INTERNATIONAL LABOUR OFFICE

GB.278/3/1
278th Session

Governing Body

Geneva, June 2000

THIRD ITEM ON THE AGENDA

321st Report of the Committee on Freedom of Association

Contents

Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva on 25 and 26 May and 2 June 2000, under the chairmanship of Professor Max Rood.

2. The member of Mexican nationality was not present during the examination of the case relating to Mexico (Case No. 2070).

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3. Currently, there are 83 cases before the Committee, in which complaints have been submitted to the governments concerned for observations. At its present meeting, the Committee examined 25 cases on the merits, reaching definitive conclusions in 12 cases and interim conclusions in 13 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

New cases

4. The Committee adjourned until its next meeting the examination of the following cases: Nos. 2078 (Lithuania), 2079 (Ukraine), 2080 (Venezuela), 2082 (Morocco), 2083 (Canada/New Brunswick) and 2084 (Costa Rica) because it is awaiting information and observations from the governments concerned. All these cases relate to complaints or representations submitted since the last meeting of the Committee.

Observations requested from governments

5. The Committee is still awaiting observations or information from the governments concerned in the following cases: Nos. 1865 (Republic of Korea), 1986 (Venezuela), 1995 (Cameroon), 2010 (Ecuador), 2012 (Russian Federation), 2014 (Uruguay), 2022 (New Zealand), 2034 (Nicaragua), 2048 (Morocco), 2059 (Peru), 2061 (New Zealand), 2062 (Argentina), 2063 (Paraguay), 2065 (Argentina), 2067 (Venezuela), 2068 (Colombia), 2072 (Haiti), 2073 (Chile) and 2076 (Peru).

Observations requested from complainants

6. In Case No. 2039 (Mexico), the Committee is awaiting specific information from the complainant on the reasons for which it wishes to withdraw the complaint. The Committee requests the complainant to send this information without delay, in the absence of which the Committee may examine the substance of the case.

Partial information received from governments

7. In Cases Nos. 1851, 1922 and 2042 (Djibouti), 1984 (Costa Rica), 2049 (Peru) and 2077 (El Salvador), the Governments have sent partial information on the allegations made. As regards Case No. 1951 (Canada/Ontario), the Committee is awaiting a copy of a court decision that the Government is to transmit as soon as it has been handed down. In Case No. 1991 (Japan), the Committee is awaiting the Government's observations on a recent

communication from a complainant. The Committee requests all of these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

8. As regards Cases Nos. 1953 (Argentina), 1960 (Guatemala), 1980 (Luxembourg), 2006 (Pakistan), 2013 (Mexico), 2021 (Guatemala), 2028 (Gabon), 2037 (Argentina), 2045 (Argentina), 2058 (Venezuela), 2060 (Denmark), 2069 (Costa Rica), 2074 (Cameroon), 2075 (Ukraine) and 2081 (Zimbabwe), 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. 1880 (Peru), 1970 (Guatemala), 2017 (Guatemala), 2035 (Haiti), 2036 (Paraguay), 2043 (Russian Federation), 2050 (Guatemala) and 2053 (Bosnia and Herzegovina), the Committee observes that, despite the time which has elapsed since the submission of the complaints or the last examination of the case, it has not received the observations of the governments concerned. 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 their observations or information as a matter of urgency.

Closing a case

10. In Case No. 1835 (Czech Republic), the complainants have not responded to the request made by the Committee to furnish comments on the Government's reply. In view of the time that has lapsed since this request was first made and the number of times it was reiterated, the Committee decides to close this case.

Transmission of cases to the Committee of Experts

11. 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/Ontario (Case No. 1975) and Swaziland (Case No. 2019).

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

Case No. 1939 (Argentina)

12. The Committee examined this case at its June 1999 meeting [see 316th Report, paras. 88-101], where it requested the Government:

(a) to keep it informed of the charges brought against the members of the CTA of Cutral-Co, Sandro Botron, Juan Bastías, Cristían Rodríguez, Oscar Chávez, Beatriz Parra, Cristían Valle and Angel Lucero and of the length of their detention;

(b) to keep it informed of the outcome of the judicial investigations as regards the allegations on: (1) the assault on ATE delegate Mr. Jorge Villalba, on 13 June 1997 at Lanús; (2) the death threat made against Ms. Nélida Curto, a member of the administrative committee of ATE-Lanús; (3) the threat against the ATE delegate at the Arturo Melo Hospital, Ms. Ana María Luguercho on 26 June 1997; (4) the death threat against the ATE-Lanús delegate, Mr. Daniel Saavedra; (5) the death threat against the general secretary of ATE-San Martín, Mr. Víctor Bordiera; and (6) the threat against the deputy-general delegate of ATE-General Rodríguez district, Mr. Ricardo Caffieri;

(c) to investigate the allegations concerning the attack on the home of the deputy secretary of ATE, national branch, Mr. Juan Gonzáles, the attack and looting in July 1997 of the ATE premises in Comodoro Rivadavia and Goya, and the request by the Governor of Neuquén province to withdraw legal recognition from the state employees and teaching unions (ATE and ATEN which are affiliated with the CTA), and to keep it informed of their outcome;

(d) to keep it informed of the outcome of the judicial inquiry into the killing of the worker Teresa Rodríguez by police officers during a demonstration organized on 12 April 1997 in Neuquén province in protest against unemployment.

13. In communications of 3 and 9 March 2000, the Government indicates that: (1) the national Government democratically elected which has assumed its functions on 10 December 1999, has once again officially transmitted the conclusions and recommendations of the Committee in this case to the provincial governments involved, a large number of which have also been confirmed in their functions through democratic means. That being the case, it is hoped that this initiative by the new national authorities will lead to a better appreciation of the Committee's conclusions and recommendations, in the provinces where the facts occurred; (2) the police and judiciary authorities have launched an inquiry concerning the alleged attack and looting of the ATE premises in Comodoro Rovadavia, in July 1997; that inquiry is on hold, pending the discovery of new evidence; (3) it has been decided to put on hold, for lack of evidence, the inquiry into the assault on Mr. Jorge Villalba (ATE delegate), and to suspend the inquiry into the death threat made against Ms. Nélida Curto, a member of the administrative committee of ATE-Lanús.

14. *The Committee takes note of this information. It hopes that the new Government will transmit in the near future all the information requested when this case was last examined in June 1999, so that the pending issues may be fully examined.*

Case No. 1849 (Belarus)

15. During its last examination of this case at its meeting in March 2000, the Committee once again requested the Government to keep it informed of the measures taken to reinstate the workers dismissed in connection with the strikes in Minsk and Gomyel in August 1995 [see 320th Report, paras. 32-34].

16. In a communication dated 22 April 2000, the Government indicates that the strikes in question were declared illegal and the workers at the Gomyel undertaking and the Minsk metro system were dismissed for infringing labour discipline. Applications for reinstatement by a number of the dismissed workers have not been granted by the courts.

Former metro workers have been given assistance in finding other employment. The Minsk municipal executive committee in August-September 1995 adopted a number of measures to help individual workers find new jobs. For example, on 28 March 1996 a working commission, including representation from the executive committee, met to discuss the problem of finding jobs for former Minsk metro workers, who were offered the possibility of employment with a new employer or retraining.

17. *The Committee takes due note of this information. It must however draw the Government's attention to its conclusions and recommendations when it first examined this case [see 302nd Report, paras. 161-222]. At that time, the Committee had recalled that strikes may be prohibited in respect of essential services, but that transport does not generally fall within the category of essential services. It therefore requested the Government to modify its legislation in such a fashion that transport workers unequivocally enjoy the right to strike. Consequently, the Committee also emphasized that the dismissal of workers for taking part in legitimate strike action constituted anti-union discrimination in employment and requested the Government to take the necessary measures without delay to assure the reinstatement in their jobs of all workers dismissed in connection with the strikes in Minsk and Gomyel in August 1995.*

18. *While taking note of the efforts to offer employment with a new employer or retraining for these workers, the Committee must express its deep concern that the Government has apparently limited its action on this issue within the context of dismissals for illegal strike action, whereas the Committee has emphasized that the legislation prohibiting such strikes is contrary to the principles of freedom of association. The Committee therefore requests the Government urgently to take the necessary measures to ensure a solution for the dismissed workers who remain without employment which is to their satisfaction and which ensures full compensation for lost wages and to keep it informed of developments in this regard.*

Case No. 1997 (Brazil)

19. The Committee last examined this case, which concerns interference by the authorities in the application of a collective agreement, at its meeting in November 1999 [see 318th Report, paras. 16-18]. At that time the Committee requested the Government "to keep it informed of whether the enterprises of the Puerto Alegre port sector [had] denounced the collective agreement as a result of the meeting to which the complainant objected [called by the Executive Group for Port Modernization] and whether sanctions [had] been applied to them for complying with the agreement".

20. In its communication of 10 April 2000, the Government states that it was not the National Ministry of Labour that had denounced the collective agreement but the Regional Labour Delegation of the State of Río Grande do Sul. The latter had recognized the unlawful nature of a number of clauses in the collective agreement and had notified the parties concerned accordingly, urging them to adhere to the law. After lengthy negotiations, the parties promised the Office of the Regional Prosecutor for Labour to regularize the clauses that had led to the denunciation of the agreement, in order to avoid a lawsuit. The Regional Delegation also asked the trade union organizations that had signed the collective greement to correct the irregularities therein, to which it got the parties to agree. The trade unions themselves recognized the unlawfulness of the clauses that had led to the denunciation of the agreement. The collective agreement had in any case already expired, and the parties concerned agreed that they would meet the commitments that they had entered into with the Regional Delegation and the Office of the Regional Prosecutor as soon as the new collective agreement, which was currently in the process of negotiation, came into force.

21. *The Committee takes note of this information.*

Case No. 1999 (Canada/Saskatchewan)

22. The Committee last examined this case at its November 1999 meeting [see 318th Report paras. 119-171]. On this occasion, it had requested the Government to bring the Maintenance of Saskatchewan Power Corporation's Operations Act, 1998 (Bill No. 65), into conformity with freedom of association principles as well as to explore in the future the possibility of consultations with workers' organizations on the establishment of a budgetary package in the context of public sector collective bargaining.

23. In a communication dated 25 April 2000, the Government indicates that Bill No. 65 will sunset on 31 December of this year and, therefore, the Government is not contemplating repealing the Act. Concerning the issue of consultation in the public service, the Government indicates that the relevant departments and agencies have reviewed the Committee's recommendations and have agreed to take under advisement its specific recommendation to consult on public sector guidelines as well as to consider alternate dispute resolution mechanisms to deal with impasses in collective bargaining.

24. *The Committee takes note of this information with interest and trusts that Bill No. 65 will no longer produce effects beyond 31 December 2000.*

Case No. 1938 (Croatia)

25. The Committee last examined this case, which concerned allegations of interference in trade union activities and with trade union assets, at its June 1998 meeting [see 310th Report paras. 15-17]. On this occasion, the Committee repeated its requests to the Government for it to determine the criteria for the division of immoveable assets formerly owned by the trade unions in consultations with the trade unions concerned should they be unable to reach an agreement among themselves, and fix a clear and reasonable time frame for the completion of the division of the property once the period of negotiation has passed. The Committee also requested the Government to forward a copy of the decision of the Constitutional Court regarding the assessment of constitutionality of the provisions of article 38 of the Act on Associations.

26. In a communication dated 25 February 2000, the Government sends a copy of the decision of the Constitutional Court which was delivered on 3 February 2000 and in which the Court stated that article 38 of the Act on Associations, as a transitional provision, was not contrary to the Constitution.

27. *The Committee takes note of the contents of the decision. It requests once again the Government to keep it informed of the remaining above-noted matters.*

Case No. 1978 (Gabon)

28. At its meeting in November 1999 [see the Committee's 318th Report, paras. 208 to 219], the Committee deplored the suppression of the trade union structure of the Gabonese Confederation of Free Trade Unions (CGSL) in the SOCOFI and Leroy-Gabon enterprises and the fact that the Government had not replied to these allegations. It requested the Government to take all the necessary measures to guarantee the existence and free functioning of that trade union in the enterprises in question. It also deplored the dismissal of trade unionists for activities connected with the setting up of a trade union or for

exercising their right to strike, and requested the Government to take all the necessary measures for the workers to be reinstated in their posts without loss of pay.

29. The Government explains that the labour inspectorate intervened on two occasions following the establishment of a branch of the CGSL at the SOCOFI enterprise. The labour inspectorate had found on the first occasion that the union had been established without prior filing of its by-laws and the names of its officers, and on the second occasion had found that the union branch in question represented only one occupation. The Government maintains that although the CGSL in August 1997 accepted the labour inspectorate's recommendations, it maintained its old trade union structure, with all the consequences that ensued.

30. With regard to the allegations of wrongful repatriation by the Gabon police of Mr. Sow Alliou, a CGSL trade union delegate to SOCOFI, on 2 August 1997, the Government maintains that Mr. Alliou, who has Guinean nationality, had a residence permit which expired on 31 July 1997; he was not expelled from Gabon because he was a trade union delegate but for reasons which the immigration police have yet to specify. The Government also indicates that Mr. Alliou returned to Gabon some months later and found another job and now has a valid residence permit which will not expire until October 2001. The Government also indicates that his previous employer has paid him the compensation owed to him under the terms of his contract and that he and the CGSL have just begun an action for damages which is exclusively a matter for the Gabonese courts.

31. As regards the allegations of dismissals of all the CGSL members at the SOCOFI enterprise in September 1997 following a strike, the Government states that the strike had been declared illegal by a court of first instance and that the matter was now before the appeal court (a copy of the original ruling is supplied).

32. As regards the allegations concerning the suppression of the CGSL trade union structure at the Leroy-Gabon company's "Gongue" forestry works, the Government explains that the intervention of the Koula-Mouton labour inspectorate had the same legal basis as in the CGSL/SOCOFI case and that, contrary to the CGSL's allegations, an ordinary CGSL member had assumed that he would enjoy the same protection as that enjoyed by trade union delegates in the enterprise and accordingly took time off during working hours to engage in trade union activities. In the absence of a list of CGSL delegates at the Gongue forestry works, the labour inspectorate recommended to the supposed delegate that he desist for the time being from his trade union activities, until such time as the union officers were formally appointed and their names communicated to the labour inspectorate. Lastly, the Government states that only a short time after the labour inspectorate made this recommendation, and long before the CGSL's complaint was filed, the Gongue works was abandoned and its employees were transferred following a fall-off in its activities.

33. *The Committee takes note of this information. Nevertheless, it greatly deplores the fact that, although the complaint was lodged on 27 July 1998, the Government took nearly two years to send any information at all on the case. The Committee hopes that the Government will be more cooperative in future.*

34. *As regards the allegations concerning the dissolution of the CGSL trade union structure in the SOCOFI enterprise, the Committee notes the Government's statement to the effect that the labour inspectorate took action at the enterprise because of a failure to comply with regulations on the registration of trade unions. In this respect, the Committee has always considered that, although the founders of a trade union should comply with the formalities prescribed by legislation, those formalities should not be of such a nature as to impair the free establishment of organizations. The Committee also emphasises that the free exercise of the right to establish and join unions implies the free determination of the structure and*

*composition of unions. Furthermore, it should be possible to appeal to the courts against any administrative decision concerning the registration of a trade union [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 248, 264 and 275]. In the present case, the Committee requests the Government to take the necessary measures to ensure the existence and the free functioning of the trade union CGSL in the SOCOFI enterprise, once the union has complied with the registration formalities provided for by law, and to keep it informed in this regard.*

35. *As regards the allegations concerning the wrongful repatriation to Guinea of Mr. Sow Alliou, a CGSL delegate to the SOCOFI, the Committee notes with concern that, by the Government's own admission, the immigration police are still unable to indicate the precise motives for that expulsion three years after it occurred. The Government also states that the delegate received compensation from his former employer. The Committee believes that it can often be difficult or even impossible for a worker to prove that he or she has been the victim of anti-union discrimination. In its view, 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 employees 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]. Noting that Mr. Alliou has just brought an action for damages, the Committee requests the Government to keep it informed of any ruling handed down by the court. It also requests the Government to keep it informed of the decision of the court of appeal concerning the legality of the strike by the CGSL at the SOCOFI enterprise in 1997. If the strike is ruled to have been legal, the Committee trusts that the Government will take all the necessary measures to ensure that the workers concerned are reinstated in their posts without loss of pay.*

36. *As regards the allegations concerning the suspension of the CGSL trade unions structure at the Leroy-Gabon company's Gongue forestry works, the Committee notes once again that the labour inspector intervened because the union's officers failed to comply with the registration formalities. In this regard, the Committee, while reiterating the principles stated above in relation to the CGSL officers in the SOCOFI enterprise, also notes that the worksite in question was closed and its workers were transferred before the complaint was filed.*

Cases Nos. 1512 and 1539 (Guatemala)

37. At its meeting in November 1997, the Committee made the following recommendations concerning certain allegations of grave acts of violence against trade union officials and members that occurred between 1990 and 1994 [see 308th Report, para. 394]: "With regard to Cases Nos. 1512 and 1539, the Committee requests the Government to keep it informed periodically of the progress made by the Commission on Historical Clarification in connection with the allegations under review concerning the assassination or disappearance of trade unionists (1990-94)." In its communication of 27 August 1999, the Government stated that the Commission on Historical Clarification had submitted its report.

38. *Given that the report in question contains general conclusions on human rights violations that occurred before the peace agreements were signed, the Committee requests the Government to indicate whether the annexes to the report contain specific information on the allegations in the present case and whether it has initiated judicial inquiries in this matter, whether any rulings have been handed down and whether the culprits have been punished.*

Case No. 1974 (Mexico)

39. The Committee last examined this case relating to the dismissals of trade union officials and threats of arrest at its meeting in November 1999 [see 318th Report, paras. 298-308]. On that occasion, the Committee made the following recommendation:

> The Committee requests the Government to ensure that the union officials belonging to the Executive Board of the Single Trade Union for Employees of the State, Municipal Authorities and Decentralized Industries in Nayarit (SUTSEM) who were dismissed for their participation in a strike in March 1998 are reinstated in their posts without loss of pay. The Committee requests the Government to keep it informed of any measures taken in this regard.

40. In a communication dated 9 May 2000, the Government states that the members of the Executive Board of the said trade union organization were not dismissed from the jobs for which they were mandated as trade union officials. It adds that at no moment were they deprived of their wages which they continued to receive especially since the corresponding labour proceedings were dismissed and annulled any action that might have prejudiced their employment relations and their wages.

41. *The Committee takes note of this information.*

Case No. 2020 (Nicaragua)

42. The Committee last examined this case, which concerns dismissals and other anti-union measures – seizure of union offices and confiscation of property – at its meeting in November 1999 [see 318th Report, paras. 309-323]. At the time the Committee had made the following recommendations:

(a) The Committee requested the Government to endeavour to secure the reinstatement of the 367 dismissed workers, at least until the courts have given a ruling on the matter.

(b) The Committee requested the Government to keep it informed of developments in the collective talks at ENITEL.

(c) The Committee requested the Government to carry out an independent investigation into the seizure of trade union premises and the confiscation of trade union papers and other property in León, Chinandega, Granada and Matagalpa by paramilitary units and, if these allegations are found to be true, to take the necessary measures to ensure the immediate return of the premises, papers and property to the trade unions concerned and to ensure that the persons responsible are brought before the competent court.

(d) The Committee requested the Government to take measures to begin an independent inquiry into the allegations concerning pressure in the form of threats of dismissal to persuade workers to relinquish the benefits of the collective agreement and their representation by the complainant and, if they are found to be true, to ensure that these workers in positions of trust can choose freely whether or not to be covered by the collective agreement and be represented by the trade union organization.

(e) The Committee requested the Government to take measures to carry out an independent investigation into the allegations concerning the pressure applied to force workers to leave the complainant organization and, if the allegations are found to be true, to take appropriate steps to apply

administrative and legal sanctions and to prevent any future recurrence of such acts. The Committee requested the Government to keep it informed in this regard.

43. In a communication dated 22 March concerning the reinstatement of the 367 dismissed workers, the Government states that the authorization to dismiss a number of former employees of ENITEL for abandoning their duties on 19 October 1998 was justified. Moreover, the 312 workers who accepted settlements cannot be reinstated as the matter has been resolved once and for all. Regarding the workers who did not accept settlements, on the other hand, the Government cannot determine whether or not their reinstatement is justified, even temporarily, as that would constitute interference by the Executive in matters that come within the purview of Judiciary. Finally, the Government states that the workers and employers reached a satisfactory agreement in the course of the conciliation procedure, wherein the workers negotiated and accepted the conditions of their cessation of work and explicitly notified the judicial authorities that they were abandoning their demand for reinstatement.

44. *The Committee regrets that the Government has not interceded on behalf of the dismissed workers and recalls the principle 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 of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 707].*

45. The Government further states that ENITEL signed a new collective agreement with the complainant organization and its two other trade union associations on 28 February 2000 (the new trade union executive board took up office on 16 January 1999).

46. *The Committee takes note of this information.*

47. Regarding the allegations that trade union premises were seized and various trade union papers confiscated, the Government states that there are no paramilitary units in Nicaragua and that no trade union premises were seized.

48. *The Committee regrets that the Government has not provided any information on the outcome of the administrative appeal lodged by the complainant organization in this respect or on the findings of the independent investigation into these allegations that had been requested. The Committee therefore recalls that the right of the inviolability of trade union premises also necessarily implies that the public authorities may not insist on entering such premises without prior authorization of their occupants or without having obtained a legal warrant to do so [see* ***Digest****, op. cit., para. 175].*

49. The Government further gives its assurances that no pressure was exercised on the workers to induce them to relinquish the benefits of the collective agreement with ENITEL and also that no pressure was brought to bear on the workers to force them to leave the complainant organization.

50. *The Committee observes that, in its reply, the Government does not provide sufficient information concerning the pressure allegedly brought to bear on the workers to persuade them to relinquish their representation by the complainant organization and to leave it, or to the outcome of the independent inquiry that had been called for into these allegations. It recalls that when examining various cases in which workers who refuse to give up the right to collective negotiation were denied [certain rights], 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., para. 913]. It also emphasizes that workers […] without distinction whatsoever have the right to establish and […] to join organizations of their own choosing without previous authorization [see **Article 2 of Convention No. 87**].*

Cases Nos. 1793 and 1935 (Nigeria)

51. During its last examination of this case in March 1999 [315th Report, paras. 1-26], the Committee urged the Government to amend the Trade Unions Act in order to ensure the right of workers to form and join the union of their own choosing at all levels, to take the necessary measures to repeal section 7(9) which confers overly broad powers on the Minister to cancel trade union registration and to amend the legislative requirement to include "no-strike" and "no lock-out" clauses in collective agreements in order to benefit from check-off facilities. Furthermore, the Committee urged the Government to amend the International Affiliation Decree so as to ensure that workers' organizations may affiliate with the international workers' organization of their own choosing free from interference by the public authorities.

52. In a communication dated 9 March 2000, the Government reiterates a number of measures it had taken to ensure greater conformity with the principles of freedom of association and which were taken into account when the Committee last examined this case. It expresses the hope that the comprehensive details of the measures taken by the Government to redress all the complaints in Cases Nos. 1793 and 1935 will receive the approval of the Committee.

53. *The Committee takes note of this information. It refers the Government once again to the conclusions and recommendations made when it last examined this case in March 1999 and requests the Government to keep it informed of any developments in this respect.*

Case No. 1931 (Panama)

54. At its meeting in November 1999, the Committee had formulated definitive conclusions on this case and in particular had requested the Government to consider amending certain provisions in its legislation which presented problems in terms of conformity with Conventions Nos. 87 and 98 [see 318th Report, paras. 353-371]. In its communications of 24 January and 8 May 2000, the Government states that in its view, such recommendations should be based on consensus and consultations, and has begun general consultations with the social partners, with a view to reconciling the different views and the Committee's recommendations. The majority of workers' organizations consulted and which had replied did not indicate agreement with the Committee's recommendations. *The Committee notes this information and requests the Government to keep it informed of the outcome of these consultations*.

Case No. 1967 (Panama)

55. At its meeting in November 1999, the Committee noted "*with satisfaction the information provided by the International Confederation of Free Trade Unions (ICFTU) in its communication of 5 October 1999, according to which the affiliation of FENASEP to the Joint Trade Union Central has been registered by a decision of the Minister of Labour and Social Development*".

56. In its communication of 4 February 2000, the Government, referring to the registration of FENASEP, states that the previous Minster of Labour on his final day in office acted in a way that flew in the face of legal judgement by formally recognizing the affiliation of FENASEP to the Joint Trade Union Central; this created a legal quandary for the incoming Government, since the official decision in question was signed by persons not competent to do so and violated constitutional and legal provisions in force, making it necessary to issue a new decision overruling the original one. The Government adds that registration of FENASEP as being affiliated to the Joint Trade Union Central would be against FENASEP by-laws. Following a long legal clarification, the Government adds that FENASEP could hardly comply with the National Constitution (the *Carta Magna*), the Labour Code and the Act respecting the administrative service, by affiliating to the Joint Trade Union Central, an act which would constitute a total violation of all three. At the same time, under the terms of article 18 of the Constitution of Panama, public servants may do only that which the law specifically empowers them to do and are liable for any acts exceeding their powers or for any omissions in carrying out their duties. Ministry of Labour officials could therefore not recognize and register the affiliation of a public service union to a private sector trade union organization without breaking the law, which is absolutely clear that this is the sole responsibility of the Directorate of the Administrative Service (*Dirección de Carrera Administrativa*) and specifically in the case of public service federations and confederations.

57. *The Committee deeply deplores the administrative decision overruling the original decision to register FENASEP as being affiliated to the Joint Trade Union Central, and recalls the Government's international obligations arising from ratification of Convention No. 87, in particular Article 5, according to which "Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers." The Committee requests the Government to recognize and re-register the affiliation of FENASEP to the Joint Trade Union Central organization without delay and to keep it informed on this matter.*

Case No. 1796 (Peru)

58. At its meeting in March 1999, the Committee requested the Government to keep it informed of the final outcome of the proceedings concerning the dismissals of trade union leaders Delfín Quispe Saavedra and Iván Arias Vildosa [see 313th Report, paras. 46-48].

59. In a communication dated 8 February 2000, the Government states that: (1) the proceedings initiated by Mr. Delfín Quispe Saavedra are at the final ruling stage, since the Mixed Court of Chimbote has overturned the ruling of the lower court; and (2) in the proceedings for Mr. Iván Arias Vildosa claiming that his dismissal was invalid, the complainant has been granted leave to appeal against the original ruling of the Labour Court, which had upheld the dismissal, and the case will be brought before the Supreme Court.

60. *The Committee takes note of this information, and requests the Government to keep it informed of the final outcome of the proceedings involving the trade union leaders in question.*

Case No. 1813 (Peru)

61. At its March 1999 meeting [see 313th Report, para. 49], the Committee requested the Government to keep it informed of the final outcome of the proceedings concerning the

death of the trade unionists Alipio Chueca and Juan Marco Donayre Cisceros as a result of shots fired by CORDECALLAO security staff (the Government had stated that three persons had been charged). In a communication dated 8 February 2000, the Government states that the proceedings in question are still in progress.

62. *The Committee notes this information. It deeply regrets that the facts of the case have not yet been clearly established and that those responsible for the killings in question, which took place in 1994, have not been identified and punished. In this context, the Committee draws the Government's attention to the fact that it has on numerous occasions emphasized that "The absence of judgements against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights." [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 55]. Under these circumstances, the Committee hopes that the proceedings currently under way will be concluded in the near future and requests the Government to keep it informed of the final outcome.*

Case No. 1926 (Peru)

63. The Committee last examined this case at its meeting in June 1998 and on that occasion requested the Government to: (1) take the necessary steps to recognize the SUTREL trade union sector's right to represent its members and to bargain collectively on conditions of employment, at least on behalf of its own members; and (2) communicate the findings of the investigation into the alleged anti-union dismissals of officers of several trade union organizations (all the leaders of the Union of Backus and Johnson Brewery Workers and of the Brewery Federation of Peru, the northern region undersecretary of the CGTP, officers of the Single Union of Lighting and Power Workers of Electro Ucayali and an officer of the Single Union of Workers of Electroperú of the Interconnected System) [see 310th Report, paras. 48-52].

64. In a communication dated 8 February 2000, with regard to the matter of recognition of the SUTREL trade union sector's right to represent its members and bargain collectively on conditions of employment, at least on behalf of its own members, the Government states that the administrative authorities declared inadmissible the list of demands presented by the trade union sector in question, and as a result of this the company Luz del Sur S.A. signed a collective agreement with the majority of its employees, it being agreed that the benefits would be enjoyed by all the workers, since the agreement in question had been concluded with 50 per cent of the workforce.

65. *The Committee takes note of this information. It draws the Government's attention to the fact that it has stated on many occasions that direct negotiation between the undertaking and its employees, bypassing representative organizations where these exist, might be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 785]. Under these circumstances, the Committee requests the Government to take the necessary measures to ensure that the Unified Trade Union of Electricity Workers of Lima and Callao (SUTREL) can bargain collectively on its members' conditions of employment. Lastly, the Committee deeply regrets the fact that the Government has not supplied any information on the findings of the investigation – which it had announced in 1998 – into the alleged dismissals of a large number of trade union officers in 1997. Under these circumstances, the Committee requests the Government to take measures to ensure that the investigation in question is concluded in the near future and, if it is found that the trade union officials in question were dismissed because of their status of trade union officers or trade union*

activities, that they are immediately reinstated in their posts and receive any arrears of wages owed to them.

Case No. 1785 (Poland)

66. At its March 1999 meeting, the Committee had noted with interest the detailed information provided by the Government on the issue of cash compensations to trade union organizations and assignations of real estate property to NSZZ "Solidarnosc" and the Polish Trade Union Alliance (OPZZ) [see 313th Report, paras. 55-61].

67. In a communication dated 23 February 2000, the Government indicated that, as of June 1999 (the deadline for submitting motions to the Social Commission for Revindication) 1,793 proceedings had been filed with the Commission concerning the restitution of assets forfeited by trade unions and social organizations under martial law. As of 31 January 2000, 1,287 of these proceedings have been completed and the Social Commission plans to finalize all cases by the end of 2001. The total amount of the current state Treasury liabilities is estimated at approximately PLN220 million. As regards non-cash liabilities, authorized organizations have the right to choose between two forms of compensation: state Treasury bonds, or a transfer of right to assets' components belonging to the state Treasury or to municipalities. Other liabilities resulting from decisions of the Commission, and which became final in December 1999, will be discharged in cash.

68. While the Government remains convinced that the legal status, and the possible division of the assets of the former Trade Unions' Association (CRZZ) and of the other trade union organizations liquidated under martial law, should be fully settled, the preliminary work in this respect has been delayed due to the complexity of the legal and factual situation of the assets, and to incomplete documentation. The Government is considering whether some legislative initiative should be taken to address this problem, which was not covered by the Act of 23 May 1991 on trade unions. Before taking such initiative, however, the Government asked in December 1999 the National Commission of NSZZ "Solidarnosc" to submit proposals in this respect.

69. The Government adds updated information on two issues which are related to the complaint. Firstly, the OPZZ had challenged a decision of the Minister of Labour of 9 October 1998 denying it entitlement to some PLN25 million (representing a transfer of assets, back in 1985, from the former Trade Unions' Association to OPZZ); on 10 November 1999, the Supreme Administrative Court dismissed the OPZZ's appeal; the National Commission of NSZZ "Solidarnosc" participated in these proceedings as intervener. Secondly, the draft Act concerning the assets of the liquidated Employees' Recreation Fund has been submitted to the Sejm (Lower House of Parliament) in accordance with a Senate's resolution; in June 1999, the Government presented its comments and proposals concerning that draft, and legislative work is being pursued in Parliament.

70. *The Committee notes with interest the detailed information provided by the Government and in particular that the Social Commission plans to finalize all pending proceedings by the end of 2001. While aware of the complexity of factual and legal issues involved, the Committee once again expresses the hope that all remaining issues concerning trade union assets will be finally settled in the near future, and asks the Government to keep it informed in this regard.*

Case No. 1972 (Poland)

71. At its June 1999 meeting, the Committee examined this case which concerned three sets of allegations by three different trade unions [see 316th Report, paras. 681-709].

72. Firstly, as regards the complaint made by the All Poland Trade Union Alliance (OPZZ), the Committee requested the Government to ensure that measures be taken to promote consultation and cooperation between the public authorities and the social partners before legislation affecting their interests is adopted; the Committee also encouraged the Government and OPZZ to negotiate an agreement for the settlement of collective disputes. Secondly, concerning the complaint made by the Warsaw Trade Union of Self-Government Employees (WZZPS), the Committee asked the Government to send it a copy of the judgement concerning the dismissal of Mrs. Sikorka-Mrozek, Chairperson of the Board of WZPPS, and to obtain her reinstatement if that dismissal was found to be related to the exercise of legitimate trade union activities; the Committee further requested the Government to confirm that WZZPS could perform its legitimate activities in appropriate premises. Thirdly, with respect to the complaint made by the trade union "Sprawiedliwosc", the Committee asked to be kept informed of the outcome of the appeal lodged by Mr. Marek Grabowski, Chairman of Sprawiedliwosc, against his dismissal and to ensure that he be reinstated if it was proven to be discriminatory; the Committee further asked the Government to indicate whether Sprawiedliwosc was able to perform its trade union activities normally.

73. The Government provided the information requested in communications of 23 February and 9 May 2000.

74. As regards the issues raised by Sprawiedliwosc, the Government states firstly that, on 7 April 1999, the Labour Division of the Regional Court reversed the verdict of the Court of First Instance (which had ordered the reinstatement of Mr. Grabowski in his functions) and returned the case to the lower court for further examination in accordance with the recommendations of the appellate body. The Government further submits that Sprawiedliwosc was allowed to carry out its normal activities and that the two allegations raised by Mr. Grabowski in this respect are unfounded: the latter had requested his employer (GP KPRM) to use the company mobile phone to communicate with members of the trade union, which the employer refused as going beyond its responsibilities, as defined in article 33 of the Law of 23 May 1991 on Trade Unions; furthermore, there was an ample network of stationary phone lines in the facility, which he could use to communicate with union members. In addition, Mr. Grabowski was never instructed that he could not enter the employer's premises; the trade union management was informed in a letter of 14 July 1998 that they could access the premises, which access was actually given on 1 November 1998, but the union has not used it to date.

75. *The Committee takes note of this information. It requests the Government to provide it with the final court decision concerning the dismissal of Mr. Grabowski as soon as it is issued, and concludes that the other aspects of this particular complaint do not call for further examination.*

76. Concerning the WZZPS' allegations, the Government provided the text of the final judgement issued by the Regional Court regarding the dismissal of Mrs. Sikorska-Mrozek, confirming the decision of the Court of First Instance that she had been dismissed not because of her trade union activities, but due to her inadequate performance. The Government also confirms that premises have been made available to WZZPS in a building situated in the Zoliborz District (the seat of WZZPS, under their own statutes), so that they may carry out their trade union activities.

77. *The Committee takes note of this information. Recalling the importance it attaches to the principle that complaints of anti-union discrimination should be examined in the framework of national procedures which are prompt, impartial and considered as such by the parties concerned [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, para. 738], the Committee concludes that these conditions appear to have been met in the circumstances. The Committee further notes on the basis of the information provided that appropriate premises were put at WZZPS' disposal for their trade union activities.*

78. As regards the allegations of OPZZ, the Government welcomes the Committee's recognition that the principle of consultation seems to be respected in the vast majority of cases. It stresses that the practice of consultation on draft legislation is well established and that deviations from this practice are rare and isolated. Nevertheless, all Ministers and Directors of central government agencies have been reminded, through a circular letter, of the requirement to consult with social partners; the Government will spare no effort in this respect. Concerning the alleged failure to agree with OPZZ on a procedure for the settlement of disputes, the Government submits that the fact that such a procedure has been established with Solidarnosc and not with OPZZ should not be interpreted as a case of unequal treatment between trade unions. In fact, the agreement concluded in 1992 with Solidarnosc, while still formally in force, has outlived its purpose with the establishment in 1994 of the Tripartite Social and Economic Commission, which provides a suitable institutional forum for the settlement of disputes, and to forge consensus on reforms of national importance. The Government regrets that OPZZ has suspended its participation in the work of the Commission. With a view to giving the Commission a solid legal foundation, the Government has prepared draft legislation, which is currently in the final stages of consultations between agencies and with social partners. Since that draft legislation provides that the Commission will be a forum for consultations and negotiation of social issues with social partners, no purpose would be served by negotiating a bilateral agreement with OPZZ.

79. *The Committee notes with interest that all Ministries and government agencies have been reminded of the need to consult with social partners on draft legislation, and hopes that this directive will be fully applied in the future. As regards the arrangements for the settlement of collective disputes, the Committee notes that a new legislation, extending the mandate of the National Tripartite Commission, is currently being drafted, hopefully through consultation with all social partners, including OPZZ. The Committee requests the Government to provide it with the text of the Act as soon as it is adopted.*

Case No. 1884 (Swaziland)

80. During its last examination of this case at its meeting in November 1998, the Committee once again expressed the firm hope that the Industrial Relations Bill would be adopted in the very near future and that, in its final form, it would ensure full respect for the principles of freedom of association. It further expressed the firm hope that, with the passage of this Bill, the 1973 Decree and the 1963 Public Order Act would no longer be used to suppress legitimate trade union activities. Finally, the Committee once again urged the Government to establish independent investigations into the death of the 16 year-old schoolgirl during the January 1996 stay-away, the abduction of Jan Sithole in August 1996 and the dismissal of Jabulani Nxumalo [see 311th Report, paras. 85-88].

81. In a communication dated 2 May 2000, the Government indicates that the recommendations of the Committee and those of the Committee on the Application of Conventions and Recommendations were taken on board in every legislative structure when the Industrial Relations Bill was being processed to become law. The Government

states that the Bill has passed through both houses of Parliament and is now only awaiting the assent of the Head of State. Regarding the need to set up commissions of innquiry into the abduction of Mr. Sithole, the death of the schoolgirl and the dismissal of Mr. Nxumalo, the Government adds that its position has not changed.

82. *The Committee takes note of this information. It notes in particular that, while the Industrial Relations Bill has apparently now been passed by Parliament, it still needs the assent of the Head of State to enter into force. The Committee must therefore recall that two years have passed since the Government first indicated that the Industrial Relations Bill had been drafted with a view to bringing national legislation and practice into conformity with the freedom of association principles and standards. The Committee therefore requests the Government to take the necessary measures as a matter of urgency to ensure that the Industrial Relations Bill enters into force in the near future and to keep the Committee informed of developments in this regard. As concerns the remaining matters raised in this complaint, the Committee must express its deep regret at the Government's refusal to carry out independent investigations in respect of the killing of a schoolgirl during the 1996 stay-away, the abduction of Mr. Sithole and the dismissal of Mr. Nxumalo.*

Case No. 2018 (Ukraine)

83. The Committee last examined this case at its November 1999 meeting [see 318th Report paras. 473-516], which concerned among other things allegations of anti-union harassment, violations of the right to strike and physical threats against the president of the union. On this occasion, it had formulated the following recommendations:

> With regard to the allegations that pressure was brought to bear on members of the complainant union by their employer, the Ilyichevsk Maritime Commercial Port, to leave the union, the Committee, recalling that proof of such inducement by an employer to leave a union can be very difficult when workers fear losing their jobs, requested the Government to order a new inquiry by an independent body enjoying the trust of both parties, with a view to establishing the circumstances of the resignations from the union and assessing the reliability of the allegations; if it is found that pressure was brought to bear on the workers to leave the union, the Committee requested the Government to ensure that this does not recur and to keep it informed of the outcome of the inquiry.
>
> As regards the allegation concerning the use of the employer's own funds to set up a young workers' association, the Committee requested the Government to ensure that the functions carried out by the association in question do not encroach on the normal activities of a trade union organization.
>
> As regards the allegations concerning the workforce meeting, the Committee requested the Government to ensure that activities which naturally pertain to a trade union are carried out by independent trade union organizations, and in particular that workers' collectives do not encroach on the normal functions of trade unions, particularly in matters relating to strikes and collective bargaining.
>
> As regards the court rulings that the strike planned for 7 September 1998 was illegal, the Committee, emphasizing that the ports do not constitute essential services in which strikes might be prohibited, although they are important public services in which a minimum service might be required in the event of a strike, requested the Government to amend section 18 of the Transport Act in order to ensure that it cannot be construed as allowing the prohibition of strikes in ports.

The Committee expressed its concern at the serious nature of the allegations concerning physical and legal threats against the president of the complainant union and against the union itself (seizure of financial records, closure of bank accounts, pressure on workers, infringements of freedom of movement, an attempt to abduct the president of the NPRP), and requested the Government to ensure that the inquiry which the State Prosecutor's Office had been ordered to conduct was carried out with diligence, and to keep it informed in this regard.

84. In its communication dated 30 March 2000, the Government indicates firstly that, with regard to the allegations of pressure by management on the members of the complainant union with the aim of forcing them to leave the union, the Commission of the Ministry of Labour and Social Policy and the Ministry of Transport did not find a single instance of pressure on the said workers. The Government insists that the port workers only withdrew from the complainant organization in order to join other trade unions that were active in the port and which they considered more effective to defend their interests.

85. *While taking note of this information, the Committee regrets that the Government did not order a new inquiry by an independent body on this issue and reiterates its requests to the Government on this aspect of the case and asks it to keep it informed in this regard.*

86. Concerning the allegation regarding the use of the employer's own funds to set up a young workers' association supposedly signatory of a no-strike agreement, the Government explains that the members of this organization are young workers who are members of five different trade unions established in the port and that its aim is youth work, the development of sports and excursions and the organization of young people's leisure. *The Committee, while taking note of this information, once again asks the Government to ensure that the functions carried out by the association in question do not encroach on the normal activities of a trade union organization*.

87. As regards the court rulings that the strike planned for 7 September 1998 was illegal, the Government emphasized that the strike was declared illegal primarily because it violated the provisions of the Act on the settlement of collective labour disputes and not for violating section 18 of the Act of Ukraine respecting transport, which prohibit strikes in the transport sector. However, the Government indicates that the Ministry of Transport is currently drafting provisions amending and supplementing the Transport Act, which will include changes relating to the holding of strikes in this sector.

88. *The Committee takes note of this information. It recalls once again that the ports do not constitute essential services in the strict sense of the term in which strikes might be completely prohibited and asks the Government to keep it informed of all relevant amendments to the Transport Act in this regard.*

89. As regards the criminal charges initiated against the president of the complainant organization, the Government indicates that the case and the charges have been referred to the Ilyichevsk municipal court.

90. *The Committee takes note of the information and, in view of the serious nature of the allegations, it urges the Government to ensure that the proceedings are carried out with diligence and requests it to keep it informed in this regard.*

Case No. 2038 (Ukraine)

91. The Committee last examined this case at its November 1999 meeting [see 318th Report, paras. 517-533]. On this occasion, it had requested the Government, in consultations with

all trade unions concerned, to take all necessary measures to bring sections 11 and 16 of the Act on Trade Unions, their Rights and Safeguard of their Activities into full conformity with the provisions of Convention No. 87. These two sections dealt in particular with requirements regarding territorial competence, number of union members and registration formalities.

92. In a communication dated 25 April 2000, the Government indicates that on 24 February of this year, at the initiative of the president of the All-Ukrainian Confederation of Workers' Solidarity and the president of the Confederation of Free Trade Unions of Ukraine, the question of sections 11 and 16 of the Act was discussed at a session of the National Council on Social Partnership (NSSP) which comprises, on a parity basis, 22 representatives of the Government, the trade unions and the employers of Ukraine. After taking into consideration the statement of these trade union leaders, the NSSP requested the Constitutional Court to speed up its examination concerning the constitutionality of the Act. The Government indicates that the NSSP also suggested to the trade union side to further examine the issue, taking into account the decision of the Constitutional Court, and after holding additional consultations among themselves, submit acceptable and concerted proposals for possible amendment of certain sections of the Act to the NSSP. The Government states that this issue will continue to be examined and further consultations and negotiations will be held with the trade unions, of which the ILO will be kept informed.

93. *The Committee takes due note of this information. It once again requests the Government to kept it informed of all relevant developments concerning the possible amendment of sections 11 and 16 of the Act on Trade Unions, their Rights and Safeguards of their Activities in line with the principles of freedom of association. The Committee draws the Government's attention to the availability of the ILO's technical assistance in this regard.*

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94. Finally, as regards Cases Nos. 1581 (Thailand), 1618 (United Kingdom), 1698 (New Zealand), 1769 (Russian Federation), 1826 (Philippines), 1843 (Sudan), 1854 (India), 1890 (India), 1895 (Venezuela), 1908 (Ethiopia), 1914 (Philippines), 1930 (China), 1937 (Zimbabwe), 1942 (China/Hong Kong Special Administrative Region), 1944 (Peru), 1949 (Bahrain), 1954 (Côte d'Ivoire), 1957 (Bulgaria), 1959 (United Kingdom/Bermuda) 1963 (Australia), 1966 (Costa Rica), 1977 (Togo), 1988 (Comoros), 1989 (Bulgaria), 1992 (Brazil), 1994 (Senegal), 1996 (Uganda), 1997 (Brazil), 1998 (Bangladesh), 2004 (Peru), 2007 (Bolivia), 2008 (Guatemala), 2009 (Mauritius), 2023 (Cape Verde), 2024 (Costa Rica), 2027 (Zimbabwe), 2044 (Cape Verde) and 2047 (Bulgaria), 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 the following cases: 1952 (Venezuela) and 1993 (Venezuela), which it will examine at its next meeting.

CASE NO. 2041

DEFINITIVE REPORT

Complaint against the Government of Argentina presented by the Federation of Trade Unions of Municipal Workers of Santa Fe Province (FESTRAM)

Allegations: Refusal by the provincial authorities to convene a meeting for the purpose of electing members of a joint committee

95. This complaint is contained in a communication dated 30 July 1999 from the Federation of Trade Unions of Municipal Workers of Santa Fe Province (FESTRAM).

96. The Government sent its observations in a communication dated 12 January 2000.

97. 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 complainant's allegations

98. In its communication of 30 July 1999, the Federation of Trade Unions of Municipal Workers of Santa Fe Province (FESTRAM) alleges that, from January 1991 onwards, local and municipal leaders in Santa Fe Province refused to appoint representatives for the purpose of forming the joint negotiating committee instituted under the terms of Provincial Law 9996 of 1996 (according to the complainant, this committee, consisting of eight representatives of municipal and local authorities for the employers' side and eight representatives of FESTRAM for the employees' side, issues resolutions and formalizes agreements and accords on various matters), and that the provincial authorities have not met their legal obligation to convene an annual meeting to allow local officials and leaders to appoint representatives. Thus, according to the complainant, this collective bargaining body for municipal and local government employees has been paralysed.

B. The Government's reply

99. In its communication of 12 January 2000, the Government states that the Santa Fe provincial authorities convened a meeting for 12 November 1999 of all the local and municipal leaders involved for the purpose of electing the joint committee to which Law No. 9996 refers. The Government supplies a copy of the relevant documents relating to the convocation and arrangements for the meeting.

C. The Committee's conclusions

100. *The Committee notes that in the present case, the complainant alleges that since 1991 no meeting was convened for the purpose of appointing representatives of local and municipal authorities in Santa Fe Province to sit on the joint negotiating committee required under provincial law.*

101. *In this regard, the Committee notes with interest the fact that, according to the Government's reply, the complainant and the provincial authorities have reached an*

agreement on electing such representatives, and the fact that the Government supplies a copy of the agreement in question.

The Committee's recommendations

102. ***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. 1975

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

Complaint against the Government of Canada (Ontario) presented by the Canadian Labour Congress (CLC)

Allegations: Denial of the right to organize

103. The Committee examined this case and adopted interim conclusions at its May-June 1999 meeting [see 316th Report, paras. 229-274, approved by the Governing Body at its 275th Session (June 1999)].

104. The Government provided further observations in communications of 12 October 1999 and 7 January 2000.

105. Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). However, it has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

106. At its May-June 1999 meeting, the Committee examined allegations of freedom of association arising out of the adoption of the Prevention of Unionization (Ontario Works) Act, 1998 (Bill 22) and the Economic Development and Workplace Democracy Act, 1998 (Bill 31). In particular, the complainants raised concerns regarding the provisions of Bill 22 prohibiting welfare recipients taking part in a community participation activity ("workfare") from joining a trade union, bargaining collectively or striking. In this respect, the Committee found "that the employment provided does not constitute ordinary work but, rather, activities which, according to the Government, aim to encourage self-reliance through employment. These activities are of limited duration (six months at most) and cannot replace work done by regular employees … Furthermore, there is no doubt in the Committee's view that people involved in community participation activities are not true employees of the organization which benefits from their labour and can therefore legitimately be excluded from the scope of collective agreements in force, at least in respect of wages. On the other hand, it is an undeniable fact that persons involved in community participation activities are performing work and providing a service of benefit to the organizations concerned. For this reason, they must enjoy a certain protection in respect of their working and employment conditions." [see 316th Report, paras. 268-270]. As there is a clear indication in Bill 22 that its aim is to prevent unionisation, the Committee emphasized the universality of the principle of the freedom of association and requested the Government to take the necessary measures to ensure that persons involved in community participation activities may enjoy the right to organize.

107. The complainant also referred to Bill 31 which modified the Labour Relations Act, 1995 as regards specific construction projects. In the light of the Committee's interim conclusions, the Governing Body approved the following recommendations in June 1999:

(a) Emphasizing the universality of the principle of freedom of association and recalling that all workers, without distinction whatsoever, must have the right to organize, the Committee requests the Government to take the necessary measures to amend its legislation relating to community participation activities and to extend to persons involved in such activities the right to organize, in accordance with the principles of freedom of association in general and the provisions of Convention No. 87 in particular. The Committee requests the Government to keep it informed in this regard.

(b) The Committee requests the complainant to provide additional information in respect of Bill 31; the Committee also requests the Government to provide further clarification with regard to the impact of Bill 31 on previously concluded agreements and on the prohibition on the right to strike and lock out.

(c) The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations [316th Report, para. 274].

B. The Government's further reply

108. In its communication of 12 October 1999, the Government relies on its previous response concerning the Prevention of Unionization (Ontario Works) Act, 1998 (Bill 22). In its communication of 7 January 2000, the Government specifies that in its view, Bill 22 does not violate the principles of freedom of association, and no legislative change is being contemplated.

109. With respect to the Economic Development and Workplace Democracy Act, 1998 (Bill 31), the Government in its communication of 12 October 1999 provides some information on the impact of the Act. The Government addresses firstly the changes in the certification procedures under Bill 31. It removes the power of the Ontario Labour Relations Board (OLRB) to grant automatic certification or to automatically dismiss an application for certification and replaces it with power of the OLRB to order another representation vote. The OLRB may also make orders it considers necessary to ensure the vote reflects the employees' wishes. Votes by secret ballot in each instance will determine whether or not employees will be represented by a bargaining agent. The Government asserts that these changes do not affect existing collective agreements.

110. On the issue of construction project agreements, the Government confirms that Bill 31 creates a new framework for such agreements. These agreements may contain terms and conditions of employment that are different from those set out in the province-wide industrial, commercial and institutional (ICI) agreements. The framework applies to projects in the industrial portion of the ICI sector. Non-industrial projects may be designated through regulations. Under the new framework, a proponent of a project (e.g. an owner) negotiates directly with local unions that would be supplying members to the project. The Government states that if 60 per cent or more of local unions approve the agreement, then the agreement would be binding with respect to all work on the project within the jurisdiction of the local unions who were given notice of the negotiations. Any ratified agreement would include a no-strike and no-lockout provision for the duration of the agreement.

111. Bill 31 also removes employers who are not engaged in construction work or who are engaged in such work only incidentally to their primary business from the construction industry provisions of the Labour Relations Act. Employees of these employers are entitled to certify and bargain collectively under the general provisions of the Labour Relations Act. Non-construction employers currently in bargaining relationships with construction unions continue to be covered by the construction provisions of the Labour Relations Act. However, they are entitled to an order from the OLRB extinguishing these bargaining rights, provided the employer does not employ any members of the affected union when it applies to the OLRB.

C. The Committee's conclusions

112. *The Committee recalls that the allegations in this case concern primarily legislative provisions that have been adopted as part of a reform of the Ontario welfare system. In particular, the complainants allege that the Prevention of Unionization (Ontario Works) Act, 1998 (Bill 22), which prohibits those taking part in a community participation activity ("workfare") from joining a trade union, bargaining collectively or striking, violates principles of freedom of association. The complainant also refers to the Economic Development and Workplace Democracy Act, 1998 (Bill 31) which modified the Labour Relations Act, 1995 as regards specific construction projects.*

113. *With respect to Bill 22, the Committee notes that it had requested the Government to take measures to amend the legislation so as to ensure that those involved in community participation activities have the right to organize. The Committee very much regrets that the Government has rejected this recommendation, continuing to rely on its assertion that Bill 22 does not violate the principles of freedom of association. The Committee again draws to the Government's attention the fact that those involved in the community participation activities are not true employees of the organization concerned, and therefore can legitimately be excluded from the scope of collective agreements in force, at least with respect to wages. However, the Committee stresses that it cannot be denied that these persons are included in the structure of the organization concerned and thus, in accordance with hierarchical instructions received, are performing work and providing a service of benefit and must therefore enjoy a certain protection in respect of their working and employment conditions. Emphasizing once again the universality of the principle of freedom of association, the Committee recalls its earlier conclusions that persons working under community participation programmes are "workers" within the meaning of Convention No. 87, and must have the right to organize [see 316th Report, para. 270]. The Committee, therefore, once again urges the Government to take the necessary measures to amend the legislation concerning community participation activities, and to extend to persons involved in such activities the right to organize in accordance with the principles of freedom of association in general and the provisions of Convention No. 87 in particular. The Committee requests the Government to keep it informed in this regard.*

114. *Concerning Bill 31 (see annex), the Committee notes that the complainant has not responded to the Committee's request for additional information in order to clarify the allegations. Without further precision from the complainants, the Committee is not in a position to comment on the allegations that Bill 31 makes it more difficult to enforce effectively the right to organize, or that it allows certain entities outside the construction industry to give preference to non-union labour for particular projects. However, given the terms of Bill 31 and the further information provided by the Government, the Committee is able to address some of the issues related to the "project agreements" which may be concluded for specific construction projects.*

115. *The Committee notes that prior to Bill 31, the Labour Relations Act, 1995 provided for a system of province-wide, multi-employer collective agreements for the construction*

industry. While the system of province-wide agreements remains under Bill 31, project-level agreements are now also provided for, which appear to supersede a provincial agreement to the extent of any inconsistency, and apply until the project is completed or abandoned. Bill 31 adds section 163.1 to the Labour Relations Act, and subsection 14 states as follows with respect to the effect of the agreement:

> *1. The project agreement applies to all construction work on the project that is within the jurisdiction of a bargaining agent on the list.*
>
> *2. Each applicable provincial agreement, as modified by the project agreement, applies to the construction work on the project, even with respect to employers who would not otherwise be bound by the provincial agreement ...*

116. *The Committee notes that separate and unique collective bargaining structures already applied to the construction industry in Ontario pursuant to legislation prior to the adoption of Bill 31. The complainants do not appear to object to the construction industry being treated differently than other sectors under the Labour Relations Act, but rather to the addition of another level of agreements which essentially override the provincial agreements. The Committee notes, however, as the Government points out, that a project agreement must be approved by at least 60 per cent of the local unions before it will be binding on the workers (section 163.1(8)). If the project agreement is not approved, the workers remain covered by the province-wide agreement. Therefore, whether or not to accept a project agreement rests in the hands of the workers' representatives, and the workers are not left without the coverage of a collective agreement should a project agreement be rejected.*

117. *The Committee wishes to express its concern regarding some of the specific provisions of Bill 31. In particular, the legislation provides for the adoption or rejection of an agreement which has been unilaterally proposed by the proponent of a construction project. The role of the workers' and of the employers' bargaining agents appears to be limited to the approval or disapproval of the proposed agreement, thus seriously restricting the room for negotiation. In this respect, the Committee recalls that the voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 844]. In addition, according to the principle of free and voluntary collective bargaining, the determination of the bargaining level is essentially a matter to be left to the discretion of the parties [see* ***Digest****, op. cit., paras. 851-852]; however, in the context of the Ontario construction industry, it seems that only the proponent of a construction project can initiate project-level agreements and that such agreements are only available for projects that are planned but not yet set up. The Committee, therefore, requests the Government to take the necessary measures to amend the legislation to ensure that full collective bargaining below the provincial level in the construction industry in Ontario is adequately provided for and that it may be initiated by either the workers' or the employers' representatives at any stage of the project. The Committee requests the Government to keep it informed in this regard. 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

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

(a) The Committee once again urges the Government to take the necessary measures to amend the legislation concerning community participation activities, and to extend to persons involved in such activities the right to organize in accordance with the principles of freedom of association in general and the provisions of Convention No. 87 in particular. The Committee requests the Government to keep it informed in this regard.

(b) The Committee requests the Government to take the necessary measures to amend the legislation to ensure that full collective bargaining below the provincial level in the construction industry in Ontario is adequately provided for and that it may be initiated by either the workers' or the employers' representatives at any stage of the project. The Committee requests the Government to keep it informed in this regard.

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

Annex

Economic Development and Workplace Democracy Act (Bill 31)

21. The [Labour Relations] Act is amended by adding the following section:

163.1 (1) A proponent of a construction project who believes that the project is economically significant and who wishes to have a project agreement shall do the following:

1. Create a list of potential parties to the agreement, consisting of bargaining agents, subject to subsection (2).

2. Give each bargaining agent on the list a notice that the proponent wishes to have a project agreement. The notice must include a copy of the list, a general description of the project and the estimated cost of the project.

3. Give a copy of the notice to each employee bargaining agency to which any of the bargaining agents on the list belong.

4. Give a copy of the notice to each employer bargaining agency that is a party to a provincial agreement by which a bargaining agent on the list is bound.

5. Give the Board a copy of the notice and evidence, in such form as the Board requires, that the notice has been given to each bargaining agent on the list.

(2) The following apply with respect to the list of potential parties created by the proponent:

1. A bargaining agent may be included on the list only if it is bound by a provincial agreement.

2. A bargaining agent may be included on the list only if the proponent anticipates the project may include work within the bargaining agent's geographic jurisdiction for which the bargaining agent would select, refer, assign, designate, or schedule persons for employment.

(3) A bargaining agent on the list may apply to the Board for an order that the project may not be the subject of a project agreement and the following apply with respect to such an application:

1. The application must be made within 14 days after receiving the notice that the proponent wishes to have a project agreement.

2. The parties to the application are the applicant, the proponent and such other persons as may be prescribed under the regulations or as may be specified by the Board in accordance with the regulations.

3. The Board shall dismiss the application if the project is an industrial project in the industrial, commercial and institutional sector of the construction industry.

4. The Board shall dismiss the application if the project is designated in the regulations as a project that may be the subject of a project agreement.

5. If neither paragraph 3 nor 4 apply, the Board shall grant the application and make an order that the project may not be the subject of a project agreement.

6. An order under paragraph 5 does not affect the preparation of another list and the giving of other notices under subsection (1) even if they relate to the same project.

(4) A project agreement must contain:

(a) a general description of the project; and

(b) a term providing that the agreement is in effect until the project is completed or abandoned.

(5) The proponent may give notice of a proposed project agreement if at least 40 per cent of the bargaining agents on the list agree, in writing, to the giving of the notice.

(6) If the proponent gives notice under subsection (5), the proponent must give notice to each bargaining agent on the list, and the proponent shall also give a copy of the notice to the Board.

(7) A notice under subsection (5) must include:

(a) a copy of the proposed project agreement; and

(b) the names of the bargaining agents on the list that have agreed to the giving of the notice.

(8) The following apply with respect to the approval of a project agreement:

1. A bargaining agent on the list that wishes to approve or disapprove of the proposed agreement shall do so by giving notice of that approval or disapproval to the proponent within 30 days after receiving notice of the proposed agreement.

2. A bargaining agent that gives notice of approval or disapproval shall also give a copy of the notice to the Board.

3. The proposed agreement is approved if the agreement is approved by at least 60 per cent of the bargaining agents that gave notice, either of approval or disapproval, within the time period for doing so.

4. After the time period for every bargaining agent on the list to approve or disapprove has expired, the proponent shall forthwith determine whether the proposed agreement has been approved.

5. If the proponent determines that the proposed agreement has been approved, the proponent shall forthwith give notice that the proposed agreement has been approved to

every bargaining agent on the list and shall give the Board a copy of the notice and evidence, in such form as the Board requires, that the notice has been given to each bargaining agent on the list.

6. If the proponent determines that the proposed agreement has not been approved, the proponent shall forthwith give notice that the proposed agreement has not been approved to every bargaining agent on the list and shall give the Board a copy of the notice.

(9) A bargaining agent on the list that did not give notice of approval of the proposed project agreement may challenge the proposed project agreement by giving notice to the Board within 10 days after the Board receives the evidence described in paragraph 5 of subsection (8) and the following apply with respect to such a challenge:

1. The Board shall make an order either declaring that the proposed project agreement is in force or declaring that the proposed project agreement shall not come into force.

2. Paragraphs 3 and 4 apply if:

   i. the bargaining agent challenging the proposed project agreement gave notice of disapproval of the project agreement, and

   ii. the proposed project agreement would result in a reduction in the total wages and benefits, expressed as a rate, of an employee represented by the bargaining agent challenging the project agreement that is larger, proportionally, than the largest reduction that would apply to an employee represented by a bargaining agent that gave notice of approval of the project agreement.

3. In the circumstances described in paragraph 2, the Board shall make an order doing the following, unless the Board considers it inappropriate to do so:

   i. amending the proposed project agreement so that no reduction in the total wages and benefits, expressed as a rate, of an employee represented by the bargaining agent challenging the project agreement is greater, proportionally, than the largest reduction that would apply to an employee represented by a bargaining agent that gave notice of approval of the project agreement, and

   ii. declaring that the proposed project agreement, as amended, is in force.

4. In the circumstances described in paragraph 2, if the Board considers it inappropriate to make an order under paragraph 3, the Board may make an order declaring that the proposed project agreement shall not come into force.

5. The Board may make an order declaring that the proposed project agreement shall not come into force if the requirements of subsections (1) to (8) have not been satisfied and the failure to satisfy the requirements affected the bargaining agent challenging the project agreement.

6. In the circumstances prescribed in the regulations, the Board may make an order declaring that the proposed project agreement shall not come into force.

(10) A project agreement comes into force upon the Board making an order declaring that the proposed project agreement is in force or, if the project agreement is not challenged under subsection (9), upon the expiry of the time period for making such a challenge.

(11) If the project agreement comes into force, the proponent shall forthwith give notice that the project agreement is in force to the agents and agencies described in subsection (13).

(12) If the Board makes an order declaring that the proposed project agreement shall not come into force, the proponent shall forthwith give notice of that order to the agents and agencies described in subsection (13).

(13) The agents and agencies referred to in subsections (11) and (12) are the bargaining agents, employee bargaining agencies and employer bargaining agencies to which notice was given under subsection (1).

(14) The following apply with respect to projects to which a project agreement applies:

1. The project agreement applies to all construction work on the project that is within the jurisdiction of a bargaining agent on the list.

2. Each applicable provincial agreement, as modified by the project agreement, applies to the construction work on the project, even with respect to employers who would not otherwise be bound by the provincial agreement.

3. Subject to the project agreement, if a provincial agreement ceases to apply while the project agreement is in effect, the provincial agreement that applied when the project agreement was approved applies to the construction work on the project until a new provincial agreement is made. However, this paragraph does not apply with respect to provincial agreements that apply to work that the project agreement does not apply to.

4. No employees performing work to which the project agreement applies shall strike and no employer shall lock out such employees while the project agreement is in effect even if a strike is called or authorized under subsection 164(1) or a lockout is called or authorized under subsection 164(2).

5. For greater certainty, paragraph 4 does not affect the right to strike of an employee who performs work to which the project agreement does not apply nor does paragraph 4 affect the right of the employer to lock out such an employee.

(15) If a trade union does not have bargaining rights with respect to employees of an employer but the employer employs members of the trade union to perform work on the project, such employment shall not be considered in any application for certification by the trade union with respect to the employer.

(16) Becoming a party to the project agreement or operating under the project agreement shall not constitute an agreement voluntarily recognizing a trade union as an exclusive bargaining agent.

(17) The proponent and, if the proponent is an agent, the person who owns or has an interest in the land for which the project is planned, are not, only by reason of being a party to the project agreement or operating under the project agreement, parties to a provincial agreement.

(18) In this section:

"proponent" means a person who owns or has an interest in the land for which the project is planned and includes an agent of such a person.

CASES NOS. 2005 AND 2056

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

Complaint against the Government of the Central African Republic presented by
– the Organization of African Trade Union Unity (OATUU)
– the National Central African Confederation of Workers (CNTC) and
– the Democratic Organization of African Workers' Trade Unions (DOAWTU)

Allegations: Arrest and detention of a trade union official; breaking into trade union premises; violation of the right to strike and the right to collective bargaining

119. The Committee previously examined Case No. 2005 at its November 1999 meeting, when it submitted an interim report to the Governing Body [see 318th Report, paras. 172-187, approved by the Governing Body at its 276th Session (November 1999)].

120. As to Case No. 2056, the Democratic Organization of African Workers' Trade Unions (DOAWTU) submitted a new complaint alleging infringement of freedom of association in a communication dated 10 September 1999.

121. The Government sent its observations in communications dated 16 February and 14 March 2000.

122. The Central African Republic 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 Case No. 2005

123. At its November 1999 session, and in the light of the Committee's interim conclusions, the Governing Body adopted the following recommendations:

(a) Deploring the Government's failure to provide any details concerning the procedures and reasons involved in Mr. Cole's arrest and detention, the Committee urges the Government to send its observations on these aspects of the case and to keep it informed of the development of the judicial case.

(b) Concerning the physical ill-treatment and torture allegedly inflicted on Mr. Cole, the Committee reaffirms that the Government should give precise instructions to the effect that no detainee should be subjected to ill-treatment and apply effective sanctions where cases of ill-treatment are found and urges the Government to set up an independent judicial inquiry and to send its observations concerning these allegations.

(c) Concerning the CNTC's allegations of violation of the right to strike and the right to collective bargaining and of forced entry into trade union premises, the Committee asks the Government to communicate without delay its observations on the CNTC's allegations as a whole.

(d) With respect to the allegations of the Government's refusal to negotiate in good faith on the matter of the wage backlog, the Committee requests the parties to provide detailed information concerning this aspect of the case.

B. Case No. 2056

124. In a communication dated 10 September 1999, the DOAWTU alleges that since October 1993 the Government of the Central African Republic has accumulated several months of arrears in the payment of wages. Consequently, state teachers affiliated to the four trade union confederations – the National Central African Confederation of Workers (CNTC), the Central African Workers' Trade Union (USTC), the Central African Workers' Trade Union Confederation (CSTC) and the Central African Workers' Central Confederation (CCTC) – held a general assembly in October 1995 to demand the payment of their wages in arrears. Their demand was not met, and so the four confederations called a first strike at the end of 1995 and a second in April 1996. The complainant alleges that, in response to their strike notice, the Minister of Public Service and Employment threatened that sanctions would be imposed on any worker who went on strike without first providing evidence that he or she belonged to one of the four confederations. As no solution was found, the confederations opted for a boycott of the end-of-year examinations and for unlimited strikes.

125. The complainant claims that, by way of reprisal, the Central African Government assigned certain teachers arbitrarily to new posts and suspended the salaries of more than 1,000 teachers. It mentions the cases of Louis-Marie Kogrengbo, Jules Nemandji, Xavier Balewanga, Blaise Vincent Yangue, Joseph Koyakoua and François Kogonet, all of whom allegedly were the victims of acts of anti-union discrimination such as the suspension of their salaries or their assignment to one of the provinces. The complainant further claims that the Government recruited supply teachers to replace the permanent teachers who were on strike.

126. Finally, the complainant alleges that on 7 May 1997 the home of the secretary-general of the CNTC was ransacked by unknown persons and that on 6 January 1999 the CNTC's headquarters were broken into by a platoon of the national gendarmerie.

C. The Government's reply

127. In its communications of 16 February and 14 March 2000 the Government begins by stating that, with regard to Case No. 2005, it has suspended the judicial proceedings against Mr. Sony Cole in order to ease the social unrest, and that Mr. Cole was now in full possession of his civil liberties.

128. Regarding Case No. 2056, the Government recalls that, although article 10 of the country's Constitution recognizes that all workers are entitled to join trade unions, only workers whose membership of a trade union complies with the texts governing it are entitled to participate in a strike called by a trade union. The Government therefore deplores the fact that, as soon as a strike is called, all workers take part in it including those who are not union members. The Government adds that, during the latest strike, a check of the Academic Inspectorates carried out by the Department showed that there were 1,000 teachers "on strike". However, their salary was never suspended even though some of them – who did not belong to any union confederation – were in an illegal situation.

129. The Government goes on to explain that the educational system in the Central African Republic has been very short of staff since the introduction of the assisted voluntary departure programme, combined with the epidemic of AIDS that causes around 100 deaths among teachers at every level each year. In addition, a large number of teachers have left or refused to return to their posts, on the grounds that their assignment to the provinces is arbitrary. According to the Government, these teachers are encouraged in their attitude by the trade unions, which look upon an assignment to the provinces as a sanction; at the same time hundreds of schools have had to be closed or have only one teacher for all the subjects taught. The Government explains that parents are so tired of the situation that they have had to recruit teachers from among their number who do not have the requisite qualifications and that the standard of education has therefore been steadily declining. It stresses that it has never recruited supply teachers to replace teachers on strike; rather, it is the parent-teacher associations which at their general assemblies have taken the initiative to recruit these supply teachers so that the school year is not entirely wasted for their children.

130. Regarding the payment of wages, the Government explains that most of the teachers who have been protesting for the past three years teach in the capital. They refuse to teach in the public schools, and yet many of them are working as supply teachers in private establishments while continuing to receive their salaries just like those who are working regularly. Moreover, the Government emphasizes that the non-payment of wages when they are due is not a deliberate policy of the Government but one of the many consequences of the three riots of 1996 and 1997 that have considerably weakened the country's economy. Finally, the Government asserts that it has always given priority to collective bargaining in disputes with the social partners and that, under a programme in which the ILO is involved, it is making every effort to promote social dialogue and tripartite cooperation.

131. Regarding the alleged reprisals against certain public servants because of their trade union activities, the Government argues that taking objective decisions in the course of the normal functioning of the administration cannot be considered a reprisal. It goes on to provide the following information on the individuals mentioned by the DOAWTU: concerning Mr. Louis-Marie Kogrengbo, the Government states that his salary has been suspended since May 1998 and not 1997, and that the suspension is a consequence of his prolonged absence on strike – the Government considers that it is the responsibility of the trade union confederation that calls for a strike to pay the salaries of its members; concerning Mr. Nemandji, the Government states that his case cannot be assimilated to a reprisal since, as prefectural secretary, he has not been posted outside the prefecture whose jurisdiction he comes under; concerning Mr. Xavier Balewanga, the Government explains that his posting with the Academic Inspectorate was decided in accordance with Central African law, which stipulates that any public servant may be assigned to a new post depending on the requirements of each service; finally, concerning Mr. Koyakoua and Mr. Kogonet, the Government acknowledges that they are on the register of staff who are awaiting a posting but states that they are still receiving their salaries.

132. Regarding the alleged ransacking of the home of the secretary-general of the CNTC, the Government states that no connection has been established between that occurrence and the secretary-general's membership of a trade union or trade union activity and that it is a common law matter that should have followed judicial procedure.

D. The Committee's conclusions

Case No. 2005

133. *The Committee recalls that it issued an interim report on Case No. 2005 at its November 1999 meeting [see 318th Report]. At the time the Committee had requested the Government to provide details concerning the reasons for Mr. Cole's arrest and to keep it informed of developments in the judicial procedure. While regretting the Government's failure to provide any such details on the reasons for Mr. Cole's arrest or on his alleged torture, the Committee notes the Government's statement that the judicial procedure against Mr. Cole has been suspended and that he is now in full possession of his civil liberties. The Committee nevertheless urges the Government once again to order an inquiry into the alleged torture inflicted on Mr. Cole and requests it to keep it informed of developments. In addition, the Committee regrets that, despite its express request, the complainant has provided no detailed information on the Government's alleged refusal to negotiate in good faith the matter of wages in arrears.*

Case No. 2056

134. *Regarding the allegations concerning the violation of the right to strike and the right to collective bargaining, anti-union reprisals and breaking into trade union premises presented by the DOAWTU, the Committee notes that they are essentially the same as those cited by the CNTC in Case No. 2005.*

135. *Regarding the issue of the strikes in the education sector, the Committee notes that, following the non-payment of their wages, the teachers resorted to strike action in 1995 and 1996. The complainant further states that, because there was no apparent issue to the situation, the teachers opted for a boycott of the end-of-year examinations and for unlimited strikes. The Committee notes that, for its part, the Government has explained that there is a serious shortage of staff in the education system of the Central African Republic, partly owing to the AIDS epidemic which has undeniably had serious consequences for the economically active population of Africa. The Committee also notes the Government's statement that the non-payment of wages is directly related to the country's weakened economic situation following the riots that occurred in 1996-97. Finally, the Committee notes that, according to the Government, no supply teachers have been requisitioned to replace the permanent teachers on strike and that it is rather the students' parents who have taken the initiative to recruit teachers so that school years are not entirely wasted.*

136. *The Committee feels it must recall that, when it examined Case No. 2005, it observed that the right to strike by workers is a legitimate means of defending their interests and that, if a strike is legal, recourse to the use of labour drawn from outside the undertaking to replace the strikers entails a risk of derogation from the right to strike which may affect the free exercise of trade union rights. In this particular case, the Committee observes that, according to the Government, the striking teachers are still receiving their salaries and were replaced not as part of a deliberate government policy but rather by the students' parents who wanted to avoid the school years being completely wasted. Noting with some concern, however, that the social climate is continuing to deteriorate in the education sector, the Committee calls on the Government to take steps to re-establish genuine and constructive negotiations with the trade unions of the education sector and calls on the parties to make the necessary effort to reach an agreement that is satisfactory to all.*

137. *With regard to the alleged anti-union reprisals against the striking teachers, the Committee notes that the Government denies these allegations and argues that taking*

decisions in the course of the normal functioning of the administration cannot be considered a reprisal. The Committee observes, however, that the Government recognizes that Mr. Kogrengbo's salary has been suspended ever since May 1998 and that the suspension is a consequence of his prolonged absence on strike. It also notes that the Government provides no information on Mr. Blaise Vincent Yangue, although it does recognize that Mr. Nemandji, Mr. Balewanga, Mr. Koyakoua and Mr. Kogonet have either been given, or are awaiting, a new posting. The Committee recalls once again in this connection that no one should be penalized for calling for a legitimate strike. Moreover, protection against anti-union discrimination must cover not only dismissal but also any discriminatory measure imposed in the course of a person's employment and, in particular, transfers, demotions and other detrimental acts. The Committee reminds the Government that it is responsible for preventing all acts of anti-union discrimination and that it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 590 and 738]. The Committee therefore requests the Government to ensure that the persons concerned have access to such procedures and, should it be found that they have been subjected to acts of anti-union discrimination, to take all necessary steps to remedy the situation. The Committee requests the Government to keep it informed of developments.*

138. *Regarding the allegations that the home of the secretary-general of the CNTC was broken into by persons unknown and the organization's headquarters by the police, the Committee deeply regrets that the Government has only provided information on the first allegation, merely indicating that it was a common law matter that should have followed normal judicial procedure. The Committee recalls that attacks carried out against trade union premises and threats against trade unionists create among the latter a climate of fear which is extremely prejudicial to the exercise of trade union activities and that the authorities, when informed of such matters, should carry out an immediate investigation to determine who is responsible and punish the guilty parties [see* ***Digest****, op. cit., para. 179]. The Committee urges the Government to order such an investigation and requests it to keep it informed of developments.*

The Committee's recommendations

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

(a) The Committee once again urges the Government to order an inquiry into the alleged torture of Mr. Sony Cole and requests it to keep it informed of developments.

(b) Expressing its concern at the deterioration of the social climate in the education sector in the Central African Republic, the Committee calls on the Government to take steps to re-establish genuine and constructive negotiations with the trade unions of the education sector and calls on the parties to make the necessary effort to reach an agreement that is satisfactory to all.

(c) Regarding the alleged acts of anti-union discrimination, the Committee calls on the Government to ensure that the teachers identified by the complainant have access to prompt and impartial procedures and, should it be found that they have been subjected to acts of anti-union discrimination, to take all

necessary steps to remedy the situation. The Committee requests the Government to keep it informed of developments.

(d) Concerning the allegations that the home of the secretary-general of the CNTC and the organization's premises were broken into, the Committee urges the Government to order an inquiry to determine who was responsible and punish the guilty parties, and to keep it informed of developments.

CASE NO. 2031

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

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

Allegations: Physical assaults and detention of labour activists; imprisonment for attempts to establish independent trade union organizations or to carry out activities for the defence of workers' interests

140. In a communication dated 4 June 1999, the International Confederation of Free Trade Unions (ICFTU) presented a complaint of violations of freedom of association against the Government of China.

141. The Government furnished its observations in a communication dated 6 March 2000.

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

A. The complainant's allegations

143. In its complaint dated 4 June 1999, the ICFTU alleges that the Chinese authorities continue to suppress, in law and in practice, any attempt by workers to join or establish independent workers' organizations of any kind including: (i) trade union groups trying to organize outside the government-controlled All-China Federation of Trade Unions; (ii) groups and individuals attempting to protect laid-off workers or assist them in demanding the payment of wage arrears or the refund of their enterprises' funds after these had been embezzled by members of the management; or (iii) in general, any other groups of workers attempting to defend, promote and protect workers' rights, in particular, their right to organize freely and independently of the public authorities.

144. The ICFTU states that the incidents it is about to describe demonstrate that the Chinese authorities have recently targeted those individuals and groups of workers who have attempted to protect and defend the rights of retrenched workers. According to the ICFTU, the economic reforms developed in the last decade by the Government have exacted a heavy toll in terms of employment on China's working class. Dozens of millions have been retrenched, 6 million in 1998 alone, as shown by official data. In fact, many scholars say China's actual jobless rate could be far higher if the tens of millions of surplus labourers in

rural areas and workers who were idle but registered as employed were taken into consideration. Seven more million workers should lose their employment in 1999, by the Government's own admission. In these circumstances, the authorities have issued and continue to regularly issue calls for social and political stability. Indeed, on 1 May 1999, International Labour Day, China's Vice-President, Mr. Hu Jintao, called on workers throughout the country to "take on a sense of personal responsibility for the reforms and to maintain social and political stability". In a message to workers on the front page of the *People's Daily* on 30 April 1999, Mr. Hu, a member of the country's key political decision-making body, the Standing Committee of the Communist Party Politburo, said: "without stability nothing can be achieved and successes already attained will be lost", adding that "the great workers must wholeheartedly cherish the nation's political stability and unity".

145. The ICFTU asserts that while ensuring social stability may certainly be considered as a legitimate policy objective for any democratic government, the fact is that, translated into Chinese present-day conditions, this overriding priority of the Government translates, inter alia, into numerous arrests, long prison sentences and dispersion of entirely legitimate workers' demonstrations and protests, especially when these concern the non-payment of wages arrears or the embezzlement of enterprise funds, which often leads to bankruptcy and the consequent mass lay-off of staff without compensation.

146. Hence, on 16 January 1998, the authorities of Factory 813 of the state-owned China National Nuclear Corporation in Hanzhong, a city in northern Shaanxi Province, put their worker Zhao Changqing under house arrest to stop him standing for elections to a local People's Congress. These congresses form a layer of grass-roots democracy in China. In the run-up to the elections, factory officials seized Zhao's campaign flyers and accused him of challenging the Communist Party. In fact, it was widely known amongst Zhao's colleagues that he intended to use the electoral campaign as a platform to publicly denounce embezzlement of enterprise funds and non-payment of wage arrears, both of which were common around the region. Zhao had been jailed for six months for his role in student-led demonstrations for democracy in Beijing that were crushed by the army with heavy loss of life in June 1989.

147. Moreover, on 16 January 1998, an unemployed worker who had demanded independent labour unions was taken into custody in Shaanxi Province. About ten policemen detained Li Qingxi, a 41 year-old unemployed worker who had called for free trade unions. Police also searched Li's house and seized documents and a videotape. The ICFTU states that it has strong reasons to believe the material in question dealt with workers' rights and other labour-related issues. Li, who had been laid off from his job as a health worker in a clinic attached to the Datong City Coal Mine Administration four years earlier, had criticized existing labour unions as mere "puppets" of the Government. He has pasted up flyers calling for independent labour unions to "prevent corruption and social contradiction". He was sentenced to one year of re-education through labour.

148. The same week, a veteran dissident, Qin Yongmie, who had issued a nationwide appeal for independent labour unions, rejected an offer by the authorities to leave the country that week, saying he feared he would not be allowed to return. The ICFTU believes that his fear was closely related to the situation faced for years now by Han Dong-fang, the veteran independent trade union leader and workers' rights campaigner, who has lived for years in Hong Kong, owing to the authorities' continuous refusal to allow him back into China, from where he was banned after seeking treatment in the United States for tuberculosis contracted in jail.

149. On 21 July 1998, the authorities detained Zhang Shanguang, another worker who had tried to establish an independent trade union organization. Like many other such initiatives, his

aim was, inter alia, to protect the rights of his retrenched colleagues. In this context, he had transmitted information about laid-off workers' protests in his region to foreign journalists and been interviewed on the subject. Accused of "supplying intelligence to foreign organizations", he was sentenced on 27 December 1998 to ten years' imprisonment with forced labour. The ICFTU considers that Zhang's sentence is directly connected to his attempt to set up the *Shupu County Association for the Rights of Laid-Off Workers*. Furthermore, the ICFTU finds it shocking that, during an interrogation on 6 August 1998, Zhang was severely beaten by members of a police-appointed militia because he allegedly failed to respond to questions. He is 45 and dangerously ill with tuberculosis. The ICFTU is of the view, based on its past experience with China's detained labour activists, that Zhang may now be kept in prison for years with his medical condition deteriorating for lack of medical treatment, until he is either released at the end of his term, if he survives, or is released prematurely on medical grounds and following intense diplomatic and international political pressure.

150. The ICFTU goes on to explain that some days after Zhang's arrest, the authorities detained Jin Jiwu, Li Yingzhi and Song Ge. All were taken from Jin's home in Xiangtan City, in southern China's Hunan Province. Police also searched Jin's home and took away his computer and books, including contact books. The three were detained while discussing plans to press for the release of Zhang Shanguang, who had invited Jin to join his association. The three detained met on 11 July to discuss topical political and labour issues and protection for laid-off workers.

151. The ICFTU contends that it is not surprising, in such a climate of repression, that workers are ill-treated, beaten, and often arrested. Hence, at least ten workers were injured, including four seriously, on 21 October 1998, while mounting a peaceful protest along a railway line in China's Sichuan Province to demand unpaid salaries. They had peacefully occupied a station along the Baocheng railway line for four hours, disrupting at least ten trains. (The Baocheng railway, which stretches from Chengdu in Sichuan Province to Baoji in Shaanxi Province, is the most important railway in south-western China, according to ICFTU sources.) Scuffles broke out when over 100 police officers used force to disperse the approximately 500 protesting workers from the state-owned Peijiang Iron and Steel Factory in Jiangyou town. The workers were owed three months' pay. Most of the protesters were laid-off workers, while the rest were still working for the factory, which was by then bankrupt. Police in Sichuan confirmed that the protest had taken place, but refused to give a figure for the number of people injured in the clash.

152. The ICFTU points out that in 1999, the repression has continued unabated, and that it has already been informed of several cases of detention of labour activists and/or workers advocating workers' rights and raising workers' grievances. For example, on 4 January 1999, police detained more than 100 retired factory workers, severely beating some, when they demonstrated in the central industrial city of Wuhan. Police swooped on the elderly workers ten minutes after they gathered to protest that they had not received their 150 yuan ($18) monthly pensions from Wuhan Qintai furniture plant. More than 200 police moved in to crush the demonstration, with each protester taken away by two riot policemen. More than ten retired workers resisted the police and were severely beaten, including a 70 year-old who was knocked unconscious. Observers pointed out that the crackdown contrasted with the handling of other protests, which had ended peacefully after local government officials had promised that back wages and pensions would be paid. An ICFTU source indicated that the tough stance shown by the Wuhan police was "clearly connected" with two hard-line speeches in December 1998 by President Jiang Zemin, who ordered that all sources of instability be "nipped in the bud", in a speech widely reported by both the Chinese and international press.

153. Moreover, on 11 January 1999, the authorities detained Yue Tianxiang, an independent labour rights activist from Tianshui City, in the north-western Gansu Province. Some days before, on 4 January 1999, he had opposed a government ban on "politically" sensitive printed materials and begun publishing a magazine advocating workers' rights. As in similar cases, he had used the inaugural issue of his publication, *China Workers Observer*, to uncover corruption and other staff grievances at his state-owned transport company, where workers had not been paid, some for up to three years. Earlier, Yue had also organized legal action to force a payment of wage arrears to laid-off and employed workers from the company in question, the Tianshui City Auto Transport Company. According to the Chinese state media, Yue went on trial before the Tianshui Intermediate People's Court on 28 May 1999, together with two workers arrested in this case: Guo Xinmin, a colleague of Yue, and Wang Fengshan, who reportedly acted as an adviser to the other two. If convicted under the charges which they face, i.e. "leading a subversive group", the three could be sentenced to ten years or more in prison. They reportedly stand accused of subverting state power by setting up their group to protect workers' rights, of organizing protests by laid-off workers and of receiving US$400 from an unidentified US-based organization. They have also been accused of having contacts with "enemy" organizations in Hong Kong and the United States, and the ICFTU suspects that the former one may be the Hong Kong-based *China Labour Bulletin*, edited by Han Dong-fang. According to the ICFTU, even as their firm accumulated losses of $6.8 million in three years and stopped paying unemployment benefits, executives bought themselves apartments and spent $65,000 on entertainment, including a tourism trip to the south-eastern city of Guangzhou.

154. The ICFTU stresses that the trial came as authorities stepped up detentions and surveillance of dissidents to prevent public commemorations of the tenth anniversary of the military assault that ended the Tiananmen Square democracy movement. Independently of the Tiananmen anniversary, however, the ICFTU points out that the charges against the three abovementioned labour rights organizers are among the stiffest used against dissidents and democracy activists. To the ICFTU, this clearly indicates the extent of the authorities' fear in the face of growing workers' protests at corruption, embezzlement, non-payment of wages and massive lay-offs. The ICFTU believes that the incidents described above are quite indicative of the general climate prevailing in workers' communities throughout China. According to numerous sources, including several official media, most of the demonstrations staged by workers and farmers last year, numbering at least 60,000, were related to corruption of officials and the dramatic difficulties faced by workers as a result thereof.

155. Finally, the ICFTU contends that on 18 March 1999, police injured ten workers in a scuffle with demonstrators demanding unemployment compensation. The incident erupted after some 200 coalminers, in the south-western city of Chengdu, refused to follow the police order to relocate their protest to another venue. The protesters were among an estimated 3,000 workers who were laid off earlier on in the year when the coalmine they had worked for was shut. Many had not received compensation. According to the ICFTU, the compensation fund issued by the State to the protesters had been siphoned off by officials. About 200 victims had been protesting outside the municipal government office since 15 March, and the demonstration had continued on 18 March, under the surveillance of a strengthened police force of approximately 100 officers.

B. The Government's reply

156. In a communication dated 6 March 2000, the Government states that the complaint presented by the ICFTU alleging that the Chinese Government violated the principle of freedom of association is completely unjustified. However, the Government, in a sincere attempt to cooperate fully with the ILO, undertook in-depth inquiries, in respect of the issues raised in the complaint, with the Ministries of Public Security and Justice as well as

with the All-China Federation of Trade Unions and the departments concerned of the Provinces of Shaanxi, Gansu, Sichuan and Hunan. According to the information received by the Government, the ICFTU's allegations are unfounded and constitute a distortion of the reality. For example, the complainant alleges that the Chinese authorities are often late in paying the wages of workers as well as the pensions of retired workers, that laid-off workers do not receive any compensation and that workers who demonstrate against the non-payment of wage arrears or pensions are often ill-treated, beaten or arrested. According to the Government, such an accusation does not correspond to the reality and illustrates that the complainant is ignorant of the measures that are currently being adopted in China to resolve these problems.

157. The Government then goes on to describe in detail how the standard of living has risen significantly and how the fundamental rights of workers and their working conditions have improved considerably over the last 20 years in China. Moreover, there has been considerable progress in the development of democracy and legislation in China. At the same time, the Government has improved the social security system covering the areas of retirement, medical care and unemployment insurance – through a variety of schemes – thereby providing workers with greater employment opportunities and fundamental social safeguards. The implementation of various policy measures has fully guaranteed the fundamental living conditions of laid-off workers as well as unemployed and retired persons; hence, workers, and specifically the abovementioned workers, fully understand and support the Government in this regard. Thus, while there were a total of 11,900,000 laid-off workers in 1999, some were able to find new jobs and, as a result, there were only 6,500,000 laid-off workers at the end of 1999, 90 per cent of whom had their everyday subsistence costs covered by the Government. Moreover, from the second half of 1999, the authorities increased the wages of low-income citizens. As a result, the 6,500,000 laid-off workers, 800,000 unemployed workers and 27,000,000 retired persons saw an increase in their income. The Government indicates nevertheless that in spite of the enormous efforts it has undertaken, unexpected problems do inevitably occur given that the country's level of economic development is not high and that the social security system is still being developed and is in a transitional phase. However, the Government attaches a great deal of importance to such incidents and always attempts to find a way to resolve them adequately and in a timely manner. Hence, incidents such as arrests, beatings and forced dispersions of workers as alleged in the complaint simply do not occur.

158. With regard to the allegation that the Chinese authorities continue to suppress any attempt by workers to join or establish independent workers' organizations of any kind, including groups of workers who attempt to defend and protect workers' rights freely and independently of the public authorities, the Government stresses the importance that it attaches to the protection of the democratic rights of its citizens, including freedom of association, and reaffirms that the civil and political rights of the Chinese people are effectively guaranteed by law. First of all, according to article 35 of the Constitution, citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration. Moreover, section 7 of the Trade Union Act stipulates that workers shall have the right, by virtue of the law, to form and join trade unions, and trade union representatives shall defend the workers' rights and interests and shall carry out activities independently by virtue of the law. Finally, section 3 of the Trade Union Act provides that "all persons engaged in manual or intellectual work and employed by an enterprise, an institution or an office in Chinese territory, and who are primarily wage earners, have the right to form and join trade unions, in conformity with the law, regardless of their ethnic status, their race, sex, occupation, religious beliefs or level of education". According to the Government, all these provisions prove that the right of workers to form and join organizations of their choice is guaranteed in full. Concretely, as of the end of 1998, there were already 165,600 social organizations established in China.

159. The Government points out nevertheless that as is the case in other countries, when Chinese citizens exercise their right to freedom of association, they must respect the laws and regulations of the State. Moreover, Article 8 of Convention No. 87 provides expressly that in exercising the rights provided in the Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land. In the Government's view, if the activities of certain citizens, including workers and their organizations are contrary to the laws and regulations of the State, they are naturally punished by virtue of the law. It is extremely dangerous and misleading to consider violations of the law as violations of freedom of association. According to the inquiry undertaken by the Government, the persons mentioned in the complaint all violated the laws of the land. Hence, it is not a problem of violations of freedom of association but of infringements of the ordinary law.

160. The Government then indicates that the results of the inquiries undertaken in respect of the persons and events mentioned in the complaint are as follows. Zhao Changqing was sentenced in January 1998 to three years' imprisonment for his subversive activities endangering national sovereignty and state security. Li Qingxi has already been released after serving his sentence of re-education through labour. Qin Yongmei was sentenced to 12 years' imprisonment for subversion against national sovereignty and endangering state security; he is currently in detention. Zhang Shanguang was sentenced to ten years' imprisonment for the crime of providing information to organizations outside China; he is currently in detention. Jin Jiwu, Li Yingzhi and Song Ge were all released after re-education and a warning. Yue Tianxing, Guo Xinmin and Wang Fengshan were sentenced respectively to ten years, two years and one year in prison for their subversive activities against national sovereignty and state security.

161. Turning to the allegation that police used force to disperse protesting workers from the Peijiang Iron and Steel Factory in Jiangyou town in Sichuan Province who were demanding unpaid salaries, the Government responds that this was an unexpected incident which has been exaggerated to a certain degree in the complaint and which was caused by the factory's bankruptcy. Since the enterprise was unable to pay its debts for a number of years, it was declared bankrupt by the People's Court. Subsequently, the Government was able to resolve the problem adequately in accordance with certain state regulations by providing support to the unemployed and by covering the basic living expenses of those still working for the factory.

162. The Government then addresses the allegation that on 4 January 1999, the police in Wuhan detained around 100 retired factory workers who were demonstrating against the non-payment of their pensions and then severely beat up some of these workers. According to the investigation carried out by the Government, however, on 5 January 1999, around 30 employees and retired workers from the former Qintai furniture factory in the city of Wuhan took part in a sit-in on the Hanjiang Boulevard to demonstrate against the takeover of their factory by a private company. The town's security forces arrived immediately and persuaded the protestors to return to their factory without any force being used by the police on the demonstrators. After this incident and due to the efforts made by various actors, the workers' fears were allayed; their factory was successfully taken over in June 1999 and adequate arrangements were made for them.

163. Finally, the Government turns to the allegation that on 18 March 1999, violent incidents occurred between the police and demonstrators who were demanding unemployment compensation, and that the police injured ten protestors. According to the government investigation, the Dujiang mine in the city of Chengdu was an old enterprise set up in 1939. After 60 years of operation, it faced a shortage of resources. In July 1998, it had applied for bankruptcy after having obtained the approval of the council of its employees' representatives. On 18 March 1999, some of its employees took part in a sit-in in front of

the Chengdu government offices to demonstrate against the application for bankruptcy and to demand early retirement in contravention of the regulations in force governing this issue. Since the municipal authorities attached great importance to this case, they expedited officials from the Ministry of Labour, the coalmining industry and others in an attempt to persuade the workers. These officials managed to bring the demonstrators back to their enterprise without giving rise to violent incidents and no one was injured. Subsequently, the regulations governing early retirement were explained to the workers, and the problems which were of concern to the workers relating to the bankruptcy were resolved. On 22 September 1999, this mine was declared bankrupt by decision of the Chengdu People's Court of Second Instance; adequate arrangements were made for some 2,400 workers.

C. The Committee's conclusions

164. *The Committee notes that this case addresses serious allegations of violations of freedom of association concerning the detention and imprisonment of labour activists for attempts to establish independent workers' organizations or for their attempts to carry out legitimate activities to defend the occupational interests of workers. The allegations also relate to the physical assaults of workers and forced dispersions of workers protesting against their conditions of employment.*

165. *As regards the complainant's general allegation that the Chinese authorities continue to suppress any attempt by workers to join or establish independent workers' organizations of any kind, including groups of workers attempting to defend and protect workers' rights freely and independently of the public authorities, the Committee observes that the Government stresses the importance that it attaches to the protection of the democratic rights of its citizens, including the right of freedom of association. The Government then goes on to cite certain provisions of its Constitution and its Trade Union Act that according to it fully guarantee the right of workers to form and join organizations of their choice. In this regard, the Committee must recall that during its examination of two previous complaints presented against the Government of China [see 286th Report (Case No. 1652) and 310th Report (Case No. 1930)], the Committee had concluded that the obligations set forth in sections 5, 8 and 9 of the Trade Union Act prevented the establishment of trade union organizations that were independent of the public authorities and of the ruling party, whose mission should be to defend and promote interests of their constituents and not to reinforce the country's political and economic system. The Committee had further noted that sections 4, 11 and 13 resulted in the imposition of a trade union monopoly and that the requirement that grass-roots organizations be controlled by higher-level trade unions and that their constitutions should be established by the National Congress of Trade Union Members constituted major constraints on the right of unions to establish their own constitutions, organize their activities and formulate programmes [see 286th Report, paras. 713-717]. Consequently, the Committee had concluded that many provisions of the Trade Union Act were contrary to the fundamental principles of freedom of association and had requested the Government to take the necessary steps to ensure that the provisions in question were modified [see 286th Report, para. 728(a) and 310th Report, para. 367(a)]. Noting with regret that the Government merely repeats its previous statements to the effect that the Trade Union Act fully guarantees the right of workers to form and join organizations of their own choosing, the Committee would once again request the Government to take the necessary measures to ensure that sections 4, 5, 8, 9, 11 and 13 of the Act are amended in line with freedom of association principles.*

166. *Concerning the situation of persons specifically named by the complainant who were allegedly imprisoned for their attempts to establish independent workers' organizations or to carry out activities to defend the legitimate interests of workers, the Committee notes that the Government refutes that these workers were imprisoned for carrying out lawful*

activities to defend workers' interests or for their attempts to establish independent workers' organizations. Rather it claims that all these persons violated the law of the land which, under the terms of Article 8 of Convention No. 87, must be respected by workers and their organizations. While taking due note of the Government's statement, the Committee would recall that Article 8 of this Convention *stipulates that in exercising their right to freedom of association, workers and their organizations shall respect the law of the land,* provided that the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention. *Before proceeding to examine individually the situation of the persons sentenced to imprisonment, the Committee notes in a general manner, that according to the Government, all of the persons concerned were convicted either for their subversive activities endangering national sovereignty and state security or were sentenced to re-education through labour. The Committee regrets that the Government does not provide any information on the grounds for which the activities carried out by these persons were considered "subversive". In light of the specific information provided by the complainant on the labour-related activities of these persons who were subsequently sentenced to imprisonment and in the absence of any explanation from the Government on the criminal nature of these activities, the Committee is bound to conclude, at the outset, that the individuals concerned were sentenced for carrying out legitimate trade union activities. The Committee is, a fortiori, bound to conclude that since the laws of the land (presumably the National Security Law and the Regulations on Re-education through Labour) were applied to persons who were carrying out legitimate trade union activities, their application in these cases constitute a flagrant violation of freedom of association principles. Hence, the Committee considers the Government's contention that "the persons mentioned in the complaint all violated the laws of the land" and that this case "is not a problem of violation of freedom of association but of infringements of the ordinary law" to be unfounded.. Finally, the Committee would emphasize that trade union rights, like other basic human rights, should be respected no matter what the level of development of the country concerned [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1966, para. 41].*

167. *With regard to the situation of Zhao Changqing, the complainant alleges that the authorities put him under house arrest to prevent him from standing for elections to a local People's Congress since he intended to use the electoral campaign as a platform to publicly denounce embezzlement of enterprise funds and non-payment of wage arrears. In this respect, the Committee would recall that a general prohibition on political activities by trade unions and their members for the promotion of their specific objectives is contrary to the principles of freedom of association. Trade union organizations may wish, for example, to express publicly their opinion regarding the Government's economic and social policy [see* ***Digest****, op. cit., paras. 452 and 455]. The Committee notes that the Government merely indicates that Zhao was sentenced in January 1998 to three years' imprisonment for his subversive activities endangering national sovereignty and state security, without providing any information on the nature of these subversive activities. The Committee is therefore led to believe that Zhao was sentenced to imprisonment for exercising legitimate trade union activities; it urges the Government to take the necessary measures to ensure his immediate release and asks the Government to keep it informed of developments in this regard.*

168. *Concerning Li Qingxi who had allegedly criticized existing labour unions as mere "puppets" of the Government and had called for independent labour unions, and Jin Jiwu, Li Yingzhi and Song Ge who had allegedly met to discuss topical political and labour issues and protection for laid-off workers as well as to discuss plans to press for the release of another labour activist, the Committee notes the Government's statement that all these persons have now been released after serving their respective sentences of re-education through labour. The Committee would remind the Government that this system*

of re-education through labour continues a form of forced labour and administrative detention of people who have not been convicted by the courts and who, in some cases, are not even liable to sanctions imposed by the judicial authorities. This form of detention and forced labour constitutes without any doubt a violation of basic ILO standards which guarantee compliance with human rights and, when applied to people who have engaged in trade union activities, a blatant violation of the principles of freedom of association [see **Digest**, *op. cit., para. 67]. The Committee would strongly urge the Government to refrain in future from having recourse to such measures.*

169. *Regarding the situation of Qin Yongmie who had allegedly issued a nationwide appeal for independent labour unions and had rejected an offer by the authorities to leave the country in January 1998, saying he feared he would not be allowed to return, the Committee notes with serious concern the Government's reply that he was sentenced to 12 years' imprisonment for subversion against national sovereignty and endangering state security. In this regard, the Committee would recall that the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party [see* ***Digest***, *op. cit., para. 273]. Noting that the Government does not provide any information on the grounds for which Qin's activities were considered to be subversive, the Committee can only conclude that Qin Yongmie was sentenced to imprisonment for his legitimate trade union activities. Deploring the harshness of the sentence handed down against him, the Committee strongly urges the Government to take the necessary measures to ensure that he is released without delay. It requests the Government to keep it informed of developments in this regard.*

170. *As regards Zhang Shanguang, the complainant alleges that he was another worker who had tried to establish an independent trade union organization, the Shupu County Association for the Rights of Laid-off Workers. Moreover, he allegedly transmitted information about laid-off workers' protests in his region to foreign journalists and had been interviewed on the subject for which he was accused of "supplying intelligence to foreign organizations" and sentenced on 27 December 1998 to ten years' imprisonment with forced labour. The Committee notes with concern the Government's statement that Zhang was sentenced to ten years' imprisonment for providing information to organizations outside China. The Committee deplores the harshness of this sentence and would remind the Government that the International Labour Conference has pointed out that 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 constitute civil liberties which are essential for the normal exercise of trade union rights [see* ***Digest***, *op. cit., para. 39]. The Committee therefore insists that the Government take the necessary measures to ensure the immediate release of Zhang Shanguang, and requests the Government to keep it informed of developments in this regard.*

171. *The Committee further notes with great concern the allegations concerning the state of Zhang's health, as well as the very serious allegations relating to the severe beating inflicted on him by members of a police-appointed militia during an interrogation on 6 August 1998. Noting with regret that the Government does not reply to these allegations, the Committee would recall that 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 sanctioning of those responsible, are taken to ensure that no detainee is subjected to such treatment. 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]. The Committee therefore urges the Government to institute immediately an independent inquiry*

into the serious allegations of torture and ill-treatment inflicted on Zhang while in detention in order to determine responsibility and punish those responsible. The Committee requests the Government to keep it informed of the outcome of the investigation.

172. *As regards the alleged detention and trial on 28 May 1999 of Yue Tianxiang, Guo Xinmin and Wang Fengshan, the Committee notes with serious concern the Government's reply that these three workers were sentenced respectively to ten years, two years and one year in prison for their subversive activities against national sovereignty and state security. The Committee notes the information provided by the complainant according to which Yue Tianxiang, an independent labour rights activist, had opposed a government ban on "politically" sensitive printed materials and begun publishing a magazine advocating workers' rights. He had allegedly used the inaugural issue of his publication,* China Workers' Observer*, to uncover corruption and other staff grievances at his state-owned transport company, where workers had not been paid, some for up to three years. In this regard, the Committee recalls that the publication and distribution of news and information of general or special interest to trade unions and their members constitute a legitimate trade union activity and the application of measures designed to control publication and means of information may involve serious interference by the authorities with such activity [see* ***Digest****, op. cit., para 161]. The Committee further notes the complainant's contention that these three workers were also accused of receiving money from a foreign organization and would recall that it has considered that all national organizations of workers and employers should have the right to receive financial assistance from international organizations of workers and employers respectively, whether or not they are affiliated to the latter [see 305th Report, para. 380]. Therefore, the sanctioning of any such acceptance as a crime is considered to be an infringement of the principles of freedom of association. The Committee would urge the Government to take the necessary measures to ensure that Yue Tianxiang, Guo Xinmin and Wang Fengshan, sentenced respectively to ten years, two years and one year in prison, are released without delay. It requests the Government to keep it informed of developments in this regard.*

173. *As regards the complainant's general allegation that the Chinese authorities are often late in paying the wages of workers as well as the pensions of retired workers, that laid-off workers do not receive any compensation and that workers who demonstrate against the non-payment of wage arrears or pensions are often ill-treated, beaten or arrested, the Committee notes the Government's reply that such an accusation is unfounded and constitutes a distortion of the reality. Hence, the Government does not deny the allegations that workers from the Peijiang Iron and Steel Factory in Jiangyou town in Sichuan Province demonstrated on 21 October 1998 to demand unpaid salaries, nor that workers from the Qintai furniture factory in the city of Wuhan took part in a sit-in on 4 January 1999, nor that coalminers from the Dujiang mine in the city of Chengdu took part in a sit-in on 18 March 1999 to demonstrate against their enterprise's application for bankruptcy. However, the Government refutes the allegations that the police used any force on these demonstrators, or that violent incidents ever occurred between the police and the workers leading to the injury of the latter in any of these demonstrations. Rather the Government claims that these disputes were all peacefully resolved.*

174. *In view of the fact that the complainant and the Government give differing accounts of the events that took place during the course of these various demonstrations, the Committee would merely recall that workers should enjoy the right to peaceful demonstration to defend their occupational interests and that the authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of law and order should be in due proportion to the danger to law and order that the authorities are attempting to control and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger*

entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace [see ***Digest****, op. cit., paras. 132 and 137].*

175. *Finally, in view of the importance of the principles which are at stake as regards the allegations, both of a legislative as well as of a factual nature, the Committee requests the Government to examine the possibility of a direct contacts mission being undertaken to the country in order to examine the pending issues with all the parties concerned. 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 and to fully implementing freedom of association principles.*

The Committee's recommendations

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

(a) Recalling that in exercising their right to freedom of association, workers and their organizations shall respect the law of the land provided that the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the principles of freedom of association, and further recalling that several provisions of the Trade Union Act are contrary to the fundamental principles concerning the right of workers without distinction whatsoever to form and join organizations of their own choosing without previous authorization and the right of trade unions to establish their constitutions, organize their activities and formulate their programmes, the Committee once again requests the Government to take the necessary measures to ensure that sections 4, 5, 8, 9, 11 and 13 of the Act are amended in line with freedom of association principles.

(b) Recalling that a general prohibition on political activities by trade unions and their members for the promotion of their specific objectives is contrary to the principles of freedom of association, the Committee urges the Government to take the necessary measures to ensure the immediate release of Zhao Changqing, sentenced in January 1998 to three years' imprisonment. It requests the Government to keep it informed of developments in this regard.

(c) The Committee reminds the Government that the system of re-education through labour constitutes a violation of basic ILO standards which guarantee compliance with human rights and, when applied to people who have engaged in trade union activities, a blatant violation of the principles of freedom of association; it strongly urges the Government to refrain in future from having recourse to such measures.

(d) Recalling that the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility of forming, in a climate full of security, organizations independent both of those which exist already and of any political party, the Committee strongly urges the Government to take the necessary measures to ensure the immediate release of Qin Yongmie, who was sentenced in 1998 to 12 years' imprisonment. It requests the Government to keep it informed of developments in this regard.

(e) Recalling that 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 constitute civil liberties which are essential for the normal exercise of trade union rights, the Committee insists that the Government take the necessary measures to ensure the immediate release of Zhang Shanguang who was sentenced on 27 December 1998 to ten years' imprisonment; it requests the Government to keep it informed of developments in this regard. The Committee further urges the Government to institute without delay an independent inquiry into the serious allegations of torture and ill-treatment inflicted on Zhang while in detention, in order to determine responsibility and punish those responsible. The Committee requests the Government to keep it informed of the outcome of the inquiry.

(f) Recalling that the publication and distribution of news and information of general or special interest to trade unions and their members constitute a legitimate trade union activity and that national organizations of workers and employers should have the right to receive financial assistance from international organizations of workers and employers respectively, the Committee urges the Government to take the necessary measures to ensure that Yue Tianxiang, Guo Xinmin and Wang Fengshang sentenced respectively to ten years, two years and one year in prison on 28 May 1999, are released without delay. The Committee requests the Government to keep it informed of developments in this regard.

(g) In view of differing accounts given by the complainant and the Government of the events that took place during the course of various demonstrations, the Committee would merely remind the Government that workers should enjoy the right to peaceful demonstration to defend their occupational interests and that the authorities should resort to the use of force only in situations where law and order is seriously threatened.

(h) The Committee requests the Government to examine the possibility of a direct contacts mission being undertaken to the country in order to examine the pending issues with all the parties concerned. 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 and to fully implementing freedom of association principles.

CASE NO. 2064

DEFINITIVE REPORT

Complaint against the Government of Spain presented by the National Confederation of Labour (CNT)

Allegations: Refusal to allow on the safety committee of two enterprises a trade union representative who is not a member of the works council

177. The complaint is contained in communications of the National Confederation of Labour (CNT) dated 6 August and 2 November 1999. The Government sent its observations in a communication dated 22 February 2000.

178. Spain 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

179. In its communications dated 6 August and 2 November 1999, the National Confederation of Labour (CNT) alleges that the chairperson of the safety and health committee of the Iberia Líneas Aéreas de España enterprise and the Recoletos Compañía Editorial S.A. enterprise refused to allow a trade union delegate (with the right to speak but not to vote) to attend the meetings of that committee. In both cases, the judicial authorities (Labour Court of Madrid, High Court of Justice and Constitutional Court) ruled that the trade union branch of the CNT does not have the right to attend meetings of the safety and health committee since it is not represented on the works council, neither has it voluntarily participated in the elections to that body. According to the CNT, the existence of elected representatives is thus being used, contrary to the provisions of ILO Convention No. 135, to undermine the position of the trade unions concerned or their representatives, impeding their exercise of freedom of association. The CNT considers that it has as much right as any other trade union to be concerned with the workers' safety and health, that the right it claims does not impose a burden on anyone and that the denial of this right will result in depriving its members of information on safety and health.

B. The Government's reply

180. In its communication of 22 February 2000, the Government states that the question at issue is whether the delegate or spokesperson of the CNT trade union in the enterprises Iberia Líneas Aéreas de España and Recoletos Compañía Editorial S.A. has the status of trade union delegate under the terms laid down by Spanish law in order to participate in the safety and health committee, with the right to speak but not to vote. In this respect, it should be pointed out that section 10(1) of Basic Act No. 11/1985 respecting freedom of association provides that "in undertakings or, as the case may be, in workplaces that employ more than 250 workers, whatever the type of their contract, the trade union branches that may be established by the workers who are members of the trade unions represented on the works councils or on the representative organs to be established in the public administrations shall be represented for all purposes by trade union delegates elected by and from among the union's members in the undertaking or workplace", which means, on the one hand, that in order for a union to have a trade union delegate, there must

be at least 250 employees in the enterprise or workplace and, on the other, the trade union must be established in the enterprise and represented on the works council; the latter requirement was not met in this case, since the CNT itself in its own communication admits that it does not participate in elections of workers' representatives.

181. In this respect, attention should be drawn to the decision of the Central Labour Court of 23 December 1986, denying the appellant, a member of the CNT trade union, the right to the status of trade union delegate, in which it was emphasized that the requirements for a trade union branch to meet in order to have delegates are those laid down in section 10(1) of the Basic Act respecting freedom of association. The ruling states the following:

> This conclusion is not in contradiction with the provisions of section 8(1) of the Basic Act respecting freedom of association, since the latter lays down the general right of all trade unions to establish trade union branches, but this right does not imply that every trade union branch must have at least one trade union delegate, given that, as stipulated in section 10, the only branches that may be represented by such delegates are those that meet the requirement of subsection (1) of that section. Neither can it be maintained that these considerations violate articles 7 and 28 of the Constitution of Spain or Article 5 of ILO Convention No. 135, since none of these articles prohibits establishing restrictions or conditions on the ability of trade union branches to have trade union delegates, and secondly, such restrictions (laid down in section 10(1) of Act No. 11/1985 as pointed out above) do not in any way constitute an infringement of freedom of association, since these limitations, duly regulated as they are in this enactment, are dictated by indisputable imperatives of reason and hence, in such cases, there has been no violation of the right to freedom of association, but only correct regulation of this right.

182. Moreover, judgement No. 84/1989 of the Constitutional Court, in the appeal for protection of constitutional rights lodged against the Central Labour Court's decision of 23 December 1986, makes clear what is meant by the trade union's self-exclusion with respect to its participation in unitary or elected representative bodies, and in this respect point 4 of the legal reasoning states:

> Therefore, if a trade union excludes itself from participation in representative bodies, which of course is perfectly legitimate and cannot be hindered (STC 23/1983 of 25 March), this means that it has also excluded itself from the consequences which representation on such bodies entails (STC 37/1983 of 11 May). If the right to be represented by trade union delegates, with the attendant powers and guarantees, is reserved to trade union branches of trade unions which, because they represent more voters, are represented on works councils (section 10 of the Basic Act respecting freedom of association), a trade union branch without such representation clearly cannot enjoy the right or the accompanying powers and guarantees.

183. In the light of the above, and taking account of the fact that the CNT trade union does not meet the requirements for representation on the unitary representative bodies, as provided in section 10 of the Basic Act respecting freedom of association, and that the requirements laid down in this section do not violate the rights of freedom of association and equality of treatment and collective bargaining as stated in rulings STC 173/1992 and STC 188/1995, trade union branches that do not meet these requirements may nominate representatives or spokespersons in the exercise of their freedom to organize, but cannot in any way nominate trade union delegates having the rights and guarantees recognized by the Basic Act respecting freedom of association.

C. The Committee's conclusions

184. *The Committee observes that in this case the complainant objects to refusal to allow a delegate from its trade union branches on the safety and health committee of two enterprises.*

185. *The Committee notes that, according to the statements made by the Government: (1) the complainant has excluded itself from this right by not contesting the elections to the workers' representative bodies and hence not being represented on the works council; and (2) only the trade union branches represented on the works council may have delegates (in this case on the safety and health committee).*

186. *The Committee concludes that: (1) Spanish legislation has chosen to provide that the determination of trade union delegates on the safety and health committee of an enterprise is conditional upon the representativity of trade union branches in so far as the latter is expressed in terms of the results of elections to the works council; (2) although the works council is a representative body of the workers in general, the candidates for election to this body are representatives of the trade union branches. Therefore the Committee considers that, contrary to the complainant's assertions, the existence of elected representatives on the works council does not undermine the position of the trade union representatives within the meaning of Article 5 of Convention No. 135.*

The Committee's recommendation

187. ***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. 2011

INTERIM REPORT

Complaint against the Government of Estonia presented by the Central Association of Estonian Trade Unions (EAKL)

Allegations: Government interference in the establishment and internal functioning of trade union organizations

188. The complaint in this case was presented by the Central Association of Estonian Trade Unions (EAKL) in a communication dated 25 February 1999. Additional information was sent by the complainant confederation on 23 March 1999.

189. In a communication dated 7 May 1999 the Minister of Labour and Social Affairs reported that a new Government had come to power on 25 March 1999 and invited the Office to send a technical mission to Estonia to find a solution to questions related to freedom of association principles.

190. At its June 1999 meeting the Committee adjourned the examination of this case and noted that contacts would be made during the International Labour Conference so as to specify the terms of such a mission [see 316th Report of the Committee, approved by the Governing Body at its 275th Session, June 1999, para. 13]. This mission took place from 25 to 27 August 1999. It was led by Ms. Anna Pouyat, Deputy Chief of the Freedom of

Association Branch, who was accompanied by Ms. Shauna Olney, Senior Legal Officer, and Mr. Giuseppe Casale, Senior Industrial Relations Specialist (ILO, Budapest). The Committee was informed about this mission at its November 1999 meeting where it once again adjourned the examination of the case [see 318th Report, para. 10].

191. In the meantime, the complainant organization sent further information in a communication dated 28 February 2000 and the Government sent some information in communications dated 16 March and 24 April 2000.

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

A. The complainant's allegations

193. In its communication dated 25 February 1999 the Central Association of Estonian Trade Unions (EAKL) denounced the refusal of the public authorities to register it as a national confederation. It emphasized that the Act concerning non-profit-making associations according to which trade union organizations must be registered to be able to obtain legal personality was very restrictive. As a result there were delays in the registration of trade unions and unjustified interference in their functioning. In addition, it alleged that these provisions had the effect of automatically disbanding trade unions that had not obtained their registration by a given date.

194. The EAKL emphasized that under the Act those organizations that had not obtained their registration by October 1998 (a date that was later postponed to 1 March 1999) would be disbanded and their property would be liquidated. The complainant confederation added that its statutes, which had been democratically approved by its congress in 1995, had been rejected by the clerk in charge of registrations. This stopped the EAKL from being registered and threatened it with automatic disbandment.

195. The restrictive conditions for registration which, according to the EAKL, were a prior requisite for its establishment involved:

– the obligation to file a request for registration certified by a notary and countersigned by the members of the executive committee which implied paying notary's fees;

– the obligation, in order to obtain the registration, to pay a tax which, added to the notary's fees, was the equivalent of two weeks' minimum wage;

– the discretionary power of the clerk to accept or refuse the documents attached to the registration request, the formalities being very detailed and being open to different interpretation;

– the length of the procedure which took three to six months or more, no deadline being placed on the public authorities to process the files in order to allow the trade unions to take legal action;

– conditions for the registration of already existing trade unions determined differently on a case-by-case basis.

196. In the opinion of the EAKL, the registration conditions violated the right to establish and join organizations on the following points:

– obstacles to the right of trade unions to join federations as a non-registered trade union did not have legal personality and could therefore not join a federation;

– obligation on the founding members of trade unions to personally sign the merger agreement to establish a federation, while according to the complainant confederation this right should belong to the general assembly of the delegates of trade unions;

– obstacles placed on trade unions in large enterprises where there are a high number of founding members, in that they did not have the right to appoint delegates who, during the constitutive meeting, had the power to formally create the trade union;

– the impossibility for small trade unions with three to ten members which did not wish to obtain their registration to join federations.

197. Concerning interference in the internal functioning of trade unions, the EAKL raised further points concerning:

– the procedure for convening general assemblies and adopting resolutions (over half the members had to participate, the statutes had to be adopted by a majority of two-thirds and modifications concerning objectives had to be adopted by a majority of nine-tenths);

– the obligation to hold an annual general assembly (including half of the members) which should approve the annual report;

– excessively high number of members necessary for the adoption of resolutions (at least half of the members);

– the system of delegates which was not authorized, while in the statutes of the trade unions delegates were elected by the representative bodies on the basis of the number of members in the trade union;

– the election of management bodies which was regulated, and in some circumstances the right given to the court to appoint the members of an executive committee;

– the devolution in some cases of an association's property which could go to the State;

– interference by the authorities in appointing members in the event of the merger or division of associations;

– the obligation to make public the minutes of meetings and other documents;

– the ability of the clerk to request the minutes of meetings relating to amendments of statutes and the list of participants and also of signatories;

– the obligation to convene a general assembly when the clerk required amendments to be made to the statutes of associations;

– restrictive conditions imposed on the content of the statutes whereby the EAKL and its affiliated organizations, in several sectors, were unable to draft the statutes in accordance with the law because the result would have been obstacles to their trade union activities.

B. Information obtained during the mission

198. The mission which took place in Estonia from 25 to 27 August 1999 met – from the Government: the Minister of Social Affairs, Mr. Eiki Nestor, and the Legal Adviser to the Ministry, Ms. Anne Joonsaar; representatives from the Ministry of Justice, Mr. Henri Mikk, director of the Department of Private Law, and Mr. Viljar Peep, head of the Office of Commercial Registration; from the workers: Mr. Tiit Kaadu, secretary-general of the Central Association of Estonian Trade Unions (EAKL), Ms. Kadi Pärnits, legal adviser, and Ms. Margarita Tuch, lawyer for this trade union; for the employers: Mr. Tarmo Kriis, legal adviser. The mission was given every possible assistance in its work and all those it met with were extremely cooperative and frank.

199. The Minister of Social Affairs explained the recent background to labour relations in Estonia. In 1989, a special Act was adopted to put an end to the system of trade unionism subject to government power and to guarantee the establishment of new independent trade unions. Nevertheless, this 1989 Act which authorizes the establishment of trade union organizations without prior authorization does not regulate the question of registration which in Estonia confers legal personality on trade unions. The applicable legislation in this area was therefore the Act on non-profit-making and related associations which was repealed by the 1996 Act on non-profit-making associations in order to exclude control over the registration of associations from the Government's jurisdiction and give it to the courts. According to the Minister of Social Affairs, approximately half of previously registered trade unions have re-registered themselves under the new Act and, the remaining half have considered the procedure to be too complicated and inappropriate. The Minister of Social Affairs explained that, when he was still the leader of the Transport Trade Union, his union was registered in accordance with the 1996 Act, but he agreed that the procedure stipulated by the Act is complicated and cumbersome. He referred in particular to the fact that the founding members must personally submit their signatures in a notarized instrument. He also recognized that workers who, individually, wished to join a federation came up against difficulties. The Minister nevertheless stressed that a working group responsible for examining a Bill on the registration of trade unions had been set up and that this group, which had already held a number of sessions, would continue to meet. The EAKL was part of the group and was in charge of drafting the Bill on freedom of association and protection of the right to organize that had been brought to the attention of the mission. The Government intends to formulate its comments on this proposal. Nevertheless, the Minister explained the importance of registration to obtain legal personality in order to establish credibility and to determine the trade union partners in the area of collective bargaining. He confirmed that the new Act would be less rigid and would leave trade unions free to determine their own structure and to conduct their internal activities.

200. The Minister of Social Affairs lastly assured the mission of the importance for Estonia of respect for freedom of association, and in particular of allowing trade unions to conduct their activities without government interference. He indicated that an Act adopted on 28 June 1999 had been promulgated, which provided that trade unions, federations and confederations would not be subject to administrative disbandment, in application of the Act on non-profit-making associations, before 1 December 1999 due to non-compliance with registration formalities. The date of registration was also extended to 1 December 1999. This was the second legislative postponement and no trade unions had yet been disbanded.

201. The representatives of the Ministry of Justice considered that the 1996 Act on non-profit-making associations was a step in the right direction as the registration procedure was now conducted by independent judges. According to the system in place in 1996 the register of associations is kept by the clerk of the courts where associations and enterprises are

registered. In their view the Act is very liberal as only two people are necessary to establish an association and, contrary to what was said by the complainant confederation, there is no registration tax for previously registered trade unions. Trade unions can contest the provisions of the 1996 Act before the constitutional court if they consider them to be contrary to the international labour Conventions ratified by Estonia. The representatives of the Ministry of Justice confirmed that the Bill on freedom of association and protection of the right to organize under preparation, which was being drafted by the EAKL, certainly came under the jurisdiction of the Ministry of Social Affairs, but indicated that this Bill should obtain the endorsement of the Ministry of Justice. They provided the mission with statistics on the trade unions registered (70 are already registered and 50 are in the process of being registered, including the EAKL). In their view, in order to register itself this organization had firstly to make amendments to its statutes concerning technical formalities, errors or articles that did not comply.

202. The representatives of the Ministry of Justice admitted that the 1996 Act was open to differences of interpretation between the four competent judicial areas in the country. This was due to the fact that the judicial system was still relatively recent. On the matter of taxes, only new trade unions were obliged to pay them, with trade unions that were re-registering being exempt. The deadlines for registration should in principle be 15 days in the case of re-registration and two months for new trade unions. In the event of any difficulties, it was for the judge to give additional time for trade unions to make the necessary modifications to their statutes. Unfortunately, almost all requests for registration had been lodged in February 1999, just before the closing date, thus extending the deadlines. The representatives of the Ministry of Justice confirm that the provisions of the 1996 Act did not in any way constitute prior authorization. In their view, the founding members must all personally sign or give a procuration to someone else to sign on their behalf. The Act does not authorize the election of delegates to participate in general assemblies, but a member can appoint someone to vote on his behalf. They did not consider it useful to amend the 1996 Act, but were ready to examine the Bill concerning trade unions under preparation.

203. The representatives of the EAKL met the mission twice. They explained that they had submitted their statutes for registration on 26 February 1999 and that in May 1999 the court had rejected their request, declaring in very general terms that it was not in compliance with the Act on non-profit-making associations. The EAKL then provided the text of the Decree containing the refusal by the deputy judge which mentions that “the registration certificate, the minutes and the statutes of the trade union attached to the request for registration are not in compliance with the requirements of article 85(3) of the 1996 Act on non-profit-making associations in accordance with which only the originals or copies certified by a notary may be submitted to the clerk”. The Decree indicates that the EAKL must rectify the situation before 30 September 1999. The trade union representatives said they were aware that the trade unions must register themselves in order to have legal personality and to be admitted to the collective negotiation table, but they reiterated their strong criticism about the 1996 Act. In their view, only federations from three sectors were registered: transport, energy and wood and forestry. Those in the sectors of textiles, telecommunications, medicine and seafarers had appealed to the courts about their registrations. As regards the revision of the Act, for which the EAKL has drafted a very detailed proposal, they referred to the difficulties they had encountered with the representatives of the Ministry of Justice. They hoped that the Act on freedom of association and protection of the right to organize under preparation would lead to the repeal of the 1989 trade union Act and would exclude trade unions from the 1996 Act on non-profit-making associations. In their view, the new Act should be less restrictive and give trade unions the right to manage their internal affairs without interference from the public authorities.

204. The representative of the Estonian Employers' Confederation (ETTK) confirmed that the 1996 Act applied to employers and employers' organizations and that the employers' confederation had had to register itself in accordance with the law. Just one employers' organization had been disbanded, but it had wanted to cease activities. The Act had certainly had a more negative impact on workers' organizations than on employers' organizations. In his view, obtaining legal personality was essential to facilitate relations between trade unions and employers. The latter were in favour of a single registration system for employers' and workers' organizations and for keeping the 1996 Act, but they criticized the provisions allowing interference by the public authorities in the internal affairs of organizations, particularly as regards the questions of affiliates and structure. He noted that certain employers' organizations had had difficulties in obtaining their registration. Furthermore, the employers' representative explained that in the absence of enterprise trade unions, workers' representatives could be elected. In practice, collective agreements only covered workers in large enterprises. If a new Act were to be adopted the employers hoped that it would apply to various employers' organizations and that it would specify the levels of negotiations with government representatives as at present discussions only occurred in the framework of informal arrangements. Furthermore, the employers hoped that the Act would take into account their commitment to vocational education, industrial policies and the collection of statistics. Those areas currently came under several ministries making coordination difficult. With regard to the representativeness of organizations, discussions were under way but the employers thought that in principle it would be appropriate to require five branch associations to form a confederation.

205. On the request of the mission a tripartite meeting was held in its presence between the Ministry of Social Affairs and the representatives of the EAKL and the ETTK.

206. On the employers' side it was indicated that the ETTK would be happy with amendments to the 1996 Act to bring it more into line with the principles of freedom of association. The employers agreed that the system of procuration instead of the election of delegates to participate in general assemblies could well cause difficulties for trade unions and that, proportionally, the taxes were less of a burden for employers' organizations than for workers' organizations. The employers did not insist on the adoption of a single act covering employers and workers.

207. On the workers' side, the EAKL representatives reiterated their grievances concerning the 1996 Act on non-profit-making associations. They denounced the refusal of the judge to register the seafarers' trade unions on the grounds that he did not approve the way in which the executive committee had been elected (seafarers on board ship could not all sign in person). The election procedure stipulated in the Act was cited, in accordance with the EAKL statutes, each basic trade union votes in proportion to the members it represents, while the 1996 Act gives the same number of votes to a trade union representing 20 members as to one representing 600 members. They again mentioned the difficulties encountered with the Ministry of Justice and indicated that in the framework of the preparation of the new Act the question of representativeness could be set aside for the moment.

208. The Minister of Social Affairs said he favoured an amendment of the 1989 trade union Act to include provisions relating to the registration procedure. He indicated that an act covering employers and workers ran the risk of creating more confusion than solutions. He again referred to the issues concerning the structure of trade unions and trade union activities, which in his view should be left to the trade union statutes and should not in any way be regulated by law. He agreed that provisions on the protection of workers against anti-union discrimination should be reinforced. He thought that the question of the representativeness of trade union organizations should not be dealt with at the present stage. He thought it preferable to allow labour relations to develop freely. He said he was

in favour of less complex legislation in accordance with the standards and principles of freedom of association, stressing the fact that the Act should apply to all workers without distinction whatsoever rather than to employees in the strict sense of the term.

C. Developments since the mission

(a) Information communicated by the complainant

209. In a communication dated 28 February 2000, the EAKL announced that it had obtained its registration in mid-December 1999 and that it had not had to amend its statutes in any way, although the authorities had previously said that they were not compatible with Estonian law.

210. The EAKL nevertheless regretted the lack of progress in the adoption of the new legislation. It indicated that the trade union Act under preparation had still not been adopted owing to the reluctance of the Ministry of Justice.

(b) The Government's reply

211. In a communication dated 16 March 2000, the Government announced that on 29 February 2000 it had submitted to Parliament the trade union Bill discussed with the EAKL representatives. It annexed the Prime Minister's communiqué submitting to Parliament, for adoption, said Bill prepared by the Ministry of Social Affairs and entrusting the Minister of Social Affairs to submit it to Parliament. The Government stressed the fact that the Ministry of Social Affairs was the EAKL's only social partner and not the Ministry of Justice. It confirmed that the Bill had taken into account all the recommendations made by the mission on the basis of the principles of freedom of association.

212. In a communication dated 24 April 2000, the Government stated that the Bill was adopted at the first reading by Parliament on 5 April 2000, and hopes that the final text will be adopted in June 2000.

D. The Committee's conclusions

213. *This case concerns allegations of government interference in the establishment and internal functioning of trade union organizations. It relates in particular to the alleged refusal to register a national confederation, the Central Association of Estonian Trade Unions (EAKL), by the public authorities and threats of automatic disbandment of trade union organizations that had not obtained their registration by a given date. It also concerns obstacles to the establishment and functioning of trade unions contained in the 1996 Act on non-profit-making associations which provides that trade unions must be registered to obtain legal personality.*

214. *As regards the refusal to register the EAKL and the risk of automatic disbandment of this trade union organization, the Committee notes with satisfaction that the EAKL, which had filed its statutes in February 1999, was registered in December 1999, without having to amend its statutes in any way. This being the case, the Committee will not pursue its examination of these allegations*

215. *The Committee noted with concern the provisions of the Act concerning non-profit-making making associations which imposed on workers' and employers' organizations a heavy and detailed procedure for the acquisition of legal personality (notarized acts, fees) and which grant officials of the Ministry of Justice discretionary powers to interfere in the*

drafting of organizations' constitutions, in the framework for elections of trade union leaders and in the supervision of the management of workers' and employers' organizations. The Committee recalls that, in ratifying Convention No. 87, the Government has committed itself to guaranteeing to workers' and employers' organizations the right to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities without interference by the public authorities. It further recalls that the acquisition of legal personality by workers' and employers' organizations, their federations and confederations should not be made subject to conditions of such a character as to restrict the application of the provisions of the Convention. (Articles 3 and 7 of the Convention.) *The Committee has always considered that legislative provisions which regulate in detail the internal functioning of workers' and employers' organizations pose a serious risk of interference by the public authorities. Where such provisions are deemed necessary by the public authorities, they should simply establish an overall framework in which the greatest possible autonomy is left to the organizations in their functioning and administration. Restrictions on this principle should have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organizations. Furthermore, there should be a procedure for appeal to an impartial and independent judicial body so as to avoid any risk of excessive or arbitrary interference in the free functioning of organizations. Consequently, in order to guarantee the right of workers' organizations to draw up their constitutions and rules in full freedom, national legislation should only lay down formal requirements as regards trade union constitutions, and the constitutions and rules should not be subject to prior approval by the public authorities [see* ***Digest of decisions and principles of the Committee on Freedom of Association****, 1996, 4th edition, paras. 331 and 333.].*

216. *In the circumstances concerning the interference in the establishment and functioning of trade union organizations contained in the 1996 Act on non-profit-making associations, the Committee notes with interest that, in accordance with commitments made by the Government during the ILO's mission, a trade union Bill discussed with the representatives of the EAKL was submitted to Parliament on 29 February 2000. It observes in particular that, according to the Government, this Bill took into consideration all the recommendations made by the mission on the basis of the principles of freedom of association.*

217. *Noting the statement of the Minister of Social Affairs according to which an act concerning workers' and employers' organizations ran the risk of creating more confusion than solutions, the Committee requests the Government to guarantee that the national legislation will allow and promote the free formation and free functioning of employers' organizations.*

218. *The Committee expects that the new Act on the formation and functioning of workers' and employers' organizations, in compliance with the principles of freedom of association, will be adopted shortly and that it will not keep in force the provisions of the 1996 Act on non-profit-making associations that restrict the creation and functioning of these organizations. It requests the Government to provide a copy of the final text once it is adopted.*

The Committee's recommendations

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

(a) The Committee notes with satisfaction that the Central Association of Estonian Trade Unions (EAKL) obtained its registration without having to amend its statutes.

(b) Noting with interest that a trade union Bill was adopted at the first reading by Parliament, the Committee expects that the new Act will contain provisions in conformity with the principles of freedom of association and that it will not keep in force the provisions of the 1996 Act on non-profit-making associations that obstruct the establishment and functioning of trade unions.

(c) The Committee requests the Government to send a copy of the final text of the trade union Act once it is adopted.

CASE NO. 1888

INTERIM REPORT

Complaint against the Government of Ethiopia presented by
– Education International (EI) and
– the Ethiopian Teachers' Association (ETA)

Allegations: Death, detention and discrimination of trade unionists, interference in the internal administration of a trade union

220. The Committee previously examined the substance of this case at its November 1997, June 1998 and June 1999 meetings, presenting an interim report to the Governing Body in all these instances [308th Report, paras. 327-347; 310th Report, paras. 368-392; 316th Report, paras. 465-504].

221. Since the most recent examination of this case, Education International has submitted new allegations and additional information in a communication dated 25 November 1999. The Government submitted its reply in a communication dated 16 May 2000.

222. Whilst the Government had announced in communications, dated 29 October 1999 and 17 March 2000, that it would provide full information on this case, it has done so too late to allow the Committee to take that reply into account. In the absence of a reply from the Government, the Committee postponed the examination of this case on two occasions. At its March 2000 meeting [see 320th Report, para. 9], the Committee addressed an urgent appeal to the Government, drawing its attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it might present a report on the substance of this case at its next meeting if the Government's information and observations were not received in due time.

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

A. Previous examination of the case

224. During the course of its previous examinations of this case, the Committee addressed very serious allegations of violations of freedom of association, in particular the Government's refusal to continue to recognize the Ethiopian Teachers' Association (ETA), the freezing of its assets and the killing, arrest, detention, harassment, dismissal and transfer of ETA members and officials. The Committee expressed its grave concern due to the extreme seriousness of the case and urged the Government to cooperate in furnishing the Committee with a detailed response to all the questions posed by the Committee.

225. At its June 1999 session, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

(a) The Committee requests the Government to provide information concerning any appeal lodged with respect to the leadership of the ETA, and to forward any relevant orders or judgements in this regard. The Committee would also request the Government to provide information concerning its role with respect to ETA prior to the 1994 court decision. The Committee would also appreciate receiving any other information from either the Government or the complainant that could shed light on this matter.

(b) The Committee requests the Government to provide information as to its involvement in the freezing of ETA's assets prior to the June 1998 court order, and with respect to the delay between the judgement unfreezing ETA's bank account and the order transmitting this decision to the relevant bank. The Committee also requests the Government to provide information concerning the allegation that the Government has informed tenants in the ETA building to submit their rent payments to the Government.

(c) The Committee urges the Government to respond to the specific allegations concerning the occupation and sealing of ETA premises, and the closing by security forces of an ETA/EI workshop.

(d) With respect to Dr. Taye Woldesmiate, the Committee urges the Government to provide information as to his first arrest in May 1995, when the charges were laid and the facts upon which the arrest and charges were based.

(e) The Committee, deploring the fact that Dr. Woldesmiate was detained for two months before charges were laid and that he has remained in detention since May 1996 (that is, for three years) without being brought to trial, strongly urges the Government to take the measures necessary to secure his immediate release. The Committee requests the Government to inform it of action taken in this regard.

(f) On the issue of the harassment and detention of ETA leaders and members, the Committee, deeply regretting that the Government has provided a reply of a general nature to allegations that were very specific, must once again urgently request the Government to provide precise information concerning all those listed in Annex 2, as well as with respect to Abate Angore, Awoke Mulugeta and Shimalis Zewdie, in particular concerning the dates of detention, where they were detained, the reasons for the detention, whether any charges were laid and the specific charges, the conditions of detention, and the legal process that was followed and any decisions or orders arising therefrom.

(g) The Committee urges the Government to take the necessary measures to ensure that all the ETA members and leaders detained or charged are

released and all charges withdrawn. Furthermore, the Committee requests the Government to take the necessary measures to ensure that in future workers are not subject to harassment or detention due to trade union membership or activities.

(h) Concerning the dismissal of ETA members and leaders (see Annex 1), the Committee again strongly urges the Government to take the necessary measures to ensure that the leaders and members of ETA who have been dismissed are reinstated in their jobs, if they so desire, with compensation for lost wages and benefits, and requests the Government to keep the Committee informed in this regard.

(i) The Committee, deploring that despite the extremely serious nature of the allegation, the Government has clearly indicated that it does not intend to establish an independent judicial inquiry into the killing of Mr. Assefa Maru, once again strongly urges the Government to ensure that an independent judicial inquiry is carried out immediately to determine the facts, establish responsibility, and appropriately punish the perpetrators if any wrongdoing is found. The Committee requests the Government to keep it informed regarding the establishment and outcome of the inquiry.

(j) The Committee reiterates its request that the Government consult with ETA on the unilateral introduction of an evaluation system for teachers to ensure that it is not used as a pretext for anti-union discrimination, and to inform it of progress in this regard. The Committee also requests the Government to reply to the new allegation that the Government has refused ETA's attempts to establish a constructive working relationship with the Government.

B. New allegations and additional information

226. In its communication of 25 November 1999, Education International indicates that after a trial which lasted three years, with frequent adjournments and deferrals, ETA's President, Dr. Taye Woldesmiate, was found guilty of conspiring to overthrow the State and was sentenced to 15 years in jail in June 1999. The complainants reject this decision as outrageous, unjust and contrary to the evidence available to the court. Although no written copy of the decision is available, other evidence available suggests a number of serious failings in the handling of Dr. Taye Woldesmiate's case, including: the use of torture to extract witness testimony; denying Dr. Taye Woldesmiate proper access to his lawyer to prepare the case; changes of judges throughout the proceedings; references, during the sentencing, to charges that had been dismissed earlier. There are also serious questions about the independence of the judiciary in Ethiopia, the extent of government interference in the process and pressures on individual judges.

227. According to the complainants, other actions taken against the ETA suggest that the accusations of terrorism against Dr. Taye Woldesmiate and other ETA leaders have been made simply to disguise the real agenda, which is to crush an independent and democratic teachers' organization that has questioned some aspects of the Government's education policy and has put forward the legitimate claims of its members. These actions include the following: the ETA was refused permission to hold professional workshops in four regions in August 1999; the government-supported organization has initiated further legal action against the ETA, which has however challenged this action, while other Court decisions are still awaited; ETA's property in Addis Ababa has been seized and tenants in the building instructed to pay their rents to the government-supported organization.

228. The Committee further notes that, contrary to what had been reported earlier, and reflected in its 316th Report, Mr. Mulatu Mekonnen, has not actually been reinstated. He was

actually dismissed in July 1993 from his position as teacher in a public school and never reinstated there; instead, he found a job as teacher in a private school.

C. The Committee's conclusions

229. *The Committee deplores the fact that, despite the time which has elapsed since the last examination of this case and bearing in mind the extreme gravity of the facts alleged, the Government has not provided in due time the comments and information requested by the Committee, although it was invited to send its reply on several occasions, including by means of an urgent appeal at its March 2000 session.*

230. *In these circumstances, and in accordance with the applicable rule of procedure [see 127th Report of the Committee, para. 17, approved by the Governing Body at its 184th Session], the Committee is obliged to submit a report on the substance of this case in the absence of the information it had hoped to receive in due time from the Government. The Committee reminds the Government firstly that the purpose of the procedure instituted by the International Labour Organization to examine allegations concerning violations of freedom of association is to ensure respect for trade union rights in law and in fact. If this procedure protects governments against unreasonable accusations, governments on their side will recognize the importance of formulating for objective examination detailed factual replies concerning the substance of the allegations brought against them [see First Report of the Committee, para. 31].*

231. *The Committee recalls once again that this case addresses very serious allegations of violations of freedom of association, in particular, government interference with the functioning of ETA, and killing, arrest, detention, harassment, dismissal and transfer of ETA members and officials. The Committee also emphasizes that the trade union situation in Ethiopia in general, and the teachers and ETA case in particular, have been discussed during two consecutive years by the tripartite Conference Committee on the Application of Standards [see ILC, 1998, **Provisional Record** No. 18, pp. 91-93; ILC, 1999, **Provisional Record** No. 23, pp. 109-112] which attests to the seriousness of this situation. The Committee also refers to the last comments made by the Committee of Experts on the wider legal context of this case [see ILC, 88th Session, 2000, Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 175-76].*

232. *Regarding the case of ETA's president, the Committee is deeply concerned that Dr. Taye Woldesmiate was found guilty of conspiring to overthrow the State and has been sentenced to 15 years in jail. Whilst deploring that it has not been provided with the text of the judgement, the Committee notes from the information provided by the complainants that there exist serious misgivings as to the regularity of the trial and of the proceedings leading to it, including that torture was allegedly used to extract testimony from witnesses, that Dr. Taye Woldesmiate was denied proper access to his lawyer to prepare his case, that there were unexplained changes of judges during the proceedings, and that references were made during sentencing to charges which had been dismissed earlier.*

233. *The Committee recalls once again that while persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists [see **Digest of decisions and principles of the Committee on Freedom of Association**, 1996, 4th edition, para. 83]. In addition, trade unionists, like anyone else, should benefit from normal judicial proceedings and have the right to due process, in particular the right to be informed of the charges brought against them, 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**, op. cit.,*

para. 102]. On the basis of available information, and taking into account that, before his trial and judgement, Dr. Taye Woldesmiate has been detained for over three years (he had been initially arrested in May 1995, and has been detained since May 1996) in very difficult conditions, the Committee concludes that Dr. Taye Woldesmiate did not get the benefit of due process in the circumstances. The Committee urges the Government to provide without delay the text of the judgement issued against Dr. Taye Woldesmiate, including the precise reasons why he was brought to trial as well as the evidence on which he was convicted, to indicate whether any appeal has been lodged against the sentence, and to keep it informed on developments in the situation of Dr. Taye Woldesmiate, in particular as regards any measures taken to release him.

234. *The Committee will examine on their merits the other aspects of the complaint, on the basis of the most recent allegations and of the Government's reply of 16 May, as well as any further communication from the Government. The Committee wishes to recall a few fundamental rights and principles regarding freedom of association: workers, without distinction whatsoever, should have the right to establish and join organizations of their own choosing; they should have the right to elect their representatives in full freedom, to organize their activities and to formulate their programmes; the public authorities should refrain from any interference which restricts these rights or impede their lawful exercise. Furthermore, workers should enjoy adequate protection against acts of anti-union discrimination. Noting with serious concern that these conditions did not exist at the time in Ethiopia, the Committee recalls that it is incumbent upon the Government to ensure that these rights and principles are respected, in law and in practice.*

235. *The Committee therefore urges the Government, once again to provide precise information on all the allegations pending. This information, including the information contained in its reply of 16 May, should cover all the following points:*

– *any appeal lodged with respect to the leadership of the ETA, and any relevant orders or judgements in this regard; its role with respect to ETA prior to the 1994 court decision;*

– *its involvement in the freezing of ETA's assets prior to the June 1998 court order, and with respect to the delay between the judgement unfreezing ETA's bank account and the order transmitting this decision to the relevant bank; the allegation that the Government has informed tenants in the ETA building to submit their rent payments to the Government;*

– *the specific allegations concerning the occupation and sealing of ETA premises, and the closing by security forces of an ETA/EI workshop;*

– *on the issue of the harassment and detention of ETA leaders and members, to provide precise information concerning all those listed in Annex 2, as well as with respect to Abate Angore, Awoke Mulugeta and Shimalis Zewdie, in particular concerning the dates of detention, where they were detained, the reasons for the detention, whether any charges were laid and the specific charges, the conditions of detention and the legal process that was followed and any decisions or orders arising therefrom;*

– *measures to ensure that all the ETA members and leaders detained or charged are released and all charges withdrawn, and to ensure that in future workers are not subject to harassment or detention due to trade union membership or activities;*

– *concerning the dismissal of ETA members and leaders (see Annex 1), the Committee again strongly urges the Government to take the necessary measures to ensure that the leaders and members of ETA who have been dismissed are reinstated in their*

jobs, if they so desire, with compensation for lost wages and benefits, and requests the Government to keep the Committee informed in this regard;

– *deploring that despite the extremely serious nature of the allegation, the Government has clearly indicated that it does not intend to establish an independent judicial inquiry into the killing of Mr. Assefa Maru, the Committee once again strongly urges the Government to ensure that an independent judicial inquiry be carried out immediately to determine the facts, establish responsibility and appropriately punish the perpetrators if any wrongdoing is found. The Committee requests the Government to keep it informed regarding the establishment and outcome of the inquiry;*

– *the Committee further reiterates its request that the Government consult with ETA on the unilateral introduction of an evaluation system for teachers to ensure that it is not used as a pretext for anti-union discrimination, and to inform it of progress in this regard. The Committee also requests the Government to reply to the allegation that the Government has refused ETA's attempts to establish a constructive working relationship with the Government.*

The Committee's recommendations

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

(a) Noting with deep concern that Dr. Taye Woldesmiate did not get the benefit of due process, the Committee urges the Government to provide it without delay with the text of the judgement issued against him, including the precise reasons why he was brought to trial as well as the evidence on which he was convicted, to indicate whether any appeal has been lodged against the sentence, and to keep it informed on developments in his situation, in particular as regards any measures taken to release him.

(b) The Committee urges the Government, once again, to provide precise information on all the allegations pending. This information should cover all the following points:

(i) any appeal lodged with respect to the leadership of the ETA and any relevant orders or judgements in this regard; to provide information concerning its role with respect to ETA prior to the 1994 court decision;

(ii) its involvement in the freezing of ETA's assets prior to the June 1998 court order, and with respect to the delay between the judgement unfreezing ETA's bank account and the order transmitting this decision to the relevant bank; the allegation that the Government has informed tenants in the ETA building to submit their rent payments to the Government;

(iii) the specific allegations concerning the occupation and sealing of ETA premises, and the closing by security forces of an ETA/EI workshop;

(iv) on the issue of the harassment and detention of ETA leaders and members, to provide precise information concerning all those listed in Annex 2, as well as with respect to Abate Angore, Awoke Mulugeta and Shimalis Zewdie, in particular concerning the dates of detention, where

they were detained, the reasons for the detention, whether any charges were laid and the specific charges, the conditions of detention, and the legal process that was followed and any decisions or orders arising therefrom.

(c) The Committee urges the Government once again to take the necessary measures to ensure that all the ETA members and leaders detained or charged are released and all charges withdrawn, and to ensure that in future workers are not subject to harassment or detention due to trade union membership or activities.

(d) Concerning the dismissal of ETA members and leaders (see Annex 1), the Committee again strongly urges the Government to take the necessary measures to ensure that the leaders and members of ETA who have been dismissed are reinstated in their jobs, if they so desire, with compensation for lost wages and benefits, and requests the Government to keep the Committee informed in this regard.

(e) Deploring that despite the extremely serious nature of the allegation, the Government has clearly indicated that it does not intend to establish an independent judicial inquiry into the killing of Mr. Assefa Maru, the Committee once again strongly urges the Government to ensure that an independent judicial inquiry be carried out immediately to determine the facts, establish responsibility, and appropriately punish the perpetrators if any wrongdoing is found. The Committee requests the Government to keep it informed regarding the establishment and outcome of the inquiry.

(f) The Committee reiterates its request that the Government consult with ETA on the unilateral introduction of an evaluation system for teachers to ensure that it is not used as a pretext for anti-union discrimination, and to inform it of progress in this regard.

(g) The Committee reiterates its request that the Government reply to the allegation that it refused ETA's attempts to establish a constructive working relationship with it.

Annex 1

Members of ETA purportedly dismissed

Mulugheta W/Quirqos	Ayke Asfaw
Ghebayaw Niguse	Taye Mekuria
Ketema Belachew	Yohanns Tola
Ghetachew Feysia	Alemayehu Tefera
Mesfin Mengistu	Alemayehu Melake
Asrat Woldeyes	Alemayehu Haile

Abeta Anghure	Negatu Tesfaye
Worku Tefera	Hailu Araya
Sira Bizu	Aynalem Ashebir
Mekonnen Bishaw	Admassu Wassie
Eyassu Albezo	Berhanu Bankashie
Befekadu Degifie	Sebhat M/Hazen
Eshato Denege	Lealem Berhanu
Ayele Terfie	Mekonnen Dilgassa
Tesegaye Hunde	Huluanten Abate
Alemayehu Haile	Solomon Terfa
Taye W/Semayat	Mekuria Asffa
Tsehay B. Sellassie	Tamiru Hawando
Ghemoraw Kasa	Feleke Desta
Assefaw Desta	Fesseha Zewdie
Shimellis Zewde	Solomon Wondwossen
Messay Kebede	Dawit Zewdie
Adinew Ghetanhun	Shiferaw Agonafir
Taddese Beyene	Ayele Tarekegn
Aweqe Mulugheta	Zerihun Teshome
Seifu Metaferia	Fekade Shewakena
Aseffa Maru	Mendaralew Zewdie
Tesfaye Shewaye	Akilu Taddese
Abate Anghure	Meskerem Abebe

ETA Executive Committee members and regional officers, purportedly dismissed

Dr. Taye Woldesmiate – President of ETA since April 1993

Mr. Abate Angorie, Members Afffairs Officer since January 1993, Addis Ababa, March 1993

Mr. Gemoraw Kassa, Secretary General of ETA, since July 1993, Addis Ababa

Mr. Shimelis Zawdie, Assistant Secretary General of ETA, since July 1993, Addis Ababa

Mr. Adinew Getahun, Administrative and Finance Officer, since July 1993, Addis Ababa

Mr. Awoke Mulugeta, Humanitarian Services and Supplies Officer, since July 1993, Addis Ababa

Mr. Asefa Maru, Cooperative Services Officer, since July 1993, Addis Ababa

Mr. Mulatu Mekonnen, Art and Research Department Officer, since July 1993, Addis Ababa

Mr. Muhammed Umer, South Wollo, February 1994

Mr. Fekadu Negash, South Gonder, June 1994

Mr. Alula Abegaz, North Wollo, September 1994

Annex 2

Members of ETA alleged to have been repeatedly detained for their active participation in ETA

Ato Gennene H/Silasie

Ato Nikodmos Aramdie

Ato Moges Taddese

Ato Ambachew W/Tsadik

Ato Ashenafi Legebo

Ato Demeke Seifu

Ato Mohammed Ussien

Ato Wondimu Bekele

Ato Yibellae

Ato Sollomon Tesfaye

Ato Endalkachew Molla

Ato Zewdu Teshome

Ato Mohamed Umer

Ato Girma Tolossa

Ato Mekonnen Dawud

Ato Gemoraw Kassa

Ato Wogayehu Tessema

Ato Adinew Getahun

Ato Wollee Ahmed

Ato Shimelis Zewdie

Ato Yimam Ahmed

Ato Getachew Feyisa

Ato Sollomon H/Silsie

Ato Gebayaw Nigusie

Ato Sisay Mitiku

Ato Assefa Maru

Ato Limenih Nienie

Ato Ashenafi Mengistu

Ato Getinet Asnake

Ato Kebede Aga

Ato Befikadu Firdie

Ato Wubie Zewdie

Ato Baye Abera

Ato Asfaw Tessema

Ato Desta Titto

Ato Abate Angorie

Ato Woreyelew Demissie

Ato Ashetu Deneke

Ato Desie Keffele

Ato Bekele Mengistu

Ato Tarekegn Terefe

Ato Kinfie Abate

Ato G/Hiywot Gebru

Ato Tomas Egzikuret

Ato Fekade Nidda

Ato Sollmon Girma

Ato Mulugeta W/Kiros

Ato Fereja Feleke

Ato Mohamed Seid

Ato Demissie Tesfaye Haile

Ato Wondafrash Millon

Ato Gizachew Balcha

Ato Melessie Taye

W/t S/Wongel Belachew

Ato Ali Mengesha

Ato Yigzaw Mekonnen

Ato Getaneh Abebe

Ato Fekadu Negash

Ato Merkebu Taddesie

Ato Tesfaye Daba

Ato Mudisu Yasin

Ato Diana Kefeni

Ato Bekele Abay

Ato Berrecha Kumssa

Ato Hailu Derso

W/ro W/Yesus Mengesha

Ato Keteme Belachew

Ato Tamirat Daba

Ato Mesfin Mengistu

Ato Futa Sori

Ato Alemayehu Melake

Ato Legesse Lechissa

Ato Yohannes Tolla

Ato Admasu W/Yesus

Ato Aykie Asfaw

Ato Abbie Dessalegn

Ato Alemu W/Silasie

Ato Shukie Dessalegn

Ato Fikru Melka

W/ro Tewabech H/Michael

Ato Workneh Dinssa

Dr. Taye W/Semiat

Ato Assefa Geleta

Ato Alemu Desta Ketema

CASE NO. 2052

INTERIM REPORT

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

Allegations: Attempted murder of trade union officials; detention of and physical assaults against trade unionists; dismissals of trade union leaders and members

237. The complaint is contained in a communication from the International Confederation of Free Trade Unions (ICFTU) dated 23 September 1999.

238. In the absence of a reply from the Government, the Committee was obliged on two occasions to postpone its examination of the case. At its March 2000 meeting [see the Committee's 320th Report, para. 9], the Committee issued an urgent appeal to the Government drawing its attention to the fact that, under the rule of procedure established 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 and observations of the Government had not been received in due time.

239. Haiti 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

240. In its communication of 23 September 1999, the ICFTU alleges that the company *Electricité d'Haïti* (EDH) violated freedom of association and the free exercise of the right to organize of trade union leaders and members of the Federation of Electricity Workers of Haiti (FESTRED'H). In particular, it refers to the mass dismissal in November 1996 of 30 leaders and more than 400 members of FESTRED'H, the closure of trade union offices by armed persons, the ban on any meetings by union members in the company, the attempted murder of two trade union officials, and arrests and assaults against other union leaders.

241. The complainant points out that these events originate from a conflict between the company and the authorities, on the one hand, and FESTRED'H, on the other, that goes back ten years. From 1987-88 onwards, the existing trade union had undertaken a "clean-up" campaign against waste, non-payment of invoices by well-to-do individuals close to the Government and by some companies, and various other practices generally referred to as "non-technical losses", and had also sought improvements in working conditions. Throughout those years, the union faced constant difficulties in its activities; several of its members suffered harassment or arbitrary imprisonment, others were murdered, particularly during the *coup d'état* in September 1991. Several members of the union were forced into exile to save their own lives. The return of President Aristide in 1994 coincided with the launch of a neo-liberal economic policy of privatizing state-owned enterprises, and the EDH was at the top of the list of companies to be privatized. FESTRED'H opposed this policy from the beginning and put forward alternatives. The situation deteriorated, as the existence of an active mobilizing trade union became intolerable for the company and for the political authorities.

242. It was in this context that the company decided to cancel all the agreements which it had concluded with the union, including agreements on wage increases and on the establishment of a bipartite committee responsible for reducing "non-technical losses". The management also launched a defamation campaign against a number of trade union leaders and made a number of accusations against the union, none of which were proven. An altercation in October 1996 between two EDH employees led to the dismissal in November 1996 of 30 trade union leaders and more than 400 union members, on the pretext of administrative requirements and allegations of sabotage; however, no formal accusations were made against anyone. Faced with the impossibility of establishing any dialogue with the management, FESTRED'H went through all the avenues of appeal available at national level (Labour Directorate; Ministry of Social Affairs; Tripartite Consultation and Arbitration Committee; Ministry of Public Works; Ministry of Transport and Communications), but to no avail. On 18 October 1996, armed individuals closed the union's offices and all gatherings of union members were prohibited within the enterprise. In December 1996, a representative of the *Fédération des travailleurs du Québec*, who had been asked by the ICFTU to act as an "honest broker", held a number of meetings with various representatives of the authorities in order to resolve the dispute, still to no avail, although a representative of the authorities acknowledged that the situation had to be remedied and said that appropriate measures would be taken. Since then, all the union's attempts to re-launch this dialogue have been stone-walled.

243. In addition, several trade members and leaders suffered violations of their physical integrity. On 15 October, in the course of attempted negotiations, armed individuals fired shots at the union's President Mr. Vilbrun Laguerre, who was subsequently forcibly retired, in contravention of the company's own administrative procedures and regulations. On 11 November, two armed individuals attempted to kill the union delegate Mr. Ronald Léveillé. Lastly, four members of the union's national executive (Mr. Paulin Elladin, Mr. Buffon Sambourg, Mr. Félix P. Michel and Mr. Jean-René Martineau) were arbitrarily imprisoned and brutally assaulted before being released two days later without charge.

244. The complainant maintains that workers and their organizations should be able to express their dissatisfaction regarding economic and social issues which affect the interests of their members. The systematic refusal to engage in dialogue and the brutal repression of workers constitute a violation of the most basic principles of freedom of association.

B. The Committee's conclusions

245. *The Committee deplores the fact that, despite the time that has passed since the presentation of the complaint, and given the gravity of the allegations that have been made, the Government has not replied to any of the allegations made by the complainant, although it has been invited on several occasions to present its own comments and observations on the case, notably through an urgent appeal. Under these circumstances, in accordance with the applicable rule of procedure [see the Committee's 127th Report, para. 17, approved by the Governing Body at its 184th Session], the Committee is bound to present a report on the substance of the case, even without the information which it had hoped to receive from the Government.*

246. *The Committee reminds the Government, first, that the primary goal of the procedure instituted by the International Labour Organization for examining allegations relating to violations of freedom of association is to ensure that trade union freedoms are respected in law and in fact [see the Committee's First Report, para. 31].*

247. *The Committee notes that the allegations concern in particular various violations of the physical integrity of trade union leaders and members, including in some cases attempted murder. The Committee recalls that the rights of workers' 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 those organizations, and it is for governments to ensure that this principle is respected [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 47]. The Committee urges the Government to take all the necessary measures to ensure that this principle is respected in future, in particular by instigating independent judicial inquiries with a view to establishing the facts, punishing those responsible and preventing recurrences. In particular, it urges the Government to begin such inquiries into the attempts to murder Mr. Laguerre and Mr. Léveillé and to keep it informed of the outcome of any such inquiries.*

248. *With regard to the arrests and detentions in this case, the Committee deplores the detention of four national trade union leaders for two days without charge. It recalls that the detention of trade union leaders or members for reasons connected with their defence of workers' interests constitutes a serious interference with civil liberties in general and with trade union rights in particular [see* ***Digest****, op. cit., para. 71]. The Committee insists that the Government take all the necessary measures to prevent any recurrences of this in future.*

249. *The Committee also emphasizes that the occupation or closure of trade union premises constitutes a serious violation of freedom of association and a serious interference in trade union activities [see* ***Digest****, op. cit., paras. 174-185]. The Committee requests the Government to take all the necessary measures without delay to ensure that FESTRED'H regains the free use of its premises and can carry out its legitimate trade union activities, in particular the right to hold meetings in full freedom. The Committee requests the Government to keep it informed of any measures taken to that end.*

250. *The Committee emphasizes the importance which it attaches to the principle that governments should consult trade union organizations to discuss the consequences of restructuring programmes on employment and working conditions [see* ***Digest****, op. cit., para. 937]. The Committee, recalling that it can examine allegations concerning economic rationalization programmes and restructuring processes if they might have given rise to acts of discrimination or interference against trade unions [see* ***Digest****, op. cit., para. 935], urges the Government to supply all relevant information on the dismissals of a large number of leaders and members of the complainant organization.*

The Committee's recommendations

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

(a) The Committee deplores the fact that the Government has not replied to the allegations despite the fact that it was invited to do so on several occasions, including through an urgent appeal, and it counts on an immediate reply on the Government's part.

(b) The Committee urges the Government to take all necessary measures to ensure that, in future, workers and their organizations can exercise their rights in a climate that is free from violence, pressure or threats of any kind, in particular by instigating independent judicial inquiries with a view to establishing the facts, punishing those responsible and preventing recurrences.

(c) The Committee requests the Government to begin independent judicial inquiries into the attempts to murder Mr. Laguerre and Mr. Léveillé and to keep it informed of the outcome of any such inquiries.

(d) The Committee insists that the Government take all necessary measures to prevent future recurrences of arrests or detentions of trade union leaders and members for reasons connected with their activities in defence of workers' interests.

(e) The Committee requests the Government without delay to take all necessary measures to ensure that FESTRED'H regains the free use of its premises and can carry out its legitimate trade union activities in full freedom, in particular the right of assembly, and to keep it informed of any measures taken in this regard.

(f) The Committee requests the Government to supply all relevant information on the dismissal of a large number of leaders and members of the complainant organization within the company Electricité d'Haïti.

CASE NO. 2066

DEFINITIVE REPORT

Complaint against the Government of Malta presented by
– the International Confederation of Free Trade Unions (ICFTU)
– the International Transport Workers' Federation (ITF) and
– the International Metalworkers' Federation (IMF)

Allegations: Violations of the right to strike and detention of trade unionists

252. The International Confederation of Free Trade Unions (ICFTU) and the International Transport Workers' Federation (ITF) submitted a complaint of violations of freedom of association in a communication dated 21 January 2000. The International Metalworkers' Federation (IMF) also submitted information in respect of the allegations raised by a communication dated 16 March 2000.

253. The Government furnished its observations in communications dated 21 March and 11 April 2000.

254. Malta 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

255. In a communication dated 21 January 2000, the International Confederation of Free Trade Unions (ICFTU) and the International Transport Workers' Federation (ITF) submitted a complaint concerning a recognition dispute at Malta International Airport (MIA), a company wholly owned by the Government of Malta. According to the complainants, despite repeated requests for a ballot by the General Workers' Union (GWU), a national trade union centre which has a majority of trade union members at the MIA, MIA management has in effect refused to agree that a ballot should be held.

256. A subsequent strike over this issue was organized by the GWU at the airport on 20 August 1999, but was broken up by army personnel and the police. The latter violently ejected around 80 strikers, arrested 38 of them "en masse", piled them into police vehicles, took them to police headquarters, and held them for a number of hours before they were released. The strikers were brutally roughed up. Two of them were injured: one needed medical treatment; and another one had to be taken to hospital. Twenty-seven of them were charged with criminal offences. Subsequent protests by 16 top officials of the GWU, and the union's lawyer, led to them being charged with criminal offences, several of which carry prison sentences.

257. On the same day, the authorities and security forces also intervened in a second strike in Valletta harbour. This was a solidarity strike in another dispute.

258. By way of background, the complainants explain that Malta International Airport was established in May 1991. In December 1994, the UHM trade union, which is affiliated to a second national trade union centre, the CMTU, claimed recognition at the airport. In March 1995, the approximately 200 airport workers were balloted and the UHM obtained 17 more votes than the GWU. The GWU accepted the decision of the workforce.

259. Malta's labour legislation does not provide for polls to be conducted to determine a majority union. However, this has been achieved through international practice. The 1995 ballot was organized by the MIA and the National Electoral Commission, after all the parties (i.e. GWU, UHM and MIA) reached an agreement.

260. On 17 April 1998, the authorities made offers to workers in the Department for Civil Aviation who worked at the airport, but were employed by the public service/armed forces, to join the MIA. On 22 April an agreement was signed between the Government and the MIA that some of these workers would have one year to decide whether to renounce their employment with the Armed Forces of Malta and instead to become employees of the MIA. Others had two months after signing a collective agreement to exercise their right to either revert to their previous employer or to remain with the MIA. The GWU discussed the transfer of these employees as it represented the majority of the workers (approximately 400) at the airport.

261. On 1 May 1998, the workers were transferred. On 8 May the GWU requested sole recognition at MIA as it represented 60 per cent of membership. The MIA agreed, but the UHM did not. In June 1998, the Director of the Labour Department stated that according to proof he had received, the GWU represented the majority of employees at the airport.

262. Maltese law says nothing about recognition. The practice is that a union is entitled to sole recognition if it has 50 per cent plus one member. Practice also provides for joint recognition if neither union has more than 50 per cent.

263. On 22 July 1998, the MIA granted sole recognition to the GWU. The UHM, however, opposed recognition of the GWU and on 11 August 1998 the MIA decided to take the case to the Industrial Tribunal for a ruling on which union should be recognized.

264. In early September 1998 there was a change of government. In accordance with the law, the Minister of Labour and Social Policy referred the case to the Industrial Tribunal on 28 September. On 2 October, the UHM ordered partial industrial action in protest against recognition of the GWU.

265. On 21 July 1999, the Industrial Tribunal handed down an ambiguous ruling on the recognition issue. It said that until the employees transferred from the public service/armed forces renounced their right to return to the public service/armed forces, and became employees of the MIA, they could not be considered as MIA employees. [The Industrial Tribunal decision was attached to the complaint.]

266. The three unions at the airport, GWU, UHM and MATCA, which represents air traffic control staff, failed to agree on the implications of the ruling. The UHM continued to claim that it had sole recognition and had the right to negotiate on behalf of all employees. On 27 July 1999, the GWU insisted with MIA management that negotiations for a new collective agreement should be opened. This was even truer in view of the fact that more than 90 workers in the fire section had renounced their right to revert to the armed forces and consequently were now fully fledged MIA employees.

267. On 3 August, as no solution was in sight, the MIA referred the case back to the Industrial Tribunal for a clear interpretation of its decision on recognition. On 10 August, the GWU insisted with the MIA management that a ballot should be held in view of the fact that the 90 or so workers had renounced their right to revert to the armed forces. The MIA management took the line that the issue was between the two unions.

268. On 16 August, the GWU ordered partial industrial action. A conciliation meeting held on the same day with the Director of the Labour Department and members of the Industrial Tribunal failed to resolve the issue. The next day, the GWU ordered a four-hour strike in the airport's fire section in support of the claim that it represented the vast majority of workers at the airport. Before going on strike, the GWU offered to provide an emergency fire service during the strike, but MIA management refused. During the same day, the Prime Minister of Malta intervened and made a public statement saying that according to the Industrial Tribunal award, the UHM had a majority union membership at the airport.

269. On 19 August, the Industrial Tribunal met again to give an interpretation of its decision of 21 July 1999. The GWU protested, saying that a new industrial tribunal should be set up since a supervening fact had occurred now that more than 90 workers in the fire section had renounced their right to go back to the armed forces. The GWU also alleged that two members of the three-person Industrial Tribunal clearly had conflicts of interest in the matter, and would not give the union a fair hearing. They asked for these two officials to be replaced. The two officials were the President of the CMTU national trade union centre, whose largest trade union affiliate was the UHM, and a high-ranking member of the Malta Employers' Association, which had issued statements criticizing the GWU action at the airport.

270. The Industrial Tribunal dismissed the GWU arguments. The GWU filed a constitutional case over the issue. However, before the Industrial Tribunal was adjourned, the MIA management, the GWU and UHM agreed that the MATCA trade union, which represented air traffic control staff at MIA, should be given sole recognition for these workers.

271. The GWU continued to ask for a membership ballot but MIA management refused. On 20 August, the GWU ordered a four-hour protest strike in all sections of the MIA. On the day of the strike, the GWU called two meetings at the airport, which were publicized. The first meeting went ahead and the GWU General Secretary again called for a ballot. Permission for union leaders to address fire section personnel at the second meeting was unjustifiably denied.

272. Before going on strike, the GWU again offered to provide an emergency fire service during the strike, but the MIA refused. Shortly after the strike began, the MIA closed the airport, as no fire service was available. Fifteen minutes before the strike was due to end, the strike was broken up by army personnel and the police who took over the workplace. The latter violently ejected around 80 strikers in the fire section, arrested 38 of them "en masse" as well as three GWU officials who were peacefully picketing, without verification or investigation.

273. Air Malta sacked a contract worker from New Zealand because he refused to work during the strike. The contract worker said in a taped interview that Air Malta told him to cross the picket line, otherwise he would be fired. He said that there were ugly scenes at the airport. In particular he saw "the way that the fire crew were taken away by military personnel and the police".

274. The strikers were brutally roughed up and dragged into police vehicles, one of which had to wait in excessively hot conditions for two hours, before being taken to police headquarters. At no time were they informed why they had been arrested. The GWU made strong protests and extended the strike indefinitely.

275. When the last police vehicle containing arrested workers finally set off for police headquarters, GWU officials intercepted it with their cars. They asked to speak to the detainees, to give them some water and medical assistance, and to know the reason for their arrest. An ambulance was called to take one of the workers on the police bus to the hospital.

276. The police persistently refused to give any explanation for the arrests. However, the Deputy Police Commissioner told the GWU General Secretary and the GWU lawyer that if they thought that the workers had been illegally arrested, they could go to police headquarters or take the police to court.

277. The union leaders sat down on the ground in front of the police coach. Some 80 police arrived and brutally dispersed the GWU officials, including the union's General Secretary and President. Union cars were forcibly removed by the police and damaged in the process.

278. The arrested workers were released after being questioned at police headquarters. GWU officials stayed outside police headquarters until the last worker was released. When the workers arrived at work the next day, they were refused entry and received letters saying that they had been put on stand by at home with full pay pending further investigations and a magisterial inquiry. One month later they were told they could report for work without prejudice to any further measure that might be taken against them in the future. The three union officials who had been picketing during the strike and who had also been arrested were subject to the magisterial inquiry as well.

279. The strike continued into the late evening of 20 August, but the GWU called it off when its officials came to know of a provisional court injunction stopping the strike. The MIA management had applied for an urgent injunction against the strike. The court found in the MIA's favour, and granted the provisional injunction prohibiting the GWU from

continuing the industrial action, followed by a definitive injunction three days later. The court ruled that a dispute over recognition was not an industrial dispute under the 1976 Industrial Relations Act. This decision divested the GWU and its members of its immunity from prosecution. The GWU is still challenging the legality of the warrant in court.

280. A few days after the strike, the Government claimed that there was an agreement between the Armed Forces of Malta and the MIA that workers in the fire section could not go on strike. When these workers were transferred to the MIA in April-May 1998, their employment contracts said "personnel in the air traffic services and the fire-fighting section are to be identified as essential services under the relevant acts by government legislation". However no such legislation was ever enacted. Neither had a minimum service been defined. Furthermore, the Government had allowed the strike on 17 August to take place in the fire section of the MIA without making any similar claim.

281. Twenty-seven of the arrested strikers were arraigned in court in three different groups on 29 November, 3 December and 14 December 1999, on charges of obstructing the police in their duties, and damaging a fire engine and an ambulance in the fire section of the airport during the strike. GWU officials and delegates from the "Global Mariner" attending a conference of the International Transport Workers' Federation in Malta, accompanied the accused to court on 29 November. Some 400 police officials barred the entrance to the court for the "Global Mariner" delegation.

282. On 6 December, 17 top GWU officials, including the General Secretary, Tony Zarb, the President, James Pearsall, the International Secretary, Michael Parnis, the Vice-President, Saviour Sammut, the GWU legal adviser, Dr. George Abela, eight secretaries of GWU sections, and other officials, were charged and arraigned in court in connection with the strike of 20 August. Thirteen of them were charged on the following eight counts: (1) unlawfully detaining police officials; (2) threatening police officials; (3) assaulting or resisting police officials by violence; (4) disturbing public order; (5) obstructing the police in their duties; (6) inciting others to commit crimes; (7) inciting an assembly to detain police officials, threatening police officials, assaulting or resisting police officials by violence; (8) taking part in an assembly for the purpose of detaining police officials, threatening police officials, assaulting or resisting police officials by violence. The most serious charges carry sentences of up to two years' imprisonment. Others carry heavy fines.

283. On 30 November 1999, the GWU filed a second constitutional court case against the Police Commissioner and the Attorney-General, this time for breaches of fundamental human rights.

284. During the week of 6-10 December 1999, the Government published a bill amending section 18 of the 1976 Industrial Relations Act which refers to essential services. This said that air traffic control and fire-fighting are essential services which must be manned at all times, and the personnel in these services would not enjoy immunity from legal proceedings if they went on strike.

285. The complainants state that if workers legitimately categorized as providing essential services are deprived of an essential means of defending their socio-economic and occupational interests (striking), the Government must provide compensatory mechanisms for dispute resolution in the legislation. The issue of union recognition at the airport remains unresolved with no union currently being recognized.

286. The authorities and the security forces also intervened in a second strike on 20 August 1999. This began after the Government reneged on an agreement it had made with the GWU port and transport sector on 18 June. The GWU registered an industrial dispute, and

industrial action in the sector began in mid-August 1999. A solidarity strike in the sector led to the boycott of a ship carrying oil from entering the harbour, for the first time during the dispute. The Government immediately issued an ad hoc authorization to an unlicensed pilot, making him an "authorized pilot" to bring the ship into port. Army patrol boats escorted the ship. The Government also issued a special licence to a private contractor which it engaged to provide tug services. This dispute was settled on 25 August 1999.

287. The IMF communication of 16 March 2000 complains of government intervention in the strikes which took place in August 1999 and the subsequent arrest and detention of trade unionists.

B. The Government's reply

288. In its communication dated 21 March 2000, the Government pointed out that the underlying dispute that gave rise to the incidents in question concerned trade union recognition at Malta International Airport (MIA) between the General Workers' Union (GWU) and the Union Haddiema Maghqudin (UHM). The latter union had been granted sole recognition as the representative of MIA employees. The Government states that it has always adopted a neutral stance in the dispute and has only intervened when absolutely necessary: to ensure the continued delivery of essential services and supplies which were being disrupted by industrial action; and to enforce the law when and where it was being flagrantly broken. It further reiterates its commitment to the relevant provisions of the Maltese Constitution, to existing labour legislation and to their international legal obligations, including ILO Conventions Nos. 87 and 98.

289. The Government states most emphatically that all the actions taken by the authorities in the context of the dispute which gave rise to this complaint were solely motivated by the need to uphold the principle enunciated in Article 8 of Convention No. 87. The Government highlights the fact that the events in question raise the following issues: the upholding of the fundamental principle of the rule of law by everyone concerned, including all social partners even when industrial action is being taken; the social partners' responsibility to fully respect the decisions taken by the judicial institutions of Malta, including the Industrial Tribunal, in all circumstances, even when decisions are taken which affect upcoming or ongoing industrial disputes; the social partners' obligation to honour the terms and conditions of agreements to which they are parties, including when those agreements, inter alia, identify essential services, as a result of which employees providing those services are not allowed to take strike action; the right of non-striking workers to report for work if they are willing to do so, and their right to request protection for their physical safety if they feel or are threatened.

290. The Government very much regrets that to a significant extent the contents of the ICFTU/ITF complaint represent a very slanted version of events although the Maltese authorities on a number of occasions sought to clarify matters with both the ICFTU and ITF.

291. The annexed documents highlight the following facts with regard to the industrial action at MIA:

– A number of employees of the fire section (presumably members of the trade union (i.e. the UHM) whose recognition the GWU is contesting) opted to work since they were not on strike. Instead of resorting to peaceful picketing, their striking colleagues, members of the GWU, chose to damage the fire engines and ambulances at the fire section of the airport, obviously to render them inoperable. It should be noted that Malta International Airport is the only airport in the country and, therefore, Malta's principal economic lifeline.

– In the circumstances, the police were forced to intervene, informing the strikers that their colleagues had a right to work and that this right would be protected. Some of the striking employees forcefully resisted the police and a number of employees were consequently arrested and taken to police headquarters for questioning with regard to the damage caused at the fire section as well as other breaches of the law. Following this process of questioning, all employees were released. None of them had requested medical assistance. One individual, however, was taken to hospital for an ECG, having complained of chest pains while he was being escorted to police headquarters in a police bus which had been obstructed in a public road by officials of the GWU. On the other hand, three policemen were injured during the incidents.

– On the morning of the day when the industrial action was taken and the incidents in question took place (i.e. 20 August 1999), upon a request by MIA, the civil courts issued a prohibitory injunction which enjoined both unions (the GWU and the UHM) to refrain from further industrial action against MIA until such time as the issue was resolved in the court and/or by the Industrial Tribunal. Notwithstanding this, the GWU proceeded with its actions. It was only on the morning of Saturday, 21 August 1999, that MIA was informed by means of a handwritten note from the GWU that employees on strike were to report back for work on that same day at 7.45 a.m.

– The free use of adjectives, in statements then issued by the GWU and now replicated in the complaint to the Committee on Freedom of Association, such as “brutally”, “forced”, “treated badly” and “manhandled” when describing the police action on the day of the incidents, is totally contradicted by the facts which are publicly documented and which have now been recorded by the inquiring magistrate and by the Court of Magistrates.

– The subsequent arraignment of officials and members of the General Workers’ Union was pursued by the relevant and responsible institutions of the country according to the due process of law and the charges levelled against these persons do not relate to matters pertaining to trade union rights but to offences relating to the wilful damage of equipment and to the disruption of public order.

292. A copy of the letter of complaint to the Committee on Freedom of Association was forwarded by the Government to Malta International Airport plc (MIA), a public sector organization with a major interest in this issue. [The detailed response of the MIA was attached to the Government’s reply.] The comments of MIA refer to the trade union recognition dispute in question as well as to the ensuing industrial action at Malta International Airport and provides extensive background information.

293. The Government gives an account of developments on the court proceedings that have been instituted against members and officers of the GWU as well as of the circumstances leading to these proceedings.

294. On 20 August 1999, the General Workers’ Union ordered a strike at the fire-fighting and ambulance section at Malta International Airport. A number of workers who were out on strike actually organized a sit-in in the fire-fighting section of the airport and did not allow fellow workers, who did not want to obey the union directive, to enter the section to work. Nor did the striking workers allow members of the Civil Protection Department (firefighters), who were detailed to go to the airport to give these essential services and provide possible emergency intervention, to enter the premises.

295. It must be noted that the fire-fighting and ambulance section at Malta International Airport is in a restricted security zone within the airport perimeter and access thereto, for obvious security reasons, is limited to persons holding an authorization for the purpose under the

Civil Aviation and Airports Security Act, 1998. The permit only allows persons to enter a security zone while on duty.

296. The provision of fire-fighting and ambulance services at the airport is required in terms of ICAO requirements for the airport to be operational, as well as for any assistance that could be required by any aircraft flying in the vicinity of Malta needing to effect an emergency landing at the airport.

297. In fact, on the day of the incidents, the airport had to be temporarily closed for a number of hours because such services were not available. Besides reducing the safety of aviation as aforesaid, this was detrimental to the tourism industry since thousands of tourists were stranded at the airport for long hours during the peak tourism season.

298. The Civil Protection Department personnel was escorted inside the airport perimeter by Armed Forces of Malta (AFM) personnel who are entrusted with responsibility for airport security. At no time did the AFM personnel intervene in the arrest of the striking workers. When the striking workers saw the Civil Protection Department personnel approaching, they confronted them with aggressive behaviour and, to further ensure that they or the employees who were not on strike would not be able to provide the fire-fighting and ambulance services, they proceeded to damage the fire-fighting equipment and ambulances at the section.

299. The police were called in to intervene and proceeded to remove the striking workers who were not authorized to remain in the restricted security zone. The police also had to investigate the wilful damage caused to the equipment and for that purpose proceeded to arrest the striking workers present at the fire-fighting section, who were suspected of having caused the damage. Most workers complied with the police orders voluntarily, but some resisted arrest and formed a human chain to obstruct arrest. Limited and necessary force had consequently to be used. No one was roughed up, brutally or otherwise, and no one suffered any injuries.

300. The arrested persons were transferred by means of two police buses to police headquarters for interrogation. While the second police bus was on its way on the public highway proceeding to the police headquarters from the airport, a number of union officials and supporters proceeded in a number of private cars to surround the police bus and prevented it from proceeding on its way. The union officials and supporters held the police bus in the raging afternoon heat for around an hour shouting abuse at the police officers and preventing them from proceeding on their way. This unprecedented and illegal action blocked all traffic on a major arterial road leading to Valletta. It continued for several hours during which time GWU officials harangued and obstructed the police officials who were trying to restore law and order.

301. When the police attempted to remove the obstructing vehicles, they were physically prevented from doing so by the union officials and supporters who were present. During this time a worker who had been previously arrested and who was on the police bus, complained that he was unwell because of the heat and an ambulance was called to assist him. The union officials and supporters even prevented the ambulance from proceeding on its tasks. The worker in question was eventually transported to hospital where he was immediately released after medical examination.

302. A magisterial inquiry was conducted by the magistrate on duty on the incidents at both the Malta International Airport fire-fighting section and in connection with the stopping of the police bus. The magistrate concluded that offences had been committed by striking workers and union officials at both places and therefore also concluded that criminal proceedings could be initiated against them for the following offences: voluntary damage

to property; unlawful assembly for the purpose of committing offences; violence and threats to public officers; complicity in the above; unlawful entry in a restricted security zone at the airport; unlawful picketing; breach of public peace and good order; disobedience of lawful police orders and obstruction to police in the performance of their duties; dangerous driving; unlawful arrest; slight personal injuries. The police subsequently took action to charge the persons identified by the inquiring magistrate, as well as the other person subsequently identified by the police, with the offences above stated before the proper courts.

303. In no way was the police action taken with the purpose of intimidating the union members or of preventing them to exercise legitimate union rights. The General Workers' Union was in no way prevented from addressing its members or holding meetings for them and it was only denied in its request to hold a meeting for all workers affiliated with it in an airport security zone, and this for obvious reasons. Other meetings were held at unrestricted areas of the airport without interference.

304. The Government did not in any way intervene or take sides in the recognition dispute either on the side of any of the two unions or of management and only intervened to ensure the provision of essential supplies and services, and to restore public order.

305. Union officials and members were charged before four different magistrates. Two of these magistrates, for procedural reasons, did not hear the prosecution evidence and have ordered a discharge (which is subject to reversal) while the two magistrates who actually heard the evidence have concluded that, with regard to the persons charged before them, there is enough evidence for them to be indicted. The cases presented by the union officials and members for the Maltese Constitutional Court are being heard regularly and the due process of law is being respected.

306. The complaint also refers to the agreement which had been reached on 22 April 1998 as a result of discussions with the GWU and the UHM regarding the terms and conditions of service for personnel of the Air Traffic Control Corps (ATCC) and Airport Company (AC) of the Armed Forces of Malta (AFM) to be engaged with Malta International Airport plc (MIA). The Government points out that the complainants quote one particular condition which was accepted by every single employee, namely that "personnel in the air traffic services and the fire-fighting section are to be identified as essential services under the relevant acts by government legislation". Immediately after the agreement had been reached, every single employee of the ATCC and the AC had been personally notified with a copy of the full terms and conditions and was requested to make a free choice and to sign a declaration stating whether he/she wanted to join MIA under those terms and conditions, or remain an employee of the AFM or apply for retirement.

307. The Government notes that the complainants argue that "no such legislation was ever enacted" and that they imply that no action was taken by the Government between the date of the agreement and the publication of the Bill in December 1999. This statement is highly misleading since it fails to mention the fact that on 8 May 1998 (i.e. a mere fortnight after the agreement was reached), the Government of Malta published Bill No. 66 entitled "an Act to amend various laws in connection with the transfers of services from the Air Traffic Control Corps and the Airport Company of the Armed Forces of Malta to the Malta International Airport plc". This Bill was published in *Government Gazette* No. 16613 of 8 May 1998 after having been given its first reading in Parliament on 4 May.

308. The "Objects and reasons" paragraph which forms an integral part of Bill No. 66 state: "The object of the Bill is to amend the Malta Armed Forces Act, Cap. 220, and the Industrial Relations Act, Cap. 266, in order to safeguard the pensions of certain military personnel belonging to units of the Armed Forces of Malta who take up full employment

with Malta International Airport plc upon the disbandment of the units, as well as to safeguard the continued operation of such services upon the taking up of certain essential services at the airport by civilian personnel." Neither the GWU nor any other person or organization commented on this issue between the time of publication and the date when strike action was taken. It was only when everyone concerned was duly reminded by the Government about the employees' obligations in accordance with the terms of the agreement, that the GWU, and subsequently the complainants, decided to comment on the issue.

309. The Government points out that the legislative process for the enactment of Bill No. 66 was stalled in view of the fact that Parliament was dissolved in July 1998 and early general elections called in September 1998 when a change of government took place. Naturally, the legislative process had to be restarted under the new administration in accordance with the administration's legislative and parliamentary priorities. In fact, the first reading of this Bill was moved in the Maltese Parliament for the second time on 28 September 1999 and it was subsequently published in *Government Gazette* No. 16880 of 3 December 1999.

310. The Government further argues that the complainants' statement that "the Government had allowed the strike on 17 August to take place in the fire section of the MIA without making any similar claim" is blatantly incorrect, since by letter dated 21 August 1999, the 98 employees of the fire section personally received a copy of the declaration which they had signed accepting the terms and conditions of the agreement that had been reached. Their attention was also drawn to the fact that the agreement granted each one of them the right to retain their pension rights in accordance with the special conditions applicable to armed forces personnel in view of the fact that their service was considered as an essential service and therefore they could not take strike action.

311. As concerns the complainants' allegations about the sympathy strike by port pilots in a separate issue regarding Kalaxlokk Co. Ltd., the Government recalled that:

– The GWU registered an industrial dispute, and industrial action in the sector began in mid-August 1999. On 20 August 1999, the GWU ordered strike action in the sector.

– On the day in question, a small fuel tanker was waiting to enter the port of Marsaxlokk to discharge its cargo consisting of aviation fuel.

– Under normal circumstances, a licensed pilot conducts or assists the captain of a vessel in conducting ships within Maltese waters. Pilots are licensed by the Malta Maritime Authority which is regulated by the Malta Maritime Authority Act of 1991. Section 56 of this Act regulates the licensing of pilots and states in subsection 4 that "the Authority may, if it considers expedient, authorize any person to pilot a vessel in a port subject to such terms and conditions as it deems fit".

– In view of the circumstances, and in accordance with section 56(4) of the abovementioned Act, the Malta Maritime Authority authorized in writing two senior officers (in the rank of captain) in the Maritime Squadron of the Armed Forces of Malta, to assist captains of vessels which were inwards or outwards bound.

– During the manoeuvre, there was in attendance a tug boat belonging to the Civil Protection Department in order to give all necessary assistance to the tanker to dock safely. The presence of the AFM patrol boats was rendered necessary in view of confirmed reports that a tug captained by a member of the GWU used his radio to threaten the captain of the Civil Protection Department's tug boat "Sea Salvor" and later tried to ram it.

– The allegation made by the complainants that a special licence was issued to a private contractor to provide tug services is totally unfounded.

– The Government emphasizes that it has a primary responsibility to ensure adequate fuel supplies to meet the energy requirements of the population and that trade union action to withhold such supplies could seriously prejudice the economic stability of a number of enterprises and put employment in jeopardy as well as cause unnecessary hardship to the population in general.

– The Kalaxlokk issue was settled as a result of an agreement reached between the Government and the GWU on 26 August 1999.

312. By way of complement to the Government's reply, the information provided by MIA can be summarized as follows. Firstly, as concerns the request for sole recognition made by the GWU to the MIA management on 8 May 1998, MIA management at that time, in agreeing with the claim, did not comply with accepted industrial relations practice, as the currently recognized union, the UHM, was not consulted and recognition in their favour was not, as a matter of fact, withdrawn. It is to be pointed out that at that time the UHM enjoyed sole recognition in respect of all MIA's confirmed employees, and this recognition has not been withdrawn up to this very day.

313. The two unions involved in the recognition issue that developed have very similar powers to obstruct the operations of the airport significantly. In this context, MIA found itself in a real dilemma: by choosing to grant recognition to either of the two unions in the face of competing claims being made by both of them, MIA would have found itself embroiled in an industrial dispute of major proportions and this in an enterprise of very real importance to the national economy. In the light of this situation, MIA invoked its rights under the Industrial Relations Act, 1976, and in August 1998 referred the matter to the Industrial Tribunal. Following lengthy and strongly argued proceedings, during which MIA continued to adopt a low-profile approach, the Industrial Tribunal handed down the award to which reference is made in the complaint.

314. The contending unions (the GWU and the UHM) failed to agree on a mutually acceptable interpretation of the operative part of the award handed down by the Tribunal, namely that until such time as they become employees of MIA, ex-government employees (including those coming from the Armed Forces of Malta) could not be taken into account for the purposes of establishing which of the contending unions should be granted recognition. GWU representatives consistently called on MIA to hold a ballot in order to establish which union the workers preferred as their representative. The UHM consistently countered this call by submitting that any such ballot could only be held amongst MIA employees in terms of the Industrial Tribunal award. MIA, therefore, was still caught in the very same dilemma that faced it before the award.

315. In the light of the August 1999 declaration by fire section personnel that they were renouncing their right to reversion to government service, the GWU contended that a ballot should be held including these "new" employees of MIA, while the UHM contended that the reversion was not in accordance with the terms of the preliminary agreement covering these employees. The UHM referred to clause 4 of the preliminary agreement of 22 April 1998 whereby the trial period for these workers ends two months after the signing of a collective agreement with MIA (no such agreement has been signed up to this date).

316. Industrial action was resorted to by the GWU in support of its contention, but the GWU did not follow the provisions of the collective agreement regarding the 48-hour notice to be given before industrial action. Furthermore, the company was not informed about the industrial action at the fire section. The letters from the GWU at this time advised the

company of a "communications ban" issued to its members and of directives issued to the airport attendants, finally informing the company that such actions (at the other sections of the airport) *could also* involve the employees at the fire section.

317. While the complaint refers to a GWU offer to provide an emergency service, the "emergency service" offered would only operate in the event of flights overflying Malta being forced to divert to Malta because of an emergency. Flights departing from and arriving in Malta regularly were not to be covered. Moreover, this position ignores the reference in the applicable preliminary agreement that "personnel in air traffic services and the fire-fighting section are to be identified as essential services under the relevant Acts by government legislation".

318. Faced with this further complicated impasse, and the clear and present danger that the airport could be shut down at any time, MIA made a submission to the Industrial Tribunal on 3 August 1999 requesting that, in the light of the developments and the terms of the award to which reference has already been made, the situation be clarified with a view to resolving the dispute. The GWU counsel submitted that the union-nominated member could not properly sit on the Tribunal, as he was the President of the Confederation of Malta Trade Unions, of which Confederation the UHM was an affiliate and also raised the question as to whether the employer-nominated member of the Industrial Tribunal could properly sit on the Tribunal, as the Malta Employers' Association, with whom he was employed, had "passed some comments" regarding the GWU's industrial actions. These points had not been raised during the "original" proceedings.

319. In its decree on this matter delivered later in the afternoon, the Tribunal dismissed the GWU's arguments and the GWU counsel stated that a constitutional application would be filed by the union in this regard. At this point, the Tribunal suspended further hearing of the issue *sine die*. The constitutional application is still pending before the Civil Court and the Tribunal proceedings are consequently still suspended.

320. In support of their position, the GWU called a strike as stated in the complaint. Again, the company was never informed by the GWU of any industrial action. The company was only informed of a meeting for workers that was to be held at 10.15 a.m. and which eventually turned out to be a work stoppage. The industrial actions involved, as previously, workers in the fire section. The non-availability, at that time, of an appropriate response to emergencies caused the MIA management to decide to close the air space and this in accordance with international regulations (ICAO). However, MIA opted to take reactive measures, as outlined below.

321. On 20 August 1999, MIA requested the Civil Court to order that a warrant of prohibitory injunction be issued enjoining both unions (the GWU and the UHM) to refrain from further actions until such time as the issue was resolved in the court and/or by the Industrial Tribunal as the case may be. Relying on public statements made to the effect that the dispute was one between two unions, rather than with an employer, and therefore not an industrial dispute as properly defined under the law, and on the terms of MIA's application, the Civil Court granted the injunction, which is still in effect.

322. MIA ascertained that, taking into consideration the known fact that a number of workers (of the fire section), members of the other union – UHM – were willing to work, and the fact that the services of these workers could be backed up by civil protection resources to provide the necessary emergency services, the air space could be opened under the applicable parameters. It is to be noted that at this time, striking workers occupied the fire section premises and it was known that these workers had incapacitated the fire tenders and the ambulance and caused damage to these vehicles and other equipment to the extent that the air space had to be closed down. It was also learnt later that the striking workers

hid the keys of the fire section vehicles, rendering them temporarily inoperative. The police force then intervened only in order to contain as much as possible the damage that was being caused and to restore law and order within the airport's restricted and security areas. [Documentary photos were attached.]

323. MIA informed the Government that it was able, provided the workers' safety was guaranteed, to open the airport under full safety standards. The Government decided to escort to the fire section the workers who were willing to work and to maintain sufficient protective cover to guarantee their safety. A number of personnel from the Civil Protection Department were asked by the Government to back up the fire section workers who were willing to perform their duties. It was also decided to order the striking workers to leave the security and restricted zone, where they were without authorization as well as to evict from this zone other persons, not employees of MIA or otherwise authorized to be in the restricted and security zone.

324. As a final point, MIA provides further information concerning the statement in the complaint that it denied permission for GWU to address fire section personnel. After the first strike of 17 August, the GWU had asked MIA for permission to hold a meeting for all its members, employees of MIA, at the fire station itself. MIA explained to the GWU officials that this would not be possible for three reasons, namely: (1) in case of an emergency, a crowd around the fire station would hinder the prompt response from the firefighters on duty; (2) the area was a restricted and security area and not all employees of MIA, members of the GWU, have a security pass for the area; (3) the issue of security passes was anyway outside the competence of MIA.

325. The GWU asked for an alternative site, within MIA, and proposed the car park situated near the Office of the Director-General of Civil Aviation. The GWU suggested that the fire engines should be moved from the fire section and be located near the site of the meeting "in case of emergency". This was also not acceptable to MIA for technical reasons, namely that in case of an emergency on runway 32, the fire engines that would be located at the suggested site would not be able to respond fast enough as the car park was too far away from the threshold of runway 32.

326. The GWU asked MIA to propose a site within the airport area that would be acceptable to both parties. MIA said that because of the restrictions imposed for security reasons, no area within the airport restricted and security area would be ideal for such a meeting. MIA stated that the GWU should find another site outside the airport to hold the meeting. MIA further stated that, as long as the airport/airfield remained operational, it would find no objection to allow its workers, members of the GWU, to attend the planned meeting notwithstanding that it was being held during office hours. The meeting was eventually held by the GWU on 20 August 1999 at 10 a.m. at the public entrance of the air terminal, blocking the main entrance leading from the public car park into the whole terminal. MIA was not informed of this alternative location for the meeting, let alone asked for permission. Notwithstanding, MIA did not even attempt to hinder this unauthorized meeting and took no action with regard to any unauthorized attendance by employees who should have been at their place of work and had therefore left their places of work without the necessary authorization.

327. At 12.30 p.m. a GWU delegation requested a meeting with MIA management at which they requested permission to address fire section employees at the fire section which is situated in a restricted and security zone of the airport. These GWU officials were informed that the granting of such permission was vested in the Office of the Manager of Airport Security that falls under the sole jurisdiction of the Ministry for Home Affairs. Furthermore the MIA management informed the GWU delegation that it (the management) was not authorized to recommend the issue of such permits.

328. Finally, in a communication dated 11 April 2000, the Government responded to the observations made by the International Metalworkers' Federation. In this latest communication, the Government has further indicated in respect of the allegations of a breakdown in collective bargaining that, following mediation efforts by the Deputy Prime Minister and Minister for Social Policy, the trade union recognition dispute has been settled. In light of the agreement reached between the General Workers' Union, the Union Haddiema Maghqudin and Malta International Airport over union recognition at MIA, the President of Malta has granted a pardon to all the members and officials of the GWU who had been charged in court in relation to the abovementioned incidents.

C. The Committee's conclusions

329. *The Committee notes that the allegations in this case concern the refusal to hold a recognition ballot, violations of the right to strike and police and military intervention in two instances of industrial action.*

330. *In the first instance, the Committee notes that the allegations in this case raised a number of detailed points which necessarily gave rise to lengthy and detailed replies by the Government and the airport authority concerned. Many of the issues raised would probably have been dealt with more effectively had the national legislation been clearer in respect of a number of matters relative to recognition disputes, representativeness and legitimate restrictions on industrial action. The Committee would therefore draw the Government's attention to the fact that ILO technical assistance is available to facilitate a review of existing legislation and to assist in finding solutions to the types of difficulties encountered at Malta International Airport (MIA).*

331. *As concerns the issue of recognition at MIA, the Committee notes the complainants' allegation that MIA refused to agree to the request from the General Workers' Union (GWU) that a ballot be held to determine the most representative union. The information provided by MIA, and corroborated in the complaint, demonstrates however that the airport authority was making reasonable attempts to settle the recognition issue through the courts in the absence of any explicit legislative provisions for the determination of the most representative union and in the light of the complexity arising from the unclear status of some of the employees in question. The Committee considers that the ambiguous ruling handed down by the Industrial Tribunal on 21 July 1999 concerning the employees transferred from the public service/armed forces cannot be attributed to any fault of MIA and the latter's desire to resolve this ambiguity through the court rather than hold a ballot (which was opposed by the rival union) in a situation where the definition of employees eligible to take part in such a ballot was unclear cannot be condemned.*

332. *As concerns the tribunal judgement in respect of the inclusion of those employees transferred from the public service/armed forces for the purposes of determining union representativeness, the Committee recalls that 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, like workers in the private sector, be able to establish organizations of their own choosing to further and defend the interests of their members [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 206]. The Committee further recalls that the members of the armed forces who may be excluded from Convention No. 87 should be defined in a restrictive manner [see **Digest**, op. cit., para. 222]. In this specific case, the employees were transferred to MIA from the armed forces and were given the following options: to join MIA with the possibility of rejoining the armed forces within 12 months; to remain with the armed forces; or to apply for retirement; each option had its advantages and disadvantages, including in respect of pension entitlements. The assignment of these employees to MIA was however also made under a preliminary agreement (clause 4)*

stating that the trial period for these workers ends two months after the signing of a collective agreement with MIA (yet to be signed). A dispute between the two principal unions arose in respect of the point in time at which the above employees could be considered as having effectively renounced their right to revert to the armed services and thus be taken into account for determining representativeness. This difference of opinion between the unions resulted in MIA requesting the Tribunal to provide an interpretation of its earlier judgement holding that these employees could not be taken into account until such time as they became employees of MIA.

333. *The issue as to whether the transferred employees should have been taken into account for determining representativeness is a rather complex one in the case at hand and would best be handled by the competent national courts. Moreover, given that the Government's latest communication indicates that the trade union recognition dispute has been settled following mediation efforts by the Deputy Prime Minister and Minister for Social Policy involving an agreement between the two unions (GWU and UHM) and MIA, the Committee considers that this aspect of the case does not call for further examination.*

334. *As concerns the allegations of infringements of the right to strike, including police and military intervention, the Committee notes that both the complaint and the Government's reply concur that the industrial action in question took place in the airport's fire section. The complainant asserts that it offered to provide an emergency fire service but that MIA refused. MIA has stated that these emergency services were refused because they were only offered to cover flights flying over and forced to divert to Malta because of an emergency but would not cover flights regularly scheduled to depart from and arrive in Malta. Furthermore, the Government points out that the agreement at the time of the transfer of the members of the armed forces provided that "personnel in the air traffic services and the fire-fighting section are to be identified as essential services under the relevant acts by government legislation" and that each transferred employee was given notice of this condition. The complainant argues however that no such provision has been made in national legislation, nor are there any compensatory guarantees for such workers.*

335. *Following the commencement of the strike and MIA's closing down of the airport because of an inability to ensure international safety standards, MIA applied to the Civil Court requesting a warrant of prohibitory injunction enjoining both unions to refrain from strike action. The Civil Court granted the injunction apparently on the basis that the dispute was between two unions rather than with an employer and was therefore not covered by the definition in law of an industrial dispute. Subsequently, and, according to MIA, in view of the occupation by striking workers of the fire section premises and the damage caused to vehicles and other equipment, the Government escorted workers who were willing to work to the fire section and ordered the striking workers to leave the security and restricted zone. According to MIA, the police force intervened only in order to contain as much as possible the damage that was being caused and to restore law and order within the Airport's restricted and security areas. According to the complainants, the police, in a brutal manner, ejected around 80 strikers in the fire section, arrested 38 of them "en masse", as well as three GWU officials who were peacefully picketing, without verification or investigation.*

336. *The Committee would first recall that the right to strike can only be restricted (such as by the imposition of compulsory arbitration to end a strike) or prohibited in essential services in the strict sense of the term; i.e. those services whose interruption would endanger the life, personal safety or health of the whole or part of the population [See **Digest**, op. cit., para. 516]. In this respect, the Committee considers that fire services may quite legitimately be considered to be essential services. The fact that the national legislation in force did not yet address the issue of fire services as essential services is a matter for determination by the national courts. On the other hand, given that the Civil Court*

judgement issued its injunction on the basis that a dispute over recognition cannot be considered to be an industrial dispute under relevant legislation and given that there appears to be no provision for compensatory guarantees in the event a strike is restricted, the Committee recalls that a ban on strikes related to recognition disputes (for collective bargaining) is not in conformity with the principles of freedom of association and that where strikes may legitimately be restricted, there should be provisions for compensatory guarantees [see ***Digest,*** *op. cit., paras. 488 and 546]. The Committee therefore requests the Government to amend its legislation accordingly and recalls its earlier offer of technical assistance to review the current labour legislation.*

337. *In view of the clearly essential nature of the fire section occupied by the striking workers and of the numerous allegations of property damage and other serious obstruction to the functioning of this section (corroborated by photographic evidence and the procés verbal), the Committee cannot conclude that the Government order evicting the striking workers or the corresponding police action were in violation of the principles of freedom of association. Furthermore, there is nothing in the information provided to the Committee (including film footage and the procés verbal), which can lead the Committee to conclude that the police used excessive force in their removal of the striking workers. Finally, the Committee notes with interest that, following an agreement between the unions and MIA on recognition, the President of Malta has pardoned all of the GWU officers and members who had been arraigned on charges in connection with the strike on 20 August. In light of the foregoing, the Committee considers that this aspect of the case does not call for further examination.*

338. *As concerns the subsidiary allegation that permission for union leaders to address fire section personnel was unjustifiably denied, the Committee notes the observations made by MIA that this permission was refused because such a meeting around the fire station might hinder the prompt response from firefighters on duty and the area was a restricted and security area. In this respect, the Committee recalls that the right of occupational organizations to hold meetings in their premises to discuss occupational questions, without prior authorization and interference by the authorities, is an essential element of freedom of association and the public authorities should refrain from any interference which would restrict this right or impede its exercise, unless public order is disturbed thereby or its maintenance seriously and imminently endangered [see* ***Digest****, op. cit., para. 130]. Given the security zone nature of the fire section and the fact that an alternative meeting place had been found by the GWU without interference by MIA, the Committee considers that there was no infringement of the principles of freedom of association and that this aspect of the case does not call for further examination.*

339. *Finally, as concerns the allegations of intervention by the public authorities in the solidarity strike in the port sector and the boycott of a ship carrying oil from entering the harbour, the Committee notes the Government's indication that, during the strike action, the Malta Maritime Authority authorized two senior officers in the Maritime Squadron of the Armed Forces of Malta to assist captains of vessels which were inwards or outwards bound and that a small fuel tanker was waiting to enter the port to discharge its cargo consisting of aviation fuel on the day in question. It further notes the Government's indication that it has a primary responsibility to ensure adequate fuel supplies to meet the energy requirements of the population and that withholding such supplies could seriously prejudice the economic stability of a number of enterprises and put employment in jeopardy as well as cause unnecessary hardship to the population in general.*

340. *In this respect, the Committee recalls that ports (loading and unloading) as well as the services provided by the National Ports Enterprise do not constitute essential services, although they are an important public service in which a minimum service could be required in case of a strike. In this respect, the Committee recalls that what is meant by*

essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population [see ***Digest****, op. cit., paras. 545, 564 and 541]. As concerns the use of two officers of the armed forces to assist vessels entering or leaving the port during the strike action, the Committee recalls that the employment of the armed forces or of another group of persons to perform duties which have been suspended as a result of a labour dispute can, if the strike is lawful, be justified only by the need to ensure the operation of services or industries whose suspension would lead to an acute crisis. The utilization by the Government of labour drawn from outside the undertaking, with a view to replacing striking workers, entails a risk of derogation from the right to strike which may affect the free exercise of trade union rights [see* ***Digest****, op. cit., para. 574]. In the specific circumstances of the case at hand and in light of the fact that the Government acted immediately to provide labour to bring the ships to port without any apparent emergency, the Committee cannot consider that the industrial action in question was such as to lead to an acute crisis and therefore requests the Government to avoid having recourse to such action in the future. However, taking into account the specific concerns raised by the Government in respect of its primary responsibility to ensure adequate fuel supplies to meet energy requirements, the Committee suggests that the Government may wish to give consideration to establishing a minimum service for the port sector to be determined with the participation of the trade union organizations concerned.*

The Committee's recommendations

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

(a) Recalling that a ban on strikes related to recognition disputes (for collective bargaining) is not in conformity with the principles of freedom of association, the Committee requests the Government to amend its legislation so as to lift the ban on strikes related to recognition disputes. In this respect and as regards the other points made in its conclusions concerning the lack of clarity of the national legislation, the Committee would draw the Government's attention to the fact that ILO technical assistance is available to facilitate a review of existing legislation and to assist in finding solutions to the types of difficulties encountered at Malta International Airport (MIA).

(b) In accordance with its abovementioned conclusions, the Committee suggests that the Government may wish to give consideration to establishing a minimum service for the ports sector to be determined with the participation of the trade union organizations concerned.

(c) As concerns the provision of government labour during the August 1999 dispute in the ports sector, the Committee cannot consider that, in the specific circumstances, the industrial action in question was such as to lead to an acute crisis and therefore requests the Government to avoid having recourse to such action in the future.

CASE NO. 2055

INTERIM REPORT

Complaint against the Government of Morocco presented by the Democratic Organization of African Workers' Trade Union (DOAWTU)

Allegations: Acts of anti-union discrimination, including dismissal of workers following a strike; employer's refusal to deduct union dues

342. The complaints in this case are contained in a communication from the Democratic Organization of African Workers' Trade Union (DOAWTU) dated 10 September 1999.

343. The Government sent its observations in a communication dated 2 March 2000.

344. 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. The complainant's allegations

345. In its communication dated 10 September 1999, the DOAWTU alleges, firstly, that the national airline, Royal Air Maroc (RAM), systematically discriminated against and sidelined the workers who are members of the Air Transport Workers' Trade Union (STTA) affiliated to the General Union of Workers of Morocco (UGTM) and, secondly, that several violations of freedom of association – dismissals, arrests and imprisonment – were committed against the workers of the Casablanca urban transport company (SALAMA).

346. As regards the situation in the Royal Air Maroc company, the DOAWTU states that, after it was established on 30 October 1997, the STTA addressed a request on 13 November 1997 for a meeting with the chief executive officer of the company in order to introduce the new trade union executive committee. Not having obtained a reply, the STTA addressed similar requests on 25 February 1998 to the director of human resources and the director of customer services on the ground, again without result. Meanwhile, management has been supporting workers' associations that have taken on the role of trade union organizations; there are four associations (representing cockpit crew, cabin crew, aeronautical technicians and managerial staff) affiliated to the Moroccan Labour Union (UMT) and the Democratic Confederation of Labour (CDT), which are the preferred interlocutor of the management in bargaining, from which the UGTM is completely sidelined.

347. Since its inception, the STTA has requested management to deduct its members' union dues under the check-off system, with their prior consent, as is the case for the members of the other trade unions. Management has not replied and the dues of the workers concerned are still not being deducted, even though this is the main if not the only source of income for trade unions. According to the complainant, by refusing to deduct dues as it has for the other trade unions, management is discriminating against the STTA and preventing it from carrying out its activities, fostering a climate that is hardly conducive to harmonious industrial relations.

348. Moreover, in anticipation of the holiday on 1 May 1998, the STTA requested management to allow its officers to be absent from 27 April to 5 May in order to prepare the festivities and to place a means of transportation at its disposal. According to the complainant, this is a long-standing practice and these facilities were provided that year to the members of the UMT and the CDT.

349. As regards the SALAMA company, after the workers in this enterprise joined the UGTM on 24 May 1998, management dismissed 35 workers, including the members of the trade union executive committee, which sparked off a protest strike on 28 May 1998. The fact that management hired other workers to replace the striking workers provoked an open-ended strike starting on 24 February 1999. Management instituted criminal proceedings against trade union officers El Khatib El Maati, Boulouz Lahcen and Hanoun Mahjouba, who were sentenced to six months' imprisonment and a fine of 500 dirhams by the court of first instance of Aïn Sba.

B. The Government's reply

350. In its communication of 2 March, the Government states that it will provide the Committee with all the information concerning the collective dispute in Royal Air Maroc as soon as it has received it.

351. As regards the events involving the SALAMA company, the Government states that following the dismissals in May 1998, the workers who were members of the UGTM held protest actions, the last of which dates back to 17 February 1999, during which they occupied the workplace and seized buses to prevent non-striking workers from exercising their right to work. The management therefore petitioned the judge in interim relief proceedings to order the evacuation of the premises and release of the buses; the court handed down a judicial decision to that effect and certain employees who refused repeatedly to comply with it were prosecuted for disobedience and obstruction of justice.

352. With a view to settling the dispute, a number of meetings were held between the parties in the presence of the competent authorities: the labour inspectorate of Casablanca, the Regional Investigation and Conciliation Board, the central administration and the labour directorate of the Ministry. As a result, on 22 May 1999, a conciliation meeting was held at the headquarters of the Employment Department of Casablanca, in which all the parties participated and accepted an arrangement under the following terms, which was placed on record:

– all the employees would be gradually reinstated within four months, including the strikers, who would be paid their wages for the strike period;

– all the contracts of employment, as well as the rights and advantages deriving therefrom, would be maintained in force, in accordance with section 754 of the Code of Obligations and Contracts;

– the strike would end on the date on which the record was signed.

353. According to the Government, activities were resumed in a normal labour relations climate at the SALAMA enterprise once all the employees had been reinstated in accordance with this agreement.

C. The Committee's conclusions

354. *The Committee notes that the present complaint concerns two separate situations, although it involves the same umbrella organization. As regards the various allegations of discrimination and inequality of treatment of trade union organizations within the national airline company, the Committee notes the statements provided by the Government. Given that the establishment of the STTA dates back to October 1997 and that the legitimate activities of this trade union are likely to be jeopardized by the passage of time, the Committee invites the Government to urge Royal Air Maroc to supply all the relevant information as soon as possible and to forward it to it as soon as it has been received.*

355. *As regards the events that occurred in the SALAMA company, while noting that an out-of-court settlement was ultimately reached between the parties with the assistance of the conciliation service of the competent ministry, the Committee cannot help noting from the little information at its disposal, that the establishment of the trade union affiliated to the UGTM and dismissals of workers and trade union officers occurred at the same time. 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 [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 696]. Noting moreover that the complaint dates back to September 1999 and that the reinstatement of the workers in SALAMA was supposed to have been carried out within four months after the agreement reached on 22 May 1999, the Committee requests the complainant to confirm whether the terms of the settlement were in fact carried out.*

The Committee's recommendations

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

(a) Noting that an out-of-court settlement was reached between the parties in the urban transport company of Casablanca, 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 requests the complainant to confirm whether the terms of the settlement were in fact carried out.

(b) The Committee invites the Government to urge Royal Air Maroc to supply all the relevant information as soon as possible concerning the collective dispute involving the UGTM and to forward it to it as soon as it has been received.

CASE NO. 2070

DEFINITIVE REPORT

Complaint against the Government of Mexico presented by the National Democratic Alliance of Oil Workers A.C. (ANDTP)

Allegations: Failure to provide due protection of rights in an internal trade union dispute

357. The complaint in this case is contained in a communication dated 17 January 2000 from the National Democratic Alliance of Oil Workers A.C. (ANDTP). That organization sent additional information in a communication in March 2000. The Government sent its observations in a communication dated 10 March 2000.

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

A. The complainant's allegations

359. In its communications of 17 January and March 2000, the National Democratic Alliance of Oil Workers A.C. (ANDTP) alleges that on 25 September 1997 the Trade Union of Oil Workers of the Republic of Mexico (STPRM) issued a convocation for elections of members of local executive committees, local supervisory councils, honour and justice committees and local union commissions, to be held between 1 January 1998 and 31 December 2000. On 29 September 1997, the STPRM informed workers, members and activists of its Section 35 by circular that an extraordinary general meeting would be held for the purpose of renewing the various trade union bodies mentioned above. The meeting was to be held on 8 October 1997 at the "7th of August" sports facility. The circular announced a registration period during which members could register their papers, the deadline for registration being 72 hours before the elections; this was in contravention of article 281 of the union's own by-laws, according to which the convocation must be sent out 20 days in advance. Thirteen members of the National Democratic Alliance of Oil Workers A.C. (ANDTP) and active members of Section 35 of the STPRM went to the union's offices on 2 October 1997 for the purpose of registering their voting papers, in accordance with the requirements of the convocation. The General Secretary of the local executive committee and the chairperson of the local supervisory council, who were at the union offices at the time, told them that registration had to be done at the registered office of Section 35, which was located in the federal district. The trade unionists went to the federal district on 3 October 1997 and arrived at the registered office at about 14.00; they were then told by the chief clerk that there was no one who could register their papers. When they returned at 17.00, the door was locked and they had to wait until 19.00 before anyone came.

360. The complainant adds that on 8 October 1997, the day of the trade union elections, various irregularities took place: anyone was allowed to enter the premises without any checks, and workers in supervisory positions, retired workers and children did indeed enter the premises; there was no legal quorum for the meeting; the election of the chairperson was not done by direct ballot; voting took place through general acclamation and not by the procedure established in the by-laws; there were instances of physical assault against

persons who called for a secret ballot and for the acceptance of voting papers of ANDTP members, who were subsequently expelled from the meeting.

361. Faced with the failure to comply with legislation and STPRM by-laws, the Section 35 members applied to the competent jurisdictional authority, the Federal Conciliation and Arbitration Board, on 24 October for cancellation of the election results. The application called for the annulment of the election results and for a new convocation in accordance with the by-laws, as well as the annulment of the acknowledgment (*toma de nota*) issued by the General Directorate for the Registration of Associations (part of the Labour and Social Security Secretariat). On 29 October 1997, the Federal Conciliation and Arbitration Board, to which Section 35 of STPRM had applied, ruled as follows:

> … its claims do not come within the objectives and ends which constitutionally define the mandate and powers of this tribunal. This is because the dispute in question does not pertain to labour relations or circumstances related to them, but to purely internal trade union matters, in which it is of paramount importance to maintain the trade union autonomy which it is the aim of the international Conventions invoked here to protect. For this reason, the provisions of the respective by-laws must be adhered to. It is thus clear that this tribunal cannot override the express wishes of the union's members or act for them, nor can it call union elections or annul an acknowledgement (of registration) … On these grounds, and given the impossibility under law for this tribunal to rule on the matters raised here, it is setting aside the present case which it declares closed.

362. The complainant adds that, faced with this situation, it applied to the Collegiate Labour Tribunal on 21 November 1997 for *amparo* and protection of the federal courts. However, the Tribunal in a ruling of 11 February 1998 refused to grant the *amparo*, arguing that:

> … irrespective of whether or not the application is allowed, the Board rejects it in its entirety and declares the case closed, … it is clear – regardless of the substance of the case – that the central issue here is a purely internal trade union matter … the confrontation has taken place under circumstances of equality such that there are no grounds for overlooking any deficiencies in the substance of the complaint itself … Under these circumstances, given the impossibility of examining the details of the claim with a view to determining its legality or illegality, it is also impossible to consider whether the individual rights of the complainants were infringed, and consequently, their request for protection (*amparo*) must be refused …

363. According to the complainant, the members of Section 35 subsequently appealed to the Labour and Social Security Secretariat which denied having any competence to hear and resolve internal trade union disputes.

364. The complainant emphasizes that it is clear from the above that there is no authority, be it administrative or judicial, in the United Mexican States, with the competence to resolve internal trade union disputes. The Federal Conciliation and Arbitration Board has indicated that the dispute in question relates to purely internal trade union matters in which it is essential to maintain the trade union autonomy which it is the aim of the international Conventions invoked here to protect. For this reason, the provisions of the respective by-laws must be adhered to. According to the complainant, this makes the trade union in question the arbitrator as well as party in its own disputes, without any guarantee of impartial, objective and swift due process.

B. The Government's reply

365. In its communication of 10 March 2000, the Government states that Mexican law does provide for specific complaint procedures in cases where the competent authority has acted illegally in registering workers' organizations, or in issuing the "acknowledgment" regarding trade union elections. According to section 83 of the Federal Act respecting administrative procedures,

> The parties affected by acts and resolutions of the administrative authorities which terminate an administrative procedure, adjourn proceedings before a given authority, or definitively resolve a particular case, shall be entitled to apply for a review or to apply the appropriate legal remedies available.

366. The Government explains that in the case brought by the complainant, the registering authority (the General Directorate for the Registration of Associations of the Labour and Social Security Secretariat) is an administrative body which reviews its own decisions and rulings, and such reviews must take place within 15 days of any such decision taking effect; a final ruling is given by the hierarchically superior body, which in this case is the Under-Secretary of Labour. If the parties concerned consider that their individual rights have been infringed, they may submit an application for protection (*amparo*) before a circuit labour tribunal.

367. The Government points out that, in this particular case, no application was made to the General Directorate for the Registration of Associations challenging the "acknowledgement" issued to the officials of Section 35 of the STPRM, although in their written representation to the ILO they claim that such an application was made.

368. In the light of these facts, the Government considers that, while the Federal Conciliation and Arbitration Board is competent to hear and resolve labour disputes that arise between workers, in accordance with the express provisions of section 604 of the Federal Labour Code, it does not have the authority to annul administrative decisions, and considers that the decision of the Federal Conciliation and Arbitration Board in the case in question was lawful.

369. In summary, irrespective of the arguments adduced by the Federal Conciliation and Arbitration Board in support of finally setting aside the matter and those adduced by the Collegiate Tribunal in denying protection *(amparo)* to the applicants, the Government considers that the workers who do not agree with the election results failed to make use of the available legal remedies.

C. The Committee's conclusions

370. *The Committee observes that in the present case the complainant has alleged that legislation and trade union by-laws were violated in union elections held by the STPRM and that there are no administrative or judicial bodies competent to resolve internal trade union disputes, a fact that has been made clear by the outcome of appeals to the Federal Conciliation and Arbitration Board, the Collegiate Circuit Labour Tribunal and the labour administration authority.*

371. *In this regard, the Committee notes that, according to the Government's statements: (1) there did exist means for bringing complaints before the administrative authority regarding the administrative decision to issue an acknowledgement regarding elections of trade union executive committees or elected union representatives, through an administrative review process which itself was subject to judicial review; (2) in this*

particular case, the workers who considered that their rights had been infringed (members of Section 35 of the STPRM) did not make use of the available legal remedies.

372. *The Committee draws attention to the fact that it is not competent to make recommendations on internal dissensions within a trade union organization, so long as the Government does not intervene in a manner that could affect the exercise of trade union rights and the normal functioning of an organization [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 1996, para. 963]. Under these circumstances, noting that the allegations refer to events that occurred in late 1997 and early 1998, and that the Government has indicated the appropriate legal remedies, which were not used in this case, the Committee considers that this case does not call for further examination.*

The Committee's recommendation

373. ***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. 1965

INTERIM REPORT

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

Allegations: Arrests and ill treatment of trade unionists

374. The Committee examined this complaint at its November 1999 meeting and presented an interim report [see 318th Report, paras. 372-384]. The Government's observations were subsequently received in a communication dated 24 January 2000.

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

A. Previous examination of the case

376. At its November 1999 meeting, the Committee observed that in the present case the complainant alleged that 25 trade unionists from the Single National Union of Workers of the Construction Industry and Related Occupations (SUNTRACS) had been detained following a peaceful demonstration during a strike, that the union's premises had been raided and that some of the detainees had been ill-treated and held in inhuman conditions.

377. The Government denied that the demonstration was peaceful and stated that demonstrators had destroyed or damaged property, committed acts of violence, tried to prevent other workers from working normally, prevented free movement by blocking roads and showed gross disrespect to the Mayor of Colón. In this regard, the Committee noted that, according to the Government, the acts of violence had taken place after the Aribesa company had dismissed five workers and decided subsequently – citing as a reason the stoppage of construction work which occurred immediately afterwards – to dismiss all the workers, and that the union regarded this action as a violation of the collective agreement and the

accords signed with the company. The Committee emphasized that, although a number of trade unionists had been fined and/or sentenced to five days' detention by a court for the reasons indicated (and all of them had now been released), the company's decision to dismiss all the workers – which according to the Government's statements had not yet been implemented – seemed excessive. Lastly, the Committee noted that the Government had not replied to the allegations concerning the raid of SUNTRACS premises and the ill-treatment and inhuman conditions suffered by a number of SUNTRACS members during their detention.

378. In the light of the foregoing, the Committee formulated the following recommendations [see 318th Report, para. 384]:

> The Committee appeals to the Government to mediate between the parties (the trade union SUNTRACS and the company Aribesa) with a view to resolving the problem of alleged failures to comply with the legislation and the collective agreement cited by the union as well as the problem of the dismissals.
>
> Noting that the Government has not replied to the allegations concerning the raid of SUNTRACS premises and the ill-treatment and inhuman conditions suffered by a number of SUNTRACS members, the Committee requests the Government to send its observations on the matter.

B. The Government's reply

379. In its communication of 24 January 2000 the Government, which took office on 1 September 1999, i.e. after the events at issue in this case, states that it carried out an extremely thorough investigation of the case. It asserts that the labour dispute which arose between a group of workers of SUNTRACS and the Aribesa enterprise was settled within the legal parameters laid down by the Labour Code and that there is no indication that any violations of human rights were committed against the workers during the time they were detained in police facilities and placed at the disposal of the Mayor of the District of Colón.

380. The Government states further that the General Secretariat of the Mayor's Office of the District of Colón has no record of any indictment of Mr. Marcos Andrades, Mr. Javier Méndez, Mr. Julio E. Trejos, Mr. Juan C. Solar, Mr. Luis Alejandro De La Rosa, Mr. Darío Melle, Mr. Efraín Ballesteros, Mr. Martín Montaño, Mr. Aníbal Alvarado, Mr. Luis González, Mr. Tomás Mendoza and Mr. Fernando Tlubet, neither is there any record of their having been detained or arrested, much less subjected to ill-treatment or inhuman conditions by the national police.

C. The Committee's conclusions

381. *The Committee notes that the Government replies in very general terms that the labour dispute which arose between the Single National Union of Workers of the Construction Industry and Related Occupations (SUNTRACS) and the construction enterprise Aribesa was settled in accordance with law. Deplorings that it has not provided more specific information on the nature of the settlement and, more particularly, concerning the dismissal, the Committee requests the Government to provide more precise information on the settlement of the labour dispute between the SUNTRACS trade union and the Aribesa enterprise and, more particularly, concerning whether the dismissed workers have been reinstated.*

382. *The Committee further observes that once again the Government has not provided information concerning the raid on the SUNTRACS premises. In this respect, it recalls that*

*the right of the inviolability of trade union premises also necessarily implies that the public authorities may not insist on entering such premises without prior authorization or without having obtained a legal warrant to do so [see **Digest of decisions and principles of the Freedom of Association Committee,** 4th edition, 1996, para. 175]. The Committee accordingly once again urges the Government to send as soon as possible more detailed observations concerning the raid on the premises of the SUNTRACS trade union.*

383. *Concerning the allegations of detentions and ill-treatment, the Committee observes that, in asserting that the General Secretariat of the Mayor's Office of Colón has no record of any indictment of the workers detained during the demonstration held on 20 January 1998, or of their having been detained or arrested, the Government contradicts its previous reply in the matter. The Government itself had sent on 25 May 1999 "a copy of the judicial ruling which fined Mr. Javier Méndez and Mr. Marcos Andrades ... for damaging property" [318th Report of the Committee, para. 379]. In this respect, the Committee recalls that 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 sanctioning of those responsible, are taken to ensure that no detainee is subjected to such treatment [see **Digest**, op. cit., para. 57]. The Committee accordingly requests the Government to take the necessary measures to ensure that an independent inquiry is carried out urgently into the allegations of ill-treatment suffered by certain detained workers and, if such allegations are found to be true, to punish the guilty parties and provide compensation for any damages suffered. The Committee also requests the Government to keep it informed of the measures taken to this end and the results thereof.*

The Committee's recommendations

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

(a) Deploring that the Government has not provided more specific information, the Committee strongly requests the Government to provide more precise information concerning the settlement of the labour dispute between the Single National Union of Workers of the Construction Industry and Related Occupations (SUNTRACS) and the Aribesa enterprise and, more particularly, concerning whether the dismissed workers have been reinstated.

(b) The Committee once again urges the Government to send as soon as possible its observations concerning the raid on the premises of the SUNTRACS trade union.

(c) Regarding the allegations of ill-treatment suffered by certain detained workers, the Committee requests the Government to take the necessary measures to ensure than an independent inquiry is urgently carried out and, if such allegations are found to be true, to punish the guilty parties and provide compensation for any damages suffered by the detained workers concerned. It also requests the Government to keep it informed of the measures taken to this end and of the results thereof.

CASE NO. 1979

DEFINITIVE REPORT

Complaint against the Government of Peru presented by the General Confederation of Workers of Peru (CGTP)

Allegations: Anti-union dismissals

385. The Committee examined this case at its June 1999 meeting, when it submitted an interim report to the Governing Body [see 316th Report, paras. 670-680, approved by the Governing Body at its 275th Session (June 1999)]. The Government sent its observations in communications dated 21 January and 8 February 2000.

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

A. Previous examination of the case

387. In its previous examination of the case, which deals with allegations concerning dismissals and other anti-union actions, the Committee made the following recommendations [see 316th Report, para. 680]:

- as regards the alleged dismissals of seven union officials at the National Bank, the Committee requests the Government to provide it with the text of any rulings on the six appeals still pending as soon as they are handed down and trusts that if it is found that they were victims of anti-union discrimination that they will be reinstated immediately; and

- with respect to the allegations of the CGTP concerning the refusal of the authorities to discuss the list of demands submitted by the Single National Union of Workers and Employees of the General Corps of Voluntary Fire-fighters of Peru, the mass anti-union dismissals of workers at the Enrique Guzmán y Valle National University, anti-union acts against workers of the municipality of Villa el Salvador, anti-union dismissals of union officials at the Federico Villareal National University, and the break-in perpetrated by the authorities at the union's premises, the Committee requests the complainants to provide more detailed information.

B. The Government's reply

388. In its communications of 21 January and 8 February 2000, the Government states the following in connection with the judicial proceedings under way concerning the trade union officials dismissed from the National Bank:

- Marco Antonio Maraví Orellana. In the Committee's previous report, it was pointed out that the Labour Court of Huancayo ruled on the merits of the request of 8 January 1996, and subsequently the reinstatement of Maraví Orellana. However, on 12 August 1996, the Labour Chamber of Huancayo overruled the abovementioned lower court ruling since the plaintiff did not lodge his appeal through the corresponding procedural channels;

– Pedro Cristóbal Reyes Sáenz. The reinstatement of Cristóbal Reyes Sáenz at the National Bank was overruled and amended by the Third Labour Court (second instance), which declared his request unfounded. The Third Labour Court specified that in this case the ending of the labour relationship was not of an arbitrary, unfounded and/or unjustified nature; the termination was a consequence of a lay-off duly authorized by the corresponding administrative labour authority and that its authorization had been granted in accordance with the respective legal provisions and regulations in force. Finally, on 25 July 1997, the Constitutional Law Chamber of the Supreme Court ruled that the appeal lodged by Reyes Sáenz was unfounded, thus upholding the ruling of the higher court since he had not been dismissed but made redundant as his labour relationship had come to an end as the result of a lay-off that was in accordance with labour standards in force;

– Luis Fernando Cárdenas Campana. The appeal lodged by Luis Fernando Cárdenas Campana was upheld by the lower court (first instance). However, on 17 February 1997, the Second Labour Court of Lima rejected the appeal since the plaintiff, by virtue of the fact he had accepted retirement benefits paid to him on a monthly basis, was party to an agreed termination of the labour relationship;

– Joaquín Gutiérrez Maduaño. The lower labour court (First Labour Court) ordered that compensation be paid in lieu of reinstatement because the plaintiff had just received his pension in accordance with Act No. 20530 and could not at the same time be paid a pension and a wage as prescribed in Legislative Decree No. 276;

– Ronald Avila Candiotti. The Constitutional Law Chamber of the Supreme Court ordered the reinstatement of the plaintiff Ronald Avila Candiotti. Avila Candiotti is continuing with his usual work at the National Bank in a perfectly normal way;

– Felipe Callacondo Durand. The respective labour court rejected the appeal lodged by the former worker of the National Bank since Mr. Callancondo had just started receiving monthly retirement benefits in accordance with Act No. 20530 and could not at the same time be paid a pension and wages in accordance with the provisions of Legislative Decree No. 276.

(The Government encloses with its reply the judicial rulings concerning these cases.)

C. The Committee's conclusions

389. *In its previous examination of the case, dealing with allegations concerning the dismissal of union officials at the National Bank, the Committee noted that judicial proceedings were under way and requested the Government to provide it with the text of any rulings handed down on these cases.*

390. *In this respect, the Committee notes that the Government stated in its replies that: (1) the judicial authorities did not grant requests for reinstatement made by Marco Antonio Maraví Orellana, Pedro Cristóbal Reyes Sáenz, Luis Fernando Cárdenas Campana and Felipe Callacondo Durand; and (2) the Constitutional Law Chamber of the Supreme Court ordered the reinstatement of Ronald Avila Candiotti who is carrying out his usual work at the National Bank.*

391. *The Committee notes that according to the rulings a number of trade union officials (Felipe Callacondo Durand, Joaquín Gutiérrez Maduaño and Luis Fernando Cárdenas Campana) were not reinstated because they were receiving pension benefits thereby opting for the voluntary settlement of their employment relations. In these circumstances, the Committee is unable to determine whether the dismissals in question were linked or not to*

their status as trade union officials or to their trade union activities since the judicial authorities have not ruled in this regard. The Committee recalls that the dismissal of workers on grounds of membership of an organization of 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] and requests the Government to ensure that in future it guarantees the respect of this principle.*

392. *Finally, noting that the complainant failed to communicate the details that the Committee had requested in connection with its allegations concerning: the refusal by the authorities to discuss the list of demands submitted by the Single National Union of Workers and Employees of the General Corps of Voluntary Fire-fighters of Peru; mass anti-union dismissals of employees at the Enrique Guzmán y Valle National University; anti-union acts against workers of the municipality of Villa el Salvador; anti-union dismissals of trade union officials of the Federico Villareal National University; and the break-in perpetrated by the authorities at the union's premises, the Committee is unable to proceed with the examination of these matters.*

The Committee's recommendation

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

The Committee requests the Government to ensure, in future, that it guarantees respect of the principle whereby the dismissal of workers on grounds of membership of an organization or trade union activities violates the principles of freedom of association.

CASE NO. 2019

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

Complaint against the Government of Swaziland presented by the Swaziland Federation of Trade Unions (SFTU)

Allegations: Violations of the right to bargain collectively, persistent violation of trade union rights through unamended labour legislation and the introduction of new restrictive bills

394. In a communication dated 30 March 1999, the Swaziland Federation of Trade Unions (SFTU) submitted a complaint of violations of freedom of association against the Government of Swaziland.

395. The Government transmitted its reply in a communication dated 2 May 2000.

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

A. The complainant's allegations

397. In its communication dated 30 March 1999, the SFTU alleges that the Government has violated Articles 2 and 3 of Convention No. 87, Articles 1 and 2 of Convention No. 98, as well as sections 43, 47, 79 and 82 of the current Industrial Relations Act No. 1 of 1996.

398. The complainant asserts that it is normal practice that, in February or March of each year, the Government appoints and mandates its negotiation team to engage in the collective bargaining process with all associations within the public service, including the Teachers' Association, the Civil Servants' Association and the Nurses' Association.

399. On the first day of negotiations, the Government team came up with a proposal which was, in the view of the associations, very low and the parties agreed to part in order to recharge their mandates. At this juncture, there was no deadlock and no dispute reported by either party.

400. On 17 March 1999, the Minister for Public Service and Information announced that individual civil servants, teachers and nurses must come and sign a form if they accept the Government's offer outside their associations. The offer being referred to was the same offer on the basis of which the parties had agreed to adjourn the negotiations and consult. Newspaper clippings to further corroborate the fact that the Minister resorted to an individual appeal was attached to the complaint.

401. The complainant asserts that this action on behalf of the Minister was a flagrant violation of Conventions Nos. 87 and 98 and a ploy to marginalize or destroy organized labour in Swaziland.

402. Subsequently, the Government went to the media to call continuously for individuals to fill in forms accepting the offer. The Government further clandestinely organized non-members within the SNACS (Civil Service Association) to write a petition. Only 91 employees of the 11,000 in the civil service signed the petition which the Minister claimed was legitimately mandating him to take this kind of action.

403. The associations took the Government to court on this issue and the case is currently ongoing.

404. Furthermore, the complainant alleges that the Minister for Enterprise and Employment has made a public statement (a copy of which was attached to the complaint) which proves that the Government is not committed to its promise to the ILO in respect of the Industrial Relations Bill of 1998. Finally, the complainant alleges that the Government continues to enact laws and orders impinging on fundamental freedoms. The SFTU recalls in this regard the 1996 Industrial Relations Act and the 1973 Decree which have been the subject of a previous complaint and the introduction of a Media Council Bill allegedly designed to deny the freedom of expression and the rights of journalists and a Civil Servants Bill designed to deny all public servants the right to make statements to the media.

B. The Government's reply

405. In its communication dated 2 May 2000, the Government states firstly as concerns the Media Council Bill, that the allegation made by the complainant is not clear as to which specific ILO standards would be violated by which specific provisions of the Bill if it were to be passed by the Parliament of Swaziland in its present form. The absence of clear information thus deprives the Government of the opportunity to address the complaint in more detail.

406. As concerns the Civil Servants Bill, the Government indicates that there is no such Bill and therefore the allegation in the complaint is evidently unfounded.

407. In respect of the current Industrial Relations Act (IRA) of 1996, the Government recalls that there has already been much debate on the extent to which this Act is perceived to be in violation of some ILO standards [see Case No. 1884]. It is therefore not clear to the Government why it has to be brought up as a fresh complaint. To some extent the formulation of the new Industrial Relations Bill (IRB) (No. 13) is based on the effort to make industrial relations conform to these international labour standards. The Government considers that there is no justification for reviving this issue in another case as if there is another violation of these standards. The recommendations of the CFA and indeed those of the Application of Standards Committee were taken on board in every legislative structure when the Industrial Relations Bill was being processed to become law. A lot of progress has been made already with this Bill passing through both houses of Parliament and now only awaiting assent by the Head of State.

408. The Government also indicates that it has already responded to the Committee on the Application of Standards that the 1973 Decree on meetings and demonstrations was never intended to apply in the case of workers. This Decree does not include workers at all and the Industrial Court in the case of *Swaziland Manufacturing and Allied Workers Union v. the Commissioner of Police* (Industrial Court Case No. 1 of 1988) helped elucidate this point. The Government further recalls that the new IRB has introduced new provisions which would clear up misconceptions regarding the operation of the Decree of 1973 as far as trade unions are concerned.

409. As concerns the allegations of government interference in the negotiation process with public service associations, the Government considers that the matter was reported rather prematurely to the ILO. Had the complainant waited for the outcome of the court proceedings, they would not have found any need to report the issue since it was finally conclusively dealt with by the relevant court and the Government of Swaziland was bound by the decision [see *SNAT, SNACS and SNA v. Swaziland Government* – case 67/99 (IC)]. The Government considers that this proves the maturity and independence of dispute resolution in Swaziland.

410. The Government concludes that, through tripartite participation, Swaziland has taken the necessary strides to build up the necessary consensus and that the 1998 Industrial Relations Bill is one of the main fruits for such tripartite cooperation. The ILO certainly has a critical role to play in harnessing this culture through providing the necessary technical support.

C. The Committee's conclusions

411. *The Committee notes that this case concerns allegations of government interference in the right to bargain collectively and the continuing violation of trade union rights in the law and practice of Swaziland.*

412. *As concerns the allegations of government interference in the negotiation process with the public service associations through the call of the Minister for Public Service and Information upon individual employees to accept the offered terms, as well as the attempts to organize a petition to legitimize this action, despite the fact that the negotiation process was under way, the Committee recalls that the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. Moreover, all public service workers other than those engaged in the administration of the State should enjoy collective bargaining rights, and priority should*

be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service. [See ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 782 and 793.] The Committee notes in the case at hand that the negotiations were carried out not only with the Civil Servants' Association, but also with the association for teachers and that for nurses (neither of which can be considered to be public servants engaged in the administration of the State). Moreover, the Swaziland Industrial Relations Act (IRA) makes no distinction between types of public employees for the purposes of collective bargaining and the definition of the term "employer" in the IRA includes Government.*

413. *The Committee observes that, after what appears to be a very short time since the commencement of the negotiations, rather than pursuing the negotiations or reporting a dispute to the Labour Commissioner in accordance with the disputes procedure mechanism provided for in the law, the Minister for Public Service and Information decided to sidestep the duly recognized unions and appeal directly to the workers. While noting from the Government's reply that this matter has been conclusively dealt with by the relevant court, the Committee must nonetheless conclude that given the apparent absence of any steps by the Government to attempt to resolve the matter with the unions the Minister's action in this case cannot be considered as encouraging and promoting collective bargaining and thus urges the Government to avoid having recourse to such action in the future. Furthermore, the Committee requests the Government to transmit a copy of the court judgement in this case referred to in its reply.*

414. *As concerns the general allegation that the Government is not committed to its promise to enact the 1998 Industrial Relations Bill, as well as the presentation of new bills which restrict the freedom and rights of journalists and civil servants, the Committee first notes with deep regret that the 1998 Industrial Relations Bill has still not entered into force. Indeed, as recalled by the Government, the Committee had observed numerous and grave discrepancies between the 1996 Industrial Relations Act and the provisions of Conventions Nos. 87 and 98 in its examination of an earlier complaint against Swaziland [Case No. 1884, 306th Report, paras. 619-705]. In June 1998, the Committee had noted with interest the efforts made by the Government, in consultation with the social partners and with the assistance of the ILO, to revise the Industrial Relations Act in order to bring it into conformity with the principles of freedom of association and urged the Government to ensure that the proposed Industrial Relations Bill was adopted in the near future [see 310th Report, paras. 576-591]. The Committee now notes from the Government's reply that, while having passed through both houses of Parliament, this Bill is still awaiting assent by the Head of State.*

415. *The Committee must therefore recall that under present law, certain basic trade union rights, including the right for federations to take industrial action and to carry out legitimate trade union activities, are prohibited under penalty of imprisonment ranging from one to five years. Furthermore, while noting the Government's statement that the 1973 Decree on meetings and demonstrations was never intended to apply to workers, the Committee recalls that, during its examination of an earlier complaint against Swaziland, the Committee had noted from the report of the direct contacts mission in 1996 that section 12 of this Decree had been evoked by the Police Commissioner to justify police presence at trade union meetings so as to ensure that they were not being used as fronts for outlawed political opposition groups. In the absence of legislative protection to the contrary, the Committee must retain its previous conclusion that section 12 of the 1973 Decree places a serious threat on the rights of organizations to hold meetings and peaceful demonstrations [306th Report, para. 694]. The Committee once again urges the Government to take the necessary measures as a matter of urgency to ensure that the 1998 Industrial Relations Bill comes into force without delay so as to ensure full respect for the principles of*

freedom of association. The Government is requested to keep the Committee informed of the progress made in this regard. As concerns the Media Council Bill and the Civil Servants' Bill referred to in the complaint, the Committee takes due note of the information provided in the Government's reply and draws this matter, as well as the status of the Industrial Relations Bill, to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

The Committee's recommendations

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

(a) In concluding that the Minister's action to sidestep ongoing negotiations with the public service and make individual appeals to employees cannot be considered as encouraging and promoting collective bargaining, the Committee urges the Government to avoid having recourse to such action in the future. Furthermore, the Committee requests the Government to transmit a copy of the court judgement in this case.

(b) The Committee urges the Government to take the necessary measures as a matter of urgency to ensure that the Industrial Relations Bill comes into force without delay so as to ensure full respect for the principles of freedom of association. The Government is requested to keep the Committee informed of the progress made in this regard.

(c) As concerns the Media Council Bill and the Civil Servants' Bill referred to in the complaint, the Committee would draw this matter, as well as the status of the Industrial Relations Bill, to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

CASE NO. 2071

DEFINITIVE REPORT

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

Allegations: Arrests and detentions of trade union officials and members

417. Requests for intervention concerning allegations of violation of trade union rights by Togo were submitted to the ILO on 28 January 2000 by the International Confederation of Free Trade Unions (ICFTU) and by the World Confederation of Labour (WCL); these allegations refer to the arrests of trade unionists. Subsequently, the WCL sent additional information on this matter on 31 January 2000 and made an official complaint to the Committee on Freedom of Association on 3 February 2000.

418. The Government sent its observations on this matter in communications dated 1 February and 22 March 2000.

419. Togo 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

420. In their request for intervention on 28 January 2000, the ICFTU and the WCL denounced the arrest on that very day of two trade union officials, Gbikpi Benissan, Secretary-General of the National Union of Independent Trade Unions of Togo (UNSIT) and Allagah-Kodegui, Secretary-General of the Federation of National Education Workers (FETREN), as well as the warrant for the arrest of Mr. Akouete, Secretary-General of the Workers' Trade Union Confederation of Togo (CSTT) and the Deputy Secretary-General of the Democratic Organization of African Workers' Trade Union (ODSTA). In supplementary information sent on 31 January 2000, the WCL explains that the Government of Togo arrested two high-ranking trade union officials for "spreading false information" and that they had been sent to the prison in Lomé.

421. In its official complaint, the WCL states that Togo is undergoing an unprecedented period of social and economic unrest characterized by arrears of three to seven months in the salaries of officials and other public servants. The state authorities refuse to negotiate with the workers, which has resulted in a worsening of the social climate and in street demonstrations forcefully put down by the police. At its general assembly on Wednesday, 26 January 2000, the Workers' Trade Union Confederation of Togo analyzed the economic situation brought about by the increase in the price of petroleum products and denounced the constant erosion of workers' purchasing power. It therefore asked the Government to go back on its decision and to take measures to ease the suffering of workers; it also called on its members to mobilize to preserve their social rights.

B. The Government's reply

422. In its reply of 1 February 2000, the Government states that it is concerned about the respect for human rights and does its utmost to respect the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). However, according to the Government, both trade unionists being questioned are being prosecuted for "spreading false information and libel" – both of which are specifically penalized under the Code of Press and Communications – and not for trade union activities. The Government points out that in accordance with the separation of powers, the Ministry of Labour and the Public Service may not intervene in a matter that is not within its competence.

423. The Government encloses with its communication a copy of the communiqué from the Attorney-General of the Republic on this matter, dated 31 January 2000. The Attorney-General refers to an article entitled "Repression at the Agbalepodo lycée, a student killed" which appeared in the Togolese daily newspaper *L'Aurore*, dated 15 to 21 December 1999, claiming that a young girl had died during skirmishes between the police, schoolchildren and students on 7 December 1999. According to the Attorney-General, the newspaper attributed the crime to the headmaster and the Minister of National Education although, in fact, no young girl had been killed. The Minister lodged a complaint against the director of the newspaper on grounds of spreading false information and libel. The latter was arrested. This led to the questioning of the actual authors of the article, i.e. two retired officials claiming to be the secretaries-general of the UNSIT and FETREN.

424. In a subsequent reply dated 22 March 2000, the Government explains that on 4 February 2000 all those arrested in this case had been released, despite the seriousness of the facts, thanks to the generosity of the Head of State of Togo who personally instructed the

Minister of National Education to withdraw his complaint. This act of clemency resulted in the immediate release of the director of the newspaper *L'Aurore*, the release of the two trade unionists, Gbikpi Benissan and Allagah-Kodegui, and the withdrawal of the arrest warrant against Mr. Akouete, Secretary-General of the CSTT, who was abroad on mission at the time of the events in question. Mr. Akouete returned to Lomé without being investigated and is calmly continuing with his trade union activities, according to the Government.

425. The Government is surprised however that after the fruitful discussions it had with the ICFTU and WCL delegations on the eve of the trade unionists' release, it is nevertheless accused of violating trade union rights before the ILO. The Government refers to Article 8 of Convention No. 87 that stipulates "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". It points out that this is unfortunately still not always the case in Togo, where a number of trade union officials feel that they are above the law.

426. The Government regrets that a number of trade unionists prefer to settle their concerns in the street rather than embarking upon social dialogue and recalls that it was this attitude which led to the unlimited and non-negotiable general strike called in 1992 which lasted nine months; indeed, the repercussions the strike had at the social and economic levels constitute the deep-rooted causes of the "unrest" to which the complainants refer in their complaint.

427. The Government encloses with its reply of 22 March 2000 a copy of the communiqué issued by the Council of Ministers on 4 February 2000 announcing the release of all the persons arrested in this case, as well as the relinquishment of the legal proceedings concerning them, at the express request of the Head of State.

C. The Committee's conclusions

428. *The Committee notes that this case concerns the arrest of two trade union officials and the arrest warrant taken out against a third trade union official on 28 January 2000.*

429. *According to the complainants, the arrests occurred after demonstrations in December 1999 to protest against the increase in petroleum prices and the arrears in salaries in the public service and after a general assembly of the CSTT on 26 January 2000 which called on its members to mobilize to preserve their social gains.*

430. *The Committee notes that, according to the Government, proceedings had not been brought against the trade unionists in question on account of their trade union activities but because of a complaint lodged by the Minister of National Education for the spreading of false news and libel in a published article that had accused the headmaster of a* lycée *and the Minister of National Education of being implicated in the death of a young girl during skirmishes with the police.*

431. *The Government points out however that – due to the intervention of the Head of State – those concerned were all released on 4 February 2000 and the judicial proceedings brought against them were dropped.*

432. *As regards the Government's statement concerning Article 8 of Convention No. 87, the Committee would point out that, while the first paragraph of this Article provides that "in exercising the right provided in this Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land", the second paragraph provides that "the law of the land shall not be such*

as to impair, not shall it be so applied as to impair, the guarantees provided for in this Convention".

433. *The Committee feels bound to recall that while persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 83].*

434. *Noting however that the trade union officials were released after one week of detention following the intervention of the Head of State and that the legal proceedings were dropped, the Committee will not pursue the examination of this aspect of the case.*

435. *The Committee nevertheless notes that, in this case, the complainants refer to a situation of social unrest due to arrears in salaries and the erosion of the workers' living standards. In these circumstances, the Committee expresses the firm hope that the problems of a social nature confronting the workers in Togo might be settled within the framework of a dialogue between the Government and the trade union organizations.*

The Committee's recommendations

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

(a) The Committee notes that the trade union officials arrested in this case were released after one week of detention due to the intervention of the Head of State and that the legal proceedings against them have been dropped.

(b) The Committee expresses the firm hope that the problems of a social nature confronted by the workers of Togo might be settled within the framework of a dialogue between the Government and the trade union organizations.

Geneva, 2 June 2000.

(Signed) Max Rood,
Chairperson.

Points for decision: Paragraph 102; Paragraph 118; Paragraph 139; Paragraph 176; Paragraph 187; Paragraph 219; Paragraph 236; Paragraph 251; Paragraph 341; Paragraph 356; Paragraph 373; Paragraph 384; Paragraph 393; Paragraph 416; Paragraph 436.