximum period of imprisonment for this crime is ten years according to Law No. 1060 of 1984, in force on the relevant date (in accordance with the *Legal Bulletin*, year 1, June/July 1984, page 59), which says in article 2: "Punishment for crimes against ownership will not exceed ten years unless these are linked to other more serious crimes." In accordance with documentary proof from the Supreme Court library, this text was in force on the date in question.

2. Application of the rules of criminal law

The trade union officials Alan Flores, Jerónimo López and Reinaldo Barreto Medina were sentenced for complicity in the commission of the crime covered by article 192, subsection (2), of the 1997 Penal Code. Javier Contreras, the Prosecutor in the case, explained why article 192 of the new Penal Code, "breach of trust", was applied *ex post facto* to a criminal act that took place in 1996, i.e. to an act that was carried out prior to this Code being in force (it came into force in 1998). The prosecutor suggests that the new Code was applied outside the official date of its entry into force as it was less harsh than that which was laid down for fraud in the repealed Code. The relevant concept in the repealed Code is that of fraud through misappropriation in article 401 (Penal Code, 1914, and this is included in the current Code in article 160 "Appropriation"). This has become less harsh because, despite the fact that the criminal provision for fraud through misappropriation in the former Code indicates a maximum penalty of one to two months' imprisonment, this increases in relation to the amount defrauded. Both Judge López and Prosecutor Contreras emphasize that what makes the penalty less harsh is the maximum duration of imprisonment that can be applied, which according to the previous Code would have been 25 years.

The position taken by the Prosecutor, seconded by the trial judge, gives rise to problems for two reasons.

The first reason is based on the fact that the maximum penalty for fraud (former Code) cannot exceed ten years' imprisonment (in place of 25) as Law No. 1060 of 1984 limits the sentence for crimes against ownership to ten years' imprisonment. Therefore, there is no reason to maintain that the application of the law in force at the time the crime was committed was harsher than the new law. It should be noted that the trial judge did not take into consideration Law No. 1060 when he issued the sentence. This omission represents a serious flaw in the reasoning of the ruling of the Court of First Instance.

The second reason that highlights the unsatisfactory position taken with regard to the Codes arises from the fact that fraud by appropriation requires that the way in which this fraud took place or the person who benefited from this act must be shown, describing the means by which the appropriation took place. Breach of trust in the new law requires only that the owner of the property has suffered damages. Therefore, less proof is required to convict the defendant under the new Code compared to the proof required for a conviction of fraud under the old Code. In other words, the old Code requires proof of objective issues (possession of the property) and subjective issues (the proposal to take possession of the property) causing damages to the third party in question. In the case of breach of trust, the proof required is considerably less as this relates solely to the way in which the management of property of third parties is damaging to those third parties.

These reasons indicate that the judge has retroactively applied a criminal law that is more harsh than that which was in force at the time the crime was allegedly committed. This implies a violation of the universally recognized principle of criminal law in which a judge is prohibited from applying laws that are implemented subsequent to the act committed. This problem was in no way solved by the explanations of the trial judge in the course of the interview with him.

3. Private plaintiffs (complainants in the criminal prosecution)

Among other things, it is timely to indicate the strangeness of a number of trade unions being admitted as plaintiffs. These trade unions are the Electrical Workers' Trade Union (SITRANDE), the Journalists' Trade Union of Paraguay (SPP) and the Construction Workers' Trade Union (SINATRAC). With regard to this, there is a generalized opinion that coincides with that of the defence. The claim that these trade unions have a direct interest in the activities that damaged the BNT is not sufficient. It is obvious that a criminal scheme involving the assets of the bank would cause damage to all workers in the country. It should not be forgotten that the duty to contribute to

the assets of the bank with a percentage of their salary includes all those workers involved with the bank. The explanation presented by the complainant trade unions that those affected by the operation are not only the workers belonging to the trade unions but also the trade unions themselves is not convincing. The judge accepts this complaint: "This court believes that the complainants have the right to complain as they have been the victims, taking into account that they are shareholders in the bank and that those responsible were the authorities and administrators …". Such a reasoning would lead to absurd results. The parties authorized to lay a complaint against a civil servant would, according to this reasoning, be infinite, for example, if the criminal activities allegedly carried out by that civil servant resulted in a ruinous state policy. *Class action* is not admissible in this type of criminal prosecution.

4. Duration of the sentence

The sentence for Jerónimo López and Alan Flores is seven years' imprisonment and for Reinaldo Barreto Medina is four years' imprisonment. These exceed the sentences requested by the prosecutor. When interviewed, Javier Contreras expressed his surprise. This confusion arises from the fact that he had requested only six years' imprisonment. Although the judge is legally allowed to increase a punishment beyond that which is requested by the prosecutor, this is unusual. A number of authorities interviewed on this point expressed their surprise at the extremely harsh sentence of the Court of First Instance, especially as this exceeded the sentence requested by the prosecutor.

5. The slowness of the trial and the restriction of individual freedoms

The sentence was handed down by the Court of First Instance on 8 October 2001. This sentence was appealed by the defendants. As a result of some disqualifications and a number of challenges filed by the parties, there is still no trial judge for the appeal. This deprives the parties of an authority who will resolve possible issues arising out of the trial. There are two points of appeal. The first is the sentence itself, as the defendants maintain their innocence. With regard to this matter it should be pointed out that the Minister of the Supreme Court, Felipe Santiago Paredes, expressed surprise at the allegation of the direct contacts mission that the trial lacked a "natural judge". This statement is based on the fact that the court has still not been formally constituted, as has been pointed out by Civil Court Judge, Fernando Barriocanal, who holds the file. Furthermore, according to the latter, it is the Supreme Court Division, to which Judge Felipe Santiago Paredes belongs, that must resolve the challenges.

The second matter makes the delay a particularly serious flaw. The impossibility of resolving the recourse to appeal gave rise to the decision to detain the defendants. In the absence of the trial judge, this precautionary measure was handed down by an "itinerant" judge after the appeal lodged by the defendants' lawyers had been accepted. While the mission does not believe it appropriate to discuss this issue here, it should be pointed out that it can be legally maintained, as the defendants do, that the trial judge no longer had jurisdiction once appeal had been granted. This means that the trial judge no longer had the competency to rule on any question linked to the trial. Both the defendants and the judge himself maintain this. In an interview on 20 March, Judge Hugo López confessed "not to know the reasons" for which his replacement could have issued a ruling to detain the defendants. The lack of jurisdiction held by the "itinerant" judge of first instance to issue a ruling for the arrest of the defendants has given rise to similar criticism. The trial judge, Hugo López, and the Civil Court Judge, Fernando Barriocanal, who, as already indicated, will probably be responsible for hearing the appeal agree that this measure was inappropriate. This situation demonstrates a serious flaw that highlights the "anarchy" of the procedure followed in this trial. As regards this description, the direct contacts mission refers to the sincere reaction shown by a prestigious magistrate interviewed by the mission. It should be noted that the prosecutor himself was also worried by the delay.

C. Alleged trade union persecution

All but a few of the members of the judiciary and of the Executive interviewed agree that, since the start of this trial, parts of the media have covered the events in a sensationalist way. The constant coverage had the appearance of trying to obtain a judgement against the trade union officials. Perhaps the clearest witness to this fact was the lawyer, Manuel Páez Monges, who is

currently the Counsel for the Defence. Mr. Páez Monges referred to the existence of a campaign specifically directed against the trade union members accused. All those interviewed, apart from the plaintiffs in the criminal trial, agreed that some parts of the media had shown marked hostility towards the defendants. Among various newspapers and radio stations, the paper *ABC Color* stood out. According to the newspaper clippings that the direct contacts mission was able to see, it should be pointed out that the information in *ABC Color* indicated to the public that this crime was already proved even before the legal investigation took place: the trade union officials of the complainant organizations to the Committee on Freedom of Association were part of a criminal consortium involved in enriching their members at the expense of the compulsory contributions paid by workers to the BNT. This campaign implies that a large part of the community considered the trade union officials guilty from the start.

From this point of view, the fact that the trade union officials were tried on a particular day, in June 2000, a few hours before the start of a general strike, is significant. A number of the people interviewed by the direct contacts mission assumed that the day chosen was done so in order to intimidate the organizations who had called the strike.

High-level officials of the Executive and the complainant organizations to the ILO confirm that the proceedings to try the trade union officials took place in the context of a forthcoming programme of state reform and widespread privatization. They add that the proceedings and subsequent arrest of the trade union officials of the complainant organizations to the ILO were probably carried out with the intent to prevent anything from standing in the way of this programme.

Conclusion

There are circumstances surrounding the procedure and others that relate to the social and political context in which this procedure took place. The circumstances surrounding the legal proceedings reveal both procedural flaws and flaws in the application of the rules applicable to the case.

(a) With regard to the procedural matters, the following measures seem inappropriate:

(1) The decision of the court to authorize the trade union organizations to act as private plaintiffs [the claim that these trade unions had a direct interest in the activities that caused damage to the BNT is inadequate and it is not proven that the complainant organizations had a direct interest in the criminal proceedings].

(2) The inappropriate – and entirely unjustified – decision by a court with no jurisdiction to hold Alan Flores, Jerónimo López and Reinaldo Barreto Medina [the Court of First Instance that sentenced the defendants stated that it did not know why the other court decided to continue to hold the trade union officials.

(3) The excessive delay (more than five months at the time of the direct contacts mission) in forming a Court of Second Instance with competency to hear the appeal that was granted in October 2001. This situation leaves two matters outstanding: (a) the appeal against the sentence of the first instance; and (b) the decision to continue to hold the defendants. Needless to say, the latter issue is of urgent importance.

(b) With regard to the fundamental legal questions:

(1) Rules of criminal law were applied retroactively in violation of the principle of *nullum crimen nulla poena sine lege*.

With regard to the social and political context of anti-union discrimination alleged by the complainant organizations to the ILO, it should be pointed out that:

(1) Most of those people interviewed believe that a number of important sections of the media, especially the press, carried out a campaign to establish the opinion that the defendants were unquestionably guilty even before the legal proceedings confirmed this. According to this majority opinion, all of this was translated in the decision to impose long sentences on the trade union officials, and to continue to hold them in custody in spite of the sentences having being appealed.

(2) Although the direct contacts mission is not able to conclude that the judiciary or the Government were acting in a clearly anti-union manner, it is convinced that the flaws described above, and the media campaign, have been prejudicial to the defendants.

Buenos Aires, 23 March 2002. Jaime Malamud Goti.

List of persons met by the ILO mission (18 March 2002)

1. Meetings at the Ministry of Justice and Labour
   - Dr. Diego Abente Brun, Minister of Justice and Labour.
   - Dr. Jorge Luis Bernis, Deputy Minister of Labour and Social Security.
   - Dr. Gloria Bordón, Chief of International Affairs of the Vice-Ministry of Labour and Social Security.
2. Meetings with the judiciary
   - Dr. Carlos Fernández Gadea, President of the Supreme Court of Justice.
   - Dr. Felipe Santiago Paredes, Member of the Supreme Court of Justice.
   - Dr. Hugo López, Judge of the Court of First Instance for Liquidation and Settlement.
   - Dr. Fernando Barriocanal, Member of the Civil Court of Appeal, Second Court.
   - Dr. Ramiro Barboza, Member of the Labour Court of Appeal, First Court.
3. Dr. Javier Contreras, Criminal Prosecutor.
4. Dr. Manual Páez Monges, Public Defender.
5. Trade union officials of CUT and CPT, detained in the Tacumbú Penitentiary.
6. President of CESITEP, who is under house arrest at the headquarters of the trade union organization.
7 Defence lawyers for the trade union officials.
8. Complainant trade union organizations in the criminal trial (some of which are affiliated to the trade union confederation CUT-A) and their counsel.
9. Trade union officials of CGT, CUT, CPT and CNT.
10. Officials from the employers' organization FEPRINCO.
11. Mr. José Soler, Deputy Resident Representative for the United Nations Development Programme (UNDP).

CASE NO. 2149

DEFINITIVE REPORT

Complaint against the Government of Romania presented by the Employers' Confederation of Romania (CPR)

Allegations: Violations of collective bargaining rights

570. In a communication dated 1 August 2001, the Employers' Confederation of Romania (CPR) submitted a complaint of violations of their collective bargaining rights against the Government of Romania.

571. The Government sent its observations in communications dated 7 November and 28 December 2001 and 7 February 2002.

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

A. The complainant's allegations

573. In its communication dated 1 August 2001, the complainant alleges that the Collective Agreement Act No. 143 of 1997 infringes its right to voluntary negotiations as guaranteed by Article 4 of Convention No. 98 and freedom of association principles. Section 1 of Act No. 143 provides that: collective negotiations are obligatory at the enterprise level, with the exception of those with less than 21 employees; collective negotiations must occur every year; and that the scope of the negotiations must include, at least, wages, working time, work programmes and working conditions. The duration of negotiations cannot last more than 60 days. Violations of these provisions results in a fine of between 3 million and 6 million lei. The complainant asserts that the new Minister of Labour has declared that he will enforce this regulation.

B. The Government's reply

574. In its communications dated 7 November and 28 December 2001, the Government first states that Article 4 of Convention No. 98 calls for measures appropriate to national conditions to be taken to encourage and promote the full development and utilization of machinery on a large scale for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to regulation of terms and conditions of employment. The Government confirms that Act No. 143, amending the Collective Agreement Act No. 130 of 1996, provides for the obligation to begin collective bargaining each year in workplaces with more than 21 employees. The negotiations must address, at least, wages, working time, work programmes and working conditions, while the duration of these negotiations must not exceed 60 days. The deadline for concluding negotiations was set with the aim of avoiding vacillation and delays. In the Government's opinion, the Collective Agreements Act, as amended, in no way constitutes a violation of Convention No. 98 and, to the contrary, is a concrete legal framework for regulating collective bargaining with the aim of eliminating any risk of abuse either on the part of the workers' organizations, or by the employer or employers' organizations.

575. The Government adds that the legislation does not provide for any obligation to conclude a collective agreement. If at the end of the 60-day period the parties have not arrived at an agreement, the labour relations will be set in the individual labour contracts established between the employee and the employer. The parties can then take up negotiations again 12 months after the date of the previous unsuccessful negotiation.

576. In its communication dated 7 February 2002, the Government adds that the period for negotiations is dependent upon whether or not a collective agreement has been previously concluded. Where there is no collective agreement, the negotiations must take place 12 months after the previous negotiation. Where a collective agreement has been concluded, the negotiations must take place at least 30 days before the expiration of the collective agreement. Under section 23 of the Act, the duration of collective agreements must be at least one year and can be extended in the same conditions in which they were concluded or different conditions.

577. The Government asserts that, in promoting collective bargaining, the Government has aimed at ensuring equitable labour relations for the social protection of employees, as well as the prevention or limitation of labour disputes and strike action. The Government adds that the social partners have not raised any difficulties in the carrying out of collective bargaining in practice.

C. The Committee's conclusions

578. *The Committee notes that the allegations in this case concern infringements of free collective bargaining through legislation obliging employers and workers' organizations to enter into negotiations in all enterprises with over 21 employees, under penalty of a fine.*

579. *As regards the principle of free and voluntary negotiation, the Committee has considered that nothing in Article 4 of Convention No. 98 places a duty on the government to enforce collective bargaining by compulsory means with a given organization; such an intervention would clearly alter the nature of bargaining. [See* ***Digest of decisions and principles of the Freedom of Association Committee****, 1994, para. 846.] The previous cases in which the Committee has set forth this principle have concerned complaints submitted by trade union organizations in respect of employer refusal to negotiate with a given organization and the absence of any compulsion by the government on the employer to do so. The focus of these cases was not whether the government had the right to enforce employers or employers' organizations and workers' organizations to enter into negotiations, but rather whether they had a duty so to do under internationally established standards and principles. The complaint in the present case is different in nature and the Committee is called upon to determine whether the term voluntary negotiation in Article 4 of Convention No. 98 means that a legal obligation to enter into negotiations for a specified period of time would be contrary to freedom of association standards and principles.*

580. *In this respect, the Committee has reinforced the importance it attaches to collective bargaining in elaborating upon the principle of bargaining in good faith. It has recalled the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations [see* ***Digest****, op. cit., para. 814]. A balance between the voluntary nature of collective bargaining and the importance of good faith negotiations was set forth by the Committee when it stated "while the question as to whether or not one party adopts an amenable or uncompromising attitude towards the other party is a matter for negotiation between the parties, both employers and trade unions should bargain in good faith making every effort to reach an agreement" [see* ***Digest****, op. cit., para. 817].*

581. *The Committee considers it important to emphasize that the legislation in question in this case does not oblige the conclusion of a collective agreement and that, in the event negotiations fail, conditions of employment will be regulated by the terms of individual contracts. Indeed, several other industrial relations systems around the world compel in varying circumstances the entering into of negotiations with, as the Government of Romania has indicated in the present case, the aim of promoting healthy and harmonious labour relations by providing a period for negotiations between the social partners in a period absent of industrial unrest. Neither these systems, nor the legislation in Romania, have been commented upon by the Committee of Experts on the Application of Conventions and Recommendations as giving rise to violations of Convention No. 98. The Committee considers that Article 4 of Convention No. 98 in no way places a duty on the Government to enforce collective bargaining, nor would it be contrary to this provision to oblige social partners, within the framework of the encouragement and promotion of the full development and utilization of collective bargaining machinery, to enter into negotiations*

on terms and conditions of employment. The Committee recalls, however, that the public authorities should refrain from any undue interference in the negotiation process.

The Committee's recommendation

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

> ***The Committee considers that Article 4 of Convention No. 98 in no way places a duty on the Government to enforce collective bargaining, nor would it be contrary to this provision to oblige social partners, within the framework of the encouragement and promotion of the full development and utilization of collective bargaining machinery, to enter into negotiations on terms and conditions of employment.***

CASE NO. 2143

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

Complaint against the Government of Swaziland presented by the Swaziland Federation of Trade Unions (SFTU)

Allegations: Excessive use of state of emergency laws; detention of trade union leaders and charges against them for participating in peaceful demonstrations

583. The complaint in the present case is contained in a communication dated 25 June 2001 from the Swaziland Federation of Trade Unions (SFTU).

584. In the absence of a reply from the Government, the Committee was obliged to adjourn the examination of this case on two occasions. At its meeting in March 2002 [327th Report, para. 9], the Committee made an urgent appeal to the Government, stating 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 not sent any information.

585. Swaziland 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

586. In its communication of 25 June 2001, the SFTU explains firstly that one of the main problems with the industrial relations system in Swaziland lies with the fact that the Government has made, over the years, systematic use of the 1973 State of Emergency Decree and the 1963 Public Order Act, which are both state of emergency laws, and this, in order to undermine human and trade union rights. The 1973 State of Emergency Decree, which, according to the complainant, is considered by the Government the supreme law of the country and is still in force today, bans political parties, freedom of association, right to assembly, right of demonstration and introduces a 60-day detention without trial. This has

meant that in recent years, workers could only meet if the commissioner of police gave an authorization. Even with such an authorization, the police would attend meetings and had a right to stop them at any time.

587. More precisely, the SFTU provides a list of events which happened in the last few years and where the Government had recourse to the 1973 State of Emergency Decree and the 1963 Public Order Act: banning of trade union meetings by the Prime Minister on 27 October 2000; brutalization of peaceful demonstrators on 13 and 14 November 2000; denial of the right to demonstrate on 7 November 2000; arrest of activists during a demonstration on 10 November 2000 and detention of trade union leaders by the police at the Lobamba police station for nine hours; conditional banning of union meetings in December 2000 by the Prime Minister, the conditions being that the police should authorize the meeting and attend it, with a view to stopping it if it considered that the issues being discussed seemed political.

588. The SFTU further alleges that in January 2001, the Government pressed charges against six trade union leaders for having led and participated in the peaceful demonstration of 13 and 14 November 2000. They are: Jan Sithole, secretary-general (SFTU); Musa Dlamini, secretary-general (SNAT/teachers); Phineas Magagula, president (SNAT/teachers); Elliot Mkhatshwa, vice-president (SFTU); Quinton Dlamini, secretary-general (SNACS/civil service) and Bonginhlanhla Gama, executive member (SNAT/teachers). The bail conditions for all the above individuals were the withdrawal of all passports and travel documents and the banning to address gatherings. While their passports were eventually returned, their case has been adjourned three times and is still pending.

589. Finally, the SFTU alleges that the Government selectively picked on the leadership of all the public sector unions and charged them for "compromising their political impartiality" for having participated in a peaceful protest action and attending a meeting of workers which was held in South Africa. The public servants who were charged are the following: Phineas Magagula, Meshack Masuku, Musa Dlamini, Masitsela Mhlanga, Zweli Nxumalo, Julia Ziyane, Elliot Mkhatshwa, Sipiwe Hlophe and Quinton Dlamini.

B. The Committee's conclusions

590. *The Committee regrets that, despite the time that has elapsed since the complaint was first presented, the Government has not replied to any of the complainant's allegations, although it has been invited on several occasions, including by means of an urgent appeal, to present its comments and observations on the case. The Committee expresses the hope that the Government will be more cooperative in the future.*

591. *Under these circumstances, and in accordance with the applicable rules of procedure [see 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee finds itself obliged to present a report on the substance of the case without the benefit of the information which it had hoped to receive from the Government.*

592. *The Committee recalls that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if the procedure protects governments from unreasonable accusations, governments on their side will recognize the importance of formulating for objective examination detailed replies concerning allegations made against them [see the First Report of the Committee, para. 31].*

593. *The Committee notes that this case concerns the application in practice of the 1973 State of Emergency Decree and the 1963 Public Order Act, which, according to the complainant organization, has led to serious violations of the right of workers to assembly and to hold peaceful demonstrations. The Committee also notes that the Government's recourse to the abovementioned legislation has allegedly led to the detention of trade union leaders and the pressing of charges against them. In this regard, the Committee recalls that the right to organize union meetings is an essential aspect of trade union rights. Furthermore, workers should enjoy the right of peaceful demonstration to defend their occupational interests 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. Moreover, the authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of law and order should be in due proportion to the danger to law and order that the authorities are attempting to control and the Government should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 137]. On this issue, the Committee further observes that the Committee of Experts on the Application of Conventions and Recommendations had been expressing for several years its concern over the use of the 1973 State of Emergency Decree and the 1963 Public Order Act regarding peaceful protest action. The Committee of Experts noted however with interest, in its 2002 observation, that following the adoption of Act No. 8 of 2000, which came into force in December 2000, modifying certain sections of the Industrial Relations Act of 2000, the provisions regarding the holding of peaceful protest action had been brought into line with the principles of freedom of association. Therefore, the Committee expresses the firm hope that the provisions concerning peaceful protest action contained in Act No. 8 of 2000 will be duly applied, in law and in practice, and that the Government will no longer have recourse to the 1973 State of Emergency Decree and the 1963 Public Order Act when facing peaceful demonstrations from workers. The Committee asks the Government to be kept informed in this regard.*

594. *As concerns the short detention of trade union leaders following a peaceful demonstration in November 2000 and the charges that were laid against them in January 2001 relating to these incidents, the Committee notes that while they have been released and their passports, once confiscated, were returned, their case has been adjourned three times and is still pending. In this regard, the Committee reminds the Government that the arrest, even if only briefly, of trade union leaders and trade unionists for exercising legitimate trade union activities constitutes a violation of the principles of freedom of association. The Committee asks the Government to drop the charges against the six trade union leaders if it is established that these charges were only laid against them for having led and participated in a peaceful demonstration. Concerning the charges which were laid against the leaders of the public sector unions, the Committee, as in the previous case, asks the Government to drop these charges if it is established that they were only laid against them for, inter alia, allegedly compromising their political impartiality for having participated in a peaceful protest action and attending a workers' meeting in South Africa. It requests the Government to keep it informed of developments in this matter.*

The Committee's recommendations

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

(a) The Committee regrets that, despite the time that has elapsed since the complaint was first presented, the Government has not replied to any of the complainant's allegations. The Committee expresses the hope that the Government will be more cooperative in the future.

(b) Recalling that workers should enjoy the right of peaceful demonstration to defend their occupational interest, the Committee expresses the firm hope that the provisions concerning peaceful protest action contained in Act No. 8 of 2000 will be duly applied, in law and in practice, and that the Government will no longer have recourse to the 1973 State of Emergency Decree and the 1963 Public Order Act when facing peaceful demonstrations from workers.

(c) With regard to the detention of six trade union leaders and the subsequent charges that were laid against them, the Committee asks the Government to drop the charges against the said leaders if it is established that these charges were only laid against them for having led and participated in a peaceful demonstration. It requests the Government to keep it informed of developments in this matter.

(d) The Committee further urges the Government to provide its observations concerning the charges which were laid against the leaders of the public sector unions and, as in the previous case, asks the Government to drop these charges if it is established that they were only laid against them for allegedly compromising their political impartiality for having participated in a peaceful protest action and attending a workers' meeting in South Africa.

CASE NO. 2129

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

Complaint against the Government of Chad presented by the Union of Trade Unions of Chad (UST)

Allegations: Detentions of trade union officials

596. The Union of Trade Unions of Chad (UST) submitted this complaint in communications dated 8 June and 7 July 2001.

597. In the absence of a reply from the Government, the Committee was obliged to adjourn the examination of this case on two occasions. At its March 2002 meeting [see 327th Report, para. 9], the Committee made an urgent appeal to the Government stating 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 information or observations requested had not been received in due time. To date, the Government has not sent any information.

598. Chad 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

599. In its communications of 8 June and 7 July 2001 the complainant organization explains that on 30 May 2001 the chairman and the secretary-general of the Union of Trade Unions of Chad, Mr. Boukinebe Garka and Mr. Djibrine Assali Hamdallah, were taken from their office at the UST headquarters for questioning by the police, without an arrest warrant, at approximately 9 a.m. They were interrogated, detained in appallingly unhygienic conditions, then released on 31 May at 12.50 a.m. The complainant organization alleges that the grounds given to justify these arrests were that the UST had been involved with the opposition political parties to try to arrange an information meeting following the contested elections of 20 May 2001.

B. The Committee's conclusions

600. *The Committee regrets that, despite the time that has elapsed since the complaint was first presented, the Government has not replied to any of the complainant's allegations, although it has been invited on several occasions, including by means of an urgent appeal, to present its comments and observations on this case. The Committee expresses the hope that the Government will be more cooperative in the future.*

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

602. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to promote respect for this freedom in law and in fact. The Committee remains confident that, if this procedure protects governments from unreasonable accusations, governments on their side will recognize the importance of formulating for objective examination detailed replies concerning allegations made against them [see the First Report of the Committee, para. 31].*

603. *The Committee notes that this case concerns the arrest and detention, for approximately 48 hours, of the chairman and the secretary-general of the UST. The Committee notes that, according to the complainant organization, these arrests occurred without an arrest warrant and on grounds relating to the fact that the UST had allegedly been involved with opposition political parties for the purpose of holding an information meeting following the elections held in Chad on 20 May 2001. The Committee hereby calls the Government's attention to the fact that the detention of trade union officials or members for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular. The Committee reminds the Government that measures depriving trade unionists of their freedom on grounds related to their trade union activity, even where they are merely summoned or questioned for a short period, constitute an obstacle to the exercise of trade union rights [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 71 and 77]. Consequently, the Committee requests the Government to fully respect the principles set forth above and to give appropriate instructions to the competent authorities to ensure that such arrests do not occur in the future. The Committee requests the Government to keep it informed in this regard.*

604. *Furthermore, the Committee recalls that, in the interests of the normal development of the trade union movement, it would be desirable to have regard to the principles enunciated in the resolution on the independence of the trade union movement adopted by the*

International Labour Conference at its 35th Session (1952) that the fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers and that when trade unions, in accordance with the national law and practice of their respective countries and at the decision of their members, decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social or economic functions, irrespective of political changes in the country. Moreover, the Committee reminds the Government that a general prohibition on trade unions from engaging in any political activities would not only be incompatible with the principles of freedom of association, but also unrealistic in practice. Trade union organizations may wish, for example, to express publicly their opinion regarding the Government's economic and social policy [see ***Digest****, op. cit., paras. 450 and 455]. The Committee hopes that all the parties concerned will take these principles fully into account in the future.*

The Committee's recommendations

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

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

(b) Stressing that the detention of trade union officials or members on grounds related to their trade union activity, even where they are merely summoned or questioned for a short period, constitutes a serious violation of public freedoms in general and trade union freedoms in particular, the Committee requests the Government to fully respect this principle and to give the appropriate instructions to the competent authorities to ensure that such arrests do not occur in the future. The Committee requests the Government to keep it informed in this regard.

CASE NO. 2087

INTERIM REPORT

Complaint against the Government of Uruguay presented by the Association of Bank Employees of Uruguay (AEBU)

Allegations: Anti-union dismissals; irregular denouncement of a collective agreement; threats of dismissal

606. The Committee last examined this case at its June 2001 meeting, at which time it submitted an interim report [see 325th Report, paras. 561-575, approved by the Governing Body at its 281st Session (June 2001)]. The Government sent its observations in communications dated 23 August 2001 and 16 January 2002.

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

A. Previous examination of the case

608. When it last examined this case, the Committee presented the following recommendations [see 325th Report, para. 575]:

> Noting that the Government states that an administrative investigation is under way, initiated following a complaint lodged by the Association of Bank Employees of Uruguay (AEBU) against the Savings and Loans Cooperative of Officials of the Armed Forces (CAOFA) for anti-union acts, the Committee requests the Government to:
>
> – take measures so that this investigation, started more than one year ago, is quickly concluded;
>
> – ensure that the investigation covers all the allegations made by the complainant in this case;
>
> – take measures, if during this investigation the allegations are found to be true, so that: (i) workers dismissed on trade union grounds or transferred are reinstated immediately in their jobs, with the payment of back wages; and (ii) in the future, the respect of established collective agreements is fully guaranteed at CAOFA as well as that of legal provisions against acts of anti-union discrimination; and
>
> – transmit information on the results of the investigation and any measures adopted.

B. The Government's reply

609. In communications dated 23 August 2001 and 16 January 2002, the Government stated that the following stages of the administrative investigation had been reached:

(a) statements in their defence have been received from the Savings and Loans Cooperative for Officials of the Armed Forces (CAOFA), in which they deny having taken and implemented any decisions on the grounds of anti-union discrimination, and that these decisions were a result of a process of restructuring and rescuing the enterprise from the economic and financial situation in which it had been left by the outgoing executive committee. As proof of this they state that there is a penal denunciation under way against the outgoing executive committee for alleged fraudulent management, and that there is a request before a commercial court to negotiate a legal arrangement with creditors to avoid bankruptcy;

(b) on 8 November 2000, the General Inspectorate of Labour and Social Security (the division responsible for investigating the complaint) considered the hearing of the enterprise concluded and ordered the taking of evidence from the parties, consisting of testimony from the plaintiff and the results to date of the legal proceedings from the defendant. At the same time, it set the date of 20 November 2000, 1 p.m., for receiving the testimonial evidence mentioned above, and reminded the plaintiff organization that it was responsible for producing the chosen witnesses;

(c) the plaintiff, the enterprise and the civil servants' association of the CAOFA were notified of this date, and on 16 November official communications were sent to the two courts, requesting them to send copies of the relevant proceedings taking place before them;

(d) on 20 November 2000 the testimonial evidence was not heard as neither the parties summoned nor the witnesses appeared in court;

(e) since then, the file has remained at the disposition of the parties, but not one has shown any active interest in following this up. At the end of June 2001, given the seriousness of the complaints and acting under Decree No. 500/991 of the executive

authority governing the administrative proceedings of the central administration, the Inspector-General of Labour and Social Security officially decided to continue the hearing of testimonial evidence submitted by the parties. To this effect, it was decided to hold a new hearing to receive testimonial evidence and the parties were so notified; this hearing has not yet taken place.

610. Consequently, the Government indicates that the administrative investigation had not been concluded as a result of a lack of action on the part of the parties concerned and that the Government had had to act officially in order to ensure that the facts came to light and that they could be considered from a legal point of view. In this respect, the Government states that it still does not have sufficient evidence to pronounce on the case as, to date, it only has the evidence on file, which is documentary, and which needs to be compared to the evidence presented by the parties in the denunciation and the reply. Furthermore, the Government notes the Committee's recommendation that the investigation should cover all the allegations made by the complainant in this case, and it confirms that it will apprise the Committee of the outcome.

611. With regard to the accuracy of the allegations, the Government states that, in view of the difference in the statements made by the parties and the fact that the proceedings are in the preliminary stages, it is in no position to take any specific measures in this case. Without prejudice to this, the Government repeats that which has already been stated with regard to other complaints laid before the Committee on Freedom of Association against the Government of Uruguay, inasmuch as the reinstatement of a worker who has been dismissed on trade union grounds is not provided for in national legislation and has been expressly rejected by the labour courts. The fact that a worker has been dismissed on such grounds, and that this dismissal is illegal, in accordance with legislation and jurisprudence, leads to the imposition of a fine that may be accompanied by a legal penalty to pay compensation, but it does not provide for specific execution in the form of reinstatement of the worker in the private enterprise.

612. Finally, the Government states that the measures used to guarantee respect of collective agreements, in accordance with national legislation, are preventive, dissuasive and punitive: (a) a collective agreement must be registered with the National Directorate of Labour, which endorses its date of establishment and publicizes it; (b) the General Inspectorate of Labour and Social Security has the authority to impose fines on those enterprises not respecting the agreements, relative to the seriousness of the omissions or violations and the numbers of workers in the enterprise affected by these violations; and (c) a record is established of previous violations and penalties with regard to each enterprise in order to ensure that steeper fines are imposed on those enterprises that continue to violate the collective agreements. These measures take place without prejudice to other types of remedy that may be imposed by the independent legal system and that the Government lack, such as protective measures and proceedings or appeals for protection of constitutional rights *(amparo)*. The Government states that as soon as the investigation is concluded, it will inform the Committee of the outcome and the measures to be taken.

C. The Committee's conclusions

613. *The Committee recalls that in this present case, the complainant organization had alleged: (i) that the Savings and Loans Cooperative for Officials of the Armed Forces (CAOFA) denounced the collective agreement in force once it became aware of the intentions of union leaders of the cooperative to become affiliated to the Association of Bank Employees of Uruguay (AEBU); (ii) the dismissal of members of this trade union (Nelson Corbo, Eduardo Cevallos, Gonzalo Ribas, Andrea Oyharbide, Gerardo Olivieri and Marcelo Almadia) and the transfer of another member (Virginia Orrego); and (iii) that workers joining the AEBU were threatened with dismissal. Moreover, the Committee recalls that at*

its June 2001 meeting, it requested the Government to take steps to ensure that the investigation, which was begun more than one year ago, was concluded quickly, that it covered all the allegations made by the complainant and that if those allegations were found to be true that those workers who had been dismissed or transferred for trade union reasons were reinstated in their positions with payment of back wages and that respect of established collective agreements was fully guaranteed at CAOFA.

614. *The Committee notes that the Government: (1) provides details on the different stages of the administrative investigation; (2) states that the parties to the proceedings showed no interest in this moving forward and that the Government, in June 2001, decided officially to continue to receive testimonial evidence and fixed a hearing for this, which had not yet taken place; (3) states that the administrative investigation had not been concluded owing to inaction by the parties and that there was a lack of sufficient evidence to pronounce on the case as the only evidence available (documentary evidence) needed to be compared with the testimonial evidence submitted by the parties in the denunciation and reply; (4) indicates that it has noted the Committee's recommendation that the investigation should cover all the allegations made by the complainant; and (5) states that regarding the accuracy of the allegations, in view of the difference between the parties' statements and the fact that the proceedings are still in the preliminary stages, it is not in a position to take any measures in this regard.*

615. *In this regard, the Committee regrets that, in spite of two years having passed since the date of the dismissals and the other acts of anti-union discrimination (January 2000) and two years since the beginning of the administrative investigation (March 2000), the facts have still not yet been ascertained. In these circumstances, the Committee strongly urges the Government to: (1) take measures to ensure that the administrative investigation under way is immediately concluded; (2) ensure that the investigation covers all the allegations made by the complainant in this case; and (3) transmit information on the results obtained in this respect. Finally, noting that the Government states that reinstatement of those workers dismissed for anti-union reasons is not laid down in national legislation and has been expressly refused by the labour courts when such measures had been requested, the Committee requests the Government that, if it finds that these dismissals and transfers have occurred for anti-union reasons, it apply the sanctions laid down in national legislation, referred to in its reply (a fine and the imposition of a legal penalty to pay special compensation), and that it mediate between the parties in order to obtain the reinstatement of those workers affected. The Committee brings the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee's recommendations

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

(a) The Committee urges the Government to: (1) take measures to ensure that the administrative investigation under way, of which it was informed in June 2001, is immediately concluded; (2) ensure that the investigation covers all the allegations made by the complainant in this case; and (3) communicate its observations, based on the information obtained in this respect.

(b) The Committee requests the Government, if it finds that the dismissals and transfers in this case have occurred for anti-union reasons, to apply the sanctions laid down in the national legislation, referred to in its reply (a fine and the imposition of a legal penalty to pay special compensation), and to

mediate between the parties in order to obtain the reinstatement of those workers affected.

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

CASE NO. 2137

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

Complaint against the Government of Uruguay presented by the Departmental Association of Public Employees of Canelones (ADEOM)

Allegations: Non-payment of trade union dues and restrictions on union leave

617. The complaint in this case is contained in a communication from the Departmental Association of Public Employees of Canelones (ADEOM) of 16 June 2001. This communication was followed by a number of documents that supported the complaint. The Government sent its observations in a communication dated 23 August 2001.

618. Uruguay 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

619. In its communication of 16 June 2001, the Departmental Association of Public Employees of Canelones (ADEOM) states that, in spite of the fact that the Municipal Administration of Canelones had been using the check-off facility for trade union dues since the middle of the last century, on 9 June 2000 the Administration issued Internal Service Order No. 562/2000 to the Director-General of the Ministry of Finance as follows: "Faced with the need to rationalize the deductions from the wages paid to civil servants, we request that you do not use the check-off facility for trade union dues, to take effect, without exception, as of payment of wages for the month of July of this year". The complainant organization states that this seriously affected the trade union (the Administration has 200 places of work) and its members, who receive social services, health services, legal advice, training, etc. The Courts of the First and Second Instances have declared this Order to be contrary to that which is laid down in the national Constitution and Conventions Nos. 87, 98 and 151, but the order has still not been suspended.

620. The ruling of the Court of First Instance on a petition for constitutional guarantee for protection of civil rights *(amparo)* considers that "the Administration has manifestly acted in an arbitrary manner", orders "the Administration to continue with the check-off facility for the trade union dues" and decrees "the definitive suspension of the implementation or the fulfilment of the contested decision" (Service Order No. 562/2000). The Court of Second Instance considered that Service Order No. 562/2000 "is manifestly illegal in that it restricts the exercise […] of a right recognized in the Constitution of the Republic (article 57) and is not based on sufficient cause […]"; "such decision […] affects the financing of the activities of the […] ADEOM […], interfering with the organizing of its administration in violation of the legal rights of protection *(tutela)* laid down in Article 3 of

Convention No. 87 and Article 2 of Convention No. 98 of the ILO […] and Convention No. 151 of the ILO"; "the suspension of the administrative decision being contested will be temporary until this matter is resolved with recourse to the Administration itself and, possibly, to the courts".

621. Subsequently, the complainant organization filed another *amparo* proceedings based on a new decision (No. 3866 of 31 July 2001) of the Municipal Administration of Canelones, which once again prohibited the deduction of trade union dues (among other deductions, from 1 April 2002) in spite of a decree from the Departmental Board (No. 16/2001 of 9 March 2001) that ordered the deduction of trade union dues as follows:

> ... the public employees of the Municipal Administration who are employed permanently, contractually or seasonally whether or not they are, or become, members of the Departmental Association of Public Employees of Canelones (ADEOM), may request in writing to the Financial Department that the amount due for membership to this trade union is deducted from the monthly wage packet. Once this request, signed by the public employee, has been received by the Financial Department, the latter must deduct the amount due for membership to ADEOM from the monthly wage packet starting from the month in which the request was presented […]. The authorization by public employee to have his/her trade union dues deducted from the monthly wage packet remains in force until the public employee communicates to the Financial Department in writing his/her decision to cancel the deduction of this amount.

In a ruling on 17 September 2001, the legal authorities admitted the petition for protection of constitutional rights of ADEOM (the complainant organization), condemning the conduct of the Administration and:

> … summoning the Municipal Administration of Canelones (in the form of the person in charge), within the period of three (3) days, to re-establish and to do whatever is necessary to deduct, without exception, the trade union dues of those public employees who are members of the Departmental Association of Public Employees of Canelones for the immediate and subsequent transfer of the said monies to that organization, in accordance with the conditions laid down in Decree No. 16/2001 (sections 7-8) of the Departmental Board of Canelones. With regard to the protection to act extended by Decision No. 3866/2001 of the Municipal Administration of Canelones, the defendent administration shall refrain from implementing this with regard to the deductions of the trade union dues of the members of ADEOM of Canelones, decreeing its preventive and conditional suspension until the Court of Administrative Law hands down its ruling.

622. Finally, the complainant organization states that on 27 October 2000, the Office of Personnel and Human Resources of the Municipal Administration of Canelones issued Service Order No. 007/2000 which stated, as follows:

> In the light of a rearrangement of employees and a reassignment of duties, the Office of Personnel and Human Resources considers it expedient to facilitate administratively the situation of the officials of ADEOM so that they can freely exercise their trade union activities.
>
> Therefore, it informs all state officers, local councils and municipal dependencies that they should dispense with submitting trade union meeting records, as the members of the Departmental Committee of ADEOM are exclusively exempt from recording their attendance, or the attendance of their deputies when the officials request trade union leave through an official communication to this office.

This resolution clearly states that only the nine members of the Executive Committee of ADEOM are entitled to carry out trade union activities (the total number of employees at the Administration is 1,750 in 200 places of work). It is now impossible for the remaining trade union members to carry out trade union activities.

B. The Government's reply

623. In its communication of 23 August 2001, the Government states that in a written answer to a charge the Municipal Administration of Canelones declares that the Administrative Act that suppressed the automatic deduction of trade union dues was not issued by the General Secretariat but by the Municipal Administration itself, which is the body with the legal authority to issue this type of Act, while the former merely countersigns and circulates it. The Administration states that Law No. 13.100 authorizes the Treasury to carry out deductions following authorization by those involved. This authorization had not been communicated by those involved but by the trade union, whose authorization it considered insufficient. It adds that this type of deduction is optional, and not obligatory, for the employer. Furthermore, it states, as the basis for the suppression of the check-off facility, the inviolable nature of wages and the claim that the wage earner has over them, based on Articles 8 and 10 of the Protection of Wages Convention, 1949 (No. 95). With regard to its behaviour following the rulings handed down by the two courts, photocopies of which are attached to the complaint, the Government provides reliable documentation that, on 11 October 2000, the Administration complied with the ruling of the Court of First Instance, paying trade union dues that had been deducted for July and August 2000 to representatives of the trade union, and on 25 October 2000 paying the trade union dues for the month of September. The trade union did not lodge an appeal to executive authority against the decision of the Administration that suppressed the check-off facility for trade union dues, with the result that this Administrative Act became definitive. The fact that appeals were not lodged prevents the requirement that executive action run its course in order to begin action in the administrative law courts, which have the legal competence to annul. Individual appeals – copies of which are not available in the file – were lodged by Juan del Hoyo del Puerto, Daniel Roberto Mazzine Ferreri, Juan José and Alfredo Cabrera, who participated in the petition for protection of constitutional rights that took place in the Court of First Instance. Consequently, the Administration is complying with the ruling handed down by the Court of Appeal (Court of Second Instance) and therefore deducting and paying the trade union only those trade union dues of the four people mentioned earlier, on a temporary basis and until such time as proceedings have been decided once and for all through appeal to the executive authority of the Administration itself and, possibly, in the courts for administrative law.

624. The administrative proceedings are currently at the stage of notifying the complainant and the defendant that evidence is being taken so that they might present evidence or bring witnesses.

625. Regarding the merits of the case, the Government states that the Municipal Administration of Canelones is the executive body of the departmental government of Canelones, and is one of the 19 political-administrative jurisdictions of Uruguay. It is situated to the north-east of Montevideo, is the second largest in terms of population, and, as indicated in the complainant's case, has local offices throughout the region to which administrative matters are decentralized.

626. The Departmental Board of Canelones, as the departmental government, issues legislative acts on matters assigned to it by the Constitution of the Republic or municipal organic law and these have legal force within its jurisdiction. The departmental government is not affected in this matter by laws issued by the National Parliament.

627. The Ministry of Labour and Social Security, as an integral part of the Central Administration, is not competent to oversee or to punish departmental governments for the possible non-fulfilment of their obligations to their dependants; the decisions taken by these departmental governments must be challenged through appeals to executive authority, action for protection of constitutional rights and possibly action for legal

annulment when appeals have no effect. Notwithstanding, international representation of the State and the essence of the political and social values in question mean that the active intervention carried out by this ministry must be brought to the knowledge of the Committee.

628. There are no provisions with legal force in the jurisdiction of Canelones issued by the Departmental Board and known as departmental decrees that refer to the trade union dues of employees of the Administration. The few legal provisions issued by the National Parliament do not apply to departmental governments. For purposes of information, article 1 of Law No. 13.100 of 18 June 1962 and article 52 of Law No. 13.349 of 29 June 1965, reproduced as article 173 of the Text Governing the Civil Service (TOFUP), Executive Decree No. 200/997 of 18 June 1997, state: "Legal authorization. Authorizes the Department of Finances, Supplies and Accountancy of the Ministry of Livestock, Agriculture and Fisheries to retain and to pay out on a monthly basis to the Civil Servants' Association of that organization, subject to the agreement of its members, the amount of their trade union dues. Moreover, this provision covers all civil servants' organizations of the State that have or obtain legal personality with the effect that the the relevant offices or sections of these institutions will comply with this provision".

629. Similarly, article 368 of TOFUP states: "Deduction of trade union dues. All state organizations of civil servants that have or obtain legal personality are authorized to deduct from the wages of trade union members the amounts corresponding to their trade union dues, in accordance with article 173 of this text".

630. The departmental government of Canelones, by analogy with these provisions, is found to be right for both reasons put forward: first, in that the agreement of the trade union member is required before trade union dues are deducted and it is not enough that the trade union itself makes the request or authorization; second, in that the organization is authorized but not obliged to carry out deductions and payment of trade union dues.

631. Of the legal standards in force in the Republic for the protection of salaries, the application of those invoked by the Administration are equally relevant: Articles 8 and 10 of ILO Convention No. 95, which state that "deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award" and that "wages may be attached or assigned only in a manner and within limits prescribed by national laws or regulations". There is no collective agreement between the Administration and the Departmental Association of Public Employees of Canelones.

632. Article 144 of TOFUP states: "Legal authorization. As a general principle, deductions from wages can only be made where there is a legal provision expressly authorizing this".

633. The Government does not agree with the fact that the complainant organization denounces the Administrative Act declaring an end to the deduction of trade union dues as illegal, based on Articles 2 and 3 of Convention No. 87, Articles 1 and 2 of Convention No 98, and Articles 4, 5 and 9 of Convention No. 151.

634. The Administrative Act neither limits nor circumscribes the right of the workers' organization to draw up its constitutions and rules, to elect its representatives in full freedom, to organize its administration and activities and to formulate its programmes (Article 3 of Convention No. 87).

635. Neither does the Administrative Act constitute a discriminatory act that aims to reduce freedom of association in relation to employment or imply the existence of interference in the establishment, functioning or administration of the workers' organization (Articles 1

and 2 of Convention No. 98, Articles 4 and 5 of Convention No. 151), or reduce the civil and political rights which are essential for the normal exercise of freedom of association (Article 9 of Convention No. 151).

636. The detrimental situation caused by the difficulties experienced by the workers' organization in amassing the trade union dues of members who are geographically scattered across the region is valid, but this does not mean it is impossible, nor does it mean that the Municipal Administration of Canelones is unduly interfering in the organization. This situation should not be confused with the freezing of the trade union's account as the Administration does not have money belonging to the trade union in its possession.

637. With regard to the fact that suppression of the possibility of using the check-off facility might cause financial difficulties for trade union organizations and would not encourage harmonious professional relations, the Government agrees that it would be desirable to avoid this suppression but that it is also true that the situation in this case is not governed by a law or collective agreement that demands that the practice carried out up until last year be customary.

638. The administrative proceedings did not reveal that, following the decision issued by the Administration, the trade union members might have requested deduction and payment of their trade union dues to representatives of the organization, nor that the Administration would necessarily have refused in advance to do so, given the existence of express agreement in writing.

639. The end of the process of deduction of trade union dues is neither incompatible nor contrary to the administrative rationalization and the financial administration of the municipal government: if the worker does not provide express consent that his trade union dues be deducted, such deduction from his salary, whether or not it is requested by the trade union, constitutes an improper and illegal act liable to be the subject of a claim by the employee affected and to incur the responsibility of the Administration, and for this reason the fact that the deduction of trade union dues must be preceded by the express agreement of the worker concerned is not only in accordance with law but also with the appropriate technical application by the financial administration.

640. Regarding the allegations relating to Service Order No. 007/2000 that exempts only the members of the Departmental Committee of ADEOM, or their deputies when they request trade union leave, from recording their attendance, this matter will be clearer following evidential proceedings, on which the Government will make regular reports, as well as report on the conclusion of the administrative proceedings and the measures it may take. Without prejudice to this, the Government reminds the Committee that Uruguay has no national legislation on trade union privileges.

The Committee's conclusions

641. *Regarding the cancellation of the check-off facility as a result of decisions taken by the Municipal Administration of Canelones on 9 June 2000 and 31 July 2001, in spite of trade union dues having been deducted since the middle of the past century, the Committee notes the observations of the Municipal Administration on the allegations (relating to 2000) as follows: (1) that there is the express agreement of the parties concerned (it is not sufficient that this is communicated by the trade union); (2) that the deduction is contrary to that which is laid down in ILO Convention No. 95 concerning the protection of wages; (3) that the Administration complied with the ruling of the Court of First Instance relating to the payment of trade union dues and paid the amounts for July, August and September 2000; (4) that the complainant organization did not appeal to executive authority with regard to*

the decision of the Administration and the administrative action became definitive; (5) that regarding the ruling of the Court of Second Instance, the Administration is provisionally paying the trade union the dues of those four persons who appealed to executive authority on the basis of the action for protection of constitutional rights laid in the Court of First Instance, until the matter is resolved by the executive authority and, possibly, by the courts.

642. *The Committee notes that the Government states that: (1) the competency extended to the Departmental Board of Canelones means that it is not affected by laws issued by the National Parliament (which fall outside this competency); (2) there are no legal provisions ("departmental decrees") in the jurisdiction of Canelones issued by the Departmental Board referring to the trade union dues of employees of the Administration; (3) the few provisions issued by the National Parliament on the subject of trade union dues are not applicable to the departmental government and, in any case, as a result of such provisions, the agreement of trade union members is required before trade union dues are deducted (it is not sufficient that the trade union requests or authorizes this); and the institution in question would be authorized, but not obliged, to deduct and pay trade union dues; (4) ILO Convention No. 95 concerning the protection of wages states that national laws or regulations, collective agreements or arbitration awards may authorize deductions (which is not the case in this complaint, as up until last year the practice of making deductions of trade union dues was based on custom); (5) there is no evidence in the administrative proceedings that, following the issuing of the decision by the Administration, the trade union members had requested that their trade union dues be deducted and paid to representatives of the organization, nor that the Administration would refuse to do this in the light of express agreement in writing to that effect. The Government believes that the Administrative Act calling for an end to deductions of trade union dues is not illegal and does not constitute an act of anti-union discrimination (collection of trade union dues can take place by other means). While acknowledging the specificity of the political structure and organization of each country, the Committee recalls that, by freely becoming a member State of the ILO, the Government has a responsibility to ensure full respect of freedom of association principles throughout its territory.*

643. *The Committee points out that the Government's opinion does not match that expressed by the legal authority that issued rulings based on proceedings for protection of constitutional rights, ordering the Administration to proceed with the deduction and payment of trade union dues and condemning the conduct of the Administration as illegal, although it decreed the suspension of administrative decisions (that prohibited the deduction of trade union dues) as a precautionary and conditional measure until the ruling is handed down by the court for administrative proceedings.*

644. *The Committee notes that the decisions of the Municipal Administration of Canelones refusing to deduct the trade union dues do not seem to have been made in consultation with the trade union organization. The Committee also notes the rulings of the judicial authorities which, up until now, have called for the deductions to take place. There has been a clearly established custom to this effect since last century and, after the judicial authorities criticized the first administration decision to prevent the deduction, the Administration issued a new decision similar to the first one. Moreover, in the light of the Government's statement that "it does not appear that ... the trade union members had requested the deduction ..." "without it being sufficient that the trade union make the request or authorization", it should be pointed out that effectively the agreement of trade union members is a precondition to carry out the deduction of trade union dues, and this condition is explicitly mentioned in Decree No. 16/2001 of the Departmental Board. The Administration did not comply, however, with this decree through its decision No. 3866. Rather than trying to find a solution with the complainant organization by checking the agreement of the trade union members, the Administration issued administrative decisions*

that prevented the deduction of trade union dues. In this respect, the Committee has, on previous occasions, recalled that "the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided" [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 435].*

645. *In these circumstances, the Committee concludes that the Municipal Administration of Canelones behaved in an anti-union manner by unilaterally and arbitrarily ceasing to deduct the trade union dues of the complainant organization and it urges the Administration, as the judicial authorities have ruled, to deduct the trade union dues of the members who have stated their agreement in any form. The Committee requests the Government to keep it informed of any new ruling on this matter.*

646. *Regarding Service Order No. 007/2000, which allows trade union leave only for those members of the departmental committee of the complainant organization, or their deputies, the Committee notes the Government's statement that it will provide information in this respect following the processing of the administrative proceedings and the measures that it may take. The Committee requests the Government to keep it informed in this respect.*

The Committee's recommendations

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

(a) The Committee concludes that the Municipal Administration of Canelones acted in an anti-union manner by unilaterally and arbitrarily ceasing to deduct the trade union dues of the complainant organization and urges it to deduct the trade union dues of those members who have stated their agreement to this in any form. The Committee requests the Government to keep it informed of any new ruling on this matter.

(b) Regarding Service Order No. 007/2000, which allows trade union leave only for members of the departmental committee of the complainant organization, or their deputies, the Committee notes that the Government will provide information in this respect following the processing of the administrative proceedings and the measures that may be taken. The Committee requests the Government to keep it informed in this respect.

CASE NO. 2160

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

Complaint against the Government of Venezuela presented by the Trade Union of Revolutionary Workers of the New Millennium

Allegations: Refusal to register a trade union; anti-union dismissal of its founders

648. The complaint is contained in a communication from the Trade Union of Revolutionary Workers of the New Millennium dated 15 October 2001. The complainant presented

additional information in a communication dated 26 December 2001. The Government sent its observations in a communication dated 29 January 2002.

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

A. The complainant's allegations

650. In its communications dated 15 October 2001 and 29 January 2002, the Trade Union of Revolutionary Workers of the New Millennium alleges that in February 2000 a group of workers decided to establish a trade union in the Corporación INLACA enterprise, but were dismissed and reinstated after proceedings which lasted seven months.

651. The complainant adds that on 25 September 2000 an application was filed for registration of a new trade union with the Valencia Inspectorate in the State of Carabobo, and that on 29, 30 September and 3 October 2000 the Corporación INLACA enterprise dismissed the executive committee of the trade union and some workers who supported its establishment. The complainant points out that on 5 December 2000 the Guacara Inspectorate stated that in order to register the trade union the signatures would have to be verified, which was carried out; despite this, on 10 January 2001 the same Labour Inspectorate refused to register the trade union.

652. The complainant adds that on 11 December 2000, the Labour Inspectorate ordered the reinstatement of the dismissed workers. On 18 January 2001 the workers were reinstated, paid part of their wage arrears, and again dismissed.

653. Lastly, the complainant states that: (i) on 19 January 2001 an application was submitted to register a new trade union (the Trade Union of Revolutionary Workers of the New Millennium) in the Corporación INLACA enterprise; (ii) on 31 May 2001 the Labour Inspectorate refused the application for registration on the grounds that the founders of the trade union were not employees of the Corporación INLACA enterprise; (iii) an administrative appeal *(recurso jerárquico)* was filed with the Ministry of Labour on 11 June 2001 and dismissed on 17 September; and (iv) on 2 October 2001, the Labour Inspectorate of Puerto Cabello, Carabobo State, denied the petition for reinstatement of the dismissed workers, on the grounds that there was a doctrinal rule providing that trade union immunity of union officers could not exceed three months.

B. The Government's reply

654. In its communication dated 29 January 2002, the Government states that, having studied the documents in the possession of the Labour Inspectorate of the Autonomous Municipalities of Valencia, Naguanagua, San Diego, Los Guayos, Carlos Arvelo, Miranda and Montalbán of the State of Carabobo and the Inspectorate's decision handed down on 30 May 2001, the Ministry of Labour upheld the decision, on the grounds that pursuant to divisions II and III of Chapter II of Title VII of the Organic Labour Act, the workers wishing to establish the trade union did not meet the most elementary requirements, such as that of being employed by the enterprise, especially if it is an enterprise union that they intended to establish (section 412 of the Organic Labour Act). The Government states that as at 19 January 2001, the date on which the supporting documents were to be presented (notification of the general meeting, constitution, list of members and by-laws), the workers who were applying for the establishment of the trade union did not have the required status of employees of the enterprise in which they were organizing the trade

union. The Government adds that neither the constitution of the trade union nor the list of members bore the signatures of the members of the executive committee.

655. The Government states that article 95 of the Constitution of the Bolivarian Republic of Venezuela provides for the right of workers to establish freely such trade unions as they consider appropriate, and that the Organic Labour Act elaborates on this right, laying down the requirements to be met by the persons concerned. However, the procedure for establishing a trade union does not implicitly include a procedure for reinstatement and payment of wage arrears, which is another administrative procedure in labour law, for which provision is made in sections 454 and 457 of the Organic Labour Act. This procedure was not initiated by the trade union's founders once they had lost the required status of employees of the enterprise and applied for registration of their planned trade union. The Government adds that according to the documents of the case, on 23 January 2001 the founders of the trade union petitioned the competent Labour Inspectorate for reinstatement and payment of their wage arrears. A favourable decision would result in the persons concerned being reinstated, and in the event of an unfavourable decision they could even avail themselves of the appropriate legal channels (by filing an appeal for annulment). Should they obtain the status of employees of the Corporación INLACA enterprise and meet the requirements laid down in the law in this respect, they will have every right to apply again for the establishment of their trade union, given that the labour legislation does not lay down any condition as to the timing of applying for registration of the trade union, which would thus become lawfully registered. Lastly, the Government announces its intention to remain attentive to the reinstatement proceedings, which are still under way, in order to inform the Committee of progress in this case and the proper application of the laws and regulations in force.

C. The Committee's conclusions

656. *The Committee observes that the complainant alleges that on three occasions (February and September 2000 and January 2001) an attempt was made to establish a trade union in the Corporación INLACA enterprise but its registration was refused and, on all three occasions, its founding members were dismissed.*

657. *The Committee observes that the Government refers in its reply to the third procedure involving the application for registration of the trade union and that it states that: (1) the decision to refuse registration of the trade union was based on the fact that the workers attempting to establish it did not have the required status of employees of the enterprise at the time the application was made; (2) the founders of the trade union petitioned the competent Labour Inspectorate for reinstatement on 23 January 2001 and a favourable decision by the administrative authority would enable them, as workers, to establish a trade union and apply for its registration; and (3) it will remain attentive to the reinstatement proceedings – which are still under way – of the dismissed founders of the trade union, in order to keep it informed of progress in this case.*

658. *The Committee emphasizes "the importance that it attaches to the fact that workers and employers should in practice be able to establish and join organizations of their own choosing in full freedom" and recalls that it has pointed out on numerous occasions that "if the conditions for the granting of registration are tantamount to obtaining previous authorization from the public authorities for the establishment or functioning of a trade union, this would undeniably constitute an infringement of Convention No. 87" [see **Digest** of **decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 274 and 259]. Moreover, the Committee points out that "measures taken against workers because they attempt to constitute organizations or to reconstitute organizations of workers outside the official 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" and that "the necessary measures have to be taken so that trade unionists who have been dismissed for activities related to the establishment of a union are reinstated in their functions, if they so wish" [see ***Digest****, op. cit., paras. 301 and 302].*

659. *The Committee observes that the Government has not denied in its reply the alleged attempts to obtain registration of the trade union prior to January 2001, nor the dismissals of its founders on those occasions. Moreover, the Committee regrets that, although more than 15 months have elapsed since the beginning of the proceedings, the Government merely states that "it will remain attentive" to the proceedings for reinstatement of the founding members of the trade union who were dismissed. In these circumstances, the Committee concludes that there have been serious violations of freedom of association and therefore urges the Government to take the necessary measures without delay to ensure that: (a) the trade union of the Corporación INLACA enterprise, called the Trade Union of Revolutionary Workers of the New Millennium, is registered; and (b) all of the workers of the enterprise who were dismissed for having participated in the establishment and application for registration of the trade union in question are reinstated. The Committee requests the Government to keep it informed in this respect.*

The Committee's recommendation

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

> ***The Committee urges the Government to take the necessary measures without delay to ensure that: (a) the trade union of the Corporación INLACA enterprise, called the Trade Union of Revolutionary Workers of the New Millennium, is registered; and (b) all of the workers of the enterprise who were dismissed for having participated in the establishment and application for registration of the trade union in question are reinstated. The Committee requests the Government to keep it informed in these respects.***

CASE NO. 2161

INTERIM REPORT

Complaint against the Government of Venezuela presented by the Single Trade Union of Workers of the "Sofía Imbert" Museum of Contemporary Art in Caracas (SUTRAMACCSI)

Allegations: Anti-union dismissals, acts of interference, delays in registration of a trade union

661. The complaint is contained in a communication dated 3 November 2001 from the Single Trade Union of Workers of the "Sofía Imbert" Museum of Contemporary Art in Caracas (SUTRAMACCSI). The complaint has been supported by the following organizations: the National Trade Union of Public Employees of the Autonomous Institute of the National Library and Library Services (SBN), the Single Trade Union of Workers of the Teresa Carreño Foundation (SUTRAFUNTECA) and the Association of Workers of the Museum of Sciences of the Capital District (SINTRAMUCIEN).

662. The Government replied in a communication dated 29 January 2002.

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

A. The complainant's allegations

664. In its communication of 3 November 2001, the Single Trade Union of Workers of the "Sofía Imbert" Museum of Contemporary Art in Caracas (SUTRAMACCSI) states that on 22 August 2001, it deposited with the Ministry of Labour the documents required by law for the registration of the union, and that on 31 August the Labour Inspectorate drew attention to formal defects or errors that needed to be rectified, which was in fact done on 18 September 2001.

665. The complainant adds that on 1 October 2001, the employer, i.e. the (public) Foundation of the Museum of Contemporary Art, appealed to the Ministry of Labour to cancel the registration, alleging in general and unsubstantiated terms that trade union leaders had the status of "management employees"; on 19 October, a labour inspector was presented with the union's evidence that its General Secretary (the only official questioned by the employer) did not have that status.

666. On 30 October 2001, it was noted that the page numbering in the registration file had been altered from page 67 onwards and documents which purported to have a bearing on the status of workers in the union's general secretariat and public relations office had been unduly inserted in the file.

667. On 1 November 2001, the time allowed for registration elapsed and the legal protection against anti-union discrimination which had hitherto been enjoyed by the trade union's founders expired; on 2 November, Ms. Sonia Chacón, the union's Public Relations Secretary, who also enjoyed special maternity protection as she had recently had a child, was arbitrarily dismissed.

668. One of the unions that supported this complaint (SUTRFUNTECA) states that Ms. Teresa Zottola, General Secretary of SUTRAMACCSI, was also dismissed on 13 November 2001, and that the Labour Inspectorate, working closely with the Foundation of the Museum of Contemporary Art, has been pushing ahead with the foundation of a parallel union, promoted by the Director of Human Resources. The trade unions that support the complaint by SUTRAMACCSI stress that the refusal to register this organization is linked to the fact that five cultural trade unions are needed to form a federation, and that figure would be reached with the registration of SUTRAMACCSI.

B. The Government's reply

669. In its communication of 29 January 2002, the Government supplies the registration certificate with which the labour inspector of Libertador Municipality in the Capital District certifies that the Single Trade Union of Workers of the "Sofía Imbert" Museum of Contemporary Art in Caracas (SUTRAMACCSI) complied with all the requisite procedures to obtain legal registration, in accordance with section 425, Title VII of the Organic Labour Act. It was accordingly granted legal certification and entered in the appropriate registry under No. 2454, heading 262, Vol. III, dated 3 December 2001.

670. The Government emphasizes that the union was registered once all the legal requirements were met, since it is in the interests of the Government, as represented by the Ministry of Labour, to facilitate the active participation of all trade union organizations, as the law requires.

C. The Committee's conclusions

671. *The Committee notes that in the present case, the complainant and the organizations supporting the complaint have alleged the following: (1) the refusal of the authorities to register the complainant organization (SUTRAMACCSI); (2) the dismissal of the General Secretary and Public Relations Secretary of SUTRAMACCSI; and (3) connivance between the Labour Inspectorate and the (public) Foundation of the Museum of Contemporary Art to create a parallel union, promoted by the Director of Human Resources.*

672. *As regards the first allegation, the Committee notes the information supplied by the Government, according to which SUTRAMACCSI was registered on 3 December 2001. Given that the Government has not explained the reasons for the delay in granting registration, the Committee cannot but regret that the union was obliged to wait several months before obtaining registration, despite having rectified the formal deficiencies noted by the authorities, and urges the Government to take the necessary measures to ensure that in future, registration of trade unions is not unjustifiably delayed.*

673. *As regards the dismissal of Teresa Zottola and Sonia Chacón, General Secretary and Public Relations Secretary respectively of SUTRAMACCSI, the Committee regrets that the Government has not replied to the allegation in question. The Committee notes that according to the allegations, documents purporting to show that the trade union officials concerned did not in fact have the status of workers were improperly inserted in the registration file; according to the allegations, the foundation challenged the General Secretary's right to hold that post before the authorities. The Committee notes that, according to the allegations, the dismissals in question occurred as the legal protection against anti-union discrimination which had been enjoyed by the trade union's founders was coming to an end.*

674. *The Committee draws the Government's attention to the principle according to which "No person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, whether past or present" [see **Digest of decisions and principles of the Freedom of Association Committee**, 1996, para. 690], and to the principle that "The dismissal of workers on grounds of membership of an organization or trade union activities violates the principles of freedom of association" [see **Digest**, op. cit., para. 702]. The Committee emphasizes that protection against dismissals of this type is especially desirable in the case of trade union officials to allow them to perform their trade union duties with the necessary independence, without being prejudiced on that account, and to ensure respect for the right of workers to elect their representatives freely. Under these circumstances, bearing in mind the fact that the Government has not denied the information supplied by the complainant, the Committee considers the possibility that the dismissal of the trade union officials Teresa Zottola and Sonia Chacón was motivated by their trade union membership and activities; it urges the Government to investigate promptly and impartially these dismissals and, if their anti-union nature is established, to take the necessary measures to ensure that the trade union officials in question are reinstated in their posts without delay. The Committee requests the Government to keep it informed in this regard.*

675. *Lastly, as regards the allegation concerning connivance between the Labour Inspectorate and the (public) Foundation of the Museum of Contemporary Art to establish a parallel trade union promoted by the Director of Human Resources, the Committee greatly regrets that the Government has not replied to this allegation and urges it to supply its observations as a matter of urgency. The Committee draws the Government's attention to Article 2 of Convention No. 98, according to which:*

1. Workers' and employers' organisations 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.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

The Committee requests the Government to guarantee the effective implementation of these principles in practice.

The Committee's recommendations

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

(a) The Committee regrets that the complainant organization has had to wait several months to obtain registration, and urges the Government to take the necessary measures to ensure that in future, registration of trade unions is not unjustifiably delayed.

(b) As regards the dismissal of the trade union leaders Teresa Zottola and Sonia Chacón, the Committee urges the Government to investigate promptly and impartially these dismissals and, if their anti-union nature is established, to take the necessary measures without delay to reinstate the trade union officials in question in their posts. The Committee requests the Government to keep it informed in this regard.

(c) As regards the allegation concerning connivance between the Labour Inspectorate and the (public) Foundation of the Museum of Contemporary Art to establish a parallel trade union promoted by the Director of Human Resources, the Committee regrets that the Government has not replied to the allegation and urges it to send its observations as a matter of urgency. The Committee requests the Government to ensure the effective implementation of Article 2 of Convention No. 98, concerning protection against acts of anti-union interference.

Geneva, 7 June 2002.

Paul van der Heijden,
Chairperson.

Points for decision: Paragraph 124; Paragraph 228; Paragraph 251; Paragraph 264; Paragraph 304 Paragraph 324; Paragraph 370; Paragraph 416; Paragraph 447; Paragraph 463; Paragraph 476; Paragraph 490; Paragraph 529; Paragraph 541; Paragraph 551; Paragraph 569; Paragraph 582; Paragraph 595; Paragraph 605; Paragraph 616; Paragraph 647; Paragraph 660; Paragraph 676.