INTERNATIONAL LABOUR OFFICE

Governing Body

GB.287/8(Part II)
287th Session

Geneva, June 2003

Part II

CASE NO. 1865

INTERIM REPORT

Complaints against the Government of the Republic of Korea presented by
— the Korean Confederation of Trade Unions (KCTU)
— the Korean Automobile Workers' Federation (KAWF)
— the International Confederation of Free Trade Unions (ICFTU) and
— the Korean Metalworkers' Federation (KMWF)

Allegations: The complainants' allegations concern the arrest and detention of trade union leaders and members; government refusal to register newly established organizations; the dismissal of unionists at Dong-hae Company; and the non-conformity of several provisions of the labour legislation with freedom of association principles.

322. The Committee already examined the substance of this case at its May 1996, March and June 1997, March and November 1998, March 2000, March 2001 and March 2002 meetings, when it presented an interim report to the Governing Body [304th Report, paras. 221-254; 306th Report, paras. 295-346; 307th Report, paras. 177-236; 309th Report, paras. 120-160; 311th Report, paras. 293-339; 320th Report, paras. 456-530; 324th Report, paras. 372-415; 327th Report, paras. 447-506; approved by the Governing Body at its 266th, 268th, 269th, 271st, 273rd, 277th, 280th and 283rd Sessions (June 1996, March and June 1997, March and November 1998, March 2000, March 2001 and March 2003)].

323. The Government provided its observations in communications dated 18 February and 30 April 2003, as well as an additional information note which was received on 16 May 2003.

324. The Republic of Korea 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. Previous examination of the case

325. At its March 2002 session, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

(a) As regards the legislative aspects of this case, the Committee requests the Government:

(i) to continue to extend the right of association to all those categories of public servants who should enjoy this right in accordance with freedom of association principles;

(ii) to continue to take steps to recognize, as soon as possible, the right to establish and join trade union organizations for all public servants who should enjoy this right in accordance with freedom of association principles;

(iii) to speed up the process of legalizing trade union pluralism at the enterprise level with a view to promoting the implementation of a stable collective bargaining system;

(iv) to ensure that the payment of wages to full-time union officers by employers is not subject to legislative interference;

(v) to further amend the list of essential public services contained in section 71 of the Trade Union and Labour Relations Adjustment Act (TULRAA) so that the right to strike is prohibited only in essential services in the strict sense of the term;

(vi) to repeal the requirement, contained in section 40 of the TULRAA to notify the Ministry of Labour of the identity of third parties in collective bargaining and industrial disputes, as well as the penalties contained in section 89(1) of the TULRAA for violation of the prohibition on persons not notified to the Ministry of Labour from intervening in collective bargaining or industrial disputes;

(vii) to repeal the provisions concerning the denial of the right of dismissed and unemployed workers to keep their union membership and the ineligibility of non-members of trade unions to stand for office (sections 2(4)(d) and 23(1) of the TULRAA);

(viii) to bring section 314 of the Penal Code (obstruction of business) into line with freedom of association principles;

(ix) to speed up the work of the Tripartite Commission and to keep the Committee informed of the outcome of the deliberations within the Tripartite Commission on all the above issues, which the Committee firmly hopes will be examined and resolved quickly in accordance with freedom of association principles;

(x) to speed up the legislative process with a view to amending all the provisions mentioned above in line with freedom of association principles. The Committee reminds the Government in this regard that it may avail itself of the

technical assistance of the Office. The Committee requests the Government to provide information on measures taken to give effect to the above recommendations and to keep the Committee informed thereon.

(b) As regards the factual aspects of this case:

(i) the Committee once again urges the Government to ensure the dropping of charges brought against Mr. Kwon Young-kil, former president of the KCTU, in connection with his legitimate trade union activities, and requests it to keep it informed of the outcome of Mr. Kwon Young-kil's appeal against the judgement issued by the Seoul District Court;

(ii) the Committee requests the Government to keep it informed of the outcome of the appeal lodged by OMRON Automotive Electronics Korea to the Supreme Court regarding the dismissal of six workers at the Dong-hae Company, and encourages the Government to continue pursuing efforts towards maintaining social dialogue between labour and management on this issue.

(c) As regards the KCTU's new allegations contained in a communication dated 8 June 2001:

(i) the Committee urges the Government to ensure that the activities of the Korean Association of Government Employees' Works Councils (KAGEWC) are no longer hindered in future. The Committee requests the Government to indicate whether any KAGEWC leaders or members were dismissed pursuant to its formation, as alleged, and if so, to take the necessary measures to ensure that they are immediately reinstated in their jobs. The Committee asks the Government to keep it informed of progress made in this regard;

(ii) the Committee requests the Government to indicate the total number of unionists who were arrested and detained in 2001 as well as the charges brought against them. The Committee urges the Government to take the appropriate measures so that the persons detained or on trial as a result of their trade union activities, are released, or that the charges brought against them are dropped. In the case of persons charged with violence or assault, the Committee asks the Government to ensure that these charges are dealt with as soon as possible. It requests the Government to provide information concerning measures taken on all these points.

(d) The Committee once again reiterates its call, on all the parties, to act in good faith and expresses its firm hope that tripartite dialogue will continue on all issues raised in this case. The Committee calls on all parties to exercise restraint in pursuing activities linked to collective labour disputes.

B. The Government's replies

326. In its communication dated 18 February 2003, the Government indicated that it has continued efforts to improve the related systems in accordance with the Committee's recommendations. A bill on the establishment and operation of public officials' union has been submitted to the National Assembly. In addition, the Government has made profound consultations with the members of the ILO advisory mission, has co-hosted an international seminar with the ILO in November 2002 and has engaged in intense discussion on the related labour issues at the Tripartite Commission.

327. The Government then indicates the state of developments on these issues as of January 2003 and adds that any new improvement or change under the new Government, which will take office on 25 February 2003, will be provided in due time. The Government indicates that, aside from the government-led initiative to submit a bill on the establishment and operation of public officials' association, two other bills were before the National Assembly on its own initiative: (1) a revision bill for the Trade Union and Labour Relations Adjustment Act (TULRAA) which would guarantee the three labour rights of public servants (to organize, to bargain collectively and to strike); and (2) a bill on the establishment and operation of trade unions for public officials recognizing the right to organize and to bargain collectively.

328. As concerns the list of essential services in section 71 of the TULRAA, the Government indicated that, in order not to restrict the right to strike in essential public services excessively, it made all efforts to minimize the cases where strikes in such services were referred to arbitration. As of November 2002, the Labour Relations Committee has referred 22 of the 62 conciliations to arbitration. The Government plans to review the issues of adjusting the scope of essential public services taking into account domestic industrial relations practices, the contents of labour-related laws and the characteristics of the national economic structure. The Government's position on the other legislative aspects of the case was similar to that presented to the Committee at its last examination of the case in March 2002.

329. As concerns the arrest and detention of trade unionists, the Government states that Mr. Kwon Young-kil, former president of the Korea Confederation of Trade Unions (KCTU), was sentenced in 2001 to ten months' imprisonment with a two-year stay of execution. According to the Government, the prosecution of Mr. Kwon cannot be withdrawn since the case is still under appeal. As concerns the appeal lodged by OMRON Automotive Electronics Korea regarding the dismissal of six workers at the Dong-hae Company, the Government indicates that the Supreme Court dismissed the appeal by OMRON on 29 March 2002 and ruled that Hee-young Lee and five others were fired unfairly. Accordingly, five were reinstated in service on 22 July 2002. One decided not to return to his/her former position.

330. As concerns the situation of the leaders and members of the Korean Association of Government Employees' Works Councils (KAGEWC), the Government indicates that, as of January 2003, 12 people were dismissed due to illegal collective actions, such as leading, planning and participating at illegal assemblies and walking out on their job without permission.

331. Finally, as concerns the total number of unionists arrested or detained in 2001, the Government indicates that, as of January 2003, 221 were arrested and four were imprisoned. Sixty-three unionists were arrested during the period from January to April 2002, only two of whom were in prison as of January 2003. Eight public servants involved in the public officials' union were arrested in 2002 and their trials or appeals are still pending. The Government annexes lists of all those arrested with the status of their trials.

332. In its reply dated 30 April 2003, the Government indicates that the new Government that took office in February 2003 is firmly committed to building industrial relations for social integration by balancing power between labour and management. Toward the end, the Government will reform the labour laws to meet global standards and harmonize with domestic reality.

333. In order to have a comprehensive review of all the institutions previously raised by labour and management, including the CFA recommendations, the Government will start operating the industrial relations improvement task force. The task force will devise

detailed plans for improving the institutions by next year. Before completing amendment by 2005, the Government will also gather opinions through social dialogue at the Tripartite Commission. The Government would like ILO experts to provide necessary advice on the bills which will be prepared by the industrial relations improvement task force.

334. Legalizing the government officials' union was a campaign pledge of President Roh. Toward the end, the Government gave the Ministry of Labour (MOL) the authority of preparing the Public Officials' Union Bill, which was previously handled by the Ministry of Government Administration and Home Affairs (MOGAHA). With a view to granting government officials the rights equivalent to those of teachers, the Government is revising the bill that was submitted to the National Assembly in October 2002 and promoting the enforcement of the new legislation by 2004. The new bill would allow using the title of trade union and grant the right to organize, the right to bargain collectively, and the right to conclude collective agreements except for those affected by the budget and legal issues.

335. In preparation for the overall granting of trade union pluralism at the enterprise level in 2007, the Government plans to prepare necessary measures for unifying the bargaining channels. It will also map out measures to amend the legal provisions that can cause controversies, inter-union conflicts and conflicts between labour and management when multiple unions are allowed at a single enterprise.

336. The Government states that it is planning to reasonably adjust the scope of essential public services that can be subject to arbitration by authority in the process of industrial disputes, taking into account the global standards and domestic reality.

337. The Government indicates that it will also come up with reasonable measures for improvement on other issues raised by labour and management, including a provision of report for third party assistance in case of collective bargaining and labour disputes and the right to join trade unions for the unemployed or the dismissed.

338. Finally, the Government indicates that it will establish a practice of investigation without detention for union workers who violate current labour laws, unless they commit an act of violence or destruction. The Government adds that the KCTU president, Mr. Dan Byung-ho, was released on the expiration of his prison term on 3 April 2003.

339. On 16 May 2003, the Government transmitted an information note on the current situations of trade unionists imprisoned in the Republic of Korea. On 30 April 2003, the Korean Government decided to grant special pardons and reinstate 1,424 convicts, including 568 who violated labour laws, in an attempt to make a new start with regard to establishing industrial relations for a social integration of tolerance and reconciliation, with the launch of the new Government. However, in an effort to fully respect the judicial authority, only those who had served a certain period after their sentencing were granted pardons. In that context, those whose stay of execution was finalized after 1 October 2002 were excluded from the pardon. In addition, those who have been granted a pardon since 2000 and have since committed a second offence were also not granted a pardon this time.

340. As a result, all the trade union officials who were reported to be in jail by the Government in January 2003 were released. Among them, Mr. Kang Sung-chul (executive of the KCTU), was released from prison by an exemption of the execution of his remaining sentence. Mr. Dan Byung-ho (Chairman of the KCTU), Mr. Kim Byung-hak (Taekwang Industry Union official), and Mr. Han Seok-ho (Organization Chief of the KMWF), who had been released by finishing their terms of sentence but were under various legal restrictions for a certain period, were reinstated and are now able to perform their full rights as citizens. Mr. Ku Jae-bo was released, having served two years in prison with a three-year stay of execution, and Mr. Lee Hae-nam was released, having served three years

in prison with a four-year stay of execution. In addition, Lee Yong-deuk (Chairman of the KFBU), Lee Kyung-soo (Chairman of Kookmin Bank Union), and Kim Cheol-hong (Chairman of the Housing and Commercial Bank Union), were also reinstated their civil rights.

C. The Committee's conclusions

341. *The Committee recalls that it has been examining this case since 1996, and while important steps have been taken over the years to ensure greater conformity between the national legislation and practice and the principles of freedom of association, most notably in the recognition of trade union pluralism at the national level and the recognition of the right to organize for teachers, significant obstacles to the full implementation of freedom of association principles remain. These obstacles can be found both in the legislation and in the practical approach to industrial relations within the country.*

342. *This being said, the Committee notes with interest the latest government communications which have indicated not only an overall desire and willingness to resolve most, if not all, of the outstanding issues in this case, but have also demonstrated concrete progress made in achieving a positive framework for the promotion of harmonious industrial relations through a certain number of special pardons granted to imprisoned trade unionists. The Committee is convinced that such an attitude will greatly facilitate the search for solutions to the complex issues involved in this case. The Committee hopes that all the parties concerned will be able to come together to find mutually acceptable solutions to all these issues and that it will be in a position to note further significant progress made in respect of its recommendations in the near future. The Committee takes due note of the Government's request for advice from ILO experts in respect of the bills to be prepared by the industrial relations improvement task force and reminds the Government that the technical assistance of the Office is entirely at the Government's disposal in this regard.*

Legislative issues

343. *The Committee recalls that the outstanding legislative issues concern the need to: ensure the right to organize for public servants, legalize trade union pluralism at the enterprise level; resolve the issue of payment of wages to full-time union officers in a manner consistent with freedom of association principles; amend section 71 of the Trade Union Labour Relations Amendment Act (TULRAA) so that the right to strike may be prohibited only in essential services in the strict sense of the term; repeal the notification requirement in section 40 of the TULRAA and the penalties provided for in section 89(1) concerning the prohibition on persons not notified to the Ministry of Labour from intervening in collective bargaining or industrial disputes; amend the prohibition on dismissed and unemployed workers from remaining union members or holding trade union office (sections 2(4)(d) and 23(1) of the TULRAA); and amend section 314 of the Criminal Code concerning the obstruction of business to bring it into line with freedom of association principles.*

344. *As concerns the Committee's previous recommendation that steps be taken to recognize, as soon as possible, the* ***right to establish and join trade union organizations for all public servants*** *who should enjoy this right, in accordance with freedom of association principles, the Committee notes with interest that, according to the Government's latest reply, legalizing the government officials' union was a campaign pledge of the newly elected President. The Government has now given the Ministry of Labour the authority to prepare the Public Officials' Union Bill, which was previously handled by the Ministry of Government Administration and Home Affairs (MOGAHA), with a view to granting to government officials the right to organize, the right to bargain collectively and the right to conclude collective agreements, with the exception of those who are affected by the budget and legal issues. The Committee welcomes these developments and noting that the*

Government intends to promote enforcement of the new legislation by 2004, trusts that the necessary measures will be taken in the very near future so as to ensure that all public servants fully enjoy the right to establish and join trade union organizations of their own choosing. It requests the Government to keep it informed of the progress made in this regard.

345. *Regarding the issue of the* ***legalization of trade union pluralism at the enterprise level****, the Committee notes from the latest information provided by the Government that it plans to prepare the necessary measures for unifying the bargaining channels and addressing other related areas of concern in preparation to the legalization of enterprise pluralism in 2007. While taking due note of the complexity arising from a number of issues interrelated to the introduction of pluralism at the enterprise level, the Committee trusts that the Government will take all possible steps to speed up the process of legalizing trade union pluralism, in full consultation with all social partners concerned, thereby ensuring full respect for the right of workers to establish and join the organization of their own choosing. Further noting that the* ***prohibition of payment by employers of wages to full-time union officials*** *(presently also deferred to 2007) is also closely linked to this issue, the Committee recalls its previous conclusions that such matters should not be subject to legislative interference and requests the Government to ensure that this matter is resolved in conformity with freedom of association principles. It requests the Government to keep it informed of the progress made on these matters.*

346. *As regards the* ***scope of essential public services*** *currently listed in section 71(2) of the TULRAA, where the right to strike may be prohibited, the Committee notes with interest the Government's indication that it is planning to adjust reasonably the scope of essential public services that can be subject to arbitration, taking into account the global standards and domestic reality. The Committee recalls in this regard its previous conclusions in which it indicates that railroad services, intercity rail and the petroleum sector do not constitute essential services in the strict sense of the term the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee has, however, considered that they may, in the circumstances of this case, constitute public services where a minimum service, negotiated between the trade unions, the employers and the public authorities, may be maintained in the event of a strike so as to ensure that the basic needs of the users of these services are satisfied [see 327th Report, para. 488]. The Committee therefore trusts that these principles will be borne in mind when reviewing the scope of essential public services and requests the Government to keep it informed of the progress made in restricting the list in section 71(2) to essential services in the strict sense of the term.*

347. *The Committee further notes the latest indication by the Government that, more generally, steps will be taken to come up with reasonable measures for the improvement of other matters, including* ***the notification requirement for third-party intervention in collective bargaining and industrial disputes and the denial of dismissed and unemployed workers from keeping their union membership*** *and the* ***ineligibility of non-union members to stand for trade union office****. Recalling its previous conclusions in this respect, the Committee once again requests the Government to repeal the notification requirement (section 40), the penalties for violation of the prohibition on persons not notified to the Ministry of Labour from intervening in collective bargaining or industrial disputes (section 89(1)) and the provisions concerning the denial of dismissed and unemployed workers from keeping their union membership and the ineligibility of non-union members to stand for trade union office (sections 2(4)(d) and 23(1) of the TULRAA). It requests the Government to keep it informed of the progress made in this regard.*

348. *As regards the term* ***obstruction of business*** *under section 314 of the Criminal Code, the Committee recalls from its previous examination of this matter that the Government had*

stated that certain workers had been arrested for leading illegal strikes and violating this section, taking due account of the size of the workplaces concerned and the negative impact on the national economy, even though violent acts were not committed. The Committee notes with interest the Government's general indication in its most recent reply that it will establish a practice of investigation without detention for workers who violate current labour laws, unless they commit an act of violence or destruction. The Committee considers that this statement is of paramount importance, particularly in a context where certain basic trade union rights have yet to be recognized for certain categories of workers and where the notion of a legal strike has been seen as restricted to a context of voluntary bargaining between labour and management for maintaining and improving working conditions [see 327th Report, paras. 491-492].

349. *Recalling that the legal definition of "obstruction of business" is so wide as to encompass practically all activities related to strikes and that the charge of obstruction of business carries extremely heavy penalties (maximum sentence of five years' imprisonment and/or a fine of 15 million won), the Committee once again emphasizes that such a situation is not conducive to a stable and harmonious industrial relations system and requests the Government to bring section 314 of the Criminal Code into line with freedom of association principles. In the meantime, the Committee hopes that, in accordance with the Government's indication, means of detention will not be used against union members for the exercise of their trade union activities, unless they have committed violent acts.*

Factual issues

350. *The Committee recalls that the factual issues in this case concern: the arrest and detention of Mr. Kwon Young-kil, former president of the KCTU; the arrest and detention of hundreds of trade unionists in 2001; the dismissal of six workers at the Dong-hae Company; the alleged dismissal of leaders and members of the Korean Association of Government Employees' Works Councils (KAGEWC) and the obstacles placed in the way of the association's activities.*

351. *While welcoming the release of KCTU president, Mr. Dan Byung-ho, communicated in the Government's latest reply, the Committee nevertheless regrets that he was obliged to serve his full term of imprisonment. The Committee further notes the Government's indication in its communication of February 2003 that 221 trade unionists were arrested or detained in 2001, four of whom are in prison, while those remaining, as well as the 63 unionists, two of whom are in prison, and eight public servants (who the Government acknowledged were arrested in the first part of 2002) are awaiting the final judgements in their cases. Finally, the Committee notes with regret that there have been no new developments in respect of Mr. Kwon Young-kil, whose case is still under appeal.*

352. *Recalling its previous conclusion that it is not possible for a stable industrial relations system to function harmoniously in the country as long as trade unionists are the subject of arrests and detentions [see 327th Report, para. 505], the Committee welcomes the steps taken by the Government to grant special pardons to a certain number of detained trade unionists. The Committee further considers that the indication in the Government's communication of April 2003 that it will establish a practice of investigation without detention for trade unionists who violate current labour laws, unless they commit an act of violence, is an important step towards building a climate of confidence necessary to stable and harmonious industrial relations. It would therefore further encourage the Government to take additional steps as appropriate so that all persons still detained or on trial as a result of their trade union activities are released and that the charges brought against them are dropped. In the event of persons charged with violence or assault, the Committee asks the Government to ensure that any such charges are dealt with as soon as possible. It*

requests the Government to keep it informed of any measures taken in respect of the above points.

353. *The Committee also recalls its previous conclusions in respect of Mr. Kwon Young-kil, former president of the KCTU, and once again urges the Government to ensure that the charges brought against him in connection with his legitimate trade union activities are dropped and requests the Government to keep it informed of the outcome of his appeal.*

354. *As concerns the activities of the KAGEWC and possible measures of reprisal against its leaders and members, the Committee notes with regret the information provided by the Government that 12 people had been dismissed as of January 2003 due to illegal collective actions. Recalling its conclusions above with respect to the right of public servants, as other workers, to establish and join organizations of their own choosing in the furtherance and defence of their members' interests, the Committee, in keeping with its previous recommendation [see 327th Report, para. 506(c)(i)], requests the Government to take the necessary measures to ensure that these persons are immediately reinstated in their jobs, without loss of wages. The Committee requests the Government to keep it informed of the progress made in this regard.*

355. *Finally, as concerns the six workers dismissed from the Dong-hae Company, the Committee notes with interest that the Supreme Court has ruled that these workers were fired unfairly and that five of them were reinstated in July 2002, the sixth choosing not to return to his/her former position.*

The Committee's recommendations

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

(a) Noting with interest from the latest government communication an overall desire and willingness to resolve most, if not all, of the outstanding issues in this case, the Committee hopes that all the parties concerned will be able to come together to find mutually acceptable solutions to all these issues and that it will be in a position to note further significant progress made in respect of its recommendations in the near future.

(b) As regards the legislative aspects of this case, the Committee requests the Government:

(i) to take the necessary measures in the very near future so as to ensure that all public servants fully enjoy the right to establish and join trade union organizations of their own choosing;

(ii) to take all possible steps to speed up the process of legalizing trade union pluralism, in full consultation with all social partners concerned, in order to ensure full respect for the right of workers to establish and join the organization of their own choosing;

(iii) to ensure that the payment of wages by employers to full-time union officials is not subject to legislative interference;

(iv) to amend the list of essential public services in section 71(2) of the Trade Union and Labour Relations Amendment Act (TULRAA) so that

the right to strike may be prohibited only in essential services in the strict sense of the term;

(v) to repeal the notification requirement (section 40) and the penalties for violation of the prohibition on persons not notified to the Ministry of Labour from intervening in collective bargaining or industrial disputes (section 89(1) of the TULRAA);

(vi) to repeal the provisions concerning the denial of dismissed and unemployed workers from keeping their union membership and the ineligibility of non-union members to stand for trade union office (sections 2(4)(d) and 23(1) of the TULRAA);

(vii) to bring section 314 of the Penal Code (obstruction of business) into line with freedom of association principles;

(viii) to keep it informed of the progress made in respect of all of the abovementioned matters.

Noting the Government's request for advice from ILO experts in respect of the bills to be prepared by the industrial relations improvement task force, the Committee reminds the Government that the technical assistance of the Office is entirely at the Government's disposal in this regard.

(c) As regards the factual aspects of this case:

(i) the Committee welcomes the steps taken by the Government to grant special pardons to a certain number of detained trade unionists;

(ii) taking due note of the indication in the Government's communication of April 2003 that it will establish a practice of investigation without detention for trade unionists who violate current labour laws, unless they commit an act of violence, the Committee further encourages the Government to take additional steps as appropriate so that all persons still detained or on trial as a result of their trade union activities are released and that the charges brought against them are dropped. In the event of persons charged with violence or assault, the Committee asks the Government to ensure that any such charges are dealt with as soon as possible. It requests the Government to keep it informed of any measures taken in respect of the above points;

(iii) the Committee once again urges the Government to ensure that the charges brought against Mr. Kwon Young-kil, former president of the KCTU, in connection with his legitimate trade union activities are dropped and requests the Government to keep it informed of the outcome of his appeal;

(iv) noting with regret the information provided by the Government that 12 people connected to the Korean Association of Government Employees' Works Councils (KAGEWC) had been dismissed as of January 2003 due to illegal collective actions, the Committee requests the Government to take the necessary measures to ensure that these

persons are immediately reinstated in their jobs, without loss of wages. It requests the Government to keep it informed of the progress made in this regard.

CASE NO. 2231INTERIM REPORT

Complaint against the Government of Costa Rica presented by the Latin American Workers' Confederation (CLAT) supported by the World Confederation of Labour (WCL)

Allegations: threats of dismissals and changes in conditions of work on the PROPOKODUSA company SA since the trade union was formed; dismissal by the management of members of the union executive committee and other workers who did not accept the change in conditions of work offered by the company.

357. The complaint is contained in a letter from the Latin American Workers' Confederation (CLAT) dated 8 November 2002. The World Confederation of Labour (WCL) supported the complaint in its letter of 13 December 2002.

358. The Government sent its observations in a letter of 17 February 2003.

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

A. The complainant's allegations

360. In its letter of 8 November 2002, the Latin American Workers' Confederation (CLAT) alleges the violation of trade union rights in the poultry company PROPOKODUSA where a group of workers were dismissed for forming a trade union (constituted on 16 June 2002 with 21 workers), the Poultry Industry and Similar Workers' Union (SINTRAINAVI). This union fulfilled all the legal requirements and is affiliated to the Trade Union Organization Movement of Costa Rican Workers (CMTC). Despite efforts by the CMTC to bring about a dialogue between the company and the trade union on its recognition and reinstating the workers in their jobs, it was not successful. The CLAT has sent various documents and information on these dismissals which can be summarized as follows.

361. On 16 June 2002, the workers of the company in question formed the SINTRAINAVI union. The company's response was not long in coming and on 25 June, without warning, the workers were called by the management in small groups to accept unilateral conditions of work under a supposed reorganization of the company of which they had no knowledge. The workers who did not accept the new unilateral conditions, which were not only fundamental but no time was allowed to consider them, immediately received a dismissal letter. They were told that those who did not collect the letter would have to wait until the employers' representatives handed it to them in the presence of two witnesses.

362. The trade union confederation to which SINTRAINAVI is affiliated (the CMTC) lodged a complaint of violation of the right of freedom of association with the Ministry of Labour on 10 September 2002. Following the formation of the trade union (on 16 June 2002) the workers were threatened with dismissal and changes in working hours and form of remuneration. On 21 July the trade union requested a meeting. The company replied on 24 July asking what subjects were to be discussed and on 25 July the trade union members were unfairly, without warning, called in small groups by company representatives who gave them two options: accept the new conditions clearly prejudicial to the workers' economic interests or sign for a letter of dismissal with management responsibility and the requirement to complete one month's work (notice). The workers refused to sign. On 26 July the CMTC sought an urgent meeting with the Ministry of Labour to have the company reconsider the dismissals and that it should first attend the meeting requested by the trade union. On 29 July the dismissed members and members of the executive committee were given a cheque for their legal entitlements and prevented from entering the workplace, in breach of the legal one month's notice. On 5 August, after a meeting between representatives of the trade union and the Ministry, the company stated its decision to uphold the dismissals.

B. The Government's reply

363. In its letter of 17 February 2003, the Government states that the Ministry of Labour received an initial complaint from the Costa Rican Confederation of Democratic Workers Rerum Novarum (5 September 2002) and subsequently from the Trade Union Organization Movement of Costa Rican Workers (CMTC) (24 September 2002) against the PROPOKODUSA company SA for trade union harassment and unfair labour practices. The Ministry asked them for the SINTRAINAVI workers' membership cards and an attestation of the legal status of that trade union. The issue was also raised as to which of the two confederations could legitimately represent the trade union. The Rerum Novarum Confederation later withdrew its complaint.

364. The report of 9 December 2002 by the competent Regional Director in the National Directorate of Labour states that the CMTC only provided information on the eight members of the trade union's executive committee without indicating, among other things, to what extent they were affected by the alleged unlawful actions by the company and which other members of the union were also affected, which information has still not been provided by the complainant organizations, although they were repeatedly requested to do so. Independent of the complaint of trade union harassment and unfair labour practices lodged by the CMTC, the labour inspectors carried out an inspection of the PROPOKODUSA workplace on 8 October 2002 and were told, among other things, about offences involving excessive working hours, prohibited working hours, compulsory minimum rest and the minimum wage. In addition, according to the workers, when asked who was a member of a union, none of them replied in the affirmative. The Regional Director's report states that, since it was impossible to proceed with the investigation for failure by the complainant organization to provide the information required by law, a decision to shelve the case would be taken within the next few days in view of the lack of interest of the complainant.

365. The Government states that on 26 July 2002, on the instructions of the Minister of Labour, two labour inspectors and the Director-General of Labour Affairs visited the company's premises to ascertain the facts and deal with the initial complaint submitted by the Trade Union Organization Movement of Costa Rican Workers (CMTC) about the dismissal of members of the Poultry Industry and Similar Workers' Union (SINTRAINAVI). On that occasion they spoke separately with trade union representatives and made the first moves to bring about a conciliation meeting. They returned to the factory on 29 July 2002, to urge a conciliation meeting between the trade union and the company. On that date, the

dismissal of 37 workers took place and they were paid termination entitlements. A police patrol at the factory gates was observed. On 1 August 2002, a conciliation meeting was convened by the Office of the Vice-Minister of Labour, attended by the Vice-Minister and the Director-General of Labour Affairs, to seek a solution to the dispute between the trade union and the company. At the meeting, the parties reiterated their positions:

– *PROPOKODUSA company:* since 20 March 2002 the 82 workers in the processing plant had been notified of the company's reorganization, consisting of hourly pay rather than piecework (for processed chicken) as had been the case until then and to work only eight hours, in compliance with labour legislation. On 12 July 2002, these workers were presented with a new personnel action with the changes in question. Anyone who did not accept the changes was dismissed with payment of their full labour entitlements. On 25 July 2002, they were called on to decide, summoned to the administration in groups of 20, and those who did not accept the new conditions were dismissed. The company continues to state that the trade union was formed during the reorganization process, and that they had no knowledge of the names of the members, although they did know the names of the leaders. In any case, all the workers were given the option of continuing to work and if the trade union leaders did not accept the new conditions, no one forced them to do so. Of the 82 workers affected by the reorganization (not the same number as the total workforce) 37 did not accept the new conditions, and were therefore given their letter of dismissal by the management. The company does not know if members were dismissed because it does not know their names.

– *Trade Union Organization Movement of Costa Rican Workers:* there is an industrial dispute in the company as a result of the dismissal of the executive committee of a trade union formed on 16 June 2002 and who are seeking reinstatement. On 26 July 2002, the trade union presented the company with an agenda for discussion, including, among other things, that workers were given five minutes to accept the new conditions or be dismissed. The workers' organization seeks reinstatement, recognition of the trade union and the opening of negotiations.

Other possible meetings between the parties, with the mediation of the Ministry of Labour, were ruled out because the company informed the Vice-Minister by telephone of its refusal to consider the points proposed by the trade union.

366. In a letter of 13 December 2002, the National Director and Inspector General of Labour asked the Ministry of Labour for the investigation into the case to be continued.

367. The Government sends a letter from the company concerning the complaint in which it underlines the following points: (1) since January 2002 the company was expanding rapidly and hired new workers (under a new system of working hours and form of pay) and had to reorganize; (2) from that month onwards, in a fully transparent manner, the company kept the workers informed through several meetings and announced that there would be changes (different working hours and pay – which would be higher – in particular to align them with the conditions of work of the new workers who had been hired because of the expansion of the company's activities); (3) right in the middle of the restructuring process, 21 of the 140 workers formed a trade union; (4) the deadline for accepting the restructuring and the new conditions was 25 July 2002, the company indicating that those who did not accept would be dismissed, although the company hoped that they would all accept; (5) many of those who belonged to the trade union accepted the new conditions, others did not accept but later changed their mind, in which case the company cancelled the dismissal order; (6) none of the members of the executive committee of the trade union accepted the restructuring and were dismissed, and paid all their entitlements; (7) the company acted lawfully and there are no legal proceedings

against it on this matter; (8) the purpose of the restructuring was economic and not anti-union; and (9) the vacant jobs have already been filled.

368. According to trade union documents sent by the Government, the formation of the trade union was notified to the Ministry of Labour on 27 June 2002 and to the company on 15 July 2002. According to a letter from the company provided by the Government, 37 workers left (were dismissed from) the company when faced with two alternatives due to the restructuring of the company (offer of better conditions of work or total termination of their employment rights).

369. The following is the model letter of acceptance of the restructuring:

> I, the undersigned …… hereby inform you as follows:
>
> 1. I accept the new restructuring of the company.
> 2. I accept the new payment for my work which will be 400 colons per hour with effect from 5 August 2002.
> 3. I accept the new working hours which will be 48 hours per week with effect from 5 August 2002.
> 4. In the light of the foregoing, with effect from 5 August 2002 I shall cease to work under the conditions which previously applied and will begin to work under the new conditions set out in paragraphs 2 and 3 of this letter.
> 5. I thereby continue as an employee retaining my length of service rights.
>
> Signature of the worker.

C. The Committee's conclusions

370. *The Committee observes that in the present case the complainant organization has alleged anti-union dismissals with management responsibility (i.e. with payment of the legal compensation set out in the legislation on unfair dismissal) of a group of workers in the PROPOKODUSA company (37 according to the information provided by the Government and the company) including the eight members of the executive committee of the SINTRAINAVI union because of the formation of this union, the dismissals taking place without warning on 25 July 2002 when the workers in question did not accept the new and unilateral conditions of work proposed by the company, which invoked a supposed and unknown process of restructuring of the company.*

371. *The Committee observes that the company, for its part, maintains that the dismissals do not have anti-union but economic motives, that the process of restructuring was known to the workers since the beginning of 2002, that meetings had been held in the company (the last on 12 July 2002), that only 21 of the 140 company workers were members of the union and that 25 July 2002 was the deadline for workers to accept the restructuring, i.e. the new conditions of work proposed by the company (see last paragraph of the Government's reply) and that anyone who did not accept the changes would be dismissed with payment of their full labour entitlements.*

372. *The Committee takes note of the inspections and conciliation hearings (which were unsuccessful) conducted by the Ministry of Labour authorities as a result of a trade union complaint and observes that in the investigation the trade union side did not provide the membership cards of all the members dismissed as requested by the authorities but only those of the eight members of the trade union's executive committee, nor did it state how far and to what degree the alleged unlawful actions by the company affected those members, for which reason it was not possible to proceed with the investigation for lack of the information requested from the complainant trade union. The Committee observes that*

on 13 December, the National Director and Inspector General of Labour asked for the investigation into the case to be continued.

373. *The Committee observes that, contrary to the company, the complainant organization maintains that the workers had no knowledge of the restructuring until the last minute.*

374. *The Committee requests the Government and the complainant organizations to send additional information and, in particular, to transmit all legislative texts ensuring protection of trade union officials and to indicate whether this legislation protects them against dismissal throughout their term of office (except in the case of serious professional misconduct) or whether it only protects them to the extent that the dismissal decision or other prejudicial measure is related to the performance of trade union activities.*

375. *Finally, the Committee regrets in any case that the company did not consult the trade union concerning the restructuring. The Committee therefore underlines the importance of employers and workers' organizations consulting on questions of common interest and seeking to reach agreement and in particular to discuss the consequences of restructuring programmes on employment and conditions of work.*

The Committee's recommendation

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

> ***The Committee requests the Government and the complainant organizations to send additional information and, in particular, to transmit all legislative texts ensuring protection of trade union officials and to indicate whether this legislation protects them against dismissal throughout their term of office (except in the case of serious professional misconduct) or whether it only protects them to the extent that the dismissal decision or other prejudicial measure is related to the performance of trade union activities.***

CASE NO. 2214

INTERIM REPORT

Complaint against the Government of El Salvador presented by the World Confederation of Labour (WCL)

Allegations: The complainant organization alleges that the permanent contracts of members of SIMETRISSS were changed to temporary contracts of three months' duration, private armed guards were hired to discourage any protest attempts at the Salvadoran Social Security Institute (ISSS), illegal wage deductions were made for 11 people (some of them trade union members), 18 people were dismissed, two trade union members were transferred or prevented from applying for a job in violation of the arbitration award in force, and people and vehicles belonging to trade union members were searched at the Medical Surgical Hospital and the Specialized Treatment Hospital, including two trade union officials who are under surveillance and who have been deprived of freedom of movement. The complainant organization also refers to the privatization process and its labour-related consequences and to the alleged lack of collective bargaining.

377. The complaint is presented in a communication dated 9 July 2002 from the World Confederation of Labour (WCL). This organization sent further information in a communication dated 20 August 2002. The Government submitted its reply in a communication dated 3 March 2003.

378. El Salvador 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

379. In its communication of 9 July 2002, the World Confederation of Labour (WCL) alleges that the negotiations undertaken between May 1998 and November 1999 by the Government of El Salvador with the International Monetary Fund (IMF) and the World Bank, which included privatization of public health services, have, as a consequence, led to an increase in the repression of and discrimination against members of the Union of Doctors and Workers of the Salvadoran Social Security Institute (SIMETRISSS). The

doctors have seen their permanent work contracts changed to short-term contracts (three months), and renewal of these depends entirely on the good will of the employers.

380. The WCL states that in a document entitled "Proposed comprehensive health reform", submitted to the President of the Republic of El Salvador, SIMETRISSS has proposed alternative policies in order definitively to resolve the problems of the health sector in this country but the Government has made no reply.

381. The WCL indicates that instead of implementing a policy of negotiation with the staff, the Salvadoran Social Security Institute (ISSS) hired heavily armed private guards with the aim of, among other things, discouraging any attempt to protest against the policies implemented by the management. And, faced with the numerous attacks on members of SIMETRESSS (arbitrary wage deductions, the institution of searches of staff and vehicles of trade union members by private armed employees contracted by the general management of ISSS), SIMETRESSS has submitted to the labour inspectorate requests for inspections to confirm the facts in the various establishments involved. Unfortunately, the results of these inspections are biased and do not bear any relation to the reality faced by workers.

382. The WCL concludes by indicating that the facts in this complaint show the consequences of the policies recommended by the international financial institutions for the privatization of the public health services.

383. In its communication of 20 August 2002, the WCL lists 11 people (some of them trade union members) who had deductions made in their wages arbitrarily and illegally even when the presence of these workers in the ISSS was registered for the month in which the deductions were made. The WCL refers to the dismissal of 18 people, also listed (Juan Bautista Caballero, Beatriz Córdova de Caballero, Aníbal Avelar, Jaime Francisco Murillo, Ricardo Marvin Rodríguez, Elvia Elizabeth Antonio Beltrán, Richard Edgardo Castro, Angel Gabriel Aguilar, Silvia Canales de Alfaro, Camila Baquerano, José Alberto Elías Torres, Bernardo Gómez Escobar, Rigoberto Guillén, Santos Carlos Vásquez, Nelson Rafael Olivo Méndez, Walter Cecilio Serrano Monge, Nora Edith Martínez de Colocho and Juan Francisco Figueroa). Doctor Darío Sánchez (a member of the trade union) was transferred to a new workplace in violation of the criteria in clause 23 of the arbitration award and Doctor Teresa de Jesús Sosa (a member of the trade union) was prevented from applying for the job of clinic director in the clinic in which she worked in violation of the provisions of clause 33 of the arbitration award. The trade union representative Noila Aminta Menjíbar and the education secretary of the trade union, Carlos Avilés, were deprived of freedom of movement by private surveillance and were subjected to searches without official authorization from the competent authority. Searches of people and vehicles took place in centres such as the Medical Surgical Hospital and the Specialized Treatment Hospital, both in El Salvador.

B. The Government's reply

384. In its communication of 3 March 2003, the Government states that after a detailed investigation it declared that no illegal deductions were made to any of the members affiliated to the Union of Doctors and Workers of the Salvadoran Social Security Institute (SIMETRISSS) who did not work on 11 September 2001 and that, on the contrary, these deductions were made legally and in accordance with article 171, paragraph 2, of the Labour Code, which states that "any worker who does not complete the working week, and has no justifiable grounds for this, will not be entitled to the wage established in the previous paragraph". It stated that these people did not provide the work for which they had been contracted and had no justifiable grounds and, therefore, they did not complete

their labour week, for which reason they did not have the right to the aforementioned payment.

385. With regard to the searches of people currently taking place at the facilities of the Salvadoran Social Security Institute (ISSS), the Government states that these searches were instituted for all staff of the Institute, including the rightful owners and visitors and arose as a result of the constant outbursts of members of this trade union that had destroyed goods and assets belonging to the ISSS, giving rise to an atmosphere of obvious insecurity. To establish these searches was not only a right of the public administration, but also an obligation based on the technical standards of internal control of the Comptroller of the Republic and in articles 54, 57, 61, 99 No. 1 and 102 of the Law of the Comptroller of the Republic. These provisions indicate that an important obligation of the authorities of the ISSS is to ensure that within its facilities the integrity and property of the rightful owners and staff are protected. The furnishings and equipment of the ISSS must also be safeguarded to prevent them from being stolen or destroyed. Therefore, such searches are justified and entirely legal in accordance with the above. The administration is directly responsible for fulfilling its legal obligations.

386. The Government states that it is not true that the implementation of these searches infringes in any way the Constitution of the Republic, as in the current situation it is not investigating any type of crime or offence but that the measure of implementing searches is aimed at safeguarding the facilities of the ISSS and protecting the personal integrity and property of the rightful owners and staff.

387. With regard to the so-called privatization of medical and hospital services, including those provided by the ISSS, the Government categorically states that it upholds its constitutional undertaking to provide health services to all those living in the Republic as, in accordance with article 65 of the Constitution of El Salvador, the health of the inhabitants of the country is a public asset and, consequently, the State and the people are obliged to ensure that this is maintained. From the previously mentioned information it can be assumed that the ISSS is upholding its legal undertaking to provide social security services to all its rightful owners, based on article 59 of the Constitution which states that social security is an obligatory public service. The law shall regulate its extent, reach and form. This service shall be provided by one or several institutions, which shall ensure amongst themselves the appropriate consideration to ensure a good social protection policy, in specialized form and with the best use of resources. Employers, workers and the State shall contribute to paying social security in the form and amount determined by law. The State and employers shall be excluded from the obligations imposed by law in favour of workers, in so far as these are covered by social security.

388. With regard to the supposed dismissals of ISSS workers, the Government states that the decision to end working relations, without liability on the part of the Institute, was entirely justified by the various labour offences that were committed and duly documented in each one of the respective files, having complied with the due process accorded and laid down by the Labour Code. In all cases, proceedings were carried out in accordance with article 50 of the Labour Code, which contains the grounds for terminating a labour contract without liability on the part of the employer.

389. Finally, with regard to the complaint lodged by the Secretary-General of the Executive Committee of SIMETRISSS relating to the fact that requests for inspections were submitted to confirm the supposed illegal processes that members of the trade union had been subjected to and that, according to them, the results of the inspections had been biased, the Government states that all requests lodged were treated with due promptness and speed, having determined legally that none of the violations alleged existed, as has been previously stated.

C. The Committee's conclusions

390. *The Committee notes that the complainant organization alleges in this complaint that permanent contracts of members of the Union of Doctors and Workers of the Salvadoran Social Security Institute (SIMETRISSS) were changed to temporary contracts of three months, private armed guards were hired to discourage any protest attempt at the Salvadoran Social Security Institute (ISSS), illegal wage deductions were made for 11 people (some of them trade union members), 18 people were dismissed, two trade union members were transferred or prevented from applying for a job in violation of the arbitration award in force, and people and vehicles belonging to trade union members were searched at the Medical Surgical Hospital and the Specialized Treatment Hospital, including two trade union officials who are under surveillance and who have been deprived of freedom of movement. The complainant organization also refers to the privatization process and its labour-related consequences, and to the alleged lack of collective bargaining, but these matters have already been examined in the framework of Case No. 2077 [see 324th Report, paras. 537-553, examined by the Committee in March 2001].*

391. *In reply to the alleged dismissal of 18 people, listed by name, the Committee notes the Government's statement that these dismissals were justified by the various labour offences duly documented that are listed among the reasons for termination of a labour contract without liability on the part of the employer. The Committee, although noting that the complainant organization has not indicated whether those dismissed were members of the trade union SIMETRISSS or not, requests the Government and the complainant to provide concrete details as to the reasons for the dismissal of these persons and to indicate the extent to which these dismissals were related to the exercise of trade union rights and whether those dismissed were trade union members.*

392. *With regard to the alleged transfer or prevention from applying for a job affecting Doctor Teresa de Jesús Sosa and Doctor Dario Sánchez (members of SIMETRISSS), in violation of the arbitration award in force and the alleged modification of permanent contracts to short-term contracts to the detriment of trade union members, the Committee regrets that the Government has made no reply in this respect and requests it to do so without delay.*

393. *With regard to the alleged illegal deductions from wages affecting 11 people (some of them trade union members) even when, according to the complainant organization, the presence of these workers was registered with the ISSS during the period in question, the Committee notes that the Government states that: (1) the deductions were legally carried out for workers who did not work on 11 September 2001; and (2) these people had not carried out the work for which they had been contracted. The Committee requests the Government and the complainant to indicate the name of the workers who were not present at the workplace on 11 September 2001 as well as the legislation to which the Government refers.*

394. *With regard to the alleged illegal search of people and vehicles belonging to trade union members at the Medical Surgical Hospital and the Specialized Treatment Hospital (including trade union officials Zoila Aminta Menjíbar and Carlos Avilés) and the alleged hiring of private armed guards to discourage any protest attempt, the Committee notes the Government's statement according to which: (1) the searches were implemented for all staff of the ISSS and visitors; (2) these searches were justified by the destruction of goods and assets belonging to the Institute which had given rise to an atmosphere of obvious insecurity (these activities the Government attributes to members of SIMETRISSS); (3) the administration is legally obliged to ensure the safety of assets and is directly responsible for fulfilling these obligations; and (4) the labour inspectorate concluded that there had*

been no illegal action taken. The Committee requests the Govenment and the complainant to provide further information on these allegations.

The Committee's recommendations

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

(a) The Committee requests the Government and the complainant to provide concrete details regarding the reasons for the dismissal of the 18 people listed by name in the allegations, and to indicate the extent to which these dismissals were related to the exercise of trade union rights and whether those dismissed were trade union members.

(b) The Committee requests the Government to send information without delay on the alleged transfer or prevention from applying for a job that affected Doctor Teresa de Jesús Sosa and Doctor Dario Sánchez, both members of the Union of Doctors and Workers of the Salvadoran Social Security Institute (SIMETRISSS), and regarding the alleged modification of permanent contracts to short-term contracts affecting members of the trade union.

(c) With regard to the allegations relative to illegal deductions from wages affecting 11 persons (some of them trade union members), the Committee requests the Government and the complainant to indicate the name of the workers who were not present at the workplace (ISSS) on 11 September 2001, as well as the legislation to which the Government refers.

(d) With regard to the alleged search of people and vehicles belonging to trade union members of SIMETRISSS and the hiring of private armed guards, the Committee requests the Government and the complainant to provide further information on these allegations.

CASE NO. 2138

INTERIM REPORT

Complaint against the Government of Ecuador presented by
— the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL) and
— the International Confederation of Free Trade Unions (ICFTU)

Allegations: Refusal to register a trade union at the enterprise COSMAG – default on a collective agreement (at Cervecería Andina S.A.) – refusal to convene an arbitration tribunal in the case of the Hotel Chalet Suisse – legislation restricting trade union rights – criminal proceedings brought against 11 trade union officials who had prompted a work stoppage in the social security sector.

396. The Committee last examined this case at its March 2002 meeting, when it submitted an interim report [see 327th Report, paras. 525-547]. The ICFTU submitted further allegations in a communication dated 3 April 2002 and the CEOSL in a communication dated 17 June 2002.

397. The Government replied in communications dated 2, 11, 25 and 29 July 2002, 6 and 27 January and 24 March 2003.

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

A. Previous examination of the case

399. Following its examination of the case at its March 2002 meeting, the Committee formulated the following recommendations on the issues that remained pending [see 327th Report, para. 547]:

- As regards the alleged denial of registration to the trade union of the COSMAG security company and intimidation of workers to make them renounce union membership in the context of the delay in the registration process, the Committee requests the Government to take measures to investigate whether there has been any kind of pressure on the enterprise's workers not to participate in the establishment of the trade union, and, if so, to apply legal sanctions and promptly register the trade union in question. The Committee requests the Government to keep it informed of developments in that respect.
- As regards the allegation of default on the collective labour agreement by the Cervecería Andina S.A. enterprise (specifically, it is alleged that the enterprise has defaulted on the clause relating to salaries and wages), the Committee requests the Government to take measures to investigate and, if the allegations are found to be true, to ensure that the relevant collective agreement is observed.

– As regards the allegations in connection with article 85 of the Economic Transformation (Ecuador) Act (private sector), which allows the hiring of workers on an hourly basis, the Committee requests the Government to provide information on the application of the article (specifically, whether workers hired by the hour have the right to establish or join the organizations of their choice and whether they enjoy collective bargaining rights).

– As regards the allegations in connection with article 94 of the Economic Transformation (Ecuador) Act (private sector), which provides for the standardization of salaries, the Committee requests the complainant organization and the Government to provide information on the application of this article (specifically whether it implies that salary levels may not be freely set through collective bargaining).

– As regards the allegations in connection with Title 30 of the Promotion of Investment and Citizen Participation Act, relating to the proportion of workers (15 per cent) that may be employed under work probation contracts, the Committee requests the Government to inform it whether such workers enjoy the rights conferred by Conventions Nos. 87 and 98.

– As regards the allegations in connection with articles 190 and 191 of the Promotion of Investment and Citizen Participation Act, which, according to the CEOSL, allow the employer to negotiate a free collective labour agreement with the workers even if they are not organized into a trade union, the Committee recalls that direct negotiation between the undertaking and its employees, bypassing representative organizations where these exist, might be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted, and request the Government promptly to communicate its observations on the issue.

– The Committee requests the Government to communicate without delay its observations on the alleged failure by the administrative authority to convene the Conciliation and Arbitration Tribunal in accordance with the request made by the Workers' Committee of the Hotel Chalet Suisse through the submission of a collective agreement.

B. New allegations

400. In a communication dated 3 April 2002, the International Confederation of Free Trade Unions (ICFTU) alleges that on 8 March 2002, at the Ecuadorian Social Security Institute (IESS), workers protected under the Labour Code held an assembly in which they decided to implement a work stoppage to demand a wage increase from the authorities, as well as an increase in pension rates for retired workers and orphans. It also alleges that, in response to this legitimate action, the general director of the IESS submitted a complaint to the District Procurator's Office in Pichincha, in which he requested that criminal proceedings be brought against 11 trade union officials of the IESS: Mr. Roberto Checa, Ms. Ana Herrera, Ms. Marlene Cartagena, Mr. José Ortiz, Ms. Gloria Correa, Mr. Wilson Salguero, Mr. Lenín Villalba, Mr. Bolívar Cruz Vásquez, Ms. Judich Chuquer, Mr. Angel López and Mr. Adolfo Nieto, who he accused of being behind and participating in a flagrant offence of sabotage. According to the management of the trade union, this complaint is tendentious and unfounded and seeks to turn a labour problem into a criminal matter.

401. In a communication dated 17 June 2002, the CEOSL alleges that the Government is claiming only to know unofficially about the labour dispute that occurred at the enterprise Cervecería Andina S.A., when in reality numerous documents on this matter already exist (claims dated 26 December 2000, 2 and 21 February 2001, as well as four rulings handed down by the general director of labour on 20 June and 18 July 2000, and 29 January and 6 March 2001).

C. The Government's replies

402. In its communications of 2, 11, 25 and 29 July 2002, 6 and 27 January and 24 March 2003, referring to the alleged denial of registration to the trade union of the COSMAG security company, the Government indicated that there has been no such refusal; during the legal deadline of 30 days for the registration of the union, a number of workers renounced their membership which meant that the union did not have the legal minimum number of members; in addition, the enterprise contested the requested registration. The Government points out that Convention No. 87 does not detail a specific minimum number of members in order to be able to organize; this matter will be of particular interest for discussion when there is a possibility of a tripartite dialogue. As to possible pressure by the employer not to allow the trade union, the Government indicates that it sent an investigative report prepared by the labour inspectorate to clarify the facts (this report was not received by the ILO).

403. The Government indicates that a verification inspection was carried out by the labour inspectorate concerning the alleged default on the collective labour agreement concluded by the Cervecería Andina S.A. enterprise and it was found that there had been no such default and that the only thing the enterprise committee had requested was compliance with a Ministry of Labour agreement (No. 080 of 2000).

404. The Government adds that there is nothing to stop workers contracted on an hourly basis from setting up associations or trade unions. The Labour Code does not contain any exceptions as regards the enjoyment of trade union rights by workers on probation contracts. The Government explains, furthermore, that the "standardization of salaries" in the private sector has no effect whatsoever on the freedom to bargain collectively, which remains in force.

405. As to the recommendations of the Committee concerning articles 190 and 191 of the Promotion of Investment and Citizen Participation Act, the Government states that the Collective Agreements Recommendation, 1951 (No. 91), is an illustrative instrument but is not binding. It is both relevant and a priority that workers' rights be looked after by a trade union organization but workers cannot be forced to organize. Article 190 of the Act seeks to achieve the application of Convention No. 98. The Government also announces the dispatch of observations concerning the allegations relating to the Hotel Chalet Suisse.

406. Lastly, the Government provides press cuttings which show that in August 2002 the Government Minister and the representatives of the Ecuadorian Social Security Institute (IESS) signed an agreement which makes provision for a wage increase of 20 per cent (the worker sector initially requested an increase of 300 per cent), with the offer that there would be no type of retaliation (reprisals) against the leaders of the work stoppage. This agreement spelt the end of the stoppage of the IESS services. The Government points out that article 36(10) of the Constitution prohibits the stoppage for any reason of health services (medical attention and hospital services), noting that when the services were stopped, there was no thought of, suggestion of, or willingness to negotiate minimum services by the worker sector. It was therefore a long, wrongful and illegal (almost two months) stoppage that was conducted by the public officials of the IESS (where, the Government underlines, most of the employees are not public officials but workers governed by the Labour Code, who have their own collective agreements and who did not support the work stoppage). Owing to this stoppage, which generated a national health crisis, innumerable health problems which could not be attended to in private clinics had unfortunate outcomes. The country was also deprived of pension services owing to the stoppage by the abovementioned minority.

407. The Government adds that in cases of decisions by the Procurator concerning matters of a purely criminal nature, due process is guaranteed, it being understood that the facts in question are not associated with the exercise of the labour or trade union rights of those responsible.

D. The Committee's conclusions

408. *As regards the alleged denial of registration to the trade union of the COSMAG security company on the grounds that the number of members did not reach the minimum number stipulated in legislation (30) owing to pressure by the enterprise to make them renounce union membership, the Committee notes the Government's statement that a number of workers renounced their membership as well as the fact that the labour inspectorate has carried out an investigative report to clarify the facts. The Committee requests the Government to send it that report as, although the Government states that it has already done so, the report has not been received.*

409. *Concerning the alleged default on certain clauses relating to remuneration in the prevailing collective agreement by the Cervecería Andina S.A. enterprise, the Committee notes that the labour inspectorate found that there had been no default.*

410. *Furthermore, the Committee notes the Government's statement concerning workers contracted on an hourly basis and workers on probation contracts, whereby the Labour Code does not contain any exceptions as regards the enjoyment of trade union rights.*

411. *Concerning the allegation objecting to article 94 of the Economic Transformation (Ecuador) Act which provides for the "standardization of salaries" (the article concerned provides the following: "Standardization of salaries. As from the entry into force of this Act, the amounts corresponding to the fifteenth monthly salary and the sixteenth salary will be added to the remuneration received by workers in the country's private sector; as a result, said wage components will no longer be paid in the private sector."), the Committee requests the complainant organizations to indicate specifically the manner in which the application of this provision violates trade union rights. The Committee also requests the Government to communicate its position in this respect in greater detail.*

412. *With regard to the allegations in connection with articles 190 and 191 of the Promotion of Investment and Citizen Participation Act, which allow the employer to negotiate a free collective labour agreement with the workers even if they are not organized into a trade union, the Committee notes the Government's statements and asks it to send the up-to-date text of the Act so that it can decide on the allegations with all the elements before it.*

413. *With regard to the new allegations by the ICFTU concerning the criminal proceedings brought against 11 trade union officials of the Ecuadorian Social Security Institute (IESS) in conjunction with a work stoppage, the Committee notes that, according to the Government, the Government Minister and the representatives of the public officials reached an agreement that brought the work stoppage to an end. The Committee observes that the Government stresses the illegality of the strike in the health sector, the considerable damage caused and the refusal by the strikers to negotiate minimum services, but it observes that the Government does not refer in a sufficiently specific manner to the criminal proceedings brought against the 11 trade union officials mentioned (Roberto Checa, Ana Herrera, Marlene Cartagena, José Ortiz, Gloria Correa, Wilson Salguero, Lenín Villalba, Bolívar Cruz Vasquez, Judich Chuquer, Angel López and Adolfo Nieto) but simply makes observations concerning proceedings in general. The Committee therefore requests the Government to indicate whether the 11 trade union officials of the IESS mentioned by the ICFTU have had criminal proceedings brought against them and, if so, to communicate the charges and specific facts of which they have been accused. The*

Committee also asks the Government to send any decisions or rulings that have been handed down in this respect. The Committee observes, furthermore, that according to press cuttings provided by the Government, once the agreement was concluded with the public officials, this was done with the offer that there would be no type of reprisals against the leaders of the work stoppage.

414. *Lastly, the Committee once again requests the Government to send its observations concerning the allegations relating to the Hotel Chalet Suisse.*

The Committee's recommendations

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

(a) The Committee requests the Government to send the report by the labour inspectorate concerning the alleged pressure by the COSMAG company for workers to renounce union membership, thus preventing the registration of the trade union owing to it not having the legal minimum number of members.

(b) The Committee requests the Government to send the up-to-date text of the Promotion of Investment and Citizen Participation Act.

(c) As concerns the allegations objecting to article 94 of the Economic Transformation Act which provides for the "standardization of salaries", the Committee requests the complainant organizations to indicate specifically the manner in which the application of this provision violates trade union rights. The Committee also requests the Government to communicate its position in this respect in greater detail.

(d) The Committee once again requests the Government to send its observations concerning the allegations relating to the Hotel Chalet Suisse.

(e) The Committee requests the Government to indicate whether the 11 trade union officials of the IESS (Roberto Checa, Ana Herrera, Marlene Cartagena, José Ortiz, Gloria Correa, Wilson Salguero, Lenín Villalba, Bolívar Cruz Vasquez, Judich Chuquer, Angel López and Adolfo Nieto) have had criminal proceedings brought against them and, if so, to communicate the charges and specific facts of which they have been accused. The Committee also requests the Government to send it any decisions or rulings that have been handed down in this respect.

CASE NO. 2187

INTERIM REPORT

Complaint against the Government of Guyana presented by Public Services International (PSI) on behalf of the Guyana Public Service Union (GPSU)

Allegations: The complainants allege that the Government attempts to weaken the GPSU's bargaining power through various acts, such as refusal to implement an agreement concerning arbitration over wages in the public service, denunciation of the agency fees agreement, withdrawal of check-off facilities, dismissals of trade union officers and members, withdrawal of GPSU certification as majority union in the Guyana Forestry Commission, pressure on fire officers to quit the GPSU and closing down of the Guyana Energy Authority without consulting the GPSU which is the majority union.

416. The complaint is contained in a communication from Public Services International (PSI) on behalf of its affiliated organization, the Guyana Public Service Union (GPSU), dated 15 March 2002. The complainant sent additional information in communications dated 14 October and 12 December 2002.

417. The Government sent a reply to some of the allegations in a communication dated 22 January 2003.

418. Guyana has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Workers' Representatives Convention, 1971 (No. 135), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

419. In communications dated 15 March, 14 October and 12 December 2002, Public Services International (PSI) and its affiliated organization, the Guyana Public Service Union (GPSU), allege several anti-union acts aimed at weakening the GPSU.

Refusal to implement an agreement on arbitration

420. The complainants allege that the real value of the minimum wage in the public service suffered great losses due to a decade of hyperinflation (1979-88) and has never regained the levels of 1977-78 when the first agreement on minimum wages in the public service was concluded. Moreover, since the change in Government in 1992, the GPSU has met

with difficulties in establishing a working relationship with the new ruling party, which has always regarded the GPSU as closely affiliated to the previous regime. In 1993, the GPSU formed an alliance with three other public sector unions to address the real wage loss and several agreements were concluded with the Government on this issue in 1993-95 and 1998.

421. The complainants add that in 1999 a 57-day strike staged over a pay claim ended after the terms of a Memorandum of Agreement were negotiated with the assistance of a mediating team. Article 8(ii) of the Memorandum of Agreement specifically stated as a condition for ending the strike that, "in future, where salary and wages negotiations fail to result in agreement and a third party conciliation of thirty (30) days fails, it is agreed that, until entrenched into the collective agreement, the parties will in respect of future disputes adopt the same method of arbitration as set in this agreement". The complainants allege that two years later, in 2001, following the breakdown of negotiations for wage and salary increases, the Government refused to submit the dispute to arbitration in accordance with the Memorandum of Agreement, under the pretext that it was not a legally enforceable collective labour agreement and could not replace existing provisions inserted in the collective agreement and the Labour Act. The complainants contend that the Memorandum is legally enforceable and state that legal action has been initiated on this issue.

422. The complainants further allege that in 2002 the dispute on wages continued. Whereas the Government initially agreed to put the dispute to arbitration, it subsequently reneged on its agreement. More specifically, the negotiations concerning the terms of reference of the arbitral tribunal broke down over the question of allowances. The complainants attach certain letters as evidence in this respect. Following this, the Government unilaterally determined that all public employees would be accorded a 5 per cent increase on their salaries and wages. The GPSU objected to the manner in which such an increase was decided, i.e. outside the duly constituted processes.

Withdrawal of facilities

423. In communications dated 15 March and 12 December 2002, the complainants allege that the Guyana Public Service Ministry unilaterally altered established procedures for the collection of trade union dues and agency fees, with the aim to starve the union of funds and to ensure that it no longer had the means to effectively challenge the Government. The complainants submit that on 8 April 1999, the Permanent Secretary Public Service Ministry notified the GPSU that it had failed over the last eight years to comply with the terms and conditions of the 1976 agency fee agreement and gave a 90-day notice to terminate the agreement. On 11 January 2000, he addressed another letter to the GPSU informing it that the Ministry had not received any compliance in terms of clause 8 of the agency fee agreement nor had the GPSU indicated its position on this issue. The GPSU responded on 28 January that its failure to conform to clause 8 of the agreement was due in essence to the failure by the permanent secretaries of several ministries, heads of departments and regional executive officers to conform to directives given by the Permanent Secretary, PSM, in Circulars Nos. 43/1977, 8/1991 and 25/1991. The complainants do not explain the exact content of the agency fee agreement or the exact nature of the alleged failure to comply with the agreement. The complainants state that on 7 June 2000, while a conciliation process was pending, the GPSU was informed in writing by the Permanent Secretary, PSM, that the deductions of agency fees would no longer be facilitated. This decision is currently being challenged before the courts.

424. According to the complainants, moreover, the Permanent Secretary also terminated a system for the collection of trade union dues which had been in existence since October 1954 under the pretext that there was no evidence to show that those from whom deductions were being made had authorized any such deductions. The complainants also

attach a letter by the Permanent Secretary, PSM, in which it is stated that deductions of union dues continue to take place based on written authorization submitted by employees.

Anti-union dismissals

425. The complainants allege anti-union dismissals in an effort to modify the bargaining units. The complainants state that three GPSU branch officers, one vice-president and two members were unjustifiably dismissed from the High Court Registry, the Ministry of Agriculture, the Guyana Forestry Commission and the MMA-ADA (William Blackman – Branch Officer, High Court Registry; Yvette Collins – Ministry of Agriculture; Leyland Paul – Branch Officer, MMA-ADA; Bridgette Crawford – Branch Officer, MMA-ADA; Barbara Moore – Guyana Forestry Commission; Karen Vansluytman – Member of the Central Executive Council and 3rd Vice President, High Court Registry). The complainants state that these grievances were brought before the High Court, in its quality as Public Service Appellate Tribunal. On 26 August 2002, the High Court issued an Order quashing the removal of six marshals and a clerical officer by the High Court Registrar and directed their immediate reinstatement and payment of their outstanding wages.

426. The complainants state moreover that the Registrar refused to implement the Order of the High Court, and replaced the officers who were unjustifiably dismissed. Moreover, she refused to pay the wages outstanding under the pretext that the money earmarked for their payment had been used up to pay the replacements of those dismissed. Moreover, the complainants allege that several GPSU members employed at the High Court Registry reportedly received threats from the Registrar (Cheryl Scotland, Marcia Oxford, William Pyle, Yutze Thomas, Anthony Joseph, Niobe Lucius, Odetta Cadogan). The complainants add certain names to the list of persons affected by anti-trade union acts in the High Court Registry without specifying the type of grievance (Patrick Sancho, Clyde Bascom, Mithra Bhola, Odetta Fogenay, Andrea Brummell).

Withdrawal of certification as majority union

427. The complainants state that the Government has been modifying the bargaining units by calling for new polls for union recognition where the GPSU already has recognition, particularly in the Guyana Forestry Commission, the Anna Regina Town Council and the MMA-ADA. Thus, pursuant to the enactment of the Trade Union Recognition Act in 1997 and the appointment of the Trade Union Recognition and Certification Board in 1999, the GPSU was notified of challenges to its certification as majority union in three bargaining units. As a result of the challenges, two polls were conducted. The GPSU lost its certification and exclusive bargaining rights in the Guyana Forestry Commission and won in the Anna Regina Town Council. The GPSU objected to the poll considering that the union's power had been purposely altered prior to the poll through restructuring and dismissals of GPSU officers. In particular, the complainants allege that the branch executives were dismissed in 1998 and again in 2000 on the occasion of restructuring in the Guyana Forestry Commission in order to destroy the GPSU. The GPSU alleges moreover that the organization which filed the challenge is the Guyana Agricultural and General Workers' Union (GAWU), a union considered to be the industrial arm of the ruling party and whose president sits in the National Assembly on the benches of that party.

Pressure to quit the union

428. The complainants allege that on the directions of the Minister of Home Affairs, the Chief Fire Officer coerced the members of the fire service to become members of an association other than a trade union. The complainants submit that this measure aimed at weakening

the GPSU by depriving fire officers who have been represented by the GPSU for many years, even before independence, from their GPSU membership.

429. Finally, the complainants allege that although the GPSU has recognition and certification as representative union in the Guyana Energy Authority, the Government communicated directly to the staff of the agency that it would be closing down and that they should form a committee to meet with the administration to negotiate their termination benefits.

B. The Government's reply

430. In its communication dated 30 January 2003, the Government provides information with regard to certain complaints.

Anti-union dismissals

431. With respect to the dismissal of Ms. Van Sluytman, 3rd Vice-President of the GPSU, from the High Court Registry, the Government forwards a report by the High Court Registrar in which it is stated that the dismissal was justified by the fact that Ms. Van Sluytman took leave of absence for trade union purposes in violation of the applicable rules and procedures, having exhausted her special leave entitlement and having failed to obtain the required approval. A series of minutes and other documents are attached in support of this statement. As to the dismissals of the GPSU officers Leyland Paul, Bridgette Crawford, Chief Marshal William Blackman and others, the Government confines itself to stating that this matter is currently before the High Court.

432. Concerning allegations of threats being addressed to GPSU members at the High Court Registry, the Government forwards a report by the High Court Registrar in which it is stated that this allegation remains in the realm of hearsay and the burden consequently falls upon the complainants to provide evidence.

Withdrawal of certification as majority union

433. With regard to the poll conducted in the Guyana Forestry Commission, the Government states that the Trade Union Recognition Act, 1997, provides that, under certain conditions, the Trade Union Recognition Board is required to have a poll conducted in case of a challenge to a union's certification as representative union. The Government states that pursuant to this Act, a total of nine challenges were filed, three of which concerned the GPSU. In response to these challenges, two polls have been conducted while one is to be held. The GPSU won at Anna Regina Town Council and has been certified. It lost at the Guyana Forestry Commission and has since filed an action before the High Court. The Government attaches a copy of the Act and a series of documents and letters illustrating efforts made by the Board to implement the law and address the concerns of the GPSU.

Pressure to quit the union

434. Concerning allegations of denial of union representation of fire officers, the Government notes that this issue is currently engaging the attention of the High Court.

C. The Committee's conclusions

435. *The Committee observes that this case concerns allegations that the Government attempts to weaken the bargaining power of the GPSU through various acts such as refusal to implement an agreement concerning arbitration over wages in the public service,*

denunciation of the agency fees agreement, withdrawal of check-off facilities, dismissals of trade union officers and members, withdrawal of GPSU certification as representative union in the Guyana Forestry Commission, pressure on fire officers to quit the GPSU and the closing down of the Guyana Energy Agency without consulting the GPSU which is the majority union.

436. *The Committee observes that despite the time which has elapsed since the presentation of the complaint, and bearing in mind the gravity of the allegations, the Government has only responded to a few of the allegations and has provided minimum comments and information on a few others, although it was invited to send its reply on several occasions. The Committee recalls that governments should recognize the importance for their own reputation of formulating detailed replies to the allegations brought by complainant organizations, so as to allow the Committee to undertake an objective examination in full knowledge of the facts [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 20].*

Refusal to implement an agreement on arbitration

437. *The Committee observes that the Government has not replied to allegations concerning its refusal in 2001 to implement an agreement on arbitration, which was adopted in 1999 and which reads as follows: "in future, where salary and wages negotiations fail to result in agreement and a third party conciliation of thirty (30) days fails, it is agreed that until entrenched into the collective agreement, the parties will in respect of future disputes adopt the same method of arbitration as set in this agreement". The Committee notes that the Government maintains that the 1999 agreement is not enforceable and did not replace the collective agreement or the Labour Act. The Committee notes that the issue is pending before the courts. The Committee recalls that in general, agreements should be binding on the parties [see* ***Digest****, op. cit., para. 818] and requests the Government to supply it with a copy of the court ruling on the enforceability of the 1999 Memorandum of Agreement as soon as it becomes available, so that it may reach a conclusion on this aspect of the case in full possession of all the relevant information.*

438. *The Committee further observes that in 2002, after negotiations over salaries and wages broke down, the parties initially agreed to bring the dispute to arbitration but later failed to reach agreement over the terms of reference of the tribunal. Following this, the Government imposed unilaterally a 5 per cent increase on public employees' wages and salaries. The Committee notes that, according to the complainant, real wages in the public service have suffered great losses due to a decade of hyperinflation and have never recovered since. The Committee recalls that in contexts of economic stabilization, priority should be given to collective bargaining as a means of determining employment conditions of public servants, rather than adopting legislation to restrain wages in the public sector [see* ***Digest****, op. cit., para. 900]. The Committee trusts that in the future the Government will give priority to collective bargaining as a means of determining employment conditions of public servants and will make every effort to avoid unilateral measures in this context.*

Withdrawal of facilities

439. *The Committee observes that the Government has not responded to allegations according to which in June 2000, it unilaterally denounced the 1976 agency fee agreement with the GPSU based on grounds which are disputed by the GPSU and despite the fact that a conciliation process was pending. The Committee requests the parties to provide sufficiently detailed information on the content of the 1976 agency fee agreement and the legal grounds for its denunciation and to transmit a copy of the court ruling on this issue*

as soon as it becomes available, so that it may reach a conclusion on this aspect of the case in full possession of all the relevant information.

440. *The Committee also notes that the Government did not respond to allegations according to which it ended unilaterally the automatic check-off system which had been in existence since 1954 by introducing a requirement for written authorization of the deduction of trade union dues by trade union members. The Committee considers that, in general, the introduction of such a requirement does not contravene Conventions Nos. 87, 98 and 151, ratified by Guyana, but regrets to note that such a measure was introduced without any consultation with the trade unions concerned. The Committee has emphasized the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights [see* ***Digest****, op. cit., para. 927]. The Committee notes, moreover, that the introduction of such a requirement should be a measure of general scope applicable to all trade unions. However, it seems from the allegations that the measure was limited to the GPSU only. The Committee notes that under such conditions, this measure could amount to discrimination and interference in the internal affairs of the GPSU in violation of Conventions Nos. 87, 98 and 151. The Committee requests the parties to indicate whether the introduction of a requirement for written authorization of the deduction of trade union dues is a measure of general application or an individual decision limited to the GPSU. If the measure is an individual decision, the Committee requests the Government to take all necessary measures as soon as possible with a view to ending such situation of discrimination and interference, and to keep it informed in this respect. The Committee also requests the Government to ensure that in the future, the introduction of measures affecting trade union rights is preceded by full and frank consultations with all trade unions concerned.*

Anti-union dismissals

441. *The Committee notes that according to the complainants, six GPSU officers and members were dismissed on anti-union grounds from several branches of the public service (High Court Registry, Guyana Forestry Commission, Ministry of Agriculture, MMA-ADA). The Committee also observes from the complainants' latest communication that by a decision of 26 August 2002, the High Court ordered the reinstatement of seven GPSU officers who had been dismissed on anti-union grounds from the High Court Registry and the payment of their outstanding wages. The Committee notes that as this decision is limited to dismissals in the High Court Registry, it concerns two of the trade union officers enumerated in the allegations, namely, Ms. Van Sluytman, 3rd Vice-President, and Mr. Blackman, Branch Officer. As to the implementation of the court's order, the Committee observes that according to the complainants, the High Court Registrar replaced the dismissed trade union officers and refused to pay outstanding wages on the basis that the money earmarked for their payment had been used up to pay the new employees. The Committee regrets that acts of anti-union discrimination, in particular dismissals, have taken place in the High Court Registry and recalls that no person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, whether past or present [see* ***Digest****, op. cit., para. 690]. The Committee requests the Government to take all necessary measures as soon as possible with a view to ensuring the full implementation of the High Court's decision ordering the reinstatement of seven GPSU officers and members who have been dismissed from the High Court Registry on anti-union grounds and the payment of outstanding wages, and to keep it informed in this respect.*

442. *The Committee also notes that with respect to the officers dismissed from other branches of the public service, the Government confined itself to noting that their case is currently pending before the courts. The Committee requests the Government to supply it with a copy of the court ruling on the dismissal of GPSU officers and members in other branches*

of the public sector, and if the court finds that the dismissals were on anti-union grounds, to take all necessary measures with a view to the reinstatement of the dismissed trade union officers and members and the payment of outstanding wages, and to keep it informed in this respect.

443. *The Committee also notes that the complainants enumerate certain GPSU members who allegedly received threats at the High Court Registry. The Committee notes that the Government confined itself to forwarding a report on this matter by the High Court Registrar, that is, the person concerned by the allegations, who rejects the allegations as mere rumours. The Committee recalls that complaints against acts of anti-union discrimination should normally be examined by national machinery which, in addition to being speedy, should not only be impartial but also be seen to be such by the parties concerned, who should participate in the procedure in an appropriate and constructive manner [see* ***Digest****, op. cit., para. 750]. The Committee requests the Government to take all necessary measures as soon as possible so that allegations of anti-union discrimination in the High Court Registry are investigated by an independent body and if the allegations are confirmed, to ensure that such acts cease immediately and that appropriate remedies are adopted. The Committee requests to be kept informed in this respect.*

Withdrawal of certification as majority union

444. *The Committee observes that the parties disagree on the legal validity of a poll conducted in the Guyana Forestry Commission as a result of which the GPSU lost its certification as majority union and its exclusive bargaining rights in that unit. The Committee notes from the Government's report that such polls are required under the Trade Union Recognition Act, 1997, where two or more unions have applied for certification with respect to the same bargaining unit and attempts to resolve the claim fail. The poll is conducted by a tripartite body, the Trade Union Recognition and Certification Board, and there is a possibility to challenge the certification generally after two years. The Committee notes that according to the complainants, the poll was the culmination of attempts, including dismissals, to modify the bargaining unit in the Guyana Forestry Commission. The Committee notes that the complainants do not provide sufficiently detailed information to enable it to undertake an examination of this aspect of the case. The Committee also notes that according to the GPSU, the president of the Guyana Agricultural and General Workers' Union, which is the newly certified union in the Guyana Forestry Commission, sits on the benches of the ruling party in the National Assembly. The Committee notes that the issue of the certification of the majority union in the Guyana Forestry Commission is currently pending before the courts and requests the Government to supply it with a copy of the court ruling as soon as it becomes available, so that it may reach a conclusion on this aspect of the case in full possession of all the relevant information.*

Pressure to quit the union

445. *The Committee notes that according to the complainants, the members of the fire service have been coerced by the Chief Fire Officer on the directions of the Minister of Home Affairs to become members of an association other than a trade union, thus being denied GPSU membership while the Government confines itself to stating that this matter is pending before the courts. The Committee requests the complainants to specify the acts by which fire workers are allegedly coerced to join an association other than a trade union, the type of association promoted and in what way it affects the freedom of association of fire workers. The Committee requests the Government to transmit a copy of the court ruling as soon as it becomes available so that it may reach a conclusion on this aspect of the case in full knowledge of all relevant facts.*

446. *The Committee notes that the Government has not responded to allegations according to which the Guyana Energy Authority staff have been informed that the establishment would close down and that the staff should form a committee to negotiate their termination benefits with the administration, despite the fact that the GPSU has recognition and certification as representative union in this establishment. The Committee observes that section 23(4)-(6) of the Trade Union Recognition Act, 1997, provides that an employer who decides to close an undertaking must give the certified union notice and consult with it before a final decision is taken. In this context, the Committee considers that the Government's failure to consult with the GPSU, which has certification as the majority union in the Guyana Energy Authority, contravenes the law and is detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted, while the invitation extended to workers to set up a parallel committee amounts to interference in the affairs of the GPSU. The Committee requests the Government to take all necessary measures to ensure that the Guyana Energy Authority initiates consultations with the GPSU as the certified majority union and to keep it informed in this respect.*

The Committee's recommendations

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

(a) The Committee recalls that governments should recognize the importance for their own reputation of formulating detailed replies to the allegations brought by complainant organizations, so as to allow the Committee to undertake an objective examination in full knowledge of the facts.

(b) The Committee recalls that in general, agreements should be binding on the parties and requests the Government to supply it with a copy of the court ruling on the enforceability of the 1999 Memorandum of Agreement as soon as it becomes available, so that it may reach a conclusion on this aspect of the case in full possession of all the relevant information.

(c) The Committee trusts that in the future the Government will give priority to collective bargaining as a means of determining employment conditions of public servants and will make every effort to avoid unilateral measures in this context.

(d) The Committee requests the parties to provide sufficiently detailed information on the content of the 1976 agency fee agreement and the legal grounds for its denunciation and to transmit a copy of the court ruling on this issue as soon as it becomes available, so that it may reach a conclusion on this aspect of the case in full possession of all the relevant information.

(e) The Committee requests the parties to indicate whether the introduction of a requirement for written authorization of the deduction of trade union dues is a measure of general application or an individual decision limited to the GPSU. If the measure is an individual decision, the Committee requests the Government to take all necessary measures as soon as possible with a view to ending such situation of discrimination and interference, and to keep it informed in this respect. The Committee also requests the Government to ensure that in the future, the introduction of measures affecting trade union

rights is preceded by full and frank consultations with all trade unions concerned.

(f) The Committee requests the Government to take all necessary measures as soon as possible with a view to ensuring the full implementation of the High Court's decision ordering the reinstatement of seven GPSU officers and members who have been dismissed from the High Court Registry on anti-union grounds and the payment of outstanding wages, and to keep it informed in this respect.

(g) The Committee requests the Government to supply it with a copy of the court ruling on the dismissal of GPSU officers and members in other branches of the public sector, and if the court finds that the dismissals were on anti-union grounds, to take all necessary measures with a view to the reinstatement of the dismissed trade union officers and members and the payment of outstanding wages, and to keep it informed in this respect.

(h) The Committee requests the Government to take all necessary measures as soon as possible so that allegations of anti-union discrimination in the High Court Registry are investigated by an independent body and if the allegations are confirmed, to ensure that such acts cease immediately and that appropriate remedies are adopted. The Committee requests to be kept informed in this respect.

(i) The Committee notes that the issue of the certification of the majority union in the Guyana Forestry Commission is currently pending before the courts and requests the Government to supply it with a copy of the court ruling as soon as it becomes available, so that it may reach a conclusion on this aspect of the case in full possession of all the relevant information.

(j) The Committee requests the complainants to specify the acts by which fire workers are allegedly coerced to join an association other than a trade union, the type of association promoted and in what way it affects the freedom of association of fire workers. The Committee requests the Government to transmit a copy of the court ruling as soon as it becomes available so that it may reach a conclusion on this aspect of the case in full knowledge of all relevant facts.

(k) The Committee requests the Government to take all necessary measures to ensure that the Guyana Energy Authority initiates consultations with the GPSU as the certified majority union and to keep it informed in this respect.

CASE NO. 2228

INTERIM REPORT

Complaint against the Government of India presented by the Centre of Indian Trade Unions (CITU)

Allegations: The complainant alleges acts of anti-union discrimination including dismissals, the lack of grievance redressal mechanisms, the suppression of a strike by the police, and refusal to negotiate in the Worldwide Diamond Manufacturing Ltd. which is situated in the EPZ of Visakhapatnam in the state of Andhra Pradesh.

448. The complaint is contained in a communication from the Centre of Indian Trade Unions (CITU) dated 30 October 2002.

449. The Government sent its observations in communications dated 10 and 27 January 2003.

450. 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

451. In its communication dated 30 October 2002 the Centre of Indian Trade Unions (CITU) alleges various acts of anti-union discrimination against the "Visakhapatnam Export Processing Workers' Union", a CITU affiliate, established in the Visakhapatnam Export Processing Zone (VEPZ) in the state of Andhra Pradesh. According to the complainant, although trade unions are generally not banned in EPZs in India, trade union activities are not allowed in the VEPZ and the Development Commissioner, who is the authority responsible for the VEPZ, has personally warned the workers that they might lose their jobs if they join any trade union. According to the complainant, there is no grievance redressal mechanism for the workers and their services are immediately terminated if they are suspected of participating in any trade union activity.

452. The complainant alleges moreover that the management of the Worldwide Diamonds Manufacturing Ltd., a company located in the VEPZ, refuses to talk to the union and has also committed various acts of anti-union discrimination. In particular, two workers were illegally terminated for being active in the union (Aruna and Vijaya), one worker was suspended for trade union activities (Neelakanteswara Rao) and arbitrary fines were imposed upon 22 others, ranging from Rs.100-700, for trade union activities (R.T. Santosh, Praveen, Babu Khan, Srinu, Ravi, Babu Rao, Sita Rama Raju, Raju, Nooka Raju, Kalyani, Aruna, N. Sailaja, Girija, Neeraja, Chandram, Veerraju, T. Lakshmi Kanta, P. Govinda Raju, P. Manga Raju, Subba Raju, Rajeswari, Krishna).

453. The complainant states that all the 350 workers of one unit of Worldwide Diamonds Manufacturing Ltd. (which is divided in two units) went on strike on 9 January 2002. The 850 workers of the second unit joined them on 17 January 2002. The strike was staged in

protest for conditions of work which are not in conformity with the applicable labour law especially in the area of wages, and for allegedly abusive management practices.

454. The complainant claims that initially, the managing director of the company tried to coerce the workers to withdraw the strike unconditionally and abused them verbally. It is alleged that pursuant to this, the peaceful strike of the workers was brutally suppressed by the EPZ administration and the police. Instead of taking steps to resolve the issue by holding discussions, the administration chose to terrorize the workers who were peacefully agitating in their demands through arrests, illegal detention in police stations and prohibiting workers from gathering in an area up to 20 km from the VEPZ. Meetings in the local CITU office were not permitted. Hundreds of workers were arrested and detained, including one of the national secretaries of CITU who was arrested as she was walking out of the CITU local office after having addressed a trade union meeting. One worker was chained while in custody at the police station. Workers and their leaders were brutally caned by the police and a reign of terror was unleashed by the administration. The CITU also alleges that the police went to the houses of individual workers and threatened them so that they return to work. Encouraged by the attitude of the administration, the management refused to talk to the representatives of the workers.

455. According to the complainant, the strike finally ended on 18 February 2002, on assurances provided by the Minister for Heavy Industries, the District Collector and the Commissioner of Police that they would ensure respect for workers' rights as provided for in Indian law, including the right to collective bargaining, and that there would be no victimization of workers for having staged a strike. However, the complainant states that the management has since refused to talk to the union. The complainant reiterates these claims in a letter attached to the complaint, dated 4 April 2002 and addressed to the Minister for Heavy Industries. The complainant also brings these allegations to the attention of the Chief Justice of the Supreme Court of India in a letter dated 4 July 2002, which is also attached to the complaint. In the letter, the complainant requests the Chief Justice to consider its appeal and states that VEPZ workers have no alternative remedy to redress these grievances except to ask the Chief Justice for protection.

456. The complainant alleges further acts of anti-union discrimination in relation to the strike. According to the complainant, termination letters were sent to eight workers during the strike (G. Sony, Srinivasa Rao, Ganesh Reddy, Nagapaidi Raju, D.V. Sekhar, Ramesh Kumar, Rajaratnam Naidu and Prasad). A further seven workers were dismissed after the strike, on 25 March 2002, because of their trade union activities (K. Sudhakar Rao, Ch. Hemalatha, P.U. Kishore Reddy, T. Guru Murthy, G.V. Raju Kumar, K.R.A.S. Varma and I. Kanaka Raju) despite the abovementioned assurances. The complainant makes this last allegation in a letter attached to the complaint, dated 7 May 2002 and addressed to the Deputy Commissioner of Labour.

457. The complainant finally states that conditions are similar in the seven EPZs of the country and that attacks on the workers have been increasing.

B. The Government's reply

458. In its communications dated 10 and 27 January 2003, the Government forwards the views of the provincial government of Andhra Pradesh which conducted an inquiry on the allegations. The provincial government states that in general, workers in the EPZs have the right to join trade unions and to bargain collectively and rejects as untrue the allegations that there are restrictions on trade union activities in the VEPZ and that the Development Commissioner warned the workers that they may lose their jobs if they join any trade union.

459. The provincial government states that EPZs are governed by the labour laws and rules applicable to the industrial workers in general like the Trade Union Act, 1926 an the Industrial Disputes Act, 1947. The VEPZ administration is entrusted with ensuring the implementation of labour laws in the VEPZ. The Office of the Development Commissioner has constituted a Grievance Redressal Committee with a senior officer, the Deputy Development Commissioner, designated as Grievances Redressal Officer. Much before the commencement of a strike in the VEPZ, the grievances of the employees have been settled by the Grievance Redressal Committee. Furthermore, for the convenience of the workers, suggestion boxes have been kept at prominent places frequently visited by workers so that they can drop their written complaints there. Periodical inspections take place by a joint team comprising labour departments at the provincial level, the central Government's Labour Ministry and the representatives of trade unions of the EPZs.

460. With regard to allegations of anti-union discrimination, the Government notes that the list of workers who were allegedly suspended, dismissed or fined for trade union activities was verified with the management of Worldwide Diamond Manufacturing Ltd. on a case-by-case basis and it was found that the reasons for suspension were indiscipline, irregularity and failure to learn.

461. The Government states that while the workers' grievances were being taken up with the management of Worldwide Diamonds Manufacturing Ltd. by the Office of the Development Commissioner, the workers went on a flash strike from 9 January 2002 in spite of being advised that any strike without notice would be considered as illegal as the VEPZ has "public utility" status. The Government specifies that if any establishment is declared a public utility for the purposes of the Industrial Disputes Act, 1947, this does not restrict workers' rights. It only requires that 15 days prior notice is given before going on strike which ensures that there is adequate time for conciliation/mediation, etc. before the actual strike takes place.

462. The provincial government reports that after the strike started, the managing director of the company tried to convince the workers to come back to work without abusing them and that the circle inspector and the sub-inspector of police were witness to the scene.

463. With regard to the alleged suppression of the strike by the police, the Government notes that the local police was called upon to disperse a mob which prevented senior officials like the Additional Secretary to the Government of India, Ministry of Commerce and Industry, and the Development Commissioners of all Export Promotion Zones (EPZs) of India, including the Development Commissioner, VEPZ, to attend a board meeting at the VEPZ on 10 January 2002. Subsequently, precautionary measures were taken, including the isolation of the vicinity of the VEPZ, in accordance with section 144 of the Indian Penal Code, in order to maintain law and order and to ensure safety and security of public property.

464. According to the provincial government, some issues highlighted by the complainant could have otherwise been resolved through dialogue without calling for a strike. Small misunderstandings between the management and the workers do occur when an industry is growing and the fact that all the striking workers resumed their duties voluntarily and unconditionally indicates that "they have realized their mistakes". The Government has, however, advised the management to improve their relationship with the workers so that such incidents can be avoided in the future.

465. The Government further states that the provincial government instructed a team consisting of the District Collector, Visakhapatnam, the Development Commissioner, Visakhapatnam EPZ and the Joint Commissioner of Labour, Visakhapatnam, to once again inspect the

VEPZ to ensure that the labour laws are properly implemented and that once the inspection report is received, it will be sent to the Committee.

C. The Committee's conclusions

466. *The Committee observes that this case concerns allegations of acts of anti-union discrimination including dismissals, the lack of grievance redressal mechanisms, the suppression of a strike by the police, and refusal to negotiate in the Worldwide Diamond Manufacturing Ltd. which is situated in the EPZ of Visakhapatnam (VEPZ) in the state of Andhra Pradesh.*

467. *The Committee is faced with a lack of information or a conflict of evidence with respect to several allegations concerning the strike staged from 9 January to 18 February 2002 in protest for conditions of work allegedly not in conformity with the applicable labour laws and for abusive management practices. The Committee notes that whereas the complainant alleges that the administration and the police terrorized the workers who were peacefully on strike, the Government rejects these allegations stating that the local police was called upon to disperse a mob which prevented senior officials from visiting the VEPZ and had to adopt measures to isolate the vicinity of the VEPZ. The Committee notes that the Government does not provide specific information on the alleged arrest of a trade union officer who was walking out of a trade union meeting and the prohibition of meetings in the complainant's local office, as well as allegations that striking workers were threatened by the police at home. The Committee also notes that the Government has not responded to allegations concerning the communication of termination notices to eight workers during the strike and the dismissal of another seven workers after the strike. Finally, the Committee notes that the complainant and the Government disagree as to the conditions under which the strike was initiated and ended. The Committee requests the Government to transmit sufficiently detailed information on allegations that a trade union officer was arrested, meetings in the complainant's local office were prohibited and striking workers were threatened by the police as well as the conditions under which trade unionists were allegedly dismissed during and after the strike staged at the Worldwide Diamond Manufacturing Ltd. in the VEPZ.*

468. *With regard to other allegations of anti-union discrimination, the Committee takes note of the Government's statement rejecting as untrue the allegations that the Development Commissioner of the VEPZ personally warned the workers that they might lose their jobs if they join any trade union. The Committee notes however, that the Government does not provide any specific information on the grounds that led to this conclusion. The Committee also notes the Government's statement that the list of workers who were allegedly dismissed, suspended or fined for their trade union activities was verified with the management of Worldwide Diamonds Manufacturing Ltd. and it was found that these measures were due to indiscipline, irregularity and failure to learn. Given the brevity of the allegations and the Government's response, the Committee considers that it does not have sufficiently detailed information at its disposal to undertake an objective examination of the allegations. The Committee recalls that in general, 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 concerned [**Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 754 and 738]. The Committee requests the complainant to provide more specific information concerning allegations of anti-union discrimination in the VEPZ concerning the workers who have been dismissed, suspended or fined and to confirm whether there have been restrictions of their trade union rights.*

469. *The Committee observes that the Government has not responded to allegations that the management of Worldwide Diamonds Manufacturing Ltd. refuses to talk to the union. The Committee recalls that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements [**Digest**, op. cit., para. 781]. The Committee invites the Government to take all necessary measures as soon as possible with a view to encouraging a settlement of the current dispute through collective bargaining between the parties and to keep it informed in this respect.*

470. *The Committee notes that according to the complainant, there is no available mechanism in the VEPZ for the redressal of grievances and that the Government rejects these allegations stating that there is a Grievances Redressal Committee headed by the Deputy Development Commissioner. However, the Committee notes that the Government does not provide any factual information on the composition, functioning and effectiveness of this Committee or the measures taken to promote a settlement of the current dispute through conciliation. The Committee notes that there could be incompatibility between the functions of Deputy Development Commissioner and Grievances Redressal Officer when performed by the same person. It requests the Government to review this situation. The Committee notes, moreover, that this mechanism, which seems to function in the event of both individual grievances and collective disputes, might not always have the confidence of all parties concerned, especially when allegations of anti-union discrimination are directed against the VEPZ administration itself. The Committee requests the Government to take all necessary measures as soon as possible with a view to promoting a settlement of all disputes and grievances in this case through inexpensive, expeditious and impartial conciliation procedures and to keep it informed in this respect.*

471. *The Committee is of the view that many of the issues brought up in this complaint could be resolved in the last resort by the judicial instances. The Committee observes in this respect that the complainant addressed a letter to the Chief Justice of the Supreme Court of India in which it requests the Chief Justice to consider its appeal stating that VEPZ workers have no alternative remedy to redress these grievances except to ask for protection. The Committee recalls from an earlier case that in the event of collective labour disputes and individual cases of alleged anti-union discrimination, recourse to adjudication as a last resort, if all other efforts at conciliation have failed, seems to depend on permission by the competent labour authorities [Case No. 420, Report No. 93, paras. 158-161]. However, given that this decision dates from 1964, the Committee cannot determine whether this is still the case. The Committee requests the Government to indicate whether access to justice continues to depend on the permission of the competent labour authorities. If this is the case, the Committee requests the Government to take all necessary measures to amend the legislation so that no such permission is required. The Committee asks to be kept informed in this respect.*

The Committee's recommendations

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

(a) The Committee requests the Government to transmit sufficiently detailed information on the conditions under which trade unionists were allegedly dismissed, and on allegations that a trade union officer was arrested, meetings in the complainant's local office were prohibited and striking workers were threatened by the police during and after the strike staged at the Worldwide Diamonds Manufacturing Ltd. in the EPZ of Visakhapatnam

concerning the workers who have been dismissed, suspended or fined and to confirm whether there have been restrictions of their trade union rights.

(b) The Committee requests the complainant to provide more specific information concerning allegations of anti-union discrimination in the EPZ of Visakhapatnam concerning the workers who have been dismissed, suspended or fined and to confirm whether there have been restrictions of their trade union rights.

(c) The Committee requests the Government to take all necessary measures as soon as possible with a view to reaching a settlement of the current dispute through collective bargaining and to keep it informed in this respect.

(d) The Committee requests the Government to take all necessary measures as soon as possible with a view to promoting a settlement of all disputes and grievances in this case through inexpensive, expeditious and impartial conciliation procedures and to keep it informed in this respect.

(e) The Committee requests the Government to review the situation where the two functions of Deputy Development Commissioner and Grievance Redressal Officer are performed by the same person and to indicate whether access to justice continues to depend on the permission of the competent labour authorities. If this is the case, the Committee requests the Government to amend the legislation so that no such permission is required. The Committee requests to be kept informed in this respect.

CASE NO. 2236

INTERIM REPORT

Complaint against the Government of Indonesia presented by the Chemical, Energy and Mine Workers' Union (Federasi Serikat Pekerja Kimia, Energi dan Pertamangan Serikat Pekerja Seluruh Indonesia – DPP SP KEP SPSI)

Allegations: Anti-union discrimination by the Bridgestone Tyre Indonesia Company against four union officers currently suspended without pay pending the outcome of the dismissal procedure initiated by the company.

473. The complaint is set out in a communication of 25 November 2002 supplemented by 30 appendices. In support of its complaint, the Chemical, Energy and Mine Workers' Union sent two sets of additional information through communications of 25 January and 28 February 2003. A third set of additional information, also dated 28 February 2003, was received on 1 April.

474. The Government replied to the complaint in a communication dated 25 February 2003 and was invited to submit its observations on the three communications containing the additional information submitted by the complainant. Both the complainant and the

Government have sent an English version of the collective labour agreement in force in the Bridgestone Tyre Indonesia Company for the period 2001-03.

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

A. The complainant's allegations

476. The complainant alleges that the Bridgestone Tyre Indonesia Company has infringed trade union rights, in contravention in particular of the provisions of Conventions Nos. 87 and 98 and article 28 of Act No. 21 concerning trade unions, by suspending ("schorsing" in the national legal terminology) four union officers and seeking authorization from the competent authorities to dismiss them. The four union officers concerned are:

– Mr. Sarno H., chairperson of the union section of the company's factory in Bekasi;

– Mr. Hazrial Nazar, chairperson of the union section of the company's factory in Karawang;

– Mr. Juli Setio Raharjo, chairperson of the union section of the company's head office in Jakarta;

– Mr. Machmud Permana, secretary of the union section of the company's factory in Bekasi.

477. The complainant submits that the company should be instructed to set aside its decisions of suspension. Further, the Government should be asked to handle the matter to rectify the weakness of the enforcement of labour law, the length and complexity of the labour law settlement process as well as the competent authorities' bias against workers.

478. The facts of the case and the contentions presented by the complainant can be summarized as follows.

Background

479. Under article 27(1) of the collective labour agreement in force in the Bridgestone Tyre Indonesia Company, negotiations on the review of the basic salary started at the beginning of March 2002. Since no agreement had been reached by the end of the month, both parties agreed to submit the matter for mediation to the officer of the Department of Manpower of the Bekasi district.

480. At the same time, a union officer (most likely from the Bekasi factory although there is no explicit specification from the complainant), pressed by the workers to give explanations on the negotiations, sought the authorization of the company to hold a meeting. During the meeting, the workers suggested calling a strike. The union representative replied that such an initiative would be contrary in particular to the agreement concluded between the local union and the company, designated by the complainant as an agreement concerning the effort to prevent strike action.

481. On 27 March 2002, the three chairpersons of the union sections of the Bekasi and Karawang factories and of the head office in Jakarta, as well as the secretary of the union section of the Bekasi factory, issued a communication on the union letterhead. This communication contained three sets of instructions (to use the terminology of the

complainant) to the workers: (1) no overtime as of 28 March until the April salary increase; (2) work should continue as usual; (3) on the national holiday (29 March) work should be performed in accordance with the applicable working calendar. The complainant indicates that overtime payment represents 40-50 per cent of the total wage. The aim of the communication was therefore to enable the company to save money and thereby to grant workers a percentage of basic salary increase higher than 25 per cent.

482. In accordance with article 10 of the collective labour agreement, the distribution of the union's communication to workers had to be authorized by the general affairs manager. On 28 March 2002, the latter refused to put his visa on the communication and returned it to the union. Since explanations had been given on the contents of the communication at the meeting organized by the union, it appears that these oral instructions were considered to be sufficient. The communication was eventually distributed (a copy of the communication in the national language is appended to the complaint, signed by the four officers; the name of the general affairs manager is written down but there is no signature below it).

483. On 1 April 2002, the company management asked the union to send back the communication for its signature but, according to the complainant, never returned it. On the same day, the chairperson of the union section of the Bekasi factory, Mr. Sarno, was summoned by the director of the factory in the presence of the general affairs manager. The director of the factory questioned the lack of distribution of the union's communication to the president director of the company and asked explanations on its contents. He added that the level of production was decreasing because the workers were not working on overtime.

484. On 5 April 2002, the local union and the company rejected a proposed increase of the basic salary submitted by the Department of Manpower of the Bekasi district. The parties brought the matter before the Regional Labour Disputes Settlement Committee. On 26 April 2002, the committee decided on a basic salary increase of 26.59 per cent. On the same day, the president director summoned a meeting with the three chairpersons of the union sections and the secretary of the local union of the Bekasi factory. During this meeting, the decision of the Regional Labour Disputes Settlement Committee was accepted by all the parties. The president director indicated that workers should be ready to work on overtime to increase production. The secretary of the local union of the Bekasi factory informed him that a letter withdrawing the previous union's communication on overtime had been prepared. The general affairs manager put his signature on the union's new letter (a copy of which, in the national language, is attached to the complaint). This letter informed workers of the agreement reached on the basic salary increase and of the withdrawal of the previous instruction concerning overtime. The letter was distributed the same day and bore the signature of the three chairpersons of the local unions as well as of the secretary of the local union in the Bekasi factory. On 26 April 2002, as well, an agreement on the basic salary increase (appended to the complaint in the national language) was signed between the union – represented by Mr. Sarno – and the company.

Decisions of suspension of the four union officers by the company

485. On 21 May 2002, the complainant indicates that the company called a bipartite meeting without giving any details of the agenda. On 22 May 2002, the meeting was held in the presence of Mr. Sarno H., Mr. Machmud Permana, Mr. Hazrial Nazar and Mr. Juli Setio Raharjo. All of them were invited to the meeting in their personal capacity and not as union representatives. The four union officers were informed that, as a result of the communication of 27 March sent out by the union during the negotiations on the basic salary increase, and in particular the instruction concerning overtime, the production target

had gone down. As a consequence, the company decided to suspend them pending their dismissals. These sanctions were notified in writing to each of the four employees through four decisions of the president director. On the same day, the president director also requested from the competent authorities the authorization to proceed with the dismissal.

486. The complainant indicates that, in support of the suspensions and the requests for dismissal, the president director invoked mistakes on the part of the four union officers – amounting to criminal actions – under article 67 of the collective labour agreement, which relates to a "major violation act". Thus they were accused, among other things, of persuading the employer and workers to conduct an action "contrary to the law and morals", of intentional damage to the company's assets and good name and reputation, and of leak of information. In a subsequent letter to the union (appended to the complaint), the president director indicated that the four employees were dismissed as workers of the company and not in their capacity of union officers. In a declaration made in front of some workers of the company, as well as in front of the Minister of Manpower and Transmigration, the president director explained that the three years of Mr. Sarno's leadership and that of his colleagues created problems for the company; hence, the procedures of dismissal decided by the company's headquarters in Japan.

487. The complainant adds that the decisions of suspension were supplemented by the following measures. First, the four union officers were prohibited from entering the company premises although in principle they were still considered union officers; the exercise of their union activities was thus impeded since the union's premises were located inside the company. Further the suspension was decided at first with partial pay (amounting to a 25 per cent wage cut) from 23 May until 22 November 2002 and then without pay (salary and benefits).

Infringements of trade union rights

488. In the complaint, the following arguments are presented. First, the decisions of suspension as preliminary steps to the dismissals are contrary to the collective labour agreement, a number of provisions of the national legislation on trade union rights and, in particular, article 28 of Act No. 21 of 2000 which protects workers against acts of anti-union discrimination in the course of their employment, as well as Conventions Nos. 87 and 98. The complainant points out that the company's accusations were made outside any legal process and in particular in the absence of a thorough investigation to establish whether there was any foundation to the accusations. Such accusations damage the good name and reputation of the four employees. The complainant also underlines that, during the three years of the union officers' activities, a number of agreements had been reached with the president director and, in particular, the collective labour agreement and the agreement on wages. In general, workers' welfare improved during this period and ultimately this was beneficial to the company. The complainant underlines also that the four employees suspended were representatives of a union duly recognized by the company and with whom it had just reached an agreement on the basic salary increase. Finally, the complainant contends that the suspension without pay of the four union officers is contrary to article 6(4) of Manpower Ministerial Decree No. 150/2000.

Events subsequent to the decisions of suspension

489. On 22 May 2002, the four union officers organized a meeting to inform the union of the company's decisions. On the same day the production of goods stopped as a result of a movement launched by the workers to express their solidarity with the four union officers. The following day the four union officers sought the intervention of the Minister of Manpower and Transmigration to settle their case. The Minister promised to do so but, at

the same time, requested the officers to urge workers to resume work. This was done through the local union officers but to no avail. The four union officers wrote to the president director to ask for the withdrawal of his decisions. They also expressed concern about the stoppage and suggested settlement of the matter through the bipartite mechanism. On 25 May 2002, the four union officers were informed that the Minister set a deadline for the resumption of work on 27 May; if this deadline was not met, the Minister indicated that it would not intervene to settle the case of the four union officers. On 25 May 2002, workers were urged to resume work in a joint appeal signed by the chairperson, the secretary of the union section of the Bekasi factory, as well as by the president director; as a result, workers took up their duties on the same day.

490. On 27 May 2002, the union, the president director and the general affairs manager were summoned by the Minister of Manpower and Transmigration to settle the case relating to the four union officers. In the course of the meeting, the president director indicated that the decisions had been taken by the top management in Japan because of the problems created by the four union officers were detrimental to the company and its workers. The general affairs manager underlined that the union's communication instructing workers to refuse to work overtime decreased the level of production and was perceived as a threat by workers. For its part, the union pressed for the reinstatement of the four officers and promised to remain open to any suggestion and advice from the company on the conduct of the union's activities. The Minister suggested that the matter be settled through a bipartite meeting. The president director refused this suggestion, underlining that the matter should be processed according to the applicable legislation. The Minister maintained his position and appointed the Manpower Officer of the Bekasi district to act as a facilitator; the two sides gave their agreement to this appointment. A meeting was held subsequently on 10 June 2002 but the parties were not able to reach an agreement. In these circumstances, on 26 June 2002 the Minister of Manpower and Transmigration ordered the Department of Manpower and Transmigration to process the requests for dismissal of the four union officers under Act No. 21 of 2000.

491. The complainant further submitted to the competent authorities allegations of infringements of trade union rights on the part of the company. On 16 July 2002, the Director of "Working Norm Control/Supervision" of the Department of Manpower undertook an investigation.

National procedures implemented

492. The additional information submitted by the complainant gives some general indications as well as details on the procedures implemented in each individual case.

493. The complainant indicates that the Director of "Working Norm Control/Supervision" of the Department of Manpower and Transmigration undertook the investigation into the allegations of trade union infringements by the company, in accordance with article 28 of Act No. 21. Nonetheless, at the date of the submission of the complaint, the investigation had not led to any result and the process followed was unclear. Further, in a letter of 20 January 2003 written to the "inspector general" of the Department of Manpower of the Ministry of Manpower and Transmigration Ministry, the complainant requested the interruption of the dismissal because the investigation on the violation of trade union rights was under way. The complainant also underlines that the "director-general of Manpower Control and Supervision" of the Department of Manpower and Transmigration suggested to the Manpower District Office to postpone the dismissal process and that the opposite suggestion was made by the another official of the same department.

494. In the third set of additional information, the complainant indicates that it requested the competent bodies in charge of examining the dismissal requests made by the company, to

interrupt the procedures. The reason given was that the real issue at hand was one of anti-union discrimination and that, therefore, it should be referred for decision to the civil court once the investigation had been completed. The complainant underlines that the investigation process is very slow.

495. The following indications can be made on the national procedures implemented in respect of the four union officers concerned.

Mr. Hazrial Nazar (chairperson of the local union in the Karawang Factory)

496. At a first stage of the procedure, the Manpower District Officer of the City of Karawang, acting as a mediator, suggested Mr. Nazar's reinstatement with a warning letter. The company rejected this suggestion and the case was brought before the Regional Labour Disputes Settlement Committee. The Committee handed down a decision of dismissal on 8 January 2003. Extracts of the decision – in a translated version – are reflected in the documentation submitted by the complainant.

497. According to these extracts, the company indicated that the dismissal was justified because of the instruction contained in the communication of 27 March signed by Mr. Nazar and the disruption created by this instruction. The company considered that Mr. Nazar's conduct infringed several provisions of the collective labour agreement and that he committed a serious violation of the agreement and that his dismissal was thus justified under article 67. For his part, Mr. Nazar rejected the company's arguments that he had infringed these provisions, maintained that the instruction was compatible with article 20 of the agreement and claimed that the decision of suspension and the request for his dismissal were contrary to a number of provisions of the national legislation and to Conventions Nos. 87 and 98. The Committee found that by circulating the instruction without the company's authorization, in his capacity of union officer, Mr. Nazar infringed several provisions of the collective labour agreement. Considering that a warning letter was sent to Mr. Nazar – a factual point challenged by the complainant – and that the latter showed no sign of amending his conduct, the Committee concluded that his dismissal could not be avoided and that final payments should be made to him.

498. The Committee eventually cancelled its ruling by a decision of 4 February 2003 – notably because it was based on a warning letter, which did not exist; a letter of apology was sent to Mr. Nazar on this account. The Committee issued a second decision on 11 February 2003 on the referral of the matter to the National Labour Disputes Settlement Committee.

Mr. Sarno H. and Mr. Machmud Permana, respectively chairperson and secretary of the local union of the Bekasi factory

499. The case of Mr. Sarno and that of Mr. Permana were brought on 22 January 2003 before the Manpower District Officer of the City of Bekasi, acting as a mediator. The Manpower District Officer submitted a recommendation on 18 February 2003 to the parties. The text of this recommendation has been translated and communicated by the complainant. It can be summarized as follows. In support of its decisions, the company gave similar explanations to the ones given in the case of Mr. Nazar, adding that the 27 March communication had been distributed without its authorization. The two union officers concerned underlined that the 27 March instruction had been issued and distributed in their capacity as union representatives. They recalled the purpose of the instruction, that they had sought the company's authorization for its distribution but that its management could not put its signature on the instruction.

500. The mediator took the view that the distribution of the instruction without prior authorization of the company infringed article 10 of the collective labour agreement. In this respect, the company's decisions to suspend the two officers and request their dismissal could be understood. On the other hand, the mediator noted that the warning letter, provided for under the national legislation, had not been sent to the two union officers. In these circumstances, the mediator suggested that the company reinstate Mr. Sarno and Mr. Permana with a warning letter.

Mr. Julio Setio Raharjo chairperson of the local union of the head office in Jakarta

501. In submitting its additional information on 25 January 2003, the complainant simply indicates that the mediation process has not yet been conducted in this particular case. In its third set of additional information, the complainant indicates that the Manpower District Office of the City of Jakarta organized a last meeting on 21 February 2003 between the parties.

B. The Government's reply

502. While noting the importance and the seriousness of the case, the Government mainly submits in its reply of 25 February 2003, information on the implementation of the national procedures.

503. At the outset, it underlines that under the national legislation local governments have authority to settle labour-related problems but that, given the importance of the matter, the central Government took some measures falling directly under its authority.

504. Concerning the facts of the case, the Government confirms that the difficult negotiations on a salary increase sparked off the whole case. It also states that the company and the union had concluded an agreement whereby each party agreed not to take any action that might influence the negotiation process. Faced with the absence of an agreement, the union issued its 27 March instruction requesting workers not to work overtime. Some workers refused to follow this instruction and were subject to acts of intimidation; this created anarchy. On 26 April 2002 the company agreed to a wage increase and the union's instruction was withdrawn.

505. On 23 May 2002, the company decided to suspend the four workers, who were also union officers, for actions incompatible with the collective labour agreement. The company also forbade these workers from entering its premises, thus preventing them from exercising their union activities since the union is located inside the company's premises.

506. Concerning the procedures followed, the Government considers that it can be concluded that article 28 of Act No. 21 concerning workers' protection against acts of anti-union discrimination has been implemented. More specifically, it underlines that the four workers submitted a complaint to the "Directorate of the norm labour inspection" of the Department of Manpower. As a result, investigations were carried out, in the course of which the four workers and some witnesses were heard. The Government indicates that, "it is considered" that the decisions of suspension are not compatible with the provision of articles 28(a) and 42 of Act No. 21 of 2000. Nevertheless, the Government indicates that the investigation report was submitted on 7 September 2002 to the police headquarters according to the applicable national procedure. The Government adds that the regions of Bekasi, Karawang and Jakarta considered that the company's request for dismissal might have to be processed only once the investigation of the central Government was achieved. The head of the local office of Manpower and Transmigration in Bekasi sought some information on the progress of the investigation. In his response of 26 November 2002, the

director-general of the "Industrial Relations and Labour Standards" of the Department of Manpower and Transmigration underlined that the investigation and the dismissal should be carried out in accordance with the national legislation. According to the Government, both matters should be settled without intervention from any other parties. As a general comment on the procedure, the Government underlines that Act No. 21 of 2000 is a new Act and that the investigation into the infringements of trade union rights is examined under the existing procedures. It adds that the Department of Manpower and Transmigration has recently coordinated with the police headquarters to submit the results of the investigation to the Attorney's Office and that the matter may be further processed at the level of the state court.

C. The Committee's conclusions

507. *The Committee notes that the present case concerns the initiation of dismissal procedures by the Bridgestone Tyre Indonesia Company in respect of four workers who are officers of the union recognized by the company and who are currently suspended without pay from their work.*

508. *The Committee notes that the complainant has submitted detailed information on the substantial and procedural aspects of the case while the Government's reply at this stage makes some points of a factual nature and describes the national procedures currently under way. The Committee requests the Government to solicit information from the employers' organizations concerned with a view to having at its disposal their views, as well as those of the enterprise concerned, on the questions at issue.*

509. *From the information at its disposal, the Committee considers that the following elements can be usefully identified. First, the case stems from difficult negotiations on a salary increase, between the local union and the company. In this context, the four union officers, representing the local union in the salary negotiations, issued a communication on 27 March 2002 whereby workers were asked to refuse to work overtime and to continue their work according to the normal working time; recourse to overtime in the company seems to be rather important for maintaining production up to a certain level. From the information given both by the complainant and the Government, albeit in different terms, this communication had quite an impact. On 26 April 2002, an agreement on the salary increase was eventually reached and the union withdrew the appeal made to workers in respect of overtime. Through four decisions, dated 22 May 2002, emanating from the chairperson of the company, the union officers who had signed the 27 March communication were suspended from their work for infringement of the collective labour agreement; the same day, the company sought from the competent authorities the authorization to dismiss them.*

510. *The Committee notes that the company's decisions resulted in two kinds of processes. The first one is the procedure engaged by the company in order to obtain the authorization to dismiss the four union officers. The Committee notes that the matter falls within the ambit of the local administration's authority. A second process was initiated by the complainant, on behalf of the four union officers, for infringements of trade union rights by the company. The Committee notes that this process finds its legal basis notably in article 28 of Act No. 21 of 2000 concerning trade unions and which relates to workers' protection against acts of anti-union discrimination by employers. In this regard, the Committee notes, on the one hand, the Government's remarks that allegations made under article 28 are tackled under the procedure that existed at the time of the entry into force of the Act and, on the other hand, the complainant's comments that the procedure followed in their case is unclear. The Committee notes that the central administration has been designated to deal with the allegations of anti-union discrimination. The Committee has taken note in this regard of the Government's declaration that, given the seriousness and the importance*

of the case, it has taken measures pertaining directly to the exercise of its authority. Further, the Committee notes that the link between the two processes raised some questions on the part of the local authorities. The Government's view seems to be that both processes should follow their course in accordance with the applicable legislation.

511. *From the additional information communicated by the complainant, the Committee notes that the dismissal procedures have evolved differently in each individual case but that no dismissal has been authorized yet. With respect to the allegations of infringement of trade union rights, an investigation has been carried out, a report produced, but no firm decision has been taken yet. The Committee notes the declaration of the Government that it has taken steps for the transmission of the investigation report to the Office of the Attorney with a view to its possible submission to the state court. The Committee also notes the "General Inspector's" letter of 4 March 2003 attached to the third set of additional information submitted by the complainant; according to this letter, as it has been translated by the complainant, the allegations of infringement of trade union rights have been forwarded to the chairperson of the civil court.*

512. *The Committee notes that, in support of its decisions, the company contended that the four union officers have infringed the collective labour agreement and that, according to the additional information submitted by the complainant, the company considered this to be a serious violation of the agreement under article 67. The Committee notes, from the complaint, that the company invoked a number of violations of the collective labour agreement that were apparently unrelated to the union activities of the four workers. On the other hand, the Committee notes, from the additional information submitted by the complainant, that the competent bodies handling the four dismissal procedures seem to have referred solely, in their conclusions, to the 27 March communication signed, issued and withdrawn by the four workers in their capacity of union officers. Therefore, in order to pronounce itself on this case in full knowledge of all the facts, the Committee requests the Government to submit its observations on the three sets of additional information submitted by the complainant and in particular on the description given therein of the dismissal procedures.*

513. *Without prejudice to the foregoing, the Committee notes that the Government's reply indicates that the case raises – at least in part – a question of anti-union discrimination by pointing out that the legal basis for the procedure implemented by the central Government is Act No. 21 of 2000 concerning trade unions and, in particular, its article 28. The Committee has duly taken note of the Government's remark that "it is considered" that the suspension is incompatible with articles 28(a) and 42 of Act No. 21, although it is not possible at this stage to determine when and by whom this conclusion was made. In these circumstances, the Committee would like to recall the following principles of freedom of association. 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****, 4th (revised) edition, 1996, para. 690]. Further, respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress, which are expeditious, inexpensive and fully impartial [see* ***Digest****, op. cit. para. 741].*

514. *The Committee notes that ten months after the submission of the allegations of infringement of trade union rights, the procedure has not been concluded and that it will go through additional stages which, apparently, are not fully ascertained. On the other hand the Committee notes that the workers concerned have not received any salary for a little more than six months and are most likely prevented from seeking other employment since they have not been dismissed. The Committee notes the Government's comments that there is no specific procedure for the examination of allegations of anti-union*

discrimination and draws the Government's attention that it can avail itself of the technical assistance of the Office in this regard. Furthermore, in light of the principles recalled above, the Committee requests the Government to take the necessary steps to ensure that the procedure implemented in this respect reaches its conclusion without delay and in a fully impartial manner and to submit its observations thereon. The outcome of the procedure, especially if the allegations of anti-union discrimination were found to be justified, will have a substantial impact on the dismissal procedures; indeed, at one point, the local authorities were apparently of the view that they could only proceed with the dismissal procedures once the investigation into the allegations of anti-union discrimination had been concluded. In these circumstances, the Committee requests the Government to take the necessary measures so as to guarantee that the procedure concerning the allegations of anti-union discrimination takes precedence over the dismissal procedures. The Committee also requests the Government to examine ways of providing adequate assistance to the four workers concerned until a final judgement has been rendered and to ensure that all the national procedures implemented in the present case are brought to a speedy conclusion. Finally, the Committee requests the Government to send its observations on the complainant's contention that the suspension without pay is contrary to article 6(4) of Manpower Decree No. 150/2000.

The Committee's recommendations

515. ***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 solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprise concerned, on the questions at issue.

(b) In order to pronounce itself on this case in full knowledge of all the facts, the Committee requests the Government to submit its observations on the three sets of additional information submitted by the complainant and in particular on the description given therein of the dismissal procedures.

(c) Noting the Government's comments on the absence of a specific procedure for the examination of allegations of anti-union discrimination, the Committee draws to the attention of the Government that it can avail itself of the technical assistance of the Office in this regard.

(d) The Committee requests the Government to take the necessary steps to ensure that the procedure on the allegations of anti-union discrimination reaches its conclusion without delay and in a fully impartial manner and to submit its observations thereon.

(e) The Committee requests the Government to: (i) take the necessary measures so as to guarantee that the procedure concerning the allegations of anti-union discrimination takes precedence over the four dismissal procedures; and (ii) examine ways of providing adequate assistance to the four workers concerned and to ensure that all the national procedures implemented in the present case are brought to a speedy conclusion.

(f) The Committee requests the Government to send its observations on the complainant's contention that the suspension without pay is contrary to article 6(4) of Manpower Decree No. 150/2000.

CASES NOS. 2177 AND 2183

INTERIM REPORT

Complaints against the Government of Japan presented by

Case No. 2177
— the Japanese Trade Union Confederation (JTUC-RENGO)
— the RENGO Public Sector Liaison Council (RENGO-PSLC)
— the International Confederation of Free Trade Unions (ICFTU)
— Public Services International (PSI)
— the International Transport Workers' Federation (ITF)
— the International Federation of Building and Wood Workers (IFBWW)
— Education International (EI)
— the International Federation of Employees in Public Services (INFEDOP) and
— Union Network International (UNI)

Case No. 2183
— the National Confederation of Trade Unions (ZENROREN) and
— the Japan Federation of Prefectural and Municipal Workers' Unions (JICHIROREN)

Allegations: The complainants allege that the upcoming reform of the public service legislation, developed without proper consultation of workers' organizations, further aggravates the existing public service legislation and maintains the restrictions on the basic trade union rights of public employees, without adequate compensation.

516. The Committee examined these cases at its November 2002 meeting, where it presented an interim report, approved by the Governing Body at its 285th Session [see 329th Report, paras. 567-652].

517. In communications dated 26 December 2002 and 28 March 2003, the complainant JTUC-RENGO (Case No. 2177) submitted the information requested by the Committee as well as additional information. The complainant ZENROREN (Case No. 2183) submitted additional information in a communication dated 18 March 2003. The Government submitted its observations in communications dated 26 December 2002, 31 March and 15 April 2003.

518. In a communication dated 17 February 2003, Union Network International (UNI) associated itself with the complaint in Case No. 2177.

519. 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. Previous examination of the case

520. At its meeting in November 2002, the Committee made the following recommendations [see 329th Report, para. 652):

(a) The Government should reconsider its stated intention to maintain the current restrictions on the fundamental labour rights of public employees.

(b) The Committee strongly recommends that full, frank and meaningful consultations be held soon with all parties concerned on the rationale and substance of the public service reform to obtain a wider consensus on the subject, and with a view to amending the legislation and bringing it into conformity with freedom of association principles. These consultations should notably address the following issues, concerning which the legislation and/or practice in Japan are in violation of the provisions of Conventions Nos. 87 and 98:

(i) granting fire-defence personnel and prison staff the right to establish organizations of their own choosing;

(ii) amending the registration system at local level, so that public employees may establish organizations of their own choosing without being subject to measures tantamount to prior authorization;

(iii) allowing public employees' unions to set themselves the term of office of full-time union officers;

(iv) granting public employees not directly engaged in the administration of the State the right to bargain collectively and the right to strike in conformity with freedom of association principles;

(v) as regards workers whose collective bargaining rights and/or right to strike may be legitimately restricted or prohibited under freedom of association principles, establishing appropriate procedures and institutions, at national and local level, to compensate adequately these employees deprived of an essential means of defending their interests;

(vi) amending the legislation so that public employees who exercise legitimately their right to strike are not subject to heavy civil or criminal penalties.

(c) The Committee requests the Government and RENGO to inform it as to whether the 18,000 employees transferred to independent administrative institutions were able to establish or join organizations of their own choosing without prior authorization.

(d) The Committee requests the Government to provide it with the court decision concerning the case at Oouda-cho (Nara Prefecture).

(e) The Committee also requests the Government to engage into meaningful dialogue with the trade unions concerning the scope of bargaining matters in the public service.

(f) The Committee requests the Government and the complainants to provide further information on the prevailing law and practice as regards the procedure of redress for unfair labour practices.

(g) The Committee requests the Government to keep it informed of developments on all the above issues and to provide copies of the proposed legislative texts.

(h) The Committee recalls to the Government that the technical assistance of the Office is available should it so desire.

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

B. Additional information from the complainants

521. In its communication of 26 December 2002, RENGO states in general that the Government has not shown any positive attitude to improve the situation by accepting the Committee's recommendations. Quite the contrary, the Government's representative said in the Governing Body that the Committee's recommendations were "unacceptable"; that view was endorsed locally by the Minister of Public Management, Home Affairs, Posts and Telecommunications, who added that the Committee did not have a full understanding of the situation and that it was inappropriate for the Committee to advise the Government to reconsider its policy of maintaining the existing restrictions on the basic labour rights of public service employees, as this is a purely domestic issue. Faced with this attitude, RENGO representatives on 29 November 2002 requested the Chief Secretary of Cabinet to: (a) fully accept the Committee's recommendations and to redevelop the reform plan so as to give basic labour rights to public servants; and (b) hold immediate consultations with the trade unions concerned to develop this plan, in line with international labour standards. Similar requests were made to the Minister in charge of administrative reform, the Minister of Public Management, Home Affairs, Posts and Telecommunications, and the Minister of Health, Labour and Welfare. While the Chief Secretary of Cabinet promised he would examine RENGO's requests, he did not give any concrete indication on how the Government would respond to the Committee's recommendations. Replying to questions in the Diet, the Government only stated that it would make further approaches to have its position fully understood. In summary, the Government shows no intention of accepting the recommendations and is proceeding with the reform based on the general principles in order to submit the relevant bills to the next ordinary session of the Diet, in early 2003.

522. Regarding the question asked by the Committee [329th Report, para. 652(c)] on the trade union situation in independent administrative institutions (IAIs), RENGO recalls that there are now two such categories of institutions: "non-specified IAIs" whose workers are not public service employees, and "specified IAIs" whose workers have the status of public employees. Before the change, all these institutions were national government organs; all their employees had public service status in what the Government calls the "non-operational sector" (i.e. white-collar workers) and came under the National Personnel Authority (NPA) system. The change has had concrete consequences on labour relations: specified IAIs, being run on a self-paying basis, are now covered by the National Enterprises and Specified Independent Administrative Institutions Labour Relations Law (NELRL). As a result, workers who used to be members of the same organizations are now divided and covered by different labour legislations; in view of the restricted collective bargaining rights that organizations with a mixed membership would enjoy under the existing registration system, registered employees' organizations with members to be covered by different labour laws had no choice but to reorganize.

523. RENGO gives specific examples of situations experienced by its affiliates:

- The Japan Agriculture, Forestry and Fisheries Ministry Workers' Union (ZENNORIN) had a membership of about 28,000 workers in the non-operational sector (white-collar employees). As 17 agencies of the ministry were reorganized into IAIs, the trade union was forced to be divided to satisfy the requirements of the registration system, which RENGO considers as a violation of freedom of association. A new ZENNORIN regrouping 21,500 employees was established in the ministry, and 17 trade unions (under the Trade Union Law), with a total membership of about 6,500, were established in the IAIS.

- The All Hokkaido Development Bureau Workers' Union (ZENKAIHATSU) had a membership of about 6,000 workers in the non-operational sector. As the Development Engineering Institute of the ministry was reorganized into an IAI, the

union was forced to be divided into two trade unions, one for white-collar workers and another one for the IAI, which RENGO considers as another example of violation of freedom of association.

524. RENGO alleges that, as further reorganizations into IAIs will be promoted under the Government's policy, freedom of association will be violated even further. As for ordinary IAIs (whose workers do not have public employee status) no violation of freedom of association has been reported since all agencies reorganized into IAIs so far were not unionized. However, it is evident that similar problems will be experienced once agencies with organized workers will be reorganized into IAIs. RENGO believes that this type of violation would not occur in principle if the Government were to accept the Committee's recommendation [329th Report, para. 652(b)(iv)] to grant the right to bargain collectively and the right to strike to public servants not directly engaged in the administration of the State, and to abolish the existing system of registration.

525. Regarding the question asked by the Committee on the court's decision in the Oouda-cho case [329th Report, para. 652(d)] RENGO states that the Nara District Court held that the ruling issued on 1 February 1999 by the Oouda-cho Equity Committee to suspend the registration of the employees' organization should be cancelled. RENGO considers that the court's decision included some positive points and was an appropriate one in the specific case; nevertheless, the court did not go far enough in examining the substance of the rule concerning the scope of managerial personnel of Oouda-cho ("the rule") as it did not touch on the constitutionality of the rule and the need to revise it. Such decision only maintains the existing Government's position and past case law, and avoids any judgement on the legitimacy of the legislation, which entails a serious problem which infringes freedom of association and the fundamental rights of organizations. While not totally satisfied with the decision, RENGO hopes that it would restore the rights of the dissolved organization and freedom of association, and would contribute to the normalization of labour-management relations. The complainant requests that the Government accept the court decision as a final one and implement it, and that it revise the rule and the legislation.

526. As regards the procedure of redress for unfair labour practices [329th report, para. 652(f)] RENGO states that under existing legislation, labour relations of public servants and the rights of their organizations are dealt with differently according to different duties. Since these organizations are covered by different laws such as the National Public Service Law (NPSL), the National Enterprises Labour Relations Law (NELRL), the Local Public Service Law (LPSL) and the Local Public Enterprises Labour Relations Law (LPELRL) there occur cases where, for the same cause within the same institution, one organization may resort to relief measures while another one has no such recourse. One of the issues raised in the complaint concerned employees' organizations not covered by the Trade Union Law and facing restrictions of their right to organize and therefore hindered in the pursuit of their objectives as employees' organizations. For instance, in the town of Ariake-cho (Kagoshima Prefecture), white-collar municipal employees and their union are covered by the LPSL, while blue-collar municipal workers and their union (the Operational Employees' Council) are covered by the LPELRL. The mayor proposed both in June 1999 to increase their weekly working hours, and implemented the proposal the following month without negotiations or agreement. The Operational Employees' Council was entitled to file a complaint of unfair labour practice with the Labour Relations Committee of the Kagoshima Prefecture, where the parties ultimately agreed to solve this issue through collective bargaining in future. By contrast, the union representing white-collar employees had no access to legal relief. RENGO alleges that this differential treatment clearly violates the right to organize, and that the existing registration system which cannot prevent such violations infringes Conventions Nos. 87 and 98. The complainant demands that the legislation be revised so that trade union rights be equally guaranteed to both public and private sector workers.

527. In its communication of 28 March 2003, RENGO indicates that there has been no progress and that its representatives met again on 24 February 2003 with the Chief Secretary of Cabinet who, whilst saying that the Government would sincerely consult/negotiate with employees' organizations, mentioned that the Government had no intention to press for revision of the public service system. RENGO also reiterated their previous demands with the Minister in charge of administrative reform, who stated that the Government is now working on amendments of the NPSL based on the general principles, and intends to consult trade unions occasionally. No other progress was achieved in the Diet. In spite of repeated demands, it has become clear that the Government has no intention of holding the "full, frank and meaningful consultations" recommended by the Committee. The Government meanwhile continues its work on the amendments based on the general principles, and maintains its intention to submit the bills to the current session of the Diet, which will close by 18 June 2003. This amounts to an outright rejection of the Committee's recommendations. Finally, the Office of Administrative Reform Promotion has submitted the bills to the ministries concerned for comments on 28 March 2003; as such bills are usually presented to Cabinet two weeks after the conclusion of official consultations with the ministries, the bills in question here may have already been enacted before the Committee may have a chance to examine them.

528. In its communication of 18 March 2003, ZENROREN states that the Government is of the view that the public service reform is purely a domestic matter, and that there are no appropriate consultations with trade unions. ZENROREN points out as regards the labour relations regime in IAIs that seven trade unions, including the administrative employees section of KOKKO-ROREN and the Transport Ministry All Workers' Union, have been forced to reorganize as they had mixed membership. The Japan National Hospital Workers' Union (JNHWU-ZEN-IRO) now faces the same problems since state-run hospitals will be converted into IAIs in April 2004. As the transition from state-run institutions into IAIs requires division and reorganization of existing trade unions, there is a risk that the strength and ability of unions to carry out their activities will be considerably affected. The core of the problem lies in the current system of registration of employees' organizations, which ZENROREN says should be abolished. The Government plans to introduce a bill on the establishment of local IAIs, which means that municipal employees will be facing the same organizational problem if that bill is adopted.

C. The Government's reply

529. In its communication of 26 December 2002, the Government states that the purpose of establishing IAIs is to separate the functions of policy-making from policy execution, as part of the process of administrative reform. The National Enterprise and Specified Independent Administrative Institutions Labour Relations Law (NELRL) applies to employees of specified IAIs (who have the status of public employees); their right to bargain collectively, including the right to conclude collective agreements, is guaranteed. In addition to policy execution duties already transferred to IAIs in 2001 and 2002, the administration of the Statistics Bureau, the Mint Bureau and the Printing Bureau is to be transferred to specified IAIs in April 2003, and such a transfer is also planned in April 2004 as regards national hospitals and sanatoria. By transferring in this way more duties to IAIs, the Government has expanded the scope of public employees whose rights to bargain collectively and to strike are guaranteed. Therefore, as regards the Committee's recommendation 652(c), the right to organize of employees transferred to specified IAIs is guaranteed by article 4(1) of the NELRL.

530. In its extensive communication of 31 March 2003 (summarized below) the Government states that it is currently negotiating and consulting with the parties to revise the National Public Service Law. In mid-February, the Government presented a specific plan, including major issues such as the introduction of a competence grade system and a reform of the

recruitment system (see annex) and requested discussions thereon. Several high-ranking officials, including the Chief Secretary of Cabinet and the Minister in charge of administrative reform met with RENGO and assured them that the Government wished to maintain dialogue with employees' organizations and to have frank and meaningful negotiations and consultations with them.

531. The Government describes the history of labour relations in the civil service, back to 1946. While there exist some restrictions on the fundamental labour rights of public employees due to their distinctive status and the public nature of their duties, appropriate compensatory measures, such as the National Personnel Authority recommendation system, are guaranteed. The present system is well accepted in the country.

532. Recalling the rationale for promoting the establishment of IAIs (i.e. separating policy-making from policy execution) the Government submits that fundamental rights of public employees are being steadily expanded under that system. Employees transferred in specified IAIs (some 64,000 persons as of 1 January 2003, or 12.6 per cent of the national public employees) retain their status of public employees and are covered, like employees of national enterprises, by the NELRL: they have the right to bargain collectively and to conclude collective agreements. For employees transferred in non-specified IAIs (some 2,000 persons as of 1 January 2003) the restrictions on fundamental labour rights are lifted as they become non-public employees; they are covered by the Trade Union Law, have the right to bargain collectively, to conclude collective agreements and the right to strike. Now under consideration is the case of the National Universities Corporation which concerns 125,000 persons, who would also become non-public employees and whose restrictions on fundamental labour rights would be lifted; this is scheduled to commence in fiscal year 2004.

533. As regards the rights of fire defence personnel, the Government repeats its previous arguments that the functions of firefighters correspond to those of police forces mentioned in Article 9 of Convention No. 87, when one compares the historical background, the duties involved, their authority and the rank system. The Government also reiterates its previous arguments on the importance and role of the fire defence personnel committees; under that system, firefighters have achieved pay and working conditions similar to, or better than, those of other administrative employees. The Government is determined to do its best to improve their working conditions, with the participation of firefighters and that of fire defence personnel committees.

534. Concerning the right of employees of penal institutions, the Government repeats its previous arguments that the functions of prison guards correspond to those of police forces mentioned in Article 9 of Convention No. 87. Their exclusion from the right to organize is due to the specific nature of their duties, which makes it necessary for these employees to be subject to specially rigid control and strict discipline. These employees enjoy pay and working conditions similar to, or better than, those of other administrative employees; the salary scale is the same as that of police officers. Working conditions are improved under the National Personnel Authority recommendations system: in 1998 for instance, the NPA recommended a new and special rank in the salary scale, taking into special consideration the duties of prison officers, and the consequential amendments were adopted and implemented that same year.

535. As regards the registration system of employees' organizations [329th Report, para. 652(b)(ii)], the Government indicates that there is no authorization required for the establishment of employee's organizations, as the registration system does not impose any restriction on the establishment of employees' organizations. Local public employees can set up organizations of their own choosing without previous authorization or procedures tantamount to such authorization. Employees of local governments are allowed to organize

beyond a local government boundary and organizations may join federations and confederations. The registration system has been established to verify that organizations are democratic and independent bodies, and imposes no other restriction. The Government adds that, whether an employees' organization is registered or not makes no substantial difference in acquiring corporate status or capacity to negotiate. The registration system therefore does not have the effect of subdividing trade unions, and there is no problem as regards application of Convention No. 87.

536. Dealing with the Committee's recommendation on the system of leave of absence for full-time union officers [329th Report, para. 652(b)(iii)], the Government indicates that the system in question is nothing but a privilege that allows the granting of leaves of absence to public employees to let them engage exclusively in the activities of employees' organizations as officers of these organizations, while retaining their status as public. The upper limit of leave of absence for full-time union officers has been raised twice by the Diet and is presently set at seven years. This system is far more generous than the one prevailing in the private sector, where employees are not automatically entitled to such rights. According to the Government, the Committee of Experts has already concluded in its 1994 report that this question does not fall under Article 1 of the Convention. The Government therefore considers that there is no problem in this respect.

537. As regards the right to bargain collectively and the right to strike of public employees not directly engaged in the administration of the State [329th Report, para. 652(b)(iv)], the Government reiterates its previous argument that while there exist some restrictions on the fundamental labour rights of public employees due to their distinctive status and the public nature of functions performed, they enjoy appropriate compensatory measures such as the National Personnel Authority system. Such compensatory measures also exist in respect of public employees in the non-operational sector. Public employees who are denied the right to conclude collective agreements are *only* those who work for the non-operational sector of national institutions and of local governments; these public employees (covered by the National Public Service Law) work for ministries or agencies or equivalent institutions, are engaged in policy planning and policy execution undertaken by the State, and are therefore "engaged in the administration of the State". As regards the right to strike of these employees, the Government states that they enjoy appropriate compensatory measures such as the NPA system, a position that the Supreme Court of Japan has endorsed. The Government therefore considers that restrictions on the right to bargain collectively and on the right to strike of public employees do not present any problem of conformity with ILO Conventions.

538. As regards the Committee's recommendation on the establishment of appropriate procedures and institutions to compensate adequately those workers whose right to bargain collectively and to strike may be legitimately restricted or prohibited [329th Report, para. 652(b)(v)] the Government submits that the existing NPA compensatory measures are functioning properly, since it has fully implemented the NPA recommendations since 1986, and most local governments have implemented pay revisions in line with the recommendations of the personnel commissions. Compensatory measures include: a guarantee of status; the determination of working conditions by law; the NPA recommendation system, a procedure for requesting administrative measures on working conditions and filing objections against disadvantageous treatment. As a result, public employees enjoy working conditions similar to, or better than, those of private sector workers. The current reform will maintain restrictions on the fundamental labour rights of public employees and the NPA compensatory system.

539. On the issue of civil and criminal penalties for violations of prohibitions of the right to strike [329th Report, para. 652(b)(vi)] the Government states that such criminal penalties are limited to those who conspire, instigate or incite public employees to strike or attempt

to strike; those who simply participate in a strike will never be penalized. Criminal penalties, including imprisonment not exceeding three years or fines not exceeding Y100,000, may be imposed on leaders of illegal acts under the national or the local public service laws. For the past 20 years, there has been no case of imprisonment of public employees by reason of strike. By law, national and local public employees are prohibited from going on strike, and it is a matter of course that disciplinary sanctions are applied to those who contravene such prohibitions.

540. Regarding the establishment of trade unions in independent administrative institutions [329th Report, para. 652(c)], the Government declares that employees of specified IAIs (who keep their status of public employees) are guaranteed the right to organize trade unions under the NELRL. On the other hand, employees of non-specified IAIs (who do not keep their status of public employees) become ordinary workers and are covered by the Trade Union Law. Replying to RENGO's additional allegation (in its communication of 9 January 2003) that there was a violation of the freedom of association of employees forced to reorganize as a result of the shift of operations to IAIs, the Government states that the freedom of association of these employees is guaranteed and that it is up to the organizations to decide their organizational structure after the shift. Moreover, even after restructuring, it will be possible to form a confederation.

541. As regards the Oouda-cho case [329th Report, para. 652(d)], the Government explains that the court has decided that the Equity Committee had erred in deciding that the Deputy Director of the relevant division belonged to managerial personnel, and therefore revoked the cancellation of the registration of the employees' organization concerned; however, the court also decided that the rationale for the rule concerning the separation of rank and file employees and managerial personnel was a valid one, and that it was appropriate to leave this kind of factual determination to a neutral third-party body. The case has been appealed to the high court and the Government will inform the Committee of the final decision.

542. As regards the information requested by the Committee on the procedure of redress for unfair labour practices [329th Report, para. 652(f)], the Government states the following. Public employees in the non-operational sector (not covered by the Trade Union Law) enjoy protection against unfair labour practices under the National Public Service Law and the Local Public Service Law; they can file requests for administrative measures regarding working conditions and/or appeal prejudicial action to the NPA. Public employees in the operational sector are covered by the Trade Union Law and enjoy the same general protection as private sector workers against unfair labour practices, either under the National Enterprises Labour Relations Law (for national public employees) or under the Local Public Enterprises Labour Relations Law (for local public employees).

543. In its communication dated 15 April 2003, the Government points out what it considers as misunderstandings of fact in the additional communications of RENGO (28 March 2003) and ZENROREN (18 March 2003):

– Concerning the communication of RENGO, the Government denies that it wants to shelve or postpone the examination of public workers' fundamental labour rights or that it will submit the bills to the Diet without consultations/negotiations. The meetings of 24 and 25 February, and 31 March 2003, constituted such consultations/negotiations which promoted mutual comprehension. As a result, the Administrative Reform Promotion Bureau started to negotiate and consult with RENGO-PSLC on the Bill amending the National Public Service Law. On 8 April 2003, the negotiations/consultations were under way.

– Concerning the communication of ZENROREN, the Government challenges the complainant's statement that no concrete consultations have taken place although two

months have elapsed since the decision of the Committee. The Administrative Reform Promotion Bureau has offered organizations such as KOKKO-ROREN (an affiliate of ZENROREN) to hold concrete negotiations and consultations, an offer which was rejected. The latest consultation took place on 4 April with KOKKO-ROREN, and the Government intends to hold consultations/negotiations in good faith.

544. As regards the present status of the civil service reform, the Government explains that the Administrative Reform Promotion Bureau has unofficially presented the draft Bill amending the National Public Service Law to workers' organizations on 28 March, at the same time it presented the draft in the same manner to the ministries concerned. This only means that the Government has started consultations on the Bill, and not that it has set a date for a Cabinet decision on the Bill. The Government has told workers' organizations that there would be full consultations with them, including on the schedule for processing the Bill to the Diet.

545. Concerning ZENROREN's comments on the alleged inadequacy of the NPA system, the Government reiterates that this system allows a full hearing of the opinions of workers' organizations concerning changes in working conditions and such opinions are reflected as much as possible in policies and measures. When preparing its recommendation for 2002, the NPA listened to more opinions than before from workers' organizations; the ensuing recommendation reflected comparability with private sector trends, and the Government attempted to provide full explanations to workers' organizations in order to obtain their understanding by holding as many meetings as requested. The salary revision for that period was a fully rational measure, in compliance with the "Principle of Meeting Changing Conditions" prescribed by legislation. The same considerations and principles were taken into account as regards the adjustment measures of salaries of local public employees.

546. Throughout its replies, the Government also stated in respect of various issues: that these are purely domestic matters in which the Committee should not intervene (e.g. the public service reform); that national courts have held that some of these legislative schemes or provisions are valid (e.g. the NPA system); that the Committee of Experts, the Committee on Freedom of Association, or both, have in the past accepted the Government views (e.g. on the issues of firefighters and prison staff); and that over the last 40 years the Government has had dialogue with the ILO and has taken various measures in response to the observations of supervisory bodies.

D. The Committee's conclusions

547. *The Committee recalls that this case concerns the current reform of the public service in Japan, as regards both substantive provisions and process. The Committee notes that while it has received from the complainants and the Government most of the supplementary information requested, and additional observations which in many cases repeat those already provided, it has still not received the actual text of the amending bills, although they are about to be submitted to the Diet. The Committee must therefore proceed to the present examination on the basis of available information from the parties, without the benefit of these texts. The Committee requests the Government to provide it with the text of any amending legislation.*

548. *Before examining the substance of the case, the Committee recalls that the matters dealt with by the ILO in respect of working conditions and promotion of freedom of association cannot be considered to be undue interference in the internal affairs of a sovereign State since such issues fall within the terms of reference that the ILO has received from its Members, who have committed themselves to cooperate with a view to attaining the*

*objectives that they have assigned to it [**Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 3].*

Right to organize of fire-fighters and prison staff

549. *When it last examined this case, the Committee recalled its views on this issue, to which it refers [see 329th Report, para. 633, and recommendation 652(b)(i)]. Since then, the Committee of Experts has again endorsed this position in its 2003 report (pages 271-272). The Committee cannot find any new element in the Government's observations and notes with deep regret that, in spite of numerous discussions in various forums, there has not been any progress whatsoever on these issues. Recalling once again that the armed forces and the police are the only exceptions provided for in Convention No. 87, the Committee urges once again the Government to amend its legislation to ensure that fire-fighters and prison staff have the right to organize, and to keep it informed of developments in this respect.*

Term of office of full-time union officers

550. *The Committee also requested the Government to allow public employees' unions to set themselves the term of office of full-time union officers. The Government replies in substance that the situation is more advantageous in the public sector than in the private sector in this respect, and that the Committee of Experts concluded in its 1994 report that this subject did not fall under Article 1 of the Convention. The Committee emphasizes that: the issue here is not one of comparing provisions between the private and public sectors but whether the existing restriction in the public service is compatible with freedom of association principles; and that the Committee of Experts' observation mentioned by the Government referred to Convention No. 98, not Convention No. 87, whereas the issue here is the principle derived from Convention No. 87 on the right of workers' organizations to elect their representatives in full freedom. The Committee therefore refers to its previous comments in this respect [see 329th Report, para. 633] and requests once again the Government to amend its legislation to ensure that workers' organizations may set themselves the term of office of full-time union officers.*

Scope of exclusion of management personnel

551. *The Committee notes both the general comments made in this respect and the information concerning the judicial case at Oouda-cho, from which it appears that the Court revoked the cancellation of the union's registration in that particular instance. Recalling the principles expressed in this respect in its last examination [see 329th Report, para. 638], the Committee trusts that the final decision issued in the Oouda-cho case, as well as the law and practice generally applicable in such matters, will be in conformity with said principles. The Committee requests the Government to provide it with the final judgement once it is issued.*

Employees transferred to independent administrative institutions (IAIs)

552. *The Committee points out in this regard that, while it is not mandated to comment upon the rationale of that policy nor on the Government's decision itself to proceed with an administrative reorganization, it is competent to examine whether in so doing the Government violated freedom of association principles, and whether public employees enjoy the rights to organize and to bargain collectively [see also 329th Report, para. 648]. The Committee takes note of the extensive information submitted in this respect by the*

Government and both complainants. It notes that the complainants are challenging the fact that the administrative reorganization obliged them to reorganize themselves (and will do so in the future) when, for instance, their membership becomes a mixed one after a reorganization; the complainants allege that this constitutes a violation of their right to associate. The Committee notes that, while the administrative reorganization of the civil service will undoubtedly entail a major reorganization of trade unions structures, workers who are now employed in both specified and non-specified IAIs have the right to organize, irrespective of whether they remain public employees (as in specified IAIs) or lose that status and become regular workers covered by the Trade Union Law (as in non-specified IAIs). The Committee however requests the Government and the complainants to indicate what is the impact of this reorganization on the collective bargaining rights of these workers and their trade unions.

Right of public employees to bargain collectively and to conclude collective agreements

553. *The Committee recalls the principles that apply in these respects, irrespective of whether public sector employees are still employed in ministries or similar institutions, or have been already transferred to IAIs (specified and non-specified). The right to bargain collectively is a fundamental right of workers that should be recognized in both the private and public sectors, with only a few possible exceptions: armed forces, police and public servants engaged in the administration of the State [see also 329th Report, para. 643]. Those public employees who can be legitimately excluded from these rights should enjoy adequate guarantees, which have the confidence of all parties involved, to safeguard fully the interests of workers thus deprived of an essential means of defending their occupational interests [see 329th Report, para. 648]. The numerous criticisms made by the complainants, both in their initial complaint and their additional information, makes it clear that the current NPA system does not have the confidence of workers' organizations as an adequate compensatory procedure. The Committee notes that, according to the Government, not all local governments have implemented the pay revisions in line with the recommendations of the personnel commissions. The Committee therefore refers to its previous comments concerning the rights of public employees to bargain collectively, to conclude collective agreements and, for those whose such rights can be legitimately curtailed, the right to benefit from adequate compensatory procedures. The Committee requests the Government to ensure that the amending legislation is in full conformity with these principles.*

Right to strike and penalties

554. *The Committee recalls that public sector employees, like their private sector counterparts, should enjoy the right to strike, with the following possible exceptions: members of the armed forces and police; public servants exercising authority in the name of the State; workers employed in essential services in the strict sense of the term; or in situations of acute national crisis. Public employees who may be deprived of this right or have it restricted should be afforded appropriate compensatory guarantees. In addition, workers and union officials should not be penalized for carrying out legitimate strikes. The Committee therefore refers to its previous comments in this respect [see 329th Report, para. 641]. While noting the Government's statement that for the past 20 years there has been no case of imprisonment of public employees for reason of strike, the Committee requests the Government to indicate whether other sanctions, such as fines, have been imposed in such cases. The Committee also requests the Government to ensure that the amending legislation is in full conformity with these principles.*

Registration of workers' organizations at local level

555. *The Committee commented on this issue in its previous examination of the case [see 329th Report, para. 635] by mentioning its previous decision on the subject, which itself referred to the comments of the Fact-Finding and Conciliation Commission. The complainants maintain that the core of the problem lies in the current system of registration, which has the practical effect of subdividing them. The Government reiterates its previous argument that local employees are allowed to organize beyond local government boundaries and that they may join federations and confederations. In these circumstances, the Committee can only recall that an excessive fragmentation of trade unions is likely to weaken them and their action in defence of workers' interests, and recommends that the legislation be amended to allow public employees at local level to establish organizations of their own choosing.*

Procedure of redress for unfair labour practices

556. *The Committee notes the information provided by the Government and the complainants in this respect. Based on the example that occurred in the town of Ariake-cho (Kagoshima Prefecture) it appears to the Committee that operational employees (blue-collar workers) and non-operational employees (white-collar employees) were subjected to differential treatment in similar circumstances, as they were covered by different legislations. While stating that there are adequate redress procedures in place to cover all situations, the Government did not comment on the particular case of Ariake-cho. The Committee requests the Government to provide its comments in this respect.*

The consultation process

557. *The Committee notes the information provided by the Government and the complainants on the consultation process and must note, once again, that their positions continue to be completely at odds on this issue. The Committee must therefore refer to its previous extensive comments in this respect [see 329th Report, para. 651] and draw, once again, the Government's attention to the importance of full, frank and meaningful consultations, particularly in such circumstances, which are going to affect large numbers of public employees for years to come. On a related issue, the Committee had also requested the Government to keep it informed about developments on the dialogue with the trade unions concerned concerning the scope of bargaining matters in the public service [see 329th Report, recommendations 652(e) and (g)]. No information has been provided in this respect. The Committee urges once again the parties to make efforts with a view to achieving a consensus which is in conformity with the freedom of association principles embodied in Conventions Nos. 87 and 98, and to keep it informed in this respect.*

The Committee's recommendations

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

(a) The Committee strongly requests once again the Government to reconsider its stated intention to maintain the current restrictions on the fundamental rights of public employees.

(b) The Committee strongly requests once again the parties to make efforts with a view to achieving rapidly a consensus on the reform of the public service and on legislative amendments that are in conformity with the freedom of

association principles embodied in Conventions Nos. 87 and 98, ratified by Japan, and to keep it informed in this respect. Consultations should notably address the following issues:

(i) granting the right to organize to fire-fighters and prison staff;

(ii) ensuring that public employees at local level may establish organizations of their own choosing, without being subject to excessive fragmentation as a result of the operation of the registration system;

(iii) allowing public employees' organizations to set themselves the term of office of full-time union officers;

(iv) ensuring that public employees have the rights to bargain collectively and to conclude collective agreements, and that those employees whose such rights can be legitimately curtailed enjoy adequate compensatory procedures, all of which should be in full conformity with freedom of association principles;

(v) ensuring that public employees are given the right to strike, in conformity with freedom of association principles, and that union members and officials who exercise legitimately such right are not subject to heavy civil or criminal penalties;

(c) The Committee requests the Government to engage in meaningful dialogue with the trade unions concerning the scope of bargaining matters in the public service.

(d) The Committee requests the Government to indicate whether public employees who have resorted to strike action in the past have been subjected to sanctions other than prison, e.g. fines.

(e) The Committee requests the Government to provide it with the text of any legislation amending the public service labour relations system.

(f) The Committee requests the Government to provide it with the final judgement in the Oouda-cho case once it is rendered.

(g) The Committee requests the Government to provide its comments on the allegations concerning the differential treatment of unfair labour practices in the case of Ariake-cho.

(h) The Committee requests the Government and the complainants to provide information on the consequences of the reorganization on the collective bargaining rights of workers transferred to independent administrative institutions (IAIs) and their trade unions.

(i) The Committee requests the Government to keep it informed of developments on all the above issues.

(j) The Committee reminds the Government that it may avail itself of the technical assistance of the Office, if it so desires.

Annex

Competence grade system

1. Gist of competence grade system

- Under the competence grade system introduced in this reform, official positions are to be classified to competence grades according to the kind of duties and by the degrees of complexity and difficulty of duties and responsibilities involved. In addition to this, the public employees are also to be appropriately evaluated in respect of their competence currently being demonstrated in performing their duties. Based on these evaluations, competence grades of public employees are determined so that the competence required by the official positions and demonstrated by the public employees are to be grasped precisely at all times as a system.
- With regard to salary, public employees are paid on the basis of their competence grades, which is determined in accordance with their competence to perform their duties. Payment shall therefore be made not just by the public employees' occupation of their official positions but based on the consideration of their competence demonstrated in performing the duties of their official positions.

2. Purpose of the introduction of competence grade system

(a) Establishment of the new system more suitable for the principle of personnel management under the law for the national public employees

- The purpose of this reform is to describe by law the standard duties for classifying job positions and the competencies to perform those duties as much as possible, which changes the current framework where personnel management is entrusted with the rules and ordinances, not law. Thus this reform aims to realize the national civil service system where civil service is administered more democratically with the reflection of the Diet's intentions.
- Further, following the idea of the Constitution that the personnel management of the public employees shall be made according to the standards provided for under the law, the Government proposes to provide under the law for evaluation of public employees' competence according to the criterion of competence to perform duties with a view to utilizing the evaluation for determining the competence grades of the public employees. Thus a base for the administration of personnel management based upon the law shall be provided.

(b) Realization of the personnel management system which contributes to a more efficient public service by utilizing the competence grade system to appointment

- By classifying the official positions as well as the public employees into the competence grades, the Government precisely grasps at all times not only the competence required by the official positions but also public employees' competence demonstrated in performing the duties. And this system provides the foundation for appointment of the public employees to the official positions most suitable to reflecting their competence to perform the duties. Through the above, the Government aims to base personnel management on competence, and to contribute to a more efficient civil service by putting the right person in the right place in the whole system.

(c) Others

- In order that the respective administrative institutions flexibly cope with the rapidly changing administrative issues and that the Government realize a proper administration of the civil service as a whole, it is essential to have the competence grade system designed and administered as a system to contribute to a more efficient civil service from the aspect of

personnel management. Thus, the Prime Minister, as the Central Personnel Agency responsible for the democratic operation of the system and more efficient civil service, shall administer the competence grade system. The National Personnel Authority, in view of its functions, shall participate properly.

3. Matters to be noted in the transfer to the competence grade system

(a) Establishment of a competence evaluation system to realize the meritocracy

- Introduction of the competence grade system in this reform will set up the institutional foundation necessary for the meritocracy. In addition, it will be necessary that the actual operation should be made precisely suitable to the principle of meritocracy.
- After amending the National Public Service Law, fixing of the details of the criteria to determine the competence grades of the public employees will be determined. At the same time it will become important to establish competence evaluation system, which will support the competence grade system in the actual operation.
- Accordingly, the Government, in order to realize a proper competence evaluation system, will continue to consult with employers' organizations and the relevant institutions, etc. until fiscal year 2006, when the competence grade system will start.

(b) Measures necessary for the smooth introduction

- By repealing the rank system, a base for personnel management under the National Public Service Law, and the provisional system, and by introducing the competence grade system, the appointment system and the basic concept for salary system are altered in this reform. This may cause some impact on the public employees if the new system is constructed without paying due consideration to the continuity of the present system.
- Under the circumstances, it is considered necessary, among other things, to firmly establish the meritocracy based on competence evaluation in the civil service. With regard to the number of the grades which is the framework of classifying the official positions as well as the number of pay steps which forms the base for specific amount of remuneration, it is considered necessary to pay due consideration to the continuity with the present system and not to cause unnecessary confusion at the time of system transfer.

CASE NO. 2220

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

Complaint against the Government of Kenya presented by the International Organisation of Employers (IOE)

Allegations: Unlawful arrest, harassment and detention of the national chairman of the Federation of Kenya Employers (FKE) that resulted from his legitimate activities as an employers' representative.

559. The complaint is set out in a communication, dated 24 September 2002, from the International Organisation of Employers (IOE).

560. The Government sent its observations on the complaint in a communication dated 28 January 2003.

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

A. The complainant' s allegations

562. At the outset, the IOE indicates that the complaint is filed on behalf of the Federation of Kenya Employers (FKE) and that the Pan-African Employers' Confederation co-sponsors it. The complaint is divided into three sections in which the IOE states the facts of the case, submits some background information and makes a number of considerations in light of the principles of freedom of association. On this basis, it concludes with requesting the Committee to make a series of specific recommendations to the Government.

Facts of the case

563. The IOE indicates that on 20 August 2002, the FKE national chairman, Mr. Walter Mukuria, represented the employers' interests in a meeting of the Finance Committee of the National Social Security Fund (NSSF) board of trustees. This meeting was convened following an irregular investment made by the former managing trustee of the NSSF who had unlawfully discounted treasury bills and deposited the money in a bank with which the NSSF had no previous dealings and about which the board of trustees had little knowledge. During this meeting, Mr. Mukuria suggested that verifications should be made on the main shareholders and directors of the bank where the money had been deposited. The IOE adds that according to some information, the bank in question was owned by some prominent Kenyan personalities, including at least one public official.

564. The IOE alleges that soon after the meeting Mr. Mukuria was informed that policemen were looking for him. On the evening of the following day, 21 August, six heavily armed policemen arrived at Mr. Mukuria's private home and requested him to accompany them. Despite Mr. Mukuria's insistence that he be given a chance to contact his lawyer, the police denied him this right. Mr. Mukuria was brought to the Criminal Investigation Department headquarters (CID). He was allowed to call the FKE Executive Director but the latter, upon his arrival at the CID headquarters, was denied the opportunity to talk to Mr. Mukuria.

565. The IOE alleges that at the CID headquarters, Mr. Mukuria was interrogated and forced to write a statement concerning his declaration during the meeting of the Finance Committee of the NSSF. Mr. Mukuria produced a seven-page statement to that effect after being denied once again the right to talk to his lawyer before writing it and under the threat of a prolonged detention if he refused to write the statement. He was eventually released later in the same evening but instructed to report back to the CID the following day.

566. On 22 August, Mr. Mukuria was accompanied to the CID headquarters by the FKE Executive Director and the FKE Deputy Executive Director. After a stay of 15 minutes, he was told that he was free to go as the police found no merit in pursuing the matter any further and therefore would not prefer any charges against him.

Background

567. The IOE submits the following indications on the FKE. The federation was registered in 1959 as an association of employers under the Trade Unions Act, Cap 233. It is without

any doubt the most representative employers' body in Kenya and the Kenyan Government acknowledges that it is best suited to represent the employers' interests in the tripartite body such as the NSSF. It is affiliated to the Pan-African Employers' Confederation and the IOE. The IOE adds that throughout its 43 years of existence, the FKE has maintained good working relations both with the Government and the Central Organization of Trade Unions through the tripartite system.

Considerations concerning the principles of freedom of association

568. The complainant underlines some ILO principles on freedom of association and submits that, in Mr. Mukuria's case, an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibilities, punishing those responsible and preventing the repetition of such acts. In conclusion, the complainant suggests a series of course of actions to be taken by the Committee including specific recommendations to be made to the Government of Kenya, in particular, to guarantee that the civil liberties of employers' representatives, such as the freedom of speech, are respected in the future, that employers' representatives may conduct the activities they are mandated to do without any kind of interference, harassment or intimidation by the Government and to publicly clarify and mend any harm caused to Mr. Mukuria's reputation as a result of his unlawful detention.

B. The Government's reply

569. In its communication of 28 January 2003, the Government submits observations on the background of the case as well as responses to the specific recommendations suggested by the complainant.

Background

570. The Government confirms the facts surrounding the meeting of the Finance Committee of the NSSF board of trustees as they are recounted by the complainant and in particular Mr. Mukuria's suggestion in his capacity as member of the NSSF board of trustees that some verifications be carried out on the bank where the irregular investment was made. The Government acknowledges that it appears that such suggestion led to Mr. Mukuria's arrest and detention by the security forces.

Specific responses

571. The following considerations can be highlighted from the Government's response. The Government asserts that it has always respected the principles of freedom of association to which it is bound by virtue of its membership of the ILO and its ratification of Convention No. 98. The Government states therefore that Mr. Mukuria's arrest is highly regretted and that it will not allow such arrest to recur in the future. The Government further gives its assurances to the Committee that it will ensure that all social partners, employers' representatives included, will be free to express their views without intimidation and harassment on the part of anyone including the Government. The Government asserts that Mr. Mukuria's arrest and confinement should be treated as an isolated incident, which will not be repeated. The Government adds that it undertakes to ensure and guarantee the enjoyment of civil liberties to all social partners, including employers' representatives.

572. Further the Government underlines that it apologized to Mr. Mukuria through the FKE and that this apology was made public. Thus, through a press release dated 23 January 2003 – a

copy of which is attached to the reply – the Government presents its public apology to Mr. Mukuria and the FKE, assures that employers' representatives will continue to enjoy freedom of speech in all tripartite bodies, and that it will conduct thorough investigations with a view to punishing the persons responsible for the loss of the NSSF. The Government has attached to its reply newspaper extracts on the press release as well as a letter dated 27 January 2003 to the FKE transmitting copies of the press release and the extracts; in this letter the Government expresses its hope that Mr. Mukuria will accept its apology and consider a withdrawal of the complaint lodged with the Committee. Finally, the Government indicates that the NSSF board of trustees has already instituted court proceedings against those responsible for the irregular investment. The Government indicates that through these proceedings it is expected that those responsible for Mr. Mukuria's arrest and detention will be identified and punished.

C. The Committee's conclusions

573. *The Committee notes that the present case relates to the arrest and the detention of the leader of an employers' organization by reason of a declaration made in this capacity during the meeting of a tripartite body.*

574. *The Committee notes that the complainant's version and that of the Government coincide on the following points. First, Mr. Mukuria's declaration as a member of the NSSF prompted his arrest and detention for a few hours at the Criminal Investigation Department headquarters by the police. Second, in the course of his detention, Mr. Mukuria was forced to write a statement reflecting the declaration he had made before the NSSF. Third, the arrest and detention were operated outside any regular legal procedures and without the necessary judicial safeguards; in this connection, the Committee notes that the allegation on the police's refusal that Mr. Mukuria be allowed to contact his lawyer is not denied by the Government.*

575. *In the Committee's view, the following principles of freedom of association can usefully be recalled in the present case. The arrest, even if only briefly, of leaders of workers' and employers' organizations for activities in connection with the exercise of their right to organize is contrary to the principles of freedom of association [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th (Revised) edition, 1996, paras. 69 and 70]. Such arrest may create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities [see* ***Digest****, op. cit., para. 76]; all the more so when it occurs in an arbitrary manner, outside any regular legal procedure. The Government should take steps to ensure that the authorities which proceeded to arbitrary arrest have appropriate instructions to eliminate the danger which arrest for trade union activities implies [see* ***Digest****, op. cit., para. 81].*

576. *On the other hand, the Committee notes from the Government's reply that the Government presented publicly its apology to Mr. Mukuria and his organization through a detailed press release which was diffused by some newspapers; this press release and newspaper extracts were transmitted to the FKE by a letter from the Government. The Committee also notes the statements made by the Government in its reply that Mr. Mukuria's arrest is highly regretted and that it is an isolated incident which the Government will not allow to recur. The Committee further notes the Government's assurances that it will ensure that all social partners, including employers' representatives, will enjoy freedom of opinion and expression without intimidation and harassment; more generally, the Government undertakes to ensure that all social partners, including employers' representatives, fully enjoy the exercise of civil liberties.*

577. *In light of the steps taken by the Government, a little before submitting its reply to the complaint, to make amends publicly for the arrest and detention of Mr. Mukuria, the*

Committee considers that the Government has taken the appropriate steps to remedy the violation of the principles of freedom of association that occurred to the detriment of the FKE Chairman. Noting the solemn statements made by the Government before the Committee in respect of full compliance with the principles of freedom of association and their application, the Committee trusts that the Government will effectively ensure that arbitrary arrest and detention of any person by reason of his activities as representative of a workers' or an employers' organization will be averted. Finally, the Committee notes the Government's indication that the court proceedings initiated by the NSSF against the persons responsible for the irregular investment are likely to lead to the identification and the sanction of the persons responsible for Mr. Mukuria's arrest. The Committee requests the Government to keep it informed in this respect.

The Committee's recommendation

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

The Government should keep the Committee informed of the outcome of the court proceedings in respect of the identification and the sanction of the persons responsible for Mr. Mukuria's arrest.

CASE NO. 2132

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

Complaint against the Government of Madagascar presented by
— the Federation of Workers' Trade Unions of Madagascar (FISEMA)
— the Confederation of Christian Trade Unions of Madagascar (SEKRIMA)
— the Independent Trade Unions of Madagascar (USAM)
— the Federation of Health Workers' Unions (FSMF)
— the Federation of Informal Sector Workers' Unions (SEMPTIF TOMAVIA) and
— various other Malagasy trade unions

Allegations: Interference by the Government in the internal affairs of trade unions; suspension of social dialogue.

579. The Committee examined this case at its session in March 2002, at which it submitted an interim report to the Governing Body [see 327th Report, paras. 645-663].

580. The Government provided additional observations in a communication dated 1 April 2003.

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

A. Previous examination of the case

582. At its session in March 2002, with regard to the Committee's interim conclusions, the Governing Body had approved the following recommendations:

(a) The Committee reminds the Government that in future, any decision concerning participation by a workers' organization in a tripartite body should be taken in full consultation with all trade union organizations of a given representativity determined according to objective criteria. The Committee requests the parties concerned to spare no effort to reach an agreement concerning the composition of the CNaPS board and requests the Government to keep it informed in this regard.

(b) As concerns the new draft decree concerning the composition of the CNaPS board, the Committee recalls that it is for the workers' organizations, and not for the authorities, to choose in full freedom all of their representatives within the tripartite bodies.

(c) The Committee asks the Government to amend section 1(3) of Decree No. 2000-291 to allow the representativity of trade unions to be determined without making it a requirement that members' names be communicated to the authorities. The Committee requests the Government to keep it informed in this regard.

(d) The Committee requests the Government to send without delay its observations concerning allegations of interference in internal trade union affairs by the Ministry of Public Service, Labour and Social Law, concerning the allegations of infringements of the right of collective bargaining resulting from Decree No. 97-1355.

B. The Government's reply

583. In its reply of 1 April 2003, while taking note of the Committee's recommendations, the Government reports numerous meetings on the issue of the CNaPS board which have produced encouraging results. Moreover, the Government states that the Committee will be informed as soon as possible of the measures taken concerning section 1(3) of Decree No. 2000-291. The Government adds that efforts have been made to ensure observance and effective protection of freedom of association, trade union rights and the right to collective bargaining. Finally, the Government refers to the establishment of the National Employment Council in accordance with Order No. 6238/2002 of 5 November 2002. The Council is a tripartite consultative body responsible for labour, employment and social protection.

C. The Committee's conclusions

584. *Taking into account the latest information provided by the Government, the Committee recalls that the complaint raised three main issues: (1) the change in composition and functioning of the CNaPS board, a tripartite body, initiated by the Government; (2) the requirement to communicate the names of members of trade unions in accordance with section 1(3) of Decree No. 2000-291 to establish the representativity of trade unions with a view to their participation in the work of the Higher Civil Service Council; (3) allegations relating to interference in the internal affairs of trade unions by the Ministry of Public Service, Labour and Social Law and the infringement of the right of collective bargaining resulting from Decree No. 97-1355 of 4 December 1997.*

585. *With regard to the first issue, the Committee wishes to recall the following points. The issue had initially been raised because of the Government's adoption of Decree No. 99-673 of 20 August 1999 changing both the composition of the CNaPS board (by reducing the number of representatives of workers' organizations from eight to six) and its mode of operation (by allowing the Government to participate in the rotating presidency). At the time, this Decree had probably been the cause of the social dialogue breaking down. The issue had subsequently been re-examined by a tripartite ad hoc commission established following the tripartite memorandum of 8 May 2000 signed by the Government and the social partners. It was not possible to reach agreement within this commission. Furthermore, as one of the provisions of the Decree had been ruled unconstitutional by the High Constitutional Court on 23 August 2000, the Government had developed another proposed decree which was intended to grant the Ministry the right to appoint one of the six workers' representatives. The Government explained in its communication of 29 January 2002 that, because of the low rate of unionization of Malagasy workers, it was concerned about meeting the demand of the vast majority of workers, who were not trade union members, to participate in social dialogue and therefore to be represented in some way other than by traditional professional organizations. The Government recalled that the memorandum allowed members of tripartite bodies to be co-opted "because of their particular abilities", without them necessarily being from a representative organization.*

586. *The Committee notes the Government's general statement regarding the fruitful nature of meetings held on the matter. However, the Committee considers it appropriate to reiterate its previous conclusions. The Committee therefore recalls the importance that should be attached to full and frank consultations taking place on any questions or proposed legislation affecting trade union rights; 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 of decisions and principles of the Freedom of Association Committee****, 1996, 4th edition, paras. 927 and 943]. Moreover, the Committee wishes to underline that any initiative aimed at broadening the representation of workers beyond trade union organizations should not undermine the prerogatives, with regard to the representation of employers' and workers' interests, of the respective organizations. Under these circumstances the Committee expects that an agreement on the composition of the CNaPS Board will soon be reached, and requests the Government to inform it of the terms of that agreement. Furthermore, the Committee requests the Government to preserve the role of employers' and workers' organizations in the aforementioned terms if it follows up its stated wish to broaden the composition of certain tripartite institutions. The Committee requests the Government to keep it informed on all aspects of the matter.*

587. *Regarding the second issue, the Committee considers it useful to recall that the issue of the representativity of trade unions was raised in the first place with regard to the Higher Civil Service Council in the specific terms mentioned above. In accordance with the tripartite memorandum, it was also raised in general with regard to participation in social dialogue structures, social policy and social funds management bodies and notably, with regard to the CNaPS board. In this regard, the tripartite ad hoc commission had, during a meeting in June 2000, considered the issue of the determination of the representativity of organizations based on a comparison of data collected through inspections and data produced by the organizations themselves. The latter, it is claimed, were asked to provide the Ministry of the Public Service, Labour and Social Law with the information relating to the representativity criteria kept by their regional unions, but were unable to produce such figures.*

588. *Whilst taking note of the Government's reference to the effort made to ensure greater respect for freedom of association and its effective application, the Committee recalls that objective, pre-established and precise criteria to determine the representativity of an*

*organization of employers or workers should exist in legislation, so as to avoid any possibility of bias or abuse and that this assessment should not be left to the discretion of governments [see **Digest**, op. cit., paras. 314 and 315]. Consequently, the Committee expects, as it had called for in its previous report, that section 1(3) of Decree No. 2000-291 will be amended quickly so that the representativity of trade unions can be established without any requirement to compile a list of names, which could make acts of anti-union discrimination easier. The Committee also requests the Government to ensure, in general, that the determination of the representativity of professional organizations is based on objective and precise legal criteria, instead of being left to the Government's discretion. Finally, the Committee requests the Government to keep it informed on all aspects of the matter.*

589. *As regards the allegations of interference in the internal affairs of trade unions by the Ministry of the Public Service, Labour and Social Law and infringements of the right of collective bargaining, in the absence of any government observation on this point, the Committee would like to underline the following. Concerning the first category of allegations, the Committee recalls that the complainants were reporting initiatives of the Ministry of the Public Service, Labour and Social Law such as missions of workers' delegates without the knowledge of their confederations for the purpose of appointing them to regional tripartite bodies, or the request to put forward candidates other than those already put forward by the confederations for membership of these bodies. The Committee recalls that freedom of association implies the right of workers and employers to organize their administration and activities without any interference by the public authorities, and requires that the latter exercise great restraint in relation to intervention in the internal affairs of trade unions [see **Digest**, op. cit., paras. 416 and 761]. If confirmed, the allegations would seriously undermine the authority of trade union leaders and the cohesion of trade unions. The Committee therefore urges the Government to keep it informed in this regard.*

590. *Concerning the allegations relating to infringements of the right of collective bargaining, the Committee recalls that the complainants call into question Decree No. 97-1355 of 4 December 1997, according to which the social partners can enter into collective bargaining on working conditions only after the Ministry for the Development of the Private Sector and Privatization has authorized them to do so. In this respect, the Committee recalls that the voluntary bargaining of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association [see **Digest**, op. cit., para. 844]; the very system of a preliminary administrative approval, whether it concerns the initiation of collective bargaining or the entry into force of a freely concluded collective agreement, is contrary to the principle of voluntary collective bargaining. The Committee requests the Government to amend Decree No. 97-1355, as appropriate, to make it compatible with the principle of voluntary collective bargaining, and to keep it informed in this regard.*

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

The Committee's recommendations

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

(a) The Committee expects that an agreement on the composition of the CNaPS board will soon be reached, and requests the Government to inform it of the terms of that agreement; if the Government intends to follow up its stated

wish to broaden the composition of certain tripartite bodies, the Committee requests it to preserve the prerogatives, with regard to representation of employers' and workers' interests, of their respective organizations; the Committee requests the Government to keep it informed on all aspects of the matter.

(b) The Committee expects, as it had requested in its previous report, that section 1(3) of Decree No. 2000-291 will be quickly amended to allow the representativity of trade unions to be determined without any requirement for a list of names which could make acts of anti-union discrimination easier; in more general terms, the Committee also requests the Government to ensure that determination of the representativity of workers' and employers' organizations is based on precise, objective, legal criteria, instead of being left to the Government's discretion; the Committee requests the Government to keep it informed of all aspects of the matter.

(c) With regard to the allegations relating to acts of interference by the Ministry of the Public Service, Labour and Social Law in the internal affairs of trade unions, and those relating to infringements of the right of collective bargaining resulting from Decree No. 97-1355, the Committee requests the Government to keep it informed in this regard, and to amend the Decree in question to make it compatible with the principle of voluntary collective bargaining.

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

CASE NO. 2243

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: Refusal of the Central Carbonated Beverage Company (SCBG) to recognize the trade union executive established by workers and to engage in dialogue with it; anti-union discrimination, including two dismissals following the establishment of the executive.

593. The complaint in this case is contained in a communication from the Democratic Confederation of Labour (CDT) dated 18 December 2002.

594. The Government sent its observations in a communication dated 24 March 2003.

595. Morocco has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135). Morocco has not

ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainant's allegations

596. The complaint concerns the Central Carbonated Beverage Company (SCBG) and reports its refusal to recognize its workers' trade union executive and to engage in social dialogue with it. The allegations also cite anti-union discrimination in the form of pressure on trade union members to resign from the trade union, the imposition of undue sanctions against trade union members, and the dismissal of two trade union members, Mr. Najahi Mohamed and Mr. Chahrabane Azzedine. The Government of Morocco allegedly did not respond to the repeated violations of trade union rights and freedoms. The complainant considers that the allegations represent serious breaches of national laws and Conventions Nos. 87, 98 and 135.

597. To substantiate these allegations, the complainant is submitting a "detailed report" outlining the events which are the subject of the complaint and which can be summarized as follows.

SCBG's refusal to engage in social dialogue and acts of anti-union discrimination

598. The SCBG is a company specializing in making, bottling and distributing carbonated drinks under the *Coca-Cola* brand. It belongs to the leading Moroccan industrial and financial group Omnium Nord Afrique (ONA). Its distribution branch in Casablanca employs 150 drivers/salespeople and co-drivers.

599. In accordance with the Dahir of 16 July 1957 on trade unions (as amended by Act No. 11.98, promulgated on 15 February 2000), drivers/salespeople and allied workers established their trade union executive, affiliated to the CDT, on 6 March 2002. Moreover, staff representatives elected at the last trade union elections in 1997 and not belonging to a trade union joined the CDT. After carrying out the required formalities, including depositing the founding documents with the SCBG management, the trade union requested the latter to hold an initial meeting with it. The SCBG management refused this meeting.

600. Since 22 March 2002, a number of steps have been taken against trade union officials and members. Under the pressure, some workers preferred to resign from the trade union. A list of the 20 trade union members who were subjected to acts of anti-union discrimination is appended to the detailed report. The measures consist of dismissals, transfers from one workplace to another and demotion; in some cases these measures were combined, and half of them took place on 22 or 25 March. The complainant explains that the demotion consisted of drivers/salespeople being assigned to other duties. For the staff concerned this change entails a loss of remuneration, as the drivers/salespeople are entitled to a sales commission which amounts to 50 per cent of their wages. As regards transfer from one workplace to another, the complainant points out that the two production centres concerned are 15 km apart. Transfers from one workplace to another entail additional travel and therefore, in particular, additional expenditure for the workers concerned. The complainant emphasizes that these transfers are unwarranted, as they do not correspond to any operational requirements.

601. On 16 April 2002 the SCBG management wrongfully dismissed the secretary-general of the trade union executive, Mr. Najahi Mohamed, and a member of the executive, Mr. Chahrabane Azzedine, who were both staff representatives.

602. The complainant took steps to have the sanctions lifted and the two dismissed trade union officials reinstated; in particular, it addressed inquiries to the SCBG, the president of the ONA group and the president of the General Confederation of Moroccan Enterprises. To date, the SCBG management still refuses to enter into a dialogue and has broadened the scope of anti-union discrimination to include every member or person supporting the trade union. A last attempt to find a solution to the problems that had arisen was made by addressing a letter to the SCBG management on 4 October 2002.

Attitude of the public authorities

603. The complainant also approached the public authorities, in particular the Ministry for Employment and its local office.

604. The complainant indicates that the employment directorate at the Ministry of Employment invited the SCBG and the trade union to a meeting in the National Arbitration Committee on 14 May 2002. The SCBG management refused to reply to this invitation. The labour inspector sent a warning to the SCBG management to remind it that, in accordance with the Dahir of 29 October 1962, no staff representative may be dismissed without the labour inspectorate being consulted.

605. In reply to a letter sent by the complainant to the Ministry of Employment, it stated that the SCBG refused to engage in dialogue, to reinstate the two trade union officials and to review the sanctions taken against other trade union members. The Ministry also expressed the hope that an amicable settlement to the dispute would be reached but, according to the complainant, without specifying the actions which it intended to take to achieve this.

B. The Government's reply

606. The Government reports the steps taken by the Ministry of Employment, Social Affairs and Solidarity, and encloses with its reply "observations" from the SCBG management which it requested under the procedure before the Committee.

Steps taken by the Ministry of Employment, Social Affairs and Solidarity

607. The Government firstly notes a contradiction in the CDT complaint. Its assertion that there was no response from the Government is contradicted by the steps, mentioned in its detailed report, taken by the Ministry of Employment and its external services with a view to enforcing legislation and finding a solution to the dispute by means of reconciliation.

608. The Ministry states that the Ministry's labour directorate and employment office did in fact take a number of steps with a view to settling the dispute. Several meetings were convened in the labour inspectorate, the employment office, the prefecture of Casablanca and the headquarters of the labour directorate. The SCBG always refused to attend them. In fact, in a reply dated 7 May 2002 to a government invitation, the SCBG asserts that the allegations of a collective dispute submitted to the Government are unfounded and that it has always been open to dialogue, in particular with representatives elected by staff, with whom it has concluded numerous agreements (in particular concerning wage increases and bonuses), of which it has always kept the Government informed. The SCBG also emphasized in its reply that the dispute only concerned Mr. Najahi Mohamed and Mr. Chahrabane Azzedine, who were dismissed for disciplinary reasons. Consequently, it refused to participate in the meeting to which it was invited, as it considered that there was no collective dispute and

that there was ongoing dialogue with the representatives elected by the workers, in accordance with the laws in force.

609. The Government states further that on 12 April 2002 an injunction was sent to the SCBG management ordering it to comply with the provisions of section 12 of the Dahir of 29 October 1962 relating to staff representation in enterprises, under which it is obliged to seek the opinion of the labour inspector on the sanctions envisaged. On 19 April 2002 a violation notice was served against the SCBG Director-General for non-compliance with the aforementioned section 12. A copy of this notice was submitted to the competent court of law on 31 May 2002; this is also attached to the Government's reply. According to this document, the labour inspector states that he was not consulted about Mr. Chahrabane Azzedine's dismissal and that the SCBG Director has thus committed an offence according to section 12 of the Dahir of 29 October 1962.

SCBG observations given to the Government

610. As soon as the complaint was communicated to it, the Government forwarded the CDT's allegations to the SCBG. In its reply dated 18 February 2003, the SCBG makes the following observations.

611. Firstly, the SCBG states that transfers did indeed take place but that it is not a case of disciplinary transfers affecting some of the salespeople. These transfers affected almost the entire sales force of all the distribution centres. They were due to a change in the distribution system, which had the effect of transferring most of the sales routes. According to the SCBG, the staff unreservedly supported the organizational restructuring resulting from this change and is fully committed to rising to the challenges imposed by sudden competition in a market which used to be dominated by a quasi-monopoly. The SCBG cites the enterprise's continued normal activity as proof of the above.

612. The SCBG adds that a change of post in high or low season is not a new concept for the staff. It is in fact normal to redeploy staff according to the increase in sales routes or when the production is at a low ebb. It emphasizes that this is a structural aspect of its work.

613. With regard to the two dismissals, the SCBG confirms that they occurred not because the two workers were trade union members, but because they were guilty of serious professional misconduct, i.e. leaving work voluntarily and without reason, refusing to carry out work which was part of their duties and uttering insolent remarks and insults towards staff and superiors. The SCBG states that this serious misconduct has been corroborated by testimonies written and signed by their colleagues and superiors. The two workers in question received dismissal letters dated 25 April 2002, which were also addressed to the office of the Ministry of Employment.

614. Finally, the SCBG recalls that, in accordance with the Dahir of 29 October 1962, social dialogue with staff representatives – legal representatives of the employees – is an essential component of its management. Various protocols of agreement to this effect have been signed with staff representatives, the last of which is dated 6 January 2003 and which the SCBG will supply to the Government on request.

C. The Committee's conclusions

615. *The Committee notes that the complaint originated in a dispute between the trade union executive, affiliated to the complainant, and the Central Carbonated Beverage Company (SCBG), after the executive was established by SCBG workers, in accordance with Dahir No. 1-57-119 of 16 July 1957 on trade unions. The Committee notes that the complaint*

concerns, on the one hand, the SCBG's refusal to recognize the executive and to engage in dialogue with it and, on the other hand, individual acts – including two dismissals – which affected the professional situation of the workers who, at least in the case of the persons named in the complaint, are members or officials of the trade union executive.

616. *Before examining these two aspects, the Committee would like to return to the allegation to which the Government has not responded. The Committee notes that both the complaint and the Government's reply indicate that the latter intervened directly at the same time as certain applicable national procedures were being implemented: i.e. the Government attempted to bring about conciliation between the parties to the dispute. The labour inspector also sent a warning to the SCBG, dated 12 April 2002, concerning non-compliance with the provisions of the Dahir of 29 October 1962 on staff representation in enterprises. A violation notice was served for the same reason and submitted on 31 May 2002 to the competent court. Consequently, the Committee must note that the Government has taken some initiatives concerning the trade union situation in the enterprise, particularly with a view to remedying the failure to comply with the legislation. The question is therefore whether the Government's action in this case is adequate with regard to the commitments it has made concerning freedom of association. The Committee recalls that it is for the Government to ensure that the provisions of Conventions which it has freely ratified are fully respected in the whole of its territory, in law and in practice.*

617. *With regard to recognition of the trade union executive, the Committee observes, firstly, that the legality of its constitution is not called into question. However, the Committee notes that the SCBG considers the staff representatives to be "legal representatives of the employees in accordance with the Dahir of 29 October 1962" and that agreements have been signed between the enterprise and the staff representatives. The SCBG therefore seems to favour the elected staff representatives, rather than trade union organizations, in the process of consulting and negotiating within the enterprise. This is confirmed by the SCBG's letter of 7 May 2002 attached to the Government's reply, which refers to ongoing dialogue with the workers' elected representatives, without making the slightest mention of the recently established trade union executive.*

618. *In this regard, the Committee recalls that the Workers' Representatives Convention, 1971 (No. 135), contains provisions guaranteeing that, where there exist in the same undertaking both elected representatives and trade union representatives, appropriate measures are to be taken to ensure that the existence of elected representatives in an enterprise is not used to undermine the position of the trade unions concerned [see* ***Digest of decisions and principles of the Freedom of Association Committee,*** *4th edition, 1996, para. 951]. Moreover, the Committee emphasizes that the Collective Agreements Recommendation, 1951 (No. 91), stresses the role of workers' organizations as one of the parties in collective bargaining; it refers to representatives of unorganized workers only when no organization exists. In these circumstances, direct negotiation between the undertaking and its employees, bypassing representative organizations where these exist, might be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted [see* ***Digest****, op. cit., para. 785].*

619. *In these circumstances, the Committee asks the Government to take all the necessary measures so that the trade union executive duly established can freely carry out its activities within the SCBG and negotiate the workers' conditions of employment directly with the enterprise. The Committee requests the Government to keep it informed of the specific measures taken in this regard and their results.*

620. *With regard to the individual measures affecting some of the unionized workers, the Committee notes that the SCBG acknowledges that transfers took place, while emphasizing*

that they affected the entire sales force and that they were due to a change in the distribution system. The Committee also observevs that the SCBG admits that Mr. Najahi Mohamed and Mr. Chahrabane Azzedine were dismissed by a letter dated 25 April 2002, but states that these dismissals occurred not because they were trade union members, but as a result of serious professional misconduct.

621. *The Committee notes that the SCBG does not specify whether the transfers to which it refers mean changes of workplace or changes in duties. Moreover, neither the SCBG's letter nor the Government's reply contain any comment on the financial consequences of the changes of duties or on the dismissals referred to by the complainant. The Committee also notes that the transfers acknowledged by the SCBG affected the category of staff which decided to set up a trade union executive and that the two dismissals involve an official and a member of the trade union executive. The Committee further notes that the two dismissals occurred soon after the trade union executive was established and that nothing in the case contradicts the complainant's allegation to the effect that the transfers and other measures also closely followed the setting up of a trade union executive. Lastly, the Committee notes that the violation notice by the labour inspector dated 19 April 2002, submitted to the judicial authorities, states that the SCBG committed an offence under the legislation protecting staff representatives at work by dismissing Mr. Chahrabane Azzedine, a member of the trade union executive, without seeking the opinion of the labour inspector. In these circumstances, the Committee cannot rule out the possibility of a connection between, on the one hand, the establishment of the trade union executive and sales staff being involved in trade union activities and, on the other hand, the transfers and dismissals affecting certain members of this category of staff; the Committee also takes into account the SCBG's dismissive attitude to the trade union executive.*

622. *The Committee recalls that no person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see* ***Digest****, op. cit., para. 696]. In this regard, the Committee notes that Dahir No. 1-57-119 of 16 July 1957 on trade unions, as amended and supplemented by Act No. 11-98, prohibits in particular all forms of anti-union discrimination and that this prohibition is accompanied by severe penalties. In these circumstances, the Committee requests the Government to ensure that inquiries are promptly opened in order to determine whether: (1) the 20 trade union members named in the appendix to the complainant's detailed report have been prejudiced because of their trade union activities; (2) Mr. Najahi Mohamed and Mr. Chahrabane Azzedine were dismissed because of their trade union activities. If the anti-union nature of these measures – or part thereof – is proven, the Committee requests the Government to take the necessary steps, as appropriate, to ensure that: (1) the measures affecting the 20 trade union members are immediately lifted; (2) Mr. Najahi Mohamed and Mr. Chahrabane Azzedine are immediately reinstated in their posts, with the payment of the wages due. Lastly, the Committee requests the Government to ensure strict application of the legislative provisions relating to the protection of workers against anti-union discrimination and to keep it informed on all aspects of the matter.*

The Committee's recommendations

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

(a) The Committee requests the Government to take all the necessary measures so that the trade union executive duly established can freely carry out its activities within the SCBG and negotiate the workers' conditions of

employment directly with the enterprise. The Committee requests the Government to keep it informed of the specific measures taken in this regard and their results.

(b) The Committee requests the Government to ensure that inquiries are promptly opened to determine whether: (1) the 20 trade union members named in the appendix to the complainant's detailed report have been prejudiced because of their trade union activities; (2) Mr. Najahi Mohamed and Mr. Chahrabane Azzedine were dismissed because of their trade union activities. The Committee requests the Government to keep it informed on all aspects of this matter.

(c) If the anti-union nature of these measures – or part thereof – is proven, the Committee requests the Government to take the necessary steps, as appropriate, to ensure that: (1) the measures affecting the 20 trade union members are immediately lifted; (2) Mr. Najahi Mohamed and Mr. Chahrabane Azzedine are immediately reinstated in their posts, with the payment of wages due. The Committee requests the Government to ensure the strict application of the legislative provisions relating to the protection of workers against anti-union discrimination and to keep it informed on all aspects of the matter.

CASE NO. 2169

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

Complaint against the Government of Pakistan presented by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), on behalf of the Pearl Continental Hotels' Employees' Trade Unions Federation

Allegations: The complainants allege that some of their leaders have been detained illegally; that there have been violations of their right to bargain collectively; and that there have been acts of intimidation, harassment and anti-union dismissals in the company Pearl Continental Hotels.

624. In a communication dated 25 January 2002, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) filed a complaint of violations of freedom of association against the Government of Pakistan, on behalf of its affiliated organization, the Pearl Continental Hotels' Employees' Trade Unions Federation. The complainants submitted additional allegations in communications dated 1 February, 23 May, 3 and 17 July 2002.

625. The Government provided partial observations in communications dated 3 May, 26 August and 6 November 2002. At its March 2003 meeting, the Committee issued an urgent appeal to the Government, drawing its attention to the fact that, in accordance with the procedural

rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it might present a report on the substance of the case at its next meeting if the information and observations of the Government had not been received in due course [see 330th Report, para. 8].

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

A. The complainants' allegations

627. In its communications of 25 January and 1 February 2002, the IUF submits that 11 union members (including six union officials) of the Pearl Continental Hotel Workers' Union were arrested on 7 January 2002 by the Pakistan Central Investigation Agency (CIA), in circumstances suggesting that the management of the hotel and the police are colluding in a union-busting operation. According to the complainants, the management of the Karachi Pearl Continental Hotel has been seeking to intimidate the union since September 2001, when the union was informed that a decline in bookings made it necessary to dismiss all casual and temporary workers, and to cut one day of paid work per week for permanent staff. The management ignored the union's call for negotiations and proceeded to dismiss 350 casual workers. The union and the workers did not receive prior notice; the dismissal letter was published in a daily newspaper on 8 November and the workers were barred from entering the hotel when reporting for work the next day. With IUF support, the union responded with a broad-based campaign to obtain their reinstatement; during that campaign, the union vice-chairman was harassed by the police and violently attacked near his home.

628. A fire, which damaged part of the hotel on 6 January 2002, had been initially described as a routine accident by management, which later informed the police that the fire resulted from a deliberate act of union sabotage. On 7 January, the CIA arrested Mr. Muhammad Nasir (President of the Karachi Pearl Continental Hotel Workers' Union), Mr. Muhammad Ishaq (Vice-President), Mr. Ghulam Mehboob (General Secretary) and eight other union officers and members, six of whom were subsequently released. Following repeated public protests, Mr. Nasir was released from custody on 16 January; upon reporting for work on 21 January, he learned that he had been suspended for failing to report for work during his detention. On 23 January, Mr. Muhammad Shawaz (Social Secretary of the union) and Mr. Cheetan (member of the union) were released from custody; upon reporting for duty the following day, they were informed that they had been suspended for four days because they had not reported for work during their imprisonment. Mr. Ghulam Mehboob, Mr. Muhammad Ishaq, Mr. Bashir Hussain (Joint Secretary) and Mr. Aurangzeg (Vice-Chairman) remained in custody. Attempts were made to connect them with other unsolved criminal cases in order to keep them in indefinite detention. The union called for an impartial inquiry into the fire incident, and intervened with various authorities to stop the anti-union harassment by both the police and hotel management.

629. In its communication of 23 May 2002, the IUF submits four supporting documents:

– a letter dated 7 January 2002 from the union to the hotel management, whereby the union requested a leave of absence for the 11 arrested union officers and members, including Mr. Nasir and other officers subsequently suspended from work for not reporting for work during their imprisonment;

– a letter dated 16 January 2002 to the Labour Department, setting forth the union's position on the issues surrounding the dispute and the charges against the officers;

– a charge sheet for absence from duty, dated 21 January 2002, from the hotel management to Mr. Nasir, despite its knowledge that he was imprisoned as a result of the charges filed by the hotel;

– a letter dated 28 March 2002 from the union to the Labour Department, requesting meetings to settle outstanding issues, including the improper withholding of dues check-off.

630. In its communication of 3 July 2002, the IUF explains that in April 2002, the National Industrial Relations Commission issued an order restraining the hotel management from dismissing the union officers. However that order was arbitrarily and summarily quashed by the Division Bench of the Sindh High Court on 6 June 2002. On 7 June 2002, the hotel management sent letters of dismissal to nine union officers, alleging illegal misconduct, together with the management "justification" for the discharges. The documents supporting four of these cases mention that the union officers had beaten spoons on trays in the staff cafeteria as part of the protest action. Even if proven, such an activity taking place far away from the public in the staff cafeteria does not constitute misconduct worthy of serious disciplinary action, let alone discharge. The complainants submit that these dismissals are clearly for trade union activity and that the purpose of management is to destroy the union.

631. In its communication of 17 July 2002, the IUF states that on 6 July, two officers of the union who had been unfairly dismissed (Messrs. Aurangzeg and Hidayatullah) were beaten at the police station in the presence of two members of the hotel management staff, and were released after more than 26 hours of custody. Workers at the hotel reported that the police assistant superintendent spent the night following the beating at the hotel with members of the hotel management. The complainants allege that this is further evidence of the complicity between the police authorities and the hotel management in repressing union activity. The union demanded an impartial inquiry into the conduct of the police and the hotel management but have received no reply.

B. The Government's reply

632. In its communication of 3 May 2002, the Government states that, according to the reports received from the provincial authorities:

– the management of the hotel took action in accordance with the law and did not violate any vested rights of the workers;

– due to the abolition of certain posts, the management had to undergo some structural changes resulting in the termination of a number of employees, action which was taken strictly in accordance with the law;

– the workers were investigated by reason of a go-slow action, which is an unfair labour practice; the action taken was in accordance with the law;

– as a disorderly situation was created by some union leaders and members, the police had to apprehend them;

– upon intervention by the Labour Department, three workers (Messrs. Muhammad Ishaq, Muhammad Nawaz and Chatan Das) were released and the remaining three union officials (Messrs. Aurangzeg, Ghulam Mahboob and Bashir Hussain) were released by order of the Sindh High Court.

633. In its communications of 26 August and 6 November 2002, the Government provides details on the procedures related to the go-slow action. The management of the hotel had

submitted an application to the Sindh labour authorities on 28 December 2001, alleging that union officials and members of the union had started to resort to go-slow tactics. A show cause notice was issued on 11 January 2002, requesting the union to explain its position and to show cause why no action should be taken in connection with that alleged unfair labour practice. On 16 January 2002, the union submitted a reply which was not considered justified or appropriate, and the Director of Labour referred the case to the Labour Court, where the union and the management had an opportunity to explain their positions. The matter is now pending before the court.

C. The Committee's conclusions

634. *The Committee regrets that, despite the time which has elapsed since the presentation of the complaint, the Government has not provided in due time the supplementary comments and information requested by the Committee, although it was invited to send its reply on several occasions, including by means of an urgent appeal at its March 2003 meeting. In these circumstances, and in accordance with the applicable rule of procedure [see 127th Report of the Committee, para. 17, approved by the Governing Body at its 184th Session], the Committee is bound to present a report on the substance of this case, in the absence of the information it had hoped to receive in due time from the Government.*

635. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations concerning violations of freedom of association is to ensure respect for the rights of employers' and workers' organizations in law and in fact. If this procedure protects governments against unreasonable accusations, governments on their side should 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].*

636. *The Committee notes that this complaint concerns allegations of: arrests of trade union members and leaders; anti-union intimidation, harassment and dismissals; police intervention and violence; all of which occurred in the context of an industrial dispute which started with go-slow tactics by the union, and ultimately led to the dismissal of some 350 casual workers. The complainants allege collusion between the hotel management and the police to destroy the union.*

637. *The Committee notes that, according to the Government, the employer claimed that the dismissals were necessary due to a reduction of business, leading to the abolition of some 350 posts and a one-day cut of work per week for permanent staff. The Committee notes that the management of the hotel ignored the union's request for negotiations and went ahead with the dismissals, which were announced through the press. While it has not been established whether or not a notice is required by law in the case of dismissal of casual workers and, if so, whether the legal notice was actually given, the Committee notes that the dismissals took place in the context of an industrial dispute related to staff reductions that had started a few months earlier, and from the Government's indication as to the employer's own contention, had given rise to go-slow tactics which might constitute an unfair labour practice under Pakistani law. The Committee recalls the importance of consultations or attempts to reach agreements with trade union organizations in cases of rationalization and staff reduction processes [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 936].*

638. *As regards the management's contention that the fire that broke out in the hotel was a deliberate act of sabotage by the union, the Committee notes that no evidence has been submitted to that effect, that no charges have been filed in this respect against the union officers and members involved, and that no independent inquiry was held into the causes*

*and circumstances of the fire. The Committee recalls that, while the exercise of trade union activity or the holding of trade union office does not provide immunity as regards the application of ordinary criminal law, the arrest and detention of trade unionists without charges being led or court warrants being issued constitutes a serious violation of trade union rights [**Digest**, op. cit., para. 79], 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 [**Digest**, op. cit., para. 77]. In addition, trade unionists, like anyone else, should benefit from normal judicial proceedings and have the right to due process [**Digest**, op. cit., para. 102], including the right to be presumed innocent until proven guilty [**Digest**, op. cit., para. 65]. The Committee requests the Government to ensure that such guarantees of due process will be applied in future.*

639. *The Committee notes that, as a result of the arrests and detentions, nine union officers have been dismissed after the Sindh High Court reversed the order of the National Industrial Relations Commission. The Committee also notes that, according to the complainants, the facts reproached to some of the dismissed workers in the charge sheets and dismissal letters (noisy and disorderly behaviour, beating spoons on trays in the cafeteria far from the public or hotel guests) are minor ones when placed in an industrial dispute context. The Committee further observes that the management of the hotel, when suspending workers because they did not report for work, was fully aware that their absence was due to their being in custody, following charges laid by management itself. In these circumstances, the Committee concludes that the acts of the management, in particular the dismissal of trade union leaders, constituted anti-union discrimination, which is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions. The Committee requests the Government to instruct the competent labour authorities to undertake rapidly an in-depth investigation of this matter and, if it is found that there has been anti-union discrimination, to ensure that the workers concerned are reinstated in their posts without loss of pay. The Committee further requests the Government to initiate meetings between the hotel management and the trade union with a view to avoiding violations of trade union rights in the future.*

640. *As regards the allegations of police harassment and violence, the Committee notes that, according to the complainants, the vice-chairman of the union was harassed by the police during the campaign to obtain the reinstatement of dismissed workers, that the police were colluding with the hotel management to destroy the union, and that two union members were beaten at the police station in the presence of two members of the hotel management. The Government did not provide any reply or observation on these allegations. The Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and that it is for governments to ensure that this principle is respected [**Digest**, op. cit., para. 47]. In cases of alleged ill-treatment while in detention, governments should carry out inquiries into complaints of this kind so that appropriate measures, including compensation for damages suffered and sanctioning those responsible, are taken to ensure that no detainee is subject to such treatment 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 [**Digest**, op. cit., paras. 57 and 77]. The Committee therefore requests the Government rapidly to carry out an inquiry into the alleged beatings of Messrs. Aurangzeg and Hidayatullah on 6 July 2002 at the police station, to keep it informed of the results of that inquiry, and to give appropriate instructions to police forces, to prevent the repetition of such acts.*

641. *Noting that the unfair labour practice procedure concerning the go-slow tactics in December 2001 are still pending before the labour jurisdiction, the Committee requests the*

Government to send its observations in this respect and to provide a copy of the court decision as soon as it is issued.

The Committee's recommendations

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

(a) The Committee recalls the importance of consultations or attempts to reach agreements with trade union organizations in cases of rationalization and staff reduction processes.

(b) The Committee requests the Government to ensure that guarantees of due process are fully afforded to trade unionists, as any other person.

(c) The Committee requests the Government to instruct the competent labour authorities to rapidly undertake an in-depth investigation of the anti-union dismissals at the Karachi Pearl Continental Hotel and, if it is found that there has been anti-union discrimination, to ensure that the workers concerned are reinstated in their posts, without loss of pay. It further requests the Government to initiate meetings between the hotel management and the trade union with a view to avoiding violations of trade union rights in the future.

(d) The Committee requests the Government to rapidly carry out an inquiry into the alleged beatings of Messrs. Aurangzeg and Hidayatullah on 6 July 2002 at the police station, to keep it informed of the results of that inquiry, and to give appropriate instructions to police forces, to prevent the repetition of such acts.

(e) The Committee requests the Government to provide, as soon as it is issued, a copy of the court decision concerning the unfair labour practice procedure related to the go-slow tactics in December 2001.

CASE NO. 2162

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

Complaint against the Government of Peru presented by the National Federation of Paper Manufacturing, Chemical and Allied Workers of PERU (FENATPAQUISP)

Allegations: Dismissal of 15 members (including six union officials) of the trade union of workers of "Manufacturera de Papeles y Cartones del Perú S.A. – Planta Chillón", a few days after the establishment of the union; threats of dismissal against workers who refused to leave the union (more than 29 workers have left) and against the six union officials who replaced the dismissed officials; refusal by the enterprise to negotiate a draft collective agreement.

643. The complaint is contained in communications dated 27 September and 9 November 2001 from the National Federation of Paper Manufacturing, Chemical and Allied Workers of Peru (FENATPAQUISP), which sent additional information in a communication dated 8 December 2001.

644. The Government sent its observations in a communication dated 22 January 2003.

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

A. The complainant's allegations

646. In communications dated 27 September and 9 November 2001, the National Federation of Paper Manufacturing, Chemical and Allied Workers of Peru (FENATPAQUISP) alleges that on 25 May 2001 the trade union of workers of the company "Manufacturera de Papeles y Cartones del Perú S.A. – Planta Chillón" filed its founding documents with the labour authorities in accordance with legislation. On 29 May 2001, at the company's request, a meeting took place with the union's executive committee, and the union was even allowed to install a notice board in a space made available by the company. However, on the following day (30 May 2001), to the surprise of all the workers, the union's officers and organizers were unilaterally prevented by the company from entering the site and 15 official letters of dismissal were sent out selectively, including six to members of the union's executive committee (which has a total of seven members).

647. The complainant organization states that in the legal proceedings initiated by the dismissed workers (who under the terms of section 31 of Decree No. 25593 enjoyed trade union immunity "from the date on which the application for registration was filed until three months after that date") the company falsely stated that it did not know about the establishment of the trade union and that the dismissals were due to economic factors,

although in reality the company had increased its nominal capital from 122 to 132 million new soles between 8 September 1999 and 26 July 2002.

648. The complainant also alleges that the company not only applied repressive measures against workers but is blackmailing them with the threat of dismissal to force them out of their union. Evidence of this is provided by the three workers' letters of resignation from the union dated 5 July 2001.

649. The complainant also alleges acts of interference by the company in the union's internal affairs. Specifically, it states that, faced with the dismissal of the six union officials, the union general meeting elected sub-secretaries and presented a draft collective agreement. The company then put pressure on the newly elected officials to leave the union, which in the end they all did (the letters of resignation are all worded in the same way and bear the same typescript). The company rejected the draft collective agreement in another discriminatory act of bad faith.

650. In its communication of 8 December 2001, the complainant indicates that on 19 October 2001 a company manager sent to the Ministry of Labour 29 official letters of resignation from the union, which shows the direct interference by the company in union affairs. The management of the company has actually hardened its anti-union stance, as shown by its constant pressure on union members to leave the union by summoning them and confronting them with a stark choice between leaving the union or being dismissed. Faced with the imminent loss of their jobs, union members choose to resign from the union.

B. The Government's reply

651. The Government refers to the remarks made by the company Manufacturera de Papeles y Cartones del Perú S.A., according to which: (1) between July and October 2001, the workers sent it copies of their letters of resignation from the union to which they belonged; (2) the enterprise flatly denies having directly interfered in any way in the trade union organization; (3) none of the union members were induced or pressured to resign from the union; (4) on the other hand, since 2000, the enterprise has been experiencing a serious economic crisis which resulted in it being declared bankrupt on 10 June 2002 by INDECOPI. Consequently, all of the wages owed prior to this date will be bound by the bankruptcy process, a labour representative having already been chosen to sit on the corresponding Creditors' Board.

652. The Government considers that the complaint should be declared unfounded if in this case the facts are suitably laid out. The Government recalls that article 28 of the Constitution indicates that the State recognizes the rights to freedom of association, collective bargaining and strike and defends their democratic exercise: (1) it guarantees freedom of association; (2) promotes collective bargaining and peaceful forms of solving labour disputes. Collective agreements are binding; (3) regulates the right to strike which is to be exercised in keeping with the general interest and indicates the corresponding exceptions and restrictions. Article 2 of Act No. 25593, concerning collective labour relations, establishes that "the State grants workers the right to organize, without prior authorization, for the study, development, protection and defence of their rights and interests and the social, economic and moral progress of its members". This standard establishes protection for all members of trade union organizations with respect to any coercive actions the employer might carry out. In this connection, article 3 indicates "membership is free and voluntary. The employment of a worker cannot be made conditional upon membership, lack of membership or resignation from membership, a worker cannot be obliged to join a trade union nor can he be stopped from doing so". Meanwhile, article 4 indicates that "the State, employers and the representatives of both shall abstain from any type of action intended to coerce, restrain or undermine, in any way, the right to organize of workers, and

to intervene in any way in the establishment, administration or support of the trade union organizations that they may set up". Furthermore, article 29(a) of Supreme Decree No. 003-97-TR, consolidated text of Legislative Decree No. 728, concerning productivity and labour competitiveness, indicates that any dismissal on the grounds of membership of a trade union or participation in trade union activities has no legal force. In this way dismissals that affect freedom of association are sanctioned with invalidity. Consequently, the last paragraph of article 34 of this standard indicates that "in cases relating to invalid dismissals, if the worker's claim is found to be justified he will be reinstated in his post, unless in the execution of the judgement he opts for the compensation established in article 38".

653. The Government adds, with respect to the legal texts described, that the administrative labour authority ensures compliance with them by means of labour inspection, which can be carried out following a complaint by a worker who considers himself to have been wronged.

654. Likewise, workers have an expedited right to lodge a claim with the courts if they consider their labour rights to have been violated. For this reason, it is important to point out that it is this authority that must decide on any claims that may have been lodged by the workers.

C. The Committee's conclusions

655. *The Committee observes that the allegations relate to: (1) the dismissal of 15 members (including six union officials) of the trade union of workers of "Manufacturera de Papeles y Cartones del Perú S.A. – Planta Chillón", a few days after the establishment of the trade union; (2) threats of dismissal against workers who refused to leave the union (more than 29 workers have left) and pressure put on the six union officials who replaced the dismissed officials to leave the union (withdrawals achieved by the enterprise); and (3) the refusal by the enterprise to negotiate a draft collective agreement. The Committee notes the information from the Government concerning the legal provisions and mechanisms that provide protection against acts contrary to freedom of association and that it is the judicial authority that is responsible for examining this case.*

656. *Concerning the allegation relating to the dismissal of 15 trade unionists (including six trade union officials), a few days after the establishment of a union, the Committee notes the enterprise's indication that following an economic crisis, it was officially declared bankrupt in June 2002. The Committee points out, nevertheless, that the dismissals date back to May 2001 and that the Government does no more than indicate that legislation provides judicial recourse. The Committee therefore expresses its concern at the severity of the allegations concerning anti-union dismissals and calls attention to the principle whereby no person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 696]. The Committee observes that the dismissals have prompted judicial proceedings, and expresses the hope that these will soon be concluded, hoping also that if the persons in question cannot be reinstated in their jobs (in particular because the enterprise cannot continue its operations) they will be fully compensated, and requests the Government to keep it informed of the decisions that are handed down.*

657. *As regards the alleged threats of dismissal against workers who refused to leave the union (more than 29 members have left) and pressure (also to leave) put on the six union officials who replaced the dismissed officials (withdrawals achieved by the enterprise), the Committee notes the enterprise's denial of any type of pressure or inducement for affiliated workers to leave and, given the contradictory nature of both versions, it asks the*

Government urgently to conduct an investigation into this matter and, if the claims are found to be true, to take the necessary steps to apply the sanctions provided by law, and to ensure that such acts are not repeated. The Committee requests the Government to keep it informed in this respect.

658. *Lastly, concerning the alleged refusal by the enterprise to negotiate a draft collective agreement, the Committee observes that the enterprise is in the process of bankruptcy owing to an economic crisis and asks the Government that if the enterprise manages to continue its operations to take steps to stimulate and promote collective bargaining in the enterprise.*

The Committee's recommendations

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

(a) The Committee requests the Government to keep it informed of the decisions handed down relating to the dismissal of trade unionists at the enterprise Manufacturera de Papeles y Cartones del Perú S.A. – Planta Chillón a few days after the establishment of the union and hopes that if the persons in question cannot be reinstated in their jobs (particularly because the enterprise cannot continue its operations) they will be fully compensated.

(b) The Committee requests the Government urgently to conduct an investigation into the alleged threats of dismissal against workers who refused to leave the union and pressure put on six trade union officials to resign and, if the allegations are found to be true, to take the necessary measures to apply the sanctions provided for in legislation and to ensure that such actions are not repeated. The Committee requests the Government to keep it informed in this respect.

(c) The Committee requests the Government that, if the enterprise Manufacturera de Papeles y Cartones del Perú S.A. – Planta Chillón does manage to continue its operations, to take measures to stimulate and promote collective bargaining in the enterprise.

CASE NO. 2185

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

Complaint against the Government of the Russian Federation presented by the Central Committee of the Trade Union of Water Transport Workers of the Russian Federation (PRVT) supported by the Federation of Independent Trade Unions of Russia (FNPR)

Allegations: The complainant alleges that the management of the Open Stock Company (OAO) "Novorossiisk Commercial Sea Port" interferes in trade union activities by exercising pressure on workers to change their affiliation to another trade union created by the management, and violates the right to bargain collectively.

660. The complaint is contained in a communication dated 28 February 2002 from the Central Committee of the Trade Union of Water Transport Workers of the Russian Federation (PRVT). The Federation of Independent Trade Unions of Russia (FNPR) associated itself with the complaint in a communication dated 20 March 2002. The PRVT sent additional information in a communication dated 22 May 2002.

661. The Committee has been obliged to postpone its examination of the case on two occasions [see 328th and 329th Reports, paras. 4 and 5 respectively]. At its meeting in March 2003 [see 330th Report, para. 8], the Committee issued an urgent appeal to the Government, indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting even if the information or observations requested had not been received in due time. To date the Government has sent no observations.

662. The Russian Federation 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

663. In its communications dated 28 February and 22 May 2002, the PRVT alleges that the administration of the Open Stock Company (OAO) "Novorossiisk Commercial Sea Port" has violated the right of the primary trade union organization of the Azov-Black Sea Interregional Organization of the PRVT to organize its administration and activities by exercising pressure on workers to change their affiliation to another trade union created by the management. The complainant also alleges violations of its right to bargain collectively.

664. In particular, the complainant alleges that in early 2000, the OAO administration issued slanderous information to the trade union alleging that the bank in which the trade union's main financial resources have been deposited was on the verge of insolvency and

suggested that these resources be transferred to a steadier bank. It was later established that the director of the OAO was the chairman of the board of directors of that steadier bank. Thus, the OAO administration was put in control of the trade union's financial assets.

665. In November 2000, notwithstanding the collective agreement due to remain in force until March 2001, the port administration discontinued unilaterally to finance the cultural and sports activities among workers of the OAO, and ceased to pay bonuses to the trade union personnel as envisaged in the collective agreement. Furthermore, contrary to the collective agreement, according to which the chairman of the trade union committee is entitled to two days off every six months for exercising his trade union activities, the port administration has been persistently attempting to restrict this right.

666. In December 2000, the general director of the OAO decided to found his own trade union of workers of the seaport of the Krasnodar territory. Accordingly, a group of initiators, presided over by the director of human resources, was set up from among the chiefs of the OAO divisions who, pursuant to instructions from the port management, launched a campaign aimed at the withdrawal of the port workers from the PRVT and their subsequent entry into the new trade union. The "educational" work was carried out by the use of blackmail, misinformation, intimidation and administrative pressure: some workers received bonuses in exchange for the submission of statements on withdrawal from the union, others had their pay delayed and were threatened with dismissal. As a result, 2,000 persons withdrew from the PRVT between December and January. In February 2001, the founding conference of the new trade union organization was held. The delegates to the conference were arbitrarily appointed by the managers of respective port divisions.

667. Following these events, the Azov-Black Sea Interregional Organization of the PRVT addressed the Office of Transport Prosecutor and a commission of inquiry was established in May 2001. According to the findings of the commission, the attempt to liquidate the primary trade union of the PRVT and the establishment of a new trade union at the OAO were initiated by the OAO administration. The commission considered that these acts were tantamount to acts of interference in trade union activities and were contrary to the legislation in force and Conventions Nos. 87 and 98, ratified by the Russian Federation. Moreover, the commission found that the procedure for the establishment of a new trade union was not respected (for example, most of the appointees to the conference establishing the new trade union were representing the management and not workers). Following the commission report, the transport prosecutor requested the director of the OAO to take all the necessary measures in order to ensure that all the violations of the Law on Trade Unions were obviated.

668. Furthermore, according to the documents provided by the complainant, a new collective agreement for 2002-04 was concluded between the port administration and the "yellow" trade union acting on behalf of all workers of the port without respecting the procedure provided for under section 37 of the Labour Code. According to the complainant, no unified representative body for engaging in collective bargaining was formed and no general meeting, to determine, through a secret ballot, the trade union authorized to conduct collective bargaining on behalf of all workers, was held (as prescribed by section 37 of the Labour Code if a unified representative body fails to be established) and the collective agreement was signed between the port administration and the president of the "yellow" trade union. The complainant supplies a copy of the legal opinion issued by the Office of the Public Prosecutor on that matter. According to this document, the procedure provided for in section 37 of the Labour Code was not respected. Thus, the complainant organization addressed the port administration with a proposal to annul the collective agreement and to form a unified representative body on the basis of the principle of proportional representation for the conclusion of a new collective agreement.

B. The Committee's conclusions

669. *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 urgently requests the Government to be more cooperative in the future, and in particular, it would request the Government to solicit information from the employer's organization concerned with the view to having at its disposal its view as well as those of the enterprise concerned on the questions at issue.*

670. *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.*

671. *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].*

672. *The Committee notes that the complainant in this case alleges that the administration of the Open Stock Company (OAO) "Novorossiisk Commercial Sea Port" has violated the right of the primary trade union organization of the Azov-Black Sea Interregional Organization of the PRVT to organize its administration and activities by exercising pressure on workers to change their affiliation to another trade union created by the management. The complainant also alleges violations of its right to bargain collectively.*

673. *The Committee notes the complainant's allegation concerning the transfer of trade union financial assets to the bank administered by the director of the OAO. The Committee notes however that the transfer seems to have been made willingly even if it was made upon the suggestion of the OAO administration.*

674. *The Committee further notes the complainant's allegation concerning the violation of the collective agreement by the port administration, in particular, clauses concerning the financing of the cultural and sport activities among workers of the OAO and payment of bonuses to the trade union personnel. The complainant further states that the port administration has been attempting to restrict the right of the trade union chairman to two days off every six months for exercising his trade union activities, as provided for in the collective agreement. In this respect, the Committee recalls that agreements should be binding on the parties [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 818]. Mutual respect of the commitment undertaken in the collective agreement 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. The Committee therefore requests the Government to take the necessary measures so as to ensure that this principle is respected.*

675. *As regards the allegation concerning the creation of a "yellow" union and the campaign launched by the enterprise aimed at the withdrawal of the port workers from PRVT and their subsequent entry into the "yellow" union, the Committee notes the report of the commission of inquiry confirming these allegations. It further notes that the transport prosecutor has requested the director of the OAO to obviate all the violations of the Law*

on Trade Unions. The Committee further notes that according to the complainant a new collective agreement was concluded between the management of the OAO and the allegedly "yellow" trade union on behalf of all workers of the port in violation of the procedure provided for under section 37 of the Labour Code. The Committee notes that according to section 37, if there are two or more primary trade unions at the enterprise, a unified representative body for holding negotiations should be formed on the basis of the principles of proportional representation depending on the number of trade union members and if such a body fails to be established within five days, representation of workers' interests is assured by the majority trade union or in the event of none of the trade unions uniting over half of the employees, a general meeting (conference) determines, through a secret ballot, the trade union which is further authorized to conduct collective bargaining. The complainant submits that none of these requirements were respected and the collective agreement was signed between the port administration and the president of the "yellow" trade union. The complainant attaches a copy of the legal opinion issued by the Office of the Public Prosecutor on this matter, according to which the procedure of conducting collective bargaining was not respected. The Committee notes that the complainant organization addressed the port administration with a proposal to annul the collective agreement and to form a unified representative body on the basis of the principle of proportional representation for the conclusion of a new collective agreement.

676. *In this respect, the Committee recalls that Article 2 of Convention No. 98 establishes the total independence of workers' organizations from employers in exercising their activities [see **Digest**, op. cit., para. 759]. Recalling the importance of the independence of the parties in collective bargaining, the Committee considers that negotiations should not be conducted on behalf of employees by bargaining representatives appointed by or under the domination of employers or their organizations [see **Digest**, op. cit., para. 771]. The Committee therefore requests the Government to initiate an independent inquiry into the allegations made in this respect and to keep it informed of the outcome. It also requests the Government and the complainant organization to keep the Committee informed of any developments concerning the establishment of a unified representative body on the basis of proportional representation for the conclusion of a new agreement.*

The Committee's recommendations

677. ***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 urgently requests the Government to be more cooperative in the future and in particular, it would request the Government to solicit information from the employer's organization concerned with the view to having at its disposal its view as well as those of the enterprise concerned on the questions at issue.

(b) As regards the complainant's allegation of violation of the collective agreement by the port administration, the Committee recalls that agreements should be binding on the parties and requests the Government to take the necessary measures so as to ensure that this principle is respected.

(c) As regards the allegations concerning the creation of a "yellow" trade union at the OAO "Novorossiisk Commercial Sea Port", the Committee requests

the Government to initiate an independent inquiry into these allegations and to keep it informed of the outcome.

(d) The Committee requests the Government and the complainant organization to keep it informed of any developments concerning the establishment of a unified representative body on the basis of proportional representation for the conclusion of a new collective agreement.

CASE NO. 2199

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

Complaint against the Government of the Russian Federation presented by the Russian Labour Confederation (KTR)

Allegations: The complainant alleges acts of anti-union discrimination by the administration of the Commercial Seaport of Kaliningrad, including reprisals against workers present in the strike, pressure on workers to change their affiliation to another trade union, transfer of personnel, reduction of work schedule, salary cuts, refusal to implement a court decision ordering the reinstatement of worker members of the trade union and violation of trade union premises and property.

678. The complaint is contained in a communication dated 18 April 2002 from the Russian Labour Confederation (KTR). The KTR sent additional information in a communication dated 3 December 2002.

679. The Committee has been obliged to postpone its examination of the case on two occasions [see 328th and 329th Reports, paras. 4 and 5 respectively]. At its meeting in March 2003 [see 330th Report, para. 8], the Committee issued an urgent appeal to the Government, indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it could present a report on the substance of the case at its next meeting even if the information or observations requested had not been received in due time. To date the Government has sent no observations.

680. The Russian Federation 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

681. In its communications dated 18 April and 3 December 2002, the Russian Labour Confederation (KTR) alleges that members of the Russian Trade Union of Dockers (RPD),

the affiliated organization of the KTR at the Commercial Seaport of Kaliningrad (MTPK), are subject to anti-union discrimination.

682. In particular, the complainant states that after its founding in August 1995, the RPD endured constant pressure from the administration of the port. This pressure became especially pronounced after the trade union organized and carried out a strike from 14 to 28 October 1997 with demands to increase dockers' wages, to guarantee employment and to provide free health care and insurance against accidents at work. The trade union was unable to achieve its demands and the strike was halted. However, not all dockers were allowed to return to work in their brigades. Twenty dockers who took part in the strike were transferred to brigades which were composed exclusively of members of the RPD. They no longer received work assignments and, as a result, almost completely lost their earnings. Work in normal conditions, and accordingly wages normally received, would be given to those dockers who would quit the RPD. Moreover, on 18 December 1998 the brigade of dockers, members of the RPD, was notified that in two months, their total monthly working hours would be reduced from 132 to 40, which was indeed done within the promised period. At the same time, the employer pressured workers to quit the RPD and to join the Trade Union of Water Transport Workers (PRVT), promising to provide the PRVT members with additional sums of money.

683. The trade union repeatedly addressed the Office of the Public Prosecutor, the Federal Labour Inspection and Baltic District Court of Kaliningrad with a demand to recognize as illegal the discrimination suffered by 20 dockers and their transfer to separate brigades. The court declined to satisfy the claim on two occasions and on 14 August 2000, the Kaliningrad Provincial Court concluded, in appeal, that the disputes concerning violations of labour rights based on trade union membership did not fall under the jurisdiction of civil cases as the protection against discrimination could only be achieved by bringing to account individuals in a criminal case.

684. Following the international action in support of the RPD initiated by the International Transport Workers' Federation (ITF), the situation began to improve and by the summer of 2000 the brigade consisting of the RPD members received the same wages as the rest of the brigades in the port.

685. In December 1999 the Commercial Seaport of Kaliningrad formed a branch company, Transport and Freight Company Ltd. (TPK), which would have exclusive rights to process freight work in the port. In December 2000, the port administration proposed to all dockers/machine operators to be transferred to TPK arguing that failure to do so would result in loss of work. After a certain time nearly all workers were transferred to TPK. However, according to the complainant, docker members of the RPD were not even offered such a transfer, while those RPD workers who showed the initiative and approached the administration with a wish to be transferred were told that such a transfer would only be possible upon their exit from the RPD. Following this restructuring, the administration of the Commercial Seaport of Kaliningrad has practically ceased to provide the docker members of the RPD with highly paid loading and unloading work and as a result, those dockers earned almost twice less than dockers at TPK.

686. On 10 January 2001, the general director of the Commercial Seaport of Kaliningrad published Decree No. 11 "concerning the change in the number of employees and their work schedule" by which the administration ordered changes in the work schedule of 36 dockers working at the commercial seaport, 24 of whom are members of the RPD. As a result, the earnings of the RPD members left at MTPK were seven times smaller than the earnings of the PRVT members who were transferred to TPK.

687. The trade union appealed these acts to the Commission for Labour Disputes at MTPK which, in its decision of 28 September 2001, stated that there were no violations of the rights of docker members of the RPD and that the "demand to recognize the actions of the administration as discriminatory cannot be considered by the Commission since this is not within the jurisdiction of the Commission. The disputes of this issue do not have a legal character […]". The case was transferred for the consideration of the Justice of the Peace of the Baltic District of Kaliningrad, who refused to consider the part of application concerning discrimination, because such claims could only be handled within the framework of a criminal court case and would involve criminal responsibility of a person and not of an organization or enterprise.

688. On 26 September 2001, the general director of MTPK issued Decree No. 317 "concerning staff reductions" in accordance with which 24 dockers/machine operators, that is all the remaining docker members of RPD, were dismissed. The administration of MTPK motivated the dismissals and refusal to transfer them to the TPK by the fact that the turnover of goods at the port was diminishing. However, the complainant indicates that on 19 October 2001, the provincial newspaper *Kaliningradskaia Pravda* (the article was attached to the complaint) published an interview with the aid to the general director of MTPK for external economic relations in which it is stated that the turnover of goods at the port grew by 35 per cent in 2001 while profits have grown by 44 per cent. Such growth in the turnover of goods resulted in the hiring of 37 new dockers. The complainant considers that the situation has developed as a result of persistent policies by the management of MTPK to infringe the rights of dockers with the intention of seeing all of them quit the RPD, which would result in the destruction of the trade union at the port.

689. The RPD addressed a letter to the Kaliningrad Provincial Duma concerning the violation by the employer of the rights of the RPD members. The Duma's Permanent Committee for Social Policy and Health Care issued, on 15 November 2001, a resolution expressing extreme concern about the situation developed at MTPK. Particularly, it found that "members of the RPD are placed at a disadvantage with regards to access to work and wages in comparison to the non-members" and that the RPD "reasonably poses the question of anti-union discrimination". On 29 November 2001, the Duma Committee addressed a letter to the General Public Prosecutor of the Province with a request to undertake immediate measures to defend the rights of the RPD members and to examine the question of preparing a criminal investigation against the management of MTPK.

690. On 24 May 2002, the Baltic District Court, while rejecting the claim of anti-union discrimination, found the dismissal illegal and issued an order of reinstatement of members of the RPD at their jobs with MTPK and on their transfer to TPK. The complainant submits the decision of the court, according to which the MTPK administration had no legal grounds for the decision to dismiss the plaintiffs on grounds of the reduction of staff since the port, having transferred to TPK its stevedoring function, property and all workers (only plaintiff dockers – RPD members – were laid off, the remaining workers being transferred) had in effect re-subordinated the production section to TPK and therefore was obliged to offer the plaintiffs continued employment in TPK. The management of MTPK reinstated the dockers at MTPK, but refused to implement the court decision as concerns continuation of their employment with TPK, which has been declared, since 1 October 2001, a successor of MTPK in terms of labour relations with all dockers, including RPD members. On 24 June 2002, TPK was reorganized into the company "Commercial Seaport" (MTP). The two companies requested the court to clarify its decision. On 3 July 2002, the Baltic District Court issued a ruling explaining its previous decision. The companies then appealed the court decision to the Kaliningrad Provincial Court, which confirmed, on 7 August 2002, the previous decision and obliged the employer to pay the illegally dismissed workers their average wage due from the time of their dismissal. However, instead of implementing the court decision, the MTPK management fired all

RPD members from the port for absenteeism. According to the documents provided by the complainant, the dockers could not do their regular work at MTPK as it no longer had a licence for freight operations and refused to transfer them to the TPK.

691. A new lawsuit regarding the new dismissal of the RPD members was filed and the case is yet to be considered. The complainant considered that the dismissals did not annul the employer's obligation to implement the decision of 24 May 2002 to reinstate the RPD members at TPK. It therefore appealed to the bailiff department in order to begin an enforcement procedure. The enforcement procedure, began on 15 August 2002, was suspended on 27 August following a letter sent by the Kaliningrad Provincial Prosecutor to the bailiff department. The complainant considers that the actions of the Kaliningrad Provincial Prosecutor suspending the enforcement procedure are aimed at destroying RPD at the Commercial Seaport of Kaliningrad and are illegal, as according to the Law on Enforcement Procedure only a court has the right to suspend enforcement.

692. On 11 September 2002, the Kaliningrad Provincial Court considered the MTPK's and MTP's appeal of the district court decision of 3 July 2002 containing clarifications of the previous decision and rejected it leaving the clarification standing. The court also noted that due to the reorganization of TPK into MTP, it was now the MTP's obligation to hire the transferred dockworkers. However, the decision was still not implemented.

693. In addition, on 8 August 2002, the port management notified RPD's committee that they were to vacate the union office and that the union chairperson was to remit his pass to the port on the grounds that all RPD's members were dismissed from the port. Considering the employer's demand illegitimate the union refused to vacate the office. On the night of 13 August port management welded the metal door to the union office and put guards in front of it. All of the union's belongings, including documents, money and equipment, remained in the sealed office. The trade union was forced to move the union's belongings out of the office.

B. The Committee's conclusions

694. *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 urgently requests the Government to be more cooperative in the future and in particular, it would request the Government to solicit information from the employer's organization concerned with the view to having at its disposal its view as well as those of the enterprise concerned on the questions at issue.*

695. *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.*

696. *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].*

697. *The Committee notes that the complainant in this case alleges acts of anti-union discrimination taken by the management of the Commercial Seaport of Kaliningrad (MTPK) against docker members of the Russian Trade Union of Dockers (RPD) as well as violation of trade union premises and property. The Committee regrets that the Government has sent no observations.*

698. *The Committee notes from the complainant's allegations that since its founding in 1995, the RPD has endured constant pressure from the administration of the port which through transfers created brigades composed exclusively of the RPD members, who received less work and therefore earned less, as well as the encouragement given to these docker members to leave the RPD and become members of other trade unions. The Committee notes however that, according to the complainant, the situation had improved by the summer of 2000 following the international action initiated by the International Transport Workers' Federation.*

699. *The Committee further notes that according to the complainant, in December 2000, following the restructuring of MTPK, the port administration proposed to all dockers, with the sole exception of members of the RPD, to be transferred to the new company, Transport and Freight Company Ltd. (TPK), which would have an exclusive right to process freight work in the port. The complainant states that such a transfer for the RPD members was only possible upon their resignation from the RPD. The complainant further states that 36 dockers, 24 of whom were members of the RPD, stayed at MTPK. As a result of this change and following Decree No. 11 "concerning the change in the number of employees and their work schedule" issued by the general director of MTPK on 10 January 2001, the earnings of the RPD members at MTPK were seven times smaller than the earnings of workers transferred to TPK. The Committee further notes that on 26 September 2001, 24 docker members of the RPD were dismissed and replaced shortly afterwards with 37 new dockers.*

700. *The Committee notes that these administrative acts were appealed to different bodies, i.e. the Commission for Labour Disputes, the Justice of the Peace of the Baltic District of Kaliningrad, Baltic District Court, Kaliningrad Provincial Court and the Kaliningrad Provincial Duma. The Committee notes that in its decision of 14 August 2000, the Kaliningrad Provincial Court considered that the "fact [of discrimination] must be determined as a matter of a criminal case, in accordance with the demands of article 136 of the Criminal Code of the Russian Federation, which acts as a guarantee on the constitutional principle of the rights and freedoms of an individual. Moreover, verification of the fact that discrimination was committed may be possible only with respect to a specific individual, since the perpetrator of the crime, according to article 136 of the Criminal Code, may only be a specific individual acting with intent, but not an establishment or an organization". Therefore, the court refused to consider the claim of anti-union discrimination. The same argument is also given by the Justice of the Peace of the Baltic District of Kaliningrad in its decision of 18 October 2001. The Committee further notes the resolution of the Kaliningrad Provincial Duma Permanent Committee for Social Policy and Health Care, in which it stated that there are reasonable grounds to believe that members of the RPD suffer from anti-union discrimination and that this situation has been artificially created by the management of MTPK, and the request addressed to the General Public Prosecutor of the Province to investigate the possibility of bringing criminal charges against the MTPK administration.*

701. *The Committee further notes however the change in courts' position concerning the procedural aspects of the allegations of anti-union discrimination. Instead of rejecting the anti-union discrimination claim on procedural grounds, the Baltic District Court, in its decision of 24 May 2002, found that grounds of anti-union discrimination were not established and therefore rejected this allegation. The court nevertheless found that the*

dismissal of dockers was illegal and ordered their reinstatement. The Committee notes that according to the court, the MTPK administration had no legal grounds for the decision to dismiss the plaintiffs on grounds of the reduction of staff since the port, having transferred to TPK its stevedoring function, property and all workers (only plaintiff dockers – RPD members – were laid off, the remaining workers being transferred) had in effect re-subordinated the production section to TPK and therefore was obliged to offer the plaintiffs continued employment in TPK. The Kaliningrad Provincial Court confirmed this decision on 7 August 2002. The Committee notes from the complainant's allegations that the court's decision was not fully implemented and the said 24 dockers were once again dismissed. A new case regarding the new dismissals was filed and is yet to be considered.

702. *While noting that the Baltic District Court judgement found that the allegations of anti-union discrimination had not been proven, the Committee notes that, since the court's decision to reinstate the RPD union members at the re-subordinated production section of the TPK due to the nevertheless illegal grounds for their dismissal, the MTPK administration has persistently refused to fully implement this decision, despite repeated clarifications and confirmation from this and higher courts. In the light of these circumstances, the Committee feels bound to query the motivation behind the employer's acts, in particular its persistent refusal to reinstate dockers, all of whom happen to be members of the RPD, despite repeated judicial orders in this respect. Further noting the Duma resolution expressing extreme concern about this situation and adding that the question of anti-union discrimination has been reasonably posed, the Committee therefore requests the Government to establish an independent investigation into the allegations of acts of anti-union discrimination and if it is proven that acts of anti-union discrimination were taken against RPD members, in particular as concerns the non-transferral to the subordinated production sectors at TPK in accordance with the court's decision to take all necessary steps to remedy this situation, to ensure reinstatement at the TPK, as requested by the courts, as well as payment of lost wages. Furthermore, noting that the dockers were once again dismissed and a new case was filed, the Committee requests the Government to keep it informed of the outcome of this case.*

703. *As concerns the means of redress against alleged acts of anti-union discrimination, the Committee recalls that the existence of basic legislative provisions prohibiting acts of anti-union discrimination is not sufficient if these provisions are not accompanied by effective procedures ensuring their application in practice [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 742]. Noting that in the present case, the complainant has been addressing the different judicial bodies since 2001 with allegations of anti-union discrimination, which were, until May 2002 rejected on procedural grounds, the Committee considers that the legislation providing for protection against acts of anti-union discrimination is not sufficiently clear. It therefore requests the Government to take the necessary measures, including the amendment of the legislation, in order to ensure that complaints of anti-union discrimination are examined in the framework of national procedures which are clear and prompt. The Committee requests the Government to keep it informed in this respect.*

704. *As regards the allegation of violation of trade union premises and property, the Committee considers that before being undertaken, the occupation or sealing of trade union premises should be subject to independent judicial review in view of the significant risk that such measures may paralyse trade union activities. The Committee draws the Government's attention to the importance of the principle that the property of trade unions should enjoy adequate protection [see **Digest**, para. 184]. The Committee therefore requests the Government to take the necessary measures so as to ensure that this principle is respected.*

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

The Committee's recommendations

706. ***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 urgently requests the Government to be more cooperative in the future and in particular, it would request the Government to solicit information from the employer's organization concerned with the view to having at its disposal its view as well as those of the enterprise concerned on the questions at issue.

(b) The Committee requests the Government to establish an independent investigation into the allegations of acts of anti-union discrimination and if it is proven that acts of anti-union discrimination were taken against RPD members, to take all necessary steps to remedy this situation, to ensure reinstatement at the TPK, as requested by the courts, as well as payment of lost wages.

(c) The Committee requests the Government to keep it informed of the outcome of the new case filed by the docker trade union members against new dismissals.

(d) The Committee requests the Government to take the necessary measures, including the amendment of the legislation, in order to ensure that the complaints of anti-union discrimination are examined in the framework of national procedures which are clear and prompt. The Committee requests the Government to keep it informed in this respect.

(e) As regards the complainant's allegation of violation of trade union premises and property, the Committee considers that before being undertaken, the occupation or sealing of trade union premises should be subject to independent judicial review. Drawing the Government's attention to the importance of the principle that the property of trade unions should enjoy adequate protection, the Committee requests the Government to take the necessary measures so as to ensure that this principle is respected.

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

CASE NO. 2209

DEFINITIVE REPORT

Complaints against the Government of Uruguay presented by
— the InterUnion Workers' Assembly – National Confederation of Workers (PIT-CNT)
— the Confederation of Civil Service Unions (COFE)
— the Coordinating Congress of Enterprise Trade Unions and
— the Association of Livestock, Agriculture and Fisheries Officials (AFGAP)

Allegations: The complainant organizations allege that in regulating conditions of employment by decree and in the absence of collective agreements in the central administration the Government is in breach of Conventions Nos. 151 and 154. In addition, the complainant organizations dispute the Government's decision to declare an animal health division an essential service during an epidemic of foot-and-mouth disease.

707. The complaints are set out in letters from the InterUnion Workers' Assembly – National Confederation of Workers (PIT-CNT), the Confederation of Civil Service Unions (COFE), the Coordinating Congress of Enterprise Trade Unions and the Association of Livestock, Agriculture and Fisheries Officials (AFGAP) of June 2002. The Government sent its observations in a letter dated 7 January 2003.

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

A. The complainants' allegations

709. In its communication of June 2002, the Confederation of Civil Service Unions (COFE), the InterUnion Workers' Assembly – National Confederation of Workers (PIT-CNT) and the Coordinating Congress of Enterprise Trade Unions alleged breach of Conventions Nos. 151 and 154 by the Government. Specifically, they allege that on 30 April 2002, the President of the Republic issued Decrees Nos. 158 and 159, published in the Official Journal (*Diario Oficial*) No. 26.001 of 7 May 2002, which directly affect the conditions of employment of public servants, without COFE's participation in the changes.

710. Under the first of these decrees, the central administration is totally prohibited from contracting any personnel under a contract for works, contract for services, casual, seasonal, temporary or of any other kind of contract which in any way involves a service of a personal nature, whether under an individual or collective contract, with a natural person, with or through de facto or commercial companies or any private entity whether or not it has legal personality either through provision of services or budgetary allocations administered by the State or through international organizations, and instructing the

executive board or governing body of the organizations listed in article 221 of the Constitution of the Republic accordingly. The second decree suspends the payment of overtime in the central administration, and for officials in the organizations listed in article 221 of the Constitution of the Republic.

711. The complainant organizations add that article 739 of Law No. 16736 of 5 January 1996 provides for the creation of the Permanent Commission on Labour Relations in the Central Administration and Organizations listed in article 220 of the Constitution of the Republic, under the Ministry of Labour and Social Security, with the specific assignment to advise on wages, conditions of employment and other matters regulated by international labour conventions. The law further provides that the Commission shall have five members: two representatives of the executive power through the Ministry of the Economy and Finance and the Planning and Budget Office, two nominated by the most representative organizations of public servants and the Minister of Labour and Social Security, or his representative, in the chair. The Commission may be convened by any of its members.

712. The complainant organizations allege that the abovementioned Commission, which should have had a permanent organization to allow the public servants' representatives to participate in determining conditions of employment, has not been established and does not function in any organized way.

713. The complainants add that the Government's practice of not having workers' organizations participate in issues of interest to the workers was compounded by the Government's decision that there would be no collective bargaining in the state public enterprise sector, which in practice means discarding agreements reached in the collective agreements concluded in the past with the Coordinating Committee of Enterprise Trade Unions on macro issues, and specifically in each of those state enterprises individually. The complainants state that there are no forums in the public administration for collective bargaining as envisaged in ILO Convention No. 151, and any that remain in effect under article 739 of Law No. 16736 do not function for lack of stimulus and promotion by the Government which is in breach of its obligation to promote collective bargaining on wages, conditions of work and employment levels in the sector.

714. The complainants add that the practice current in state commercial and industrial enterprises, whereby collective agreements including internal dispute settlement mechanisms, provisions on determination of conditions of work and wage adjustments had been formalized, had been abandoned.

715. Lastly, the complainants indicate that as well as not encouraging collective bargaining throughout the public sector and particularly state enterprises, wage reductions are being intensified, new conditions of work are being fixed which undermine the gains of collective bargaining, everyday measures to reduce employment levels are announced, mechanisms for adjusting wages and forms of contracting are being deregulated and there is growing evidence of disregard not only for agreements reached through collective bargaining, but also the very right to engage in trade union activity.

716. In another letter dated June 2002, the Association of Livestock, Agriculture and Fisheries Officials (AFGAP) and InterUnion Workers' Assembly – National Confederation of Workers (PIT-CNT) say that the officials of the Animal Health Division of the Uruguayan Ministry of Livestock, Agriculture and Fisheries, through the local branch of AFGAP, decided in June 2001 to engage in trade union action in the context of the trade union dispute with the authorities of that Ministry, because of non-payment of overtime actually performed. In that context, it was decided: (a) that each responsible official would not send zoo sanitary information relating to the service's activity to the Ministry's central office; (b) to work to rule; and (c) to strike on 26 June 2001.

717. The complainants report that after notifying the officials in dispute, the Ministry of Labour and Social Security decided, on 5 July 2001, to declare the services and functions of various offices of the Animal Health Division in the Directorate-General of Livestock Services to be essential services, and ordered that the decision would remain in force for the duration of the trade union action described above, and for a period of 60 days.

718. The complainant organizations add that the administrative authority stated that "… the trade union actions seriously affected sanitary control throughout the Republic, compromising the proper guarantees of public health and harmed production, marketing, imports and exports, causing a serious obstacle to the normal functioning of national production". The authority further failed to send the information described as "… an attack on the fulfilment of the international obligations assumed by the country … and various bilateral treaties and agreements … which resulted in serious harm to the national economy …". The complainant organizations consider that this specific case is not one where it is possible to limit the exercise of trade union activity.

719. The complainants add that although it is true that the obligations of the Animal Health Division of the Directorate-General of Livestock Services in the Ministry are to prevent, control and eradicate serious animal diseases, and in that respect to register and monitor commercial animal producers, as well as taking health certification measures, it is also obvious that, although at the time of the dispute in question a state of health emergency for foot-and-mouth disease had been declared, the trade union actions taken did not endanger the life, health or security of any part of the population, as can be seen from the relevant technical reports. The measures adopted did not mean abandoning the tasks of prevention, control, certification and actions to eradicate the epidemic, but consisted of not submitting the information gathered to the central Ministry, and in taking strike action on 26 June 2001, in a context of planned mobilization. The attitude of the officials of the Animal Health Division involved in the dispute, far from straying outside their responsibility to combat the foot-and-mouth epidemic, let alone endanger the life and health of the population as a whole, was about defending the right to receive compensation or remuneration for overtime actually worked, before, during and after the period of health emergency.

B. The Government's reply

720. In its letter dated 7 January 2003, the Government states that with respect to the alleged non-compliance with Convention No. 151, there is total freedom to form trade unions in the public sector, and, indeed, that collective agreements have been concluded in many state enterprises on conditions of employment in general. The Government points out that both the Committee of Experts on the Application of Conventions and Recommendations and the Committee of Freedom of Association are aware that there are no legal restrictions whatsoever in Uruguay on the formation of trade unions or collective bargaining. Furthermore, both private and public sector trade unions are recognized as having de facto legal personality to engage in collective bargaining and indeed the trade union representatives of public officials have concluded many collective agreements, especially in commercial and industrial enterprises, the banking sector and departmental governments.

721. As regards the alleged failure by the Government to convene the Permanent Commission on Labour Relations for the Central Administration and other Organizations, created by article 739 of Law No. 16736, the Government indicates that the Commission was extremely active in the period following its creation, but recently no joint meetings had been convened, and highlights that the law expressly provides that any of the interested parties may convene a meeting in relation to their own interests. The fact is that none of the organizations has done so and the reason for this is quite apart from the Commission,

public sector employment relations have functioned quite normally and state officials have the highest rates of trade union membership.

722. With respect to the alleged failure to promote collective bargaining, the Government which took office on the restoration of democracy (March 1985) implemented a system whereby it was mandatory to convene employers and workers to wage bargaining every four months. That was a stage in promoting collective bargaining, necessary following a period when it had been absent and when high inflation needed to be offset by frequent wage adjustments. This stage was considered to end with the full re-establishment of individual and collective liberties and the decline in inflation rates from 130 per cent annually to less than 5 per cent in 1999.

723. Although the Government considers that mandatory convening of wage bargaining can be dispensed with, that does not mean that it is restricted in any way in any sector. On the contrary, as already stated, there are no requirements either for recognition of the capacity of the negotiating parties or the practical arrangements. It should be noted in particular that the Ministry of Labour and Social Security maintains a permanent team of experts who collaborate in any bargaining in which the parties may wish to engage. In this respect, we can say that, during the period 1995-99, there was free and open collective bargaining with state enterprises and government departments, and although it is true that there are no collective agreements in the central administration, the fact remains that various central government bodies set up bargaining forums which allowed trade unions to submit claims included by the administration in its corresponding budgetary allocations. An example of this is the Uruguayan Teachers' Federation (FUM) which undertook an energetic strategy of mobilization and participation in bodies responsible for transforming the sector. At the same time, we can mention the case of the Federation of Public Health Workers (FFSP) which during the period concerned participated in decisions on wage issues for the sector affecting the five-year budget and the law on submission of accounts. In state enterprises between 1995 and 1999, there were two areas of bargaining: a centralized one of a general character in the Planning and Budget Office and individual company-level bargaining.

724. The Government reports that there was no break in centralized bargaining, and successive agreements were concluded in the National Ports Administration (ANP), the telecommunications sector (ANTEL), state factories (UTE), the National Postal Administration and the Social Security Bank (BPS), among others. During 2000 and 2001, the same pattern was maintained in the public sector. There were no collective agreements in the central administration and there was free bargaining in state enterprises and the state bank. At this level, it is interesting to note that the agreement signed by the National Fuel, Alcohol and Cement Company (ACAP) in March 2000, which constitutes a new framework which will then be taken up in section agreements adapted to their goals and objectives. In the light of the foregoing, the Government states that there has been no failure to comply with the Labour Relations (Public Service) Convention, 1978 (No. 151).

725. As regards the allegations submitted by the Association of Livestock, Agriculture and Fisheries Officials (AFGAP) on the declaration of essential service which affected some offices of the Animal Health Division of the Directorate-General of Livestock Services, the Government states that prior to its designation as an essential service, there were several meetings between workers' representatives and various authorities of the Ministry of Livestock, Agriculture and Fisheries, as well as Ministry of Labour and Social Security officials in order to reconcile the parties to the dispute.

726. The Government points out that the declaration of essential service in Uruguayan law does not mean that strikes are prohibited, but solely that there is a need to establish emergency shifts, such that the strike will only be illegal if it causes a total breakdown of the service.

Article 4 of Law No. 13720 does not prohibit strikes in essential services, but merely lays down restrictions.

727. The Government adds that obviously the delicate situation faced by the country during the health alert caused by the appearance of foot-and-mouth disease led to a national emergency which justified the declaration of an essential service in the terms adopted, which in no way prevented the right to strike of the officials involved but merely restricted it to a requirement to provide minimum services, which does not impair enjoyment of that right. Moreover, the Government states that the possibility allowed in article 4 of Law No. 13720 is considered as an exceptional power bearing in mind that the mechanism has rarely been invoked.

728. With respect to the allegations by the Confederation of Civil Service Unions (COFE) on the non-convening of the Permanent Commission on Labour Relations in the Central Administration and Organizations listed in article 220 of the Constitution of the Republic, the Government points out that article 739 of Law No. 16736 allows any of the parties to convene it.

729. The Government indicates that the allegations against Decrees Nos. 158 and 159 of 7 May 2002 issued by the executive power on reduction in public expenditure do not deserve further comment. According to the Government, it is sufficient to read the international legislation to realize that in no case have international standards ratified by the country been infringed. The Government considers that the prohibition on the central administration of generating overtime or recruiting people under a contract for works, contract for services, casual, seasonal, temporary or of any other kind of contract is nothing more than the State controlling its own public spending and does not require prior authorization or consultation.

C. The Committee's conclusions

730. *The Committee observes that in this case: (1) the Government is alleged to have violated Conventions Nos. 151 and 154 in having issued decrees which affect conditions of employment of public officials, without consulting their representative organizations and because there are no forums in the public administration to allow collective bargaining; and (2) it is alleged that the Ministry of Labour and Social Security decided in the context of a strike to declare as essential services the services and functions of various offices of the Animal Health Division of the Directorate-General of Livestock Services in the Ministry of Livestock, Agriculture and Fisheries.*

731. *As regards the allegations of violation by the Government of Conventions Nos. 151 and 154 by virtue of: (i) the issue of Decrees Nos. 158 and 159 (whereby according to the complainants contracting any personnel under a contract for works, contract for services, casual, seasonal, temporary or of any other kind of contract which in any way involves a service of a personal nature is prohibited and suspension of payment of overtime in the central administration); (ii) the failure to convene the Permanent Commission on Employment Relations in the Central Administration and listed Organizations – consisting of members of the executive power and members of the most representative officials' organizations – whose purpose is to advise on wages issues, conditions of employment and other matters regulated by international labour conventions; and (iii) abandonment of the practice of negotiating collective agreements in state enterprises. In this respect, the Committee notes that the Government stated the following: (1) Decrees Nos. 158 and 159 of 2002 refer to reduction of public expenditure and control by the State of its public spending which does not require prior authorization or consultation; (2) the law allows any of the members to convene the Permanent Commission on Labour Relations in the central administration and listed organizations; (3) since 1995, there has been free and*

open collective bargaining with state enterprises and government departments, and although there were no collective agreements in the central administration, various central government bodies set up bargaining forums which allowed trade unions to submit claims included by the administration in its corresponding budgetary allocations.

732. *In the first place, in relation to the Decrees to which the complainants object (Nos. 158 and 159) the Committee considers that, although the measures adopted with the objective of reducing public expenditure are essentially within the purview of the executive power, to the extent that such measures may affect the conditions of employment of public sector officials or workers (as in the case of these Decrees), their organizations should be consulted prior to their adoption. The Committee requests the Government in future to consult the interested organizations prior to cases of this kind.*

733. *In addition, as to the non-existence of collective bargaining in the central administration (according to the Government, collective bargaining is free in other areas of the public sector), the Committee recalls that Article 1 of the Collective Bargaining Convention, 1981 (No. 154), ratified by Uruguay in 1989 provides that it "applies to all branches of economic activity" and that "as regards the public service, special modalities of application of this Convention may be fixed by national laws or regulations or national practice" and Article 2 provides that "the term collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more workers' organizations, on the other, for determining working conditions and terms of employment". In these circumstances, the Committee requests the Government to take the necessary measures to ensure full application of Convention No. 154 and promote collective bargaining also in the central public administration through appropriate mechanisms, in consultation with the trade union organizations concerned.*

734. *As regards the complainants' objections to the decision adopted by the Ministry of Labour and Social Security to declare as essential services the services and functions of various offices of the Animal Health Division of the Directorate-General of Livestock Services in the Ministry of Livestock, Agriculture and Fisheries in the context of a strike in June 2001, the Committee observes that the Government states that: (1) prior to the declaration as an essential service, the Ministry held several meetings between workers' representatives and authorities of the Ministry of Livestock, Agriculture and Fisheries with a view to reconciling the parties to the dispute; (2) the declaration of an essential service in Uruguayan law does not mean a prohibition of the strike but only the need to establish emergency shifts; (3) Law No. 13720 does not prohibit strikes in essential services, but merely lays down restrictions; and (4) the delicate situation faced by the country during the health alert caused by the appearance of foot-and-mouth disease led to a national emergency which justified the declaration of an essential service in the terms adopted, which in no way prevented the right to strike of the officials involved but merely restricted it to a requirement to provide minimum services. In this respect, although the complainant organization alleges that the measures adopted did not mean abandoning the tasks of prevention, control, certification and actions to eradicate the epidemic, it also recognizes that a state of health emergency was in effect in the country. In this context, the Committee considers that the decision adopted by the Government to declare the Animal Health Division an essential service, for the purpose of requiring a minimum service, in the face of an outbreak of a highly contagious disease (foot and mouth) does not violate the principles of freedom of association.*

The Committee's recommendations

735. ***In the light of the above conclusions, the Committee invites the Governing Body to approve the following recommendations:***

(a) The Committee requests the Government in the future, when it envisages adopting measures to reduce public expenditure which may affect the conditions of employment of public sector officials or employees, to consult the organizations concerned prior to their adoption.

(b) With respect to the right of collective bargaining of officials of the central administration, the Committee requests the Government to take the necessary measures to ensure the full application of Convention No. 154 and promote collective bargaining in the central public administration through appropriate mechanisms, in consultation with the trade union organizations concerned.

CASE NO. 2154

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

Complaints against the Government of Venezuela presented by — the Venezuelan Workers' Confederation (CTV) — the Road Workers' Union of the State of Trujillo and — the Construction and Timber Industry Workers' Federation of Venezuela (FEDRACONSTRUCCION)

Allegation: Unfair dismissals and denial of justice in the context of the administrative reorganization of various departments of the regional Government of the State of Trujillo.

736. The Committee last examined this case at its November 2002 meeting [see 329th Report, paras. 799-817], approved by the Governing Body at its November 2002 meeting.

737. The Government sent its partial observations in a communication dated 14 January 2003.

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

A. Previous examination of the case

739. At its meeting in November 2002, on examining the allegations of unfair dismissals and denial of justice in the context of an administrative reorganization which affected various departments of the regional government of the State of Trujillo, having issued an urgent appeal to the Government, which had not been heeded, to send its observations, the Committee formulated the following recommendations on the outstanding questions [see 329th Report, para. 817].

– The Committee urges the Government to ensure that the ruling concerning some of the persons dismissed by the regional government of the State of Trujillo is implemented and that, together with the complainant organizations, it keeps it informed of the situation of the employees in whose favour orders were issued for reinstatement in their posts and the payment of wages owed.

– The Committee reminds the Government that in a case involving a large number of dismissals, it would be particularly necessary for the Government to carry out an urgent inquiry in order to establish the true reasons for the measures taken. It also requests the Government that if this inquiry, which must be independent, reveals that the remaining dismissals, or some of them, were on anti-trade union grounds, it should ensure that these workers are reinstated and the outstanding wages paid. Finally, it requests the Government, together with the complainant organizations, to keep it informed in this respect.

B. The Government's reply

740. In its communication dated 14 January 2003, the Government confirms that in the present case the regional government of the State of Trujillo decreed an administrative reorganization of the state, based on article 160 of the Constitution of the Bolivarian Republic of Venezuela, articles 100 and 107 of the Constitution of the State of Trujillo and articles 5 and 6 of the state of Trujillo Political Regime Act, whereby the following public organizations of that State were dissolved: the Trujillo Sports Institute; the Trujillo Tourism Institute; the Centre for the Development of Crafts, Micro-enterprise and Small Industry of the State of Trujillo; the Agricultural Development Corporation; the Special Fund for Child Development; the Trujillo Institute of Culture; the Trujillo Development Corporation; the Trujillo educational improvement programme; the Social Security Office; the Advisory Commission on Modernization of the State of Trujillo; and the Regional Coordination and Execution Unit.

741. The Government also points out that under the abovementioned derogatory decree the following new departments were created: Human Resources, Planning and Budget; Finance, Policy and Civil Security; Economic Development, Education, Culture and Sports; Infrastructure and Participatory Social Development. Each of the newly appointed directors was instructed "to organize his new department and prepare a proposal to determine the economic cost of paying social security benefits, pensions and other entitlements of persons who as a result of this new organizational structure of the Public Administration of the State had become redundant …". According to the Government, in January 2001, each Department informed those affected by the decree that their entitlements would be paid as soon as the necessary financing could be found. Persons employed in public works of the State were informed that in future the new Department of Infrastructure "would directly administer the execution of a series of works, with a view to reinstating the dismissed personnel, in accordance with the needs and wishes of the parties". The Government reports that in order to respond to the situation of the dismissed workers, also in January 2001, a commission was created to carry out an investigation into the case with the aim of ensuring respect for the rights and guarantees enshrined in the Constitution of Venezuela. In addition, the Commission on Internal Policy, Justice and Human Rights requested the Office of the Attorney-General of the Republic to conduct an investigation into the case.

742. According to information furnished by the Public Prosecutor's Office of the State of Trujillo, the reorganization was driven by the need for an efficient rationalization of the State's resources, since prior to the reorganization 90 per cent of its own resources and those allocated by the central administration were for personnel costs which prevented it from undertaking the projects needed by various population groups in Trujillo who were suffering from deplorable deprivation, lacking even the most basic care and services.

743. The Government also reports that the payment of the social benefit entitlements of the persons affected by the reorganization were paid as soon as the credits requested for the purpose were approved. Up to the date of submission of the Government's observations, a

total of 1,321 payments had been processed, approved and paid to the workers, and only seven workers' cases remained to be settled.

C. The Committee's conclusions

744. *The Committee observes that the present case refers to the mass dismissal of workers (3,500 according to the complainants, 1,328 according to the Government) in the context of a reorganization of various departments of the public administration in the regional government of the State of Trujillo. With respect to the Committee's request for an explanation of the reasons for the measure, the Committee observes that, according to the Government, the administrative reorganization was driven by the need for an efficient rationalization of the state's resources, in order to improve the situation of various population groups of Trujillo who were in a profound state of crisis and was based on provisions of the Constitution of the Bolivarian Republic of Venezuela, the Constitution of the State of Trujillo and the State of Trujillo Political Regime Act. The Committee also observes that according to the Government, a total of 1,321 workers had accepted and received settlement of their entitlements and only seven cases remained to be settled.*

745. *The Committee recalls that, according to the complainants, some of the dismissals effected in the context of the reorganization were in breach of the collective agreement in force with the workers and employees of state public works, in particular, its clause 51 which extended trade union immunity (labour stability) to all workers covered by the agreement and requires the application of a special procedure in the case of dismissals regulated by articles 449 and 451 of the Organic Labour Act which was not followed by the government of the State of Trujillo. However, the complainants do not indicate the number of dismissed workers covered by this collective agreement. The Committee notes with regret that the Government did not send its observations in this regard. Nevertheless, the Committee considers that bearing in mind the time elapsed since the dismissals (January 2001) and, given that a total of 1,321 workers have accepted and received their entitlements, it would be difficult to request reinstatement of all the workers covered by the collective agreement. The Committee requests the Government to ensure that the workers who were dismissed in violation of the collective agreement be reinstated in their posts, and if that is not possible, that they receive adequate entitlements. The Committee requests the Government to keep it informed in this respect.*

746. *While noting the reasons for the reorganization, the Committee cannot fail to observe that the Government makes no reference to the holding of any consultations or negotiations whatsoever with the trade unions. In this regard, the Committee again recalls that it 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 in fine], the more so when the dismissals are allegedly in breach of clauses of a collective agreement in force applicable to some of the workers affected. The Committee expects that in future reorganizations of the public sector, due consultation will be conducted with the relevant trade unions thus avoiding unilateral decisions imposed by decree and that collective agreements will be respected until their term expires.*

747. *The Committee had requested the Government to indicate whether it had executed the six judicial rulings on labour stability mentioned in the criminal complaint submitted to the Public Prosecutor's Office on 17 July 2001 against the authorities of the Trujillo Health Foundation (FUNDASALUD) and the latter's decision in the matter and to inform it of the result of the court proceedings in respect of the order of the Inspectorate of Labour to reinstate the workers of the former Department of State Public Works (now the Department of Infrastructure). The Committee had also requested information from the complainant organizations on these reinstatements. The Committee observes with regret*

that neither the Government nor the complainant organizations have sent information and again requests them to send information in this regard.

The Committee's recommendations

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

(a) The Committee expects that in future reorganizations of the public sector, the Government will conduct due consultations with the relevant trade unions thus avoiding unilateral decisions imposed by decree and will respect the collective agreements until their term expires.

(b) With respect to the mass dismissals of workers in the state of Trujillo, the Committee requests the Government to ensure that all workers who were dismissed in violation of the collective agreement be reinstated in their posts and if that is not possible that they receive adequate entitlements. The Committee requests the Government to keep it informed in this respect.

(c) The Committee again urges the Government to indicate whether it has executed the six judicial rulings on labour stability mentioned in the criminal complaint submitted to the Public Prosecutor's Office on 17 July 2001 against the authorities of the Trujillo Health Foundation (FUNDASALUD) and the latter's decision in the matter and to inform it of the result of the court proceedings in respect of the order of the Inspectorate of Labour to reinstate the workers of the former Department of State Public Works (now the Department of Infrastructure).

Geneva, 6 June 2003. *(Signed)* Professor Paul van der Heijden, Chairperson.

Points for decision:	Paragraph 121;	Paragraph 321;	Paragraph 578;
	Paragraph 168;	Paragraph 356;	Paragraph 592;
	Paragraph 180;	Paragraph 376;	Paragraph 623;
	Paragraph 211;	Paragraph 395;	Paragraph 642;
	Paragraph 254;	Paragraph 415;	Paragraph 659;
	Paragraph 266;	Paragraph 447;	Paragraph 677;
	Paragraph 282;	Paragraph 472;	Paragraph 706;
	Paragraph 290;	Paragraph 515;	Paragraph 735;
	Paragraph 307;	Paragraph 558;	Paragraph 748.