



NINTH ITEM ON THE AGENDA

**333rd Report of the Committee
on Freedom of Association****Contents**

	<i>Paragraphs</i>
Part I	
Introduction	1-181
<i>Case No. 2153 (Algeria): Interim report</i>	
Complaint against the Government of Algeria presented by the National Autonomous Union of Public Administration Staff (SNAPAP)	182-215
The Committee's conclusions.....	203-214
The Committee's recommendations	215
<i>Case No. 2204 (Argentina): Report in which the Committee requests to be kept informed of developments</i>	
Complaints against the Government of Argentina presented by the Confederation of Argentine Workers (CTA), the World Confederation of Labour (WCL) and the Latin American Central of Workers (CLAT).....	216-230
The Committee's conclusions.....	226-229
The Committee's recommendation	230
<i>Case No. 2219 (Argentina): Definitive report</i>	
Complaint against the Government of Argentina presented by the Confederation of Argentine Workers (CTA) and the Association of State Workers (ATE)	231-239
The Committee's conclusions.....	238
The Committee's recommendation	239

Case No. 2277 (Canada/Province of Alberta): Interim report

Complaint against the Government of Canada concerning the Province of Alberta presented by the Alberta Union of Provincial Employees (AUPE).....	240-277
The Committee's conclusions	271-276
The Committee's recommendations	277

Case No. 2172 (Chile): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Chile presented by the Trade Union of Pilots and Technicians of Lan Chile (SPTLC).....	278-319
The Committee's conclusions	314-318
The Committee's recommendation	319

Case No. 2245 (Chile): Definitive report

Complaint against the Government of Chile presented by the Amalgamated Workers' Union of Chile (CUT)	320-333
The Committee's conclusions	329-332
The Committee's recommendations	333

Case No. 2186 (China/Hong Kong Special Administrative Region): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of China/Hong Kong Special Administrative Region presented by the International Federation of Air Line Pilots' Associations (IFALPA).....	334-362
The Committee's conclusions	347-361
The Committee's recommendations	362

Case No. 2189 (China): Interim report

Complaint against the Government of China presented by the International Confederation of Free Trade Unions (ICFTU) and the International Metalworkers' Federation (IMF).....	363-387
The Committee's conclusions	374-386
The Committee's recommendations	387

Case No. 1787 (Colombia): Interim report

Complaints against the Government of Colombia presented by the International Confederation of Free Trade Unions (ICFTU), the Latin-American Central of Workers (CLAT), the World Federation of Trade Unions (WFTU), the Single Confederation of Workers of Colombia (CUT), the General Confederation of Democratic Workers (CGTD), the Confederation of Workers of Colombia (CTC), the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA), the Petroleum Industry Workers' Trade Union (USO) and the World Confederation of Labour (WCL) and others	388-464
The Committee's conclusions	446-463
The Committee's recommendations	464

Case No. 2068 (Colombia): Interim report

Complaints against the Government of Colombia presented by the General Confederation of Democratic Workers (CGTD), the General Confederation of Democratic Workers (CGTD), Antioquia branch, the Single Confederation of Workers of Colombia (CUT), Antioquia executive subcommittee and 25 other Colombian trade unions.....	465-486
The Committee's conclusions.....	477-485
The Committee's recommendations	486

Case No. 2226 (Colombia): Interim report

Complaints against the Government of Colombia presented by the Union of State Workers of Columbia (UTRADEC), the Single Confederation of Workers of Colombia (CUT) and the Social Security Workers' Union (SINTRASEGURIDADSOCIAL).....	487-509
The Committee's conclusions.....	503-508
The Committee's recommendations	509

Part II*Case No. 2231 (Costa Rica): Definitive report*

Complaint against the Government of Costa Rica presented by the Latin American Workers' Confederation (CLAT), supported by the World Confederation of Labour (WCL).....	510-520
The Committee's conclusions.....	516-519
The Committee's recommendation.....	520

Case No. 2272 (Costa Rica): Report in which the Committee requests to be kept informed of developments

Complaints against the Government of Costa Rica presented by the National Association of Insurance Brokers (ANDAS) and the National Association of Public and Private Employees (ANEP)	521-542
The Committee's conclusions.....	537-541
The Committee's recommendations	542

Case No. 2299 (El Salvador): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of El Salvador presented by the National Trade Union Federation of Salvadorian Workers (FENASTRAS).....	543-564
The Committee's conclusions.....	557-563
The Committee's recommendations	564

Case No. 2301 (Malaysia): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Malaysia presented by the Malaysian Trade Union Congress (MTUC).....	565-599
The Committee's conclusions.....	586-598
The Committee's recommendations	599

Case No. 2164 (Morocco): 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)	600-612
The Committee's conclusions	607-611
The Committee's recommendations	612

Case No. 2281 (Mauritius): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Mauritius presented by the Mauritius Labour Congress	613-641
The Committee's conclusions	629-640
The Committee's recommendations	641

Case No. 2268 (Myanmar): Interim report

Complaint against the Government of Myanmar presented by the International Confederation of Free Trade Unions (ICFTU).....	642-770
The Committee's conclusions	729-769
The Committee's recommendations	770

Case No. 2264 (Nicaragua): Interim report

Complaint against the Government of Nicaragua presented by the Agricultural Workers' Association (ATC)	771-787
The Committee's conclusions	783-786
The Committee's recommendations	787

Case No. 2275 (Nicaragua): Interim report

Complaint against the Government of Nicaragua presented by the National Federation of "Heroes and Martyrs" Trade Unions of the Textile, Clothing, Leather and Footwear Industry (FNSHM)	788-804
The Committee's conclusions	799-803
The Committee's recommendations	804

Case No. 2288 (Niger): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Niger presented by the Democratic Confederation of Workers of Niger (CDTN).....	805-832
The Committee's conclusions	824-831
The Committee's recommendations	832

Paragraphs

Case No. 2096 (Pakistan): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Pakistan presented by the United Bank Employees' Federation (UBEF)	833-848
The Committee's conclusions.....	841-847
The Committee's recommendations	848

Case No. 2284 (Peru): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Peru presented by the General Confederation of Workers of Peru (CGTP), the National Federation of Water and Sewerage Workers of Peru (FENTAP) and the Single Trade Union of Water and Sewerage Control Workers (SUTOPEC).....	849-862
The Committee's conclusions.....	858-861
The Committee's recommendation	862

Case No. 2286 (Peru): Interim report

Complaint against the Government of Peru presented by the National Federation of Petroleum and Allied Workers of Peru (FENPETROL).....	863-877
The Committee's conclusions.....	872-876
The Committee's recommendations	877

Case No. 2291 (Poland): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Poland presented by NSZZ "Solidarnosc"	878-919
The Committee's conclusions.....	911-918
The Committee's recommendations	919

Case No. 2246 (Russian Federation): Definitive report

Complaint against the Government of the Russian Federation presented by the Association of Russia's Trade Unions SOTSPROF (SOTSPROF).....	920-939
The Committee's conclusions.....	933-938
The Committee's recommendations	939

Case No. 2251 (Russian Federation): 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)	940-1001
The Committee's conclusions.....	970-1000
The Committee's recommendations	1001

Case No. 2087 (Uruguay): Interim report

Complaint against the Government of Uruguay presented by the Association of Bank Employees of Uruguay (AEBU).....	1002-1012
The Committee's conclusions.....	1008-1011
The Committee's recommendations	1012

Case No. 2174 (Uruguay): Interim report

Complaint against the Government of Uruguay presented by the Staff Association of the Assistance Centre of the Medical Trade Unions of Uruguay CASMU (AFCASMU)	1013-1023
The Committee's conclusions	1020-1022
The Committee's recommendations	1023

Case No. 2088 (Venezuela): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Venezuela presented by the National Organized Single Trade Union of Court and Council of the Judicature Workers (SUONTRAJ).....	1024-1036
The Committee's conclusions	1033-1035
The Committee's recommendation	1036

Case No. 2249 (Venezuela): Interim report

Complaints against the Government of Venezuela presented by the Venezuelan Workers' Confederation (CTV), the International Confederation of Free Trade Unions (ICFTU), the National Union of Oil, Gas, Petrochemical and Refinery Workers (UNAPETROL) and the National Single Federation of Public Employees (FEDEUNEP)	1037-1140
The Committee's conclusions	1121-1139
The Committee's recommendations	1140

Part I

Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951) met at the International Labour Office, Geneva on 11, 12 and 19 March 2004, under the chairmanship of Professor Paul van der Heijden.
2. The members of Venezuelan, Pakistani and Salvadorian nationality were not present during the examination of the cases relating to Venezuela (Cases Nos. 2088 and 2249), Pakistan (Case No. 2096) and El Salvador (Case No. 2299), respectively.

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3. Currently, there are 110 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 31 cases on the merits, reaching definitive conclusions in 18 cases and interim conclusions in 13 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

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

4. The Committee considers it necessary to draw the Governing Body's special attention to Cases Nos. 1787 (Colombia), 2189 (China), 2249 (Venezuela) and 2268 (Myanmar) because of the extreme seriousness and urgency of the matters dealt with therein.

New cases

5. The Committee adjourned until its next meeting the examination of the following cases: Nos. 2305 (Canada), 2306 (Belgium), 2307 (Chile), 2308 (Mexico), 2309 (United States), 2311 (Nicaragua), 2312 (Argentina), 2314 (Canada), 2315 (Japan), 2317 (Republic of Moldova), 2318 (Cambodia), 2319 (Japan), 2320 (Chile), 2321 (Haiti), 2322 (Venezuela), 2323 (Islamic Republic of Iran), 2324 (Canada) and 2325 (Portugal) since it is awaiting information and observations from the governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Observations requested from governments

6. The Committee is still awaiting observations or information from the governments concerned in the following cases: Nos. 1865 (Republic of Korea), 2177 (Japan), 2183 (Japan), 2228 (India), 2262 (Cambodia), 2270 (Uruguay), 2273 (Pakistan), 2276 (Burundi), 2278 (Canada), 2283 (Argentina), 2285 (Peru), 2289 (Peru), 2292 (United States), 2294 (Brazil), 2302 (Argentina), 2303 (Turkey) and 2304 (Japan).

Partial information received from governments

7. In Cases Nos. 2097 (Colombia), 2138 (Ecuador), 2203 (Guatemala), 2211 (Peru), 2214 (El Salvador), 2236 (Indonesia), 2244 (Russian Federation), 2248 (Peru), 2265 (Switzerland), 2267 (Nigeria), 2274 (Nicaragua), 2287 (Sri Lanka) and 2298

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

Observations received from governments

8. As regards Cases Nos. 2046 (Colombia), 2197 (South Africa), 2200 (Turkey), 2215 (Chile), 2217 (Chile), 2222 (Cambodia), 2224 (Argentina), 2239 (Colombia), 2241 (Guatemala), 2253 (China/Hong Kong Special Administrative Region), 2254 (Venezuela), 2256 (Argentina), 2258 (Cuba), 2259 (Guatemala), 2266 (Lithuania), 2269 (Uruguay), 2271 (Uruguay), 2279 (Peru), 2280 (Uruguay), 2282 (Mexico), 2290 (Chile), 2293 (Peru), 2295 (Guatemala), 2296 (Chile), 2297 (Colombia), 2300 (Costa Rica), 2310 (Poland), 2313 (Zimbabwe) and 2316 (Fiji), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Urgent appeals

9. As regards Cases Nos. 2111 (Peru) and 2257 (Canada), the Committee observes that despite the time which has elapsed since the submission of the complaints, it has not received the observations of the governments. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases, if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit or complete their observations or information as a matter of urgency.

Transmission of cases to the Committee of Experts

10. The Committee draws the legislative aspects of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Canada (Case No. 2277), Russian Federation (Case No. 2251) and Zimbabwe (Cases Nos. 1937 and 2027).

Question of procedure

11. The Committee noted that the Credentials Committee found itself before a particularly disturbing situation: the circumstances in which governments nominated Employers' and Workers' delegates appeared to reveal serious breaches of the independence of employers' or workers' organizations.

12. The Committee equally noted that during the discussion of this question within the LILS Committee in November 2003 (see document GB.288/10/1, paragraphs 65-69), a great majority of Committee members were in favour of the Credentials Committee referring cases to the Committee on Freedom of Association subject to the following conditions:

- the case should not yet have been examined by the Committee on Freedom of Association;
- the decision by the Credentials Committee to refer a case should be unanimous;
- the referral proposal should be endorsed by the Conference.

13. Taking into account these elements, the Committee decided that it would examine on an experimental basis any objection raising questions which have not yet been examined by the Committee, relates to a violation of freedom of association principles and has been referred to it by the Conference pursuant to a unanimous proposal by the Credentials Committee. The text of the objection thus referred would be sent to the government for its observations prior to any examination.

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

Case No. 2221 (Argentina)

14. The Committee last examined this case, which concerns allegations of restrictions of the right to bargain collectively, at its November 2003 meeting when it requested the Government to undertake detailed consultations with the parties concerned with a view to remedying the imbalance in the Supervisory Commission of the National Register of Newspaper and Magazine Vendors and Distributors and to promote free and voluntary collective bargaining between newspaper and magazine vendors' unions and employers in the sector. The Committee requested the Government to keep it informed of developments in this regard [see 332nd Report, paras. 211-227].
15. In a communication of 20 January 2004, the Government states that it has communicated the Committee's recommendations to the president of the Supervisory Commission of the National Register of Newspaper and Magazine Vendors and Distributors.
16. *The Committee takes note of this information. The Committee expresses the hope that measures will continue to be taken in order to remedy the imbalance in the composition of the abovementioned tripartite Supervisory Commission. The Committee requests the Government to keep it informed of all new measures adopted in this respect.*

Case No. 1943 (Canada/Ontario)

17. The Committee last examined this case, which concerned government interference in the impartiality of the process of arbitration, at its November 2003 meeting [see 332nd Report, paras. 25-27]. On that occasion, it noted the decision of the Supreme Court of Canada in this matter which confirmed the views of the Committee, urged the Government to take measures to ensure that the neutrality and impartiality of arbitration boards be guaranteed in law and practice in order to maintain the confidence of both sides in the system, and requested to be kept informed of developments.
18. In a communication of 17 December 2003, the Government of Ontario informed the Committee that, when the Government passed in June 2003 the Back to School (Toronto Catholic Elementary) and Education and Provincial Schools and Negotiations Amendment Act, 2003, the legislation included the following wording as regards the appointment of a mediator-arbitrator, if such appointment became necessary: "The Minister shall appoint a person who, in the opinion of the Minister, has the requisite experience as a mediator-arbitrator or expertise in labour relations and education matters."
19. *Whilst noting this information with interest as regards the conclusion of the present case, the Committee observes that this legislative language was introduced on an ad hoc basis and in the context of a back-to-work legislation. It hopes that the Government, in future, will refrain from resorting to such legislation. The Committee emphasizes nevertheless that in mediation and arbitration proceedings it is essential that all the members of the bodies*

entrusted with such functions should not only be strictly impartial but, if the confidence of both sides, on which the successful outcome even of compulsory arbitration really depends, is to be gained and maintained, they should also appear to be impartial both to the employers and to the workers concerned.

Cases Nos. 1951, 1975 and 2182 (Canada/Ontario)

20. The Committee last examined these cases at its March 2003 meeting [see 330th Report, Case No. 1951, paras. 32-34; Case No. 1975, paras. 35-38; Case No. 2182, paras. 306-334] where it requested to be kept informed of developments.
21. In a communication of 17 December 2003, the Government of Ontario informed the Committee that the new Government is currently reviewing these cases to examine whether a policy change needs to be contemplated.
22. *Noting this information, the Committee recalls the conclusions and recommendations made in these cases and invites the Government to take appropriate measures in full conformity with the principles of freedom of association. It requests the Government to keep it informed of developments concerning these cases.*

Cases Nos. 2166, 2173, 2180 and 2196 (Canada/British Columbia)

23. The Committee examined these cases on the merits at its March 2003 session [see 330th Report, paras. 239-305]. These cases concerned violations of freedom of association principles on collective bargaining in respect of public employees through several pieces of legislation in the health (Bills Nos. 2, 15 and 29) and education (Bills Nos. 18, 27 and 28) sectors.
24. As regards the education sector, the Committee had recommended that the Government: repeal Bill No. 18; adopt a flexible approach, eventually amending Bill No. 27 to give the parties an opportunity to vary by agreement the working conditions unilaterally imposed by the legislation; and include in the mandate of the commission established under Bill No. 27, the issues raised in connection with Bill No. 28 [330th Report, para. 305(a)(i)-(iv)].
25. As regards the health and social services sector, the Committee had recommended that the Government: amend the legislation to ensure that workers enjoy adequate compensation measures for the limitation placed on their right to strike; adopt a flexible approach, eventually amending Bill No. 15 to give the parties an opportunity to vary by agreement the working conditions unilaterally imposed by the legislation; and hold full and detailed consultations with representative organizations, with the help of a neutral and independent facilitator, to review the collective bargaining issues raised in connection with Bill No. 29 [330th Report, para. 305(b)(i)-(iii)].
26. The Committee further requested the Government in future: to respect the autonomy of bargaining partners in reaching negotiated agreements and refrain from having recourse to legislatively imposed settlements; and to hold meaningful consultations with representative organizations when workers' right of freedom of association and collective bargaining may be affected. Finally, the Committee requested the Government to provide it with judicial decisions concerning pending court challenges in connection with the complaints, and to keep it informed of all developments [330th Report, para. 305(c)-(f)].

27. In its communication of 8 January 2004, the Government of British Columbia states that to give effect to Bill No. 27, the Minister of Labour appointed an individual to consult with interested parties and recommend terms of reference for the review commission. Based on that report, the Minister appointed, in December 2003, a commissioner who will consult with groups in the education sector and review procedures in other jurisdictions to recommend procedures for a new collective bargaining arrangement. It is anticipated that the commissioner will complete his work by the fall of 2004. Although the Committee on Freedom of Association had recommended to include the issues raised in connection with Bill No. 28 in the mandate of the commission, the individual who framed the terms of reference for the review commission deliberately omitted the scope of bargaining issues from said terms. For the Government, the commission will be in a better position to develop a new collective bargaining process if the divisive and inflammatory issues concerning the scope of bargaining are not directly addressed at this time.
28. The Government also mentions that it had reached with the association of unions in the facilities subsector of the health sector a tentative agreement that provided clear limits on the number of non-clinical health-care positions that could be contracted out under the provisions of Bill No. 29; however that tentative agreement was rejected by the members of the unions in votes held in May 2003.
29. Lastly, the Government provides a copy of a judgement of the B.C. Supreme Court upholding the constitutionality of Bill No. 29. The health sectors unions have obtained leave to appeal to the B.C. Court of Appeal but have taken no further steps in this respect.
30. *The Committee takes note of this information. It requests the Government to keep it informed of steps taken to implement the recommendations made when it examined the merits of these complaints at its March 2003 session. The Committee requests the Government to continue to keep it informed on the conclusions of the review commission established under Bill No. 27, and on the outcome of judiciary proceedings filed in connection with the complaints.*

Case No. 2141 (Chile)

31. At its November 2002 meeting, the Committee made the following recommendations on the issues still pending [see 329th Report, para. 34]:

The Committee requests the Government to keep it informed of the outcome of the judicial proceedings under way concerning the death of Luis Lagos and the serious injuries sustained by Donaldo Zamora during the strike held in the FABISA S.A. enterprise in May 2001. The Committee also requests the Government to keep it informed of the sentence handed down by the judicial authority concerning the dismissal of 18 workers following the conclusion of the said strike.
32. In its communication of 12 January 2004, the Government states that the workers who were dismissed and who petitioned the judicial authorities in this regard individually reached a financial agreement with the enterprise. There are currently no disputes at the enterprise and a new collective agreement has been signed.
33. *The Committee notes this information and once again requests the Government to keep it informed of the outcome of the legal proceedings concerning the death of Luis Lagos and the serious injuries sustained by Donaldo Zamora during the strike held at the FABISA S.A. enterprise in May 2001.*

Case No. 2150 (Chile)

34. At its November 2002 meeting, the Committee requested the Government and the authorities of the municipality of Empedrado to take measures to reinstate the trade union leader Juana Contreras Labarca, without loss of earnings, in a comparable post if the one she occupied had been eliminated, and to keep it informed of any developments [see 329th Report, para. 315].
35. In a communication dated 12 February 2003, the Government states that the trade union official has still not been reinstated owing to the lack of municipal budgetary resources.
36. *The Committee notes this information and requests the Government to continue to make every effort towards ensuring the reinstatement of Juana Contreras Labarca, without loss of pay, in a comparable post if the one she occupied had been eliminated, and to keep it informed of any developments.*

Case No. 2151 (Colombia)

37. The Committee last examined this case at its November 2003 meeting [see 332nd Report, paras. 28-38]. On that occasion, the Committee made the following recommendations:
 1. As regards the dismissal of trade union officials of various public bodies related to the Institute for Urban Development (SINDISTRITALES and SINTRASISE) and Bogotá Council (SINDICONCEJO) without the corresponding suspension of trade union immunity, the Committee requests the Government to provide it with information on the inquiries that have been initiated.
 2. As regards the allegations relating to the dismissal of SINTRABENEFICENCIAS officials for setting up trade union in the Cundinamarca district, and on which the territorial directorate of Cundinamarca was to issue the corresponding decision, the Committee requests the Government to provide it with a copy of this decision.
 3. With regard to the refusal to grant trade union leave and further dismissals of SINTRASISE officials in the Transport Department, the Committee requests the Government to send copies of the appeals for reversal and motions of appeal that were rejected.
 4. Concerning the refusal of the mayor of Bogotá to bargain collectively, and the lack of regulations governing the right to collective bargaining in the public service, despite the fact that Colombia has ratified Conventions Nos. 151 and 154, the Committee requests the Government to take measures to promote collective bargaining in the Bogotá mayor's office and to take the necessary measures to ensure that the right of public servants to collective bargaining is respected in accordance with the provisions of Convention No. 151.
 5. With regard to the alleged non-compliance with trade union agreements establishing certain advantages in respect of wages and benefits that have been recognized since 1992, the Committee requests the Government to send its observations in this respect.
38. In its communication of 24 December 2003, the Government states that, with regard to the dismissal of trade union officials of the Institute for Urban Development (SINDISTRITALES and SINTRASISE) and Bogotá Council (SINDICONCEJO) without the corresponding suspension of trade union immunity, the Ministry of Social Protection has no authority to begin an administrative labour investigation.
39. *The Committee notes this information and requests the Government to provide information on whether, prior to carrying out the dismissal of the trade union officials at the Institute for Urban Development (SINDISTRITALES and SINTRASISE) and Bogotá Council*

(SINDICONCEJO), the enterprises or institutions in question requested judicial authorization, as required in the legislation.

40. *The Committee regrets to note that the Government has not sent the information and observations requested regarding the other outstanding issues covered in the preceding recommendations (2-5), and requests it to do so without delay.*

Case No. 2237 (Colombia)

41. The Committee last examined this case at its November 2003 meeting [see 332nd Report, paras. 39-41]. On that occasion, the Committee requested the Government to take steps to see that an investigation was carried out without delay to determine whether a number of members of SINTRATEXIL at the Hilazas Vanylon Enterprise S.A. had renounced their membership as a result of the wage discrimination carried out by the enterprise because of their trade union membership.
42. In its communication of 24 December 2003, the Government states that the territorial directorate of Atlántico carried out an administrative labour investigation and issued Decision No. 000759 of 10 July 2001 (text attached), which declared that it was not competent to decide legal disputes and that competency lay, in this case, with the ordinary labour courts.
43. *The Committee notes this information and notes that the text of Decision No. 000759 implies that there is a disparity in the wages paid to the different workers working in the same departments at the Hilazas Vanylon Enterprise S.A. Although the Committee has no other facts, it requests the Government to ensure that workers at the enterprise are not discriminated against with regard to wages because of their trade union membership, and that the Government keep it informed of any steps taken in this respect.*

Case No. 2084 (Costa Rica)

44. At its November 2001 meeting, the Committee requested the Government to keep it informed of the final administrative decisions and judicial verdicts handed down in relation to the case of trade union leader Mario Alberto Zamora Cruz [see 326th Report, paras. 65-67].
45. In its communications of 17 March and 2 September 2003, the Government states that, in Decision No. 434 of 2003, the Small Claims Labour Tribunal, Second Division, rejected the complaint filed by Mario Alberto Zamora Cruz for infringement of the labour legislation (monitoring this trade union official) after having indicated that there was no evidence of personal or trade union harassment against this person, or that his trade union leave had been restricted. The Government adds that it will provide the information on the decision relating to the dismissal of this trade union official when it is handed down by the Civil Service Tribunal.
46. *The Committee requests the Government to transmit the decision handed down relating to the dismissal of trade union official Mario Alberto Zamora Cruz.*

Case No. 2104 (Costa Rica)

47. At its November 2002 meeting [see 329th Report, paras. 38-40] and its June 2003 meeting [see 331st Report, paras. 29-32], the Committee made the following recommendations on the pending questions:

- the Committee requests the Government to inform it of the decisions handed down relating to: (1) the dismissal of trade union official Luis Enrique Chacón; (2) the unfair labour practices at the University of Costa Rica verified by the administrative authorities; and (3) the violations of the Ministry of Education in the matter of trade union leave;
- the Committee notes with interest the various initiatives taken by the Ministry of Labour and other authorities (proposed constitutional and legislative amendments, etc.) with a view to guaranteeing full enjoyment of the right of collective bargaining in the public sector, including bills to ratify Conventions Nos. 151 and 154, and notes that an ILO official has provided technical assistance in one of these initiatives. The Committee requests the Government to keep it informed of developments with regard to these issues.

48. In its communications of 2 September and 17 November 2003, the Government states that the legal proceedings relating to this case are awaiting decisions. Moreover, the Government outlines the steps taken and the efforts made by the Ministry of Labour and Social Security with the Legislative Assembly for the ratification of Conventions Nos. 151 and 154, the draft acts of which are to be found under agenda items 17 and 18 of the “first discussions in the second part of the plenary session”. All of the above shows the Government’s interest and goodwill in ensuring collective bargaining in the public sector.

49. *The Committee notes this information and requests the Government to keep it informed with regard to these issues.*

Case No. 2208 (El Salvador)

50. At its November 2003 meeting, the Committee made the following recommendation on the outstanding issues [see 332nd Report, para. 54]:

The Committee is still awaiting the legal ruling on the dismissals of 11 union officers and 30 union members at Lido, S.A. The Committee also notes that the parties, with the participation of the Ministry of Labour, have held meetings and that it was anticipated that the reinstatement of trade union officials would begin in September 2003. The Committee requests the Government to keep it informed in this respect.

51. In its communication of 8 January 2004, the Government states that it will keep the Committee informed of the decisions made by the labour courts concerning the dismissals of the 11 union officers. The Government states that in keeping with the conciliatory agreement reached at the General Labour Directorate, the enterprise has paid these union officers a salary for each month. As regards the 30 dismissed union members, the Government states that they received full compensation.

52. *The Committee notes this information and requests the Government to keep it informed of the rulings handed down on the dismissals of 11 union officers at Lido, S.A.*

Case No. 2201 (Ecuador)

53. The Committee last examined this case at its November 2003 meeting. On that occasion, on examining allegations concerning violent acts perpetrated against strikers and workers, the Committee deplored the violent acts perpetrated against strikers and workers at the Los Alamos ranch in May 2002 and requested the Government to communicate the text of the ruling handed down. It also hoped that those who had suffered injury or loss of property would be properly compensated [see 332nd Report, paras. 536-550].

54. In a communication dated 15 December 2003, the Government states that as soon as the abovementioned events at the Los Alamos ranch came to light, the Prosecutor of the city of Naranjal handed down instruction No. 050-2002 against Mireses Obando, Carlos Bahamonde, Temistocles Navas, Angel Estrada, Hernán Nazareno, Roger Ducan, Marcos Galarza, Findley Gallegos, Carlos Cabindo, Mauro Sánchez, Arístides Lara, José Barroso and Víctor Argoti, for the offences of injury and illegal possession of arms. Following various formalities, the Prosecutor pressed charges and the judge issued a committal order against the abovementioned accused as being responsible for the offence defined in article 162 in agreement with article 470 of the Penal Code. The abovementioned order was challenged by the accused by way of appeal proceedings, by reason of which the Fifth Division of the Court of Justice of Guayaquil revoked it handing down a dismissal order.
55. *The Committee notes this information. The Committee deeply regrets that the serious acts of violence (12 workers wounded; two of them seriously), ill treatment and acts of aggression against trade unionists and against their property at the Los Alamos ranch dating back to May 2002, have remained unpunished following the dismissals handed down by the judicial authority. In this regard, the Committee requests the Government to continue taking measures to punish those responsible for the acts of violence in question and to ensure that the victims are properly compensated.*

Case No. 2133 (The former Yugoslav Republic of Macedonia)

56. During the previous examination of this case which concerns serious obstacles to the registration of employers' organizations, including the complainant Union of Employers of Macedonia (UEM) [see 329th Report, paras. 535-548], the Committee requested the Government to initiate discussions urgently with the UEM with a view to finalizing its registration process under a status that corresponds to its objectives as an employers' organization. It also requested the Government to bring its legislation and practice concerning registration of employers' organizations into conformity with Convention No. 87 and to take all necessary measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' and workers' organizations into conformity with Convention No. 98.
57. In a communication dated 11 November 2003, the Government states that the Labour Relations Act contains provisions recognizing freedom of association, and regulating the activities and protection of the representatives of workers' and employers' organizations. However, although on the basis of this Act the Ministry of Labour and Social Policy is running a special Register of Trade Unions, there is no corresponding Register of Employers' Associations (article 81). The creation of employers' organizations used to be governed by the Act on the Economic Chamber which has been replaced in the meantime with the new Act on the Economic Chamber. The latter has been disputed before the Constitutional Court, which has not handed down its decision yet. The Government adds that due to these reasons, certain associations have been registered on the basis of the Act on Citizens' Associations. The Government notes that the basis, conditions and way of establishing employers' associations are not regulated in the new Act on the Economic Chamber and the Act on Citizens' Associations, despite the fact that employers' associations constitute one of the participants in the tripartite social partnership framework, and emphasizes that the law needs to be complemented in order to address the need for employers' associations to be registered in a special register to be run by the Ministry of Labour and Social Policy. Moreover, criteria of representativeness should be established. The Government finally indicates that it is in the process of harmonizing the national law to EU legislation (inter alia, with regard to industrial relations), and that foreign experts have been engaged in order to propose measures regarding this issue. Taking into account

their recommendations, appropriate changes and additions will be proposed regarding the Labour Relations Act.

58. *The Committee recalls that the facts of this case date as far back as 1998 and notes with concern that the Government does not provide any information on any steps taken to initiate discussions with the Union of Employers of Macedonia (UEM) with a view to finalizing the registration of this organization under a status that corresponds to its objectives as an employers' organization. The Committee requests both the Government and the complainant to provide information on the current status of the UEM and reiterates its previous request to finalize the registration of the UEM urgently under a status that corresponds to its objectives as an employers' organization.*
59. *The Committee observes from the Government's response that although the Labour Relations Act requires employers' organizations to be registered in order to obtain legal personality and commence their activities, no such procedure exists in law or in fact. It also notes that although the Government acknowledges the need to adopt new legislation in order to afford a procedure for the registration of employers' organizations, it does not provide any indication as to the steps taken or the timetable set for the adoption of such legislation. The Committee considers that the current state of law and practice impairs the establishment of employers' organizations and amounts to a denial of freedom of association. It recalls that the right of employers and workers to establish and join organizations of their own choosing cannot be said to exist unless such freedom is fully established and respected in law and in fact. In particular, "employers' occupational associations" should not be restricted by excessively detailed provisions which discourage their establishment, contrary to Article 2 of Convention No. 87, which provides that employers, as well as workers, shall have the right to establish organizations of their own choosing without previous authorization [**Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 271 and 252]. The Committee requests the Government to take all necessary steps urgently so as to bring its law and practice into conformity with freedom of association principles, either by establishing a procedure for the registration of employers' organizations or by repealing the requirement of registration altogether, and to keep it informed in this respect. Noting that the Government has engaged foreign experts in order to propose measures regarding this issue, the Committee recalls that the technical assistance of the Office remains at the Government's disposal, and urges the Government to make use of such assistance.*
60. *The Committee finally observes that the Government provides no information on the fact that it is practically impossible for employers' organizations, including the complainant organization, to engage in collective bargaining in the absence of registration and legal personality. The Committee has pointed out the importance which it attaches to the right of representative organizations to negotiate, whether these organizations are registered or not [**Digest**, op. cit., para. 784]. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. Any such interference would appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities and to formulate their programmes [**Digest**, op. cit., para. 782]. The Committee requests the Government to take all necessary measures so as to ensure that free and voluntary negotiations between employers' and workers' organizations take place regardless of registration of such organizations, and to abstain from any interference which would have the effect of preventing employers' organizations from engaging in negotiations with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee requests to be kept informed in this respect.*

Cases Nos. 2017 and 2050 (Guatemala)

61. The Committee last examined this case at its November 2003 meeting [see 332nd Report, paras. 68-76]. On that occasion, the Committee made the following recommendations:

- With respect to the La Exacta farm, the Committee requests the Government to specify whether the friendly agreement to resolve the issue with regard to the La Exacta and/or San Juan El Horizonte farm, the relevant aspects of which refer to the need to reach an agreement on financial compensation within a period not exceeding five months and to establish other means of compensation that will benefit the families of the farm workers, includes the reinstatement of the workers who were dismissed, with regard to whom legal orders for reinstatement were issued.
- With regard to the closure of the CARDIZ S.A. company following the establishment of the trade union and the detention of the workers who remained on company premises to prevent the removal of company equipment, the Committee requests the Government to keep it informed of the outcome of the proceedings.
- With regard to the refusal of the La Aurora National Zoological Park to negotiate a new collective agreement with the trade union and the encouragement of a solidarity association, the Committee requests the Government to provide clarification on these issues.
- Furthermore, with respect to:
 - (1) the allegations relating to the kidnapping, assaults and threats against the trade unionists of the Santa Maria de Lourdes farm, Walter Oswaldo Apen Ruiz and his family, the Committee requests the Government to send its observations and to ensure that the safety of the trade union member, which had been threatened, is guaranteed;
 - (2) the allegations relating to the murder of trade union members Efraín Recinos, Basilio Guzmán, Diego Orozco and José García Gonzáles, the injuries to 11 workers and the detention of 45 workers of the La Exacta and/or San Juan El Horizonte farm, the Committee urges the Government to send information in this respect without delay;
 - (3) the murder of trade union member Baudillo Amado Cermeño Ramírez, the Committee requests the Government to send it a copy of the ruling handed down in this respect;
 - (4) the alleged threats against Miguel Angel Ochoa and Wilson Armelio Carreto López, the Committee invites the complainant organizations to send comments on the Government's observations that state that these people do not belong to a trade union and that they have not filed complaints of threats with the Office of the Attorney-General;
 - (5) the dispute involving the Banco de Crédito Hipotecario Nacional, the Committee requests the Government to keep it informed of progress in the negotiating committee on the issues;
 - (6) the allegations of dismissal of the founders of the trade union formed in 1997 in the Hidrotecnia S.A. company, the Committee requests the Government to keep it informed with regard to the investigation that is being carried out;
 - (7) the threats by the BANDEGUA company to leave the country if the workers do not agree to a reduction of their rights under the collective agreement and the dismissals threatened and carried out by that company (25 dismissals at five farms), the Committee requests the Government to keep it informed of developments in this situation;
 - (8) the Tamport S.A. company, the Committee requests the Government to inform it of the result of the legal proceedings under way to protect the money owed to UNSITRAGUA members who were dismissed because of the company's closure;

- (9) the Ace International S.A. assembly plant, the Committee requests the Government urgently to communicate the court rulings handed down on the serious allegations of discrimination and intimidation;
- (10) the Committee also requests the Government to send its observations on the new allegations, according to which the employer-controlled trade union SITRACOBSA (a fact admitted by the Government) opposed the decision of the Ministry of Labour to reactivate workers belonging to the legitimate trade union (SITECOBSA) of the Corporación Bananera S.A. company.

62. In its communication of 16 October, the Trade Union of Workers of Guatemala (UNSI TRAGUA) states that:

- (1) with regard to the La Exacta farm, the workers have still not been reinstated and the former owners have sold the facilities, making it more difficult to comply with the court orders for reinstatement;
- (2) with regard to the dispute involving the Banco de Crédito Hipotecario Nacional, following the mass dismissals and the refusal of the bank to comply with the court orders for reinstatement, the bank proceeded to employ new workers on a short-term basis, excluding them from the benefits of the collective labour agreement and from a variety of other benefits that are enjoyed by permanent workers;
- (3) with regard to the Tamport S.A. company, the legal proceedings for partial payment of the wages owed are still being processed as a result of a number of delays in the proceedings, in spite of the fact that the closure of the enterprise was considered illegal by the judicial authority;
- (4) with regard to the alleged anti-union discrimination at the Ace International S.A. company, the judicial authorities, the Appeals Court, the Supreme Court of Justice and the Constitutional Court rejected the legal actions lodged;
- (5) with regard to the Corporación Bananera S.A. company, the administrative order to reinstate the workers has still not been acted on and, in spite of the Government having recognized that the trade union SITRACOBSA tends to favour the company, no proceedings have begun to dissolve it.

63. In its communication of 9 January 2004, the Government states that:

- with regard to the La Exacta farm, the agreement for financial compensation was signed on 24 October 2003 between COPREDEH and workers' representatives, relatives of the victims for whom the civil and criminal actions are still pending. The Government adds that, in the framework of the agreement, the workers requested the intervention of the Ministry of Labour and Social Security so that, through mediation, the parties might reach an agreement that was satisfactory to all of them. In the hearing on 17 December 2003, called by the General Labour Inspectorate, the new owners of the La Exacta farm stated that they were unaware of the labour disputes at the company and that it was for the former owners to assume responsibility for these. The Government states that the next hearing has been called for 16 January 2004;
- with regard to the refusal of the La Aurora National Zoological Park to negotiate a new collective agreement with the trade union and the fact that it has encouraged a solidarity association, the parties went to the Arbitration Court, which handed down a decision in December 2003. This decision is being appealed by the enterprise;
- with regard to threats by the BANDEGUA company to leave the country if the workers do not agree to a reduction of their rights under the collective agreement, the

Government states that there are no dismissals at the company and that the workers are well paid, have no disputes with the company and are members of SITRABI.

64. In its communication of 27 October 2003, the Government states that the General Labour Inspectorate provided the information in a communication dated 25 October 2003 that the Trade Union of Workers of the Corporación Bananera S.A. company (SITRACOBSA) was legally recognized up to 19 September 2003, that this is an active organization with approved statutes wherein there is no record that its members represent employers' interests and that, in the past three years, it has complied with all the legal requirements.
65. *With regard to the La Exacta and/or San Juan El Horizonte farm, the Committee notes the information provided by the complainant organization and the observations of the Government relating to the friendly agreement signed on 24 October 2003. The Committee notes that according to the information received in the framework of this agreement, the workers requested the intervention of the Ministry of Labour in order to obtain a solution that was satisfactory for all parties and that in one of the hearings arranged by the Labour Directorate, the new owners stated that they were not aware of the existence of labour disputes in the company and emphasized that these were the responsibility of the former owners. The Committee requests the Government to specify whether the agreement mentioned includes the reinstatement of the dismissed workers with regard to whom legal orders for reinstatement were issued, and to keep it informed of the outcome of the hearing of 16 January at the Ministry of Labour with the new owners and the workers' representatives.*
66. *With regard to the dispute at the La Aurora National Zoological Park, which was lodged with the Arbitration Court, the Committee requests the Government to keep it informed of the legal ruling with regard to the arbitrator's decision issued in December 2003, which was appealed by the company.*
67. *With regard to the threats by the BANDEGUA company to leave the country if the workers do not agree to a reduction of their rights under the collective agreement, the Committee notes the Government's information with regard to there being no disputes at the company.*
68. *With regard to the allegations of the dissent from SITRACOBSA over the decision by the Ministry of Labour to cancel the suspension of the contracts of workers belonging to the legitimate trade union (SITECOBSA) of the Corporación Bananera S.A. company, the Committee notes the allegations of the complainant organization relating to the bias of SITRACOBSA in favour of the company and the lack of measures taken to dissolve this body, and the Government's reply in which it denies that SITRACOBSA represents the employers' interests. The Committee requests the Government to send its observations with regard to the alleged suspension of employment contracts for workers belonging to the other trade union (SITECOBSA) without delay.*
69. *The Committee regrets that the complainant organizations have not sent the information requested on the Government's statements that Miguel Angel Ochoa and Wilson Armelio Carreto López (who had been threatened) are not members of any trade union and that no complaints have been sent in respect of threats against these persons to the Attorney-General's Office. The Committee requests the complainant organizations to send their observations without delay.*
70. *The Committee regrets that the Government has sent no information on the other issues that remain pending since its last examination of the case and on the issues for which UNSITRAGUA has sent new information, and it urges the Government to send the information and observations requested on the following without delay:*

- *with regard to the closure of the CARDIZ S.A. company following the establishment of a trade union in the company and the unlawful detention of the workers who remained on company premises to prevent the removal of company equipment, the Committee requests the Government to send information on the outcome of the legal proceedings under way;*
- *with regard to the allegations concerning the kidnapping, assaults and threats against the trade unionists of the Santa María de Lourdes farm, Walter Oswaldo Apen Ruiz and his family, the Committee requests the Government to send its observations and to ensure that the safety of the trade union member, which has been threatened, is guaranteed;*
- *with regard to the allegations relating to the murder of trade union members Efraín Recinos, Basilio Guzmán, Diego Orozco and José García Gonzáles, the injuries to 11 workers and the detention of 45 workers of the La Exacta and/or San Juan El Horizonte farm, the Committee urges the Government to send information in this respect without delay;*
- *with regard to the murder of trade union member Baudillo Amado Cermeño Ramírez, the Committee requests the Government to send it a copy of the ruling handed down in this respect;*
- *with regard to the dispute involving the Banco de Crédito Hipotecario Nacional, the Committee requests the Government to keep it informed of progress in the negotiating committee on all the ongoing issues and on the new allegations presented by UNSITRAGUA;*
- *with regard to the allegations of dismissal of the founders of the trade union formed in 1997 in the Hidrotecnia S.A. company, the Committee requests the Government to keep it informed of the investigation being carried out;*
- *with regard to the Tampont S.A. company, the Committee requests the Government to inform it of the legal proceedings under way to protect the money owed to UNSITRAGUA members who were dismissed because of the company's closure;*
- *with regard to the Ace International S.A. assembly plant, the Committee requests the Government to send the judicial rulings handed down by the Appeals Court, the Supreme Court of Justice and the Constitutional Court rejecting the proceedings begun with regard to the serious allegations of discrimination and intimidation.*

Case No. 2230 (Guatemala)

- 71.** At its November 2003 meeting, the Committee examined this case relating to the dismissal of 42 trade union members from the municipality of Esquipulas without the judicial authorization provided for in the Labour Code [see 332nd Report, paras. 77-79], on which occasion it requested the Government to inform it of the ruling handed down for the proceedings that the Government stated it were under way.
- 72.** In its communications of 4 November 2003 and 9 January 2004, the Government states that the preliminary proceedings begun in the framework of a judicial complaint against the mayor (who refuses to comply with the order for reinstatement issued by the administrative authorities and who, as a result, has already been fined) were rejected by the competent courts and that the trade union members have still not been reinstated.

73. *The Committee notes this information and requests the Government to continue to make every effort to ensure that the dismissed workers are reinstated and to keep it informed of any judicial or other type of complaint initiated in this respect.*

Case No. 2118 (Hungary)

74. The Committee last examined this case at its November 2003 meeting [see 332nd Report, paras. 80-83]. It requested the Government to keep it informed of the outcome of the legal proceedings pending before the Constitutional Court with regard to the constitutionality of section 33 of the Labour Code, and it also requested a copy of Internal Order Gy. 7-76/2002.
75. In a communication dated 7 January 2004, the Government informs the Committee that the Constitutional Court has still not made its ruling on the constitutionality of section 33 of the Labour Code and that no ruling should be expected in the coming months. The Government states that it does not wish to amend section 33 before the ruling of the Constitutional Court is made, since it considers that the legislation has to be in line with both the rulings of the Constitutional Court and the ILO standards. The Government also provides a copy of Internal Order Gy. 7-76/2002 of the Hungarian Railway Company which repeals the instructions of the Deputy General Manager for Public and Labour Relations according to which trade union activities had to be continuously monitored, formal and informal conversations reported and any programme or events organized by the trade union brought to the employer's knowledge.
76. *The Committee takes note of the information provided by the Government. As concerns the constitutionality of section 33 of the Labour Code, the Committee recalls that the Committee of Experts, in December 2003, considered that problems may arise when the law stipulates that trade unions must attain a percentage of 65 per cent (individually) or 50 per cent (jointly) in order to be recognized as bargaining agents, since unions which fail to secure this excessively high threshold are denied the possibility of bargaining, and requested the Government to take all necessary measures to amend section 33 so as to lower the minimum threshold requirements set for recognition as a bargaining agent, and ensure that, where no trade union reaches these thresholds, collective bargaining rights are granted to all unions in the unit, at least on behalf of their own members. The Committee therefore urges the Government to take all necessary measures to amend without delay, section 33 of the Labour Code so as to bring it in line with the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and to keep it informed of the measures taken.*

Case No. 1890 (India)

77. The Committee last examined this case which concerns the dismissal of Mr. Laxman Malwankar, President of the Fort Aguada Beach Resort Employees' Union (FABREU), the suspension of 15 FABREU members following a strike, and the employer's refusal to recognize the most representative union for collective bargaining purposes, at its November 2001 session, where it requested the Government to keep it informed of developments on all pending issues [see 326th Report, paras. 96-98].
78. In a communication dated 2 January 2004, the Government states that as regards Mr. Malwankar, a hearing concerning his dismissal scheduled before the Industrial Relations Tribunal on 20 January 2003 has been adjourned (Case No. 9/95) and that an order for inquiry was passed on 28 November 2003 concerning his alleged illegal termination (Case No. 27/97). The inquiries concerning Messrs. Ambrose D'Souza and Sitaran Rathod are in progress; Mr. Ambrose submitted a statement on 19 November 2003;

the evidence given by Mr. Rathod's witnesses is being examined. The case concerning Mr. Shyam Krekar was listed for hearing on 20 November 2003. The findings of the inquiry officer in respect of Mr. Mukund Parulekar are still awaited.

79. *While noting that information, the Committee observes with deep regret once again that this complaint was filed in May 1996 and that the Committee examined it for the first time on the merits at its June 1997 session; Mr. Malwankar was dismissed in January 1995 and the other workers were suspended in April 1995. Recalling that justice delayed is justice denied, the Committee requests the Government to take rapidly all appropriate measures to ensure that these proceedings are concluded, in particular as regards Mr. Malwankar's dismissal. The Committee once again requests the Government to keep it informed of developments and expects a rapid conclusion of all these cases, in conformity with freedom of association principles.*

Case No. 2158 (India)

80. The Committee last examined this case at its November 2003 meeting where it requested the Government to provide information on: the murder of trade union leader Ashique Hossain; the actual situation of the complainant organization, Pataka Biri Karmachari Union; the investigation into allegations of serious acts of anti-union discrimination; the circumstances under which two apprentices were dismissed; the progress of proceedings before the Calcutta High Court concerning anti-union discrimination [see 332nd Report, paras. 87-89].
81. In a communication dated 15 January 2004, the Government indicates that information is being collected from the State Government of West Bengal as to the conduct of an independent judicial inquiry concerning the murder of trade union leader Ashique Hossain and the actual situation of the complainant organization. As to the progress of the investigation into allegations of serious acts of anti-union discrimination, the Government refers to previously provided information according to which 97 employees of the Pataka Biri Company called at the Suti Police Station and reported that they were not members of the Pataka Biri Karmachari Union as alleged by Ashique Hossain. The latter came to the police station, on his own and uncalled for, and gave a written declaration to those 97 employees that they were not members of his union. He then left the police station at his own accord. Thus, the allegation of 16-hours' "obstruction" at the Suti police station by those 97 persons was not found to be true. Moreover, Mr. Hossain failed to produce any proof that he had called on the Border Security Force (BSF) for his security on 24 September 2001 and also failed to name any one criminal alleged to have been engaged to suppress his trade union activities. Finally, he had no record/document to prove his claim to have informed the administration or the Chief Minister from 6 August 2001 to 20 August 2001 of his allegations.
82. The Government further indicates with regard to the dismissal of two apprentices, that the circumstances under which they were dismissed are under examination. Finally, concerning the progress of proceedings before the Calcutta High Court concerning anti-union discrimination, the Government indicates that the necessary follow-up for a quick disposal of this case is being looked into by a section officer of the Labour Directorate of the Government of West Bengal.
83. *The Committee notes with regret that information is still being collected from the State Government of West Bengal as to the conduct of an independent judicial inquiry into the murder of trade union leader Ashique Hossain which took place in June 2002. The Committee also notes from the Government's response that Mr. Hossain had made allegations in August/September 2001 that criminals had been engaged to suppress his trade union activities. The Committee notes that the rights of workers' and employers'*

*organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. The killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and, in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 47 and 51]. The Committee requests the Government to take all necessary measures so as to ensure that an independent judicial inquiry into the murder of trade union leader Ashique Hossain is concluded rapidly and to keep it informed in this respect.*

- 84.** *The Committee also takes note of the information provided by the Government with respect to acts of anti-union discrimination, the dismissal of two apprentices and the proceedings for anti-union discrimination pending before the Calcutta High Court. The Committee requests to be kept informed of the grounds on which two apprentices were dismissed and the progress of proceedings before the Calcutta High Court.*

Case No. 2048 (Morocco)

- 85.** *The Committee last examined this case at its March 2003 meeting [see 330th Report, paras. 123-125]. The Committee recalls that the case concerns a collective labour dispute at the Avitema farm in September 1999, following which two types of judicial proceedings were instituted. Firstly, 21 striking farm workers were given custodial or suspended prison sentences and were fined. Their case was brought to the Court of Appeal in Rabat. Secondly, charges of abuse of power in accordance with section 231 of the Moroccan Penal Code were brought before the Court of the First Instance in Rabat against Mr. Abderrazzak Challaoui, the farmowner, Mr. Bouazza Maâch, a representative of the *caïdat* of Menzah and Mr. Abdeslam Talha of the auxiliary forces of the Municipality of Aïn Aouda.*
- 86.** *In a communication dated 2 October 2003, the Government states that the Court of Appeal postponed the hearing regarding the case of Mr. Challaoui, Mr. Maâch and Mr. Talha to 20 November 2003.*
- 87.** *The Committee takes note of this information. In respect of Mr. Challaoui, Mr. Maâch and Mr. Talha, it observes that, according to the Government's information, the Court of the First Instance appears to have ruled already in this case. Therefore, the Committee requests the Government to provide information concerning the results of the ruling. Furthermore, the Committee expresses the firm hope that the Court of Appeal has already handed down its decision or that it will do so in the very near future, and requests the Government to send it a copy of this decision as soon as possible.*
- 88.** *Furthermore, in respect of the 21 workers at the Avitema farm, the Committee notes that the Government has not yet sent a copy of the ruling of the Court of Appeal. The Committee recalls that, in its last examination of the case, it noted that the Court of Appeal had suspended certain one-month suspended prison sentences or had confirmed the suspension of some detentions. Nevertheless, the Committee recalls that it cannot understand the precise significance of this "suspension" and that, generally, the Committee cannot reach entirely objective conclusions without the text of the judgement handed down in the appeal [see 330th Report, para. 125]. The Committee once again strongly requests that the Government provide it with a copy of the Court of Appeal ruling without delay.*

Case No. 2175 (Morocco)

89. The Committee last examined this case at its May-June 2003 meeting [see 331st Report, paras. 54-57]. The Committee recalls that this case deals with the refusal by the Professional Association of Moroccan Banks (GBPM), an organization that comprises all the commercial banks operating in Morocco, to engage into dialogue and negotiations with the Banks' National Trade Union (SNB), affiliated to the Democratic Labour Confederation of Morocco (CDT).
90. In its communication dated 12 January 2004, the Government states that, with the aim of resolving the dispute that forms the basis of the present case, the Minister of Employment, Social Affairs and Solidarity sent a letter, of which a copy is attached, to the president of GBPM, inviting him to open dialogue with the SNB/CDT and to inform the Minister of the steps taken. The Government states that it has made every effort to find a solution to the present dispute.
91. *The Committee notes this information. The Committee hopes that the GBPM will respond favourably to the Government's invitation, and requests the Government to keep it informed of developments relating to collective bargaining in the banking sector.*

Case No. 2243 (Morocco)

92. The Committee last examined this case at its May-June 2003 meeting [see 331st Report, paras. 593-623]. The Committee recalls that this case concerns, firstly, the refusal by the Central Carbonated Beverage Company (SCBG) to recognize its workers' trade union executive, which is affiliated to the Democratic Confederation of Labour (CDT), and to engage in dialogue with it, and, secondly, particular acts – including two dismissals – carried out against 20 members or leaders of the trade union executive.
93. In a communication dated 2 October 2003, the Government states that it has made numerous efforts at conciliation in an attempt to find a solution to this dispute. The management of the SCBG consistently refuses to participate in the conciliation meetings organized by the Labour Administration. The Labour Inspectorate has drawn up a violation notice against the employer and sent it to the competent court. Furthermore, the Government adds that it sent the Committee's most recent recommendations to the director of the company and to the Provincial Employment Representative, so that, on receipt of them, he could study them and give a response.
94. *The Committee is interested to note the information provided by the Government on the steps that it has taken with a view to starting a dialogue between the SCBG and the trade union executive. In respect of this, the Committee, recalling that governments are bound to ensure that the provisions of Conventions which have been freely ratified are respected in law and in practice throughout their territory, requests the Government to continue to take steps 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. It requests the Government to keep it informed in this regard.*
95. *The Committee also observes that the Government has failed to provide any response regarding the other aspects of the case. The Committee therefore has to repeat its previous recommendations. It once again requests the Government to ensure that inquiries are promptly opened to determine whether: (1) the 20 trade union members named by the complainant organization 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 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. 1996 (Uganda)

96. The Committee last examined this case at its May-June 2003 session. It requested the Government to speed up the process concerning the recognition of the Uganda Textile, Garments, Leather and Allied Workers' Union (UTGLAWU) at the Nytil Picfare company, later taken over by Southern Range Nyanza Ltd. and to keep it informed of any progress achieved. It further requested the Government to provide information on various legal proceedings filed by UTGLAWU against a number of companies to obtain recognition for collective bargaining purposes, and on the adoption of two draft bills (elaborated with ILO technical assistance) amending provisions of the Trade Unions Decree inconsistent with freedom of association principles [see 331st Report, para. 63].
97. In a communication dated 16 January 2004, the Government indicates that the negotiation between the management of Southern Range Nyanza Ltd. and the UTGLAWU has not yielded fruitful results and the matter is now being handled at a political level and in accordance with sections 17(2) and (3), respectively, of the Trade Unions Act 2000, Cap 223 (formerly section 19(2) and (3) of the Trade Unions Decree No. 20 of 1976). Section 17(2) provides that "[...] whenever an employer refuses to deal with a registered trade union as therein provided, the trade union shall report the facts to the Minister who shall call upon the employer to show cause in writing within twenty-eight days why the trade union is not being so recognized". And section 17(3) provides that "[...] where the Minister is not satisfied with the cause shown by the employer under subsection (2) or the Minister considers that the public interest so requires, the Minister may, by statutory order and after informing the parties concerned, declare that the registered trade union shall deal in respect of all matters relating to the relations of the employer with those of his or her employees who fall within the scope of membership of that trade union".
98. *The Committee takes note of the Government's reply. The Committee notes however that the Government has not provided information on certain matters previously raised. The Committee deplors that, more than four years after the first examination of the case and after repeated demands, some issues are still pending. The Committee has recalled that it has always taken the view that nothing in Article 4 of Convention No. 98 places a duty on the Government to enforce collective bargaining by compulsory means with a given organization; such an intervention would clearly alter the nature of bargaining [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 846]. On the other hand, it has also taken the view that employers should recognize, for collective bargaining purposes, the representative organizations of the workers employed by them or organizations that are representative of workers in a particular industry. If the union concerned is found to be the majority union, the authorities should take appropriate conciliatory measures to obtain the employer's recognition of that union for collective bargaining purposes [see **Digest**, op. cit., paras. 821, 823 and 824]. In the situation at hand, the Committee recalls once again that the UTGLAWU is the most representative, if not the sole, organization of workers in the textile sector in Uganda. The Committee further observes that the Government appears to have taken certain conciliatory measures to obtain the concerned employers' recognition of the UTGLAWU for collective bargaining purposes but, regrettably, to no avail. The Committee deplors that the employer in question has still not recognized the UTGLAWU for the purposes of collective bargaining, which constitutes a flagrant violation of Article 4 of Convention*

No. 98, ratified by Uganda [see 316th Report, para. 667]. It requests the Government to take the necessary measures to remedy this situation.

99. The Committee therefore takes note of the procedure provided by section 17(2) and (3) of the Trade Unions Act 2000 and requests the Government to indicate whether the employer has already presented its written statement to the Minister and to keep it informed of any development with regard to the recognition of UTGLAWU by Southern Range Nyanza Ltd.
100. The Committee recalls that the UTGLAWU had filed legal proceedings against a number of companies, namely Vitafoam Ltd., Leather Industries of Uganda, Kimkoa Industry Ltd., Tuf Foam (Uganda) Ltd. and Marine and Agro Export Processing Co. Ltd. in order to obtain recognition for collective bargaining purposes. The Committee urges the Government to provide without delay information on these legal proceedings.
101. Finally, the Committee urges the Government to provide, without delay, information on the adoption of the two draft bills amending provisions of the Trade Unions Decree.

Case No. 2229 (Pakistan)

102. The Committee examined this case at its March 2003 session [see 330th Report, paras. 918-958]. On that occasion, it requested the Government to amend the Industrial Relations Ordinance of Pakistan (IRO) of 2002 so as:

- to ensure that workers of Bata Shoes company; Pakistan Security Printing Corporation; Pakistan Security Papers Ltd.; Pakistan Mint; establishments or institutions maintained for the treatment and care of sick, infirm, destitute and mentally unfit persons; institutions established for payment of employees' old-age pensions or workers' welfare; members of Watch and Ward; security and fire services staff of an oil refinery; or establishments engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas or petroleum products, or of a seaport and airport; railways; and administration of the State, enjoy the right to establish and join organizations of their own choosing;
- to ensure that workers' organizations are allowed to determine themselves whether they wish to join a federation and if that is the case to enjoy the right to establish and join the federation of their own choosing;
- to repeal section 19(1) of the IRO which imposes measures of administrative control over trade union assets;
- to lower the minimum requirement of ten trade unions, with at least one from each province, for establishment of a national federation;
- to repeal section 65(5) of the IRO which stipulates the disqualification of a trade union officer from holding any trade union office for the following term for committing an unfair labour practice and covers a wide range of conduct not necessarily making it inappropriate for persons found guilty to hold a position of trust;
- to enable the review of the factual bases on which that power was granted to unions if there is a change in the relative strength of unions competing for the power to represent workers exclusively for collective bargaining purposes;
- to allow workers to seek legal remedies against the acts of anti-union discrimination at any time and not only during an industrial dispute.

In addition, the Committee requested the Government to provide information on whether there is an additional waiting period relative to strike notice before initiating a strike action and, if so, to indicate the duration, and to engage in full consultations with the social partners on the possible amendment of the IRO in order to resolve the issue concerning the labour judiciary system to the satisfaction of all the parties concerned.

103. In a communication dated 29 April 2003, the Public Services International associated itself with the complainant organizations.
104. In a communication dated 11 August 2003, the Employees' Federation of Pakistan alleges that the management of the Employees' Old-Age Benefits Institution (EOBI) is threatening office bearers of the EOBI Employees' Federation of Pakistan by transferring them to far-flung places and creating hurdles to stop them pursuing a constitutional petition filed in the Sindh High Court. It indicates that the management has issued charge sheet letters to the members of the federation who are struggling for their constitutional and fundamental rights. The complainant organization further states that they have provided very convincing evidence of corruption, mismanagement and irregularities to the Ministry of Labour, as well as to other concerned authorities according to laid down procedure, but all in vain as no action was taken against the wrongdoers.
105. In a communication dated 6 October 2003, replying to allegations raised by the Employees' Federation of Pakistan, the Government indicates that EOBI has been excluded from the scope of IRO 2002 because it is an institution established for the welfare of workers and the experience proved that union activities were adversely affecting the working of EOBI, thereby increasing the administrative expenses of EOBI. The Government states that it considers it appropriate, in the interest of insured persons (workers) to exclude EOBI from the scope of IRO 2002 but assures that the legitimate rights and privileges of the workers of this institution will be given high priority by both the institution itself as well as the Ministry.
106. With regard to the allegation that the management of EOBI is threatening office bearers of EOBI Employees' Federation of Pakistan and creating hurdles to stop them from pursuing a constitutional petition filed in the Sindh High Court, the Government states that no office bearer of EOBI federation has been transferred from Karachi to another station in Pakistan. It further indicates that the EOBI Employees' Federation of Pakistan is not being deprived of the right to pursue its case filed in the Sindh High Court, Karachi.
107. With regard to the Committee's recommendations, the Government reiterates that the draft of IRO 2002 was prepared in consultation with all stakeholders, i.e. employers federation of Pakistan, leading labour federations, workers/employers bilateral council, provincial governments and ministries concerned of the federal government.
108. *The Committee takes note of the information provided by the Government. The Committee recalls that the guarantee of the right of association should apply to all workers, with the only exception of police and armed forces [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 206]. Workers of EOBI, an institution established for payment of old-age pensions or workers' welfare, should enjoy the right to establish and join organizations of their own choosing. The Committee once again requests the Government to amend its legislation in that respect. With regard to the alleged acts of anti-union discrimination against trade union officers in the EOBI Employees' Federation of Pakistan, the Committee notes the contradictory information submitted by the Government and the federation. Recalling that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures and that this protection is*

*particularly desirable for trade union officials [see **Digest**, op. cit., para. 696], the Committee asks the Government to conduct an independent investigation on the alleged situation in EOBI Employees' Federation of Pakistan.*

- 109.** *The Committee regrets that no information was provided by the Government as concerns the Committee's previous recommendations. It regrets that the Government has not been able to amend the IRO and refers to its earlier recommendations in this case and to the comments of the Committee of Experts in this regard. The Committee therefore requests the Government to engage in full consultations with the social partners in order to amend the IRO so as to bring it in to conformity with Conventions Nos. 87 and 98. It further requests the Government to keep it informed in this respect.*

Case No. 1965 (Panama)

- 110.** At its March 2003 meeting, the Committee requested the Government to communicate the final judicial ruling on the dismissals of Darío Ulate, Porfirio Beitia and Julio Trejos [see 330th Report, para. 137]. (According to the allegations, the Aribesa company, where these workers worked, went into liquidation and the dismissals took place in violation of the collective agreement.)
- 111.** In its communication of 30 October 2003, the Government states that Porfirio Beitia did not appeal against the judicial ruling that declared the proceedings a nonsuit and ordered the file to be archived as the proceedings had come to an end. With regard to Darío Ulate and Julio Trejos, the domicile of the defendant that was indicated in their judicial complaints has not been found and neither have they requested that the defendant be summoned. The legal authorities have set a date for a hearing for both cases.
- 112.** *The Committee notes this information and requests the Government to send it a copy of the decisions handed down on the dismissal of Darío Ulate and Julio Trejos.*

Case No. 2134 (Panama)

- 113.** The issues pending in the present case refer mainly to the allegations of dismissal of trade union officials in the context of mass dismissals of public servants for partisan political reasons, which affected thousands of public servants since the new Government took over (September 1999) [see 330th Report, para. 974]. The Committee made the following recommendations at its March 2003 meeting [see 330th Report, para. 977]:
- the Committee requests the Government to examine the possibility of offering new posts to the union officers dismissed, on the understanding that it is for the complainant to demonstrate the status of the 60 persons concerned as union officers. The Committee requests the Government to keep it informed in this respect;
 - the Committee requests the Government to send it a copy of the ruling given in the criminal trial of the union officer Alberto Ibarra for offences against honour.
- 114.** In its communication of 30 October 2003, the Government states, with regard to the 60 persons mentioned by the complainant organization as being trade union officials, that in the documents submitted it has not noted that any of these are accredited as trade union officials. The complainant organization has also not provided proof to uphold this allegation, as requested by the Committee. With regard to the information requested on the ruling given in the criminal trial of Alberto Ibarra, the Government states that the hearing set for April 2003 was held but that the decision relating to this is pending.

115. *The Committee notes this information. The Committee requests the Government to send it a copy of the ruling in the criminal trial of the union officer Alberto Ibarra for offences against honour, when this is handed down.*

Case No. 1785 (Poland)

116. The Committee last examined this case at its November 2003 session, where it requested the Government to continue to keep it informed in respect of remaining claims pending before the Social Revindication Commission (the "Commission"), and of any further developments in respect of the Employees' Recreation Fund [see 332nd Report, para. 145].
117. In a communication of 8 January 2004, the Government indicates that there are no cases currently pending before the Commission. The Supreme Administrative Court (the "Court") is currently examining: complaints against three decisions of the Commission concerning the restitution of assets of NSZZ Solidarnosc, forfeited under martial law; and a complaint against a decision concerning restitution of assets of the Miners' Federation of Trade Unions, also forfeited under martial law. The judgements of the Court will determine whether these cases may be returned before the Commission (if the Court reverses or invalidates a given decision). As regards the case mentioned in the Government's previous communication, the Court has dismissed the extraordinary appeal filed by the Public Prosecutor General; the decision of the Commission thus came into force.
118. *The Committee takes note of this information and requests the Government to continue to keep it informed in respect of the remaining claims pending before the Social Revindication Commission and the Supreme Administrative Court. It also requests the Government to keep it informed of any further developments in respect of the Employees' Recreation Fund.*

Case No. 2146 (Serbia and Montenegro)

119. The Committee last examined this case at its meeting in November 2002, when it expressed the firm hope that the Government would take the necessary steps to repeal the provisions of the law on the Yugoslav Chamber of Commerce and Industry, which give rise to compulsory membership or financing, and to ensure that employers may freely choose the organization they wish to represent their interests in the collective bargaining process without any interference by the legislatively constituted Chamber of Commerce [see 329th Report, paras. 152-155]. The Government provided the following information in a communication dated 4 August 2003 and two communications dated 8 October 2003.
120. In its communication of 4 August 2003, the Government indicates that the Constitutional Charter and the law on the implementation of the Constitutional Charter of the state union of Serbia and Montenegro have vested in the member States the responsibility relating to the organization and association of employers. Accordingly, the National Assembly of the Republic of Serbia passed, on 27 May 2003, a law which repeals the law on the Yugoslav Chamber of Commerce and Industry. The law (published in the *Official Journal of the Republic of Serbia No. 55* of 27 May 2003) came into force on 4 June 2003. The Government underlines that, since both member States have their own laws on economic chambers, the conclusions and recommendation of the Committee on the case under examination have been transmitted to the competent authorities so that they can be taken into account in the enactment of a new legislation or the amendment of the existing one.
121. Through its communications of 8 October 2003, the Government transmits observations made by the Minister of Labour and Employment of the Republic of Serbia and a copy of

the law abrogating the law on the Yugoslav Chamber of Commerce and Industry. The Minister of Labour and Employment of the Republic of Serbia refers specifically to several provisions of the labour law adopted by the Parliament of Serbia and which became effective on 21 December 2001. Under section 5, membership of an association of employers is taken on a voluntary basis. In light of section 136, paragraph 1, collective agreements are concluded between an employer or the representative association of employers and the representative trade union. In accordance with section 139, an association of employers is considered to be representative when it is composed of at least 10 per cent of the employers of the branch or the activity to be covered by the collective agreement or 10 per cent of the total number of the employers in a territorial unit. The Minister of Labour and Employment underlines therefore that the Chamber of Commerce and Industry does not participate in collective bargaining as this matter pertains to voluntary associations of employers. The Minister of Labour and Employment adds that the Socio-Economic Council was established under an agreement concluded between three trade unions and the Union of Employers of Serbia. The latter is a voluntary representative association of employers; it therefore participates in collective bargaining. The Chamber of Commerce and Industry of Serbia is not a member of the Social-Economic Council. It attends its sessions “as a visiting party”.

- 122.** Regarding the law abrogating the law on the Yugoslav Chamber of Commerce and Industry, paragraph 1 of section 2 in the translated version provided by the Government reads as follows: “the Chamber of Commerce and Industry of Serbia and the Chamber of Commerce and Industry of Montenegro shall overtake rights and obligations, financial resources and other property, as well as documentation and activities of the Yugoslav Chamber of Commerce and Industry”. Section 4 specifies that the law will enter into force eight days as of its publication in the *Official Gazette of the Republic of Serbia*.
- 123.** *The Committee has duly taken note that, under the Constitutional Charter and the law on the implementation of the Constitutional Charter of the state union of Serbia and Montenegro, the exercise of the employers’ right to organize is a matter falling within the competence of each member state of the union. The Committee notes also that its recommendations have been communicated to both the authorities of the Republic of Montenegro and the Republic of Serbia so that they can take them into account when they legislate on the matter. In this regard, the Committee notes that information on the legislation of the Republic of Montenegro has not been provided. It trusts therefore that the Government will soon supply all the necessary information in this respect, in particular on the Chamber of Commerce and Industry of Montenegro.*
- 124.** *The Committee notes that, according to the Minister of Labour and Employment of the Republic of Serbia, in light of the provisions of the labour law, the Chamber of Commerce and Industry of Serbia does not participate in collective bargaining, as voluntary associations, such as the Union of Employers of Serbia, can conclude collective agreements. On the other hand, the Committee observes that paragraph 1, section 2, of the law abrogating the law on the Yugoslav Chamber of Commerce and Industry provides that the rights, obligations and activities of the dissolved Yugoslav Chamber of Commerce and Industry shall be taken over by the Chamber of Commerce and Industry of Serbia and the Chamber of Commerce and Industry of Montenegro. The Committee recalls, in particular that, under section 6 of the law on the Yugoslav Chamber of Commerce and Industry, one of the activities of the Chamber was the participation in the conclusion and the implementation of collective agreements and that membership of the Chamber was compulsory.*
- 125.** *To the extent that the provisions of the law abrogating the law on the Yugoslav Chamber of Commerce and Industry enable the Chamber of Commerce and Industry of Serbia to continue to have compulsory membership and to exercise powers which pertain to*

employers' organizations, the new law does not depart from the previous legislation but simply reproduces its provisions at the level of the Republic of Serbia. It thus appears to conflict with the provisions of the labour law referred to by the Minister of Labour and Employment. The Committee therefore requests the Government to take the necessary measures so that the law of the Republic of Serbia abrogating the law on the Yugoslav Chamber of Commerce and Industry be amended in order to ensure that employers may freely choose the organization they wish to represent their interests in the collective bargaining process without any interference by the legislatively constituted Chamber of Commerce. The Committee underlines that this request applies also to any similar legislative provisions of the Republic of Montenegro. Finally, the Committee requests the Government to indicate over the last two years how many collective agreements have been concluded and signed only by employers' organizations both in the Republic of Serbia and in the Republic of Montenegro.

Case No. 2255 (Sri Lanka)

126. During the previous examination of this case, which concerned certain provisions of the Guidelines for the Formation and Operation of Employees' Councils issued by the Board of Investment (BOI) which is the overseeing public authority in free trade zones (FTZs) [see 332nd Report paras. 915-956], the Committee formulated the following recommendations:

- (a) Considering that certain provisions of the BOI Guidelines for the Formation and Operation of Employees' Councils issued by the Board of Investment, which is the overseeing public authority in free trade zones (FTZs), are contrary to Conventions Nos. 87, 98 and 135, ratified by Sri Lanka, and the principles of free and voluntary collective bargaining, the Committee requests the Government to take all necessary measures to:
 - (i) amend section 5(ii), (iii) and (v) of the BOI Guidelines so as to ensure that elections to employees' councils are carried out in the presence of independent persons and only where requested by both parties, and that the first elections are organized in close consultation with all parties concerned;
 - (ii) amend section 12 of the BOI Guidelines so as to ensure that the procedure for the conduct of meetings between the employer and elected representatives is determined by common agreement between the parties;
 - (iii) amend section 13 of the BOI Guidelines so as to ensure that the right of employees' councils to engage in collective bargaining is not subject to a prohibition of any action that might affect productivity;
 - (iv) amend section 8(v) of the BOI Guidelines so as to ensure that representative trade unions enjoy the same facilities in the undertaking as employees' councils without discrimination.
- (b) The Committee requests the Government to keep it informed of the steps taken with regard to the amendments indicated above.
- (c) Taking into account that only two collective agreements have been concluded in FTZs, the Committee requests the Government to take measures with a view to promoting collective bargaining in FTZ enterprises in conformity with Convention No. 98 and, considering that the 40 per cent rule is too restrictive, to amend this requirement taking into account the views of the parties. The Committee requests to be kept informed in this respect.

127. In its communication dated 12 January 2004, the Government indicates with regard to points (a) and (b) above, that the BOI has already prepared the necessary changes in line with the Committee's recommendations and steps will be taken to amend the Guidelines after having received feedback from the ILO. The Government attaches a copy of the

proposed amendments. Thus, the draft amendment to section 5 provides that the first election for the creation of an employees' council shall be organized by the representatives of the BOI Industrial Relations Department, in close consultation with all parties concerned and carried out by a three-member electoral board constituted by the eligible employees of the enterprise. Subsequent elections to the councils shall be carried out by a three-member electoral board which shall be constituted by the council. A representative of the Commissioner General of Labour may be present at the election as an observer where both parties request him to be present. Where the electoral board of a council fails to carry out the election within one month of the date of expiry of the term of office of the council, the Industrial Relations Department of the BOI may, in close consultation with the council, facilitate the carrying out of the election by the electoral board of the council.

- 128.** The Government also indicates that, according to the draft amendment to section 12.3, the procedure for the conduct of meetings between the employees' council and the employer shall be determined by mutual agreement between the parties. The draft amendment to section 13(ii) provides that the employer and the council shall work together to improve the efficiency and productivity of the enterprise and the well-being of the employees. The draft amendment to section 8(v) stipulates that the facilities provided to employees' councils under the BOI Guidelines cannot be extended to trade unions, as the Guidelines are applicable to employees' councils only; parallel to this, certain draft amendments to the Labour Standards and Employment Relations Manual envisage facilities for trade union representatives:

Section 9A: Facilities to trade union representatives

- (i) Union committee meetings

The employer shall allow up to two (02) hours duty leave for a meeting of the executive committee of a representative enterprise-union and the branch union committee of a representative union operating from outside the enterprise/export processing zone, and provide the necessary premises and facilities for the conduct of the affairs of the union/branch union.

- (ii) Right of access of trade union representatives to BOI enterprises/EPZs

A duly nominated representative of a trade union who is not employed in a BOI enterprise but whose trade union has members employed therein, whether within or outside the export processing zone, shall be granted access to the enterprise/export processing zone, provided the union –

- (a) is a representative union,
- (b) seeks access to the enterprise for purposes of representation functions,
- (c) has obtained the consent of the employer for such access, and
- (d) having satisfied the above requirements, obtained an entry permit from BOI authorities for the entry sought, in the case of an enterprise located within an export-processing zone.

- (iii) "Representative union" for the purposes of this section means a union which represents not less than forty (40) per centum of the employees in the enterprise on whose behalf it seeks to represent.

- 129.** Regarding point (c) of the Committee's recommendations, the Government notes that the Department of Labour is taking measures to promote collective bargaining in the FTZ enterprises with ILO assistance. With regard to the 40 per cent rule, the Government states that action is being taken to take up the matter at the National Labour Advisory Council (NLAC). Finally, the Government states that action is being taken to effect the necessary amendments to legislation. All the legislative aspects would be taken up for discussion at the NLAC scheduled to meet in January 2004.

- 130.** *The Committee notes with interest the swift steps taken by the Government pursuant to its recommendations, so as to modify the provisions of the BOI Guidelines concerning the organization of elections to employees' councils, the procedure for the conduct of meetings between the employer and elected representatives, and the conduct of negotiations between the employees' council and the employer. The Committee notes that these draft amendments will be taken up for discussion at the National Labour Advisory Council in January 2004, along with the issue of the 40 per cent threshold for the recognition of trade union representativeness, which had been considered as too restrictive by the Committee. The Committee expresses the hope that the above draft amendments will be approved and adopted as soon as possible and that appropriate steps will be taken to amend the 40 per cent rule, taking into account the views of the parties. The Committee requests to be kept informed of progress made in this respect.*
- 131.** *The Committee recalls that during the previous examination of this case, it had requested the Government to ensure that representative trade unions enjoy the same facilities in the undertaking as employees' councils without discrimination. It notes from the Government's response that a draft amendment to the Labour Standards and Employment Relations Manual grants facilities to trade union representatives including the right of access to EPZ/FTZ enterprises. Thus, the proposed section 9A of the Manual provides that access to EPZ/FTZ enterprises shall be granted to a union which represents at least 40 per cent of the employees in the enterprise; seeks access to the enterprise for purposes of exercising representation functions; has obtained the consent of the employer; and, having satisfied the above requirements, has obtained an entry permit from the BOI. The Committee considers that these requirements do not allow access to an EPZ/FTZ enterprise of trade unions which do not have representative status in the particular enterprise, in order to inform the workers of the advantages of trade unionism. The Committee recalls that governments should guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers, in order to apprise them of the potential advantages of unionization. In a case concerning the right of trade union leaders to enter an industrial free trade zone, the Committee drew the Government's attention to the principle that workers' representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including access to workplaces [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 954 and 957]. The Committee therefore requests the Government to ensure that trade union representatives are granted access to the workplace even when their organization does not have representative status in a particular EPZ/FTZ enterprise, and that permission for such access may not be unreasonably withheld, with due respect to the need to maintain the smooth functioning of the enterprise concerned. The Committee requests to be kept informed in this respect.*

Case No. 2129 (Chad)

- 132.** The Committee examined the substance of this case at its May-June 2002 meeting [see 328th Report, paras. 596-605]. The Committee recalls that the case concerns the arrest, detention and interrogation, without warrant, on 30 May 2001, of the chairperson and the secretary-general of the Union of Trade Unions of Chad (UST), Mr. Boukinebe Garka and Mr. Djibrine Assali Hamdallah, on the grounds that the UST had been involved with the opposition political parties to try to arrange an information meeting following the contested elections of 20 May 2001.
- 133.** In a communication dated 8 January 2004, the Government states that the secretary-general of the UST was questioned by police concerning a document signed jointly with six political parties inciting the population to civil disobedience. It claims that it considered it reasonable, in the interests of keeping the peace, to arrest the abovementioned union

members in order to avoid any unfortunate developments in the situation. The Government stresses that, in accordance with legal and statutory provisions, trade unions in Chad are entitled to express their positions on economic and social policy in the country, but not to promote interests which are essentially political to the detriment of their trade union activities.

- 134.** *The Committee takes note of this information. However, the Committee also notes that its recommendation, whereby it requested the Government to give appropriate instructions to the competent authorities so that no further arrests of this type take place in the future, has not been implemented by the Government. Recalling again that the detention of trade union leaders or members for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular, the Committee requests the Government to keep it informed of the specific measures taken to implement its recommendations.*

Case No. 1581 (Thailand)

- 135.** The Committee last examined this case at its May-June 2003 session [see 331st Report, paras. 67-69]. This case relates to the conformity of the State Enterprise Labour Relations Act (SELRA) with the principles of freedom of association. The examination of the Committee relates also to the amendment of the Labour Relations Act (LRA) which applies to the private sector. During its last examination, the Committee recalled that, in relation to the SELRA, it had expressed concern over the maintenance by the Act of a situation of trade union monopoly in state enterprises, broad powers granted to the Registrar to oversee certain internal affairs of the trade union, a general prohibition of strike and severe penalties for strike action, even when peaceful. The Committee thus requested the Government to keep it informed of the measures taken to give effect to its recommendations. Finally, the Committee requested the Government to send a copy of the latest version of the amendment to the LRA so that it may assess its contents in the light of the principles of freedom of association.
- 136.** In a communication of 11 November 2003, the Government provides the following information. Regarding the inconsistencies between the SELRA and the principles of freedom of association, the Ministry of Labour, through the intermediary of its Department of Labour Protection and Welfare (DLPW), is reviewing the matter. Resources have been allocated to conduct a research and a study on 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). This work will focus on the appropriate way to enhance the right to organize workers in all sectors. It is scheduled for one year as of August 2003. At the same time, the Government underlines that the Parliament adopted the SELRA by consensus and that the contents of the Act were approved by the National Advisory Council for Labour and Development which includes representatives from the Government, employers and workers. With respect to the LRA, the text is still under consideration by the Council of State. The Committee will be kept informed of any progress made in this respect as soon as possible.
- 137.** *The Committee takes note of the information submitted by the Government. It recalls that, since November 1991 [see Report 279th, paras. 441-482], it has been examining at length the conformity of the SELRA with the principles of freedom of association. As a result, an earlier version of the Act (the State Enterprise Labour Relations Act, B.E. 2535) had been repealed and a new version adopted on 23 March 2000 (the State Enterprise Labour Relations Act, B.E. 2543). Under the current SELRA, employees of state enterprises have the right to form and join trade unions and federations, and bargain collectively. Nonetheless, as the Committee recalled it during its last examination, a number of inconsistencies with the principles of freedom of association still need to be resolved.*

These inconsistencies raise fundamental issues in terms of freedom of association. The Committee takes note of the study launched by the Government on Convention Nos. 87 and 98 with a view to enhance the right to organize workers of all sectors. While it welcomes the principle of this initiative, the Committee is concerned about the time it will take and the additional time that will be required to amend the SELRA on the points highlighted by the Committee in 2002 [see 327th Report, paras. 107-112]. The Committee trusts that the Government will take concrete steps to accelerate the study so that amendments to the SELRA will be adopted in the shortest possible time. The Committee expresses the firm hope that all the issues it has raised will be resolved in a satisfactory manner, including the issue concerning the impact of the conversion from state to private enterprise on the existence of a state enterprise union examined in case No. 2181. The Committee requests the Government to keep it informed of the progress made in this respect and to provide it, without delay, with the text of the amendment to the LRA.

Case No. 2125 (Thailand)

- 138.** The Committee last examined this case at its June 2003 meeting [see 331st Report, paras. 70-72]. This case relates to the dismissals of 21 employees of the ITV-Shin Corporation, which the Committee concluded occurred on account of their membership of the ITV labour union [see 327th Report, para. 778]. During its last examination, the Committee noted that the Central Labour Court confirmed the unanimous decision of the tripartite Labour Relations Committee that the dismissal of the 21 employees, members and officials of the ITV labour union, was illegal and that they should all be reinstated. An appeal was lodged before the Supreme Court of Thailand by the ITV-Shin Corporation. In its conclusions, the Committee underlined that it had requested the Government not only to keep it informed of the outcome of the national judicial procedure, but also to take active steps to ensure the 21 employees' reinstatement, in particular to avoid that recourse to national jurisdictions by the ITV prolongs unduly the effects of the anti-union discrimination it exerted on these employees.
- 139.** In a communication 18 August 2003, the complainant submitted additional information in the form of a letter from the president of the International Federation of Journalists (IFJ). The IFJ voices its deep concern over the case and in particular over the Government's inaction despite the rulings of the Central Labour Court and the tripartite Labour Relations Committee, and the conclusions of the Committee. In a communication of 11 November 2003, the Government indicates that the case is still pending before the Supreme Court and that it will inform the Committee of the outcome of the national judicial procedure as soon as possible. Regarding the steps to be taken to ensure the reinstatement of the 21 employees, the Government adds that, if the Supreme Court confirms the judgement of the Central Labour Court, the ITV-Shin Corporation must comply with the order of the tripartite Labour Relations Committee to reinstate the 21 ITV labour union members and to pay them compensation, equivalent to the amount of the wages they would have received between the date of their dismissals and the date of their reinstatement. In case of failure on the part of the ITV to execute the order, the company will be charged with violation of sections 121-123 of the Labour Relations Act and a penalty will be decided.
- 140.** *The Committee regrets that for the second time it is obliged to note that the Government has not taken any steps at all to ensure that the 21 employees are reinstated, considering that this is a matter to be dealt with by the national courts. The Committee must recall that the 21 employees were dismissed more than three years ago and that it has been established since then that these dismissals were acts of anti-union discrimination on the part of the employer, the ITV-Shin Corporation. One year ago, the Committee specifically requested the Government to take steps to ensure the reinstatement of the 21 dismissed members and officials of the ITV labour union in their jobs, with the payment of back*

wages. This request was made in light of the fact that the Government is responsible for preventing all acts of anti-union discrimination.

- 141.** *By not taking any steps to ensure the reinstatement of the 21 employees, the Government allows acts of anti-union discrimination to have prolonged, if not irreversible, effects on the workers concerned. This inaction is thus in clear infringement of the principles of freedom of association and renders the prohibition of any act of anti-union discrimination, set out in section 121 of the Labour Relations Act, 1975, ineffective. The Committee must therefore firmly requests the Government to put an end to such a situation and to take, without delay, active steps to ensure the reinstatement of the 21 employees dismissed on account of their trade union activities. The Committee requests the Government to keep it informed of developments in this respect.*

Case No. 2181 (Thailand)

- 142.** The Committee last examined this case at its May-June 2003 meeting [see 331st Report, paras. 73-77]. The case relates to the automatic dissolution of the Bangchak Petroleum Public Co. Ltd. Employees' Union (BCPEU) as a result of a purported change of status of a state-owned oil company, the Bangchak Petroleum Public Co. Ltd. In the course of its first examination of the case [see 329th Report, paras. 740-764], the Committee found that the administrative dissolution of the BCPEU and the automatic revocation of its registration and legal personality infringed a number of principles of freedom of association, and the Committee requested the restoration of the union's legal personality and registration. Noting the registration of a new union led by another president, the Committee also requested from both the Government and the complainant information on the situation of trade union and collective bargaining rights in the company. Finally, in view of the serious consequences that the existing legislation might bring about for the existence of workers' organizations in such cases of conversion from state to private enterprise, the Committee requested the Government to take appropriate measures so that the situation would not arise again in the future and trade union successors' rights would be safeguarded. When it last examined the case, the Committee reiterated its requests.
- 143.** In a communication dated 15 July 2003, the complainant organization submitted further information in the form of a letter from Public Service International (PSI). PSI voiced its concern over the Government's apparent choice to disregard the recommendations of the Committee. Thus, PSI has been informed by its affiliates in Thailand that there has been no progress towards the reversal of the revocation of BCPEU's legal personality and registration. The State Enterprise Workers Relations Confederation (SERC) made a number of representations to the Government. The latter maintained its position which rests on the distinction between the State Enterprise Labour Relations Act of 2000 (SELRA), governing state-enterprise workers, and the Labour Relations Act of 1975 (LRA) applicable to private sector workers. Thus, according to PSI, all change in ownership, under which a state enterprise is transferred to the private sector, will result in the revocation of the legal personality and registration of its union, since there is no clause governing the transition from one status to another. Given the Government's commitment to privatize virtually all state enterprises, in the absence of any amendment to the legislation, the Government will proceed with such revocations upon an enterprise's privatization. PSI has attached a number of documents to its communication, which had already been brought to the attention of the Committee.
- 144.** In a communication dated 11 November 2003, the Government makes the following points. The Government recalls that the SELRA and the LRA are the two laws governing labour relations. The Bangchak Petroleum Public Co. Ltd. is not considered any longer to be a state enterprise within the framework of the SELRA due to a change in its shareholder; it now falls within the scope of the LRA. The modification of the company's

status resulted in the dissolution of the BCPEU. The Government underlines however that this modification has not affected the right to organize and the right to bargain collectively of the workers concerned, which are both guaranteed under the LRA. The Government recalls in this respect that a union, the Bangchak Labour Union, has been established in accordance with the LRA and is composed of 61 members. No labour dispute has arisen since the modification of the company's status. The Government points out that it is not currently possible to transfer the rights which arose under the SELRA. Further, the governmental authorities are not empowered to allow an automatic transfer of the rights and status of a union originally established under the SELRA and which henceforth falls under the scope of the LRA. The Government submits in this respect that the SELRA allows the establishment of only one labour union composed of no less than 25 per cent of the employees of the state enterprise, while the LRA allows the foundation of a union with a minimum of ten employees working for the same employer or in the same description of work. The Government takes the view that a transfer of rights may cause inequity in respect of promoters and members required for the establishment of the union. Nonetheless, the Government indicates that the Department of Labour Protection and Welfare (DLPW) is currently considering the legal problems and obstacles raised by the impact that a state enterprise's conversion has on the rights and status of its union, in order to seek feasible legislative solutions.

- 145.** *The Committee takes note of the Government's recognition of the legal difficulties engendered, under the current legislation, by the conversion from state to private enterprise in respect of the existence of a state enterprise union. The Committee also notes that the matter is under consideration by the Department of Labour Protection and Welfare (DLPW) in order to seek legislative solutions. The Committee welcomes this development and requests to be kept informed of the progress made in this respect.*
- 146.** *Turning to the particular case of the BCPEU, the Committee would like to recall that its administrative dissolution and the automatic revocation of its registration and legal personality constituted serious infringements of the principles of freedom of association. Since they occurred more than two years ago, these infringements should now be remedied without delay. In this respect, the Committee has some difficulty in understanding the Government's general contention that a transfer of the BCPEU's rights under the LRA would create inequity in respect of the number of promoters and members required for the establishment of a union; indeed, it seems that the conditions for the establishment of a union are more strict under the SELRA than under the LRA. As the Committee has already pointed out, the only question which arises is that of preferential bargaining rights. This question has not yet been clarified neither by the Government nor by the complainant. In these circumstances, the Committee firmly requests the Government once again to restore the legal personality and registration of BCPEU and trusts that the Department of Labour Protection and Welfare (DLPW) will promptly examine this particular question alongside the more general legislative issue. The Committee requests the Government to keep it informed of developments in this respect.*

Case No. 2014 (Uruguay)

- 147.** The Committee examined this case relating to anti-union measures and sanctions against trade union officials and workers at the CONAPROLE enterprise at its March 2002 meeting [see 327th Report, paras. 118-120]. On that occasion, the Committee requested the Government to keep it informed of the outcome of the inquiry carried out by the Labour Inspectorate into the alleged restrictions on the access of trade union officials to the workplace.
- 148.** In a communication dated 27 August 2003, the Association of Workers and Employees of CONAPROLE (AOEC) states that the situation of the trade union leader Ramón Vitalis

remains unchanged and that the commission that is to re-examine his case has still not been convened (the trade union leader had been dismissed and the Government informed the Committee that his conduct at work would be analysed by a commission made up of representatives from the National Labour Directorate and the Trade Union Confederation PIT-CNT).

149. In its communication dated 30 December 2003, the Government states that the issue of Ramón Vitalis was definitively resolved both at the national level, and with regard to its examination by the Committee on Freedom of Association it had been duly and repeatedly shown that his separation from the enterprise was for work related reasons which in no way constituted a case of trade union repression. This has been the conclusion not only of the administrative procedure carried out before the General Labour Inspectorate, but also of the pronouncements of the labour courts, in both first and second instance. The two rulings agreed that the worker had committed what both doctrine and national case law deem “flagrant bad conduct” and as such he is not entitled to claim abusive dismissal, while any notion of a violation of freedom of association by the enterprise is fully ruled out. The Government adds that without prejudice to the conflict that gave rise to this case (which goes back to 1997), it is clear that labour relations at the enterprise have gone back to normal, as evidenced by the note sent to the ILO by the Association of Workers and Employees of CONAPROLE dated 27 August 2003, so that far from indicating new grounds for conflict it is persisting with the case of Ramón Vitalis, whose work situation has been clearly and definitively resolved from both the administrative and jurisdictional points of view. Lastly, the Government states that relations are fluid between the enterprise and the trade union and mentions the various agreements reached between 1999 and 2003 (the most recent of them in September 2003 concerning wages).

150. *The Committee notes this information and in particular that the judicial authority concluded in respect of the dismissal of the trade union leader Mr. Vitalis, that “no causal link was found between the dismissal and the trade union role of the person in question (Mr. Vitalis) ... whereas there is ample proof of the bad conduct cited by the complainant (CONAPROLE enterprise)”. Nevertheless, the Committee regrets to observe that the Government has provided no information about the result of the inquiry carried out by the Labour Inspectorate into the alleged restrictions on access of trade union officials to the workplace. Whatever the case may be, the Committee trusts that in the framework of the normalization of labour relations between the enterprise and the AOEC trade union announced by the Government, this matter has been resolved and requests the Government to ensure that this is the case.*

Case No. 1952 (Venezuela)

151. The Committee last examined this case at its June 2003 meeting when it made the following requests [see 331st Report, paras. 78-97]:

Dismissals of unionized firefighters

- The Committee requests the Government to inform it of the decision of the judicial authority on the question of the reinstatement of trade unionists Rubén Gutiérrez and Juan Bautista Medina and payment of unpaid wages.

Anti-union campaign to prevent the right of free association of firefighters in the Eastern Joint Fire Brigade, the Guacara, San Joaquín and Mariara Fire Brigade Foundation, and the Valencia Fire Brigade Autonomous Municipal Institute

- The Committee requests the Government to have the labour inspectorate undertake an investigation into obstacles to free association in the bodies mentioned by the complainant and to inform it thereof.

Harassment and vilification campaign against the Yaracuy Fire Brigade Foundation and the promulgation of the law of 22 December 2001 which excludes firefighters from the rights of free association and collective bargaining

- The Committee requests the Government to send it the text of the law in question and to have the labour inspectorate undertake an investigation into the alleged harassment and vilification campaign.

New allegations

- As regards the allegations of SINPROBOM (8 May 2002) and ASINBOMPROVEN (September 2002), the Committee notes that the Government confirms the allegations and attributes anti-union conduct to different local authorities, while the local authorities deny that they have an anti-union attitude and offer a different version of the facts. The Committee notes the Government's wish to continue with investigations and requests it to have the labour administrative authority (labour inspectorate) carry out an exhaustive investigation and inform it thereof. The Committee further requests that the investigation should also cover the allegations of ASINBOMPROVEN of 21 February 2003 (according to this organization, the Caracas Metropolitan District Fire Brigade does not apply the rights contained in the collective agreement signed before the merger of the fire brigades in the case of 220 firefighters. Administrative proceedings were commenced against the president of the trade union for having invited the media to an interview in the trade union premises. In addition, for informing members of the date of an assembly, disciplinary action was taken against Martín Rodríguez, the trade union's secretary for international affairs and relations). The Committee requests the Government to take the necessary measures to ensure full respect for trade union rights in the fire-fighting sector.

152. In its communication of 27 August 2003, the National Trade Union Association of Professional Firefighters, Auxiliaries and Related Workers of Venezuela (ASINBOMPROVEN) refers to the allegations already made and states that the Chairperson of the National Executive Committee of ASINBOMPROVEN, Tomás Arencibia, was dismissed following irregular disciplinary proceedings conducted by the Human Resources Director of the Metropolitan District of Caracas and the Commander-in-Chief of the Fire Brigade. The complainant adds that judicial proceedings were initiated regarding this dismissal and other violations of trade union rights, but these were declared unfounded.

153. As regards the alleged discrimination against transferred workers who had previously worked at the Eastern Joint Fire Brigade (by revoking the labour rights obtained through collective bargaining), in its communication of 30 October 2003, the Government states that as regards the acquired rights of the fire-fighting officers, the Caracas metropolitan mayor's office endeavoured to apply the collective agreement concluded between the former Eastern Joint Fire Brigade and its firefighters provided the provisions did not contravene legislation. This has not affected the position of transferred officers, given that, coincidentally, the benefits established in the aforementioned agreement are the same as those provided for in the arrangements enjoyed by Caracas Metropolitan District staff. Furthermore, the Government states that on no occasion did the Caracas metropolitan mayor's office prevent officers at the Caracas Metropolitan District Fire Brigade from establishing trade unions.

154. Regarding the allegation that the authorities of the Caracas Metropolitan District Fire Brigade raided the office occupied by the trade union and illegally vacated the premises, without the presence of an official from the Attorney-General's Office, and wrongfully appropriated property belonging to the trade union, the Government states that according to information provided by the Commander-in-Chief of the Caracas Metropolitan District Fire Brigade, the ownership of the facilities that have been made available to the Fire Brigade, which are located in the Municipalities of Baruta, Chacao and Sucre, has not been

transferred over to the Metropolitan District of Caracas and, in principle, the use of these facilities was made possible through documents handing them over on a right of use or loan for use basis. As regards the fire station at El Cafetal, where the premises occupied by the aforementioned trade union are located, to date, this station has not been officially handed over to the Metropolitan District of Caracas, given that it consists of two buildings, one of which is in the final stages of construction. The Government adds that neither Venezuelan legislation nor ILO decisions and resolutions have qualified the failure of employers to provide premises for trade unions as a violation of freedom of association.

- 155.** With reference to the launch of an administrative inquiry into the conduct of the president of the complainant organization, Second Sergeant (*Sargento Segundo*) Tomás Arencibia, the Government states that on 28 October 2002, the Commander-in-Chief of Caracas Metropolitan District Fire Brigade requested the Human Resources Director of the metropolitan mayor's office of Caracas to open a disciplinary inquiry in accordance with the provisions of section 89, paragraph 1, of the Civil Service Statute Act, given that unsuccessful attempts had been made to: (1) try to reconcile the officer in question to his rights and duties within the organization; and (2) offer guidance on the regulations applicable to him and explain the action taken in view of his conduct by his direct superiors, who ordered him to perform his professional duties. Therefore, through the document dated 20 November 2002, the Human Resources Director ordered the launch of a disciplinary inquiry into the conduct of the officer in question so as to verify the alleged misconduct involving dereliction of duty, failure to obey orders and instructions given by his direct supervisor, lack of respect and lack of probity towards his superiors. Through Memorandum No. D.C.J. 0009 of 22 January 2003, the Office of the Legal Counsel of the Caracas metropolitan mayor's office, came to a decision regarding this case and considered that "Mr. Tomás Arencibia Ramírez disobeyed orders issued by his hierarchical superiors within the scope of their responsibilities, was guilty of insubordination on repeated occasions and failed to turn up for work", and that "the disciplinary measures taken by the Human Resources Office were fair". The Government considers that the dismissal of Mr. Tomás Arencibia from his position as Second Sergeant of the Caracas Metropolitan District Fire Brigade does not constitute a violation of the right to freedom of association or its guarantees, such as trade union immunity, given that his dismissal resulted from the outcome of disciplinary proceedings, conducted with due process, which confirmed that the officer in question was guilty of serious misconduct when performing his duties.
- 156.** On the other hand, as regards the acts of aggression against members of the National Executive Committee, the Government states that according to the facts, events that were reported as an assault against Second Sergeant Tomás Arencibia committed by some officials, following the direct orders issued by the Commander-in-Chief of the Fire Brigade, are incorrect, given that it has been established in this case that there was a physical confrontation between the official in question and Major Eleazar Corro, who acted in legitimate defence in response to the acts of aggression committed by Second Sergeant Tomás Arencibia, who had provoked the physical confrontation. In any case, the Government states that there are no forensic reports to support the alleged serious injuries as reported by ASINBOMPROVEN suffered by Second Sergeant Tomás Arencibia, and there is even less evidence that these injuries were the result of an order given by the Commander-in-Chief of the Fire Brigade.
- 157.** As regards the transfer of National Executive Committee members and the alleged suspension of trade union leave, granted through the collective agreement and regulations under the Administrative Service Act, the Government states that in the specific case of the Caracas Metropolitan District Fire Brigade, which serves approximately 5 million inhabitants, it would be irresponsible of high-ranking and commanding officers not to anticipate how many staff members they will have at any given time, which staff members have been granted leave, and for how long. It would be even more irresponsible of the

firefighters and workers of this brigade to fail to turn up for work without notice or prior explanations. Unfortunately, ASINBOMPROVEN representatives misunderstood the nature of trade union leave by trying to take leave without following the necessary procedures beforehand and without any form of justification, using the excuse that they had the right to take leave to perform trade union activities. To date, the ASINBOMPROVEN representation has not obtained an administrative or judicial decision declaring the legitimacy of any leave required to fulfil trade union duties. On the contrary, with regard to Second Sergeant Tomás Arencibia, the records on this case show that he received warnings for absence from the workplace and insubordinate conduct.

- 158.** The Government adds that as a result of integrating staff from the Eastern Joint Fire Brigade into the Caracas Metropolitan District Fire Brigade, it was necessary to make organizational changes. The Act on Fire Brigades and Civilian Crisis Management Entities, section 14, provides for the extension of activities by stating that: “fire brigades and civilian crisis management entities can extend their activities to any area within the region provided that their collaboration is requested by the commanding officer responsible for the area in question, and that the necessary coordination has been carried out between the competent authorities of the brigades involved”. Thus, according to the above, transfers are legitimate and within the authority of commanding officers, provided that such transfers are made to meet a request for collaboration made by the commanding officer responsible for the area in question. Therefore, the Government indicates that commanding officers can make transfers, if they so wish, and highlights that the transfer of officers that occurred at the Caracas Metropolitan District Fire Brigade did not affect in any way the rights and legitimate, personal and direct interests of the officer in question, given that this modification did not lead to any deterioration in working conditions.
- 159.** Lastly, with reference to the alleged anti-union conduct by the Mayor of Caracas and the Commander-in-Chief of the Caracas Metropolitan District Fire Brigade, the Government states that the authorities of the aforementioned Fire Brigade and the Mayor of Caracas expressed their opposition to the presence of a firefighters’ trade union at this fire brigade in order to prevent certain groups and individuals from disrupting the establishment through their lack of discipline and failure to respect legislation and regulations. The position adopted by these authorities is not one of failing to recognize or rejecting collective bodies established to protect and demand the labour rights of workers and firefighters, rather one of maintaining the institutional system that must prevail within organizations, such as fire brigades responsible for the safety of citizens.
- 160.** *The Committee notes this information and points out the contradiction between the version of events provided by the complainant and that given by the Government concerning the allegations. The Committee notes that the Government highlights that there were no acts of anti-union discrimination by the authorities of the Caracas metropolitan mayor’s office and the fire brigade of this district. However, the Committee observes that when examining this case at its June 2003 meeting, the Government confirmed some allegations of anti-union discrimination and attributed acts of anti-union conduct to various local authorities (it also stated that it would conduct investigations, the results of which have not been sent). In any case, the Committee recalls that firefighters (even if they are considered civil servants) must enjoy the guarantees provided for in Conventions Nos. 87 and 98, which have been ratified by Venezuela. The Committee requests the Government to take measures to this end and, more generally, to conduct negotiations with the complainants to find a solution to the problems posed in various localities and to keep it informed in this respect.*

Case No. 2154 (Venezuela)

161. At its June 2003 meeting, the Committee formulated the following recommendations on the issues that remained outstanding [see 331st Report, para. 748]:

- 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.
- 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).

162. In its communication dated 30 October 2003, the Government sent official documentation showing that the Constitutional Division of the Supreme Court ordered that the judgements of first instance ordering the reinstatement of six workers should be vacated due to violation of due process; the social benefits of these workers had previously been paid. The Government stresses that the Executive Power of the State of Trujillo, by reason of the restructuring (new administrative organization) that resulted in the mass dismissals, settled all its labour obligations, and the workers who fulfilled the necessary requirements were even awarded pension benefits.

163. *The Committee notes this information.*

Case No. 2160 (Venezuela)

164. At its March 2003 meeting, the Committee formulated the following recommendations on the issues that were still pending [see 330th Report, para. 179]:

The Committee requests the Government to supply a copy of any court ruling regarding the refusal to register the complainant (Trade Union of Revolutionary Workers of the New Millennium). At the same time, the Committee deplores the fact that the Government has not supplied any information in connection with its recommendation concerning the reinstatement of all the workers who were dismissed for participating in the establishment of the union in question, and urges the Government to take measures without delay to ensure that these workers are reinstated in their posts. The Committee requests the Government to keep it informed in this regard.

165. In its communication of 4 September 2003, the Government states that the Ministry of Labour will comply with the ruling handed down by the judicial authority relating to the administrative decision refusing to register the trade union in question. Furthermore, the Government attaches the financial agreements concluded between six workers (Jonatán Pacheco, Iván Orlando Suárez, Jaime Gómez, Daniel León, Alcides A. Hernández and Gerardo Montenegro) and the INLACA corporation in which they freely recognize that those agreements should be considered as *res judicata* and renounce any proceedings.

166. *The Committee notes this information. It requests the Government to send it the ruling handed down concerning the refusal to register the complainant trade union. The Committee notes the agreements signed by six dismissed workers and requests the complainant trade union to indicate whether other workers remain dismissed for having participated in the establishment of the trade union (the complainant organization had*

also referred in its communication of 26 December 2001 to Jorge Amaro, Alfredo Aular, Guido Sivira, Otiel Montero and Orlando Acuña).

Case No. 2161 (Venezuela)

- 167.** At its November 2003 meeting, the Committee requested the Government to inform it of all measures adopted to reinstate trade union officials José Gregorio González, Delvis Beomont and Sonia Chacón, who had been dismissed from the “Sofía Imbert” Museum of Contemporary Art in Caracas, as well as about a draft law to amend labour legislation, in particular with regard to protection against anti-union discrimination, which had been submitted to the Congress of the Republic [see 332nd Report, paras. 182-184].
- 168.** In a communication dated 13 January 2004, the Government states with reference to the situation of the former officials José Gregorio González, Delvis Beomont and Sonia Chacón, that they left their posts in 2002. These former officials voluntarily stopped working for the MACCSI, and consequently abandoned the proceedings initiated before the Labour Inspectorate where they were requesting reinstatement and the payment of outstanding wages, which is why the Labour Inspectorate did not order them. The Government also states that these former workers were paid all the benefits and other obligations to which they were entitled under their employment contracts, in keeping with the Republic’s Constitution and legislation.
- 169.** With regard to the draft law to amend labour legislation, and in particular with regard to protection against anti-union discrimination, the Government states that it put the draft law to reform the Labour Organization Act before the National Assembly, and it was approved in first discussion on 17 June 2003, while the second discussion process involving the consultation and participation of all the social partners, is under way. According to the Government, this draft law is underpinned by the recommendations formulated by the ILO supervisory bodies relating to the need to adapt national provisions to the obligations deriving from the ratification and application of Conventions Nos. 87 and 98. The draft law incorporates means of protection for workers against acts of anti-union discrimination and imposes strict sanctions on anyone violating these rights; more rapid, less rigid and more effective justice is guaranteed. The draft also restores the system of compensation for unjustified dismissal, protecting workers discriminated by the last reform of the Labour Organization Act of 1997. Mass dismissals are regulated more precisely, as are other issues.
- 170.** *The Committee notes this information. The Committee requests the Government to send it a copy of the Act as soon as it is adopted.*

Cases Nos. 1937 and 2027 (Zimbabwe)

- 171.** The Committee last examined these cases at its November 2003 session. It requested the Government to amend the Labour Relations Amendment Act No. 17/2002 to ensure that industrial action may be taken in respect of questions of economic and social policy without sanctions and to guarantee that no imprisonment sanctions are taken in case of peaceful strikes and that the sanctions are proportionate to the seriousness of the infringements. The Committee further expressed its deep concern with regard to the Government’s refusal to conduct an independent investigation with the aim of identifying and punishing the guilty parties of the assault on the trade union leader, Mr. Morgan Tsavangirai. Finally, it requested the Government to take the necessary measures to conduct an inquiry in order to identify the perpetrators of the arson of the ZCTU offices and to keep it informed of the measures taken in this regard as well as the results of the investigation.

172. In a communication dated 14 January 2004, the Government states that the legislative amendments brought by the Labour Relations Amendment Act No. 17/2002 are sufficient to address the concerns of the Committee. Concerning the assault on the trade union leader, Mr. Morgan Tsavangirai, the Government states that, instituting a judiciary inquiry over the assault of the former General Secretary of ZCTU is uncalled for as much as it would set a wrong precedent. It further states that it considers that the courts have competently handled the matter and that the onus is upon the complainant to seek redress through the available national procedures, if ever he was not satisfied by the court's decision. The Government indicates that Mr. Tsavangirai could file a civil action should he be able to identify the perpetrator. Finally, concerning the arson of the ZCTU offices, the police are still investigating the matter and have since opened a docket. However, so far, nobody has been identified as the perpetrator.
173. *The Committee takes note of the Government's reply.*
174. *The Committee notes the Government's recent ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and trusts that it will make every effort to ensure that its legislation is brought into full conformity with the provisions of the Convention. The Committee therefore urges the Government to amend the Labour Relations Amendment Act No. 17/2002 to ensure that industrial action may be taken in respect of questions of economic and social policy, without sanctions and to guarantee that no imprisonment sanctions are taken in case of peaceful strikes and that the sanctions are proportionate to the seriousness of any infringements. It draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case.*
175. *Concerning the assault on the trade union leader, Mr. Morgan Tsavangirai, the Committee is deeply concerned about the lack of cooperation of the Government in this matter and deplores its persistent refusal to conduct an independent investigation. It recalls once again that the absence of judgements against the guilty parties creates a situation of impunity, which reinforces the climate of violence [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, op. cit., para. 55]. Such climate aimed at trade union leaders and their families is not favourable to the free exercise of trade union rights and all States have the duty to guarantee their respect [see **Digest**, op. cit., paras. 55 and 61]. The Committee reiterates its previous conclusion, urges the Government to ensure that an independent investigation is fully carried to its term with the aim of identifying and punishing the guilty parties and requests to be kept informed of the measures taken in this regard as well as the results of the investigation.*
176. *Concerning the investigation into the arson of the ZCTU offices, the Committee takes note of the information of the Government. It reiterates its previous conclusion and requests to be kept informed of any development in this respect.*

Case No. 2081 (Zimbabwe)

177. At its November 2003 session, the Committee urged once again the Government to take the necessary measures to amend section 120 of the Labour Relations Act, which gives sweeping powers to the Government to interfere in the running of the affairs of trade unions and asked to be kept informed of developments in this regard.
178. In a communication dated 14 January 2004, the Government states that it stands by its earlier position and that it does not intend to amend section 120. Furthermore, the Government states that, "the sole and primary purpose of trade union is to champion workers' rights at the workplace and not to dabble in political activity".

- 179.** *The Committee takes note of the Government's reply and deeply regrets that no progress whatsoever has been achieved in this matter.*
- 180.** *Noting the Government's recent ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee trusts that the Government will make every effort to ensure that its legislation is brought into full conformity with the provisions of the Convention. In this respect, it recalls that according to Article 3 of the Convention, workers' and employers' organizations shall have the right to organize their administration and activities and to formulate their programmes and that public authorities shall refrain from any interference, which would restrict this right or impede the lawful exercise thereof. The Committee therefore draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this case.*
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- 181.** Finally, as regards Cases Nos. 1826 (Philippines), 1854 (India), 1955 (Colombia), 1962 (Colombia), 1973 (Colombia), 1991 (Japan), 2006 (Pakistan), 2038 (Ukraine), 2051 (Colombia), 2079 (Ukraine), 2083 (Canada), 2086 (Paraguay), 2103 (Guatemala), 2105 (Paraguay), 2127 (Bahamas), 2132 (Madagascar), 2139 (Japan), 2140 (Bosnia and Herzegovina), 2144 (Georgia), 2148 (Togo), 2156 (Brazil), 2162 (Peru), 2167 (Guatemala), 2169 (Pakistan), 2178 (Denmark), 2188 (Bangladesh), 2195 (Philippines), 2198 (Kazakhstan), 2206 (Nicaragua), 2220 (Kenya), 2225 (Bosnia and Herzegovina), 2227 (United States), 2233 (France), 2234 (Mexico), 2242 (Pakistan), 2250 (Argentina) and 2252 (Philippines), the Committee requests the governments concerned to keep it informed of any developments relating to these cases. It hopes that these governments will quickly provide the information requested. In addition, the Committee has just received information concerning Cases Nos. 1888 (Ethiopia), 1957 and 2047 (Bulgaria), 2126 and 2147 (Turkey), 2171 (Sweden), 2185, 2199 and 2216 (Russian Federation), which it will examine at its next meeting.

CASE NO. 2153

INTERIM REPORT

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

Allegations: The complainant organization alleges obstacles to the establishment of a trade union confederation and the exercise of trade union rights, anti-union dismissals, anti-union harassment by the public authorities, and the arbitrary arrest and detention of union members

- 182.** The Committee has already examined the substance of this case at its March 2002 and November 2002 meetings, and on those occasions it presented interim reports to the Governing Body [327th Report, paras. 140-161; 329th Report, paras. 160-174; approved by the Governing Body at its 283rd and 285th Sessions (March and November 2002)].
- 183.** The complainant organization sent new allegations and additional information in communications dated 12 December 2002, 22 and 29 January, 25 February, 4 May 2003 and 5, 9, 20 and 25 January 2004.
- 184.** The Government has sent its replies in communications dated 10 December 2002, 14 February and 17 November 2003, and 4 February 2004, as well as complementary information on 9 February 2004.
- 185.** Algeria has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 186.** In its previous examination of the case in November 2002, the Committee made the following recommendations [see 329th Report, para. 174]:
- (a) Regarding the difficulties that might arise from the interpretation of certain provisions of Act No. 90-14 of 2 June 1990, relating to the right of the social partners, notably the members of the SNAPAP, to establish federations and confederations of their own choosing, the Committee welcomes the request for technical assistance from the Government on this issue and reminds it that the Office is available to review the ways in which this might take place. Furthermore, the Committee requests the Government to keep it informed with regard to the recognition of the CASA as a trade union confederation.
 - (b) Noting the recent allegations of obstacles to the exercise of trade union rights in the Prefecture of Oran, particularly with regard to the closure of the SNAPAP office in Oran, the suspension of eight trade union members on the ground that they encouraged observation of a strike, the fact that they received a suspended sentence, and a campaign to intimidate and harass the secretary-general of the complainant organization, the Committee requests the Government to send its observations with regard to these new allegations without delay.

B. New allegations

- 187.** In a communication dated 22 January 2003, the complainant organization informs the Committee that the eight trade union members at the Prefecture of Oran appealed against the ruling whereby seven of them had been fined and given suspended prison sentences. The Court of Appeal reduced the fines to DZD5,000 but the union members were not reinstated to their positions and have therefore received no salary for over a year. The complainant organization also informs the Committee that the matter was taken to the Supreme Court. Moreover, in its communication of 25 February 2003, the complainant organization alleges that these eight union members were dismissed following a decision by the Prefect of Oran, a copy of which they enclose.
- 188.** In a communication of 29 January 2003 accompanied by numerous press cuttings, the complainant organization alleges that, on that date, members of the National Union of Commune Workers (UNTC), a union affiliated to the SNAPAP, were beaten by security service agents when they held a sit-in in front of the headquarters of the Ministry of the Interior and Local Communities.
- 189.** In its communication of 4 May 2003, the complainant organization alleges that the authorities took reprisals against it after it had presented its complaint to the Committee. In this regard, it cites a communication by the Ministry of Labour and Social Security requiring it to provide a list of the names of all 430,000 of its members, along with copies of their membership cards. The complainant organization alleges that it is the only organization to have been required to supply information of this sort, and that this is the first time since the organization was founded, in 1990, that the Ministry of Labour has made such a request.
- 190.** Furthermore, the complainant organization alleges that the Ministry of Labour and Social Security refuses to honour commitments which it made following talks to end the hunger strike of August 2001. It also alleges that it is being discriminated against as it has never been invited to take part in the seminars organized by the Ministry of Labour and Social Security on issues pertaining to the world of work.
- 191.** Finally, the complainant organization claims that the Ministry of Labour and Social Security does not recognize the National Union of Civil Protection Officers, which was created in accordance with the statutes of the complainant organization at its August 2001 conference. In a letter forwarded by the complainant organization, the Ministry of Labour and Social Security states that the “minutes of establishment” of the Union of Civil Protection Officers, which the SNAPAP submitted in March 2003, cannot be recognized, as the criteria stipulated particularly, in section 4 of Act No. 90-14 of 2 June 1990, have not been met. The letter also states that the civil protection officers wishing to form a trade union must submit a registration form to the Ministry in application of sections 6, 7, 8, 9, 10 and 21 of Act No. 90-14. Only after the completion of registration procedures can the union then affiliate to a confederation of its choice.
- 192.** In its communication of 5 January 2004, the complainant organization alleges that two union members, namely, Mr. Bourada and Mr. Himer, respectively secretary-general and an active member of the National Union of the Health of the Population (UNSP) at the Oran Teaching Hospital, a union affiliated to the SNAPAP, have been arrested and detained. It alleges that, on 29 December 2003, the director of the Oran Teaching Hospital brought a complaint against the two union members, for insults and death threats. The following day, the detective division of the police called them in for questioning, after which Mr. Bourada was released. On 31 December 2003, he was again arrested and taken into custody. The complainant organization alleges that there was no warrant for his arrest and that the arrest was unlawful. Mr. Himer went to the police station of his own accord on

3 January 2004 and was also arrested and put in custody. On 4 January 2004, the two union members appeared before the Public Prosecutor, who maintained their detention. The complainant organization also alleges that four workers at the Teaching Hospital were summoned by the police for questioning as witnesses and that they too were taken into custody.

- 193.** In its communication of 9 January 2004, the complainant organization alleges that, on 8 January 2004, the police questioned seven civil protection officers (firefighters) who were union members, namely Mr. El Hachemi Belkhir, Mr. Mohamed Benahmed, Mr. Rabeh Mebarki, Mr. Mokhtar Mesbah, Mr. Benchâa Benatia, Mr. Mohamed Bekhil and Mr. Djeloul Amar Behida.
- 194.** In its communication of 20 January 2004, the complainant organization states that on that date, three union members were questioned and detained at the police station in the second division of Oran for posting notices about a lawful general strike in the health sector. The three union members were Mr. Salim Mecheri, national secretary of the SNAPAP, and Mr. Fodhil Agha and Mr. Djilali Bensafi, both members of the committee of the Oran Teaching Hospital trade union section.
- 195.** Finally, in its communication of 25 January 2004, the complainant alleges that, by decision No. 851/2003 of 28 December 2003, the authorities cancelled the transfers of certain members of the National Vocational Training Union, which is affiliated to SNAPAP, including the transfer of its general secretary.

C. The Government's new reply

- 196.** In communications dated 10 December 2002 and 14 February 2003, the Government sends additional information and numerous documents on the procedures to which the eight union members from the Prefecture of Oran were subjected. The Government explains that the union members were suspended for inciting and holding a demonstration, calling for strike action, inside the premises of the Prefecture of Oran with signs and placards, and for breach of the peace and damage to public property. The Prefect of Oran made use of procedures laid down in current legislation to end the union's illegal occupation of the premises and to re-establish public order. Therefore, he first called on the bailiffs to draw up statements of offence noting the illegality of the SNAPAP's actions. The Government encloses copies of these statements. As a preventive measure, the security forces called out by the Prefect of Oran evacuated the premises and brought the eight members of the SNAPAP to the Public Prosecutor's Office. After their provisional discharge, they appeared before the Court of Oran, where seven of them were given suspended prison sentences of three months and fined DZD5,000. The Court acquitted the eighth union member and the Prefect of Oran had him reinstated to his position. The judgement of the Court of Oran is enclosed with the Government's communication. The Court noted that the Prefecture of Oran had suspended the activities of the complainant union in 1999 and that the union office had been closed down. This had displeased the trade union, which had submitted several protests to the Prefecture of Oran, following which it had decided to institute a hunger strike in its own premises, thereby occupying administrative areas reserved for work. The Government considers that the Prefect of Oran was clearly acting in compliance with current law in taking the disciplinary measures required in the case, as has been confirmed by the rulings of the competent judicial authorities.
- 197.** Moreover, the Government considers that the rejection of the complaint submitted by the SNAPAP against the closure of the premises that it was occupying was well founded, since there were no grounds for such complaint. According to the Government, the Prefect's response to the situation and the measures taken against the union members are in no way

connected to their membership of the SNAPAP or to their union activities; rather, they are a response to illegal troublemaking which led to infringements of ordinary law.

- 198.** With regard to the allegations concerning discriminatory treatment of different trade unions and, in particular, the privileges allegedly granted to the General Union of Algerian Workers (UGTA), the Government emphasizes that all trade unions are treated equally in accordance with the provisions of the law. The Government notes that premises are allocated according to the criteria for representativeness laid down in Act No. 90-14 of 2 June 1990 on methods for the exercise of the right to organize. In this respect, the Government points out that the organization of bailiffs verified the membership rolls of the UGTA and the SNAPAP, following an order by the Chairperson of the Court of Oran on 13 July 1999, No. 2759/1999, in order to compare the two and delete cases of dual membership. It found that 398 individuals were named on the membership rolls of both the UGTA and the SNAPAP.
- 199.** The Government replies to the allegations concerning the request by the Minister of Labour and Social Security for the membership rolls of the SNAPAP in a communication dated 17 November 2003. According to the Government such a demand fits within the context of normal relations between the authorities and legally established trade union organizations. The Government denies any intention to interfere with or attack the free exercise of the right to organize. In this respect, the Government refers to the fact that all union organizations must communicate the facts concerning their representativeness in accordance with sections 35-37bis of Act No. 90-14 of 2 June 1990. All the organizations concerned, including the SNAPAP, are thus requested to provide information allowing their representativeness to be calculated before 31 May of each year. The Government sends a copy of a press release to this effect. The Government insists that all trade union organizations which had not sent detailed information to enable their representativeness to be calculated were approached in a similar way, and the majority responded favourably. Furthermore, the Government recalls that section 37bis, subsection 2, of Act No. 90-14 entitles the SNAPAP to make an appeal. However, the SNAPAP has chosen not to do this.
- 200.** In respect of the Union of Civil Protection Officers set up by the SNAPAP, the Government merely reiterates the reasons it set out to the SNAPAP regarding its interpretation of the provisions of Act No. 90-14 of 2 June 1990 on methods for the exercise of the right to organize.
- 201.** In its communication of 4 February 2004, the Government provides information concerning the arrest and judicial procedure which took place with regard to Mr. Bourada and Mr. Himer on the one hand, and the holding of an extraordinary conference by SNAPAP 24-26 December 2003, on the other hand. According to the Government, in the first place, Mr. Bourada and Mr. Himer requested a meeting with the director of the Oran Teaching Hospital on 29 December. The latter refused to see the two UNSP representatives immediately, since he was holding a closed workshop with advisers from the Ministry of Health and Population on hospital reform. Following this refusal, Mr. Bourada and Mr. Himer forced their way into the office of the director and addressed insults and death threats against him. The director of the Oran Teaching Hospital lodged a complaint against them and Mr. Bourada and Mr. Himer were brought before the tribunal which sentenced them to a six-month prison sentence and a fine of DZD10,000 on 7 January 2004. The Government insists on the fact that the charges maintained against them by the judge did not relate to freedom of association but to offences under the provisions of the Penal Code. The Government underlines that freedom of association does not confer immunity.
- 202.** Secondly, the Government indicates that the extraordinary conference of SNAPAP, elected Mr. Hamana Moumkhila as secretary-general of the national secretariat of SNAPAP thus

replacing Mr. Rachid Malaoui. In its communication of 9 February 2004, the Government attaches, in support of this information, a copy of the minutes of the conference. According to these minutes, the participants decided to definitively expel from the union Mr. Rachid Malaoui as well as other members, to freeze the activities of national unions (affiliated to SNAPAP) until they held their national meetings and to call on the ministries not to deal with the old representatives of these unions, with the exception of the Union of Civil Protection Officers which remains under the new national secretariat which emerged from the conference.

D. The Committee's conclusions

203. *The Committee recalls that this case concerns allegations of obstacles to the establishment of trade union confederations, (namely the National Union of Algerian Workers (SNATA), later known as the Algerian Confederation of Independent Trade Unions (CASA)), and of an affiliated trade union organization, (the Union of Civil Protection Officers); favouritism with regard to a trade union organization (the UGTA); repeated anti-union harassment against the SNAPAP; and the arbitrary arrest and detention of members of that union.*
204. *The Committee notes that this is its third examination of the case since the complaint was submitted on 17 September 2001 and that, despite the time which has since elapsed, no progress seems to have been made.*
205. *In respect of the eight trade union members at the Prefecture of Oran, the Committee notes that their hunger strike followed the decision to suspend the complainant organization and to close down its premises. The Committee notes that the complainant organization has contested the decision to close down their premises in court, without success. In this respect, the Committee notes the Government's statement that the judgement which rejected the complaint against the closure of the premises was well founded, since the SNAPAP had no grounds for such complaint. The Committee has drawn attention to the importance of the principle that the property of trade unions should enjoy adequate protection [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 184], and recalls that judicial review is required for measures taken by the authorities, for instance, occupation or closure of trade union premises, in view of the significant risk that such measures may paralyse trade union activities [see *General Survey on freedom of association and collective bargaining*, 1994, para. 40]. The Committee requests the Government to specify the reasons for which the complaint by the SNAPAP was, in its view, groundless and to indicate whether the rulings to suspend the complainant organization and to close its Oran office are still in force. If these decisions are indeed still in force, the Committee requests the Government to revoke them.*
206. *The Committee notes the detailed information provided by the complainant organization and the Government with regard to the accusations made against the eight trade union members at the Prefecture of Oran and the development of these proceedings. It notes that the union members were suspended from work and deprived of all remuneration for the whole duration of the proceedings, and that they were dismissed following a ruling by the Prefect of Oran. However, the Committee also notes the information provided by the Government to the effect that the worker who was acquitted has since been reinstated to his position. 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]. The Committee urges the Government to take the necessary steps to ensure that the other trade union members from the Prefecture of Oran are reinstated in their posts without delay and without loss of pay, and that they receive adequate compensation should reinstatement*

prove impossible. The Committee requests the Government to keep it informed of all measures taken in this respect.

- 207.** *With regard to the issue of the representativeness of the complainant organization and the request by the Ministry of Labour and Social Security to be given a list of the names of all its members and copies of their membership cards, the Committee recalls that the representativeness of employers' or workers' organizations should be determined according to objective, precise, pre-established criteria laid down in legislation, and that such a determination should not be left to the discretion of governments. The Committee notes the authority's reliance on membership rolls of organizations in determining their representativeness. The complainant organization fears that such a practice could lead to reprisals and anti-union discrimination against that organization's members. The Committee therefore requests the Government to take legislative or other steps so as to allow the determination of the representativeness of organizations on the basis of objective and pre-established criteria without revealing the identity of their members – for instance, by organizing ballots. The Committee requests the Government to keep it informed of measures taken in this respect.*
- 208.** *With regard to the request of the SNAPAP to establish a confederation to be known as the CASA, the Committee notes that the Government does not provide any response on this matter, despite the Committee's recommendation to this effect in its previous examination of the case [see 329th Report, para. 174(a)]. Moreover, the Committee takes note of the SNAPAP's new allegations with regard to the refusal by the Ministry of Labour and Social Security to register the newly created Union of Civil Protection Officers, despite its having received a "minutes of establishment" to this effect.*
- 209.** *In this respect, the Committee recalls that, during the first examination of the case, it considered that the provisions of Act No. 90-14 of 2 June 1990 did not pose a problem from the standpoint of the principles of freedom of association, but that the Government's interpretation of these provisions seemed to raise a problem [see 329th Report, para. 171]. Moreover, the Committee has taken note of the comments made by the Committee of Experts on the Application of Conventions and Recommendations at its 73rd Session in December 2002. The Committee of Experts noted "the Government's reply to the effect that: (1) under Act No. 90-14 of 2 June 1990, no previous authorization is required to establish an occupational organization; a mere declaration of constitution duly acknowledged by the competent authority is necessary; and (2) in respect of the particular case [of the Algerian Confederation of Independent Trade Unions (CASA)], unions can conduct their activities within the framework of the envisaged confederation without waiting for the legal opinion of the Ministry of Labour and Social Security". The Committee of Experts also recalled that "national regulations governing the constitution of occupational organizations are not in themselves incompatible with the provisions of the Convention provided that they do not impair the guarantees granted by the Convention and in particular that they do not amount in practice to a requirement for previous authorization in respect of the constitution of occupational organizations and which is prohibited under Article 2 [of Convention No. 87] (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 68-69)".*
- 210.** *In its previous examination of the case, the Committee noted the Government's statement that it had begun a series of meetings in order to help the SNAPAP establish the CASA and that in order to remove the difficulties that might arise from the interpretation of certain provisions of Act No. 90-14 of 2 June 1990, it was considering, in consultation with the social partners, beginning a review of the texts relating to freedom of association. With regard to this, the Committee notes that, according to the information provided by the complainant organization, the latter has never been invited to participate in the seminars organized by the Ministry of Labour and Social Security. The Committee reminds the*

Government again that the Office is at its disposal to provide assistance in this area. It once again requests the Government to keep it informed with regard to the effective recognition of the CASA and of the Union of Civil Protection Officers.

- 211.** *As regards the allegations of violent acts perpetrated by the authorities on 29 January 2003, namely, the beating of union members who were holding a sit-in, the Committee regrets that the Government has not provided any information. The authorities should resort to the use of force only in grave situations where law and order is seriously threatened [see **Digest**, op. cit., para. 580]. The Committee stresses that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see **Digest**, op. cit., para. 47]. The Committee requests the Government to communicate its observations on these allegations without delay.*
- 212.** *With regard to the allegations concerning the arbitrary arrest and detention of Mr. Salim Mecheri, national secretary of the SNAPAP, Mr. Fodhil Agha and Mr. Djilali Bensafi, members of the trade union branch at the Oran Teaching Hospital, for posting notices about a lawful general strike in the health sector, and the allegation that the police summoned for questioning Mr. El Hachemi Belkhir, Mr. Mohamed Benahmed, Mr. Rabeih Mebarki, Mr. Mokhtar Mesbah, Mr. Benchâa Benatia, Mr. Mohamed Bekhil and Mr. Djeloul Amar Behida, the Committee recalls that measures designed to deprive trade union leaders and members of their freedom entail a serious risk of interference in trade union activities and, when such measures are taken on trade union grounds, they constitute an infringement of the principles of the freedom of association, and preventive detention should be limited to very short periods of time intended solely to facilitate the course of a judicial inquiry [see **Digest**, op. cit., paras. 74 and 87]. The Committee requests the Government to communicate its observations on these new allegations without delay.*
- 213.** *Concerning the allegations of arbitrary arrests and detentions of Mr. Bourada and Mr. Himer, members of the UNSP, which is affiliated to SNAPAP, the Committee notes the information transmitted by both the complainant organization and the Government. The Committee nevertheless notes that the complainant organization does not provide information on the circumstances which led to the arrest and indictment of the two UNSP members. It notes that, according to the Government, Mr. Bourada and Mr. Himer tried to force their way into the Office of the Director of CHU of Oran and addressed insults and death threats against him. The Committee recalls that persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law [see **Digest**, op. cit., para. 83]. It requests the Government to provide a copy of the judgement by which Mr. Bourada and Mr. Himer were condemned.*
- 214.** *Concerning the decision to cancel the transfer of the members of the National Vocational Training Union, the Committee requests the Government to provide its observations on these new allegations.*

The Committee's recommendations

- 215.** *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 specify reasons for which the complaint of the SNAPAP against the decision to close its Oran premises was, in its view, groundless, to indicate whether the rulings to suspend the*

complainant organization and to close its Oran office are still in force and, if this is the case, to revoke these decisions.

- (b) The Committee urges the Government to take the necessary steps to ensure that the seven workers who were dismissed from the Prefecture of Oran, are reinstated in their posts without delay and without loss of pay, and that they receive adequate compensation should reinstatement prove impossible. The Committee requests the Government to keep it informed of all steps taken in this respect.*
- (c) Regarding the representativeness of the complainant organization, the Committee requests the Government to take legislative or other steps so as to allow the determination of the representativeness of the complainant organization on the basis of objective and pre-established criteria, without revealing the identity of its members – for instance, by organizing ballots. The Committee requests the Government to keep it informed of measures taken in this respect.*
- (d) The Committee once again urges the Government to take the necessary steps to ensure that workers who are members of the SNAPAP can establish and join federations and confederations of their own choosing. It also requests to be kept informed with regard to the effective recognition of the CASA and of the Union of Civil Protection Officers. The Committee reminds the Government that the Office is at its disposal for assistance in this area.*
- (e) As regards the allegations of violent acts perpetrated by the authorities on 29 January 2003, namely, the beating of union members who were holding a sit-in, the Committee requests the Government to communicate its observations on these allegations without delay.*
- (f) With regard to the allegations concerning the arbitrary arrest and detention of Mr. Salim Mecheri, national secretary of the SNAPAP, Mr. Fodhil Agha and Mr. Djilali Bensafi, members of the trade union branch at the Oran Teaching Hospital, for posting notices about a lawful general strike in the health sector, and the allegation that the police summoned for questioning Mr. El Hachemi Belkhir, Mr. Mohamed Benahmed, Mr. Rabeh Mebarki, Mr. Mokhtar Mesbah, Mr. Benchâa Benatia, Mr. Mohamed Bekhil and Mr. Djeloul Amar Behida, the Committee requests the Government to communicate its observations on these new allegations without delay.*
- (g) Concerning Mr. Bourada and Mr. Himer who, according to the Government, tried to force their way into the Office of the Director of CHU of Oran while addressing insults and death threats against him, the Committee requests the Government to provide a copy of the judgement by which they were condemned.*
- (h) Concerning the decision to cancel the transfers of the members of the National Vocational Training Union, the Committee requests the Government to provide its observations on these new allegations.*

CASE NO. 2204

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

**Complaints against the Government of Argentina
presented by**

- **the Confederation of Argentine Workers (CTA)**
- **the World Confederation of Labour (WCL) and**
- **the Latin American Central of Workers (CLAT)**

Allegations: The complainants allege the death, injury, criminal persecution and repression of trade union officers and workers who participated in peaceful protests

- 216.** The complaint is contained in a communication from the Confederation of Argentine Workers (CTA) of May 2002. In a communication of 1 July 2002, the World Confederation of Labour (WCL) supported the complaint. In a communication of 10 July 2002, the Latin American Central of Workers (CLAT) also supported the complaint.
- 217.** The Government sent its observations in communications of 6 September 2002, 13 January, 25 April, 31 October 2003 and 20 January 2004.
- 218.** Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 219.** In their communication of May 2002, the complainants allege the death, criminal persecution and repression of trade union officers and workers who participated in peaceful social protests. They indicate that, as a result of structural adjustments implemented in the country since the 1990s and deepening social exclusion, many social protests and demonstrations took place from 1997 onwards. One of the methods used was to create roadblocks in which participants generally demanded the creation of jobs, an increase in social spending (especially in the field of education and health) and compliance with agreements concluded with provincial governments and/or the national Government. According to the complainants, the institutional response to social protests was characterized by the repression and criminal persecution of those involved, mainly trade union representatives and activists and unemployed workers. Repression took the form of disproportionate and unjustified force, which left numerous people injured and several people dead. In many cases, the federal courts intervened ordering the repression of demonstrations and were later responsible for conducting the investigations. For all the reported cases of injuries or deaths, the legal investigations are at a standstill and those responsible have not been identified.
- 220.** The protests also led to the criminal persecution of demonstrators, and at present over 2,800 people are being prosecuted (according to information from the Human Rights Secretariat of the CTA). Those being prosecuted are workers who for the most part are unemployed and extremely poor and, in many cases, unable to put up an effective defence, and for whom the discredit associated with facing prosecution will prevent them from

securing work. The majority of cases are still open, thereby prolonging the legal uncertainty of the accused persons.

- 221.** The complainants describe the manner in which the social protests are conducted and indicate that, generally speaking, once the road is blocked, a local, provincial or national Government representative appears on the scene with the aim of reaching an agreement with the demonstrators. A document is produced, sometimes in the presence of a prosecutor, and signed by the representatives of workers involved in the demonstration. Subsequently, the signatories are accused of being those criminally responsible in the prosecutions initiated. Therefore, most of the people prosecuted are the trade union officers or social leaders who accompany the demonstrators, as well as representatives designated by the demonstrators.
- 222.** The complainants state that certain alternative means of expression, such as peaceful protests, are fundamental for unemployed workers, who do not have the possibility of using methods such as strikes or collective bargaining.
- 223.** The CTA details, province by province, numerous cases of repression and criminal persecution. Some of these cases refer to trade unionists, whereas others involve unemployed persons, and the CTA does not provide information on the trade union nature of the action taken by these people, neither does it indicate whether such action was organized by a trade union. Most of the cases refer to roadblocks. The following is a list of the cases referring to trade unionists which involve, or may involve, trade union activities:
- *Buenos Aires Province:* Mr. Sergio Ariel Basterio, General Secretary of the Association of Aeronautical Personnel (APA) and member of the National Executive Committee of the CTA, and Mr. Edgardo Aníbal Llano, Deputy Secretary of the Association of Aeronautical Personnel (APA), were prosecuted for allegedly violating section 194 of the Penal Code (obstructing the highway) as the result of a protest following disputes at the *Aerolíneas Argentinas* enterprise towards the end of 2001.
 - *Autonomous City of Buenos Aires:* In the early morning of 19 April 2001, the Federal Police repressed a demonstration by trade unions affiliated to the Argentine Workers Movement (MTA) who were demonstrating in front of the National Congress for the approval of a labour reform act. Although physical force was used initially to restore the flow of traffic, once this had been done, there was indiscriminate repression and around 30 people were injured, four of whom with bullet wounds.
 - *Tierra de Fuego Province:* Owing to a meeting of health workers, held in January 2002 at the Río Grande Regional Hospital, security forces committed brutal acts of repression. The intervening judge defined the events as sedition, and the summary proceeding is still under way.
 - *Santa Fe Province:* During the social crisis leading up to the resignation of former President Fernando de la Rúa, Mr. Claudio Lepratti, trade union representative of the Association of State Workers (ATE), was murdered by police in Rosario city, whilst he was carrying out his professional duty in a school canteen.
 - *Neuquen Province:* Mr. Julio Durval Fuentes, General Secretary of the Confederation of Argentine Workers (CTA) of the Neuquen Province, currently has 20 criminal actions against him and Mr. César Abel Sagredo, Deputy Secretary of the Association of State Workers (ATE) of the State of Neuquen, currently has ten criminal actions against him.

Mr. Luis Alberto Rodríguez, General Secretary of the Confederation of Argentine Workers (CTA) of Zapala city, is accused of committing an offence against public

safety for having participated in a protest in Zapala city along with a large group of workers and unemployed persons (1999).

Mr. Alejandro Mansilla is accused of committing an offence against public safety for his participation in a roadblock to demand work for a group of unemployed persons belonging to the CTA (2001).

Messrs. Juan Morales, Oscar Buyones, José Antonio Ríos, Pablo M. Jiménez, Juan Manuel Sallavedra and José Arbajou are accused of committing an offence against public safety for their participation in a roadblock in Senillosa city to demand work for a group of unemployed persons belonging to the CTA (2001).

Mr. Carlos Quintriqueo, General Secretary of the ATE in the Neuquen Province, is accused of violating section 194 of the Penal Code for his participation in a roadblock held by unemployed persons and workers in Junín de los Andes city (2001).

- *Salta Province:* Mr. Martín Caliva (General Secretary of the Trade Union of Municipal Employees of Güemes), Mr. Miguel Gamboa, Ms. Miriam de los A. Gonzáles, Ms. Cristina del V. Gómez, Ms. Silvia C. Maidana, Ms. Blanca E. Salvatierra (ATE Güemes), Mr. Juan José Mendoza, Mr. Eduardo Miranda (Trade Union of Municipal Employees of Güemes) and Mr. David Buenaventura (General Secretary of ATE Salta) are accused of obstructing the highway for their participation in January 2000 in a roadblock held 1,135 kilometres along road No. 34 by municipal employees of General Güemes city to demand the payment of five months owed wages.
- *Córdoba Province:* On 8 June 2000, a roadblock was held in the Cruz del Eje area to demand the implementation of benefit plans for the unemployed and to denounce the structural poverty prevailing in the north of the province. The provincial police repressed the demonstration, leaving three people injured and three others in detention.
- *Chaco Province:* On 17 May 2000, the provincial police violently repressed a demonstration by state employees, leaving 15 people injured and eight in detention.

B. The Government's reply

224. In its communications of 6 September 2002, 13 January, 25 April, 31 October 2003, and 20 January 2004, the Government sent information produced by the Interior Security Department of the Ministry of Justice, Security and Human Rights on the situation of the events reported in various provinces. According to this information, at present the new Government's relationship with unemployment movements is one based on dialogue by virtue of the efforts made to reduce unemployment and social exclusion. The Government states that although generally speaking the social and employment situation during the previous decade matches the description given by the complainants in some aspects, the priority of the new Government, which took office on 25 May 2003, is to generate a fairer economy aimed at social inclusion. However, the Government considers that this area does not come under the specific responsibility of the Committee. The Government indicates that specific policies are being applied to reverse the consequences of the social and economic crisis which include the Comprehensive Plan for the Promotion of Employment, the National Plan for Employment Regularization, the Plan for Unemployed Male and Female Heads of Households, and the Plan for Local Development and Social Economy implemented by the Ministry of Social Development. The Government also mentions the establishment of a Committee for Legal Analysis of Social Protests, which is comprised of important figures from various sectors of society, distinguished jurists, officials and social

actors and is responsible for assessing different variables so that acts which are not exclusively acts of social protest do not come under criminal law; a Bill has been drawn up for this purpose.

- 225.** As regards the various specific events reported, the Government sent the following information concerning the autonomous City of Buenos Aires and the events of 19 April 2002:

As regards the events that occurred during the demonstration in front of the National Congress, it should be mentioned that members of the Argentine Federal Police Force provided security services to safeguard the physical integrity of demonstrators, as well as that of those people not participating in the protest.

As events developed, traffic on Avenida Entre Ríos, at its intersection with Avenida Rivadavia, was brought to a standstill. For this reason, the prosecutor responsible for contraventions (Fiscalía Contravencional) issued an order to clear the road and pavement of the thoroughfare in question, given that the behaviour of the demonstrators was in violation of section 41 of the “Contravention Code” (Código Contravencional) of the City of Buenos Aires.

When repeated contact with representatives of the demonstrators with a view to re-establishing the flow of traffic and appeals made to demonstrators through personal dialogue and using loudspeakers did not lead to positive results, security forces started to clear the thoroughfare.

During this procedure, 52 people were detained and proceedings were initiated against them for “affronts to and resistance of authority, disobedience, damage, numerous thefts, and injuries”, with the intervention of the National Criminal Court of First Instance and the Fifth Federal Correctional Court, under the responsibility of Dr. Gabriel Cavallo, Secretariat No. 9, Dr. Javiera Gómez Castilla.

C. The Committee’s conclusions

- 226.** *The Committee notes the allegations and the Government’s reply which mainly refer to acts of protest by unemployed persons, with the support of trade union officials, using roadblocks to promote their cause. The Committee observes that in numerous cases this action led to confrontations with the authorities and resulted in deaths and injuries. The Committee observes that legal proceedings have been initiated against those participating in the roadblocks and against the police authorities who repressed the protests.*
- 227.** *The Committee observes that these allegations refer to events that occurred up until 2002, and that the new Government indicates that its relationship with unemployed persons’ movements is one based on dialogue, given its attempt to generate a fairer economy aimed at social inclusion, and draws attention to a series of specific, relevant policies.*
- 228.** *The Committee underlines that it is unable to determine whether the protests were organized by trade unions as such. The Committee recalls that protests are protected by the principles of freedom of association only when such activities are organized by trade union organizations or can be considered as legitimate trade union activities as covered by Article 3 of Convention No. 87. On the other hand, the Committee considers that the complaints, as formulated, do not allow for a determination as to whether the issues raised relating to repression during roadblocks relate to the peaceful exercise of trade union rights as contained in Convention No. 87, Article 8, which provides that “in exercising the rights provided for in this Convention, workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land”.*

229. *The Committee requests the Government to transmit its observations on the complainants' allegation that Mr. Claudio Lepratti, trade union representative of the Association of State Workers (ATE), was murdered by police in Rosario city, whilst he was carrying out his professional duty in a school canteen. The Committee requests the Government to keep it informed of the outcome of any judicial inquiry undertaken in this respect.*

The Committee's recommendation

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

The Committee requests the Government to transmit its observations on the complainants' allegation that Mr. Claudio Lepratti, trade union representative of the Association of State Workers (ATE), was murdered by police in Rosario city, whilst he was carrying out his professional duty in a school canteen. The Committee requests the Government to keep it informed of the outcome of any judicial inquiry undertaken in this respect.

CASE NO. 2219

DEFINITIVE REPORT

Complaint against the Government of Argentina presented by

- **the Confederation of Argentine Workers (CTA) and**
- **the Association of State Workers (ATE)**

Allegations: Workers were sanctioned following their participation in a strike to claim back pay at the town council of the City of Salta

- 231.** The complaint is contained in a communication from the Confederation of Argentine Workers (CTA) and the Association of State Workers (ATE) dated September 2002.
- 232.** The Government sent its observations in communications dated 9 April and 10 and 15 September 2003.
- 233.** Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 234.** In their communication of September 2002, the Confederation of Argentine Workers (CTA) and the Association of State Workers (ATE) allege that sanctions were imposed, in violation of Convention No. 87, on workers of the town council of the City of Salta by way of Ruling No. 140 issued by the general directorate of human resources of that municipality, for having participated in a strike convened by the ATE to claim back pay.
- 235.** The complainants state that the delay in the payment of wages that occurred at the end of 2001 led to a series of legitimate claims and protests. The conflict worsened and in May 2002 a strike was held to claim the pay corresponding to February, March and April 2002.

The measure was decided at an assembly convened by the ATE, the employer and the administrative authority were notified of it, and it had the support of 80 per cent of the workers.

236. Ruling No. 140 (the text of which was attached to the complaint) imposes one day of suspension with the corresponding deduction in pay for workers who participated in the strike, and constitutes, according to the complainant organizations, a clear violation of Convention No. 87.

B. The Government's reply

237. In its communication dated 9 April 2003, the Government said that it had submitted the complaint to the relevant provincial and municipal authorities, requesting them to provide their observations. In its communications of September 2003, the Government states that Ruling No. 378, issued by the general directorate of human resources of the Municipality of the City of Salta (the text of which was attached), set aside Ruling No. 140 and ordered that the workers in question be reimbursed the deductions made in accordance with it. As the allegation underlying the claim has disappeared the Government considers that this case requires no further action.

C. The Committee's conclusions

238. *The Committee observes that this case relates to the imposing of a sanction of one day's suspension on workers of the town council of the City of Salta by way of Ruling No. 140 issued by the general directorate of human resources of that municipality, for having participated in a strike convened to claim back pay. The Committee notes with interest the Government statement that Ruling No. 378, issued by the general directorate of human resources of the Municipality of the City of Salta, set aside Ruling No. 140 and ordered that the workers in question be reimbursed the deductions made in accordance with it. The Committee requests the Government to ensure that the new Ruling is fully implemented.*

The Committee's recommendation

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

The Committee notes with interest Ruling No. 378, issued by the general directorate of human resources of the Municipality of the City of Salta, which sets aside Ruling No. 140 and orders the reimbursement to workers of the deductions made, and requests the Government to ensure that the new Ruling is fully implemented.

CASE NO. 2277

INTERIM REPORT

**Complaint against the Government of Canada
concerning the Province of Alberta
presented by
the Alberta Union of Provincial Employees (AUPE)**

Allegations: The complainant organization alleges that the provincial Government significantly altered the rights to organize and to bargain collectively of health-care sector employees, through the speedy adoption of legislation, without proper consultations with trade unions

240. The complaint is contained in communications dated 9 June and 2 July 2003 from the Alberta Union of Provincial Employees (AUPE).
241. The Government of Canada transmitted the replies of the Government of Alberta in a communication dated 29 October 2003.
242. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), nor the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

243. In its communication of 9 June 2003, the AUPE explains that it is Alberta's largest union, representing some 53,000 members in several sectors of employment, including health care, educational facilities, the provincial government, municipalities, boards and agencies.
244. The AUPE alleges that the Government of Alberta violated Conventions on freedom of association and related instruments when it introduced the Labour Relations (Regional Health Authorities Restructuring) Amendment Act (Bill No. 27), which came into force on 1 April 2003 (hereafter "the Act").
245. The complainant organization submits that the new legislation significantly and dramatically alters bargaining rights for health-care workers in the Province by, among other things, terminating the right to strike for members, removing freely negotiated severance provisions from collective agreements, restructuring the health-care sector thereby effectively deleting collective agreements and forcing members into collective agreements and unions that are the product of "winner takes all" vote scenarios. Additionally, those unions that are not successful in "run-off" votes will no longer be able to organize the unorganized in the remaining four functional bargaining units. In short, the freedom to associate, to engage in legal strikes and to organize has been taken away from workers in Alberta's health-care sector with the enactment of Bill No. 27. The Government's interference with the worker's right to choose a union and with the continued functioning of those unions and the collective agreements they have negotiated is a clear violation of Convention No. 87.

246. Even though Bill No. 27 would rewrite collective agreements, take away the right to strike for non-essential health-care workers, dissolve collective agreements and force unions into “run-off” votes, there was no consultation with health-care unions, including AUPE, prior to the Alberta Government introducing Bill No. 27 on 11 March 2003. The usual course of legislation in Alberta, and indeed across Canada, is for stakeholders who are affected by proposed legislation to appear before committees to voice concerns or endorse the legislation. With Bill No. 27, there was no ability to do this, as the Alberta legislature passed the legislation in less than three weeks with the changes taking effect on 1 April 2003.

247. According to the AUPE, the Act and associated regulations:

- terminate the right to strike. The majority of health-care workers (90 per cent) did not have the right to strike prior to the enactment of Bill No. 27. With the enactment of Bill No. 27, the legal right to strike for the remaining 10 per cent (approximately 7,000) of workers in health care has been abolished. The legislation has simply completed the Alberta Government’s mission to make strikes illegal for all health-care workers;
- remove the right for health-care workers to continue with their union of choice by forcing members in four functional bargaining units (there were five functional bargaining units prior to Bill No. 27) to participate in “run-off” votes. The Alberta Labour Relations Board will determine which collective agreement will apply to members thereby effectively negating all other existing collective agreements;
- nullify severance provisions in existing collective agreements. This not only eliminates the opportunity to bargain collectively for severance in future rounds of bargaining, but it also overrides basic contractual obligations that were fairly determined between both parties; and
- take away the right and ability for nurse practitioners to be unionized. Their duties have been expanded and they are now on their own to negotiate individual employment contracts.

248. When the Government introduced Bill No. 27, it stated that it was doing so to “streamline bargaining” and to introduce “flexibility to implement reforms”. Any fair reading of Bill No. 27 indicates that the sole reason to make these draconian changes to labour relations in Alberta’s health-care sector is to tear up collective agreements, remove the right to strike and take away the right to choose a union without state interference. Under the guise of simple “housekeeping”, the Alberta Government has clearly demonstrated its contempt for international labour Conventions.

249. In its communication of 2 July 2003, the complainant states that one of the more reprehensible effects of the Act is the removal of freedom of choice for workers by mandating run-off votes between unions in a “winner takes all” scenario. The resources, both human and financial, that must be expended by Alberta’s health-care unions to prepare for these forced votes, is astronomical. Time and effort that should properly be spent on safeguarding and protecting workers’ rights in existing freely negotiated collective agreements must instead be diverted to election campaigns that pit union against union and serve no useful labour relations purpose. Intentional or not, the purpose that it does serve is to create labour relations turmoil and attempts to severely weaken the ability of Alberta’s health-care unions to advocate on behalf of their members. With the stroke of a pen, the Alberta Government has essentially stated that it has the unilateral right to change the representation rights and future collective agreements of Alberta’s unionized

health-care workers with no consultation with unions and in flagrant disregard for ILO Conventions.

- 250.** The AUPE adds that one of its specific allegations is that the Act would nullify severance provisions in existing collective agreements that were freely bargained between the union and a health-care employer. In support of its position, the AUPE attaches copies of correspondence with the Alberta Mental Health Board in which this employer confirms its position that it does not have to provide severance pay to AUPE members in accordance with an agreement between the parties, by relying on the provisions of Bill No. 27 and its attendant regulations.
- 251.** As a result of the enactment of Bill No. 27 on 1 April 2003, the Labour Relations Board (LRB), the administrative tribunal charged with the responsibility of ensuring compliance with Alberta's labour legislation for the unionized work environment, issued revised information bulletins for the health-care sector. The revisions were necessary as a result of Bill No. 27 and provide an overview of how the regressive and draconian changes will be implemented. These include the process for forced run-off votes resulting in the elimination of unions freely chosen by workers and their respective collective agreements.
- 252.** The complainant organization requests that: the Act be declared in violation with Conventions on freedom of association and repealed; adversely affected employees be entitled to financial compensation; appropriate and meaningful consultations be held with affected trade unions; the Government refrain in future from arbitrarily enforcing legislation as a means of resolving disputes; and an ILO study and information mission be sent to Alberta to examine the complaint.

B. The Government's reply

- 253.** In its communication of 29 October 2003, the Government states in summary that the purpose of the Act was to simplify the administration of labour relations in the public health-care sector. The changes carried out in the Act will ensure the effective management and provision of public health care to Albertans – the Government of Alberta's number one public policy priority – while also protecting the right of health-care workers to organize and enjoy the benefits of a collective agreement. It explains by way of background that, as the public health-care governance structure (particularly following the creation of the regional health authority system in 1994) has become more centralized and integrated, pressure has increased for the labour relations system to conform to this new environment. Public health-care services in Alberta have been faced with increasing pressures and challenges over the past two decades. As with most Canadian jurisdictions, Alberta in the 1980s and 1990s struggled with the dilemma of supporting an increasingly sophisticated and complex health-care system in a period of severe fiscal restraint. The Alberta Government responded to this challenge in 1994 with the passage of the Regional Health Authorities Act, which greatly simplified public health-care governance by dividing the Province of Alberta into 17 geographically delineated regional health authorities (RHAs).
- 254.** Prior to 1994, responsibility for health-care delivery was divided among more than 200 hospital boards, public health units and various other public health bodies. In an environment characterized by a large number of employers typically operating one or just a few facilities, labour relations also tended to be decentralized, with a large number of bargaining relationships and collective agreements. Following regionalization, labour relations within the regional health authorities were characterized by considerable uncertainty as all parties attempted to determine how the new governance structure would work and, as the Labour Relations Board (LRB) describes it, "how that structure would affect bargaining units, collective agreements and trade union and employee rights". No

new legislation was introduced at the time, and labour relations disputes concerning the new governance structure were typically resolved before the LRB.

- 255.** For a number of reasons, no clear consistent model of labour relations, particularly with respect to bargaining unit structure, emerged in the post-regionalization period. While the LRB adjudicated on outstanding issues between the parties and adapted their policies and procedures to the new governance structure, there was a sense in the community (clearly acknowledged by the LRB) that the labour relations system as it applied to the regional health authorities warranted review. To that end, and in the context of the continuing evolution of public health-care delivery in the post-regionalization period, the LRB initiated a dialogue with health-care stakeholders. The question of the appropriateness of current LRB policy with respect to bargaining units was examined, and two discussion papers were issued in 1996. In 2002, the LRB issued another, more comprehensive, discussion paper and consulted with health-care stakeholders throughout the Province on the question of reform.
- 256.** In 2003, the Government of Alberta determined that a further realignment of the regional health authority system was required. In April 2003, the 17 regional health authorities were further restructured into nine larger regional health authorities. At this time, the operational management responsibilities of the Alberta Mental Health Board (AMHB) were folded into the RHAs, while the Alberta Cancer Board was maintained as a stand-alone entity.
- 257.** In the wake of this restructuring, the Government of Alberta introduced Bill No. 27, in the spring 2003 session. The Act came into force on 1 April 2003, and reorganizes labour relations within the regional health authorities by making the following changes:
- establishing region-wide bargaining units for all unionized employees within each of the regional health authorities, and establishing four job-function-based standard bargaining units for all unionized employees within each regional health authority (nurses, auxiliary nurses, paramedical-technical-professional workers, general support workers);
 - establishing compulsory arbitration as the common dispute resolution system for all unionized bargaining relationships within the regional health authorities;
 - clarifying severance provisions to ensure that a nominal change of employer due to organizational restructuring – without significant change in years of service, rates of pay, and terms and conditions of employment (as outlined in collective agreements) – did not result in severance;
 - excluding nurse practitioners from labour relations coverage; and
 - establishing an implementation process, with the LRB responsible for overseeing the transition.
- 258.** Turning to the AUPE’s allegations, the Government underlines at the onset that the scope of the Act is limited to the nine regional health authorities and their employees. While the AUPE submission makes reference to the “health-care sector”, it is only those workers who are unionized employees of the regional health authorities who are affected by the Act. The Government then addresses the AUPE’s specific allegations.

Region-wide bargaining units

- 259.** The Government of Alberta does not agree with the AUPE claim that the Act significantly and dramatically alters the fundamental bargaining rights of unionized employees of the

regional health authorities, nor does it agree that it contravenes Convention No. 87. The establishment of region-wide functional bargaining units is entirely consistent with and appropriate to a public health-care system that continues to become functionally interdependent and integrated. Upon the completion of the Act's implementation process, each of the nine regional health authorities will be responsible for four collective agreements, for a total of 36 agreements throughout all of the authorities. Therefore, the Act is simply a confirmation and rationalization of already-established practice. The Government further observes that these adjustments are in no way radical or unexpected. As discussed above, the structure of health-care labour relations has been greatly influenced by the structure of health-care governance. The LRB, in their 2002 discussion paper *Standard Health Care Bargaining Units* noted that: "Between 1977 and 1994, geographic bargaining boundaries were generally 'employer wide'. For example, when the hospital was the employer, the Board's standard practice was to name the hospital as the employer and describe the unit as 'all employees when employed in (functional group)'. When hospitals grouped together to form districts, the Board moved to district-wide units, with the district identified as the employer."

- 260.** For a number of reasons, the LRB did not fully adopt the "employer governance model" approach upon the establishment in 1994 of the regional health authority system. As a result, a patchwork of different bargaining unit descriptions emerged that was not always consistent with the employer's model of governance. This in turn created considerable uncertainty for health-care employers and unions alike. While stakeholder concern was channelled into dialogue with the LRB over its bargaining unit policies, many parties actively involved with labour relations in the health authorities also adapted their behaviour to fit the new governance structure. Several health-care employers and unions, including the AUPE, have engaged in bargaining either at the regional or even provincial level, though there was no formal requirement to do so. Indeed, with the notable exception of general support services, the majority of bargaining impacting nurses, auxiliary nurses and paramedical professional and paramedical technical personnel appears to take place at least at the regional level. Prior to the Act, the establishment of functional bargaining units had been a matter of LRB policy. However, as early as 1994 the LRB identified that the direction of health-care evolution in the Province was changing, and that increased integration of hospital and community health-care functions and operations was very likely. For example, in the 1994 "T-2 Transitional Bulletin" the LRB contemplated the integration of community health units into acute care units in the event of future regionalization. Further, the LRB, in its 2002 discussion paper, recognized the practical benefit of combining the two paramedical units.
- 261.** The Government submits that the Act contains two key elements: it reintroduces into the Alberta health-care labour relations environment the notion that the employer's governance structure determines the geographic boundaries of bargaining units; and it involves a move to four functional bargaining units, which apply to all unionized workers in the regional health authorities. The presence of job-function-based bargaining units in Alberta's unionized health-care industry is nothing new. According to the LRB, functional bargaining units have been in existence for at least 25 years and standard functional units have been used for hospitals and nursing homes since 1972.
- 262.** The choice of four functioning bargaining units (and further the decision to combine paramedical professional and technical units in the Act was not an unforeseen outcome. The move to employer-wide bargaining units and the creation of four functional bargaining units are evolutionary rather than revolutionary in nature, and are entirely intelligible within the context of the health-care community discussions that took place during the LRB's 2002 consultations on bargaining unit policy. In other words, the Alberta Government does not believe that either employer-wide bargaining units or four (as opposed to five or three) standard functional bargaining units in any way violate

fundamental worker rights to freedom of association under Convention No. 87. Health-care trade unions have operated comfortably under LRB bargaining unit policies that recognized standard, functional, and in varying degrees employer-wide bargaining units. Moreover, the extent to which Alberta's health-care unions have engaged in province-wide bargaining is perhaps some indication that a more rationalized and simplified labour relations structure within the regional health authorities is a reasonable policy choice.

Common dispute resolution system

263. As regards the AUPE's allegation that the Act removed the right to strike from certain health authority workers, the Government states that it is responsible for providing publicly funded and administered health services. As such, patient access and safety cannot be compromised. Like police officers and firefighters, regional health authority health-care employees provide essential services. The Act extends the prohibition on strikes and lockouts to all employees within the regional health authorities: this reflects the growing interdependence and integration of health-care delivery within the regional health authorities. Withholding services could have potentially life-threatening consequences for Alberta citizens whose legitimate health-care needs must be met. Public health-care employees should have a common means to resolve labour disputes that is fair, objective and transparent, without jeopardizing public safety: the Act provides for this.

Severance provisions

264. As regards the allegations that bargaining rights for health-care workers in Alberta were altered in violation of Convention No. 87, by removing freely negotiated severance provisions from collective agreements, and that the Government is thereby interfering with the continued functioning of negotiated collective agreements, the Government replies that the restructuring of the regional health authorities was accompanied by a change in governance on the part of some employees of the Alberta Mental Health Board who were transferred to the regional health authorities. While the job functions of the vast majority of these employees were not changed, it appeared that a nominal name change of their employer could lead to these employees having access to severance rights, even though they were substantially unaffected by the change in governance. Section 19 of the Regional Health Authority Collective Bargaining Regulations states that "Notwithstanding any other enactment or the terms of a collective agreement, where there is a change in governance or a restructuring of one or more prescribed entities, no employee of any of the entities is entitled to severance pay or termination pay or other compensation if the employee's position is substantially the same after the change in governance or restructuring as it was before it". Health-care employees affected by the Act were transferred wholly to successor employers. All terms and conditions of employment as outlined in their collective agreements continue to be in full force and effect for each and every employee.

Nurse practitioners

265. The Government disagrees with the allegation that the Act takes away the right and ability for nurse practitioners to be unionized, noting instead that the role of nurse practitioners has been expanded to such an extent so as to realistically place them in a separate professional category. The role of a nurse practitioner has grown to include such responsibilities as: making independent clinical decisions about diagnosis and treatment; ordering and performing diagnostic tests; and prescribing drugs. The Act recognizes the important role played by nurse practitioners in a reformed public health-care system. For example, recent amendments in July 2002 to the Registered Nurses Providing Extended Health Services Regulation (renamed Nurse Practitioner Regulation) enable nurse practitioners to provide care as independent primary-care providers. Hence, the Labour

Relations Code will no longer cover these professionals. Instead, like other independent professionals, they will negotiate their own wages and working conditions that reflect their specific requirements. It should also be noted that like other professionals who are excluded because of the independent nature of their work, nurse practitioners are not restricted from forming or joining professional associations.

Transition mechanism

266. As regards the AUPE's objection to the transition mechanism that the Act established to move the parties to 36 functional bargaining units, the Government does not believe that establishing 36 standard functional bargaining units in any way violates fundamental worker rights to freedom of association. The LRB has been provided with temporary powers to address issues arising out of the move from a large number of collective agreements to 36 in a timely and effective manner. As the transition process is still under way, it would not be appropriate to comment on any rulings or directives that have been issued by the LRB. However, it does appear that the parties are gradually working their way through the transition process without undue disruption or delay.

267. In those circumstances where union representation was in question (primarily in the general support services sector), the decision was left to employees to choose their union representation from among two or more competing unions who demonstrated substantial support in the pre-Act environment. The process was designed to reflect, as much as possible, existing LRB policy on representation votes. Likewise, in those cases where one union was in a clear position of dominance with respect to the functional bargaining unit in question, employees are still given an opportunity to choose between two eligible collective agreements that would serve as the base or template agreement for future negotiations. The Government recognizes that the transition process is complex and has created some hardship for certain trade unions. However, that process was designed to minimize disruption, and extends to employees a primary role in determining how their future labour relations will be conducted. Fundamentally, the transition process ensures that all unionized personnel continue to be represented by a union and covered by a collective agreement.

Continued functioning of unions

268. The AUPE alleges that the bargaining rights for health-care workers in Alberta were altered by mandating that those unions which are not successful in representation votes will no longer be able to organize the unorganized workers in the remaining four functional bargaining units. The Government recognizes that the creation of larger and more centralized bargaining units does place restrictions upon the abilities of "losing" trade unions to organize the small number of unorganized workers within the regional health authorities. The decision to restrict "losing" trade unions from organizing "tag end" units outside the region-wide functional bargaining units must be viewed in the context of the high level of union density in the health-care sector in general, and in the regional health authorities in particular. It cannot be argued that this restriction will, in any significant way, jeopardize the ability of regional health authority employees to access unionization if they so desire. The Act may affect the fortunes of a particular union, but it in no way changes the reality that the employees of the regional health authorities are almost entirely unionized. The Government also notes that there is nothing within the Act that inhibits or restricts the ability of a "losing" trade union to attempt to organize the workers within a given region-wide functional bargaining unit as contemplated by the Labour Relations Code.

Consultations

269. As regards the alleged lack of consultation prior to the development and introduction of the legislation, the Government recognizes that consultation with stakeholders can be a valuable element in the development of legislation. It is not, however, a requirement of the legislative process. It should be noted that the Act did build on the work of previously referenced LRB consultations on standardized health-care bargaining.
270. The Government concludes that the primary public policy expectation of Albertans on their provincial Government is the effective provision of public health-care services. The Labour Relations (Regional Health Authorities Restructuring) Amendment Act was an administrative change to rationalize labour relations in the public health-care sector, by establishing region-wide bargaining units of all organized employees and four job-function standard-based bargaining units within each RHA. In making this change that will allow for more effective management of public health care, the Government has not compromised the freedom of association of public health-care workers.

C. The Committee's conclusions

271. *The Committee notes that this case concerns alleged violations of the rights to organize and to bargain collectively of workers of the health-care sector, in the context of a legislated restructuring of collective bargaining. The complainant organization alleges that the rights of workers were adversely affected through the speedy adoption of the Labour Relations (Regional Health Authorities Restructuring) Amendment Act ("the Act"), without adequate consultations with trade unions.*
272. *As regards the restructuring process itself, it is not for the Committee to decide whether it is appropriate to modify the number of functional bargaining units (in this case, to reduce it from five to four) or whether bargaining units should be region-wide, job-based or otherwise: these decisions belong to the Government. The Committee is competent however to decide whether in so doing, the Government complied with freedom of association principles, including those concerning consultations with workers' organizations. The Committee notes that in spite of the Government's general statement that there were consultations with health-care stakeholders, the evidence adduced shows that there have been no real and meaningful consultations with trade unions, to the extent that the magnitude of the changes would have warranted. The Committee recalls in this respect that where a government seeks to alter bargaining structures in which it acts directly or indirectly as employer, it is particularly important to follow an adequate consultation process, whereby all objectives perceived as being in the overall national interest can be discussed by all parties concerned; such consultations should be undertaken in good faith and both partners should have all the information necessary to make an informed decision; these consultations should be held prior to the introduction of legislation [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 941 and 932]. This is particularly the case in situations such as the present one, where a major restructuring of the collective bargaining regime has profound repercussions (e.g. the delineation of bargaining units; the identification of which collective agreements will apply to which employees; the possible disappearance of existing agreements, the transition process, etc.) and entails a significant financial and organizational impact for the workers' organizations concerned, including the consequences, financial or otherwise, of the forced "run-off" votes. (The Committee understands that run-off votes are a form of representation vote that are used when two or more unions are in competition over members. A run-off vote is very similar to a conventional successorship vote where competing unions attempt to persuade employees in their own and in another bargaining unit to vote for them: in short, it is a "winner takes all" scenario. Unions involved in run-off votes are permitted to organize*

employees as if it were a new certification situation, subject to the rules established by the Labour Relations Boards. During a run-off vote, all collective agreements continue to govern the parties to the agreement until the result of the run-off vote is known). The Committee therefore requests the Government to ensure in future that such adequate and meaningful consultations are held in such circumstances and requests the complainant organization to provide additional information on the practical consequences of these changes.

- 273.** While not underestimating the organizational difficulties flowing from such a major restructuring process (which the Government itself acknowledges when stating that the transition process has created some hardship for certain unions) the Committee emphasizes that the paramount consideration is that, notwithstanding the modifications of the collective bargaining structure, all employees should retain their right to organize. The Committee notes in this respect that the Act adds “nurse practitioners” to the list of employees (inter alia: persons performing managerial functions; members of the medical, dental, architectural, engineering or legal profession) excluded from the scope of the Labour Relations Code and therefore deprived of the right to organize. The Committee recalls that the words “without distinction whatsoever” used in Article 2 of Convention No. 87 mean that freedom of association should be guaranteed without discrimination of any kind based on occupation, not only to workers in the private sector but also to civil servants. All public service employees (with the sole possible exception of the armed forces and the police, as indicated in Article 9 of Convention No. 87) should be able to establish organizations of their own choosing to further and defend the interests of their members [see *Digest*, op. cit., paras. 205-206]. The Committee therefore requests the Government to amend rapidly the provisions in question so that nurse practitioners recover the right to establish and join organizations of their own choosing, and to keep it informed of developments in this respect.
- 274.** As regards the right to strike, the Committee has acknowledged that it can be restricted or even prohibited in essential services, i.e. those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, and that the hospital and health sectors are essential services. The Committee notes, however, that within these essential services, certain categories of employees, e.g. labourers and gardeners, should not be deprived of the right to strike, as noted by the Committee of Experts on the Application of Conventions and Recommendations (observations 2003 and 2004). At the same time, the Committee has considered that adequate protection should be given to workers deprived of the right to strike, to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting such services; these restrictions should thus be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties can take part at every stage and in which the awards, once made, are fully and promptly implemented [see *Digest*, op. cit., paras. 546-547]. The Committee requests the Government to ensure that these principles are fully applied in practice in future rounds of negotiations.
- 275.** As regards the effects of the restructuring process on the severance pay provisions freely negotiated in previous collective agreements, the Committee considers generally that terms and conditions freely negotiated in previous agreements should not be cancelled through subsequent unilateral legislative or administrative measures; were it not the case, social partners could not have any trust in negotiated agreements, which is ultimately detrimental to harmonious and stable labour relations. In the particular circumstances, the Committee notes from the exchange of correspondence between the AUPE and the Alberta Mental Health Board, in March and April 2003, that the parties disagree both on the facts (i.e. whether the employees in question were transferred to a successor employer) and on the legal consequences thereof (i.e. whether these employees are entitled to severance pay). Noting that the issue has been referred to arbitration under the applicable Letter of

Understanding, the Committee requests the Government to keep it informed of developments and to provide it with the decision issued in this respect.

276. *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

277. *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 amend rapidly the legislative provisions depriving nurse practitioners of the right to establish and join organizations of their own choosing, and to keep it informed of developments.*
- (b) The Committee requests the Government to ensure that, in future rounds of negotiations, only workers of the health sector providing essential services in the strict sense of the term may be deprived of the right to strike and that they enjoy adequate, impartial and speedy conciliation and arbitration proceedings, in accordance with freedom of association principles.*
- (c) The Committee requests the Government to keep it informed of developments concerning the severance pay dispute involving workers at the Alberta Mental Health Board, and to provide it with the arbitration decision thereon.*
- (d) Recalling that where a Government seeks to alter bargaining structures in which it acts directly or indirectly as employer, it is particularly important to follow, before the introduction of legislation, an adequate consultation process conducted in good faith and where social partners should have all the necessary information, the Committee notes the alleged lack of adequate consultations in this instance, prior to the Government's decision to change functional and regional bargaining structures and requests the complainant organization to provide additional information on the practical consequences of these changes.*
- (e) The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

CASE NO. 2172

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

**Complaint against the Government of Chile
presented by
the Trade Union of Pilots and Technicians of Lan Chile (SPTLC)**

Allegations: The complainant organization alleges that Lan Chile S.A. conducted a campaign to break up its organization that began in 2001 and took the form of a series of illegal practices of anti-union discrimination, above all in connection with negotiations aimed at concluding a new collective agreement. According to the complainant, these practices included the following: a publicity campaign against the trade union; the mass dismissal of unionized pilots; threats of dismissal; pressure exerted on pilots and their family members so that the former withdrew trade union membership; discrimination against trade union members with regard to training; the re-employment of dismissed pilots (or their recruitment in subsidiary enterprises) under anti-union conditions (the acceptance of individual responsibility for the industrial action entitled “work-to-rule”, a written statement that the trade union ordered them to participate in this action and acceptance to be covered by individual employment contracts rather than the collective agreement); and harassment of trade union officials

- 278.** The Committee examined this case at its November 2002 meeting and adopted an interim report [see 329th Report, paras. 316-356, approved by the Governing Body at its 285th Session (November 2002)].
- 279.** The Government sent, on 5 May 2003, the comments, dated February 2003, of the Confederation of Production and Trade, and provided additional observations in a communication dated 12 January 2004.
- 280.** Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

281. At its November 2002 meeting, the Committee noted the Government's statements [see 329th Report, para. 349], which confirmed that:

- the action entitled “work-to-rule” taken by the trade union consisted in fulfilling the provisions of aeronautical regulations to the letter, which obviously did not involve the infringement of applicable standards; no contractual or legal standards were violated;
- between 14 September and 4 October 2001, the enterprise dismissed 108 trade union members. In 23 of these cases, the enterprise invoked “company requirements” and in 85 cases it involved a “serious breach of contractual obligations”. However, in these 85 cases, there is a clear relationship between the delays and the breaches in contractual obligations (or internal regulations). Following the dismissal of these 85 workers, the company reinstated 40 and amongst those not reinstated were eight former trade union directors and workers who participated in the 1995 legal strike. Therefore, the measure was highly discriminatory given that, in essence, it affected the most active members of the organization, namely those who were dismissed for respecting a trade union agreement consisting in “work-to-rule”, without violating contractual or legal standards. Three of the five members of the trade union executive board left the company following legal proceedings (which lead to an agreement or out-of-court negotiations). Thirty-seven pilots affected filed a request to vacate the dismissals before the Fifth Labour Court of First Instance of Santiago;
- the dismissals reduced the negotiating power of the workers (participants decreased by 200 per cent compared with the previous collective bargaining process) and while the enterprise signed a new collective agreement, it also came to an agreement with three groups of pilots that had formed part of the trade union. The collective agreement with the trade union was for four years (48 months) with a 56 per cent reduction in the pay increase that otherwise would have been due, whereas the collective agreements with the groups of workers were for 62 months and a lower pay adjustment. Therefore, the pilots will not be able to bargain collectively at the same time and a strike will be very difficult to sustain in this context;
- it has been established that unionized pilots and technicians were subjected to intense pressure aimed at making them withdraw trade union membership. This is shown in documents and communications issued by the employer which offer improved conditions of work that are incompatible with continued trade union membership. This approach was also reflected in the explicit threats of dismissal that were made by some supervisors and acknowledged by some workers during conversations with the officer from the Labour Inspectorate. The trade union can legally file a complaint before the courts for these events and have the company fined;
- according to the inspections conducted within the enterprise, the latter excluded trade union members from flight training for operating new company aeroplanes;
- forty pilots dismissed for having participated in the “work-to-rule” action were reinstated with the condition that they write a letter in which they had to acknowledge responsibility for the possible damage the industrial action may have caused, as well as blame the trade union for forcing them into the alleged transgression. In their new individual contracts, these pilots did not regain the collective benefits that they had previously enjoyed;
- the administrative authority fined the enterprise on two occasions for failing to grant the work agreed upon in the employment contract or for failing to provide four trade union officials with their work schedules (to keep their licence, pilots must be accredited with a specific number of flight hours, and the inability to do so amounts, in practice, to professional disqualification).

282. The Committee made the following recommendations [see 329th Report, para. 356]:

- (a) The Committee decided to present an interim report on this case, considering that information was lacking. In particular, 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. The Committee will then re-examine this case.

- (b) The Committee emphasizes the seriousness of the allegations which have been confirmed by the Government, and expresses its deep concern in view of the number, and nature, of the anti-union practices that were discriminatory or contrary to collective bargaining and resulted in trade union membership dropping from 400 to 71.
- (c) As regards the allegations relating to acts of anti-union discrimination (mass dismissals for conducting trade union activities, pressure exerted on pilots and their family members so that the former withdrew their trade union membership, the exclusion of trade union members from flight training for operating new aeroplanes, the failure to grant the work agreed upon in the employment contracts of trade union officials, the reinstatement of more than half of those dismissed under anti-union conditions), the Committee deeply deplores these anti-union practices and highlights the importance that the discriminatory practices suffered by the complainant organization and its members be rectified and sanctioned without delay.
- (d) The Committee requests the Government to keep it informed of the result of legal proceedings that are currently in force or that will intervene by reason of the previously mentioned anti-union dismissals and practices, and expects that effective and dissuasive sanctions, along with compensatory measures, will be imposed without delay in order to put a stop to the enterprise's anti union practices in the future. The Committee requests the Government to initiate discussions with a view to the possible reinstatement of the 37 pilots who have taken legal action against their dismissal.
- (e) As regards the complainant's allegations and the Government's statement that the enterprise bargained with individual pilots or with groups of pilots for anti-union purposes, and in order to prevent pilots from bargaining collectively in a simultaneous manner in the future, the Committee requests the Government to take measures to prevent Lan Chile S.A. from bargaining for anti-union purposes with individual pilots or non-unionized groups of pilots, and to keep it informed of legal action that may be initiated with regard to such practices.

B. Information communicated by the Government from the Confederation of Production and Trade (February 2003)

283. The Confederation of Production and Trade (CPC) states that the Government, unfairly, neither informed nor consulted Lan Chile S.A. with regard to the present complaint before the Committee on Freedom of Association. It was a cause for surprise that the Government, acting outside its legal powers, spoke unilaterally and arbitrarily of "anti-union practices" at Lan Chile S.A.; this is a serious infringement of the legislation as notice and decision on infringements through alleged unfair practices or anti-union practices are exclusively the domain of the labour courts (article 292 of the Labour Code). Moreover, the Labour Inspectorate is responsible for lodging complaints of such practices with the courts, but it did not do so and neither did the trade union; there is only one complaint lodged with the legal authorities relating to establishing whether the dismissal of certain workers was null and void based on the alleged anti-union practices. The CPC indicates, furthermore, that the Government has added other new facts to the complaint by the complainant organization.

284. The CPC indicates, with regard to the complaint and the dismissal of pilots, that between 26 August and 5 September 2001 there was an average increase of operating flight time of planes of 22 hours (7.6 per cent more than the standard operating flight time).

285. Flight delays caused disruptions in flight traffic control at the airport of Santiago de Chile (frequent changes in the planning of arrivals, alterations in approach sequences, integration

of other users in holding patterns, etc.) and passengers missed connections, enduring long waits and, at times, flights were cancelled.

- 286.** Other deliberate actions were to fly at altitudes below those recommended in order to use more fuel. Moreover, the average of medical leave increased from 3.5-4 daily to 100 daily, which forced the company to cancel flights when replacement alternatives were not sufficient.
- 287.** The dismissals occurred for these reasons and to stop the damage that was wrongfully being caused and not because the process of collective bargaining was drawing near or because of the trade union membership of the pilots. In fact, following the dismissals, there was a trade union meeting during which it was agreed to suspend the actions undertaken in order to meet with the management of the company, achieving in the meetings with the latter complete agreement with regard to the collective bargaining under way, which was negotiated specifically with the same trade union officials who are the complainants in this case, culminating in the signing of a collective agreement with the trade union organization on 26 November 2001.
- 288.** The dismissals were a result of the “serious failure to fulfil the obligations imposed by the employment contract” (article 161.7 of the Labour Code) and, specifically, the behaviour of those dismissed was inconsistent with the technical standards of their duties and led to considerable damage to the company and its clients, both on the operational level, such as its commercial image (destroying the work of years) and on the economic level. They also seriously infringed the internal regulations of the company.
- 289.** Lan Chile S.A. was the number one company in the One World Alliance on international routes and number two for domestic routes. However, with the strategy promoted by a group of pilots (“go-slow”), the company was ranked last in the punctuality statistics for the period 26 August to 5 September 2001; the averages indicate a fall from 82.2 per cent to 39.3 per cent on domestic routes and from 82.1 per cent to 35.2 per cent on international routes. The measures used were a series of deliberate and concerted actions of unwarranted delays in flights, to the point which the General Directorate for Civil Aviation issued a resolution prohibiting unwarranted delays. These actions included a longer time to authorize closing the plane doors, longer “delays” on the tarmac both before departure and on arrival, the misuse of medical leave and flying at altitudes lower than usual, as well as other clearly obstructive actions. Once the dismissals had been declared by the company, the parameters of these issues returned to normal.
- 290.** Those dismissed, moreover, infringed the contractual obligations of the duties of fidelity and loyalty.
- 291.** Up to February 2003, one-third of the 42 workers (i.e. 12) who filed legal complaints against the enterprise for unfair dismissal renounced their complaints, having arrived at an agreement with the enterprise and ending the dispute that they had with it.
- 292.** Lan Chile S.A. totally rejects any “pressure” on pilots and technicians to withdraw their trade union membership; the Government has not specified what this pressure was, and it is completely and absolutely untrue. A large majority of the workers are members of trade unions without having problems as a result of this and the company maintains normal relationships with these trade unions. Company policy fully respects trade union and labour rights. It is also completely untrue that the company has pressured the families of the pilots so that they withdraw their trade union membership. However, many members of the pilots’ trade union believed that the “go-slow” was unnecessary and out of proportion, above all taking into account that it coincided with the tragic events of 11 September 2001, and they freely chose to withdraw their trade union membership from the pilots’ trade

union without any interference from the company. There have been no complaints lodged with the courts with regard to the alleged pressures noted by the Government of Chile, in spite of the fact that the legislation envisages serious penalties when trade union membership is hindered.

- 293.** The Government's statement that it noted that the company excluded pilots and co-pilots belonging to the complainant organization from flight training for operating the new company aeroplanes is completely untrue (documentation attesting that all pilots have received the regulation training and advanced courses is attached). For example, during the period stated, three trade union members obtained their promotion as pilots of the Airbus 320.
- 294.** It is not true that the dismissals reduced the negotiating power of the workers or that collective bargaining was fragmented and gave rise to lesser benefits than those previously obtained. On the contrary, in spite of the fact that the pilots were bargaining during the greatest commercial aviation crisis in history and in the context of the serious economic situation of a neighbouring country – Argentina (which had losses of US\$57 million in the fourth trimester of 2001) – the pilots not only did not suffer a reduction in benefits and remuneration but an increase according to the change in the consumer price index was agreed on, as well as a real increase in wages equivalent to 2 per cent per year.
- 295.** According to the Government, three groups of workers, bargaining separately, signed collective agreements for 62 months, in circumstances in which the trade union did so for 48 months, for which reason, in future negotiations, there will be some pilots who will not be able to negotiate collectively through the regulated channels and at the same time, and who will not have a negotiating power that can act as an appropriate counterbalance. In the complaint and in the information provided by the Government of Chile, it states that the periods agreed by each one of the contracts and the collective agreements ensure that the pilots will not be able, in practice, to come together to bargain collectively in the regulated manner or at the same time, and that they will not be able to negotiate with their counterpart on an equal footing. This is incorrect.
- 296.** First, Lan Chile S.A. states that the various collective agreements and contracts were freely signed by the contracting parties, who acted in full autonomy. The representatives of the pilots and co-pilots established, together with the company, the duration of the various collective agreements that bound them, which not only ensure their current level of income for a prolonged period of time when the civil aviation market is very unstable but also increase it in real terms throughout the whole period. The duration agreed upon will clearly benefit the workers affected by these instruments and will impose quite a serious situation of inflexibility on the company, as it will not be able to try to reduce the cost of the wages covered by these instruments as they are protected by legal regulations that prevent individual bargaining for wages established in collective instruments.
- 297.** Second, it should be highlighted that the collective agreement signed by the company and the complainant organization dates from 26 November 2001, i.e. after the main collective labour agreements whose durations are being contested.
- 298.** In the case of Lan Chile S.A., pilots and co-pilots are always able to unite, when they consider it most convenient, and bargain collectively or separately, at the time of expiry of the last of the collective contracts or agreements, or before, if the company will accept such a procedure. However, there is no one absolute obstacle that makes it impossible for all workers employed as pilots or co-pilots of Lan Chile S.A. to associate in one single draft collective agreement should they wish to do so.

- 299.** While the Government's information may imply, from its own particular point of view, that the periods agreed upon in the collective agreements and contracts are prejudicial to the pilots and co-pilots of Lan Chile S.A., the reality is that these employees themselves chose periods longer than those agreed upon, and in doing so believed that this would benefit them.
- 300.** With regard to the alleged publicity campaign undertaken by Lan Chile S.A. against the complainant organization, its officials and members, Lan Chile S.A. does not know of the existence of any type of publicity campaign against the trade union, its officials or members, which is referred to in the complaint submitted by the trade union, either in form or in substance. Similarly, Lan Chile S.A. categorically states that it has not financed, either directly or indirectly, notices, publications, press studies or other forms of publicity aimed at damaging or influencing the image of the company's trade unions.
- 301.** Moreover, the pilots and co-pilots are the public image of the company for its clients and the highest authority in the company's planes and the company has an interest in maintaining their prestige and repute, and there is no reflection in the media of any doubt in their professional capacity, which the company believes is of the highest standard and quality.
- 302.** Lan Chile S.A. indicated that it was proud of its pilots, their professional capacity and their dexterity, and it would be simply irrational to begin a campaign, from within the company, to undermine them, given that this would directly affect the company, which, as an aviation company, must, among other things, guarantee the appropriate competence of the pilots and co-pilots in the cockpits of its various planes.
- 303.** Logically, not all the press articles were pleasing to or supportive of the parties mentioned, but to proceed from there to maintain that the company organized and financed a campaign of this type is a very different state of affairs. Lan Chile S.A. quotes, with press cuttings, a series of statements by the secretary of the pilots' trade union that are clearly critical of and prejudicial to the company and that are not based on fact. It is possible that many things were said that could have and should have been omitted by the parties in an atmosphere as tense as the "go-slow" protest, but it is neither fair nor true to maintain that there was "a campaign by Lan Chile S.A. to discredit the Trade Union of Pilots and Technicians of Lan Chile".
- 304.** The Government's report indicates that 40 of the pilots dismissed for disciplinary reasons were reinstated by the employer on the condition that they write a letter in which they acknowledged responsibility for the possible damage the industrial action may have caused, and blaming the trade union for forcing them into the alleged transgression. Moreover, it states that the pilots, in their new individual contracts, did not regain the collective benefits that they had previously enjoyed. With regard to this issue, the Lan Chile S.A. company finally reinstated 51 pilots at Lan Chile, Lan Cargo (formerly Ladeco) and Lan Express. The labour and remuneration benefits that these workers enjoy are identical in all cases to those pertaining to the rest of the pilot body at Lan Chile S.A., for which reason it is untrue that they have been discriminated against in this matter. The exception to the above is of four cases of pilots who were employed on a temporary basis with temporary contracts and various wage levels.
- 305.** With regard to the alleged written statement requested by the company, wherein the former employees were required, in order to be re-employed, "to acknowledge responsibility for the possible damage the industrial action may have caused, and blaming the trade union for forcing them into the alleged transgression" is not true.

- 306.** While many of the dismissed pilots and co-pilots requested the company in writing that they be reinstated, the tone and content of these letters was that believed relevant by each individual, and the company made no demands in this respect. It is difficult moreover to see how the demand to request reinstatement from the company in a letter might affect freedom of association and the rights of workers in any way, particularly when these letters have no effect other than to facilitate reinstatement with the company. Moreover, these letters were never made public.
- 307.** The report indicates that Lan Chile S.A. has made various threats of dismissal to pilots of the company. Lan Chile S.A. does not know of any of the alleged threats of dismissal to its workers that are referred to in the complaint from the trade union. It is not aware of the causes that may have given rise to them nor to whom specifically they were directed or who specifically threatened dismissal to a pilot of Lan Chile S.A. None of this information was supplied by the Government, which says that it confirms these threats. It should be pointed out that the complaint, illogically, states that the company at the same time is “in desperate need of pilots” and is making “an effort to ensure adequate staffing levels during the next period of heavy air traffic”.
- 308.** If, as the complainant organization states, the number of trade union members has gone from 400 to 71, it should be emphasized that the actions decided upon by the executive board of the trade union caused a deep sense of unease and concern among many members who believed that the trade union measures were unjustified and disproportionate, particularly in the context of the events of 11 September 2001. The company did not encourage members to withdraw their membership. Moreover, the fact that the executive board of the trade union went from five to three members is due to the trade union’s decision.
- 309.** In three cases, the officials themselves requested their disassociation from the company, indicating that their situation with the members was untenable and their representativeness was minimal, for which reasons they preferred to relinquish their trade union duties.
- 310.** With regard to the decrease in the membership of the trade union and a significant reduction in resources, in the form of trade union dues, the company has nothing to do with the resources of the trade union.

C. New information from the Government

- 311.** In its communication of 12 January 2004, the Government transmits the following information, provided by Lan Chile S.A.: 35 of the 42 workers who had filed proceedings against the dismissals of September 2001 have signed a direct agreement with the company whereby they withdrew unilaterally from their demands; the only cases remaining pending concern seven workers. The withdrawals (which the Government annexes to its communication) mention that “in its employer’s capacity, during all the working relationship binding the undersigned, Lan Chile maintained an appropriate conduct, showed respect and complied with labour standards ...”.
- 312.** Referring to the anti-union practices allegedly committed by Lan Chile S.A., the Government adds that on 29 September 2003, a former member of the union filed charges of anti-union practices which are dealt with by the 5th Chamber of the Labour jurisdiction; the latter has requested information from the Metropolitan Regional Directorate of Labour and has concluded that this Directorate should be made a party to said proceedings, under article 292 of the Labour Code. At the hearing on 30 October 2003, the company raised the time limit provided for in article 480 of the Code of Civil Procedure, and argued that the court was already seized with the issue, in the context of the case relating to the dismissal of the pilots.

313. Finally, as regards the collective bargaining conducted by Lan Chile S.A. with individual pilots or small groups of pilots, to impede bargaining with the whole group of workers, the Government indicates that the company has been firmly advised that the labour authorities would not permit anti-union actions and that the penalties provided for in the law for such actions would be applied.

D. The Committee's conclusions

314. *In the present case the complainant organization mainly alleges a campaign organized by Lan Chile S.A. to break up its organization, which began in 2001 and took the form of a series of illegal practices of anti-union discrimination, above all in connection with negotiations aimed at concluding a new collective agreement. According to the complainant, these practices include a publicity campaign against the trade union; the mass dismissal of unionized pilots; threats of dismissal; pressure exerted on pilots and their family members so that the former withdrew trade union membership; discrimination against trade union members with regard to training; the re-employment of dismissed pilots under anti-union conditions (the acceptance of individual responsibility for the industrial action entitled "work-to-rule"; a written statement that the trade union ordered them to participate in this action; and acceptance to be covered by individual employment contracts rather than the collective agreement).*
315. *The Committee notes the information provided by the Confederation of Production and Trade (CPC) wherein the Lan Chile S.A. company's point of view is presented and the allegations of the complainant organization concerning a series of illegal labour practices violating trade union rights and the Government's statements attributing Lan Chile S.A. with anti-union practices are rejected. According to the company, the complainant organization instituted a series of deliberate and concerted actions by the pilots prior to collective bargaining in order to harm the company; the information provided by the CPC points to a combination of "work-to-rule" and "go-slow" activities and deliberate delays to flights, a large number of medical leave certificates and measures to increase costs (flying at altitudes lower than those recommended), which caused economic damage, damage to the image of the company and adversely affected clients at the same time as it caused disturbances in air traffic control, according to the company. In order to put an end to this situation, the company proceeded with dismissals. According to the CPC, a new collective agreement was signed on 26 November 2001 and only 30 of the pilots who had been dismissed were continuing with proceedings against the company for their dismissal in September and October 2001. The Committee notes the contradiction between the points of view of Lan Chile S.A. and the Government with regard to the existence of anti-union practices, but observes that according to the Government, in September 2003, a former member of the union has filed charges of anti-union practices with the judicial authorities, which have decided that the Metropolitan Regional Directorate of Labour should be made a party to said proceedings. The Committee also notes the recent Government's statement that 35 of the 42 workers who had filed proceedings against their dismissals have withdrawn their demands, have declared that the company had maintained throughout that period an appropriate conduct, in conformity with the law, and that there remain only seven pending cases.*
316. *In the circumstances, the Committee requests the Government to inform it of the decision that is handed down with regard to the dismissal of the seven pilots and to keep it informed of the results of the judicial charges brought for anti-union practices by an ex-member of the union.*
317. *Independently of the decision to be made by the courts on the alleged anti-union practices, the Committee emphasizes that in this case the initial number of dismissals extended to 108 pilots who were members of the trade union, even though, a little later, the company*

reinstated a large number of these and was reaching agreements with others, so that only seven cases of dismissal remain pending before the courts at present.

- 318.** *Finally, the Committee notes that the Government indicates, in connection with the collective bargaining conducted by Lan Chile S.A. with individual pilots or small groups of pilots, to impede bargaining with the whole group of workers, that the company has been firmly advised that the labour authorities would not permit anti-union actions and that the penalties provided for in the law for such actions would be applied. The Committee recalls that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 781].*

The Committee's recommendation

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

The Committee requests the Government to inform it of the decision that is handed down with regard to the dismissal of the seven pilots and to keep it informed of the result of the judicial proceedings for anti-union practices filed against Lan Chile S.A. by an ex-member of the union.

CASE NO. 2245

DEFINITIVE REPORT

Complaint against the Government of Chile presented by the Amalgamated Workers' Union of Chile (CUT)

Allegations: Objection by the complainant organization to a judicial declaration by the Supreme Court of Justice determining that clerical workers at land registries may not establish trade unions

- 320.** The complaint is contained in a communication from the Amalgamated Workers' Union of Chile (CUT) dated 25 November 2002.
- 321.** The Government sent its observations in a communication dated 4 September 2003.
- 322.** Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 323.** In its communication dated 25 November 2002, the Amalgamated Workers' Union of Chile (CUT) explains that a group of clerical workers at the land registry office in Santiago de Chile established a trade union, and that on 2 September 2002 the Supreme Court

handed down Ruling No. 002398 providing that “clerical officials working at a land registry office may not establish trade unions as the regime governing them, which is established in the Courts Organization Code, is incompatible with the regime that governs unionized workers”. (The complainant organization adds a copy of this judicial declaration by the Supreme Court from which it emerges that the land registrars (employers) informed the Court about the establishment of a trade union and about the request to deduct union dues, and asked for directions in this respect.)

- 324.** The complainant organization indicates that the Supreme Court of Justice is blatantly ignoring written legislation with this ruling. Legislation clearly establishes that workers who provide services in land registry offices shall be subject to all the rights and duties contained in the Labour Code. Of these, the right to freedom of association is one of the fundamental rights. The formulation of article 1 of the Labour Code is perfectly clear in its differentiation of groups of employees and workers. There are no stipulations or contradictions that could give rise to a different interpretation. The reasoning of the Supreme Court whereby “... land registrars belong to the secondary scale of the judicial power ...” and “... a special regime governs the work they perform as public officials authenticating documents ...”, has nothing to do with the right of clerical workers at land registry offices to establish trade unions.

B. The Government’s reply

- 325.** In its communication dated 4 September 2003, the Government states that as soon as the judicial declaration by the Supreme Court was known (issued in the framework of an administrative consultation), it ruled that “clerical officials working at a land registry office may not establish trade unions as the regime governing them (established in the Courts Organization Code) is incompatible with the regime that governs unionized workers”, the Legal Department of the Labour Directorate then prepared a document, dated 1 October 2002, which determined the legal status of staff working at notaries’ offices, registries and record offices with respect to their right to establish trade unions and bargain collectively. The Labour Directorate also repeatedly described the offices of notaries and registrars as enterprises for the purposes of the rights and obligations of their workers. In order to dispel any doubt in this respect, Act No. 19759 of 5 October 2001 added a final clause to article 1 of the Labour Code, which categorically establishes that “workers who provide services at notaries’ offices, registries and record offices shall be governed by the provisions of this Code”.
- 326.** It should be borne in mind that the Santiago land registry did not object, at the time, to the establishment of the trade unions, but when they asked it to deduct the union dues and deposit them in the current bank accounts of the respective organizations it refused to do so. Given this refusal by the employer, on 12 April 2002 the executive committee of the Santiago Land Registry Workers’ Union lodged a complaint with the Provincial Labour Inspectorate of Santiago.
- 327.** The Government states that this complaint was examined by the Labour Services investigator, who went to the premises of the enterprise charged and found that, in effect, the employer had refused to deduct the union dues in March and April 2002 from all the unionized workers. In response to this infringement, an administrative fine was levied on 13 May 2002, corresponding to 14 monthly tax units. In June 2002, the administrative authority fined the employer the same amount again on the same grounds. The Government states that the Ministry of Labour is seeking to reconcile the parties with regard to the deduction of union dues.

328. Lastly, the Government notes that the Trade Union of the Santiago Land Registry, established on 14 March 2002, and Trade Union No. 2 of the Santiago Land Registry, established on 12 May 2002, are active and fully in force.

C. The Committee's conclusions

329. *The Committee observes that in this case the complainant organization objects to a decision by the Supreme Court of Justice, handed down in respect of a dispute over the failure to deduct union dues for a trade union of clerical workers at the land registry office, according to which: "clerical officials working at a land registry office may not establish trade unions as the regime governing them, which is established in the Courts Organization Code, is incompatible with the regime that governs unionized workers".*

330. *The Committee observes the Government's statements that: (1) as soon as the judicial declaration of the Supreme Court was known (issued in the framework of an administrative consultation), the Legal Department of the Labour Directorate prepared a document in which it is established that the Labour Directorate has classified the offices of notaries and registrars as enterprises for the purposes of the rights and obligations of their workers, and that they are governed by the provisions of the Labour Code; (2) the Santiago land registry did not object to the establishment of trade unions, but according to the Government refused to deduct the union dues and as a result was fined on two occasions in accordance with the provisions of articles 261 and 292 of the Labour Code by the administrative authority; the Ministry of Labour is currently seeking to reconcile the parties in this respect; and (3) the Trade Union of the Santiago Land Registry, established in March 2002, and Trade Union No. 2 of the Santiago Land Registry, established in May 2002, are active and fully in force.*

331. *The Committee observes that in this case clerical workers at land registries were able to set up the trade union organizations of their own choosing, that the Supreme Court of Justice considered in an opinion that "clerical officials working at a land registry office may not establish trade unions", and that nevertheless the administrative authority considered that this category of workers was entitled to establish trade unions in accordance with article 1, final clause, of the Labour Code. In these conditions, the Committee recalls that, in accordance with the provisions of Convention No. 87, all workers, with the sole possible exception of the armed forces and the police, should be able to establish organizations of their own choosing to promote and defend the interests of their members, and requests the Government to go on ensuring this right to the category of workers who provide services for land registries.*

332. *Furthermore, the Committee notes the sanctions imposed in accordance with legislation by the administrative authority on the Santiago land registry on two occasions for not having deducted union dues, as stipulated by law, and requests the Government to ensure that the relevant legislation (article 261 of the Labour Code which provides that the employer shall make the corresponding deduction and deposit it in the current or savings account of the respective trade union organization(s)) is complied with in this area.*

The Committee's recommendations

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

- (a) *With respect to the judicial declaration by the Supreme Court of Justice according to which workers providing services at a land registry office are not entitled to set up trade unions, the Committee recalls that in accordance*

with the provisions of Convention No. 87 all workers, with the sole possible exception of the armed forces and the police, should be able to establish organizations of their own choosing to promote and defend the interests of their members, and requests the Government to go on ensuring this right to the category of workers in question.

- (b) *The Committee requests the Government to ensure compliance with legislation (article 261 of the Labour Code which provides that the employer shall make the corresponding deduction and deposit it in the current or savings account of the respective trade union organization(s)) relating to the deduction of union dues for members of workers' organizations in the land registry sector.*

CASE NO. 2186

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

**Complaint against the Government of China/Hong Kong Special
Administrative Region
presented by
the International Federation of Air Line Pilots' Associations (IFALPA)**

Allegations: The complainant alleges that Cathay Pacific Airways dismissed 50 HKAOA members and officers by reason of their trade union activities, refused to enter into meaningful negotiations, tried to break up the union and committed other acts of intimidation and harassment. It has also been alleged that the Government has left these practices unchecked

334. The Committee examined this case at its March 2003 meeting [see 330th Report, paras. 335-384, approved by the Governing Body at its 286th Session (March 2003)]. The Government furnished new observations in a communication dated 15 December 2003.

335. China has declared the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), applicable in the territory of Hong Kong Special Administrative Region, with modifications, and has declared the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), applicable without modifications.

A. Previous examination of the case

336. In its previous examination of the case in March 2003, the Committee made the following recommendations [see 330th Report, para. 384]:

- (a) The Committee expresses concern at the dismissal of 50 HKAOA members and officers following the lawful staging of industrial action in July 2001 and the decision not to institute legal proceedings against Cathay Pacific for absence of sufficient evidence; the

Committee requests the Government to provide the material of the investigation conducted on this case.

- (b) The Committee hopes that the High Court will give its ruling as soon as possible and requests the Government to keep it informed of the outcome of the civil action brought before the High Court by the pilots who were dismissed following the industrial action staged in July 2001 and, if the Court finds that the dismissals were on anti-union grounds, to take all necessary measures with a view to the possible reinstatement of the pilots in their previous employment without loss of pay, and to ensure that the enterprise faces any legal sanctions imposed.
- (c) Noting that this is a long-running and serious dispute, the Committee requests the Government to take all necessary measures as soon as possible to put an immediate end to all acts of interference, anti-union discrimination and intimidation against HKAOA and its members, prevent their recurrence in the future and keep it informed of measures taken in this respect, including any legal action that may be initiated with regard to such acts.
- (d) The Committee requests the Government to take all necessary measures as soon as possible in order to put an immediate end to practices which are contrary to Article 4 of Convention No. 98 and to encourage and promote negotiations in good faith between Cathay Pacific Airways and HKAOA with a view to finding a rapid and comprehensive solution to all outstanding issues. The Committee requests to be kept informed in this respect.

B. The Government's new observations

337. In a communication dated 15 December 2003 the Government emphasizes that the allegation that the Government has left any alleged unjust action by Cathay Pacific unchecked, is totally ungrounded and that all necessary steps have been taken to safeguard the statutory and contractual rights of the pilots concerned. The Labour Department will continue to do everything within its power to facilitate the resumption of meaningful dialogue, and will keep the Committee informed of any major development on this case.

338. With regard to point (a) of the Committee's recommendations, the Government notes that it is committed to protecting the statutory rights of employees under the Employment Ordinance, section 21B(2) of which provides that it is an offence for any employer to terminate the contract of employment of an employee by reason of his exercising rights in respect of trade union membership and activities. However, in a criminal prosecution, including under the Employment Ordinance, the standard of proof is very high and the prosecution has to prove every element of an offence beyond reasonable doubt.

339. The Government then recalls that upon being approached by nine of the dismissed pilots in November 2001, it undertook an immediate investigation, with in-depth interviews, witness statements, submissions and supporting documents and forwarded this material to the Department of Justice for consideration of prosecution action if there was a prima facie case to prove all the elements of the alleged offences. After careful evaluation, the Department of Justice advised that the prosecution would be unable to establish, to the requisite criminal standard, that the nine complainants were dismissed by reason of exercising their union rights under section 21B(2) of the Employment Ordinance. There was no direct evidence to support the complainants' belief that they were dismissed by reason of exercising their trade union rights. On the contrary, there was evidence to show that the employer had taken into consideration the attendance records and disciplinary history of the pilots before making the termination decision. HKAOA committee members and negotiators who had good attendance records and without any record of disciplinary action were not dismissed, while the nine complainants had either received warning letters in the past regarding their attitude or had a record of absence from work without leave. According to the Director of Flight Operations of Cathay Pacific, in reviewing the pilots'

employment histories and in assessing individual pilot's attitudes towards the aims, objectives and interests of the company, Cathay Pacific identified pilots who had an attendance problem, had a warning letter on file in respect of previous disciplinary action, and were considered by crew control representatives to be unhelpful and uncooperative in the performance of their duties, and difficult to deal with both from a management perspective and in their relations with other staff.

- 340.** As for the request to provide the material of the investigation conducted on this case, the Government points out that under the Personal Data (Privacy) Ordinance, Cap. 486 of the Laws of Hong Kong, personal data shall not be used for any purpose other than the purpose for which the data were to be used at the time of its collection, or for a purpose directly related to this purpose. In the Hong Kong legal system, the only proper place for prosecutions of guilt or innocence to be determined is in a court, where the accused has the right to a fair trial in accordance with the rules of criminal justice, and the opportunity to defend himself. The prosecuting authority should not disclose investigative material about a case outside the court as it might amount to a public trial of the suspect without the safeguards which criminal proceedings are designed to provide.
- 341.** With regard to point (b) of the Committee's recommendations, the Government points out that the civil action initiated by the dismissed pilots against Cathay Pacific is pending hearing at the High Court and no hearing date has been fixed yet. Given the independence of the judiciary, the Government cannot, and must not, interfere with the judicial process. The Government will inform the Committee of the High Court's decision on the civil action as and when it is delivered. Should the Court find that the dismissals were on grounds of exercising trade union rights, the Court will decide on the appropriate remedies. Remedies awarded for unreasonable and unlawful dismissal under the Employment Ordinance may include an order for reinstatement subject to the consent of both the employer and the employee, or an award of terminal payments and compensation up to a maximum of HK\$150,000. The Court may also make an award for damages for breach of employment contract under the common law.
- 342.** With regard to point (c) of the Committee's recommendations, the Government states that the basic rights of Hong Kong employees, including those governing anti-union discrimination, are protected under the Employment Ordinance. An employer who dismisses an employee by reason of exercising his trade union rights commits an offence and is subject to criminal prosecution. The dismissed employee is entitled to claim against the employer for civil remedies for unreasonable and unlawful dismissal. When a dispute cannot be settled through conciliation, the Labour Department will assist the employee to seek adjudication at the Labour Tribunal. If the Department of Justice is satisfied that there is sufficient evidence, the Labour Department will take out prosecution against the employer. The aggrieved employee can also make a civil claim against the employer before the court and sue for damages for breach of employment contract.
- 343.** The Government emphasizes that in the present dispute it has taken every necessary step to safeguard the statutory rights of the pilots. Upon the dismissal of 52 pilots by Cathay Pacific in July 2001, the Labour Department immediately advised HKAOA of the relevant provisions of the Employment Ordinance and the channels to seek redress. Subsequently, nine dismissed pilots lodged a complaint in November 2001 with the Labour Department for termination of their employment in contravention of the anti-union discrimination provisions. As already seen above, after conducting an immediate investigation into the complaint, it was found that there was insufficient evidence to establish a prima facie case and, as a result, no prosecution action was taken. It was not until June 2002 that 21 of the 52 dismissed pilots lodged claims with the Labour Department against Cathay Pacific for civil remedies for unreasonable and unlawful dismissal under the Employment Ordinance. They did not avail themselves of the Labour Department's conciliation service

and chose to approach the Labour Tribunal directly to seek adjudication of their claims. The Labour Department promptly assisted the pilots to file their claims at the Labour Tribunal. The case was subsequently transferred by the Labour Tribunal to the High Court on the ground that the claimants had initiated civil action against Cathay Pacific at the High Court on the same issue. The case is pending hearing.

344. The Government adds that the Registry of Trade Unions of the Labour Department conducts inspection visits to trade unions and employer associations to provide advice and assistance on the management of their organizations and to ensure that employees and employers are free from acts of interference by each other in the establishment, functioning and administration of their organizations. Finally, the Government has received no report or complaint from HKAOA about acts of interference against Cathay Pacific.

345. With regard to point (d) of the Committee's recommendations, the Government states that legislative and administrative measures appropriate to local conditions have been taken to implement Article 4 of Convention No. 98. Freedom of speech and association is guaranteed under the Basic Law and the Bill of Rights Ordinance. Employers and employees are free to bargain and enter into collective agreements on the terms and conditions of employment. In keeping with the philosophy and belief in a free market economy and non-intervention in private sector operations, the Government has made sustained efforts to promote voluntary negotiation between employers and employees and their respective organizations. At the enterprise level, the Labour Department provides a comprehensive range of services to encourage employers to enter into direct and ongoing negotiation with their employees and employees' unions on employment issues. At the industry level, the Labour Department promotes tripartite dialogue through the setting up of industry-based tripartite committees to discuss industry-specific issues. The Labour Department provides voluntary conciliation services and assists, as a neutral intermediary, to settle disputes when necessary.

346. The Government adds that Cathay Pacific has practised voluntary collective bargaining and entered into successive collective agreements with its union for decades. HKAOA has long been in direct negotiation with Cathay Pacific. The current deadlock in their negotiations over terms and conditions of service is due to the uncompromising positions taken by both sides in the last round of protracted negotiation. In this long-running dispute, the Government has left no stone unturned within the framework of the voluntary conciliation system to help resolve the differences. Its conciliation efforts had facilitated amicable settlement in two earlier rounds of collective bargaining in preceding years but had yet to be able to help the parties reach a common ground this time. Since the breakdown of the last round of negotiations, the Labour Department has spared no efforts to persuade the two sides to resume dialogue. However, it requires two willing parties to have a meaningful negotiation. With a new HKAOA president and committee coming to office in October 2003, Cathay Pacific and HKAOA have renewed their dialogue and have resumed talks on the outstanding issues. The Government very much hopes that this will lead to constructive discussion and cooperation and the ultimate resolution of their dispute. The Government recalls that, as always, the Labour Department stands ready to render its conciliation service as and when necessary.

C. The Committee's conclusions

347. *The Committee recalls that this case concerns allegations that Cathay Pacific Airways dismissed 50 HKAOA members and officers by reason of their trade union activities, refused to enter into meaningful negotiations, tried to break up the union and committed other acts of intimidation and harassment. It has also been alleged that the Government has left these practices unchecked.*

348. *During the previous examination of this case the Committee took note of the civil action for unreasonable and unlawful dismissal brought before the High Court by several of the 50 HKAOA members and officers who had been dismissed in July 2001 following the staging of lawful industrial action. The Committee expressed the hope that the High Court would give its ruling as soon as possible and requested the Government to keep it informed of the outcome; if the Court found that the dismissals were on anti-union grounds, the Government was requested to take all necessary measures with a view to the possible reinstatement of the pilots in their previous employment without loss of pay, and to ensure that the enterprise faced any legal sanctions imposed. The Committee notes from the Government's response that civil action is pending at the High Court since June 2002 and no hearing date has been fixed yet. The Committee also takes note of the Government's statement that given the independence of the judiciary, the Government cannot and must not interfere with the judicial process and that the Labour Department will continue to do everything within its power to facilitate the resumption of meaningful dialogue and will keep the Committee informed of any major development on this case.*
349. *The Committee also notes that recourse against acts of anti-union discrimination is possible under the provisions of the Employment Ordinance on unreasonable and unlawful dismissal. Conciliation services as well as civil and penal proceedings are available. Thus, upon the dismissal of 51 pilots by Cathay Pacific in July 2001 following the staging of lawful industrial action, nine pilots lodged a complaint for unreasonable and unlawful dismissal with the Labour Department but there was no prosecution due to lack of sufficient evidence. In June 2002, 21 of the dismissed pilots lodged civil claims with the Labour Department. They did not avail themselves of the conciliation services of the Labour Department and chose to approach the Labour Tribunal directly to seek adjudication of their claims. The case was subsequently transferred by the Labour Tribunal to the High Court on the ground that the claimants had initiated civil action against Cathay Pacific at the High Court on the same issue.*
350. *The Committee notes with concern that the civil action for unreasonable and unlawful dismissal brought before the High Court by several pilots of Cathay Pacific Airways, has been pending since June 2002 without a date for a hearing having been fixed yet. The Committee emphasizes that the facts of this case date as far back as July 2001 and that the pilots, whose status remains uncertain, are subject to a legal requirement to fly at least one trip per month to maintain recency, as indicated in the complaint. The Committee therefore considers that the delay in civil proceedings is likely to cause considerable professional and personal prejudice to the dismissed pilots. The Committee recalls that justice delayed is justice denied and that the basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 56 and 739]. It therefore requests the Government to take all necessary measures as soon as possible to end the dispute through a negotiated settlement which may be considered by both parties as fair and equitable. In the absence of such settlement, the Committee requests the Government to intercede with the parties with a view to promoting interim measures preventing irreparable damage to the dismissed pilots pending final judgement on this case. It also reiterates its previous request to the Government to communicate the High Court ruling once rendered.*
351. *The Committee notes from the Government's response that remedies awarded for unreasonable and unlawful dismissal under the Employment Ordinance may include an order for reinstatement subject to the consent of both the employer and the employee, an award of terminal payments and compensation, or an award for damages for breach of employment contract under the common law. The Committee recalls in this respect the conclusions it reached in Case No. 1942 according to which it is difficult to envisage that*

*the requirement of prior mutual consent to reinstatement will be easily forthcoming if the true reason for a dismissal is based on anti-union motives [see 311th Report, paras. 235-271, approved by the Governing Body at its November 1998 session]. The Committee recalls that it would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation in cases where employers can in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker, if the true reason is the worker's trade union membership or activities [see **Digest**, op. cit., para. 707]. The Committee notes that the Government has been working on a legislative amendment to empower the Labour Tribunal to make an order of reinstatement/re-engagement in cases of unreasonable and unlawful dismissal without the need to secure the employer's consent and that the Labour Advisory Board which has an equal number of employer and employee representatives has approved this amendment [see 326th Report approved by the Governing Body at its 282nd Session, para. 44]. It requests the Government to keep it informed of developments in this respect.*

- 352.** *The Committee also recalls that during the previous examination of this case it expressed concern at the dismissal of 50 HKAOA members and officers following the lawful staging of industrial action in July 2001 and the decision not to institute legal proceedings against Cathay Pacific for absence of sufficient evidence, and requested the Government to provide the material of the investigation conducted on this case. The Committee notes that the Government does not provide the results of the investigation itself, but informs the Committee of the grounds on which it was decided by the Department of Justice that there was insufficient evidence to establish a prima facie case against the employer. Thus, the Committee notes that the Department of Justice found that prosecution could not go forward because the requisite standard of evidence, which is very high for criminal proceedings, every element having to be proved beyond reasonable doubt, had not been satisfied. According to the Government, there was no direct evidence to support the complainant's belief that they were dismissed by reason of their trade union activities and on the contrary, there was evidence to show that the employer had taken into consideration the attendance records and disciplinary history of the pilots as well as the views of the crew control representatives about the pilots who were unhelpful, uncooperative and difficult to deal with.*
- 353.** *The Committee recalls that during the previous examination of this case it noted that the number of warnings in workers' files concerning attendance and disciplinary action could be closely related to trade union membership and activities and that generic reasons like "unhelpful and uncooperative" attitude could not provide an objective basis for dismissal. The Committee recalls that 50 out of 51 dismissed pilots were trade union members, including eight officers and three members of the union negotiating team. It recalls that in a similar case, the Committee found it difficult to accept as a coincidence unrelated to trade union activity that heads of departments should have decided, immediately after a strike, to convene disciplinary boards which, on the basis of service records, ordered the dismissal not only of a number of strikers, but also of the seven members of their union committee [see **Digest**, op. cit., para. 717].*
- 354.** *The Committee notes that although the possibility of criminal prosecution against acts of anti-union discrimination might appear in theory to afford a very high level of protection to the workers, in the particular circumstances of this case it is likely to be ineffective due to the inhibitory effect of the high standard of proof required in criminal proceedings and the difficulties involved in proving beyond reasonable doubt that the dismissal was by reason of trade union activities. The Committee has recalled 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. Thus, for example, it may often be difficult, if not impossible, for a worker to*

*furnish proof of an act of anti-union discrimination of which he has been the victim. This shows the full importance of Article 3 of Convention No. 98, which provides that machinery appropriate to national conditions shall be established, where necessary, to ensure respect for the right to organize [see **Digest**, op. cit., para. 740].*

- 355.** *The Committee considers furthermore that the available (civil and criminal) proceedings against unreasonable and unlawful dismissal may not suffice to prevent and redress acts of anti-union discrimination when the employer is allowed to justify the dismissals on the basis of the unhelpful and uncooperative character of those dismissed, or to rely on grounds which might indirectly be related to the trade union activities of those selected. The Committee notes that in the context of proceedings for unreasonable and unlawful dismissal, the presentation of indirect evidence has not been considered by the authorities as sufficient. It appears to the Committee that if the proceedings pertained to anti-union discrimination in particular, indirect evidence might have led the authorities to make further inquiries. The Committee therefore requests the Government to take all necessary measures, in consultation with the social partners, so as to consider the adoption of appropriate machinery geared to prevent and redress acts of anti-union discrimination, given that the generally applicable (criminal and civil) procedures for unjustified and unlawful dismissal do not seem to be sufficiently effective in affording protection against acts of anti-union discrimination, as required by Article 1 of Convention No. 98.*
- 356.** *The Committee further recalls that during the previous examination of this case it noted that this is a long-running and serious dispute, and requested the Government to take all necessary measures as soon as possible to put an immediate end to all acts of interference, anti-union discrimination and intimidation against HKAOA and its members, prevent their recurrence in the future and keep it informed of measures taken in this respect, including any legal action that may be initiated with regard to such acts. The Committee notes that according to the Government, the Labour Department took every necessary step to safeguard the statutory rights of the pilots by advising them of their rights and channels to seek redress, conducting an investigation into the complaint, and assisting the pilots to file their claims at the Labour Tribunal, and then to the High Court where it is pending hearing. The Committee takes note of these measures.*
- 357.** *The Committee further notes from the Government's response that it has received no report or complaint from HKAOA about acts of interference against Cathay Pacific. In this respect, the Committee observes that the allegations in this case relate to anti-union discrimination and interference at the same time. It recalls that in an earlier case, in endorsing an observation made by the Committee of Experts on the Application of Conventions and Recommendations concerning a law, the Committee pointed out that it would be extremely difficult for a worker who was dismissed by an employer invoking, for example, "neglect of duty", to prove that the real motive for his dismissal was to be found in his trade union activities. Further, since lodging an appeal in this case did not suspend the decision taken, the dismissed trade union leader had, by virtue of the law, to resign his trade union post when he was dismissed. The Committee considered that the law therefore made it possible for managements of undertakings to hinder the activities of a trade union, which is contrary to Article 2 of Convention No. 98, according to which workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration [see **Digest**, op. cit., para. 768].*
- 358.** *The Committee also observes that the Government does not make reference to any legal provisions prohibiting acts of interference and refers instead to promotional measures like inspection visits to trade unions and employer associations so as to provide advice and assistance and ensure that they are free from acts of interference by each other. The Committee recalls that where legislation does not contain specific provisions for the*

*protection of workers' organizations from acts of interference by employers and their organizations, it would be appropriate for the Government to examine the possibility of adopting clear and precise provisions ensuring the adequate protection of workers' organizations against these acts of interference. Moreover, the existence of legislative provisions prohibiting acts of interference on the part of the authorities, or by organizations of workers and employers in each other's affairs, is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice. Legislation must make express provision for appeals and establish sufficiently dissuasive sanctions against acts of interference by employers against workers and workers' organizations to ensure the practical application of Article 2 of Convention No. 98 [see **Digest**, op. cit., paras. 762, 763 and 764]. The Committee recalls that it is incumbent on the authorities to ensure the application of Article 2 of Convention No. 98 and therefore requests the Government to take all necessary measures as soon as possible with a view to adopting legislative provisions prohibiting acts of interference in the establishment, functioning and administration of workers' organizations and establishing efficient procedures coupled with sufficiently dissuasive sanctions so as to ensure their implementation in practice.*

359. *The Committee recalls that during the previous examination of this case it requested the Government to take all necessary measures as soon as possible in order to put an immediate end to practices which are contrary to Article 4 of Convention No. 98 and to encourage and promote negotiations in good faith between Cathay Pacific Airways and HKAOA with a view to finding a rapid and comprehensive solution to all outstanding issues. The Committee notes that the Government states that in addition to general measures taken in order to promote voluntary negotiation at the enterprise level, the Labour Department has done everything in its power within the framework of the voluntary conciliation system to help resolve the differences between HKAOA and Cathay Pacific and to persuade the two sides to resume dialogue. The Committee finally notes that after the election of a new HKAOA president and committee the two parties have resumed talks on the outstanding issues.*

360. *While taking note of the measures adopted so far to promote bipartite negotiations at the enterprise level in general, the Committee recalls the recent observation made by the Committee of Experts on the Application of Conventions and Recommendations according to which, "much further progress needs to be made" with respect to "the measures taken so far by the Government to promote bipartite collective bargaining" [see 2003 observation on the application of Convention No. 98, Report of the Committee of Experts on the Application of Conventions and Recommendations to the International Labour Conference, 92nd session, 2004]. Furthermore, the Committee notes that negotiations on the outstanding issues have resumed between Cathay Pacific and the new HKAOA committee. The Committee expects that relations between HKAOA and Cathay Pacific Airways will improve, and requests the Government to renew its efforts for the effective promotion of bipartite collective bargaining, both in general and between the parties, and to take all necessary measures so as to ensure that negotiations are genuine and meaningful.*

361. *The Committee requests the Government to keep it informed of developments on all the above issues.*

The Committee's recommendations

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

- (a) *The Committee notes with concern that the civil action for unreasonable and unlawful dismissal brought before the High Court by several pilots of Cathay Pacific Airways, has been pending since June 2002 without a date for a hearing having been fixed yet. It therefore requests the Government to take all necessary measures as soon as possible to end the dispute through a negotiated settlement which may be considered by both parties as fair and equitable. In the absence of such settlement, the Committee requests the Government to intercede with the parties with a view to promoting interim measures preventing irreparable damage for the dismissed pilots pending final judgement on this case. It also reiterates its previous request to the Government to communicate the High Court ruling once rendered.*
- (b) *The Committee notes that the Government has been working on a legislative amendment to empower the Labour Tribunal to make an order of reinstatement/re-engagement in cases of unreasonable and unlawful dismissal without the need to secure the employer's consent and requests the Government to keep it informed of developments in this respect.*
- (c) *The Committee requests the Government to take all necessary measures, in consultation with the social partners, so as to consider the adoption of appropriate machinery geared to prevent and redress acts of anti-union discrimination, given that the generally applicable (criminal and civil) procedures for unjustified and unlawful dismissal do not seem to be sufficiently effective in affording protection against acts of anti-union discrimination, as required by Article 1 of Convention No. 98.*
- (d) *The Committee recalls that it is incumbent on the authorities to ensure the application of Article 2 of Convention No. 98 and therefore requests the Government to take all necessary measures as soon as possible with a view to adopting legislative provisions prohibiting acts of interference in the establishment, functioning and administration of workers' organizations and establishing efficient procedures coupled with sufficiently dissuasive sanctions so as to ensure their implementation in practice.*
- (e) *The Committee expects that relations between HKAOA and Cathay Pacific Airways will improve, and requests the Government to renew its efforts for the effective promotion of bipartite collective bargaining, both in general and between the parties, and to take all necessary measures so as to ensure that negotiations are genuine and meaningful.*
- (f) *The Committee requests the Government to keep it informed of developments on all the above issues.*

CASE NO. 2189

INTERIM REPORT

**Complaint against the Government of China
presented by**

- **the International Confederation of Free Trade Unions (ICFTU) and**
- **the International Metalworkers' Federation (IMF)**

Allegations: The complainants allege the use of repressive measures including threats, intimidation, intervention by security forces, beatings, detentions, arrests and other mistreatment meted out to leaders, elected representatives and members of independent workers' organizations at the Ferrous Alloy Factory (FAF) in Liaoning Province and the Daqing Petroleum Company in Heilongjiang Province, as well as violent police intervention in a workers' demonstration at Guangyuan Textile Factory and sentencing of workers rights' advocates in Sichuan Province. Finally, the complainants allege the detention, arrest and mistreatment in Shanxi Province of an independent labour activist for trying to set up a federation for retired workers

- 363.** The Committee examined the substance of this case in March 2003 when it presented an interim report to the Governing Body [see 330th Report, paras. 385-467, approved by the Governing Body at its 286th Session]. The International Confederation of Free Trade Unions (ICFTU) transmitted additional information in a communication dated 5 March 2004.
- 364.** The Government transmitted additional information in a communication dated 21 August 2003, received on 24 October 2003.
- 365.** China 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

- 366.** At its March 2003 session, the Governing Body approved the following recommendations in the light of the Committee's interim conclusions:
- (a) The Committee requests the Government to institute an impartial and independent investigation into the allegations of violent police intervention in respect of the demonstrations in relation to the workers' struggle at the Ferrous Alloy Factory in Liaoyang on 20 March and 15 May 2002. The Government is asked to provide detailed information to the Committee on the outcome of this investigation and to indicate the measures taken to compensate any injured workers.

- (b) The Committee further requests the Government to institute an independent investigation into the allegations concerning the serious condition of Yao Fuxin's health and the torture or mistreatment surrounding his detention. The Government is asked to inform the Committee of the outcome of this investigation and of any measures taken in the event that it is found that Yao Fuxin has been mistreated while in detention, including the measures taken to ensure that he receives any necessary medical treatment.
- (c) The Committee requests the Government to institute an independent investigation into the allegations that Gu Baoshu was beaten during his brief detention and to inform the Committee of the outcome of this investigation and of any measures taken in the event that it is found that he was mistreated. It also requests the Government to provide any information it may have in respect of the whereabouts of Wang Dawei.
- (d) Given the Government's indication that the events occurring at the Ferrous Alloy Factory fell within the context of a labour dispute, the Committee requests the Government to drop all charges relating to terrorism, sabotage and subversion.
- (e) The Committee also requests the Government to provide specific and detailed information on the charges brought against Yao Fuxin, Pang Qingxiang, Xiao Yunliang and Wang Zhaoming. In the meantime, it requests the Government to take the necessary steps for the immediate release of any of the FAF workers' representatives still detained and to ensure that the charges brought against them are dropped. The Government is requested to keep the Committee informed in this regard.
- (f) The Committee requests the Government to ensure that due process of the law is guaranteed in respect of all the workers' representatives named in this complaint.
- (g) The Committee requests the Government to reply specifically to the allegations that representatives of the PAB Retrenched Workers' Provisional Union Committee and some 60 other workers involved in protest actions in Daqing City as well as an unidentified 50-year-old woman and a retired worker, Li Yan, were detained on 11 March. It further requests the Government to provide any information at its disposal concerning arrests which may have been made in connection with the protests in Daqing, whether any individuals are still being detained and any charges which may have been brought against them.
- (h) In light of the numerous allegations in this complaint concerning the excessive use of force by the police in various disputes taking place in different parts of the country, the Committee requests the Government to consider preparing relevant instructions for the forces of law and order aimed at eliminating the danger of resorting to the use of excessive violence when controlling demonstrations.
- (i) The Committee requests the Government to provide detailed information concerning the two democratic opposition activists, Hu Mingjun and Wang Sen, (and possibly Zheng Yongliang) who have reportedly been sentenced to heavy prison terms for acting on behalf of the organizing workers and on the allegations that an independent labour activist, Di Tiangui, was detained on 1 June 2002 in Shanxi Province for trying to set up a federation for retired workers. The Government is asked, in particular, to provide information concerning Di Tiangui's health and the allegations of his mistreatment in detention.
- (j) The Committee requests the Government once again to examine the possibility of a direct contacts mission being undertaken to the country in order to promote the full implementation of freedom of association. The Committee expresses the hope that the Government will respond positively to this suggestion which has been made in a constructive spirit with a view to assisting the Government to find appropriate solutions to the existing problems.

B. The complainants' additional allegations

367. In a communication dated 5 March 2004, the International Confederation of Free Trade Unions transmitted additional allegations of freedom of association violations in China referring in particular to the violent dispersal by the police on 8 February of workers who

were picketing the Tieshu Textile Factory in Suizhou City (Hubel) and the arrest of six workers for disturbing the public order, as well as information that other Tieshu workers were undergoing re-education through labour.

C. The Government's reply

- 368.** In its communication dated 21 August 2003, the Government indicated that in addition to the information provided in its earlier detailed reply, it had recently instituted another investigation of individuals and incidents relevant to the dispute at the Ferrous Alloy Factory (FAF) in Liaoyang City (Liaoning Province), including visits to the Ministry of Public Security, the Ministry of State Security, the Ministry of Justice, the Supreme People's Court, as well as the Committee on the Supervision and Control of the State Property under the State Council.
- 369.** The Ferrous Alloy Factory in Liaoyang City (Liaoning Province) is a factory run by the city. In October 2001, a proposal for bankruptcy was accepted after consideration by the Congress of Worker and Staff Representatives of that factory and the bankruptcy process was formally put into motion in November of the same year.
- 370.** Since 2002, Yao Fuxin, Xiao Yunliang and others, workers of the rolling mill affiliated to FAF, took advantage of the fact that some workers did not understand why their factory had gone bankrupt and had appealed against the city government of Liaoyang, carried out planned activities of terrorism and sabotage, which severely threatened public security, disrupted public order and damaged public property, thus violating Chinese law. The public security authorities of Liaoyang summoned them for trial in accordance with the law and applied forceful measures. On 27 December 2002, the Liaoyang City People's Procurator instituted legal proceedings against Yao Fuxin and Xiao Yunliang on charges of subverting the state power and the Liaoyang City Intermediate People's Court heard the case in public on 15 January 2003.
- 371.** After hearing the case, the Liaoyang City Intermediate People's Court held that the accused, Yao Fuxin and Xiao Yunliang, had taken an active part in the organization and plotting of activities aimed at subverting the state power. Having been educated by the public security authorities on many occasions, they continued to create disturbances, fabricate rumours to mislead people and instigate the masses, who were unaware of the facts, to attack the Liaoyang City government office building and damage public property, thereby seriously disturbing the normal working order of the state organ and causing traffic jams in the principal streets of Liaoyang for quite a long time. The Liaoyang City Intermediate People's Court maintained that the conduct of Yao Fuxin and Xiao Yunliang constituted the crime of subverting the state power, and according to the provisions of paragraph 1 of Article 105 of the Criminal Law of the People's Republic of China (which stipulates that among those who organize, plot or carry out the scheme of subverting the state power or overthrowing the socialist system, the ringleaders and the others who commit major crimes shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years; the ones who take an active part in it shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; and the other participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights) and of Article 106 of the same law (which stipulates that "whoever commits the crime as prescribed in Articles ... and 105 of this chapter in collusion with any organ, organization or individual outside the territory of China shall be given a heavier punishment according to the provisions stipulated in these articles respectively), Yao Fuxin and Xiao Yunliang were sentenced respectively on charges of subverting the state power, with Yao Fuxin sentenced to a fixed-term imprisonment of seven years and the deprivation of political

rights for three years and Xiao Yunliang to a fixed-term imprisonment of four years and the deprivation of political rights for two years.

- 372.** Both Yao Fuxin and Xiao Yunliang pleaded not guilty and lodged appeals with the Higher People's Court of Liaoning Province. After hearing the case, the Higher People's Court of Liaoning Province deemed that the facts established by the original court decision were clear, the evidence irrefutable, the conviction accurate and the measurement of penalty appropriate. It rejected the appeals of Yao Fuxin and Xiao Yunliang on 27 June 2003 and maintained the original court decision.
- 373.** During the court trial, the public procurator presented written evidence, material evidence and a large amount of witness testimony, and the accused and their legal defenders were given opportunities to query the evidence. Yao Fuxin and Xiao Yunliang exercised their right to a defence according to law and each engaged two legal defenders to defend their case in court. The decision in respect of the case of Yao Fuxin and Xiao Yunliang was made according to the relevant provisions stipulated in the criminal law of the country whereas the hearing process strictly followed the procedures as stipulated in the Criminal Procedure Law of the People's Republic of China.

D. The Committee's conclusions

- 374.** *The Committee recalls that the allegations in this case referred to the use of repressive measures, including threats, intimidation, intervention by security forces, beatings, detentions, arrests and other mistreatment meted out to leaders, elected representatives and members of independent workers' organizations at the Ferrous Alloy Factory (FAF) in Liaoning province and the Daqing Petroleum Company in Heilongjiang Province, as well as violent police intervention in a workers' demonstration at Guangyuan Textile Factory, the sentencing of workers rights' advocates in Sichuan province and the detention, arrest and mistreatment in Shanxi province of an independent labour activist for trying to set up a federation for retired workers.*

Ferrous Alloy Factory (FAF) in Liaoyang (Liaoning Province)

- 375.** *In its interim report, the Committee had requested the Government to institute impartial and independent investigations into the allegations of: violent police intervention in respect of the demonstrations at the Ferrous Alloy Factory (FAF); torture and mistreatment in respect of Yao Fuxin; and the beating of Gu Baoshu during his brief detention. The Committee further requested the Government to drop all charges relating to terrorism, sabotage and subversion in respect of the events at the FAF. In addition, it requested the Government to provide specific and detailed information on the charges brought against Yao Fuxin, Pang Qingxiang, Xiao Yunliang and Wang Zhaoming and, in the meantime, to ensure the immediate release of any of the FAF workers' representatives still detained and to ensure that the charges brought against them were dropped.*
- 376.** *In its latest reply, the Government indicates that it instituted another investigation into the events surrounding the dispute at the FAF, including visits with the Ministry of Public Security, the Ministry of State Security, the Ministry of Justice, the Supreme People's Court and the Committee on the Supervision and Control of State Property. From the investigation, it was ascertained that a proposal for bankruptcy had been accepted by the Congress of Workers and Staff Representatives of the FAF in October 2001, but that in 2002, a number of workers of the rolling mill affiliated to the FAF, including Yao Fuxin and Xiao Yunliang, appealed against the bankruptcy and carried out planned activities of terrorism and sabotage, severely threatening public security, disrupting public order and*

damaging public property, in violation of Chinese law. According to the Government, the authorities of Liaoyang therefore brought them to trial and applied forceful measures. On 27 December 2002, the Liaoyang City People's Procurator brought further charges of subversion against Yao Fuxin and Xiao Yunliang.

- 377.** *The Liaoyang City Intermediate People's Court found that the accused had taken an active part in the organization and plotting of activities aimed at subverting state power. The Government states that, having been educated by the public security authorities on many occasions, the accused nevertheless continued to create disturbances, fabricate rumours to mislead people and instigate the masses to attack the government office building and damage public property thereby seriously disturbing the normal working order of the state organ and causing a traffic jam. While unaware of the precise meaning behind this reference to public security authorities having "educated" the accused, the Committee must emphasize the importance it attaches to the full respect for those civil liberties essential to the meaningful exercise of freedom of association. In this respect, the Committee wishes especially to recall the rights to freedom and security of person and to freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers [see **1970 resolution concerning trade union rights and their relation to civil liberties**]. The Committee trusts that the Government will take all necessary measures to ensure full respect for these rights.*
- 378.** *The accused were thus sentenced under paragraph 1 of Article 105 of the Criminal Law which provides that those who plot or carry out the scheme of subverting the state power or overthrowing the socialist system shall be sentenced to between ten years and life imprisonment and between three and ten years' imprisonment for those who take an active part in such activities. According to the Government, Yao Fuxin was thus sentenced to seven years' imprisonment and Xiao Yunliang to three years' imprisonment. They both pleaded not guilty and appealed to the Higher People's Court of Liaoning Province, which deemed that the facts established by the original court decision were clear, the evidence irrefutable, the conviction accurate and the penalty appropriate.*
- 379.** *As regards court procedure, the Government asserts that Yao Fuxin and Xiao Yunliang exercised their right to defence according to the law and each engaged two legal defenders for their case. The court decision was made according to relevant provisions stipulated in the Criminal Law and the procedures followed the rules of the Criminal Procedure Law of the People's Republic of China.*
- 380.** *While taking due note of the Government's efforts to investigate the circumstances surrounding the dispute at the FAF and the subsequent court rulings, the Committee must recall that in its previous examination, noting the Government's indication that the events fell within the context of a labour dispute, it had requested the Government to drop all charges relating to terrorism, sabotage and subversion. Indeed, the Committee deplors from the Government's latest reply that the events in connection with the FAF dispute were related to the bankruptcy of the factory and its consequences on the workers, yet Yao Fuxin and Xiao Yunliang were charged with and sentenced for subversion.*
- 381.** *As to the Committee's request to the Government to provide specific and detailed information on the charges brought against Yao Fuxin, Xiao Yunliang, Pang Qingxiang and Wang Zhaoming, the Committee notes with regret that the Government, referring only to Yao Fuxin and Xiao Yunliang, repeats its earlier general statements that these two workers planned activities of terrorism and sabotage, which severely threatened public security, disrupted public order and damaged public property. The most specific information provided by the Government refers to the creation of disturbances, fabrication of rumours and instigation of masses to attack the Liaoyang City government office*

building and damage public property, thereby disturbing the normal working order of the state organ and causing a traffic jam. No information is provided as to the specific property that was damaged, or to any clear individual responsibility in this regard. In any event, the Committee cannot comprehend how such vague and general accusations can lead to the conviction of such a serious crime as subversion.

- 382.** *Further, the Committee deplores that these two individuals, who were arrested initially simply on charges of illegal demonstration that were transformed several months later into charges of subversion (see 330th Report, para. 452), received a trial that lasted all of one day. Moreover, recalling its previous request to the Government to ensure that due process of the law is guaranteed to all the workers' representatives named in the complaint, the Committee notes that the Government merely indicates that Yao Fuxin and Xiao Yunliang engaged two legal defenders each to defend their case, but provides no specific information on the allegations made that Xiao Yunliang's lawyer did not have access to his client. Deploring the serious allegations of blatant disrespect for due process in respect of the trials of Yao Fuxin and Xiao Yunliang, the Committee must emphasize that detained trade unionists, like anyone else, should benefit from normal judicial proceedings and have the right to due process, in particular, the right to have adequate time and facilities for the preparation of their defence and to communicate freely with counsel of their own choosing and the right to a prompt trial by an impartial and independent judicial authority [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 102]. The Committee requests the Government to provide a copy of the court judgement in their case, as well as the appeal heard by the Higher People's Court of Liaoning Province, and any additional information relevant to the guarantees of due process afforded in this case.*
- 383.** *Finally, the Committee notes with deep regret that the Government has provided no information in reply to its previous request to institute an independent investigation into the allegations concerning the serious condition of Yao Fuxin's health and the torture or mistreatment surrounding his detention. The Committee calls upon the Government to ensure that Yao Fuxin receives all necessary medical attention and treatment as a matter of urgency.*
- 384.** *In the light of the above, the Committee deeply regrets the Government's disregard for essentially all of its previous recommendations in this very serious case and its perseverance in the punishment of acts related to labour conflict with lengthy terms of imprisonment for acts of subversion on the basis of general and vague accusations. It therefore once again strongly urges the Government to take the necessary measures for the immediate release of Yao Fuxin and Xiao Yunliang and requests the Government to keep it informed of all measures taken in this respect.*

Other pending matters

- 385.** *The Committee notes with regret that the Government has provided no additional information in reply to the Committee's previous recommendations: to institute an impartial and independent investigation into the allegations of violent police intervention in respect of the demonstrations at FAF and into the allegations that Gu Baoshu was beaten during his brief detention; to provide information on the whereabouts of Wang Dawei; to reply specifically to the allegations that representatives of the PAB Retrenched Workers' Provisional Union Committee and some 60 other workers were detained on 11 March 2002 and whether any of these individuals are still being detained; to provide detailed information on the sentencing of two democratic opposition activists, Hu Mingjun and Wang Sen (and possibly Zheng Yongliang), who were reportedly sentenced to heavy prison terms for acting on behalf of the organizing workers; and to provide detailed information on the detention and alleged mistreatment of the independent labour activist,*

Di Tiangui. The Committee strongly urges the Government to institute the independent investigations requested in respect of the abovementioned matters and to provide all detailed information called for above. Finally, the Committee requests the Government to transmit its observations on the allegations recently made by the ICFTU in its communication of 5 March 2004.

386. *In these circumstances, in particular the numerous outstanding requests for information and action, and convinced that the development of free and independent trade unions and employers' organizations is indispensable for social dialogue and to enable a government to confront its social and economic problems and resolve them in the best interests of the workers and the nation [see, in particular, **Digest**, op. cit., para. 24], the Committee once again strongly urges the Government to respond positively to its previous suggestion for a direct contacts mission.*

The Committee's recommendations

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

- (a) Deploring the serious allegations of blatant disrespect for due process in respect of the trials of Yao Fuxin and Xiao Yunliang, the Committee must emphasize that detained trade unionists, like anyone else, should benefit from normal judicial proceedings and have the right to due process, in particular, the right to have adequate time and facilities for the preparation of their defence and to communicate freely with counsel of their own choosing and the right to a prompt trial by an impartial and independent judicial authority.*
- (b) The Committee requests the Government to provide a copy of the court judgement in the case of subversion brought against Yao Fuxin and Xiao Yunliang, as well as the appeal heard by the Higher People's Court of Liaoning Province and any additional information relevant to the guarantees of due process afforded in this case.*
- (c) The Committee calls upon the Government to ensure that Yao Fuxin receives all necessary medical attention and treatment as a matter of urgency.*
- (d) The Committee once again strongly urges the Government to take the necessary measures for the immediate release of Yao Fuxin and Xiao Yunliang and requests the Government to keep it informed of all measures taken in this respect.*
- (e) The Committee once again requests the Government to institute the independent investigations requested in respect of the following pending allegations and to provide all detailed information called for in respect of the following matters:*
 - (i) to institute an impartial and independent investigation into the allegations of violent police intervention in respect of the demonstrations at FAF and into the allegations that Gu Baoshu was beaten during his brief detention;*

- (ii) to provide information on the whereabouts of Wang Dawei;*
 - (iii) to reply specifically to the allegations that representatives of the PAB Retrenched Workers' Provisional Union Committee and some 60 other workers were detained on 11 March 2002 and whether any of these individuals are still being detained;*
 - (iv) to provide detailed information on the sentencing of two democratic opposition activists, Hu Mingjun and Wang Sen (and possibly Zheng Yongliang), who were reportedly sentenced to heavy prison terms for acting on behalf of the organizing workers; and*
 - (v) to provide detailed information on the detention and alleged mistreatment of the independent labour activist, Di Tiangui.*
- (f) The Committee requests the Government to transmit its observations on the recent allegations made by the ICFTU in its communication dated 5 March 2004.*
- (g) In light of the numerous outstanding requests for information and action, and convinced that the development of free and independent trade unions and employers' organizations is indispensable for social dialogue and to enable a government to confront its social and economic problems and resolve them in the best interests of the workers and the nation, the Committee once again strongly urges the Government to respond positively to its previous suggestion for a direct contacts mission.*

CASE NO. 1787

INTERIM REPORT

**Complaints against the Government of Colombia
presented by**

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

Allegations: The complainant organizations allege murders, abductions, assaults, death threats and other acts of violence against trade union officials and members. The complainant organizations also allege that the Government is not adopting the necessary measures to put an end to this serious situation of impunity

388. The Committee last examined this case at its May-June 2003 meeting [see 331st Report, paras. 212-254]. The International Confederation of Free Trade Unions (ICFTU) sent new allegations in communications dated 28 May, 2 June, 15 July and 4 August 2003; the World Federation of Trade Unions in communications dated 16 May, 5 September, 21 November and 2 December 2003; ASODEFENSA in communications dated 20 June and 28 October 2003; the Public Servants International joined the complaints submitted by ASODEFENSA in a communication dated 30 June 2003; The National Union of Mining and Power Industry Workers (SINTRAMIENERGETICA) submitted complaints in a communication dated 12 August 2003; the Single Confederation of Workers of Colombia in a communication of 19 September 2003 and the Colombian Teachers' Federation (FECODE) in a communication dated October 2003.

389. The Government sent its observations in communications dated 2 and 28 July, 11 August, 8 and 24 September, 17 November and 4 December 2003.

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

A. Previous examination of the case

391. At its May-June 2003 meeting, the Committee made the following recommendations on the allegations that were still pending which, for the most part, referred to acts of violence against trade union members and acts of anti-union discrimination [see 331st Report, para. 254]:

- (a) Noting the comprehensiveness of the Government's report and taking into consideration the extreme gravity of the situation, the Committee regrets to observe that since the last examination of the case, 84 assassinations (in 11 of which the victims were trade union members and the facts related to 2003 and in 73 the victims were trade union officials and members and the facts related to 2002 and the preceding years), seven detentions and seven threats, have been denounced. The Committee recalls that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed.
- (b) The Committee urges once again the Government to take immediate measures to institute investigations into all the alleged acts of violence and make significant progress on these investigations. The Committee reiterates once more its request to the Government to continue sending its observations on the progress made in the investigations already begun on which the Government has reported (Appendix II) and to take measures to ensure that investigations begin without delay into other murders, abductions, disappearances, attempted murders and threats referred to in Appendix I (acts of violence against trade union officials or members up to the Committee's meetings of November 2002 for which the Government has not sent its observations or has not reported the initiation of investigations or judicial procedures) as well as those referred to in the section on "new allegations" in this report (with respect to the latter, the Government has not sent any information on only a few of the new allegations).
- (c) The Committee encourages the parties to cooperate fully and directly so that the Government may rapidly transmit detailed and comprehensive replies to the Committee. The Committee recalls the complainants' duty to collaborate with the Government in order to provide the maximum amount of precisions possible in all cases where this is requested. Nevertheless, the Committee underlines that the complainants have communicated substantial information on many of the 51 allegations (on which the Government does not have enough precisions) and with renewed efforts from the Government it should be possible in any case to report whether investigations were instituted and in which stage they are.
- (d) The Committee requests once again the Government to take the necessary measures to put an end to the intolerable situation of impunity and punish effectively all those responsible.
- (e) With respect to the trade union status of 25 victims objected to by the Government, the Committee requests the complainant organizations to provide the information necessary to clarify this question.
- (f) The Committee also requests the Government to continue and increase the protection of all trade unionists who are at risk and to continue keeping it informed on the evolution of the protection programme and the "Working Plan of the Inter-Institutional Committee for the Prevention of Violations and the Protection of Workers' Human Rights" to which it had referred at the last examination of this case.
- (g) The Committee once again recalls that it would be advisable to deal specifically with situations in which violence against trade union members is very intensive – for example in the sectors including education, the petroleum industry, the health services as well as municipal and departmental administrations. Such information should also refer to regions where acts of violence occur most frequently, such as the departments of Valle del Cauca and Antioquia and the municipality of Barrancabermeja, especially in the Empresa de Petróleo de Colombia and the Empresa de Gas de Barrancabermeja.
- (h) With respect to allegations of threats, assaults, murder of trade union officials, the detention of four officials, the refusal to provide protection to one official, presented by the ICFTU on 3 February 2003, the Committee requests the Government to continue keeping it informed on the evolution of these investigations.
- (i) With respect to the non-compliance with the agreement concluded on 29 January 2002 between the Government, the workers of the Cali Municipal Enterprises (EMCALI) and the community of Cali, through which it had been established that the enterprises would not be privatized, the Committee requests the Government to send its observations in this respect.

B. New allegations

392. The complainant organizations present the following allegations:

Murders

- (1) Jamil Mosquera Cuestas, member of the Antioquia Teachers' Association (ADIDA), on 11 January 2003, in Antioquia;
- (2) Luis Hernando Caiceda, member of the Arauca Teachers' Association (ASEDAR), on 23 January 2003 in the municipality of Yumbo, Department of Valle del Cauca;
- (3) Luis Antonio Romo Rada, member of the Ciénaga Fishermen's Union, on 8 February 2003, in Ciénaga, Santa Marta;
- (4) Bertha Nelly Awazacko Reyes, member of the Boyacá Teachers' Union (SINDIMAEESTROS), on 24 February 2003, in Tunja, Boyacá;
- (5) Alejandro Torres, member of the National Association of Workers and Employees in Hospitals and Clinics (ANTHOC), on 20 March 2003, in Arauquita, Department of Arauca;
- (6) José Rubiel Betancourt Ospina, member of Caldas United Teachers' Union (EDUCAL), on 26 March 2003, in Samana, Department of Caldas;
- (7) Cecilia Salas, member of the Valle Department Workers' Union, on 7 April 2003, in Buenaventura, Department of Valle;
- (8) Evelio Germán Salcedo Taticuan, official of the Nariño Teachers' Union (FECODE), on 7 April 2003;
- (9) Luz Stella Calderón Raigoza, member of EDUCAL, on 8 April 2003, in Samana, Department of Caldas;
- (10) Tito Livio Ordóñez, member of the Union of the Workers of the National University of Colombia, on 16 April 2003, in Cocomá, Antioquia;
- (11) Luz Elena Zapata Cifuentes, on 25 April 2003, member of EDUCAL in Ansema, Caldas;
- (12) Ana Cecilia Duque, on 26 April 2003, member of the Antioquia Teachers' Association, in Cocomá, Antioquia, by the ELN;
- (13) Jorge Ruiz Sara, member of the Magdalena Teachers' Union (EDUMAG, FECODE-CUT), on 29 April 2003, in Barranquilla, Department of North Santander, by paramilitaries;
- (14) Juan de Jesús Gómez, president of the Mina branch of SINTRAINAGRO, on 1 May 2003, in San Alberto, Department of César, by paramilitaries;
- (15) Ramiro Manuel Sandoval Mercado, member of the Córdoba Teachers' Association (ADEMACOR), on 7 May 2003, in the municipality of Chima, Department of Córdoba;
- (16) Omar Alexis Peña Cardona, member of the North Santander Teachers' Association (ASINORT), on 7 May 2003, in Cúcuta, North Santander;

- (17) Jorge Eliécer and Moreno Cardona, members of EDUCAL, on 8 May 2003, in Supia, Department of Caldas;
- (18) Nelson López, Willmer Vergara and Jorge Vásquez, members of EMCALI, on 8 May 2003, at the Puerto Malarino Drinking Water Treatment Plant, in Cali, Valle del Cauca;
- (19) Victoria Sterling and Héctor Jaimes, union membership not specified, on 11 May 2003, in Garzón, Department of Huila;
- (20) Luis Oñate Enriquez, member of the Electricity Workers' Union of Colombia (SINTRAELECOL), on 24 May 2003, in the Department of Atlántico;
- (21) María Rebeca López Garcés, member of ADIDA, on 29 May 2003, in Uramita, Department of Antioquia;
- (22) Nubia Cantor Jaimes, member of ANTHOC, on 3 June 2003, in Arauca, Department of Arauca;
- (23) Jorge Eliécer Suárez Sierra, member of ASINORT, on 8 June 2003, in San José de Cúcuta, North Santander;
- (24) Luis H. Rolón, member of the Lottery and Gaming Vendors Union, on 16 June 2003, in the Department of Cúcuta, North Santander, by paramilitaries;
- (25) Morelly Guillén, member of ANTHOC, in the Department of Arauca, municipality of Tame, on 16 June 2003, by paramilitaries;
- (26) Orlando Fernández Toro, Union of Public Service Workers and Employees (SINTRAEMSDES), on 17 June 2003, in Valledupar, Department of César, by paramilitaries;
- (27) Liliana Caicedo Pérez, member of the Nariño Teachers' Union (SIMANA), on 19 June 2003, in Ricaurte, Department of Nariño, by paramilitaries;
- (28) Fanny Toro Rincón, member of ANTHOC, on 20 June 2003, in Ibagüé, Department of Tolima;
- (29) Pedro Germán Florez, member of the Arauca Teachers' Association, on 4 July 2003, in Saravena, Department of Arauca;
- (30) Marco Tulio Díaz, president of the ECOPETROL National Pensioners' Association (ASONAJUB), on 15 July 2003;
- (31) José Evelio Bedoya Alvarez, member of the Construction Industry and Materials Workers' Union (SUTIMAC), in the municipality of Santa Barbara, Department of Antioquia, on 15 July 2003;
- (32) Alberto Márquez, member of SINTRAGRITOL, branch of FENSUAGRO, in the municipality of Nantagaima, Department of Tolima, on 15 July 2003;
- (33) Carlos Barreto Jiménez, member of the Executive Board of ANTHOC, in Barranquilla, on 23 July 2003;
- (34) Juan Carlos Ramírez Rey, Penitentiary and Prison Institute Employees' Association (ASEINPEC), in Villavicencio, on 24 July 2003;

- (35) Elena Jiménez, member of ANTHOC, on 9 August 2003, in Ocaña, Department of North Santander;
- (36) Marleny Stella Toledo, member of ANTHOC, on 9 August 2003, in Puerto Rico, Department of Caquetá;
- (37) Flor Marina Vargas, member of the Antioquia Teachers' Association, on 19 August 2003, in the village of Pava in the municipality of Alejandría, Department of Antioquia;
- (38) Cruz Freddy Buenaventura, member of the Cauca Teachers' Association (ASOINCA), on 21 August 2003 in the Department of Cauca;
- (39) César Augusto Fonseca, member of the Atlántico Department Farm Workers' Union (SINTRAGRICOLAS), on 2 September 2003, in the municipality of Ponedera, Department of Atlántico;
- (40) José Rafael Fonseca, member of SINTRAGRICOLAS, on 2 September 2003, in the municipality of Ponedera, Department of Atlántico;
- (41) José Ramón Fonseca Morales, member of SINTRAGRICOLAS, on 2 September 2003, in the municipality of Ponedera, Department of Atlántico;
- (42) Iván Muñiz Bermúdez, member of the Guajira Teachers' Association (ASODEGUA), on 9 September 2003, in Guajira, Department of Rioacha;
- (43) Renzo Vargas Vélez, member of the Tolima Teachers' Association (SIMATOL), on 12 September 2003, in the municipality of Villarrica, Department of Tolima;
- (44) Margot Londoño Medina, member of ADIDA, on 15 September 2003, in Envigado, Department of Antioquia;
- (45) Dora Melba Rodríguez Urrego, member of SIMATOL, on 19 September 2003, in Ibagüé, Department of Tolima;
- (46) Abel Ortega Medina, member of the Sucre Teachers' Association (ADES), on 15 September 2003, in the municipality of Monroa, Department of Sucre;
- (47) Nelly Herazo Rivera, member of ADES, on 15 September 2003, in the municipality of Monroa, Department of Sucre;
- (48) Rito Hernández Porra, member of the National Union of Mining and Power Industry Workers (ACUEDUCTO), on 27 September 2003, in the municipality of Saravena, Department of Arauca;
- (49) Luis Carlos Olarte Gaviria, member of the National Union of Mining and Power Industry Workers (SINTRAMIENERGETICA), Segovia branch, on 3 October 2003, in the municipality of Segovia, Department of Antioquia;
- (50) Pacheco Evero Fiholl, member of the Magdalena Teachers' Association (EDUMAG-FECODE) in the municipality of Pueblo Viejo, Department of Magdalena, on 3 November 2003;
- (51) Nubia Estela Castro, member of EDUMAG-FECODE in the municipality of Tenerife, Department of Magdalena, on 5 November 2003;

- (52) Zuly Esther Codina Pérez, member of EDUMAG-FECODE in the municipality of Pueblo Viejo, Department of Magdalena, on 3 November 2003;
- (53) Emerson Pinzón, activist in the Union of Health and Social Security Workers (SINDESS), Department of Magdalena, on 11 November 2003;
- (54) Jorge Peña Moreno, member of EDUMAG-FECODE, on 11 November 2003, in Orihueca, Department of Magdalena;
- (55) Zuly Esther Codina Pérez, national official of SINDESS, in Santa Marta, Department of Magdalena, on 12 November 2003;
- (56) Mario Sierra Anaya, secretary of the Colombian Institute for Agrarian Reform (SINTRADIN-CUT), Arauca branch, in the municipality of Saravena, Department of Arauca, on 16 November 2003;
- (57) Miguel Angel Anaya Torres, member of SINTRAEMSEDES, on 17 November 2003, in Saravena, Department of Arauca;
- (58) Elles Carlos de la Rosa, member of the Workers' Union of the Transportes Atlántico company (SINTRAATLANTICO), on 30 November 2003, in Barranquilla, Department of Atlántico;
- (59) Orlando Frias Parada, member of the Communication Workers' Union, on 9 December 2003, in Villanueva, Department of Casanare.

Attempted abduction

Ana Paulina Tovar González, daughter of the CUT Human Rights Director, on 21 March 2003.

Abductions

- (1) Luis Alberto Olaya, member of the Valle Single Education Workers' Trade Union (SUTEV), in the Department of Valle del Cauca, on 15 June 2003;
- (2) Jhon Jairo Iglesias, José Céspedes and Wilson Quintero were abducted on 2 November 2003 in the municipality of Cajamarca, Department of Tolima. The complainants must state to which union the abducted persons belonged;
- (3) Marco Antonio Rodríguez and Ricardo Espejo, attorneys of the Tolima Farm Workers' Union (SINTRAGRITOL), in the municipality of Cajamarca, Department of Tolima, on 6 November 2003.

Threats

- (1) The National Union of Workers in the Food Industry (SINALTRAINAL), Bucaramanga branch, on 14 March 2003;
- (2) Domingo Tovar Arrieta, Director of the CUT Human Rights Department, on 9 May 2003;
- (3) Hernán Herrera Villalba, member of the Neiva branch committee of ASODEFENSA;
- (4) Mario Ernesto Galvis Barbosa, whose union membership must be clarified;

- (5) Lenidas Ruiza Mosquera, chairman of the ASODEFENSA coffee sector subcommittee;
- (6) Jorge León Sarasty Petrel, national president of SINALTRACORPOICA, on 9 June 2003, in Montería, where he was advising on the formation of the union's Córdoba branch;
- (7) the workers of the Drummond company (2,000 in all) working in conflict zones where paramilitary groups operate and consider them as military targets. Five officials and members have already been murdered and this has been considered in previous examinations of the case. Currently, workers are being sent to remote areas where there is no security;
- (8) Carlos Hernández, president of the NATHOC Union, in Barranquilla, was forced to go into exile following the murder of several of his colleagues;
- (9) Victor Jaimes, Mauricio Alvarez and Elkin Menco, officials of the Petroleum Industry Workers' Union (USO);
- (10) Risaralda Teachers' Union (SER), on 22 October 2003, received the third written threat warning the members of the union to leave the region. In addition, the administrative authorities revoked the trade union's licence.

Raids

- (1) Residence of Laura Guerrero, official of the CUT Bogotá branch committee, Cundinamarca, on 11 March 2003;
- (2) Residence of Gilberto Salinas, member of SINTRAGRITOL, branch of FENSUAGRO-CUT. He was arrested during the raid.

Disappearances

- (1) Marlon Mina Gambi, son of Yesid Mina, ECOPETROL workers, and member of USO, on 5 May 2003;
- (2) The Tolima Farm Workers' Union alleges that 18 farm workers who peacefully occupied the Manigua Estate in March 2003 have disappeared.

Acts of violence

- (1) María Clara Baquero Sarmiento, President of ASODEFENSA: according to the allegations presented by the complainant organization, union meetings were obstructed, those attending were intimidated, lists of people participating in union meetings were drawn up, the organizers were transferred to conflict zones, etc. The complainant organization adds that the president of the union was not given the protection to which the Government referred in the Committee's 330th Report;
- (2) Henry Armando Cuéllar Valbuena, member of the ASODEFENSA Executive Board;
- (3) Jairo Chávez, a worker in the Nariño Teachers' Union, when an explosive device of moderate force exploded, also causing enormous material damage, on 5 June 2003;

- (4) Manuel Hoyos, president of the Atlántico Workers' Union, affiliate of the CGTD, on 3 July 2003;
- (5) Juan Carlos Galvis, on 22 August 2003;
- (6) Berta Lucy Dávila, member of SER in Risaralda, on 13 November 2003.

Denial of trade union leave

393. In its communication of October 2003, the Colombian Teachers' Federation (FECODE) gives a global analysis of the general situation of teachers in Colombia. It refers specifically to the various violations of which they are the victims as teachers belonging to a trade union or union officials, including: threatening telephone calls, harassment by armed persons, public statements that they are military targets, pressure to resign their trade union office, raids on their homes, pressure not to participate in trade union activities and numerous murders. The successive lists of murders drawn up during the examination of this case highlight the many members and union officials murdered or victims of other violations.

C. The Government's reply

394. In its communication of 2 July 2003, the Government provides a detailed report on the Cali Union of Workers' in Public Enterprises (SINTRAEMCALI) members containing over 63 criminal investigations into acts of violence reported as presumed violations of the human rights of trade union members and officials of the Cali Municipal Workers' Union (EMCALI), current protection schemes, means of communication, armour and other measures provided under the protection programme of the Ministry of the Interior and Justice to various members of the union, which are currently in operation. It also includes full information concerning various incidents that have occurred in recent months, in which SINTRAEMCALI members have been involved (strike on 16 September 2002, detention on 14 November 2002, bomb on 8 May 2003).

I. Criminal investigations into violations of human rights of SINTRAEMCALI members

395. Details are given of all the criminal investigations being conducted into violations of the human rights of SINTRAEMCALI members and officials in the various prosecutor's offices and section directorates of prosecutions in Valle del Cauca, concerning the following matters:

- (1) On Sunday 16 June 2002, at about 9.30 p.m., the president of SINTRAEMCALI, Luis Enrique Imbachi, was going from the San Luis quarter to the Cali Mío quarter in the security vehicle assigned by the Ministry of the Interior protection programme, accompanied by bodyguard Ivaney González, when in Ciudad de Cali Avenue, three individuals riding two high-powered motorcycles, a green KMX and a purple RX15, and a taxi followed them for several minutes, during which they approached the vehicle in front and behind, trying to see inside the car. The individuals on the motorcycles took up positions on each side of the car and a kilometre further on, the ones on the right of the vehicle drew out revolvers, apparently long-barrelled 38s, which they aimed at the right side window where the official, Luis Imbachi, was sitting. He ordered the bodyguard to react by steering the vehicle towards the man on the motorcycle, who immediately fled. The bodyguard immediately tried to call the Department of Administrative Security (DAS) on the radio, but in vain since no one answered, so the bodyguard and the official drove to the DAS to make a complaint to

the duty inspector. The authority conducting the investigation is Prosecutor's Office 46, Cali section; File No. 518885; stage: preliminary; current status: active.

- (2) On Saturday, 18 May 2002, at about 1 p.m., Orlando Arenas Marín was in a public establishment in the municipality of Florida when a yellow taxi arrived, Daewoo make, carrying four armed men. Two of them got out of the vehicle, entered the establishment and tried to seize Orlando who resisted by punching one of them. Immediately, the individual who had been punched drew a weapon and murdered Orlando. The authority conducting the investigation is Prosecutor's Office 46, Cali section; File No. 518885; stage: preliminary; current status: active.
- (3) On 10 May 2002, during the International Labour Day march, two suspicious persons were identified filming and taking photos of the workers. The infiltrators tried to escape and the workers stopped them, demanding that the police should identify and arrest them. The response of the riot police belonging to the mobile anti-riot squad (ESMAC) was to protect the infiltrators and beat the workers. The police reacted violently against Luis Hernández Monroy, president of SINTRAEMCALI; Jesús González, a member of the National CUT Human Rights Executive Committee; Oscar Figueroa and Domingo Angulo, members of the SINTRAEMCALI Executive Board; Ariel Díaz, the Valle CUT human rights officer; Berenice Celeyta, president of NOMADESC; William Aescobar, SIDELPA official, a SINTRAEMCALI lawyer; Alexander López, member of the House of Representatives for Valle del Cauca. All of whom were physically assaulted and verbally abused. The most serious case was Jesús González who was hospitalized for five days. According to the medical report, the blows he had received caused a trauma in the occipito-parietal region, with a 1.5 cm bleeding wound, caused by a wooden object, and he is now under observation and permanently scarred. During the incident, Jhon Weiner González, Jesús González' bodyguard was arrested and beaten on various parts of his body with a truncheon, while a gas grenade launcher was pointed directly at the head of another bodyguard. The bodyguard was released as a result of pressure by the demonstrators. On the same day, two other officials from the ombudsman's office, a member of the House of Representatives, Alexander López and Ariel Díaz of Valle CUT lodged a complaint with the regional ombudsman, Hernán Sandoval, in which they reported the detention of two persons who infiltrated the march. The authority conducting the investigation is Prosecutor's Office 30; Cali section; File No. 494944; stage: preliminary; current status: active.
- (4) On 27 April 2002, the sister of SINTRAEMCALI activist Daniel Valencia Villegas, a worker in the water and sewage plant, received a telephone call asking for Daniel. As he was not there, they left him the following message: "tell him to stop going around with the union board members". There were constant calls to his family and his home. The authority conducting the investigation is Prosecutor's Office 29; Cali section; File No. 486973; stage: preliminary; current status: active.
- (5) On 18 April 2002, when the president of NOMADESC and coordinator of the SINTRAEMCALI human rights department, Berenice Celeyta was leaving a meeting at SINTRAEMCALI headquarters in the company of Cristian Llanos, a SINTRAEMCALI student, member of the NOMADESC education team, and a student in Valle University, she was followed by a white Toyota four-door estate with silver polarized glass windows to the "La Cucharita" Restaurant which the human rights defender entered with the students. A few minutes later, a motorcycle carrying two men parked outside the restaurant and a man wearing a kangaroo type purse got off and sat down staring at them while the other stayed outside with the motorcycle. The immediate reaction was to call the union's security unit by avantel radio and mobile phone, contact the CUT human rights coordinator and leave the place at once

since there was no security unit nearby, and by taking various vehicles they managed to escape those following them.

- (6) During the night on 11 April 2002, the porter at the office of House of Representatives member and ex-president of SINTRAEMCALI, Alexander López Maya, received a call from a man who did not identify himself saying “despite all the guards and the DAS, we are going to blow up your office”. The next morning, the office secretary received another call in which they told her “didn’t you hear that we are going to bomb you?” as a result of which the office stayed closed. The authority conducting the investigation is Prosecutor’s Office 89; Cali section; File No. 561463; stage: preliminary; current status: active.
- (7) During the security council meeting in the second week of April, the military authorities stated their intention of seeking, by every means, to prosecute the executive board for impeding the functioning of public services, insulting the flag and patriotic symbols, conspiracy to commit crimes and terrorism. The authority conducting the investigation is Prosecutor’s Office 88; Cali section; File No. 464116; stage: preliminary; current status: active.
- (8) In the week of 8-12 April 2002, a white Mazda car without number plates and a high-powered motorcycle followed the SINTRAEMCALI General-Secretary, Angel Tovar on a number of occasions. The authority conducting the investigation is Prosecutor’s Office 30; Cali section; File No. 561460; stage: preliminary; current status: active.
- (9) In the first week of April 2002, a white Chevrolet Rodeo estate with polarized glass windows followed the vehicle carrying Robinson Masso on several occasions. Also in the same period, vehicles not known to the neighbours in the official’s place of residence constantly patrolled the area and disappeared when the security unit arrived. The authority conducting the investigation is Prosecutor’s Office 93; Cali section; File No. 561459; stage: preliminary; current status: active.
- (10) During the weeks of 25 February to 12 March 2002, SINTRAEMCALI Board members, Luis Hernández Monroy (President) and Robinson Masso (member of the anti-corruption committee and education officer), observed suspicious vehicles and individuals riding high-powered motorcycles constantly following the cars in which they travelled, for which reason they were forced to change their address. The authority conducting the investigation is Prosecutor’s Office 89; Cali section; File No. 561473; stage: preliminary; current status: active.
- (11) At about 4 p.m., on 22 February 2002, the president of SINTRAEMCALI, Luis Hernández, left the headquarters of the Single Confederation of Workers of Colombia (CUT) in Bogotá for the airport, to fly to Cali. Shortly after, he became aware that four individuals in a white Mazda were following him. On arriving at the airport and going to the police station to hand in his personal weapon, he noticed that the four individuals had entered the airport and he immediately alerted the police, who accompanied him until he boarded the aeroplane. At the same time, Luis Hernández’ family received a threatening telephone call. It should be noted that Luis Hernández was elected president in place of Alexander López, currently member of the House of Representatives for the *Frente Social y Político*. The authority conducting the investigation is Prosecutor’s Office 29; Cali section; File No. 561457; stage: preliminary; current status: active.
- (12) On 16 February 2002, a call was made to the campaign office of Alexander López Maya, candidate for the House of Representatives and former president of SINTRAEMCALI, saying that they were going to place a bomb. The authority

conducting the investigation is Prosecutor's Office 91; Cali section; File No. 561455; stage: preliminary; current status: active.

- (13) On Monday, 11 February 2002 in commune 20 (Sileo) at 5.55 a.m., community leader, Julio Galerno was murdered as he was leaving his home with his wife Vivian María Villamil on their way to the Municipal Administrative Centre (CAM), EMCALI Tower, where she worked. The couple were approached by two men, one of whom drew a gun and said "don't move", then shot him in the lower left jaw killing him. The authority conducting the investigation is Prosecutor's Office 13; Cali section; File No. 470844; stage: preliminary; current status: active.
- (14) On 28 January 2002, Arley Gordillo, a water and sewage worker in the Cali municipal works, was wounded by a policeman driving a motorcycle, Mecal registration No. 24-842, identified by the side number 642. This incident occurred when the Cali municipal police took drastic security measures in the city directed at the peaceful occupation by EMCALI workers, by publishing communications from the local authorities in which they indicated to the conveners of the municipal civil strike that it would be infiltrated by rebels. The authority conducting the investigation is Prosecutor's Office 31; Cali section; File No. 561451; stage: preliminary; current status: active.
- (15) On 26 January 2002, in the middle of the call to the community to join a civil strike, General Francisco Ren Pedraza, Commander of the 3rd Division told the newspaper *El Pais* "... behind the call to a civil strike there were some illegal trade unions and armed groups". That statement forced the social and trade union organizations organizing the strike to suspend the protest. The authority conducting the investigation is Prosecutor's Office 32; Cali section; File No. 561449; stage: preliminary; current status: active.
- (16) On 25 January 2002, at about 5.45 a.m., members of the SIJIN and Prosecutor's Office 53 of the Rapid Reaction Unit raided the water and sewage works located at the junction of 15th avenue and 59th street, claiming that they had gone there on the basis of information received. A person was seen accompanying the prosecutor's staff and the SIJIN, carrying a video camera with which he was filming the number plates of the cars parked there and the faces of the workers in the works. The authority conducting the investigation is Prosecutor's Office 94; Cali section; File No. 561448; stage: preliminary; current status: active.
- (17) On 16 January 2002, during a security council meeting, the speakers at the negotiating table were stated to be members of insurgent groups. According to reports, the representatives of the military forces said that the negotiating table had been infiltrated by the ELN. The authority conducting the investigation is Prosecutor's Office 36; Cali section; File No. 561445; stage: preliminary; current status: active.
- (18) On 10 January 2002, at midnight, an explosive device was detonated on the terrace of the home of Sedilfredo Grueso, at No. 27-80, 72nd street, W2, Omar Torrijos District. At the time of the incident, only his wife and children were at home. The authority conducting the investigation is Prosecutor's Office 10; Cali section; File No. 447383; stage: preliminary; current status: active.
- (19) On the same day, at about 6 p.m., an individual was arrested carrying a firearm and wearing an EMCALI shirt to blend in with the workers. In his briefcase he had a doctor's coat with the logo of Valle University and several photographs. The man was arrested by the workers on the picket line outside the Tower and handed over to the police chief on duty in charge of the anti-riot squad surrounding the Tower. An

hour-and-a-half after the incident (at 10 p.m.) three individuals in plain clothes travelling in a Mazda 323, registration No. NEH 108 and carrying handguns, arrived at SINTRAEMCALI headquarters at No. 6-54, 18th Street. The three men got out of the vehicle and proceeded to ask questions about a Rodeo van parked outside the union headquarters which was allocated by the Ministry of the Interior as a security measure for one of the SINTRAEMCALI officials.

- (20) In January 2002, three telephone calls were made to SINTRAEMCALI's headquarters, asking if there were EMCALI staff in the CAM Tower, and threatened to blow it up. The authority conducting the investigation is Prosecutor's Office 30; Cali section; File No. 561435; stage: preliminary; current status: active.
- (21) On 26 December 2001, at about 8 a.m., the police physically assaulted the workers, firing tear-gas grenades, and seriously injuring Carlos Emiro Hernández, the company's legal disciplinary officer, who had to be admitted to the departmental hospital. The authority conducting the investigation is Prosecutor's Office 54; Cali section; File No. 561520; stage: preliminary; current status: active.
- (22) On 25 December 2001, during the peaceful occupation of the EMCALI Tower and the declaration of permanent strike by the workers belonging to SINTRAEMCALI, the police attacked several workers with tear-gas grenades, seriously injuring one of them. The authority conducting the investigation is Prosecutor's Office 36; Cali section; File No. 561517; stage: preliminary; current status: active.
- (23) On 24 December 2001, between 5.30 and 6 a.m., the waterworks, sewage works, power and telephones were taken over by the military. Some hours later, at 10 a.m., the Superintendent of Public Services, Diego Humberto Caicedo Ortiz announced the dismissal of EMCALI's General Manager, Dr. Juan Manuel Pulido and the appointment of Oscar Reveiz as administrator in the liquidation of the company. The authority conducting the investigation is Prosecutor's Office 36; Cali section; File No. 561513; stage: preliminary; current status: active.
- (24) On 3 August 2001, SINTRAEMCALI activists Rubén Enrique Calvo Zúñiga, Carlos Alberto Lozada and Freddy Hernando Salinas, workers in the reading and distribution section, members of the working groups on the rescue of the company, were each threatened in an anonymous telephone call and threats were sent to their homes. The authority conducting the investigation is Prosecutor's Office 32; Cali section; File No. 434355; stage: preliminary; current status: active.
- (25) On 7 August 2001, EMCALI EICE worker and union activist Rigoberto Díaz, member of the company rescue planning group was the victim of harassment and death threats. On several occasions, someone came to his house and workplace looking for him to check on his comings and goings without giving any reason. The authority conducting the investigation is Prosecutor's Office 29; Cali section; File No. 435415; stage: preliminary; current status: active.
- (26) On 11 July 2001, the union activist Oscar Figueroa received a threatening telephone call at his place of work. The authority conducting the investigation is Prosecutor's Office 30; Cali section; File No. 449329; stage: preliminary; current status: active.
- (27) On 10 June 2001, when the union delegates in the working groups on the rescue of EMCALI were presenting proposals to the General Manager, Dr. Juan Manuel Pulido, in the EMCALI Club, several armed men fired from the upper storey of the club. The SINTRAEMCALI guards responded, whereupon the attackers made an unsuccessful attempt to take as hostage the young daughter of a worker, before fleeing in the face of the guards' response. The authority conducting the investigation

is Prosecutor's Office 30; Cali section; File No. 449329; stage: preliminary; current status: active.

- (28) On 25 May 2001, telephone exchange worker and union activist, Henry Jiménez Rodríguez, was murdered by several men in a car and on a motorcycle. The authority conducting the investigation is Prosecutor's Office 14; Cali section; File No. 424801; stage: preliminary; current status: active.
- (29) On 21 May 2001, at 6.45 a.m., sewage worker and SINTRAEMCALI activist, Carlos Eliecer Prado, was murdered on his arrival at his workplace. A passer-by shot at one of the assassins who died on arrival at the Occidente clinic. The authority conducting the investigation is Prosecutor's Office 35; Cali section; File No. 424801; stage: preliminary; current status: active.
- (30) On 30 November 2000, at 6 a.m., when worker and SINTRAEMCALI activist Diego Quiguanas was leaving for the waterworks, he was intercepted near the Pichincha battalion by three heavily armed men who put him in a car, drove him for an hour into the mountains and then took him up the mountain on foot for about an hour and a half, where they interrogated him about the activities of SINTRAEMCALI's executive board. He was subjected to physical and mental torture and given a substance which rendered him unconscious. On 1 December, Diego Quiguanas was dumped near the El Lido district, where trade union officials Luis Hernández, Robinson Masso and Héctor Castro went to collect him. When they took him to hospital, two vans belonging to the national and the *Gaula* (local authority) police barred their way, stopped the car carrying the officials and removed Diego Quiguanas. When the unionists protested, the members of the *Gaula* and the police physically and verbally assaulted them, booked them and refused to identify themselves. The authority conducting the investigation is Prosecutor's Office 39; Cali section; File No. 401421; stage: preliminary; current status: active.
- (31) During the national day planned by the Single Confederation of Workers on 30 August 2000, the union officials' bodyguards came across some outsiders directly filming and photographing the participants, arrested them and found them to be intelligence officers attached to the Cali metropolitan police. The union officials' bodyguards are the subject of disciplinary proceedings by the DAS. The authority conducting the investigation is Prosecutor's Office 29; Cali section; File No. 561508; stage: preliminary; current status: active.
- (32) On 19 September 2000, when the General Secretary of SINTRAEMCALI, Ricardo Herrera, was arriving at his home in the Junín district, accompanied by worker Omar de Jesús Noguera, two heavily armed men fired several shots at them, seriously wounding Omar de Jesús, who was admitted to the Valle del Lili Clinic where he died on Saturday 23 September as a result of wounds to the face, arm and spinal column. Ricardo Herrera and Omar de Jesús Noguera had been victims of harassment by three men on high-powered motorcycles who had been following them for over two months. The authority conducting the investigation is Prosecutor's Office 26; Cali section; File No. 390310; stage: preliminary; current status: active.
- (33) Against the background of these incidents, the Directorate of Human Rights in the Ministry of the Interior, DAS and the other state security agencies were asked to take immediate measures to protect the life of Mr. Herrera, but so far the request has not met with a satisfactory response. The authority conducting the investigation is Prosecutor's Office 91; Cali section; File No. 40396; stage: preliminary; current status: active.

- (34) On 26 July 2000, five members of the military intelligence belonging to the army's Third Division based in the town of Santiago de Cali were identified loitering in the building containing the office of SINTRAEMCALI's legal advisers. The protection unit succeeded in identifying the members of the Third Brigade who, dressed in plain clothes and riding high-powered motorcycles, were following SINTRAEMCALI's officials and the team of lawyers advising the union. One of the intelligence officers who was subsequently identified as Luigui López Gómez, entered the office of Dr. Wilson Arias Rojas when he was in a meeting with trade union officials Luis Hernández Antonio, acting President, Robinson Emilio Masso Arias, human rights coordinator and member of the executive board and worker Carlos González. The military intelligence officer spoke to the attorney, Wilson Arias, and sought legal advice for a brother whose name he did not wish to give. The attorney told him that he could not see him because he was busy. The then unknown man (because he refused to give his name) asked Dr. Arias when he could see him in the office, etc. As the legal adviser refused to tell him and recommended him to go somewhere else for advice, the man left. Half an hour later, the assistant in the legal office, Martha Selene Lozada C. left the building on a legal errand to the Palace of Justice, but met the man who had asked for advice outside the building in the company of a man and a woman who had parked a motorcycle outside the building and two other individuals standing beside another motorcycle. She therefore decided to go back into the office and tell the lawyers and the union members what she had seen. The union officials and the lawyers looked out of the window and were able to confirm what the assistant had seen. The president of SINTRAEMCALI immediately called the Director of the Valle del Cauca DAS, the CUT Human Rights Office and the bodyguards assigned under the security scheme to Alexander López (president of SINTRAEMCALI who was arranging his exile at the time). The bodyguards approached the persons, two of whom fled, and four were taken to the DAS building (by order of its director) where they were questioned.
- (35) On 21 June 2000, the OAS Inter-American Commission on Human Rights approved precautionary measures for ten members of the SINTRAEMCALI executive board. The authority conducting the investigation is Prosecutor's Office 31; Cali section; File No. 435527; stage: preliminary; current status: active.
- (36) On 20 June 2000, a death notice arrived at SINTRAEMCALI headquarters in the name of union official Harold Viafara González. The authority conducting the investigation is Prosecutor's Office 31; Cali section; File No. 376476; stage: preliminary; current status: active.
- (37) On 12 June 2000, the bodyguards of the then president of SINTRAEMCALI, now member of the House of Representatives, Alexander López, detained a woman outside the union headquarters disguised as a sweet-seller who was reporting the official's times of arrival and departure by mobile phone to third parties. The bodyguards identified the woman as María Liliana Sánchez Guevara and handed her over to the Cali Department of Administrative Security (DAS), where she said she had been hired by Wilson Mosquera Ramírez (whose home in the municipality of Jamundi was raided) who had given her a mobile phone and paid her 30,000 pesos a day to watch the SINTRAEMCALI president and report all his movements. The woman was reported to the Cali section prosecutor's office and released, despite the fact that the director of DAS himself, Colonel Miguel Evan Cure stated publicly that the woman was following the union president because there was a plan to murder him. The authority conducting the investigation is Prosecutor's Office 31; Cali section; File No. 561506; stage: preliminary; current status: active.
- (38) On 27 May 2000, posters appeared in several places in Cali saying "down with the EMCALI guerrilla group and Cali guerrilla murderers". The authority conducting the

investigation is Prosecutor's Office 93; Cali section; File No. 561235; stage: preliminary; current status: active.

- (39) On 25 May 2000, in the CAM courtyard, during a public meeting of the people's front for the defence of EMCALI, an agent of the prosecutor's office technical group (CTI) was detected filming the workers. On 25 May 2000, when the EMCALI workers belonging to the trade union SINTRAEMCALI were at an information meeting in the section waterworks at the junction of 15th Avenue and 59th Street in La Base District, (to consider the announcement by the National Superintendent of Public Services, Jorge Enrique Ramírez Yáñez that the company would be liquidated under the administration proceedings ordered by the State) when an anti-riot squad of the Cali metropolitan police sent by Mayor Ricardo II Lobo fired indiscriminately with tear gas and firearms at the workers, breaking up the meeting by force. The authority conducting the investigation is Prosecutor's Office 32; Cali section; File No. 561503; stage: preliminary; current status: active.
- (40) On 18 April 2000, worker Carlos Alberto González, activist and bodyguard of SINTRAEMCALI president Alexander López lodged a complaint with the Attorney-General's Office for several telephone threats. In addition, police constantly patrol outside the house and the workplace but paradoxically only question him, although other people are present. On 12 April 2000, the union office received a call from an unidentified individual who demanded his workplace, telephone number and home address. Faced with imminent danger of death, the worker was forced to move to another town. The authority conducting the investigation is Prosecutor's Office 89; Cali section; File No. 561500; stage: preliminary; current status: active.
- (41) On 10 April 2000, SINTRAEMCALI activist, Carlos Fernando Florez, received a death notice by registered letter. This worker had been a victim of personal injuries caused by truncheons and blows by the police on 5 April 2000 outside the CAM buildings, when Mayor Richard Cobo Lloredo ordered the anti-riot police to use tear gas to break up the gathering of workers meeting to listen to the broadcast of the debate in the House of Representatives on the EMCALI issue. The same day, Carlos Enrique Rico, a trade union delegate, received a threatening telephone call. The authority conducting the investigation is Prosecutor's Office 89; Cali section; File No. 365596; stage: preliminary; current status: active.
- (42) On 7 April 2000, the EMCALI EICE workers and union activists listed below went to the prosecutor's office to lodge a complaint for persecution and harassment against the company management, including Mayor Richard H Cobo and the EMCALI EICE human resources manager, for requesting personnel files of several workers (for undisclosed purposes), among them Juan Carlos Manzano, Jorge Isaac Cabezas, Honorio Bonilla, Leónidas Angulo Cabezas. The authority conducting the investigation is Prosecutor's Office 32; Cali section; File No. 367093; stage: preliminary; current status: active.
- (43) On 6 April 2000, inside the sewage works, workers Leónidas Angulo Cabezas, Juan Carlos Manzano Jurado, Fabricio Quiñonez, Jorge Isaac Cabezas Honorio discovered a person in civilian clothes carrying a handgun who, on being questioned by the workers, replied that he was a member of the public waiting for a bus. During the following investigation, it was established that the person was a SIPOL agent, identified as Manuel Zuñiga Anchico, identity card No. 94,411,952 from Cali, carrying a long-barrelled 38 calibre handgun, a two-way radio, woollen gloves and driving a Honda 175 motorcycle, registration No. DVA59. The police came to the scene and took him away. The authority conducting the investigation is Prosecutor's Office 88; Cali section; File No. 561475; stage: preliminary; current status: active.

- (44) On 5 April 2000, in the offices of the CAM, the workers belonging to SINTRAEMCALI held a peaceful union meetings which was met with physical aggression by the police which broke up the meeting and arbitrarily arrested workers Miguel Angel Aguirre, watchman and member of the union, and Julio Hinestroz, worker in the Navarro plant and union delegate. Carlos Fernando Florez, watch supervisor at the EMCALI Tower was brutally beaten by the police. The authority conducting the investigation is Prosecutor's Office 89; Cali section; File No. 365590; stage: preliminary; current status: active.
- (45) On 11 March 2000, Justiniano García was murdered near his home in the city of Cali. The union activist was a member of EMCALI's anti-corruption committee and was involved in an important investigation into illegal transactions by the management of Cali Municipal Enterprises. The authority conducting the investigation is Prosecutor's Office 46; Cali section; File No. 36042; stage: preliminary; current status: active.
- (46) On 8 February 2000, a communication was sent by the self-defence groups of Colombia (AUC) to union offices and disseminated throughout the city. It accused the union leaders of Cementos del Valle, Sidelpa, EMCALI, Good Year municipality of Yumbo, Titán, Eternit and the Executive Committee of Valle CUT of being puppets of the guerrilla movement, treason, encouraging communist policies to wreck the companies, promoting unemployment, trade union corruption, left-wing radicalism and declared them to be military targets with a purpose: to carry out the orders of our high command. The authority conducting the investigation is Prosecutor's Office 94; Cali section; File No. 561243; stage: preliminary; current status: active.
- (47) On 6 September 1999, members of the national police violently attacked the information meeting for SINTRAEMCALI members in which officials were presenting a report of achievements in September 1998. The authority conducting the investigation is Prosecutor's Office 82; Cali section; File No. 521240; stage: preliminary; current status: active.
- (48) During the peaceful occupation of the CAM, officials Robinson Masso and Luis Hernández, members of the anti-corruption committee, were seriously injured with fractures to the forearms and clavicle, while official César Martínez and activists Diego Quiguanas, Oscar Marulanda, Martin Potosí, Carlos Magno, Mauricio Noreña, Carlos González, Enrique Ramírez were beaten and some of them arrested without being given first aid. On 18 July 1999, 16 workers were arrested at the end of a peaceful march in the city of Cali. These cases included worker Edgar Núñez Pizo, an activist arrested as he approached a bus belonging to the Azul Plateada Company. The activists were questioned and held by the Rapid Reaction Unit in the prosecutor's office, and referred to Prosecutor's Office 88 of the Offences against the Administration of Justice Unit charged with rioting. After signing an undertaking they were released, but the proceedings were dropped only at the beginning of 2001, for lack of evidence. The authority conducting the investigation is Prosecutor's Office 88; Cali section; File No. 32251; stage: preliminary; current status: active.
- (49) On 26 October 1998, unidentified persons entered the home of SINTRAEMCALI official and president, Alexander López Maya, breaking down the door and searching everything, for which reasons the official was forced to change his address. The authority conducting the investigation is Prosecutor's Office 31; Cali section; File No. 561259; stage: preliminary; current status: active.
- (50) On 19 October 1998, the renowned popular trade union leader, Oscar Artunduaga was murdered. He had worked in the Cali Municipal Enterprises for 22 years and had been a member of the union throughout that time. The authority conducting the

investigation is the Cali Prosecutor's Office – special homicide unit (*unidad de vida*); File No. 154765; stage: preliminary; current status: active.

(51) During the first weeks of October 1998, various threats were made by unidentified individuals to the union's headquarters at No. 6-54, 18th street, to telephone numbers 8835368 and 8835369, asking for the president and officials of the union. The authority conducting the investigation is the Cali Prosecutor's Office – personal freedom unit; File No. 151154; stage: preliminary; current status: active.

(52) On 16 September 1998, faced with continuous violations of the collective agreement signed by SINTRAEMCALI, the threat of privatization, the violations of Agreement 014 of 1996 and the growing corruption in the company, the workers peacefully occupied the premises of the EMCALI Tower, the diesel power plant and the telephone exchange in the Colón district and began a strike against corruption and privatization which lasted 14 days. The authority conducting the investigation is Prosecutor's Office 36; Cali section; File No. 561261; stage: preliminary; current status: active. On the same day, during the protest by SINTRAEMCALI workers outside the CAM, Erlin Marino Vaifara, a student in the National Education Service (SEN), was assaulted by police officers who fired a tear-gas bomb at him, causing him to lose an eye. The authority conducting the investigation is Prosecutor's Office 36; Cali section; File No. 561261; stage: preliminary; current status: active.

(53) File No. 391326
 Prosecutor's Office: section 29, Dr. Jairo Daniel Fonseca
 Offence: threats
 Date: 29 September 2000
 Victim: Luis Antonio Hernández Monroy
 Stage of proceedings: preliminary
 Accused: to be ascertained

(54) File No. 402254
 Prosecutor's Office: section 91, Dr. Carlos Alberto Mejía
 Offence: threats
 Date: 11 December 2000
 Victim: Javier Alfonso López Rojas
 Stage of proceedings: preliminary
 Accused: to be ascertained

(55) File No. 403505
 Prosecutor's Office: section 91, Dr. María del Socorro Ordóñez
 Offence: threats
 Date: 30 November 2000
 Victim: Luis Antonio Hernández Monroy
 Stage of proceedings: preliminary
 Accused: to be ascertained

(56) File No. 403612
 Prosecutor's Office: section 11, Dr. Alba Luz Lozada
 Offence: abduction
 Date: 6 December 2000
 Victim: Diego and Noe Quiguanaz González
 Stage of proceedings: preliminary
 Accused: to be ascertained

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- (57) File No. 431241
Prosecutor's Office: section 30, Dr. Nelly Gallego Tumiñan
Offence: threats
Date: 11 July 2001
Victim: Ricardo Herrera
Stage of proceedings: preliminary
Accused: to be ascertained
- (58) File No. 435415
Prosecutor's Office: section 29, Dr. Jairo Daniel Fonseca
Offence: threats
Date: 10 August 2001
Victim: Rigoberto Díaz
Stage of proceedings: preliminary
Accused: to be ascertained
- (59) File No. 443316
Prosecutor's Office: 93, Dr. María del Socorro Ordóñez
Offence: threats
Date: 20 September 2001
Victim: Carlos Arturo Marín and Carlos Florez
Stage of proceedings: preliminary
Accused: to be ascertained
- (60) File No. 494949
Prosecutor's Office: section 30, Nelly Gallego Tumiñan
Offence: threats
Date: 1 May 2002
Victim: Jesús González Luna and Luis Antonio Monroy
Stage of proceedings: preliminary
Accused: police squadron
- (61) File No. 525234
Prosecutor's Office: 3rd special, Dr. Carlos Martín Latorre
Offence: terrorism
Date: 3 September 2002
Victim: SINTRAEMCALI members
Stage of proceedings: preliminary
Accused: to be ascertained
- (62) File No. 550760
Prosecutor's Office: 93, Dr. María del Socorro Ordóñez
Offence: threats
Date: 4 March 2003
Victim: Luis Enrique Imbachi Rubiano
Stage of proceedings: preliminary
Accused: to be ascertained

(63) File No.	346202
Prosecutor's Office:	Homicide Unit 19
Offence:	attempted murder
Date:	15 December 1999
Victim:	Antonio González Luna
Stage of proceedings:	preliminary
Accused:	to be ascertained
(64) File No.	358080
Prosecutor's Office:	3rd special, Dr. Carlos Martín Latorre
Offence:	attempted murder
Date:	unknown
Victims:	Antonio González Luna and Geovanny Rodríguez
Stage of proceedings:	preliminary
Accused:	to be ascertained

396. There are at present 64 criminal investigations in progress into violations of the human rights of SINTRAEMCALI members, including one for threats and assaults in “members” of the union of the Cali Municipal Enterprise, i.e. this investigation in particular may include many members of the organization who have not been listed. The foregoing is an illustration of the efforts by the Government and the Attorney-General’s Office to defend and protect the human rights of our trade union leaders and officials, as well as a valiant effort to combat impunity. All the violations that have been publicly reported and thus judged by the competent authority, are being investigated and pursued by the prosecution service, with the object of safeguarding the lives and personal well-being of these union leaders who have been threatened and assaulted in different ways. It will thus be possible to see results in terms of those presumed guilty and the victim’s attackers.

II. *Current protection schemes: 10 individual schemes and 18 bullet-proof jackets*

397. The Government reports that it has provided protection to the following officials:

- (1) Alexander López Maya, consisting of an armoured vehicle, four bodyguards, four bullet-proof jackets and a radio. He is currently a member of congress, but the scheme was granted as president of SINTRAEMCALI;
- (2) Luis Antonio Hernández Monroy, consisting of a vehicle, three bodyguards, a radio, support weapon, two pistols and three bullet-proof jackets;
- (3) Angel Tovar Peña, consisting of a vehicle and a bodyguard;
- (4) Luis Enrique Imbachi Rubiano, consisting of a vehicle, two bodyguards and a radio;
- (5) Robinson Emilio Masso, consisting of a vehicle, two bodyguards, three bullet-proof jackets and a radio;
- (6) Oscar Figueroa, consisting of a vehicle and a bodyguard;
- (7) Harold Viafara González, a vehicle, a bodyguard, two bullet-proof jackets and a radio;
- (8) Rubén Dario González, consisting of a vehicle, two bodyguards, three bullet-proof jackets and a radio;

- (9) Domingo Angulo Quiñonez, consisting of a vehicle and a bodyguard;
- (10) César Martínez, consisting of a vehicle, two bodyguards, three bullet-proof jackets and a radio.

398. These protection schemes consist of a unit (vehicle and bodyguard) because two were used to provide a bodyguard for the protection of two trade unionists, which therefore weakens the schemes, because of the incident on 20 September 2002. The DAS was asked, as a matter of urgency, to take the necessary steps to provide arms and the related support for the schemes listed below, assigned to protect the following SINTRAEMCALI officials: Domingo Angulo, Harold Viafara, Luis Imbachi, Angel Tovar, Robinson Masso and Oscar Figueroa.

399. The management support service was asked to take the administrative steps to ensure that the organization's security schemes are equipped with bullet-proof jackets and the relevant avantel radio communications.

III. Means of communication: Three mobile phones and nine avantel radios

400. The following means of communication have been supplied:

- (1) Alexander López Maya, mobile phone, avantel radio;
- (2) Robinson Emilio Masso, mobile phone, avantel radio;
- (3) Domingo Angulo Quiñonez, avantel radio;
- (4) Harold Viafara González, mobile phone;
- (5) Luis Hernández Monroy, avantel radio;
- (6) Cesar Martínez, avantel radio;
- (7) Milena Olave Hurtado, avantel radio;
- (8) Luis Imbachi, avantel radio;
- (9) Ricardo Herrera, avantel radio; and
- (10) Alexander Barrios, avantel radio.

César Martínez, Rubén Dario González and Angel Tovar are currently no longer members of the executive board of SINTRAEMCALI.

IV. Armour protection

401. SINTRAEMCALI's headquarters is at present partly armoured but is requesting total armour protection.

V. Other measures

402. All the matters for urgent action referred from several sources against SINTRAEMCALI members have been brought to the attention of the Attorney-General's Office and the

national police, for action within their area of competency. The DAS was asked to provide arms for issue and support to schemes which needed them, and studies were also requested into the level of risk faced by new members of the executive board, and a reassessment of the risk to officials who are no longer members of the board.

- new SINTRAEMCALI officials: Fabio Bejarano, Carlos Ocamp, Carlos Marmolejo and Alberto Hidalgo.
- former SINTRAEMCALI officials: César Martínez, Rubén Darío González and Angel Tovar.

VI. Report of detention of 20 September 2002 in the municipality of Santander de Quilichao, paragraph (g) of the Committee's recommendations in its 331st report

403. On 20 September 2002, units belonging to the 8th (Pichincha) Infantry Battalion, stopped several vehicles travelling from the city of Santiago de Cali, Valle, en route for La María, in the municipal jurisdiction of Piendamó, where there was a national farm workers' strike (on 16 September) which planned to block the Pan-American highway.

404. The vehicles belonging to the programme of protection of witnesses and threatened persons (trade union leaders) of the Directorate of Human Rights in the Ministry of the Interior, were arrested by units of the battalion, in accordance with article 398 of the Criminal Procedures Code: "illegal use", since they were taking food and persons to the demonstration. The vehicles were transporting food, provisions and members of non-governmental organizations not covered by the protection scheme for which the vehicle or the protection of the hired bodyguards administered by the DAS were allocated. The arrest was also on the express order of the Government, that no consignments must enter the demonstration, given the conditions of disturbance to public order in that jurisdiction. According to the DAS report, the trade unionists did not possess an operational order justifying travel to the La María, Piendamó area. The detention took the following form:

- Persons arrested in Santander de Quilichao: Juan Carlos Valens Duque, employee of the Valle Government Secretariat of Public Works; Angel Tovar Elias, EMCALI staff member; Alfonso Gabino Quiñonez, SINTRAVALLE official; Henry Dominguez of the Agriculture and Livestock Union; Deseden Dromal Parra Arciza, NGO NOMADESC staff member; Incolaza Díaz Ortiz, NGO NOMADESC staff member; Gustavi Adolfo, NGO NOMADESC staff member.
- Hired bodyguards administered by the DAS, Valle section: Euclídes Ramírez Loba, Gustavo Alfonson Hernández Monroy, Alex Alberto Echeverri Alzate; Ricaurte Martínez Millán, Wilmar Castillo Muñoz, Mauricio Albarracín, Otoniel Ramírez López, Lenin Galerno Zambrano, José Yesid Olaya Andrade, Carlos Queitnero Lozano.
- Others: Domingo Angulo Quiñonez, William Castillo Valencia; Berenice Celeita Alayón.

405. The following items were also handed over to the Prosecutor's Office, section 2, Cali:

- Arms: two VECTOR pistols; an UZI sub-machine gun, a CZ pistol.
- Vehicles: five Rodeo vehicles, registration numbers CSU137; CSU140, CUS 180, CSU 149, BIB Y ONI 622.

- Provisions: five sacks of rice; two arrobas (1 arroba = approx 11 kg) of rice in bags; one arroba of salt; two arrobas of lentils; two arrobas of peas; two arrobas of beans; a can of oil; two arrobas of coffee; a box of soap; a bag of brown sugar; a tin of tuna; an arroba of pasta; a five-gallon can of oil; 25 litre cans of water; 576 cartons of water.

VII. Report of detention on 14 November 2002 in the city of Cali by members of the metropolitan police of Santiago de Cali

406. The Cali metropolitan police informed the Ministry of Social Protection by fax that, on 14 November 2002 at 9 a.m. in Cali, two members of SINTRAEMCALI were arrested for carrying explosives: "... at the time and place indicated in a routine operation by the ALFA 3 patrol of the "CALI SEGURA" police group searched a vehicle of the Cali Municipal Enterprises (EMCALI), registration No. ONI-113, in which there were two people. In the course of the search inside the car, the police found three homemade explosive devices, two revolvers, a bullet-proof jacket, a large quantity of propaganda concerning the public statements of the union of the abovementioned company and the holding of a workers' assembly (14 November 2002) in the municipal stadium at 2.30 p.m., as well as three mobile phones, one in the name of Alfredo Cuellar. The occupants of the vehicle were recognized as Oscar Figueroa Pachongo, identity card No. 94,429,314 from Cali, who is currently employed as an engineer and drinking water pump operator and treasurer of the EMCALI company trade union, who was carrying a Llama revolver with permit P0797816 and his bodyguard, Ricaute Martínez, also a member of the union, resident at 9th street F, No. 23A-35, Breña District, carrying a long-barrelled 38 calibre Llama revolver, No. IM6478U with 6 cartridges, with permit to carry P067826. ... These persons were taken to the SIJIN-MECAL premises where it was concluded on interviewing them that they did not know the origin of the explosive devices, and they were subsequently placed in the jurisdiction of the prosecutor's office ...". Unofficially, it was discovered that during the taking of the statement or questioning by the prosecutor's office, Cali section, the bodyguard Ricaute Martínez incriminated himself and took responsibility for all the charges and Mr. Oscar Figueroa Pachongo was immediately released.

407. The Attorney-General's Office, for its part, reported that this matter was the subject of judicial proceedings against Mr. Oscar Figueroa Pachongo and another for the offence of manufacturing, trafficking and carrying of explosives, and the investigation is being conducted by the Special Prosecutor's Office 13, Cali, under File No. 527588.

File No.	527588
Prosecutor's Office:	13th special, Cali
Facts:	on 14 November 2002, an EMCALI vehicle driven by Mr. Oscar Figueroa Pachongo, and also occupied by Mr. Ricaurte Martínez Millán, both employees of EMCALI and members of SINTRAEMCALI, was stopped, and a package containing two explosives was found
Offence:	carrying arms restricted to the military forces, explosives, illegal use and others
Current status:	institution of judicial proceedings, without remand in custody, stating that on 4 December 2002, Mr. Ricaurte Martínez Millán admitted charges for early sentencing and the proceedings were ordered to be stopped. Martínez Millán's case is before the first special court pending sentence. Oscar Figueroa Pachongo's case is

in the Special Prosecutor's Office 13 with the investigation closed pending evaluation of the merit of the summary

408. Finally, it should be noted that despite this incident, Mr. Pachongo continues to benefit from the Ministry of the Interior and Justice Protection Programme.

VIII. Bomb, 8 May 2003, in the EMCALI water treatment plant, Puerto Mallarino district, Cali

409. According to the investigations by the competent authorities, the conclusion was drawn that it was not an attack on trade union officials but handling of explosives by the victims themselves. For its part, the Attorney-General's Office stated in its letter No. 1141 of 19 May 2003 that judicial proceedings have been instituted concerning the incident in the city of Cali on 8 May 2003 at 11.50 a.m. and that the investigation is being conducted by the Special Prosecutor's Office 10, Cali, under File No. 564069, and is at the preliminary stage – examination of evidence. It also stated that the explosion rocked the electric power plant which serves the Puerto Mallarino water treatment plant, located at 76th Street and 15th Avenue in the north-east of Cali. The report of the intelligence services and of police explosives experts suggests that the dead trade unionists were handling explosive substances (sulphur and potassium chlorate on the clothing and body) used to make the notorious homemade grenades (notorious because they are the explosives that trade unionists take out in movements and marches to intimidate the public and the authorities) and they also found Reynolds aluminium foil at the scene of the crime, which suggest that they were making them since aluminium is used to wrap the explosive devices.

Dispute within EMCALI

410. In the context of the protests against the privatization of EMCALI, the workers held a protest meeting. The police were antagonistic to them and even threatened them with death. The Government gives a brief summary of the bargaining process concerning the revision of the collective agreement, between the Cali Municipal Enterprises and SINTRAEMCALI, during the period 1999 to June 2003.

411. In December 2002, EMCALI began talks with the officials of the workers' union SINTRAEMCALI, seeking to reach agreement on a revision of the collective agreement.

412. From the outset in the talks, the company expressed the imperative need to revise the collective agreement as a priority in saving the company, especially the provisions on governability and labour flexibility, pensions and redundancies and easing the company's cash position, as the workers' contribution to its survival.

413. The EMCALI and SINTRAEMCALI committees on the revision of the collective agreement began official bargaining rounds on 26 March and have so far held 27 meetings.

414. The results of the negotiations are set out in the pre-agreement documents of 10 and 15 May 2003 which have become a draft collective agreement which is being analysed by the committees.

415. The key aspects of the revised agreement are:

- governability;
- labour flexibility;

- reduction in some agreed benefits to improve EMCALI's cash position; and
- modification and adjustment of pensionable periods.

416. The economic agreements reached by the parties will only come into effect when the agreements are fully approved by EMCALI's creditors and suppliers. These include the PPA and the PTAR. The committees have not yet signed a document which commits and binds the parties to EMCALI. SINTRAEMCALI indicated its intention to revise the collective agreement provided that everyone "chips in" and that the company continues to be a state enterprise (EICE).

417. The company committee presented the SINTRAEMCALI committee with a previously agreed draft of the new collective agreement based on what had been agreed at the bargaining table and the basic agreement. The points where there is no agreement are the following:

- denunciation of the collective agreement by 28 June 2003;
- permanent trade union leave;
- wages of trade union officials;
- duration of the agreement; and
- drafting of the articles; transitional period, retirements, redundancies, non-statutory bonuses and all matters concerning the company's contributions.

418. If the collective agreement review committees do not formalize the agreements before 28 June 2003, the collective agreement will be automatically extended for six months to 31 December 2003. The SINTRAEMCALI committee broke off the drafting meetings for the new collective agreement until the political agreement submitted to the President of the Republic is signed by the national Government. The SINTRAEMCALI committee has been holding talks with the national Government with a view to including points already negotiated and defined in the May agreements.

419. In its communication of 28 July 2003, the Government reports on the protection schemes adopted by the Government of Colombia due to the death threats and situation of risk of some members of SINALTRAINAL, USO and SINALTRAINAGRO. The Government includes all the criminal investigations into violations of the human rights of the members and leaders of these trade unions, and all the Government's actions to protect and safeguard the lives and persons of our trade unionists, by designating, approving and implementing security measures and schemes through the Ministry of the Interior and Justice Protection Programme.

A.1. Threats recorded and prosecuted in 2002-03 SINALTRAINAL members

- (1) Luis Javier Correa Suárez, president of SINALTRAINAL, Bucaramanga section, threatened on 3 May 2003 in that city. Victim: Luis Javier Correa; offence: threats; date and place of the incident: March 2002 in Bucaramanga; File No. 12553; authority: Prosecutor's Office 1, Law No. 30 section – Bucaramanga; stage: preliminary; current status: inhibitory since 5 December 2001, for lack of evidence of criminal conduct; organization: SINALTRAINAL; office: member – official.
- (2) William Mendoza Gómez, president of the Executive Board of SINALTRAINAL. Complaints of alleged death threats against the official were received on three

occasions: on 2 January 2002, 9 October 2002 and 17 January 2003. With regard to the death threats received on 2 January 2002, the prosecutor's office reported that the investigation is being conducted by the support unit to the National Human Rights Unit in Barranquilla, National Directorate, File No. 1438, and is currently at the preliminary stage and currently active. The investigation also shows that threats were made against Javier Suárez and Juan Carlos Galvis, also members of the union.

Type of offence: threats
Date and place: 2 January 2002, Cartagena
Victims: Javier Suárez, William Mendoza Gómez and Juan Carlos Galvis

With respect to the death threats received on 9 October 2002, there is no report of an investigation being conducted into that incident. However, the Attorney-General's Office reported that the death threats against Mr. Mendoza received last 17 January 2003 are the subject of the following investigation:

Type of offence: coercion for terrorist purposes
Date and place: 17 January 2003, in Barrancabermeja, Santander
Section directorate: Bucaramanga
Responsible authority: Special Prosecutor's Office 3, Bucaramanga
File No: 166206
Stage: preliminary
Current status: active
Organization: SINALTRAINAL

(3) Wilson Castro Padilla, member of SINALTRAINAL, Bolívar branch. The death threats were reported by the ICFTU to the Office of the President of the Republic. The investigation into the death threats against Mr. Castro Padilla, received on 2 January 2002, is being conducted by Special Prosecutor's Office 3, Cartagena section, File No. 85596. It is at the preliminary stage and currently active. Another investigation is being conducted into threats received between 7 and 9 February and 13 March 2003 by Prosecutor's Office 39, Cartagena section, File No. 115265. It is at the preliminary stage, and currently active.

(4) Alvaro González Jerez, member of SINALTRAINAL, Bucaramanga branch. It is known that he was the victim of death threats between 27 March and April 2003. The investigation is being actively pursued as follows:

Victim: Alvaro González Jerez
Offence: threats
Place: Bucaramanga
File No: 1533554
Authority: Prosecutor's Office 32, Bucaramanga section
Stage: preliminary
Current status: active
Organization: SINALTRAINAL
Office: member

A.2. Current protection schemes National Union of Workers in the Food Industry – SINALTRAINAL

420. On 28 January 2002, the CIDH ordered the adoption of precautionary measures to protect the life and physical safety of the officials of SINALTRAINAL, Luis Alberto Díaz Correa – Barrancabermeja; William Mendoza Gómez – Barrancabermeja; Oscar Giraldo – Carepa, Luis Adolfo Cardona – Carepa; Hernán Manco – Cartagena; and Juan Carlos Galvis – Barrancabermeja.

A.3. Security measures

- (a) Hard measures: bodyguards, support weapons and personal and collective mobile schemes:
- (1) recently reinforced personal security schemes for Mr. Juan Carlos Galvis, president of the Barrancabermeja branch, by exchanging a normal vehicle for an armoured one;
 - (2) recently implemented personal security scheme for Mr. Wilson Castro Padilla, president of the Bolívar branch of the union;
 - (3) recently implemented collective security scheme for Mr. Robinson Domínguez Romero and Mr. Santos Deán Jaimes, members of the Bolívar branch;
 - (4) collective security scheme recently implemented but not accepted by the beneficiary, Mr. Efraín Guerrero Beltrán of the Bucaramanga branch, as according to information provided by the Department of Administrative Security (DAS), the union official does not use it and, therefore, does not rely on the bodyguards suggested for him. It should be noted that Mr. Guerrero was also granted transport support while the scheme was in effect;
 - (5) the collective scheme for the national executive board (Luis Javier Correa Suárez and others) is pending, since we are awaiting the results of the risk assessment study requested from DAS, so as to ascertain the degree of vulnerability. Once this has been received, the cases will be submitted to the Risk Assessment and Control Committee (CRER) under the witnesses and threatened persons protection programme headed by the Ministry of the Interior, which will examine the possibility of providing a collective scheme to the Board members.
- (b) Soft measures: means of communication and direct support (humanitarian assistance and air tickets).

Dr. Rafael Bustamante Pérez, Director of Human Rights, called a meeting on 19 April 2002 of the State institutions, applicant NGOs and beneficiaries, with a view to coordinating measures necessary to protect the lives and persons of members of the National Union of Food Industry Workers (SINALTRAINAL), especially the Cartagena officials. The following was agreed:

- to hold a meeting with the participation of the Ministers of the Interior and Labour, management of Coca Cola, Nestlé and the National Union of Food Industry Workers (SINALTRAINAL), to address the security of their workers, with a view to working together on the matter;
- in the light of specific requests to the CRER, to allocate six-monthly national tickets on the following routes: Bogotá-Pasto-Bogotá; Bogotá-Valledupar-Bogotá;

Bogotá-Barranquilla-Bogotá; Bogotá-Medellín-Bogotá; Bogotá-Cali-Bogotá; and Bogotá-Bucaramanga-Bogotá;

By Decision No. 1 of January 2002

- three months of humanitarian assistance and relocation assistance were approved for Mr. Luis Adolfo Cardona, identity card No. 3,366,106;
- armour protection was approved for the Buga La Grande and Cúcuta offices.

By Decision No. 3 of March 2002

- a study of the office and risk assessment for the members of the executive board was approved.
- three months of humanitarian assistance were approved for Mr. Wilson Castro, identity card No. 73, 085,187. Personal scheme.

By Decision No. 4 of April 2002

- three months of humanitarian assistance and international tickets were approved for Mr. Juan Carlos Galvis;
- a security study was approved for the Valledupar office.

By Decision No. 5 of April 2002

- to allocate six-monthly national tickets on the following routes: Bogotá-Pasto-Bogotá; Bogotá-Valledupar-Bogotá; Bogotá-Barranquilla-Bogotá; Bogotá-Medellín-Bogotá; Bogotá-Cali-Bogotá; and Bogotá-Bucaramanga-Bogotá;
- to allocate a three-month extension of humanitarian assistance to Mr. Luis Adolfo Cardona, identity card No. 3,366,106;
- to allocate a three-month extension of humanitarian assistance, bullet-proof jacket and avantel radio to Mr. Wilson Castro, identity card No. 73,085,187.
- to allocate three months of humanitarian assistance, bullet-proof jacket and avantel radio to Mr. Luis Hernán Manco;
- three months of humanitarian assistance are allocated to Mr. Oscar Giraldo;
- an armoured vehicle is assigned under a personal scheme to Juan Carlos Galvis in Barrancabermeja;
- two avantel radios are assigned to Oscar Tascón Abadía, vice-president, Valledupar branch, identity card No. 6,196,595 and Oswaldo Enrique Silva Ditta, president, Valledupar branch;
- the officials of this union are reviewing the need to implement a protection scheme for the Valledupar subcommittee. They will notify the programme of their decision in writing;
- to review of the closed circuit televisions system at the Bogotá office;

- to prioritize armour protection for the Valledupar office – in accordance with the recommendations of the security review, the internal door of the office will also be armoured. It will be a priority in the contracting of armour protection;
- it is necessary to supplement the scheme approved for Bogotá with an additional avante radio and new arms (under DAS management).

By Decision No. 8 of May 2002

- international air tickets were approved for Ms. Marelvis Mieles, daughter of Víctor Mieles of SINALTRAINAL, her husband and daughter, subject to fulfilment of the requirements. Humanitarian assistance for two months was approved as a grant;
- she had already received three months of humanitarian assistance under Decision No. 20 of 2001.

By Decision No. 11 of June 2002

- a personal scheme was approved for Mr. Jaime Santos Deán;
- a personal scheme was approved for Mr. William Mendoza Gómez. Up to now, land transport assistance of 192 hours is in effect. Three bullet-proof jackets were approved for the collective scheme to the Barrancabermeja subcommittee;
- by Decision No. 15 of 18 September 2002, he was granted an avante radio and three months of humanitarian assistance;
- a personal scheme was approved for Mr. Robinson Domínguez Romero;
- three months' humanitarian assistance was approved for Mr. Adolfo Múnera López on a month by month basis;
- by Decision No. 15 of 18 September 2002, a personal scheme and transport assistance of 192 hours per month for the duration of the scheme was approved for Mr. Efraín Guerrero Beltrán, president of the Bucaramanga branch. He also has two means of communication, a mobile phone and avante radio.

By Decision No. 13 of 22 July 2002

- an additional bodyguard was approved for the scheme provided to Mr. Juan Carlos Galvis.

Union offices

Barrancabermeja, Bogotá, Valledupar, Valle, Cúcuta.

Bogotá: collective scheme for the executive board.

Barrancabermeja: personal scheme for Juan Carlos Galvis.

Actions implemented to date

- (1) Armour protection installed:
 - Popayán office

- Medellín office
 - Buga La Grande office
 - Barrancabermeja office
 - Cali office
- (2) Armour protection to be installed:
- Residence of Guillermo Qucieno and Luis Javier Correa
 - Valledupar office
 - Bucaramanga office

By Decision No. 5 of 17 March 2003

- the case of the Descuebradas branch, Risaralda, was presented, requesting review of the armour protection at the union's office. The CRER recommended a reassessment of the security of the union's installations.

By Decision No. 7 of 26 May 2003

- the case of Gerardo Cajamarca Alarcón, of the Facataiva branch was considered. He was granted an avantel radio, bullet-proof jacket and a personal security scheme.

B. Precautionary protection schemes for officials of the Petroleum Industry Workers' Trade Union (USO) (22 July 2003)

421. In response to the communication sent by the Ministry of the Interior and Justice on 2 November 2001 to Dr. Alberto Calderón Sultan, president of ECOPETROL, a process of coordination was initiated with the national police, the Department of Administrative Security and ECOPETROL, in order to join forces to provide protection to USO officials.

422. At the invitation of the Vice-Minister of the Interior, the Ministry's protection programme met on Thursday 20 December and Wednesday 26 December 2001, with the abovementioned institutions and officials of the Petroleum Industry Workers' Trade Union, to work on the main conflicts in each area and the presence of the various actors outside the law, in terms of the risk and threat that they represent to the union officials. The following agreements were reached:

- to conclude an inter-administration agreement between ECOPETROL, DAS and the Ministry of the Interior to channel budgetary resources and harmonize protection schemes for USO officials;
- to undertake the respective risk assessments for members of USO subcommittees and security reviews at branch offices;
- to contact the departmental and municipal authorities (Santander, North Santander, Casanare Meta, Bolívar, Magdalena, Huila, Putumayo) with a view to coordinating the arrangements necessary for the protection of the union officials.

423. The witness and threatened persons protection programme has provided 42 mobile phones and two avante radios to USO officials. Protection schemes including bodyguards, vehicles, radios, arms and bullet-proof jackets have been provided to:

- Gabriel Alvis Ulloque
- Hernando Hernández Pardo*
- Julio Carrascal*
- Jorge Gamboa*
- Edgar Mójica

(*) the vehicles for these schemes were supplied by ECOPETROL.

424. In response to the request submitted on 9 January 2002, the Risk Assessment and Control Committee of the witness and threatened persons protection programme of the Ministry of the Interior approved the following schemes for the Petroleum Industry Workers' Trade Union at its meetings of 10 and 14 January of this year.

- assignment and implementation of two personal protection schemes for officials Hernando Meneses and Daniel Rico;
- approval of three collective protection schemes for the Barrancabermeja subcommittee members;
- approval of one collective protection scheme for Cartagena;
- approval of one collective protection scheme for USO – Puerto Salgar;*
- approval of one collective protection scheme for Orito;
- approval of one collective protection scheme for Apiay;
- approval of one collective protection scheme for the national executive Board;

The collective protection schemes are assigned three bodyguards, but the schemes marked with an asterisk (*) have an additional bodyguard and include arms, bullet-proof jackets, means of communications and vehicle. The bodyguards are appointed after the relevant vetting by the DAS and are provided as personal bodyguards trusted by those protected. These protection schemes are implemented in coordination with ECOPETROL and the DAS.

Based on the results of the risk assessments for officials and security reviews of the union offices requested on 17 December 2002 from the DAS and the national police respectively, the necessary measures will be taken to armour the offices and assign new protection schemes.

425. As a policy measure, a letter was sent from the office of the Minister of the Interior requesting the departmental and municipal authorities in Santander, North Santander, Casanare-Meta, Bolívar, Magdalena, Huila and Putumayo to coordinate the protection schemes within their jurisdiction and to identify alternatives for the protection of these officials, in conjunction with the law enforcement agencies. On 21 March 2002, the inter-administration agreement was signed between ECOPETROL, the DAS and the Ministry of the Interior to channel the necessary budgetary resources through FONADE to implement

the protection schemes and harmonize protection schemes for these union officials. It should be noted that under this agreement, ECOPETROL will finance the cost of implementing ten (10) protection schemes recently approved by the CRER at its meetings of 10 and 14 January this year, as well as five (5) schemes which were operating with ECOPETROL and DAS support.

426. These schemes involve the acquisition of the following items:

- 47 pistols;
- 15 submachine guns;
- 55 bullet-proof jackets;
- 30 avantel radios;
- 15 vehicles, including two armoured;
- hiring of 45 bodyguards, with their respective life insurance policies.

427. In addition, personal protection schemes have been implemented for Juan Ramón Ríos Monsalve (29 January 2003), USO National General Secretary, and Edgar Mojica Vanegas (5 April 2002), USO National Press and Public Relations Secretary.

428. ECOPETROL, as a result of the negotiations with its workers, now has the following protection measures:

- eight-hour transport assistance, when the officials travel to another city;
- security assistance, amounting to 40 per cent of the value of the official's travel costs;
- relocation of threatened officials;
- assignment of bodyguards;
- surveillance;
- vehicles for officials' travel;
- air tickets for employee transport.

429. By Decision No. 38 of May 2003, ten communications devices, avantel radios, were issued to the Magdalena Medio branch. By Decision No. 9 of 16 July 2003, 20 communications devices, avantel radios, were approved for the Cantagallo and Neiva branch; for the Orito branch committee, an additional ten mobile phones were approved. In addition, armour protection was approved for the following branches:

- (1) USO National Executive Board
- (2) USO Cantagallo branch
- (3) USO Arauca branch
- (4) USO Apiay Meta branch
- (5) USO Cartagena Bolívar branch

- (6) USO Neiva Huila branch
- (7) USO Casabe Yondo branch
- (8) USO Medellín branch

C. Protection measures adopted for the National Union of Farm Workers (SINTRAINAGRO)

Communications sent by the Ministry of the Interior and Justice Protection Programme to the Human Rights Coordinator in the Ministry of Social Protection:

1. Communication No. 002896 of 7 May 2003:

In this communication, the Ministry of the Interior Protection Programme states that: “(...) as regards the information that you (the Human Rights Coordinator in the Ministry of Social Protection) require concerning protection measures adopted for the members of the union (SINTRAINAGRO) under this Programme, we wish to inform you that the National Executive of that organization was granted 192 hours per month transport for eight months in 2001 (...).

(...) In addition, the Programme has accepted as beneficiaries Mr. Medardo Cuesta Quejada, treasurer of the National Executive Board, Libardo Florez Chávez, union vice-president, Pedro Pablo Barbosa, president of the Turbo branch and Edgar Payares Barrio, member of the Apartadó, Antioquia executive board, all of whom were granted with three hard personal security schemes. In addition, Mr. Manuel Gómez Ricardo, of the National Executive Board was provided with preventive security measures at his home by the national police (...).”

2. Communication No. 03381 of 27 May 2003:

In this communication, the Ministry of the Interior Protection Programme states that: “(...) with respect to your request for information about the protection measures adopted for members of the National Union of Farm Workers (SINTRAINAGRO), I am pleased to inform you that the national police was asked to adopt the protection measures appropriate to each case, and a risk assessment and study of the degree of threat to the trade unionists was requested, in order to ascertain their vulnerability. Once the results of the study have been received, the cases will be presented to the Risk Assessment and Control Committee (CRER) of the witness and threatened persons protection programme, headed by this Directorate, for adoption of the new security measures (...).”

3. Communication from the chief of the Special Protection Office in the Department of Administrative Security (DAS), No. 27765 of 7 July 2003 to the Human Rights Coordinator:

“(...) I have pleasure in informing you that this institution is in the process of changing the arrangements for hired bodyguards under the National Government’s Special Security Programme, whereby it is sought to depersonalize and form a body of bodyguards in the service of this programme. The personnel have therefore been reassessed, to ensure that they meet the minimum standards set by the Risk Assessment and Control Committee (CRER). As regards the SINTRAINAGRO protection schemes, they have already accepted the security and are reviewing their previous bodyguards who will be re-hired if they pass the process (...).”

D.1. Investigation into illegal coercion of officials of the Risaralda CUT

José Vicente Villada Carvajal, Antonio Ramírez, Bernardo Bernal Alvarez, Ms Gloria Inés Ramírez Ríos, Diego María Osorio Montes, Jhon Jairo Loaiza, Ubenney Morales, Javier Duque Murillo, William Gaviria Ocamp and Gustavo Ramírez.

Date and place: 22 October 2003 in Pereira, Risaralda
File No: 107503
Authority: Prosecutor's Office No. 24, Pereira economic section
Stage: preliminary
Current status: active
Latest actions: 10 November 2003, tasks were assigned to officials of the criminal police

D.2. Measures adopted for social and union leaders in Risaralda by the Ministry of the Interior and Justice

- (1) Diego María Osorio (CPDH) has a mobile phone under the Programme. By Decision No. 14 of 24 July 2002, the Risk Assessment and Control Committee (CRER) recommended the allocation of a hard personal security scheme. He currently has a scheme provided by the UP. Preventive protection measures were requested from the national police. The recent threats were reported to the Attorney-General's Office. The extraordinary meeting of the CRER on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued. The humanitarian assistance was put in place and could be claimed from 6 November 2003.
- (2) Gloria Inés Ramírez Ríos, CUT Executive, has a personal security scheme provided by the Programme and a mobile phone. Preventive security measures were requested from the national police. The extraordinary meeting of the CRER on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national tickets to allow her to leave the risk area temporarily with her family. The tickets have already been issued. The humanitarian assistance was put in place and could be claimed from 6 November 2003.
- (3) Carlos Alberto Ayala Murillo, SER Communications Secretary, member of the *Frente Social y Político*. The extraordinary meeting of the CRER on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued. The humanitarian assistance was put in place and could be claimed from 6 November 2003. Preventive security measures were requested from the national police.
- (4) William Gaviria Ocampo, president of UNEB, Risaralda and secretary of the *Frente Social y Político*. The extraordinary meeting of the CRER on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued. The humanitarian assistance was put in place and could be claimed from 6 November 2003. Preventive security measures were requested from the national police.

- (5) Fernando Arias Guapacha, general secretary of the *Frente Social y Político*. The extraordinary meeting of the CRER on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued. The humanitarian assistance was put in place and could be claimed from 6 November 2003. Preventive security measures were requested from the national police.
- (6) Jhon Jairo Loaiza, UNIMPTPR official. The extraordinary meeting of the CRER on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued. The humanitarian assistance was put in place and could be claimed from 6 November 2003. Preventive security measures were requested from the national police.
- (7) Antonio José Ramírez Arias, attorney of the CUT, Risaralda and UNIMOTOR. The extraordinary meeting of the CRER on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued. The humanitarian assistance was put in place and could be claimed from 6 November 2003. Preventive security measures were requested from the national police.
- (8) Bernardo Bernal Alvarez, vice-president of the CUT, Risaralda, president UNIMOTOR. The extraordinary meeting of the CRER on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued. The humanitarian assistance was put in place and could be claimed from 6 November 2003. Preventive security measures were requested from the national police.
- (9) María Eugenia Londoño, SER attorney. The extraordinary meeting of the CRER on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued. The humanitarian assistance was put in place and could be claimed from 6 November 2003. Preventive security measures were requested from the national police.
- (10) Vicente Villada, president of the CUT, Risaralda. Preventive security measures were requested from the national police. By Decision No. 16 of 31 October 2002, it was recommended to allocate one mobile phone which has already been given to him. Medium risk level, according to the DAS assessment of 3 April 2003. A personal security scheme was approved for him. The extraordinary meeting of the CRER on 27 October 2003 recommended the allocation of one month of humanitarian assistance and national tickets to allow him to leave the risk area temporarily with his family. The tickets have already been issued. The humanitarian assistance was put in place and could be claimed from 6 November 2003.

Measures for organizations

- By Decision No. 14 of 2002, armour protection was approved for this office of the Single Confederation of Workers, Risaralda branch, and is being installed.
- The office of the Risaralda Teachers' Union (SER) has had armour protection since the end of last year.
- The extraordinary meeting of the CRER of 27 October 2003 recommended the allocation of 4 collective schemes for the following Risaralda organizations: the

Single Confederation of Workers (CUT), the Drivers' Union (UNIMOTOR), the *Frente Social y Político* Party and the Risaralda Teachers' Union. They are currently being established.

D.3. Measures taken by the Risaralda Police Department concerning the insecurity of trade union officials in Risaralda

Colonel José Aristides Puente Blanco, Chief of the Risaralda Police Department, informed the Lieutenant Colonel, coordinator of the National Police Human Rights Group concerning the security measures being implemented with regard to the alleged threats against officials of the Risaralda branches of the CUT, UNIMOTOR, Risaralda Teachers' Union and Travelling Salesmen's Union.

- Taking into account the information received in this Department concerning the alleged threats against trade union officials, a coordinating meeting was held on 14 October 2003 at the Police Headquarters, with officials and representatives of the CUT, the operations deputy chief, Chief of the First District, SIJIN, SIPOL and the Human rights Coordinator, to analyse the conditions and guarantees of the conduct of trade union activity and existing precautionary measures, among other things.
- The Chief of the SIPOL gave an analysis of the two leaflets sent to the CUT officials, and said that they did not originate from a self-defence group operating in that area of the country, nor did they match the ideology of that type of illegal organization.
- On 24 October 2003, a security council meeting was held at the Risaralda police headquarters, with the participation of various authorities, the Commander of the San Mateo Battalion, Departmental and local government secretaries, regional and provincial prosecutors, the regional director of the Attorney-General's Office, Municipal staff, the OIT Director, the Director of the DAS and representatives of the threatened unions. At the meeting, the trade union officials explained the current situation concerning threats and asked for their request for security measures to be granted. The State security agencies also described the activities and services that they were performing to safeguard the officials fundamental rights. In conclusion, it was said that the security measures for the threatened unionists must be stepped up, with a commitment by the DAS to arrange in Bogotá the dispatch of personnel and vehicles necessary to satisfy the various requests, to examine the leaflets sent to the union leaders thoroughly, to determine their authenticity, to enhance intelligence activities and post a permanent surveillance on trade union officials during the election period.
- The intelligence section analysed the leaflets, conducted security studies and risk assessments and provided advice to the officials on personal security measures and protection of premises, issuing them with the book "Guide to self-protection for public officials and candidates". They were also reminded that they should immediately inform any police unit or State security agency of any unusual situation.
- The criminal police section is carrying out the relevant investigations and police patrolling of the union and political offices of the organizations concerned.
- Pereira Station assigned a permanent police post to CUT headquarters and surveillance was intensified under existing police regulations, and there is also a mobile patrol responsible for keeping union and political offices under constant watch.

- It should be emphasized that the allegedly threatened unions work in the CUT headquarters and these premises provide the appropriate security measures.
- 430.** In its communication of 8 September 2003, the Government states once again that Colombia is making a notable inter-institutional effort to compile and process the information required in order to present a complete and detailed report.
- 431.** Once again, the Government states that, in the case of complaints where it is indicated that no criminal investigation is in process, it is because they are rather general complaints, which in some cases state neither the place nor the exact date of the incidents, thus making it impossible to find the case in the section prosecutor's office concerned. Likewise, it may happen that the preliminary investigation is not even being pursued, either because a complaint was never lodged or because the incident never happened. Such allegations, in particular, are treated as not subject to judicial proceedings. For this reason, in his verification work, the Human Rights Coordinator in the Ministry of Social Protection maintains constant communications with all the trade unions, in order to allay doubts and concerns to which the abovementioned cases give rise regarding the occurrence of the incidents and respect for the status of union leader or official of the victim of the violation. Up to the date of this report, the Ministry of Social Protection says that there has been full collaboration with the trade unions.
- 432.** As regards protection of trade unionists and union leaders, the Government reports the persons who were beneficiaries of the Ministry of Interior and Justice Protection Programme at the time of the occurrence of the violent incidents, as well as the persons who are currently protected by the Programme. In addition, the Government wishes it to be noted that the majority of the complaints included in the 331st Report as "new allegations" concern incidents that occurred in 2000, 2001 and 2002, and thus are not new, although the Government nevertheless provides answers concerning them.

105 new allegations

84 murders

41 preliminary stage – active

12 preliminary stage – inhibitory

7 preliminary stage – suspended

5 preliminary stage – provisionally archived

3 institution of judicial proceedings – active pending determination of the merit of the summary

2 institution of judicial proceedings – charges made

3 institution of judicial proceedings – persons arrested

4 at trial (effective conviction)

7 where the investigation is not being pursued for lack of information about the complaint or because the alleged victim is alive.

1 abduction

1 preliminary stage.

8 detentions

4 institution of judicial proceedings – active to define the legal position

2 at trial in public hearing

1 investigation closed and the person released

1 where the investigation is not being pursued for lack of information about the complaint.

40 threats

27 preliminary stage – active

3 preliminary stage – suspended

2 institution of judicial proceedings – active with persons arrested

8 where the investigation is not being pursued for lack of information about the complaint.

5 acts of violence

2 preliminary stage – active

2 institution of judicial proceedings – charges and detention

1 where no information into the SINTRAEMCALI investigations was given since the Government answered that complaint in its previous reply to the 330th report of the Committee on freedom of Association.

63 allegations in Appendix I

27 murders

4 preliminary stage – active

2 preliminary stage – inhibitory

2 preliminary stage – suspended

1 institution of judicial proceedings

18 where the investigation is not being pursued for lack of information about the complaint or where the person died of natural causes.

6 abductions and disappearances

3 preliminary stage – active

1 preliminary stage – inhibitory

2 where the investigation is not being pursued for lack of information about the complaint.

3 attempted murders

1 preliminary stage – active

2 where the investigation is not being pursued for lack of information about the complaint.

17 death threats

3 preliminary stage – active

1 preliminary stage – inhibitory

1 at trial – preclusion

12 where the investigation is not being pursued for lack of information about the complaint.

4 harassments

1 preliminary stage – active

1 at trial – active

2 where the investigation is not being pursued for lack of information about the complaint.

5 sendings of civilians to a war zone

See the relevant information at the end of the report.

Total: 168 complaints.

433. All of them are answered, even in some cases when it was not possible to establish whether a criminal investigation is in progress, since the complaint is expressed in general terms, making it impossible to trace the investigation. The Government also states that of the 168 complaints raised, 35 do not concern the population examined by this Committee, since after checking, it was found that some cases did not involve a trade unionists, in others death was from natural causes or reasons unconnected with trade union activity and in others, the alleged victim is free or alive. Consequently, it is respectfully requested that until such time as the complainant organizations provide information to the contrary, the following names should be removed from case No. 1787 of the Committee on Freedom of Association: Darwin Salcedo, Carlos Julio Vega Ríos, Florentino Suárez, Hernando Portillo Moreno, Dionila Vitonas Chilueso, Alirio Vargas Sepúlveda, Marco Antonio Salazar, Mauricio Angarita, Cristina Echeverri, Francisco Sarmiento, Barquel Ríos, Carlos Emilio Vélez, José Orlando Céspedes, Santiago Flor María, Heliodoro Sánchez, Miguel Segura, Jaen Blandón, Luis Eduardo Castaño, Edison de Jesús Toro, Luis Eduardo Vélez Arboleda, Gema Lucía Jaramillo, Yaneth Igarguren, Luis Eduardo Guzmán Alvarez, Fredy Perilla Montoya, Soraya Patricia Díaz, Augusto de Jesús Palacio Restrepo, César Arango Mejía, Molena Pereira Plata, Giovanni Uyazán Sánchez, Rosario Vela, Rusbel.

Murders

434. Information is provided below on the investigations being conducted (investigating authority, parties, stage of the proceedings, current status, organization and office of the victim at the time of the incident and presumed motives) by the Attorney-General's Office

into the alleged murders. Unfortunately, it has been impossible to locate all the investigations given the general terms in which the complaint is presented. However, it should be noted that the Government has made a considerable effort to compile the information and to ensure that all the incidents are subject to judicial process in order to combat the high levels of impunity.

- (1) Darwin Salcedo, member of ADUCESAR, César, on 28 January 2000, in the Department of César:

Victim: Darwin Salcedo

File No: 121951

Authority: Special Prosecutor's Office No. 23, Valledupar

Stage: preliminary – inhibitory from 24 September 2001

Facts: massacre (11 persons) in Astrea, César, on 28 January 2000

The president of ADUCESAR, Mr. Francisco Rinaldy Robles, reported on 1 August 2003 to the Human Rights Office in the Ministry of Social Protection that Mr. Salcedo, a local teacher murdered in the municipality of Astrea was not a member of that organization.

- (2) Carlos Julio Vega Ríos, member of ADUCESAR, on 5 March 2000:

Víctim: San Roque, César, 5 March 2000

File No: 5419

Authority: Prosecutor's Office No. 22, Chiriguaná section, Valledupar

Stage: preliminary – suspended 18 April 2001

Status: suspended

Motives: unknown

The president of ADUCESAR, Mr. Francisco Rinaldy Robles, reported on 1 August 2003 to the Human Rights Office in the Ministry of Social Protection that Mr. Vega, a local teacher murdered in the municipality of La Juaga, Ibérico was not a member of that organization.

- (3) Florentino Suárez Betancourt, member of ADIDA, on 17 May 2000, in the Department of Antioquia:

File No: 24982

Authority: Prosecutor's Office No. 4, Neiva

Offence: murder and personal injury for terrorist purposes

Stage: institution of judicial proceedings against FARC leadership and legal position dated 12 February 2003, for the offence of terrorism, multiple aggravated homicide, conspiracy to commit offences and rebellion

Facts: 7 May 2000, at the exit of the municipality of Gigante in the direction of Garzón, a bus belonging to the Cootranslaboyana company, registration number BZE 654 travelling on the Neiva-Pitalito road was attacked by a bomb thrown at it followed by shots whereupon the bus crashed and caught fire, resulting in the death of six persons including Florentino Suárez Betancourt and others who were wounded

The national president of ADIDA, Mr. Luis Alfonso Londoño informed the Human Rights Office in the Ministry of Social Protection on 11 August 2003 that Mr. Florentino Suárez did not appear in the union's database and he therefore did not know whether or not he was a registered teacher and whether he was a member of the union.

(4) Jesús Antonio Posada Marín, member of ADIDA, in 11 May 2000:

Facts: Puerto Triunfo – Aquitania, Antioquia, on 11 May 2000
 File No: 1441
 Authority: Prosecutor's Office No. 22, Puerto Triunfo section
 Stage: preliminary – suspended 26 February 2001
 Organization: member of ADIDA.

(5) Nelson Romero Romero, member of ADEM, on 7 June 2000:

File No: 22343
 Authority: National Human Rights and International Humanitarian Law Unit, Villavicencio office
 Stage: preliminary
 Organization: member of ADEM.
 Motives: to be established

(6) Reynaldo Mora Gómez, member of SIMATOL, on 14 June 2000, in San Antonio, Department of Tolima:

File No: 49155
 Authority: Prosecutor's Office No. 5, Ibaqué section, Personal Freedom Unit
 Offence: aggravated homicide
 Stage: Trial. On 19 April 2001, the prosecutor's office charged Enoc Capera Trujillo and Eduardo Fajardo (FARC). The case is currently with the criminal court of the Chaparral, Tolima circuit, awaiting a date to be fixed for the public hearing.
 Motives: for his trade union activity – member of SIMATOL

(7) Hernando Portillo Moreno, member of ASINORT, on 17 June 2000, in Ocaña, Department of North Santander:

File No: 2000-0477
 Authority: prosecutor's office, Cúcuta section directorate
 Stage: preliminary – suspended
 Organization: ASINORT
 Motives: to be established

(8) María Mez Pabón, member of EDUMAG, on 11 August 2000, in Pivijay, Department of Magdalena:

The Santa María section directorate of prosecutions reports that after consulting each of the prosecutors' offices in its section and the judicial information system of the prosecution service (SIJUF), no investigation is being conducted into this murder. Further information is required to assess whether a prosecution is viable.

The president of the Magdalena Teachers' Union, EDUMAG, Ms. Carlina Sánchez Marmolejo, informed the Human Rights Office in the Ministry of Social Protection that Ms. María Meza Pabón was a member of that trade union.

(9) Luis Angel Ramos Mesa, member of ADIDA, on 27 October 2000 in Granada, Antioquia:

File No: 1618
Facts: Bodeguitas Estate “El Santuario”, Antioquia, 24 October 2000
Authority: National Human Rights and IHL Unit, Medellín office
Stage: preliminary – active
Organization: ADIDA member
Motives: to be established

(10) José Orlando López Gil, member of ADIDA, on 3 November 2000, in Guatapé, Antioquia:

File No: 2823
Authority: prosecutor’s office, Marinilla section, Antioquia
Stage: inhibitory
Organization: ADIDA member
Motives: to be established

(11) Edilberto Arce Mosquera, member of ADIDA, on 11 November 2000, in Yarumal, Department of Antioquia:

File No: 3960
Authority: prosecutor’s office, Yarumal section
Stage: preliminary – suspended
Organization: ADIDA member
Motives: to be established

(12) Javier Aníbal Amaya Rafael, Quiceno, member of ADIDA, on 11 November 2000, in Antioquia:

File No: 19270
Authority: Prosecutor’s Office No. 45, Bello section
Stage: preliminary – suspended
Organization: ADIDA member
Motives: to be established

(13) Jairo Germán Delgado Ordoñez, member of SIMANA, on 13 November 2000, in Linares, Department of Nariño:

Victim: Germana Alfredo Delgado Ordoñez
Offence: murder
Authority: Prosecutor’s Office No. 4, Pasto section
File No: 27094
Stage: preliminary – active
Motives: to be established
Organization: SIMANA member

(14) Dionila Vitonas Chilueso, member of SUTEV, on 8 December 2000, in Florida, Department of Valle:

File No: 182307
 Authority: Prosecutor's Office No. 136, Florida section, Valle
 Stage: preliminary – active
 a teacher working in a Florida school: while she was at work, they came and murdered her and Mr. Elber Valencia

The president of the Valle Single Education Workers' Trade Union (SUTEV), Stella Domínguez, informed the Human Rights Office in the Ministry of Social Protection that "this colleague was an active teacher but was not a member of our trade union (...). We know that she completed the application form but she never submitted it".

(15) Alirio Vargas Sepúlveda, member of FECODE, on 23 March 2001, in the Department of Antioquia:

Offence: murder
 Facts: Puerto Boyacá, 23 March 2001
 Victim: Luis Alirio Vargas Sepúlveda
 File No: 2319
 Authority: prosecutor's office, Puerto Boyacá section, in the Manizales Directorate of Prosecutions
 Stage: preliminary – archived 15 March 2002, inhibitory, article 327 of the Criminal Procedures Code

The national president of ADIDA, Mr. Luis Alfonso Londoño informed the Human Rights Office in the Ministry of Social Protection on 11 August 2003 that Mr. Alirio Vargas Sepúlveda did not appear in the union's database and he therefore did not know whether or not he was a registered teacher and whether he was a member of the union.

(16) Faustino Antonio Barrios Barrios, member of ADEA, on 18 January 2002, in Malambo, Department of Atlántico:

File No: 1300
 Authority: Prosecutor's Office No. 2, Soledad section
 Offence: murder
 Stage: preliminary – inhibitory from 15 November 2002
 Organization: ADEA
 Motives: To be established

(17) Gabriel Enrique Quintana Ortiz, member of SUDEB, on 25 January 2002, in San Estanislao, Department of Bolívar:

Offence: murder
 Facts: on 25 January 2002 in the San Estanislao Kotska High School, Department of Bolívar
 File No: 87114
 Authority: Prosecutor's Office No. 30, Cartagena Homicide Unit
 Stage: preliminary – inhibitory from 30 January 2003
 Motives: to be established
 Organization: member of the Bolívar Teachers' Union (SUDEB)

(18) Carlos Miguel Padilla Ruiz, member of EDUMAG, on 29 January 2002, in Plato, Department of Magdalena:

File No: 29156
Authority: Special Prosecutor's Office No. 1, Santa Marta
Stage: preliminary – active
Organization: EDUMAG
Motives: unknown

(19) Nelly Avila Castaño, member of AICA, on 1 February 2002, in Milán, Department of Caquetá:

File No: 2309
Authority: Special Prosecutor's Office No. 2, Florencia
Stage: preliminary – active
Motives: to be established

The general secretary of the Caquetá Teachers' Association (RICA), Hollman Sierra, informed the Human Rights Office in the Ministry of Social Protection that Ms Nelly Castaño Avila was a member of that trade union registered with the Secretariat of Education.

(20) Marco Antonio Salazar, member of SIMANA, on 7 February 2002, in the Department of Nariño:

Facts: Pasto, 7 January 2001
Victim: Marco Antonio Salazar Prada
File No: 1137
Authority: National Human Rights and IHL Unit
Stage: preliminary – active
Organization: he was not a member of SIMANA
Motives: to be established

The Ministry of the Interior and Justice Protection Programme reported that Mr. Marco Antonio Salazar Prada was presented as a student leader of Nariño University and his death occurred on 7 January 2002. The case was proceeding, further information had been requested, as well as confirmation from the students' union and the DAS was asked to undertake the risk assessment study. It was also established that Mr. Salazar Prada's father was being assisted under the programme, but the requested protection measures and the inclusion of members of the family had not been included by the applicant organization.

(21) Mauricio Angarita, member of ASINORT, on 11 February 2002, in Cúcuta, North Santander:

The Cúcuta directorate of prosecutions reports that after consulting each of the prosecutor's offices belonging to the directorate and the Judicial Information System of the prosecution service (SIJUF), there is no investigation in progress into the murder of Mauricio Angarita. However, the Directorate reports that an investigation is in progress into the murder of Mauricio Gardira Espinoza, the facts and circumstances of which match the present complaint.

Victim: Mauricio Gardira Espinoza
Offence: murder
Facts: Villa Paz de Tibú district, on 20 February 2002
Authority: Prosecutor's Office No. 3, Cúcuta section homicide unit

Stage: preliminary – inhibitory from 28 March 2003
 File No: 42318
 Office: English language teacher teaching in Tibú at the Koe Corporation institute

The president of the North Santander Teachers' Association (ASINORT) informed the Human Rights Office in the Ministry of Social Protection that Mr. Mauricio Angarita was not a member of that association.

(22) Cristina Echeverri Pérez, member of EDUCAL, on 15 February 2002, in Manizales, Department of Caldas:

File No: 49413
 Facts: 23 June 2001, Alejandría estate, Anserma district, Caldas
 Offence: kidnapping for ransom and murder
 Authority: second Special Prosecutor's Office, Manizales, attached to the Caldas Gaula Group
 Stage: the prosecutor's office formally linked the investigation to several persons, the majority of whom were arrested and are now awaiting sentence by the special Manizales criminal circuit court for the offences of kidnapping for ransom, murder and rebellion. One of the suspects is currently in detention on remand
 Organization: Ms. Echeverría Pérez was a teacher in the private sector at the Santa Inés College in Manizales, but was not a member of the Caldas United Teachers' Union and Social Organization (EDUCAL). This was confirmed by the vice-president of the EDUCAL Manizales branch, Rubio Ariel Osorio González.

(23) Francisco Sarmiento Yepes, member of ADES on 16 February 2002, in Sincelejo, Department of Sucre:

File No: 21989
 Authority: Special Prosecutor's Office 1, Sincelejo
 Victim: Francisco Sarmiento Yepes
 Facts: Sincelejo, 19 February 2002
 Stage: institution of judicial proceedings. The case is being conducted by the prosecutor's office, pending declaration of the accused in their absence.
 Motives: to be established
 Organization: he was a member of the Sucre Teachers' Association (ADES) but was not involved in any trade union activity and was not a member of the Association's executive board, according to information provided by the president of ADES, Mr. Salvador Vanegas Carcamo to the Human Rights Office in the Ministry of Social Protection

(24) Rubén Darío Campuzan, member of ADIDA, on 16 February 2002, in the Department of Antioquia:

File No: 3111
Authority: Prosecutor's Office No. 86, Girardot section, Antioquia
Stage: preliminary inhibitory: the perpetrators were not identified, the motives for the crime are not known, provisionally archived
Motives: to be established
Organization: according to the president of the union, Luis Alfonso Londoño on 11 August 2003, he was a member of ADIDA

(25) Barquel Ríos Mena, member of ADIDA, on 18 February 2002, in San Carlos, Department of Antioquia:

Victims: Berkeley Ríos Mena and Manuel Santo Rentería Rentería
Offence: homicide for terrorist ends
File No: 575501
Authority: Special Prosecutor's Office 15, Medellín
Stage: preliminary – active
Organization: the president of the union, Luis Alfonso Londoño confirmed that he was not a member of ADIDA
Motives: to be established

(26) Edison de Jesús Castaño, member of ADIDA, on 25 February 2002, in Medellín:

The Medellín section directorate of prosecutions reports that after consulting all the prosecutor's offices attached to the directorate and the judicial information system of the prosecution service (SIJUF), no investigation is being conducted into this murder. Further information is required to assess whether criminal proceedings are viable.

The president of ADIDA, Mr. Luis Alfonso Londoño informed the Human Rights Office in the Ministry of Social Protection on 11 August 2003 that Mr. Edison de Jesús Castaño worked in the private sector but did not mention his membership of the union.

(27) Wilfredo Quintero Amariles, member of ADIDA, on 25 February 2002, in Medellín:

File No: 535563
Facts: 25 February 2002, in Medellín
Stage: preliminary – active
Authority: Prosecutor's Office No. 112, Medellín section
Organization: ADIDA, he was working in the private sector
Motives: not established

(28) Manuel Alberto Montañez Buitrago, member of ASINORT, on 25 February 2002, in el Tarra, Department of North Santander:

Victim: Manuel Alberto Montañez Buitrago
File No: 50731
Authority: Cúcuta section directorate of prosecutions
Stage: institution of judicial proceedings – preparation of indictment
Organization: ASINORT

(29) Carlos Emilio Vélez Correa, member of ADIDA, on 9 March 2002, in San Antonio de Prado, Antioquia:

File No: 541050
 Facts: 8 March 2002, in Medellín
 Authority: Prosecutor's Office No. 7, Medellín section
 Stage: preliminary – suspended
 Organization: he was not a member of ADIDA nor a trade unionist
 Motives: to be established

(30) José Orlando Céspedes García, member of ASEDAR, on 24 March 2002, in Tame, Department of Arauca:

File No: 834
 Authority: Cúcuta section directorate of prosecutions
 Stage: preliminary – active
 Organization: founder of the Arauca Teachers' Union (ASEDAR)
 Motives: to be established

It should be noted that Mr. José Orlando Céspedes was detained on 23 March 2002 by an insurgent group while travelling from the city of Arauca to Tame and was later released safe and sound after several months in captivity. This is according to the president of ASEDAR, Mr. Jaime Ernesto Carrillo on 24 July 2003 when asked by the Human Rights Office in the Ministry of Social Protection. Consequently, the Government respectfully requests that this complaint should be removed from case No. 1787.

(31) Oscar Calle, member of ADEM, on 29 March 2002, in Villavicencio, Department of Meta:

File No: 1893
 Facts: 20 February 2002, found in a common grave in San Martín, Meta
 Offence: homicide
 Authority: Prosecutor's Office No. 39, San Martín section, Meta
 Stage: preliminary – inhibitory from 8 October 2002

The attorney of the Meta Teachers' Association (ADEM), Mr. Hernán Alarcón Blanco, stated that Mr. Oscar Calle was a teacher and was murdered in the municipality of Mesetas, Meta, and that he was indeed a member of that association.

(32) Salatiel Piñeros, member of ADEM, on 29 March 2002, in Villavicencio, Department of Meta:

Victim: Salatiel Piñeros Rodriguez
 File No: 67460
 Authority: Prosecutor's Office No. 35, Villavicencio section
 Stage: preliminary – active
 Motives: not established
 Organization: member of the Meta Teachers' Association (ADEM)

(33) Eddie Socorro Leal Barrera, member of ASINORT, on 31 March 2002, in Salazar, Department of North Santander:

File No: 44150
 Authority: Cúcuta section directorate of prosecutions
 Stage: preliminary – inhibitory

Organization: member of ASINORT
Motives: to be established

(34) Santiago Flor María, member of ASINORT, on 31 March 2002, in Tibu, Department of North Santander:

File No: 2002-0110
Authority: Cúcuta section directorate of prosecutions
Stage: preliminary – archived
Organization: not a member of ASINORT
Motives: to be established

(35) Freddy Armando Girón Burbano, member of ASOINCA, on 7 April 2002, in Patia, Department of Cauca:

Authority: Prosecutor's Office No. 2, El Bordo section, Cauca
Stage: preliminary – active
File No: 86590
Motives: unknown
Organization: member of ASOINCA-CUT

(36) Miguel Acosta García, member of EDUMAG, on 13 April 2002, in Aracataca, Department of Magdalena:

The Santa Marta section directorate of prosecutions reports that after consulting each of the prosecutors' offices in its section and the prosecution service judicial information system (SIJUF), no investigation is being conducted into this murder. Further information is required to assess whether a prosecution is viable.

The president of the Magdalena Teachers' Union (EDUMAG) informed the Human Rights Office in the Ministry of Social Protection that Mr. Miguel Acosta García was a member of that organization.

(37) Heliodoro Sánchez Peña, member of ASINORT, on 19 April 2002, in Villa del Rosario, Department of North Santander:

Victim: Heliodoro Peña Fuentes
Facts: Villa del Rosario, 19 April 2002
Authority: Prosecutor's Office No. 1, Patios section, North Santander
Offence: Homicide
Stage: preliminary – inhibitory from 11 February 2003

The president of the North Santander Teachers' Association (ASINORT) informed the Human Rights Office in the Ministry of Social Protection that Mr. Heliodoro Sánchez Peña was not a member of that association.

(38) Henry Rosero Gaviria, member of ASEP, on 22 April 2002, in Puerto Guzmán, Department of Putumayo:

File No: 1004
Authority: Prosecutor's Office No. 38, Mocoa section
Offence: Homicide
Victim: Henry Rosero Gaviria

Organization: member of Putumayo Teachers' Association (ASEP)
 Stage: preliminary – inhibitory from 3 April 2003
 Facts: Puerto Guzmán, 22 April 2002

(39) Francisco Isaías Cifuentes Becocbe, member of ASOINCA, on 26 April 2002, in Popayán, Department of Cauca:

Facts: 26 April 2001 in Popayán, Cauca
 Authority: National Human Rights and IHL Unit, Cali office
 Stage: preliminary – active
 File No: 464286
 Motives: unknown
 Organization: Member of ASOINCA

The Risk Assessment and Control Committee (CRER) of the Ministry of the Interior and Justice Protection Programme had recommended that a mobile phone and bullet-proof jacket be provided to Francisco Isaías Cifuentes, a member of ASOINCA.

(40) Miguel Segura Cortés, member of ASEP, on 29 April 2002, in Puerto Guzmán, Department of Putumayo:

The Mocoa section directorate of prosecutions reports that Prosecutor's Office 38, Mocoa section, conducted the preliminary investigation, File No. 1004, into the murder of Miguel Segura Cortés. It established that despite initial reports that he had been murdered, according to a list of teachers murdered issued by the personnel department of Puerto Guzmán, Putumayo, the teacher was still alive and was still working at his normal place of work. His death had been reported in error.

(41) Jean Blandón Vargas, member of ASEP, on 29 April 2002, in Puerto Guzmán, Department of Putumayo:

File No: 1004
 Authority: Prosecutor's Office No. 38, Mocoa section
 Offence: homicide
 Victim: Jean Blandón Vargas
 Stage: preliminary – inhibitory from 3 April 2003
 Facts: Puerto Guzmán, 29 April 2002
 Organization: according to the president of the union, Ana María Cuellar in a written communication dated 19 August 2003 to the Human Rights Office in the Ministry of Social Protection, he was not a member of the Putumayo Teachers' Association (ASEP)

(42) Bertulfo Borja Clavijo, member of ASEP, on 30 April 2002, in Puerto Guzmán, Department of Putumayo:

The Mocoa section directorate of prosecutions reports that Prosecutor's Office 38, Mocoa section conducted the preliminary investigation, File No. 1004, into the murder of Bertulfo Borja Clavijo. It established that despite initial reports that he had been murdered, according to a list of teachers murdered issued by the personnel department of Puerto Guzmán, Putumayo, the teacher was still alive and was still working at his normal place of work. His death had been reported in error.

(43) Jairo Bentancur Rojas, member of AICA, on 30 April 2002, in Florencia, Department of Caquetá:

Authority: Prosecutor's Office No. 4, Florencia section
File No: 22641
Stage: preliminary – archived
Motives: to be established
Organization: AICA

The general secretary of the Caquetá Teachers' Association (AICA) informed the Human Rights Office in the Ministry of Social Protection that, Mr. Bentancur Rojas was a member of that association.

(44) Enio Villanueva Rojas, member of AICA, on 1 May 2002, in El Paujil, Department of Caquetá:

Authority: Special Prosecutor's Office 3, Florencia
File No: 23865
Stage: preliminary – active
Motives: to be established
Organization: AICA

The general secretary of the Caquetá Teachers' Association (AICA) informed the Human Rights Office in the Ministry of Social Protection that, Mr. Villanueva Rojas was a member of that association.

(45) Ledys Pertuz Moreno, member of EDUMAG, on 6 May 2002, in Pivijay, Department of Magdalena:

File No: 30715
Authority: Special Prosecutor's Office 2, Santa Marta
Stage: preliminary – active
Organization: EDUMAG
Motives: unknown

The president of the Magdalena Teachers' Union (EDUMAG) informed the Human Rights Office in the Ministry of Social Protection that, Ms. Pertuz Moreno was a member of that union.

(46) Antonio Acosta, member of ASEP, on 12 May 2002, in Puerto Asís, Department of Putumayo:

Victim: Luis Antonio Acosta Zamora
File No: 1750
Authority: Prosecutor's Office No. 43, Puerto Asís section
Offence: homicide
Organization: member of ASEP
Facts: Carmelita village estate, Puerto Asís, 12 May 2002. The deceased worked as a teacher at the El Cuembí school, Carmelita village estate, where he was found dead with 22 bullet wounds.
Stage: preliminary – inhibitory from 12 December 2002

(47) Fernando Olaya, member of ASEP, on 12 May 2002, in Puerto Asís, Department of Putumayo:

Victim: Fernando Olaya Sabala
 File No: 1758
 Authority: Prosecutor's Office No. 44, Puerto Asís section
 Offence: homicide
 Organization: member of Putumayo teachers' association (ASEP)
 Facts: La Libertad Village, Alto Santamaría, Puerto Asís, 12 March 2002. It is reported that two armed men came to the school where the deceased worked, took him out and killed him about two hundred yards away.
 Stage: institution of judicial proceedings. A person is in custody pending interrogation.

(48) Adriana Patricia Díaz, member of SIMANA ON 11 June 2002 in Los Salzales, Department of Nariño:

Victim: Adriana Patricia Díaz Jojoa
 File No: 54007
 Authority: Prosecutor's Office No. 3, Pasto section
 Stage: preliminary, suspended on 28 February 2003
 Organization: SIMANA

The vice-president of the Nariño Teachers' Union (SIMANA) informed the Human Rights Office in the Ministry of Social Protection on 29 July 2003 that Ms. Patricia Díaz was a member of that union.

(49) Fabio Antonio Obando Aguirre, member of AICA, on 14 July 2002, in Florencia, Department of Caquetá:

Authority: Special Prosecutor's Office 2, Florencia
 File No: 24101
 Stage: institution of judicial proceedings – active, a person in custody under a valid arrest warrant
 Organization: member of AICA
 Motives: to be established

The general secretary of the Caquetá Teachers' Association (AICA) informed the Human Rights Office in the Ministry of Social Protection that, Mr. Obando Aguirre was a member of that association.

(50) Carlos Alberto Barragán Medina, member of ASEDAR, on 20 July 2002, in Tame, Department of Arauca:

File No: 67679
 Authority: Cúcuta section directorate of prosecutions
 Stage: preliminary– active
 Organization: member of ASEDAR since entry into the teaching profession. Until the day of his death, he was a member of the executive board of the Tame branch of ASEDAR, Arauca.

(51) José Olegario Gómez Sepúlveda, member of ASEDAR, on 21 July 2002, in Saravena, Department of Arauca:

File No: 64521
Authority: Cúcuta section directorate of prosecutions
Stage: institution of judicial proceedings – active
Organization: ASEDAR
Perpetrators: unidentified armed group
Motives: to be established

(52) Wilson Rodriguez Castillo, member of EDUMAG, on 25 July 2002 in Pivijay, Department of Magdalena:

File No: 34452
Authority: Special Prosecutor's Office 5, Santa Marta
Stage: preliminary – active
Organization: EDUMAG
Motives: Unknown

The president of the Magdalena Teachers' Union (EDUMAG) informed the Human Rights Office in the Ministry of Social Protection that, Mr. Wilson Rodriguez Castillo was a member of that union.

(53) Luis Eduardo Castaño, member of ASODEGUA, on 30 July 2002, in the Department of Guajira:

File No: 814
Offence: homicide
Facts: Villa Leda Farm, jurisdiction of the municipality of San Juan del César
Authority: Prosecutor's Office No. 3, San Juan del César section
Stage: preliminary – active
Organization: not a member of ASODEGUA. He worked as a teacher in the Hugues Manuel Lacouture College in Junta Guajira, San Juan del César village estate.
Motives: unknown

(54) Ladislao Mendoz, member of ADUCESAR, 30 July 2002, in San Juan del César, Department of Guajira:

File No: 814
Offence: homicide
Facts: Villa Leda Farm, jurisdiction of the municipality of San Juan del César
Authority: Prosecutor's Office No. 3, San Juan del César section, attached to the Riohacha directorate of prosecutions
Stage: preliminary – active
Organization: ASODEGUA. He worked as a teacher in the Hugues Manuel Lacouture College in Junta Guajira.
Motives: unknown

He was a member of ASODEGUA, according to its president, Mr. Manuel Enrique Córdoba.

(55) Jaime Lobato, member of EDUMAG, on 3 August 2002, in Pivijay, Department of Magdalena:

File No: 34448
 Authority: Special Prosecutor's Office 2, Santa Marta
 Stage: preliminary – active
 Organization: EDUMAG
 Motives: unknown

The president of the Magdalena Teachers' Union (EDUMAG) informed the Human Rights Office in the Ministry of Social Protection that Mr. Jaime Lobato was a member of that union.

(56) Ingrid Cantillo Fuentes, member of EDUMAG, on 7 August 2002, in Pedraza, Department of Magdalena:

Victims: Ingrid Cantillo Fuentes and Noralba Esther Jiménez de León
 File No: 43140
 Authority: Prosecutor's Office No. 28, Plato section, Magdalena
 Stage: preliminary – active
 Organization: EDUMAG
 Motives: unknown

The president of the Magdalena Teachers' Union (EDUMAG) informed the Human Rights Office in the Ministry of Social Protection that Ms. Ingrid Cantillo was a member of that union.

(57) Américo Benítez Rivas, member of ADEM, on 7 August 2002, in Vista Hermosa, Department of Meta:

Facts: San Juan de Arama, on 7 August 2002
 File No: 81827
 Authority: Special Prosecutor's Office 9, Villavicencio
 Stage: preliminary – active
 Motives: not established
 Organization: ADEM

(58) Edison de Jesús Toro Gaviria, member of ADIDA, on 8 August 2002, in Ituango, Department of Antioquia:

File No.: 618017
 Authority: Special Prosecutor's Office 13, Medellín
 Facts: La Trampa village, municipality of Santa Rita de Ituango, between 7 and 16 August 2002
 Stage: Preliminary – active
 Position: Teacher

The national president of ADIDA informed the Human Rights Office in the Ministry of Social Protection that Mr. Toro Gaviria was not a member of that union.

(59) Alvaro Poveda, member of ADEM, on 15 August 2002, in Vista Hermosa, Department of Meta:

File No.: 97344
Authority: Prosecutor's office 37, Granada section, Meta
Stage: Preliminary – active
Motives: Not established
Organization: Member of ADEM

(60) Nicanor Sánchez, member of ADEM, on 20 August 2002, in Vista Hermosa, Department of Meta.

The section directorate of prosecutions reports that, according to the judicial information system, there is no investigation into the murder of Nicanor Sánchez, but an investigation is in progress into the murder of Nicanor Becerra Obregon, teacher. In addition, the attorney of the Meta Teachers' Association (ADEM) stated that Mr. Nicanor Sánchez was a teacher and was murdered in the municipality of Vista Hermosa, Meta, and that he was indeed a member of that trade union at the time of his death.

(61) Abigail Girón Campos, member of AICA, on 22 August 2002, in Puerto Asís, Department of Caquetá:

Authority: Special Prosecutor's Office 2, Florencia
File No.: 24926
Stage: Institution of judicial proceedings – active, one person in custody
Motives: To be established
Organization: AICA

The general secretary of the Caquetá Teachers' Association (AICA) informed the Human Rights Office in the Ministry of Social Protection that Mr. Girón Campos was a member of that association.

(62) Guillermo Sanin Rincón, member of AICA, on 4 September, in Puerto Rico, Department of Caquetá:

Authority: Special Prosecutor's office 3, Florencia
File No.: 25,522
Stage: Preliminary – archived
Motives: To be established
Organization: AICA

The general secretary of the Caquetá Teachers' Association (AICA) informed the Human Rights Office in the Ministry of Social Protection that Mr. Sanin Rincón was a member of that trade union.

(63) Oscar de Jesús Payares, member of ADEA, in September 2002, in Barranquilla, Department of Atlántico:

File No.: 136248
Authority: Prosecutor's office 42, Barranquilla section
Offence: Homicide
Stage: Institution of judicial proceedings, two persons identified in connection with the investigation
Organization: ADEA – teacher
Motives: To be established

(64) Luis Eduardo Vélez Arboleda, member of ADIDA, on 7 September 2002, in Caldas, Department of Antioquia:

File No.: 3387
 Authority: Prosecutor's office 79, Caldas section, Antioquia
 Stage: Preliminary – active
 Organization: Not a member and does not appear in the ADIDA database, according to the president of the union, Mr. Luis Alfonso Londoño
 Motives: To be established

(65) Gema Lucía Jaramillo, member of ADIDA, on 9 September 2002, in San Andrés del Cuerca, Department of Antioquia:

File No.: 2548
 Authority: Prosecutor's office, Ituango section, Antioquia
 Stage: Preliminary – active
 Organization: Does not appear to be a member and does not appear in the ADIDA database, according to the president of the union, Mr. Luis Alfonso Londoño
 Motives: To be established

(66) Elmer de Avila Arias, member of ADER, on 30 September 2002, in Barranquilla, Department of Atlántico:

File No.: 138086
 Offence: Homicide
 Authority: Prosecutor's office 35, Barranquilla section
 Stage: Preliminary – active
 Organization: ADEA – teacher

(67) Jorge Ariel Díaz Aristizábal, member of ADEM, on 13 October 2002, in Villavicencio, Department of Meta:

Facts: Maracaibo, municipality of Vista Hermosa on 10 October 2002. Jorge Ariel Díaz Sepúlveda was a teacher, murdered with two other persons: Rosalbina González Urrego and Eduardo Alfonso López Beltrán
 File No.: 015
 Stage: Summary, against members of the army
 Authority: Military Criminal Court 18 of the 21st Battalion, Vargas de Granada

The attorney of the Meta Teachers' Association stated that Mr. Jorge Ariel Díaz was a teacher and was murdered in the municipality of Vista Hermosa, Meta, and that he was indeed a member of that trade union.

(68) José del Carmen Lobos, member of ADEC, on 15 October 2002, in Bogotá:

The president of the Cundinamarca Teachers' Association certified to the Human Rights Office in the Ministry of Social Protection on 4 August 2003 that "this is to inform you that the teachers José del Carmen Lobos, Edgar Rodríguez Guaracas and Juan Antonio Bohórquez Medina, who were teachers employed by the Department in the municipalities of Cachipay and Albán at the time of their murder were members of our trade union".

(69) Edgar Rodríguez Guaracas member of ADEC, on 15 October 2002, in Bogotá:

The president of the Cundinamarca Teachers' Association certified to the Human Rights Office in the Ministry of Social Protection on 4 August 2003 that "this is to inform you that the teachers José del Carmen Lobos, Edgar Rodríguez Guaracas and Juan Antonio Bohórquez Medina, who were teachers employed by the Department in the municipalities of Cachipay and Albán at the time of their murder were members of our trade union".

(70) Oscar David Polo Charris, member of EDUMAG, on 28 October 2002, in Pivijay, Department of Magdalena:

File No.: 34360
Authority: Special Prosecutor's Office 5, Santa Marta
Stage: Preliminary – active
Organization: EDUMAG
Motives: Unknown

The president of the Magdalena Teachers' Union, EDUMAG, informed the Human Rights Office in the Ministry of Social Protection that Mr. Polo Charris was a member of that trade union.

(71) Yaneth Iburguen, member of ADIDA, on 19 November 2002, Cocoma, Antioquia:

Victim: Janeth Iburguen Romaña
Facts: Molina de Corconá village, 19 November 2002
Offence: Aggravated homicide
File No.: 678834
Authority: Special Prosecutor's office 19, Medellín
Stage: Preliminary – active
Organization: She worked on a personal service contract, and did not have an employment relationship, so she was not a member of ADIDA, as confirmed by the president of ADIDA, Mr. Luis Alfonso Londoño
Motives: Unknown

(72) José Lino Beltrán Sepúlveda, member of ASOINCA, on 20 November 2002, in Popayán, Department of Cauca.

The Popayán section directorate of prosecutions reports that the investigation into the murder of José Lino Beltrán Sepúlveda was referred to the Popayán Special Court and a charge made on 9 July 2003:

Facts: 20 November 2002 in the municipality of Patía, Cauca
Authority: Popayán Special Court
Stage: Trial
Status: Active
Organization: Member of ASOINCA

(73) Cecilia Gómez Córdoba, member of SIMANA, on 20 November 2002, in El Talón de Gómez, Department of Nariño.

The Pasto section directorate of prosecutions reports that after consulting each of the prosecutors' offices in its section and the prosecution service Judicial Information System (SIJUF), no investigation is being conducted into this murder. Further information is required to assess whether a prosecution is viable.

The vice-president of the Nariño Teachers' Union informed the Human Rights Office in the Ministry of Social Protection that Ms. Cecilia Gómez Córdoba was a state registered teacher and worked in the Páramo rural mixed school in the Aponte village estate, municipality of Tablón de Gómez and was a member of that trade union.

(74) José Marcelino González, Rector of the Froilán Farias College in the municipality of Tame, president of the College of Rectors and Directors (COLDIT), member of the Arauca Teachers' Association (ASEDAR-FECODE), on 13 January 2003:

File No.: 55266
 Authority: Cúcuta section directorate of prosecutions
 Stage: Preliminary – active
 Organization: ASEDAR
 Motives: To be established

(75) Abelardo Barbosa Páez, member of FENSUAGRO, in Santander, on 21 January 2003.

The incident occurred on 21 January 2003, in Puerto Wilches, Santander. The Prosecutor's Office noted that there was nothing in the report to show that he belonged to any union, even though the officials of SINTRAINAGRO-SINTRAPALMAS-CUT stated that Mr. Abelardo was a member of that subcommittee.

File No.: 168120
 Offence: Homicide
 Authority: Prosecutor's office 1, Barrancabermeja section
 Stage: Preliminary – active
 Motives: To be established

(76) Luis Eduardo Guzmán Alvarez, member of ADIDA, on 3 February 2003, Antioquia:

File No.: 22303
 Facts: Bello, Antioquia, 3 February 2003
 Authority: Prosecutor's office 98, Bello section
 Stage: Preliminary – active
 Organization: As reported directly by the trade union, Mr. Luis Eduardo Guzmán was not a member of ADIDA at the time of the incident. He was thus not involved in trade union activity.

(77) Luz Mery Valencia, member of ASEP, on 13 February 2003, in Putumayo:

Victim: Luz Mery Valencia Restrepo
 File No.: 2059
 Authority: Prosecutor's office 42, Puerto Asís section
 Offence: Homicide
 Organization: Member of ASEP
 Facts: Puerto Asís, 12 February 2003. The incident occurred on the outskirts of Puerto Asís, specifically in the San Nicolas district, at the home of the deceased. At 7.30 a.m. she was about to leave to go shopping on her motorcycle when she was attacked with a firearm by two persons on a motorcycle, and she fell dead across the vehicle
 Stage: Preliminary – active

(78) Maritza Ortega Serrano, member of ADUCESAR, on 19 February 2003, by hired assassins in the Department of César:

Victim: Maritza Ortega del Toro
File No.: 151301
Facts: Valledupar, 19 February 2003
Authority: Prosecutor's office 14, Valledupar homicide unit
Stage: Preliminary – active
Organization: ADUCESAR
Motives: Unknown

(79) José Antonio Bohórquez Medina, member of FECODE-CUT, was abducted on 20 February 2003 and found dead three days later in the municipality of Albán, Cundinamarca:

Victim: Juan Antonio Bohórquez Medina
File No.: 10927
Authority: Prosecutor's office, Facatativá section
Stage: Preliminary – active
Organization: From the evidence gathered by the Prosecutor's Office, it was not possible to establish whether the deceased belonged to a trade union. However, the Cundinamarca Teachers' Association, ADEC, confirmed to the Human Rights Office in the Ministry of Social Protection that Mr. Juan Antonio was president of the union's Albán branch, Cundinamarca

(80) Fredy Perilla Montoya, SINTRAEMCALI activist, on 21 February 2003:

Facts: 21 February 2003, in Cali
File No.: 548541
Authority: Prosecutor's office 35, Cali section homicide unit
Stage: Preliminary – active
Motives: Crime of passion

(81) Rufino Maestre Gutiérrez, member of ADUCESAR, on 25 February 2003, by paramilitaries in the Department of César:

Victim: Rufino de Jesús Maestre Gutiérrez
Facts: Valledupar, 25 February 2003
Authority: Prosecutor's office 14, Valledupar homicide unit
File No.: 151549
Stage: Preliminary – active
Organization: Member but not activist of ADUCESAR

(82) Jairo Echavez Quintero, member of ADUCESAR, on 27 February 2003, by paramilitaries in the Department of César:

File No.: 0937
Facts: Copey, César, 27 February 2003
Authority: Prosecutor's office 25, Bosconia section, César
Stage: Preliminary – active
Organization: Member of ADUCESAR
Motives: Unknown

(83) Luis Alfonso Grisales Peláez, member of ASEDAR, on 7 March 2003, by paramilitaries in the Department of Arauca:

Facts: Municipality of Clarinetero, Arauca
 File No.: 24113
 Authority: Prosecutor's office 2, Arauca section
 Stage: Preliminary – active
 Organization: Arauca Teachers' Association (ASEDAR)

(84) Soraya Patricia Díaz, member of SER, on 12 March 2003, in Risaralda:

Facts: 13 March 2003 in Santa Sofía village estate, jurisdiction of the municipality of Quinchía
 Organization: Risaralda Teachers' Union (SER)
 Authority: Prosecutor's office 29, Quinchía section
 File No.: 1776
 Stage: Preliminary – active
 Motives: Personal incidents with members of the self-defence groups (AUC)

435. The Government reports that of the above 84 allegations by the complainant organizations, only in two cases – Marco Antonio Salazar Predo, member of SIMANA, murdered on 7 February 2002 and Francisco Isaías Cifuentes, member of ASOINCA, murdered on 26 April 2002 – could it be established that security measures were in the course of approval. The other persons were not registered with the Protection Programme at the time of their death and there are no records of that, since their cases had not been submitted directly or indirectly to the Programme because no threats had been reported.

Abductions and disappearances

(1) Augusto de Jesús Palacio Restrepo, official of the Glassworkers' Union of Colombia (SINTRAVIDRICOL-CUT) on the Medellín-Bogotá road, on 17 December 2002:

File No.: 647651
 Facts: Bridge over the Samana River, Santuario, Antioquia
 Authority: Special Prosecutor's office 6, Medellín
 Stage: Preliminary – active
 Organization: ELN
 Motives: Fishing expedition – they mistook him for another person with the same name

On checking, the Human Rights Office in the Ministry of Social Protection contacted the union and established that Mr. Augusto Palacio was working at the time and thus free. Mr. Palacio was interviewed and he clarified the events and said that he had indeed been deprived of his liberty for six days, from 16 December, the day of the abduction, to 21 December 2002, when he was released by members of the ELN who accepted that the abduction had been the result of a mistake, since they were looking for another person of the same name. Mr. Palacio said that his union activity had nothing to do with the incident, since he had never received any kind of threat or actively engaged in his union activity within the company where he works.

Mr. Augusto de Jesús Palacio Restrepo, SINTRAVIDRICOL official, has not received protection measures from the Ministry of the Interior and Justice Protection Programme.

Detentions

- (1) Nicodemo Luna, official of the Petroleum Industry Workers' Trade Union (USO) was detained on 18 December 2002, tortured and then transferred to Military Brigade No. 3, Cali.

The Attorney-General's Office reported that: "having reviewed the database of the Cali section directorate of prosecutions, no investigation into the facts was found". Further information is required to assess whether criminal prosecution is viable.

According to the information received from USO, Mr. Nicodemo Luna is retired and thus not a trade union official. Nevertheless, it was asked to provide information on his whereabouts so as to coordinate preventive security measures with the Ministry of the Interior and Justice and the National Police.

- (2) Hernando Hernández, secretary for international affairs of the Petroleum Industry Workers' Trade Union (USO) and ex vice-president of the Single Confederation of Workers (CUT). The Human Rights Unit in the Attorney-General's Office initiated Case No. 11278, in which he was supposed to have been present at shootings on various occasions, accused of links with guerrilla groups. These allegations have never been proved.

Mr. Hernando Hernández was detained on 15 January 2003. This investigation is being conducted by Human Rights Prosecutor 4 of the National Human Rights Department, File No. 1127B, now at the institution of judicial proceedings stage, for the offence of rebellion. By decision of 14 January 2002, the legal position of Mr. Hernando Hernández Pardo was resolved with his detention in custody for the offence of rebellion, which was converted to house arrest, subject to bail of five times the minimum wage. The investigation is currently in progress and active. On 15 May 2003, the Prosecutor's Office presented the indictment against Mr. Hernández. The proceedings are currently before Criminal Court 28 of the Bogotá circuit, at the trial stage. A preliminary hearing was set for 10 September 2003 for examination of evidence ordered by the judge.

According to the Ministry of the Interior and Justice Protection Programme, Mr. Hernando Hernández, USO official, currently has a personal scheme, consisting of an armoured vehicle, four bodyguards, one avantel radio and two mobile phones.

- (3) Nubia Esther González, official of the Sucre Farm Workers' Union (SINDAGRICULTORES), was detained by Counter-Guerrilla Group No. 1, Corozalquienes Brigade, in the Don Gabriel area, municipality of Morroa, Sucre, on 18 January:

File No.:	30132
Authority:	Prosecutor's office 16, Sincelejo section attached to the criminal circuit judges and the economic crimes unit based in Sincelejo
Accused:	Nubia Esther González Payares and others
Facts:	San Gabriel settlement (corregimiento) (Sucre), jurisdiction of the municipality of Ovejas, 18 January 2003, at 9 a.m.
Status:	By decision of 27 January 2003, the legal situation was decided, and the office refused to order the arrest of the accused and ordered her immediate release. Evidence is still being examined
Violation:	Article 467, Law No. 599 of 2000, defining the offence of rebellion

Accused: Nubia Esther González Payares and another (Jorge Gómez who was not connected with the proceedings and was released)

In the specific case of Nubia Esther González, SINDAGRICULTORES official, no request for protection was submitted. The officials of this union currently have eight mobile phones, recommended by the Risk Assessment and Control Committee (CRER) as a security measure.

- (4) Policarpo Camacho and Gloria Holguín, officials of the Farm Workers' Union of the municipality of Calarcá, presented in the media as owners of a FARC clinic:

The investigation was conducted by the Manizales section directorate of prosecutions, Prosecutor's Office 20, Manual URI section, File No. 743681591. The proceedings are currently at the summary stage, the accused being Policarpo Camacho and Gloria Holguín, held in custody for the offence of rebellion, a decision confirmed by the appeal court. The proceedings are still active.

In the case of Ms. Gloria Acevedo Holguín, official of the Farm Workers' Union of the municipality of Calarcá, the Protection Programme requested a risk assessment by the police, and the petitioners were asked to obtain the support of the trade union and its comments on the facts, which have not been provided yet. The lady concerned has not been a beneficiary of measures provided by the Programme.

Policarpo Camacho, official of the Farm Workers' Union of the municipality of Calarcá, has not been a beneficiary of measures provided by the Protection Programme and has not submitted a formal request.

- (5) Rafael Palencia Hernández, active member of SINTRAMINTRABAJO, was detained in the SIJIN in Cartagena on 16 February 2003 accused of belonging to the urban militias of the insurgency and of planning possible terrorist acts.

On 28 April 2003, the Attorney-General's Office stated the following:

Charged with the offence of rebellion: Robinson Beltrán Herrera, member of CORELCA (now ELECTROCOSTA), Rafael Palencia Hernández, member of the workers' union of the former Ministry of Labour; investigation File No. 115275; Prosecutor's Office conducting the investigation: Prosecutor's Office 35, Cartagena economic crimes unit; offence: rebellion; Rafael Palencia Hernández was arrested in a raid carried out on 18 February 2003 and Robinson Beltrán Herrera on 22 February in Manizales.

On 31 August, in reply to an inquiry by the Ministry of Social Protection, the Attorney-General's Office provided the following updated information on the case:

Accused: Robinson Beltrán Herrera (member of CORELCA) and Rafael Palencia Hernández (member of the workers' union of the former Ministry of Labour)

File No.: 115275

Authority: Prosecutor's office 35, economic crimes unit

Facts: 11 December 2002, El Campestre district, Cartagena

Offence: Rebellion

Status: Institution of judicial proceedings. By decision of 12 August 2003, the merits of the case against the accused were assessed

Rafael Palencia Hernández was arrested at his home in a raid carried out by the URI on 18 February 2003.

Finally, it should be noted that Mr. Rafael Palencia Hernández, a member of SINTRAMINTRABAJO, is not registered with the Protection Programme administered by the Ministry of the Interior and Justice.

- (6) Robinson Beltrán Herrera, president of the Workers' Union of the Autonomous Atlantic Coast Regional Corporation (SINTRAELECOL-CORELCA) on 22 February 2003 in the City of Manizales.

On 28 April 2003, the Attorney-General's Office stated the following:

Charged with the offence of rebellion: Robinson Beltrán Herrera, member of CORELCA (now ELECTROCOSTA), Rafael Palencia Hernández, member of the workers' union of the former Ministry of Labour; Investigation File No. 115275; Prosecutor's Office conducting the investigation: Prosecutor's Office 35, Cartagena economic crimes unit; offence: rebellion; Robinson Beltrán Herrera was arrested on 22 February 2003 in Manizales.

On 31 August, in reply to an inquiry by the Ministry of Social Protection, the Attorney-General's Office provided the following updated information on the case:

Accused:	Robinson Beltrán Herrera (member of CORELCA) and Rafael Palencia Hernández (member of the workers' union of the former Ministry of Labour)
File No.:	115275
Authority:	Prosecutor's office 35, economic crimes unit
Facts:	11 December 2002, El Campestre district, Cartagena
Offence:	Rebellion
Status:	Institution of judicial proceedings. By decision of 12 August 2003, the merits of the case against the accused were assessed

Robinson Beltrán Herrera was arrested on 22 February 2003 at the La Nubia Airport in Manizales.

Finally, Mr. Robinson Beltrán Herrera, a member of SINTRAELECOL-CORELCA, has not been a beneficiary of the Ministry of the Interior and Justice Protection Programme. Thus, pending the request for protection measures from the national SINTRAELECOL Office at the end of the preceding year, the Department of Administrative Security was asked to undertake a risk assessment study and the trade union was asked to provide confirmation of its support.

- (7) Germán Robinson López, teacher at the "Ciudad de Ipiales" comprehensive school in the municipality of Ipiales, Department of Nariño, member of SIMANA, charged with the offences of rebellion and terrorism on 27 February 2003.

Charged with the offences of rebellion and terrorism. The situation was fully reported by the Nariño Teachers' Union (SIMANA). On 28 April, the Attorney-General's Office provided the following statement: offence: drug trafficking; accused: Germán Robinson López Morillo (at liberty) member of SIMANA; File or Investigation No. 741; Prosecutor's Office conducting the investigation: Prosecutor's Office 25, Ipiales section; the Prosecutor's Office did not hold him in custody, pending closure of the investigation.

Finally, Mr. Germán Robinson López, a member of SIMANA, is not registered with the Ministry of the Interior and Justice Protection Programme.

- (8) Teresa Báez Rodríguez, president of SINTRACLINICAS, Bucaramanga. Her house was raided and she was arrested and charged with rebellion on 5 March 2003. The detention of the trade union official was ordered by the Prosecutor's Office, on the grounds that she was involved in the offence of rebellion, after a raid on her house. In addition, about a year ago, when she was leaving a meeting at the then Ministry of Labour in Bucaramanga, several persons tried to abduct her. On 20 February last, she was the victim of a personal attack. Prosecutor's office 8, Bucaramanga section is conducting the Investigation No. 170479, against Teresa Báez. She is president of the trade union SINTRACLINICAS and an activist in the Single Confederation of Workers (CUT), Santander branch and was arrested during a raid on 5 March 2003 in the City of Bucaramanga, Santander, for the offence of rebellion.

On this occasion, the Government provides further information on the various proceedings for threats and other criminal acts with which Ms. Teresa Báez is somehow connected:

Victim:	Teresa Báez Rodríguez
Facts:	Bucaramanga, 20 March 2002
Offence:	Threats
File No.:	126266
Authority:	Prosecutor's office 10, Bucaramanga section
Stage:	Preliminary – inhibitory decision of 18 March 2003

Victim:	Teresa Báez Rodríguez
Facts:	Bucaramanga, 29 April 2002
Offence:	Threats
File No.:	130588
Authority:	Prosecutor's office 2, Bucaramanga section
Stage:	Preliminary – inhibitory decision of 4 June 2003

Victim:	Teresa Báez Rodríguez
Facts:	Bucaramanga, 22 January 2003
Offence:	Slander
File No.:	165267
Authority:	Prosecutor's office 13, Bucaramanga section
Stage:	Preliminary – inhibitory decision of 24 June 2003

Finally, Ms. Teresa Báez Rodríguez, president of SINTRACLINICAS, Bucaramanga, is currently included in the collective scheme recommended by the Risk Assessment and Control Committee for members of the UP-PCC in that city.

Threats

- (1) Guillermo Rivera Plata, vice-president of the Farm Workers' Union (SINTRAINAGRO) who was formerly the beneficiary of a security scheme provided by the Government, but the protection has now been withdrawn.

Report on protection measures

- (1) Guillermo Rivera Plata, SINTRAINAGRO official was a beneficiary of measures under the Programme:
- by Decision 3 of 10 February 2000, a personal security scheme was approved;
 - by Decision 19 of 2001, Mr. Rivera's request for a provisional scheme was submitted, although, due to an accident, the vehicle was being repaired and the

bodyguards were incapacitated. The CRER recommended asking the DAS in Antioquia to check on the situation and request the repair of the vehicle to be done quickly;

- in the CRER meeting of 14 February 2003, the case was again submitted, because the vehicle was damaged. The CRER recommended a reassessment of the risk to Mr. Rivera, to request security measures from the National Police and to ask the DAS to expedite the repair of the vehicle;
- he had a vehicle (operational), two bodyguards and two weapons;
- he currently has a mobile phone.

(2) Gladis Barajas, president of the Graphic Reporters' Union, on 17 February 2003.

On 28 April 2003, the Attorney-General's Office stated: victim: Gladys Barajas Osorio; violation: threats; date, place and facts: 17 February 2003, in Bogotá, DC; File No. 676090; authority conducting the investigation: Prosecutor's Office 241, Bogotá section, attached the Personal Liberty Unit, at the preliminary stage, currently active. Ms. Gladys Barajas, president of the Graphic Reporters' Union, was provided with a protection measure, four national tickets and an international ticket, by the Ministry of the Interior and Justice Journalist Protection Programme, and is currently out of the country.

(3) Wilson Castro Padilla, member of SINALTRAINAL, on 22 February 2003.

After making the appropriate inquiries, the Attorney-General's Office reported that, regarding threats against SINALTRAINAL officials, the only recorded case was against Mr. Wilson Castro Padilla, as follows:

Victim:	Wilson Castro Padilla
Offence:	Threats
Date and place:	13 March 2003, in Cartagena
Section directorate:	Cartagena
Authority in charge:	Section Prosecutor's Office 39
File No.:	115265
Stage:	Preliminary
Current status:	Active
Organization:	SINALTRAINAL
Position:	Member

In addition, according to the Attorney-General's Office database, threats against Mr. Castro Padilla received on 2 January 2002 are being investigated by special Prosecutor's Office 3, Cartagena section directorate of prosecutions, File No. 85596, preliminary stage, active.

The Ministry of the Interior and Justice Protection Programme granted Mr. Wilson Castro Padilla six months' humanitarian assistance and national tickets. He currently has a personal security scheme (a car and two bodyguards).

(4) Alvaro Enrique Villamizar Mogollón, president of SINTRAUNICOL, Bucaramanga branch, Department of Santander, on 27 February 2003.

The Human Rights Office in the Ministry of Social Protection sent a written request on 11 April 2003 to the Attorney-General's Office requesting information about the incident. On 30 April, the Attorney-General's Office replied in letter No. 1140 as follows: "The Bucaramanga section directorate of prosecutions reports that the investigation into

threats received on 27 March 2003, File No. 104943, by special Prosecutor's Office 5, Bucaramanga, is at the preliminary stage. The complainant is Mr. Alvaro Enrique Villamizar and victims belonging to the UIS Workers' and Staff Union". In addition, on 31 August 2003, the Attorney-General's Office provided further information and reports that an investigation into aggravated illegal coercion of which Mr. Villamizar was the victim is in progress:

File No.	173147
Offence:	Aggravated illegal coercion
Authority:	Special Prosecutor's Office 6, Bucaramanga
Stage:	Preliminary – active
Organization:	SINTRAUNICOL branch president, Santander

Finally, Mr. Alvaro Enrique Villamizar Mogollón, president of SINTRAUNICOL, Bucaramanga branch, has a mobile phone provided by the Protection Programme. At its meeting of 26 May this year, the Risk Assessment and Control Committee recommended the allocation of land transport for himself and two other officials of the same union.

- (5) Roberto Borja Rubiano, official of FENASINTRAP, has already been moved to another department, on 5 March 2003.

The Ministry of the Interior and Justice reports that Mr. Borja Rubiano has an avante radio and mobile phone provided by the Ministry's Protection Programme, and that by Decision 38 of 1 March, he was provided with national tickets to remove him urgently from the risk area. By a decision of 5 March 2003, the Risk Assessment and Control Committee (CRER) recommended that he be granted humanitarian assistance for three months. In addition, in a communication of 31 March 2003, the Ministry of the Interior stated that: "Mr. Borja Rubiano is a beneficiary of this Protection Programme and as a temporary measure it was necessary to move him from the City of Barranquilla to the City of Bogotá last 2 March, because in the former city there was a level of risk assessed by the DAS as medium-medium." Thus the CRER approved the allocation of a personal protection scheme, which is now in force. By decision of 9 July 2003, the CRER recommended the granting of two additional months of humanitarian assistance. The national police was asked to take appropriate protection measures for Mr. Borja Rubiano's family in the City of Barranquilla.

The Ministry of Social Protection has approached the Electrocaribe company, where Mr. Borja Rubiano works for humanitarian arrangements, the granting of trade union leave, which they granted in the form of unpaid union leave.

On 21 July 2003, the Ministry of the Interior reported that the personal scheme for Roberto Borja Rubiano had been approved, consisting of a normal car, two weapons, two bullet-proof jackets and two bodyguards hired by the Department of Administrative Security. The scheme is ready for use in the City of Barranquilla. However, Mr. Borja, in a meeting on precautionary measures in the Chancellery on 21 July, said that he would not accept the scheme unless they assigned him two personal bodyguards, with an armoured vehicle and support weapons and communications for each bodyguard. At the same meeting, the Attorney-General's Office reported on current investigations into the death threats against Mr. Rubiano: the three investigations are: File No. 107928, conducted by Prosecutor's Office 21, Barranquilla section; File No. 135002, conducted by Prosecutor's Office 23, Barranquilla section; and File No. 149728, conducted by the Prosecutor's Office, Barranquilla section. The three investigations are active, at the preliminary stage, examination of evidence. It was also agreed that the three investigations conducted by the Barranquilla section directorate of prosecutions would be taken into account in the context of all cases of violation of the human rights of trade unionists to be pursued by lawyers

appointed by the Inter-Institutional Commission for the Promotion and Protection of Workers' Rights.

The Prosecutor's Office undertook to inquire with the National Directorate of Prosecutions whether the three investigations can be conducted by the same Prosecutor's Office for the sake of streamlining the proceedings, guarantees, etc.

Victims: Roberto Borja Rubiano and Armando José Moya Lengua
Offence: Threats
File No.: 135002
Authority: Prosecutor's office 23, Barranquilla section
Stage: Preliminary – active
Organization: President of FENASINTRAP

Victim: Roberto Borja Rubiano
Offence: Threats
File No.: 107928
Authority: Prosecutor's office 21, Barranquilla section
Stage: Preliminary – active
Organization: President of FENASINTRAP

Victim: Roberto Borja Rubiano
Offence: Threats
File No.: 149728
Authority: Prosecutor's office 24, Barranquilla section
Stage: Preliminary – active
Organization: President of FENASINTRAP

The Ministry of the Interior and Justice Protection Programme, to update the information requested by the Ministry of Social protection, reported in 2 September 2003 that the Programme granted Roberto Borja Rubiano, president of FENASINTRAP, national tickets to remove him from the risk area and allocated him five months of humanitarian assistance. The CRER recommended a personal security scheme, which was available from the DAS Barranquilla section, although he is temporarily in another city.

(6) Alexander López Maya, Martha Cecilia Gómez Reyes, former official of SINTRAEMCALI:

As an official of SINTRAEMCALI, Alexander López Maya was provided with security measures, and now has a personal security scheme (car, two bodyguards, support weapons, bullet-proof jackets) avantel radio and mobile phone communications.

Martha Cecilia Gómez Reyes was not a beneficiary of measures provided by the Ministry of the Interior and Justice Protection Programme. In that respect and taking into account the provisions of article 81 of Law No. 418 of 1997, extended by Law No. 782 of 2002, which describes the persons covered by the Programme, Ms. Reyes was asked to provide this office with the support of the union to which she belonged and the judicial proceedings concerning the facts which constituted the threat. In addition, the Department of Administrative Security was asked to carry out the corresponding risk assessment study.

Currently there are four investigations in progress into death threats received by Alexander López Maya and others:

Victims:	Alexander López Maya, Martha Cecilia Gómez, Robinsón Masso, Oscar Figueroa Pachongo, Giovanni Serrano
Facts:	1 May 2003
File No.:	580435
Authority:	Prosecutor's office 93, Personal Liberty and Guarantees Unit
Stage:	Preliminary – active
Victims:	Alexander López Maya, Martha Cecilia Gómez Reyes, Robinsón Masso, Oscar Figueroa Pachongo
Facts:	3 May 2003
File No.:	572008
Authority:	Prosecutor's office 29, Personal Liberty and Guarantees Unit
Stage:	Preliminary – active
Victims:	Alexander López Maya, Martha Cecilia Gómez Reyes, Robinsón Masso, Oscar Figueroa Pachongo
File No.:	566761
Authority:	Prosecutor's office 29, Personal Liberty and Guarantees Unit
Stage:	Preliminary – active

Finally, Prosecutor's Office 89, Cali section, Cali DSF, is conducting the investigation into threats against Alexander López Maya, File No. 356496, which is currently active. The completion of the investigation is awaited to determine the merits of the case. Two persons are connected with the investigation. Mr. López Maya was a candidate to the House of Representatives, ex president of SINTRAEMCALI and member of the executive board.

- (7) FECODE attaches a list of threatened members: Jairo Toro Figueroa, Luis Eduardo Patiño Loaiza, Marlene Rangel García, Carlos Alberto Angulo de la Cruz, Nazli Palomo, Rafael Alberto Ilías, Magda Ibony Moreno Ortiz, Olga Cecilia Merchán Moreno, Ana Deima Chate Rivera, Dalia Esther Florez Lozano, Gilma del Carmen Alarcón, Jorge Alirio Pinzón Ulloa, Rico Bohórquez Flor Teresa, Isaura Isabel Paniagua Chávez, Giovanni Botello Rodríguez, Luz Marina Pérez Quintero, Omar Andrade, Carlos Alberto Vallejo Mejía, Teresa Hernández Zambrano, María Elena Saavedra Rodríguez, Jairo Alberto Carvajal, Gladis Blanco Urrea, Oscar Eduardo Ramón Florez, Oscar Heno Gutiérrez.

The violent acts against the teaching profession have almost all been investigated by the State investigative agency and the following investigations into threats against members and leaders of the Colombian Teachers' Union (FECODE) are in progress:

Victim:	Giovanni Botello Rodríguez
File No.:	20241
Authority:	Cúcuta section directorate of prosecutions
Stage:	Preliminary – suspended
Organization:	FECODE
Victim:	Giovanni Botello Rodríguez
File No.:	44702
Authority:	Cúcuta section directorate of prosecutions
Stage:	Preliminary – active
Organization:	FECODE

Victim: Luz Marina Pérez Quintero
Offence: Threats
File No.: 56089
Authority: Cúcuta section directorate of prosecutions
Stage: Preliminary – active
Organization: FECODE

Victim: Gladis Blanco Urrea
File No.: 67975
Authority: Cúcuta section directorate of prosecutions
Stage: Institution of judicial proceedings – active
Organization: FECODE

Victims: Omar Andrade and Cecilia del Carmen Chapal
File No.: 1058
Authority: Prosecutor's office 36, La Unión section, Nariño
Stage: Preliminary – active
Organization: SIMANA

Victim: Jairo Toro Figueroa
File No.: 670786
Authority: Prosecutor's office 239, Bogotá section
Stage: Preliminary, proceedings received on 6 February 2003 and forwarded on 7 March to the municipality of Tame, Arauca, for reasons of territorial and functional jurisdiction

Victim: Rafael Arturo Ilías Muñoz
File No.: 672444
Authority: Prosecutor's office 239, Bogotá section
Stage: Preliminary, proceedings received on 11 February 2003 and forwarded on 13 March to the competent special Prosecutor's Offices Preliminary, proceedings received on 6 February 2003 and forwarded on 7 March to the municipality of Tame, Arauca, for reasons of territorial and functional jurisdiction

Victim: Teresa Hernández Zambrano
File No.: 691031
Authority: Prosecutor's office 240, Bogotá section
Stage: Preliminary – proceedings received on 15 May 2003. A hearing was called on 8 July and examination of evidence ordered

Victim: Teresa Hernández Zambrano
File No.: 707086
Authority: Prosecutor's office 246, Bogotá section
Stage: Preliminary

Victim: Teresa Hernández Zambrano
File No.: 673438
Authority: Prosecutor's office 328, Bogotá section
Stage: Preliminary

Victim: Jorge Alirio Pinzón Ulloa
File No.: 859032
Authority: Prosecutor's office 240, Bogotá section
Stage: Preliminary

Victim: Marlene Rangel García
File No.: 672484
Authority: Prosecutor's office 246, Bogotá section
Stage: Preliminary

Victim: Luis Eduardo Patiño Loaiza
File No.: 671825
Authority: Prosecutor's office 247, Bogotá section
Stage: Preliminary

Victim: Magda Ibony Moreno Ortiz
File No.: 892802
Authority: Prosecutor's office 247, Bogotá section
Stage: Preliminary

Victim: Magda Moreno
File No.: 673028
Offence: Threats
Authority: Prosecutor's office 243, Bogotá section
Stage: Preliminary. By a decision of 18 February 2003, it was ordered to be transferred, for reasons of jurisdiction, to the City of Yopal, Casanare

Victim: Ana Deima Chate Rivera
File No.: 678996
Authority: Prosecutor's office 247, Bogotá section
Stage: Preliminary

Victim: Carlos Alberto Angulo de la Cruz
File No.: 672446
Authority: Prosecutor's office 328, Bogotá section
Stage: Preliminary

Victim: Jairo Alberto Carvajal
Offence: Threats
Facts: Bucaramanga, 26 April 2001
File No.: 102441
Authority: Prosecutor's office 1, Bogotá section
Stage: Preliminary – inactive

Victim: Oscar Eduardo Ramón Florez
Offence: Threats
File No.: 671694
Authority: Prosecutor's office 242, Bogotá section
Stage: Preliminary. For reasons of jurisdiction, the proceedings were transferred to the special Prosecutor's Office , Bogotá, on 18 February 2003

Victim: Gilda del Carmen Alarcón
 Offence: Threats
 File No.: 672447
 Authority: Prosecutor's office 243, Bogotá section
 Stage: Preliminary – by a resolution in Apia on 28 May 2003, the proceedings were transferred to the assignation office in Barranquilla, for reasons of jurisdiction

Victim: Nazli Palomo
 Offence: Threats
 File No.: 686823
 Authority: Prosecutor's office 243, Bogotá section
 Stage: Preliminary – by a resolution in Apia on 28 May 2003, the proceedings were transferred to the assignation office in Barranquilla, for reasons of jurisdiction

- 436.** The Ministry of the Interior and Justice, Protection Programme informed the Human Rights Office in the Ministry of Social Protection that the following teacher members of FECODE were the recipients of protection measures provided by the Programme: Luis Eduardo Patiño Loaiza, Nazli Palomo, Ana Denma Crate Rivera, Usaura Isabel Paniagua, Giovanni Botello Rodríguez, Omar Andrade, Teresa Hernández Zambrano and Oscar Eduardo Ramón Florez.
- 437.** The cases of Jairo Toro Figueroa, Marlene Rancel García, Carlos Alberto Angulo de la Cruz, Rafael Alberto Ilías, Magda Ibony Moreno Ortiz, Olga Merchan Moreno, Gilma del Carmen Alarcón, Jorge Alirio Pinzón Ulloa, Luz Marina Pérez Quintero, María Elena Saavedra Rodríguez, Gladis Blanco Urrea and Oscar Henao Gutiérrez are awaiting consideration by the Risk Assessment and Control Committee, and in all cases, the Department of Administrative Security (DAS) was asked to carry out the respective risk assessment studies.
- 438.** Teacher Carlos Alberto Vallejo Mejía is the husband of Teresa Hernández Zambrano, who was a beneficiary of measures under the Programme, such as humanitarian assistance and national tickets, which cover her basic family nucleus.
- 439.** As regards the cases of teachers Dalia Esther Florez Lozano, Flor Teresa Rico Bohórquez and Jairo Alberto Carvajal, there is no record of any requests for protection.

Other acts of violence

- (1) Nicolas Hernández Cabrera, general secretary of FENSUAGRO and his bodyguard Jaime Rodríguez were assaulted in the Department of Tolima on 20 December 2003. The Government notes that he was the victim of an assault on 20 December 2002, in Chaparral, Tolima. The Attorney-General's Office reported that the investigation into the rape, assault, ordinary and grievous bodily harm which occurred at Chaparral, Tolima, on 20 December 2002 is being conducted by Prosecutor's Office 28, Chaparral section, Ibagué section directorate. The investigation is at the preliminary stage, currently active. The Ministry of the Interior and Justice, Protection Programme reported that Nicolas Hernández Cabrera, general secretary of FENSUAGRO currently has a personal security scheme provided by the Programme (car and two bodyguards) and he was also provided with a mobile phone.
- (2) On 16 December 2002, in the municipality of Saravena, Department of Arauca, several officials of the Workers' Union of the Saravena Community Water and

Sewerage Company were detained and after several hours of physical and verbal abuse were set free. Members of the same union were detained at 5.10 p.m. on 16 December 2002, when they were getting ready to leave work. Unknown persons intercepted them and took them to the road leading to the “Bojaba Beach” estate, in the municipality of Saravena, Arauca, where after three hours of physical and verbal abuse, they were released. The Attorney-General’s Office reported that after carrying out the respective inquiries, it was concluded that the offence was one of rape, ordinary and grievous bodily harm.

Date and place: La Pavita estate in the municipality of Saravena, Arauca
 Authority in charge: Section Prosecutor’s office, municipality of Saravena, Cúcuta section directorate of prosecutions
 File No.: 982
 Stage: Institution of judicial proceedings
 Victim: Eloisa Monterrey, wife of the social leader
 Authority: Section Prosecutor’s office, municipality of Saravena
 Current status: Active – decision of preclusion dated 19 August 2003 against José Yesid Barajas Gómez and Rafael Buelvas Peinado, for ordinary and grievous bodily harm and rape. At the time, the accused were acting as volunteer soldiers enrolled in mechanized group No. 18 Reweiz Pizarro, Saravena. The decision is currently being notified

- (3) Attempted murder of on Elber Alberto Granja, president of the Community Action Board of the municipality of Vijes, Valle del Cauca when an unknown person shot at him on a number of occasions in February 2003.

Elber Alberto Granja is not at present a trade union official but he has an avantel radio provided by the Programme, which was supplied to him as a trade unionist.

Offence: Attempted homicide
 File No.: 185449
 Authority: Prosecutor’s office 153, Vijes section
 Stage: Institution of judicial proceedings – indictment
 Organization: To be established

- (4) Takeover by the military of the Barrancabermeja refinery, preventing the entry of all the officials of the Petroleum Industry Workers’ Union (USO), who were later attacked with teargas, rubber bullets and shots, resulting in nine persons wounded and fifteen arrested. The Government states that the Barrancabermeja refinery was taken over by the military to prevent the entry of officials of the Petroleum Industry Workers’ Union (USO) who launched a brutal assault. In this respect, the Attorney-General’s Office stated that “preliminary investigations are being conducted by Prosecutor’s Office 3, Barrancabermeja section, File No. 29128, into the offence of sabotage by ECOPETROL employees. On the day of the incidents, ten persons were arrested, eight of whom have been released and two of whom were charged and are being questioned in relation to the abovementioned offence. (Their names are withheld because it is information restricted to the summary proceedings)”.

According to more recent information provided on 4 September 2003 by the Attorney-General's Office, the investigation is proceeding as follows:

File No.:	174145
Status:	Institution of judicial proceedings
Authority:	Prosecutor's office 3, Barrancabermeja section
Offence:	Sabotage

Two persons have been questioned, and released because the offence does not warrant remand in custody and at the moment the evidence is being examined. No one is in custody at present.

- 440.** On 13 March 2003, students and workers from the University of Nariño held a peaceful demonstration outside the main university building. The demonstration was brutally broken up by 150 police officers who then broke into the university campus and destroyed the laboratory, classrooms and offices, beating and unjustly arresting the students. The rector of the university and representatives of the ombudsman were present to ensure respect for human rights. They were also brutally assaulted. The Attorney-General's Office reported that no complaint was made about the incidents and therefore no investigation is in progress.

Request for protection

- 441.** The ICFTU sent a communication in which it states that it knows of 10 SINTRAUNICOL officials who have been declared military targets by outlawed armed groups, four of whom are officials in the University of Valle: Carlos Arbey González Quintero, José Adonai Munera Ortega, Luis Carlos Moreira Roldán and Jesús Antonio Luna, for whom protection is requested. The following is the report obtained thanks to information supplied by the Human Rights Directorate and the Protection programme of the Ministry of the Interior and Justice on physical measures provided to the members of SINTRAUNICOL, who are currently beneficiaries of the programme and under its protection:

- Carlos Abbey González Quintero is a beneficiary of the programme and currently has a personal security scheme, consisting of a normal vehicle and two bodyguards. He was also provided with a mobile phone;
- José Adonar Munera Ortega, as national official of SINTRAUNICOL, is covered by the trade union's collective scheme. He also has a mobile phone;
- Luis Carlos Moreira Roldán: a risk assessment was requested from the Department of Administrative Security and the national police were requested to take preventive measures for him and the other members of the SINTRAUNICOL Cali branch subcommittee. The Programme approved a mobile phone for him;
- Jesús Antonio González Luna is currently out of the country, with international tickets provided by the Programme. In addition, while he was working in the country, he was the beneficiary of security measures such as humanitarian assistance, national tickets, means of communication as well as a personal scheme for his protection.

- 442.** In its communication of 17 November 2003, the Government sent its observations on some of the acts of violence described in the section "New allegations" in this case.

Murders

- (1) Marco Tulio Díaz, on 15 July 2003, in the City of Cúcuta, North Santander. The Government states that it is aware of the complaint and states the following: "(...) the

investigation is being conducted by the National Human Rights and IHL Unit Cúcuta office, North Santander, File No. 1745, preliminary stage, active. Mr. Díaz Hernández was president of the ECOPETROL-ASONAJUB Pensioners' Association. (...) Mr. Andrés Galvia, president of the ECOPETROL S.A. pensioners' association stated on 22 July that the association did not engage in trade union activity because it was for pensioners and thus had no employment relationship with the company. He also stated that Mr. Marco Tulio Díaz was 53 years old and it was not known whether he had been threatened for personal reasons or connected with his work. The murder occurred when he was at his mother's house in the Garden City estate in Cúcuta, where a man was lying in wait for him, entered the house and shot him twice. (...) Mr. Marco Tulio Díaz had been general secretary and treasurer of the Pensioners' Association and the last office he had held was that of president. But he was not a trade union member in ECOPETROL S.A. at the time of the incident (...)"

- (2) José Evelio Alvarez Bedoya, on 15 July 2003 in the municipality of Santa Bárbara, Antioquia. The Government states that it is aware of the complaint and states the following: "(...) the investigation is being conducted by the Prosecutor's Office , Santa Bárbara section, Antioquia, File No. 2296, preliminary stage, active. The motives are unknown but are being investigated by the competent authority. He was a worker in Cementos El Cairo and a member of SUTIMAC, Santa Bárbara branch and an outstanding union activist. Mr. Alvarez Bedoya was in the municipality of Santa Bárbara on his day off and a few blocks from the union office, when several armed persons fired several shots at him, killing him (...)"
- (3) Alberto Márquez, SINTRASGRITOL member, on 15 July 2003 in Natagaima, Tolima. The Government states that it is aware of the complaint and states the following: "(...) the investigation is being conducted by Ibagué special Prosecutor's Office 3, Santa Bárbara section, Antioquia, File No. 129390, preliminary stage, active. Motives unknown. They entered the house at 1.30 p.m., killed his bodyguard, Castiblanco Franco Nelson (an officer in the DAS escort service) and his daughter was wounded. According to Mr. Ever García, member of the union's executive board, Mr. Márquez was an active member of the Natagaima union which he had to leave because of threats. Thanks to police protection, he was able to return to Natagaima where he was later murdered. The president of SINTRAGRITOL, José Jesús Buriticá confirmed that at the time he was murdered, Mr. Márquez was a member of the Farm Union and was an official and agrarian activist and a native of the Department of Tolima (...)"

Threats

- (1) Victor Jaimes, Mauricio Alvarez and Elkin Menco, members of the Petroleum Industry Workers' Union (USO). The Government states that it is aware of the complaint and states the following: "(...) investigations are currently in progress into the facts: Prosecutor's Office 8, File No. 189,350, is investigating the threats received by Mauricio Alvarez Gómez on 15 August 2003 when he received a death notice, preliminary stage, active (...)"

Attempted murder

- (1) Juan Carlos Galvis, vice-president of SINALTRAINAL, Barrancabermeja, on 22 August 2003 in the City of Barrancabermeja, Santander. The Government states that it is aware of the complaint and states the following: "(...) on 22 August 2003, Mr. Juan Carlos Galvis was travelling in an armoured vehicle provided by the Ministry of the Interior and Justice at the junction of 19th avenue and 47th street in the city and was attacked by two persons riding a motorcycle and who fired several shots, without wounding him (...)" The complaint was made at 12 noon on

25 August by the Barrancabermeja ombudsman, based on the victims' statements. The same day, judicial proceedings were begun by the competent investigative authority. The investigation is being conducted by Prosecutor's Office 8, Barrancabermeja section, Santander section directorate of prosecutions, preliminary stage, currently active. The national police informed the Human Rights Office in the Ministry of Social protection that "in reply to your telephone inquiry today to our office, seeking information on the attempted murder of Mr. Juan Carlos Galvis, in the City of Barrancabermeja, I can inform you that the Special Operations Command of Magdalena Medio reports in letter No. 672 as follows: "(...) with reference to the incidents on 22 August 2003 at 12.10 p.m. in 47th street between 19th and 20th avenues in the Buenos Aires district, involving Mr. Juan Carlos Galvis, president of the CUT in Barrancabermeja and vice-president of SINALTRAINAL, as he was travelling in the vehicle assigned by the Ministry of the Interior accompanied by his two bodyguards, they were intercepted by two persons riding an RX-115 motorcycle, no other details known, one of them standing on the footrests firing at the vehicle. The bodyguards, who are members of the DAS, fired five shots at the attackers who were a few metres away, there were no injuries to the trade union official, his bodyguards or the attackers, and there was no damage to the vehicle in which he was travelling". Mr. Juan Carlos Galvis has a security scheme consisting of two bodyguards assigned by the DAS in agreement with the Ministry of the Interior and he has an armoured vehicle, two 9mm pistols, an UZI machine pistol and an avantel radio. The official also has an avantel radio, a mobile phone and a revolver". "The official has repeatedly complained to international and national NGOs about alleged threats and armed attacks against him. However the national police have carried out inquiries but have not obtained any information to confirm the complaints. (...) As preventive measures, constant random patrols have been carried in the neighbourhood of Mr. Juan Carlos Galvis' house at No. 25-30, 47th street, Recreo district, and security measures have been maintained around his family's home at No. 76-15, 18th avenue A, 20th January District, and constant communication has been maintained with the official, thus providing prompt and precise information on threats or intimidation against him". "The victim was provided with a self-protection manual, with precise measures to be taken during his activities". The Department of Administrative Security (DAS) provided confidential information and expressed the following considerations.

The inquiries into the incidents of 22 August this year near the Santo Thomas premises in the Buenos Aires district of the city, at the junction of 47th street and 19th avenues, where an exchange of shots was heard, lead to the following conclusions:

- (1) The incident and its occurrence was a matter of chance, since it was a typical criminal act by a common criminal against citizens who minutes before had cashed a cheque for three million pesos at the Bancafe bank, just as, by coincidence, the abovementioned Toyota Prado estate, registration number OBF 304, assigned for the protection of CUT president Juan Carlos Galvis, was passing. They immediately observed the incident occurring yards away from them, taking immediate action on seeing the shots fired by the criminals at the victims, and fired their weapons in the air. This caused the attackers to drive off on a motorcycle, and escape, helmets closed, firing the weapon they had used in the crime.
- (2) The incident was a matter of chance and was at no time an attempted murder as originally claimed by Mr. Juan Carlos Galvis and his bodyguards, Mr. Galvis' opinion being that it was presumably linked to his current office and union membership.
- (3) As a result of the inquiries and the above, the explanation of the attempt on the life of Mr. Juan Carlos Galvis is wholly discredited, since the inquiries made and recorded in

this report show that it was an attack by common criminals against Mr. José Libardo Santos Ardila, in which they robbed him of the sum of three million pesos in cash.

It should be noted that in one part of the statement taken from Mr. José Libardo Santos Ardila, it is stated that moments after the incidents and when the car had set off in pursuit of the persons riding the black RX motorcycle, the men in the vehicle returned to the scene of the incident and asked Mr. Santos Ardila about the reasons for the incident. Mr. Santos Ardila told them what had happened. We do not understand why when the bodyguards and Mr. Galvis knew the true facts, they told the DAS and the Prosecutor's Office a different version.

Information relating to Appendix I of the Committee's 331st report (alleged acts of violence against trade union officials or members up to the Committee's meeting of March 2003 for which the Government has not sent its observations or has not reported the initiation of investigations or judicial procedures), in particular where it considers the information supplied by the complainants insufficient

443. The Government sends information on the following complaints contained in Appendix I

Murders

(1) Edison Ariel, on 17 October 2000, member of SINTRAINAGRO:

The section directorates of prosecutions in the country report that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(2) Francisco Espadín Medina, member of SINTRAINAGRO, on 7 September 2000, in the Municipality of Turbo:

The Antioquia section directorate of prosecutions reports that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required in order to assess whether criminal proceedings are viable.

(3) Ricardo Florez, member of SINTRAPALMA, 8 January 2001:

The section directorates of prosecutions in the country report that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

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

The Bucaramanga section directorate of prosecutions reports that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information

system (SIJUF), there is no investigation in progress concerning this murder. Further information is required in order to assess whether criminal proceedings are viable.

(5) Alberto Pedroza Lozada, 22 March 2001:

After consulting the Prosecutor's Offices in the directorates and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

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

The Cali section directorate of prosecutions reports that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(7) Arturo Escalante Moros, member of USO, disappeared on 27 September and found dead on 19 October 2001:

Offence:	Aggravated homicide
Facts:	Vía Las Lajas, Tibú, La Gabarra, North Santander, disappeared on 27 September and found dead on 16 October 2001
Authority:	Special Prosecutor's Office 3, Cúcuta, terrorism unit
Stage:	Preliminary – inhibitory from 29 December 2002

(8) Armando Buitrago Moreno, member of the National Association of Officials and Employees of the Judicial Branch (ASONAL), 6 June 2001:

The section directorates of prosecutions in the country report that having consulted each of the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(9) Julián Ricardo Muñoz, member of the National Association of Officials and Employees of the Judicial Branch (ASONAL), 6 June 2001, in Bogotá:

On the investigation into the murder of Mr. Julián Ricardo Muñoz, the Prosecutor's Office reported that "(...) the file number of the investigation is 53878; special Prosecutor's Office 15, Bogotá terrorism unit, is conducting the investigation, at the preliminary stage, active. However, the Prosecutor's Office notes that Mr. Muñoz was an investigator in CTI 06 of the Judicial Branch, but his connection with the union ASONAL, has yet to be established (...)".

(10) Eduardo Edilio Alvarez Escudelo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 2 July 2001, in Antioquia, by guerrilla forces:

The Antioquia section directorate of prosecutions reports that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further

information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

- (11) Prasmacio Arroyo, member of the Magdalena Teachers' Union (SINTRASMAG), on 26 July 2001, in Magdalena:

The Santa Marta section directorate of prosecutions reports that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

- (12) César Bedoya Ortiz, activist of the University Teachers' Association (ASPU), on 16 August 2001, in Bolívar:

Offence: Homicide
 Facts: The victim's body was found on 27 August 2001 in the neighbourhood of Carmen del Bolívar
 File No.: 3.442
 Authority: Prosecutor's office 43, Carmen del Bolívar section
 Stage: Preliminary – active

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

“Dr Arango was working as Administrative and Finance Director, Pereira section, at the time of his death by natural causes (cardiac arrest) on 24 August 2001. On 7 February 2003, a letter signed by the vice-president of the National Association of Officials and Employees of the Judicial Branch, Luis Fernando Otalvaro Calle, stating that Mr. César Arango Mejía was not a member of ASONAL JUDICIAL”.

The Prosecutor's Office also reconfirmed last 30 August 2003 the following:

Victim: César Augusto Arango Mejía
 Organization: National Association of Civil Servants and Judicial Employees (ASONAL)
 Authority: The Pereira section directorate of prosecutions reports that the death of Dr César Augusto Arango Mejía was due to natural causes (heart attack) in Apia, Risaralda, on 24 August 2001 while he was in his office at the Pereira Directorate of Administration and Finance, of which he was the head. Consequently, no investigation is being conducted into the matter and the Government therefore requests that the complaint should be withdrawn from Case No. 1787

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

Facts: 30 September 2001
 File No.: 5479
 Authority: Prosecutor's office 39, Buenaventura section
 Stage: Preliminary – inhibitory
 Organization: National Union of Cargo Handlers in Maritime Ports
 Motives: Unknown

(15) Milena Pereira Plata, ASINORTH, on 30 October 2001, in Santander, by the FARC:

The Bucaramanga section directorate of prosecutions reports that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

In addition, the president of the North Santander Teachers' Association (ASINORT) informed the Human Rights Office in the Ministry of Social Protection in letter No. 107 of 28 May 2003 that "with reference to your letter of 14 May 2003, requesting information about the murder of Ms. Milena Pereira Plata, we must inform you that after checking the union's files, there is no relationship with that lady. We also requested information from the FERD news office and she was not registered there as a teacher, either. We should also mention that the present executive board of ASINORT took office on 17 January this year and we have no knowledge of the matter concerning which your office seeks information". In the light of the foregoing, therefore, the Government requests that this complaint should be withdrawn from Case No. 1787 because it does not concern a violation against union members or leaders.

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

The Santa Marta section directorate of prosecutions reports that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(17) Eliécer Orozco, FENSUAGRO, on 11 November 2001, in Ciénaga, by paramilitaries:

The Santa Marta section directorate of prosecutions reports that having consulted the Prosecutor's Offices in the section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(18) María Leida Montoya, activist of the Antioquia Teachers' Association, on 30 November 2001, in Antioquia:

Facts:	Medellín, 30 November 2001
File No.:	502,247
Victim:	María Aleida Diez Montoya
Authority:	Prosecutor's office 112, Medellín section
Stage:	Preliminary – suspended
Organization:	Unknown
Motives:	To be established

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

The Tunja section directorate of prosecutions reports that according to information received from the various Prosecutor's Offices in the section, there is no investigation in progress concerning this matter. The prosecution service judicial information system (SIJUF) was also reviewed, but no mention was found.

- (20) Alberto Torres, member of the Antioquia Teachers' Association (ADIDA), on 12 December 2001, in Antioquia:

The Medellín section directorate of prosecutions reports that having consulted the Prosecutor's Offices in the section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

- (21) Adolfo Flórez Rico, activist of the National Union of Workers in the Construction Industry (SINDICONS), on 7 February 2002, in Antioquia, by paramilitaries:

The Medellín section directorate of prosecutions reports that having consulted the Prosecutor's Offices in the section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

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

The Ibagué section directorate of prosecutions reports that having consulted the Prosecutor's Offices in the section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

- (23) Oswaldo Meneses Jiménez, ASEINPEC, on 15 February 2002, in Tolima, by paramilitaries:

The Ibagué section directorate of prosecutions reports that having consulted the Prosecutor's Offices in the section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

- (24) Marcos Antonio Beltrán, activist of SUTEV, on 1 March 2002, in Valle del Cauca:

Facts:	11 March 2002 in Tenerife, rural area in the municipality of Palmira, Valle
Victims:	Marcos Antonio Beltrán Banderas and Alexander Amaya Bueno
File No.:	518367
Authority:	Special Prosecutor's office 5, Cali
Stage:	Preliminary – active
Organization:	He was a union leader of SUTEV, the Valle Single Teachers' Union, confirmed by the union's human rights committee, Ms. Ana Milena Ortiz

(25) Jorge Alberto Alvarez, member of SUTIMAC, on 6 August 2001 in the outskirts of Santa Bárbara:

Victim: Jorge Alberto Alvarez Vélez
File No.: 1702
Authority: Prosecutor's office, Santa Barbara section
Stage: Preliminary – suspended
Organization: SUTIMAC

(26) César Gómez, President of the Pamplona Subcommittee of the National Union of University Workers of Colombia (SINTRAUNICOL), on 5 September 2002, in the municipality of Pamplona, Department of North Santander:

File No.: 49553
Authority: Cúcuta section directorate of prosecutions
Stage: Preliminary – active
Organization: SINTRAUNICOL

(27) Miguel Lora Gómez, member of the executive board of the Confederation of Workers of Colombia (CTC) on 9 September 2002:

File No.: 038 bis
Offence: Homicide
Facts: Maicao, Guajira, 11 September 2002
Authority: Prosecutor's office 001, Maicao section
Stage: Institution of judicial proceedings – active, a person has been arrested
Organization: It does not appear from the proceedings that the victim belonged to a trade union. However, the president of the Confederation of Workers of Colombia, Mr. Apecides Alvis stated publicly that Mr. Miguel Lora Gómez was a member of the national executive board of the CTC and founder of the Union of Travelling Salesmen and Street Vendors of the municipality of Maicao (Guajira)
Motives: Unknown

Abductions and disappearances

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

The Cali section directorate of prosecutions reports that having consulted the Prosecutor's Offices in the section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required in order to assess whether criminal proceedings are viable.

(2) Marco Tulio Agudero Rivera, ASONAL-CUT, in the municipality of Cocorna, on 5 October 2001:

Victim: Marco Tulio Agudero Rivera
Offence: Abduction
File No.: 547
Authority: Special Prosecutor's office 53, Oriente district (gaula)

Stage: Preliminary
 Organization: National Association of Officials and Employees of the Judicial Branch (ASONAL-CUT)

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

The section directorates of prosecutions in the country report that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning this murder. Further information is required in order to assess whether criminal proceedings are viable.

- (4) Victor Manuel Jiménez Frutos, Vice-President of the Agricultural Workers' Union of the Department of Atlántico (SINTRAGRICOLAS-FENSUAGRO-CUT), disappeared on 22 October 2002, in the municipality of Ponedera, Department of Atlántico:

“(...) Mr. Victor Manuel Jiménez Fruto, Vice-President of the Agricultural Workers' Union of the Department of Atlántico (SINTRAGRICOLAS-FENSUAGRO-CUT), had replaced Saúl Colpas Castro, and disappeared on 22 October 2002 in the municipality of Ponedera, Department of Atlántico. The Human Rights Office in the Ministry of Social Protection sent letter No. DH 0080 of 29 January to Dr David Martínez Atencia, prosecutor attached to the criminal court, Barranquilla Regional Directorate and letter DH 075 of 28 January to Dr Genel Fernández, Director of the National Human Rights and IHL Unit in the Attorney-General's Office, with a view to investigating the abovementioned matter. Thus, the Barranquilla prosecutor attached to the criminal judges of the special circuit replied to our DH 080 of 28 January 2003 by letter No. 138GPR. Dr Gloria Palencia Rojas, technical section II in the Barranquilla Prosecutor's Office replied as follows: “(...) indeed in this office, special Prosecutor's Office 2, a preliminary investigation is being conducted, File No. 139121, into the disappearance of Mr. Victor Manuel Jiménez Fruto. It should be noted that by a decision of 5 November 2002, the preliminary investigation was ordered, and certain proceedings were also ordered, including instructing the CTI in this city to undertake intelligence operations to establish the full facts about the disappearance of Mr. Victor Manuel Jiménez Fruto. The preliminary investigation by the CTI was attached – AIP No. 642 of 22 November 2002. It should be noted that among the evidence relating to the investigation it was not possible to establish that Mr. Jiménez Fruto had been murdered. In addition, by a decision of 18 February, further evidence was ordered, including receiving a sworn statement from an official of the Committee for Solidarity with political prisoners, a town councillor and inhabitants of the municipality of Ponedera (...)”.

The Government takes the opportunity to reiterate information on this matter:

Offence: Forced disappearance
 File No.: 139121
 Authority: Prosecutor's office 32, Barranquilla section
 Stage: Preliminary – active
 Organization: Vice-president of SINTRAGRICOLA

- (5) Ramón Alzate, Javier Agudelo, Jhon Jairo Sánchez and Rafael Montoya, members of SUTIMAC, were abducted on 6 April 2001 and released on 11 April:

File No.: 435,114
 Victims: Ramón Alzate, Javier Agudelo, Jhon Jairo Sánchez and Rafael Montoya

Facts:	La Virgen area, municipality of Santa Bárbara, 6 April 2001
Authority:	Special Prosecutor's office 18, Medellín
Stage:	Preliminary – active
Organization:	Not known – employees of Cementos el Cairo
Motives:	Unknown

Attempted murders

- (1) César Andrés Ortiz, member of the CGTD, on 26 December 2000:

On 26 May 2003, Mr. Julio Roberto Gómez and Mr. Cévulo Bautista, general secretary and deputy general secretary of taxation, respectively, replied to letter DH 14010 of 15 April and DH 108 and 110 of 23 April 2003 sent by the Human Rights Office in the Ministry of Social Protection, as follows: "(...) in reply to your inquiry in DH 1410 of 15 April 2003 concerning the César Andrés Ortiz case, on Tuesday 26 December 2000, at 8 p.m., our colleague César Andrés Ortiz, identity card no 80,231,875 from Bogotá, who was then 21 years old, and working as a messenger in the National Institute of Social Studies (INES) and coordinator of the CGTD youth group in Ciudad Bolívar, was shot by unknown persons near his home in the Juan Pablo II district. As a result of the attack, he underwent surgery, and since then has become paraplegic for life and now moves in a wheelchair (...)"

- (2) Heberth Cuadros, member of the Valle del Cauca Single Union of Education Workers (SUTEV), on 16 November 2001:

Offence:	Threats
Victim:	Heberth Jesús Cuadros Sánchez
Facts:	24 September 2001 in the Ciudadela Comfandi district, Cali
File No.:	444747
Authority:	Prosecutor's office 93, Personal Liberty and other Guarantees Unit, Cali
Stage:	Preliminary – active

- (3) The national headquarters of the Union of Electricity Workers of Colombia (SINTRAELECOL), on 8 July 2002 in Bogotá:

On 5 June 2003, the Human Rights Office in the Ministry of Social Protection received a letter from Mr. José Rodrigo Acevedo Pérez, attorney to the national executive board of SINTRAELECOL, requesting information on what happened at the SINTRAELECOL headquarters, Bogotá, on 8 July 2002: "We attach copies of the documents relating to complaints of the incidents that occurred on 8 July 2002 at the national headquarters against José Rodrigo Acevedo Pérez, human rights secretary at the time and the threat on 16 July 2002 against colleagues in the Arauca Power Company ENELAR". Indeed, enclosed with the letter was a copy of the communication addressed to Dr Carmen María Lasso, area coordinator of the Ministry of the Interior Protection Programme, in which the victim of the attack requests the assistance of that body in re-assessing her security scheme and analysis of her case by the DAS. Also enclosed is a copy of complaint No. 186 of 8 July 2002 to the DAS special criminal police unit in Bogotá, for attempted murder and threats against Mr. Acevedo Pérez.

The Bogotá section directorate of prosecutions reports that having consulted the Prosecutor's Offices in the section and the prosecution service judicial information system

(SIJUF), there is no investigation in progress concerning this murder. Further information is required in order to assess whether criminal proceedings are viable.

Death threats

(1) Giovanni Uyazán Sánchez:

The section directorates of prosecutions in the country report that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning these threats. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

On 26 May 2003, Mr. Julio Roberto Gómez and Mr. Cévulo Bautista, general secretary and deputy general secretary of taxation, respectively, replied to letters DH 108 and 110 of 23 April 2003 sent by the Human Rights Office in the Ministry of Social Protection, as follows: "(...) as regards the cases referred to in your letter, file Nos. 48938 and 48988 of 23 April 2003, cases of Mr. Armando Cuellar Valbuena and Giovanni Uyazán Sánchez, we have no information and they are not included in our list of members".

(2) Reinaldo Villegas Vargas, member of the "José Alvear Restrepo" Society of Lawyers:

The section directorates of prosecutions in the country report that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning these threats. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(3) The following officials and members of USO: Carlos Oviedo, César Losa, Ismael Ríos, Julio Saldaña, Ladislao Rodríguez, Luis Linares, Rafael Ortiz, Ramiro Luna:

Victim:	Luis Enrique Linares Triana
Offence:	Threats
Authority:	Prosecutor's office 242, Bogotá
Stage:	Preliminary – inhibitory on 11 February 2003

The section directorates of prosecutions in the country report that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning these threats. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(4) Rosario Vela, member of SINTRADEPARTAMENTO:

The section directorates of prosecutions in the country report that having consulted the Prosecutor's Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning these threats. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

On 5 June 2003, the Human Rights Office received a letter signed by the general secretary of the Workers and Staff Union of the Department of Antioquia, stating that: "... concerning the alleged death threats against Ms. Rosario Vela, having reviewed the files of

all our members, we find that the lady in question does not belong to and is not a member of our trade union”.

(5) Numerous officials and members of FECODE:

The section directorates of prosecutions in the country report that having consulted the Prosecutor’s Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning these threats. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(6) Against SINTRAHOINCOL workers on 9 July 2001:

The section directorates of prosecutions in the country report that having consulted the Prosecutor’s Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning these threats. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(7) Rusbel, INCORA official, on 14 August 2001:

On 26 May 2003, the human resources coordinator of INCORA replied to letter DH 072 – 14010 of the Human Rights Office in the Ministry of Social Protection, sent on 21 April 2003, as follows: “I wish to inform you that the letter requesting information on alleged threats against Mr. Leonel Pasta was referred to the Nariño regional branch for its attention as he was an official of that region. (...) as regards Mr. Rusbel, he is not a plant official, however if possible, please provide us with his full name and surname (...)”.

The section directorates of prosecutions in the country report that having consulted the Prosecutor’s Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning these threats. Further information is required, such as the place where the incident occurred and the full name of the victim, in order to assess whether criminal proceedings are viable.

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

Offence:	Threats
Authority:	Prosecutor’s office 22, Barranquilla section
File No.:	138,458
Stage:	Preliminary – active
Organization:	CUT branch

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

The section directorates of prosecutions in the country report that having consulted the Prosecutor’s Offices in their section and the prosecution service judicial information system (SIJUF), there is no investigation in progress concerning these threats. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(10) Against trade union officials in Yumbo:

The section directorates of prosecutions in the country report that having consulted the Prosecutor’s Offices in their section and the prosecution service judicial information

system (SIJUF), there is no investigation in progress concerning this murder. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(11) The headquarters of SINTRAHOINCOL:

The section directorates of prosecutions in the country report that having consulted the Prosecutor's Offices in their section and the judicial information system of the prosecution service (SIJUF), there is no investigation in progress concerning this case. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(12) Against the officials of the Cali Municipal Enterprises Union (SINTRAEMCALI): Alexander López Maya, Luis Hernández and the other members of the executive committee received a communication from paramilitary groups:

The following investigations are currently being conducted into threats against trade union members and leaders and members of the SINTRAEMCALI Executive Board:

Victims: Luis Hernández Monroy and Oscar Figueroa Pachongo
 Facts: 22 February 2003
 File no.: 578048
 Authority: Prosecutor's office 94, Personal Liberty and other Guarantees Unit
 Stage: Preliminary – active

Victim: Alexander López Maya
 Facts: 26 June 2003
 File no.: 575219
 Authority: Prosecutor's office 36, Personal Liberty and other Guarantees Unit
 Stage: Preliminary – active

Victim: Alexander López Maya
 Facts: 11 April 2002
 File no.: 561,463
 Authority: Prosecutor's office 89, Personal Liberty and other Guarantees Unit
 Stage: Preliminary – active

Victim: Alexander López Maya
 Facts: 12 January 2002
 File no.: 561,442
 Authority: Prosecutor's office 30, Personal Liberty and other Guarantees Unit
 Stage: Preliminary – active

Victims: Alexander López Maya, William Escobar, Berenice Celeyta, Ariel Díaz, Oscar Figueroa Domínguez, Jesús González, Luis Hernández Monroy
 Facts: 1 May 2002
 File no.: 561442
 Authority: Prosecutor's office 30, Personal Liberty and other Guarantees Unit
 Stage: Preliminary – active

Victims: Luis Hernández, Rubén Darío González, Oscar Figueroa
Facts: 1 June 2002
File no.: 537013
Authority: Prosecutor's office 94, Personal Liberty and other Guarantees Unit
Stage: Preliminary – active

Victims: Luis Hernández Monroy and Robinsón Masso
Facts: 28 May 2003
File no.: 537013
Authority: Prosecutor's office 91, Personal Liberty and other Guarantees Unit
Stage: Preliminary – active

Victim: Luis Hernández
Facts: 12 March 2002
File no.: 561473
Authority: Prosecutor's office 89, Personal Liberty and other Guarantees Unit
Stage: Preliminary – active

Victim: Luis Hernández
Facts: 22 February 2002
File no.: 561457
Authority: Prosecutor's office 29, Personal Liberty and other Guarantees Unit
Stage: Preliminary – active

(13) Gerardo González Muñoz, member of FENSUAGRO-CUT:

The section directorates of prosecutions in the country report that having consulted the Prosecutor's Offices in their section and the judicial information system of the prosecution service (SIJUF), there is no investigation in progress concerning this case. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(14) Workers and members of the Arauca Power Company, by paramilitaries:

The section directorates of prosecutions in the country report that having consulted the Prosecutor's Offices in their section and the judicial information system of the prosecution service (SIJUF), there is no investigation in progress concerning this case. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(15) In Arauca, activists of the Teachers' Association (ASEDAR) and National Association of Workers and Employees in Hospitals and Clinics (ANTHOC):

The section directorates of prosecutions in the country report that having consulted the Prosecutor's Offices in their section and the judicial information system of the prosecution service (SIJUF), there is no investigation in progress concerning this case. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

- (16) Saúl Suárez Donado, activist of the Workers' Trade Union, by paramilitaries: when he complained of the incident to the Human Rights Unit in the Attorney-General's Office, on 19 September 2002, he was detained on a charge of rebellion:

Victim: Saúl Suárez Donado
 Offence: Threats
 File no.: 52424
 Authority: Prosecutor's office 15, Neiva section
 Stage: Preliminary – inhibitory on 16 June 2002 and provisionally archived
 Facts: Neiva, 7 April 2002

Accused: Saúl Suárez Donado
 Offence: Rebellion
 Facts: Bucaramanga, 17 May 2001, raid on his house and arrest
 Authority: Prosecutor's office 8, Bucaramanga section
 File no.: 103619
 Stage: institution of judicial proceedings – preclusion in appeal court

Victim: Saúl Suárez Donado
 Offence: Aggravated illegal coercion
 Facts: Barrancabermeja, 20 September 2002
 File no.: 170128
 Authority: Special Prosecutor's office 06, Bucaramanga
 Stage: Preliminary – active

- (17) Efraín Holguín, Fernando Trujillo Lozada and José Eduardo Villa Garzón, officials of the Workers' Union of the Empresa de Acueducto y Alcantarillado of Bogotá (SINTRACUEDUCTO-CUT), in October 2002:

Victim: Fernando Trujillo Lozada
 Authority: Prosecutor's office 239, Offences against Personal Liberty and other Guarantees Unit, Bogotá
 Offence: Threats
 File no.: 665525
 Stage: Preliminary – documents received in Apia on 26 December 2002 and transferred to the jurisdiction of the Tequendama Police Command

Victim: Efraín Holguín Zarate
 Authority: Prosecutor's office 242, Bogotá section
 Offence: Threats
 File no.: 665524
 Stage: Preliminary – inhibitory 22 May 2003

Harassments

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

The section directorates of prosecutions in the country report that having consulted the Prosecutor's Offices in their section and the judicial information system of the prosecution service (SIJUF), there is no investigation in progress concerning this case.

Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

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

File no.: 50780
Offence: Threats
Authority: Prosecutor's office 1, Neiva section
Stage: Preliminary – inhibitory decision dated 6 February 2003
Facts: Neiva, 25 March 2003
Organization: President of ASODEFENSA

Victim: Henry Armando Cuéllar Valbuena
File no.: 42746
Offence: Threats
Authority: Prosecutor's office 2, Neiva section
Stage: Preliminary – referred to the Military Criminal Court of the Tenerife Battalion based in Neiva, for reasons of jurisdiction

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

The section directorates of prosecutions in the country report that having consulted the Prosecutor's Offices in their section and the judicial information system of the prosecution service(SIJUF), there is no investigation in progress concerning this case. Further information is required, such as the place where the incident occurred, in order to assess whether criminal proceedings are viable.

(4) Mario de Jesús Castañeda, President of the CUT-HUILA subcommittee, on 28 October 2002 for distributing propaganda concerning the national strike convened by the CUT:

File no.: 68035
Offence: Threats
Date: 4 March 2003
Authority: Prosecutor's office 16, Neiva section
Stage: Preliminary – active
Organization: CUT, Huila branch
Motives: Unknown

File no.: 47993
Offence: Threats
Facts: Neiva, 9 January 2002
Authority: Prosecutor's office 1, Neiva section
Stage: Institution of judicial proceedings – active
Organization: CUT, Huila branch
Motives: Unknown

Sendings of civilians to war zones

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

- (1) Carlos Julio Rodríguez García, member of ASODEFENSA;
- (2) José Luis Torres Acosta, member of ASODEFENSA;
- (3) Edgardo Barraza Pertuz;
- (4) Carlos Rodríguez Hernández; and
- (5) Juan Posada Barba.

In this regard, the Ministry of National Defence, in communication No. 00599 Human Rights-725 of 4 September 2003 stated that “(...) in accordance with the opinion issued by the legal adviser to the Army Human Development Department, it is necessary to define the meaning and scope attached to the term “war areas” by the trade unions, since the Ministry of Defence, in Decision No. 10412 of 1995, designated some regions of the country as a question of public order. Due to the inter-institutional mission of the national army, its officials are frequently called upon in the performance of their duties to restore public order, which does not mean that they are working in conflict or war zones. Conscious of the need for the military forces to employ civilian staff in the area of public order, the legislator described the different situations which can arise as a result of serving in such areas. Thus, as such situations are contemplated in the law, such as recognition of a public order bonus, sending civilians to such areas in compliance with the requirements of each case is legitimate, provided that the staff, mainly drivers, are only assigned to participate in operations to restore and maintain public order and perform duties that are appropriate to their position. As regards the assertion that civilians are obliged to wear uniform, it should be noted that this is a prohibited practice, a fact which will be disseminated through an internal circular of the Army Human Development Department (...)”. The Ministry also stated that “(...) as drivers working for the armed forces have to transport troops in their assigned units to areas to restore public order, this does not mean that the driver is working in a war zone in the true sense (...)”.

Detentions

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

The Attorney-General’ Office informed the Human Rights Office in the Ministry of Social Protection that in the case of these and other detentions, investigations are being conducted into suspected rebellion, as follows:

Accused: Aldemar Ortiz Cubillos, Ramón Rangel Guerra, Fernando Acuña Rodríguez, Jaibo Calderón Rueda, Luis Eduardo Viana Madera, Alfonso Martínez Arias and Edgar Mojica Vargas: the investigation is being conducted by the National Human Rights and International Humanitarian Law Unit in the Prosecutor’s Office, File No. 1127, for the offence of rebellion, current status: determination of charge, Criminal Court No. 7 of the Bucaramanga circuit.

- 444.** The Government adds that the National Ministry of Defence issued Directive No. 09 on 3 July 2003 on Ministry of Defence policies concerning the human rights of trade unionists and human rights defenders. Under this directive, and to guarantee protection of the human rights of trade union leaders and human rights defenders, the Military High Command and the Directorate General of the national police must:

- (1) Issue the necessary instructions to ensure that the requirements for protection of trade union leaders and human rights defenders are duly satisfied, within the framework of their respective jurisdictions.
- (2) Pay special attention to information concerning threats by illegal armed groups against trade union leaders and human rights defenders, once having verified them.
- (3) Issue the necessary instructions to ensure that law enforcement officers refrain from making unfounded statements that might endanger the persons of trade union leaders and human rights defenders. In the case of the latter, Presidential Decree No. 07 of 1999, concerning support, dialogue and collaboration by the State with human rights organizations must be strictly applied.
- (4) Include issues concerning the human rights of workers and trade union leaders, as well as the work done by human rights defenders in training programmes and military and police training.
- (5) Seek mechanisms for permanent contact and dialogue with such persons.
- (6) Inform this office of the results of actions taken to protect the rights of trade union leaders and human rights defenders.
- (7) Inform this office of the actions and plans of the armed forces and the national police to fulfil the security requirements of such persons.

445. Finally, in a communication dated 10 February 2004, the Government sent a list of trade union executives murdered in 2003, according to their department of origin.

D. The Committee's conclusions

446. *The Committee notes with deep regret that the allegations submitted since the previous examination of the case in June 2003 include 59 murders (all committed in 2003), one attempted abduction, three abductions, ten threats, two raids, two disappearances and six attempted murders.*

447. *The Committee notes the extensive information supplied by the Government in which it gives details of the administrative and judicial investigations being conducted into the murders, disappearances and other acts of violence against trade union leaders set out in the section "new allegations" and in Appendix I of the 331st Report of the Committee and concerning the recent allegations, as well as a list of the protection measures established for certain trade unions which are particularly threatened.*

448. *The Committee notes that the Government refutes the trade union membership of some of the victims to be listed below and in certain cases states that the information provided by the complainants is not sufficient to identify the Prosecutor's Offices conducting the investigations and that the trade unions which they had asked for information have not replied.*

Information submitted by the Government with respect to the allegations found in the section “new allegations” of the 331st Report of the Committee

449. *The Committee notes that in respect of these allegations, which include 84 murders, one disappearance, eight detentions, threats and six other acts of violence, the Government sent information on almost all of them. The Committee observes that:*

(a) *Concerning the 84 alleged murders:*

- *there has been only one conviction, in the case of the murder of Cristina Echeverri Pérez, member of EDUCAL, in 2002;*
- *three investigations have reached the trial stage;*
- *in seven investigations, the institution of judicial proceedings stage has not yet been completed;*
- *seven investigations have been suspended;*
- *in ten investigations, an inhibitory order was made;*
- *five investigations have been archived;*
- *41 investigations are at the preliminary stage and active;*
- *in the case of eight investigations, nothing is reported for lack of sufficient information;*
- *in two cases, it is reported that the alleged victims are alive.*

(b) *Concerning the alleged abduction of Mr. Palacio Restrepo, the investigation is at the preliminary stage and active.*

(c) *Concerning the eight alleged detentions:*

- *two are at the trial stage;*
- *four are at the institution of judicial proceedings stage;*
- *one investigation was closed;*
- *in one case, nothing is reported for lack of sufficient information;*

(d) *concerning the alleged threats, the Government reports that:*

- *in one case, the victim has a security scheme;*
- *31 cases are at the preliminary stage and active.*

(The cases mentioned in paragraphs (a), (b), (c) and (d) in respect of which the Government indicates that it does not have sufficient data are as follows:

(1) *María Meza Pabón, member of EDUMAG, in 11 August 2000, in Pivijay, Department of Magdalena;*

- (2) *Mauricio Angarita, member of ASINORT, on 11 February 2002, in Cúcuta, North Santander. It is not known whether this is his correct name;*
- (3) *Edison de Jesús Castaño, member of ADIDA, on 25 February 2002, in Medellín;*
- (4) *Miguel Acosta García, member of EDUMAG, on 13 April 2002, in Aracataca, Department of Magdalena;*
- (5) *Nicanor Sánchez, member of ADE, on 20 August 2002, in Vista Hermosa, Department of Meta;*
- (6) *José del Carmen Lobos, member of ADEC, on 15 October 2002, in Bogotá;*
- (7) *Edgar Rodríguez Guaracas, member of ADEC, on 15 October 2002, in Bogotá;*
- (8) *Cecilia Gómez Córdoba, member of SIMANA on 20 November 2002, in El Talón de Gómez, Department of Nariño;*
- (9) *Nicodemo Luna, official of the Petroleum Industry Workers' Trade Union (USO), detained on 18 December 2002, tortured and later transferred to Military Brigade No. 3 of Cali.)*

Information provided by the Government with respect to the allegations found in Appendix I of the 331st Report (on which it had not communicated its observations or on which it had not reported that investigations had begun)

- (a) *Concerning the 27 alleged murders:*
 - *in one investigation, the institution of judicial proceedings stage has begun;*
 - *in two, an inhibitory order was made;*
 - *four are at the preliminary stage and active;*
 - *two have been suspended;*
 - *in one case, death was due to natural causes;*
 - *in 17 cases, nothing is reported by the Government for lack of sufficient information.*
- (b) *Concerning the five allegations concerning abductions and disappearances:*
 - *three investigations are at the preliminary stage and active;*
 - *in two cases, nothing is reported by the Government for lack of sufficient information*
- (c) *Concerning the three attempted murders:*
 - *one is at the preliminary stage and active;*

- *in two cases, nothing is reported by the Government for lack of sufficient information;*
- (d) *Concerning the 16 alleged death threats:*
- *in two cases, the Government reports on the protection measures adopted;*
 - *four cases are at the preliminary stage and active;*
 - *in two cases, nothing is reported by the Government for lack of sufficient information.*
- (e) *Concerning the four alleged cases of harassment:*
- *two cases are at the preliminary stage and active;*
 - *in two cases, nothing is reported by the Government for lack of sufficient information*

(The allegations mentioned in respect of which the Government does not have sufficient data are as follows:

- (1) *Edison Ariel, murdered on 17 October 2000, SINTRAINAGRO;*
- (2) *Francisco Espadín Medina, murdered on 7 September 2000, SINTRAINAGRO;*
- (3) *Ricardo Florez, murdered on 8 January 2000, SINTRAPALMA;*
- (4) *Raúl Gil, murdered on 11 February 2001 in the municipality of Puerto Wilches, SINTRAPALMA;*
- (5) *Alberto Pedroza Lozada, murdered on 22 March 2001;*
- (6) *Ramón Antonio Jaramillo, murdered on 10 October 2001, in the Valle del Cauca, by paramilitaries, SINTRAEMSDES;*
- (7) *Armando Buitrago Moreno, murdered on 6 June 2001, ASONAL;*
- (8) *Eduardo Edilio Alvarez Escudelo, murdered on 2 July 2001 in Antioquia, by guerrilla forces, ASONAL;*
- (9) *Prasmacio Arroyo, murdered on 26 July 2001, in Magdalena, SINTRASMAG;*
- (10) *Milena Pereira Plata, murdered on 30 October 2001, in Santander, by the FARC, ASINORTH;*
- (11) *Eliécer Orozco, murdered on 11 November 2001, in Ciénaga, by paramilitaries, FENSUAGRO;*
- (12) *María Leida Montoya, murdered on 30 November 2001 in Antioquia, ADIDA;*
- (13) *Herlinda Blando, murdered on 1 December 2001 in Boyacá, by paramilitaries, Boyacá Union of Teachers and Lecturers;*
- (14) *Alberto Torres, murdered on 12 December 2001, in Antioquia, ADIDA;*

- (15) *Adolfo Flórez Rico, murdered on 7 February 2002, in Antioquia, by paramilitaries, SINDICONS;*
- (16) *Alfredo González Páez, murdered on 15 February 2002, by paramilitaries in Tolima, ASEINPEC;*
- (17) *Oswaldo Meneses Jiménez, murdered on 15 February 2002, by paramilitaries in Tolima, ASEINPEC;*
- (18) *Germán Medina Gaviria, disappeared on 14 January 2001, SINTRAEMCALI;*
- (19) *Iván Luis Beltrán, disappeared on 5 October 2001, FECODE;*
- (20) *César Andrés Ortiz, attempted murder on 26 December 2000, CGTD;*
- (21) *Giovanni Uyazán Sánchez;*
- (22) *Reinaldo Villegas Vargas;*
- (23) *Rosario Vela, SINTRADEPARTAMENTO;*
- (24) *Jorge Eliécer Londoño, threatened and subjected to harassment since 16 August 2001, SINTRAEMSDES;*
- (25) *threats against trade union officials in Yumbo;*
- (26) *threats against the headquarters of SINTRAHOINCOL;*
- (27) *Gerardo González Muñoz, FENSUAGRO;*
- (28) *members of ANTHOC and ASEDAR*
- (29) *Esperanza Valdés Amortegui, victim of illegal espionage, ASODEFENSA;*
- (30) *Carlos González, assaulted by police, on 1 May 2001, president of the University of Valle Workers' Union.)*

Freedom of association and human rights

450. *In general, the Committee must once again deplore the extreme gravity of this case in which 59 new allegations of murders of officials and members have been submitted, which, added to the 11 submitted in the previous examination of the case (see 331st Report of the Committee) make a total of 70 cases of murder in 2003. This is less than the allegations of murder denounced in 2002 (159 trade unionists, see 330th and 331st Reports). It demonstrates the difficult situation which the trade union movement still faces in Colombia. The Committee reiterates that freedom of association can only be exercised in conditions in which fundamental human rights and, in particular, those relating to human life and personal safety, are fully respected and guaranteed [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 46].*

451. *The Committee recalls that in its previous examination of the case it suggested that it would be advisable to deal specifically with situations in which violence against trade union members is very intensive – for example in the petroleum industry, health and education services as well as municipal and departmental administrations.*

452. *The Committee notes that, following those recommendations, the Government sent detailed information on investigations initiated and protection measures taken in respect of certain trade unions and regions.*

Investigations into violations of human rights of officials and members of certain trade unions, in general and by Department; protection measures and protection schemes established to guarantee their physical integrity

453. *The Committee notes the extensive information on the various measures adopted in respect of certain trade unions:*

1. *Information on SINTRAEMCALI, which includes not only investigations into acts of violence against trade unionists and trade union premises, but also an outline of the dispute since 2002 between the Cali Municipal Enterprises (EMCALI) and the trade union in the context of which there have been various arrests of union officials and members by the authorities. The Government also provides a list of the protection measures and security schemes established for members of this union. The Committee deplores the fact that the great majority of the investigations are at the preliminary stage and in some cases an inhibitory order has been made.*
2. *Information in SINALTRAINAL which refers to the investigations instituted by the Government into threats against the officials and members of the union, protection measures and security schemes currently provided to the union.*
3. *Information on the Petroleum Industry Workers' Union (USO) on measures agreed between the Ministry of Defence and ECOPETROL to provide broad effective protection and security to the threatened union officials.*
4. *Information on SINALTRAINAGRO on measures adopted to protect officials and members of the union.*
5. *Information on the investigations into threats against members and officials of FECODE. The Committee deplores that in this case, too, of the 21 investigations initiated, in only one have judicial proceedings begun while all the remainder are at the preliminary stage, despite the fact that many of the alleged incidents occurred over two years ago.*
6. *Information concerning SINTRAUNICOL on the protection measures and security schemes established for the benefit of the union and its officials.*
7. *Information concerning the Department of Risaralda and the acts of violence against union officials, including the investigations into those acts of violence, the protection measures and security schemes established for the officials affected and the measures taken by the Risaralda Department Police Command to deal with the lack of security of union officials in Risaralda.*

454. *The Committee further notes with interest the information provide by the Government concerning Directive No. 09 of 3 July 2003, issued by the Ministry of Defence on its policies concerning protection of the human rights of trade unionists and human rights defenders. This directive instructs the Armed Forces High Command and the National Directorate of Police to take appropriate steps to protect trade union leaders, paying particular attention to threats by illegal armed groups against trade union leaders and to*

issue the necessary instructions to ensure that law enforcement officers refrain from making unfounded statements that might expose trade union leaders to greater risk and finally to include issues concerning human rights and the work of trade union leaders in training programmes and military and police training.

- 455.** *The Committee requests the Government to continue to keep it informed of the protection measures and security schemes in force and those adopted in the future in respect of other unions and other Departments or regions. The Committee requests the Government to take particular account of those trade unions and regions to which it referred in the previous examination of the case, such as the health services and the Barrancabermeja Gas Company, as well as municipal administrations (municipality of Barrancabermeja) and department administrations (Departments of Valle del Cauca and Antioquia). The Committee requests the Government to send information on all these matters.*
- 456.** *The Committee observes that the Government has not sent new information on the “Working Plan of the Inter-Institutional Committee for the Prevention of Violations and the Protection of Workers’ Human Rights” to which it had referred in previous examinations of the case.*

Investigations

- 457.** *The Government notes the efforts made by the Government to inform it about investigations in progress into acts of violence against trade union officials and members and observes with interest that they cover a large number of allegations, with the exception of those where, according to the Government, there is insufficient information either to locate the investigation in progress or to determine the possibility of instituting proceedings. The Committee requests the Government to continue to do everything in its power to institute investigations into all the acts of violence alleged up to June 2003, including those where it does not report that investigations or judicial proceedings have been instituted, as well as those mentioned in the section “new allegations” in the present report, and to continue to send its observations on the progress made in the investigations already begun on which the Government has sent its observations (Appendix II).*

Impunity

- 458.** *Nevertheless, the Committee cannot fail to observe the extreme gravity of the situation, which is reflected in the fact that the rate of sentences is extremely low. In fact, of the investigations instituted into the allegations presented in the last examination of the case, in only one has there been a conviction. Moreover, as in previous examinations the great majority are at the preliminary stage or have not gone beyond this stage. The Committee recalls once again that justice delayed is justice denied [see **Digest**, op. cit., para. 56].*
- 459.** *Under these circumstances, the Committee feels obliged to reiterate its conclusions in its last examination of the case, namely that the lack of investigations, the limited progress in the investigations already begun and the small number of sentences show a prevailing situation of impunity, which is not without influence upon the situation of violence affecting all sectors of society. The Committee strongly urges once again the Government to take the necessary measures to put an end to the intolerable situation of impunity and punish effectively all those responsible.*

Trade union status of certain victims

- 460.** *The Committee observes that the complainant organizations have not provided information concerning the trade union status of certain victims, denied by the Government in the last*

examination of the case [see para. 249 of the 331st Report of the Committee]. The Committee notes that in the present examination of the case, the Government once again denies the trade union status of some of the victims, namely: Darwin Salcedo, Carlos Julio Vega Riso, Florentino Suárez Betancourt, Hernando Portillo Moreno, Dionila Vitonas Chilueso, Alirio Vargas Sepúlveda, Marco Antonio Salazar, Mauricio Angarita, Cristina Echeverri Pérez, Francisco Sarmiento Yepes, Barquel Ríos Mena, Caros Emilio Vélez Correo, José Orlando Céspedes García, Santiago Flor María, Heliodoro Sánchez Pena, Miguel Segura Cortés, Bertulfo Borja Clavijo, Luis Eduardo Cataño, Edison de Jesús Toro Gaviria, Luis Eduardo Vélez Arboleda, Gema Lucía Jaramillo, Yaneth Iburguren, Luis Eduardo Guzmán, Fredy Perilla Montoya, Soraya Patricia Díaz, Nicodemo Luna, César Arango Mejía, Milena Pereira Plata, Giovanni Uyazán Sánchez and Rosario Vela. The Committee requests the complainant organizations to provide the necessary information concerning the victims listed in the previous and present examination of the case in order to clarify the situation.

Allegations in respect of which information could not be provided because of insufficient data

461. As regards cases where the Government states that the data supplied by the complainants is insufficient to identify the Prosecutor's Offices conducting the investigations, the Committee observes that in its last examination of the case, the Government also mentioned a large number of allegations (51) in respect of which it did not have sufficient information. The Committee recalls that on that occasion it reminded the complainants of their duty to collaborate with the Government by providing the maximum detail possible in all cases where so requested. The Committee regrets to observe that to date the complainants have not provided any additional information. In consequence, the Committee once again urges the complainant organizations to do everything in their power to provide the Government with the necessary information concerning the victims for whom the Government does not have sufficient data, listed in the 331st Report as well as the present report, so that the Government can state whether investigations have been instituted into these allegations and what stage they have reached. In turn, the Committee request the Government to continue to endeavour to send all available information concerning the allegations made.

Dispute in the EMCALI company

462. As regards the failure to respect the agreement concluded on 29 January 2002 between the Government, the workers of Cali Municipal Enterprises (EMCALI) and the Cali community in which it was provided that the company would not be privatized, the Committee notes the information provided concerning the dispute (basically, the trade union's opposition to the review of the collective agreement which, according to the Government, is a crucial part of saving the company). The Committee notes that agreement has been reached on certain points, but that many issues remain to be settled. The Committee recalls that in the context of this dispute and the protests to which it gave rise, some trade union officials were arrested. The Committee observes that the Government does not give details of the judicial proceedings instituted subsequently. The Committee requests the Government to keep it informed of developments and whether the persons concerned are still under arrest and to keep it informed about the situation.

Other questions

463. The Committee deplores to observe that the Government has not sent its observations on the allegations submitted by the Colombian Federation of Teachers (FECODE) concerning threatening telephone calls, harassment by armed persons, public statements

designating them as military targets, warnings to resign their union office, raids on their homes, warnings not to take part in union activities and numerous murders. The Committee requests the Government to send its observations on these matters without delay.

The Committee's recommendations

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

- (a) While noting the Government's extensive reply in which it provides information on a large number of allegations, the Committee expresses its deep concern and can only underline once again the extreme gravity of this case and deplores that 59 new allegations of murders of officials and members have been submitted, which, added to the 11 submitted in the previous examination of the case (see 331st Report of the Committee) make a total of 70 cases of murder in 2003. New allegations were also presented concerning one attempted abduction, three abductions, ten threats, two raids, two disappearances and six attempted murders. The Committee reiterates that freedom of association can only be exercised in conditions in which fundamental human rights and, in particular, those relating to human life and personal safety, are fully respected and guaranteed.*
- (b) The Committee notes with interest the various security measures adopted for the benefit of trade unionists and trade unions at risk, and requests the Government to keep it informed of the protection measures and security schemes in force and those adopted in the future in respect of other unions and other Departments or regions. The Committee requests the Government to take particular account of those trade unions and regions to which it referred in the previous examination of the case, such as the health services and the Barrancabermeja Gas Company, as well as municipal administrations (municipality of Barrancabermeja) and department administrations (Departments of Valle del Cauca and Antioquia). The Committee requests the Government to provide information on all these matters.*
- (c) The Committee requests the Government to inform it whether the protection programme and the "Working Plan of the Inter-Institutional Committee for the Prevention of Violations and the Protection of Workers' Human Rights" to which it had referred at previous examinations of this case is still functioning or has been replaced by new programmes or organs.*
- (d) The Committee requests the Government to continue to do everything in its power to institute investigations into all the acts of violence alleged up to June 2003, including those where it does not report that investigations or judicial proceedings have been instituted, as well as those mentioned in the section "new allegations" in the present report, and to continue to send its observations on the progress made in the investigations already begun on which the Government has sent its observations (Appendix II).*

- (e) *The Committee strongly urges once again the Government to take the necessary measures to put an end to the intolerable situation of impunity and punish effectively all those responsible.*
- (f) *With respect to the trade union status of certain victims contested by the Government, the Committee requests the complainant organizations to provide the necessary information concerning the victims listed in the previous and present examination of the case in order to clarify the situation.*
- (g) *As regards those cases where the Government states that the data supplied by the complainants is insufficient to identify the Prosecutor's Offices conducting the investigations, the Committee once again urges the complainant organizations to do everything in their power to provide the Government with the necessary information concerning the victims for whom the Government does not have sufficient data, listed in the 331st Report as well as the present report, so that the Government can state whether investigations have been instituted into these allegations and what stage they have reached. In turn, the Committee requests the Government to continue to endeavour to send all available information concerning the allegations made.*
- (h) *As regards the dispute between EMCALI and the union due to failure to comply with the agreement concluded on 29 January 2002, which generated protests which led to the arrest of certain union officials, the Committee requests the Government to keep it informed of developments and whether the persons concerned are still under arrest and to keep it informed about the situation.*
- (i) *As regards the allegations submitted by the FECODE concerning threatening telephone calls, harassment by armed persons, public statements designating them as military targets, warnings to resign their union office, raids on their homes, warnings not to take part in union activities and numerous murders, the Committee requests the Government to send its observations on these matters without delay.*

Appendix I

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

Murders

- (1) Edison Ariel, 17 October 2000, SINTRAINAGRO;
- (2) Francisco Espadín Medina, member of SINTRAINAGRO, 7 September 2000, in the municipality of Turbo;
- (3) Ricardo Florez, member of SINTRAPALMA, 8 January 2001;

- (4) Raúl Gil, member of SINTRAPALMA, 11 February 2001, in the municipality of Puerto Wilches;
- (5) Alberto Pedroza Lozada, 22 March 2001;
- (6) Ramón Antonio Jaramillo, prosecutor of SINTRAEMSDES-CUT, on 10 October 2001, in the Department of Valle del Cauca, when paramilitaries were carrying out a massacre in the region;
- (7) Armando Buitrago Moreno, member of the National Association of Officials and Employees of the Judicial Branch (ASONAL), 6 June 2001;
- (8) Eduardo Edilio Alvarez Escudelo, member of the National Association of Civil Servants and Judicial Employees (ASONAL) on 2 July 2001 in Antioquia, by guerrilla forces;
- (9) Prasmacio Arroyo, member of the Magdalena Teachers' Union (SINTRASMAG), on 26 July 2001 in Magdalena;
- (10) Eriberto Sandoval, member of the National United Federation of Agricultural Workers (FENSUAGRO), on 11 November 2001 in Ciénaga, by paramilitaries;
- (11) Eliécer Orozco, FENSUAGRO, on 11 November 2001 in Ciénaga, by paramilitaries;
- (12) Herlinda Blando, member of the Union of Teachers and Lecturers of Boyacá, on 1 December 2001 in Boyacá, by paramilitaries;
- (13) Alberto Torres, member of the Antioquia Teachers' Association (ADIDA), on 12 December 2001 in Antioquia;
- (14) Adolfo Flórez Rico, activist of the National Union of Workers in the Construction Industry (SINDICONS), on 7 February 2002 in Antioquia, by paramilitaries;
- (15) Alfredo González Páez, member of the Association of Employees of INPEC (ASEINPEC), on 15 February 2002 in Tolima, by paramilitaries;
- (16) Oswaldo Meneses Jiménez, ASEINPEC, on 15 February 2002 in Tolima, by paramilitaries;
- (17) María Meza Pabón, member of EDUMAG, on 11 August 2000, in Pivijay, Department of Magdalena;
- (18) Edison de Jesús Castaño, member of ADIDA, on 25 February 2002, in Medellín;
- (19) Miguel Acosta García, member of EDUMAG, on 13 April 2002, in Aracataca, Department of Magdalena;
- (20) Nicanor Sánchez, member of ADE, on 20 August 2002, in Vista Hermosa, Department of Meta;
- (21) José del Carmen Lobos, member of ADEC, on 15 October 2002 in Bogotá;
- (22) Edgar Rodríguez Guaracas member of ADEC, on 15 October 2002 in Bogotá;
- (23) Cecilia Gómez Córdoba, member of SIMANA, on 20 November 2002, in El Talón de Gómez, Department of Nariño.

Abductions and disappearances

- (1) Germán Medina Gaviria, member of the Cali Municipal Enterprises Union (SINTRAEMCALI), on 14 January 2001, in the neighbourhood of El Porvenir, town of Cali;
- (2) Iván Luis Beltrán, member of the executive committee of FECODE-CUT, on 10 October 2001.

Attempted murders

- (1) César Andrés Ortiz, member of the CGTD, on 26 December 2000. The CGTD provided the Government with the necessary information but there is no investigation;
- (2) The national headquarters of the Union of Electricity Workers of Colombia (SINTRAEECOL), on 8 July 2002 in Bogotá.

Death threats

- (1) Giovanni Uyazán Sánchez;
- (2) Reinaldo Villegas Vargas, member of the “José Alvear Restrepo” Society of Lawyers;
- (3) Against SINTRHOINCOL workers on 9 July 2001;
- (4) Jorge Eliécer Londoño, member of SINTRAEMSEDES-CUT, received death threats on 2 November 2001;
- (5) Against trade union officials in Yumbo;
- (6) The headquarters of SINTRAHOINCOL;
- (7) Gerardo González Muñoz, member of FENSUAGRO-CUT;
- (8) workers and members of the Arauca Power Company, by paramilitaries;
- (9) In Arauca, activists of the Teachers’ Association (ASEDAR) and National Association of Workers and Employees in Hospitals and Clinics (ANTHOC).

Harassment

- (1) Esperanza Valdés Amortegui, Treasurer of ASODEFENSA, victim of illegal espionage through the installation of microphones in her workplace;
- (2) Carlos González, President of the Union of University Workers of El Valle, assaulted by police, on 1 May 2001.

Appendix II

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

Arturo Escalante Moros; Julián Ricardo Muñoz, César Bedoya Ortiz, César Arango Mejía, Plutarco Herrera Gómez, Milena Pereira Plata, María Leida Montoya, Marcos Antonio Beltrán, Jorge Alberto Alvarez, César Gómez, Miguel Lora Gómez, Marco Tulio Agudero Rivera, Víctor Manuel Jiménez Frutos, Ramón Alzate, Hebert Cuadros, Jesús Tovar and Ildis Jarava, Alexander López Maya, Luis Hernández, Saúl Suárez Donado, Efraín Holguín, Fernando Trujillo Lozada, José Eduardo Villa Garzón, Henry Armando Cuellar Valbuena, Darwin Salcedo, Carlos Julio Vega Ríos, Florentino Suárez Betancourt, Jesús Antonio Posada Marín, Nelson Romero Romero, Reynaldo Mora Gómez, Hernando Portillo Moreno, Luis Angel Ramos Mesa, José Orlando López Gil, Edilberto Arce Mosquera, Javier Aníbal Amaya Quiceno, Jairo Germán Delgado Ordóñez, Dionila Vitonas Chilueso, Alirio Vargas Sepúlveda, Faustino Antonio barrios barrios, Gabriel Enrique Quintana Ortiz, Carlos Miguel Padilla Ruiz, Nelly Avila Castaño, Marco Antonio Salazar, Mauricio Angarita, Cristina Echeverri Pérez, Francisco Sarmiento Yepes, Rubén Darío Campuzano, Barquel Ríos Mena, Edison de Jesús Castaño, Wilfredo Quintero Amariles, Manuel Alberto Montanez Buitrago, Carlos Emilio Vélez Correa, José Orlando Céspedes García, Oscar Carlle, Salatiel Piñeros, Eddie Socorro Leal Barrera, Santiago Flor María, Freddy Armando Girón Burbano, Miguel Acosta García, Heliodoro Sánchez Pena, Henry Rosero Gaviria, Francisco Isaías Cifuentes Becoche, Miguel Segura Cortés, Jaen Blandón Vargas, Bertulfo Borja Clavijo, Jairo Betancur Rojas, Enio Villanueva Rojas, Ledys Pertuz Moreno, Antonio Acosta, Fernando Olaya, Adriana Patricia Díaz, Fabio Antonio Obando Aguirre, Carlos Alberto Barragán Medina, José Olegario Gómez Sepúlveda, Wilson Rodríguez Castillo, Luis Eduardo Cataño, Ladislao Mendoza, Jaime Lobato, Ingrid Cantillo Fuentes, Américo Benítez Rivas, Edison de Jesús Toro Gaviria, Alvaro Poveda, Abigail Girón Campos, Guillermo Sanin Rinco, Oscar de Jesús Payares, Luis Eduardo Vélez Arboleda, Gema Lucía Jaramillo, Elmer de Avila Arias, Jorge Ariel Díaz Aristizábal, Oscar David Polo Charris, Yaneth Iburguren, José Lino Beltrán Sepúlveda, José Marcelino González, Abelardo Barbosa Páez, Luis Eduardo Guzmán Alvarez, Luz Mery Valencia, Maritza Ortega Serrano, José Antonio Bohórquez Medina, Fredy Perilla Montoya, Rufino Maestre Gutiérrez, Jairo

Echavez Quintero, Luis Alfonso Grisales Peláez, Soraya Patricia Díaz, Augusto de Jesús Palacio Restrepo, Hernando Hernández, Nubia Esther González, Policarpo Camacho and Gloria Holguín, Rafael Palencia Hernández, Robinsón Beltrán Herrera, Germán Robinson López, Teresa Báez Rodríguez, Guillermo Rivera Plata, Gladis Barajas, Wilson Castro Padilla, Alvaro Enrique Villamizar Mogollón, Roberto Borja Rubiano, Alexander López Maya, Martha Cecilia Gómez Reyes. FECODE: Jairo Toro Figueroa, Luis Eduardo Patiño Loaiza, Marlene Rangel García, Carlos Alberto Angulo de la Cruz, Nazli Palomo, Rafael Alberto Ilias, Magda Ibony Moreno Ortiz, Olga Cecilia Merchán Moreno, Ana Deima Chate Rivera, Dalia Esther Florez Lozano, Gilma del Carmen Alarcón, Jorge Aliorio Pinzon Ulloa, Rico Bohórquez Flor Teresa, Isaura Isabel Paniagua Chávez, Giovanni Botello Rodríguez, Luz Parina Pérez Quintero, Omar Andrade, Carlos Alberto Vallejo Mejía, Teresa Hernández Zambrano, María Elena Saavedra Rodríguez, Jairo Alberto Carvajal, Gladis Blanco Urrea, Oscar Eduardo Ramón Florez, Oscar Henao Gutiérrez.

CASE NO. 2068

INTERIM REPORT

Complaints against the Government of Colombia presented by

- **the General Confederation of Democratic Workers (CGTD)**
- **the General Confederation of Democratic Workers (CGTD), Antioquia branch**
- **the Single Confederation of Workers of Colombia (CUT), Antioquia executive subcommittee and**
- **25 other Colombian trade unions**

Allegations: Dismissal of workers from the Textiles Rionegro enterprise; refusal to reinstate dismissed trade union leaders of ASEINPEC, banning of a meeting, denial of appeals for protection of constitutional rights aimed to protect the trade union immunity of a number of trade union leaders of ASEINPEC, refusal to return the offices of the ASEINPEC organization and a number of anti-union acts against ASEINPEC, mass dismissal of workers at SOFASA

- 465.** The Committee last examined this case at its May-June 2003 meeting [see 331st Report, paras. 255-266] and submitted an interim report to the Governing Body.
- 466.** The Single Confederation of Workers of Colombia (CUT) sent new allegations in a communication dated 11 March, received by the Office on 18 and 26 August 2003.
- 467.** The Government sent its observations in communications dated 8 April, received by the Office on 12 June, 13 August, 5, 6, 24 and 25 September 2003.
- 468.** Colombia 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. Previous examination of the case

469. At its May-June 2003 meeting, the Committee formulated the following recommendations [see 331st Report, para. 266]:

- As regards the dismissal of 34 workers from Textiles Rionegro, the Committee once again requests the Government to carry out the relevant investigations without delay, to inform it of any legal proceedings begun and to send its observations on the current situation in respect of these workers.
- As regards the ruling handed down by the Honourable Council of State with regard to the action for the protection of constitutional rights lodged by the trade union official María Librada García deciding to turn the file over to the Court of First Instance in order to ensure that due process was observed with regard to her dismissal, the Committee requests the Government to keep it informed of the outcome of the legal proceedings and hopes that these proceedings will be concluded in the near future.
- As regards the allegations presented by the Trade Union Association of Employees of the National Penitentiary and Prison Institute (ASEINPEC) relating to the refusal to reinstate trade union officials and the constant threats received by these officials, anti-union persecution through measures against union leaders including sanctions, disciplinary proceedings and transfers, the dismissal of union leaders in violation of trade union immunity, the suspension of trade union leaders without pay for having conducted a peaceful demonstration, pressure on members to leave the union and the refusal to return the trade union offices to the complainant organization in spite of a legal ruling ordering this, the Committee requests the Government to ensure that the National Penitentiary and Prison Institute (INPEC) complies with the legal ruling ordering the reinstatement of the dismissed trade union officials, and that it take the necessary steps to ensure that the ASEINPEC offices are returned to the trade union organization without delay as ordered by the legal authority. The Committee requests the Government to keep it informed in this respect and to reply without delay to the other allegations.
- As regards the murders of trade union officials Jesús Arley Escobar, Fabio Humberto Burbano Córdoba, Jorge Ignacio Bohada Palencia and Jaime García, the Committee requests the Government to take the necessary steps to ensure that the investigations allow those responsible for these murders to be punished in the near future and to keep it informed in this respect.
- As regards the other allegations presented by ADEM, the Trade Union of Workers of Sintéticos S.A. (SINTRASINTETICOS) and the National Union of Textile Industry Workers (SINTRATEXTIL), the Committee requests the Government to send its observations without delay so that the Committee may formulate its conclusions in full possession of the facts.

These allegations are reproduced below:

- The Official Employees' Association of the Municipality of Medellín (ADEM) alleges the violation of the agreement under which the Government had undertaken to reinstate the 83 workers enjoying trade union protection, and on the lack of consultations during the administrative restructuring process initiated by the Council of Medellín.
- The Trade Union of Workers of Sintéticos S.A. (SINTRASINTETICOS) alleges: (a) pressure and threats by the Odissey Limited enterprise to force workers to leave the union; (b) interference by the enterprise in internal union matters; (c) delays in the settlement of proceedings before tribunals relating to violation of freedom of association; (d) sanctions against trade union leaders for making use of trade union leave; (e) the enterprise refusal to hold meetings for collective bargaining.
- The National Union of Textile Industry Workers (SINTRATEXTIL) alleges: (a) in the Fabricato enterprise: (1) there is violation of the collective agreement; (2) trade union leave is denied; (3) trade union leaders are denied access to the premises; (b) in the Enka enterprise: (1) non-fulfilment of agreements concluded between the president of the company and the trade union; (2) violation of the collective

agreement through the conclusion of contracts with companies to conduct work directly covered by the collective agreement; (3) distribution of the hardest tasks to unionized workers; (c) in the Coltejer enterprise: dismissals on the grounds of restructuring, in violation of a collective agreement; and (d) in the Textiles Rionegro enterprise: (1) favouritism towards one of the enterprise trade unions to the detriment of the industry union; and (2) violation of the collective agreement.

B. New allegations

470. In its communications of 11 March and 26 August 2003, the Single Confederation of Workers of Colombia (CUT) refers to the mass dismissal in 1992 of SOFASA workers affiliated to SINTRAUTO (the Committee examined these allegations in its 325th Report, para. 331). As a result of those dismissals, the Envigado executive subcommittee of SINTRAUTO, to which the SOFASA workers were affiliated, ceased to exist. The complainant organization adds that in 1996 the National Trade Union instituted judicial proceedings against the enterprise for non-compliance with the collective agreement, without the participation of the Envigado executive subcommittee as it no longer existed. In 1997, the National Trade Union reached an agreement with the enterprise, accepting compensation of 17 million pesos for non-compliance with the collective agreement, and a clause was included in the conciliation document stating that there was no other charge against the enterprise (the Government sent a copy of the conciliation document). The CUT indicates that the Envigado executive subcommittee of the trade union did not participate in the conciliation and that the resulting economic benefits remained with the national executive committee. The question of mass dismissals therefore remains pending.

C. The Government's replies

471. In its communications dated 8 April, 13 August, 5, 6, 24 and 25 September 2003, the Government states that, as regards paragraph (a) of the recommendations relating to the dismissal of 34 workers from Textiles Rionegro, to date and in accordance with the relevant judicial decisions, 15 workers have been reinstated, the enterprise has reached agreements with 13 workers through legal channels and the ruling relating to three workers is pending before the High Court of Antioquia, with their reinstatement having been ordered in the first instance. The Government says it will send the decisions when they are handed down.

472. With respect to paragraph (b) of the recommendations relating to the ruling handed down by the Honourable Council of State with regard to the action for protection of constitutional rights lodged by the trade union official María Librada García, deciding to turn the file over to the Court of First Instance in order to ensure that due process was observed with regard to her dismissal, the Government indicates that the trade union organization has not instituted the relevant actions to make compliance with the *amparo* mechanism effective.

473. As regards paragraph (d) of the recommendations, relating to the allegations submitted by ASEINPEC concerning the constant threats received by trade union leaders, anti-union persecution through measures against union leaders including sanctions, disciplinary proceedings and transfers, the dismissal of union leaders in violation of trade union immunity (with respect to when the High Court of the Judicial District of the Department of Quindío ordered reinstatement), the suspension of trade union leaders without pay for having conducted a peaceful demonstration, pressure on members to leave the union and the refusal by the director of the INPEC to return the offices of the trade union organization, in spite of a legal ruling ordering this, the Government states that it does not share the views of the trade union organization.

474. Concerning paragraph (f) of the recommendations, relating to the allegations presented by SINTRASINTETICOS concerning persecution of the trade union at Sintéticos S.A. targeting trade union members and leaders to make them resign from the trade union [see 328th Report, paras. 151-163], which involved the dismissal of Gabriel Arturo Martínez Tirado, Gildardo Antonio Arboleda Suárez, Jaime González, Rafael Pareja, Carlos Ruíz, Joel Cardona, José Abad García, Guillermo Márquez, Diego Obando, Gabriel Martínez, Fabián Taborda and Mario de Jesús Sánchez, the Government states that the *amparo* proceedings they lodged were dismissed, a decision that was confirmed by the High Court of Medellín, on 4 September 2000. In accordance with the terms of the judicial decision, the dismissed workers can appeal through the normal legal channels. The Government adds that the Territorial Directorate of Antioquia of the Ministry of Labour and Social Security initiated two administrative labour inquiries against Sintéticos S.A., the first for alleged violation of the collective agreement and the second for violation of the in-house regulations. The Government states that in the first inquiry the Territorial Directorate sanctioned the enterprise for violation of the agreement by way of resolution No. 000681 of April 2002, a decision which was confirmed by way of resolutions Nos. 01472 of 23 July 2002, and 03268 of 11 December 2002. As to the second inquiry, the Territorial Directorate, in accordance with resolution No. 03259 of December 2002, left the parties free to apply to the ordinary labour courts as it was not competent to issue value judgements.
475. As regards the allegations presented by ADEM concerning non-compliance with an agreement in which the Government had undertaken to reinstate 83 workers covered by trade union immunity and the lack of consultations during the administrative restructuring process initiated by the Council of Medellín, the Government indicates that there is no evidence on its records of such an agreement having been reached.
476. With respect to the allegations provided by the CUT concerning SOFASA, the Government refers to the reply it gave in the framework of the 325th Report of the Committee and notes that the Committee has already addressed those allegations.

D. The Committee's conclusions

477. *The Committee observes that when examining this case relating to acts of discrimination and anti-union persecution at its May 2003 meeting, it had requested the Government to take certain measures or to communicate certain information [see 331st Report of the Committee, para. 266].*

Paragraph (a) of the Committee's recommendations at its May 2003 meeting

478. *As regards the dismissal of 34 workers from Textiles Rionegro, the Committee notes the Government's information concerning the reinstatement of 15 workers in compliance with legal decisions ordering this, the agreements reached through legal channels between the enterprise and 13 workers, and the pending rulings relating to three workers. The Committee nevertheless observes that this information relates to 31 workers, while the allegations concerned 34 workers. The Committee therefore requests the Government to keep it informed of the results of the pending judicial proceedings relating to three workers, and with respect to the situation of the other three workers to whom the Government makes no reference in its observations.*

Paragraph (b) of the Committee's recommendations

479. *As regards the ruling handed down by the Council of State with regard to the action for protection of constitutional rights lodged by the trade union official María Librada García deciding to turn the file over to the Court of First Instance, the Committee notes that*

according to the Government the trade union organization has not yet taken the relevant action to make compliance with the amparo mechanism effective.

Paragraph (d) of the Committee's recommendations

480. As regards the allegations presented by the Trade Union Association of Employees of the National Penitentiary and Prison Institute (ASEINPEC) relating to the constant threats received by trade union officials, anti-union persecution through measures against union leaders including sanctions, disciplinary proceedings and transfers, the dismissal of union leaders in violation of trade union immunity (whose reinstatement was ordered by the High Court of the Judicial District of the Department of Quindío), the suspension of trade union leaders without pay for having conducted a peaceful demonstration, pressure on members to leave the union, and the refusal by the director of the INPEC to return the trade union offices to the complainant organization in spite of a legal ruling ordering this, the Committee regrets to observe that the Government has limited itself to indicating that it does not share the views of the trade union organization, without referring specifically to the failure of the INPEC to comply with the rulings ordering the reinstatement of the trade union officials and the return of the offices to the trade union organization. Neither has the Government sent its observations with respect to the other allegations concerning anti-union discrimination. The Committee recalls once again that no person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see **Digest of decisions and principles of the Freedom of Association Committee**, para. 748]. The Committee also emphasizes the importance of judicial decisions relating to the INPEC being implemented swiftly. The Committee requests the Government to take measures to ensure that the judicial decisions ordering the reinstatement of the dismissed trade union leaders and the return of the trade union offices are implemented without delay and to send its observations with respect to the further allegations of anti-union discrimination relating to threats, sanctions, disciplinary proceedings and transfers involving trade union officials of ASEINPEC.

Paragraph (e) of the Committee's recommendations

481. As regards the murders of trade union officials Jesús Arley Escobar, Fabio Humberto Burbano Córdoba, Jorge Ignacio Bohada Palencia and Jaime García, about which the Government had stated that the Attorney-General's Office on violations of trade union members' human rights had carried out investigations, the Committee regrets to observe that the Government has not sent any further information and adds that these issues will be dealt with in future in the framework of Case No. 1787. The Committee repeats its previous recommendation in which it requested the Government to take the necessary steps to ensure that the investigations allow those responsible for these murders to be punished in the near future and to keep it informed in this respect.

Paragraph (f) of the Committee's recommendations

482. As regards the allegations presented by SINTRASINTETICOS concerning persecution of the trade union at Sintéticos S.A. targeting trade union members and leaders to make them resign from the trade union [see 328th Report, paras. 151-163], and the dismissal of Gabriel Arturo Martínez Tirado, Gildardo Antonio Arboleda Suárez, Jaime González, Rafael Pareja, Carlos Ruíz, Joel Cardona, José Abad García, Guillermo Márquez, Diego Obando, Gabriel Martínez, Fabián Taborda and Mario de Jesús Sánchez, the Committee notes the Government's information that: (i) the amparo proceedings lodged by the workers were rejected, a decision which was confirmed by the High Court of Medellín, on 4 September 2000, in accordance with the terms of the judicial decision, the dismissed

workers can still appeal through the normal legal channels; (ii) the Territorial Directorate of Antioquia of the Ministry of Labour and Social Security initiated two administrative labour inquiries against Sintéticos S.A., the first for the alleged violation of the collective agreement and the second for violation of the in-house regulations. In the first inquiry the Territorial Directorate sanctioned the enterprise by way of resolution No. 000681 of April 2002 for violation of the agreement, a decision which was confirmed by way of resolutions Nos. 01472 of 23 July 2002, and 03268 of 11 December 2002. As to the second inquiry, the Territorial Directorate, in accordance with resolution No. 03259 of December 2002, left the parties free to apply to the ordinary labour courts.

- 483.** As regards the allegations presented by ADEM concerning non-compliance with an agreement in which the Government had undertaken to reinstate 83 workers covered by trade union immunity, and on the lack of consultations during the administrative restructuring programme initiated by the Council of Medellín, the Committee notes that according to the Government it has no evidence on its records of such an agreement having been concluded. The Committee recalls in this respect that according to the complainant organization on 20 February 2001 the Mayor signed a Memorandum of Understanding committing him to respect workers' rights and freedom of association and admitted that the administration had made a mistake in dismissing the 83 employees and, under paragraph 7 of the Memorandum, agreed to order that they be reinstated in their posts [see 328th Report, para. 131]. The Committee requests the Government to carry out an investigation at the office of the Mayor of Medellín to determine whether the agreement was in fact concluded, and if it was, to take measures to ensure it is implemented as soon as possible.
- 484.** The Committee regrets to observe that the Government has not sent its observations with respect to the allegations submitted by the National Union of Textile Industry Workers (SINTRATEXIL) which relate to [see 331st Report, para. 259(g)]: (a) in the Fabricato enterprise: (1) there is violation of the collective agreement; (2) trade union leave is denied; (3) trade union leaders are denied access to the premises; (b) in the Enka enterprise: (1) non-fulfilment of agreements concluded between the president of the company and the trade union; (2) violation of the collective agreement through the conclusion of contracts with companies to conduct work directly covered by the collective agreement; (3) distribution of the hardest tasks to unionized workers; (c) in the Coltejer enterprise: dismissals on the grounds of restructuring, in violation of a collective agreement; and (d) in the Textiles Rionegro enterprise: (1) favouritism towards one of the enterprise trade unions to the detriment of the industry unions; and (2) violation of the collective agreement. The Committee requests the Government to send its observations in this respect without delay.

Allegations relating to SOFASA S.A.

- 485.** As regards the allegations of the Single Confederation of Workers of Colombia (CUT) concerning the mass dismissal of workers from SOFASA S.A., which meant the disappearance of the Envigado executive subcommittee of SINTRAUTO, the Committee agrees with the Government's observation that they have already been examined [see 325th Report, para. 331]. The Committee furthermore indicates that in accordance with the conciliation document (sent by the Government), the conflict was resolved between the Government and the national branch of the trade union. As concerns any disagreements between the Envigado executive subcommittee and the National Trade Union concerning the way in which the conflict was resolved, the Committee recalls that conflicts within a trade union lie outside its competence and should be resolved by the parties themselves or by recourse to the judicial authority or an independent arbitrator [see *Digest*, op. cit., para. 972].

The Committee's recommendations

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

- (a) *With regard to the dismissal of 34 workers from Textiles Rionegro, the Committee requests the Government to keep it informed of the results of the pending judicial proceedings relating to three workers to whom the Government made no reference in its observations. Moreover, as to the other allegations submitted by SINTRATEXIL concerning the enterprises Fabricato, Enka and Coltejer and Rio Negro, the Committee requests the Government to send its observations without delay.*
- (b) *Concerning the allegations presented by ASEINPEC relating to constant threats, sanctions, disciplinary proceedings and transfers involving trade union leaders, the dismissal and suspension of trade union leaders without pay in violation of trade union immunity and the refusal by the director of the INPEC to return the trade union offices, the Committee requests the Government to take measures to ensure that the judicial decisions ordering the reinstatement of the trade union leaders and the return of the trade union offices are implemented without delay and to send its observations with respect to the further allegations of anti-union discrimination relating to threats, sanctions, disciplinary proceedings and transfers involving trade union leaders of ASEINPEC.*
- (c) *As regards the allegations submitted by ADEM concerning non-compliance with an agreement in which the Government had undertaken to reinstate 83 workers covered by trade union immunity, the Committee requests the Government to carry out an investigation at the office of the Mayor of Medellín to determine whether the agreement was in fact concluded and if it was, to take measures to ensure it is implemented as soon as possible.*
- (d) *As regards the murders of trade union officials Jesús Arley Escobar, Favio Humberto Burbano Córdoba, Jorge Ignacio Bohada Palencia and Jaime García, the Committee once again requests the Government to take the necessary steps to ensure that the investigations allow those responsible for these murders to be punished in the near future and to keep it informed in this respect.*

CASE NO. 2226

INTERIM REPORT

**Complaints against the Government of Colombia
presented by**

- the Union of State Workers of Columbia (UTRADEC)
- the Single Confederation of Workers of Colombia (CUT) and
- the Social Security Workers' Union (SINTRASEGURIDADSOCIAL)

Allegations: The complainants allege the default on a collective agreement concluded between the Ministry of Labour and the Social Security Institute with SINTRASEGURIDADSOCIAL, dismissals in conjunction with successive restructuring at the San Vicente de Paul Hospital of Caldas-Antioquia, the dismissal of the entire executive committee of the Trade Union Association of Workers and Public Officials in the areas of Health, Integral Social Security and Complimentary Services of Colombia (ANTHOC) without judicial authorization, anti-union harassment against a trade union leader of SINDICIENAGA in the Municipality of Ciénaga, Department of Magdalena, the withholding of trade union fees and the dismissal of 38 members, alleged by UTRADEC

- 487.** The Committee last examined this case at its May-June 2003 meeting, at which time it submitted an interim report to the Governing Body [see 331st Report, paras. 291-307, approved by the Governing Body at its 287th Session]. The Social Security Workers' Union (SINTRASEGURIDADSOCIAL) submitted new allegations in communications dated 22 April and 24 June 2003.
- 488.** The Government sent its observations in communications dated 28 May, 25 June, 4 July and 8 September 2003.
- 489.** Colombia 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. Previous examination of the case

- 490.** The Committee examined this case, relating to the default on a collective agreement, anti-union dismissals and harassment and the withholding of trade union dues, at its May-June 2003 meeting, where it made the following recommendations [see 331st Report, para. 307]:

- (a) The Committee requests the Government to take steps to ensure that the investigation initiated by the territorial directorate of Antioquia is completed without delay and, if it is found that there was no judicial authorization to dismiss the members of the executive committee of ANTHOC, that the dismissed officials are reinstated in their jobs with payment of back wages. The Committee requests the Government to keep it informed in this respect.
- (b) Concerning the alleged default on the collective agreement concluded between the Ministry of Labour and Social Security and the Social Security Institute with SINTRASEGURIDADSOCIAL, and the suspension of 5,000 workers with possible dismissal, the Committee notes that the administrative authorities have initiated an investigation and that, as part of it, a conciliation process was begun. The Committee stresses the importance of the parties attending hearings convened by the administrative authority in order to reach an agreement satisfactory to both sides as soon as possible. The Committee requests the Government to take steps to ensure that the investigation covers all aspects of the allegations and that it is promptly completed. The Committee requests the Government to keep it informed in this respect.
- (c) With regard to the allegations submitted by UTRADEC concerning the anti-union persecution of María Teresa Romero Constante, president of SINDICIENAGA, by the authorities of the Institute of Traffic and Municipal Transport of Ciénaga, Department of Magdalena, who refused to negotiate with her in particular, and issued threats to make her leave the trade union, the dismissal of 38 trade union members, the default on the collective agreement as regards the payment of travelling expenses, and the withholding of trade union fees, the Committee urges the Government to send its observations without delay.
- (d) With regard to the allegations presented by CUT relative to the dismissal without suspension of trade union immunity and other anti-union acts against Gloria Castaño Valencia, the Committee requests the Government to transmit its observations in this respect.

B. New allegations

- 491.** In communications dated 22 April and 24 June 2003, the Social Security Workers' Union (SINTRASEGURIDADSOCIAL) states that, in March, the Government approved CONPES document No. 3219 on the modernization of the Social Security Institute, which contains mistakes and serious misunderstandings in its analysis. This document establishes an adjustment policy that is based on the elimination of the collective labour agreement before its expiry, the division of the company into various independent units, the liquidation and sale of workplaces and the introduction of management and administration models through the contracting out of services.
- 492.** According to the complainant organization, the Government maligns the workers and accuses the collective agreement and the trade union of being responsible for the institutional crisis. It threatens to use the extraordinary powers at the disposal of the president in order to change the legal nature of the Institute and to dismiss thousands of workers.
- 493.** Finally, the complainant organization alleges a lack of guarantees in the exercise of trade union duties, disciplinary proceedings against trade union officials for their participation in information meetings, denial of trade union leave to carry out trade union activities, harassment, intimidation and threats against trade union officials and delegates.

C. The Government's reply

- 494.** In communications dated 28 May and 8 September 2003, the Government indicates, with regard to the allegations relating to the dismissal of 150 workers and the entire executive committee of ANTHOC at the San Vicente de Paul Hospital of Caldas-Antioquia, the

territorial directorate of Antioquia began a number of administrative investigations that concluded with the following decisions:

- Decision No. 0394 of 20 February 2003, which determined that the Ministry of Labour and Social Security lacked competency to decide on an alleged violation of trade union immunity, and that this issue should be decided by the ordinary courts, in accordance with article 2 of Act No. 712 of 2001.
- Decision No. 0402 of 20 February 2003, which determined lack of competency to decide on the collective dismissals. This decision is final as no appeals for reversal of decision or motions for appeal were lodged.
- Decision No. 0494 of 27 March 2003, which determined lack of competency to decide on an alleged violation of the right of association and collective bargaining. A motion for appeal was lodged and is currently under way. The Government states that it will provide a copy of the decision at the appropriate time.

495. The Government adds that the Hospital had shown a deteriorating financial situation for some time and that it was up to the State to take the appropriate steps, within its competency, to fulfil its social obligations.

496. In communications dated 4 July and 8 September 2003, the Government refers to the alleged default on the collective agreement concluded between the Ministry of Labour and Social Security and the Social Security Institute with SINTRASEGURIDADSOCIAL and the suspension of 5,000 workers with possible dismissal, and states that the territorial directorate of Cundinamarca began an administrative investigation into these complaints by SINTRASEGURIDADSOCIAL, but that the file was archived as neither the Social Security Institute nor the trade union appeared at the hearings organized by the Fifteenth Inspectorate, in accordance with the decree of 27 March 2003.

497. With regard to the new allegations presented by the complainant organizations referring to the approval of CONPES document No. 3219 relating to the modernization of the Social Security Institute, the Government states that these documents are issued by the National Council for Economic and Social Policies (CONPES), which is the highest national planning authority acting as an advisory body to the Government on all aspects relating to economic and social development of the country. This body is responsible for coordinating and advising the organizations responsible for economic and social direction in the Government through the study and approval of documents on the development of general policies. CONPES falls under the authority of the President of the Republic and it is made up of the Ministers for Foreign Affairs, Agriculture, Trade, Social Protection, Transport and the Environment, Culture, the Director of the National Planning Department, the managers of the Bank of the Republic and the National Federation of Coffee Growers, the Director of Affairs for Black Communities and the Ministry of Justice and the Interior and the Director of the National Office for Women's Equality.

498. The Government sets out a historical description of the founding, in 1946, of the Social Security Institute, and its evolution over the years. The Government indicates that, in 1993, through Act No. 100 of 1993, a significant process of modernization of the health system took place, and this involved the creation of a new scenario in which the Social Security Institute lost its dominant position in the market, which was opened up to private sector competition. Moreover, in accordance with this Act, the benefits of the contributory scheme were extended to cover members of the immediate family of the subsidy-paying member. These measures had a great influence on the number of members of the Institute. From 1998, with private competition consolidated in the market and with the Institute facing serious administrative problems and problems in providing services, the number of members began to decline. In this way, the health business showed a decrease of 13.5 per

cent in income between 1998 and 2002. There was also a decrease in spending, but this was limited to 7 per cent per year, owing to signed agreements and the conduct of those who were retired. (The Government provides a detailed list of these expenses.)

- 499.** The Government adds that the CONPES document establishes, in the final paragraph of its recommendations, a request that the Ministry of Social Protection form a tripartite commission made up of the Social Security Institute, the Government, represented by the Ministry of Social Protection, the National Planning Department and the Treasury, and the employees of the Social Security Institute (the Government attaches a copy of the notifications of these meetings) so that together they might draw up a joint proposal with regard to the structural problems of the Social Security Institute, in order to ensure its viability and the sustainability of the health services provided by it. This document goes on to establish a deadline, 30 April 2003, by which the Ministry of Social Protection must submit its report should there be no agreement among the parties. In this sense, the Government emphasizes the implementation of prior consultation with the trade union organizations, in accordance with the Committee's recommendations. The Government adds that the President of the Republic personally met with workers' representatives from the companies involved in the restructuring in order to consider in detail the measures that should be taken.
- 500.** The Government emphasizes that the reasons listed clearly show the serious problem confronting the Social Security Institute and that this is general in nature and totally excludes any anti-union motives. The Government denies the allegations relating to anti-union discrimination and refusal to grant trade union leave. It confirms that the situation affecting the enterprise led to the adoption of measures alleged by the complainant organization as anti-union and that, in reality, these were made at the general level, and it sends copies of the decisions granting the trade union leave requested by the trade union organization.
- 501.** With regard to the allegations presented by UTRADEC relating to anti-union harassment of María Teresa Romero Constante, president of SINDICIENAGA, the Government states that the territorial directorate of Madgalena, through the Ciénaga Labour Inspectorate, began an administrative labour investigation, summoning the trade union official and the Mayor of the Municipality in order to clarify the facts contained in the complaint. The investigation is in the preliminary stages.
- 502.** With regard to the allegations submitted by CUT relating to the dismissal without the lifting of trade union immunity and other anti-union acts against Gloria Castaño Valencia, the Government states that the territorial directorate of Cundinamarca concluded an administrative labour investigation and this is currently with the office of the Coordinator for Inspection and Oversight for preparation of the draft decision. The Government indicates that it will send a copy of this decision at the appropriate time. The Government adds that Gloria Castaño Valencia joined the trade union in July 2000 and the trade union organization submitted this request for registration with the Ministry of Labour on 30 August 2000, obtaining registration on 1 December 2000. The Government emphasizes that trade union immunity is a constitutional concept protecting the right of freedom of association and, as such, is a mechanism established primarily in favour of the trade union and secondarily to protect the employment stability of workers' representatives.

D. The Committee's conclusions

- 503.** *With regard to the dismissal of the executive committee of ANTHOC without the judicial authorization required by Colombian legislation, in the framework of the mass dismissals that took place at the San Vicente de Paul Hospital, into which administrative investigations have been initiated, the Committee notes that, according to the Government, the territorial directorate of Antioquia issued three administrative decisions, Nos. 0394,*

0420 and 0494, which established the lack of competency of the Ministry of Labour to decide on the alleged violation of trade union immunity, the collective dismissals and the violation of the right to freedom of association and collective bargaining, respectively. The second decision is final and a motion of appeal was lodged against the third decision, and this is in process. In these circumstances, the Committee requests the Government to provide information on whether the Hospital requested judicial authorization for the dismissal of the executive committee, as laid down in the legislation for the dismissal of trade union officials, and, if this is not the case, that it reinstate the dismissed trade union officials in their positions, without loss of pay.

- 504.** *With regard to the alleged default on the collective agreement concluded between the Ministry of Labour and Social Security and the Social Security Institute with SINTRASEGURIDADSOCIAL, and the suspension of 5,000 workers with possible dismissal, the Committee notes the Government's statement that the territorial directorate of Cundinamarca initiated an administrative investigation but that, in accordance with the decision of 27 March 2003, this was archived owing to the fact that neither the Social Security Institute nor the trade union attended the hearings arranged by the Fifteenth Inspectorate. The Committee requests the Government to provide information on whether the complainant organization has begun legal proceedings in this respect.*
- 505.** *With regard to the new allegations presented by the trade union organization relating to the intention of the Government to renegotiate the collective agreement in force in accordance with CONPES document No. 3219 of March 2003, the Committee notes the comprehensive information provided by the Government with regard to the nature of these documents and the difficult economic situation in which the Institute finds itself, which led to the adoption of the present document that refers to general measures to be taken, among which is the revision of the collective agreement prior to its expiry. The Committee notes that the document includes, in the final section, a provision requiring the Ministry of Social Protection to establish a tripartite commission comprising the Social Security Institute, the Government (represented by the Ministry of Social Protection, the National Planning Department and the Treasury) and the workers of the Social Security Institute, so that a joint proposal on the structural problems of the Social Security Institute may be submitted within a month in order to ensure the viability and sustainability of the health services provided by the Institute, and that, if there is no agreement, the Ministry will present a report before 30 April 2003. In these circumstances, the Committee invites the parties to encourage mutual understanding and good relations and highlights the importance of in-depth discussions on issues of mutual interest in order to arrive, in so far as it is possible, at commonly agreed and accepted solutions. The Committee requests the Government to keep it informed in this respect.*
- 506.** *With regard to the allegations submitted by UTRADEC relating to the anti-union harassment of María Teresa Romero Constante, president of SINDICIENAGA, by the authorities of the Institute of Traffic and Municipal Transport of Ciénaga, who refused to negotiate with her in particular, and issued threats to make her leave the trade union, the Committee notes the Government's information that the territorial directorate of Magdalena, through the Ciénaga Labour Inspectorate, began an administrative investigation, which is currently in the preliminary stages. The Committee requests the Government to keep it informed of the outcome of this investigation.*
- 507.** *With regard to the allegations relating to the default on the collective agreement as regards the payment of travelling expenses and the withholding of trade union dues, also alleged by UTRADEC, the Committee regrets to note that the Government has sent no observations in this respect and requests it to do so without delay.*
- 508.** *With regard to the allegations submitted by CUT relating to the dismissal without suspension of trade union immunity and other acts of anti-union harassment against*

Gloria Castaño Valencia, the Committee notes that the territorial directorate of Cundinamarca began an administrative investigation and that it is still awaiting a decision. The Committee requests the Government to keep it informed of the outcome of this investigation.

The Committee's recommendations

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

- (a) With regard to the dismissal of the executive committee of ANTHOC without the judicial authorization required by Colombian legislation, in the framework of the mass dismissals that took place at the San Vicente de Paul Hospital, the Committee requests the Government to provide information on whether the Hospital requested judicial authorization for the dismissal of the executive committee, as laid down in the legislation for the dismissal of trade union officials, and, if this is not the case, that it reinstate the dismissed trade union officials in their positions, without loss of pay.*
- (b) With regard to the alleged default on the collective agreement concluded between the Ministry of Labour and Social Security and the Social Security Institute with SINTRASEGURIDADSOCIAL, and the suspension of 5,000 workers, the Committee requests the Government to provide information on whether the complainant organization has begun legal proceedings in this respect.*
- (c) With regard to the allegations relating to the Government's intention to renegotiate the collective agreement in force in accordance with CONPES document No. 3219, the Committee invites the parties to encourage mutual understanding and good relations and highlights the importance of in-depth discussions on issues of mutual interest in order to arrive, in so far as it is possible, at commonly agreed and accepted solutions. The Committee requests the Government to keep it informed in this respect.*
- (d) With regard to the allegations submitted by UTRADEC relating to the anti-union harassment of María Teresa Romero Constante, president of SINDICIENAGA, by the authorities of the Institute of Traffic and Municipal Transport of Ciénaga, who refused to negotiate with her in particular, and issued threats to make her leave the trade union, the Committee requests the Government to keep it informed of the outcome of this investigation.*
- (e) With regard to the allegations relating to the default on the collective agreement as regards the payment of travelling expenses and the withholding of trade union dues, also alleged by UTRADEC, the Committee requests the Government to send its observations without delay.*
- (f) With regard to the allegations submitted by CUT relating to the dismissal without suspension of trade union immunity and other acts of anti-union harassment against Gloria Castaño Valencia, the Committee requests the Government to keep it informed of the outcome of the administrative investigation that has begun.*



Part II

CASE NO. 2231

DEFINITIVE 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: Dismissals at the PROPOKODUSA
S.A. company of members of the trade union
executive committee and other workers who did
not accept the change in conditions of work
offered by the company***

510. The Committee examined this case at its May-June 2003 meeting and submitted an interim report [see 331st Report, paras. 357-376, approved by the Governing Body at its 287th Session (June 2003)].

511. The Government sent new observations in a communication dated 2 September 2003.

512. 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. Previous examination of the case

513. In its previous examination of the case in May-June 2003, the Committee made the following conclusions and recommendations [see 331st Report, paras. 370-376]:

- 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.

- 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.
- 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.
- 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.
- 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.

B. The Government's new observations

514. In its communication of 2 September 2003, the Government recalls all the conciliatory measures taken by the Ministry of Labour in this matter and records the regulations in the Labour Code that ensure the protection of trade union officials and indicates that this protection extends to the process of establishing the trade union and throughout the duration of its mandate (in such cases, up to six months after the expiry of the respective periods).

515. According to the Government, the articles in question establish the following:

Chapter 3 on the protection of trade union rights

Article 363: Any action or omission that is liable to impede, limit, restrict or prevent the free exercise of the collective rights of workers, their trade unions or workers' associations is prohibited.

Any act arising out of said actions or omissions shall be totally null and void and shall be penalized according to the means and conditions laid down in the Labour Code, and its supplementary or related acts for the infringement of prohibitive regulations.

Article 364: Any individual or trade union so concerned may lodge a complaint in writing with the National Labour Inspection Directorate relating to the perpetration of unfair labour practices; however, these practices may also be investigated in the absence of a complaint being lodged.

Article 365: The National Labour Inspection Directorate shall investigate, using the measures that it considers necessary, those violations of which it has been informed. If it decides that it would be useful to have knowledge of the background of the matter, it shall summon the parties concerned or, if they have them, their legal representatives, to a hearing during which all the evidence considered necessary shall be received.

Article 366: Without prejudice to the outcome of the hearing mentioned in the previous article, if the existence of unfair labour practices is confirmed a written record shall be established and the National Director and Inspector General of Labour shall file the relevant judicial complaint, with precedence over any other matter.

In order to safeguard the rights protected by this Act, shall be imposed the penalties laid down in the labour legislation in force, without prejudice to any other judicial measure that might be established.

If it is not useful to have knowledge of the background of the matter or if the existence of unfair labour practices is not confirmed, the file shall be closed by a justified decision. This decision shall be subject to the usual motions for reversal of decision or appeal, the latter to be filed with the Ministry of Labour and Social Security, which shall exhaust all possible administrative recourse.

Article 367: Without prejudice to more favourable decisions, established in accordance with collective labour agreements, the persons mentioned below shall enjoy employment stability in order to ensure the defence of the collective interest and autonomy in carrying out trade union activities as a minimum, and for those periods of time indicated:

- (a) Up to 20 workers who belong to and are involved in the establishment of a trade union. This protection lasts for two months, from the time of notification of the list of names to the Department of Social Organizations of the Ministry of Labour and Social Security in the form indicated herein, and for two months after the relevant request for registration is presented. This period may not exceed four months. In order to enjoy this protection, those concerned shall notify, through reliable means, the department mentioned and the employer of their intention to establish a trade union and the names and status of those who, in their opinion, should benefit from this protection.
- (b) One trade union official for the first 20 workers who join the union in the respective enterprise and one for every 25 workers who join the union after that, up to a maximum of four. This protection shall be extended for the period of time in which they hold office and for six months after the expiry of their respective mandates.
- (c) Trade union members who, in accordance with the statutes of the respective trade union, run as candidates for election to the executive committee. This protection shall last for three months, from the time that they inform the Department of Social Organizations of their candidacy.
- (d) Should an enterprise have no trade union, representatives freely elected by the workers shall enjoy the same protection, as indicated and for an equal length of time, as that laid down in subparagraph (b) of this article.

Article 368: A worker who is protected under the current Act and who is unfairly dismissed shall not be affected by the provisions of article 28 of this Labour Code. The competent labour court shall declare this dismissal null and void and, consequently, shall order the worker's reinstatement and payment of back wages, as well as the corresponding penalties imposed on the employer, in accordance with this Labour Code and its supplementary and related acts. If the worker expressly indicates that he wishes not to be reinstated, he shall receive compensation equivalent to the wages accruing to him during the protection period from which he did not benefit, as well as the corresponding labour rights with regard to unfair dismissal, in accordance with the previous article.

Article 369: Further to those just causes provided in article 81 of this Labour Code, the following shall also be considered as giving rise to the employer being able to terminate the employment contract of workers protected under the current Act:

- bringing pressure on or committing violence against persons or things, or any other act that is intended to encourage disorder or undermine the peaceful nature of a strike;
- attacking company property;

- inciting the perpetration of acts that result in destruction of labour materials, tools or products or goods or that decrease their value or cause their deterioration, or participating in such acts;
- inciting, directing or participating in the intentional decrease in returns or in the interruption or the illegal obstruction of labour activities;
- wrongfully withholding persons or property or using these in a wrongful manner in demonstrations or pickets;
- inciting destruction, disruption or interruption of public or private facilities, or participating in acts that cause damage to them.

C. The Committee's conclusions

516. *In the present case, the complainant organization alleged anti-union dismissals (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.*

517. *The Committee observed that the company, for its part, maintained that the dismissals did 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 with the workers (the last on 12 January 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 and that anyone who did not accept the changes would be dismissed with payment of their full labour entitlements.*

518. *The Committee notes the Government's information with regard to the provisions of the Labour Code, which protects against anti-union discrimination, and which includes administrative and judicial proceedings allowing anti-union dismissals to be declared null and void and penalties to be imposed.*

519. *The Committee notes that the complainant organizations have not sent the additional information that was requested from them and that neither the complainant organizations nor the Government have indicated that those dismissed have begun legal proceedings. In these circumstances, taking into account the contradicting reports of the complainants and the company on the dismissals, the Committee is not in a position to reach conclusions on this matter and, therefore, will not proceed with an examination of this case.*

The Committee's recommendation

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

CASE NO. 2272

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

**Complaints against the Government of Costa Rica
presented by**

- the National Association of Insurance Brokers (ANDAS) and
- the National Association of Public and Private Employees (ANEP)

Allegations: The complainant organizations allege that the National Insurance Institute (INS) was unilaterally reorganized in August 2000, terminating the employment contracts with only partial payment of compensation, of 239 insurance brokers (including members of the ANDAS executive committee), whose relationship with the employers became a commercial one without social guarantees, in a fraudulent evasion of applicable law and in violation of the Constitution and the legislation; the dismissal of two trade union officials of the Insurance Brokers' Association (AGEINS) who refused to accept the change in the articles of association; a judicial order for the arrest and imprisonment for alleged defamation following statements by a trade union official of AGEINS against the "underhand privatization". Finally, the complainant organizations allege the disavowal of the existence of the collective agreement and the trade union organization ANDAS, with the withdrawal of the use of trade union facilities

521. The complaints are presented in communications from the National Association of Insurance Brokers (ANDAS) of 23 June 2003 and the National Association of Public and Private Employees (ANEP) of 1 May 2003. ANDAS submitted further information in communications dated 23 July and 16 September 2003, and ANEP in communications dated 26 and 28 July 2003. The Government sent its observations in communications dated 23 July, 4 September and 10 November 2003.

522. 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 complainants' allegations

523. In its communications of 23 June, 23 July and 4 September 2003, the National Association of Insurance Brokers (ANDAS) states that, in order to avoid paying their social

obligations, the National Insurance Institute (INS) arbitrarily and unilaterally dismissed insurance brokers selling insurance policies, including the executive committee of ANDAS; it partially annulled the rights of these brokers to severance pay and disavowed the existence of the trade union organization and the collective agreement, declaring that the employment contracts had changed to being commercial contracts. According to ANDAS, the political machinations of the INS, using the President's Office and the Attorney-General's Office of the Republic led, in a fraudulent evasion of applicable law, to the employment relationship of those workers being considered a commercial relationship, leaving the insurance brokers unprotected with regard to their social rights and guarantees (health insurance, pension and life insurance). ANDAS indicates that these measures were adopted unilaterally by the INS, contrary to the Constitution and the legislation, and involve false "commercial" contracts. ANDAS indicates that it lodged a judicial complaint against the INS in April 2001, but the proceedings may take years and further legal action for violation of the entire collective agreement. ANDAS indicates that the reason that the insurance brokers accepted, in August 2002, partial payment of their rights to severance pay was because the INS left them no alternative. Moreover, ANDAS was evacuated from its trade union premises (laid down in the collective agreement) and left to collect trade union dues through means other than the check-off facility, which was discontinued by the employer. The set of boxes for trade union members was abolished.

- 524.** In its communications of 1 May, 26 and 28 July 2003, the National Association of Public and Private Employees (ANEP) states that on 4 July 2003 the State, through the courts, issued an order to arrest and imprison Rodolfo Jiménez Morales, a trade union official of the Insurance Brokers' Association (AGEINS) as a result of a defamation complaint (of which he was not notified) submitted by the former executive president of the INS. According to ANEP, this was in the light of retaliation for "the crime" of stating in public that the Social Security (Minimum Standards) Convention, 1952 (No. 102) had been violated as a result of the forced relinquishment of the social guarantees of the insurance brokers (which, in the opinion of the trade union official referred to, constituted the beginning of the privatization of the INS), and for revealing acts of corruption and 33 irregularities attributable to the former president of the INS, an investigation into which had been requested in the Legislative Assembly. According to press cuttings, the "underhand privatization" of the INS entailed the payment of severance pay benefits "without the addition of years of service" to the insurance brokers whose employment contracts were terminated, although they were able to continue with their duties and their client lists.
- 525.** ANEP adds that trade union official Rodolfo Jiménez Morales and his wife, Ms. Kenya Mejía Murillo (also a trade union official of AGEINS), were – according to the attached information sent by ANEP – the only employees dismissed from their posts when they opposed signing of a commercial contract, in the context of a "reorganization" of 243 insurance brokers; the heads of the opposition party in the Legislative Assembly requested of the President of the Republic that Rodolfo Jiménez Morales be reinstated as he was dismissed in violation of ILO Conventions relating to freedom of association, and they highlighted that this trade union official had promoted the movement for the Legislative Assembly to investigate the irregularities of the "underhand privatization" process and other irregularities at the INS and that his dismissal took the form of retaliation. ANEP adds that both trade union officials, after their dismissal, refused to sign the temporary administrative contract for six months offered to the dismissed insurance brokers, in which their social guarantees were abolished, and the INS gave instructions to exclude Mr. Jiménez Morales and his wife subsequently from the public tender process to accede to the new employment articles of independent broker and not to issue them with the certification for production of premiums (one of the requisites for the tender) as, according to the INS, when they did not sign the temporary contract they lost their status as

insurance brokers and their client list. The other insurance brokers were forced to sign the temporary contract as they were threatened with the distribution of their client lists.

B. The Government's reply

- 526.** In its communications of 23 July, 4 September and 10 November 2003, the Government sent its observations and the comments of the National Insurance Institute (INS) on the complaint. The Government states that the restructuring carried out at the INS in the insurance policy sales area is based on Act No. 7454 of 14 November 1995, which approves various international agreements in 1993 and 1994 between Costa Rica and the Inter-American Development Bank that include loans and sectoral programmes for investment and structural adjustment that envisage, among other things, the breaking up of monopolies, dynamic competition in the insurance and re-insurance sectors, participation of the private sector and the restructuring of the INS in this sector. The reorganization of the INS hoped to tackle increasing competitiveness in the field of insurance, insure the sustainability and the increase of sales and achieve better management of client services, providing services to those insured at lower intermediary costs, create a framework for monitoring and control and modernize the regulatory framework of insurance activities. The complainants' accusation of corruption, fraudulent and illegal practices is completely untrue. The Government emphasizes that the present case does not refer to violations of trade union rights but to changes in employment conditions and the articles of association of INS insurance brokers, who move from being employees to independent brokers with a commercial relationship.
- 527.** The Government and the INS point out that the administrative reorganization for the reasons explained gave rise to the dismissal, from September 2000, of all 239 insurance brokers of the INS, whether or not they were trade union members (who received compensation worth millions), for which reason it is not correct to say that the dismissal was a result of anti-union discrimination or persecution. In fact, in this case, the employees affected have not appealed to administrative or judicial bodies on the basis of anti-union discrimination or persecution in spite of the fact that there are appeal procedures laid down in the legislation.
- 528.** According to the Government, the reorganization process was carried out in a transparent way and, in fact, the insurance brokers and ANDAS actively took part in the process and in the various activities; the Government attaches a circular of August 2000 from ANDAS (which is recognized as the largest association of insurance brokers), in which it indicates that "ANDAS has participated in this process, endeavouring – to the extent possible – to ensure that the form of change undertaken will be that which is least damaging to the brokers" and, in a communication dated 22 July 2000, it indicated that "in continuing our participation in the search for solutions to the problems affecting us in our employment relations, it is in the interests of the institution to carry forward the model of the independent broker, in which the administration has requested our participation ...".
- 529.** The Government adds that, on a number of occasions, the AGEINS trade union official, Rodolfo Jiménez Morales, was summoned to discuss the new model of independent broker but Mr. Jiménez Morales showed no interest whatsoever, nor did he reply to the invitations, this at least according to INS documentation.
- 530.** The labour court, in Decision No. 372 issued on 28 July 2003, clearly stated that from 1 September 2000 insurance brokers would no longer be employees of the INS and would move to having independent status under the administrative employment system regulated by the act on administrative employment (a commercial contract rather than an employment contract), for which reason this is not a false employment relationship.

- 531.** A large group of insurance brokers lodged a complaint (currently under way) with the ordinary labour courts, in which they demand, specifically, that the existence of an employment relationship between independent brokers and the INS (following reorganization) be stated.
- 532.** The Government states that the brokers have not been deprived of social security and that nothing restricts the right of each broker or each family to enrol in a voluntary insurance programme with the Costa Rican Social Security Fund, as was stated by the legal authorities in the ordinary legal proceedings against the INS, which was appealed.
- 533.** In spite of the employment relationship being terminated, the brokers, in a transition plan of six-months' duration, were freely able to continue working under a temporary administrative contract, in which case they had the possibility of participating in a public competition that culminated in making the administrative contracts for independent brokers official and they were able to sign contracts with commercial companies made up of these; in this way there were very satisfactory results for the INS (sustained increase in income through sales, reduction of administrative expenses, greater possibilities of access to services, decentralization of administrative procedures, etc.).
- 534.** According to the Government, Rodolfo Jiménez Morales and his wife, Kenya Mejía Murillo, did not present themselves to sign the temporary contract of services in the time limit laid down, and for this reason they disqualified themselves from this process of temporary employment and the new model of independent broker, preferring to use judicial procedures to request their reinstatement in the INS (incidentally, without bringing up at any time anti-union persecution), in spite of the fact that, currently, there are no insurance brokers in this company. As a result of not signing the temporary contract, they lost their accreditation and their client list was transferred to the INS. Moreover, the Insurance Brokers' Association of the INS (AGEINS) (in which the couple are officials), which was established with 14 members on 1 August 2000, is not a trade union nor is it registered as such. It is an association that is registered in the commercial register, according to government documentation.
- 535.** Decision No. 372 of 28 July 2003 of the labour courts clearly stated that the collective agreement signed by the INS and ANDAS, which governed the relationship of the insurance brokers and which provided premises for the trade union, is not in force, as the employer denounced this collective agreement one month prior to its expiry. The arbitrator's decision regulating labour relations expired on 27 November 1992; moreover, in an act that damaged the principle of good faith, the insurance brokers used one of the boxes to receive communications and the trade union headquarters to attempt, through having legal domicile, to re-establish labour relations, after having signed an administrative agreement. These facilities have continued to be used up until now, in which as a legal domicile they tried to show through these facilities that they had continuity of employment contracts (the Government provides documentation in this respect).
- 536.** According to the documentation received, the judicial order to arrest and imprison Rodolfo Jiménez Morales occurred as a result of his non-appearance before the judicial authorities following the action brought against him by the former president of the INS for defamation. The judicial authorities established contempt of court for non-appearance following information that the person concerned was not to be found at the address that he himself provided and that, on two occasions, there had been telephone communication by the legal assistant in which he was informed of the action and the need to be present. The complaint indicates that Mr. Jiménez Morales stated to *Radioperiódicos* that the president of the INS was a person who "alters invoices ... who buys people ...". The Government states that the complaint lodged by the president of the INS falls into the personal and

individual sphere and that no consequences arising out of this can be accepted for the Institute or the Government. The INS confirms that the complaint was not lodged on behalf of the INS.

C. The Committee's conclusions

- 537.** *The Committee notes that in the present case the complainant organizations allege that the National Insurance Institute (INS) was unilaterally reorganized in August 2000, terminating the employment contracts of 243 insurance brokers (239, according to the Government), including members of the ANDAS executive committee, whose relationship with the employer became a commercial one without social guarantees, in a fraudulent evasion of applicable law and in violation of the Constitution and the legislation; the dismissal of two trade union officials of AGEINS who refused to accept the change in the articles of association and, with regard to whom, the INS issued instructions for exclusion from the new non-employment articles of independent broker. They also allege a judicial order for the arrest and imprisonment for alleged defamation following statements by a trade union official of AGEINS against the "underhand privatization". Finally, the complainant organizations allege the withdrawal of the trade union facilities laid down in the collective agreement (premises, sets of boxes, etc.), the existence of which, moreover, was disavowed.*
- 538.** *The Committee notes the statements of the Government and the INS rejecting the allegations, as follows: (1) the reorganization of the INS to restructure and to reduce costs was not unilateral but rather, according to the documentation attached, carried out with the participation of the insurance brokers and ANDAS, and that the representative of AGEINS did not reply to the invitations issued to him; (2) the dismissals affected all insurance brokers and, as such, cannot be held to constitute anti-union discrimination; (3) the employees dismissed were paid compensation and were offered a temporary administrative contract under which they were able to participate in a subsequent public tender as independent insurance brokers; (4) the legal authorities stated that the collective agreement (denounced by the employer one month prior to its expiry), including the sections relating to the trade union premises and the arbitrator's decision (which had expired), were inapplicable; (5) the legal authorities had stated that from 1 September the insurance brokers would no longer be workers or employees of the INS and would become independent under the administrative contract, for which reason this was not a false labour relationship; (6) with regard to their rights to social security, the brokers could enrol in a voluntary insurance programme with the Costa Rican Social Security Fund and this was stated by the legal authorities; (7) the two trade union officials of AGEINS referred to by the complainant organizations are not officials of a trade union but of an association registered in the commercial register; after their dismissal, they did not accept the temporary administrative contract offered and, because of this, they lost their accreditation and their client list, choosing instead to appeal for reinstatement to their previous positions with the legal authorities; (8) the judicial order to arrest and imprison trade union official Rodolfo Jiménez Morales of AGEINS arose because he was declared in contempt by the judicial authorities for not appearing before them as a result of a complaint for defamation lodged by the former president of the INS, after Mr. Jiménez Morales stated on the radio that the former president "alters invoices" and "buys people"; according to the INS and the Government, the complaint was lodged on an individual and personal basis by the former president of the INS and not on behalf of the Institute; and (9) the Government sent documentation attesting that the ANDAS facilities (trade union premises, boxes) were being used as the legal domicile in order to try to show continuity of employment contracts, after the insurance brokers had signed an administrative contract; for this reason use of these facilities was withdrawn.*

539. *The Committee emphasizes in this regard that the right to express opinions through the press or otherwise is an essential aspect of trade union rights [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 153]. The Committee has indicated that it can examine allegations concerning economic rationalization programmes and restructuring processes, whether or not they imply redundancies or the transfer of enterprises or services from the public to the private sector, only in so far as they might have given rise to acts of discrimination or interference against trade unions [see **Digest**, op. cit., para. 935].*
540. *In these circumstances, the trade union organizations having been able to take part in the restructuring process of the INS, and noting that the dismissals affected all the insurance brokers of the INS, the Committee concludes that there does not seem to have been any anti-union discrimination. The Committee notes that the restructuring process consisted mainly of a change in the legal articles of association affecting the insurance brokers, who were offered the possibility of participating – under a temporary administrative contract – in a public tendering process to choose to be independent agents, in the context in which the collective agreement had expired and it considers, without assessing the following proceedings, that in itself this had no bearing on trade union freedoms.*
541. *With regard to the alleged instructions of the INS to exclude the AGEINS trade union officials, Rodolfo Jiménez Morales, and his wife, Kenya Mejía Murillo, from the public tendering process to accede to the new status of independent agent, the Committee notes the Government's explanations in this regard rejecting these allegations and that it also denies that they were officials of a trade union. Given that the complainant organizations have appealed that the disassociation of these employees with regard to the INS is linked to defence activities in the interests of the insurance brokers (in particular, denouncement of irregularities and the attempt to establish a commission of inquiry in the Legislative Assembly on the restructuring process), the Committee requests the Government to keep it informed of the outcome of the legal proceedings with regard to both officials. The Committee also requests the Government to inform it of the outcome of the proceedings for defamation against Rodolfo Jiménez Morales.*

The Committee's recommendations

542. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the present report and, in particular, the following recommendations:*
- (a) *The Committee requests the Government to keep it informed of the outcome of the legal proceedings with regard to AGEINS officials, Rodolfo Jiménez Morales, and his wife, Kenya Mejía Murillo.*
 - (b) *The Committee requests the Government to inform it of the outcome of the proceedings for defamation against Rodolfo Jiménez Morales.*

CASE NO. 2299

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

**Complaint against the Government of El Salvador
presented by
the National Trade Union Federation of Salvadorian Workers (FENASTRAS)**

Allegations: The complainant organization alleges the successive dismissals of trade union officials by the J.R.C. Manufacturing S.A. of C.V. company; death threats against five officials; the arrest and prosecution of a trade union official and another worker for alleged robbery; and the denial of legal personality to a trade union representing private security agents and the dismissal of two of its officials

- 543.** The complaint is contained in a communication from the National Trade Union Federation of Salvadorian Workers (FENASTRAS) dated 11 September 2003. FENASTRAS sent further information and new allegations in communications dated 24 October and 25 November 2003. The Government sent its observations in communications dated 29 October and 4 November 2003 and 5 and 8 January 2004.
- 544.** El Salvador has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 545.** In its communication of 11 September 2003, the National Trade Union Federation of Salvadorian Workers (FENASTRAS) states that in 2001 trade union officers María del Rosario Hernández, Marlene Jeannete Arguello Alfaro, Rutilia Rivera de Miranda, Sonia Guadalupe Rivera Argueta and Rosa Sánchez Osegueda were dismissed by the J.R.C. Manufacturing S.A. of C.V. company. FENASTRAS asked for these trade union officials to be reinstated, and this took place on 4 February 2002.
- 546.** On 11 February 2002, FENASTRAS handed written statements from five trade union officials threatened with death by one of the owners of the company because of their position as trade union officials to the Ministry of Labour. In February 2002, Juana Ramírez, a trade union official, was dismissed.
- 547.** FENASTRAS states that, on 7 August 2003, the National Civil Police of El Salvador arrested the finance secretary of the trade union local office executive committee of the J.R.C. Manufacturing S.A. of C.V. company, José Alirio Pérez Cañenguez, and driver Gilberto Antonio Mejía Barrios, accusing them of robbery. This accusation turned out to be false as on 12 August 2003 the Ilopango Court of the Peace released them (provisionally put aside in the absence of sufficient evidence), finding no cause for arrest and thereby indicating that the accusations of the owner of the company in question were false. This trade union official was dismissed.

548. In its communication of 24 October 2003, FENASTRAS states that the Private Security Services Industry Workers' Trade Union of El Salvador (SITRASEPRIES), established on 11 April 2003, was denied legal personality, which it had requested on 19 May 2003. In August 2003, Carlos Baltazar Martínez Quiteño, trade union official, and Orlando Flores Paz, acting president of the trade union were dismissed; both worked for the Security Consultants S.A. of C.V. company. The trade union requested compensation for dismissal, which was paid.

549. In its communication of 25 November 2003, FENASTRAS states that on 24 October 2003 the entire executive committee of the local office (17 members) was dismissed by the J.R.C. Manufacturing S.A. of C.V. company. FENASTRAS states that in a mediation hearing it was agreed with the company that the wages of these employees would be paid – José Alirio Pérez Cañenguez was also included in the agreement – but the company refuses to allow these employees entry to the facilities, preventing them from being able to protect the interests of the other workers.

B. The Government's replies

550. In its communications of 29 October and 4 November 2003 and 5 and 8 January 2004, the Government states that, on 15 February 2002, at a mediation hearing organized by the General Labour Directorate at the request of the STITAS trade union of the J.R.C. Manufacturing S.A. of C.V. company, the reinstatement of trade union officials María del Rosario Hernández Perez, Marlene Jeannete Arguello Alfaro, Rutilia Rivera de Miranda, Sonia Guadalupe Rivera Argueta and Rosa Sánchez Osegueda was offered as a conciliatory measure, from 18 February 2002, which was accepted by the trade union.

551. With regard to the death threats against the five trade union officials, the Government states that the Ministry of Labour does not have the authority to hear criminal cases.

552. With regard to the alleged arrest by the National Civil Police of José Alirio Pérez Cañenguez, finance secretary of the trade union local office executive committee of the J.R.C. Manufacturing S.A. of C.V. company, and Gilberto Mejía Barrios in August 2003, both accused of robbery by the legal representative of the company, the relevant competent courts have been handling this situation as the Ministry of Labour and Social Security is excluded from acting in this respect, given that this is a criminal situation rather than a labour one. The Government indicates that it will send the company's observations once it receives them.

553. With regard to the alleged refusal of legal personality for the Private Security Services Industry Workers' Trade Union of El Salvador (SITRASEPRIES), which is being established, the Government puts forward the legal arguments set out in the decision of 26 June 2003, which stated that the request for the recognition of legal personality for SITRASEPRIES was without cause for the following reasons:

- Article 7 of the Constitution of the Republic, paragraph 3, expressly “prohibits the existence of political, religious or trade union armed groups”. A trade union falls into this category and, in the present case, a trade union formed of persons possessing and using firearms, falls squarely under the abovementioned constitutional prohibition.
- The nature of the work carried out by a security agent, i.e. to provide security and surveillance in those areas indicated to him by his employer, means that these employees are trusted, and that this trust is a basic requirement in the existence and continuation of the employment relationship between the agent and his employer.

- Despite the above, the law recognizes the possibility of a trusted employee joining a trade union organization so long as the general assembly of the trade union that he wishes to join accepts him as a member, article 221, section 6(a), of the Labour Code. This necessarily implies the prior existence of a trade union organization that is not made up of trusted employees and that has been granted legal personality.
- From the above, it can be concluded that trusted employees, as in the present case, lack the legal right to participate as constituent members of a trade union organization as there is still no government body enabled by law to accept them as members. It is therefore not logical to think that trusted employees who try to establish a trade union will themselves be accepted as members.
- Consequently, the fact that trusted employees are not able to participate as members of a trade union means that the security agents that have taken part in establishing the trade union in question are not legally empowered for this.

554. The reasons that caused the Ministry of Labour and Social Security to decide that the request for legal personality for the trade union in the process of being established was without cause are founded in law. It is up to the complainant to initiate the legal and administrative actions that it considers relevant for the protection of those trade union rights that have allegedly been violated.

555. Likewise, the request by the complainant for a decision to revoke the denial of legal personality for the trade union and that the latter be granted legal personality immediately is currently being examined, as the granting of legal personality to the trade union being established would contravene the Constitution of the Republic, which, as already shown in article 7, paragraph 3, expressly “prohibits the existence of political, religious or trade union armed groups”.

556. With regard to the alleged dismissal of 17 officials from the trade union organization STITAS on 24 October 2003, the Government states that at the request of the trade union, the General Labour Directorate held a mediation hearing with the result that the company informed the 17 trade union officials dismissed that it was instructed to pay out, in the offices of the General Labour Directorate, those wages that were not paid on the employer’s instructions. The trade union representatives agreed that the wages that were not paid on the employer’s instructions should be paid and that this should take place at the offices of the Ministry.

C. The Committee’s conclusions

557. *The Committee notes that the complainant organization, in the present case, has alleged successive dismissals of trade union officials by the J.R.C. Manufacturing S.A. of C.V. company; death threats against five trade union officials; the arrest and prosecution of a trade union official and another worker for alleged robbery; and the denial of legal personality to a trade union made up of private security agents and the dismissal of two of its officials.*

558. *With regard to the alleged dismissal of the five trade union officials in 2001, the Committee notes the Government’s statement that these officials were reinstated on 18 February 2002. The Committee requests the Government to inform it of the reasons for the dismissal of trade union official Juana Ramírez in February 2002.*

559. *With regard to the death threats against five trade union officials at the J.R.C. Manufacturing S.A. of C.V. company by one of the owners, the Committee regrets that the Government has restricted itself to indicating that the Ministry of Labour is not competent*

to hear criminal cases. The Committee recalls that freedom of association can only be exercised as conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 46]. The Committee emphasizes that, as indicated in the complaint, the threats were supported by written statements and it requests the Government to take steps urgently to ensure that the competent authorities carry out an investigation and, if the allegations are confirmed, to punish the guilty parties so that adequate protection is guaranteed to these officials.

- 560.** *With regard to the alleged arrest and prosecution of trade union official José Alirio Pérez Cañenguez for alleged robbery, the Committee notes the Government's statement that this issue has been put before the courts and that it has asked the company to provide observations in this respect. The Committee notes that in the attached information sent by the complainant organization there is a legal decision that infers that the official in question has not been held and that the legal authorities have declared dismissal without prejudice of the case pending new elements and/or evidence. In these circumstances, the Committee considers that these trade union officials should be reinstated in their posts without loss of pay and be authorized to exercise their trade union activities. The Committee requests the Government to keep it informed of any new legal decision handed down on this matter.*
- 561.** *With regard to the alleged denial of legal personality for the private security agents' trade union SITRASEPRIES, the Committee notes that the Government confirms the refusal of legal personality and indicates that it is examining the request by the complainant that this decision upholding refusal be revoked. The Committee notes the arguments put forward by the Government that, in its opinion, the granting of this legal personality would be illegal (the Constitution of the Republic – article 7 – prohibits the existence of armed groups, these are trusted employees and they may only join a trade union that has been established with workers of another kind who will accept them as members). The Committee notes in this respect that this constitutional provision should not prevent workers from carrying arms when this is necessary because of the nature of their work.*
- 562.** *In this respect, the Committee recalls that, in accordance with the principles of freedom of association only the armed forces and the police can be excluded from the right to establish trade unions – which is a fundamental right. Consequently, all other workers, including private security agents should freely be able to establish trade union organizations of their own choosing. In these circumstances, the Committee believes that the denial of legal personality for the SITRASEPRIES trade union is a serious violation of freedom of association and it urges the Government to recognize this trade union and to keep it informed in this regard. The Committee observes that the Security Consultants S.A. of C.V. company has dismissed two SITRASEPRIES officials, although it notes that, according to the documents attached by the complainant, the employees concerned ended up accepting legal compensation.*
- 563.** *With regard to the dismissal of 17 trade union officials of STITAS by the J.R.C. Manufacturing S.A. of C.V. company, the Committee notes the Government's statement that, in a mediation hearing organized by the General Labour Directorate, the company accepted to pay the unpaid wages. The Committee regrets that the Government has provided no information on the specific facts that led to these dismissals; neither has it said whether these trade union officials – who, according to the allegations, are prevented from entering the company – remain dismissed and it requests that the Government send it this information without delay. The Committee recalls the principle according to which 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, 1996, para. 696]. The Committee requests the Government, if it is proven that any of these officials was dismissed by reason of his trade union activities, to ensure his reinstatement in the post without loss of pay.

The Committee's recommendations

564. 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 steps urgently to ensure that the competent authorities carry out an investigation into the alleged death threats against five trade union officials from STITAS by one of the owners of the J.R.C. Manufacturing S.A. of C.V. company, and if the alleged facts are confirmed, to punish those responsible and to guarantee adequate protection to these officials.*
- (b) The Committee considers that the trade union official, José Alirio Pérez Cañenguez, should be reinstated in his post without loss of pay and be authorized to exercise his trade union activities. The Committee requests the Government to keep it informed of any new legal ruling handed down relating to the accusation of alleged robbery against this trade union officer, which, to date has been provisionally put aside in the absence of sufficient evidence.*
- (c) The Committee believes that the denial of legal personality for the SITRASEPRIES trade union is a violation of freedom of association and urges the Government to recognize this trade union and to keep it informed in this respect.*
- (d) The Committee requests the Government to provide without delay information on the specific facts that led to the dismissal of 17 trade union officials from the J.R.C. Manufacturing S.A. of C.V. company in October 2003 and to indicate whether these trade union members remain dismissed. The Committee also requests the Government to indicate the reasons for the dismissal of trade union official Juana Ramírez in February 2002, and if it is proven that any of these officials have been dismissed by reason of their trade union activities, to ensure that they are reinstated in their posts without loss of pay.*

CASE NO. 2301

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

**Complaint against the Government of Malaysia
presented by
the Malaysian Trade Union Congress (MTUC)**

Allegations: The complainant organization alleges that the labour legislation, as applied by the authorities, denies workers the right to freely organize and join organizations of their own choosing, and to bargain collectively. Alleged restrictions, prohibitions and violations include: discretionary powers granted to the competent official as regards trade unions registration and scope of membership; refusal to recognize independent trade unions; establishment of employer-dominated trade unions; arbitrary denial of collective bargaining rights

- 565.** The complaint is contained in a communication dated 22 September 2003 from the Malaysian Trade Union Congress (MTUC).
- 566.** The Government provided its observations in a communication dated 18 December 2003.
- 567.** Malaysia has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainant's allegations

- 568.** In its communication of 22 September 2003, the complainant organization states that, under the Trade Unions Act, 1959 (the "Act") every trade union must obtain a registration certificate, failing which it has no legal status. The Act imposes severe conditions and restrictions on the establishment and development of trade unions, through the arbitrary and far-reaching powers given to the Director-General of Trade Unions (DGTU). When trade unions seek registration, the DGTU relies on the powers vested in him by the Act to stipulate series of conditions, including limitations and restrictions on the unions' scope of membership.
- 569.** The Act permits workers to establish trade unions within any particular trade, occupation or industry, or within any similar trades, occupations or industries; the object of such organizations is, inter alia, the regulation of relations between workers and employers, the promotion of good industrial relations, the improvement of working conditions, the representation of the parties in trade disputes, and the organization of strikes or lock-outs. Despite the above, for the past 30 years, the DGTU has consistently refused the establishment of an industrial union for more than 100,000 workers in the electronics industry, allowing only company-based unions in that sector; with a few exceptions, these

unions have remained weak, often influenced, and sometimes even dominated by employers.

- 570.** In the past 36 months, the DGTU has arbitrarily denied organizational and collective bargaining rights to more than 8,000 workers in the manufacturing companies listed below (in these companies, unions had accepted members but, based on objections raised by the companies, the DGTU ruled that the unions were not permitted to represent the workers: as a result the unions' right to bargain collectively was denied):

Metal Industry Employees' Union

(1)	Ueda Plating (M) Sdn. Bhd.	60 members
(2)	Hiroshige (M) Sdn. Bhd.	713 members
(3)	Diamet Klang (M) Sdn. Bhd.	96 members
(4)	Soritsu Technology (M) Sdn. Bhd.	135 members
(5)	Kobe Precision (M) Sdn. Bhd.	160 members
(6)	Kawamura (M) Sdn. Bhd.	67 members
(7)	NSK Micro Precision (M) Sdn. Bhd.	294 members

Timber Industry Employees' Union

(8)	Artwright Technology Sdn. Bhd	324 members
(9)	Finewood Trading Sdn. Bhd.	30 members
(10)	Koh Poh Seng Plywood Company (M) Sdn. Bhd.	23 members

National Union of Petroleum & Chemical Industry

(11)	EP Polymers (M) Sdn. Bhd.	237 members
(12)	Shin-Etsu Polymer (M) Sdn. Bhd.	1 158 members
(13)	Kualiti Alam Sdn. Bhd.	115 members
(14)	SNC Industrial Laminates Sdn. Bhd.	268 members
(15)	W.R. Grace Speciality Chemical (M) Sdn. Bhd.	51 members
(16)	Ryoka (M) Sdn. Bhd.	272 members
(17)	Takahata Precision (M) Sdn. Bhd.	494 members

Non-Metallic Mineral Products Mfg Employees' Union

(18)	Premier Bleaching Earth Sdn. Bhd.	28 members
(19)	UBE Electronic (M) Sdn. Bhd.	374 members

The union in that case sought expert certification from the Standards and Industrial Research Institute of Malaysia, which confirmed that the products manufactured by UBE Electronic consists of 90% ceramic which comes within the jurisdiction Of the Non-Metallic Mineral Products Mfg Employees Union (NMEU) whereas the DGTU has ruled that NMEU cannot represent UBE Electronics employees.

Electrical Industry Workers' Union

(20)	Mitsumi (Segamat) Sdn. Bhd.	1 079 members
(21)	Matsushita Electronics Corp (M) Sdn. Bhd.	1 670 members
(22)	Malaysian Appliance Components Sdn. Bhd. (General Electric)	334 members
(23)	The Union of Telecoms employees in Sarawak were denied the right to represent employees of subsidiary companies of Telecoms, even though they belong to the same industry.	

- 571.** Even in situations where the DGTU had ruled in favour of unions, a number of employers used the restrictive provisions of the Act to challenge his decisions before the High Court and the Court of Appeal. These companies are: Top Thermo Manufacturers Sdn. Bhd.; Senju Metal Industries Sdn. Bhd.; Kiswire Malaysia Sdn. Bhd.; Pacific Quest (M) Sdn. Bhd.; Dipsol Chemicals Sdn. Bhd.; Great Wall Plastics Sdn. Bhd.; Syarikat Marulee (M) Sdn. Bhd.; White Horse Ceramic Industries Sdn. Bhd.; and Silverstone Sdn. Bhd. Pending a decision of the Court, more than 2,000 workers of these companies are denied the right to collective bargaining.
- 572.** Attacks on freedom of association have become worst with the globalization process and the competition for investment and trade. By denying the right to union membership to thousands of workers, the DGTU has denied them the right to collective bargaining protected by Convention No. 98, that Malaysia has ratified.
- 573.** The complainant organization attaches to its complaint, as further evidence of alleged individual violations and of the practical effect of the legislation on the general weakness of trade unions, a comprehensive analysis (some 110 pages) on the compatibility of Malaysian industrial law with international labour Conventions. The following excerpts of that analysis, inasmuch as they are relevant to the present complaint may be quoted.
- 574.** The legislation gives extensive and detailed control to the DGTU over workers' organizations and on most of the internal affairs of unions, for instance: name, scope of membership, size, composition of the executives, objects, use and investment of funds, prohibition of political activities, restrictions on affiliation to federations and consultative bodies abroad. The Act further stipulates that trade unions should adopt rules on all matters listed in the first schedule of the Act (see list in Annex 1 of the present document) and that these rules should not contravene the specific statutory provisions governing such matters. Section 38(1) of the Act provides that the DGTU shall refuse to register a trade union if he is satisfied that its objects, rules and constitution conflict with any provision of the Act or regulations and an unregistered union is considered as an unlawful body, to be dissolved.
- 575.** The DGTU is not only given wide powers to refuse to register, or to deregister, a union if it is likely to be used for unlawful purposes, but there are no criteria in the Act allowing to determine whether a union is likely to be used for such unlawful purposes, thus also giving the DGTU wide discretionary powers to make such a decision.
- 576.** In addition, the DGTU is given arbitrary powers by section 12(2) of the Act to prefer a new union to the existing one if "he is satisfied" that this would serve the interests of workers. If the DGTU decides to cancel the certificate of registration of a union, nothing can stop him from doing so, if he is satisfied that this is appropriate, and such decisions are subject to appeal only to the Minister. While this discretionary exercise of executive authority is subject to judicial review, courts do not normally intervene when such discretion is conferred to officials in the law by terms like "is satisfied that, ... is of the opinion that ..." etc.; as a result, when the competent authority is vested with such discretionary powers, its opinion or satisfaction is usually accepted as conclusive by the courts.
- 577.** The weakness of the trade union movement dates back to 1948 when the existence of general confederations was ended by a legislative amendment which required the federations to be confined to trade unions regrouping workers in the same trades, occupations or industries. This restriction was kept in the law when Malaysia became independent, and the Government introduced a new definition of trade union as "any association or combination of workmen ... within any particular trade, occupation or industry or within similar trades, occupations or industries" which became section 2 of the Act and the interpretation of what should be considered as "similar" trades, etc. comes

within the competence of the DGTU and, in the last resort, of the Minister of Labour (section 2(2) of the Act). These combined provisions limiting trade union membership to workers in similar trades have been responsible for small trade unions and the weak trade union movement in Malaysia; they effectively prevented the emergence of large powerful national trade unions, and indeed prevented the MTUC itself from being recognized as a confederation of trade unions under the Act (the MTUC could be registered only under the Societies Act and its long term objective to eliminate the multiplicity of unions and help unions to regroup into 14 national industrial unions could not be realized because of this “similarity” provision). For instance, the DGTU refused at different times to accept that food and drink industries, or that rail and road industries, are similar. The same restriction was applied in the electronic industry to prevent the Electrical Industry Workers’ Union from organizing workers in the electronic industry on the ground that they were not workers in similar industries. All these workers could obtain, under ILO pressure, was the right to organize into in-house unions in electronic establishments which are still reluctant to accept even that form of unionization for their workers.

578. The complainant concludes that the policy of the authorities seems to be to prevent national unions from becoming too powerful; this has been particularly the case in the electronics industry. Not only the Metal Industry Employees’ Union (MIEU), but other national unions are facing the same obstacles when trying to enlarge their membership; as a result, the workers in these companies are denied the right to join national unions of their choice and are forced to exist as small unions, subjected to company pressure and, in some cases, are forced to form in-house unions.

B. The Government’s reply

579. In its communication of 18 December 2003, the Government states that the main difficulty preventing ratification of Convention No. 87 is that it would enable the formation of general unions, which might be led by persons having nothing to do with the activities or interests of unions, and pursuing political or even subversive aims. The Government considers that the present system contributes to the orderly growth of trade unions which in turn contributes to industrial harmony in the country.

580. The requirement to obtain a registration certificate is meant to accord trade unions certain rights, immunities and liabilities as legal entities. The Trade Unions Act, 1959 (the “Act”) aims at ensuring that unions operate in a democratic and responsible way to maintain and promote harmonious industrial relations and to ensure that the interests of the country and the people at large are not sacrificed for the benefit of a few individuals who control trade unions. The powers conferred to the Director-General of Trade Unions (DGTU) enable him to ensure that workers are represented by the competent trade union, in terms of trade, occupation or industry, so that workers can join a union related to their work and that the union can represent the right workers, so that trade unions may grow orderly in a situation conducive to the promotion and maintenance of harmonious industrial relations.

581. With respect to the allegation concerning the limitations on the unions’ scope of membership, the Government considers that there are no such limitations. Workers are free to join the relevant trade union that falls within the scope of the Act. The Government adds that workers in the electronic industry, like workers in other sectors, are free to form a union of their own choosing, which includes the right to form or join enterprise unions. These in-house unions are free and independent and enjoy the same rights and protections accorded to national unions, including the right to bargain collectively and to strike. They can also affiliate to international unions.

582. As regards the allegations concerning the weakness of unions in the electronics industry, and the influence and domination of some employers over unions, the Government states

that in-house unions can be strong and effective in promoting the welfare and interests of their members and of workers in general. Section 5(1) of the Industrial Relations Act contains provisions prohibiting influence and domination by employers.

- 583.** With respect to the some 8,000 workers who were allegedly denied organizational rights, the Government states that the unions mentioned in the list submitted by the complainant served claims of recognition on their respective employers under section 9(2) of the Industrial Relations Act. The claims were processed by the Industrial Relations Department (IRD) under section 9(3) of the Act, which provides that, upon being served with a recognition claim, employers have three options: accord recognition; notify the union in writing of the grounds for denying recognition; applying to the Director-General of Industrial Relations (DGIR) to ascertain the membership of the union. In the present case, the employers challenged the DGIR's competency to ascertain the rights of unions to represent their workers. The IRD referred the issue to the Director-General of Trade Unions, who decided upon investigation that the unions in question were not competent to represent the workers. The IRD informed the unions and deemed the matter resolved. The workers in question should be able to enjoy organizational rights, and the right to choose and join the trade union which is registered in respect of the industry in which they are employed. In the absence of such a trade union, they may form an establishment trade union. It is therefore incorrect to say that the authorities have arbitrarily denied these workers organizational or collective bargaining rights.
- 584.** With respect to those instances where employers challenged the DGTU's decisions in favour of unions, the Government points out that the judicial system gives aggrieved parties the absolute right to challenge decisions made by public officials. In fact, decisions made by the DGTU have been challenged by both employers and trade unions.
- 585.** The Government adds that, although it has not ratified Convention No. 87, workers in Malaysia have the right to form or join trade unions under: article 10(1)(c) of the Federal Constitution; section 8 of the Employment Act, 1955; section 8(1) of the Trade Union Act, 1959; and section 5(1) of the Industrial Relations Act, 1967. Under the Trade Unions Act, 1959, unions are registered on the basis of establishment, trade, occupation or industry. The Government does not agree with the complainant's contention that the DGTU acts to deny workers the right to organize and bargain collectively each and every time that, in the lawful performance of his duty, he decides that a trade union is not competent to represent any worker or class or workers concerned. In such cases, the workers may either join or be members of a competent trade union, or in the absence of such a union, form an establishment trade union in the particular enterprise where they are employed.

C. The Committee's conclusions

- 586.** *The Committee notes that this complaint concerns various alleged violations of freedom of association in Malaysia, with particular emphasis on the restrictive legislative definition of workers' organizations and the wide powers given by the Trade Unions Act (the "Act") to the Director-General of Trade Unions in this respect, as well as the extensive and discretionary control the administrative authorities can exercise on the internal affairs of trade unions.*

The legislative framework (see Annexes 1 and 2)

- 587.** *In order to be legally recognized and to function, trade unions must be registered (section 8 of the Act) failing which they become "unlawful associations" (section 19 of the Act); to be registered, trade unions must be associations or combinations of workers within "similar" trades, occupations or industries (section 2(1) of the Act) and for the*

purposes of the definition of trade union, “similar” means similar in the opinion of the Director-General (section 2(2) of the Act); the Director-General may refuse registration to a trade union if “he is satisfied” that there exists another union representing workers in the establishment and the existence of another union is not in the workers’ interest (section 12(2) of the Act); the Director-General shall refuse to register a trade union if “he is not satisfied” that the trade union has complied with the Act and Regulations, or if “he is satisfied” that the objects, rules and constitution of the trade union conflict with “any” provision of the Act or Regulations (section 12(3) of the Act); a catch-all provision [section 15(1)(b)] provides that the Director-General may cancel the registration of a union. The Act also contains strict and detailed provisions on the eligibility of unions’ officers (section 28), on the subject matters requiring secret ballots (section 40) and on practically all aspects of the internal functioning and activities of unions’ cases. Finally, the First Schedule of the Act provides in minute detail the matters which must be included in the rules of every registered trade union.

- 588.** *In addition, section 9 of the Industrial Relations Act, 1967 (the “IR Act”) establishes an additional step in the recognition procedure and contains provisions on the scope of representation of trade unions, where the employer can intervene. In case of disagreement, the Minister ultimately makes a decision on recognition which cannot be questioned in any court (section 9(5) and (6) of the IR Act) and under section 13 of the IR Act, collective bargaining can only start where a trade union has been accorded recognition by the employer.*
- 589.** *Noting that several of these provisions conflict sharply with freedom of association principles (see below) the Committee can only conclude that the combined effect of these provisions is clearly that, at all stages of trade unions’ existence and activities, including as regards subjects which should normally be internal matters to be decided by the workers and their organizations themselves, the latter are strictly controlled and permanently subject to the discretionary powers of the administrative authorities.*

Particulars

- 590.** *As regards the definition of trade unions, the Committee notes that the Government does not deny its restrictive character, but justifies it by admitting readily that amending the legislation would enable the formation of general unions, which might be led by persons having nothing to do with the activities or interests of unions, and pursuing political or even subversive aims.*
- 591.** *Dealing with the second argument first, the Committee recalls that freedom of association implies the right of workers (and employers) to elect their representatives in full freedom [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 350]. The Committee has indeed accepted in the past some qualifications to this general principle, including as regards political activities [**Digest**, *ibid.*, paras. 377-380] but, generally speaking, it is the prerogative of workers’ and employers’ organizations to determine the conditions for electing their leaders [**Digest**, *ibid.*, para. 351]. The right of workers’ organizations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interests of their members; for this right to be fully acknowledged, it is essential that public authorities refrain from any intervention which might impair the exercise of this right, whether it be in determining conditions of eligibility of leaders or in the conduct of the elections themselves [**Digest**, *ibid.*, para. 353]. The mere possibility that some persons considered by the Government as foreign to the trade union movement might become involved in unions’ activities, cannot justify such a sweeping exclusion; the Committee has indicated in the past that some flexibility is appropriate in this respect, for example, admit as candidates persons previously employed in the occupation concerned,*

or exempt a reasonable proportion of the officers of an organization [*Digest*, *ibid.*, paras. 370-372]. The Committee further recalls that normal control of the activities of trade unions should be effected a posteriori and by the judicial authorities; and the fact that an organization which seeks to enjoy the status of an occupational organization might in certain cases engage in activities unconnected with trade union activities would not appear to constitute a sufficient reason for subjecting trade union organizations a priori to control with respect to their composition and with respect to the composition of their management committees. The refusal to register a union because the authorities, in advance and in their own judgement, consider that this would be politically undesirable, would be tantamount to submitting the compulsory registration of trade unions to previous authorization on the part of the authorities, which is not compatible with freedom of association principles [*Digest*, *ibid.*, para. 268].

592. As regards the argument that amending the legislation would enable the formation of general unions, the Committee emphasizes that it is for the workers themselves to decide whether they wish to establish general unions, if they consider that their interests would be better protected and promoted by such organizations. The authorities should refrain from intervening or imposing conditions or restrictions in this respect, since the right of workers to establish and join organizations of their own choosing is one of the cardinal tenets of freedom of association; this right cannot be said to exist unless such freedom is fully established and respected in law and in fact [*Digest*, *ibid.*, para. 271]. The Committee also recalls as regards this key issue: that workers should be free to decide whether they prefer to establish, at the primary level, a works union or another form of basic organization, such as an industrial or craft union [*Digest*, *ibid.*, para. 279]; that the free exercise of the right to establish and join unions implies the free determination of the structure and composition of unions [*Digest*, *ibid.*, para. 275]; that provisions which require a single union for each enterprise, trade or occupation are not in accordance with freedom of association principles [*Digest*, *ibid.*, para. 282]; that the above rights imply for the organizations themselves the right to establish and join federations and confederations of their own choosing [*Digest*, *ibid.*, para. 606]; and that the question as to whether a need to form federations and confederations is felt or not is a matter to be determined solely by the workers and their organizations themselves [*Digest*, *ibid.*, para. 610]. The Committee therefore urges the Government to introduce in the near future legislation to amend the Trade Unions Act, 1959, to ensure that all workers, without distinction whatsoever, enjoy the right to establish and join organizations of their own choosing, both at primary and other levels, and for the establishment of federations and confederations, as guaranteed by freedom of association principles.

593. Closely related to the abovementioned points is the issue of the wide-ranging and discretionary powers conferred upon the Director-General to decide on the unions' demarcation and scope of membership and to control unions' internal rules, a problem which cannot be examined in isolation from the restrictive criteria established in the legislation for trade union recognition. The Committee recalls that it has also already undertaken a detailed examination of these issues in connection with a series of complaints filed against Malaysia [see, *inter alia*, Case No. 1480, 265th Report, paras. 565-587] and concluded, as early as 1989, that these legislative requirements amounted to a system of previous authorization for the establishment of trade unions. The Committee deplores the long time that had elapsed without action being taken and recalls its previous recommendations on all these issues. The Committee therefore strongly urges the Government once again to introduce in the near future legislation to amend the Trade Unions Act, 1959, to bring it into full conformity with freedom of association principles, by removing the discretionary powers granted to the Director-General as regards the registration of trade unions and their right to adopt freely their internal rules, including the election of officials, as well as their activities and programme of action.

594. *The Committee further notes that the judiciary control over administrative decisions concerning the existence or functioning of trade unions, is either prohibited by law (e.g. section 9(6) of the IR Act), or very limited in practice in view of the discretionary powers given to the competent official in making decisions which are crucial for unions (e.g. those provisions containing language such as: “if he is satisfied that”; “if he considers that”; “if he is not satisfied that”; or similar expressions). The Committee recalls that an appeal should lie to the courts against any administrative decision concerning the registration of a trade union [Digest, ibid., para. 265]. In addition, and this is particularly relevant in the present case, where a registrar has to form his own judgement as to whether the conditions for the registration of a trade union have been fulfilled, although an appeal lies against his decisions to the courts, the Committee has considered that the existence of a procedure of appeal to the courts does not appear to be a sufficient guarantee; in effect, this does not alter the nature of the powers conferred on the authorities responsible for effecting registration, and the judges hearing such an appeal would only be able to ensure that the legislation has been correctly applied. The Committee has drawn attention to the desirability of defining clearly in the legislation the precise conditions which trade unions must fulfil in order to be entitled to registration and on the basis of which the registrar may refuse or cancel registration, and of prescribing specific statutory criteria for the purpose of deciding whether such conditions are fulfilled or not [Digest, ibid., para. 266]. Judges should be able to deal with the substance of a case concerning a refusal to register so that they can determine whether the provisions on which the administrative measures in question are based constitute a violation of principles of freedom of association [Digest, ibid., para. 267]. The Committee therefore urges the Government to introduce in the near future legislation to amend the Trade Unions Act and the Industrial Relations Act, to bring it into full conformity with freedom of association principles, by ensuring that appeals lie to the courts against all decisions made by administrative authorities, and that these procedures allow a substantive examination of the issues raised.*
595. *The Committee sees the situation faced by some 8,000 workers in the 23 companies mentioned by the complainant organization as a concrete example of these fundamental deficiencies of the legislation which, in the end, prevent these workers from exercising their organizational and collective bargaining rights. The Committee notes that, according to the Government, the Director-General decided after investigation that the trade unions in question were not competent to represent the workers. No other information is provided on the reasons why such a decision was made, or whether the trade unions in question were given an opportunity to present their views in contradictory proceedings, etc. The Government merely states that these workers have the right to join the trade union which is registered in respect of the industry in which they are employed, or form an establishment trade union. The Committee refers to the comments made above on the workers’ right to establish and join organizations of their own choosing, and on the Director-General’s wide and discretionary powers. It further recalls that employers should recognize for collective bargaining purposes the organizations representative of the workers employed by them, and that recognition by an employer of the main unions represented in its undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking [Digest, ibid., paras. 821-822]. If there is no union covering more than 50 per cent of the workers in a unit, collective bargaining rights should nevertheless be granted to the unions in this unit, at least on behalf of their own members [Digest, ibid., para. 833]. The Committee therefore requests the Government to take rapidly appropriate measures (and to give appropriate instructions to the competent authority), so that the 8,000 workers concerned may effectively enjoy this right, in accordance with freedom of association principles. The Committee also requests the Government to amend the applicable legislation, so as 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 regulating terms and conditions of employment by means of collective agreements, as provided by Convention No. 98, ratified by Malaysia.

- 596.** *The complainant organization also alleged that some 2,000 workers are being denied the right to collective bargaining pending a court decision on the proceedings filed by a number of companies (Top Thermo Manufacturers Sdn. Bhd.; Senju Metal Industries Sdn. Bhd.; Kiswire Malaysia Sdn. Bhd.; Pacific Quest (M) Sdn. Bhd.; Dipsol Chemicals Sdn. Bhd.; Great Wall Plastics Sdn. Bhd.; Syarikat Marulee (M) Sdn. Bhd.; White Horse Ceramic Industries Sdn. Bhd.; and Silverstone Sdn. Bhd.) after the Director-General had ruled in favour of unions. While acknowledging the Government's argument that all parties have the right to challenge decisions made by public officials, the Committee notes that it has been provided with very little information on these court challenges, and has not even been informed of their exact nature (e.g. are these employers challenging the exercise of the Director-General's discretion in the recognition of unions; the representative character of the unions; their recognition for collective bargaining purposes; etc.). The Committee thus requests the complainant on the one hand, and the Government after consultation with the employers concerned on the other hand, to keep it informed on these court challenges (e.g. exact nature, dates of filing of proceedings, present status, and any other useful information) so that it may make an informed decision in full knowledge of the facts.*
- 597.** *The Committee cannot conclude its examination of the present case without expressing its concern at the industrial relations situation in Malaysia, in view of the fact that, during the last 15 years, several complaints have been filed on these very same issues, on which it consistently made unambiguous recommendations, and that no significant progress could be observed during all that period. In fact, the present case is the seventh one of its kind since 1977 (Cases Nos. 879, 911, 1022, 1380, 1480 and 1542) something that the Committee recounted in detail in Case No. 1542 [see para. 398 of its 277th Report, approved by the Governing Body at its 249th Session, February-March 1991]. In that case, the Committee had also suggested that the Government resort to ILO's technical assistance, a suggestion that went unheeded. In view of the recurrence of the problems, and given that they are rooted in the framework and philosophy of the legislation, the Committee suggests once again that the Government avail itself of the ILO's technical assistance, to help it bring its law and practice into full conformity with freedom of association principles.*
- 598.** *The Committee requests the Government to keep it informed of developments on all the above matters.*

The Committee's recommendations

- 599.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee expresses its concern at the fact that several complaints have been filed on these same issues during the last 15 years, on which it made unambiguous recommendations, and that no significant progress could be observed.*
 - (b) The Committee urges once again the Government to introduce in the near future legislation to amend the Trade Unions Act, 1959 and the Industrial Relations Act, 1967, to bring them into full conformity with freedom of association principles, by ensuring:*

- *that all workers without distinction whatsoever, enjoy the right to establish and join organizations of their own choosing, both at primary and other levels, and for the establishment of federations and confederations;*
 - *that no obstacles are placed, in law or in practice, to the recognitions and registration of workers’ organizations, in particular through the granting of discretionary powers to the responsible official;*
 - *that workers’ organizations have the right to adopt freely their internal rules, including the right to elect their representatives in full freedom; and*
 - *that workers and their organizations enjoy appropriate judicial redress avenues over the decisions of the Minister or administrative authorities affecting them.*
- (c) *The Committee requests the Government to amend its legislation so as 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 regulating terms and conditions of employment by means of collective agreements.*
- (d) *The Committee requests the Government to take rapidly appropriate measures and give instructions to the competent administrative authority, so that the 8,000 workers denied representational and collective bargaining rights in 23 named companies may effectively enjoy these rights, in accordance with freedom of association principles.*
- (e) *The Committee requests the complainant and the Government to keep it informed on the court challenges filed by some employers and affecting some 2,000 workers, so that it may make an informed decision in full knowledge of the facts.*
- (f) *The Committee requests the Government to keep it informed of developments on all the abovementioned issues.*
- (g) *The Committee suggests once again that the Government avail itself of the ILO’s technical assistance, to help it bring its law and practice into full conformity with freedom of association principles.*

Annex 1

Trade Unions Act, 1959 (excerpts)

Section 1: “Registered trade union” means a trade union registered under this Act;

...

“Trade union” or “union” means any association or combination of workmen or employees, ...

- (a) within any particular establishment trade, occupation or industry or within any similar trades, occupations or industries;

...

Section 1: (2) For the purposes of the definition of “trade union” in subsection (1) and for the purposes of sections 32, 33, 72 and 74, “similar” means similar in the opinion of the Director-General.

...

Section 12. Registration

...

(2) The Director-General may refuse to register a trade union in respect of a particular establishment, trade, occupation or industry if he is satisfied that there is in existence a trade union representing the workmen in that particular establishment trade, occupation or industry and it is not in the interest of the workmen concerned that there be another trade union in respect thereof.

(3) The Director-General shall refuse to register a trade union if –

- (a) he is of the opinion that the trade union is likely to be used for unlawful purposes or for purposes contrary to or inconsistent with its objects and rules;
- (b) any of the objects of the trade union is unlawful;
- (c) he is not satisfied that the trade union has complied with this Act and of the regulations;
- (d) he is satisfied that the objects, rules, and constitution of the trade union conflict with any of the provisions of this Act or of any regulations; or
- (e) the name under which the trade union is to be registered is –
 - (i) identical to that of any other existing trade union, or so nearly resembles the name of such other trade union as, in the opinion of the Director-General, is likely to deceive the public or the members of either trade union; or
 - (ii) in the opinion of the Director-General, undesirable, unless the trade union alters its name to one acceptable to the Director-General.

...

15. Cancellation of registration

(1) A certificate of registration of a trade union may be cancelled or withdrawn by the Director-General –

...

(b) if he is satisfied –

...

- (ii) that any one of the objects or rules of the trade union is unlawful;
- (iii) that the constitution of the trade union or of its executive is unlawful;
- (iv) that the union has been or is being or is likely to be used for any unlawful purpose or for any purpose contrary to its objects or rules;
- (v) that the trade union has contravened any provision of this Act or of any regulations made thereunder, or of any of its rules, or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter for which provision is required by section 38;
- (vi) that the funds of the trade union are or have been expended in an unlawful manner or on an unlawful object or on an object not authorized by the rules of the union; or
- (vii) that the trade union has ceased to exist.

(2) Where two or more registered trade unions exist in a particular establishment, trade, occupation or industry, as the case may be, the Director-General may, if he is satisfied that it is in the interest of the workmen in that establishment, trade, occupation or industry so to do –

- (a) cancel the certificate of registration of the trade union or trade unions other than the trade union which has the largest number of workmen in the said establishment, trade, occupation or industry as its members; or [... amalgamation].

...

17. Suspension of a branch of a trade union

(1) The Director-General may, if he is satisfied that a branch of a trade union has contravened the provisions of this Act or the rules of the union, by order direct the suspension of such branch.

...

18. Power of the Minister to suspend a trade union

(1) Notwithstanding anything in this Act, it shall be lawful for the Minister in his absolute discretion, but with the concurrence of the Minister responsible for internal security and public order, by order published in the *Gazette* to suspend for a period not exceeding six months any trade union, or any class or description of trade unions, which in his opinion is, or is being, used for purposes prejudicial to or incompatible with, the interests of security of, or public order in, Malaysia or any part thereof.

...

19. Consequences of failure to register or of cancellation of registration

If any trade union does not apply for registration in due time, or if the registration of any trade union is refused, withdrawn or cancelled, then –

- (a) the trade union shall be deemed to be an unlawful association and shall cease to enjoy any of the rights, immunities, or privileges of a registered trade union;
- (b) the trade union shall not, take part in any trade dispute or promote, organise or finance any strike or lock-out;
- (c) the trade union shall be dissolved and its funds disposed of in such manner as may be prescribed and, subject thereto, in accordance with the rules of the union.

...

20. Disabilities of unregistered union

A trade union shall not enjoy any of the rights, immunities or privileges of a registered trade union unless it is registered.

...

38. Rules

(1) The rules of every registered trade union shall make provision for all the matters specified in the First Schedule,

...

40. Secret ballot

(1) A trade union shall take a secret ballot to make a decision on any of the following matters –

- (a) the election of delegates to a general meeting, if the rules of the union provide for meetings of delegates, or to a federation of trade unions;
- (b) the election of officers (other than trustees) by the members in accordance with the rules of the union;
- (c) all matters relating to strikes or lock-outs;
- (d) the imposition of a levy;
- (e) dissolution of the trade union or a federation of trade unions;
- (f) amendment of the rules where such amendment results in increasing the liability of the members to contribute or in decreasing the benefits to which members are entitled;

(g) amalgamation with another trade union or transfer of engagements to another trade union.

...

72. Formation of federation of trade unions

Two or more registered trade unions in Malaysia whose members are employed in a similar trade, occupation or industry may form or create a federation of trade unions if the consent of the members of each of the registered trade unions wishing to form or create a federation has been obtained by a majority of votes taken at a general meeting or a meeting of delegates, as the case may be, after service on the Director-General and all members of the union, not less than fourteen days prior to such meeting, of notice of the proposed resolution to participate in the federation.

...

74. Affiliation with registered federation of trade unions

(1) A registered trade union may affiliate with a registered federation of trade unions representing similar trades, occupations or industries if the consent of the members of the trade union to such affiliation has been obtained in the manner provided in section 72,

...

76. Decisions by secret ballot

The provisions of this Act relating to the taking of decisions by secret ballot shall apply to a federation of trade unions.

...

76A. Restriction on the formation of or affiliation with consultative or similar bodies

(1) No trade union registered under this Act shall affiliate with, or be a member of, any consultative or similar body, by whatever name called, established outside Malaysia, except with the prior permission in writing of the Director-General and subject to such conditions as he may impose:

...

First Schedule

(Section 38)

Matters for which provision must be made in the rules of every registered trade union

1. The name of the trade union and the place of meeting for the business of the trade union.
2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, the conditions under which any member thereof may become entitled to any benefit assured thereby, and the fines and forfeiture to be imposed on any member thereof.
3. The manner of making, altering, amending and rescinding rules:
4.
 - (a) The election of members of the executive of the trade union in accordance with the rules of the union.
 - (b) Subject to paragraph (a), the nomination, appointment or election and removal of an officer and of trustees, secretaries, treasurers and employees of the trade union.
 - (c) The prohibition of the employment of all officers and employees of the trade union by any other trade union.
5. The custody and investment of the funds of the trade union, the designation of the persons responsible therefor, and the annual or periodical audit of its accounts.

6. The inspection of the books and names of members of the trade union by any person having an interest in the funds of the trade union.

7. The manner of the dissolution of the trade union and the disposal of the funds thereof available at the time of such dissolution.

8. Where applicable, the manner of establishing and dissolving any branch of the trade union and the manner in which any such branch and the accounts thereof shall be administered.

9. The taking of decisions by secret ballot on the following matters:

- (a) the election of delegates to a general meeting, if the rules of the union provide for meetings of delegates, or to a federation of trade union;
- (b) the election of officers (other than trustees) by the members in accordance with the rules of the union;
- (c) all matters relating to strikes or lock-out;
- (d) the imposition of a levy;
- (e) dissolution of the trade union or federation of trade unions;
- (f) amendment of the rules where such amendment results in increasing the liability of the members to contribute or in decreasing the benefits to which members are entitled;
- (g) amalgamation with another trade union or transference of engagements to another trade union.

10. The procedure for holding ballots, the securing of the secrecy of secret ballots and the preservation of ballot papers for the prescribed period.

11. The manner in which disputes referred to in Part VI of the Trade Unions Act 1959, shall be decided.

12. Cessation of membership if members commence, participate or otherwise act in furtherance of any strike in contravention of section 25A(1).

Annex 2

Industrial Relations Act, 1967 (excerpts)

Recognition and scope of representation of trade unions

9. Claim for recognition

...

(2) A trade union of workmen may serve on an employer ... a claim for recognition in respect of the workmen or any class of workmen employed by such employer ...

(3) An employer or a trade union of employers upon whom a claim for recognition has been served shall, within twenty-one days after the service of the claim –

- (a) accord recognition; or
- (b) if recognition is not accorded, notify the trade union of workmen concerned in writing the grounds for not according recognition; or
- (c) apply to the Director-General to ascertain whether the workmen in respect of whom recognition is being sought are members of the trade union of workmen concerned and give a written notice of such application to such trade union of workmen.

(4) Where the trade union of workmen concerned receives a notification under subsection (3)(b), or where the employer or trade union of employers concerned fails to comply with subsection (3), the trade union of workmen may report the matter in writing to the Director-General.

(4A) The Director-General, upon receipt of ... an application under subsection (3)(c), or a report under subsection (4) may take such steps or make such enquiries as he may consider necessary or expedient to resolve the matter.

...

(4C) Where the matter is not resolved under subsection (4A) the Director-General shall notify the Minister.

(5) Upon receipt of a notification under subsection (4C) the Minister shall give his decision thereon;

...

(6) A decision of the Minister under subsection (5) shall be final and shall not be questioned in any court.

CASE NO. 2164

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: Various sanctions imposed
following the exercise of the right to strike;
transfer of trade union officers; refusal to
engage in social dialogue***

600. The Committee examined this case when it met in May-June 2002 and submitted an interim report to the Governing Body [see 328th Report, paras. 477-490], which was approved by the Governing Body at its 284th Session in June 2002.

601. The Government sent its reply in communications dated 6 January 2004.

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

A. Previous examination of the case

603. The case concerns acts of anti-union discrimination alleged to have been committed following a labour dispute between the *Caisse nationale du Crédit agricole* (CNCA) and the National Union of Bank Employees (SNB)/CDT that led to two strikes on 12 April and 13-14 June 2001. The following acts are alleged to have been committed: (1) the expulsion or suspension of 34 temporary workers, including two members of the trade union executive committee, Mr. Karim Rachid and Mr. Aziz Youssef, following the strike of 12 April 2001; (2) the disciplinary suspension of Mr. Chatri Abdelkader; (3) sanctions imposed on workers who had taken part in the strike of 13-14 June 2001, including the transfer of union officers: Mr. Kamar Bensalem; Mr. Faïçal Balafrej; Mr. Jamal Boudina, whose definitive dismissal from the CNCA followed on 7 December 2001; Mr. Ahmed Arrout; Mr. Abdessamad Mammad; Mr. Mustapha Hafidi; Mr. Mustapha Kounech; Mr. Mahjoubé Ennaj; Mr. Said Benjamae; Mr. Lahcem Chkha; Ms. Naja Mimouni; and Ms. Ouafae Chmaou.

604. In its previous examination of the case in May-June 2002, the Committee made the following recommendations [see 328th Report, para. 490]:

- (a) The Committee requests the Government to send, without delay, detailed information on all the allegations and, in particular, on the persons mentioned by the complainant as having been victims of acts of anti-union discrimination following their participation in the strikes of 12 April and 13 and 14 June 2001.
- (b) The Committee requests the complainant to provide, without delay, additional information on the status in the SNB/CDT of Mr. Kamar Bensalem and Mr. Faïçal Balafrej, as they appear to have played an important role in the labour dispute in the CNCA.

B. The Government's reply

605. In its communications of 6 January 2004, the Government reiterates its previous response to the allegations concerning Mr. Kamar Bensalem, General Secretary of the executive committee and his assistant, Mr. Faïçal Balafrej. The Government claims that this case is an inter-union dispute between the national committee and the union executive committee of the SNB/CDT, rather than a dispute with the CNCA.

606. Furthermore, the Government refutes all allegations of refusal to engage in social dialogue and states that it has always made sure that social dialogue is constant and constructive. Moreover, in order to ensure adequate protection for workers' and employers' organizations against any act of interference by each side against the other, the Government has adopted Law No. 11-98. This Law amends Decree No. 1-57-119 of 16 July 1957 on trade unions, which, inter alia, prevented any individual or legal entity from hindering the exercise of the right to organize. The Government also stresses that it has recently taken a number of measures, including, in particular, the adoption of a new Labour Code, published in the Official Bulletin of 8 December 2003.

C. The Committee's conclusions

607. *The Committee deplores the fact that, in spite of the express recommendation it made in its previous examination of the case [see 328th Report, para. 490(a)], the Government has failed to provide any information regarding the allegations of: (1) the expulsion or suspension of 34 temporary workers, including two members of the trade union executive committee, Mr. Karim Rachid and Mr. Aziz Youssef, following the strike of 12 April 2001; (2) the disciplinary suspension of Mr. Chatri Abdelkader; (3) the sanctions imposed on workers who took part in the strike of 13 and 14 June 2001, including the transferral of the following union officials: Mr. Jamal Boudina, whose definitive dismissal from the CNCA followed on 7 December 2001; Mr. Ahmed Arrout; Mr. Abdessamad Mammad; Mr. Mustapha Hafidi; Mr. Mustapha Kounech; Mr. Mahjoubé Ennaj; Mr. Said Benjamae; Mr. Lahcem Chkha; Ms. Naja Mimouni; and Ms. Ouafae Chmaou.*

608. *The Committee recalls that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests, and that no one should be penalized for carrying out or attempting to carry out a legitimate strike. In particular, the dismissal of workers because of a strike, which is a legitimate trade union activity, constitutes serious discrimination in employment and is contrary to Convention No. 98 [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 590 and 591]. In this regard, the Committee notes that Decree No. 1-57-119 of 16 July 1957 on trade unions, as amended and complemented by Law No. 11-98, prohibits, inter alia, any act of anti-union discrimination, and provides for severe penalties for violation of this prohibition.*

- 609.** *In these circumstances, the Committee requests the Government to ensure that inquiries are instituted as soon as possible to determine whether: (1) the 34 temporary workers, including two members of the trade union executive committee, Mr. Karim Rachid and Mr. Aziz Youssef, were treated prejudicially because of their participation in the strike of 12 April 2001; (2) Mr. Chatri Abdelkader was subjected to disciplinary suspension because of his trade union activities; and (3) the workers who had taken part in the strike of 13 and 14 June 2001, including the union officers named by the complainant organization, were penalized for their participation in the strike. The Committee requests the Government to keep it informed of the issue as a whole.*
- 610.** *If it is demonstrated that any or all of the measures taken were anti-union in nature, the Committee requests the Government to take the necessary steps in each case to: (1) rectify immediately the measures taken against the 34 temporary workers, including the union representatives Mr. Karim Rachid, Mr. Aziz Youssef and Mr. Chatri Abdelkader; and (2) reinstate the strikers who were dismissed, particularly the union officers named by the complainant organization, with payment of unpaid wages. Where reinstatement is impossible, the workers concerned should be paid adequate compensation. Finally, the Committee requests the Government to ensure the strict implementation of legislative provisions for the protection of workers against acts of anti-union discrimination and to keep it informed on the issue as a whole.*
- 611.** *As regards Mr. Kamar Bensalem, General Secretary of the executive committee, and his assistant, Mr. Faiçal Balafrej, the Committee notes that the complainant organization has not sent additional information regarding their status within the SNB/CDT as requested by the Committee in its recommendations during the previous examination of the case [see 328th Report, para. 490(b)]. The Committee notes the information provided by the Government, according to which the national executive committee of the SNB/CDT decided to relieve Mr. Bensalem and Mr. Balafrej of their duties on 24 April 2001, after they had published a communication denouncing an agreement concluded on 18 April 2001. The Committee concludes that this aspect of the case concerns an inter-union dispute, for which a solution should be found by the parties concerned, and which does not require any further examination.*

The Committee's recommendations

- 612.** *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 ensure that inquiries are instituted as soon as possible to determine whether: (1) the 34 temporary workers, including two members of the trade union executive committee, Mr. Karim Rachid and Mr. Aziz Youssef, were treated prejudicially because of their participation in the strike of 12 April 2001; (2) Mr. Chatri Abdelkader was subjected to disciplinary suspension because of his trade union activities; and (3) the workers who had taken part in the strike of 13 and 14 June 2001, including the union officers named by the complainant organization, were penalized for their participation in the strike. The Committee requests the Government to keep it informed on the issue as a whole.*
- (b) *If it is demonstrated that any or all of the measures taken were anti-union in nature, the Committee requests the Government to take the necessary steps in each case to: (1) rectify immediately the measures taken against the*

34 temporary workers, including the union representatives Mr. Karim Rachid, Mr. Aziz Youssef and Mr. Chatri Abdelkader; and (2) reinstate the strikers who were dismissed, particularly the union officers named by the complainant organization, with payment of unpaid wages. Where reinstatement is impossible, the workers concerned should be paid adequate compensation. Finally, the Committee requests the Government to ensure the strict implementation of legislative provisions for the protection of workers against acts of anti-union discrimination and to keep it informed on the issue as a whole.

CASE No. 2281

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

**Complaint against the Government of Mauritius
presented by
the Mauritius Labour Congress**

Allegations: The complainant alleges that the trade union movement has been victimized for the last 30 years by the anti-democratic and repressive nature of the Industrial Relations Act (IRA) which should be revoked and replaced by more acceptable legislation, without delay

- 613.** The complaint is contained in a communication from the Mauritius Labour Congress dated 27 June 2003.
- 614.** The Government sent its observations in communications dated 26 September 2003 and 23 February 2004.
- 615.** Mauritius has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainant's allegations

- 616.** In its communication dated 27 June 2003 the Mauritius Labour Congress states that the trade union movement has been victimized for the last 30 years by the anti-democratic and repressive nature of the Industrial Relations Act (IRA). In particular, according to the complainant:
- (1) The IRA denies the right to strike when negotiations fail.
 - (2) The IRA establishes severe penalties, like fines and even imprisonment, for participation in strikes; this results in the loss of jobs, a measure frequently followed by employers in the country.
 - (3) The IRA seriously hinders collective bargaining, which is practically inexistent in the country, due to the fact that employers feel absolutely protected by the legislation and workers cannot legally exercise the right to strike.

- (4) The IRA confers to the Minister of Labour and Industrial Relations the authority to unilaterally refer disputes to compulsory arbitration thereby nullifying the right to strike and depriving unions of the right to collective bargaining.
- (5) The legislation allows the Prime Minister to declare a strike illegal even if the latter is not unlawful, on the ground that the strike may imperil the national economy. The Prime Minister has exercised this power on several occasions thus leading to an abrupt stoppage of industrial action and at times, to lay-offs.
- (6) On several occasions the Minister has rejected disputes. The law empowers him to do so on what appears to be flimsy grounds.
- (7) The legislation gives the registrar excessive powers which amount to interference: approval has to be sought from the registrar for decisions taken by the annual general meeting (AGM); he can require unions' officials to appear and produce documents, accounts of funds and assets even if these have been approved at the AGM unanimously or by majority vote; unions are also required to retain reports, accounts and other documents for a minimum period of three years.
- (8) The legislation requires the presence of at least 50 plus 1 per cent of members in order to vote on the disposal of trade union assets. This requirement practically disallows large unions to dispose of old and even obsolete equipment and thus puts an unreasonable and unnecessary burden on unions.
- (9) The law weakens the trade union movement by allowing registration of a union with only seven members. Over the last 30 years this has led to an unacceptable proliferation of unions, leading to the creation of 375 unions and 13 federations.
- (10) The Permanent Arbitration Tribunal occasionally takes too much time to deliver an award. There is no specified delay for delivery of awards.
- (11) The report of the Industrial Relations Commission (carrying out conciliation functions) does not have mandatory effect and the Minister has the authority not to publish it.
- (12) Section 13 of the IRA enables the authorities to cancel the registration of trade unions.
- (13) The law prescribes that appointment of auditors of unions' funds or accounts should be made with the approval of the registrar. This means that the registrar may overrule the choice made by members at a general meeting.
- (14) Appointment of the members of the National Remuneration Board (NRB) and the Industrial Relations Commission (IRC) is the prerogative of the Minister, according to the IRA. At times it appears that the choices for such appointments are politically motivated and this is not helpful for unions.
- (15) The IRA exercises compulsion on unions and federations to respect the time limit between 1 January and 31 March for holding annual general meetings and electing their officials at the same time. This sometimes represents a serious handicap to unions and federations, especially the large organizations.
- (16) The IRA does not allow unions or federations the possibility to elect officials for a period exceeding two years.

- (17) As employers are allowed by the legislation to dismiss or lay off workers who participate in industrial action, workers in certain sectors, especially the EPZs, are very reluctant to join unions. The legislation thus allows employers to use threats against workers who express the wish to unionize. This contributes to the low rate of unionization in the country.
- (18) The IRA requires unions or federations to have recourse to ballots in case they decide to amalgamate or to join a federation, although their members may have approved a resolution in the same connection.
- (19) Time-off facilities for workplace representatives are almost inexistent especially in the private sector. Elected union officials in large unions are granted minimum time off just to attend executive council meetings and this considerably reduces the functions and scope of operation of unions.
- (20) Procedures for obtaining recognition especially in the export processing zones are too cumbersome as employers use various kinds of tactics. If a union succeeds in obtaining recognition at the IRC, some companies change their names in order to maintain their refusal for recognition. They also contest the recognition at the Arbitration Tribunal and the Supreme Court thus causing the issue of recognition to drag on for several years.
- 617.** According to the complainant, despite promises to amend the legislation, the Government recently decided to render it more repressive by amending a specific section which now denies the right to public sector unions to declare disputes after a salary revision exercise in the same sector.
- 618.** The complainant stresses that the IRA was voted in Parliament in 1973 at the time when a state of emergency was declared in the country. According to the complainant, that period of repression has been codified and perpetuated in labour law. The IRA establishes a permanent balance of power in favour of employers, including the Government, enabling them to always reject union demands. Employers systematically refuse to grant recognition rights to unions in the private and EPZ sectors and almost all strikes staged during the last 30 years have been declared illegal. Numerous workers have faced repression and have lost their jobs as a result of this legislation, especially in the sugar, dock and transport sectors.
- 619.** The complainant notes that the claim to revoke the IRA and replace it by a new and more acceptable piece of legislation has been the central concern of the trade unions for the last 30 years. Motions have been presented in Parliament and several reports have been prepared on this issue, some of which were worse than the current legislation while some others, notably an ILO study carried out approximately eight years ago, were never published.
- 620.** Noting that the Government proposes to set up a new committee on this issue, the complainant expresses the fear that this committee may take five or six years to produce its report, which may end up in Government drawers, as has happened in the past. It emphasized therefore that the Government should revoke the IRA and have it replaced by more acceptable industrial legislation without delay.

B. The Government's reply

- 621.** In its communications dated 26 September 2003 and 23 February 2004, the Government states its intention to review the Industrial Relations Act (IRA) as announced by the President upon the accession of the new Government in 2001 and as recently reiterated

publicly by the Deputy Prime Minister and the Minister of Finance. This year a tripartite committee has been set up at the Ministry of Labour and Industrial Relations to review the IRA and to make recommendations. A technical committee at the Ministry is presently working on the various recommendations made in previous reports, including a report and recommendations made in the past by the ILO. All the federations of trade unions and the Mauritius Employers' Federation have been invited to submit their proposals in writing. All the federations of trade unions submitted a common memorandum on 30 January 2004. The Mauritius Employers' Federation was expected to supply its proposals by the end of February 2004. The Government states that, on receipt of all the proposals, a White Paper will be prepared on the replacement of the IRA by new legislation.

622. More specifically, the Government indicates its intention to re-examine the following:

- *The provisions of the IRA regarding strikes.* The Government adds that due to the country's vulnerability to external factors and economic constraints, the Government places much emphasis on prevention of industrial disputes and effective grievance settlement measures including through a Conciliation and Mediation Division in the Ministry of Labour and Industrial Relations and a Code on Conflict Free Workplace prepared after tripartite consultations.
- *The provisions concerning collective bargaining.* The Government emphasizes that several factors influence the extent to which collective bargaining is practised, including a trade union density of around 20 per cent, the fragmentation of trade unions and the refusal by trade unions to discuss several proposals for reform. In June 2003, the Minister of Labour and Industrial Relations solicited ILO assistance in order to conduct a full-scale study on the obstacles to collective bargaining and to advise on strategies for promoting collective bargaining.
- *The power of the Prime Minister to declare a strike illegal* if its continuation is likely to imperil the national economy, in the light of the existing legislation relating to fundamental rights and freedoms, public security and safety; since 1979, the Prime Minister has not availed himself of this provision.
- *The powers of the registrar* with regard to the approval of the decisions taken by the annual general meeting, the obligation of trade unions to produce documents, accounts and assets, the appointment of auditors and the disposal of assets.
- *The minimum membership requirements* for registration of trade unions. The existence of 352 registered trade unions and 13 federations indicates that freedom of association is fully respected and that there is no attempt to build trade union monopoly. The Government has set up and financially supported a trade union trust fund since 2000 with the aim of strengthening trade unions and helping them to build professional capacity.
- *The functioning of conciliation and arbitration institutions.* With regard to the publication of the IRC's report, the Government states that the IRC is meant to provide a conciliation service and its reports are addressed to the parties to the dispute.
- The provision on cancellation of trade union registration (section 13 of the IRA).
- *The amount of penalties* provided in section 49 of the IRA for non-compliance with the prohibition of anti-union discrimination. Amendments will be introduced to the Labour Act shortly, to prohibit all forms of threats, violence, etc. against workers and to provide for severe fines for such actions. Workers' education programmes are being conducted on a regular basis both on site and at the Ministry to inform workers

of their rights. There have been no complaints from any worker regarding threats of anti-union dismissal, including in EPZs.

- The provisions of the IRA regarding *registration of federations and amalgamation*. The Ministry has noted certain ambiguities in the existing legislation. Consultations will be held with the social partners on this issue.
- *The time-off facility for trade union activities* (section 49 of the IRA guarantees this right and provides for penalties).
- *Procedures for obtaining trade union recognition* including in EPZs.

623. The Government makes some additional comments on the complainant's allegations. With regard to the allegation that the legislation establishes severe penalties for participation in strikes, the Government indicates that over the past three years, there have been no fines or cases of imprisonment resulting from participation in a strike and the Ministry of Labour and Industrial Relations has intervened to ensure that the workers resume work normally.

624. With regard to the allegation that the Minister exercises the authority to refer disputes unilaterally to compulsory arbitration, the Government states that under section 82(1)(e) of the IRA, the Minister may advise the parties to refer the dispute to the Permanent Arbitration Tribunal only as a last resort where the disputants have expressed such a wish. Statistical information indicates that only a small percentage (approximately 10 per cent) of the cases handled by the Ministry are actually referred to compulsory arbitration. Finally, notwithstanding the Minister's right to refer disputes to conciliation and arbitration, there have been 73 work stoppages/strikes during the past three years.

625. The Government dismisses the allegation that the Minister has rejected disputes on certain occasions on flimsy grounds and indicates that section 80 of the IRA stipulates that the Minister may reject a report of dispute only if it appears to him that the report: (a) relates in whole or in part to a dispute which is not an industrial dispute; or (b) is made by or on behalf of a party who is not, or is not entitled to be a party to an industrial dispute in relation to any of the issues or matters raised in the report; or (c) does not contain sufficient particulars of the issues or matters giving rise to the disputes. Any party who feels aggrieved by the rejection may appeal to the Permanent Arbitration Tribunal. The Government adds that only 15 disputes out of 951 have been rejected since 2001.

626. The Government rejects as totally unfounded the allegation that the appointment of persons as members of the NRB and the IRC by the Minister are politically motivated and emphasizes that the IRA requires such appointment to be made after consulting such organizations representing employees and employers as the Minister considers appropriate.

627. With regard to the allegation that the Government has made the legislation more repressive by amending a specific section which now denies the right to unions of the public sector to declare disputes after a salary revision exercise, the Government explains that on 13 June 2003, an amendment to the IRA was voted in the National Assembly providing that employees, who opt to be governed by the report of the Pay Research Bureau with regard to salaries, and therefore sign a voluntary option form to this effect, will not have the right to declare disputes in respect of remuneration or allowance of any kind. The amendment does not prevent public officers who do not accept the new salaries and conditions of employment and refuse to sign the option form to declare a dispute.

628. In conclusion, the Government states that a holistic approach is being adopted for the review of the IRA taking into consideration the social and economic context, the protection of fundamental rights and freedoms as well as the importance of promoting sound and

harmonious industrial relations as a factor enhancing competitiveness. The success of this exercise would depend to a large extent on the attitude of the social partners and their willingness to examine the issues and make proposals with a dispassionate and objective mind.

C. The Committee's conclusions

629. *The Committee notes that this case concerns allegations that the trade union movement has been victimized for the last 30 years by the anti-democratic and repressive nature of the Industrial Relations Act (IRA) which, according to the complainant, should be revoked and replaced by more acceptable legislation without delay. The Committee also takes note of the Government's statement that it is committed to amending the IRA and has set up a tripartite committee, as well as a technical one, at the Ministry of Labour and Industrial Relations to this end.*
630. *The Committee notes that certain attempts have been made in the past to bring about a revision of the industrial relations legislation in Mauritius. The Committee recalls that previous technical assistance projects and reports have identified certain obstacles to the ratification of Convention No. 87 including the unfettered discretion of the Minister of Labour and Industrial Relations to refer any industrial dispute in any sector to the Permanent Arbitration Tribunal for compulsory arbitration, the need to modernize the dispute resolution procedures capable of assisting the parties in the collective bargaining process and helping them to avoid industrial action, as far as possible, and overly detailed and restrictive legal provisions concerning the constitution, membership, administration, management, property and funds of trade unions.*
631. *With regard to the issue of compulsory arbitration, the Committee wishes to emphasize that a regime of compulsory arbitration at the discretion of the authorities is contrary to the free and voluntary nature of collective bargaining and raises problems in relation to the application of Convention No. 98, ratified by Mauritius. It also recalls that compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e., in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population [see **Digest of decisions and principles of the Freedom of Association Committee**, 2nd edition, 1996, paras. 515 and 861].*
632. *The Committee further notes that where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services; restrictions on the right to strike should therefore be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented [see **Digest**, op. cit., paras. 546 and 547]. The bodies entrusted with mediation and arbitration should have the confidence of all parties concerned and should be accessible on a voluntary basis and without government interference.*
633. *With regard to protection against anti-union discrimination, especially as a result of participation in strikes, the Committee notes that the use of extremely serious measures, such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association. It is inconsistent with the right to strike for an employer to be permitted to refuse to*

*reinstate some or all of its employees at the conclusion of the strike, lockout or other industrial action without those employees having the right to challenge the fairness of that dismissal before an independent court or tribunal. More generally, 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. With regard to the amount of penalties, the Committee notes that the existence of legislative provisions prohibiting acts of anti-union discrimination is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice [see **Digest**, op. cit., paras. 597, 722, 741 and 742].*

- 634.** *With regard to the power of the Prime Minister to declare a strike illegal if its continuation is likely to imperil the national economy, the Committee notes that whenever a total and prolonged strike in a vital sector of the economy might cause a situation in which the life, health or personal safety of the population might be endangered, a back-to-work order might be lawful, if applied to a specific category of staff in the event of a strike whose scope and duration could cause such a situation. However, a back-to-work requirement outside such cases is contrary to the principles of freedom of association. Responsibility for declaring a strike illegal should not lie with the Government, but with an independent body which has the confidence of all parties involved [see **Digest**, op. cit., paras. 522 and 572].*
- 635.** *Concerning the recognition of the most representative workers' organizations for collective bargaining purposes, the Committee emphasizes that such recognition is an important means through which collective bargaining may be promoted, including in EPZs. Recognition by an employer of the main unions represented in his undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking. The competent authorities should, in all cases, have the power to proceed to an objective verification of any claim by a union that it represents the majority of the workers in an undertaking, provided that such a claim appears to be plausible. If the union concerned is found to be the majority union, the authorities should take appropriate conciliatory measures to obtain the employer's recognition of that union for collective bargaining purposes [see **Digest**, op. cit., paras. 822 and 824].*
- 636.** *With regard to EPZs in particular, the Committee recalls that the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy provides that special incentives to attract foreign investment should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively. The Committee considers that legal provisions on export processing zones should ensure the right to organize and bargain collectively for workers [see **Digest**, op. cit., para. 801].*
- 637.** *The Committee also notes that all public service workers other than those engaged in the administration of the State should enjoy collective bargaining rights and priority should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service. It recalls that when examining various cases in which workers who refused to give up the right to collective negotiation were denied a wage rise, the Committee considered that it raised significant problems of compatibility with the principles of freedom of association, in particular as regards Article 1(2)(b) of Convention No. 98 [see **Digest**, op. cit., paras. 893 and 913].*
- 638.** *Finally, the Committee emphasizes that trade unions have the right to draw up their constitutions and rules, elect their representatives in full freedom, organize their administration and activities and formulate their programmes without interference by the*

public authorities. They have the right to establish and join federations and confederations of their own choice. They should not be liable to be dissolved or suspended by administrative authority.

- 639.** *The Committee requests the Government to take all necessary measures as soon as possible to conclude the revision of the IRA in conformity with the above freedom of association principles and in consultation with the social partners. The Committee requests to be kept informed of progress made in this respect.*
- 640.** *The Committee observes that both the complainant and the Government emphasize the need to achieve a swift and successful revision of the IRA. It also takes note of the Government's recent request for ILO technical assistance in defining the obstacles to collective bargaining and in advising on strategies for promoting collective bargaining. The Committee notes that a good number of these obstacles are legislative and that legal reform is essential if industrial relations in the country are to be firmly based on freedom of association and free and voluntary collective bargaining. The Committee considers that ILO technical assistance may be necessary in the framework of the revision of the IRA, given the magnitude and complexity of the task, as well as the need to accommodate both its technical aspects and the wider needs and views of the social partners. The Committee therefore strongly encourages the Government to make use of ILO technical assistance with a view to facilitating the process of revision of the IRA. The Committee requests to be kept informed in this respect.*

The Committee's recommendations

- 641.** *In the light of its foregoing conclusions, the Committee requests the Governing Body to approve the following recommendations:*
- (a) The Committee takes note of the Government's statement that it is committed to amending the IRA and has set up a tripartite committee, as well as a technical one, at the Ministry of Labour and Industrial Relations to this end.*
 - (b) The Committee requests the Government to take all necessary measures as soon as possible to conclude the revision of the IRA in consultation with the social partners and in conformity with the following freedom of association principles:*
 - A regime of compulsory arbitration at the discretion of the authorities is contrary to the free and voluntary nature of collective bargaining.*
 - Restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration; the bodies entrusted with such mediation and arbitration should have the confidence of all parties concerned and should be accessible on a voluntary basis and without government interference.*
 - The dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association.*

- *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.*
- *Legislative provisions prohibiting acts of anti-union discrimination should be accompanied by efficient procedures to ensure their implementation in practice.*
- *Whenever a total and prolonged strike in a vital sector of the economy might cause a situation in which the life, health or personal safety of the population might be endangered, a back-to-work order might be lawful, if applied to a specific category of staff in the event of a strike whose scope and duration could cause such a situation. However, a back-to-work requirement outside such cases is contrary to the principles of freedom of association.*
- *Responsibility for declaring a strike illegal should not lie with the Government, but with an independent body which has the confidence of all parties involved.*
- *The recognition of the most representative workers' organizations for collective bargaining purposes is an important means through which collective bargaining may be promoted, including in EPZs; the competent authorities should, in all cases, have the power to proceed to an objective verification of any claim by a union that it represents the majority of the workers in an undertaking and to take appropriate conciliatory measures to obtain the employers' recognition.*
- *Special incentives to attract foreign investment should not include any limitation of the workers' freedom of association or the right to bargain collectively and legal provisions on export processing zones should ensure the right to organize and bargain collectively for workers.*
- *All public service workers other than those engaged in the administration of the State should enjoy collective bargaining rights; cases in which workers who refuse to give up the right to collective negotiation are denied a wage rise, raise significant problems of compatibility with the principles of freedom of association.*
- *Trade unions should have the right to draw up their constitutions and rules, elect their representatives in full freedom, organize their administration and activities and formulate their programmes without interference by the public authorities.*
- *Trade unions should have the right to establish and join federations and confederations of their own choice.*
- *Trade unions should not be liable to be dissolved or suspended by administrative authority.*

The Committee requests to be kept informed of progress made in this respect.

- (c) *The Committee strongly encourages the Government to make use of ILO technical assistance with a view to facilitating the process of revision of the IRA. The Committee requests to be kept informed in this respect.*

CASE NO. 2268

INTERIM REPORT

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

Allegations: (1) Allegations relating to legislative issues: unclear legislative framework covering freedom of association; serious discrepancies between legislation and Convention No. 87; repressive texts, in particular military orders and decrees, detrimental to freedom of association and which contribute to a climate of denial of fundamental freedoms and to annihilate and destroy any form of labour organization; (2) Allegations relating to factual issues: total lack of legally registered workers' organizations; systematic practice of repression by public authorities of any form of labour organization; the Federation of Trade Unions of Burma (FTUB) cannot function freely and independently on the Myanmar territory and its General Secretary has to face criminal prosecution because of his legitimate trade union activities; murder, detention and torture of trade unionists; continuing repression of seafarers for the exercise of their trade union rights; arrest and dismissal of workers in connection with collective labour protests and claims, in particular at the Unique Garment Factory, the Myanmar Texcamp Industrial Ltd. and the Myanmar Yes Garment Factory; intervention of the army in labour disputes

- 642.** The International Confederation of Free Trade Unions (ICFTU) submitted its complaint in a communication dated 28 May 2003.
- 643.** The Government sent its reply in two communications, the first of which is dated 5 September 2003, and the second of which is dated 20 February 2004 and was received on 2 March 2004.

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

A. The complainant's allegations

645. The complaint and its 17 appendices can be summarized as follows.

646. In an introduction, the complainant indicates that the complaint raises new cases of violations of the right to freedom of association. These new cases are further examples of the military regime's established practice of violating workers' right to freely associate in trade unions. From a more general perspective, the complainant invites the Committee, in the course of its examination, to bear in mind that violations of freedom of association occur in a climate in which human rights and other fundamental freedoms and guarantees are being violently repressed. In the present case, the interdependence between freedom of association and civil liberties is particularly important. According to the complainant, there is little chance of any free exercise of trade union rights in Myanmar without human rights and fundamental freedoms being respected, the independence of justice restored and due process ensured.

647. In the field of freedom of association, the complainant recalls that for over 40 years the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has pinpointed serious discrepancies in the law and practice with regard to the application of Convention No. 87. In addition, the Conference Committee on the Application of Standards has examined violations of the Convention in Myanmar on 13 occasions in the past 20 years. On eight of the most recent occasions, the conclusions of the Conference Committee were the subject of a special paragraph of its report; on the last five of these occasions, the application of the Convention by Myanmar was mentioned as a case of "continued failure to apply the Convention".

648. Despite the international pressure, the military junta has not taken any action so far in order to bring law and practice into conformity with the basic principles of freedom of association. On the contrary, gross violations persist in Myanmar.

649. The complaint is divided into two parts. The first part addresses issues related to legislation, while the second deals with specific instances of grave, factual violations of freedom of association.

Violations of freedom of association based on legal issues

650. In its introductory remarks, the complainant describes briefly the political and institutional history of Myanmar. In particular, it recalls that, after the country had gained independence in 1948, there was a first military coup in March 1962, which led to the formation of a Revolutionary Council under the chairmanship of General Ne Win. In 1974 a one-party Constitution was adopted.

651. In 1988, the country faced a rising tide of discontent due to the economic and political situation. A general strike broke out in August 1988 and was violently repressed. The military retreated nonetheless to their quarters in August and September. During this period, in the wake of a general movement which led to the creation of various organizations and an independent media, hundreds of workers' organizations were established in both the public and private sectors. These organizations were grouped in the All Burma Workers Union. On 18 September 1988, the 1974 Constitution was suspended

and martial law imposed. All state organs were abolished and replaced by the State Law and Order Restoration Council (SLORC). Organizations deemed to be “anti-state”, including workers’ organizations, were disbanded and top leaders were jailed. In March 1990, the democratic opposition, the National League for Democracy (NLD), won the legislative elections but was not permitted to assume power. On 15 November 1997, the SLORC dissolved itself and appointed a new State Peace and Development Council (SPDC).

- 652.** As regard the legislative framework, the complainant stresses that it is particularly difficult to have a clear idea of the legislation in force in Myanmar, not least due to the fact that part of this legislation is secret. That being said, the complainant indicates that much of the rest of the legislative framework comprises, inter alia, a residue of outdated laws and regulations adopted during the British and Ne Win eras, to which are added a series of military decrees and orders issued since 1988.

Laws on freedom of association: the Trade Union Act, 1926; the Law “defining the fundamental rights and responsibilities of the people’s workers”, 1964 (amended in 1976); and the Trade Disputes Act, 1929

- 653.** The complainant explains that Myanmar has inherited, from the British era, much legislation that has so far not been repealed, amended or officially abrogated. This is the case with the Trade Union Act of 1926 (attached to the complaint) which had been the subject of comments by the CEACR for many years. One of the issues raised by the CEACR was the excessively high threshold required to establish a trade union. In 1964, the Law “defining the fundamental rights and responsibilities of the people’s workers” was adopted (the law is attached to the complaint). The Trade Union Act remained in force in so far as it was compatible with the 1964 Law. For many years, the CEACR has sought, without success, clarification from the Government on the extent to which the 1964 Law had repealed the Trade Union Act.

- 654.** The complainant indicates that the 1964 Law is far from complying with Convention No. 87 since it establishes a compulsory system for the organization and representation of workers. The 1964 Law was amended in 1976. In its 1977 comments, the CEACR noted however that the law as amended still “... imposes a single trade union system contrary to Article 2 of the Convention under which workers have the right to form organizations of their own choosing”. The complainant underlines that since that date, the CEACR has repeated its comments in successive reports. Unfortunately no progress has yet been noted.

- 655.** The complainant indicates that other laws should be brought to the attention of the Committee and in particular the Trade Disputes Act, 1929 (attached to the complaint). This Act, amended in 1966, appears to define the means of resolving industrial disputes. The complainant mentions a number of provisions that, in its view, appear not to be in conformity with freedom of association. On the other hand, the complainant indicates that it is unable to confirm whether the Act is still in force.

Military decrees and orders: Orders Nos. 2/88 and 6/88

- 656.** The complainant underlines that the legislative framework would not be complete if decrees and orders adopted by the military since 1988 were not taken into account. These decrees and orders have direct detrimental effects on the free exercise of trade union rights. In some cases they appear to supersede outdated legislation that has not been officially repealed.

- 657.** The complainant first draws the attention of the Committee to Order No. 2/88 issued on 18 September 1988 under the title “Order No. 2/88 of the Organization for Building Law and Order in the State” (attached to the complaint). Order No. 2/88 prohibits “gathering, walking or marching in procession ... by a group of five or more people ... regardless of whether the act is with the intention of creating disturbance or of committing a crime or not”. Order No. 2/88 goes on to state that “no one is permitted to open strike centres regardless of whether or not the intent is to create disturbances or to commit a crime”. Finally, “no one is permitted to demonstrate en masse” or “interfere or obstruct people carrying out security duties”. The complainant underlines that the sweeping wording of Order No. 2/88 covers all types of meetings, including those related to legitimate trade union activities. It could thus render illegal normal trade union gatherings essential to the defence and promotion of workers’ rights.
- 658.** The complainant underlines that the provisions of Order No. 2/88 are strengthened by the Unlawful Association Act, 1908, which provides, under section 17.1 that “whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association or in any way assists the operations of any such association, shall be punished with imprisonment for a term which shall not be less than two years and more than three years and shall also be liable to fine”.
- 659.** The complainant then draws the attention of the Committee to Order No. 6/88 of 30 September (attached to the complaint), entitled “Law on the Formation of Associations and Organizations”. The complainant considers that Order No. 6/88 is in blatant contravention of Convention No. 87. Thus, under section 2(a), “an organization means an association, society, union (underlining added), party committee, federation, group of associations, front, club, and similar organization that is formed with a group of people for an objective or a programme ...”. By virtue of section 3(a), “organizations shall apply for permission to form to the Ministry of Home and Religious Affairs ...”, while section 3(c) states that “organizations that are not permitted shall not form or continue to exist and pursue activities”. There is no doubt, according to the complainant, that Order No. 6/88 applies to workers’ and employers’ organizations, which are thus required to request previous authorization from the military to be established or to pursue their activities.
- 660.** In addition, section 5(b) and (c) describes, in a very broad manner, the organizations which are prohibited, i.e. “organizations that attempt, instigate, incite, abet or commit act that may in any way disrupt law and order, peace and tranquillity, or safe and secure communications” and “organizations that attempt, instigate, incite, abet or commit act that affect or disrupt the regularity of the state machinery”. The complainant emphasizes that the order does not give any indication of the grounds on which the Government would judge a violation to have occurred. Moreover, it does not provide an appeal against decisions denying permission for organizations to be established.
- 661.** Finally, penalties provided in the Order for punishing violations are particularly harsh. Under section 6, any person found to have infringed section 3(c) and section 5, “shall be punished with imprisonment for a term which may extend to five years”. Section 7 states that “any person found guilty of being a member of, or aiding and abetting or using the paraphernalia or organizations that are not permitted ... shall be punished with imprisonment for a term which may extend to three years”.
- 662.** The complainant underlines that these two military Orders are part of a net of repressive texts, some dating back to colonization, others new, and others secret, which are designed to prevent any person from challenging the military by organizing peaceful demonstrations. The complainant lists some other texts: (1) the Unlawful Association Act, 1908 (mentioned above and attached to the complaint); (2) the Official Secrets Act, 1928

(not attached to the complaint and providing, according to the complainant, for imprisonment for the dissemination of statements deemed official secrets); (3) the Emergency Provisions Act, 1950 (section 5 of which is attached to the complaint); (4) the State Protection Law, 1975 (attached to the complaint); and (5) Law No. 5/96 (attached to the complaint and bearing the following title “Law protecting the peaceful and systematic transfer of state responsibility and the successful performance of the functions of the National Convention against disturbance and oppositions”).

663. The complainant submits that all these texts can be used arbitrarily as needed by the regime to undermine any sort of trade union activities. They contribute to nourishing a climate of denial of fundamental freedoms and to annihilating any form of labour organization. They should therefore be repealed without delay, or at least, be modified in order not to pose a threat to normal trade union activities. On the other hand, the complainant is unable to confirm whether the texts listed in the previous paragraph are still in force.

Preliminary conclusions of the complainant on the legislative framework

664. In light of the serious discrepancies identified in the legislation, the Government should:

- suppress any reference to a monopoly;
- suppress any previous authorization required in order to form and join workers’ or employers’ organizations;
- provide for the right to establish and join workers’ and employers’ organizations at all levels;
- eliminate all penalties for the exercise of trade union activities, including strike action;
- provide for an appeal before an independent body in case of refusal to register or recognize a workers’ or employers’ organization.

665. The complainant states that the Government should be urged to accept technical assistance by ILO experts on freedom of association in order to carry out a comprehensive review of its legislation on freedom of association so as to ensure better compliance with Convention No. 87. In this last respect, the complainant refers to the “resolution on widespread use of forced labour in Myanmar” adopted by the International Labour Conference at its 87th (June 1999) Session. Under paragraph 3(b) of this resolution, the Conference resolves “that the Government of Myanmar should cease to benefit from any technical cooperation or assistance from the ILO, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry, until such time as it has implemented the said recommendations ...”. The complainant takes the view that the resolution does not prevent any technical assistance and assistance in the field of freedom of association. On the contrary, the complainant believes that the assistance given in this field can only be seen as falling within the purview of the resolution i.e. “direct assistance to implement immediately the recommendations of the Commission of Inquiry”. The complainant refers in this regard to the report of the High-Level Team, concerning the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), submitted to the Governing Body at its 282nd (November 2001) Session. The complainant quotes an extract of paragraph 68 of the report, which reads as follows “... if there existed genuine civil society organizations, and in particular strong and independent workers’ organizations, as required by Convention No. 87 ratified by Myanmar, these could provide individuals affected by forced labour with a framework and collective

support which would help them to make the best possible use of whatever remedies are available to defend their recognized rights” (document GB.282/4).

Violations of freedom of association based on factual discrepancies

- 666.** The complainant states that, whatever the written law, in practice, workers who fight to redress the often atrocious conditions face threats, violence and murder.

No trade union is allowed to be established or to function

- 667.** The complainant submits that there is a total lack of legally registered workers’ organizations in Myanmar. All the trade unions that existed before the present military regime came to power have been disbanded. Any workers’ organizations that do exist have to function underground, facing constant threat of repressions and reprisal. There is a systematic practice of repression by public authorities of any form of labour organization, which often extends to violence, including torture.

- 668.** The complainant refers also to the “Union Solidarity and Development Association” (USDA). Workers are forced to join this association to work, for example, in the civil service and more generally for a myriad of economic activities. This association was created in 1993 by the Government. It is designed to substitute not only workers’ organizations, but all other civil institutions and is widely seen as a political mobilization tool. Its purported objective, published on the website of the government, is to “strengthen the Union of Myanmar to promote love and understanding among indigenous peoples, to strengthen State sovereignty, to safeguard territorial integrity and to develop the country and to build a peaceful and modern State”.

Federation of Trade Unions of Burma (FTUB)

- 669.** The complainant states that the FTUB is an independent workers’ organization. According to its draft constitutive documents (attached to the complaint with the composition of its Central Executive Committee), one of its aims is “to further the establishment, maintenance and development of free trade unions in Burma”. It also aims to “protect, maintain and promote democracy and basic trade union rights and human rights ...”.

- 670.** The complainant explains that the organization was established in 1991 by trade unionists who were subsequently dismissed from their jobs by the military regime. It is headed by a Central Executive Committee. The Central Executive Committee has not yet succeeded in registering the organization in Myanmar; hence the draft nature of the constitutive documents. Indeed, since its establishment, the FTUB has been forced to operate outside the country. While it is the effective voice of over 1.5 million Myanmar migrants working in Thailand, it also maintains internal underground unions in key industrial sectors in Myanmar and operates in all major cities of the country. While the FTUB maintains offices in most neighbouring countries of Myanmar, it also maintains structures, organizes workers’ unions inside the territory of Myanmar and runs workers’ training activities both in countries bordering Myanmar and inside the country. The FTUB has also played a critical role in organizing independent workers’ organizations in ethnic nationality areas; the names of some of these organizations are listed in the complaint. In common with the FTUB, these workers’ organizations are unable to legally register and all function underground. While they are not affiliates of FTUB, they maintain close working relationships.

- 671.** The Government has orchestrated a campaign of defamation and discredit against the FTUB. Part of this campaign is conducted through the government-controlled media. The

complainant also quotes a statement of the Worker delegate of the Myanmar delegation at the 86th (June 1998) Session of the International Labour Conference. According to him, the FTUB was created by expatriates. The FTUB “does not represent a single worker in Myanmar ... [and] is an illegal organization [that] has been directly involved in and responsible for terrorist acts which took place in [Myanmar] ...”. The complainant adds that that the Workers’ group challenged the credentials of this delegate on the ground of his lack of independence.

- 672.** Finally, the complainant states that the FTUB has often had to face gross interference by the public authorities in its administration that takes the form of violations of its premises and properties. Thus in May 2002, the military junta attacked and torched the Kawthoolei Education Workers’ Union (KEWU) office in Kho-Pay, Papun District, and burned down the homes of several KEWU members. KEWU is not affiliated to the FTUB but closely cooperates with it. It is not legally registered and under constant threat of repression. The event occurred a few days after union members led by the FTUB celebrated May Day; the building used for the May Day celebration was also torched. To the complainant’s knowledge no inquiry was carried out.
- 673.** The complainant concludes by underlining that it would be impossible for the FTUB to obtain authorization under Order No. 6/88 to function as a legal trade union inside Myanmar. Its activities in the country are therefore systematically considered illegal and subject to criminal prosecution.

Case of the General Secretary of FTUB, Maung Maung

- 674.** Maung Maung has been the General Secretary of FTUB since its creation in 1991. He was forced to leave the country in 1988 at the time of the military crackdown. Previously, Maung Maung had created with other colleagues a trade union in the state-owned mining company in which they were employed. They became members of the executive committee of this organization and were dismissed by the Military in application of Order No. 6/88. Since then, Maung Maung has exercised his trade union functions and leadership from outside Myanmar and has been honoured repeatedly by the international trade union movement.
- 675.** The Government regularly harasses and attempts to discredit Maung Maung, presenting him as a fugitive criminal. The government-controlled media launched regular attacks against Maung Maung (newspaper articles attached to the complaint in support). In 2002, the Myanmar military intelligence attempted once more to discredit the FTUB and its leadership, including its president and its general secretary, by accusing them, without evidence, of planting bombs.
- 676.** According to the complaint, the FTUB General Secretary faces criminal prosecution for legitimate trade union activities, in total contradiction of the free exercise of trade union rights and fundamental principles of freedom of association.

Murder of a trade unionist: Saw Mya Than

- 677.** Saw Mya Than was a member of the FTUB and an official of the KEWU mentioned above. He received training as a specialist in human and trade union rights in 2001 by both organizations. He became well known in his area for his involvement with human rights and was elected as a headman of his village, Kaleiktoat, in Ye township (Mon State).
- 678.** The complainant explains that Saw Mya Than was forced to work as a porter for the army’s Light Infantry Battalion (LIB) No. 588, led by Major Myo Hlaing. On 4 August 2002, the army column came under attack from elements of the ethnic independence

movement. Saw Mya Than was shot dead by the State Peace and Development Council (SPDC) soldiers, retaliating against an ambush set by the democratic forces.

- 679.** It is common practice for the Myanmar military to recruit forced labourers as porters and “human shields” and they are often made to march in front of battalions. However, the complainant believes that there is a direct link between Saw Mya Than’s trade union role and his murder by the army for the following reasons: first, Saw Mya Than’s involvement in trade union rights was widely known; and secondly, as mentioned above, he was a headman. The complainant explains that headmen are not usually forcibly recruited to work, but they organize forced labour of others and, indeed, “recruit” a force labour workforce. By attacking the community’s head, the military regime attempted to prevent the emergence of a new leader to challenge its rule.
- 680.** The complainant adds that it was informed of the murder by the FTUB; it then reported the case to the ILO. The case was subsequently raised by the ILO Liaison Officer before the National Implementation Committee at a meeting on 9 November 2002. The Government has not given any answer yet. To the complainant’s knowledge, no inquiry was carried out to clarify the facts and take appropriate measures to punish those responsible, and to prevent such events from occurring in the future.

Detention of trade unionists: Myo Aung Thant, Khin Kyaw and Thet Naing

- 681.** The complainant submits the following elements concerning Myo Aung Thant. Myo Aung Thant was a member of the All Burma Petro-Chemical Corporation Union formed during the 1988 pro-democratic movement. In 1995, he became a member of the Central Executive Committee of the FTUB. He was arrested on 13 June 1997 at the airport in Yangon, along with his wife and children. He was then charged with high treason. A secret trial was conducted in August 1997 where he was denied the right to his own legal counsel and was assigned a lawyer designated by the junta. He was convicted and sentenced to transportation for life. He also was sentenced to 7 years of imprisonment, three years out of which corresponded to the sanction provided under the Unlawful Association Act, 1908. His conviction rested on a confession obtained under torture. At the end of 1998, he was moved from Yangon’s Insein prison to a remote prison in Myitkyina, Kachin State, in the far north of the country, which is too distant for family visits. At the same time, Myo Aung Thant’s wife had been sentenced to ten years in prison as an accomplice of her husband. She has, however, since been released.
- 682.** With respect to the case of Khin Kyaw, the complainant gives the following information. Khin Kyaw was a member of the Seamen’s Union of Burma. He was arrested in 1997 along with his wife. He had earlier been detained for trade union activities in 1993 and had been tortured in detention. The authorities have never stated the charges under which he is currently held but it is known that these are related to Myo Aung Thant’s case. Khin Kyaw is presently serving a 17-year prison sentence in Thayarwaddy prison in Pegu division. His health is poor.
- 683.** Regarding the case of Thet Naing, the complainant indicates that he was an underground trade union leader who is currently in jail. He was originally arrested in 1990 after involvement in politics with the National League for Democracy (NLD), and student and workers’ organizations. He was released in 1994. In 1997, Thet Naing was recruited in the Yan Ze Kyan garment factory. In 1999, a protest action broke out due to unfair labour practices on the part of the employer. Thet Naing was one of 85 workers dismissed for their role in the protest action; 100 workers were sanctioned with pay deductions. As a result, the entire workforce walked off the job in a wild-cat strike and the factory management contacted the township SPDC and military officers. An arrangement was

negotiated, and the workers, including Thet Naing, were allowed to return to work. Five days later, Thet Naing and 60 other workers were dismissed once again. On 20 December 1998 (this is the year given by the complainant but presumably it should read 1999), Thet Naing was apprehended at his home by the SPDC Military Intelligence Unit No. 3, accompanied by officers of the Pegu Police Station No. 3. He was told that he was being arrested for violating section 5(j) of the Emergency Act, 1950 (mentioned above) and was sentenced to seven years in prison. He was held for five months in Insein and Pegu jails, and then transferred to Myitkyina jail in Kachin State.

- 684.** The complainant considers that these detentions and convictions for trade union activities contribute to creating an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities. The complainant believes that Myo Aung Thant, Khin Kyaw and Thet Naing should be released immediately.

Sailors repressed overseas

- 685.** The complainant recalls in detail Case No. 1752 examined by the Committee [see 295th Report paras. 87-119 and 299th Report, para. 17]. The complainant then describes the case of Shwe Tun Aung to show that contrary to what the Government indicated to the Committee during the examination of Case No. 1752, Myanmar seafarers are still denied freedom of association and continue to be discriminated against when they try to defend their rights. The complainant adds that it is aware of hundreds of cases but they are particularly difficult to document for fear of reprisals.
- 686.** The complainant recalls that in Case No. 1752, it was alleged that, prior to their departure from shore, Myanmar seafarers were required by a governmental agency, the Seamen Employment Control Division (SECD), to sign an affidavit saying that they would not accept any assistance from the International Transport Workers' Federation (ITF) or affiliated parties. The affidavit obliged seafarers to sign a double payroll. The Committee urged "the Government to withdraw the SECD requirement that Myanmar seafarers must sign an affidavit restricting their right to affiliate with or contact the [ITF] for assistance, which requirement violates freedom of association principles". The Committee also stated that the double payroll was a reprehensible way of evading the terms of collective agreements, "a practice which the Committee strongly condemns".
- 687.** Further, the Committee noted that the ITF-affiliated Seafarers' Union of Burma (SUB) which intervened on behalf of Myanmar seafarers, operated in exile in Thailand because it was not recognized by the Government. The Committee reminded the Government that "... it is not for the Government to decide which organization would best represent the workers' interests, as would appear to be the case of the SECD which exercises total control over the placement of all Myanmar seafarers and which is a government agency". Therefore, the Committee urged the Government "to guarantee and respect the rights of seafarers to form an independent trade union in Myanmar for the defence of their basic rights and interests if they so wish".
- 688.** Finally the Committee noted "with serious concern" the various incidents described by the ITF and the victimization of Myanmar seafarers – revocation of their registration, confiscation of their passports and even threat of imprisonment – in the event that they accepted or received an ITF settlement and refused to hand back their back-pay settlements to the SECD. The Committee called on the Government "to refrain in the future from having recourse to acts of anti-union discrimination against Myanmar seafarers who pursue their legitimate grievances through the complainant and/or its affiliated trade unions".
- 689.** In the course of the follow-up of the case, the complainant recalls that the Government informed the Committee that the "affidavit requirement" had been revoked and that

measures to allow Myanmar seafarers to form organizations had been taken [see 299th Report, para. 17]. The complainant asserts, in contradiction, that no effect has yet been given to the Committee's recommendations: no seafarers' organization has been allowed to be established and acts of anti-union discrimination are continuing. Further, seafarers were still required to sign a contract preventing them from receiving any assistance from the ITF. In support of its contentions, the complainant describes the case of Shwe Tun Aung and appends two affidavits detailing his story. It should be noted that both affidavits are unsigned, undated (referring only to March 2002) and printed on unheaded white paper. While neither document provided by the complainant is signed, they both contain a space for signature by a notary public of Harris county, state of Texas. One affidavit indicates that it reflects the statement made by Mr. James McAuley having "... personal knowledge of the facts herein ... [and] submitting this affidavit on behalf of Shwe Tun Aung's application for asylum". The elements submitted by the complainant and reflected in the affidavits can be summarized as follows.

- 690.** Before taking his first position as a seafarer, Shwe Tun Aung was called in by an employee of the SECD to sign a paper that warned him not to join the union or make any claims to the ITF. Without signing this document, Shwe Tun Aung would not have been able to obtain the seafarer's certificate entitling him to work as a seafarer. At the end of his first work, Shwe Tun Aung waited in Thailand for another job. While there, he discovered the differences between the conditions of work of Myanmar seafarers and those of seafarers from other countries. He met the General Secretary of FTUB and learned about ITF's activities. He joined the SUB in 1997 and is also a member of FTUB.
- 691.** In 1998, he joined the crew of the M/V Great Concert. For four months, the crewmembers were not paid fair wages. For two weeks, they were not fed. When the ship arrived in Paranagua Port in Brazil, in 1999, Shwe Tun Aung called the ITF inspectors who inspected the ship. The Myanmar shipping agent learned of Shwe Tun Aung's initiative and informed the Myanmar Embassy. After a dispute lasting four months between the ITF and the shipping company, an agreement was reached and the company paid all outstanding wages. Out of the four crewmembers who decided to return to Myanmar, two were trade union members. Upon their arrival, all four were forced by the SECD to refund the wages that ITF had secured for them and were fined heavily. They were also forbidden to leave the country for three years.
- 692.** Shwe Tun Aung did not return to Myanmar for fear of reprisal but instead went to Bangkok where he became more involved in the SUB's activities. In a radio interview, he talked about the events which had occurred on the M/V Great Concert. His name was made public and the interview was broadcast in Myanmar. This came to the knowledge of the Government who labelled Shwe Tun Aung as a criminal. Shwe Tun Aung also participated in demonstrations before the Myanmar Embassy; during one of them he met Mr. James McAuley, another seafarer.
- 693.** In September 1999, they both joined the M/V Global Mariner to participate in a worldwide campaign to present the situation of workers in Myanmar. The ship was owned by ITF. The world tour ended in February 2000. The ship was donated to a company for which most of the crew, including Shwe Tun Aung, decided to work. On 2 August 2000, the M/V Global Mariner sunk near Venezuela and all the crewmembers lost, inter alia, their identity documents. Shwe Tun Aung contacted the Myanmar Embassy in Brazil to obtain a new passport. On 17 October 2000, he was informed by the third secretary of the Embassy that his name had been placed on a "blacklist" by the Government and that he would only obtain a travel document to return to Myanmar. Six months later, after the intervention of several unions, the authorities issued a passport with the imposition of a fine of US\$1,500. The document contained, however, a special instruction from the Ministry of Foreign Affairs and the Home Ministry, in charge of the special branch police who investigate all

cases before passports are issued, informing authorities to whom this passport would be shown that the Government sought the return of Shwe Tun Aung to Myanmar. In other words, should he return to Thailand, he would be at risk of extradition to Myanmar. Aided by the ITF, he was granted political refugee status in the United States where he currently serves as an ITF inspector.

- 694.** Mr. James McAuley's statement confirms Shwe Tun Aung's involvement in trade union activities with the SUB in Thailand and in the campaign organized by the ITF. He was informed by the General Secretary of FTUB and by Shwe Tun Aung of the difficulties encountered by the latter to obtain a passport from the Myanmar Embassy in Brazil; he adds that Shwe Tun Aung was the only Myanmar crewmember on the M/V Global Mariner. Mr. James McAuley helped Shwe Tun Aung to obtain temporary visas in order to leave Brazil where he did not feel safe. The complainant contends that it is clear that Shwe Tun Aung is targeted by the Government because he tried to pursue his legitimate labour grievances.

Labour unrest and dismissals of workers

- 695.** The complainant states that it was informed of a great number of dismissals of workers in connection with collective labour protests and claims.
- 696.** The first case reported is the case of the Motorcar tyre factory in Kanthayar village (Thaton township, Karen State). The factory was opened in 1996 by the Ministry of Industry. Due to shortage of fuel oil and raw material, it was unable to produce anything in 1999. Unskilled daily workers lost their jobs in February 2000, while 120 skilled workers lost their employment in the following May. On 25 February 2001, the Ministry of Industry announced that 19 of the remaining skilled workers were also discharged. No compensation was paid to any of these workers. A peaceful protest was staged in front of the factory on 9 and 10 March 2001 to obtain a severance compensation pay. Thaton district authorities and a local unit of military intelligence told the protesters that they should submit their petitions to the Ministry of Industry and to the Ministry of Labour. They urged the workers to stop the protest as it "could affect the regional security".
- 697.** Before any petition was submitted, the intelligence officers and the Myanmar police began arresting the protesters' leaders. Nineteen skilled workers were first arrested. Arrests continued on 11 March 2001 and most workers fled the factory. Two companies from the Light Infantry Battalion (LIB) No. 24 were deployed at the site. A sign was installed at the top of the lane leading to the factory that stated that anyone passing through the factory lane between 6.00 p.m. and 6.00 a.m. was liable to be shot. The fate of the arrested workers remains unknown.

Textile factories

- 698.** The complainant indicates that dozens of instances of labour unrest, severely repressed by public authorities were reported to have occurred in textile factories in the course of 2001. The complainant provides examples of the ways in which workers' rights are ignored in blatant violation of the fundamental freedom of association.

Unique Garment Factory, Hlaing That Ya industrial zone 4

- 699.** In November 2001, an organized workers' movement took place at this factory in order to obtain an increase in overtime pay. At the request of management, officers of the Strategic Office of the Yangon Military Command arrived immediately and asked workers to elect representatives. Six workers came forward and explained the workers' claims. The next day, these six workers were given three months advance pay as well as their basic monthly

pay and dismissed were from their jobs. The last update of the situation indicated that the workers went into hiding for fear of being arrested.

Myanmar Texcamp Industrial Ltd, Hlaing Tha Ya zone 3

700. Myanmar Texcamp is a Singapore-financed company, employing more than 1,000 workers. During the second week of January 2002, there was an organized request by the workers for higher wages and better working conditions. The management responded by calling in the tactical commander of the Yangon Military Command who threatened the workers that if they did not stop, they would be arrested with the charge of “creating instability to the nation”. The management added that since the overall economy was not good, if the wages were to be increased, the company would ultimately have to close. The workers felt compelled to stop their protests and drop their claims.

Myanmar Yes Garment Factory, Hlaing Tha Ya

701. This Hong Kong-financed company employs more than 2,000 workers, in poor working conditions. Average wages are low and working hours are very long (workers are compelled to work until 10.00 p.m. or, if the demand is high, all through the night; refusal leads to automatic dismissal). In addition to the absence of any form of medical assistance, there are severe restrictions on toilet services (a toilet card is required and there is one given for each line comprising over 100 workers). While transportation is provided by the employer, its cost is deducted from workers’ wages.

702. On 16 May 2000, a worker, Ma Moe Moe Htay, fell seriously ill and pleaded the manager to be allowed to rest. Two days later, her dead body was found in the gutter, clothed in her work uniform. No investigation was carried out; anger rose amongst the workers.

703. On 5 October 2000, the workers staged a protest in response to the company’s failure to fulfil its promise to introduce a piece-wage rate. The company called the military intelligence unit who arrested a number of workers. Some were detained at the Hlaing Tha Ya police station, while others were detained at Ye Kyi Ai, a well-known military interrogation centre where political prisoners are routinely tortured.

704. The case was denounced by the International Garment and Leather Workers’ Federation in a communication addressed to the Managing Director of the company on 2 November 2000. The complainant has attached a copy of the communication to the complaint. To the complainant’s knowledge no action was taken in response and the fate of the workers who were arrested remains unknown.

Conclusion of the complainant

705. The complainant believes that this complaint shows serious breaches in the law and practice of Myanmar as relates to internationally recognized principles on freedom of association.

B. The Government’s reply

706. The Government completed its original communication of 5 September 2003 in a communication dated 20 February 2004. At the outset of its first communication the Government stresses its belief that the complainant’s allegations are untrue. Its reply focuses only on the factual allegations.

Allegation that no trade union is allowed to be established or to function

707. The Government states that the fundamental transformation and transition of one political system to another must be linked to the forthcoming constitution. Thus, the formation of first-level trade unions can only take place after the emergence of a national constitution, as all the laws of the country emanate from the constitution. Nevertheless, during the transitional period still faced by the country, the Government is trying to make appropriate arrangements and, in particular, to building on the existing mechanisms. The Government refers in this regard to the workers' welfare association and to professional associations such as the Myanmar Overseas Seafarers' Association, the Myanmar National Committee for Women's Affairs, and the Myanmar Engineer's Association. The Government is of the view that these associations are able to protect the rights, interests and welfare of workers as effectively as is possible under the prevailing circumstances. The Government indicates that these associations are currently functioning at various workplaces, factories, industrial zones and services and they are forerunners of trade unions.

708. The Government states that it firmly believes that with the continued contact, cooperation and assistance of the ILO, differences will be resolved. The Government declares that its main objective is to continue its cooperation with the ILO.

Allegations concerning the public authorities' interference with regard to the Federation of Trade Unions of Burma (FTUB)

709. The Government stresses at the outset that the FTUB is an unlawful organization engaged in terrorist activities. It is headed by Maung Maung, a criminal, who had previously founded HAWK, an organization which carried out destructive terrorist activities. This organization was subsequently transformed into the FTUB. With respect to the allegation relating to the campaign of defamation and discredit against the FTUB, the Government states that it has a duty to raise awareness in the population about dangerous elements in society.

Response concerning Maung Maung from the Federation of Trade Unions of Burma (FTUB), representative of the ICFTU

710. According to the Government, Maung Maung (also known as Pyi Thit Nyunt Wai) is a terrorist from a rebel group. He is a fugitive from justice. Two cases have been filed against him under the Public Preservation Law, 1947 and under the Penal Code (High Treason). In 1989, he was dismissed from his job at the Myanmar Gems Cooperation, for involvement in the theft of jewellery from the diplomatic department store in Yangon. When a further legal action was initiated against him under the abovementioned law, he fled from the country.

711. Maung Maung then joined an anti-government organization – the United Democratic Front, later called the National Coalition Government of the Union of Burma (NCGUB) – and engaged in various activities against the Government. While he was in Bangkok, he undertook activities with members of a rebel group called “Ba Ka Tha” and in 1992, he founded the unlawful organization “HAWK” which also undertook terrorist activities. Maung Maung was involved in a terrorist attempt to carry out bombing in Yangon in 1997 and he helped another terrorist, Myo Aung Thant, to smuggle explosives in the country. For all these activities, he was found guilty under section 122 of the Penal Code (High Treason).

Allegations concerning the death of Saw Mya Than

712. The Government indicates that a thorough investigation has been carried out and led to the following findings.
713. Saw Mya Than was a villager from the village of Kaleikatoat in Ye township. He did not belong to any lawful association of education workers. The Government underlines that the Kawtholei Education Workers' Union is an unlawful underground association affiliated to Karen National Union (KNU), which is the only remaining insurgent group in the country.
714. Saw Mya Than was not elected as headman of the village contrary to what the FTUB claimed, neither was he a porter. Rather, he was employed by the army as a guide. On 4 August 2002, in this role, he was accompanying an army column. About 5 miles from the village, a small group of KNU insurgents detonated a Claymore mine; Saw Mya Than was killed instantly (he died of 11 splinter wounds), while a number of soldiers and porters sustained injuries. The army returned Saw Mya Than's body to his family and assisted in organizing the funeral service. His family received due compensation and was quite satisfied with the assistance extended by the army and the sympathy it demonstrated. No complaint was ever made by any member of his family. The Government concludes that the allegations made by the FTUB are clearly unfounded and deliberately fabricated with political motives.

Allegations concerning Myo Aung Thant and Khin Kyaw

715. The Government contends that Myo Aung Thant had no permanent and proper job. He went to Bangkok on several occasions and met various anti-government organizations. Pyi Thit Nyunt Wai (Maung Maung) instructed Myo Aung Thant to keep regular contacts with him and to recruit Myanmar workers. Their objective was to instigate student unrest in Myanmar. Thus, Myo Aung Thant left Yangon for Ranong on 2 June 1997. On 4 June, Pyi Thit Nyunt Wai, Myo Aung Thant, Khin Kyaw, a demolition expert, Than Lwin, and the representative of another organization (ABSDF), Aye Maung, held a meeting to instigate workers unrest in Yangon. Decisions were also taken to murder state leaders, to bomb the Chinese and Indonesian embassies, to blow up transformers and cut telephone lines in downtown Yangon. The same day, security personnel apprehended Myo Aung Thant and his accomplices and seized explosives and other evidence in Kawthoung. They were all punished for their crimes.

Allegations concerning seafarers repressed overseas

716. The Government provides the following elements. First, it states that the Department of Marine Administration reached an agreement with the ITF. Further, the Myanmar Overseas Seafarers' Association was established legally and affiliated with the ITF. The Association takes interest in the welfare and rights of Myanmar seafarers and is in a position to work effectively given its affiliation with the ITF.
717. Moreover, the Seamen Employment Control Department issued a formal instruction dated 1 February 1995, under which the former 25 per cent deduction out of the family remittances of Myanmar seafarers was ended. Further, under Notification No. 146/94 of the Ministry of Finance and Revenue issued on 16th November 1994, Myanmar seafarers are only liable to pay 10 per cent income tax on their declared total foreign earnings.
718. The Government recalls that, following the recommendations made by the Committee in Case No. 1752, a communication was sent. The Government believes that this

communication adequately replies to the allegations contained in the complaint concerning seafarers. In this letter, the Government explained that the following steps had been taken to comply with the recommendations of the Committee: (1) the SCD revoked, with effect from 9 February 1995, the affidavit that seafarers had previously been obliged to sign before leaving the country; and (2) measures were under way to allow seafarers to form organizations on their own; the Government strongly denied having committed any acts of anti-union discrimination. In this communication, the Government also referred to the departmental instruction of 1 February 1995 and Notification No. 146/94. The Government stressed its commitment to fully comply with the Committee's recommendations. It also emphasized that some actions might take some time.¹

Allegations concerning labour unrest and dismissals of workers

- 719.** With regard to the allegations concerning the Unique Garment Factory, the Myanmar Texcamp Garment Factory and the Myanmar Yes Garment Factory, in its communication of 5 September 2003, the Government contends that there were no such cases of the nature alleged. The Government admits that some disagreements between the workers and the employers existed but it underlines that these disagreements were resolved by the Township Workers' Supervisory Committee (all factories are located in the Hlaing Tha Yar township). Contrary to what is stated in the complaint, there were no outstanding cases with respect to the Unique Garment Factory in November 2001; the Myanmar Texcamp Garment Factory in January 2002; and the Myanmar Yes Garment Factory between May and November 2000.
- 720.** In its communication of 20 February, the Government submits additional comments on the allegations relating to the three garment factories mentioned in the complaint. The Government underlines that it disagrees with the dates given and the manner in which the events are reported by the complainant. At a general level, the Government comments that workers in Myanmar enjoy rights and benefits in accordance with the existing labour laws. In any case in which breach of applicable legislative provisions is proven, the employer would be liable to pay compensation to the affected workers.
- 721.** The Government proceeds to describe the dispute resolution system. It insists that in disputes workers are represented by workers' welfare associations present in most factories. Should a dispute arise, negotiation and conciliation are carried out between the employer and workers in the presence of both the workers' welfare associations and the Supervisory Committee of the Industrial Zones. If the parties so wish, the Township Workers' Supervisory Committee may continue the negotiation and conciliation until an agreement is reached. The Government denies any interference from the military in cases of labour conflict. These are settled solely by the administrative council and committees functioning under the authority of the Ministry of Labour. The Government indicates that between January 2000 and December 2003, a number of disputes arose in various industrial zones. In total, all 1,069 cases concerned were resolved through the negotiation and conciliation process and 19,186 workers received additional benefits as a result.
- 722.** Concerning the garment factories in particular, the Government indicates that these have experienced a great deal of pressure resulting from the economic sanctions imposed on

¹ The Committee took note of the information with interest. It requested the Government to indicate the specific measures undertaken to guarantee the rights of seafarers to form an independent trade union in Myanmar for the defence of their basic rights and interests and to keep it informed of any progress made in this regard [see 299th Report, para. 17].

Myanmar. These factories sometimes had no alternative but to lay off workers, in which case due compensation was paid to those dismissed. The Government denies that workers who engaged in protest actions were threatened or dismissed. In instances where workers submitted demands, the Department of Labour, in conjunction with management, workers and the competent administrative bodies, succeeded in defusing confrontation.

723. The Government comments on each of the three specific cases raised in the complaint.

Unique Garment Factory

724. The Government confirms that disputes arose but disagrees with both the dates specified and the alleged results. The Government indicates that the three following disputes arose:

- (a) on 6 October 2000, 19 workers refused to work overtime and it was decided to transfer them to another work section; a dispute arose and was conciliated by the Township Workers' Supervisory Committee; a settlement was reached under which management agreed to reinstate the ten workers (the discrepancy in figure is that of the Government) in their former section; it was also agreed that expatriate personnel would not interfere in the management of the factory and that 6 October would be considered as a worked day for the workers concerned;
- (b) on 10 July 2001, 77 night shift workers were involved in a dispute; the factory was going through a difficult period; the 77 workers, who were still on probation, were dismissed and compensation was paid to them following a conciliation undertaken by the Workers' Supervisory Committee;
- (c) on 15 December 2001, workers asked for the payment of work done during lunchtime and overtime wages; the township authorities and officials of the Ministry of Labour met with the management and conciliated the matter; an agreement was signed between the employer and the workers.

Myanmar Texcamp Garment Factory

725. The Government underlines that there have been no instances of arrest and that conciliation and negotiation were undertaken, with the assistance of the Township Workers' Supervisory Committee, the Supervisory Committee of the Industrial Zones and the workers' welfare associations concerned. All the workers' claims have been met, often beyond what was demanded. The Government adds that because of the economic crisis, the factory was obliged to pay "legal benefits" to all workers. The Government refers to the three following disputes:

- (a) on 8 January 2002, all the workers of the factory submitted claims for a wage increase and better conditions of work; conciliation was undertaken by officials of the Government and an agreement reached and signed; the management agreed to all the claims submitted; the owner of the factory even consented, in addition, to an increase for low-wage workers;
- (b) on 2 December 2002, workers requested a wage increase; the factory owner together with management, met with the workers in the presence of the Township Workers' Supervisory Committee and an agreement was reached on overtime compensation;
- (c) on 5 July 2003, a dispute arose when 300 workers asked for an increase of a particular allowance; conciliation was undertaken by officials of the Department of Labour and an agreement was reached.

Myanmar Yes Garment Factory

726. The Government asserts that the working time in force in the factory is in accordance with that prescribed under the existing labour laws and that, when overtime is to be performed, it is paid. Transportation depends on the understanding that exists between employer and workers and is either free (if it is agreed that transportation should be provided) or else charged to the workers (who are entitled to provide their own transportation, if they so prefer). The Government refers to the following two cases conciliated and negotiated in the presence of the Township Workers' Supervisory Committee, the Supervisory Committee of the Industrial Zones and the workers' welfare associations concerned:

- (a) on 24 May 2002, 80 workers submitted a number of claims relating to a salary increase and improved working conditions; agreements were reached following a conciliation undertaken by the Township Supervisory Committee;
- (b) on 16 September 2002, workers voiced their dissatisfaction about a lay-off and the conditions under which it had occurred, as well as the treatment of workers by the line manager (sewing sector); the Township Supervisory Committee undertook a conciliation and urged management to pay the compensation provided for under the contracts of employment; an agreement was reached.

727. With respect to the individual case of Ma Moe Moe Htay, the Government confirms that on 16 May 2000, she fell ill at work and was allowed to rest. In the afternoon she did not report to work and her body was later found in the circumstances described by the complainant. The police undertook an investigation and concluded that it was an accident. The factory and the public authorities paid the funeral expenses.

728. With respect to the Motorcar tyre factory in Kanthayar Village (Thatone township, Karen State), the Government states that it is a state-owned factory. It denies that there has ever been any complaint of the kind alleged by the complainant. There is no record of any incident at the Township (or) Divisional Labour Office. The allegations are therefore unfounded.

C. The Committee's conclusions

729. *The Committee notes that the complainant has submitted two sets of allegations. A first set of allegations relates to legislative issues. The complainant has identified certain legislative instruments seriously breaching Convention No. 87. The second set of allegations relates to factual issues. The Committee will group these allegations under three main issues. The first issue relates to the alleged total absence of recognized workers' organizations in Myanmar. The second issue concerns the alleged repression by the authorities – including murder, arrest and torture – of any worker engaged in any trade union activity or, more generally, in any expression of labour grievances; allegations of workers' dismissals are also made. The third issue deals with the recognition of seafarers' freedom of association, an issue dealt with by the Committee in its examination of Case No. 1752. From a wider perspective, the complainant states that the alleged violations of freedom of association have occurred in a climate in which human rights and other fundamental freedoms are being violently repressed.*

730. *At the outset, the Committee is obliged to observe the extreme seriousness of the allegations and the detailed manner in which they have been set out. The Committee notes that the Government has submitted a reply only on certain of the factual issues raised. The Committee also notes that the second communication of the Government has been received one week before its meeting. Noting that the Government of Myanmar's declared objective is the continuation of its cooperation with the ILO, the Committee considers the contents of*

its future replies and their timeliness to be an important signal of its willingness in this respect.

- 731.** *Turning to the substance of the allegations, the Committee must recall the specific background concerning freedom of association against which they are presented. ILO supervisory bodies have closely followed the application of Convention No. 87 by Myanmar over several years. The Committee of Experts on the Application of Conventions and Recommendations and the Committee on the Application of Standards of the International Labour Conference have repeatedly drawn the Government's attention to its continued failure to apply the Convention. The Conference Committee has regularly mentioned (the last occasion of which was at the 91st (June 2003) Session of the International Labour Conference,) the application of the Convention by Myanmar in a special paragraph of its general report, thereby underlining the seriousness of the matter.*
- 732.** *Given this context, the Committee wishes to recall at the outset that when a State takes membership of the Organization, it accepts the fundamental principles in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association [see **Digest of decisions and principles of the Freedom of Association Committee**, 1996, para. 10]. In addition to this overall obligation, there are the specific commitments resulting from Myanmar's ratification of Convention No. 87.*

Legislative issues

- 733.** *The Committee notes that the Government has not responded to any of the points concerning legislation made by the complainant. The Committee notes that the Government does, however, admit that in practice no first level trade unions exist. The Government links this absence with the fact that the state Constitution, from which all national laws derive, has not yet been adopted. The Committee notes in this respect that the legislation applicable to trade unions and trade disputes invoked by the complainant was adopted or considered to be in force under the 1974 Constitution, which was suspended in the meantime. The Committee notes also that Order No. 6/88, which explicitly applies to unions – and the currency of which is not questioned – subjects their establishment to previous authorization of the Ministry of Home and Religious Affairs. This Order bans organizations, including unions, on very broad terms, such as disruption of the law and order or disruption of the State, without providing any mechanism of appeal. The Committee underlines in this respect that the principle of freedom of association would often remain a dead letter if workers and employers were required to obtain any kind of previous authorization to enable them to establish an organization [see **Digest**, *op. cit.*, para. 244].*
- 734.** *In light of the above, the Committee notes that on the one hand, there is currently no Constitution in force in Myanmar and that, according to the Government, this prevents the adoption of laws under which unions could be formed; hence, the absence of unions in practice. On the other hand, paradoxically, Order No. 6/88 refers to unions and applies in the conditions described above as problematic from the freedom of association perspective. The combination of these two elements leads the Committee to observe that currently there is no legislation that affords a legal basis to the respect for, and the realization of, freedom of association in Myanmar. This legal situation is in clear infringement of Convention No. 87.*
- 735.** *In the Committee's view, this situation calls for several actions to be taken by the Government. First, a legal basis must be provided to allow the respect for, and realization of, freedom of association and, in particular, the recognition of free and independent workers' and employers' organizations. This legal basis must, at the very minimum, provide for the guarantees enshrined in Convention No. 87. It should also address the*

more specific issues of the seafarers' right to organize. In addition, the Committee reminds the Government that the Convention covers employers as well as workers. While due note has been taken of the Government's observations on the lack of a state constitution, the Committee observes that this situation does not prevent all legislative activities and that decrees and orders have indeed been adopted since the suspension of the 1974 Constitution.

- 736.** *Secondly, in accordance with Article 8 of the Convention,² this legal basis should comprise specific measures whereby any other legislation, and in particular Orders Nos. 2/88 and 6/88, will not be applied in a manner which would undermine the guarantees relating to freedom of association and collective bargaining.*
- 737.** *Finally, the Committee observes that respect for the Rule of Law requires all legislation adopted to be made public and the contents of which to be widely diffused. Any amendment to the law or indeed its abrogation should follow the same process. The Committee expects that any legislative instruments adopted with respect to freedom of association will strictly abide by these fundamental requirements.*
- 738.** *Bearing in mind the serious implications of the lack of any legal basis for freedom of association in Myanmar, the Committee is convinced that the Government should accept the technical assistance of the Office to remedy the situation.*

Factual issues

- 739.** *In relation to the absence of recognition of trade unions, the Committee will first examine the question of the representation of workers' interests by the welfare associations referred to by the Government and which, according to its own admission, are not trade unions but can be considered as forerunners of trade unions. This question has been examined previously by the Committee of Experts on the Application of Conventions and Recommendations and was raised recently before the Credentials Committee of the International Labour Conference.*
- 740.** *Pending the establishment and recognition of trade unions, the Committee is of the view that alternative forms of organized collective representation of workers can be envisaged provided they constitute real preliminary steps towards the setting up of free and independent trade unions. These embryonic workers' organizations must therefore enjoy, at least, guarantees of independence. The question is whether welfare associations present these guarantees.*
- 741.** *The Committee notes that, while generally referring to their role in dispute resolution, the Government has not provided any information on the composition and the functioning of these associations, nor has it submitted examples of their rules. While the Committee was able to obtain a copy of the rules of the Myanmar Overseas Seafarers' Association, in the absence of detailed information on the circumstances under which these rules have been developed and adopted, the Committee cannot ascertain whether they are the free expression of the will of the workers concerned. In any event, paragraph 5 of Chapter 4 of these rules explicitly limits seafarers' freedom of choice to establish and join associations; thus, under this provision the association is "... the sole association representing the Seafarers". The Committee notes from the conclusions of the Credentials Committee [see 3rd Report, para 27, 90th (June 2002) Session of the International Labour Conference]*

² Under Article 8, paragraph 2, of the Convention: "The law of the land shall not be such as to impair, nor shall it be so applied as to impair, guarantees provided for in this Convention".

that these associations are far from presenting all guarantees of independence since representatives of the Government and employers are members of their executive committees. The Committee also takes note of the 2002 observation of the Committee of Experts on the Application of Conventions and Recommendations that "... Workers Welfare Associations ... are not a substitute for the fundamental right to organize provided for in the Convention".

742. In light of the considerations made above, the Committee is also of the view that workers' welfare associations are not substitutes for free and independent trade unions. This will be so for as long as they fail to present guarantees of independence in their composition and in their functioning and, at least as far as seafarers are concerned, as long as these workers are prevented from establishing or joining the association of their own choosing. By the same token, should the Government consider the involvement of welfare associations in the elaboration of the draft legislation on freedom of association, the Committee must point out that such a contribution could not be considered as fulfilling the requirements of a real representation of workers in the process.
743. The Committee notes that in its observations concerning the FTUB, the Government has not replied to the allegations concerning the other workers' organizations functioning underground on the territory of Myanmar. The Committee notes that the Government considers the FTUB to be unlawful and headed by a person against whom criminal charges have been pressed. The Committee will address this last aspect below. The Committee also notes that the Government considers another workers' organization, the KEWU, to be unlawful. Given the legislative context currently prevailing in Myanmar, and the absence of any recognized trade unions, the Committee may reasonably infer that any organization freely chosen by workers will be considered to be unlawful by the Government. In these circumstances, pending the outcome of the legislative process and the ensuing establishment of trade unions proposed earlier in this report, the Committee requests the Government to refrain from any acts preventing the free operation of any form of organized collective representation of workers, freely chosen by them to defend and promote their economic and social interests. The Committee's request includes workers' organizations which operate in exile since they cannot be recognized in the prevailing legislative context of Myanmar. The Committee also requests the Government to issue clear instructions in this regard to its agents and to keep it informed of developments. Finally, the Committee recalls that the right of workers and employers to freely establish and join organizations of their own choosing cannot be said to exist unless such freedom is fully established and respected in law and practice.
744. Regarding the allegations of repression by the authorities towards trade union officers and members, as well as workers pursuing their labour grievances, the Committee makes the following preliminary considerations before examining each of these allegations in turn. Generally speaking, the Committee recalls that appropriate measures should be taken by governments to guarantee that, irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect to basic human rights and in a climate free of violence, pressure, fear and threats of any kind. In addition, although holders of trade union office do not, by virtue of their position, have the right to transgress legal provisions in force, these provisions should not infringe the basic guarantees of freedom of association, nor should they sanction activities which, in accordance with the principles of freedom of association, should be considered as legitimate trade union activities. Finally, with regard to charges brought against trade union leaders on the grounds of their trade union activities, the Committee has pointed out in the past the danger to the free exercise of trade union rights by sentences passed against representatives of workers within the framework of activities related to the defence of the interests of those they represent [see *Digest*, *op. cit.*, paras. 36, 42 and 44].

745. *The Committee is mindful of several limitations surrounding the examination of the allegations in question. Indeed, as mentioned earlier since freedom of association has no legal basis and in view of the contents of some legislative instruments, such as Order No. 6/88, the logical consequence is that any form of trade union activity would be considered illegal and, in practice, could not develop effectively. Thus, the gathering of evidence in support of the allegations relating to trade union activities will be especially difficult as the relevant bodies and individuals are considered unlawful. In this context, in its determination of the matters raised by this case, the Committee will consider that any labour activity, which can reasonably be associated with freedom of association will form a sufficient basis for examination. Further, in what follows, the Committee requests the Government to provide copies of the documentation produced by governmental or any other public authorities in relation to the issues raised by the allegations, in order to allow the Committee to carry out an objective examination.*
746. *Turning first to the case of Saw Mya Than's murder, the Committee notes that, according to the complainant, he was actively involved in human rights and trade union activities: he was an FTUB member and an official of the KEWU. He was elected as a headman in his village of Kaleiktoat. He was forced to work for the army as a porter. He was murdered by the army in retaliation for a rebels' attack. The complainant alleges that there was a direct link between his trade union role and his murder by the army, because such role was widely known and headmen are not usually forced to work for the army. The Committee notes that, according to the Government, Saw Mya Than was not elected as headman of the village nor was he a porter in the army. Rather, he was employed by the army as a guide. He did not belong to any lawful association of education workers and the KEWU is an unlawful underground organization affiliated with the only remaining insurgent group in the country. Saw Mya Than was killed by a mine detonated by insurgents. Due compensation was given to the members of his family and the army helped organize the funeral services. A thorough investigation of this murder was carried out by the authorities.*
747. *The Committee notes that the Government does not deny Saw Mya Than's involvement in trade union activities but merely states that he did not belong to any lawful association of workers. As an unlawful association of workers may equally raise freedom of association issues, the Committee considers that it is justified to examine the murder. In view of the directly conflicting versions of events, however, the Committee cannot draw any conclusion as to the link between his murder and any activity associated with freedom of association. While the Committee takes due note that an investigation has been carried out – indeed its results have been presented to the Governing Body³ – it notes that it was undertaken by the Government in a particular context and that its findings are very succinct.*
748. *In these circumstances, the Committee recalls that serious cases such as murder of a trade unionist require the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events [see **Digest**, op. cit., para. 51]. The Committee is aware that the conditions to afford such inquiries are not currently met at the national level. As a result, the Committee considers that the best solution would be the establishment of an independent panel, composed of experts who could be considered impartial by all the parties concerned. This panel would carry out an independent*

³ See “Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), Appendix 2, GB.288/5.

investigation into the case of Saw Mya Than. The Committee requests the Government to establish such a panel and inform it of its decision in this regard.

- 749.** *Regarding the case of the General Secretary of FTUB, the Committee notes that, according to the complainant, the General Secretary of FTUB faces criminal prosecution for his legitimate trade union activities. He was allegedly dismissed from his employment under Order No. 6/88 after establishing a union in the state-owned mining company in which he was employed. After he had fled his country, he became General Secretary of FTUB in 1991. The Committee notes the Government's statement that the General Secretary of FTUB is a fugitive from justice as two cases have been filed against him under the Public Protection Preservation Law, 1947 and under the Penal Code of High Treason; he was found prima facie guilty under section 122 of this Code. He was dismissed from his employment in 1989 because he had committed theft.*
- 750.** *The Committee notes that the Government does not make any comment at all in relation to the trade union activities of the General Secretary of FTUB. In particular, the Government does not deny that he participated in the establishment of a union in the state-owned company who employed him at the time but it disagrees with the complainant on the reason of his dismissal. While both parties agree that criminal charges have been pressed against the General Secretary of FTUB, the Government does not spell out in detail the grounds on which these charges have been made and on which he was found guilty under section 122 of the Penal Code.*
- 751.** *The Committee considers that there are enough elements present to justify its examination of this case. Given the prominent trade union activities of the General Secretary of FTUB and the current legislative context rendering any such activity illegal in Myanmar, the Committee must consider the possibility that the criminal charges and the trade union functions are linked in this particular case. Therefore, the Committee requests the Government to adduce evidence illustrating that the grounds on which the criminal charges were pressed against the General Secretary of FTUB had no connection with his trade union activities. In particular, it requests copies of the decision, referred to in the Government's reply, by which he was found guilty under section 122 of the Penal Code, as well as of any documents relating to the other case filed against him under the Public Protection Preservation Law, 1947.*
- 752.** *With respect to the cases of Myo Aung Thant and Khin Kyaw, according to the complainant, Myo Aung Thant was a member of the All Burma Petro-Chemical Corporation Union. In 1995, he became a member of the Central Executive Committee of FTUB. He was arrested on 13 June 1997 at the airport in Yangon, along with his wife and children and was charged with high treason. A secret trial was conducted in August 1997 during which he was denied the right to his own legal counsel and was represented by a lawyer designated by the junta. He was convicted and sentenced to transportation for life as well as to seven years in prison. His conviction rested on a confession obtained under torture. Myo Aung Thant's wife was sentenced to ten years in prison as an accomplice of her husband. She has since been released. Concerning Khin Kyaw, the complainant alleges that he was a member of the Seamen's Union of Burma. He was arrested in 1997 along with his wife. He had earlier been detained for trade union activities in 1993 and had been tortured in detention. The authorities have never stated the charges under which he is currently held but it is known that these are related to Myo Aung Thant's case. Khin Kyaw is presently serving a 17-year prison sentence.*
- 753.** *According to the Government, Myo Aung Thant had no permanent job and was in close contact with the General Secretary of FTUB and various anti-government organizations. He and his accomplices, including Khin Kyaw, decided on 4 June 1997 to instigate workers unrest in Yangon and to commit crimes. They were apprehended the same day by*

security personnel, and explosives and other evidence were seized in Kawthoung. Myo Aung Thant and Khin Kyaw were sentenced their crimes.

- 754.** *The Committee notes that the Government admits that the two cases are connected and that sentences have been handed down. The Government does not comment at all on the allegations of trade union activities. Given the prevailing legislative context in Myanmar and that Myo Aung Thant and Khin Kyaw's names appear on the list of the members of FTUB Central Executive Committee, the Committee considers that there are enough elements to justify its examination of these two particular cases. The Committee notes with deep concern the extreme gravity of the allegations relating to the manner in which both Myo Aung Thant and Khin Kyaw and their families were arrested, the allegations relating to torture, the allegations that Khin Kyaw was not informed of the charges pressed against him and the allegations relating to the manner in which the trial was conducted at least in Myo Aung Thant's case. The Committee observes in this respect that these allegations have not been denied or contradicted by the Government, with the exception of the circumstances under which the arrests occurred.*
- 755.** *The Committee must draw the Government's attention to the following general principles. The arrest and detention of trade unionists, even for reasons of internal security, may constitute a serious interference with trade union rights unless attended by appropriate judicial safeguards [see **Digest**, op. cit., para. 84]. The absence of guarantees of due process of law may lead to abuses and result in trade union officials being penalized by decisions that are groundless. It may also create a climate of insecurity and fear which may affect the exercise of trade union rights [see **Digest**, op. cit., para. 106]. In cases of alleged torture or 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 sanction of those responsible, are taken. The Committee has also emphasized the importance that should be attached to the principle laid down in the International Covenant on Civil and Political Rights according to which all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person [see **Digest**, op. cit., paras. 57 and 59]. Finally, a climate of violence aimed at trade union leaders and their families does not encourage the free exercise of trade union rights set out in Conventions Nos. 87 and 98, and all states have the duty to guarantee their respect [see **Digest**, op. cit., para. 61].*
- 756.** *In these circumstances, taking into account that Myo Aung Thant and Khin Kyaw did not benefit from a fair trial with access to legal counsel of their choice and that the conviction of Myo Aung Thant rested allegedly on a confession obtained under torture, the Committee urges the Government to take the necessary steps to have both Myo Aung Thant and Khin Kyaw released from prison.*
- 757.** *Regarding the case of Thet Naing, according to the complainant, he was recruited in the Yan Ze Kyan garment factory, in 1997. In 1999, a protest action broke out, in which Thet Naing played a role for which he was dismissed. The workers launched a wild-cat strike and the management called for the intervention of the army. An arrangement was eventually negotiated, and the workers, including Thet Naing, were allowed to return to work. Five days later, Thet Naing and 60 other workers were dismissed again. Thet Naing was subsequently apprehended at his home by the SPDC Military Intelligence Unit No. 3, accompanied by officers of the Pegu Police Station No. 3. He was told that he was being arrested for violating section 5(j) of the Emergency Act, 1950 and was sentenced to seven years in prison. The Committee regrets that the Government has not provided any reply to these allegations. It therefore firmly requests the Government to submit a comprehensive reply together with the copies of any relevant documents, including any judicial decision under which Thet Naing might have been sentenced. If any sentence has been handed down, the Committee requests the Government to provide evidence to prove that it has no*

connection with any activity related to freedom of association and, in the absence of conclusive evidence, to take urgent steps to release Thet Naing from prison.

- 758.** *Turning to the allegations that workers of various factories have been repressed or threatened because of their pursuance of their labour grievances, the Committee notes the following allegations in relation to the particular examples highlighted in the complaint. In the case of the Motorcar tyre factory, a peaceful protest was staged in front of the factory on 9 and 10 March 2001 to obtain payment of compensation for workers who had been dismissed due to the production being stopped. Thaton district authorities and a local unit of military intelligence intervened and officers of military intelligence and of the Myanmar police force arrested 19 workers. Further arrests were made on 11 March 2001 and two companies from LIB No. 24 were deployed at the site. The fate of the workers arrested remains unknown. The Committee notes that the Government rejects all allegations. In view of the direct conflicting versions given by the complainant and the Government, it would be difficult for the Committee to express any opinion in this examination. In that context, the Committee requests the Government to provide copies of the company's records of employees on 9 and 31 March 2001 with due explanations of any differences so as to resolve this issue.*
- 759.** *In the case of the Unique Garment Factory, in order to obtain an increase in overtime pay, an organized workers' movement took place in November 2001. At the request of management, the officers of the Strategic Office of the Yangon Military Command arrived and asked workers to elect representatives. The six workers who came forward were the next day dismissed with final payments. The workers went into hiding for fear of being arrested. In the case of the Myanmar Texcamp Industrial Ltd, in the second week of January 2002, there was an organized request by workers for higher wages and better working conditions. The management responded by calling in the tactical commander of the Yangon Military Command who threatened the workers with arrest if the protest was not ended. The workers felt compelled to stop their protest and drop their claims. Finally, regarding the Myanmar Yes Garment Factory, on 5 October 2000, workers staged a protest in response to the company's failure to fulfil a promise concerning their wages. The company called the military intelligence unit and a number of workers were arrested. Some were detained at the Hlaing Tha Ya police station, and others were detained at Ye Kyi Ai, a well-known military interrogation centre where political prisoners are routinely tortured. The fate of the workers who were arrested remains unknown.*
- 760.** *With respect to these last three cases, the Committee notes the general comments made by the Government on the dispute-resolution mechanism and the number of disputes which arose between January 2000 and December 2003. The Committee notes that the Government denies that workers have been threatened or dismissed because of their participation in protest actions; that if workers were dismissed, this was due to the economic situation of the garment industry; and that the workers concerned received a severance payment. With respect to the Unique Garment Factory, the Government refers to three disputes which arose on 6 October 2000, 10 July and 15 December 2001. In all three cases, agreements or settlements were reached following conciliation undertaken by the Township Workers' Supervisory Committee and officials of the Ministry of Labour. The only dismissals which occurred were those of 77 night shift workers who were still in their probationary period and who received compensation for termination of employment. Concerning the Myanmar Texcamp Factory, the Government refers to three disputes, dated, respectively, 8 January and 2 December 2002 and 5 July 2003. Again, in all three cases, agreements were reached following conciliations undertaken by the Township Workers' Supervisory Committee and officials of the Ministry of Labour. The Government also refers, albeit without more detail, to "legal benefits" paid to workers because of an economic crisis experienced by the Myanmar Texcamp Factory. Finally, with respect to the Myanmar Yes Garment Factory, the Government refers to two disputes which occurred*

on 24 May and 16 September 2002. Agreements were reached in both instances. The second dispute related to the conditions under which workers had been laid off.

- 761.** *With respect to the dispute-resolution mechanism, the Committee refers to its earlier conclusions on the representations of workers' interests by the workers' welfare associations. These conclusions apply equally for dispute resolution. The Committee trusts that the forthcoming legislation on freedom of association will address the issue and that workers' interests, in particular in dispute resolution, will be represented by organizations presenting all guarantees of independence. Further, the Committee requests the Government to provide copies of the relevant legal instruments governing the dispute-resolution mechanism it has described and, in particular, details on the composition, the role and the functioning of the Township Workers' Supervisory Committee and the Supervisory Committee of the Industrial Zones.*
- 762.** *Concerning the three garment factories, the Committee notes that the Government recognizes the existence of labour disputes. However, with the exception of the dispute which arose in the Myanmar Texcamp Factory in January 2002, the Committee notes that there are significant factual disagreements between the complainant and the Government, to the extent that they may be referring to different events. In these circumstances, the Committee is not able at this stage to draw any conclusion and is obliged to ask for further information as follows.*
- 763.** *The Committee requests the complainant to submit additional information in light of the comments made by the Government on labour disputes which occurred in the three factories. Further, the Committee requests the Government to provide copies of all agreements (or to detail the terms of the agreements if no formal document was signed by the parties) referred to in its reply and in particular: (1) the agreements relating to the disputes of 6 October 2000 and 15 December 2001 concerning the Unique Garment Factory; (2) the agreements relating to the disputes of 8 January, 2 December 2002 and 5 July 2003 concerning the Myanmar Texcamp Factory; and (3) the agreements relating to the dispute of 24 May 2002 concerning the Myanmar Yes Garment Factory. In addition to each of these agreements, the Committee requests the Government to submit any other records of the process leading to the conclusion of the agreements and to detail by whom and the manner in which they have since been implemented.*
- 764.** *Further, the Committee requests the Government to specify the grounds on which the dismissals referred to in its reply have occurred and to detail the agreements reached as to the conditions under which the dismissals were eventually settled. The Committee's request relates to: (1) the dismissal of the 77 night shift workers from the Unique Garment Factory; (2) the workers from the Myanmar Yes Garment Factory who disagreed on 16 September 2002 with the conditions under which they had previously been laid off. Finally, the Committee requests the Government to submit further information on the dismissals which have occurred in the Myanmar Texcamp Factory due to the economic situation.*
- 765.** *Finally, the Committee wishes to state that the intervention of the army in relation to labour disputes is not conducive to the climate free from violence, pressure or threats that is essential to the exercise of freedom of association. The Committee notes that the Government denies any intervention of the army in labour conflicts and requests the Government to explicitly protect workers' and employers' organizations from any interference by the public authorities in the forthcoming legislation on freedom of association.*
- 766.** *With respect to the recognition of seafarers' freedom of association, as recalled by both by the complainant and the Government, the Committee has already examined the issue in*

Case No. 1752. The Committee notes, however, that the complainant adduces new evidence in support of its allegations of denial of seafarers' freedom of association and anti-union discrimination by detailing the case of Shwe Tun Aung. The Committee notes that the Government has not submitted any comments on this individual case.

- 767.** As concerns the question of freedom of association of seafarers, and in particular the representation of their interests by the Myanmar Overseas Seafarers' Association, the Committee can only refer the Government to its previous conclusions on the welfare associations in general and the Myanmar Overseas Seafarers Association in particular. The Committee therefore requests the Government to explicitly recognize the right to organize of Myanmar seafarers in the forthcoming legislation. In the meantime, the Committee requests the Government to refrain from any acts preventing the free operation of any form of organized collective representation of seafarers, freely chosen by them to defend and promote their economic and social interests. Again, this request includes seafarers' organizations which operate in exile and which cannot be recognized in the prevailing legislative context in Myanmar. Instructions should be issued to that end to governmental agencies in charge of seafarers' working conditions. The Committee requests the Government to keep it informed in this regard.
- 768.** In addition, the Committee requests the Government to submit a detailed reply on the allegations relating to Shwe Tun Aung's case, including any relevant documents to support its comments. With reference to the allegations that Shwe Tun Aung was requested to sign a contract under which he was forced to renounce his right to seek any assistance from the ITF and/or its affiliated parties, the Committee requests the Government to provide any contract or document signed or accepted by Shwe Tun Aung upon taking up his first assignment, as well as any document on the basis of which seafarers can currently take up their first assignment.
- 769.** The Committee trusts that the examination of the complaint will enable the Government of Myanmar to fulfil the general obligation to respect and realize freedom of association that it accepted upon becoming an ILO Member as well as the specific obligation deriving from its ratification of Convention No. 87. While the Committee and the Office will be at the disposal of the Government of Myanmar to provide for any assistance or guidance it may wish to have in this respect, any real and sustainable progress will only hinge on the willingness of the Government to fulfil its obligation as an ILO Member and, in particular, on its cooperation in the present procedure.

The Committee's recommendations

- 770.** In light of the foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) *Noting the absence of a legal basis for freedom association in Myanmar, the Committee requests the Government to:*
- (i) *elaborate a legislation whereby the respect for, and the realization of, freedom of association will be guaranteed for all workers, including seafarers, and employers;*
 - (ii) *include in the aforementioned legislation specific measures whereby any other legislation, including Orders Nos. 2/88 and 6/88, will not apply in a manner which would undermine the guarantees relating to freedom of association and collective bargaining.*

- (b) *Bearing in mind the serious implications of the lack of legal basis for freedom of association in Myanmar, the Committee is convinced that the Government should accept the technical assistance of the Office to remedy the situation.*
- (c) *Noting that workers' welfare associations are not substitutes for free and independent trade unions, and pending the outcome of the legislative process, the Committee requests the Government to refrain from any acts preventing the free operation of any form of organized collective representation of workers, including of seafarers, freely chosen by them to defend and promote their economic and social interests; this request includes workers' organizations, which operate in exile as they cannot be recognized in the prevailing legislative context of Myanmar; the Committee requests the Government to issue clear instructions in this regard to its agents and to keep it informed of developments. The Committee recalls that the right of workers and employers to freely establish and join organizations of their own choosing cannot be said to exist unless such freedom is fully established and respected in law and practice.*
- (d) *The Committee requests the Government to establish an independent panel of experts who could be considered impartial by all the parties concerned, to undertake an independent investigation into the murder of Saw Mya Than and to inform it of the decision in this regard.*
- (e) *Concerning the General Secretary of FTUB, the Committee requests the Government to adduce evidence illustrating that the grounds on which the criminal charges were pressed against the General Secretary of FTUB had no connection with his trade union activities; it requests copies of the decision, referred to in the Government's reply, by which he was found guilty under section 122 of the Penal Code, as well as any documents relating to the other case filed against him under the Public Protection Preservation Law, 1947.*
- (f) *Concerning the interconnected cases of Myo Aung Thant and Khin Kyaw, and taking into account that they did not benefit from a fair trial with access to legal counsel of their choice and that the conviction of Myo Aung Thant allegedly rested on a confession obtained under torture, the Committee urges the Government to take the necessary steps to have both Myo Aung Thant and Khin Kyaw released from prison.*
- (g) *The Committee regrets that the Government has not provided any replies to the allegations made in Thet Naing's case and firmly requests the Government to submit a comprehensive reply together with the copies of any relevant documents, including any judicial decision under which Thet Naing might have been sentenced; if any sentence has been handed down, the Committee requests the Government to provide evidence to prove that it has no connection with any activity related to freedom of association and, in the absence of conclusive evidence, to take urgent steps to release Thet Naing from prison.*

- (h) *The Committee requests the Government to submit a detailed reply on the allegations relating to Shwe Tun Aung's case, including any relevant documents to support its comments; the Committee requests the Government to provide any contract or document signed or accepted by Shwe Tun Aung before he could take up his first assignment as seafarer, as well as any document on the basis of which seafarers can currently take up their first assignment.*
- (i) *Concerning the various cases of alleged repression or threats towards factory workers for having pursued their labour grievances:*
- (i) *the Committee requests the Government to provide copies of the relevant legal instruments governing the dispute-resolution mechanism and, in particular, details on the composition, the role and the functioning of the Township Workers' Supervisory Committee and the Supervisory Committee of the Industrial Zones;*
- (ii) *in the case of the Motorcar tyre factory, in view of the direct conflicting versions given by the complainant and the Government, the Committee requests the Government to provide copies of the company's records of employees on 9 and 31 March 2001 with due explanations of any differences so as to resolve this issue;*
- (iii) *the Committee requests the complainant to submit additional information in light of the comments made by the Government on labour disputes which occurred in the Unique Garment Factory, the Myanmar Texcamp Factory and the Myanmar Garment Factory;*
- (iv) *the Committee requests the Government to provide copies of all agreements (or to detail the terms of the agreements if no formal document was signed by the parties) referred to in its reply and in particular: (1) the agreements relating to the disputes of 6 October 2000 and 15 December 2001 concerning the Unique Garment Factory; (2) the agreements relating to the disputes of 8 January, 2 December 2002 and 5 July 2003 concerning the Myanmar Texcamp Factory; and (3) the agreements relating to the dispute of 24 May 2002 concerning the Myanmar Yes Garment Factory; the Committee requests the Government to submit any other records of the process leading to the conclusion of the agreements and to detail by whom and the manner in which they have since been implemented;*
- (v) *the Committee requests the Government to specify the grounds on which the following dismissals have occurred and to detail the agreements reached as to the conditions under which the dismissals were eventually settled: (1) the dismissal of the 77 night shift workers from the Unique Garment Factory; (2) the workers from the Myanmar Yes Garment Factory who disagreed on 16 September 2002 with the conditions under which they had previously been laid off; the Committee also requests the Government to submit further information on the dismissals which have occurred in the Myanmar Texcamp Factory due to the economic situation.*

- (vi) *Noting that the Government denies any intervention of the army in labour conflicts, the Committee requests the Government to explicitly protect workers' and employers' organizations from any interference by the public authorities in the forthcoming legislation on freedom of association.*

CASE NO. 2264

INTERIM REPORT

**Complaint against the Government of Nicaragua
presented by
the Agricultural Workers' Association (ATC)**

Allegations: Anti-union dismissals during a collective dispute at the Presitex Corp. S.A. company because of unilateral changes in the methods of production and payment of the workers

771. The Agricultural Workers' Association (ATC) presented a complaint in a communication dated 24 April 2003. This organization sent further information in a communication dated 26 May 2003. The Government sent its observations in a communication dated 12 September 2003.
772. Nicaragua 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

773. In its communications of 24 April and 26 May 2003, the Agricultural Workers' Association (ATC) alleges that the Presitex Corp. S.A. textile company in the export processing zone, which employs 2,045 workers, has committed various violations of trade union rights against the trade union officials of the Lidia Madariaga Trade Union.
774. The complainant organization indicates that, following a number of anti-union dismissals, disputes and obstacles to collective bargaining and violations of the collective agreement in previous years, on 15 January 2003, the company informed the trade union that on 23 January 2003 there would be new methods for production and for payment of wages and it presented a range of decisions that unilaterally changed the method of payment. On 24 January 2003, Evelin Moreno and Lilian Moreno were dismissed for their links with the trade union and their opposition to the unilateral changes in the method of payment. On 27 January 2003, the company prevented the members of the executive committee of the trade union from entering the workplace. On the following day, Miguel Angel Laguna, Secretary-General of the trade union, was attacked by a security employee; the workers protested and stopped work to support this trade union official. On 29 January, company representatives closed the company and on 30 January the company made a formal announcement that it was considering withdrawing its investments in Nicaragua and requested a deferral in order to communicate its definitive decision on 5 February. The complainant organization also refers to pressure that was aggressively and disrespectfully brought to bear by the Embassy of Taiwan and its diplomatic representative on the

Ministry of Labour. In the middle of meetings with the authorities and the parties to the dispute, the company requested authorization for the dismissal of the trade union executive committee and the police began to guard the company buildings. Finally, on 3 March 2003, the labour inspectorate authorized the termination of the employment contracts of four trade union officials, a decision that was confirmed on administrative appeal on 14 March.

775. The complainant organization indicates that in this case it is clear that the workers and their trade unions have been compelled to take part in activities involving partial stoppages and temporary strikes as a last resort to succeed in containing the retaliation offensive of their employer. These situations, perhaps lacking in formal legal status but highly legitimate when faced with a lack of state protection for the rights of workers, have also been examined by the bodies of the ILO in other contexts.

776. Finally, the complainant organization states that it has petitioned the legal authorities.

B. The Government's reply

777. In its communication of 12 September 2003, the Government, referring to the dismissal of four members of the Lidia Madariaga Trade Union executive committee, states that the Presitex Corp. S.A. company requested authorization to dismiss from the Ministry of Labour, as laid down in the legislation. The workers submitted in writing a request for a hearing on a collective basis; a decision indicating a hearing for the workers for the second and last time was issued. The workers stated that if they were not allowed to have a hearing on a collective basis they would not appear. A decision was issued to open the procedure to evidence and testimony to both parties for a period of four days, and the time period was extended to enable the authorities to complete this. The Departmental Inspectorate of Labour of Matagalpa admitted all the evidence, submitted by both parties, endeavouring to obtain compromises from the parties so that in the hearing granted to the workers the dispute might be resolved through understanding and agreement. However, this was impossible as the workers requested a collective hearing and the employer requested that the hearing take place on an individual basis with each worker; both parties submitted photographs as evidence but it was not possible to determine what really occurred just by examining these. The workers submitted 784 signatures in their favour, which were not dated, and none of the three points to which they referred, related to the request in itself or to the authorization for dismissal; the opposite was the case with the 873 signatures submitted by the employer supporting the company.

778. With regard to the witnesses' statements proposed by the workers, the Government states that the workers restricted themselves to giving their version of what occurred without contradicting the main facts, and this was accepted in the complainant's favour. However, the witnesses' statements proposed by the employer, including sworn statements, show that the trade union officials acted disrespectfully towards the employer and work colleagues, reaching the point of abusive words and behaviour, endangering the security of staff and the company and causing economic losses to the company. One of the determining evidentiary elements in this case was a video, which is part of the file and which was seen in the presence of both parties, clearly showing that the trade union officials appearing in said video are those who organized the work stoppage on 28 January 2003.

779. The Government states that the decision issued by the labour inspectorate gave rise to the authorization for dismissal based on the legislation and the internal regulations of the Presitex Corp. S.A. company. The workers appealed the administrative decision of the labour inspector, which allowed workers Miguel Antonio Laguna Laguna, Dulce Lila Osejo Roque, Luisa Ortega Jarquin and Hector Casimiro Centeno Rizo to submit their version of the grievances in reply to those in the abovementioned decision. Subsequently, on 14 March 2003, the General Inspector for Labour of Managua, of the Ministry of

Labour, considered that there was sufficient evidence to show that the persons mentioned were directly responsible for the acts of insubordination that took place in the Presitex Corp. S.A. company, as it was they who incited the other workers to abandon their posts and to continue their defiance by not returning to work, which, as a direct consequence, led to a climate of violence and instability in the workplace as these workers did not fulfil the obligations that their respective employment contracts imposed on them, as can clearly be seen in the file.

780. Moreover, the General Inspector for Labour considered that while it is true that the political Constitution of Nicaragua, and the Labour Code, grants workers the right to organize and to carry out any type of demonstration with regard to the fulfilment of their rights, whether they be individual or collective in character, it is nonetheless true that the same law provides, at all times, that the procedures used should be those laid down in the legislation; and that, with their acts of insubordination the persons mentioned above caused economic hardship to the company, which clearly represents non-fulfilment of the obligations that they have as workers. Based on all of the abovementioned, he confirmed entirely the decision appealed against and authorized the termination of the employment contracts of the four trade union officials in question.

781. Furthermore, the Government points out that the same complaint from the complainant organization indicates that “in this case it is clear the workers and their trade unions have been compelled to take part in activities involving partial stoppages and temporary strikes as a last resort to succeed in containing the retaliation offensive of their employer. These situations perhaps lack formal legal status but are highly legitimate when faced with a lack of state protection”. The Government states that protection of freedom of association by the State is particularly exercised against any act that aims to dismiss a worker or to cause prejudice for a worker in any form because of his/her trade union affiliation, but that, in the present case, the confession by the complainants of “activities involving partial stoppages and temporary strikes is clear”. These situations do in fact lack formal legal status; and they can never become in any way legal or officially permitted. The complainant recognizes that the practice used by the trade union executive board was completely inappropriate and illegal when it encouraged the other workers to abandon their work and posts, misrepresenting the trade union right to demonstrate in accordance with the law.

782. The Government concludes by stating that on 24 June 2003, a collective agreement was signed between the Presitex Corp. S.A. company and the Democratic Workers’ Trade Union of the Presitex Corp. S.A. company, for two years from the date of signature.

C. The Committee’s conclusions

783. *The Committee notes that the allegations in the present case refer mainly to the dismissal of four members of the executive committee of the Lidia Madariaga Trade Union as a result of a collective dispute relating to the unilateral changes by the Presitex Corp. S.A. company in the methods of production and payment of wages. The Committee notes that the Government justifies the administrative authorization for the dismissal of the four trade union officials by stating that they incited the other workers to abandon their posts and to continue their acts of insubordination by not returning to work, with the direct consequence of a climate of violence and instability as these workers did not fulfil the obligations imposed upon them by their respective employment contracts; the Government also states that these acts of insubordination led to economic hardship for the company, and that the complainant organization recognizes in its complaint that partial stoppages and temporary strikes lacked formal legal status; according to the Government’s reply the trade union officials acted disrespectfully towards the employer and work colleagues, reaching the point of abusive words and behaviour.*

- 784.** *The Committee notes, however, that, although this is a collective dispute, the Government recognizes that in the procedure carried out by the labour inspectorate, the workers requested a collective hearing and the employer requested that the hearing be on an individual basis with each worker and that because of this it was impossible for the dispute to be resolved through understanding and agreement. Moreover, the complainant organization highlighted pressure from the Embassy of Taiwan and its diplomatic representative on the Ministry of Labour, and the threat of the company to withdraw its investments in Nicaragua. Furthermore, the Government has not indicated whether, as maintained by the complainant organization as the cause of the dispute, the employer unilaterally imposed new methods of production and payment of the workers; neither has it provided its observations on the previous dismissal of two workers belonging to the trade union (Evelin Moreno and Lilian Moreno) as a result of their opposition to the unilateral changes in the method of payment, nor on the attack that the Secretary-General of the trade union suffered at the hands of a security employee of the company.*
- 785.** *The Committee requests the Government to send information on: (i) the alleged unilateral decision of the Presitex enterprise to modify the methods of production and the system of wage payments without consulting the union; (ii) the reasons why the enterprise and the Ministry refused to accept the collective audience requested by the workers aimed at obtaining the conclusion of a collective agreement; (iii) the alleged pressure exercised by diplomatic representatives of a foreign country on the Ministry of Labour. The Committee requests the Government to promote an appropriate procedure for collective bargaining at the enterprise and to ensure that no outside pressure is brought to bear on the collective bargaining process in violation of Convention No. 98.*
- 786.** *In these circumstances, the Committee requests the Government to provide it with a copy of the decision handed down by the judicial authorities on the dismissal of the four members of the trade union executive committee, as well as information on the specific facts that were cause for the dismissal of the trade union members Evelin Moreno and Lilian Moreno. The Committee also requests the Government to ensure that those concerned are reinstated in their jobs without loss of pay if it is shown that their dismissals were due to anti-union motives.*

The Committee's recommendations

- 787.** *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 information on: (i) the alleged unilateral decision of the Presitex enterprise to modify the methods of production and the system of wage payments without consulting the union; (ii) the reasons why the enterprise and the Ministry refused to accept the collective audience requested by the workers aimed at obtaining the conclusion of a collective agreement; and (iii) the alleged pressure exercised by diplomatic representatives of a foreign country on the Ministry of Labour. The Committee requests the Government to promote an appropriate procedure for collective bargaining at the enterprise and to ensure that no outside pressure is brought to bear on the collective bargaining process in violation of Convention No. 98.*
- (b) *The Committee requests the Government to provide it with a copy of the decision handed down by the judicial authorities on the dismissal of the four members of the trade union executive committee, as well as information on*

the specific facts that were cause for the dismissal of trade union members Evelin Moreno and Lilian Moreno. The Committee also requests the Government to ensure that those concerned are reinstated in their jobs without loss of pay if it is shown that their dismissals were due to anti-union motives.

CASE NO. 2275

INTERIM REPORT

**Complaint against the Government of Nicaragua
presented by
the National Federation of “Heroes and Martyrs” Trade Unions
of the Textile, Clothing, Leather and Footwear Industry (FNSHM)**

***Allegations: The complainant alleges that:
(1) the Hansae de Nicaragua S.A. enterprise excluded and continues to exclude the “Idalia Silva” Workers’ Trade Union (STIS) from collective bargaining and concluded a collective agreement with the (SDTH) trade union, which has close links to the employer, containing clauses that were damaging to workers, shortly after the establishment of STIS; (2) the enterprise, and subsequently four workers and an adviser paid by the enterprise, requested the dissolution of STIS, and proceedings are under way in this respect, which led the Ministry of Labour to refuse to register the reorganization of the STIS executive committee and to suspend the collective bargaining process with STIS; (3) death threats were made against two trade unionists; (4) trade union officers were not involved in the procedure for approving the internal regulations of the enterprise; and (5) a labour inspection was conducted with the participation of only the SDTH trade union***

788. The complaint is contained in a communication from the National Federation of “Heroes and Martyrs” Trade Unions of the Textile, Clothing, Leather and Footwear Industry (FNSHM) dated 29 May 2003. This organization sent additional information in the communication of 19 July 2003. The Government sent its observations in a communication of 29 September 2003.

789. Nicaragua 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

- 790.** In its communications of 29 May and 19 July 2003, the National Federation of “Heroes and Martyrs” Trade Unions of the Textile, Clothing, Leather and Footwear Industry (FNSHM) refers to anti-union practices at the Hansae de Nicaragua S.A. export processing zone enterprise against the “Idalia Silva” Workers’ Trade Union (STIS) (affiliated to the Sandista Workers’ Confederation). More specifically, the complainant alleges that shortly after the establishment of this trade union on 5 July 2002, the enterprise concluded a collective agreement on 8 July 2002 with the Democratic Trade Union of Workers at Hansae de Nicaragua S.A. (SDTH); that this trade union is affiliated to the Autonomous Confederation of Nicaraguan Workers (which is financially supported by the export processing zone enterprises) and has close links to the enterprise; in fact, its executive committee was granted a four-month extension by the Ministry of Labour following the expiry date of its one-year term. According to the complainant, the collective agreement that was concluded contained clauses that were damaging to workers in terms of dismissals and overtime, and negotiations with STIS were put aside; the Ministry of Labour authorized this collective agreement. The enterprise refuses to negotiate with STIS despite having been called to the Ministry of Labour for this purpose.
- 791.** On the other hand, the enterprise, and subsequently four workers and an adviser paid by the enterprise, requested the authorities to dissolve STIS and the corresponding proceedings were initiated. In this context, the Ministry of Labour refused to register the reorganization of the STIS executive committee and suspended the collective bargaining process.
- 792.** The complainant also alleges that trade unionists Ms. Marjorie Sequeira and Ms. Johana Rodríguez filed a complaint on 22 August 2002 with the state police and the competent court regarding death threats issued by persons linked to the enterprise’s administration (the plant manager and a former employee) who attempted to make them leave STIS.
- 793.** Furthermore, the Ministry of Labour approved the internal regulations of the enterprise on 19 August 2002 without taking into account the involvement of trade union officers or workers. In March 2003, the Labour Inspectorate conducted an inspection which involved only the SDTH which has close links with the employer.

B. The Government's reply

- 794.** In its communication of 29 September 2003, the Government refers to two requests to cancel the registration of the “Idalia Silva” Workers’ Trade Union (STIS) and its executive committee; the Ministry of Labour stated that it was incompetent to deal with these requests and ordered the file on this case to be closed. The Government indicates that when STIS requested the registration of the reorganization of its executive committee on 21 October 2002, the Directorate for Trade Union Associations rejected the request owing to the legal proceedings under way against STIS (relating to the cancellation of the registration of the trade union and its committee). On 28 October, the appeal against this decision was rejected, but, following a new appeal, the Directorate for Trade Union Associations notified STIS on 13 January 2003 that the registration of the committee’s new structure had been processed.
- 795.** The Government states that, contrary to the allegations, the Directorate for Trade Union Associations only extended the SDTH executive committee for a period of one month (from 10 July to 9 August 2002), and that this had been at the request of the trade union.
- 796.** As regards the alleged death threats against STIS officers at the Hansae de Nicaragua S.A. enterprise, the Government states that Ms. Marjorie Sequeira filed a complaint with the

state police in district No. 6 against Mr. César Jarquín Reyes and Mr. Orlando Vallecillo for having issued death threats. On 3 September 2002, the case was referred to the Third Local Criminal Court of Managua.

- 797.** With reference to the signing of the internal regulations without the involvement of STIS officers, the Government indicates that Hansae de Nicaragua S.A. enterprise submitted a draft of the disciplinary internal regulations to the Labour Inspectorate for them to be duly revised and approved. The Inspectorate subsequently issued a document to inform workers that they had 72 hours to put forward any comments they saw fit on the draft internal regulations submitted by the employer. This was also notified to the General Secretary of SDTH who appeared and provided the trade union's comments. Once the draft had been revised and corrected accordingly, the Inspectorate proceeded to authorize the internal regulations on 18 August 2002. The STIS was not notified of the draft because this trade union had still not been established.
- 798.** The Government rejects the allegation that STIS was excluded from the comprehensive labour inspection conducted at the enterprise in March 2003. In fact, the document containing the observed infractions and the corrective measures to be taken within specific deadlines was signed by the General Secretary of STIS and by a representative of the other trade union (SDTH).

C. The Committee's conclusions

- 799.** *The Committee observes that in the present case the complainant alleges that: (1) the Hansae de Nicaragua S.A. enterprise excluded and continues to exclude the "Idalia Silva" Workers' Trade Union (STIS) from collective bargaining and concluded a collective agreement with the SDTH trade union, which has close links to the employer, containing clauses that were damaging to workers, shortly after the establishment of STIS; (2) the enterprise, and subsequently four workers and an adviser paid by the enterprise, requested the dissolution of STIS, and proceedings are under way in this respect, which led the Ministry of Labour to refuse to register the reorganization of the STIS executive committee and to suspend the collective bargaining process with STIS; (3) death threats were made against two trade unionists; (4) trade union officers were not involved in the procedure for approving the internal regulations of the enterprise; and (5) a labour inspection was conducted with the participation of only the SDTH trade union. The Committee considered that information was lacking on this case. In particular, the Committee requests the Government to approach the employers' organizations concerned by the questions at issue, with a view to having at its disposal the views of the enterprise concerned.*
- 800.** *Regarding the allegation that a collective agreement was concluded, without the involvement of STIS, containing clauses that were damaging to workers, with a trade union that has close links to the employer, the Committee observes that the complainant has not sent a signed copy of the collective agreement, and that the Committee is unable to assess the clauses contained in this agreement. Furthermore, the annexes provided by the complainant clearly show that STIS requested the possibility of bargaining jointly with the other trade union. Furthermore, it emerges from the documentation sent by the complainant that legislation allows for the signing of a second collective agreement with STIS, and that the other trade union has made various demands similar to those of STIS. Under these circumstances, the Committee requests the Government to send a copy of the collective agreement in question, so as to be able to pronounce itself in this respect.*
- 801.** *With reference to the request made by the enterprise, and subsequently by four workers, for the dissolution of STIS, the Committee notes that the Government confirms that this issue (the cancellation of the trade union's registration) was submitted to the judicial authority, observes that STIS is still operational, and requests the Government to send the*

rulings handed down in the two proceedings under way. The Committee regrets that the administrative authority used this situation to refuse to register the reorganization of the STIS executive committee for several months (as emerges from the allegations and the Government's statements) and (according to the complainant) to suspend the collective bargaining process initiated by STIS. Nonetheless, the Committee observes that, following a second appeal, the reorganization of the STIS executive committee was registered. The Committee regrets the delay in registration of the executive committee due to an initial refusal and requests the Government to refrain from interfering in trade union affairs in the future.

- 802.** *As regards the alleged death threats against trade unionists Ms. Marjorie Sequeira and Ms. Johana Rodríguez so that they would leave the trade union, the Committee notes the Government's statements, according to which Ms. Marjorie Sequeira filed a complaint with the national police, which referred the complaint to the judicial authority. Furthermore, the Committee observes that the annexes of the complaint include a mediation agreement between the two trade unionists and the two persons accused of issuing the threats. In this agreement the latter agrees that they will not visit the trade unionists in question or cause them any future problems, thereby bringing the case to a close. It requests the Government to take the necessary measures to institute an independent investigation in this respect and, if the allegations are found to be true, to punish the guilty parties and immediately provide adequate protection to the trade unionists in question. The Committee condemns these threats and requests the Government to ensure that all workplaces and especially the export processing zone remain free from violent acts against trade unionists.*
- 803.** *Lastly, the Committee notes the Government's statements rejecting the idea that STIS was excluded from the labour inspection conducted at the enterprise in March 2003, and points out that the General Secretary of this trade union signed the inspection document. Furthermore, the Committee notes that STIS could not have been consulted (as was not the case with SDTH) when drawing up the internal regulations of the enterprise, since at this point in time it had still not been established.*

The Committee's recommendations

- 804.** *In the light of its foregoing interim conclusions, the Committee requests the Governing Body to approve the following recommendations:*
- (a) The Committee considered that information was lacking on this case. In particular, the Committee requests the Government to approach the employers' organizations concerned by the questions at issue, with a view to having at its disposal the views of the enterprise concerned.*
 - (b) The Committee requests the Government to keep it informed of the outcome of the two proceedings under way in which the cancellation of the registration of STIS was requested. Moreover the Committee regrets the delay in the registration of the STIS executive committee due to an initial refusal and requests the Government to refrain from interfering in trade union affairs in the future.*
 - (c) The Committee condemns the death threats against trade unionists Ms. Marjorie Sequeira and Ms. Johana Rodríguez and requests the Government to take the necessary measures to institute an independent investigation in this respect and, if the allegations are found to be true, to*

punish the guilty parties and immediately provide adequate protection to the trade unionists in question.

- (d) *The Committee requests the Government to ensure that all workplaces and especially the export processing zone remain free from violent acts against trade unionists.*
- (e) *With regard to allegations that a collective agreement, containing clauses that were damaging to workers, was concluded with a trade union that has close links with the employer, the Committee requests the Government to send a copy of the collective agreement in question so as to be able to pronounce itself in this respect.*

CASE NO. 2288

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

**Complaint against the Government of Niger
presented by
the Democratic Confederation of Workers of Niger (CDTN)**

Allegations: Refusal by the Government to negotiate in good faith on the working conditions of public servants with regard to pay scale, retirement age, promotions and the payment of salary arrears; government interference in union affairs; non-payment of salaries and the redundancy of 179 public servants after a public institution was franchised to the private sector; restriction of the right to strike of customs officials; interference in the exercise of the right to strike by means of the abusive requisitioning of workers

- 805.** In a communication dated 17 June 2003, the Democratic Confederation of Workers of Niger (CDTN) presented a complaint of violations of freedom of association against the Government of Niger.
- 806.** The Government sent its comments and observations in a communication dated 5 November 2003.
- 807.** Niger 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

- 808.** In its communication dated 17 June 2003, the CDTN alleges that the Government of Niger targeted workers' benefits and took various measures to cut back on salaries in order to implement its structural adjustment policy. The CDTN claims that these cutbacks took the

form of a series of unilateral measures on the part of the Government: lowering of the salary scale for public servants; withdrawal of certain allowances, including weighting allowance; accumulation of salary arrears, for payment of which workers are at the mercy of the State; blocking, of promotions, at both the financial and administrative levels; reduction in the length of working life due to changes in conditions for retirement.

- 809.** With regard to the reduction of salary payments, the CDTN alleges that the Government's approach was biased and that the cutback measures were unevenly applied: entire sectors with autonomous status were spared, such as higher education, the magistracy and the army.
- 810.** The CDTN adds that the basis for the salary negotiations in the last quarter of 2002 was set out in an agreement concluded on 19 December 2001. It was in this context that the organization presented the Government with a list of demands containing its chief concerns regarding the salary reduction measures. The CDTN alleges that the chief cause of conflict with the Government is the latter's refusal to negotiate on the sole basis that such was its will. It maintains that the Government has not held to its commitments of 19 December 2001 and that the planned negotiations, which began on 6 December 2002, have still not been concluded. The CDTN states that, during three months of strike action, only two sessions of negotiation were organized, on 2 and 5 May 2003, and that, even then, there was no genuine or sincere discussion.
- 811.** The complainant also stresses that, although a joint commission was set up to assess the impact of the change in the conditions for retirement, as per the agreement of December 2001, it has not yet presented its conclusions. With regard to conditions for promotion, the CDTN alleges that the promise to renew the work of the commissions has remained nothing more than a promise; although it was announced in January 2002 that funds would be provided for promotions and regradings, these funds were blocked from June 2002. The CDTN also alleges that, despite commitments to the contrary, the Government has not yet calculated the cost of all the allowances that must be paid in arrears, or of promotions and regradings, with a view to determining methods of payment for them. As regards the payment of salary arrears, the CDTN alleges that the Government is not properly respecting the payment schedule that was drawn up.
- 812.** Furthermore, the CDTN alleges that the Government interfered in union matters, notably regarding the equitable distribution of state funds made available to union organizations, subsidies and access to representation on committees, councils and joint commissions where workers' problems are discussed.
- 813.** On behalf of its affiliate union, the Trade Union of University Student Support Services Officials (SYANU), the complainant states that the management of the National Centre for University Student Support Services (CNOU) was transferred to private organizations, which resulted in the non-payment of salaries from December 2002 and the collective redundancy of the entire personnel of 179 public servants.
- 814.** With regard to another affiliate organization, the National Trade Union of Customs Officials (SNAD), the CDTN contests Decree No. 2000-160 of 23 May 2000, which deprives customs officials of recourse to any industrial action save work-to-rule.
- 815.** On a general note, the CDTN claims that Ordinances Nos. 96-09 and 96-10 of 21 March 1996 and implementing Decree No. 96-92 of 14 April 1996 are too restrictive. It alleges that an order was given by the Prime Minister in a letter of 8 May 2003 to draw up lists of the names of strikers with a view to making deductions from their wages as a result of the strike. It also alleges that workers in various sectors have been forced to return to work through abusive requisitioning. The Government is thus ignoring the recommendations of

the Committee of Experts on the Application of Conventions and Recommendations concerning the qualification of sectors which have been abusively considered as vital or strategic.

B. The Government's reply

- 816.** In its communication of 5 November 2003, the Government explains that the measures mentioned above, namely, the revision of the salary scale, the withdrawal of certain allowances, the freeze on promotions, the accumulation of salary arrears and the early retirement of workers, are of a purely economic nature, adopted to redress the country's economic situation, which has been deteriorating for the last 20 years.
- 817.** The Government does not deny that public servants are poorly paid, nor that the rescue package chosen has affected workers' pay. Nevertheless, it stresses that a significant proportion of internal resources is spent each year on managing the wage bill.
- 818.** The Government stresses that, since its accession in 2000, it has made significant efforts to improve the situation of public servants. It has broken with the practice of accumulating arrears in salaries; ordinary salaries are now paid when due. With regard to arrears from previous years, the Government states that a settlement mechanism has been elaborated with the workers' representatives, and has been successfully implemented. In respect of the freeze on promotions, the Government states that the restriction has been lifted since 2002 and that, since then, promotions have been granted normally and their financial effects reflected in the wages. On the question of retirement, the Government states that the entry into force of the current legislation has meant that the two conditions established by the previous legislation (55 years of age and 30 years of service) no longer have to be counted cumulatively. The Government adds that it has noted the concerns of the CDTN and has undertaken to carry out a study to assess the impact of the ordinance in question.
- 819.** As regards the allegations of government interference in union matters, the Government emphasizes that trade union pluralism has existed only since 1996. This raises the question of how to determine the representativeness of existing organizations. According to the Government, the CDTN is demanding an immediate reassessment of the representations made by the already existing trade union confederations and of certain benefits which they enjoy. The Government states that its very neutrality renders a response to this demand difficult. For the moment, therefore, until the question of how to determine the representativeness of occupational organizations is resolved, the trade union confederations are all granted equal treatment. The Government states that solving this problem is one of its major concerns. It adds that a tripartite commission, charged with the implementation of the recommendations, was established by order in June 2003, and that, with ILO technical assistance, one-day conferences were held in Niamey in June 2002, on the right to strike and the representativeness of occupational organizations. The tripartite commission has begun its work but is facing certain budgetary constraints.
- 820.** As regards the non-payment of salaries to CNOU employees, the Government states that only two months' salaries still remain to be paid. This is due to an administrative error, which the Government will take steps to correct. The Government adds that the CNOU was managed in an unsatisfactory manner; it therefore became necessary to put this institution out to franchise. It states that the workers who were made redundant were given their severance pay and were granted priority of recruitment, in accordance with the provisions of the Labour Code. It affirms that several of these workers have already been rehired by the CNOU.
- 821.** With regard to public servants' right to strike, the Government explains that the exercise of this right is governed by Ordinances Nos. 96-09 and 96-10 of 21 March 1996, and also by

Decree No. 96-92 of 14 April 1996. It states that these provisions were adopted after a lengthy discussion process between the administration and the trade union confederation of the day, which took place in the context of a joint consultative committee. In the course of these discussions the substance of the workers' proposals was taken into account. The Government affirms that despite this fact, deliberate resort to strike action without prior warning and without providing a minimum service has become the principal means of struggle for certain trade unions.

- 822.** In regard to the customs officials' case in particular, the Government states that the only option for industrial action available to these officials is work-to-rule, as the law considers customs officials to be covered by the provisions of Article 9 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which applies to the armed forces and the police. The Government, however, points out that it has entered into a consultation procedure with the social partners, with the aim of reviewing this legislation.
- 823.** As regards the issue of the difficulties in dialogue raised by the CDTN, the Government states that, since the creation of the draft agreements mentioned by the CDTN, it has held several rounds of negotiation with the CDTN, most recently in November 2003. It adds that the demands of the CDTN have now been met to a large extent.

C. The Committee's conclusions

- 824.** *The Committee notes that in this case the complainant makes the following allegations: restriction of the right to collective bargaining; refusal by the Government to negotiate in good faith on the working conditions of public servants (pay scale, retirement age, promotions, payment of salary arrears) in violation of written commitments; government interference in union affairs; non-payment of salaries and the redundancy of 179 public servants after a public institution was franchised to the private sector; restriction of the right to strike of customs officials; and government interference in the exercise of the right to strike by means of the abusive requisitioning of workers, on the basis of overly restrictive regulation.*
- 825.** *As regards the allegations concerning the unilateral adoption of economic measures by the Government to reduce salary payments to public servants, the Committee notes the Government's statement that these were purely economic measures, taken with the purpose of reducing the significant proportion of internal resources spent each year on managing the wage bill of public servants, in order to redress the difficult economic situation in which the country has found itself for the last 20 years. In respect of the allegations of difficulties in negotiations between the Government and the CDTN, and of the Government's non-compliance with agreements concluded between the two parties, the Committee notes the Government's statement that several negotiating sessions have been held with respect to the list of demands of the CDTN and that these demands have now been met to a large extent.*
- 826.** *While the Committee is not in a position to assess the seriousness of the financial and budgetary difficulties facing the government, it nevertheless considers that the authorities should give preference to collective bargaining in determining the conditions of employment of public servants. The Committee considers that it is essential that workers and their organizations be able to participate fully and meaningfully in designing the overall bargaining framework, which implies in particular that they must have access to all the financial, budgetary and other data enabling them to assess the situation on the basis of the facts. In circumstances where collective bargaining is ruled out, unilateral measures should be limited in time and protect the standard of living of the workers who are the most affected. In other words, a fair and reasonable compromise should be sought*

between the need to preserve as far as possible the autonomy of the parties to bargaining, on the one hand, and measures which must be taken by governments to overcome their budgetary difficulties, on the other [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 899]. The Committee recalls the importance which it attaches to the obligation to negotiate in good faith, and recalls that it is important that both employers and trade unions make every effort to reach an agreement, since genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties [see **Digest**, op. cit., paras. 814-815]. Moreover, the Committee recalls that agreements should be binding on the parties, and hence respected by them [see **Digest**, op. cit., para. 818]. In these circumstances, the Committee urges the Government to take into consideration these principles in the future.

- 827.** In respect of the allegations concerning government interference in union matters, particularly regarding the equitable distribution of state funds made available to union organizations, subsidies and access to representation, the Committee takes note of the Government's statements according to which trade union pluralism has existed in Niger for only a few years, and while waiting for a regulation to apply on the issue of trade unions' representativeness, the trade union confederations are all granted equal treatment. The Committee considers that the determination of the most representative trade union should always be based on objective, precise, pre-established criteria laid down in legislation. Such a determination should not be left to the discretion of governments, so as to avoid any opportunity for partiality or abuse. Moreover, this distinction should not have the effect of depriving those trade unions that are not recognized as being amongst the most representative of the essential means for defending the occupational interests of their members [see **Digest**, op. cit., paras. 310, 314 and 315]. Noting also that a tripartite commission, with input from an ILO technical assistance mission, has been entrusted with this matter, the Committee urges the Government to take swift measures to ensure, by legislative or other means, that the representativeness of trade union organizations is determined on the basis of criteria that are in conformity with freedom of association principles, and requests to keep it informed in this respect.
- 828.** The Committee notes the allegations concerning the franchising of the National Centre for University Student Support Services (CNOU) to private parties, resulting in the non-payment of salaries from December 2002 and the collective redundancy of 179 public servants. The Committee notes that according to the Government only two months' salaries remain to be paid at this time, owing to an administrative error, and the workers who were made redundant received severance pay and were granted priority of recruitment, in accordance with the provisions of the Labour Code. The Committee recalls that, whether or not economic restructuring or rationalization programmes or measures involve personnel reductions or the transfer of services from the public to the private sector, it can make pronouncements on allegations concerning such programmes or measures only in so far as they have resulted in acts of anti-union discrimination or interference. In this case, no such allegation has been made. However, the Committee emphasizes that it is important that governments consult with trade union organizations to discuss the consequences of restructuring programmes on employment and working conditions of employees [see **Digest**, op. cit., para. 937]. The Committee urges the Government to consult with union organizations when envisaging rationalization or restructuring programmes in enterprises or public institutions in the future.
- 829.** In regard to the allegations concerning the National Trade Union of Customs Officials (SNAD), the Committee notes that, according to the decree giving special status to customs officials, the only recognized means for them to defend their collective interests is work-to-rule. The Government maintains that customs officials are covered by the provisions of Article 9 of the Freedom of Association and Protection of the Right to Organise

Convention, 1948 (No. 87) which provides for the exemption of the armed forces and the police. However, the Committee recalls that, while Article 9 of the Convention does authorize exceptions to the general principle, the workers who can be excluded should be defined in a restrictive manner [see *Digest*, op. cit., para. 222]. The Committee therefore considers that customs officials are covered by Convention No. 87 and that they therefore have the right to organize. It nevertheless recalls that the right to strike can be restricted or even withdrawn in the following cases: for public servants exercising authority in the name of the State, in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) or in the event of an acute national emergency [see *Digest*, op. cit., paras. 527-528]. In the opinion of the Committee, certain customs officials are, indeed, public servants exercising authority in the name of the State. However, the Committee recalls that, where the right to strike is restricted or prohibited, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes with their employer. Therefore, restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented [see *Digest*, op. cit., paras. 546-547]. The Committee further recalls that in mediation and arbitration proceedings it is essential that all the members of the bodies entrusted with such functions should not only be strictly impartial but, if the confidence of both sides, on which the successful outcome even of compulsory arbitration really depends, is to be gained and maintained, they should also appear to be impartial both to the employers and to the workers concerned [see *Digest* op. cit., para. 549]. The Committee requests the Government to ensure that compensatory guarantees of this type are granted to the customs officials and to keep it informed in this respect.

- 830.** *In regard to the allegation by the CDTN that an order was given by the Prime Minister in a letter of 8 May 2003 to draw up lists of the names of strikers with a view to making deductions from their salaries as a result of the strike, the Committee considers that salary deductions for the days of strike do not, in principle, raise problems from the point of view of freedom of association.*
- 831.** *As regards the allegations concerning the abusive requisitioning of workers during strike periods, and the overly restrictive regulation of the right to strike, the Committee notes that the right to strike is regulated by Ordinances Nos. 96-09 and 96-10 of 21 March 1996 and by implementing Decree No. 96-92 of 14 April 1996. Article 9 of Ordinance No. 96-09 of 21 March 1996 provides that, in exceptional cases arising as a result of the need to preserve the general interest, all state employees, and those of territorial authorities, may be requisitioned. In the view of the Committee, the scope of this provision should be restricted only to cases in which a work stoppage may give rise to an acute national crisis or to public servants exercising authority in the name of the State, or also to essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee recalls that the use of requisitioning orders to break a strike over occupational claims, unless these actions aim at maintaining essential services or in circumstances of the utmost gravity, constitutes a serious violation of freedom of association [see *Digest*, op. cit., para. 573]. The Committee emphasizes that the Committee of Experts on the Application of Conventions and Recommendations has already drawn the Government's attention to this matter. The Committee urges the Government to take the necessary steps to amend the legislation in this respect and to keep it informed of developments.*

The Committee's recommendations

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

- (a) *As regards the measures taken by the Government to cut back on salaries and the non-compliance on its part with agreements concluded between the Government and the CDTN, the Committee requests the Government to give preference to collective bargaining in determining the conditions of employment of public servants and to respect the agreements which it has freely concluded on this issue.*
- (b) *The Committee requests the Government to take the necessary measures swiftly, so as to ensure, by legislative or other means, that trade union representativeness is determined on the basis of criteria which are in conformity with freedom of association principles and to keep it informed in this respect.*
- (c) *The Committee requests the Government to consult with trade unions in the future when envisaging rationalization or restructuring programmes in public enterprises or institutions.*
- (d) *The Committee requests the Government to ensure that compensatory guarantees, such as conciliation and arbitration proceedings, be granted to customs officials who have been deprived of the right to strike and to keep it informed in this respect.*
- (e) *The Committee requests the Government to make swift amendments to the legislation to restrict requisition orders to essential services in the strict sense of the term, to public servants exercising authority in the name of the State and to situations of acute national crisis, and to keep it informed in this respect.*

CASE NO. 2096

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

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

Allegations: The complainant alleges restrictions on trade union and collective bargaining rights for employees of the banking sector

833. The Committee last examined this case at its November 2001 meeting [see 326th Report, paras. 419-431, approved by the Governing Body at its November 2001 meeting].

- 834.** The Government forwarded its partial observations in communications dated 3 May, 26 August and 6 November 2002.
- 835.** The Committee has been obliged to postpone its examination of the case on four occasions [see 328th, 329th, 330th, and 331st Reports, para. 6]. At its meeting in November 2003 [see 332nd Report, para. 11], 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.
- 836.** 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. Previous examination of the case

- 837.** At its November 2001 session, the Governing Body approved the following recommendations in the light of the Committee's interim conclusions:
- (a) The Committee urges the Government to take the necessary steps without delay to amend section 27-B of the Banking Companies (Amendment) Act, 1997, so as to admit as candidates for union office persons who have previously been employed in the occupation concerned, and by exempting from the occupational requirement a reasonable proportion of the officers of an organization. It requests the Government to provide information on any progress made in this regard.
 - (b) The Committee urges the Government to reply without delay to the complainant's allegations that over 500 union leaders in the banking sector, including Mr. Maqsood Ahmad Farooqui, President of the UBL Employees' Federation of Pakistan and Mr. Rahmat Ullah Kazmi, General Secretary, UBL Labour Union Karachi, were dismissed or terminated from employment pursuant to the enactment of section 27-B of the Banking Companies (Amendment) Act, 1997. It further requests the Government to inform it of the current status of these trade union leaders.

B. The Government's reply

- 838.** In its communication of 3 May 2002, the Government indicates that the Ministry of Labour has requested the Ministry of Finance to amend section 27-B so as to allow non-employees to be elected as representative of a trade union. The Government indicates, however, that the Ministry of Finance is of the view that the law has never forbidden the trade union to elect outsiders as its advisors and consultants.
- 839.** In its communications of 26 August and 6 November 2002, the Government indicates that the central bank, the State Bank of Pakistan, holds the view that section 27-B was vital for checking the disruptive activities of trade unions in the interests of carrying out financial sector reforms in Pakistan and that this section is required because of the special needs of the banking industry. The Government submits that this provision does permit peaceful union activities and does not violate Article 3 of Convention No. 87.
- 840.** The Government further indicates that the Ministry of Labour has been working to amend sections 7(4) and 16 of the Industrial Relations Ordinance (IRO), 1969 on disqualification for being an office bearer of a trade union and on unfair labour practices of workers. In this respect, that Government is of opinion that the amendment of the IRO will prove to be a

positive step towards regulating the activities of the trade union without curbing their trade union and collective bargaining rights and will progressively pave the way for harmonious bilateral employer-employee relations curtailing the need for instruments like section 27-B. The Government adds that the Labour Policy, 2002, which has been finalized through tripartite dialogue, also proposes to review section 27-B with the aim of finding a mutually acceptable solution.

C. The Committee's conclusions

- 841.** *The Committee deplors that, despite the time that has elapsed since this case was first examined, the Government has not replied to all of the Committee's recommendations, 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.*
- 842.** *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.*
- 843.** *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].*
- 844.** *The Committee recalls that when it examined this case at its November 2001 meeting it urged the Government to: (1) take the necessary steps without delay to amend section 27-B of the Banking Companies (Amendment) Act, 1997, so as to admit as candidates for union office persons who have previously been employed in the occupation concerned, and by exempting from the occupational requirement a reasonable proportion of the officers of an organization; and (2) reply without delay to the complainant's allegations that over 500 union leaders in the banking sector, including Mr. Maqsood Ahmad Farooqui, President of the UBL Employees' Federation of Pakistan and Mr. Rahmat Ullah Kazmi, General Secretary, UBL Labour Union Karachi, were dismissed or terminated from employment pursuant to the enactment of section 27-B of the Banking Companies (Amendment) Act, 1997 and requested the Government to inform it of the current status of these trade union leaders.*
- 845.** *As regards the Committee recommendation to amend section 27-B of the Banking Companies Act, the Committee notes that, while the Government considers that this provision does not restrict trade union and collective bargaining rights of employees of the banking sector and that its adoption was essential in the light of the special needs of the banking industry, it states that it is currently taking steps in order to amend section 27-B. The Committee urges the Government to amend section 27-B of the Banking Companies Act without delay and requests it to provide information on any progress made in this regard.*
- 846.** *As concerns the Committee's request to provide information on the dismissed or terminated from employment 500 trade union leaders, including Mr. Maqsood Ahmad Farooqui, President of the UBL Employees' Federation of Pakistan and Mr. Rahmat Ullah Kazmi, General Secretary, UBL Labour Union Karachi, the Committee notes that no information was provided by the Government in this respect. The Committee therefore*

once again strongly urges the Government to provide information without delay on 500 trade union leaders in the banking sector, including Mr. Maqsood Ahmad Farooqui and Mr. Rahmat Ullah Kazmi, who were dismissed or terminated from employment pursuant to the enactment of section 27-B of the Banking Companies (Amendment) Act, 1997.

847. *The Committee refers to its recommendations in Case No. 2229 concerning Pakistan approved by the Governing Body at its March 2003 session [see 330th Report, para. 958], where it requested the Government to amend the Industrial Relations Ordinance of Pakistan (IRO) of 2002, as well as to the observations of the Committee of Experts [see Report III (Part 1A), 2004]. The Committee regrets that so far the Government has not been able to amend the IRO so as to bring it into conformity with Conventions Nos. 87 and 98.*

The Committee's recommendations

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

- (a) The Committee deplores that, despite the time that has elapsed since this case was first examined, the Government has not replied to all of the Committee's recommendations, 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.*
- (b) The Committee urges the Government to amend section 27-B of the Banking Companies (Amendment) Act, 1997, without delay and requests it to provide information on any progress made in this regard.*
- (c) The Committee once again strongly urges the Government to provide information without delay on 500 trade union leaders in the banking sector, including Mr. Maqsood Ahmad Farooqui, President of the UBL Employees' Federation of Pakistan, and Mr. Rahmat Ullah Kazmi, General Secretary, UBL Labour Union Karachi, who were dismissed or terminated from employment pursuant to the enactment of section 27-B of the Banking Companies Act.*
- (d) The Committee refers to its recommendations in Case No. 2229 concerning Pakistan approved by the Governing Body at its March 2003 meeting where it requested the Government to amend the Industrial Relations Ordinance of Pakistan (IRO) of 2002, as well as to the observations of the Committee of Experts. The Committee regrets that so far the Government has not been able to amend the IRO so as to bring it into conformity with Conventions Nos. 87 and 98.*

CASE NO. 2284

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

**Complaint against the Government of Peru
presented by**

- **the General Confederation of Workers of Peru (CGTP)**
- **the National Federation of Water and Sewerage Workers of Peru (FENTAP)**
- and
- **the Single Trade Union of Water and Sewerage Control Workers (SUTOPEC)**

Allegations: The complainants allege that the decision made by the SEDAPAL S.A. enterprise to end its contract with the CONCYSSA S.A. enterprise will lead to mass dismissals and the dissolution of SUTOPEC

849. The complaint is contained in a joint communication dated 5 June 2003 from the General Confederation of Workers of Peru (CGTP), the National Federation of Water and Sewerage Workers of Peru (FENTAP) and the Single Trade Union of Water and Sewerage Control Workers (SUTOPEC). The Government sent its observations in communications dated 2 October 2003 and 9 January 2004.

850. 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 complainants' allegations

851. In their joint communication of 5 June 2003, the General Confederation of Workers of Peru (CGTP), the National Federation of Water and Sewerage Workers of Peru (FENTAP) and the Single Trade Union of Water and Sewerage Control Workers (SUTOPEC) allege that under the previous Government, the Lima Water and Sewerage Company (Servicio de Agua Potable y Alcantarillado de Lima, SEDAPAL S.A.) invited service providers to submit tenders for work relating to its main activity, with the aim of shirking responsibilities towards its own workers. In this context, CONCYSSA S.A. was awarded the contract, which hired workers on a fixed term-basis. These workers, who were afraid of not being re-hired and had contracts of a maximum of three months, did not exercise the right to organize or, therefore, the right to collective bargaining.

852. The complainants add that once the new Government came into office, workers managed to establish their trade union, which was duly registered by the labour authority. It is currently a legal trade union organization belonging to the branch of intermediary activities, but it conducts most of its activities at SEDAPAL S.A.

853. The complainants indicate that SEDAPAL S.A. decided to end its contract with CONCYSSA S.A., and envisaged ending its agreement with the GRAÑA Y MONTERO S.A. enterprise. According to the complainants, this will lead to the dismissal of over 1,380 workers and the dissolution of the trade union.

854. Lastly, the complainants state that SUTOPEC requested the intervention of the Ministry of Labour in order to safeguard their rights, but they are not confident that the Ministry of Labour will defend their rights (the complainants sent a copy of the complaint filed with the legal authority objecting to the externalization of services at SEDAPAL S.A.).

B. The Government's reply

855. In its communications of 2 October 2003 and 9 January 2004, the Government states that the SEDAPAL S.A. enterprise transmitted its comments concerning the complaint. It indicates that employment intermediation, which was governed by Presidential Decree No. 003-97-TR, the Unified Text of Legislative Decree No. 728 (Act on labour productivity and competitiveness), is currently governed by Act No. 27626 and its implementing regulation, Presidential Decree No. 003-2002-TR. These standards establish the conditions and limitations concerning the exercise of employment intermediation while safeguarding labour rights.

856. The Government indicates that employment intermediation requires a user enterprise, an intermediary, and workers from both the former and the latter. The user enterprise and the intermediary have a civil relationship, whereas the intermediary and the workers it supplies to the user have an employment relationship. The Government indicates that these clarifications are of utmost importance inasmuch as they explain and state that the ending of a contract between an intermediary enterprise and a user is a legal matter that, per se, does not have an effect on the employment relationship between the intermediary's workers and the user. Therefore, it would be incorrect and inappropriate to maintain that, by ending its contract with CONCYSSA S.A., SEDAPAL S.A. had caused the dismissal of a large number of workers.

857. Lastly, the Government adds that if the fact that the legal relationship between the aforementioned enterprises came to an end did not, per se, cause the dismissal of the intermediary's workers, neither can it be stated that this led to the dissolution of the trade union organization established by these workers, since the union will continue to exist unless something occurs to cause its dissolution.

C. The Committee's conclusions

858. *The Committee observes that the complainants allege that the decision made by the Lima Water and Sewerage Company (Servicio de Agua Potable y Alcantarillado de Lima, SEDAPAL S.A.) to end its contract with CONCYSSA S.A. will lead to mass dismissals and the dissolution of the Single Trade Union of Water and Sewerage Control Workers (SUTOPEC).*

859. *The Committee notes that the Government refers to legislation governing employment intermediation and states that: (1) the ending of a contract between an intermediary enterprise and a user is a legal matter that, per se, does not have an effect on the employment relationship between the intermediary's workers and the user, and it is therefore incorrect to maintain that by ending the contract, SEDAPAL S.A. (the user) caused the dismissal of a large number of workers, and (2) if the fact that the legal relationship between the enterprises came to an end did not, per se, lead to the dismissal of workers at CONCYSSA S.A. (the intermediary), neither can it be stated that this led to the dissolution of the trade union organization established by workers at SEDAPAL S.A.*

860. *In this regard, the Committee observes that the complainants and the Government agree that the contract between SEDAPAL S.A. and CONCYSSA S.A. (with the latter providing the workers) would have ended. The Committee observes that the complainants have not*

alleged (neither does it emerge from the information provided) that the contract between the enterprises was ended for anti-union purposes. Furthermore, the Committee observes that the Government states that the trade union established at SEDAPAL S.A. has not been dissolved.

861. *However, the Committee observes that the complainants requested the intervention of the Ministry of Labour in order to safeguard their rights as regards this case, and that in March 2003 they appealed to the legal authority by filing legal criminal action objecting to the externalization of services at SEDAPAL S.A. In these conditions, considering that the information in the Committee's possession does not allow it to determine whether this case concerns a matter of freedom of association, the Committee requests the Government to transmit all eventual decisions taken by the authorities concerning violations of freedom of association.*

The Committee's recommendation

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

Considering that the information in the Committee's possession does not allow it to determine whether this case concerns a matter of freedom of association, the Committee requests Government to transmit all eventual decisions taken by the authorities concerning violations of freedom of association.

CASE NO. 2286

INTERIM REPORT

Complaint against the Government of Peru presented by the National Federation of Petroleum and Allied Workers of Peru (FENPETROL)

Allegations: The complainant alleges that as a result of the establishment of a trade union at Petrotech Peruana S.A., the enterprise dismissed the General Secretary and various workers who belonged to the trade union organization and furthermore filed a criminal complaint against the General Secretary of the trade union for having allegedly forged documents

863. The complaint is contained in a communication dated 5 May 2003 from the National Federation of Petroleum and Allied Workers of Peru (FENPETROL). The Government sent its observations in a communication dated 15 October 2003.

864. 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 allegation

- 865.** In its communication of 5 May 2003, the National Federation of Petroleum and Allied Workers of Peru (FENPETROL) states that on 4 December 2002, workers at Petrotech Peruana S.A. established a trade union of sea and land workers of Petrotech Peruana S.A. with approximately 100 of the 200 or so workers employed by the enterprise.
- 866.** The complainant states that, given the workers' determination to exercise their right of association, the enterprise's management immediately proceeded to coerce and intimidate workers into leaving the trade union. Subsequently, the management dismissed various workers for alleged serious misconduct, with the sole aim of weakening the new trade union, and dismissed Mr. Leonidas Campos Barrenzuela, the General Secretary of the trade union.
- 867.** The complainant adds that the enterprise's management proceeded to file a complaint with the state police against the General Secretary of the trade union for having committed a breach of trust, in this case, forgery; the District Attorney proceeded to file a criminal complaint against the aforementioned officer.

B. The Government's reply

- 868.** In its communication of 15 October 2003, the Government indicates that on 23 September 2003, Petrotech Peruana S.A. stated that at that time it was negotiating the 2003-04 collective agreement submitted by the trade union of sea and land workers of Petrotech Peruana S.A. Talks were at the direct negotiation stage, and specific recognition was being given to the existence and legal status of the trade union.
- 869.** The Government adds that the accusations made by FENPETROL relating to the fact that the trade union initially had 100 members are false, given that according to the register of members submitted to the enterprise on 5 December 2002, the trade union consisted of 23 workers.
- 870.** As regards the complaint made by FENPETROL that the enterprise proceeded to coerce workers into leaving the trade union, the enterprise stated that although some workers had renounced trade union membership, these workers had done so of their own free will, as proven by the letters containing the notarially certified signatures of the workers. With reference to the dismissal of the trade union officer, Mr. Leonidas Campos Barrenzuela, the enterprise stated that this decision was due to serious misconduct committed by the worker in question and that legal proceedings initiated by the aforementioned worker to challenge the dismissal were currently being processed by the 20th Labour Court of Lima, which would be responsible for assessing the case in question.
- 871.** Lastly, the Government reports that, as regards the accusation of forgery, the enterprise states that it proceeded to make this accusation given that the workers' signatures contained in the document establishing the trade union were clearly different from those registered by the enterprise, and that this procedure had taken its normal course.

C. The Committee's conclusions

- 872.** *The Committee observes that in the present case the complainant alleges that following the establishment of the trade union of sea and land workers of Petrotech Peruana S.A. in December 2002, Petrotech Peruana S.A. proceeded to: (1) intimidate workers into leaving the trade union; (2) dismiss the General Secretary and various workers who belonged to the trade union; and (3) accuse the General Secretary of forging documents (the*

complainant attached a copy of the order issued by the judge initiating the criminal investigation).

- 873.** *As regards the allegation that the enterprise intimidated workers into leaving the trade union, the Committee notes that the Government states that Petrotech Peruana S.A. declared that although some workers had renounced their trade union membership, they had done so of their own free will, as proven by the resignation letters containing the certified signatures of the workers in question. Given the contradiction between the complainant's allegations and the enterprise's version of events, the Committee requests the Government to take measures without delay to conduct an independent investigation into these allegations and to send its observations in this regard, as well as to punish the guilty parties if the allegations are found to be true.*
- 874.** *As regards the alleged dismissal of Mr. Leonidas Campos Barrenzuela, General Secretary of the trade union at the enterprise, the Committee notes that the Government reports that Petrotech Peruana S.A. stated that this was due to serious misconduct and that legal proceedings objecting to the dismissal were currently under way. In this regard, the Committee requests the Government to provide further information on the serious misconduct and the acts allegedly committed by the trade union officer in question and which led to his dismissal, as well as information on the outcome of the legal proceedings, and, should the legal authority conclude that his dismissal was unjustified, to guarantee that Mr. Leonidas Campos Barrenzuela be reinstated in his job, without loss of pay.*
- 875.** *As regards the criminal complaint against Mr. Leonidas Campos Barrenzuela, General Secretary of the trade union at Petrotech Peruana S.A., for having allegedly forged documents, the Committee notes that the Government reports that Petrotech Peruana S.A. stated that this was due to the fact that the workers' signatures contained in the document establishing the trade union were clearly different from those registered by the enterprise. In this regard, the Committee requests the Government to keep it informed of the outcome of the criminal investigation under way.*
- 876.** *Lastly, the Committee regrets that the Government failed to send its observations on the alleged dismissal of various workers who belonged to the trade union (the name of which was not indicated by the complainant) for alleged serious misconduct, with the sole aim of weakening the new trade union, and requests the Government to conduct an independent investigation into this matter and, should it conclude that the workers in question were dismissed owing to their membership of the trade union recently established at the enterprise, to take measures so that they are reinstated in their jobs, without loss of pay.*

The Committee's recommendations

- 877.** *In the light of its foregoing interim conclusions, the Committee requests the Governing Body to approve the following recommendations:*
- (a) *As regards the alleged intimidation of workers at Petrotech Peruana S.A. into leaving the trade union, the Committee requests the Government to conduct an independent investigation without delay into these allegations and to send its observations in this regard, as well as to punish the guilty parties if the allegations are found to be true.*
- (b) *With reference to the dismissal of Mr. Leonidas Campos Barrenzuela, General Secretary of the trade union at the enterprise, the Committee requests the Government to provide further information on the alleged serious misconduct and the acts allegedly committed by the trade union*

officer in question and which led to his dismissal, as well as information on the outcome of the legal proceedings and, should the legal authority conclude that his dismissal was unjustified, to guarantee that Mr. Leonidas Campos Barrenzueta be reinstated in his job, without loss of pay.

- (c) *As regards the criminal complaint against Mr. Leonidas Campos Barrenzueta, General Secretary of the trade union at Petrotech Peruana S.A., for having allegedly forged documents, the Committee requests the Government to keep it informed of the outcome of the criminal investigation under way.*
- (d) *The Committee notes with regret that the Government failed to send its observations on the allegations of dismissal of various workers who belonged to the trade union for alleged serious misconduct, with the sole aim of weakening the new trade union, and requests the Government to conduct an independent investigation into this matter and, should it conclude that the workers in question were dismissed owing to their membership of the trade union recently established at the enterprise, to take measures so that they are reinstated in their jobs, without loss of pay.*

CASE NO. 2291

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

**Complaint against the Government of Poland
presented by
NSZZ “Solidarnosc”**

Allegations: Acts of intimidation and anti-union harassment by the management of two companies; anti-union dismissals and discrimination of union members and officers for their participation in union activities, in particular strike action; interventions of private security guards and police officers; partiality of the Public Prosecutor’s Office; lengthy proceedings; and non execution of judicial decisions

- 878.** NSZZ Solidarnosc sent a complaint concerning the situation in the enterprise SIPMA S.A. in a communication dated 12 August 2003, and a second complaint concerning the situation in the enterprise Hetman Ltd. in a communication dated 26 August 2003.
- 879.** The Government sent its observations in a communication dated 22 December 2003.
- 880.** Poland has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers’ Representatives Convention, 1971 (No. 135).

A. The complainant's allegations**SIPMA S.A.**

- 881.** In its communication of 12 August 2003, NSZZ Solidarnosc (Solidarnosc) alleges repressive and harassment measures against trade union officials and members of the multi-enterprise trade union in SIPMA S.A., a company located in Lublin. In May 1998, the company had a total staff of 947 workers, 392 of whom (or 41.4 per cent) were Solidarnosc members. In February 2003, there were around 400 employees in the company, nine of whom (or 2.2 per cent) were Solidarnosc members. In other words, while the employment in the company only diminished 2.4 times from 1998 to 2003, the percentage of Solidarnosc members dropped 43.6 times during that same period, as a result of the employers' actions.
- 882.** The collective dispute between the union and the management of SIPMA S.A. began in March 1998. After ten months of negotiations and mediation, the trade union announced and launched a general strike in February 1999, after holding a strike vote where 80 per cent of the employees were in favour of the strike. The managing board of the company started to question the lawfulness of the strike without any basis; security guards and members of the management threatened to dismiss the workers who would participate in the strike, which nevertheless continued. The Regional Board of Solidarnosc confirmed the lawfulness of the strike. On the tenth day of the strike, some ten members of the management led by the chief of the company's security service, and escorted by police officers acting on an order of the Lublin Appeal Prosecutor, cut a padlock in order to open the entrance gate but were prevented from doing so by the strikers.
- 883.** The strike was suspended on 20 February and negotiations took place until 28 February 1999, without results. On 28 February, the members of the strike committee were no longer admitted to the trade union office. In spite of having declared publicly their will to negotiate with the strike committee, the managers of the company asked the Lublin Prosecutor's Office to issue a bill of indictment against the members of the committee, accusing them of conducting an illegal strike with use of violence. The strike resumed on 1 March, on which date a group of security guards belonging to another agency (Alkom) hired by the management forced their way into the establishment at night to crush the strike. The management filed another complaint to the Lublin Prosecutor's Office against the strikers. On 3 March, police officers in plain clothes entered the establishment to intimidate the strikers and arrested a member of the strike committee, Tomasz Sawka, who was also publicly slandered and called a criminal by a member of management. Mr. Sawka was then led handcuffed to the police station to be heard as a witness and released. The strike committee requested the Lublin Prosecutor's Office to issue a notice of offence, alleging violations of rights by the police officers. On 6 March, the management hired another security firm (Walmark) in order to end the strike by force, which they tried to do on 8 March, without success. A representative of the company threatened to close down the whole establishment. Between 5 and 11 March, the company committed other acts of intimidation, by depriving eight strikers of foreman's title, which entitled them to a 10 per cent pay allowance. To further weaken the union, the management started a procedure of collective dismissal affecting about 99 per cent of the workers. Due to the intervention of the chairman of the Regional Board of Solidarnosc, an agreement was signed on 23 March, whereby the union suspended the strike and the management committed itself to refrain from dismissals until the end of 1999 and to undertake collective bargaining.
- 884.** It soon became clear to the union that the settlement was a mere pretext to stop the strike. None of the company commitments were fulfilled (except for maintaining the number of employees until the end of 1999) and it engaged into discussions with a non-representative body (the Trade Union of Workers and Security Guards of SIPMA S.A.) created before the

signature of the 23 March agreement and totally controlled by the employer; the executive of that new “union” was composed of six representatives of security guards and managers and only two workers. The union made some proposals for common positions, without success. The management of the company was thus able to make decisions on issues affecting the workers, without regard to the agreement or even to the labour and trade union legislation. From April to May 1999, the company took a series of repressive measures. Four workers were issued with a serious reprimand for complying with the orders of the strike committee, and Mr. Lwieslaw Kozlowski, chairman of the union, was given for the same reason, a notice of termination of contract, which was eventually withdrawn upon intervention. From May to September 1999, SOLIDARNOSC held negotiations on: the limitation of workers to be made redundant; increased severance pay for dismissed employees; protection of workers in difficult social circumstances; and defence of the rights of strikers. But the company held parallel negotiations with the Trade Union of Workers and Security Guards, which accepted and signed “collective dismissals regulations”. This led to the dismissal of 150 employees, 80 per cent of whom were Solidarnosc members who had taken part in the strike. On 14 September 1999, the company spokesman confirmed that the 23 March agreement would not be executed.

- 885.** Between October and December 1999, the company took other measures such as: tearing Solidarnosc information bulletins from the notice board posted in the company; under the pretext of reorganization, moving its office further from the entrance gate; closing a meeting place for workers; introduction of a forced six-week break in production, with the workers getting only unpaid holiday or their remaining days of paid holiday; termination of check-off facilities under the pretext of trade union’s actions considered as detrimental by the company (the check-off was later reinstalled upon intervention from the Regional Board of Solidarnosc and a deputy of the Polish Parliament). Between January and March 2000, the management requested from the union the nominal list of its members, which it refused in view of the numerous acts of harassment against union members. In June 2001, the management launched a campaign against officials and members of the union, branding them as criminals. In September 2001, access to the union meetings held on company premises was denied to worker members of the same union but employed in establishments other than SIPMA S.A.; this made union activities difficult as it was impossible to have a quorum to adopt binding resolutions. The human resources manager sent to the workers “Declarations of loyalty” to the company, that they were supposed to fill and sign, which caused another series of resignations from the union. The chairman of the union, Marek Kozak, was given a notice of termination of his employment contract. The pressure on union members was so strong that four other members resigned from the union.
- 886.** In December 2001, the management deprived members and officials of the union of a Christmas grant (commodity coupons) without any motive. These workers were given such poor work appraisals that they were classified as employees to be dismissed. During meetings organized by management, other workers were also threatened with a downgrading of their evaluation, or with redundancy. Facing these threats of sanction, workers were induced to sign a petition censuring the union and its chairman. In addition, members of the union employed in affiliates of SIPMA S.A. (Agro Trading Ltd.; PlastForm Ltd.; LMFR S.A.) were strongly incited to stop participating in the structures of the union and to create separate trade unions. As a result, it became necessary to create and register a new trade union body in the company (registered under No. 0030 in the Regional Board of Solidarnosc). The Warsaw General Labour Inspectorate sent a team from outside the Lublin district to carry out an in-depth inspection at the company, which confirmed all the cases of infringements alleged by the union. At the end of February 2002, there remained only 21 Solidarnosc members in the company. Elections were nevertheless carried out, and Mr. Zenon Mazus nominated as chairman. The management questioned the legality of the elections, refused to recognize the new union and to cooperate with it.

The intimidation and harassment continued without interruption in 2002 and 2003, the following cases being examples only of such measures against officials and members of the union: negative work assessments; threats of dismissal unless they changed their attitude; access denied to trade union premises by the security guards; deprivation of part of remuneration; Mr. Zenon Mazus received five penalties, all of them connected with trade union activities, was affected to a different working post and was not allowed by the supervisor to leave his post to participate in, and preside, trade union meetings; penalties imposed for presence at union meetings, even after working hours; disconnection of internal and external telephone lines, and fax lines in the union office; the external correspondence sent to the trade union did not reach it; etc. As a result, there remained only 13 members in the union in December 2002.

887. Concerning the enforcement of workers and trade union rights before the Lublin Labour Court and the Supreme Court in Warsaw, the complainant organization alleges a number of situations where the proceedings were prolonged in order to hold the execution of judgements unfavourable to the company, or where the judgments were not carried out. For instance:

- Mr. Waldemar Wojtas dismissed in April 1999, reinstated in his job in December 1999, received the remaining part of his due remuneration only in November 2000.
- Mr. Henryk Jedrejek dismissed in March 2000 and reinstated in his job by the Court in November 2000; the employer used all sorts of delaying tactics not to return him to his previous post; it took other legal proceedings, up until 2003, to have the judgement executed upon the court's terms.
- Two years elapsed between the date where Mr. Marek Kozak filed a claim for due remuneration and the judgement. Meanwhile, he was dismissed in 2001 and the proceedings had not ended yet although 15 months passed since the action was brought in law.
- Mr. Zenon Mazus appealed to the Labour Court against his termination in July 2002; at the date of preparing the present complaint, the hearing had not taken place.

888. The complainant organization further alleges the partiality of the Public Prosecutor's Office. On 29 April 1999, an official of that Office issued a decision to commence prosecution following the notice of an offence filed by the strike committee of Solidarnosc concerning the unlawful conduct of the management and security guards of the company. While visiting the company, the prosecutor did not contact the trade union body, but presented to the manager the statements of employees attached to the notice of an offence, which exposed 41 workers named in the statements to repression from the management. The same Prosecutor's Office decided however to commence investigation against 15 members of the strike committee and to issue a bill of indictment against three leaders of the strike; it took two years to have that charge rejected and the workers had to defend themselves without any help of an attorney. The complainant organization also alleges that the Lublin Regional Public Prosecutor's Office issued an indictment against Henryk Jedrejek, accusing him, as chairman of the union, of causing damages to the company, based on article 23 of the Unfair Competition Act; he is now awaiting criminal proceedings. The complainant organization also mentions the case of Tomasz Sawka who was not informed of the date of his hearing and was thus condemned to the payment of a fine. Finally, the complainant organization indicates that following the notification of an offence submitted by Solidarnosc against the president of the company, the Regional Public Prosecutor's Office decided, on 30 September 2000, to discontinue the investigation, despite a decision of the National Labour Inspection stating that the employer had infringed labour law and trade union law.

Hetman Ltd.

- 889.** The second part of the complaint concerns the situation in Hetman Ltd., a clothing company, established as a result of the privatization of a state-owned enterprise. Several infringements of the labour law were reported to the Labour Inspection from 1997 to 2002. In December 2002, the workers decided to establish a union in the establishment; it was registered with the Regional Board of Solidarnosc which immediately informed the employer. On the same day, the Chief Executive Officer (CEO) of the company dismissed two members of the union, who had been the most active in setting up the union, without obtaining the approval of the union, as required by law.
- 890.** On 27 December 2002, the CEO assigned the remaining eight officers of the union to perform work in another establishment of the enterprise in Gizycko, a town situated 230 km away. When the employees reported for work there, nobody was waiting for them and no work was organized. Between 27 and 31 December 2002, the company dismissed 25 members of the trade union in the enterprise.
- 891.** On 8 January 2003, the CEO notified Solidarnosc of his intention to dismiss 96 workers for disciplinary reasons, alleging that they refused to work on 18 December 2002 (in fact, the employees had held a meeting due to delays in payment of remuneration). Although the dismissals did not take place, 50 members of the union were notified on 17 January 2003 that they would receive a serious reprimand for unjustified refusal to perform work on 18 December 2002. The CEO of the company also tried to obtain the names of the union members in the enterprise, which Solidarnosc refused.
- 892.** The Regional Board of Solidarnosc requested the Labour Inspection Directorate to undertake an investigation on the company, which eventually confirmed the accusations of violations of the law by the employer, in particular the dismissals of members and officials of the union. The artificial assignment of workers in Gizycko was mentioned as an evident example of discrimination for setting up a trade union. In December 2002, Solidarnosc submitted a notice of an offence (discrimination against trade union members) against the CEO of the company to the Regional Public Prosecutor's Office. The proceedings started on 13 January 2003; about 200 witnesses were interrogated but a decision to file charges was only made on 6 June 2003. No progress has been made since then.
- 893.** The first hearing before the Labour Court concerning the reinstatement of employees who had been dismissed was scheduled on 20 February 2003. Due to serious delays in court proceedings and lack of cooperation from the CEO of the company, the hearing was delayed and had still not taken place at the time of filing this complaint.
- 894.** As a result of mediation activities, including intervention of the Regional and National Boards of Solidarnosc, the CEO announced on 17 January 2003 that he had decided to reinstate in their employment 25 members of the union. Actions taken by Solidarnosc also led to a cancellation of the abovementioned reprimands given to 50 union members. However, the CEO ultimately refused to reinstate nine union members in their employment. He also refused to continue discussions with worker's representatives. On 28 May 2003, he terminated the contracts of 48 women workers who were members of the trade union, while simultaneously announcing that the company was looking for 60 new employees.
- 895.** During the dispute, Solidarnosc had asked the Prime Minister to change the legislation, so as to avoid the repetition of similar situations in the future. The issue was ultimately referred, through the Ministry of Labour, to the regional authorities so that a session of the Regional Social Dialogue Commission could discuss the non-observance of labour laws by employers in the region, with particular focus on the situation at Hetman Ltd.

896. The complainant organization concludes that this case further reveals serious shortages in the legislation for securing workers' right to associate.

B. The Government's reply

897. In its communication dated 22 December 2003, the Government indicates that the legislation does guarantee the rights and freedom guaranteed by Conventions Nos. 87, 98 and 135, and provides information on the legislative provisions in this respect.

898. As regards the situation in SIPMA S.A., the Government does not agree that the proceedings have been excessively lengthy. The proceedings conducted by the district and provincial courts in Lublin have been supervised by the Department of Common Courts of the Ministry of Justice, which entails an obligation to submit monthly reports on the activities undertaken by a court in a given case. Unjustified delays in proceedings are subject to disciplinary penalties; in practice, supervision by the Department of Common Courts means an acceleration of the proceedings.

899. In the case of Mr. Marek Kozak, the proceedings were delayed only by the gathering of the bulky evidence required to settle the case and by the claimant himself, who requested an adjournment of the case due to his attorney's absence. The claimant's attorney also did not act with due diligence in submitting all motions of evidence during the suit and requested more and more evidence during hearings, which meant more adjournments. As regards Mr. Tomasz Sawka, the claimant himself did not appear at the first hearing and the proceedings are currently pending before the Court of Second Instance, as the opposing party exercised its constitutional right to lodge an appeal; concerning the criminal proceedings, Mr. Sawka was present at the hearing on 16 April 2003, where the case was remanded for consideration at another date, which was notified to him at the hearing. Therefore, the allegation that he had not been informed of the hearing is totally unjustified. In the case of Mr. Zenon Mazus, it was the claimant himself who requested his case to be considered jointly with the cases of other employees, which complicated the proceedings, that have not been completed to date.

900. Concerning the alleged lack of objectivity of the Prosecutor's Office and of support given to the employer, the Government states that these allegations are not justified when considering the course of action of the Prosecutor's Office and the court procedures currently pending. The notice of offence submitted in June 2001 by Solidarnosc concerning a violation of workers' rights was referred in July 2001 to the Provincial Prosecutor's Office in Kielce due to the similarity of the issues in another case previously submitted to that office, which also took over the cases conducted by the District Prosecutor's Office of Lublin.

901. The proceedings of the District Prosecutor's Office in Lublin concerning the collective dispute at SIPMA S.A. were finalized by a decision of 26 April 1999 to refuse to commence an inquiry, as it was concluded that no violation of the Act on Settlement of Collective Disputes had been committed. An investigation conducted by the District Prosecutor's Office did not give grounds for reversing that decision.

902. The investigation of the District Prosecutor's Office in Kielce was closed on 29 August 2003. As a result, a bill of indictment was lodged on 14 October 2003 against Mr. Leszek Kepa and Mr. Jerzy Czopa, CEO and Managing Director of the company, respectively. They were charged with malicious and persistent violations of workers' rights and discrimination against trade union members due to their membership, functions and activities in the union. In addition, 17 persons with managerial functions were charged with similar offences. The Government explains that, on 29 August 2003, the material regarding discrimination of two workers, Messrs. Mysliwiecki and Jedrejek was removed

from the case because their employment contracts were terminated in 2000. The case of Mr. Tomasz Sawka was also excluded from the file because his contract of employment was terminated in 2002; the investigation on this case was discontinued as it was concluded that there was no evidence of offence under article 218(1) of the Penal Code.

- 903.** As regards Mr. Jedrejek, the notice of offence had been submitted by the company. The investigation led to an accusation, filed on 4 June 2002, that he had used confidential employer information for his own economic benefit, which caused financial damage to the company. The proceedings in this case are currently pending at the district court in Lublin.
- 904.** As regards the proceedings related to offences allegedly committed by strikers (Article 26 of the Act on the Settlement of Collective Disputes and articles 191 and 212 of the Penal Code), the Government indicates that the investigation against Mr. Kozak and 14 other persons was discontinued on 15 November 1999 due to the minor amount of damages involved. The remaining findings of the investigation led to charges filed in November 1999 against Messrs. Wojtas, Mazus and Kozak, for threatening managers and forcing them to leave the workplace. Messrs. Wojtas and Mazus were found not guilty under article 191 of the Penal Code and the proceedings against Messrs. Kozak and Mazus under article 190 of the Penal Code were discontinued due to the low amount of damages caused by the alleged acts.
- 905.** The Government concludes that the prosecutors were duty-bound to deal with the notices of offences submitted by both parties according to the legal procedural course, and the decisions taken were supported by the evidence gathered in these cases. The Government recalls that the justification of indictment bills is subject to supervision by a competent court.
- 906.** Concerning the situation in Hetman Ltd., the Government indicates that 53 lawsuits, including two collective actions, were filed against the company by the workers at the Elblag District Court. These proceedings were under the supervision of the Department of Common Courts of the Ministry of Justice since 17 March 2003. The hearings set for 24, 27 March, 1 and 4 April 2003 did not take place because the defendant requested an adjournment due to the fact that the CEO of the company was in hospital. He appeared at the next hearings (30 April, 8, 13 and 16 May 2003) and by September 2003, the Court had considered and finally settled the cases of 89 employees, whose claims were considered justified and who obtained effective legal protection, according to the Government.
- 907.** As regards the claims for reinstatement of Ms. Barbara Chmielewska and Ms. Elzbieta Chojnicka, the charges were filed on 19 December 2002. The hearing set for March 2003 was adjourned to 30 April 2003 due to the defendant CEO's hospitalization. One day before the next hearing, the defendant requested that the district court and the provincial court in Elblag be excluded from the consideration of the case, which motion was overruled by the Appellate Court in Gdansk on 22 July 2003. The hearing on the merits set for 17 October 2003 was again adjourned to 13 November 2003. By judgment issued on 21 November 2003, both employees were reinstated and granted remuneration for the period of unemployment.
- 908.** Concerning the alleged Court's failure to conduct the proceedings on the offences allegedly committed by the CEO of the company, the Government indicates that it considers it unjustified. The District Prosecutor's Office in Elblag instituted preparatory proceedings and gathered evidence and documentation; a representative of the Regional Board of Solidarnosc, a representative of the State Labour Inspection Elblag Division, an employee of the Gizycko branch of the company, and 40 employees of the company who suffered as a result of the company's president's actions were heard and cross-examined. The delay in the preparatory proceedings was due to the high volume of evidence and the

difficult circumstances (other allegations of violation of workers' rights). As a result of the preparatory proceedings, on 29 October 2003, the Provincial Prosecutor's Office in Elblag brought a bill of indictment against the CEO of the company, charging him, inter alia, with discrimination against workers for the establishment of a trade union, their membership thereof, and hindrance of trade union activities.

- 909.** Regarding the notification to the Prime Minister of the situation in Hetman Ltd., the Government indicates that the Minister overruled the possibility of considering the conflict in the company under the Act on the Settlement of Collective Disputes, since that would have prevented from appointing a mediator, and referred the issue on 16 January 2003 to the Regional Commission of Social Dialogue. The irregularities occurring at Hetman Ltd. were discussed in that tripartite commission on 21 March and 23 May 2003.
- 910.** The Government concludes that it did not fail to fulfil its obligations under Conventions Nos. 87, 98 and 135 in ensuring that the worker members of the trade union at Hetman Ltd. were provided with adequate legal protection.

C. The Committee's conclusions

- 911.** *The Committee notes that this case concerns two sets of alleged violations of freedom of association by the management of two private companies (Hetman Ltd. and SIPMA S.A.) namely: acts of intimidation and anti-union harassment; anti-union dismissals and discrimination against union members for their participation in union activities, in particular strike action; intervention of security services and police officers. The complainant also alleges partiality on the part of the Prosecutor's Office, the excessive length of proceedings and the non-execution of judicial decisions. The Government replies that the applicable legislation guarantees the rights and freedoms provided for in the relevant Conventions ratified by Poland.*
- 912.** *As regards the situation in SIPMA S.A., the Committee notes that the dispute in that company dates back to March 1998 and resulted after ten months of unsuccessful bargaining in a legal strike in February 1999, which marked the beginning of a long series of actions by the employer, challenged by the trade union as being acts of anti-union discrimination. Without going into each and every instance presented by the complainant as evidence of such anti-union action by the employer, the Committee notes that numerous members and officials of the trade union were subject to a number of measures which are generally illustrative of anti-union discrimination: disciplinary dismissals and terminations of contract; imposition of penalties and reprimands for trade union activities; artificial assignment to remote postings; failure to reinstate dismissed employees in their previous posts, in violation of a court order to that effect; sanctions imposed for presence on the company premises after work for participation in union meetings; negative work appraisals; deprivation of bonuses, rewards and other allowances in kind; refusal to recognize the union elected for the term 2002-06 and to cooperate with it; etc. The union used the available legal avenues to challenge these actions, with varying results. The Committee notes that the Government does not refute the substance of the allegations, but essentially replies that the existing labour and trade union legislation is compatible with applicable freedom of association instruments, and that the competent administrative and judicial bodies have duly exercised their jurisdiction when requested to do so. The Committee finally notes that, at the end of the day, the presence of Solidarnosc in the company dropped from 392 to nine union members (41.4 per cent to 2.2 per cent of the total number of employees) during the period 1998-2003.*
- 913.** *As regards the situation in Hetman Ltd., while noting that the events spread over a shorter period, the Committee cannot but observe the coincidence in time between the establishment of the union and the beginning of a long series of acts of anti-union*

discrimination, similar to the ones described above, including dismissals and other measures affecting the free exercise of trade union activities. Here too, the Government does not challenge the substance of the allegations, but replies that the legislation is compatible with freedom of association and that administrative and judicial bodies appropriately exercised their jurisdiction when requested to do so. The Committee further notes that the rate of success of union challenges before these jurisdictions was relatively higher in this case.

914. The complainant organization alleges in both cases unjustified delays in the courts' proceedings for alleged violations of workers' rights, and partiality on the part of the Prosecutor's Office. The Committee notes on the other hand that, according to the Government: these cases have been processed under the supervision of the Department of Common Courts of the Ministry of Justice, where unjustified delay is subject to penalties; that whatever delays occurred can be explained by the complexity of cases, the high number of witnesses and the sheer volume of evidence; that the adjournments resulted from motions presented by either party, from considerations related to the good administration of justice; and that the courts took the necessary steps for the due processing and settlement of the cases. In summary, according to the Government, the employees obtained effective legal protection where justified.
915. While recalling that an excessive delay in processing cases of anti-union discrimination and in particular a lengthy delay in concluding proceedings concerning the reinstatement of trade union leaders dismissed by an enterprise constitute a denial of justice [*Digest*, *op. cit.*, para. 749], the Committee expresses its concern regarding the length of time elapsed between the submission of a notice of offence by Solidarnosc in June 2001 and the corresponding bill of indictment lodged in October 2003. It appears to the Committee that the problem here might be more one of systematic recourse by an individual employer to all available legal recourses both as regards the merits and the execution of judgements, than one of appropriateness of the legislation.
916. The Committee thus considers, based on the extensive and detailed evidence submitted, that the present complaint might not be so much an issue of inadequate legislation, applied in an unsatisfactory manner and with inordinate court delays, but rather two isolated instances of bitter industrial relations characterized by permanent conflict, and the refusal of individual employers to recognize a workers' organization and enter in good faith in a collective bargaining relationship with it. The Committee recalls in this respect that employers should recognize for collective bargaining purposes the organizations representative of the workers employed by them, and that recognition by an employer of the main unions represented in its undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking [*Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, paras. 821-822]. In addition, the Committee recalls the importance it attaches to the obligation to negotiate in good faith for the development and maintenance of harmonious labour relations [*Digest*, *op. cit.*, para. 814].
917. Given the nature of this case, the Committee must emphasize that no person should be prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities [*Digest*, *op. cit.*, para. 701]. One of the fundamental principles of freedom of association is that workers should enjoy adequate protection against acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The guarantee of such protection in the case of trade union officials is also necessary in order to ensure that

effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [Digest, op. cit., para. 724].

918. *The Committee notes that the Government was apparently concerned enough about the recurring situation in the enterprises SIPMA S.A. and Hetman Ltd., that the Ministry of Labour felt it appropriate, at least as regards the latter, to refer the issue to the Regional Social Dialogue Commission. Expressing its concern about the labour relations situation in the companies in question, the Committee urges the Government to reiterate and intensify its efforts, under the auspices of that tripartite commission, to bring back the parties to the bargaining table and resume social dialogue, and ensure that the principles of freedom of association and collective bargaining are applied, particularly as regards effective recognition of unions and protection against acts of anti-union discrimination and interference. The Committee requests the Government to keep it informed of the developments in this regard.*

The Committee's recommendations

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

- (a) The Committee expresses its concern regarding the length of time elapsed between the submission of a notice of offence by Solidarnosc in June 2001 and the corresponding bill of indictment lodged in October 2003.*
- (b) The Committee urges the Government to reiterate and intensify its efforts, under the auspices of the tripartite Regional Social Dialogue Commission, to bring back the parties to the bargaining table and resume social dialogue, and ensure that the principles of freedom of association and collective bargaining are applied, particularly as regards recognition of unions and effective protection against acts of anti-union discrimination and interference. The Committee requests the Government to keep it informed of developments in this regard.*

CASE NO. 2246

DEFINITIVE REPORT

Complaint against the Government of the Russian Federation presented by the Association of Russia's Trade Unions SOTSPROF (SOTSPROF)

<i>Allegations: The complainant alleges interference by the public authorities in the administration of the trade union</i>

920. The complaint is contained in a communication dated 19 December 2002 from the Association of Russia's Trade Unions SOTSPROF (SOTSPROF).

921. The Government forwarded its observations in a communication dated 5 September 2003.

922. 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

923. In its communication dated 19 December 2002, the Association of Russia's Trade Unions SOTSPROF alleges that the state bodies of executive power interfere in the administration of the organization.

924. In particular, the complainant states that, on 26 March 2002, the tax authorities issued a warrant authorizing inspection of the premises of the SOTSPROF and its structural and territorial divisions. The inspection, during which certain documents were seized, was conducted on 27 March 2002. On the date of the complaint, the documents were still not returned and no criminal charges have been filed.

925. The complainant further states that on 24 May 2002, the Ministry of Taxation and Tax Collection of Moscow Southwest Inspection decided to conduct an on-site tax inspection of the Association with a view to verifying the calculation and the payment of taxes on income of physical persons. In this connection, the SOTSPROF was requested to present the following documents dated from 1 January 1999 to 1 May 2002: banking documents, cash payment documents, certain financial reports, contracts with legal and physical persons and inventory of all of its assets.

926. Considering that such inspections violate the provisions of the Federal Law on Trade Unions, as well as Article 3 of Convention No. 87, the SOTSPROF lodged complaints with the courts and the Moscow Department of the Ministry of Taxation and Tax Collection of the Russian Federation. However, the courts declared that there has been no violation of national legislation nor of Convention No. 87 and therefore, the actions of the tax police were found legal and the complaints of the trade union were rejected. Despite the SOTSPROF's objections, the tax authority decided to conduct the investigation of the financial activities of the organization. Nevertheless, considering that the trade union cannot expose its members to the risk of prosecution by the State, which could take place if the state bodies got hold of financial documents concerning the activities of the union, the trade union had decided not to comply with the request of the authorities. Following the refusal to produce the documents, the tax authority imposed a heavy fine on the chairperson of the Association.

927. The complainant further states that by an order of the tax authority dated 9 September 2002, all operations of the bank accounts of the SOTSPROF were suspended from 24 October to 12 November 2002. The formal motive given by the tax authority was a request to submit information on a certain category of tax payment for the first six months of 2002, whereas this kind of information is presented to the tax authorities once a year. The Association had earlier submitted the report, in accordance with the established procedure. The complainant alleges that the freezing of bank accounts had virtually paralysed the activities of the Association and of its largest trade union branch.

928. Furthermore, on 18 December 2002, tax police along with inspectors, conducted another search on the premises of the SOTSPROF and seized its documents.

B. The Government's reply

929. In its communication of 5 September 2003, the Government states that, as concerns the reference made by the complainant organization to Article 3 of Convention No. 87, the tax

inspections do not impinge on any of the rights of trade union organizations provided for by this Article. According to the Government, the reference to the Federal Law on Trade Unions is also groundless, as section 24 refers only to prohibition of financial inspections. The tax inspections carried out by tax authorities are not restricted under the legislation. The complainant organization been a taxpayer, the tax inspection into its activities was conducted in order to verify the regularity and punctuality of the deduction and transfer of taxes on the income of physical persons, in accordance with section 24 of the Taxation Code. In accordance with the requirements of sections 31 and 87 of this Code, the tax inspectors demanded banking and cash documents, advance accounts, agreements with individuals and juridical persons, and inventories of fixed capital and non-material assets liable to taxation. The originals of these documents were returned to the union on 23 January 2003.

930. According to the Government, the investigation into the allegations in the present case showed that, as concerns the search of the union's premises and seizure of documents, certain violations of the Federal Law on Investigative Operations were indeed committed. The Moscow City Office of Public Prosecutor brought a representation before the chief of the Moscow Division of the Federal Tax Police Service demanding that the violation be redressed, the rights of the taxpayers restored and the guilty parties punished. These demands were fully met.

931. The Government further states that the Inspection of the Southwest Moscow Administrative District Division of the Ministry of Taxation and Tax Collection did decide to suspend the bank operations of the Association SOTSPROF. However, this erroneously taken decision was revoked on 3 December 2003. The Government further states that since the union is not involved in any business activity, claims that the union had suffered losses cannot be sustained.

932. Finally, the Government states that despite the provided by the legislation, right to appeal against the verdict of the court, the complainant organization chose not to appeal the court decision to reject the SOTSPROF's claim, therefore all available means to defend its interests were not used by the organization. In this respect, the Government adds that part 3 of Article 46 of the Constitution of the Russian Federation provides that citizens have the right to make use of intergovernmental bodies to defend their human rights and freedoms on two conditions: that the Russian Federation is party to a relevant international agreement and that all available means of legal protection within the country have been exhausted.

C. The Committee's conclusions

933. *The Committee notes that the complainant in this case alleges acts of interference by the authorities in the trade union administration. In particular, the complainant states that the tax authorities conducted several on-site inspections with a view to verifying the calculation and the payment of taxes on income of physical persons. Moreover, the complainant alleges that by the order of tax authorities, the bank operations of the Association were suspended from 24 October to 12 November 2002.*

934. *As concerns the inspections by the tax authorities, during which documents related to financial activities were seized, the complainant alleges that such inspections are contrary to the national legislation, which prohibits the authorities from conducting financial investigations into trade union activities. The Committee notes the Government's reply, according to which, the complainant organization is a taxpayer and could be subject to tax inspections. The Government further states that the tax inspections could not be considered to be financial investigations, prohibited under national legislation. The Committee also notes that the Government admits that certain irregularities were committed during the*

search of trade union premises. The Government states, however, that measures have been taken to restore the rights of the trade union and to punish the guilty parties. According to the Government, the seized documents were returned to the union on 23 January 2003.

- 935.** *The Committee considers that while tax investigations should be differentiated from the discretionary investigations into all financial activities of trade unions, the question at issue is whether such investigations can be accompanied by searches of trade union premises without a judicial warrant. The Committee is of the view that while trade unions cannot claim immunity against the searching of their premises, such searches should be possible only when a warrant has been issued for the purpose by the regular judicial authority, when the latter is satisfied that there is a good reason to presume that such a search will produce evidence for criminal proceedings under the ordinary law, and provided the search is restricted to the purpose for which the warrant was issued [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 180]. The Committee regrets that certain irregularities took place during the tax inspection of the financial activities of the complainant organization and urges the Government to take the necessary measures in order to prevent such irregularities in the future. The Committee also requests the Government to take the necessary measures in order to ensure that no search of trade union premises is possible without a judicial warrant.*
- 936.** *As concerns the freezing of trade union accounts, the Committee notes from the documents submitted by the complainant, as well as from the Government's statement, that the tax authority, which took the decision to freeze trade union accounts, revoked its decision as soon as it noticed the technical error leading to such decision. The Committee also notes the Government's claim that since the complainant organization was not involved in any business activity, it could not have suffered losses.*
- 937.** *Recalling that the freezing of union bank accounts constitutes a serious interference by the authorities in trade union activities [see **Digest**, op. cit., para. 439], the Committee regrets that following a technical error, the tax authorities took a decision to freeze the SOTSPROF's bank accounts. The Committee urges the Government to take the necessary measures in order to prevent such irregularities in the future.*
- 938.** *As concerns the question of national remedies, the Committee notes that article 46(3) of the Russian Constitution provides that "everyone shall have the right to turn to interstate organs concerned with the protection of human rights and liberties when all the means of legal protection available within the State have been exhausted". The Committee would like to point out it has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures.*

The Committee's recommendations

- 939.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee regrets that certain irregularities took place during the tax inspection of the financial activities of the complainant organization and urges the Government to take the necessary measures in order to prevent such irregularities in the future. The Committee also requests the Government to take the necessary measures in order to ensure that no search of trade union premises is possible without a judicial warrant.*

- (b) Recalling that the freezing of union bank accounts constitutes a serious interference by the authorities in trade union activities, the Committee regrets that following a technical error, the tax authorities took a decision to freeze the SOTSPROF's bank accounts. The Committee urges the Government to take the necessary measures in order to prevent such irregularities in the future.*

CASE NO. 2251

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 that the newly adopted Labour Code contains provisions violating the rights of workers to freely establish and join organizations of their own choosing and to determine their structures and membership, the right to bargain collectively and the right to strike

- 940.** The complaint is contained in a communication dated 3 February 2003 from the Russian Labour Confederation (KTR).
- 941.** The Government forwarded its observations in a communication dated 5 September 2003.
- 942.** 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

- 943.** In its communication dated 3 February 2003, the Russian Labour Confederation (KTR) alleges that the newly adopted Labour Code contains provisions⁴ violating the rights of workers to freely establish and join organizations of their own choosing and to determine their structures and membership, the right to strike and the right to bargain collectively. In support of its contention, the KTR forwards complaints made by the Trade Union of Aviation Specialists (PrAS), the Tyumen Regional Trade Union Centre (TRTUC) and the Ural Trade Union Centre (URALPROFCENTRE). The KTR also alleges that it was prevented from participating in the drafting and discussion of the Code.
- 944.** As concerns the first set of allegations, concerning the violation of the right of workers to freely establish and join organizations of their own choosing and to determine their structures and membership, the complainant refers to sections 29, 30, 31, 37, 399 and 410

⁴ See Appendix for the relevant provisions of the Labour Code, as well as the relevant provisions of the federal act on trade unions, their rights and guarantees of their activity of 12 Jan. 1996.

of the Labour Code. Firstly, as regards section 29(1), the complainant states that the wording of this section provides grounds for ambiguous interpretation. More specifically, the KTR claims that some employers and officials consider that if a trade union is independent and is not affiliated to an all-Russia trade union, it may not represent workers' interests.

- 945.** The complainant further states that according to sections 29(2), 30, 31, 37, 399, 410, etc., the right to participate in social and labour relations, including the participation in collective bargaining and in collective labour disputes, is granted only to primary trade unions. According to the KTR, the independently registered trade unions operating at an enterprise do not have this right. The complainant explains that the core of the issue is the history of primary trade unions, their role and place in the Russian trade union structure. A primary trade union depends upon a higher union body for its legitimacy. The higher union body can disband the primary trade union, prevent the access to its bank accounts, members' dues, etc. This kind of structure is common to the trade unions formed during the times of the single-trade-union system of the USSR. Today, however, many trade unions have been founded at the enterprise level with structures, which significantly differ from the traditional one. For instance, some unions at the enterprise level are "stand-alone" units. According to the complainant, since the new Labour Code came into effect, many unions have been excluded from negotiations of collective agreements solely due to the fact that their structure is not that of a primary trade union. Primary trade unions representing the majority of the employees use this structural requirement to exclude non-primary trade unions from participation in a unified representative body formed for collective bargaining and, in some cases, where there is no primary trade union at the enterprise, employers refuse to negotiate with the "stand-alone" unions.
- 946.** More specifically, the complainant mentions section 31(1) of the Code, which it considers could be interpreted in the following manner: if there is no primary trade union at an enterprise or if there is one that represents less than 50 per cent of the employees, the employees may authorize the "minority" primary trade union to represent their interests or alternatively may authorize a non-union representative, even if there is a union at the enterprise with a structure that does not correspond to that of a primary trade union. According to the complainant, this interpretation is supported by section 37 of the Code, which mentions only primary trade unions as authorized negotiating partners.
- 947.** Finally, the KTR refers to section 31(2), which stipulates that other workers' representatives may not be an obstacle to the trade union to exercise its powers, and points out that this provision does not explicitly stipulate that a non-union representative has the right to represent workers only when there are no trade unions at the enterprise. The practical implication of this provision has led to some problems as many employers have initiated collective bargaining with other workers' representatives, ignoring the existing trade unions.
- 948.** In the light of the abovementioned provisions, trade unions, which are not primary trade unions, must forgo collective bargaining or must change their legal status and their constitutions, which would make them dependent on a higher trade union structure. To support its allegation, the KTR forwards a complaint made by the TRTUC. According to the latter organization, following the adoption of the Labour Code, it had to affiliate to one of the all-Russia trade unions in order to be able to conduct collective bargaining at the enterprise level and to reorganize the structure at the enterprise level of the Tyumen Trade Union of Lifting Equipment Employees (TULEE), member of the TRTUC, from the workshop unions to primary trade unions of the all-Russia trade union. The TRTUC considers that such a reorganization is not convenient for the trade union, as it now has to coordinate its activities with other trade unions, which do not necessarily express and stand for the same interests as the lifting equipment employees.

- 949.** With regard to the allegations concerning more specifically the right to collective bargaining, the KTR states that section 45 of the Labour Code provides for general, regional, industry (inter-industry), territorial and other agreements. Section 26 lists the following levels of social partnership: federal, regional, industrial, territorial and enterprise. According to the complainant, this rather narrow list violates the right of the parties to determine independently the level of collective bargaining. For instance, in these circumstances, it seems impossible to conclude agreements applying to specific professions, therefore, many categories of employees, who are members of trade union representing particular professions, are deprived of the possibility of having an agreement that protects their specific interests and regulates the peculiarities of their professions (such is the case of members of the air crews, river and sea vessel teams, dockers, air traffic controllers, journalists, etc.). According to the complainant, the new Labour Code complicates the regulation of labour relations in a particular industry as an agreement signed at the enterprise level covers all its employees and there is no provision in the Code providing for a possibility to conclude appendices that would regulate peculiarities of particular professions.
- 950.** Furthermore, the KTR alleges that as concerns collective bargaining, the Labour Code gives preference to unions with a larger membership. To support its allegation, the KTR forwards a communication from the URALPROFCENTRE, which alleges that its primary trade union of Uralsk Electro-Chemical Enterprises (UECE) is discriminated against and is excluded from the control over the employer's observance of the labour legislation on workers' rights and, more particularly, from negotiation of a collective agreement. According to the URALPROFCENTRE, the Russian Trade Union Employees of Nuclear Energy Enterprises (RTUENEE), the majority union at the UECE, as well as the management of the enterprise, refuse the participation of the free trade union of UECE in collective bargaining. In a communication from the TRTUC, the complainant indicates that the primary trade union of TULEE at the "Managing Company for Housing Maintenance" found it very difficult to persuade the large primary trade union to form a unified representative body. There was only one representative of TULEE during collective bargaining. As a result, the adopted collective bargaining agreement neglected the interests of TULEE members. At the municipal enterprise "Managing Company for Housing Communal Services UG", a unified representative body was not formed at all. The majority trade union, having representatives of the employer among its members, ignored the request of TULEE to participate in the collective bargaining and signed a collective agreement on behalf of all of the employees. The existing situation regarding the rights of smaller unions has restricted the freedom of association of workers, and some members of TULEE had to leave the union and join that of the employer's.
- 951.** As concerns the collective agreements at the national, industrial and territorial level, the Labour Code also gives preference to unions with larger membership. More specifically, the KTR states that section 37(6) is frequently used to exclude minority unions from participation in collective bargaining. The majority trade unions refuse to agree upon the composition of a unified representative body. Hence, although the Code grants the right to participate in collective bargaining to minority unions, this right is not realizable due to the absence of necessary mechanisms ensuring its implementation (the complainant points out that at the enterprise level, the necessary protection is afforded by keeping a chair for other primary trade unions for their participation, at any further time, in the collective bargaining process, as provided by section 37(5)). The KTR provides an example of negotiations of the National Maritime Tariff Agreement for 2002, where the Federation of Maritime, River and Fishery Workers' Unions, having declared its prevailing membership, ignored a number of proposals made by the Federation of Maritime Transport Workers' Unions and concluded on its own the abovementioned agreement.

- 952.** The complainant also refers to some problems posed by interpretation of section 37(2) of the Labour Code. The KTR submits the complaint made by PrAS of the joint stock company (OAO) “Aeroflot” where the following four trade unions represent workers’ interests: the Trade Union of Aviation Specialists, which has 15 primary trade unions representing 1,800 workers; the Sheremityevo Trade Union of Aircrew, with nine primary trade unions representing 2,500 workers; the Sheremityevo Trade Union of Flight Attendants, with three primary trade unions representing 1,200 workers; and the Trade Union of Aviation Employees of the OAO “Aeroflot-RA”, representing 8,000 employees. In this particular case, the complainant considers that in order to meet the requirement of section 37 on the proportional representation, the number of representatives of the unions for the collective bargaining should be equal to 110 persons (ten from the Trade Union of Aviation Specialists, 15 from the Sheremityevo Trade Union of Flight Personnel, 20 from the Sheremityevo Trade Union of Flight Attendants and 65 from the Trade Union of Aviation Employees of the OAO “Aeroflot-RA”), to which the management of the OAO “Aeroflot” has strongly objected. Nevertheless, the trade union managed to find a solution by forming a joint representative body of 13 persons, which comprised seven representatives from the majority union and two representatives from each of the other trade unions. However, the PrAS also states that the interpretation of section 37(2) could also mean that 14 (or even 28) workers’ representatives could have been chosen.
- 953.** With regard to the right to strike, the KTR is concerned about the following sections of the Code: 398, 399, 409, 410, 412, 413 and 417. As concerns section 398, the complainant states that the definition of a “collective labour dispute” contained in this section is limited to a narrow set of issues and, as a result, the right to strike provided for in section 409 is also restricted. In this respect, the complainant states that the Labour Code does not provide for a possibility to resort to strike in order to resolve individual labour disputes, for instance, over the non-payment of wages. Such a situation has resulted in court decisions declaring such strikes illegal, consequently, the guarantees afforded to participants in strikes following a collective labour disputes – e.g. reinstatement in their job – do not apply. The complainant provides an example where 19 trade union members of the Free Trade Union “Metallurg” were fired for participating in a strike over non-payment of wages. The strike took place from 24 to 28 December 1997. Only one participant was reinstated by the court, due to the fact that he was an elected trade union official. The remaining strikers were not reinstated; the court’s decision specifically states that the dispute was not collective. Moreover, the KTR points out that the Russian legislation does not expressly provide for sympathy strikes, strikes aimed at recognizing a trade union and strikes over major social or economic issues.
- 954.** Furthermore, the KTR claims that the existing procedures make the initiation of a collective labour dispute problematic and therefore deprive unions of the right to organize strikes independently. The complainant indicates in this respect that according to section 399(2), demands or claims made by workers’ representatives to the employer must be confirmed at a general meeting (conference) of employees.
- 955.** The complainant also points out that section 410 stipulates that a decision to strike must be taken at a meeting (conference) of all employees at the proposal of a representative body previously appointed by the employees. Hence, in order to call a strike at the enterprise level, even if the trade union federation (confederation) has decided to strike, this decision should be approved at the meeting of all employees of the organization (enterprise). That makes the trade union’s decision to strike dependent on the opinion of all employees rather than that of its members. The KTR forwards a copy of the decision of the Moscow Municipal Court of 22 March 2002 on the illegality of a strike organized by the employees of the joint stock company “Aeroflot-RA”. According to the court’s ruling, “the current labour legislation [section 410 of the Labour Code] determines that a decision to declare a strike may be made by a meeting (conference) of employees of an organization

[undertaking]; trade unions do not have the power to do that". The Supreme Court confirmed this decision. Moreover, according to section 410, a minimum of two-thirds of the total number of workers should be present at the meeting and the decision to take a strike should be taken by at least half of the number of delegates present. At the same time, the new Code contains no provision which would allow a strike action by a single professional union at an enterprise where many professional unions represent workers with different interests and problems. Furthermore, section 410 of the Code maintains the obligation to declare a "possible" duration of the strike. The failure to comply with this requirement may serve as grounds for declaring the strike illegal (section 413(3)).

956. In accordance with section 412 of the Labour Code, the relevant federal executive bodies, in agreement with the relevant all-Russia trade unions, determine the minimal necessary services for each branch (sub-branch) of the economy. The procedure for the approval of the lists of the minimal services is subject to a separate directive of the Government. On the basis of these lists, the regional executive bodies approve, upon agreement with relevant trade unions, territorial lists of minimal services. However, according to the complainant, such lists providing for the minimum necessary services do not exist at the moment at the federal level and it is difficult to predict when they may be compiled and whether they will cover all branches of the economy. Moreover, the KTR points out that the list of the minimum services should be determined, upon agreement between the parties and the local government, within five days from the declaration of a strike. In case of a failure to reach a consensus on this issue, the list of minimum services is drafted by the executive body of the subject of the Russian Federation. The complainant considers that the right to make the final decision regarding the list of minimum services should not belong to the body of executive power.

957. The KTR further states that the Code lists a large number of professions for which the right to strike is restricted. The KTR refers to section 413(1) which, according to the complainant, due to the absence of criteria that would definitely determine the enterprises and services qualified as "directly servicing highly hazardous kinds of production or equipment", and the absence of the criteria which would allow to make a decision if there is a threat to the country's defence and security, lives and health of people, could be subject to very broad interpretation.

958. In addition, the KTR points out that according to section 413(2), the right to strike may be restricted by the federal law. The complainant refers to a number of normative acts imposing prohibitions or restrictions on the right to strike of the following category of workers: police; military forces; employees of the federal institutions of governmental communication infrastructure and information; employees of internal affairs institutions; employees of the Federal State Communication Services; state employees; employees of professional emergency and rescue services; railroad employees; civil municipal servants; air traffic controllers; and employees of tax police. Strikes outside nuclear facilities and storage areas are also restricted if such strikes infringe the working conditions of nuclear facilities and storage area personnel, or in case of any other danger to the safety of the people, environment, health, rights and lawful interests of other people. The complainant considers that the abovementioned bans on the right to strike limit the right of a larger number of workers than required to avoid endangering peoples' lives, their personal security or the health of the nation or its part. For instance, section 11 of the law on fundamentals of state employment prohibits strike in the public service not only for those who are engaged in the administration of the state, but for many other employees.

959. The complainant is further concerned over section 413(3) of the Code, according to which, a strike shall be illegal if it is not organized within the time frames, procedures and requirements specified in the Code. However, according to the complainant, this section does not provide for a list of these time frames, procedures and requirements. As a result,

the court may rule a strike illegal due to a formal non-compliance with insignificant provisions of the law. For instance, the Code envisages that a strike may be ruled illegal if the list of a minimum of necessary services has not been agreed upon within five days from the time of calling for the strike (requirement provided for in section 412(5)), even though there could be considerable time left before the actual beginning of the strike, i.e. sufficient time to agree upon the minimum services. A strike may also be declared illegal if during the strike, the parties do not continue trying to resolve the dispute through reconciliation procedures (section 412(1)).

- 960.** The KTR further states that the Russian legislation requires the workers' representatives to warn the employer about a strike at least ten days in advance, which gives the employer sufficient time to challenge the strike's legal grounds. It furthermore alleges that according to the prevailing practice in the Russian Federation, employers file cases on the legality of a strike as soon as it is declared. In most cases, the courts order to postpone the strike for 30 days or declare it illegal. In these circumstances, strike becomes virtually impossible.
- 961.** Those involved in a strike can be held accountable if a strike is started or continued in violation of the court's order declaring the illegality of the strike under section 413(6). In such cases, in accordance with section 417, workers may incur a disciplinary penalty (including dismissals) for breaching section 413(6). Moreover, section 20.26 of the Code on administrative violations provides for administrative fines ranging from ten to 15 of minimum wages imposed on individuals responsible for unauthorized stoppage of work undertaken to resolve collective labour dispute when those individuals are responsible for securing certain public services and where federal law prohibits a work stoppage. Those who organize the strike action are punishable by a fine equivalent to 15 to 25 minimal wages. Taking into account the new provisions of the Labour Code and the federal laws restricting the right to strikes of the abovementioned categories of workers, it is not clear whether the norms of the administrative responsibility for participation in the strike may be applied to striking workers.
- 962.** Finally, as concerns the right to strike, the Russian legislation contains no norms banning the employment of other workers during a lawful strike. In practice, employers repeatedly use the absence of such a ban. Therefore, strikes turn out to be ineffective and have no real impact on the employer.

B. The Government's reply

- 963.** In its communication of 5 September 2003, the Government notes that the case material regarding the complaint filed by the KTR is composed of three complaints presented by the following three trade union organizations: the Union of Aviation Specialists (PrAS) of "Aeroflot"; the Tyumen Regional Trade Union Centre (TRTUC); and the Ural Trade Union Centre (URALPROFCENTRE).
- 964.** As concerns the complaint made by the PrAS, the Government states that, section 37 of the Labour Code, which concerns the number of workers involved in the unified representative body, applies only to unions and not to the employers. Disputes on such matter should be resolved between trade unions themselves without the involvement of employers. The Government points out that, in accordance with section 37(2), the unified representative body should be based on the principle of proportional representation and depends on the membership of each trade union. At the same time, there must be one representative from each trade union organization. There are four trade union organizations at the "Aeroflot", which together represent the interests of 13,500 workers. In the present case, if it is determined that the representative body will be composed of 13 members, the participation of each union should be the following: one representative from each of the four unions namely: the PrAS; the Sheremetyevo Trade Union of Aircrew; the Sheremetyevo Trade

Union of Flight Attendants; and the Trade Union of Aviation Employees workers. The remaining nine members of the representative body should be elected by proportional representation based on the size of the membership of each trade union.

- 965.** As concerns the complaint made by the TRTUC, the Government points out that the legal bases for the creation of trade unions in the Russian Federation are laid down in the federal act on trade unions, their rights and guarantees of their activities. Section 3 of the law provides that union activities at the enterprise level shall be organized in the form of a primary trade union, defined as a voluntary association of trade union members operating in accordance with their regulations and by-laws, or on the basis of the general regulations on primary trade union of the relevant trade union. According to section 29(2) of the Labour Code, the interests of workers are represented by the primary trade union or other elected representatives. Section 31 of the Code stipulates that if a trade union organization represents less than half of the workers of an enterprise, the workers may elect this union or another representative to represent their interests.
- 966.** As concerns the right to join or to leave a trade union, the Government indicates that workers and employers, in accordance with Article 2 of Convention No. 87, have absolutely equal rights to form organizations of their own choosing, without any prior authorization and have the right to join such organizations, subject to acceptance of their regulations. Section 2(2) of the law on trade union gives concrete expression to this principle.
- 967.** Regarding the complaint made by the URALPROFCENTRE, the Government indicates that the chairperson of the primary trade union of the UECE had in fact proposed the creation of a unified representative body to negotiate a new collective agreement. However, this proposal was turned down because it was received after the legally established time limit (five calendar days provided for in section 37(3) of the Code) and because his candidature as representative of the union was self-appointed and not properly registered.
- 968.** As regards the other alleged violation of the rights of the URALPROFCENTRE by the administration of the UECE, the Government indicates that the union did not bring the facts contained in the complaint to the attention of the Public Prosecutor. In order to examine these allegations, the Sverdlovsk Provincial Office of Public Prosecutor was requested, on 15 August 2003, to investigate this matter. The Government states that until the investigation is completed, it would be premature to come to any conclusions regarding the lawfulness of the claims by the trade union.
- 969.** The Government further indicates that the abovementioned complaints relate to a collective labour disputes. The procedure of collective bargaining is regulated by section 37 of the Labour Code and the procedure for resolving collective labour disputes is regulated by the Code and the law on procedure for resolving collective labour disputes. The cases of violations of trade union rights shall be examined by the courts at the request of the Public Prosecutor following a complaint made by the trade union. The Government points out that the abovementioned unions did not appeal to the courts and therefore had not exhausted all available means to defend their interests.

C. The Committee's conclusions

- 970.** *The Committee notes that the complainant in this case alleges that the Labour Code violates the following rights guaranteed by Conventions Nos. 87 and 98: the rights of workers to freely establish and join organizations of their own choosing and to determine their structures and membership; the right to bargain collectively; and the right to strike. In support of its contention, the KTR forwards complaints made by the Trade Union of*

Aviation Specialists (PrAS), the Tyumen Regional Trade Union Centre (TRTUC) and the Ural Trade Union Centre (URALPROFCENTRE). The KTR also alleges that its was prevented from participating in the drafting and discussion of the Code.

- 971.** *As concerns the allegation that the complainant organization was prevented from participating in the drafting and discussion of the Code, the Committee notes that no comment was made by the Government in this respect. The Committee notes, however, the Government's statement in Case No. 2216, where the Committee had examined similar allegations and where the Government had indicated that all interested organizations could make their proposals and remarks and that all opinions received concerning the new Labour Code were examined [see 322nd Report, approved by the Governing Body at its 288th Session, para. 903].*
- 972.** *As concerns the allegation of violation of the rights of workers to freely establish and join organizations of their own choosing and to determine their structures and membership, the Committee notes that the complainant refers to sections 29, 30, 31, 37, 399 and 410 of the Labour Code. Firstly, as regards section 29(1), the complainant states that the wording of this section provides grounds for ambiguous interpretation. More specifically, the KTR claims that some employers and officials consider that if a trade union is independent and is not affiliated to an all-Russia trade union it may not represent workers' interests. No comment was made by the Government on this allegation. The Committee notes that from the reading of this section, it seems that there is no obligation imposed on trade union to be affiliated to an all-Russia trade union. The Committee requests the Government to provide information in this respect.*
- 973.** *Secondly, the KTR alleges that according to the abovementioned sections, the right to participate in social and labour relations, including the participation in collective bargaining and in collective labour disputes, is granted only to primary trade unions. In practice, this means that independent or "stand-alone" trade unions have been excluded from collective bargaining. In these circumstances, those trade unions feel obliged to change their legal status and their constitutions and to affiliate to higher trade union structures. The KTR forwards a complaint made by the TRTUC, which alleges that it had to change the union's structure at the enterprise level of one of its member organizations, TULEE, and to affiliate to an all-Russia trade union so that TULEE could participate in collective bargaining. The TULEE considers that the change from a workshop structure to the primary trade union structure of a higher trade union was not beneficial and rather inconvenient, as it now has to coordinate its activities with other trade unions, which do not necessarily share the interests of the members of TULEE.*
- 974.** *The Committee notes the Government's indication to the effect that the legal bases for the creation of trade unions in the Russian Federation are laid down in the federal act on trade unions, their rights and guarantees of their activities. Section 3 of the law provides that union activities at the enterprise level shall be organized in the form of a primary trade union, defined as a voluntary association of trade union members operating in accordance with their regulations and by-laws, or on the basis of the general regulations on primary trade union of the relevant trade union. According to section 29(2) of the Labour Code, the interests of workers are represented by the primary trade union or other elected representatives.*
- 975.** *The Committee recalls in this respect, that workers should be free to decide whether they prefer to establish, at the enterprise level, a workers' union or another form of basic organization, such as a workshop union, and that the distinction made between primary trade unions and other form of trade unions, by granting particular advantages to one kind of organization or withdraw that advantage from one form of organization in favour of another, should not have the indirect consequence of restricting the freedom of workers to*

belong to the organization of their choosing. The Committee therefore requests the Government to clarify whether independent or so-called “stand-alone” trade unions, which are not primary level organization of a higher trade union, can represent workers’ interests during collective bargaining, collective labour disputes, etc.

- 976.** *Thirdly, the complainant refers to section 31 of the Code, which it considers could be interpreted in the following manner: if there is no primary trade union at an enterprise or if there is one that represents less than 50 per cent of the employees, the employees may authorize this “minority” primary trade union to represent their interests or alternatively may authorize a non-union representative, even if there is a union at the enterprise with a structure that does not correspond to that of a primary trade union. Moreover, the KTR points out that this section does not explicitly stipulate that a non-union representative has the right to represent workers only when there are no trade unions at the enterprise. The practical implication of this provision has allegedly led to some problems, as many employers have initiated collective bargaining with other workers’ representatives, ignoring the existing trade unions.*
- 977.** *The Committee notes that the Government does not provide any comments in this respect, except for citing section 31 of the Code. The Committee recalls its conclusion regarding a similar allegation in Case No. 2216, where it concluded that there would appear to be a contradiction between this section and section 37 which provides that there shall be a secret ballot for determining “the trade union” to conduct collective bargaining in the event that no trade union unites over half of the employees. The Committee considers that section 31 would appear to give workers the choice to elect non-union representatives even though there may be a union at the workplace. The Committee recalled on that occasion that the Collective Agreements Recommendation, 1951 (No. 91), stressed the role of workers’ organizations as one of the parties in collective bargaining, it referred to “representatives of unorganised workers” only when no organization exists. In these circumstances, direct negotiation between the undertaking and its employees, by-passing representative organizations where these exist, might be detrimental to the principle that negotiation between employers and workers’ organizations should be encouraged and promoted [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 785]. The Committee requested the Government to amend section 31 so as to ensure clearly that authorization can be conferred on other representative bodies only in the event that there is no trade union at the workplace [see 322nd Report, para. 909]. The Committee therefore reiterates its request to the Government and asks to keep it informed of the measures taken or envisaged in this respect.*
- 978.** *As concerns the allegations on violation of the right to collective bargaining, the Committee notes that the KTR refers to sections 45 and 26 of the Labour Code, which, according to the complainant, do not reflect the particular situation of workers’ organizations based on the occupational or professional criteria and that the Labour Code restricts the level of collective bargaining by not providing for a possibility to conclude an agreement at the occupational or professional level. The Committee recalls that this allegation was examined in Case No. 2216, where the Committee considered that workers’ organizations and employers and their organizations should be free in determining the level of bargaining, including the possibility of concluding agreements at the occupational or professional level [see 322nd Report, para. 905]. No information was received from the Government in this respect. The Committee therefore requests the Government to take all the necessary measures, including the amendment of sections 26 and 45, so as to allow the possibility of collective bargaining at occupational or professional level both in law and in practice. The Committee requests the Government to keep it informed of the measures taken or envisaged in this respect.*

- 979.** *The Committee further notes the complainant's concerns over the preference given by the Labour Code to majority unions in the collective bargaining process at all levels (enterprise as well as territorial, industrial and national). The Committee recalls that it had to deal with the similar allegation in Case No. 2216. In that case, the Committee concluded that according to section 37 (5), at the enterprise level, a protection is afforded by keeping a chair for other primary trade unions for their participation at any further time in the collective bargaining process. The Committee considered that the approach favouring the most representative trade union for collective bargaining purposes at the enterprise or a higher level is not incompatible with Convention No. 98 [see 322nd Report, para. 907].*
- 980.** *The Committee notes that the KTR forwards a communication from the URALPROFCENTRE, which describes the difficulties the trade union of the UECE, a minority trade union, had encountered. The KTR submits another complaint from the TRTUC, where the complainant indicates that the primary trade union of TULEE at the "Managing Company for Housing Maintenance" found it very difficult to persuade the large primary trade union to form a unified representative body. There was only one representative of TULEE during collective bargaining. As a result, the adopted collective bargaining agreement neglected the interests of TULEE members. At the municipal enterprise "Managing Company for Housing Communal Services UG", a unified representative body was not formed at all. The majority trade union, having representatives of the employer among its members, ignored the request of TULEE to participate in the collective bargaining and signed a collective agreement on behalf of all of the employees.*
- 981.** *As concerns the complainant made by the URALPROFCENTRE, the Committee notes that the Government indicates that the chairperson of the primary trade union of Uralsk Electro-Chemical Enterprises (UECE) had in fact proposed the creation of a unified representative body to negotiate a new collective agreement. However, this proposal was turned down because it was received after the legally established time limit (five calendar days provided for in section 37(3) of the Code) and because his candidature as representative of the union was self-appointed and not properly registered. The Government also indicates that as regards other alleged violation of the rights of the URALPROFCENTRE by the administration of the UECE, on 15 August 2003, the Sverdlovsk Provincial Office of the Public Prosecutor was requested to investigate this matter. The Government states that until the investigation is completed, it would be premature to come to any conclusions regarding the lawfulness of the claims by the trade union. The Committee requests the Government to keep it informed of the outcome of the investigation.*
- 982.** *As concerns the complaint made by the TRTUC, the Committee notes that the Government does not provide any information concerning the refusal to establish a unified representative body at the "Managing Company for Housing Communal Services UG" and only generally states that the case relate to a collective labour dispute concerning the procedure of collective bargaining regulated by section 37 of the Labour Code and other legislation. The Committee therefore requests the Government to initiate the relevant inquiries into these allegations and to keep it informed in this regard.*
- 983.** *Finally, the Committee notes the complaint made by the PrAS concerning the problem it had encountered with interpretation of section 37(2) of the Code. The Committee notes that the union had managed to find a solution and that a unified representative body for collective bargaining purposes could be formed. The Committee also notes the Government's explanations concerning section 37(2). It therefore considers that this point does not call for further examination.*

- 984.** *As concerns the allegation concerning restrictions on the right to strike, the Committee notes that the complainant mentions the following sections of the Code: 398, 399, 409, 410, 412, 413 and 417. Firstly, the KTR states that, as concerns section 398 and section 409, the legislation does not provide for a possibility to resort to strike in order to resolve individual labour disputes, for instance, over the non-payment of wages. This situation has resulted in court decisions declaring such strikes illegal, which meant that the guarantees normally afforded to strike participants – e.g. reinstatement in their job – do not apply. The complainant provides an example where 19 trade union members of the Free Trade Union “Metallurg” were fired for participating in a strike over non-payment of wages. The reinstatement of 18 workers was denied by the court, which considered that the dispute was not collective. Moreover, the KTR points out that the Russian legislation does not expressly provide for sympathy strikes, strikes aimed at recognizing a trade union and strikes over major social or economic issues. The Committee notes that the Government does not provide any comments in this respect.*
- 985.** *The Committee considers that the question which should be examined while considering the strikes as a way of settlement of a labour dispute problem is not whether the dispute is a collective labour dispute or of a purely individual nature. What should be looked at is a degree to which it affects the interests of other workers. In the present case, the non-payment of wages is more likely to affect the economic and social interest of a large group of workers. The affected workers should be able to resort to a strike action in such circumstances. As concerns the allegation that the Russian legislation does not expressly provide for sympathy strikes, strikes aimed at recognizing a trade union and strikes over major social or economic issues, the Committee recalls that workers and their organizations should be able to call for a strike aimed at recognizing a trade union, as well as in order to criticize a government’s economic and social policies and should be able to take a sympathy strike, provided the initial strike they are supporting is itself lawful [see **Digest**, *op. cit.*, paras. 482, 484, 486-488]. In the present case, the Committee notes that while those kinds of strikes are not expressly forbidden under the legislation, their legality may be ensured more generally through developed judicial precedents. The Committee requests the Government to ensure that the abovementioned principles are respected.*
- 986.** *As concerns section 399(2) which, according to the complainant requires a trade union to obtain an approval of the claims it wishes to make to the employer by the meeting (conference) of employees, the Committee recalls that it dealt with the same allegation in Case No. 2216 [see 322nd Report, para. 911]. On that occasion, the Committee did not find it clear whether only non-union representatives needed to refer to a meeting or conference of employees or whether this provision also applied to trade unions. While considering that trade unions should be free to regulate the procedure of submitting claims to the employer and that the legislation should not impede the functioning of a trade union by obliging a trade union to call a general meeting every time there is a claim to be made to an employer, the Committee requested the Government to provide additional information as to how section 399 works in practice [see 322nd Report, para. 911]. As no information was provided by the Government in this respect, the Committee reiterates its previous request.*
- 987.** *The Committee notes the allegation regarding section 410, which provides that a decision to strike must be taken at a meeting (conference) of all employees at the proposal of a representative body previously appointed by the employees and that a minimum of two-thirds of the total number of workers should be present at the meeting and the decision to take a strike should be taken by at least half of the number of delegates present. The Committee also notes the decision of the Moscow Municipal Court of 22 March 2002 supplied by the KTR, according to which, “a decision to declare a strike may be made by a meeting (conference) of employees of an undertaking and that trade unions do not have the*

power to call a strike". No information was provided by the Government in this respect. The Committee recalls that it had to deal with a similar allegation in Case No. 2216 [see 322nd Report, para. 912]. While recognizing that calling a strike action is a right which trade unions are entitled to enjoy, the Committee nevertheless accepts that legislation may make the exercise of this right subject to the agreement of a certain percentage of the workers. In this respect, it considers that while the obligation to observe a certain quorum to take strike action may be considered acceptable, the observance of a quorum of two-thirds of workers may be difficult to reach [see *Digest*, op. cit., paras. 510 and 511]. It therefore requests the Government to amend its legislation so as to lower the quorum required for a strike ballot and to keep it informed of the measures taken or envisaged in this regard.

- 988.** *As concerns the obligation to declare a "possible" duration of the strike imposed by section 410, the Committee considers that requiring workers and their organizations to specify the length of a strike would restrict the right of workers' organizations to organize their administration and activities and to formulate their programmes. The Committee requests the Government to amend its legislation so as to ensure that no legal obligation to indicate the duration of a strike is imposed on workers' organizations and to keep it informed of measures taken or envisaged in this regard.*
- 989.** *The Committee further notes the complainant's allegations concerning the required minimum necessary services. In this respect, the complainant raises two issues. Firstly, the KTR submits that it is not clear from section 412 whether minimum services are to be ensured in every sector of activity. Secondly, the KTR points out that this section provides that in the event of a disagreement between the parties on the minimum services to be provided in organizations (enterprises) the activities of which ensure safety, health and life of the people, and vital interests of society, the decision is made by an executive body. No information was received from the Government in this respect.*
- 990.** *As concerns the first issue, the Committee is of the view that the establishment of minimum service in the case of strike action should only be possible in: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) in public services of fundamental importance [see *Digest* op. cit., para. 556]. The Committee requests the Government to indicate whether the establishment of minimum services is a requirement applicable to all categories of workers and if that is the case, it requests the Government to amend its legislation so as to ensure that such a requirement is limited to the abovementioned cases.*
- 991.** *As regards the provision that any disagreement concerning the establishment of minimum services should be settled by the authorities, the Committee considers that if negotiations between the parties fail, such disagreements should be resolved by an independent body, so as to avoid any possible delay that would be tantamount to a restriction of strike action. The Committee therefore requests the Government to amend its legislation so as to ensure that any disagreement concerning minimum services is settled by an independent body having the confidence of all the parties to the dispute and not the executive body and to keep it informed of measures taken or envisaged in this regard.*
- 992.** *The Committee further notes the KTR's allegations concerning restrictions on the right to strike imposed on certain categories of workers (section 413). In this respect, the complainant raises two issues. Firstly, the KTR is concerned over the interpretation or definition of the following notions referred to in section 413(1)(a) and (b): "the enterprises and services qualified as directly servicing highly hazardous kinds of production or*

equipment”, and “threat to the country’s defence and security, lives and health of people”. According to the complainant, those provisions could be subject to very broad interpretation and therefore restrict the right to strike of a large number of workers. Secondly, the complainant invokes section 413(2), according to which, the right to strike may be restricted by federal law. The complainant refers to a number of normative acts imposing prohibitions or restrictions on the right to strike of the following category of workers: police; military forces; employees of the federal institutions of governmental communication infrastructure and information; employees of internal affairs institutions; employees of the Federal State Communication Services; state employees; employees of professional emergency and rescue services; railroad employees; civil municipal servants; air traffic controllers; and employees of tax police. Strikes outside nuclear facilities and storage areas are also restricted if such strikes infringe the working conditions of nuclear facilities and storage area personnel, or in case of any other danger to the safety of the people, environment, health, rights and lawful interests of other people. The complainant considers that the abovementioned bans on the right to strike limit the right of a larger number of people than required to avoid endangering peoples’ lives, their personal security or the health of the nation or its part. For instance, section 11 of the law on fundamentals of state employment prohibits strike in the public service not only for those who are engaged in the administration of the state, but for many other employees. No information was provided by the Government in this respect.

- 993.** As concerns those allegations, the Committee recalls that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the state; (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population); and (3) in the event of an acute national emergency [see *Digest*, op. cit., paras. 526 and 527]. As concerns section 413(1)(b), in the view of the complainant’s concerns, the Committee requests the Government to indicate the enterprises and services it qualifies as directly servicing highly hazardous kinds of production or equipment where the right to strike is prohibited. As concerns the abovementioned categories of workers, who, according to the relevant federal laws, cannot recourse to a strike action, the Committee notes that the list includes employees of railroad, which does not constitute essential services in the strict sense of the term. The Committee therefore requests the Government to amend its legislation so as to ensure that railroad employees, as well as those engaged in the public service but not exercising the authority in the name of the state, enjoy the right to strike.
- 994.** The Committee further notes that according to the complainant, section 413(3) also restricts the right to strike. This section provides that a strike shall be illegal if it is not organized within the time frames, procedures and requirements specified in the Code. However, according to the complainant, this section does not provide for a list of these time frames, procedures and requirements. In these circumstances, the court may rule a strike illegal in the case of formal non-compliance with any provision of the law. The KTR refers to the following examples when the strike could be declared illegal: (1) the list of a minimum of necessary services has not been agreed upon within five days from the time of calling for the strike (requirement provided for in section 412(5)), even though there could be considerable time left before the actual beginning of the strike, i.e. sufficient time to agree upon the minimum services; and (2) the parties do not continue trying to resolve the dispute through reconciliation procedures during the strike (section 412(1)). No information was provided by the Government in this respect.
- 995.** As concerns the time frames, procedures and requirements specified mentioned in section 413(3), the Committee understands that this section refers to sections 398-413 of the Code. However, as concerns the declaration of illegality of a strike when the minimum of necessary services has not been agreed upon within five days from the time of calling a

strike, as provided for in section 412(5), the Committee recalls that the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations [see *Digest*, op. cit., para. 498]. The Committee requests the Government to take the necessary measures, including the amendment of the legislation, in order to ensure that a strike would not be declared illegal when the minimum of necessary services has not been agreed upon within five days from the time of calling a strike, especially when there is a sufficient time to agree on this matter before the strike takes place. The Committee requests the Government to keep informed in this respect. As concerns the requirement to continue trying to resolve the dispute through reconciliation procedures during the strike (section 412(1)), the Committee considers that such a requirement cannot be regarded as an infringement of freedom of association.

- 996.** The Committee further notes that, according to the complainant, the Russian legislation requires the workers' representatives to warn the employer about a strike at least ten days in advance, which gives the employer sufficient time to challenge the strike's legal grounds. The Committee notes that the KTR's statement to the effect that according to the prevailing practice in Russia, employers file cases on the legality of a strike as soon as it is declared. In most cases, the court's order to postpone the strike for 30 days or declare it illegal. In these circumstances, a strike becomes virtually impossible. No information has been provided by the Government in this respect. The Committee considers that the obligation to give a prior notice to the employer before calling a strike may be considered acceptable [see *Digest*, op. cit., para. 502]. The Committee further notes that the responsibility to declare a strike illegal lies with the judicial body, which is also in conformity with the principles of freedom of association. The Committee considers, however, that the legislative provisions should not be used so as to prevent recourse to strike action in practice. In the light of the complainant's allegation to the effect that in practice, the strike is often postponed or declared illegal, the Committee requests the Government to provide relevant information, including statistical information, on how the right to strike is exercised in practice.
- 997.** As regards the allegation concerning sanctions against strikers provided for in section 417, including fines and, allegedly, dismissals, the Committee notes that no information was provided by the Government in this respect. The Committee considers that sanctions for strike action should be possible only where the restrictions in question are in conformity with the principles of freedom of association. The Committee further requests the Government to indicate whether section 20.26 of the Code on administrative violations is applicable to striking workers.
- 998.** The Committee notes the complainant's concern over strike replacements, to which employers, incited by the absence of provision in the Labour Code banning such a practice, often have recourse. The Committee considers that the hiring of workers to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term, and hence one in which strikes might be forbidden, constitutes a serious violation of freedom of association. If a strike is legal, recourse to the use of labour drawn from outside the undertaking to replace the strikers for an indeterminate period entails a risk of derogation from the right to strike, which may affect the free exercise of trade union rights [see *Digest*, op. cit., paras. 570-571]. The Committee requests the Government to ensure that this principle is respected.
- 999.** The Committee notes the Government's statement to the effect that the complainant trade union organizations did not appeal to the courts and therefore had not exhausted all available means to defend their interests. The Committee would like to point out that it has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures.

1000. *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

1001. *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 indicate whether section 29(1) of the Labour Code imposes an obligation on trade unions to be affiliated to an all-Russia trade union.*
- (b) The Committee requests the Government to clarify whether independent or so-called "stand-alone" trade unions, which are not primary level organizations of a higher trade union, can represent workers' interests during collective bargaining, collective labour disputes, etc.*
- (c) The Committee requests the Government to amend section 31 of the Labour Code so as to ensure clearly that authorization to represent workers can be conferred on other representative bodies only in the event that there is no trade union at the workplace.*
- (d) The Committee requests the Government to take all the necessary measures, including the amendment of sections 26 and 45 of the Labour Code, so as to allow the possibility of collective bargaining at occupational or professional level both in law and in practice.*
- (e) The Committee requests the Government to keep it informed of the outcome of the investigation on the alleged violations of trade union rights of the URALPROFCENTRE by the administration of the UECE.*
- (f) The Committee requests the Government to initiate the relevant inquiries into the allegations made by the TRTUC concerning the refusal to establish a unified representative body for collective bargaining purposes at the "Managing Company for Housing Communal Services UG".*
- (g) The Committee recalls that workers and their organizations should be able to call for a strike aimed at recognizing a trade union, as well as in order to criticize a government's economic and social policies and should be able to take a sympathy strike, provided the initial strike they are supporting is itself lawful.*
- (h) As concerns the alleged requirement to obtain an approval of the claims a trade union wishes to make to the employer by the meeting (conference) of employees, the Committee requests the Government to provide additional information as to how section 399 of the Labour Code works in practice.*
- (i) As concerns the allegation concerning restriction of the right to strike, the Committee requests the Government to amend section 410 of the Labour Code so as to lower the quorum required for a strike ballot.*

- (j) *The Committee requests the Government to amend section 410 of the Labour Code so as to ensure that no legal obligation to indicate the duration of a strike is imposed on workers' organizations.*
- (k) *The Committee requests the Government to indicate whether the establishment of minimum services is a requirement applicable to all categories of workers and, if that is the case, it requests the Government to amend its legislation so as to ensure that such a requirement is limited to the following situations: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) in public services of fundamental importance.*
- (l) *The Committee requests the Government to amend its legislation so as to ensure that any disagreement concerning minimum services is settled by an independent body having the confidence of all the parties to the dispute and not the executive body.*
- (m) *As concerns section 413(1)(b) of the Labour Code, in the view of the complainant's concerns, the Committee requests the Government to indicate the enterprises and services it qualifies as "directly servicing highly hazardous kinds of production or equipment" where the right to strike is prohibited.*
- (n) *The Committee requests the Government to amend its legislation so as to ensure that railroad employees, as well as those engaged in the public service, but not exercising the authority in the name of the state, enjoy the right to strike.*
- (o) *The Committee requests the Government to take the necessary measures, including the amendment of the legislation, in order to ensure that a strike would not be declared illegal when the list of minimum necessary services has not been agreed upon within five days from the time of calling a strike.*
- (p) *In the light of the complainant's allegation to the effect that in practice, the strike is often postponed or declared illegal, the Committee requests the Government to provide relevant information, including statistical information, on how the right to strike is exercised in practice.*
- (q) *The Committee requests the Government to indicate whether section 20.26 of the Code on administrative violations is applicable to striking workers.*
- (r) *The Committee recalls that when a strike is legal, recourse to the use of labour drawn from outside the undertaking to replace the strikers for an indeterminate period entails a risk of derogation from the right to strike, which may affect the free exercise of trade union rights.*
- (s) *The Committee requests the Government to ensure respect for the principles mentioned in subparagraphs (c)-(o) and (r) above.*

- (t) *The Committee requests the Government to keep it informed on all these points.*
- (u) *The Committee reminds the Government that it can avail itself of the technical assistance of the Office.*
- (v) *The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of the case.*

Appendix

Labour Code (relevant sections)

Article 26. System of the social partnership

The system of the social partnership shall include the following levels:

- the federal level setting the grounds for regulating relations in the sphere of labour in the Russian Federation;
- the regional level setting the grounds for regulating relations in the sphere of labour in a subject of the Russian Federation;
- the industry level setting the grounds for regulating relations in the sphere of labour in an industry (industries);
- the territorial level setting the grounds for regulating relations in the sphere of labour in a municipality;
- the level of an organization setting specific mutual obligations in the sphere of labour between the employees and the employer.

Article 29. Representatives of employees

Representatives of employees in the social partnership shall be labour unions and their associations, other labour union organizations stipulated by charters of Russian national labour unions or other representatives elected by employees in the cases stipulated by this Code.

Interests of an organization employees at collective bargaining, concluding and amending the collective contract, exercising control of its implementation as well as in exercising the right to participate in managing the organization, considering labour disputes of the employees with the employer shall be represented by the labour union local or other representatives elected by the employees.

Interests of employees at collective bargaining on concluding and on amending agreements, settling collective labour disputes on concluding or amending agreements, exercising control of their implementation as well as at establishing commissions regulating socio-labour relations and carrying out their activities shall be represented by relevant labour unions, their territorial organizations, associations of labour unions and associations of labour unions' territorial organizations.

Article 30. Representatives of non-union employees' interests

The employees not belonging to a labour union shall be entitled to authorize the labour union local executive to represent their interests in relations with the employer.

Article 31. Other representatives of employees

In the absence of a labour union local in an organization as well as when the labour union local amalgamates less than half of the employees the employees can, at their general meeting (conference) entrust said labour union local or another representative with representation of their interests.

Availability of another representative cannot hamper exercising its authority by the trade union local.

Article 37. Procedures of collective bargaining

The participants in collective bargaining shall be free in choosing the issues of regulating socio-labour relations.

Should two or more labour union locals operate within an organization, they shall form a unified representative body for engaging in collective bargaining, preparing a single draft collective contract and concluding it. Formation of a unified representative body shall be done on the basis of proportional representation principle depending on the number of the labour union members. At this, a representative shall be delegated from each labour union local.

Should a unified representative body fail to be formed within five calendar days after the collective bargaining start, interests of all the employees shall be represented by the labour union local amalgamating over half of the employees.

Should no labour union local amalgamate over half of the employees, the employees' general meeting (conference) shall determine by a secret vote the labour union local entrusted with forming the representative body.

In the cases stipulated by paragraphs three and four of this article other labour union locals shall retain the right to delegate their representatives to the representative body prior to the moment of signing the collective contract.

The right to engage in collective bargaining, sign agreements on behalf of the employees at the level of the Russian Federation, a subject of the Russian Federation, and industry, a territory shall be granted to relevant labour unions (labour union associations). Should several labour unions (labour union associations) be in existence at the relevant level, each of them shall be entitled to representation within a unified representative body for collective bargaining formed with account for the number of labour union members they represent. In the absence of an accord on establishing a unified representative body for collective bargaining the right to engage in it shall be granted to the labour union (labour union association) amalgamating the largest number of the labour union (labour unions) members.

The parties shall provide each other, not later than two weeks after receiving the appropriate request, with the information at their disposal required for collective bargaining.

Participants in collective bargaining, other persons linked to collective bargaining shall not disclose the data obtained, if such data constitute the secrets protected by law (state, official, commercial and other). The persons disclosing said data shall be brought to disciplinary, administrative, civil, criminal responsibility in the manner set by federal laws.

Dates, venues and procedures of the collective bargaining shall be determined by representatives of the parties participating in said bargaining.

Article 45. Agreement. Types of agreements

The agreement shall be a legal act setting general principles of regulating socio-labour relations and the economic relations linked to them concluded between representatives of the employees and employers at the federal, regional, industry (inter-industry) and territorial levels within the limits of their competence.

Mutual obligations of the parties can be included in the agreements on the following issues:

- wages and salaries;
- working conditions and occupational safety;

- work and rest and leisure routines;
- development of the social partnership;
- other matters as determined by the parties.

Depending on the sphere of the regulated socio-labour relations the following agreements can be concluded: a general, regional, industry (inter-industry), territorial and other ones.

The general agreement shall set general principles of regulating socio-labour relations at the federal level.

The regional agreement shall set general principles of regulating socio-labour relations at the level of the Russian Federation subject.

The industry (inter-industry) agreement shall set general provisions for wages and salaries, labour guarantees and benefits for the employees of an industry (industries).

The territorial agreement shall set general provisions for wages and salaries, labour guarantees and benefits for the employees on the territory of a relevant municipality.

The industry (inter-industry) agreement can be concluded at the federal, regional, territorial levels of the social partnership.

Agreements, by arrangement of the parties participating in collective bargaining, can be bipartite or tripartite.

The other agreements shall be agreements, which can be concluded by the parties at any level of the social partnership on individual directions of regulating socio-labour relations and other relations directly linked to them.

Article 398. Main concepts

Collective industrial dispute is unsettled controversies between employees (their representatives) and employers (their representatives), concerning establishment and change of labour conditions (including a wage), conclusion, modification and performance of contracts, agreements, as well as relating to employer's refusal to consider the opinion of an elective representative unit of employees for adoption of acts, containing norms of the labour law, within organizations.

Conciliatory procedures are consideration of a collective industrial dispute for the purpose of its settlement through the Commission for Conciliation, mediation and/or at the industrial arbitration.

The beginning of a collective industrial dispute shall be the day of issue of the employer's (his representative) decision to decline employee's (their representatives) claims, in whole or in part, or failure by employer (his agent) to communicate a decision in accordance with the article 400 of this Code, and the date of producing a dispute report in the course of collective bargaining.

Strike is a temporary voluntary refusal of employees to perform their industrial liabilities (wholly or in part) for the purpose of settlement of a collective industrial dispute.

Article 399. Raise of claims by employees and their representatives

The right to raise claims shall be vested with employees and their representatives as defined by articles 29-31 of this Code.

Claims, raised by employees and/or representative unit of employees of organization (subsidiary, representative office or other separate structural subdivision) shall be approved at the respective meeting (conference) of employees.

The meeting of employees shall be deemed authorized provided there being present the majority of employees. The conference shall be deemed authorized provided there being present at least two thirds of elective delegates.

The employer shall be obliged to provide employees or their agents with required premises for the conduct of a meeting (conference) concerning raise of claims, and shall not prevent its conduct.

Claims of employees shall be made in writing and serviced to the Employer.

Claims of trade unions and their associations shall be raised and serviced to the respective parties to social partnership.

A written copy of claims may be forwarded to the Service for Settlement of Collective Industrial Dispute. In such case the Service shall be liable to verify as to whether the other party to collective industrial dispute has received the claims.

Article 409. Strike right

Pursuant to the article 37 of the Constitution of the Russian Federation, employees have a strike right as a way of settlement of collective industrial disputes.

If conciliatory procedures failed to settle a collective industrial dispute or the employer evades conciliatory procedures, or to perform the agreement reached in the course of the settlement of a collective industrial dispute, employees or their representatives shall be entitled to start a strike.

Participation in a strike is voluntary. No individual can be coerced to participate or to refuse to participate in a strike.

Individuals, coercing employees to participate or to refuse to participate in a strike, shall be subject to disciplinary, administrative, or criminal punishment, as provided herein or any other federal statutes.

Agents of employers shall not be entitled to begin a strike or to participate in it.

Article 410. Calling a strike

The decision of calling a strike shall be made at the meeting (conference) of employees of organization (subsidiary, representative office, other separate structural subdivision) upon proposal submitted by duly authorized unit of employees. The decision of calling a strike, adopted by trade union (trade union association), shall be approved for each organization by the meeting (conference) of employees of such organization.

The meeting (conference) of employees shall be deemed authorized provided there being present at least two thirds of the total number of employees (conference delegates).

The employer shall provide for premises and set up necessary conditions for the conduct of a meeting (conference) of employees and shall not prevent its conduct.

The decision shall be deemed adopted provided it has at least half of the votes appeared at the meeting (conference). In case of failure to conduct a meeting (to call a conference) of employees, the representative unit of employees shall have the right to approve its decision by collecting signatures with more than half of employees in support of a strike.

After five calendar days of the work of the Commission for Conciliation, a one-hour warning strike may be announced once, and the employer shall be given a three days` written notice.

During the warning strike the head unit shall provide for the minimum of required accomplishments (services) in accordance with this Code.

The employer shall be given a written notice of a future strike not later than ten calendar days in advance.

The decision of calling a strike shall incorporate the following:

- list of differences of the parties to collective industrial dispute being a ground for calling and conduct of a strike;
- date and time of the beginning of a strike, its presumable length and number of participants;
- name of a head unit, list of employees agents, authorized to participate in conciliatory procedures;
- proposals on the minimum of required accomplishments (services) to be carried out within an organization, subsidiary, other separate structural subdivision during the strike period.

The Employer shall give a strike notice to the Service for Settlement of Collective Industrial Disputes.

Article 412. Parties liabilities in the course of a strike

During the strike period the parties to a collective industrial dispute shall be liable to continue the settlement of such dispute through the conduct of conciliatory procedures.

The Employer, executive bodies, local governments and the head striking unit shall be liable to take all possible measures in order to provide for public order, property safety of organization (subsidiary, representative office, other separate structural subdivision) and employees during the strike period, as well as for the work of the machinery and equipment, which being suspended threaten to people's life and health.

List of the minimum of required accomplishments (services) in organizations, subsidiaries, representative offices, whose activities are connected with people's safety, health support and essential public interests, shall be produced and approved in each branch (sub-branch) of economy by federal executive body authorized for coordination and governing of activities in the respective branch (sub-branch) of economy, according to agreement with the respective Russian National Trade Union. In case there being existing several Russian National Trade Unions in any branch (sub-branch) of economy, a list of the minimum of required accomplishments (services) shall be approved upon agreement with each of the Russian National Trade Unions existing in the branch (sub-branch) of economy. Procedures of producing and approval of the minimum of required accomplishments (services) shall be determined by the Government of the Russian Federation.

The executive body of the subject of the Russian Federation shall produce and approve, on the basis of lists of the minimum of required accomplishments (services), produced and approved by the respective federal executive bodies, upon agreement with the respective territorial associations of trade union organizations (trade unions associations), territorial lists of the minimum of required accomplishments with the specification of the content and determination of the minimum of required accomplishments (services) in the territory of the respective subject of the Russian Federation.

The minimum of required accomplishments (services) in organization, subsidiary, representative office shall be determined upon agreement of the parties to collective industrial dispute in conjunction with a local government, on the basis of lists of the minimum of required accomplishments (services) within five days of the decision on calling a strike. The inclusion of any type of accomplishments (services) into the minimum list shall be justified by the fact of threat to civilians health or life. The minimum of required accomplishments (services) shall not include accomplishments (services), which are not provided in the respective lists of the minimum of required accomplishments (services).

In case of failure to achieve agreement, the minimum of required accomplishments (services) in organization (subsidiary, representative office) shall be determined by the executive body of the subject of the Russian Federation.

The decision of such body to establish the minimum of required accomplishments (services) for organization, subsidiary, representative office, can be appealed by the parties to collective industrial dispute.

In case of failure to provide for the minimum of required accomplishments (services) the strike shall be acknowledged unlawful.

Article 413. Unlawful strikes

Pursuant to the article 55 of the Constitution of the Russian Federation the following strikes shall be deemed unlawful and not permissible:

- (a) during the period of military or emergency situations or special procedures in accordance with the legislation on emergency situation; in the bodies and organizations of the Armed Forces of the Russian Federation, military, militarised or other formations and organizations providing for the country defence, State safety, repair-rescuing, search-rescuing, and anti-fire operations, prevention or elimination of the Acts of God and emergency situations; in law enforcement

bodies; in organizations dealing with highly hazardous facilities or machinery, at ambulance stations of first medical aid;

- (b) in the bodies of essential public services (energy, heating, water, gas supply, air-, railway and water transport) in case if the conduct of strike threatens to the country's defence and safety and to life and health of its people.

The right to strike may be limited by the federal statute.

The strike shall be unlawful if it was announced without considering the terms, procedures, and requirements of collective industrial dispute, stipulated herein.

The decision of acknowledgement of a strike being unlawful shall be adopted by supreme courts of republics, territorial, regional courts, municipal federal courts, courts of autonomous regions and circuits upon employer's or prosecutor's claim.

Award of a court shall be communicated to employees through the head of a striking unit which shall immediately inform of it the strike participants.

Once adopted, the award, which acknowledges the strike being unlawful, is subject to immediate enforcement. Employees shall terminate the strike and return to work not later than the day after the issue of a copy of such award to the head of a striking unit.

In case of a direct threat to life and health of people, the court shall be entitled to adjourn the non-started strike for the period of up to 30 days, in case of a strike in progress - to suspend it for the same period.

In cases of vital importance for the interests of the Russian Federation or parts of its territory, the Government of the Russian Federation shall be entitled to suspend a strike until the issue of award by the respective court, but not more than for ten calendar days.

In cases where a strike cannot be conducted subject to Parts I and II of this Article, the decision on a collective industrial dispute shall be issued by the Government of the Russian Federation within a ten days period.

Article 417. Responsibility of employees for unlawful strikes

Employees who have started a strike or failed to terminate it the day after the head striking unit was notified of the enacted award acknowledging the strike being unlawful, or adjournment or suspension of the strike, may be subject to disciplinary punishment for infringement of employment discipline.

The representative unit of employees, which called and failed to terminate the strike thereafter, shall be liable to indemnify for losses incurred by employer due to the strike at its own expense and in the amount determined by the court.

Federal Act (No. 10-FZ) on trade unions, their rights and guarantees of their activity of 1996 (relevant sections)

Article 2. Right to unite in trade unions

1. The trade union shall be a voluntary public entity of citizens linked by common producer and professional interests, according to the line of their activity, set up for the purposes of representation and protection of their social-and-labour rights and interests. All trade unions shall enjoy equal rights.
2. Every person attaining the age of 14 years and engaged in labour (professional) activity shall have the right to set up, at his discretion, trade unions for the protection of his interests to join these, to engage in trade union activity and to withdraw from trade unions. This right shall be exercised freely, without preliminary permission.
3. Russian Federation citizens resident outside Russian Federation territory may be members of Russian Federation trade unions.

4. Foreign citizens and stateless persons resident in Russian Federation territory may be members of Russian Federation trade unions, except in the cases established by Federal laws or international treaties of the Russian Federation.
5. Trade unions shall have the right to set up their own amalgamations (associations) according to the sectoral, territorial or other feature taking professional specifics into account, such as all-Russia amalgamations (associations) of trade unions, interregional amalgamations (associations) of trade unions, and territorial amalgamations (associations) of trade union organizations. Trade unions and their amalgamations (associations) shall have the right to cooperate with trade unions of other states, to enter into international trade union and other amalgamations and organizations, and to conclude treaties and agreements with them.

Article 3. Basic terms

The terms used for the purposes of the present Act shall have the following meaning:

Primary trade union organization. A voluntary association of trade union members working, as a rule, at one and the same enterprise, in one and the same institution, in one and the same organization, irrespective of form of ownership or subordination, operating on the basis of a statute adopted by it in conformity with its rules, or on the basis of a general statute of primary trade union organization of the respective trade union;

All-Russia trade union. A voluntary amalgamation of trade union members working in one or more branches of activity linked by common social-and-labour and professional interests, operating throughout Russian Federation territory or in the territories of over one-half of Russian Federation subjects or uniting at least one-half of the total number of workers of one or more branches of activity.

CASE NO. 2087

INTERIM REPORT

Complaint against the Government of Uruguay presented by the Association of Bank Employees of Uruguay (AEBU)

Allegations: The complainant organization alleges anti-union dismissals, irregular denouncement of a collective agreement and threats of dismissal

1002. The Committee last examined this case at its May-June 2002 meeting and on that occasion submitted an interim report [see 328th Report, paras. 606-616, approved by the Governing Body at its 284th meeting (June 2002)]. The Government sent its observations in a communication dated 30 December 2003.

1003. Uruguay has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

1004. When it examined this case at its May-June 2002 meeting, the Committee, noting that the Government stated that an administrative investigation was under way, which was initiated following a complaint lodged by the Association of Bank Employees of Uruguay (AEBU) against the Savings and Loans Cooperative of Officials of the Armed Forces (CAOFA) for anti-union acts (the denouncement of the collective agreement in force by the CAOFA

once it became aware of the intentions of the union leaders of the cooperative to become affiliated to the AEBU, the dismissal and transfer of a number of trade union members and threats of dismissal of workers who joined the AEBU), made the following recommendations [see 328th Report, para. 616]:

- the Committee urges the Government to: (1) take measures to ensure that the administrative investigation under way, of which it was informed in June 2001, is immediately concluded; (2) ensure that the investigation covers all the allegations made by the complainant in this case; and (3) communicate its observations, based on the information obtained in this respect;
- the Committee requests the Government that, if it finds that the dismissals and transfers in this case have occurred for anti-union reasons, it apply the sanctions laid down in the national legislation, referred to in its reply (a fine and the imposition of a legal penalty to pay special compensation), and to mediate between the parties in order to obtain the reinstatement of those workers affected.

B. The Government's reply

1005. In its communication of 30 December 2003, the Government states that in accordance with the decision of 28 April 2003 of the General Inspectorate for Labour and Social Security it was decided to penalize the Savings and Loans Cooperative of Officials of the Armed Forces (CAOFA) for violation of Conventions Nos. 87 and 98 in dismissing workers because of their trade union membership with a fine of 690 variable units (the equivalent of US\$5,347). The Government indicates that the CAOFA lodged administrative appeals against the administrative decision in question.

1006. Moreover, the Government sends a copy of Decision No. 78 of the Labour Court of First Instance, relating to the dismissal of the six workers in question for having joined the AEBU trade union, for which the CAOFA was sentenced to pay compensation for ordinary dismissal, abusive dismissal, leave, holiday pay and bonuses, and a further 25 per cent for damages and losses.

1007. Finally, the Government states that, as a result of the application of national law, it is not in a position to reinstate the dismissed worker, even given the evidence of anti-union persecution.

C. The Committee's conclusions

1008. *The Committee recalls that, in the present case, the complainant organization had alleged: (i) that the Savings and Loans Cooperative for Officials of the Armed Forces (CAOFA) denounced the collective agreement in force once it became aware of the intentions of union leaders of the cooperative to become affiliated to the Association of Bank Employees of Uruguay (AEBU); (ii) the dismissal of members of this trade union (Nelson Corbo, Eduardo Cevallos, Gonzalo Ribas, Andrea Oyharbide, Gerardo Olivieri and Marcelo Almadía) and the transfer of another member (Virginia Orrego); and (iii) that workers joining the AEBU were threatened with dismissal. Moreover, the Committee recalls that at its June 2002 meeting, it requested the Government to take measures to ensure that the administrative investigation, of which it was informed in June 2001, was immediately concluded, that the investigation covered all the allegations made by the complainant in the case and that the sanctions laid down in national legislation were applied, and to mediate between the parties in order to obtain the reinstatement of those workers affected.*

1009. *The Committee notes the Government's statement that: (1) the judicial authority of the first instance, in July 2002, sentenced the CAOFA to pay compensation for ordinary dismissal, plus compensation for abusive dismissal (with regard to abusive dismissal, the sentence*

indicated that “the complaint lodged should be conceded given that the nature of the plaintiffs’ tasks, their participation in negotiations at the Ministry of Labour and Social Security, requesting regularization of their situation in the face of infringements by the employer, and their membership of the AEBU have been proven, and that it has not been proven, according to the judicial authority that the alleged restructuring was the reason for these dismissals”; (2) a decision handed down by the National Inspectorate for Labour and Social Security, dated April 2003, penalized the CAOFA for having dismissed workers because of their trade union membership with a fine of 690 variable units – the equivalent of US\$5,347 – (this decision indicated that “it has been certified in decrees that the company carried out acts of anti-union discrimination that culminated in the dismissal of the trade union board”); (3) that the CAOFA lodged administrative appeals against this decision; and (4) the administrative authority, as a result of the application of national law, is not in a position to reinstate the dismissed worker, even given the evidence of anti-union persecution.

- 1010.** *In this respect, the Committee recalls that “the dismissal of workers on grounds of membership of an organization or trade union activities violates the principles of freedom of association” [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 702]. Noting that both the judicial authority and the administrative authority had established that the dismissal of the six trade union members in question arose as a result of their trade union membership, the Committee believes that this case involves with a serious violation of trade union rights and, in these circumstances: (1) it requests the Government to provide information on whether the legal decision of July 2002 has been carried out; (2) it requests the Government to take measures to expedite the administrative appeals lodged by the CAOFA against the administrative decision of April 2003 and provide information on the outcome; and (3) it once again requests the Government to mediate immediately between the parties in order to obtain the reinstatement without loss of pay of those workers affected.*
- 1011.** *Finally, the Committee regrets to note that the Government makes no reference to the allegations relating to: (i) the denouncement of the collective agreement by the CAOFA once it became aware of the intentions of union leaders of the cooperative to become affiliated to the AEBU; (ii) the transfer of trade union member Virginia Orrego; and (iii) the threats to dismiss workers who joined the AEBU. In these circumstances, the Committee urges the Government to send its observations in this respect without delay.*

The Committee’s recommendations

- 1012.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *Noting that both the judicial authority and the administrative authority have established that the dismissal of the six trade union members in question arose as a result of their trade union membership, the Committee considers that this case involves a serious violation of trade union rights and, in these circumstances: (1) it requests the Government to provide information on whether the legal decision of July 2002 has been carried out; (2) it requests the Government to take measures to expedite the administrative appeals lodged against the administrative decision of April 2003 and to provide information on the outcome; and (3) it once again requests the Government to mediate immediately between the parties in order to obtain the reinstatement without loss of pay of those workers affected.*

- (b) *The Committee regrets to note that the Government makes no reference to the allegations relating to: (i) the denouncement of the collective agreement by the CAOFA once it became aware of the intentions of union leaders of the cooperative to become affiliated to the AEBU; (ii) the transfer of trade union member Virginia Orrego; and (iii) the threats to dismiss workers who joined the AEBU. In these circumstances, the Committee urges the Government to send its observations in this respect without delay.*

CASE NO. 2174

INTERIM REPORT

**Complaint against the Government of Uruguay
presented by
the Staff Association of the Assistance Centre of the Medical
Trade Unions of Uruguay CASMU (AFCASMU)**

Allegations: The complainant alleges that the Assistance Centre of the Medical Trade Union of Uruguay suspended 46 workers without pay and ordered that proceedings be instituted against them for their participation in a strike, and that proceedings were instituted against five workers for having participated in a protest organized by the trade union outside the workplace and one year later the workers were dismissed

- 1013.** The Committee last examined this case at its November 2002 meeting [see 329th Report, paras. 779-798]. AFCASMU submitted new allegations on 15 June 2003.
- 1014.** The Government sent its observations in a communication dated 22 December 2003.
- 1015.** Uruguay has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 1016.** At its November 2002 meeting, the Committee made the following recommendations [see 329th Report, para. 798]:
- (a) taking into account the circumstances of this case, the Committee requests the Government to indicate why the CASMU preventively suspended 46 workers from their duties without pay and instituted proceedings against them. Also, given that they were reinstated five days after the day of the partial strike, the Committee requests the Government to indicate whether these workers were paid the wages withheld during the five days that the examination procedures lasted, and also whether these workers still run the risk of being punished or whether the disciplinary proceedings have been filed. The Committee requests the Government to keep it informed in this respect; and

- (b) the Committee notes with concern the allegation relating to the proceedings instituted against five workers of the CASMU for having participated in a protest organized by the trade union outside the workplace in response to economic measures adopted by the Government, and requests the Government to communicate its observations in this respect without delay and in particular to inform it about the result of the proceedings in question.

B. New allegations

- 1017.** In its communication of 15 June 2003, the complainant organization, referring to subparagraph (b) of the Committee's recommendations, alleges the dismissal of Graciela Sadi, Daniel Fernández, Julio César Ximénez, Héctor Pereira and Cyro Simoes in June 2003, against whom proceedings had been instituted for having participated in a protest during the visit of the President of the Republic to a teaching facility near the workplace.

C. The Government's reply

- 1018.** In its communication of 22 December 2003, the Government indicates, with regard to the administrative proceedings carried out by the technical/administrative management of the CASMU and the suspension without pay of the workers who participated in the strike of 14 January 2002, that these proceedings concluded on 21 January 2002 with the decision to lift the preventive suspension of the workers and reinstate them to their posts. For this reason and taking into account that, with the workers having been reinstated, there no longer existed any threat of infringement of rights, the appeal for legal protection (an exceptional and unusual recourse) lodged by the complainant organization was refused, leaving the parties with the possibility of ordinary judicial recourse. The Government adds that the labour inspectorate has received no complaint and that it will keep the Committee informed of any ordinary judicial proceedings begun by the complainant organization.
- 1019.** With regard to the proceedings against five trade union members for their participation in a protest against the President of the Republic, the Government states that it has notified the management of the CASMU to provide information on the means of dismissal adopted and the General Labour Inspectorate so that it may carry out an administrative investigation without a complaint having been laid, and that once it has received this information it will inform the Committee.

D. The Committee's conclusions

- 1020.** *The Committee notes that the present complaint refers to: (1) the institution of administrative proceedings and the suspension without pay of 46 of the 78 workers who took part in a strike on 14 January 2002 at the Assistance Centre of the Medical Trade Union of Uruguay (CASMU) because of persistent delays in payment of wages and the failure to pay holiday pay; and (2) the institution of administrative proceedings and the subsequent dismissal of five trade union members, Graciela Sadi, Daniel Fernández, Julio César Ximénez, Héctor Pereira and Cyro Simoes, because of their participation in a protest against the President of the Republic outside working hours.*
- 1021.** *The Committee recalls that in its previous examination of the case it had requested the Government to indicate why the CASMU preventively suspended 46 workers from their duties without pay and instituted proceedings against them, and also to indicate whether, once these workers were reinstated, they were paid the wages withheld during the five days that the examination proceedings lasted. The Committee regrets to note that, in spite of the time that has passed since its last examination of the case (November 2002), the Government has not provided the requested information and has merely repeated the*

reasons why the appeal for protection (which is an exceptional and unusual recourse) was refused because these workers were reinstated and that the parties had the possibility of ordinary judicial recourse. The Committee, once again, requests the Government to send the information requested without delay.

- 1022.** *With regard to the administrative proceedings and subsequent dismissal of Graciela Sadi, Daniel Fernández, Julio César Ximénez, Héctor Pereira and Cyro Simoes allegedly because of their participation in a protest against the President of the Republic, the Committee also regrets to note that in spite of the lengthy period of time that has passed since its last examination of the case, the Government has confined itself to providing the information that it has notified the CASMU to provide information on these measures and has notified the General Labour Inspectorate so that it may begin an administrative investigation without any complaint having been laid. The Committee recalls that it is contrary to the principles of freedom of association that trade union members be dismissed as a result of their participation in protest actions, which, according to what can be deduced from the present case, took place peacefully. The Committee urges the Government to take steps to ensure that the administrative investigation concludes without delay and should it show that the dismissals arose as a result of the participation of the trade union members in the protest, that it take steps to ensure the workers' reinstatement in their posts. The Committee requests the Government to send it all decisions handed down in this respect.*

The Committee's recommendations

- 1023.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee once again requests the Government to indicate, without delay, why the CASMU preventively suspended 46 workers from their duties without pay and instituted proceedings against them, and whether, on reinstatement, they were paid the wages withheld during the five days that the examination proceedings lasted.*
 - (b) With regard to the institution of administrative proceedings and subsequent dismissal of Graciela Sadi, Daniel Fernández, Julio César Ximénez, Héctor Pereira and Cyro Simoes allegedly because of their participation in a protest against the President of the Republic, the Committee urges the Government to take steps to ensure that the administrative investigation being carried out by the General Labour Inspectorate concludes without delay and, should it show that the dismissals arose as a result of the participation of the trade union members in the protest, that it take steps to ensure the workers' reinstatement in their posts. The Committee requests the Government to send it all decisions handed down in this respect.*

CASE NO. 2088

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

**Complaint against the Government of Venezuela
presented by
the National Organized Single Trade Union of Court and
Council of the Judiciary Workers (SUONTRAJ)**

Allegations: Dismissals and disciplinary proceedings against trade union officers of the Judiciary, obstruction of collective bargaining, limitations on the use of the trade union headquarters of the complainant organization, detention of a trade union officer and surveillance of a trade union officer

- 1024.** The Committee last examined this case at its March 2003 meeting and submitted an interim report to the Governing Body [see 330th Report, paras. 1112-1130, approved by the Governing Body at its 286th Session (March 2003)].
- 1025.** Subsequently, the Government sent new observations in a communication dated 10 September 2003.
- 1026.** 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

- 1027.** At its March 2003 meeting, the Committee made the following recommendations on the allegations that remained pending [see 330th Report, para. 1130]:
- The Committee requests the Government to take steps to ensure that the competent authorities declare the disciplinary proceedings of dismissal relating to trade union officers María de la Esperanza Hermida, Luis Martín and Rodolfo Ascanio null and void.
 - The Committee requests the Government to intercede with the parties with a view to obtaining the reinstatement of trade union officers Oscar Romero and Isidro Ríos.
 - The Committee requests the competent authorities to guarantee that the complainant may organize meetings and activities at its headquarters outside designated working hours and that they resolve the issues of security that have arisen as a result of the building in question, housing legal offices and the headquarters of the National Assembly.
 - The Committee requests the Government to take steps to encourage negotiation of the draft collective agreement between SUONTRAJ and SUNET, on the one hand, and the employer on the other.

- The Committee requests the Government to send without delay its observations on the alleged detention of trade union officer Oscar Romero by the National Guard on 17 February 2000.
- With regard to the alleged surveillance of trade union official Rodolfo Ascanio, the Committee invites the complainant to provide its observations on the Government's reply.

B. The Government's reply

- 1028.** In its communication of 10 September 2003, the Government states that, in accordance with the decree on the transition plan of the authorities in 1999, and the reorganizing of the judicial system, the Council of the Judicature was barred from continuing with the administrative proceedings, as a result of which the proceedings initiated against María de la Esperanza Hermida, Luis Martín and Rodolfo Ascanio came to a halt and these public employees remain in their posts.
- 1029.** The Government adds that the administrative authority confirmed that Oscar Romero and Isidro Ríos had committed a disciplinary offence that led to their dismissal in a procedure in which they were guaranteed due process, and this procedure was not the result of their positions as trade union officials. The Government repeats its previous reply to this allegation.
- 1030.** With regard to the right of the trade union to hold meetings outside designated working hours, the Government states that public employees are permitted to enter the building so long as they have given prior notice in writing so that the security of the individuals and the premises may be ensured.
- 1031.** With regard to the Committee's recommendation relating to encouraging collective bargaining, the Government states that it is pleased to announce that the competent authorities are carrying out economic studies to establish the cost of the draft collective agreement with SUONTRAJ and SUNET.
- 1032.** With regard to the alleged detention of trade union official Oscar Romero by the National Guard on 17 February 2000, the Government denies this allegation and states that what happened was that Mr. Romero tried to enter court headquarters with alcoholic drinks which is not permitted by judicial order. According to the police statement, which it has attached, it seems that the National Guard only prevented Mr. Romero from distributing the bottles of beer that he was carrying and that he was not detained or mistreated.

C. The Committee's conclusions

- 1033.** *The Committee notes the Government's statements according to which: (1) the disciplinary proceedings against trade union officials María de la Esperanza Hermida, Luis Martín and Rodolfo Ascanio were brought to a halt; (2) the competent authorities carried out economic studies to establish the cost of the draft collective agreement with SUONTRAJ and SUNET; (3) trade union official Oscar Romero was not detained; he was only prevented from entering court headquarters with alcoholic drinks; (4) with regard to the right of the trade union to hold meetings outside designated working hours, entry is permitted to those public employees who have given prior written notice in order to ensure the security of individuals and premises.*

1034. *The Committee notes, however, that the Government repeats its previous point of view with regard to the dismissal of trade union officials Oscar Romero and Isidro Ríos. The Committee regrets that the Government makes no mention in its reply to any intercession with the parties (contrary to the Committee's request) in order to obtain the reinstatement of the trade union officials mentioned and, therefore, it repeats, once again, its conclusions. Therefore the Committee requests the Government to intercede with the parties with a view to obtaining the reinstatement of trade union officials Raphael Romero Machado and Isidro Ríos. The Committee requests the Government to keep it informed in this respect.*

1035. *Finally, the Committee notes that the complainant organization has not provided its observations, as requested on the Government's reply relating to the alleged surveillance by the National Guard of trade union official Rodolfo Ascanio. Therefore, the Committee will not proceed to examine this allegation.*

The Committee's recommendation

1036. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:*

The Committee requests the Government to intercede with the parties with a view to obtaining the reinstatement of trade union officials Rafael Romero Machado and Isidro Ríos and requests the Government to keep it informed in this respect.

CASE NO. 2249

INTERIM REPORT

**Complaints against the Government of Venezuela
presented by**

- the Venezuelan Workers' Confederation (CTV)
- the International Confederation of Free Trade Unions (ICFTU)
- the National Union of Oil, Gas, Petrochemical and Refinery Workers (UNAPETROL) and
- the National Single Federation of Public Employees (FEDEUNEP)

Allegations: Murder of a trade unionist; refusal to register a trade union; hostile statements by the authorities against the CTV; detention order against the CTV president; promotion of a parallel confederation by the authorities; obstruction of collective bargaining in the oil industry; detention orders and criminal proceedings against trade union officials; dismissal of more than 19,000 workers because of their trade union activities; non-compliance with collective agreements; interference by the authorities and by the Petróleos de Venezuela S.A. (PDVSA) enterprise, and anti-union acts; delays in proceedings concerning violations of trade union rights; negotiation with minority public employee organizations in disregard of the most representative ones; and action by the authorities to divide trade unions

- 1037.** The first complaint is contained in a communication dated 20 February 2003 from the Venezuelan Workers' Confederation (CTV), which sent additional information in a communication dated 28 February 2003. In a communication dated 27 February 2003 the International Confederation of Free Trade Unions (ICFTU) supported the complaint from the CTV, and in a communication dated 5 May 2003 it sent new allegations. In a communication dated 4 March 2003, the National Union of Oil, Gas, Petrochemical and Refinery Workers (UNAPETROL) submitted another complaint, and sent new allegations in communications dated 19 May, 29 August, 25 September and 6 November 2003. In a communication dated 11 April 2003, received on 3 June 2003, the National Single Federation of Public Employees (FEDEUNEP) submitted a new complaint and supplied additional information in a communication dated 10 October 2003.
- 1038.** The Government sent its observations in communications dated 31 October 2003 and 3 March 2004, the latter being received one day before the meeting of the Committee.
- 1039.** Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 1040.** In its communication dated 20 February 2003, the CTV, supported by the ICFTU in a communication dated 27 February 2003, alleges that the President of the Republic: refused to recognize the CTV leadership; was promoting the establishment of a workers' confederation supportive of his party using all the power of the State; and, in a public address on 9 February 2003 attacked the CTV saying that, "the CTV must disappear from the Venezuelan scene and a workers' movement ... a Venezuelan labour confederation must be born because these gangsters ..." [referring to its leadership] "should be imprisoned as saboteurs, fascists, irresponsible people and delinquents". The reason for these statements was the CTV's participation in the "national civic work stoppage" since 2 December 2002.
- 1041.** The CTV and the ICFTU allege that on 19 February 2003 a detention order was issued against the president of the CTV, Mr. Carlos Ortega, who was persecuted continuously for days by state security guards with the aim of imprisoning him. The detention order was based on the presumed perpetration (during the "national civic work stoppage") of political offences (treason, incitement to crime, criminal damage) and was issued without the guarantees of due process being upheld, by a judge who patently identified with the Government and therefore lacked impartiality.
- 1042.** In its communication of 28 February 2003, the CTV alleges that, during the "national civic work stoppage" which had been taking place in Venezuela since 2 December 2002 and is still going on in the national oil industry. On 17 January 2003, in the city of Valencia in the State of Carabobo, the National Guard General Luis Felipe Acosta Carles raided the premises of Panamco de Venezuela S.A., an enterprise engaged in the production and distribution of Coca-Cola beverages. The purpose of the military action was to confiscate the beverages stored on the premises, whose owners were allegedly hoarding essential goods. The military personnel who carried out the operation acted violently, resulting in serious injury not only to groups of civilians outside the plant but also to a group of workers who were officials of the Beverage Industry Union of the State of Carabobo, an organization affiliated to the Federation of Beverage Industry Workers, which in turn is affiliated to the CTV. The victims of the attack were in and around the company premises because they had been collecting outstanding benefit payments. The cause of the scuffles was their protest at the arbitrary conduct of the National Guard and because the confiscation of the goods represented a threat to their jobs. Faustino Villamediana, José Gregorio Flores Gallardo, Jhonathan Magdaleno Rivas, Juan Carlos Zavala and Ramón Díaz were detained illegally and tortured, being beaten with sticks and truncheons, in flagrant violation of their human rights.
- 1043.** In its communication of 5 May 2003, the ICFTU reported the murder of Mr. Numar Ricardo Herrera, a member of the Federation of Construction Workers, on 1 May 2003 during a peaceful trade union march in Caracas, when unidentified persons fired on the participants. Other workers were also injured.
- 1044.** In its communications of 4 March, 19 May, 29 August, 25 September and 6 November 2003, UNAPETROL alleges that despite sending the relevant documentation to the Ministry of Labour on 3 July 2002, the aforementioned organization (established with the participation of 495 workers) has not been registered.
- 1045.** On 29 July 2002, the Ministry of Labour asked the State enterprise Petróleos de Venezuela S.A. (PDVSA) for a description of the duties performed in the enterprise by the promoters of UNAPETROL; the enterprise claimed in August 2002 that the Ministry should not grant registration, considering the trade union members as representatives of the employer and management.

- 1046.** On 2 August 2002, the National Inspectorate and Collective Labour Matters of the Ministry of Labour, echoing the PDVSA statement, issued administrative Decree No. 2002-036, stating that registration of the UNAPETROL trade union was refused “on the grounds that, under article 148 of the regulations of the Organic Labour Act, a trade union which claims to represent the interests of both workers and employers, and is composed of workers who constitute the senior and middle management of the enterprise, may not be established”.
- 1047.** UNAPETROL refers to various irregularities, describes the various proceedings and decisions of the authorities and states that they have given rise to delays and to the refusal to register the organization. In addition, since December 2002, PDVSA has dismissed more than 19,000 workers, including workers affiliated to UNAPETROL, for supposed “lack of integrity” or “immoral conduct at work”, despite the fact that article 450 of the Organic Labour Act guarantees the irremovability of workers affiliated to a trade union which is being established. These mass dismissals were also unjustified and were undertaken without any prior assessment by the labour inspector, in breach of the legislation and collective agreement in force. The employer failed to inform the Ministry of Labour and request due authorization from the latter, which also took no action to ensure that the rule of law was applied and thus suspend the dismissals, and did not put forward reasons of social interest to prevent them.
- 1048.** In this respect, article 34 of the Organic Labour Act states that the Ministry may, by means of a special decision, suspend mass dismissals for reasons of social interest. No such decision was issued by the Ministry, even though the limit for dismissals laid down in the aforementioned article had been exceeded, namely 10 per cent of the workforce for enterprises with more than 100 workers. Similarly, the labour inspectorates (under the authority of the Ministry) did not summon the employer in accordance with the procedure laid down in article 63 of the regulations of the Organic Labour Act. Furthermore, the employer did not meet the terms of article 34 since the dismissals were not due to a staff reduction plan in which economic circumstances had been cited, or to a progress or technological modification plan. Even more serious is the fact that the dismissals occurred at a time when the workers were exercising their right to organize with respect to the UNAPETROL union.
- 1049.** In addition, clause 49 of the collective agreement protecting the workers states that the latter may only be dismissed on good grounds that have been previously proven by the judicial bodies; in such cases the agreement provides for social benefits such as seniority pay. At present the workers are not entitled to medical assistance or provisions of essential goods, nor do their children have the right to schooling. The clauses concerning the trade union conciliation procedure for resolving matters pertaining to the workers, as well as other clauses, have also been violated.
- 1050.** Furthermore, PDVSA requested its subsidiaries in writing not to hire the dismissed workers and sent a similar letter to the Cypriot Hanseatic Shipping Company mentioning 168 workers. The dismissed workers – who submitted administrative and judicial appeals – have no access to their private saving funds and legal proceedings were initiated to evict the workers and their families from the housing to which they were entitled under the collective agreement in the residential zones of the areas in question. Thus hundreds of workers were evicted from their housing in the State of Falcón by judicial decision and 21 evictions took place in San Tomé and Anaco oilfields in the State of Anzoátegui. PDVSA requested the judiciary to declare null and void article 32 of the Organic Oil and Gas Act concerning the stability of workers and contractors, claiming that the country’s workers are discriminated against with respect to those in the oil industry. This request to the judiciary was made after the mass dismissals (47.5 per cent of the workforce).

- 1051.** In addition, UNAPETROL alleges that, on 26 February 2003, detention orders were issued against its president and labour management secretary, Horacio Medina and Edgar Quijano, respectively, at the request of the Office of the Attorney-General of the Republic of Venezuela, by a penal court for presumed acts of sabotage and damage to installations at the PDVSA enterprise (alleged discontinuation of electricity or gas supplies), as well as presumed political offences. These detention orders were issued without fulfilling the guarantees of due process, both by the representatives of the Attorney-General's Office and by the judge, who openly identify with the Government and thus lack impartiality. Similar actions were taken with respect to other UNAPETROL members (Juan Fernandez, Lino Carrillo, Mireya Ripanti de Amaya, Gonzalo Feijoo and Juan Luis Santana, former company directors).
- 1052.** These acts of persecution against certain UNAPETROL members and other workers of PDVSA constitute the most recent chapter in the systematic harassment to which oil workers have been exposed in the last three to four years, especially by the loss prevention and control management of the enterprise, by a new pro-government workers' organization called the Association of Oil Workers (ASOPETROLEROS), and even by the PDVSA president. This harassment has consisted of verbal and written threats via e-mail and Intranet; transfers of trained staff for political reasons; persecutions and espionage; arbitrary decisions concerning the structure and functioning of PDVSA and its subsidiaries having a direct effect on the workers; and obstructing the establishment of UNAPETROL. Faced with these abuses, the appeals made received no reply. UNAPETROL points out that a statement from the authorities was also requested concerning the dismissal of thousands of workers for participating in actions to defend their labour rights and in particular as a consequence of the work stoppage that took place.
- 1053.** In its communications of 11 April and 10 October 2003, FEDEUNEP explained that in July 2002 the National Electoral Council validated its electoral process and in August the Federation approved a draft fourth collective agreement and authorized the National Executive Committee to submit the draft to the Ministry of Labour for negotiation, and this was done on 17 September 2002. Twenty-four hours after submission of the draft, a communication was received from the labour inspector containing a set of observations and demands, exceeding those which the inspector was legally entitled to make and also adopting a position corresponding to that of the employer, i.e. formulating exceptions and objections to the draft collective agreement, blatantly favouring the employer and demanding that procedures be completed and documents supplied within 15 days, many of them physically impossible to obtain within the deadline and not required by law. FEDEUNEP replied to the communication in question, supplied explanatory information and pointed out that the labour inspector was not competent to reject a draft collective agreement which complied with the formalities of the Organic Labour Act. However, again in less than 24 hours, without any direct notification, an administrative ruling was issued by the labour inspector stating that he considered the procedure to be concluded and rejecting the draft collective agreement. Meanwhile the President of the Republic was holding events throughout the country, calling them trade union meetings, even though the statements made were of an entirely party-political nature, accompanied by a small group of dissidents from the country's organized trade union movement, who were defeated in the electoral process; in the statements the President said that he would only recognize the aforementioned group, in open violation of ILO Conventions Nos. 87 and 98.
- 1054.** The Ministry of Labour, for its part, in violation of the law, allowed and initiated immediate discussions concerning a draft collective agreement submitted with the illegal use of the FEDEUNEP name and logo by six union leaders (of a total of 17), i.e. a minority group without rank or representativeness for such an action. In March 2003, the Federation, exercising its legitimate right of defence, sought in the First Administrative Court a judicial decision warning the National Executive to rectify the breach in the law.

When the Court issued an interim ruling in favour of FEDEUNEP, the latter submitted the draft fourth framework agreement approved in the general council of affiliated unions, and this was rejected by the Ministry of Labour in open violation of the Organic Labour Act and its regulations.

- 1055.** The aforementioned six officials (now expelled) formed a federation (FENTRASEP) which was endorsed by the government authorities and the Ministry of Labour itself, which legalized it so that it could pursue, but under a different name, the discussions concerning the fourth framework agreement, which it had initiated illegally and as a means of circumventing the interim ruling of the Court.
- 1056.** The Government signed the collective agreement with FENTRASEP, excluding local government employees and a series of clauses which had been in force since 2000 when FEDEUNEP signed the third framework agreement. The same group of persons is seeking to sign collective agreements in local government offices, even though the legitimate trade unions and federations in those sectors were victorious in the 2001 elections.
- 1057.** Moreover, FEDEUNEP alleges that the trade union sector has suffered reprisals owing to the events of 11-14 April 2002 in Venezuela, in particular the opening of disciplinary proceedings aimed at removing from office the leaders of unions affiliated to FEDEUNEP, including Mr. Gustavo Silva, general secretary of SINTRAFORP, and Dr. Cecilia Palma, president of the FEDEUNEP disciplinary tribunal (who, not coincidentally, chairs the disciplinary tribunal which is examining the expulsion of the dissident officials). Dr. Palma was dismissed on a false charge of insubordination, lack of integrity and slander while on full-time leave performing her union activities, i.e. Dr. Palma's resulting unavailability to the employer was deemed to be insubordination. The other charges are based on statements made by hostile employees representing the government authorities and therefore have no legal validity whatsoever. FEDEUNEP points out that, owing to the prevailing political climate in the country, a strike on account of the refusal to discuss a collective agreement would have resulted in the employees being threatened with dismissal, as well as running the risk of physical assault from violent groups if other protests had been made.

B. The Government's reply

- 1058.** In its communication of 31 October 2003, the Government, in reply to the allegations made by the planned trade union UNAPETROL, states that certain groups of former workers (senior and middle managers) from PDVSA were responsible throughout 2002 for a series of protests and illegal actions paralysing administrative sectors of strategic importance for the oil industry. Since then they have undertaken various protests and illegal stoppages, starting with allegations of irregularities regarding the legal and sovereign appointment (by the President of the Republic) of a new board of directors for PDVSA in February 2002.
- 1059.** It should be noted that the trade unions and workers organizations which comprise the contractual and daily workforce did not participate on a large scale in the abovementioned "civic work stoppage" which caused substantial damage to the oil industry. These organizations include the Venezuelan Federation of Oil, Chemical and Allied Workers (FEDEPETROL), the Federation of Oil and Allied Industry Workers (FETRAHIDROCARBUROS) and the National Single Union of Oil Workers (SINUTRAPETROL), who account for 100 per cent of the contractual and daily workforce. In a joint communication entitled "The oil workers of Venezuela, to the international community represented at the International Labour Organization. To the workers of the world", representatives of these workers made the following statement:

The work stoppage in question was never based on any labour, economic or social demands, for the simple reason that the senior and middle managers do not favour collective bargaining since they are not covered by it. This was a work stoppage whose purpose was to overthrow the President of the Republic, who was legitimately elected by the people and has declared that any alternative aimed at removing him from office must be sought in the framework of the Constitution of the Republic. Those who favoured the work stoppage were the people who had deceived the workers for years from their high executive positions in the oil industry and disregarded their rights, while establishing a whole system of unsavoury privileges and thus always remaining distant from the oil industry workers who were on the contractual payroll.

- 1060.** More specifically, the Government states that, in February 2002, on the pretext of respect for the “meritocracy”, the former senior and middle managers began to “claim irregularities” in the appointment of a new board of directors for PDVSA, an appointment which was in conformity with the law and clearly laid down in the Organic Oil and Gas Act adopted in November 2001. The slogan adopted at the time was “an alleged violation of the ‘meritocracy’”, the latter being defined as the rise of administrative workers, including senior and middle managers, to highly important posts within the industry. This certainly entailed some sort of demand by the industry’s workers in view of the fact that it was not covered by the existing collective agreement or labour legislation in force, namely the Organic Labour Act and its regulations. In March 2002, the political protests were stepped up by these managers, who used blackmail, manipulation of the media (radio, television and press) to convince various oil industry professionals to undertake staggered, partial stoppages of an illegal nature in various administrative areas, refineries and plants of the state oil enterprise PDVSA and its subsidiaries.
- 1061.** In March 2002, the senior and middle managers continued the partial stoppages in fundamental sectors of the industry, without using any established procedure laid down in the Organic Labour Act and its regulations. These were clearly acts of sabotage and political actions, given the strategic significance of the oil industry for the Bolivarian Republic of Venezuela inasmuch as it generates 95 per cent of foreign exchange and revenues to meet public demand for goods, services, education, health care, social programmes, etc. There are also other elements which establish the clear irregularity entailed in the flagrant dereliction of their duties. These former workers abused their employment contract to carry out illegal stoppages of a political nature; as a result, the President of the Republic took the decision to dismiss publicly various managers and retire others in April 2002.
- 1062.** In mid-March, a parliamentary committee was formed to mediate in the “conflict” created by the PDVSA senior and middle managers. The mediating committee demonstrates the firm resolve of the Executive and State of Venezuela to settle disputes by means of dialogue. The representative of the PDVSA Employees’ Conflict Committee and spokesman for the administrative staff of the PDVSA senior and middle management is Mr. Horacio Medina, who would subsequently be the president of the planned trade union UNAPETROL (in addition to having responsibility for business management, as a member of the PDVSA middle management).
- 1063.** Immediately afterwards, on 9 April 2002, the CTV, senior and middle managers of the state oil enterprise PDVSA, the employers’ organization FEDECAMARAS and sections of the political opposition to the Government called an “indefinite general work stoppage”, and convened a march for 11 April which was due to go from Parque del Este to PDVSA headquarters in Chuao, both locations within the Municipality of Chacao de Caracas. The PDVSA senior and middle managers took part in this political activity, once again in dereliction of their duties, actively participating in the coup d’état of 12 April 2002, showing once again that the intentions of these former PDVSA workers were, and still are, political actions with the specific aim of rejecting the legitimate authorities of the State of

Venezuela, rejecting the Constitution and the democratic regime which prevails in the Republic.

- 1064.** The mass march planned for 11 April, referred to above, was diverted from its original route as a result of the unrest caused by the leading representatives of the CTV, FEDECAMARAS, PDVSA senior and middle managers, as well as other political leaders, with the aim of taking the march as far as the Palace of Miraflores, the seat of the Presidency of the Republic, in the Free Municipality of Caracas (about eight kilometres from the original destination of the march authorized by the relevant authorities, namely PDVSA headquarters in Chuao).
- 1065.** In the vicinity of the Government Palace government supporters were gathered together, as was known by the conveners of the opposition march; at the same time the National Guard was seeking to prevent the two demonstrations (for and against the Government) from meeting, producing a series of violent clashes, which ultimately resulted in 18 deaths and dozens of casualties. This situation was used as justification, combined with the “meritocracy” proclaimed by the now former PDVSA workers, for the coup d’état which established as de facto President, for less than 48 hours, the president of FEDECAMARAS, who at the time had taken refuge in the Republic of Colombia and was a fugitive from Venezuelan justice.
- 1066.** These are the same former workers who comprise the planned trade union UNAPETROL, who were members of the PDVSA senior and middle management, who were involved in the coup d’état, rejecting the legal PDVSA board of directors, who illegally instigated stoppages on various occasions in the oil industry, and who demonstrated overt political opposition to the Head of State.
- 1067.** It should be noted that these former senior and middle managers were pardoned and no form of reprisal was taken against them after the Venezuelan people and the national armed forces re-established democracy, restoring the Constitution and the powers of the State abolished by the dictator Carmona. They were not punished after the people restored the President of the Republic to power who had been detained and abducted by a group of military accomplices of the dictator Carmona. Even the President of the Republic, on returning as Head of State on the morning of 14 April 2002, accepted the resignation of the PDVSA board of directors, which had been communicated to him by the PDVSA board days before the illegal oil industry stoppage and the coup d’état.
- 1068.** Subsequently, the dismissed managers were incorporated in the reorganization of the new PDVSA board of directors, no action of any kind was taken against those who supported the illegal work stoppage, at the conciliation meetings some members of the senior and middle management who illegally paralysed activities formed part of the PDVSA board of directors or its senior management, until they again illegally paralysed the enterprise in December 2002, this time calling for the revocation of the mandate of the Head of State. Prior to the work stoppage in December 2002, these former PDVSA senior and middle managers joined the stoppage of 21 October, again called a “national work stoppage”, convened by the business sectors represented in FEDECAMARAS and part of the workers’ sector under the control of the CTV, with no explanation given of the grounds for the stoppage.
- 1069.** At the same time, also in October, various sections of the opposition, including the former senior and middle managers now representing the planned union UNAPETROL, “collected” a number of signatures which were presented on 4 November to the National Electoral Council, where they requested a consultative referendum to be carried out in order to ask the question “Do you agree with requesting the President of the Republic, citizen Hugo Chávez Frías, to relinquish his post voluntarily and immediately?” This

request was unconstitutional since a consultative referendum is concerned with matters of national relevance, not with the revocation of mandates: the latter is covered by a revocatory referendum laid down in article 72 of the Constitution of the Bolivarian Republic of Venezuela.

- 1070.** These former PDVSA senior and middle managers, as well as various political parties, FEDECAMARAS, the CTV and dissident sections of the national armed forces issued the call for an indefinite “civic work stoppage” on a nationwide basis. The evolution and impact of the “stoppage” affected the social, political and economic levels. On the national economic level, the stoppage was basically sustained by total paralysis of the oil industry; 85 per cent of the working class did not take part in the aforementioned stoppage and an equivalent percentage did not support this act of sabotage aimed at overthrowing the democratically elected government. The only participants were some small businesses, most of which were obliged to close by sections of the opposition, and some public services, as well as basic services of the public subsector controlled by the opposition (including health care, education and local government offices).
- 1071.** Subsequently, the private banks joined in the stoppage, limiting their public opening hours and in turn restricting financial operations at national and international level. At the same time, senior and middle managers of the oil industry, which was at a standstill, set themselves the task of sabotaging the industry’s operations through the disconnection and closure of computer control systems. This was done on orders from the senior and middle managers already frequently referred to in the present allegations, who also issued instructions to the workers on the daily and contractual payrolls of PDVSA and their subsidiaries to return home. The paralysis of the oil industry affected other sectors of industry which depended on primary production; it also paralysed a number of businesses which were obliged to stop or reduce their operations for lack of fuel. One example of this was the transport sector, which never took part in the work stoppage but was partially and involuntarily paralysed on certain occasions for lack of fuel.
- 1072.** On a daily basis, during the paralysis of the oil industry, some former members of the PDVSA board of directors – former PDVSA senior and middle managers, who had been pardoned and were back in their posts after the coup d’état of April 2002 – appeared in the opposition media, once again making explicit calls “to paralyse the industry until the dictator departs”. This continued for nearly two months, with the voluntary dereliction of their duty posts being a clear, precise, well-known and public feature of the situation.
- 1073.** During the paralysis of the oil industry, the price of oil had an impact on the international economy. This increase was due not only to the reduction in Venezuelan oil stock on the market but also in the drop in fuel sales in countries to which Venezuela exports its products, including Central American and Caribbean countries. It depleted the oil reserves of these countries which enjoy preferential sales. The main customer of the region, the United States, also suffered the repercussions of this illegal work stoppage whose aim was to overthrow a democratically elected president. It also produced something which had been unthinkable in Venezuela, one of the leading oil producers, in the last 80 years: imports of petrol.
- 1074.** The work stoppage instigated by the former senior and middle managers and former and planned leaders of UNAPETROL, as well as the former presidents of FEDECAMARAS and the CTV, Carlos Fernandez, Carlos Ortega and members of the executive committee of each of the named trade unions, gave rise to the closure of various private businesses and enterprises, especially in the sector of goods and services, which reduced the capacity of society to meet the needs of the Venezuelan people with respect to health care, foodstuffs and education, among others. This embroiled the country in a massive crisis of major impact, with the direct aim of bringing down the President of the Republic and the

authority conferred on him by the sovereign people of Venezuela in free and democratic elections.

- 1075.** In political terms, the stoppage went beyond national boundaries, not only involving the international community but also the Organization of American States (OAS), the leading regional organization, as well as its member countries in statements of support for Venezuelan democracy and for the work of the “facilitator” of negotiations and agreements between the national government and the opposition, under way since November 2002. The facilitating role was performed by the OAS Secretary-General, Dr. César Gaviria, at the request of the national executive and as a way of seeking a peaceful solution to the acute crisis.
- 1076.** Despite dialogue being instigated, these former oil workers and the irrational sections of the opposition in Venezuela nevertheless prompted the stoppage of activities in our principal industry. This means that the aim of these former senior and middle managers and their supporters in the industry was not the “meritocracy” or better working conditions than those which they more than any other section of Venezuelan society have enjoyed historically. It is apparent that the intention was to overthrow President Hugo Chávez Frías and to this end they are almost destroying the oil industry in Venezuela.
- 1077.** As regards the sociocultural aspect, the implications of this episode of sabotage for the oil economy and industry should also be analysed. It is reflected in the mental health of the Venezuelan people, their social development being restricted in the majority of cases. The private media were not communicating: they were issuing dirty propaganda and lying to the national and international community; the public media were not informing people, they were manipulating and distorting information, causing offence and showing a direct bias towards a specific wealthy sector of the population. The climate of political conflict and social aggression fostered by the opposition and their media has imposed an emotional burden on the people which has not left everyone unscathed, with a heavy impact on the most vulnerable age groups, such as the elderly and children, who have been systematically exposed to visual and audio messages containing various forms of violence, infringing in most cases people’s right to free development of personality, to recreation and to living in peace. These events involved the active and systematic participation of the opposition leaders and the 18,000 people dismissed from the oil industry, dismissals which were the result of their voluntary dereliction of duty for more than 60 days, the time limit for launching the procedure for legal dismissal in accordance with the labour standards in force.
- 1078.** To sum up, all the actions of the former oil industry managers, described above, was the result of a well-conceived plan which cost US\$10 billion in losses for the Republic owing to the illegal paralysis of the oil industry. All of this was accompanied by shipping used for the nationwide transfer of fuel and for the transport of oil and its by-products to world markets being brought to a standstill, and remote sabotage or blockage via Internet or satellite of computer systems for the automated control of extraction, refining, distribution and marketing activities. It resulted in the PDVSA daily and contractual workers being unable to exercise their right to work, as well as causing GDP to plummet, inflation to rise and unemployment to soar on an unimaginable scale, with the loss of 500,000 jobs. The trade unions FEDEPETROL, FETRAHIDROCARBUROS and SINUTRAPETROL issued a press release which is reproduced in the next paragraph.
- 1079.** “We, the workers on the contractual payroll, never participated in the work stoppage and kept the oil and gas supply plants in operation, which was a difficult task. We had to do the work of the senior managers, in view of their dereliction of duties in the absence of any legal or contractual claim. We, the workers on the daily payroll, have just signed our collective agreement, in which we obtained fair benefits. Faced with the irresponsibility of

our supervisors in abandoning their duties without cause, we, the 30,000 contractual workers, set our men the patriotic task of preventing our principal industry from collapsing and our people from being overtaken by despair and chaos, with an unpredictable outcome that we would still be regretting.”

- 1080.** As regards the Government’s alleged refusal to register the planned trade union UNAPETROL, the Government points out that the latter organization was planned by a group of former senior and middle managers of the state oil enterprise PDVSA, namely Mr. Horacio Medina, qualified engineer, employed at the subsidiary PDVSA Producción, negotiation strategy manager belonging to the middle management payroll; Mr. Edgar Quijano, qualified in industrial relations, employed at PDVSA headquarters, adviser belonging to the senior management payroll; Antonio Méndez, qualified chemical engineer, employed at the subsidiary PROESCA, business manager belonging to the middle management payroll; Ronald Figueroa, qualified engineer, employed at the subsidiary PDVSA-GAS, head of IT belonging to the senior management payroll.
- 1081.** The planned trade union UNAPETROL comprises members of the senior and middle management payrolls holding posts such as analysts, secretaries, engineers, specialists, etc., in subordinate positions to those of the abovementioned managers.
- 1082.** The Government states that on 3 July 2002 ten citizens went to the National Inspectorate and Collective Labour Affairs Department (Public Sector) and expressed their desire to establish a trade union entitled the “National Union of Oil, Gas, Petrochemical and Refinery Workers (UNAPETROL)”, in respect of which they submitted the documentation laid down by article 421 of the Organic Labour Act.
- 1083.** On 9 July 2002, the Director of the National Inspectorate and Collective Labour Affairs Department (Private Sector), pursuant to article 450 of the Organic Labour Act, issued communication No. 2002-0457 to citizen Alí Rodríguez Araque as President of Petróleos de Venezuela S.A. (PDVSA), notifying him of the workers’ proposal to establish the trade union, which was received by the aforementioned enterprise on 10 July 2002.
- 1084.** On 29 July 2002, the National Inspectorate and Collective Labour Affairs Department (Public Sector), by means of Order No. 2002-066, ordered the trading company PDVSA to supply documents which would enable the accuracy of the information furnished by the promoters of the planned trade union to be verified, in relation to the duties that they actually perform, pursuant to article 131 of the Constitution of the Bolivarian Republic of Venezuela, in accordance with article 28 of the Organic Act on Administrative Proceedings.
- 1085.** On 2 August 2002, the Director of the National Inspectorate and Collective Labour Affairs Department (Private Sector) issued administrative ruling No. 2002-036 refusing registration of the planned trade union entitled “National Union of Oil, Gas, Petrochemical and Refinery Workers (UNAPETROL)”, on the basis of articles 426(a) and 589(a) of the Organic Labour Act, stating that the aforementioned organization did not aim to fulfil the purposes laid down in articles 408 and 409 of that Act, and in conformity with the provisions of article 148 of the regulations of that Act.
- 1086.** On 12 August 2002, citizens Horacio Medina, Edgar Quijano and Ronald Figueroa, acting in the capacity of president, labour assistant secretary and institutional relations secretary, respectively, of the planned trade union UNAPETROL lodged a hierarchical administrative appeal, with the aim of seeking to overturn the abovementioned administrative ruling and, consequently, requesting the registration of the trade union, claiming, inter alia, violation of the right of defence laid down in article 49 of the Constitution of the Bolivarian Republic of Venezuela: “... with respect to the decision to

refuse the registration of UNAPETROL on the basis of evidence and presumptions and not on any of the grounds of article 426 of the Organic Labour Act, it did not allow the UNAPETROL representatives to defend themselves in order to rectify any deficiency. If the official had discovered any deficiency, he should have given notification thereof and applied the second period of thirty (30) days laid down in article 425 of the aforementioned Act, but he failed to do so. On the other hand, the official stated that an appeal against his decision could be brought before the Labour Minister, in such a way that he shortened the second applicable period of thirty (30) days”.

- 1087.** On 11 November 2002, this administrative appeal body issued Decision No. 2560, concerning the hierarchical appeal made on 12 August 2002, ordering the “restoration of the infringed legal situation, i.e. that the labour inspector should formulate the relevant observations with respect to the documentation submitted by the promoters of the planned trade union ...”.
- 1088.** On 27 November 2002, the Director of the National Inspectorate and Collective Labour Affairs Department (Private Sector), by means of Order No. 2002-0181, refrained from taking the present proceedings any further, since he had previously given his opinion in refusing to register the planned trade union.
- 1089.** On 6 December 2002, the Director-General for Labour issued an administrative ruling declaring the aforementioned course of action by the Director to be admissible and authorized the Director of the National Inspectorate and Collective Labour Affairs Department (Private Sector) to attend to the present proceedings.
- 1090.** On 9 December 2002, the Director of the National Inspectorate and Collective Labour Affairs Department (Private Sector) issued an order instructing the planned trade union to rectify the deficiencies in the documentation it had supplied and to furnish all relevant information relating to provision of service by the promoters of the union, in accordance with article 425 of the Organic Labour Act. Notification of the aforementioned order took place on 17 December 2002.
- 1091.** On 30 December 2002, the secretary for official documentation and correspondence of the planned trade union sent a certified copy of the record of the extraordinary assembly held on 30 September 2002, approving the membership of 1,294 new supporters, identified in a list attached without signatures.
- 1092.** On 6 January 2003, citizen Marianella de Piñero, identified above, sent the list without signatures of 5,503 supposed supporters who had joined the planned union.
- 1093.** On 6 January 2003, the Director of the National Inspectorate and Collective Labour Affairs Department (Private Sector) issued an order instructing the PDVSA enterprise to supply documents enabling the accuracy of information provided by the promoters to be verified, relating to the actual duties performed by the latter and by the supposed members of the planned trade union, pursuant to article 131 of the Constitution of the Bolivarian Republic of Venezuela, in accordance with article 28 of the Organic Act on Administrative Proceedings, and ratifying the content of the order of 9 December 2002, according to which the employees promoting the union, as well as the supposed members, did not enjoy irremovability because the three-month irremovability period expired on 3 October 2002.
- 1094.** On 7 January 2003, the secretary for official documentation, referred to above, sent a membership list without signatures of 647 supposed members.
- 1095.** On 8 January 2003, the Director of the National Inspectorate and Collective Labour Affairs Department (Private Sector) referred the file of the application for registration of the

planned trade union to the Political and Administrative Chamber of the Supreme Court of Justice, on account of the planned trade union's appeal for the quashing of administrative ruling No. 2002-036 of 2 August 2002.

1096. On 20 May 2003, the Political and Administrative Chamber of the Supreme Court of Justice sent the Labour Minister, on the one hand, a certified copy of the decision issued by the aforementioned Chamber on 11 March 2003, following the withdrawal of the appeal for cancellation by the planned trade union, and, on the other hand, the file of the application for registration of the planned trade union.

1097. On 2 June 2003, the Director of the National Inspectorate and Collective Labour Affairs Department (Private Sector) issued an order whereby he agreed to attend to the present proceedings, incorporate in the file all communications together with their attachments received by him between 8 January and the present time and notify the representatives of the planned trade union. The communications incorporated under the aforementioned order include the communication of 9 January 2003, whereby the representatives of the planned trade union submitted to the National Inspectorate and Collective Labour Affairs Department (Private Sector) an appeal to review the order of 9 December 2002 and request inhibition of the Director of the aforementioned National Inspectorate.

1098. On 12 June 2003, the First Administrative Court sent to the National Inspectorate and Collective Labour Affairs Department (Private Sector) a certified copy of the ruling it had issued on that date, allowing the appeal for cancellation submitted by the planned trade union, admitting the claim for an interim ruling and suspending the effects of the contested administrative rulings until such time as the principal action was resolved.

1099. On 3 July 2003, the Director of the National Inspectorate and Collective Labour Affairs Department (Private Sector) issued administrative ruling No. 2003-027 deciding to:

Refuse to register the planned National Union of Oil, Gas, Petrochemical and Refinery Workers (UNAPETROL), inasmuch as, under article 148 of the regulations of the Organic Labour Act, a trade union may not be established which seeks to represent the interests of both workers and employers, and also on account of the failure to rectify within the prescribed deadline the deficiencies and omissions observed by this office in the supplied documentation.

1100. On 18 July 2003, citizens Horacio Medina, Jorge Rodríguez, Edgar Quijano, Antonio Méndez and Ronald Figueroa, in their respective capacities as members of the executive committee of the planned trade union, submitted a hierarchical appeal against administrative ruling No. 2003-027, dated 3 July 2003, requesting inhibition of the Labour Minister with respect to taking cognizance of the appeal, revocation of the aforementioned administrative ruling and revival of the case, as well as requesting that the defects and omissions to be rectified by the planned trade union be indicated clearly.

1101. Furthermore, the contents of the file show that the main promoters of the planned trade union UNAPETROL made direct representations in the past to the Ministry of Labour on behalf of PDVSA in order to resolve labour disputes within the enterprise. It is also public knowledge that some of the promoters of UNAPETROL stated that they occupied posts as managers, administrators and heads of personnel.

1102. The Government reproduces below the content of Decision No. 2932, dated 16 October 2003, issued by the Labour Minister. The main points thereof are summarized below, in particular as regards fulfilment of the minimum requirements laid down by law for the establishment of trade unions, omitting issues concerning the request for inhibition of the Labour Minister or legal interpretations of certain formal requirements.

1103. The most important paragraphs of Decision No. 2932 are as follows:

Under article 420 of the Organic Labour Act, trade unions that wish to organize themselves on a regional or national basis must be registered with the National Labour Inspectorate. When making the request for registration, the applicants must submit a copy of the deed of establishment of the union, a copy of the union statutes and a list of the founder members, with the documents signed by all members of the executive committee, as explicitly stipulated by article 421 of the Act.

As regards the fulfilment of such requirements, the appellants make the following statement in their written communication:

“Our representative had already supplied all the documents referred to by articles 421, 422 and 423 of the Organic Labour Act, i.e. she had performed her task of supplying, together with the application, the deed of establishment of the union and its statutes, as well as a list of the founder members clearly stating the full name, nationality, age, profession/occupation and place of residence of each founder member of the union. *Consequently, there is no item of legislation obliging us to indicate, as wrongly stated by the abovementioned labour official, ‘... the specific type or status of the workers proposing the planned trade union ...’.* In this respect, we wondered where he got such a “requirement” from, given that neither the Organic Labour Act nor the subsidiary legislation that was alleged to have been infringed, i.e. its regulations, mention it.”

This is backed up with the following paragraph:

“Moreover, it should be noted that the labour official’s action requesting the proponents of the trade union to give details of ‘... the posts occupied by all of them, according to the type of services they provide for the trading company *Petróleos de Venezuela S.A. ...*’, i.e. give details of ‘the type of activities performed by each of the workers, so that his/her true employment status may be ascertained ...’, constitutes an abuse of duties and unauthorized interference in the matter protected by article 95 of the constitution (sic) and Convention No. 87, to which there are repeated references, and *thus violates the content of article 424 of the Organic Labour Act, which does not state that such requirements must be indicated in the list of founder members.*”

Notwithstanding the appellants’ statement, this ministerial office is bound to point out that the Director of the National Inspectorate and Collective Labour Affairs Department (Private Sector), by an order dated 6 January 2003, made the following statement:

“... as regards the precautions relating to membership, it is clear that a substantial number of both proponents and employees joining the union belong to the senior and middle management of the *Petróleos de Venezuela S.A. (PDVSA)* enterprise, occupying posts (as seen from the lists supplied) as senior and middle managers, supervisors and advisers. Now, under article 51 of the Organic Labour Act, ‘... persons exercising managerial or administrative functions shall be considered as representatives of the employers even if not explicitly assigned that function ...’ *and taking into account that the representatives of the employers are, in turn, managerial employees as defined by article 42 of the aforementioned Act, this could make it difficult or impossible for them to meet the objectives laid down for workers’ unions, since as representatives of the employers they would not be able at the same time to represent and defend the workers in negotiations and collective labour disputes, or in conciliation and arbitration proceedings, as laid down by article 408 of the aforementioned Act.*”

The abovementioned order added the following:

“... the establishment of a trade union organization comprising representatives of the employer who also participate in the executive committee of that organization as representatives of the workers vis-à-vis the enterprise might violate the ‘purity principle’ referred to in article 148 of the regulations of the Organic Labour Act, which prohibits the establishment of mixed organizations.”

From a reading of the grounds (quoted in part) contained in the order dated 6 January of this year, it may be noted that the appellants had been duly informed with regard to the legal prohibition on establishing mixed trade unions on account of clear violation of the “*purity principle*”. The sole purpose of the request to the proponents, as recorded in the order dated 9 December 2002 (pages 305-308), to rectify the aforementioned deficiencies “... *by adding to the information and documentation which was initially provided ...*”, is to comply with

ministerial decision No. 2560, dated 11 November 2002, instructing the official in question to inform the applicants whether there is any deficiency in the documentation supplied for the purposes of registration so that, should that be the case, such deficiencies could be rectified in accordance with the relevant provisions. Hence the official in question was safeguarding the exercise of the interested parties' right to be informed and right of defence, inherent to the process of registration of the proposed trade union. Even though the proponents supplied the list of founder members indicating their professions or occupations, in accordance with article 424 of the Organic Labour Act, the fact remains that the Labour Inspectorate informed the proponents on two occasions – 9 December 2002 and 6 January 2003 – that, under our legislation, it was not possible to establish trade unions composed of employers' representatives whose purpose would be to represent the workers, since this entails a violation of the "purity principle".

Furthermore, the proponents had the opportunity to supply the requested information and rectify the deficiencies arising from the actual application which initiated the procedure for registration of the proposed trade union. That opportunity existed for more than seven months, since, in view of the mistaken and untimely submission of an appeal for nullity to the Political and Administrative Chamber of the Supreme Court of Justice (file No. 2002-1071), the administrative records were referred respectfully to the aforementioned judicial body (...). The "purity principle" is laid down in article 148 of the regulations of the Organic Labour Act, imposing a requirement which absolutely must be upheld by the labour inspector and, in addition, is recognized internationally (...).

Similarly, Article 2 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), states as follows:

"Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by *each other or each other's agents* or members in their establishment, functioning or administration."

"In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this article."

Consequently, having signed and ratified the aforementioned Convention, the State assumes the duty this imposes on it, namely to guarantee appropriate protection for workers' organizations with regard to any act of interference by the employers, directly or through their representatives or agents. In particular, measures which are designed to promote workers' organizations with the object of placing them under the control of the employers shall be deemed to constitute acts of interference. Hence, when the labour inspector, pursuant to Decision No. 2560, issued the order dated 9 December 2002 and requested the proponents to provide further information, in order to "... *accurately determine the specific type or status of the workers promoting the proposed trade union ...*" and informed them on two occasions of the "purity principle", he was giving them the fullest possible freedom to supply anything relevant in response to the order which would enable it to be proven that, although the proponents had described themselves as directors, managers, administrators and heads of industrial relations, they were not representatives of the employers, thereby undermining the legal presumption contained in articles 42 and 51 of the Organic Labour Act (...).

Article 148 of the regulations of the Organic Labour Act which lays down the "purity principle" also lays down in its final section the explicit prohibition to which management employees are subject. This explicit prohibition is drafted in the following terms: "*the management employees shall not establish workers' unions or become members of them*". This prohibition was established by means of Decree No. 3095, dated 9 December 1998, published in Official Gazette special issue No. 5292, dated 25 January 1999, as a measure to ensure fulfilment of the "purity principle".

Similarly, the Social Affairs Chamber of the Supreme Court of Justice has stated explicitly and repeatedly that oil industry employees who occupy what are defined as senior or middle management posts may be deemed to be management employees, as expressly stated in ruling No. 128 dated 28 February 2002.

Since in the present case the same proponents, by supplying the list of founder members in accordance with article 424 of the Organic Labour Act, state voluntarily and on their own initiative that they occupy posts as managers, administrators and heads of personnel, while making the same assertion in various parts of the mass media, their status within the enterprise therefore being public knowledge, article 51 of the aforementioned Act states that these are management posts and, consequently, their holders are representatives of the employer, in accordance with article 50 of the Act. This prevents these management employees from establishing a workers' union or joining a previously established workers' union, as explicitly stated in the final section of article 148 of the regulations of the Organic Labour Act.

The status of management employee in the case of at least 36 of the proponents or founders was determined in the appealed administrative ruling No. 2003-027, pp. 926-940, this office having no doubts regarding the examination conducted by the National Labour Inspector who attended to the case and whose arguments are deemed to have been set out in the present decision (...).

Moreover, it should be emphasized that the appellants also omitted to take account of the order dated 6 January of this year, in which the National Inspectorate and Collective Labour Affairs Department (Private Sector), ratifying the order of 9 January 2002, stated as follows:

“Similarly, since the labour administration is bound to act in conformity with the law pursuant to article 589 of the Organic Labour Act and ensure that the constitutional principle of the prevalence of reality over forms and appearances in labour relations is upheld, as expressly stated in article 89(1) of the Constitution of the Bolivarian Republic of Venezuela, it is obliged to order the Petróleos de Venezuela S.A. (PDVSA) trading company, as a party concerned, to supply documents enabling the accuracy of the information supplied by the proponents to be verified, regarding the posts actually held by the members of the proposed trade union UNAPETROL, pursuant to article 131 of our Carta Magna, in accordance with article 28 of the Organic Act on Administrative Proceedings. At all events, Petróleos de Venezuela S.A. (PDVSA) is hereby informed that the requirement to supply information and documentation does not endow the aforementioned enterprise with belligerent status to intervene in the procedure for union registration, since that would imply interference by the employer, which is prohibited in article 443 of the Organic Labour Act and Article 2 of Convention No. 98, of the International Labour Organization. It has been thus decided.”

From the quoted text it is clear that in issuing the order, apart from the latter having a legal and regulatory basis, the Department clearly and emphatically informed the enterprise that the information required did not endow it with belligerent status, i.e. it did not make it party to the procedure for registration of the proposed trade union UNAPETROL, since that might imply a violation of article 443 of the Organic Labour Act and Article 2 of Convention No. 98, of the International Labour Organization (...).

It can be seen from the statements by the appellants that they raise two specific objections, namely: (a) that the order instructing them to rectify the deficiencies was vague and imprecise; and (b) that no decision was made regarding the application for review of the order dated 9 December 2002 and prior to that, on the other hand, the National Inspectorate and Collective Labour Affairs Department (Private Sector) issued its final decision refusing to register UNAPETROL. In this respect, this ministerial office would make the following points:

With regard to the first claim, i.e. the supposed vagueness and imprecision of the orders dated 9 December 2002 and 6 January 2003, it is clear that the National Inspectorate and Collective Labour Affairs Department (Private Sector), acting in conformity with the principles of freedom of association, particularly avoiding any undue interference, respectfully requested the proponents to supply additional data and information which would enable their status to be evaluated. This immediate request was made pursuant to the abovementioned ministerial Decision No. 2560. Now, in the absence of the information requested from the proponents, a new order was sent, also on 6 January 2003, indicating the risks of infringing the “*purity principle*”, whose validity derives from article 148 of the regulations of the Organic Labour Act, as quoted above. This last order, contained in the instructions of the aforementioned ministerial decision, was absolutely precise and specific.

It has already been stated that the proponents had the opportunity to make the rectifications and supply the required information to the National Inspectorate and Collective

Labour Affairs Department (Private Sector) for at least six months before the appealed administrative ruling was issued, without the Labour Administration's request being complied with in accordance with the provisions in force.

Furthermore, regarding the order dated 9 December 2002, whereby the National Inspectorate (Private Sector) ordered the deficiencies to be rectified and of which the proponents were notified on 17 December 2002 – which means that within the following 15 days the latter could submit an appeal for review pursuant to article 94 of the Organic Act on Administrative Proceedings, as indeed they did on 8 January 2003, that appeal had to be resolved by the official who issued the order. Now, since it could not be resolved within the 15 days following the submission of the appeal, the proponents had the right to lodge the hierarchical appeal in accordance with article 95 of the aforementioned Act, since, given the administrative silence of the National Inspectorate and Collective Labour Affairs Department (Private Sector), it was to be understood that the application for review had been refused, as expressly laid down in article 4 of the Organic Act on Administrative Proceedings in the following terms:

“Article 4. In cases where a public administrative body does not resolve a matter or appeal within the relevant deadlines, the response shall be deemed to be negative and the interested party shall be able to appeal to the immediately following instance, unless explicitly stated otherwise. This provision does not relieve the administrative bodies or their officers of the responsibilities that would fall upon them as a result of any omission or delay.”

In other words, once the 15-day period granted by the Organic Act to the official to resolve the appeal for review had expired without his having made any decision, the interested parties become immediately entitled to appeal to the immediately following instance, in this case to submit the hierarchical appeal brought before this ministerial office on account of the negative administrative silence. Since this was not done, however, the appealed decision stands and it is implicit that the interested parties have accepted the negative decision and, consequently, must comply with the order to provide further information in addition to what they supplied with the application for registration.

On account of the foregoing, this office does not share the appellants' opinion that their right of defence was infringed by the orders of 9 December 2002 and 6 January 2003, since the fact that the proponents did not exercise the rights granted to them by law cannot be ascribed to the Administration as an infringement of such rights, and it has been thus decided.

According to the appellants, workers who wish to join a trade union which is being established are not obliged to notify the labour inspector directly, nor is it necessary for such notification to be signed by the would-be member himself. In the first case, this is because notification may be made via the trade union or via any person designated by it; in the second case, because a signature may be required only in cases where it is expressly laid down by law. In this regard this office would make the following points:

On the basis of various different legal interpretations, the ministerial office rejects the arguments put forward by the appellants on this point and endorses the conclusion contained in the appealed administrative ruling, as follows:

“Examination of the lists of the supposed members of the planned trade union shows that they appear to be simple copies of the lists of workers of PDVSA and its subsidiaries, without any trace of employee signatures, letterheads, logos or official stamps of those enterprises. In addition, examination of all the supposed memberships shows that none of them is supported by the employees supposedly seeking to join the proposed trade union. It is therefore absolutely clear, for whomever it may concern, that the membership process was never officially completed for any of those employees, since the latter did not expressly request it. It has been thus decided.”

For the reasons described above, this ministerial office, by virtue of its competence and the exercise of its functions, described in articles 425 and 586(a) of the Organic Labour Act, dismisses the submitted appeal (...).

Finally, this office duly points out to the interested parties which consider their rights to have been infringed that they may appeal against the present decision to the Political and Administrative Chamber of the Supreme Court of Justice no later than ten days after notification of the present decision, pursuant to article 425 of the Organic Labour Act.

- 1104.** Moreover, as regards the mass dismissals of senior and middle managers from PDVSA and its subsidiaries during the “national civic work stoppage” in December 2002 and January 2003, the Government declares that grounds for dismissal constitute one of the forms of unilateral termination of employment. The other is justified retirement.
- 1105.** Under article 102 of the Organic Labour Act, the following actions by a worker constitute grounds for dismissal:
- (a) lack of integrity or immoral conduct at work;
 - (b) acts of violence, except in legitimate defence;
 - (c) insults or serious lack of due respect or consideration to the employer, his representatives or members of his household;
 - (d) deliberate action or serious negligence affecting safety and health in the workplace;
 - (e) omissions or carelessness which seriously affect safety and health in the workplace;
 - (f) unjustified absence from work for three working days in a month. Illness of the worker shall be deemed to be sufficient grounds for absence from work. The worker shall notify the employer of the reason for his absence from work, provided there are no circumstances to prevent him from doing so;
 - (g) material damage caused intentionally or as a result of negligence to machines, tools or utensils, company furniture, raw materials or finished products or products being manufactured, plantations or other property;
 - (h) disclosure of secrets relating to manufacturing and its methods;
 - (i) serious failure to discharge employment obligations. This refers to the obligations arising from the employment relationship. A good guideline for how this applies to the worker is provided by article 69 of the Organic Labour Act, which states that, the worker shall be obliged to perform the services which are compatible with his strength, skills, condition or status and of the same type as those constituting the purpose of the activity undertaken by the employer (...). Where the required work is not, in the worker’s opinion, of the type that he is obliged to perform, he must nevertheless do it, provided that it is not manifestly inappropriate and does not endanger the worker himself or the activity of the enterprise, establishment or operation of the employer, pointing out the lack of conformity to the employer or his representative, without compliance with the order implying acceptance of the changes to the working conditions, if such was the case;
 - (j) dereliction of duty. Examples thereof are: (a) untimely and unjustified departure of the worker during working hours from the workplace, without permission from the employer or his representative; or (b) refusal to work in the places to which the worker has been assigned, provided that these are in accordance with the respective contract or law. A worker’s refusal to perform a task which entails a serious and immediate danger to his life or health shall not be deemed to constitute dereliction of duty. Otherwise: (c) the unjustified absence from work of a worker in charge of a task or machine, where such absence signifies disruption to the execution of the remaining work, also constitutes dereliction of duty.
- 1106.** The Government describes the action taken by PDVSA with regard to the notices in the national and regional press for all of the dismissed workers:

1107. The citizens are hereby notified that:

The Presidency of Petróleo de Venezuela S.A. and PDVSA Petróleo S.A., by virtue of its powers under the deed of establishment and its statutes, has decided to dispense with [their] labour services, terminating [their] employment as from 9 January 2003, since [they] have given grounds, individually and in every case, for justified dismissal under article 102(a), (f), (i) and (j) of the Organic Labour Act, in accordance with articles 17, 44 and 45 of its regulations.

The citizens identified above have given grounds, individually and in every case, for justified dismissal under article 102(a) of the Organic Labour Act, in accordance with article 17(c) of its regulations, inasmuch as they have committed various actions which are contrary to the due integrity they are bound to maintain as workers of this enterprise. It is a well-known fact, widely publicized by the mass media, that their conduct has contributed to the illegal paralysis of the economic activities of this enterprise since 4 December 2002 inasmuch as it has not been based on labour claims or rights but, on the contrary, has been of an exclusively political nature. This conduct, as well as other actions of which they have been guilty during the period indicated, constitutes a failure to show due diligence and loyalty to their employer within the employment relationship, and this has caused serious harm to the property of this enterprise and considerable damage to its reputation and good name.

They have also given grounds, individually and in every case, for justified dismissal under article 102(f) of the Organic Labour Act, in accordance with article 44 of its regulations, inasmuch as they were absent from work without justification. Each of the named citizens were absent from work without justification on 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 26, 27 and 30 December 2002 and 2, 3, 6, 7 and 8 January 2003.

Moreover, they have given grounds, individually and in every case, for justified dismissal under article 102(i) of the Organic Labour Act, in accordance with article 17(a) and (b) and article 45 of its regulations, inasmuch as they have performed various actions which are contrary to the fundamental obligations imposed by their employment at this enterprise. As stated above, they have participated in an illegal paralysis of the economic activities of this enterprise since 4 December 2002, the purpose of which has clearly been unconnected with the business of the enterprise. They were not present to provide their services on the days stated, without any valid cause to justify their absence. Such conduct, as well as other actions of which they have been guilty, clearly implies a serious and intentional violation of their employment obligations.

Finally, the named citizens have given grounds, individually and in every case, for justified dismissal under article 102(j) of the Organic Labour Act, inasmuch as they were guilty of dereliction of duty. In this regard it should be noted that since 4 December 2002 they have refused to fulfil their working obligations and provide their services in their customary tasks, joining and inciting an illegal stoppage of the economic activities of this enterprise, which constitutes a flagrant violation of every worker's fundamental duties, under article 102(b) and (c) of the Organic Labour Act. Moreover, it should also be noted that, among the various forms of conduct of which each worker has been guilty, their unjustified absence and refusal to provide their customary services has seriously disrupted the smooth running and economic activities of the enterprise.

For all the aforementioned reasons and on the relevant legal grounds, the employment relationship between this enterprise and the named citizens is terminated as from 9 January 2003. Consequently, all of the named citizens must present themselves, no later than 12 hours after this notification of dismissal, at our human resources and loss prevention and control offices in order to formalize the physical surrender of property belonging to this enterprise which until today has been assigned to their use and custody, as well as to comply with internal proceedings and standards. Similarly, within the same deadline, all the named citizens must hand over their respective identity cards, keys to our offices and other installations of the enterprise, including cards, codes and keys for computerized security systems which were assigned to them and which henceforth must not be used.

1108. The Government points out that, prior to the public notification of the justified dismissals by PDVSA, the Labour Ministry authorities undertook supervisory action to verify in situ

whether or not the workers of PDVSA and its subsidiaries occupied permanent posts, whereupon the relevant documents were issued.

1109. Furthermore, with regard to the supposed violations of labour rights resulting from the dismissals for mass dereliction of duty by the former senior and middle managers, the non-payment of social benefits and other employment income received by the former oil industry workers, the evictions from dwellings in the oilfields and the non-enrolment of children in schools belonging to, or run by, PDVSA under the collective agreement in force, the Government makes the following observations:

- The separation of those dismissed by PDVSA on justified grounds under the Organic Labour Act, as publicly communicated to the former PDVSA workers, referred to above, means that their employment ceases immediately, as do the benefits accruing under the work contract (housing, schooling, savings bank and other benefits).
- The evictions undertaken since the cessation of employment were legal, with due process observed and dialogue mechanisms and facilities to ensure that the former workers and their families had the opportunity to relocate maintained for over six months. This was successfully implemented for a very high percentage of the former workers who occupied housing and whose children enjoyed benefits in the schools under the responsibility of the oil industry. The former oil workers vacated peacefully and in full awareness of the situation the PDVSA housing which the company had granted them as part of their employment benefits. Nevertheless, a minority of those dismissed from PDVSA and its subsidiaries for dereliction of duty were unwilling to vacate the housing assigned by, and belonging to, PDVSA or its subsidiaries. These former workers adopted a political stance, claiming that their human rights were being violated when the fact of the matter was that the evictions were undertaken on the basis of judicial orders fulfilling the requirements of the law. Use of the forces of law and order was necessary so that the judicial officers could implement the relevant measures, in view of the fact that some of the oil workers refused systematically, rudely and violently to vacate the PDVSA housing. In isolated cases, even some of the former workers attacked the police officers responsible for enforcing the law, verbally abused the judicial officers who had ordered the legal evictions from the housing and even made mass appeals to the public to act in their defence, with a view to preventing the execution of the judicial orders for eviction from the PDVSA housing. All of this was blown up out of all proportion, manipulated and exaggerated by the radio, television and press personnel who accompanied these former workers with the aim of disrupting order, damaging the oil industry and bringing the economy of the Republic to its knees.
- As regards the complainants' claims, concerning the children's right to education, that they were not allowed to enrol in the PDVSA schools, the Government points out that a reasonable time was given to the former workers and their families to vacate the PDVSA housing. In the higher interests of social justice, the former workers who were illegally occupying the housing were given clear permission for their children to complete the school year in the schools belonging to, or run by, PDVSA. At the end of the school year in July 2003, the Ministry of Education, Culture and Sport issued precise instructions to the public and private school educational areas and supervisory districts to guarantee the right to education for the children and ensure that they were enrolled in the public schools, thereby guaranteeing the right to education of the children of the former oil workers, who, no longer being in the oil industry, do not have the rights, prerogatives or privileges enjoyed by the workers who are active in the PDVSA oil enterprise and its subsidiaries.

- As regards the references to non-payment of social benefits, the latter are guaranteed by the industry and are held in their respective trust funds pending withdrawal thereof by the former workers. The latter have not withdrawn the benefits because they decided to have recourse to administrative and judicial reinstatement proceedings, which they did voluntarily, so it is untrue that the enterprise withheld the benefits.

1110. As regards the individual dismissals in the oil industry, the Government of the Bolivarian Republic of Venezuela states that owing to the sabotage carried out by the former workers who took part in the oil industry “work stoppage” (direct sabotage of the computing systems of PDVSA and its subsidiaries), PDVSA did not have the relevant data available concerning the list of employees and the circumstances of a large number of workers who were on holiday, sick leave, maternity leave or official leave in the form of foreign scholarships, trade union immunity, vacations and others, under the abovementioned circumstances. Owing to these anomalies, the company wrongfully dismissed a number of workers but immediately rectified the errors it had committed. This could be done as a result of each worker giving proof of his or her status and by reconstructing the lists of workers incorporated in the computer systems which had been sabotaged, as described above. In order to rectify the errors made, PDVSA set up an office so that the workers could exercise their right of complaint, presenting the relevant proofs so that the situation could be resolved. After the computer systems were restored, it emerged that 1,038 workers of PDVSA and its subsidiaries had been wrongfully dismissed. The company proceeded to rectify this involuntary error and the dismissed workers were reinstated, so that their employment with PDVSA and its subsidiaries is continuing, as are the forms of special leave for those still entitled to them, and all employment benefits (wages, allowances, etc.) which had been retained were paid.

1111. As regards the allegation by the ICFTU concerning the murder on 1 May of a worker belonging to the CTV, the Government wishes to state that it deplores the death of persons on its territory resulting from any act of violence. Moreover, it drew attention to the ICFTU’s haste to send the allegations *en comento*, since it is clearly seeking to demonstrate to the Committee on Freedom of Association that the death of Mr. Herrera was the result of violence on the part of government supporters or members of the state security forces against CTV union activity, specifically suggesting that bodies belonging to the National Executive or Government supporters do not allow the exercise of the freedom of association or of the right to organize or, even worse, do not allow the free exercise of both rights. The above can be deduced from the vagueness of the ICFTU statement. The Government points out that Mr. Herrera, a member of FETRACONSTRUCCION, was regrettably murdered a few minutes after the end of the 1 May celebrations held by the CTV and the political organizations which instigated the coup d’état in April 2002 and the economic sabotage arising from the “civil work stoppage”. The events surrounding Mr. Herrera’s death occurred some distance from the gathering of CTV followers, which had now been dispersing for a few minutes, at Plaza O’Leary del Silencio. Information compiled reveals that the murder of Mr. Herrera was due to an argument between a number of people. The suspect in the homicide was Mr. Manuel Arias, who drew a gun during the argument and fired two shots, which hit and killed Mr. Herrera. This event was immediately used by sections of the opposition, centred on the so-called “democratic coordination” to which the CTV belongs, to seek to show, by means of live broadcasts and then repeatedly via the opinions of politicians and leaders of the “democratic coordination”, as well as through videos and written communications, that those behind the murder of Mr. Herrera are supporters of the national Government, and explicitly accusing the President of the Republic, Hugo Chávez Frías.

1112. During this deplorable incident, the murder of Mr. Herrera, national and international public opinion was irresponsibly informed that this was “*the work of a pro-Chávez hired assassin*”, and the same tone was adopted by the private communication media before,

during and after the coup d'état instigated by the "democratic coordination", CTV and FEDECAMARAS in April 2002.

1113. The ICFTU's use of "*unidentified persons*" (in the plural) in its statements shows the ICFTU's tendency to distort information or perhaps the manipulation to which this international organization was or is exposed, given its echoing of information which has been twisted or manipulated by the press, radio and television, or in view of the credence it gives to the political opinions of the members of the CTV executive committee concerning events which have nothing to do with freedom of association.

1114. The Government formulates the following conclusions:

- The person responsible for the shots and the presumed murder of Mr. Herrera, Mr. Arias, was detained by the police.
- Department VI of the Attorney-General's Office investigated the case.
- Examining magistrate 34 issued an order for the detention of the suspect while the court in question tried him on the charges laid down by the Attorney-General's Office in the relevant file.
- The facts demonstrated that there was no interference by government supporters nor any involvement of the public authorities in the murder of a Venezuelan citizen who was freely exercising his right to demonstrate peacefully.
- The regrettable incident was an isolated occurrence which took place after the end of the 1 May celebrations involving the CTV. It has no political connotations, nor does it entail any violation of, or interference with, freedom of association.

1115. As regards the CTV's allegations concerning violations of the human rights of workers of the Panamco enterprise in the city of Valencia in the State of Carabobo, the Government states that the Panamco enterprise was indeed raided legally by the National Guard, on the basis of a judicial order, because of the hoarding of foodstuffs. This took place in the context of the illegal "civic work stoppage" which was instigated by the executive committees of the CTV, FEDECAMARAS and opposition political parties and fuelled by various factors in December 2002 and January 2003. The raid was duly justified on the basis of the Consumer and User Protection Act, which states as follows: "Article 106. Whoever restricts the supply, circulation or distribution of basic or essential goods or services, withholds such articles or prevents the provision of such services, secretly or otherwise, in order to cause shortages and price increases shall be liable to imprisonment of between one and three years and a fine in bolivars equivalent to between 1,000 and 3,000 days' minimum urban wage-" The articles referred to in the previous paragraph are those defined by decree of the national executive. The products were classified as being essential goods in Decree No. 243 of 1994 issued by the National Executive. Article 145 thereof states as follows: "In initiating proceedings for the offences laid down in this Act, the examining body may, if appropriate, order the preventive seizure of the goods concerned by the offence, subject to a prior inventory being made in the presence of a public ministry official. If such goods are perishable or liable to deteriorate, they shall be sold to the public at the price established by the competent authority. Where non-perishable goods are concerned, they shall remain in the custody of the presumed offender. The valuations shall be referred to the court having jurisdiction in the case, together with the proceeds of the sale of the confiscated goods, which shall be deposited in a bank account opened by the court in the name of the presumed offender, blocked and unable to be used until a final ruling on the case has been delivered." Having complied with the terms of the Act, the National Guard proceeded to implement the order authorizing the raid. During this legal raid it was noted that thousands of litres of juice,

water and other soft drinks had been hoarded on the Panamco premises for over a month, since December 2002, as a result of Panamco's participation in the "civic work stoppage". The non-distribution of the stated products resulted in smuggling and price speculation, with harmful effects for the consumers. It was proven that hoarding had occurred and legal action was taken against this offence, implementation of such action being on the basis of a judicial order issued by a higher agrarian judge who authorized these proceedings in the States of Aragua, Cojedes, Carabobo and Guárico; the judge laid down that the hoarded products could be retained by the competent authorities.

1116. As regards the alleged assaults of the workers named by the CTV complainants, namely Faustino Villamediana, Jorge Gregorio Flores Gallardo, Jhonathan Magdaleno Rivas, Juan Carlos Zavala and Ramón Díaz, the Government points out that since the proceedings have not yet been concluded by the Attorney-General's Office, the latter has not yet replied to the Ministry of Labour.

1117. The complaint formulated by the CTV states that "the soldiers who carried out the operation acted violently, resulting in serious injury not only to groups of civilians outside the plant but also to a group of workers who were officials of the Beverage Industry Union of the State of Carabobo ..." and goes on to state that, "the victims of the attack were in and around the enterprise premises because they had been collecting outstanding benefit payments. The cause of the scuffles was their protest at the arbitrary conduct of the National Guard and because the confiscation of the goods represented a threat to their jobs".

1118. Firstly, the Government would like to make it quite clear to the Committee on Freedom of Association that the National Guard did not act violently in enforcing the measure: the National Guard met the requirements of the law in a peaceful manner. Only minutes after executing the judicial measure the National Guard officers were attacked by various persons unconnected with the enterprise who had been summoned by the television and radio to prevent the National Guard from executing the legal measure to undertake the raid and confiscate the goods hoarded by the operators who participated in the "civic work stoppage". The CTV is very clear in referring to "groups of civilians outside the plant": these civilians set about spitting, beating, uttering gross insults, and even trying to seize the security equipment of the National Guard officers assigned to enforce the law. These actions provoked the defensive reaction of the National Guard in order to ensure the physical safety of the officials who were executing the abovementioned judicial order, faced with the aggression of these persons. The claims made seek to establish the unjustified use of force; it actually demonstrates the degree of violence used by certain political opposition groups in Venezuela and the reaction of hatred instilled on a daily basis by the press, radio and television.

1119. The part of the CTV's complaint which states that "... and because the confiscation of the goods represented a threat to their jobs" does not sound very convincing: this situation was due to a trade union which was instigating an illegal stoppage making a joint appeal to the employers that the workers should not go to their jobs, claiming that the workers feared that "... the confiscation of the goods represented a threat to their jobs", the more so given that the political work stoppage aimed at economic sabotage caused the loss of more than 500,000 jobs. The Government deplores the events that occurred, just as it deplores the possible injuries caused to the Panamco workers. It would like to make it clear that it does not condone any type of action which threatens the physical safety of any inhabitant of the Republic. As regards the involvement of the Panamco workers, the National Guard stated that these workers, together with the civilians referred to in the previous paragraph, tried to attack the National Guard officers, which led to the officers in question defending the officials who were implementing the legal measures. The Government of the Bolivarian Republic of Venezuela will be informing the Committee on Freedom of Association in due

course of the development of the investigations undertaken by the Attorney-General's Office into the events described above.

1120. In a communication dated 3 March 2004 and received on 10 March, the Government sent its observations on the CTV communication of 20 February 2003.

C. The Committee's conclusions

1121. *The Committee observes that the allegations in this case concern the following issues: murder of a trade unionist; refusal to register a trade union; hostile statements by the authorities against the Venezuelan Workers' Confederation (CTV); detention order against the CTV president; promotion of a parallel confederation by the authorities; obstruction of collective bargaining in the oil industry; detention orders and criminal proceedings against trade union officials; dismissal of more than 19,000 workers because of their trade union activities; non-compliance with collective agreements; interference by the authorities and by the Petróleos de Venezuela S.A. (PDVSA) enterprise, and anti-union acts; delays in proceedings concerning violations of trade union rights; negotiation with minority public employee organizations in disregard of the most representative ones; and action by the authorities to divide trade unions.*

Allegations by the ICFTU and the CTV

1122. *With regard to the alleged murder of Mr. Numar Ricardo Herrera, member of the Federation of Construction Workers (FETRACONSTRUCCION), on 1 May 2003 during a peaceful trade union march, in which other workers were injured, the Committee notes the Government's statements and in particular that: (1) he was murdered minutes after the end of the 1 May celebrations as a result of an argument between various people; (2) during the argument Mr. Manuel Arias fired two shots, killing Mr. Numar Herrera, whereupon he was arrested by the police and brought before the judicial authorities, which issued a detention order; (3) it was shown that there was no interference by government supporters or the public authorities in the aforementioned murder; (4) it was an isolated occurrence without political connotations and entailing neither violation of, nor interference in, freedom of association; (5) the ICFTU's tendency to distort information or perhaps the manipulation to which it was or is exposed must be ironed out. The Committee deeply deplores the murder of the trade unionist Numar Ricardo Herrera, emphasizes that freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 46] and requests the Government to keep it informed of the outcome of the legal proceedings relating to the murder. The Committee requests the Government to indicate clearly whether other workers were injured in the march that took place on 1 May 2003, as asserted by the ICFTU, and if so, what legal action was taken.*
1123. *With respect to the alleged acts of violence by the military on 17 January 2003 against a group of workers from the Panamco de Venezuela S.A. enterprise, leaders of the Beverage Industry Union of the State of Carabobo, for protesting against the raid on the enterprise and the confiscation of its goods, which represented a threat to their jobs, the Committee notes the Government's claims that; (1) the raid was authorized by the judicial authority pursuant to the Consumer and User Protection Act, which prohibits any restriction in the supply, circulation or distribution of essential goods; (2) during the raid it was noted that thousands of litres of juice, water and other soft drinks had been hoarded on the premises of the company, which had taken part in the "civic work stoppage" of December 2002-January 2003; (3) the National Guard officers did not use violence to implement the legal measure but were attacked by various persons unconnected with the enterprise who*

opposed the raid and confiscation of goods, which prompted the defensive reaction of the forces of law and order; (4) the Attorney-General's Office has not yet replied (the proceedings not yet being concluded) to the alleged attacks on the workers Faustino Villamediana, Jorge Gregorio Flores Gallardo, Jhonathan Magdaleno Rivas, Juan Carlos Zavala and Ramón Díaz. The Committee deplors the acts of violence which occurred during the raid on the Panamco enterprise and urges the Government to institute an independent investigation without delay into the instances of detention and torture claimed by the CTV to have been suffered by these workers and keep the Committee informed on the results.

- 1124.** *As regards the allegation concerning the detention order against Mr. Carlos Ortega, president of the CTV, for the presumed perpetration of political offences during the "national civic work stoppage" ("treason", "incitement to crime" and "criminal damage") without guarantees of due process in view of a judge's lack of impartiality, and the allegations that the President of the Republic refuses to recognize the CTV leaders, promotes the establishment of a workers' confederation supportive of his party and makes hostile public statements against the CTV and its leaders in the context of the "national civic work stoppage" which began on 2 December 2002, the Committee notes that the Government has sent its observations, received one day before its meeting. The Committee regrets the delay in the sending of this reply, which it intends to examine at its May-June meeting.*

Allegations by UNAPETROL

- 1125.** *With respect to the allegation concerning the Ministry of Labour's refusal to register the National Union of Oil, Gas, Petrochemical and Refinery Workers (UNAPETROL) despite the fact that the relevant documentation was submitted on 3 July 2002, and regarding the Ministry's request to the state enterprise PDVSA to describe the duties performed by the promoters of UNAPETROL, the Committee notes the Government's statements and in particular the Minister of Labour's decision dated 16 October 2003. The Committee observes that the decision fundamentally objects to the existence of union members who carry out managerial duties and represent both the employers and other categories of workers of PDVSA and its subsidiaries, being contrary to the purity principle and incompatible with mixed unions, with article 148 of the Organic Labour Act which states that "management employees may not establish workers' unions or become members of them" and with the principle of non-interference laid down in Article 2 of ILO Convention No. 98. In addition, according to the decision, the promoters of UNAPETROL were given several opportunities to rectify these deficiencies.*
- 1126.** *In the Committee's opinion, the criterion applied by the Minister of Labour does not contradict the principles of Conventions Nos. 87 and 98. Nevertheless, the Committee deplors the fact that the Ministry of Labour informed PDVSA of the names of the UNAPETROL members in order to determine who belonged to the management staff and who did not, as well as the fact that the administrative process has been delayed for so many months partly because of a judicial appeal by UNAPETROL but largely owing to delays in administrative proceedings and because it was not clearly stated what specific steps should be taken by UNAPETROL in order to be registered (for example, suggesting that the representative role of the managers be eliminated or, conversely, that that of the non-managers be eliminated). The Committee firmly expects that in future the procedure for trade union registration will be more rapid and more transparent and requests the Government to inform it of the steps it plans to take in this respect and initiate direct contact with the members of UNAPETROL in order to find a solution to the problem of registering the union. The Committee requests the Government to keep it informed in this respect.*

- 1127.** *With regard to the alleged dismissal of more than 18,000 workers from PDVSA and its subsidiaries, including the members of UNAPETROL, since the start of the “national civic work stoppage” in December 2002, despite the fact that, according to the complainant, the law guarantees the irremovability of members of a trade union in the process of being established (article 450 of the Organic Labour Act), provides specific guarantees in the event of mass dismissals and provides for the serving of a summons on the employer, and that the collective agreement requires good grounds proven by the judicial authorities and exhaustion of the conciliation process, the Committee notes the Government’s statements concerning the historical background to the allegations, namely that: (1) during 2002 certain sections of the PDVSA senior and middle management paralysed administrative sectors of strategic importance to the oil industry, opposed the company’s board of directors – appointed by the President of the Republic – on the pretext of ensuring respect for the “meritocracy” and through blackmail promoted staggered partial work stoppages of an illegal and political nature, without respecting legal procedures, these being clear indications of sabotage and political actions; (2) in April 2002, the President dismissed a number of managers and retired others; just before, a parliamentary committee had been formed to mediate in the dispute; (3) on 9 April 2002 these sections of the senior and middle management, the CTV, FEDECAMARAS and sections of the political opposition called for an indefinite general work stoppage and a march on 11 April, actively participating in the coup d’état of 12 April, which shows the political nature of the actions; (4) these PDVSA managers were pardoned and no reprisals were taken after the restoration of democracy; the President of the Republic accepted the resignation of the PDVSA board of directors on 14 April 2002 and the previously dismissed managers formed part of the PDVSA board or its senior and middle management.*
- 1128.** *The Committee also notes the Government’s statements concerning the specific allegations regarding the dismissal of 18,000 workers in the oil industry, in particular to the effect that: (1) in December 2002 the managers again illegally paralysed the company, this time with claims of revoking the mandate of the Head of State and since October they had collected signatures requesting a consultative referendum to the effect that the President of the Republic should voluntarily relinquish his office (a different scenario from the referendum for revocation of a mandate laid down in the Constitution); in addition, together with the CTV, FEDECAMARAS and other sectors, they issued a call for an indefinite nationwide “civic work stoppage”; this completely paralysed the oil industry but 85 per cent of the working class did not take part in it; (2) the PDVSA senior and middle managers then set about sabotaging the industry’s operations by disconnecting and closing down computing systems and instructing the remaining workers to return home; they issued calls to paralyse the industry until such time as the dictator departed; (3) all of this caused a massive crisis of substantial impact with the purpose – and this was the real aim of the stoppage – of bringing down the President of the Republic, despite the various initiatives for dialogue and the intervention of the OAS; the cost was US\$10 billion in losses, together with sabotage, shipping brought to a standstill, plummeting GDP, increasing unemployment and the loss of more than 500,000 jobs, apart from daily and contractual workers being prevented from exercising their right to work; (4) the dismissal of 18,000 oil industry workers is the result of their voluntary dereliction of duty for more than 60 days.*
- 1129.** *The Committee notes that the legal grounds for the dismissals were, according to the Government, in the respective cases, “lack of integrity or immoral conduct at work”, “unjustified absence from work for three or more working days”, “acts of violence”, “slander or grave lack of respect and consideration towards the employer”, “dereliction of duty”, “serious failure to meet employment obligations”. The Committee nevertheless feels compelled to draw attention to the fact that the Government has not made any comments on the alleged failure to observe legal standards and the standards of the*

collective agreement concerning the dismissal procedure. The Committee requests the Government to send its observations in this respect.

- 1130.** *While noting the Government's information concerning the events and actions culminating on 11 and 12 April 2002, the Committee must focus on the question of the dismissals arising from the "national civic work stoppage" (December 2002-January 2003) and in particular those of the UNAPETROL members. The Government highlights the illegal character of this stoppage in which the UNAPETROL managers took part and the perpetration of criminal offences, in particular sabotage and acts of coercion, as well as asserting that the real aim was to ensure the departure from office of the President of the Republic. In this respect, the Committee is conscious of the fact that this stoppage was promoted jointly by the CTV, FEDECAMARAS, opposition parties etc., and by the PDVSA managers, and that it was happening in a context of acute political tension and polarization. The Committee emphasizes that it is alleged in the present case that the Government does not recognize the executive committee of the CTV, the most representative trade union confederation, that the CTV and FEDECAMARAS had been protesting against the Government's social and economic policy, and is of the opinion that the "national civic work stoppage" is not unrelated to this protest. The Committee also observes that article 97 of the Constitution recognizes the right to strike for all workers in the public and private sectors, subject to the conditions laid down by law, and therefore concludes that the right to strike applies to workers in the oil industry. The Committee also observes that the Government refers in general terms to offers of dialogue but does not indicate whether it established contact with the oil industry trade unions and whether it initiated negotiations for establishing a minimum service. The Committee requests the Government to provide information on these offers of dialogue and the corresponding evidence.*
- 1131.** *The Committee observes that, contrary to what the Government's reply may suggest, the fact that 18,000 dismissals took place perhaps indicates that the work stoppages that occurred could not be attributed exclusively to the PDVSA senior and middle managers.*
- 1132.** *Under these circumstances, setting aside the criminal offences referred to by the Government which must be examined and, where appropriate, punished by competent and independent judicial authorities, the Committee considers that the "national civic work stoppage", convened by the CTV, inter alia, and comprising a set of labour claims, can be likened to a general strike, also directed against the Government's social and economic policy, and therefore the work stoppages in the oil industry may in themselves be regarded as trade union activity. Consequently, the oil industry managers and workers who participated in peaceful work stoppages and did not commit any criminal offences should not have been dismissed. The Committee therefore deplores these mass dismissals, of a hasty and disproportionate nature, which affected 18,000 workers, and emphasizes the fact that mass penalties for trade union actions are tantamount to abuses, and destroy labour relations. The Government itself recognizes that it had to back down with respect to the dismissal of 1,038 workers soon after the mass dismissals occurred.*
- 1133.** *In view of all these elements, the Committee requests the Government to inform it of the result of the legal action taken by the dismissed workers and to initiate negotiations with the most representative trade union confederations in order to find a solution to the mass dismissals which took place at PDVSA and its subsidiaries as a consequence of the "national civic work stoppage", and in particular with regard to the UNAPETROL members, to whom, moreover, article 94 of the Constitution should be applied, which states that "the promoters and members of the executive committees of trade unions shall enjoy immunity for the duration of, and under the conditions necessary for, the performance of their duties". The Committee requests the Government to keep it informed in this respect.*

- 1134.** *With regard to the alleged social consequences of such dismissals (deprivation of the right to medical assistance, of provisions of essential goods, of minors' right to education, no possibility of access to private saving funds, the eviction of hundreds of workers from their dwellings), the Committee notes the Government's statements to the effect that: (1) the dismissed workers' employment relationship ceased immediately and with it the benefits accruing therefrom (housing, schools, savings bank and other benefits); (2) the evictions respected due process and facilities were made available for more than six months to enable the former workers and their families to relocate, as indeed happened in a very high percentage of cases; (3) a minority of those dismissed who adopted a political stance were evicted on the basis of judicial orders, the forces of law and order being used where necessary; in isolated cases, the dismissed workers attacked the police or verbally abused the judicial officers; (4) the children of the former workers who were illegally occupying dwellings were allowed to complete the school year (July 2003) at the schools belonging to, or run by, PDVSA and instructions were given to ensure that henceforth they would be enrolled in state schools; (5) the social benefits are held in their respective trust funds pending withdrawal of the benefits by the former workers; if the latter failed to make such withdrawals, it is because they voluntarily submitted administrative and judicial appeals for their reinstatement. The Committee must strongly emphasize the serious social consequences of the dismissals, in particular the evictions referred to by UNAPETROL from the housing to which they were entitled under the collective agreement, as well as the fact that the evictions were undertaken even in cases where former workers had appealed against their dismissals. Consequently, the Committee firmly urges the Government to examine together with the trade unions the evictions affecting hundreds of former workers in the State of Falcón and in the San Tomé and Anaco oilfields with a view to finding a solution to the problem. The Committee requests the Government to keep it informed in this respect.*
- 1135.** *Regarding the alleged anti-union reprisal in the form of PDVSA's written request to its subsidiaries and a Cypriot company not to hire the dismissed workers, the Committee regrets that the Government has not replied to these allegations. The Committee requests the Government to institute an independent investigation into this matter without delay and, if the allegations are found to be true, ensure that the workers affected are paid appropriate compensation.*
- 1136.** *As regards the detention orders of 26 February 2003 issued against the UNAPETROL president and labour management secretary, Mr. Horacio Medina and Mr. Edgar Quijano, respectively, at the request of the Office of the Attorney-General of the Republic of Venezuela, by a penal court for presumed acts of sabotage and damage to installations belonging to the PDVSA enterprise (alleged discontinuation of electricity or gas supplies), as well as presumed political offences, and as regards similar actions taken with respect to other UNAPETROL members (Juan Fernandez, Lino Carrillo, Mireya Ripanti de Amaya, Gonzalo Feijoo and Juan Luis Santana, former company directors), the Committee deplores the fact that the Government has not replied specifically to these allegations and urges it to send its observations in this respect as a matter of urgency.*
- 1137.** *With respect to the alleged systematic harassment of oil workers by the PDVSA loss prevention and control management and by a new pro-government workers' organization called the Association of Oil Workers (ASOPETROLEROS) (verbal and written threats via e-mail and Intranet; transfers of trained staff for political reasons; persecutions and espionage; arbitrary decisions concerning the structure and functioning of PDVSA and its subsidiaries having a direct effect on the workers), the Committee regrets to observe that the Government has not replied to these allegations and urges it to do so fully and without delay.*

Allegations by FEDEUNEP

- 1138.** *As regards the alleged obstruction by the labour inspectorate of the draft fourth collective agreement submitted by FEDEUNEP, imposing demands that go beyond the law or are impossible to fulfil in practice within the prescribed deadline and subsequently rejecting the draft, as well as acceptance of a new draft (which was converted into a collective agreement) originating from six of the 17 FEDEUNEP leaders who formed a federation (FENTRASEP) approved by the government authorities and the Ministry of Labour, the Committee regrets that the Government has not replied to these allegations and urges it to send its observations without delay.*
- 1139.** *As regards the alleged initiation of disciplinary proceedings against Mr. Gustavo Silva, SINTRAFORP general secretary, and Ms. Cecilia Palma, president of the FEDEUNEP disciplinary tribunal, the Committee regrets that the Government has not replied to these allegations and urges it to do so without delay.*

The Committee's recommendations

- 1140.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee deeply deplores the murder of the trade unionist Numar Ricardo Herrera, member of the Federation of Construction Workers, on 1 May 2003, emphasizing that freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed and requests the Government to keep it informed of the outcome of the legal proceedings relating to the murder. The Committee requests the Government to indicate clearly whether other workers were injured in the march that took place on 1 May 2003, as asserted by the ICFTU, and if so, what legal action was taken.*
 - (b) With respect to the alleged acts of violence by the military on 17 January 2003 against a group of workers from the Panamco de Venezuela S.A. enterprise, leaders of the Beverage Industry Union of the State of Carabobo, for protesting against the raid on the enterprise and the confiscation of its goods, which represented a threat to their jobs, the Committee deplores the acts of violence which occurred during the raid on the Panamco enterprise and urges the Government to institute an independent investigation without delay into the instances of detention and torture claimed by the CTV to have been suffered by workers Faustino Villamediana, Jorge Gregorio Flores Gallardo, Jhonathan Magdaleno Rivas, Juan Carlos Zavala and Ramón Díaz. The Committee urges the Government to keep it informed of the results.*
 - (c) As regards the allegation concerning the detention order against Mr. Carlos Ortega, president of the CTV, for the presumed perpetration of political offences during the “national civic work stoppage” (“treason”, “incitement to crime” and “criminal damage”) without the guarantees of due process in view of a judge’s lack of impartiality, and the allegations that the President of the Republic refuses to recognize the CTV leaders, promotes the establishment of a workers’ confederation supportive of his party and makes*

hostile public statements against the CTV and its leaders in the context of the “national civic work stoppage” which began on 2 December 2002, the Committee notes that the Government has sent its observations, received one day before its meeting. The Committee regrets the delay in the sending of that reply, which it intends to examine at its meeting in May-June 2004.

Allegations by UNAPETROL

- (d) *With respect to the allegation concerning the Ministry of Labour’s refusal to register UNAPETROL despite the fact that the relevant documentation was submitted on 3 July 2002, and regarding the Ministry’s request to the state enterprise PDVSA to describe the duties performed by the promoters of UNAPETROL, the Committee deplores the fact that the Ministry of Labour informed PDVSA of the names of the UNAPETROL members in order to determine who belonged to the management staff and who did not, as well as the fact that the administrative process has been delayed for so many months partly because of a judicial appeal by UNAPETROL but largely owing to delays in administrative proceedings and because it was not clearly stated what specific steps should be taken by UNAPETROL in order to be registered (for example, suggesting that the representative role of the managers be eliminated or, conversely, that that of the non-managers be eliminated). The Committee firmly expects that in future the procedure for trade union registration will be more rapid and more transparent and requests the Government to inform it of the steps it plans to take in this respect and initiate direct contact with the members of UNAPETROL in order to find a solution to the problem of registering the union. The Committee requests the Government to keep it informed in this respect.*
- (e) *With regard to the alleged dismissal of more than 18,000 workers from PDVSA and its subsidiaries, including the members of UNAPETROL, since the start of the “national civic work stoppage” in December 2002, the Committee deplores these mass dismissals, of a hasty and disproportionate nature, which affected 18,000 workers, and emphasizes the fact that mass penalties for trade union actions are tantamount to abuses and destroy labour relations. It requests the Government to inform it of the result of the legal action taken by the dismissed workers and to initiate negotiations with the most representative trade union confederations in order to find a solution to the mass dismissals which took place at PDVSA and its subsidiaries as a consequence of the “national civic work stoppage”, and in particular with regard to the UNAPETROL members, to whom, moreover, article 94 of the Constitution should be applied, which states that the promoters and members of the executive committees of trade unions shall enjoy irremovability for the duration of, and under the conditions necessary for, the performance of their duties. It requests the Government to keep it informed in this respect and that it send its observations on the alleged failure to observe legal standards and the standards of the collective agreement concerning the dismissal procedure. The Committee firmly urges the Government to examine together with the trade unions the evictions affecting hundreds of former workers of PDVSA and its subsidiaries in the State of Falcón and in the San Tomé and Anaco oilfields with a view to finding a solution to the problem and to keep it informed in this respect.*

- (f) *The Committee requests the Government to provide information on the supposed offers of dialogue in the petroleum sector to which the document refers, as well as on the corresponding evidence.*
- (g) *Regarding the alleged anti-union reprisal in the form of PDVSA's written request to its subsidiaries and a Cypriot company not to hire the dismissed workers, the Committee regrets that the Government has not replied to these allegations. The Committee requests the Government to institute an independent investigation into this matter without delay and, if the allegations are found to be true, ensure that the workers affected are paid appropriate compensation.*
- (h) *As regards the detention orders of 26 February 2003 issued against the UNAPETROL president and labour management secretary, Mr. Horacio Medina and Mr. Edgar Quijano, respectively, at the request of the Office of the Attorney-General of the Republic of Venezuela, by a penal court for presumed acts of sabotage and damage to installations belonging to the PDVSA enterprise (alleged discontinuation of electricity or gas supplies), as well as presumed political offences, and as regards similar actions taken with respect to other UNAPETROL members (Juan Fernandez, Lino Carrillo, Mireya Ripanti de Amaya, Gonzalo Feijoo and Juan Luis Santana, former company directors), the Committee regrets that the Government has not replied specifically to these allegations and urges it to send its observations in this respect as a matter of urgency.*
- (i) *With respect to the alleged systematic harassment of oil workers by the PDVSA loss prevention and control management and by a new pro-government workers' organization called the Association of Oil Workers (ASOPETROLEROS) (verbal and written threats via e-mail and Intranet; transfers of trained staff for political reasons; persecutions and espionage; arbitrary decisions concerning the structure and functioning of PDVSA and its subsidiaries having a direct effect on the workers), the Committee regrets that the Government has not replied to these allegations and urges it to do so fully and without delay.*

Allegations by FEDEUNEP

- (j) *As regards the alleged obstruction by the labour inspectorate of the draft fourth collective agreement submitted by FEDEUNEP, imposing demands that go beyond the law or are impossible to fulfil in practice within the prescribed deadline and subsequently rejecting the draft, as well as acceptance of a new draft (which was converted into a collective agreement) originating from six of the 17 FEDEUNEP leaders who formed a federation (FENTRASEP) approved by the government authorities and the Ministry of Labour, the Committee regrets that the Government has not replied to these allegations and urges it to send its observations fully and without delay.*
- (k) *As regards the alleged initiation of disciplinary proceedings against Mr. Gustavo Silva, SINTRAFORP general secretary, and Ms. Cecilia Palma, president of the FEDEUNEP disciplinary tribunal, the Committee regrets that the Government has not replied to these allegations and urges it to do so without delay.*

- (l) *Finally, the Committee would underline that it remains seriously concerned about the situation of workers' and employers' organizations in Venezuela and urges the Government to implement all its recommendations without delay.*

Geneva, 19 March 2004.

(Signed) Professor Paul van der Heijden,
Chairperson.

Points for decision: Paragraph 215; Paragraph 230; Paragraph 239; Paragraph 277; Paragraph 319; Paragraph 333; Paragraph 362; Paragraph 387; Paragraph 464; Paragraph 486; Paragraph 509; Paragraph 520; Paragraph 542; Paragraph 564; Paragraph 599; Paragraph 612; Paragraph 641; Paragraph 770; Paragraph 787; Paragraph 804; Paragraph 832; Paragraph 848; Paragraph 862; Paragraph 877; Paragraph 919; Paragraph 939; Paragraph 1001; Paragraph 1012; Paragraph 1023; Paragraph 1036; Paragraph 1140.