



EIGHTH ITEM ON THE AGENDA

**323rd Report of the Committee
on Freedom of Association****Contents**

| | <i>Paragraphs</i> |
|--|-------------------|
| Introduction | 1-112 |
| <i>Case No. 1953 (Argentina): Report in which the Committee requests to be kept informed of developments</i> | |
| Complaint against the Government of Argentina presented by the Congress of Argentine Workers (CTA) | 113-122 |
| The Committee's conclusions | 119-121 |
| The Committee's recommendations | 122 |
| <i>Case No. 2045 (Argentina): Definitive report</i> | |
| Complaint against the Government of Argentina presented by the Trade Union of Newspaper and Magazine Vendors of the Federal Capital and Greater Buenos Aires (SIVENDIA) | 123-131 |
| The Committee's conclusions | 129-130 |
| The Committee's recommendation | 131 |
| <i>Case No. 2074 (Cameroon): Definitive report</i> | |
| Complaint against the Government of Cameroon presented by the Cameroon Workers' Trade Union Confederation (CSTC), the Organization of African Trade Union Unity (OATUU) and the International Confederation of Free Trade Unions (ICFTU) | 132-150 |
| The Committee's conclusions | 145-149 |
| The Committee's recommendation | 150 |
| <i>Case No. 2073 (Chile): Definitive report</i> | |
| Complaint against the Government of Chile presented by the Confederation of Banking Trade Unions (CSB)..... | 151-161 |
| The Committee's conclusions | 159-160 |
| The Committee's recommendation | 161 |

| | |
|--|---------|
| <i>Case No. 2085 (El Salvador): Report in which the Committee requests to be kept informed of developments</i> | |
| Complaints against the Government of El Salvador presented by the Trade Union Federation of Food Sector and Allied Workers (FESTSA), the Company Union of Workers of Doall Enterprises S.A. (SETDESA) and the Ministry of Education Workers' Union (ATRAMEC)..... | 162-175 |
| The Committee's conclusions..... | 172-174 |
| The Committee's recommendations | 175 |
| <i>Case No. 1888 (Ethiopia): Interim report</i> | |
| Complaint against the Government of Ethiopia presented by Education International (EI) and the Ethiopian Teachers' Association (ETA) | 176-200 |
| The Committee's conclusions..... | 192-199 |
| The Committee's recommendations | 200 |
| <i>Case No. 2028 (Gabon): Report in which the Committee requests to be kept informed of developments</i> | |
| Complaint against the Government of Gabon presented by the Gabonese Confederation of Free Trade Unions (CGSL) | 201-213 |
| The Committee's conclusions..... | 210-212 |
| The Committee's recommendation..... | 213 |
| <i>Case No. 1960 (Guatemala): Report in which the Committee requests to be kept informed of developments</i> | |
| Complaint against the Government of Guatemala presented by the International Confederation of Free Trade Unions (ICFTU) | 214-247 |
| The Committee's conclusions..... | 242-246 |
| The Committee's recommendations | 247 |
| <i>Case No. 1970 (Guatemala): Report in which the Committee requests to be kept informed of developments</i> | |
| Complaints against the Government of Guatemala presented by the General Confederation of Workers of Guatemala (CGTG), the Latin American Central of Workers (CLAT), the World Confederation of Labour (WCL) and the International Confederation of Free Trade Unions (ICFTU) | 248-284 |
| The Committee's conclusions..... | 255-283 |
| The Committee's recommendations | 284 |
| <i>Cases Nos. 2017 and 2050 (Guatemala): Interim report</i> | |
| Complaints against the Government of Guatemala presented by the International Confederation of Free Trade Unions (ICFTU) and the Trade Union of Workers of Guatemala (UNSITRAGUA) | 285-309 |
| The Committee's conclusions..... | 299-308 |
| The Committee's recommendations | 309 |
| <i>Case No. 2021 (Guatemala): Definitive report</i> | |
| Complaint against the Government of Guatemala presented by the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) and the International Organization of Employers (IOE) | 310-326 |
| The Committee's conclusions..... | 320-325 |
| The Committee's recommendation..... | 326 |

Case No. 1991 (Japan): Report in which the Committee requests to be kept informed of developments

| | |
|--|---------|
| Complaint against the Government of Japan presented by the Japanese National Railway Workers' Union (KOKURO) and the All National Railway Locomotive Engineers' Union (ZENDORO)..... | 327-383 |
| The Committee's conclusions | 371-382 |
| The Committee's recommendations | 383 |
| Annex I. Japanese National Railways Reform Act (Law No. 87, 4 December 1986) | |
| Annex II. The scheme of section 23 of the Japanese National Railways Reform Act | |
| Annex III. State of re-employment of Japanese National Railways employees | |
| Annex IV. Start of the KOKURU-JR companies' negotiations | |
| Annex V. The Four-Party Agreement on overcoming the non-hiring issue by the JRs | |
| Annex VI. The relevant extracts of the Code of Civil Procedure | |

Case No. 2048 (Morocco): Report in which the Committee requests to be kept informed of developments

| | |
|---|---------|
| Complaint against the Government of Morocco presented by the Moroccan Labour Union (UMT), the Arab Maghreb Workers' Union (USTMA) and the International Confederation of Free Trade Unions (ICFTU)..... | 384-396 |
| The Committee's conclusions | 392-395 |
| The Committee's recommendations | 396 |

Case No. 2034 (Nicaragua): Report in which the Committee requests to be kept informed of developments

| | |
|---|---------|
| Complaint against the Government of Nicaragua presented by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) | 397-407 |
| The Committee's conclusions | 402-406 |
| The Committee's recommendations | 407 |

Case No. 2006 (Pakistan): Report in which the Committee requests to be kept informed of developments

| | |
|--|---------|
| Complaint against the Government of Pakistan presented by the All Pakistan Federation of Trade Unions (APFTU) and the Federation of Oil, Gas, Steel and Electricity Workers (FOGSEW-Pakistan)..... | 408-430 |
| The Committee's conclusions | 423-429 |
| The Committee's recommendations | 430 |

Case No. 2049 (Peru): Interim report

| | |
|---|---------|
| Complaint against the Government of Peru presented by the General Confederation of Workers of Peru (CGTP), the Unified Trade Union of Petroleum, Energy, Oil and Refinery Workers of the Grau Region (SUTPEDARG) and the Federation of Petroleum Workers of Peru (FETRAPEP) | 431-456 |
| The Committee's conclusions | 451-455 |
| The Committee's recommendations | 456 |

Case No. 2059 (Peru): Report in which the Committee requests to be kept informed of developments

| | |
|---|---------|
| Complaint against the Government of Peru presented by the Federation of Employees of Banco Continental (CFEBC)..... | 457-477 |
| The Committee's conclusions | 473-476 |
| The Committee's recommendations | 477 |

| | |
|--|---------|
| <i>Case No. 2089 (Romania): Report in which the Committee requests to be kept informed of developments</i> | |
| Complaint against the Government of Romania presented by the National Trade Union Confederation “Cartel Alfa” | 478-492 |
| The Committee’s conclusions..... | 490-491 |
| The Committee’s recommendation..... | 492 |
| <i>Case No. 2043 (Russian Federation): Report in which the Committee requests to be kept informed of developments</i> | |
| Complaint against the Government of the Russian Federation presented by the Primary Trade Union Organization Zashchita (Defense) of the Murommashzavod Company | 493-505 |
| The Committee’s conclusions..... | 499-504 |
| The Committee’s recommendations | 505 |
| <i>Case No. 2075 (Ukraine): Report in which the Committee requests to be kept informed of developments</i> | |
| Complaint against the Government of Ukraine presented by the All Ukrainian Trade Union “Solidarnost” (AUTU-Solidarnost) | 506-524 |
| The Committee’s conclusions..... | 515-523 |
| The Committee’s recommendations | 524 |
| <i>Case No. 2079 (Ukraine): Interim report</i> | |
| Complaint against the Government of Ukraine presented by the Volyn Regional Trade Union Organization of the All-Ukraine Trade Union “Capital/Regions” | 525-543 |
| The Committee’s conclusions..... | 537-542 |
| The Committee’s recommendations | 543 |
| <i>Case No. 2058 (Venezuela): Report in which the Committee requests to be kept informed of developments</i> | |
| Complaint against the Government of Venezuela presented by the Trade Union of Congressional Employees and Workers – New Trade Union Structures (SINTRANES) | 544-554 |
| The Committee’s conclusions..... | 550-553 |
| The Committee’s recommendation..... | 554 |
| <i>Case No. 2081 (Zimbabwe): Report in which the Committee requests to be kept informed of developments</i> | |
| Complaint against the Government of Zimbabwe presented by the Zimbabwe Congress of Trade Unions (ZCTU) | 555-575 |
| The Committee’s conclusions..... | 566-574 |
| The Committee’s recommendations | 575 |
| Annex I | |
| Annex II | |
| Annex III. Labour Relations Act | |

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 2, 3 and 9 November 2000, under the chairmanship of Professor Max Rood.
2. The members of Chilean, Japanese, Pakistani, Venezuelan and Zimbabwean nationality were not present during the examination of the cases relating to Chile (Case No. 2073), Japan (Case No. 1991), Pakistan (Case No. 2006), Venezuela (Case No. 2058) and Zimbabwe (Case No. 2081).

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3. Currently, there are 92 cases before the Committee, in which complaints have been submitted to the governments concerned for observations. At its present meeting, the Committee examined 24 cases on the merits, reaching definitive conclusions in 19 cases and interim conclusions in five 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: 2087 (Uruguay), 2088 (Venezuela), 2095 (Argentina), 2096 (Pakistan), 2097 (Colombia), 2099 (Brazil), 2100 (Honduras), 2101 (Nicaragua), 2102 (Bahamas), 2103 (Guatemala), 2104 (Costa Rica), 2105 (Paraguay) and 2106 (Mauritius) 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: 1995 (Cameroon), 2052 (Haiti) and 2083 (Canada/New Brunswick).

Observations requested from governments and/or complainants

6. In Case No. 2077 (El Salvador), the Committee is awaiting information from the complainant. The Committee requests the complainant to send this information without delay, in the absence of which the Committee will be obliged to examine the substance of the cases. In Case No. 2082 (Morocco), the Committee requests the complainant and the Government to provide additional information so that the Committee might examine the case in full knowledge of all the facts.

Partial information received from governments

7. In Cases Nos. 1880 (Peru), 2068 (Colombia) and 2094 (Slovakia), the Government has sent partial information on the allegations made. 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. In Case No. 1951 (Canada (Ontario)), the Committee requests the Government to provide information on the outcome of the judicial proceedings under way.

Observations received from governments

8. As regards Cases Nos. 1787 (Colombia), 1865 (Republic of Korea), 1948 (Colombia), 1955 (Colombia), 1962 (Colombia), 1965 (Panama), 1973 (Colombia), 1980 (Luxembourg), 1984 (Costa Rica), 2010 (Ecuador), 2012 (Russian Federation), 2013 (Mexico), 2014 (Uruguay), 2015 (Colombia), 2022 (New Zealand), 2036 (Paraguay), 2037 (Argentina), 2046 (Colombia), 2051 (Colombia), 2053 (Bosnia and Herzegovina), 2055 (Morocco), 2060 (Denmark), 2063 (Paraguay), 2069 (Costa Rica), 2076 (Peru), 2078 (Lithuania), 2080 (Venezuela), 2084 (Costa Rica), 2086 (Paraguay), 2091 (Romania), 2092 (Nicaragua), 2093 (Republic of Korea) and 2098 (Peru), 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. 1851 (Djibouti), 1922 (Djibouti), 1986 (Venezuela), 2035 (Haiti) 2042 (Djibouti), 2062 (Argentina), 2065 (Argentina), 2067 (Venezuela) and 2072 (Haiti), 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 or complete their observations or information as a matter of urgency.

Withdrawal of complaints

10. At its meeting in March 2000, the Committee noted that the complainant in Case No. 2039 (Mexico) had expressed its desire to withdraw the complaint and requested the complainant to specify its reasons. In a communication from September 2000, the complainant stated that it made this decision in complete independence and explained that the labour authorities had shown themselves to be fully receptive to the demands presented, finding positive replies to them. There is therefore no longer any reason for the complaint. The Committee takes note of the withdrawal of the complaint for the reasons invoked by the complainant. In Case No. 2061 (New Zealand) the complainant announced the withdrawal of its complaint because of the repeal of the legislation in question.

Follow-up to the mission to Estonia

11. At its June 2000 meeting [see 321st Report, paras. 188-219], in respect of Case No. 2011 (Estonia), the Committee noted with satisfaction that the Central Association of Estonian Trade Unions (EAKL), the complainant organization in this case, had obtained its registration without having to amend its statutes. It nevertheless noted with concern that the 1996 Act on non-profit-making associations continued to impose on workers' and employers' organizations a heavy and detailed procedure for the acquisition of legal

personality (notarized acts, fees) and granted officials of the Ministry of Justice discretionary powers to interfere in the drafting of organizations' constitutions, the framework for elections of trade union leaders and in the supervision of the management of workers' and employers' organizations. While reminding the Government that in ratifying Convention No. 87, it had 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, the Committee noted with interest that in accordance with commitments made by the Government during the ILO's mission which had visited the country in August 1999, a trade union bill discussed with the representatives of the EAKL had been submitted to Parliament on 29 February 2000. 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. The Committee expressed the hope that the new Act would contain provisions in conformity with the principles of freedom of association and that it would not keep in force the provisions of the 1996 Act on non-profit-making associations that obstructed the establishment and functioning of trade unions.

12. In a communication dated 18 July 2000, the Central Association of Estonian Trade Unions (EAKL) declared that the Riigikogu (Estonian Parliament) had adopted the new trade union Act on 16 June, which was promulgated by the President of the Republic on 5 July 2000. The complainant organization considers that the adoption of this Act will resolve the serious problems affecting the registration of trade unions and that its content will not pose any problems of compatibility with Conventions Nos. 87 and 98. It thanks the ILO for its expertise and cooperation which were essential in the examination of the complaint and in the preparation of the new trade union Act.
13. In a communication of 29 September 2000, the Government sent a copy of the Trade Unions Act adopted by the Parliament on 24 June 2000, which upholds the comments of EAKL.
14. The Committee notes this information with satisfaction and draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this legislation in the framework of the examination of the application of Convention No. 87.

Preliminary contacts mission to Belarus

15. By a communication dated 16 June 2000, the Belarus Automobile and Agricultural Machinery Workers' Union, the Belarus Agricultural Sector Workers' Union, the Belarus Radio & Electronics Workers' Union and the Congress of Democratic Trade Unions transmitted a complaint alleging the violation of trade union rights in Belarus (Case No. 2090). The Federation of Trade Unions of Belarus (FPB) joined the complaint by a communication dated 6 July 2000. The International Confederation of Free Trade Unions (ICFTU) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers (IUF) have associated themselves to the complaint.
16. Given the serious nature of the allegations raised, including the impediments to the right to organize and governmental interference in trade union activity and elections, it was agreed with the Government, after having received the prior approval of the chair of the Committee, to send a representative of the Director-General to carry out a preliminary contacts mission. In accordance with paragraph 65 of the procedure for the examination of complaints, the mandate of such a mission is, inter alia, to transmit to the competent authorities the concern to which the events described in the complaint have given rise, to

obtain from the authorities their initial reaction, as well as any additional comments and information and, above all, to ascertain the facts and to seek possible solutions on the spot.

17. The preliminary contacts mission took place from 18-21 October, led by Mr. Kari Tapiola, Executive Director of the Standards and Fundamental Principles and Rights at Work Sector, who was accompanied by Ms. Karen Curtis, Senior Legal Officer, Freedom of Association Branch, and Mr. Vitali Savine, Senior Standards Specialist in the ILO Multidisciplinary Team in Moscow.
18. The mission had meetings with the following government officials and their aides: Mr. Kobyakov, First Deputy Prime Minister and Co-Chair of the National Council for Labour and Social Issues; Mr. Zametalin, First Deputy Head of the Presidential Administration and Chair of the Commission for Registration (re-registration) of political parties, trade union organizations and other organizations; Mr. Vorontsov, Minister of Justice; Mr. Pavlov, First Deputy Minister of Labour; and Mr. Martynov, First Deputy Minister of Foreign Affairs. The Prime Minister, Mr. Yermoshin, met briefly with the mission on its final day. The mission met with the complainants in this case: the Federation of Trade Unions of Belarus and the complainant branch-level affiliates, as well as the Congress of Democratic Trade Unions and the Free Trade Unions. The mission also met with the two employers' confederations: the Byelorussian Union of Entrepreneurs and Employers, named after Prof. M. Kouniavski, and the Byelorussian Confederation of Industrialists and Entrepreneurs.
19. Noting that the Government has only sent a partial reply concerning this case, the Committee requests it to send all additional information so that the Committee may bear this in mind when it examines the complaint at its meeting in March 2001 in the light of the information and conclusions drawn in the mission report.

Serious and urgent case to which the Committee draws the Governing Body's attention

20. The Committee especially wishes to draw the Governing Body's attention to Case No. 1970 (Guatemala) because of the extreme gravity of the allegations therein.

Transmission of cases to the Committee of Experts

21. 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: Denmark (Case No. 1470), Togo (Case No. 1977), Estonia (Case No. 2011), Cape Verde (Cases Nos. 2023 and 2044) and Ukraine (Case No. 2079).

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

Case No. 1963 (Australia)

22. The Committee examined this case at its March 2000 meeting [320th Report, paras. 143-241], at which time it made a number of recommendations concerning violations of freedom of association arising out of actions in relation to workers in stevedoring operations at various Australian ports. The Committee, inter alia, asked to be kept

informed concerning the disciplining of any serving defence force personnel involved in training in Dubai in order to replace dismissed union members.

23. In a communication of 14 September 2000, the Government indicates that the Department of Defence has advised that it has no evidence of the commission of offences under the Defence Force Discipline Act 1982 by any Australian Defence Force members and is not aware that any form of disciplinary action has taken place or is contemplated. Concerning ongoing matters in the Australian courts relevant to the case, the Government provides information on the status of *McKellar and Murray v. CTMS Limited* and others, *Batten and Grahame v. CTMS Limited* and others, and *Tanner v. Shergold*. In the first action, an application was made by the Commonwealth and others to have the further amended statement of claim struck out, and the Court has reserved its decision. In *Batten and Grahame*, the Court dismissed the application of the Commonwealth and others to have the statement of claim struck out. Finally, in *Tanner v. Shergold*, concerning an application under the Freedom of Information Act 1982 for access to reports concerning the waterfront reform, the Court found that the decision to issue a conclusive certificate under the Act could be reviewed by the Court. An appeal on this matter was then lodged, and the Court has reserved its decision.
24. *The Committee notes the information provided by the Government. On the issue of the Dubai training, the Committee requests the Government to provide information concerning any inquiry held to determine whether serving Defence Force personnel were involved in the training, and to provide the Committee with a copy of the Defence Force Discipline Act 1982. With respect to the court matters, the Committee requests the Government to forward copies of the relevant decisions once they have been rendered.*

Case No. 1949 (Bahrain)

25. The Committee last examined this case at its meeting in March 2000 when it once again urged the Government to take the necessary measures to bring its legislation, in particular Orders Nos. 9 and 10 of 1981, into line with the principles of freedom of association so that workers' right to organize freely is effectively guaranteed [see 320th Report, paras. 22-24].
26. In a communication dated 21 August 2000, the Government once again states that Labour Law No. 23 of 1976 and Ministerial Orders Nos. 9 and 10 of 1981 guarantee workers' rights and freedoms, through the framework of the General Committee for Bahrain Workers. The Government adds that this type of organization is also in conformity with the economic and social conditions and practices of the country where expatriate workers represent 60 per cent of the total workforce. Finally, the Government states that it is in the process of reviewing the Labour Law in the light of social and economic changes, at both the national and international levels, inspired by Arab and international labour standards taking into account the observations of the ILO Committee on Freedom of Association.
27. *The Committee notes this information, in particular the Government's review of the Labour Law taking into account the Committee's recommendations. In this respect, the Committee recalls that the technical assistance of the Office is available should the Government so desire. It requests the Government to keep it informed of all measures taken or envisaged to amend the legislation so as to ensure that the right of workers to organize freely is effectively guaranteed.*

Case No. 1862 (Bangladesh)

28. At its March 2000 meeting, when it last examined this case [see 320th Report, paras. 25-31] the Committee: (a) urged the Government to bring to a fruitful conclusion the tripartite discussions regarding the amendment of sections 7(2) and 10(1)(g) of the 1969 Industrial Relations Ordinance; (b) urged once again the Government to speed up the registration process of the trade union at Saladin Garments Ltd.; and (c) urged once again the Government to register without delay Karmashari trade union at Palmal Knitwear Ltd., to provide it with the court decision in the case of Ms. Kalpana, and to take all necessary measures to ensure adequate redress to all workers victim of acts of anti-union discrimination.
29. In its communication of 7 June 2000, the Government states that consultations are still continuing with employers' and workers' representatives on the amendment of the 1969 Industrial Relations Ordinance. A hearing took place on 23 May 2000 in the Labour Court concerning the registration of the trade union at Saladin Garment Ltd. As regards the situation at Palmal Knitwear Ltd., the Government has directed that the case concerning the registration of the Karmashari trade union be moved to the High Court Division, where the decision is pending. Ms. Kalpana has withdrawn her allegations against the employer and the matter has been settled out of court; a copy of the decision is attached. The Government further assures that workers get its support against any kind of harassment or dismissal because of trade union membership.
30. *The Committee notes the information provided by the Government concerning Ms. Kalpana. Welcoming the assurances given in relation to the protection of workers against acts of anti-union discrimination, the Committee hopes that this commitment will be applied in practice.*
31. *As regards the other issues pending, the Committee: (a) urges the Government once again to speed up the discussions regarding the amendment of sections 7(2) and 10(1)(g) of the 1969 Industrial Relations Ordinance so that concrete results may be obtained in the very near future, particularly taking into account the lengthy consultations that have already taken place, the reiterated calls by the Committee of Experts and the commitment made in that respect by a Government representative at the 1998 Conference. The Committee requests the Government to keep it informed in this respect; (b) requests the Government to provide it with the decision of the Labour Court concerning the registration of the trade union at Saladin Garments Ltd., as soon as it is issued; (c) requests the Government to provide it with the decision of the High Court Division concerning the registration of the Karmashari trade union at Palmal Knitwear Ltd., as soon as it is issued.*

Case No. 1992 (Brazil)

32. The Committee last examined this case (concerning dismissals following a strike and other anti-union acts) at its meeting in March 2000 [see 320th Report, paras. 286-298]. On that occasion, the Committee took note of the communication sent by the Government in September 1999 and requested the Government to inform it of the final outcome of the judicial proceedings concerning the 54 workers of the ECT enterprise who remained dismissed after the strike held in September 1997.
33. In a communication dated 21 June 2000, the Government gives the Committee an account of the current status of each of the proceedings initiated in connection with this case. According to this account, 14 individual court cases are still pending before lower courts; 21 are the subject of appeals; three have yet to be declared admissible, the complaints in question having originally been ruled inadmissible. In ten cases the dismissed workers in

question were reinstated; in two cases the disputed dismissals were upheld after being ruled admissible; in one case, the dismissal was confirmed and compensation agreed by the parties; in one case, a worker was reinstated under the terms of a court settlement; and in another case dismissal with compensation was authorized by the court. The last court case was initiated by a worker who is currently on sick leave.

34. *The Committee notes this information and requests the Government to inform it of the final outcome of all the judicial proceedings in question.*

Case No. 1957 (Bulgaria)

35. The Committee last examined this case, which dealt with eviction of trade union premises and confiscation of trade union property, at its June 1999 meeting. On that occasion, it noted the non-conciliatory tenor of a letter from the authorities to the complainant National Syndical Federation (“GMH”), which accused the latter of violations of the law as a result of unspecified “self-governing actions”. The Committee urged the Government rapidly to make constructive efforts to ensure that all property confiscated be returned to the complainant, invited GMH to request the allocation of premises pursuant to the State Property Law and requested the Government to accede to that request, and to keep it informed of developments [316th Report, paras. 24-27].
36. In a communication of 30 December 1999, the complainant stated that they would rapidly send their demand to the authorities, as recommended by the Committee. GMH further pointed out that they still could not use the premises, which they had completely fitted with telephone and other communication equipment.
37. In its letter of 25 August 2000, the Government reiterates the information provided in its communication of April 1999, i.e. that the president of GMH did not respond to an invitation, sent on 25 November 1998, to take away the trade union property, and that in view of what the Government considers as an unreasonable lack of cooperation, the District Governor had implemented Decision No. 394 of 1 October 1993.
38. *Noting with regret that the Government merely repeats the information already provided more than one year ago [see 316th Report, para. 26], that no progress has been accomplished in this case and that the authorities maintain a non-conciliatory approach, the Committee recalls that the acts impugned in this case constitute serious violations of freedom of association principles. The Committee requests once again the Government to hold as soon as possible constructive discussions with the complainant organization with a view to settling, once and for all, the issues relating to the eviction of GMH from their premises and the confiscation of their trade union property. It invites the Government and the complainant to keep it informed of the results of these talks.*

Case No. 1989 (Bulgaria)

39. The Committee last examined this case at its meeting in March 2000 when it requested the Government to take the necessary steps to ensure that all those workers dismissed from the Bulgarian State Railways (BSR) for the exercise of legitimate trade union activity be reinstated without further delay in their jobs with full compensation. The Committee further requested the Government to take the necessary measures for an independent inquiry to be undertaken into the alleged harassment of the members of the Trade Union of the Engine Personnel of Bulgaria (TUEPB) by the BSR and to remedy any effects of anti-union discrimination brought to their attention [see 320th Report, paras. 299-329].

40. In a communication dated 25 August 2000, the Government first states that the workers of BSR were not dismissed due to the execution of legitimate trade union activities, as there were not any such activities. The Government adds that there is a three-tiered legal system in Bulgaria and that, after the enforcement of the legal decisions subject to execution, all the necessary acts shall be undertaken to reinstate the dismissed workers. Since it will be necessary to check the dismissed workers' professional qualifications, the BSR has expressed its readiness to discuss with the TUEPB the form of the examination in order to avoid a subjective attitude. Finally, the Government declares its readiness to establish an independent commission to discuss the complaints of the TUEPB in respect of anti-union discrimination at the United Locomotive Depot – Sofia and Locomotive Depot – Plovdiv. The Ministry of Labour and Social Policy shall host the first meeting of the Commission.
41. *The Committee takes due note of this information, in particular the Government's readiness to reinstate the dismissed workers in accordance with the relevant legal decisions and to establish an independent commission to review the allegations of anti-union discrimination at BSR. Noting that over two years have elapsed since the BSR workers were dismissed following warning strikes, the Committee recalls from its previous conclusions in this case that a lengthy delay in concluding the proceedings concerning the reinstatement of dismissed trade union leaders constitutes a denial of justice and therefore a denial of trade union rights of the persons concerned [see 320th Report, para. 325]. It requests the Government to keep it informed of developments in respect of any pending court cases and trusts that the dismissed workers will be reinstated in their jobs in the very near future with full compensation. It also requests the Government to keep it informed of the outcome of the independent commission established to examine allegations of anti-union discrimination.*

Case No. 2047 (Bulgaria)

42. The Committee last examined this case at its meeting in March 2000 when it requested the Government to undertake a new poll, including PROMYANA and ADS (the Association of Democratic Syndicates), to determine the representativeness of these organizations in accordance with pre-established and objective criteria. It further requested the Government to keep it informed of any developments in the Labour Code concerning limits for the duration of collective agreements [see 320th Report, paras. 330-362].
43. In a communication dated 25 August 2000, the Government states that the Minister of Labour and Social Policy filed an official proposal for counting to PROMYANA and ADS and confirms that they will be invited to join the National Council for Tripartite Cooperation if they comply with the objective criteria. Furthermore, the Government states that the Council of Ministers endorsed and introduced to the National Assembly the following amendment to the Labour Code: "The collective agreement shall be deemed concluded for a term of one year, in so far as it does not provide otherwise, but not more than two years. The parties can arrange shorter term of action of the provisions of the collective agreement."
44. *The Committee takes due note of this information. It requests the Government to keep it informed of the outcome of the counting of PROMYANA and ADS. Further recalling from its previous conclusions that the duration of collective agreements is primarily a matter for the parties involved [see 320th Report, para. 361], it requests the Government to indicate whether the proposed amendment to the Labour Code reflects tripartite agreement in this regard.*

Case No. 1975 (Canada/Ontario)

45. During its last examination of this case at its June 2000 meeting, the Committee again urged the Government to take the necessary measures to amend the legislation concerning community participation activities, in particular to extend to persons involved in such activities the right to organize. The Committee also requested that legislation be amended to ensure that full collective bargaining below the provincial level in the construction industry be adequately provided for, which may be initiated by either the workers' or employers' representatives at any stage of the project [see 321st Report, para. 118].
46. In a communication dated 17 August 2000, the Government reiterates its earlier comments with respect to the legislation concerning community participation activities, to the effect that the legislation does not violate the freedom of association standards and principles. Regarding collective bargaining in the construction industry, the Government states that the framework for project agreements set out in Bill 31 is the Government's response to requests from industry stakeholders to improve competitiveness in the construction industry, and is essentially an adjustment to the provincial collective agreement as agreed upon by labour and management. The Government enumerates the key features of the framework: (i) a project agreement will set the terms and conditions of employment for employees hired to work on the project, and these terms and conditions will apply instead of the province-wide industrial, commercial and institutional agreements; (ii) once the opportunity for a project becomes clear, the owner will initiate the process of negotiating a project agreement if, in its view, it is economically significant; (iii) the project agreement will be agreed upon in a democratic manner: local unions, who will be supplying labour, and owners/managers will negotiate the agreement; if at least 60 per cent of the local unions approve the agreement, it 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; (iv) once an agreement is approved by the required majority, a union that did not approve will be able to object if the agreement forced its members to accept disproportionate wage and benefit concessions; the agreement could also be challenged by parties voting against it or those who did not vote if proper procedural requirements were not followed; and (v) strikes and lockouts would not be allowed for the duration of the agreement.
47. *The Committee must again express its regret that the Government continues to rely on its assertion that the legislation concerning community participation activities does not violate the standards and principles of freedom of association, despite the fact that this legislation denies the workers concerned an indispensable element of freedom of association, namely, the right to organize. The Committee, therefore, strongly 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 again requests the Government to keep it informed in this regard.*
48. *With respect to Bill 31, the Committee takes note of the information provided by the Government. While the Government clarifies that negotiations do take place in the determination of the project agreement, it also confirms that it is only the owner who is entitled to initiate such negotiations. The Committee recalls that, 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. The Committee, therefore, again requests the Government to take the necessary measures to amend the legislation to ensure that collective bargaining in the construction industry, below the provincial level, may be initiated by either the workers' or employers' representatives at any stage of the project. The Committee again requests to be kept informed in this regard.*

Cases Nos. 2023 and 2044 (Cape Verde)

49. At its meeting in March 2000, the Committee made the following recommendations concerning the matters that remained pending [see 320th Report, paras. 429 and 455]: the Committee requests the Government to take steps to amend the legislation (Act No. 81/III/90) so that organizations of workers may freely enjoy the right to peaceful demonstration without unreasonable restrictions, in particular with regard to time. It requests the Government to keep it informed in this respect (Case No. 2023). The Committee requests the Government to take measures with a view to amending its legislation so that in the event of disagreement between the parties on the minimum services (activities to be carried out and people responsible for performing them) to be respected during strikes, this difference of opinion is resolved by an independent body. It requests the Government to keep it informed in this respect (Case No. 2044).
50. In its communication dated 28 August 2000, the Government states that at its suggestion the legislation criticized by the Committee in relation to the timing of demonstrations was amended by Act No. 107/V/99 of 27 April 1999, in accordance with the Committee's recommendation. As regards the question of minimum services, the Government states that in the framework of its programme and of the Major Options of the 1996-2000 Plan it has established an ambitious project of legal regulation that will comply with the Committee's recommendation, as well as address other labour legislation issues that require review or clarification. *The Committee notes this information with interest and submits it to the Committee of Experts on the Application of Conventions and Recommendations.*

Case No. 1988 (Comoros)

51. At its meeting of May-June 2000, the Committee had once again requested the Government to keep it informed of developments concerning this case, and in particular the fate of the trade union leaders Abderamane Abdou Saïd, Mad Ali and Mjomba Moussa [see 321st Report, para. 94].
52. In a communication of 25 May 2000, the Government states that these three leaders were released at the same time as their colleagues after having been heard by the judicial authorities. The Government points out that these trade union leaders were never imprisoned, but only held in custody for questioning. Since no charges were brought against them, they were released.
53. *The Committee takes note of this information. Recalling that the arrest, even if only briefly, of trade union leaders and trade unionists for exercising legitimate trade union activities constitutes a violation of the principles of freedom of association [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 70], the Committee trusts that the authorities of the Comoros will abstain in future from taking similar measures.*

Case No. 1470 (Denmark)

54. The Committee last examined this case at its meeting in May-June 1989 when it referred to its previous conclusions that section 10(2) and (3) of the Act of 23 June 1988 to set up a Danish International Ship's Register constitutes interference in the seafarers' right to voluntary collective bargaining and amounts to government interference in the free functioning of organizations in the defence of their members' interests which is not in conformity with the spirit of Conventions Nos. 87 and 98 and requested the Government to take the necessary measures to amend the Act in this regard [see 265th Report, para. 19].

55. In a communication dated 28 August 2000, the Government first indicates that a two-year agreement was entered into between the social partners in September 1999 confirming the fundamental principle that Danish labour organizations have a right to be represented at negotiations between Danish shipping companies and foreign organizations in order to ensure that the results in respect of living and working conditions are at an internationally acceptable level. Moreover, pursuant to the agreement, a contact committee has been established with the purpose of developing and extending cooperation between the parties. On 25 February 2000, the parties further entered into a framework agreement on the establishment of collective agreements with foreign unions and individual agreements for foreign seafarers from outside the European Union which sets minimum standards to be upheld. In the light of the above, the Government and the main organizations in the industry have discussed the issue of the collective agreement provisions in section 10 of the Danish International Shipping Register Act. Through these discussions, the main organizations have confirmed that a common understanding of the administration of these collective agreement provisions has been achieved through the above mentioned agreements.
56. *The Committee notes this information with satisfaction and refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*

Case No. 1874 (El Salvador)

57. The Committee last examined this case at its meeting in June 1997 [see 307th Report, paras. 30-32, approved by the Governing Body at its 269th Session (June 1997)], when it urged the Government: (1) to take the necessary steps so that the legislation guarantees the right to establish trade union organizations in the public sector; (2) to recognize the transformation of the Nursing Personnel Craft Union of El Salvador into an industrial trade union; and (3) to make reparation for the acts of anti-union discrimination committed in the Rosales Hospital (reinstate the trade union officials who were transferred and ensure that no worker is threatened with dismissal if he or she does not resign from the General Industrial Trade Union of Health Workers (SIGESAL)).
58. In a communication dated 22 May 2000, the General Industrial Trade Union of Health Workers (SIGESAL) states that the Government has not carried out the Committee's recommendations.
59. In a communication dated 10 August 2000, the Government: (1) refers to article 47 of the Constitution of the Republic, which guarantees the right of private employees and those in autonomous official institutions the right to associate freely. The Government states further that sections 204 ff. of the Labour Code clearly set out which workers have the right to associate freely to defend their economic, social and professional interests by forming trade unions or professional associations of workers; these do not include the workers of the Rosales National Hospital, since they are directly employed by the central Government and are governed by the Salaries and General Budget Act, and they are therefore not protected by the Labour Code, pursuant to the distinction drawn in section 2 of the Code; the Government would appreciate it if the Committee would offer it ILO technical assistance; (2) points out that the Nursing Personnel Craft Union of El Salvador, as its name indicates, is a craft union; it was established as a union of only nursing personnel, i.e. those caring for patients, and these were accordingly granted legal personality as such; the most recent lists of members of this union included watchmen, metalworkers, plumbers, messengers, secretaries and a few nurses and other persons in different occupations, which led to a degeneration of the union's founding principle and nature and prevented it from complying with section 209 of the Labour Code, which is required in order for it to function in accordance with the law and its own by-laws; this is why its executive board

was not authorized to take up office; an appeal was lodged but was rejected on grounds that it was unfounded; and (3) states that it is important to reiterate that the administration of Rosales National Hospital has not taken reprisals against its workers for joining the abovementioned union, but that the transfers were carried out as a result of a study which identified different areas that needed appropriate human resources to carry out their activities in the best possible manner in order to offer a better service to users; moreover it should be explained that the transfers took place in accordance with the second paragraph of section 37 of the Civil Service Act which states as follows: “Officials or employees may be transferred to a similar post even without their consent at the convenience of the public or municipal administration, provided that the transfer is within the same locality.”

60. *The Committee regrets that despite the time which has elapsed no steps have been taken to comply with the recommendations it formulated in this case at its meeting in June 1997. It reiterates once again 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” and “protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker” [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 206 and 695]. In these circumstances, the Committee finds itself obliged to repeat its recommendations formulated during its last examination of the case and requests the Government to keep it informed of any steps taken to comply with them.*

Case No. 1987 (El Salvador)

61. At its meeting of November 1999, the Committee reiterated its previous recommendations on the need to modify the legislation (the requirement that the trade unions of independent institutions should be works unions, minimum number of 35 workers to establish a works union and the requirement for six months to have passed before applying to establish another trade union even if the previous one did not obtain legal personality) and it requested the Government once again to take steps with a view to reinstating the trade union leaders, Luis Barrios and Gloria Mercedes Gonzáles in their posts [see 318th Report, para. 56].
62. In its communication of 13 September 2000, the Government states that its country’s labour policy for 1999-2004 includes the revision and adjustment of legal framework of labour relations, once the consultation process involving revision of the Labour Code has been carried out during a brief period. Furthermore, the Government states that under the law privatizing the national telecommunication administration, legal compensation was paid to Luis Barrios and Gloria Mercedes Gonzáles on 31 December 1997. The Government adds that the aforementioned persons did not belong to any trade union during their period of service but to a private association, and in their final pay slips they noted that the obligations towards them had been met in full. In addition, the parties concerned did not submit any complaint for anti-union practices. *The Committee notes this information and requests the Government to keep it informed with regard to the process of reform of the Labour Code and hopes that full account will be taken of its recommendations in that process.*

Case No. 2032 (Guatemala)

63. At its meeting in March 2000, the Committee regretted that the Government had adopted the circular of 21 September 1998 (as a result of which the Labour Inspectorate must

refrain from intervening in disputes and other matters relating to the public sector) without having consulted the public sector trade unions and requested the Government in future: to take into account the principle according to which the public authorities should consult the most representative organizations in matters of mutual interest, including administrative circulars which affect the interests of such organizations in the public sector and their members [see 320th Report, para. 698].

64. In its communication dated 4 May 2000, the Government states that the circular in question contradicted legislation and Convention No. 87 and as a result the Ministry of Labour and Social Security currently in office declared the circular invalid by way of Ministerial Agreement No. 040-2000 dated 26 January 2000. *The Committee notes this information with interest.*

Case No. 1890 (India)

65. At its March 2000 meeting, the Committee last examined this case concerning the dismissal of Mr. Laximan Malwankar, President of the Fort Aguada Beach Resort Employees' Union (FABREU), the suspension or transfer of 15 FABREU members following strike action, and refusal to recognize the most representative workers' organization for collective bargaining purposes [see 320th Report, paras. 54-58].
66. In a communication dated 22 September 2000, the Government indicates that out of the three inquiries which were in progress in respect of Shri Ashok Deulkar, Sitaram Ruthod and Shyam Kerkar, the case of Mr. Deulkar was settled since he and the management have arrived at an amicable settlement thereby severing the employer-employee relationship. As regards the cases of five workmen whose inquiries were in progress, two workmen have resigned and settled their dues thereby severing the employer-employee relationship. Thus only three inquiries are still in progress. As regards the adjudication proceedings in respect of the dispute of Mr. Laximan Malwankar, the case was fixed on 12 September 2000 for arguments on preliminary issues. Similarly, the adjudication proceedings in respect of the charter of demands were fixed on 24 September 2000 for arguments on interim relief application. The Government also indicates that the workers of Fort Aguada Beach Resort are covered under the settlement signed by the management and the union, namely Fort Aguada Beach Resort Workers' Association. Out of the 171 workers (including the five workers whose inquiries are pending), all have received the benefit of the settlement, in operation up to 30 June 2000. The association has also served the fresh charter of demands and bilateral negotiations are in progress.
67. *The Committee takes note of the information provided by the Government. It recalls that this case related to various acts of harassment and anti-union discrimination carried out against the president of FABREU, Mr. Malwankar, from 1992 to 1994 which culminated in the dismissal of this trade union leader in January 1995 and the suspension or transferral of FABREU members in April 1995 following a strike action in the hotel industry which was declared a public utility service and thus referred to the Industrial Tribunal contrary to the principles of freedom of association since the hotel industry is in no way an essential service in which strikes can be prohibited. The Committee also recalls that an agreement was signed in October 1995 with a newly formed organization called Fort Aguada Beach Resort Workers' Association thus de-recognizing FABREU, the management recognizing the association as the sole bargaining agent in the company. The Committee had concluded from the evidence at its disposal that no doubts existed that FABREU was the most representative at the Fort Aguada Beach Resort and had urged the Government to take appropriate conciliatory measures to obtain the employers' recognition of FABREU for collective bargaining purposes [see 307th Report, paras. 366-375]. The Committee once again must deplore the fact that the events to which the various proceedings and inquiries are related occurred in 1995 and earlier. With respect to Mr. Malwankar, the*

Committee expresses the firm hope that the court proceedings will be expedited and requests the Government to continue to keep it informed of the outcome of the proceedings, including forwarding copies of the preliminary and final decisions. Furthermore, the Committee requests the Government to continue to keep it informed of all the other pending issues related to this case, including the results of the adjudication proceedings concerning the charter of demands.

Case No. 1877 (Morocco)

68. At its March 1999 session, the Committee had requested the Government to keep it informed of the developments in the legal proceedings filed by the workers who had been dismissed or suspended, because of their legitimate trade union activities, by the SOMADIR company in Casablanca and El Jadidale [see 313th Report, para. 38]. In a communication of 15 September 2000, the Government indicates that 12 cases have been resolved in favour of the workers, all of whom have received the legal compensation applicable in case of dismissal. The court of the first instance has issued a decision in 11 other cases, and the workers affected have appealed this judgement. Three cases are still pending before the court of the first instance; and the Court of Appeal has issued a decision in 16 cases, which were subsequently overturned by the High Court. *While taking due note of this information, the Committee requests the Government to continue to keep it informed of developments in the judicial proceedings concerning this case.*

Case No. 1931 (Panama)

69. At its meeting in June 1999, referring to its request that the Government consider amending certain provisions in its legislation which presented problems in terms of conformity with Conventions Nos. 87 and 98, the Committee had noted that the Government had begun general consultations with the social partners and had requested it to keep it informed of the outcome of these consultations [see 321st Report, para. 54].
70. In its communication dated 6 September 2000, the Government reports a divergence of views among the social partners concerning the amendment of certain legislative provisions and points out that the Government does not have the necessary majority in Parliament to pass a bill amending the Labour Code. The Government states that in order to carry out legislative reform consultations first had to be held and a consensus achieved among the social partners. Faced with this complex situation, the Government reaffirms its determination to make every effort to enable the representative organizations of employers and workers to reach, through dialogue, the agreement that would make it possible to present draft legislation covering all of the points raised by the Committee on Freedom of Association. To this effect, the Government deems it appropriate to request technical assistance from the San José Multidisciplinary Team, which would help reach a favourable solution to this case, and hopes that once such assistance has been obtained this will open the way to the tripartite consensus necessary to resolve the matter.
71. *The Committee notes this information and hopes that such technical assistance will make it possible to register progress in the near future.*

Case No.1826 (Philippines)

72. During its previous examination of this case in June 1999 [see 316th Report, paras. 72-74], the Committee had urged the Government to ensure that a certification election demanded by members of the Cebu Mitsumi Employees' Union (CMEU), was conducted immediately in the Cebu Mitsumi enterprise in Danao City, especially in view of the fact that the then newly established CMEU had filed a petition for a certification election in

February 1994, which had been signed by almost all rank-and-file workers of the enterprise [see 302nd Report, paras. 405-408].

73. In a communication dated 17 August 2000, the Government states that, on 26 June 2000, the Regional Office of the Department of Labor and Employment (DOLE) issued the following order concerning the conduct of a certification election at the Cebu Mitsumi enterprise: “Wherefore, this Office hereby orders the conduct of the certification election in one (1) setting starting at 8.00 o’clock in the morning of 14 September 2000 and ending at 5.00 o’clock in the afternoon of the same day, provided, that if there will be qualified voters in the premises who will manifest their intention to vote, the voting shall be extended beyond 5.00 o’clock in the afternoon until all such voters shall have cast their votes. Canvassing will immediately follow. The Election Officer shall devise a system for the orderly and peaceful voting of those who intend to vote after 5.00 o’clock in the afternoon of the election day. The parties are hereby directed to extend their full cooperation and support.”
74. *The Committee takes note of this information. It trusts that the new certification election will be held with all the assurances of impartiality and non-interference and requests the Government to keep it informed of the outcome thereof.*

Case No. 1914 (Philippines)

75. During its previous examination of this case in June 1999 [see 316th Report, paras. 76-79], the Committee had once again urged the Government to ensure that the 1,500 or so leaders and members of the Telefunken Semiconductors Employees’ Union (TSEU) who were dismissed further to their participation in strike action from 14 to 16 September 1995 were reinstated immediately in their jobs under the same terms and conditions prevailing prior to the strike with compensation for lost wages and benefits. The Committee had noted that its recommendation was in conformity with the Orders for Reinstatement issued by the Government’s Department of Labor and Employment (DOLE) [see 308th Report, para. 668], as well as a Supreme Court decision which became final and executory on 6 April 1998. The Committee had further noted that, in the light of this development, the Secretary of Labor and Employment had issued a Writ of Execution on 26 August 1998 directing the immediate reinstatement of the workers in the company’s payroll in the event that actual or physical reinstatement was impossible, but that the company’s continued refusal to reinstate said workers led to its filing a series of motions aimed at delaying the execution of the said Writ. Finally, the Committee had noted the Government’s statement that the Secretary had issued an Order directing the Bureau of Working Conditions (BWC) to compute individual wages of the striking workers reckoned from 27 June 1996 up to the actual date of their reinstatement, that a writ of execution would be issued to satisfy said claims and that the Government would update the Committee on any action taken by the BWC relative to the Order.
76. In a communication dated 17 August 2000, the Government states that the DOLE was furnished with a copy of a Petition for Review on Certiorari filed by the TSEU with the Supreme Court seeking the: (a) annulment of the Court of Appeal’s decision; (b) dismissal of the case for illegal strike; (c) actual and physical reinstatement of all striking officers and members of the union; and (d) payment of back wages to the union officers/members. The Government adds that, acting on the Petition for Review on Certiorari filed by the union members, the Supreme Court issued a resolution dated 14 June 2000, requiring respondents to file comment on the said petition. Private respondents and the Office of the Solicitor General for Public Respondents filed their motion for extension of time to file comment dated 20 and 19 July 2000, respectively.

77. *The Committee takes note of this information. However, it profoundly regrets that over five years have elapsed since the first Order for Reinstatement of around 1,500 TSEU leaders and members was issued (27 October 1995) and that three years have elapsed since the Supreme Court handed down a decision (12 December 1997) ordering the immediate reinstatement, without exception, of all the TSEU workers concerned. In this respect, the Committee once again reminds the Government that it is responsible for preventing all acts of anti-union discrimination and that cases concerning anti-union discrimination should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of trade union leaders and members dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 738 and 749]. The Committee therefore urges the Government to guarantee expeditious and effective protection against acts of anti-union discrimination and insists that it make every effort to ensure that the approximately 1,500 TSEU leaders and members who were dismissed further to their participation in strike action in September 1995 are reinstated immediately in their jobs under the same terms and conditions prevailing prior to the strike with compensation for lost jobs and benefits. The Committee requests the Government to keep it informed of developments in this regard.*

Case No. 1618 (United Kingdom)

78. At its March 2000 meeting, the Committee noted the Government's intention to draft regulations later in the year under the powers granted by the 1999 Employment Relations Act to prohibit the compilation, dissemination and use of lists recording individuals' trade union membership or activities [see 320th Report, paras. 70-72].
79. In a communication dated 15 September 2000, the Government indicated its intention to consult publicly on the regulations to be introduced under this power later this year.
80. *The Committee takes due note of this information and requests the Government to continue to keep it informed of any further developments.*

Case No. 1959 (United Kingdom/Bermuda)

81. The Committee last examined this case at its March 2000 meeting when it requested the Government to keep it informed of any further developments as concerns its commitment to including management persons within the scope of the provisions of the 1998 Trade Union Amendment Act and as concerns any measures taken to provide for further protection against any eventual employer intimidation or interference in respect of the procedures for union certification or de-certification [see 320th Report, paras. 784-801].
82. In a communication dated 15 September 2000, the Government of Bermuda informed the Committee that the 1998 Trade Union Amendment Act has now come into force after consultation with the social partners and following concerns expressed by the unions that certain added protections afforded by the Act were not yet in place due to its non-effective status. At the same time, the Government gave a further undertaking to continue, in consultation with the social partners, to find a workable solution to the question of the inclusion of middle managers within the scope of the Act.
83. *The Committee takes due note of this information and requests the Government to continue to keep it informed of any further developments.*

Case No. 1994 (Senegal)

84. During its last examination of this case at its November 1999 meeting concerning a labour dispute within the National Electricity Company of Senegal (SENELEC), which resulted in the arrest of strikers following a general power cut that took place in July 1998 and the dismissal of many members of the Single Trade Union of Electricity Workers (SUTELEC), the Committee had requested the Government to take measures to redress the situation [see 318th Report, paras. 431-462]. In particular, it had requested the Government to keep it informed: (1) of the outcome of the negotiations held between SUTELEC and SENELEC; (2) to provide SENELEC workers with appropriate protection to compensate them for the restrictions placed on the right to strike of workers in the electricity sector; such protection might take the form of adequate, impartial and speedy conciliation and arbitration procedures; (3) to take measures to ensure that the SUTELEC union members and officials who were dismissed following incidents that took place in July 1998 were offered reinstatement in their posts without loss of pay. At its May-June 2000 meeting, the Committee on Freedom of Association once again requested the Government to keep it informed of the effect given to its recommendations in this case [see 321st Report, para. 94].
85. At the June session of the International Labour Conference, the Minister of Labour of Senegal had a meeting with the Chief of the Freedom of Association Branch of the ILO. He stated that his Government was concerned by the matter and that he himself had met with the trade union officials who had gone on strike and with the head of the enterprise concerned on several occasions. He confirmed that a process of compromise had been initiated and that he was exploring possible solutions; as soon as he had a clear picture of the direction in which the solution to the dispute was moving, he would inform the Committee of the situation.
86. *The Committee takes note of this information which emphasizes the developments to be expected within the framework of the transition towards democracy. The Committee reminds the Government of the importance of adopting measures including compensatory guarantees for workers in the electricity sector whose right to strike is limited. It once again requests the Government to obtain the reinstatement in their posts of the SUTELEC union activists and officials who were dismissed following the labour dispute of July 1998. It requests the Government to keep it informed of measures taken in this respect.*

Case No. 1581 (Thailand)

87. The Committee last examined this case at its March 2000 meeting when it had noted with interest that the State Enterprise Labour Relations Bill had been passed by both the Senate and the House of Representatives on 16 February 2000 and was awaiting the King's assent. The Committee had trusted that this new legislation would fully restore the right to organize and to bargain collectively to state enterprise employees and had requested the Government to transmit a copy of the SELRA which had been adopted by Parliament. It had further requested the Government to keep it informed of developments concerning the necessary accompanying amendment to the Labour Relations Act [see 320th Report, paras. 82-85].
88. In communications dated 22 May and 23 August 2000, the Government indicates that, on 23 March 2000, the King gave royal assent to and signed the SELRA which entered into force on 8 April 2000. The Government further states that this new legislation, which provides for the right of state enterprise employees to form a labour union and to bargain collectively, will be transmitted to the Office as soon as translation thereof is completed.

89. As regards the required accompanying amendment to the Labour Relations Act which applies to the private sector, the Government points out that, on 1 December 1999, the Cabinet approved the draft amendment to this Act proposed by the Ministry of Labour and Social Welfare (MOLSW) and forwarded it to the Office of the Council of State for scrutiny. If the State Council approves the said draft amendment, it will be resubmitted to the Cabinet before being sent to Parliament for consideration. Finally, the Government indicates that the key issues to be amended in the Labour Relations Act include the following: encouraging the establishment as well as strength and legitimacy of employer and employee organizations; strengthening bipartism by urging employers and employees to take part in joint consultation and cooperation so as to prevent and resolve labour disputes; encouraging employers and employees to use voluntary arbitration; and expanding the role of organizations of employers and employees in the settlement of labour disputes.
90. *The Committee takes due note of this information. It once again trusts that the SELRA restores fully the right to organize and to bargain collectively to state enterprise employees and looks forward to receiving a copy of this Act as soon as translation thereof is completed. Moreover, the Committee requests the Government to keep it informed of developments concerning the accompanying amendment to the Labour Relations Act.*

Case No. 1977 (Togo)

91. At its meeting in March 2000 [see 320th Report, paras. 86-88], the Committee asked the Government to keep it informed of any new developments in this case, which concerns the failure to issue an acknowledgement for the by-laws of the *Force ouvrière togolaise* (FOT) since 1995. In a communication dated 27 July 2000, the Government explains that, in the absence of the FOT General Secretary who left Togo two years ago, the organization did not reply to an invitation, made to its Deputy General Secretary in a letter dated 11 November 1999, to file the by-laws once again with the Ministry of the Interior.
92. *The Committee notes this information. However, it reminds the Government that in ratifying Convention No. 87, it undertook to guarantee the right of workers to establish and join organizations of their own choosing without prior authorization, subject only to the rules of those organizations, and the right of those organizations to establish and join federations, in accordance with Articles 2, 5 and 6 of the Convention. The Committee therefore requests the Government to repeal the legislation under which the Minister of the Interior is empowered to issue or withhold an acknowledgement that the by-laws of trade union organizations have been filed, in recognition of the right of workers to establish a trade union and the right of trade unions to form federations or confederations without prior authorization of the Ministry of the Interior, in order to bring that legislation into conformity with the Convention on these fundamental points. The Committee draws this aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

Case No. 2018 (Ukraine)

93. At its June 2000 meeting, the Committee examined this case, which concerned among other things allegations of anti-union harassment, violations of the right to strike, physical threats and judicial proceedings against the president of the union [see 321st Report, paras. 83-90]. On that occasion, the Committee: (a) expressed its regret that the Government had not ordered a new inquiry by an independent body on the allegations of pressures on trade union members by management with the aim of forcing them to leave the union, reiterated its request on this aspect of the case, and asked to be kept informed of developments; (b) asked the Government to ensure that the functions carried by the port young workers'

association did not encroach on the normal activities of trade union organizations; (c) reminded the Government that ports do not constitute essential services in the strict sense of the term, where strikes might be completely prohibited, and asked to be kept informed of legislative amendments in this regard; and (d) urged the Government to ensure that the criminal proceedings against the president of the complainant trade union be carried out with diligence and requested to be kept informed of developments.

94. In its communication of 16 August 2000, the Government underlines that the National Council on Social Partnership and the National Mediation and Conciliation Service, whose presidents participated in the inquiry on the alleged pressures against trade union members, and which concluded that there were no instances of such pressure, are two independent bodies which are not related to the executive authorities. The Government therefore considers it inappropriate to carry out further inquiries into this matter. *Whilst taking note of this information, the Committee recalls that, in order to have an industrial relations system which all social partners – workers and employers alike – can trust, it is of utmost importance that bodies called upon to make decisions which can affect the functioning, if not the very existence of organizations, should not only be independent but also be seen as truly independent by all those concerned.*
95. The Government confirms that the activities of the port young workers' association include youth work, and the organization of sports, excursions and leisure for young people. As a social organization, established in accordance with the Act on citizen's associations, it does not assume the functions of trade unions. The Government adds that authorities are prohibited from interfering in the activities of citizens' associations. *The Committee takes note of this information. Recalling the guarantees established in this respect by Article 2 of Convention No. 98, the Committee trusts that the Government will take all appropriate measures to ensure that the functions carried out by the port young workers' association do not encroach on the normal activities of trade union organizations, including those related to strike.*
96. The Government states that the strike of 7 September 1998 was declared illegal primarily because the trade union had violated the legal provisions on the settlement of labour disputes, and not because of a violation of section 8 of the Act prohibiting strikes in the ports sector. The Government adds that the Ministry of Transport is currently drafting amendments to the Transport Act, including provisions on strikes in that sector, and that it will send additional information once the Supreme Council has made a decision. *The Committee takes note of this information. It requests the Government to provide it as soon as possible with the amendments to the Transport Act, and reminds the Government of the possibility of ILO's technical assistance in this regard, preferably before the adoption of said amendments.*
97. The Government recalls that detailed information on the criminal proceedings against the trade union leaders was given in its previous communication, and adds that under section 7 of the Act respecting the Public Prosecutor's Office, the authorities are prohibited from giving any instructions to the Public Prosecutor on the outcome of cases before it. *The Committee takes note of this information. It recalls that trade union leaders, like anyone else, should benefit from normal judiciary proceedings and that respect for due process of law should not preclude the possibility of a fair and rapid trial. The Committee therefore urges the Government, once again, to ensure that the criminal proceedings against the president of the complainant trade union be carried out with diligence and requests to be kept informed of developments.*

Case No. 1952 (Venezuela)

- 98.** In its previous examination of the case in November 1999, the Committee requested the Government to inform it about the discussions that were taking place on the payment of wage arrears to trade union officials and members of SINPROBOM who had been dismissed (and subsequently reinstated) as a result of collective action [see 318th Report, para. 88].
- 99.** In communications dated 6 and 18 October and 22 December 1999, SINPROBOM states that the recognition of the promotions due to the firemen who are trade union officials and members of the abovementioned organization has yet to be resolved as only six promotions have taken place. SINPROBOM understands that the resources are being arranged to repay the wage arrears of its trade union officials but it requests the Committee to remain vigilant and call for information from the Government.
- 100.** In a communication dated 4 May 2000, the Government sent a copy of general orders Nos. 001-00 and 002-00 signed by the commander-in-chief of the Eastern Fire Brigade, concerning the promotions of the firemen belonging to SINPROBOM, including the members of the executive committee of SINPROBOM. The total number of promotions is 124.
- 101.** *The Committee notes the Government's information that 124 firemen have been promoted. Nevertheless, the Committee observes that the Government has not sent information relating to the matter of the effective payment of the wage arrears of the firemen corresponding to the period during which they were dismissed and asks it to provide some information in this respect.*

Case No. 1993 (Venezuela)

- 102.** In its previous examination of the case in November 1999, the Committee made the following recommendations concerning the pending allegations [see 318th Report, para. 595]:
- The Committee requests the Government to endeavour to promote the negotiation of a collective agreement between the Trade Union of Public Employees of the Venezuelan Scientific Research Institute (SEPIVIC) and the Venezuelan Scientific Research Institute (IVIC) and to keep it informed in this regard.
 - As regards the allegation concerning the delay in issuing a ruling on the appeal lodged by the SEPIVIC against the administrative decision of September 1998 ordering termination of the bargaining process between the trade union and the IVIC, the Committee deplores the time that has elapsed without a decision being issued by the authorities and trusts that a ruling will be handed down on this appeal in the very near future. The Committee requests the Government to keep it informed of the final decision of the administrative authorities in this respect.
 - The Committee invites the complainant to furnish comments in respect of the new Regulations under the Organic Labour Act of 20 January 1999 which regulate collective bargaining in the public sector.
- 103.** In a communication dated April 1999, the SEPIVIC indicated that the Ministry of Labour had not yet handed down a ruling on the appeal it had lodged.
- 104.** In a communication dated 4 May 2000, the Government sent a copy of the ruling dated 4 April 2000 in which the Minister of Labour (responsible official) declared the appeal

lodged by the trade union SEPIVIC to be valid and urged the parties involved to begin the discussions relating to the draft collective agreement.

105. *The Committee takes note of the administrative ruling dated 4 April 2000 which urges the parties to begin the discussions relating to the draft collective agreement and requests the Government to keep it informed of the results of negotiations. The Committee observes that the complainant organization has not provided any comments in respect of the new Regulations under the Organic Labour Act (which regulate collective bargaining in the public sector) despite having been invited to do so, and it will therefore not continue its examination into this matter.*

Case No. 1937 (Zimbabwe)

106. The Committee last examined this case at its meeting in March 2000 when it once again urged the Government to amend sections 98, 99, 100, 106 and 107 of the Labour Relations Act so as to ensure that compulsory arbitration may only be imposed with respect to essential services and in cases of acute national crisis. Furthermore, the Committee trusted that the final judgement in respect of the workers dismissed from Standard Chartered Bank would be rendered in the near future and that these workers would be promptly reinstated without loss of salary or benefits and requested the Government to transmit a copy of the Supreme Court judgement as soon as it was handed down [see 320th Report, paras. 93-96].
107. In a communication dated 29 August 2000, the Government indicates that the Supreme Court heard the case concerning the workers dismissed from Standard Chartered Bank in July 2000, but that it has not yet rendered its decision. The Government states that it will abide by the ruling and that it will furnish a copy of the Supreme Court's judgement as soon as it is rendered.
108. The Government transmitted the Supreme Court judgement in a communication dated 26 September. The judgement sets aside the Appeals Board and Labour Relations Tribunal judgement which had called for the reinstatement of the Standard Chartered Bank workers. While agreeing that the proceedings of the Disciplinary Committee which had dismissed the workers were fatally flawed, the Supreme Court ordered a new Disciplinary Committee to be properly constituted so as to determine the case on its merits, placing the dismissed workers in the position they were in prior to the initial hearing.
109. *The Committee notes with deep regret that the 211 workers dismissed from Standard Chartered Bank over three years ago for the exercise of legitimate trade union activity are still caught in an entangled and protracted legal struggle to obtain reinstatement. While noting that these workers are now obliged to await yet a further decision by a disciplinary committee, the Committee must recall that the information made available to it from the initial complaint and the Government's reply clearly indicates that these workers were dismissed for having gone on strike. The Committee must therefore recall that the dismissal of workers because of a legitimate strike constitutes discrimination in employment [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 704].*
110. *Furthermore, an excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [see **Digest**, op. cit., para. 749]. The Committee therefore urges the Government to take the necessary measures to ensure that these workers are reinstated pending the conclusions of the Disciplinary Committee and trusts that the above principles will be borne in mind by the Disciplinary Committee so that all those workers who were dismissed for the exercise of legitimate trade union*

activity are fully reinstated in their jobs as soon as possible without loss of salary or benefits. It requests the Government to keep it informed in this regard.

- 111.** As concerns its other recommendation to amend the provisions of the Labour Relations Act which provide for compulsory arbitration, the Committee deeply regrets that the Government has still not supplied any information on the measures taken or envisaged in this regard. The Committee urges the Government to take the necessary measures to amend the relevant sections of the Labour Relations Act in the very near future and once again recalls that ILO technical assistance is available to facilitate a review and revision of the Act should the Government so desire. It requests the Government to keep it informed of any measures taken to amend the Labour Relations Act.

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- 112.** Finally, as regards Cases Nos. 1512/1539 (Guatemala), 1769 (Russian Federation), 1785 (Poland), 1796 (Peru), 1813 (Peru), 1843 (Sudan), 1884 (Swaziland), 1895 (Venezuela), 1925 (Colombia), 1938 (Croatia), 1939 (Argentina), 1944 (Peru), 1954 (Côte d'Ivoire), 1967 (Panama), 1972 (Poland), 1978 (Gabon), 1996 (Uganda), 1998 (Bangladesh), 2004 (Peru), 2005 (Central African Republic), 2007 (Bolivia), 2008 (Guatemala), 2009 (Mauritius), 2019 (Swaziland), 2027 (Zimbabwe), 2031 (China) and 2056 (Central African Republic), the Committee requests the governments concerned to keep it informed of any developments relating to these cases. It hopes that these governments will quickly provide the information requested. In addition, the Committee has just received information concerning Cases Nos. 1698 (New Zealand), 1849 (Belarus), 1942 (China/Hong Kong Special Administrative Region), 1964 (Colombia), 1966 (Costa Rica), 1987 (El Salvador), 2024 (Costa Rica), 2030 (Costa Rica) and 2038 (Ukraine) which it will examine at its next meeting.

CASE No. 1953

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

**Complaint against the Government of Argentina
presented by
the Congress of Argentine Workers (CTA)**

***Allegations: Acts of anti-union discrimination;
revocation of a federation's registration in the
registry of trade union associations***

- 113.** The Committee examined this case most recently at its meeting in March 2000 and submitted an interim report [see 320th Report, paras. 98-122, approved by the Governing Body at its 277th Session (March 2000)]. The Government sent its observations in communications dated 11 May and 10 August 2000.
- 114.** Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

115. In its previous examination of the case, considering allegations relating to dismissals or transfers of trade union leaders and the revocation of the trade union registration of a federation, the Committee made the following recommendations [see 320th Report, para. 122]:

- The Committee requests the Government to inform it of the final decision concerning the dismissal of the trade union leader, Mr. Marcelo Fabián Martín (reinstated for the time being under a protective measure).
- The Committee requests the Government to send its observations concerning the dismissal or transfer between 1992 and 1996 of the following trade union leaders from the province of Salta (some of whom were from the municipality of General Güemes), whose proceedings have not yet been concluded: Carlos Alberto Ibarra, Hugo Miguel Quispe, Rubén Antonio Saravia, Juana Isnardez de Ruiz, Reynaldo Eduardo Pistan, Ramona Escobar de Gutiérrez, Juan Carlos Valdez, Miguel Angel Vittor, Ricardo Armiñana Dohorman and Héctor Luis Cruz.
- The Committee requests the Government to ensure that the administrative authority withdraws its appeal against the decision of the first instance judicial authority which ordered the trade union registration of the FETERA trade union, and to keep it informed of any decision or ruling adopted with respect to this case.

B. The Government's reply

116. In its communication dated 10 August 2000 the Government states, with respect to the Committee's recommendations concerning the request to ensure that the administrative authority would withdraw the appeal against the decision of the judicial authority which ordered the trade union registration of the FETERA trade union, that the appeal lodged before the Supreme Court of Justice against the first instance ruling handed down in this case by the National Labour Appeal Court was rejected as being inadmissible, and the appealed decision was consequently upheld.

117. As regards the recommendation in which the Committee asks to be informed of the final decision concerning the dismissal of the trade union leader Mr. Marcelo Fabián Martín, the Government states that the case file was temporarily withdrawn from the court by Mr. Martín's legal representative, with the protective measure previously ordered remaining in force and with the judicial proceedings being paralysed as a result. The Government indicates that until the legal proceedings are returned by the complainant's legal representative, and the action prosecuted by the parties, it is procedurally impossible to hand down a ruling.

118. As regards the Committee's recommendation concerning the dismissal or transfer of workers of the provincial and municipal public administration of Salta, the Government states the following:

- Vittor, Miguel Angel: this person was working in the Provincial Institute for Urban Development and Housing; he subsequently resigned from his position with that body, with effect on 1 August 1986, through Decision No. 065/86 of the IPDUV. On the payroll of the Banco Macro SA.
- Cruz, Héctor Luis: joined the management of the Highway Administration of Salta on 18 June 1987, working there as a panel beater until 7 March 1996, when he joined the

Programme for the Reorganization of Provincial and Municipal Public Employment, by Decree No. 435/96; this programme was established by Provincial Act No. 6820 in the framework of the Reform of the Provincial State. For the year he remained in the programme the official received the corresponding monthly remuneration, as well as the compensation stipulated in article 18 of the above Act. Mr. Cruz initiated legal action against the province before the Administrative Court of First Instance with the legal proceedings “*Cruz, Hector Luis v. the management of the Highway Administration of Salta and/or the province of Salta under summary proceedings of trade union protection*”, Case No. 1771/98. The judgement handed down in this court was appealed against before the Court of Justice of the province of Salta, with no decision having yet been handed down.

C. The Committee’s conclusions

- 119.** *As regards its request for the final decision concerning the dismissal of the trade union leader Mr. Marcelo Fabián Martín (who had been reinstated in his job provisionally under a protective measure), the Committee notes the Government’s statement that the judicial process is paralysed – with the protective measure remaining in force – given that the case file was temporarily withdrawn from the court by Mr. Martín’s legal representative and that until it is returned and the action prosecuted by the parties it is procedurally impossible to hand down a ruling. In these circumstances, the Committee notes that the judicial process has been temporarily paralysed but that it may be reactivated. If the process is reactivated, the Committee once again asks the Government to keep it informed of the final outcome of the judicial proceedings.*
- 120.** *With respect to the dismissal or transfer of a number of trade union leaders from the province of Salta between 1992 and 1996, the Committee notes that the Government states the following: (1) Mr. Miguel Angel Vittor: resigned from his position with the Provincial Institute for Urban Development and Housing and is currently working for Banco Macro SA; and (2) Mr. Héctor Luis Cruz: was working for the management of the Highway Administration of Salta and on 7 March 1996 joined the Programme for the Reorganization of Provincial and Municipal Public Employment, having received for the year that he was in that programme the corresponding monthly remuneration and the compensation stipulated. Mr. Cruz lodged a judicial appeal for trade union protection and the judgement of first instance was appealed against before the Court of Justice of the province of Salta. To date no further judgement has been handed down. The Committee asks the Government to send it a copy of the judgement of first instance concerning the dismissal of the trade union leader Mr. Héctor Luis Cruz and to inform it of the final judgement handed down. Lastly, while it regrets that the Government has not sent its observations concerning the situation of the proceedings relating to the other trade union leaders (Carlos Alberto Ibarra, Hugo Miguel Quispe, Rubén Antonio Saravia, Juana Isnardez de Ruiz, Reynaldo Eduardo Pistan, Ramona Escobar de Gutiérrez, Juan Carlos Valdez and Ricardo Armiñana Dormán), the Committee asks it to keep it informed of the outcome.*
- 121.** *Concerning the appeal lodged against the decision of the judicial authority which ordered the trade union registration of the Federation of Energy Workers of the Argentine Republic (FETERA), the Committee notes that the Supreme Court of Justice has rejected the appeal in question and that FETERA has been registered.*

The Committee’s recommendations

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

- (a) *The Committee once again requests the Government if the case is reactivated to keep it informed of the final outcome of the judicial proceedings relating to the dismissal of the trade union leader Mr. Marcelo Fabián Martín (reinstated in his job provisionally under a protective measure).*
- (b) *The Committee requests the Government to send it a copy of the judgement of first instance concerning the dismissal of the trade union leader Mr. Héctor Luis Cruz from the province of Salta and to inform it of the final judgement handed down.*
- (c) *The Committee requests the Government to keep it informed of the outcome of the proceedings relating to the dismissal or transfer of the following trade union leaders: Carlos Alberto Ibarra, Hugo Miguel Quispe, Rubén Antonio Saravia, Juana Isnardez de Ruiz, Reynaldo Eduardo Pistan, Ramona Escobar de Gutiérrez, Juan Carlos Valdez and Ricardo Armiñana Dormán.*

CASE No. 2045

DEFINITIVE REPORT

**Complaint against the Government of Argentina
presented by
the Trade Union of Newspaper and Magazine Vendors
of the Federal Capital and Greater Buenos Aires (SIVENDIA)**

***Allegations: Ministerial resolution restricting the rights to
unionization and collective bargaining***

- 123.** The complaint appears in a communication of August 1999 from the Trade Union of Newspaper and Magazine Vendors of the Federal Capital and Greater Buenos Aires (SIVENDIA). The Government sent its observations in a communication dated 28 April 2000.
- 124.** 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

- 125.** In its communication of August 1999, the Trade Union of Newspaper and Magazine Vendors of the Federal Capital and Greater Buenos Aires (SIVENDIA) states that pursuant to resolution No. 416/99 issued by the Ministry of the Economy and Works and Public Services of the nation, the activity of newspaper and magazine vendors is now considered a commercial activity, contrary to the legislative tradition and the de facto elements whereby the State had recognized this activity as a form of labour. Thus this resolution is a flagrant infringement of the labour rights of the vendors of newspapers, magazines and similar publications, the right to unionization and to free and voluntary negotiation of the conditions of employment in the sector. The complainant adds that the sale of newspapers and magazines is regulated by Legislative Decree No. 24095/45, ratified by Act No. 12921 and the supplementary resolutions of the Ministry of Labour and Social Security of the

nation and that it is clear from such standards that the activity is a form of work and not a commercial activity.

- 126.** The complainant points out that the undeniably labour nature of the activity was recognized by the State itself when it granted SIVENDIA legal personality No. 27 in 1945, in accordance with the terms and provisions set forth in the Act respecting trade union associations, for the purposes of defending and representing vendors in the newspaper and magazine sector.
- 127.** The complainant points out that transforming the labour activity of its members into a commercial activity will result in the disappearance of the activity.

B. The Government's reply

- 128.** In its communication of 28 April 2000, the Government states that the complainant lodged an appeal for protection against resolution No. 416/99. In this respect, the courts of the first and second instance ruled that the standard in question was unconstitutional and null and void since the conditions of "necessity and urgency" required for the issuing of the measure did not exist. In these circumstances, resolution No. 416/99 has no practical application of any kind, and the matter is therefore purely theoretical. In the light of the above, the Government emphasizes that there has been no violation of international Conventions since the standard which would supposedly result in such a situation was declared unconstitutional, and Legislative Decree No. 24095/45, ratified by Act No. 12921, was declared to be fully in force.

C. The Committee's conclusions

- 129.** *The Committee observes that the complainant in this case challenges resolution No. 416/99 of April 1999, issued by the Ministry of the Economy and Works and Public Services of the previous Government. According to the complainant, this resolution disregards the labour nature of the sale of newspapers and magazines and the transformation of such activity into a commercial activity, thus affecting the right to unionization and collective bargaining of workers in the sector.*
- 130.** *In this respect, the Committee takes note that the Government states that the complainant lodged an appeal for protection against resolution No. 416/99 and that in the courts of the first and second instance the judicial authorities considered the resolution to be unconstitutional and null and void, and that it therefore has no practical application. In these circumstances, the Committee believes that the case requires no further examination.*

The Committee's recommendation

- 131.** *In the light of the foregoing conclusions, the Committee invites the Governing Body to decide that this case requires no further examination.*

CASE NO. 2074

DEFINITIVE REPORT

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

- the Cameroon Workers' Trade Union Confederation (CSTC)**
- the Organization of African Trade Union Unity (OATUU) and**
- the International Confederation of Free Trade Unions (ICFTU)**

***Allegations: Discrimination against a trade union and
arbitrary detention of trade union officers***

- 132.** The complaint in this case is contained in communications of the Cameroon Workers' Trade Union Confederation (CSTC) dated 7 January and 27 March 2000. In communications dated 15 and 18 February 2000, the International Confederation of Free Trade Unions (ICFTU) and the Organization of African Trade Union Unity (OATUU), respectively, supported the CSTC's complaint.
- 133.** The Government sent its observations in a communication dated 27 April 2000.
- 134.** Cameroon has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 135.** In his communication dated 7 January 2000, the President of the CSTC, Mr. Benoît Essiga, states that from 7 to 9 April 1999 the CSTC held an extraordinary congress, one of the purposes of which was to elect its executive committee. A large number of observers were present at the congress, including some from the Ministry of Employment, Labour and Social Welfare and from the Ministry of the Interior. According to the complainant, these observers confirmed in their reports that the proceedings had taken place in the proper manner.
- 136.** However, the complainant alleges that the Minister of Employment, Labour and Social Welfare subsequently contested the results of the CSTC congress on a number of occasions. Among them, the complainant refers to tendentious statements by the Minister on state television to the effect that the CSTC did not have an executive committee, despite the fact that it had held the April 1999 congress. The complainant also states that its elected officers had been prevented from leading events during the May Day celebrations in 1999, that the CSTC was not consulted on the nomination of the Workers' delegate to the 87th Session of the International Labour Conference in June 1999, and that the CSTC was not invited to the official ceremony at which the Head of State was presented with New Year's greetings.
- 137.** The complainant states further that the Ministry of Labour took over by force a villa belonging to the CSTC and installed in it an officer of the National Independent Federation of Energy and Water Employees of Cameroon, which is not a CSTC affiliate, Mr. Abena Fouda. Lastly, the complainant alleges that three CSTC officers, including himself, were arbitrarily arrested and later released under international pressure.

B. The Government's reply

- 138.** In its communication dated 7 April 2000, the Government reiterates its position of neutrality and non-interference in the persisting leadership split within the executive bodies of the CSTC. It affirms once again that it never wanted this situation and is still waiting for a single executive committee to be formed in accordance with the Confederation's by-laws. The Government recalls that in Cameroon, over 500 trade unions organized by geographical area and sector carry out their activities freely both in enterprises and in their dealings with the administrative authorities. Moreover, the vast majority of these trade unions, whether or not they are registered, are – or claim to be – CSTC affiliates. The Government states that it is therefore incorrect to claim that trade union rights are violated in Cameroon and stresses that acts of turpitude committed by individuals or groups in order to take over the leadership of the CSTC cannot mask the fact that freedom of association prevails in the country.
- 139.** As regards the allegation of tendentious statements made by the Minister of Employment, and in particular his calling into question the executive committee of the CSTC after the April 1999 congress, the Government recalls that it had written to the Director-General of the ILO informing him of the crisis that had arisen within the CSTC and pointing out that the April 1999 congress appeared to have been the congress of only one faction of the CSTC. Despite mediation by third parties, which led to a joint communiqué by the leaders of the two factions (Mbappe/Sombes and Bakot/Essiga), the Mbappe/Sombes faction did not participate in this congress on the grounds that the rules and agreements reached in the joint communiqué had been violated, in particular those concerning the convening of delegates. The Government therefore considers that to recognize the executive committee elected at this congress as the interlocutor representing the CSTC would in fact constitute interference in this Confederation's internal affairs.
- 140.** As regards the allegation concerning the May Day celebrations in 1999, the Government affirms that Mr. Essiga and the leaders of his faction, who are the authors of this complaint, actively participated in that day's events in Yaoundé (the parade, meeting and speeches).
- 141.** As regards the allegation concerning the presentation of New Year's greetings to the Head of State, the Government considers that New Year's greetings do not come under freedom of association or trade union rights.
- 142.** As regards the occupation of the CSTC's villa, which the Government had placed at its disposal, by Mr. Abena Fouda, the President of the National Federation of Energy and Water Employees of Cameroon, a CSTC affiliate, who belongs to the rival faction headed by Mr. Mbappe and Mr. Sombes, the Government observes that this is a matter in dispute between the two factions of the CSTC and that the case has been brought before the judicial authorities. As a token of its non-interference in trade union matters, the Government points out, however, that Mr. Essiga and his supporters violently seized the premises of the CSTC, which are also state property placed at the CSTC's disposal free of charge for a number of years.
- 143.** As regards the allegations of so-called arbitrary arrest of officers of one of the factions of the CSTC, the Government explains that it resulted from acts committed by Mr. Essiga and his colleagues that come under criminal law, after the rival faction of the CSTC filed a complaint of attempted murder, aggravated robbery, threats and forcible entry perpetrated on the Secretary-General of the CSTC, Mr. Abena Fouda, who occupied the house on a regular basis.

144. Lastly, the Government states that all of the allegations in this complaint are the product of a trade union officer suffering from an illegitimacy complex, since one could point out that a parallel executive committee of the CSTC is active at the national and international levels.

C. The Committee's conclusions

145. *The Committee observes that this case concerns allegations of discrimination against a trade union and arbitrary detention of trade union officers. The Committee further notes that several of the issues raised in the complaint relate to a dispute within a trade union organization. In this respect, the Committee recalls that it examined similar allegations in Case No. 1969, concerning a complaint presented by the CSTC against the Government of Cameroon. At the time, the Committee recalled that it is not competent to make recommendations on internal dissensions within a trade union organization, so long as the Government did not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organization. While it has no competence to examine the merits of disputes within the various tendencies of a trade union, the Committee noted, however, the Government's mediation efforts in this connection and invited the Government to persevere with its efforts, in consultation with the organizations concerned, to enable the workers concerned freely to choose their representatives [see 311th Report, paras. 144 and 145].*
146. *In this case, the Committee observes that the allegations concerning statements made by the Minister of Labour to the effect that the CSTC does not have a single executive committee despite the holding of the April 1999 congress, concerning the refusal to invite the CSTC to the ceremony at which the Head of State was presented with New Year's greetings, concerning the dispute over the occupation of the CSTC's villa and the refusal to consult the CSTC in the nomination of the Workers' delegate to the 87th Session of the International Labour Conference in June 1999 are all linked to the question of the CSTC's leadership, which has been the subject of an internal dispute since the end of 1997. In this respect, the Committee notes that, once again this year, the CSTC submitted an objection to the Credentials Committee concerning the nomination of the Workers' delegate of Cameroon to the 88th Session of the International Labour Conference. At this stage, the Committee deems it appropriate to refer to the decision of the Credentials Committee of the 88th Session of the Conference. In its decision, that Committee noted the information supplied by Mr. Essiga concerning the internal conflicts existing within the CSTC since 1997 and which had led to the convening of an extraordinary congress in 1999 to try to bring together the rival factions. That congress, at which Mr. Essiga was elected President of the CSTC, was contested by the rival faction, alleging procedural irregularities, which had not been upheld by the tribunals. Therefore, though there could be doubt as to the legitimacy of the various bureaux elected since the split within the leadership of the CSTC in 1997, the Conference Committee had considered that the information made available this year was not of such a nature as to challenge the validity of the results of the 1999 congress aimed toward unity at which the Government had been represented. Nevertheless, it was also reasonable to believe, taking into account the available information, that part of the bureau of the CSTC had broken off from the confederation. The Committee had considered that conflicts of this nature, while not within its competence but rather of the relevant national authorities, had, in this particular case, bearing on the examination of the conformity of the nomination of the Workers' delegation with the provisions of the ILO Constitution. However, the Committee had decided not to uphold the CSTC's objection, trusting that the Government as well as all interested parties in the CSTC, would find the means to ensure that, in future, the nomination of the Workers' delegation to the Conference could be made in agreement with the country's most representative organization of workers in its entirety.*

147. For its part, the Committee notes that according to the information supplied by the complainant itself annexed to the complaint, the National Federation of Trade Unions of Water and Electricity Employees of Cameroon, whose President is Mr. Abena Fouda, and which according to him is a CSTC affiliate, although denied by Mr. Essiga, has some 4,500 members in 29 trade unions. This federation offered whole-hearted support for steps taken to hold a CSTC congress for unity in April 1999. However, the organization committee of the CSTC congresses of 7, 8 and 9 April 1999 refused to allow it all of the rights recognized for its affiliates. Moreover, it is clear from the information on file that the CSTC has accumulated a debt of over 16 million CFA francs to the federation of which Mr. Fouda is the President. In the light of the foregoing, the Committee finds itself obliged to reiterate its previous position, that is that it is not competent to make recommendations on allegations arising out of internal dissensions within a trade union organization so long as the Government did not intervene in a manner which might affect the exercise of trade union rights. In this respect, the Committee considers that the allegations concerning refusal of an invitation to the New Year's greetings and the sharing of the official villa between the CSTC factions contain no elements constituting violations of trade union rights. As regards the nomination of the Workers' delegate to the International Labour Conference, the Committee notes the conclusions of the Credentials Committee and considers in these circumstances that this aspect of the case does not call for further examination. In the Committee's view, only the statements of the Minister of Labour to the effect that the CSTC does not have an executive committee could constitute a form of interference and affect the normal functioning of this organization. The Committee therefore requests the Government to refrain in future from any discriminatory acts or statements which might constitute a form of interference in the internal affairs of the CSTC.
148. As regards the allegations concerning the May Day events in 1999, the Committee observes the contradictory versions given by the complainant and the Government. In these circumstances the Committee is not in a position to draw conclusions and can only recall that trade unions should have the right to organize freely whatever meetings they wish to celebrate on May Day, provided that they respect the measures taken by the authorities to ensure public order [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 135].
149. As regards the allegations of arbitrary arrest of three trade union officers of the CSTC, including Mr. Essiga himself, who were subsequently released, the Committee notes that according to the Government these arrests resulted from a complaint lodged by Mr. Abena Fouda and essentially came under criminal law. It appears from the police report of the complaint that Mr. Essiga and other CSTC officers had broken into the CSTC villa at night, breaking down the doors, and that they were armed with machetes with which they had threatened Mr. Fouda's family. However, the court of first instance of Yaoundé had ruled on 16 December 1999 that it was incompetent and instructed the parties to take proceedings in the proper court. In these circumstances, the Committee can only remind the parties to the dispute 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 authorities as a pretext for the arbitrary arrest or detention of trade unionists [see **Digest**, *op. cit.*, para. 83].

The Committee's recommendation

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

Following the statements made by the public authorities to the effect that the CSTC does not have an executive committee, the Committee requests the Government to refrain in future from any discriminatory acts or statements which might constitute a form of interference in the internal affairs of the CSTC.

CASE NO. 2073

DEFINITIVE REPORT

**Complaint against the Government of Chile
presented by
the Confederation of Banking Trade Unions (CSB)**

***Allegations: Government favouritism towards a group of
trade union officials during trade union elections***

151. The complaint is contained in a communication dated 2 February 2000 from the Confederation of Banking Trade Unions (CSB).
152. The Government sent its observations in a communication dated 9 June 2000.
153. Chile has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

154. In its communication of 2 February 2000, the Confederation of Banking Trade Unions (CSB), which is affiliated to the Single Central Organization of Chilean Workers (CUT), alleges that the Chilean authorities have disregarded the principles of freedom of association and violated Convention No. 87, to the detriment of trade union autonomy and the free election of CUT officials, in that public officials were directly involved in funding the election campaigns of certain candidates in the CUT leadership elections. The CSB supplies an official document from the Under-Secretary of Labour to the Finance Minister stating that a trade union official had referred to a commitment by the Minister to provide assistance for trade union officials on their election visits to various regions in December 1998. The document refers to nine trade union officials by name. This illicit procedure is one of a number of actions which resulted in several candidates not standing for election or withdrawing their candidatures. According to the CSB, the debate concerning the legitimacy and transparency of the election process is still continuing.

B. The Government's reply

155. In its communication of 9 June 2000, the Government states that the allegations are based on a communication dated 13 November 1998 from the Under-Secretary of Labour to the Finance Minister requesting financial assistance for travel by Christian Democrat trade union officials during the CUT elections. The Government states that the letter in question was of a purely personal nature but that, owing to an administrative error, it was sent on official stationery and that, because of its purely personal nature, it in no way implied any commitment to the use of public funds, nor did it constitute government interference in the internal affairs of trade union organizations.

- 156.** The Government states that an internal inquiry established that, during November and December 1998, the only travel in this context involved officials of the Under-Secretariat of Labour on official business, and that none of the trade union officials named in the communication referred to above undertook any trips at the expense of the Under-Secretariat. The Public Accounts Inspectorate of the Republic, a body that is independent of any state ministry, authority or department, and is responsible among other things for monitoring compliance with the Administrative Statutes, was informed of the inquiry. The Government recalls that the authority in question can carry out any inspections or inquiries that it may deem necessary and establishes the facts under investigation through administrative proceedings.
- 157.** The Government adds that on 2 August 1999, the official inspector of the Public Accounts Inspectorate took a statement under oath from the official who had been Under-Secretary of Labour in 1998, to the effect that the communication in question, which was published in *El Metropolitano* on 30 July 1999, was purely personal in nature, that no reply to it was ever received from the Finance Minister, and that no public funds were involved, nor was there any payment of travel expenses on behalf of the trade union officials named in the communication. This information was also passed on to the Chamber of Deputies on 30 December last, and the authorities at the time reiterated that public funds were not used to benefit certain trade unionists.
- 158.** The Government concludes by stating that it has been the practice of governments to encourage the autonomous development of workers' and employers' organizations in order to create a channel for social dialogue and thereby implement economic and social policies intended to bring about both economic growth and social equity.

C. The Committee's conclusions

- 159.** *The Committee notes that in the present case the complainant has alleged that public officials were directly involved in funding the election campaigns of certain candidates in the CUT elections in December 1998, in particular with regard to financial assistance for travel to different regions. The Committee notes the statements of the Government to the effect that the official document from the Under-Secretariat of Labour, on which the complainant bases its allegations, was a purely personal document which, owing to an administrative error, was sent on official stationery. The Committee also notes that according to the public accounts inspectorate of the Republic, public funds were not involved and travel expenses were not paid on behalf of the officials referred to by the complainant.*
- 160.** *While regretting the use of official stationery for personal communications on trade union matters by a government representative, the Committee considers that the case does not require further examination.*

The Committee's recommendation

- 161.** *In the light of the foregoing conclusions, the Committee invites the Governing Body to decide that this case does not require further examination.*

CASE NO. 2085

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

**Complaints against the Government of El Salvador
presented by**

- **the Trade Union Federation of Food Sector and Allied Workers (FESTSA)**
- **the Company Union of Workers of Doall Enterprises S.A. (SETDESA) and**
- **the Ministry of Education Workers' Union (ATRAMEC)**

***Allegations: Refusal to grant legal personality, violation of freedom
of association of state employees, anti-union dismissals***

- 162.** The complaints in this case are contained in communications dated 31 May 2000 from the Trade Union Federation of Food Sector and Allied Workers (FESTSA), the Ministry of Education Workers' Union (ATRAMEC) and the Company Union of Workers of Doall Enterprises S.A. (SETDESA).
- 163.** El Salvador has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 164.** In its communication of 31 May 2000 the Trade Union Federation of Food Sector and Allied Workers (FESTSA) stated that on 4 March of the same year, it held its constituent meeting with the participation of representatives of the following unions: the Company Union of Workers of Nestlé El Salvador S.A. (SETNESSA); the Company Union of Lido S.A. (SELSA); the Trade Union of Workers of the Dairy Companies Foremost S.A. (SITREFOSA); the Industrial Trade Union of Sweets and Food Pastes (SIDPA); and the Company Union of Workers of the Agency El Carmen S.A. (SETAELCA). On 29 March 2000, the Federation initiated formal proceedings to acquire legal personality, and to that end supplied a copy of its founding instrument and two copies of its by-laws, as well as a number of other documents which the competent authorities had requested, although this was not legally necessary. Despite this, the registration authority of the Ministry of Labour and Social Security informed FESTSA that it would not approve the by-laws or grant legal personality because of procedural errors, although the authorities could have overlooked these.
- 165.** In a communication of 31 May 2000, the Ministry of Education Workers' Union (ATRAMEC) alleges that since 1983 it has been trying to acquire legal personality from the Ministry of Labour and that on 24 March 2000 it established itself as a trade union in accordance with the procedure laid down in the Labour Code. On 5 April, it submitted the documents required by the Ministry for granting legal personality. Despite this, the Ministry informed the union officially on 4 May that the application was refused because, according to article 47 of the Constitution, only private workers and employers or those employed by autonomous institutions – i.e. not state employees, such as the persons listed as the constituent members of the trade union in this case – had the right to establish trade unions.
- 166.** In a communication of 31 May 2000, the Company Union of Workers of Doall Enterprises S.A. (SETDESA) alleges the dismissal by Doall Enterprises S.A. of 58 of its employees,

an action presumably intended to prevent these employees from establishing a trade union within the company. On 20 November 1999, the constituent assembly of SETDESA took place and on 22 November the founding instrument was deposited with the Ministry of Labour and Social Security, together with two copies of the union's by-laws as approved at its constituent assembly. Despite this, on 23 and 24 November, the company began selective dismissals of SETDESA members, members of their families, their associates and sympathizers. In order to obtain their salaries and redundancy payments, they were required to sign blank sheets (which were subsequently used as resignation letters). The workers in question received their wages on the 29th of the month, not the 23rd when they were actually dismissed. On 1 December 1999 the Ministry of Labour asked Doall Enterprises S.A. whether it employed the SETDESA members. The company responded by presenting the employees' letters of resignation.

167. However, under the terms of article 248 of the Labour Code, "members of trade union executive bodies that have or are in the process of acquiring legal personality may not be dismissed, except for valid reasons that have been confirmed by the competent authority". Under article 214(2) of the Labour Code, "from the date on which the founding instrument is deposited with the competent authority and until sixty days after the union in question is registered, the founder members, up to a maximum number of 35, shall enjoy the guarantees defined in section 248 of this Code". In January 2000, the Ministry of Labour decided in the light of the workers' resignations that they had no connection with the company and thus did not meet the minimum conditions needed to establish a company union; the workers appealed against this decision. In the meantime, the complainants had requested help from the Independent Monitoring Group of El Salvador (GMIES), the final instance of appeal, in establishing whether or not the founders of SETDESA had been the victims of arbitrary acts. On 10 January 2000, the Group concluded that there had de facto been repeated violations of labour and trade union rights in that the company had illegally terminated the employment of 58 workers between 28 September and 3 December 1999. Fifty-six of these individuals had ceased to work between 22 November and 3 December, one on 28 September and another on 15 November. Only one had been reinstated. Of the workers who had been dismissed, 38 were founders and officials of SETDESA. The GMIES also concluded that the company had coerced the workers into signing blank sheets (which subsequently turned out to be letters of resignation). On 10 December some of these workers received offers of reinstatement from Doall Enterprises S.A.

B. The Government's reply

168. In its reply of 24 July 2000, the Government states with regard to the supposedly unjustified refusal to grant legal personality to FESTSA, that the procedure for granting legal personality to federations is the same as the one applied to trade unions and that the complainant did not meet all the criteria: under section 258 of the Labour Code, the participation of a federation's constituent trade unions must have been agreed by each union's general assembly; each union's representatives must be officially appointed; and those representatives must be present at the constituent meeting duly accredited and authorized. These requirements in their turn presuppose the existence of official convocations and official records, so that even if these documents are not expressly required, it is still necessary to examine them in order to establish the legality of the assemblies which authorize a union's participation in the establishment of federations. The Government adds that the authorizing notary did not comply with all the requirements of section 259 of the Legal Code, under the terms of which the competent official or notary responsible for drafting the official records of the constituent assembly must record the name, address and category of each organization, the number and date of the agreement conferring legal personality and the number and volume of the official bulletin in which the union's registration entry is published. The Government concludes from this that the

Federation in question was not established in accordance with the relevant legal criteria and therefore refused to grant it legal personality.

- 169.** As regards the refusal to grant legal personality to ATRAMEC, the Government states that in accordance with article 47 of the Constitution of the Republic, private employers and workers and those in autonomous official institutions have the right to establish trade unions in accordance with section 204 of the Labour Code, which states that the following categories of persons, without distinction of nationality, sex, race, creed or political conviction, have the right to associate freely by forming professional associations or trade unions in defence of their common economic and social interests: (a) private employers and workers; and (b) workers employed by autonomous official institutions. Consequently, as stated clearly in the official decision of the Labour and Social Security Secretariat, the founders of the trade union in question are not entitled to establish such a union because they are public employees, a fact acknowledged by the founders themselves in the official records referred to above. The founders' application is thus not admissible, since public employees are prevented by law from establishing unions, and section 2 of the Labour Code clearly states that its provisions do not apply to public employees. The complaint presented by the trade union ATRAMEC, which operates only *de facto*, given that its by-laws have not been approved and it has no legal personality owing to the legal problems that have been described, is therefore based on arguments that are clearly refutable in legal terms (see following paragraphs).
- 170.** The Government states that under the terms of the Constitution of the Republic all private employers and workers, without distinction of nationality, sex, race or political conviction, and irrespective of the nature of their work or activities, have the right to associate freely in the defence of their respective interests by establishing professional associations or trade unions, in accordance with the principles of equality before the law (article 3) and of non-discrimination (ILO Convention No. 111). Employees of autonomous official institutions have the same right. If the Constitution itself states that the exercise of this right is reserved for private employers and workers, it means that workers employed in the service of the State may not exercise it. This state of affairs is justified by the fact that the State provides essential public services which must not be interrupted for any reason. Authorization to establish professional associations or trade unions of public service employees could lead to strikes, pre-empting possible examination of disputes by labour courts and tribunals (section 546 of the Labour Code). In other words, the existing public order could be jeopardized by trade unions which disregarded the Constitution and the Labour Code, the principle of lawful authority and the rule of law. The Labour Code does not authorize government employees to establish trade unions and the complaint should therefore not be based on this particular body of law. The Government states that, although the General Secretary elect of the Ministry of Education Workers' Union (ATRAMEC) refers to the official records of the constituent meeting, that document is not legally valid for the reasons already explained. It was therefore incorrect to lodge an appeal against a decision on the basis of the Constitution and the Labour Code, let alone to argue that the decision in question was arbitrary and illegal.
- 171.** As regards the allegations concerning Doall Enterprises S.A., the Government states that on 20 January 2000, the Ministry of Labour and Social Security decided not to grant legal personality to the Company Union of Workers of Doall Enterprises S.A. because the union's founders resigned from the company at 10 a.m. on 20 November 1999, which terminated the employment relationship and freed the company of any responsibility. The union's constituent assembly was held at 11 a.m. on the same day, that is, one hour after these workers had resigned from their posts. According to section 209(2) of the Labour Code, a "company union" is one established by workers who all work at the same enterprise; given the resignations referred to here, the union's founders, at the time when the union was established, no longer worked for the company and thus did not meet the

basic condition for establishing the union; for this reason, legal personality was not granted. The decision was based on the fact that a key legal requirement for establishing a trade union had not been met; it was not an attempt to deny the right of workers to establish trade unions, since on 6 March 2000 legal personality was granted to another trade union (the Company Union of Employees of Doall Enterprises) which had complied fully with all the legal requirements. On that date, the complainants and other workers at the company who were attempting to establish the union were reinstated and, if they continue to work there, will be free to establish another union, in which case, provided that the founding instrument and other documents filed comply with sections 213 and 219 of the Labour Code, the Ministry of Labour would have no objection to granting legal personality.

C. The Committee's conclusions

- 172.** *As regards the refusal to grant legal personality to the Trade Union Federation of Food Sector and Allied Workers (FESTSA), which was established on 4 March 2000 and comprised five trade unions, the Committee notes that according to the Government, the Federation did not comply with legal requirements (sections 258 and 259 of the Labour Code) when it was constituted; under the law, each union must have official convocations and records (for examination), and a notary or competent official must draft an official record of proceedings of the constituent assembly indicating the name, address and category of each organization involved, the number and date of the agreement granting legal personality, and the number and volume of the official bulletin in which the registration entry is published. The Committee deeply regrets that, given that the problem arose from procedural errors which could easily have been rectified, the authorities did not attempt to obtain the further documentation or information required by asking the founders of the Federation to rectify procedural anomalies found in the constituent document within a reasonable period. The Committee recalls 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 [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 248], and requests the Government to keep it informed of any follow-up to a renewed application by FESTSA for legal personality.*
- 173.** *With regard to the refusal to grant legal personality to the Ministry of Education Workers' Union (ATRAMEC) in May 2000, the Committee notes that according to the Government, the Constitution of the Republic grants the right of association to workers in the private sector and to those employed in autonomous official institutions, but not to workers employed in the service of the State (public service and government employees), since the State provides essential services which must not be interrupted for any reason. The Committee is bound to emphasize that the denial of the right of association of public service employees to establish unions is an extremely serious violation of the most elementary principles of freedom of association. Consequently, the Committee urges the Government as a matter of urgency to ensure that the national legislation of El Salvador is amended in such a way that it recognizes the right of association of public service employees, with the sole possible exception of the armed forces and the police.*
- 174.** *With regard to the complaint by the Company Union of Workers of Doall Enterprises S.A. (SETDESA), the Committee notes the Government's statements to the effect that: (1) the union of SETDESA was not granted legal personality because one hour before the foundation of the union the founders themselves had resigned in writing; (2) the workers who had attempted to establish the union were subsequently reinstated and may, if they so wish, establish another union; and (3) on 6 March 2000, other workers established a different union which was granted legal personality. The Committee notes that the Government has not sent its observations on the allegations that the resignations of the*

SETDESA founders were the result of coercion by company representatives to sign blank sheets of paper. Under these circumstances, the Committee feels it has no choice but to conclude that the company attempted to block the establishment of SETDESA. Given that the founders were able subsequently to rejoin the company and that the Government states that they can establish another union if they so wish, the Committee will confine itself to expressing its profound regret at the anti-union acts of discrimination and interference on the part of the company and to drawing the attention of the founders of SETDESA to the fact that they may, if they so wish, make further attempts to obtain legal personality for this union.

The Committee's recommendations

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

- (a) With regard to the refusal by the Ministry of Labour and Social Security to grant legal personality to the Trade Union Federation of Food Sector and Allied Workers (FESTSA), the Committee, while deeply regretting the fact that the authorities did not ask the founders to rectify any procedural errors within a reasonable period, requests the Government to keep it informed of any follow-up to the renewed application by FESTSA for legal personality.*
- (b) The Committee urges the Government as a matter of urgency to ensure that national legislation is amended so that it recognizes the right of association of workers employed in the service of the State, with the sole possible exception of the armed forces and the police.*

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***

- 176.** The Committee previously examined the substance of this case at its November 1997, June 1998, June 1999 and May-June 2000 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; 321st Report, paras. 220-236].
- 177.** The Government has provided some information in a communication dated 16 May 2000, which the Committee could not take into account at its June session in view of its late arrival, and updated observations in a communication dated 24 October 2000.
- 178.** 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

179. During 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 on several occasions its grave concern with respect 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.

180. At its June 2000 session, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

- (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 as soon as possible 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 once again 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, 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 I), 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.

B. The Government's new observations

181. In its communication of 16 May 2000, the Government explains the historical context of teachers' unionization in Ethiopia, starting with the foundation of the Teachers' Union in 1949, then the Ethiopian Teachers' Association (ETA) in 1964, which obtained legal recognition (Registration No. 25) on 20 December 1968 for an indefinite period, and functioned as such at the national level. Following the overthrow of the Derg regime and in order to reorganize the Association, a new ETA coordinating committee regrouping all the teachers residing in Addis Ababa and environs was created. In February 1993, Dr. Taye Woldesmiate was elected as head of the ETA Executive Committee. During that period, the governmental structure was restructured along settlement patterns of nationalities, a move which was opposed by some, but not all, members of the ETA Executive Committee. As a result, the relations both within the Association, and between the Association and the Government began to sour, with divergent positions in terms both of teachers' rights and benefits, and political viewpoints. These increasingly wide differences between the so-called "liberals" (roughly, teachers and their representatives residing and working in the regions, who endorsed the structure adopted by the Government) and the "conservatives" (roughly, the ETA Executive Committee led by Dr. Woldesmiate). These were the very differences which led to the ensuing disputes between rival factions and, ultimately, to the court proceedings.

182. In that context, the "liberals" organized themselves in every region through ad hoc regional committees and, in June 1993, elected a new Executive Committee. This new Executive was registered and given legal recognition, as the new Ethiopian Teachers' Association, by the Ministry of Interior which revoked at the same time the previous registration, considering that the Association had been dissolved and replaced by a new one. The court seized with this issue decided in December 1994 that this was a problem to be solved by the General Assembly of the Association, in accordance with its by-laws. On that basis, the "liberals" elected a new Executive Committee (led by Mr. Ato Yeshivwas Admassu) at a general assembly held in October 1995, following which the new Executive Committee applied to the Federal Court to obtain the transfer of union property and assets.

183. Following a series of court decisions on the issue of property and assets transfer (the various judiciary proceedings had started back in 1993) the Federal Court directed the

Commercial Bank of Ethiopia, in August 1997, to transfer the bank assets to the new Executive Committee, as the only legally recognized body, which the Bank did. As the two executive committees have filed an appeal and a counter-appeal, respectively in August 1997 and May 1998, against the Federal Court order, this matter, which involves complex factual and legal issues (described at some length in the Government's replies) is still pending before the Federal High Court. It is therefore improper to conclude, as the Freedom of Association Committee did, that the bank account and other assets have been transferred to the new Executive Committee under instructions from the Government.

184. As regards the teachers allegedly dismissed from Addis Ababa University, the Government indicates that the University was restructured under Ministerial Regulation No. 113/85 and a new University Board appointed. The Board took a few measures, including appointing the President and Vice-President of the University, and instituted the obligation for academic staff to sign an employment contract, renewable every two years. As a result:

- the contracts of some 40 teachers were not renewed;
- the contracts of eight other teachers who had reached pensionable age were renewed for various periods and they were pensioned off, effective 9 April 1993. The individuals concerned are: Messrs. Worku Tefera Damtew, Tadesse Beyene Hiwot, Sheferaw Agonafir Zerfu, Asrat Woldeyes Altaye, Seifu Metaferia Firew, Taye Mekuria Betamno, Asfaw Desta Mersha, Hailu Araia Woldegebriel);
- another group of 32 teachers filed a lawsuit against the University for wrongful dismissal, requesting reinstatement and/or compensation. The Court of Region 14 rejected the reinstatement demand but granted the compensation requested, i.e. nine months' salary to each plaintiff. This decision was subsequently confirmed by the Federal Court of First Instance on 8 January 1997, and implemented. The individuals concerned are: Messrs. Ayenew Edjigu, Ayele Tirfe, Mekonnen Bishaw, Messay Kebede, Taye Assefa, Alemeyehu Haile, Befekadu Degfe, Mekonnen Delgassa, Sebhat Mersetsehazen, Admassu Gebeyehu, Taye Wolde Semayat, Tsehay Berhaneselassie, Tesfaye Shewaye, Mukuria Mamo, Akililu Tadesse, Fekadu Shewakena, Berhanu Bankashe, Hulunante Abatye, Lelaem Berhane, Ayele Tarekegne, Mindaralew Zewde, Fisseha Zewide, Aynalem Ashebir. The University has indicated that throughout all these proceedings, the question of ETA membership was never raised. The Government therefore submits that the details of Annexes I and II mentioned in the previous decision of the Freedom of Association Committee are groundless.

185. As regards the other teachers allegedly dismissed on account of their ETA membership, the Government states that the details presented in this respect by the Freedom of Association Committee are groundless, since some of these teachers are still working, some are pensioned off and some are not alive, as listed in the following table:

| | Full name | Area where they used to live | Present condition |
|-----|------------------------|------------------------------|---|
| 1. | Ato Muligetta W/Kirkos | E/Shewa Nazareth | Pensioned off |
| 2. | Ato Alula Abegaz | E/Shewa Nazareth | Deceased |
| 3. | Ato Solomon Wondwossen | Addis Ababa | Working at the Commercial Bank having been transferred |
| 4. | Ato Befakadu Firde | Addis Ababa | Pensioned off. Has passed away; his family has received benefit from the mutual aid fund of the association |
| 5. | Ato Mohammed Seid | Nazareth | Still teaching |
| 6. | Ato Bekele Mengistu | Bale Goba | Teaching at the Batu Mountain Senior Secondary Comprehensive School |
| 7. | Ato Thomas Egzi | Jimma | Working as the head of the Bench Maji Zone Cultural Department |
| 8. | Ato Solomon Girma | Jimma | Teaching at the Agaro Senior Secondary School |
| 9. | Genene H/Selassie | Asosa | Teaching at the Assela Senior Secondary Comprehensive School |
| 10. | Ato Moges Tadesse | Assela | Teaching at the Assela Senior Secondary Comprehensive School |
| 11. | Ato Mohammed Hussein | Assela | Teaching at the Assela Senior Secondary Comprehensive School |
| 12. | Ato Ashenafi Legebo | Assela | Working at the Southern People's National Regional State having been transferred |
| 13. | Ato Endalkachew Molla | Dessie | Working at a private business establishment in Addis Ababa |
| 14. | Ato Melese Taye | Goba | Transferred to Nazareth and was working there. Has been pensioned off |
| 15. | Ato Demeke Seifu | Asebe Teferi | Teaching at the Asebe Teferi Senior Secondary School |
| 16. | Ato Womdimu Bekele | Asebe Teferi | Teaching having been transferred to the Amhara region |
| 17. | Ato Solomon Tesfaye | Asebe Teferi | Working in Dire Dawa having been transferred |
| 18. | Ato Zewdu Teshome | Asebe Teferi | Still working |
| 19. | Ato Girma Tolossa | Asebe Teferi | Working at the Meisso town |
| 20. | Ato Tesfaye Daba | Ambo | Still working |
| 21. | Ato Workneh Dinsa | Nikempte | Still working |
| 22. | Ato Duana Kefege | Ambo | Pensioned off. Currently working with the Abebech Gobena Children village |
| 23. | Ato Woldeyesus Mengesh | Ambo | Pensioned off. Currently working with the Abebech Gobena Children Village |
| 24. | Ato Tamrat Daba | Ambo | Working at the Addis Alem Senior Secondary School |
| 25. | Ato Fata Sori | Ambo | Still working |
| 26. | Ato Legesse Lechisa | Ambo | Still working |
| 27. | Ato Admassu W/Yesus | Bale/Robi | Pensioned off |
| 28. | Ato Mohammed Umer | Dessie | Has left work on his volition |
| 29. | Ato Solomon H/Selassie | Dessie | Still working |
| 30. | Ato Mekonnen Dawud | Dessie | Still teaching at the Hote Senior Secondary School |
| 31. | Ato Sisay Mitiku | Dessie | Director, Kombolcha Junior Secondary School |
| 32. | Ato Shuke Desalegn | Jimma | Still teaching at the Jimma Senior Secondary Comprehensive School |

- 186.** Concerning the introduction of the new evaluation system, the Government indicates that the previous system had been shown to be among the main causes for the low quality of education in Ethiopia, along with the methods of recruitment, training, deployment and management of teachers. The new evaluation system includes the following aspects: teaching capability and qualifications; capacity to evaluate and develop the curriculum; capacity to follow and build the character of students; work relations and cooperation demonstrated at school, with parents and the community; efforts made to improve qualifications, to share experience with others and to learn from them; dedication for the profession, participation and activities to develop democratic principles. The teachers participate in mutual evaluation, as well as students, parents and the community, since this is a transparent procedure. Membership in ETA is not part of the evaluation. The comments made by the Freedom of Association Committee in this respect are therefore not quite proper.
- 187.** As regards the alleged failure to establish a constructive working relationship with ETA, the Government states that it had no choice but to accept the decision made by the General Assembly of ETA, which has elected a new executive, with whom it has indeed established such a constructive relationship, as the only legitimate representative body of ETA.
- 188.** Concerning the harassment and detention of ETA leaders and members, the Government indicates that the incident concerning Messrs. Abate Angore, Awoke Mulugeta and Shimalis Zewdie occurred in September 1998, when the Federal High Court ordered the impounding of ETA building and other properties. As they refused to cooperate, the police had a warrant issued against them for obstructing implementation of the Court's order and contempt of court. They were arrested and detained for one month, not because of their ETA membership, but for obstructing the execution of a court order.
- 189.** As regards Dr. Taye Woldesmiate, the Government indicates that Dr. Woldesmiate and his five co-accused were found guilty by the Federal High Court of conspiring to overthrow the State on the following grounds: establishing the Ethiopian National Patriotic Front; formulating short- and long-term plans to overthrow the State; drawing up lists of individuals (high government officials) and organizations (economic, military, security and police institutions) they considered as targets; recruiting persons with military training; purchasing weapons. These charges were proved through witnesses, documents, exhibits and technical information, and the accused found guilty in accordance with the Code of Criminal Procedure (a copy of the Federal High Court decision is attached to the Government's communication of 24 October 2000) as follows:
- Dr. Taye Woldesmiate: 15 years of rigorous imprisonment (he failed to appeal within the statutory period of limitation and is serving his sentence);
 - Mr. Ato Tsadik Mariam: 13 years of rigorous imprisonment;
 - Lt. Chane Tale: ten years of rigorous imprisonment;
 - Mr. Talegeta Leul (Dagne) Mariam: eight years of rigorous imprisonment;
 - Captain Moges Assefa: eight years of rigorous imprisonment;
 - the sixth defendant, Mr. Ato Kebede Desta, is deceased.
- 190.** The Government mentions that it has no right to interfere in the works or the decisions of the courts. In addition, the Government states that the recommendations made in this respect by the Freedom of Association Committee, i.e. to release individuals, like

Dr. Taye, who have engaged in terrorist activities and caused great danger for the security of the country and its citizens will have no acceptance either from the standpoint of law or morality. This surely blemishes the work of the Committee.

- 191.** Attached to the communication of 24 October is a document containing the Government's related observations on the comments and recommendations made in June 2000 by the Conference Committee on the Application of Standards. The Government indicates in substance that, taking into account the evolution resulting from globalization, the need has been felt in the country to review existing laws and regulations, including Labour Proclamation No. 42/93, so that they would reflect recent developments. Accordingly, numerous amendments were submitted, with tripartite input, to the Council of Ministers, which decided however that the law as a whole should be revised. The Ministry is therefore organizing a tripartite workshop, with the participation of the ILO office in Addis Ababa, so that all relevant matters, including the recommendations made by the Conference Committee, for example on the right of civil servants to organize, may be reviewed comprehensively.

C. The Committee's conclusions

- 192.** *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; killing of trade unionists; arrest, detention, harassment, dismissal and transfer of ETA members and officials. The Committee also underlines that all these events took place in a context of bitter inter-union rivalry, which complicated the matter further and no doubt exacerbated tensions, leading among others to numerous judicial proceedings being launched by the two executive committees, both claiming to be the truly representative organization of Ethiopian teachers. In such situations, the Committee has consistently recalled the importance it attaches to the resolution of 1952 concerning the independence of the trade union movement, has urged governments to refrain from showing favouritism towards, or discriminating against, any given trade union, and has requested them to adopt a neutral attitude in its dealings with organizations, so that they are all placed on an equal footing [see **Digest of decisions and principles of the Committee on Freedom of Association**, 4th edition, 1996, para. 305].*

Trial and sentencing of Dr. Woldesmiate and his co-accused

- 193.** *The Committee reiterates its deep concern that Dr. Woldesmiate and his co-accused were found guilty of conspiring to overthrow the State and have received extremely heavy sentences, ranging from eight to 15 years of "rigorous imprisonment". 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. 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]. Whilst noting the judgement of the Federal High Court and the Government's explanation that the accused were found guilty in accordance with the Code of Criminal Procedure, the Committee considers on balance that there still exists serious misgivings as to the regularity of the trial and of the proceedings leading to it, irregularities which were discussed again in the Conference Committee on the Application of Standards at its June 2000 meeting; the*

Committee notes, in relation to this, the unchallenged allegation made during that debate, that an Ethiopian judge who had raised the question of the independence of the judicial system had been dismissed.

Transfer of property and assets

- 194.** *The Committee notes the information provided by the Government in this respect, and in particular that several proceedings have been instituted by both executive committees about ownership of said assets, in a context which involves not only legal issues, but numerous and complex factual ones as well. The Committee requests the Government to keep it informed of developments in the situation and to provide it with the final judgement of the Federal High Court, as soon as it has been issued.*

Introduction of the evaluation system

- 195.** *The Committee takes note of the replies of the Government to its previous request on this subject. While noting the explanations given on the rationale for the introduction of the new evaluation system, and on the decision made by the Government to establish a working relationship with the new Executive of ETA, the Committee urges the Government to ensure that the introduction of the evaluation system for teachers not be used as a pretext for anti-union discrimination, and to inform it of progress in this regard.*

Measures (dismissals and detentions) taken against ETA members

- 196.** *The Committee takes note of the partial information provided in this respect, including the Government's statement that the details mentioned in Annex I (ETA members purportedly dismissed) and Annex II (ETA members allegedly detained for their active participation in ETA activities) of its previous decision are groundless. While the Committee reiterates its previous conclusions and recommendations on these aspects of the case – i.e. to reinstate dismissed workers and leaders if they so wish, and to ensure that all detained or charged ETA members be released and that charges against them be withdrawn – it is mindful that their implementation could raise serious difficulties as there are contradictions between the information provided by the complainant organizations and the Government on the names and current status of ETA members. This may be due in part to the fact that most of these events took place a long time ago but, as a result, the Committee is not in a position, on the basis of the available information, to identify those individuals whom the complainant organizations, at this juncture, considers as being still aggrieved by the Government's actions. The Committee invites complainants EI and ETA to provide it with a list of those individuals.*
- 197.** *The Committee notes the information provided by the Government concerning the arrest and detention of Messrs. Abate Angore, Awoke Mulugeta and Shimalis Zewdie in relation to the impounding of ETA building and other properties.*

Absence of reply on other pending issues

- 198.** *The Committee notes that the Government has not provided information or observations on the killing of Mr. Assefa Maru [see 321st Report, para. 225(i)], and requests it, once again, to provide said information and observations.*

General concluding remarks

199. *In a broader perspective, the Committee wishes to underline that the trade union situation in Ethiopia in general has been discussed several times during the last eight years by the Conference Committee on the Application of Standards, and that the teachers' and ETA's case in particular have been discussed during three consecutive years by the Conference Committee, which expressed its deep concern at the trade union situation in Ethiopia [ILC 1998, Provisional Record No. 18, pp. 91-93; ILC 1999, Provisional Record No. 23, pp. 109-112; ILC 2000, Provisional Record No. 23, pp. 73-76]. Taking into account the lengthy period elapsed since the filing of this complaint, the gravity of allegations, the seriousness of this situation as attested by the various interventions of the supervisory bodies, as well as the stated willingness of the Government to make progress, including the latest initiative related to a comprehensive review of the labour legislation, the Committee urges the Government to reconsider the whole situation, with a view to taking a fresh and global look at all the pending issues and working towards their early resolution. On a related point, the Committee emphasizes, in view of the criticism made by the Government of its earlier conclusions and recommendations, that the whole object of the special procedure on freedom of association is not to blame or punish anyone, but rather to engage into a constructive tripartite dialogue to promote respect for trade union rights in law and in fact. The Committee recalls in this respect that the Government may avail itself of the ILO's technical assistance.*

The Committee's recommendations

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

- (a) Considering that serious doubts still persist as to whether all the guarantees of due process were afforded to Dr. Woldesmiate and his five co-accused, the Committee requests once again the Government to keep it informed of developments in the situation, in particular as regards any measures taken to release them.*
- (b) The Committee requests the Government to keep it informed of developments concerning the transfer of ETA property and assets, and to provide it with the final judgement of the Federal High Court, as soon as it has been issued.*
- (c) The Committee urges the Government to ensure that the introduction of the evaluation system for teachers is not used as a pretext for anti-union discrimination, and to inform it of progress in this regard.*
- (d) The Committee requests 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. The Committee invites the complainant organizations to provide updated information on workers still considered as aggrieved by the Government's actions.*
- (e) 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. The Committee invites the complainant organizations to provide updated information on those workers still concerned by these measures.

- (f) *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.*
- (g) *Taking into account the lengthy period that has elapsed since the filing of this complaint, the seriousness of the situation as attested by the repeated interventions of the various supervisory bodies, as well as the Government's stated willingness to make progress, the Committee urges the Government to reconsider the whole situation, with a view to taking a fresh and global look at all the pending issues and working towards their early resolution, and recalls that the Government may avail itself for these purposes of the ILO's technical assistance.*

CASE No. 2028

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

**Complaint against the Government of Gabon
presented by
the Gabonese Confederation of Free Trade Unions (CGSL)**

Allegations: Arrest and detention of a trade union member

- 201.** In a communication dated 21 May 1999, the Gabonese Confederation of Free Trade Unions (CGSL) submitted a complaint of violations of freedom of association against the Government of Gabon. The Government transmitted its observations in a communication dated 28 April 2000.
- 202.** Gabon 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

- 203.** In its communication of 21 May 1999, the CGSL explains that, following the unfair dismissals of Ms. Oyane and Mr. Nkwaghe, two workers employed by the Rougier-Ivindo enterprise, they both contacted Mr. Jean-Rémy Nguelany, the CGSL representative in the province of Ogové-Ivindo. Mr. Nguelany initiated a procedure for compensation with the Provincial Labour Inspectorate of Boové after Ms. Oyane and Mr. Nkwaghe had paid CGSL membership fees amounting to CFA francs 7,000.

- 204.** Following delays caused by the absence of the Boové labour inspector for health reasons, the CGSL representative decided to transfer the case file himself to the provincial labour directorate of Makokou. For this purpose, the CGSL representative was paid the travel costs involved in submitting the files, amounting to CFA francs 15,000 paid by Ms. Oyane and Mr. Nkwaghe.
- 205.** On his return from sick leave, the competent labour inspector decided, on the pretext of not having appreciated the action of the CGSL representative, to recover the files lodged by the latter with the head of the provincial labour department on the grounds that the CGSL representative was not competent to handle a problem relating to labour legislation. Seeing that time was passing without the problem of their unfair dismissal being solved, Ms. Oyane and Mr. Nkwaghe contacted the labour inspector, who encouraged them to lodge a complaint with the Makokou court against the CGSL representative for the embezzlement of CFA francs 7,000 and 15,000 (approximately US\$40). After he had been questioned by the public prosecutor's office, an investigation was opened against the CGSL representative for embezzlement. The latter was placed in preventive custody without trial for four months. He lodged an application for release on bail but this was refused. His case was finally dismissed by the court and he was released, but only after four months' imprisonment.
- 206.** On the basis of the foregoing, the CGSL considers that the labour inspector was deliberately over-zealous in order to harm the CGSL representative and reiterates the fact that, during his four months' imprisonment, the CGSL representative was deprived of his salary.

B. The Government's reply

- 207.** In its communication dated 28 April 2000, the Government does not dispute in any way the facts leading to the lodging of the complaint, but adds a few clarifications. Firstly, the Government points out that, following its inquiries, it appears that Ms. Oyane was not employed by the Rougier-Ivindo enterprise but by an individual who was himself employed by that company. As for Mr. Nkwaghe, the latter is said to have stated himself that he has never worked for Rougier-Ivindo.
- 208.** Secondly, the Government points out that the written statement by Ms. Oyane, which was certified by Boové town hall, in which she maintains that the labour inspector disapproved of the procedure undertaken by the CGSL representative and therefore encouraged her to bring a charge against the latter for embezzlement, was categorically rejected by the party concerned. In addition, the Government affirms that the imprisonment of Mr. Nguelany occurred on grounds of embezzlement and not as a result of his union activity.
- 209.** Lastly, the Government states that on 10 May 1999 the CGSL submitted a complaint to the office of the Labour Minister against the labour inspector, Mr. Mba Evouna, for having instigated the imprisonment of its member, Mr. Nguelany. However, the Government deplors the fact that before exhausting domestic remedies and obtaining a reply from the Labour Ministry, the CGSL referred the case to the ILO, and the Government considers this to be contrary to the promotion of social dialogue in the country.

C. The Committee's conclusions

- 210.** *The Committee notes that this case concerns allegations of arrest and detention of a CGSL union representative for four months. The Committee observes that the facts leading to the submission of the complaint are not disputed by the Government, even though the latter makes certain reservations. In particular, the Government states that the labour inspector,*

Mr. Mba Evouna, categorically denied that the charge of embezzlement had been brought by Ms. Oyane against the CGSL representative on his recommendation. However, the Committee observes from Ms Oyane's written statement, which was certified by Boové town hall and transmitted by the Government, that she affirms that Mr. Mba Evouna strongly urged Ms. Oyane and Mr. Nkwaghe to bring a charge against the CGSL representative for embezzlement of the sums paid for CGSL membership and travel to Makokou. Ms. Oyane concludes her written statement by severely censuring the improper conduct of the Boové labour inspector.

- 211.** *The Committee observes that the CGSL representative was kept in preventive detention for four months without trial, after the charge was filed. In addition, the Committee observes that the request for release on bail of the CGSL representative was refused. Finally, the Committee notes the judgement of the court of first instance of Makokou, transmitted by the Government and the complainant, which declares the charge of embezzlement against the CGSL representative, Mr. Nguelany, to be unfounded and dismisses the case. In his judgement, the judge of first instance declares in particular that, as a trade unionist and member of CGSL, Mr. Nguelany was entitled to act as a link between employees and the labour inspector, that he had indeed submitted the files of his union members to the provincial labour department and that he had not undertaken any fraudulent action to embezzle money from Ms. Oyane and Mr. Nkwaghe.*
- 212.** *On the basis of the foregoing, the Committee strongly deplores the arrest and detention for four months of the CGSL representative, Mr. Nguelany. The Committee strongly emphasizes that the arrest of trade union leaders against whom no charge is brought involves restrictions on freedom of association, and governments should adopt measures for issuing appropriate instructions to prevent the danger involved for trade union activities by such arrests. Furthermore, it is also clear that such arrests create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities. The Committee also recalls that preventive detention should be limited to very short periods of time intended solely to facilitate the course of a judicial inquiry. Lastly, it is one of the fundamental rights of the individual that a detained person should be brought without delay before the appropriate judge and, in the case of unionists, freedom from arbitrary arrest and detention and the right to a fair and rapid trial are among the civil liberties which should be ensured by the authorities in order to guarantee the normal exercise of trade union rights [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 80, 87 and 94]. The Committee urges the Government to respect these principles in future and asks it to take the necessary steps to ensure that Mr. Nguelany is duly compensated by the authorities for the loss of his salary during preventive detention, and requests the Government to keep it informed in this regard. With regard to the Government's statement in which it deplored the fact that the complainant referred the case to the ILO before exhausting domestic remedies, the Committee recalls that although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures. (Paragraph 33 of the Procedures of the Committee on Freedom of Association.)*

The Committee's recommendation

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

Recalling that the arrest of trade unionists against whom no charge is brought involves serious restrictions on freedom of association, the

Committee urges the Government to take the necessary steps to ensure that Mr. Nguelany is duly compensated by the authorities for his loss of salary during preventive detention and requests the Government to keep it informed in this regard.

CASE No. 1960

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

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

*Allegations: Mass dismissals in violation of a collective agreement;
acts of violence and threats against trade unionists; trade unionists
prevented from accessing banana plantations*

- 214.** The Committee examined this case for the second time at its November 1999 meeting as part of the follow-up to the effect given to its recommendations [see 318th Report, paras. 57-62, adopted by the Governing Body at its 276th meeting (November 1999)].
- 215.** The International Confederation of Free Trade Unions (ICFTU) which had previously presented new allegations in a communication dated 22 October 1999 submitted further allegations and information in communications dated 24 November and 2 December 1999. The Government presented its observations in communications dated 6 January, 25 February, 4, 17 and 24 May and 26 October 2000.
- 216.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 217.** The allegations pending refer to the dismissal of hundreds of workers from the Mopá, Panorama, Alabama and Arizona banana plantations in the context of a conflict between the SITRABI trade union and the Bandegua enterprise, which was marked by violent acts, declarations that strikes were illegal, violations of collective agreements and criminal proceedings instigated by the employers. At its November 1999 meeting, the Committee formulated the following conclusions and recommendations [see 318th Report, para. 62]:

The Committee takes note of the development recorded in the dispute surrounding the Mopá and Panorama plantations and hopes that the parties involved, with assistance from the authorities if appropriate, can rapidly find a permanent solution. With regard to the second recommendation, the Committee notes with interest the legal recognition of the workers' unions of the Alabama and Arizona plantations. Finally, concerning the dismissal of the workers at the Alabama and Arizona plantations (more than 500 workers according to the complainant) and the criminal proceedings started by the employers, the Committee takes note of the negotiations arranged by the authorities with the parties in connection with the dismissals and observes that, according to the Government's reply, reinstatement of the workers is not feasible because it has been judged inadmissible by the courts through their declaration that the strike was illegal and since the plantations are no longer functioning as productive

enterprises. The Committee requests the Government to send it a copy of the ruling that the strike in the Alabama and Arizona plantations was illegal and to inform it of the progress of the criminal proceedings instigated by the employers. The Committee further requests the Government to immediately send its observations on the latest information communicated by the ICFTU in a communication dated 22 October 1999.

B. New allegations by the complainant

218. In its communication of 22 October 1999, the International Confederation of Free Trade Unions (ICFTU) states that since 27 September 1999 the Izabal Banana Workers' Trade Union (SITRABI) has been beset by problems as the Bandegua enterprise, a subsidiary of the Del Monte multinational, decided on that date to dismiss 918 workers in violation of the Collective Agreement on Working Conditions which was in force between the enterprise and the trade union.

219. Faced with this situation, the trade union requested the intervention of the Ministry of Labour to try and reach an agreement with the employer. During the meetings held at the Ministry, the trade union put forward various solutions which entailed greater efforts on the part of the workers for the same pay. It further mentioned that SITRABI had already made concessions as a result of the problems caused in the plantations by Hurricane Mitch, which meant inter alia that its workers had forgone a salary increase to which they had been entitled under the collective agreement. The enterprise did not make concessions, arguing on the contrary that it had to maintain the unjustified dismissal order owing to problems attributable to the Government, which was charging it fees for port services that were never rendered and was pursuing various legal cases against it.

220. In response the trade union, invoking a clause in the collective agreement, requested unpaid leave of ten days to assemble before the enterprise's offices and to demand that it meet its obligations and reinstate the dismissed workers. From that moment, Bandegua began a campaign against the trade union. It appealed to the Chamber of Commerce of Morales, Izabal, for help, accusing SITRABI of closing down its operations in Guatemala. According to Mr. Carlos Castro, President of the Chamber of Commerce of Morales, the Chamber could not permit such a situation to prevail, and so it began dangerous and criminal acts against the trade union and its leaders:

- On 13 October 1999, Mr. Marel Martínez, General Secretary of the trade union, was threatened at gunpoint and violently taken from his home to the SITRABI headquarters, where he was forced against his will to carry out acts aimed at destroying the trade union.
- With 200 heavily armed, hostile persons having nothing to do with the trade union present, Mr. Martínez's life was threatened as a means of forcing the rest of the Executive of the trade union and of the Bobos branch plantations, a Bandegua holding, to come to the headquarters. If they failed to do so he was told he would be killed.
- Once the members of the trade union Executive gathered, the abovementioned Mr. Castro, speaking on behalf of the Chamber of Commerce, said that the Chamber would not permit Bandegua to close down because of the trade union, and ordered them to resign from it. Another person who was notorious in the area and who was heavily armed crudely pointed out in no uncertain terms that the problem would disappear if he killed the trade union leaders.

- The trade union leaders Marel Martínez and Enrique Villeda were then brought against their will to the *Radio Banana Stereo* radio station and forced to broadcast a message to all the workers of the Bandegua enterprise to the effect that the labour problem stemming from the dismissal of the 918 workers from the Bobos branch plantations had been resolved through an agreement with the Chamber of Commerce of the Municipality of Morales. All the workers of the Motagua branch were therefore to turn up for work on 14 October 1999 at 6.00 a.m., and the workers of the Bobos branch plantations were to collect their severance pay and leave the plantations where they were working. The entire message was sent under the threat of death.
- Following the radio message, they were forced to sign documents drawn up and legalized by a notary who himself was told what to do under threats, whereby they resigned from the Executive and from the Bandegua enterprise.
- On 13 October, at about 4.00 p.m., Mr. Teodoro Jiménez Falla, who held a management post in the Bandegua administration, met various persons who were responsible for the above incidents. It may thus be assumed that the enterprise was no innocent bystander in these criminal acts.
- The incidents occurred between 6.00 p.m. on Wednesday, 13 October, and 2.00 a.m. on Thursday, 14 October, at the union headquarters located about 400 metres from the National Civil Police station, without the police intervening or even approaching to enquire as to what was happening. This substantiates suspicion of complicity on their part.
- Lastly, five trade union leaders of SITRABI and CUSG (the Trade Union Confederation of Guatemala) (Marel Martínez (General Secretary of the trade union and secretary for agricultural affairs of the CUSG); Jorge Agustín Palma Romero (SITRABI secretary of organization); Leonel McIntosh (SITRABI secretary for relations); Oscar Leonel Guerra Evans (general secretary of the SITRABI branch); and Angel Enrique Villeda Aldana (SITRABI and CUSG disputes secretary)), were forced with their families to leave their homes in the Municipality of Morales, bringing to 28 the number of people who are currently housed in a hotel in Guatemala City because they fear for their lives after having received threats. They have had to request the protection of the United Nations Verification Mission in Guatemala (MINUGUA) and of the national Office of the Human Rights Procurator.

221. In its communication of 24 November 1999, the ICFTU states that the Ministry of Labour has taken some measures that it considers positive; nonetheless, they are not sufficient to resolve the problem. It has done the following: made public its recognition of the fact that the trade union leaders were forced to resign; provided lodging for the trade union leaders and their families; and initiated proceedings against the Bandegua enterprise for violation of the Labour Code and the collective agreement which was in force. Despite these measures, the labour dispute has not been resolved, and the 918 illegally dismissed workers have still not been reinstated. On the contrary, the enterprise is implementing a new method of managing the plantations with national producers, lowering wages and eliminating benefits which workers had achieved through collective bargaining. Eviction proceedings have been initiated against workers and trade union leaders who are still awaiting the decision of the Labour Court concerning the legitimacy of the dismissals. What is more, the enterprise has set up a guard post to deny SITRABI trade union leaders access to the plantations. The ICFTU emphasizes that the Izabal Labour Court has not dealt with Cases Nos. 67-99 brought by SITRABI and requesting the reinstatement of the 918 dismissed workers in accordance with the law, which further complicates the resolution of the problem through the courts. In addition, the Government of the United States has notified the Guatemalan authorities of its concern for this case, stating that if it

was not resolved in a manner consistent with a State governed by the rule of law it would suspend the benefits of the General System of Preferences.

- 222.** In its communications of 2 December 1999 and 16 February 2000, the ICFTU states that the Government Procurator's Office had requested arrest warrants for Messrs. Jorge Antonio Salguero, Julio César Rodríguez Sagastume, Obdulio, Edwin and Haroldo Mendoza Mata, Carlos and Luis Castro, Mario Alvarez (father) and Mario Alvarez (son), who were some of the members of the group responsible for the death threats, the abductions and forced resignations of five trade union leaders from the SITRABI Executive and 22 constituent trade union leaders from their trade union functions and from their posts at the Bandegua enterprise, a subsidiary of Del Monte. In this case there is abundant evidence to which reference is made by the Government Procurator's Office to indicate that various crimes have been committed, the most serious of which is abduction and forcibly detaining a person in order to force the victim to do things against that person's will. Depending on the circumstances, this crime can even be punishable by the death penalty. Yet for no explainable reason, instead of issuing arrest warrants, the Judge of the First Instance Criminal Court of Puerto Barrios, Izabal, merely charged the defendants with the offence of coercion and freed them on a bail of 5,000 quetzals, thus demonstrating the level of impunity in the country. The offenders maintained a public disinformation campaign in an attempt to distort the facts, to give the impression that no criminal acts took place and that, on the contrary, the trade union leaders resigned of their own free will.
- 223.** The ICFTU states that the decision taken by Mr. Miguel Hidalgo Quiroa in his capacity as judge of the First Instance Criminal Court of Puerto Barrios, Izabal, to allow those charged with committing offences against the STRABI trade union leaders to go free was challenged by the Government Procurator's Office and that to date the matter has not been dealt with in accordance with the law and thus the persons who violated the rights of the workers continue to be free. Since the file has not been sent to the Sixth Chamber of the Court of Criminal Appeals, the case is paralysed and those responsible for the crimes have not been tried. Furthermore, there is a new judge of the First Instance Criminal Court of Puerto Barrios, Izabal, whose name is Eddy Cáceres, who is responsible for the fact that the case has been unlawfully paralysed, thus benefiting the authors of the offences. Furthermore, the Government Procurator's Office has requested that warrants of arrest be issued against other persons involved in these crimes. The warrants for their arrest have already been issued; however, the persons have not been arrested because the police has not received the respective orders, since the judge Eddy Cáceres has unlawfully paralysed the proceedings. It is not correct to say that the Government Procurator's Office only made charges of coercion since it also brought other charges involving the crimes of threats, abduction and unlawful detention. The Government Procurator has pointed out that the Government Procurator's Office will continue to act according to the law, although it is also afraid since each time it attends a hearing, in addition to the trade union, a group of between 12 and 15 heavily-armed persons arrives to await the ruling of the judge in the waiting room of the court. In addition to these persons, there is another group which waits outside the court, inside expensive cars with tinted windows and cellular telephones. It is assumed that the occupants of the vehicles also have large-calibre guns.
- 224.** According to the ICFTU, workers falsely representing themselves as union members are accusing the trade union leaders of mismanagement of union funds and of committing offences, and are calling for their right to travel abroad to be withdrawn. Although the trade union leaders are able to show that they have properly managed the trade union funds and have submitted their records for the appropriate supervision, in the circumstances, with the corruption of the Izabal criminal judge, they could be sent to prison for acts they have not committed and could be killed while incarcerated.

225. The ICFTU further alleges that the trade union leader Gumersindo Loyo Martínez, who was receiving medical treatment for a traffic accident at the Guatemalan Social Security Institute, was forced to stop his medical treatment and leave the town of Morales out of fear for his life, after being threatened by Mr. Obdulio Mendoza Mata (one of those responsible for the abduction of the SITRABI trade union leaders). The same Mr. Obdulio Mendoza Mata also went to the home of a son of Marel Martínez (one of the SITRABI trade union leaders) named Amilcar Martínez Ortiz, but did not find him; later the abovementioned trade union leader was sought by armed men in his workplace. He had to flee, and moved to another city to protect his life and physical safety.
226. In the opinion of the ICFTU, the Government has minimized the problem in statements to the press, reducing it to a labour dispute between SITRABI and the Bandegua enterprise and concealing a criminal act, which strengthens the impunity of the offenders.

C. The Government's reply

227. In its communication of 6 January 2000, the Government states that the conflict referred to by the ICFTU began as a result of the dismissal on 27 September 1999 of 897 workers from three plantations run by the Bandegua company. According to a statement later made by the Ministry of Labour and Social Security, with this mass dismissal, Bandegua violated the Collective Agreement on Working Conditions which was in force between the enterprise and the trade union.
228. On 28 September 1999, the Executive of the SITRABI requested the intervention of the Ministry of Labour and Social Security to facilitate a dialogue between the enterprise and the trade union so as to reach a mutually acceptable solution. On the instructions of the President of the Republic, the Minister of Agriculture also took part as a facilitator. On 29 September the first meeting was held between the enterprise and the trade union in the presence of the Minister and the Vice-Minister of Labour and the Vice-Minister of Agriculture. On 11 October, the workers requested a pause in the negotiations. They called for a demonstration to be held on 14 October in the town of Morales, Izabal, and announced that they would block traffic on the Atlantic highway. The Ministry of Labour asked that they keep up the dialogue and refrain from resorting to de facto measures. For its part, the Bandegua enterprise let it be known to the population of Morales that if the problems which had been occurring for some time with the trade union were not resolved it would close down its operations in the area. On the night of 13 October, according to the complaint by the trade union leaders, in the trade union headquarters, a large group of inhabitants of Morales, armed with guns, forced the trade union leadership to resign from their union posts and from their jobs with the enterprise as a way of resolving the problem and preventing the enterprise from withdrawing from the area. On 17 October, two trade union leaders came to the National Civil Police substation in Morales to denounce the conditions in which they were forced to resign. That same day, the National Civil Police transferred the complaint to the Government Procurator's Office in Izabal, as required by law.
229. According to the Government, an inquiry was begun as soon as the facts were known in the capital. The SITRABI Executive pointed out that as long as its main executives were not in the capital with sufficient guarantees of protection, it could not provide the names of the persons responsible for the events of that Wednesday night, as they feared for their personal safety. The National Civil Police assisted the trade union leaders, in accordance with their wishes, to move to the capital. The Ministry of Labour declared that the resignations were invalid if they were made under duress, and called upon both parties to resume their dialogue. On 18 October, representatives of the trade union leadership met the Vice-Minister of the Interior to report on the coercion and threats, but without providing the names of those presumed responsible for the criminal acts. The same day, the General

Labour Inspector filed a complaint against Bandegua with the Sixth Labour and Social Welfare Judge of the First Economic Zone for mass dismissals carried out in violation of the Collective Agreement on Working Conditions.

- 230.** On 19 October, the Ministry of Labour, together with the Ministry of Agriculture, held a press conference and issued a press release, informing the press of the incident and the Government's position. Since the press did not provide coverage of the Ministry's press release, on 23 October it was published in paid advertising space. The same day, Bandegua published a statement in paid space in which it denied that it had anything to do with the events of 13 October in Morales and stated that if it were proven that the denunciations were obtained illicitly it would not consider them valid. The Ministry of Labour received a communication from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) in which the organization expressed its gratitude for the Government's stance.
- 231.** The dialogue between the trade union and the enterprise resumed on 25 October, at the headquarters of the Ministry of Labour. The union presented a list of eight demands in which it accused Bandegua of responsibility for the incidents and requested the reinstatement of all the dismissed workers. The enterprise said it would reply on 27 October, on which date it rejected the assertions made by the union and stated that it would not be able to resume operations in the plantations affected by the dispute. The Minister of Labour pointed out that such an approach would cast doubt on the real will of the enterprise to find a solution to the labour problem and that it contradicted the enterprise's statement of 23 October that it was well disposed to begin negotiations with the union in good faith. For that reason, he considered that there was no sense in continuing the dialogue fostered by the Ministry, as long as the enterprise made no practicable proposals. The union took a similar position, pointing out that the position of the enterprise blocked the conclusion of an agreement.
- 232.** The Government adds that the executives of the SITRABI who moved to the capital asked for government assistance for lodging and security for themselves and their families. The Ministry of Labour immediately provided them with lodging as from 27 October, and the National Civil Police has provided them with round-the-clock protection since that date. On the same day the inhabitants of Morales published a press release in paid space in which they claimed to justify the action taken on 13 October.
- 233.** On 28 October the SITRABI trade union leaders handed over to the Director General of the National Civil Police and to detectives from the Criminal Investigation Section (SIC) a copy of the list of presumed perpetrators, which they had previously given to the national Office of the Human Rights Procurator. The same day, the United Nations Verification Mission in Guatemala (MINUGUA) issued a press release in which it called the incidents in Morales grave crimes, recognized that they did not reflect the state of labour relations in the country and pointed out that it was "first and foremost up to the Government Procurator's Office and subsequently the Judicial Body to act immediately and effectively to ensure the credibility of institutions". On 29 October, the National Civil Police transferred the relevant information to the Government Procurator's Office, which was responsible for directing the criminal investigation. The same day, the Government Procurator's Office sent two special investigators to Morales to investigate the details of the incidents involving death threats and intimidation as related by the SITRABI trade union and which had led 22 trade unionists to resign.
- 234.** On Thursday, 4 November, the Government issued a press release in which it provided information on all the actions taken to resolve the problem, and stated that it agreed with the opinion expressed by the MINUGUA in its press release of 28 October.

- 235.** On 11 November the head of the Government Procurator's Office informed the Ministry of Labour that he had requested the Second Court of First Instance (Criminal) of the Department of Izabal to arrest ten persons presumed responsible for the threats and coercion. That court called upon the accused to file statements on Thursday, 25 November. On 24 November the Government, through the Ministry of Labour, issued a press release providing information on the progress of the investigation and stating that it "expects the judicial authorities to deal with the case with absolute adherence to the law, so that the acts which occurred will not go unpunished, and offers to the judicial authorities any assistance befitting the executive branch".
- 236.** The Government states that on 26 November the decision of the Second Court of First Instance (Criminal) of Izabal was handed down, bringing criminal charges for the crime of coercion against a number of persons, including Mr. Castro Castro García, who was named in the complaint presented by the ICFTU, and the following persons: Walter Obdulio Mendoza Mata, Haroldo Mendoza Mata, Luis Romero Castro, Mario Alvarez (father), Mario Alvarez (son) and Julio César Rodríguez Sagastume. The court rejected prima facie the charges of illegal detention, coercion, threats, kidnapping and aggravated unlawful entry which in the opinion of the special investigators of the Government Procurator's Office characterized the acts which occurred on the night of 13 October. The defendants were released on bail. The proceedings in the case are still under way.
- 237.** On Tuesday, 30 November the Minister and the Vice-Minister of Labour met the "Ad hoc Commission to Support and Follow Up on Strengthening of the Justice System" (which operates under the Peace Agreements) to seek support for the rapid and complete application of the law. As a result of this visit, the Commission published a statement setting out its position on the subject and requesting the judicial authorities "in hearing the cases, to analyse each in detail, given the consequences each will have for social peace and the precedent it will establish". The same day, the Government Procurator's Office lodged an appeal with the Sixth Chamber of the Court of Appeals against the decision to release without bail the two notaries who had legalized the resignations. It also contested the alternative measure (release on bail) accorded to the persons accused of the crimes of issuing threats and of coercion mentioned in the previous paragraph. On 9 December 1999 the Government Procurator's Office requested that Messrs. Teodoro Jiménez Falla, Carlos Regil Bekker, Milton Mendoza Mata, Carlos Enrique Hernández Díaz, Rogelio Arriaza, Minor Cappa Rosales, Pedro Antonio García Méndez and Samuel Mejía be detained, as the competent judge had not already done so. Days later, on 17 December 1999, the Government Procurator's Office challenged the Second Judge of the First Instance (Criminal, Drug Trafficking and Crimes against the Environment) of the Department of Izabal, as it considered that there had been delay with malicious intent and vested interests in the case, and on 21 December 1999 it: (1) lodged complaints with the Supreme Court of Justice and with the Sixth Chamber of the Court of Appeals of Zacapa for delay with malicious intent in the handling of the case by the Second Judge; and (2) challenged the Second Judge's competence to hear the case. The judge subsequently issued a decision ordering the detention of Messrs. Carlos Regil Bekker, Milton Mendoza Mata, Carlos Enrique Hernández Díaz, Rogelio Arriaza, Minor Cappa Rosales, Pedro Antonio García Méndez and Samuel Mejía. As the arrest warrant was not notified to the National Civil Police, no arrests were made. The defendant Teodoro Jiménez Falla left the country for Costa Rica. On 21 December the Second Judge notified the Government Procurator's Office of his decision to order the detention of the abovementioned defendants for the crimes of illegal detention, aggravated unlawful entry and sedition.
- 238.** On 22 December 1999 the Government Procurator's Office was informed that the two appeals challenging the lack of merit in the case of the notaries Jorge Antonio Salguero and Julio César Rodríguez Sagastume (i.e., challenging their innocence) had been accepted, but that the appeal against the release on bail of the other defendants had not. It

is still pending. The challenge by the Government Procurator's Office of the judge's competence is also still pending.

- 239.** On 29 December 1999, at the request of the SITRABI Executive, the Ministry of Labour convened a meeting between the Minister and representatives of Bandegua and the trade union. On that occasion, a review was made of the issues pending between the enterprise and the trade union, and the two parties stated their intention to continue the dialogue in order to resolve the dispute. The employer hoped for a new invitation in which the trade union representatives would put forward their claims with regard to the SITRABI executive officers affected by the incident at Morales and would take a position concerning the agreement in principle reached between Mr. Antonio Yoc of Del Monte Corporation and the IUF international trade union organization, under which Bandegua would put forward a proposal for the renegotiation of the collective agreement. The Government concludes by stating that it will inform the Committee of the outcome of the criminal and labour proceedings pending in the competent courts.
- 240.** In its communications of 25 February, 4, 17 and 24 May 2000, the Government states that after a long 19 months of fighting, on 8 February of this year, the labour dispute that started in February 1998 in the Mopá and Panorama plantations in Morales, Izabeal, was resolved. With the end of the dispute also came the legal disappearance of the Mopá and Panorama plantations, property of the company of banana growing (Bandegua), because the Fenando Bolaños enterprise rented the lands, that were renamed Panajachel one and Panajachel two plantations. At the same time, the employer allowed its 374 workers to form a union, which, in the presence of the Minister of Labour and Social Security, signed a collective agreement on conditions of work, which provides for improvements in salary, education and health. The Secretary-General of the new union of Panajachel one and Panajachel two plantations stated that the signing of the agreement demonstrates that collective bargaining can achieve better conditions for the workers. The Government states that it provided its best mediation efforts within its competence to achieve a resolution of the conflict and asks that the case be closed. As regards the Arizona and Alabama plantations, the Government states that the dismissed workers, with the support of the trade union movement, had recourse to the respective judicial bodies. An out-of-court settlement was achieved between the parties, contained in the "Final settlement agreement on the collective labour disputes which arose in the Arizona and Alabama banana plantations", signed on 7 December 1999. Within the framework of the previously mentioned agreement, of the workers involved in the dispute, 51 were to be reinstated on a permanent basis and 59 as casual workers, with the remainder being sent to other banana plantations owned by the Guatemalan Independent Banana Company (COBIGUA). For this purpose, the content of the Final settlement agreement on the labour disputes which arose in the Arizona and Alabama banana plantations was communicated to the trade union organizations and the representatives of the employers in the plantations of the Guatemalan Independent Banana Company (COBIGUA), which document was accepted and signed. At present, it has not been possible to reactivate the Arizona and Alabama plantations because of economic problems affecting the owner, but the dismissed workers are already working on other plantations pursuant to the agreement which has been signed. In a communication of 26 October 2000, the Government explains in detail the steps taken by the parties, with the help of the authorities, in particular the Ministry of Labour and Social Security, to solve the problems. The Government indicates that, on 3 October 2000, more than 500 workers out of those who worked in the three plantations reported for work. It adds that a collective agreement concerning the working conditions in these three plantations was signed on 6 October 2000.
- 241.** The Government sent a communication from the Government Procurator's Office dated 17 May 2000 which states that 23 persons have been accused of the crimes of breaking and entering, illegal detentions and coercion; others have been accused of kidnapping or

abduction. In its communication of 26 October 2000, the Government indicates that the charges have been accepted and that the public hearing will take place on 14 February 2001.

D. The Committee's conclusions

242. *The Committee observes that the allegations pending refer to: (1) the dismissal of approximately 900 workers from the Bobos branch plantations in violation of the collective agreement; (2) death threats, coercion and acts of intimidation against trade union leaders and members to force them to back down from their demands, resign from their posts and break off their trade union action; a total of five trade union leaders and 22 workers have been forced to move to Guatemala City for fear of being killed; (3) the erection of a guard post to deny SITRABI trade union leaders access to the plantations; (4) the conduct of the judge of the First Instance Criminal Court of Puerto Barrios, who instead of issuing arrest warrants against those responsible for the above acts of violence merely accused them of coercion and freed them on a bail of 5,000 quetzals; (5) the false accusation brought against SITRABI trade union leaders by a group of union members alleging offences in the handling of trade union finances (although the Committee observes that the allegations mention no involvement by the enterprise or the Government in such accusations); (6) threats made against the trade union leader Gumersindo Loyo Martínez by one of those who took part in the violent acts mentioned above in order to force him to leave his city for fear of being killed; and (7) intimidation and harassment of Mr. Amilcar Martínez Ortiz, the son of trade union leader Mr. Marel Martínez.*
243. *The Committee notes that the Government states that: (1) the dismissal of 897 workers from three plantations run by Bandegua violated the Collective Agreement on Working Conditions which was in force between the enterprise and the trade union and that the General Labour Inspector therefore filed a complaint relating to the offence with the judicial authority; (2) at the union headquarters, a large group of inhabitants of Morales, armed with guns, forced the trade union leadership to resign from their union posts and from their jobs in order to prevent the enterprise's withdrawal from the area; (3) two trade union leaders filed complaints with the national police concerning the conditions in which they were forced to resign from their trade union posts and their jobs and moved to the country's capital out of fear for their personal safety; they have been given round-the-clock protection in the capital; (4) the Bandegua enterprise denies any link with the acts of violence while the trade union accuses it of being responsible for them; (5) the criminal judicial authority brought charges against eight persons for the crime of coercion, including Mr. Carlos Castro (President of the Morales Chamber of Commerce), rejecting charges of other crimes which, in the opinion of the Government Procurator's Office, had been committed, making it possible for the accused to be set free on bail and simply releasing the two notaries who took part in the legalization of the resignation of the trade union leaders from their posts; appeals were lodged against the latter two decisions by the Government Procurator's Office, which also challenged the competence of the judge on the basis of delay with malicious intent and for vested interests in the case; (6) subsequent to the initiative taken by the Government Procurator's Office, the judge issued an arrest warrant against seven other persons for the crimes of illegal detention, aggravated unlawful entry and sedition, which could not be enforced because it was not notified to the police; the action taken by the Government Procurator's Office against the release of the two notaries has also been accepted; (7) the representatives of Bandegua and the trade union met with the Minister on the various points that are subject to dispute, and reached an agreement.*
244. *As regards the dismissal of approximately 900 workers from the plantations of the Bobos branch, the Committee observes that the complainant and the Government concur that the collective agreement in force was violated. The Committee points out the gravity of such*

mass dismissals, which have dramatic consequences for hundreds of families, and emphasizes that “agreements should be binding on the parties” [see **Digest of decisions and principles of the Committee on Freedom of Association**, 4th edition, 1996, para. 818], and that the mutual respect for the commitment undertaken in the collective agreements is an important element of the right to bargain collectively [see 308th Report, Case No. 1919 (Spain), para. 325]. However, the Committee notes that according to the Government, the dispute in the Mopá and Panorama plantations was resolved on 8 February 2000, that a collective agreement was signed and 374 workers were reinstated. As regards the dismissals at the Alabama and Arizona plantations, the Committee notes with satisfaction the out-of-court settlement between the parties (the dismissed workers with the support of the trade union movement and BANDEGUA/DEL MONTE), which was subsequently accepted by the trade union organizations, providing for the reinstatement of workers on these or other plantations. The Committee notes that, according to the Government, more than 500 workers have resumed work and a collective agreement covering this sector was signed on 6 October 2000.

245. As regards the allegations concerning the death threats, coercion and acts of intimidation to which trade unionists and trade union leaders were subjected on 13 October 1999 specifically in order to force them to resign from their posts, the Committee strongly deplores these acts of violence, which moreover forced some 30 trade unionists and trade union leaders to move to the country’s capital for fear of being killed. The Committee expresses its regret that the allegations and the Government’s reply indicate that the judge who handled these cases in the first instance has not proved impartial, and notes that the Government Procurator’s Office has taken action against him. Nonetheless, the Committee observes that 23 persons were eventually sued and accused in connection with the alleged acts, and requests the Government to communicate the judgements handed down. The Committee deplores the fact that because the judge did not communicate to the police the arrest warrant for eight of these persons, it has so far been impossible to detain them. The Committee requests the Government to take measures to establish the whereabouts of the accused persons who have fled and to keep it informed in this respect. The Committee emphasizes that the failure to punish the guilty would involve impunity which could only worsen the climate of violence, which is extremely prejudicial to the exercise of trade union rights.
246. Lastly, the Committee observes that the Government has not responded to the allegations concerning the erection of a guard post to deny SITRABI trade union leaders access to the plantations, the threats against the trade union leader Mr. Gumersindo Loyo Martínez and the intimidation and harassment of Mr. Amilcar Martínez Ortiz, the son of the trade union leader Mr. Marel Martínez. The Committee urges the Government to guarantee access to the plantations for trade union leaders and to take measures so that a judicial inquiry be conducted into such threats, intimidation and harassment, and to keep it informed in this respect.

The Committee’s recommendations

247. *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *As regards the allegations of death threats, coercion and acts of intimidation committed on 13 October 1999 against trade union leaders and trade unionists, the Committee deeply deplores the acts of violence, observes that 23 persons have been charged in connection with them and requests the Government to communicate to it the rulings which are handed down. The Committee requests the Government to take measures to establish the*

whereabouts of the accused persons who have fled and to keep it informed in this respect.

- (b) The Committee urges the Government to guarantee access to the plantations for trade union leaders and to take measures so that an inquiry can be carried out into the threats made against the trade union leader Mr. Gumersindo Loyo Martínez and the intimidation and harassment of Mr. Amilcar Martínez Ortiz, the son of a trade union leader, and to keep it informed in this respect.*

CASE NO. 1970

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

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

- the General Confederation of Workers of Guatemala (CGTG)
- the Latin American Central of Workers (CLAT)
- the World Confederation of Labour (WCL) and
- the International Confederation of Free Trade Unions (ICFTU)

Allegations: Murders, physical assaults, death threats, raids on the home and attempted abduction of trade union officers and members – anti-union dismissals – obstruction of collective bargaining – requirement of approval of collective agreements on working conditions

- 248.** The Committee last examined this case at its June 1999 meeting and presented an interim report [see 316th Report, paras. 533-569, approved by the Governing Body at its 275th Session in June 1999]. The International Confederation of Free Trade Unions presented new allegations in communications dated 20 July 1999 and 29 June 2000.
- 249.** The Government sent partial observations in a communication dated 27 August 1999.
- 250.** In view of the lack of information from the Government on most of the questions still pending, the Committee was obliged to postpone its examination of this case on three occasions. At its meeting in June 2000, the Committee drew the Government's attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of the 127th Report, approved by the Governing Body at its 184th Session (November 1971), it could present a report on the substance of the case at its next meeting, if the information or observations requested had not been received in due time [see 321st Report, para. 9, approved by the Governing Body at its 278th Session in June 2000]. To date, the complete information has not been received from the Government.
- 251.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

252. At the Committee's meeting in June 1999, numerous allegations remained pending concerning acts of violence (murders, physical assaults, death threats, etc.) against trade union officials and members, as well as acts of anti-union discrimination and attempts to obstruct collective bargaining. In this regard, the Committee made the following recommendations [see 316th Report, para. 569]:

As regards the alleged acts of violence, the Committee:

- urges the Government to ensure that judicial inquiries are carried out without delay into the murders of trade union members Cesario Chanchavac, Carlos Lijuc, José Vivas, Carlos Solorzano and Ismael Mérida and to keep it informed in this regard, and of the inquiries under way into the murders of trade union members Luis A. Bravo and Pablo A. Guerra;
- urges the Government to take the necessary steps without delay to ensure that a judicial inquiry is carried out into the alleged death threats against the general secretary and executive secretary of the United Trade Union of Taxi Drivers and Allied Workers of La Aurora International Airport, Rolando Quinteros and Mario Garza, and to keep it informed in this regard. In addition, bearing in mind the fact that an officer of the trade union in question has already been murdered, the Committee requests the Government to take steps to provide protection to officers Rolando Quinteros and Mario Garza;
- requests the Government to keep it informed of the final outcome of the judicial proceedings concerning the death threats against Oswaldo Monzón Lima, secretary-general of the Trade Union of Pilots in Fuel and Allied Transport, by his employer in Colonia Jacarandas, and if the death threats are found to have taken place, to take steps to provide adequate security for this trade union leader and to ensure that such acts do not recur in future;
- requests the Government to keep it informed of the outcome of the judicial proceedings under way concerning the death threats against Juan Gutiérrez García, officer of the Trade Union of Workers of Agropecuaria Atitlán S.A. and Panamá farm and other members of the trade union for having demanded payment of their wages;
- requests the Government to keep it informed of the outcome of inquiries carried out by the National Police, the Office of the Attorney-General and the Office of the Human Rights Procurator concerning the alleged raid on the home and attempted abduction of David Urízar Valdez;
- urges the Government to communicate without delay its observations on the following allegations: (1) municipality of Zacapa: the murders of Robinson Manolo Morales Canales, organization secretary of the Trade Union of Workers of the Municipality of Zacapa (SINTRAMUZAC), on 12 January 1999, Hugo Rolando Duarte Córdón and José Alfredo Chacón Ramírez on 28 January 1999, and the death threats against José Angel Urzúa, Maximiliano Alvarez Gonzaga, Elmer Salguero Garciam, Herminio Franco Hernández, Everildo Revolorio Torres, Feliciano Izep Zuruy, José Domingo Guzmán and Zonia de Alvarez; (2) Santa Fe and La Palmera farms: death threats against officers of the trade union for having presented a list of demands to the judicial authorities; (3) Camino Real Hotel: harassment of trade union officers by the enterprise and physical

assault (stabbing) of the secretary-general of the trade union; and (4) El Arco farm: raid on the home of trade union officer Francisco Ajtzoc Ajcac by the employer.

As regards the alleged acts of anti-union discrimination and other matters, the Committee:

- urges the Government to verify the result of the judicial proceedings concerning: (1) the dismissal on 7 August 1994 of the three founder members of the Standing Committee of United Workers of the El Arco farm after presenting a list of demands to the judicial authorities with the aim of concluding a collective agreement and non-compliance with a court reinstatement order issued on 14 December 1994; (2) the dismissal on 22 May 1995 and in October 1996 of the seven founder members of the trade union organization in the Santa Lucía La Mayor farm after presenting a list of demands with the aim of negotiating and concluding a collective agreement on working conditions (according to the complainant organization, the judicial authorities ordered the workers= reinstatement but the employer challenged this measure); and (3) the dismissal on 28 November 1996 of 25 members of the trade union in the La Argentina farm (according to the complainant organization an appeal has been lodged with the courts in relation to the reinstatement of the dismissed workers), and, if the court orders for the reinstatement of workers dismissed for their trade union activities referred to by the complainants are found to exist, requests the Government to take the necessary steps to ensure that they are carried out immediately;
- hopes that the judicial authorities will hand down a decision in the near future concerning the dismissal on 2 April 1997 of ten workers of the El Tesoro farm after presenting a draft list of demands, and requests the Government to send it a copy of the decision as soon as it is issued and to ensure that it is implemented;
- requests the Government to send its observations concerning the impossibility of negotiating a draft collective agreement presented two years ago in the San Carlos Miramar farm;
- requests the Government to ensure that the two trade union officers reinstated in the Rene S.A. Food Products Enterprise are not isolated or subjected to inhuman measures; the Committee requests the Government to keep it informed in this regard;
- urges the Government to send its observations on the allegations concerning: (1) the dismissal of 15 workers in the San Rafael Panan and Ofelia farms after presenting a list of demands and non-compliance with a court reinstatement order; (2) the dismissal on 28 October 1993 of the 40 unionized workers, including all the members of the executive committee of the trade union, in the Santa Anita farm; (3) the dismissal on 23 August 1995 and on 14 March 1996 of two trade union members in the La Patria y Anexo farm and non-compliance with a court reinstatement order; (4) the dismissal of trade union officers and workers in the Santa Fe and La Palmera farms for having established a trade union and presented a list of demands to the judicial authority; the Committee regrets that the Government has not forwarded its observations although some of the allegations relate to events that occurred many years ago;
- as regards the allegation concerning the impossibility for the Trade Union of Workers of the Congress of the Republic to negotiate a draft

collective agreement on conditions of work presented in 1995, a collective agreement having been concluded in the meantime without involving the trade union, noting that according to the complainant, the workers= trade union did not participate in the negotiation of the collective agreement, the Committee requests the Government to provide it with information concerning the representativeness of the trade union and the ad hoc workers= committee so that it will be able to examine this allegation in full knowledge of the facts;

- requests the Government to send its observations as soon as possible concerning the allegation to the effect that the Ministry of Labour and Social Insurance withholds approval of all economic and social benefits clauses of collective agreements which have a financial impact on employers, making reservations in respect of them and thereby rendering them non-existent.

B. New allegations

253. In its communications of 20 July 1999 and 29 June 2000, the ICFTU alleges:

- the murder of Mr. Baldomero de Jesús Ramírez, General Secretary of the Trade Union of Workers of the Municipality of Santa Lucía, Cotzumalguapa, Escuintla District, on 22 June 1999, following his abduction; the murder appears to have been linked to a recent labour court ruling in his favour;
- the murder of Mr. Oswaldo Monzón, General Secretary of the Trade Union of Pilots in Fuel and Allied Transport, on 23 June 2000; Mr. Monzón had previously been threatened by the J.O. Gaitán enterprise for forming a trade union, and after his dismissal he was warned of the consequences of refusing to accept compensation;
- death threats against Mr. José Pinzón, General Secretary of the CGTG, and Rigoberto Dueñas, Deputy General Secretary of the CGTG.

C. The Government's reply

254. In its communication of 27 August 1999, the Government states the following:

Allegations of acts of violence

- Murder of Luis Armando Bravo Pérez. This case was examined by the Commission for Historical Clarification and brought to the attention of the Committee on Freedom of Association. The Commission's report is now with the Secretary-General of the United Nations. The Government requests that this case be definitively closed.
- Pablo Armando Guerra. The case is being examined by the Second Lower Criminal Court of Chiquimulilla as Case No. 622-95. On 9 July 1996, the defence requested that the case be dismissed on the grounds that the incident in question had been an accident. The court stated that the request would be considered when the court met in open session to consider whether the incident was homicide or an accident. On 18 August 1997, a ruling was given on the petition presented by the Office of the Attorney-General and that of the defence requesting dismissal; the latter was refused. The lower criminal court responsible for narcotics offences and crimes against the environment has found it impossible to include the case in its timetable since 1996, and for this reason the case remains pending.

- Death threat against Oswaldo Monzón Lima. On 11 November 1998, the Escuintla lower criminal court received Case No. 9858-98 from the Public Prosecutor's Office of the Department of Escuintla, which had considered the complaint lodged by Mr. José Oswaldo Monzón Lima against Mr. Mario Ortiz Barranco; and ruled that the acts constituted a misdemeanour. A legal inquiry was ordered and both parties were summonsed. On 27 January 1999, a statement was taken from the aggrieved party.
- Death threat against Juan Gutiérrez García. The Government reiterates the information already supplied in the context of this case.
- David Urízar Valdez. Allegation: Break-in at home and attempted abduction. This case has been examined by the Attorney-General's Office as Complaint No. 14564-97, which was referred to the Mazatenango Public Prosecutor's Office on 30 December 1997 as File No. 6781-97. On 22 January 1998, that office received the findings of the investigation carried out by the National Police into the complaint made by Mr. David Urízar Valdez during which the following individuals were interviewed: Víctor Adolfo Bran Meza, Genaro Urízar Ovalle, Mario Hernández Luarca, Vicente Sucuy Siquin, Lucas Pedro Ramírez, Magdalena Estrada García and Gregorio Barillas Méndez. On 12 February 1998, Mr. David Urízar made a statement at the Public Prosecutor's Office; that statement makes no mention of any abduction or break-in.
- Murder of Robinson Manolo Morales Canales. This case is being examined by the Public Prosecutor's Office of Zacapa Department (Case No. 102-99). The Zacapa departmental police headquarters is conducting inquiries with a view to identifying those responsible for this crime. Since the case is at the investigation stage, and given that an individual has already been detained in connection with this crime, inquiries are still under way. Given the need not to obstruct those inquiries, it is not possible to give all the information requested, in accordance with section 314 of the Act respecting procedure.
- Murder of Hugo Rolando Duarte Córdón. The Public Prosecutor's Office of Zacapa Department is treating this case as a homicide inquiry (File No. 1366-98). The accused are Mr. Alfonso Acevedo Chacón and Mr. Tomás Pinto. On 13 July 1998, the Public Prosecutor's Office asked the chief of police to assign personnel to the investigation. On 21 July 1998, Mr. Randolpho de Jesús Fajardo, the third highest officer in the National Civil Police, made a statement. On 27 July, Mr. Miguel Angel Pineda also made a statement. On 1 September 1998, the Public Prosecutor stated that it was not feasible to order the arrest of the suspects because there was insufficient evidence. On 9 September 1998, the district Public Prosecutor asked the National Police to ensure that the witnesses Mr. César Augusto García Martínez and Mr. Luis Armando Galdámez Interiano appeared in court on 10 September 1998, a warning also being issued to them because they had previously failed to report to the Public Prosecutor's Office. To date, the witnesses have still not reported to the district Public Prosecutor's Office to make a statement. In view of the absence of any concrete evidence, the lower court judge is unable to order their arrest.
- Death threats against Maximiliano Alvarez Gonzaga and Zonia de Alvarez. Zonia de Alvarez appeared before the district Public Prosecutor's Office in the Department of Zacapa to accuse Yolanda Chanchavac of making death threats. The subsequent investigation showed that what actually occurred was a commercial dispute between two individuals about their respective work spaces without labour or trade union implications, and could therefore not be examined as a trade union matter; it is therefore requested that the case be closed.

- Murder of Baldomero de Jesús Ramírez. Mr. Baldomero de Jesús Ramírez was abducted on 17 June 1999 and subsequently murdered. His body was found on 22 June on the outskirts of the city. According to information provided by the district Public Prosecutor's Office of Santa Lucía, Cotzumalguapa in the Department of Escuintla, the Attorney-General's Office is investigating the crime as File No. 1387-99. On 18 June 1999, the National Police received a complaint from Ms. Sonia Maribel Arenas Camey concerning the disappearance of Mr. Baldomero de Jesús Ramírez. On the same day, the Attorney-General's Office asked the criminal investigation service to begin an inquiry. On 22 June 1999, the body of Mr. Baldomero de Jesús Ramírez was found. On 24 June, the Department of Investigations of the Attorney-General's Office was asked to investigate the case. On 25 June 1999, a statement was taken from Mr. José Manuel Gómez Urizar, an employee of the Municipality of Santa Lucía, Cotzumalguapa, who had been informed of the discovery of the body of Mr. Ramírez. On 26 June, another statement was taken from Ms. Sonia Maribel Arenas Camey, the wife of the deceased. On 6 July, a statement was made by Mr. José Alberto López Zona, an employee of the funeral parlour responsible for the funeral. On 13 July 1999, a statement was made by Mr. José Miguel Álvarez Cruz, a member of the town council. The case is currently at the investigation stage and the findings will be announced in due course.
- Murder of José Alfredo Chacón Ramírez. The murder took place on 28 January 1999. According to information given by the Public Prosecutor's Office of the Department of Zacapa, the registry of complaints has been examined; no entry relating to the original complaint had been made.

Allegations concerning acts of anti-union discrimination and other matters

- El Arco Farm. With regard to the dismissal of three founding members of the Standing Committee of United Workers of the El Arco Farm, the matter is being examined by the First Labour and Social Security Court of the Department of Retalhuleu as collective file No. 28-97. The employer's side has provided documentary evidence that the person accused in the case does not exist, and that there was no relationship between the workers concerned and the accused enterprise, which did not have legal personality. This case is still pending.
- Santa Lucía La Mayor Farm. The Labour and Social Security Court of the Department of Jutiapa is examining collective complaint No. 187/97 against the stock-breeding company Santa Clara S.A., which owns the Santa Lucía La Mayor Farm referred to originally as El Amatillo. The administrative authorities upheld the application for reinstatement of the individuals in question in a decision dated 30 September 1997. The Justice of the Peace of Chiquimulilla in the Department of Santa Rosa complied with the ruling and reinstated the workers. In a communication dated 22 October 1997, the workers in question state that the legal representative of the company failed to assign work to all the workers and indicated verbally that it would not reinstate them. The company initiated constitutional *amparo* proceedings against the labour court judge of Jutiapa, and the representative of the employer alleges that it is not possible to reinstate the workers in question, who are members of the Standing Committee of United Workers of the stock-breeding company Santa Clara S.A. on the grounds that the company Santa Clara S.A. is not the owner of the Santa Lucía La Mayor (El Amatillo) Farm, which has in fact never employed the workers in question. In this context, the legal representative of the employer sought a procedural amendment but this request was refused by the Jutiapa Labour Court; that decision was challenged by the employer and leave to appeal against it was granted. Both the collective complaint and the matter of reinstatement were referred on 13

May to the Third Division of the Labour and Social Security Court of Appeal and remain pending.

- La Argentina Farm. As regards the dismissal of 25 union members, the First Labour and Social Security Court in the Department of Retalhuleu examined the case and ordered the reinstatement of the workers in question. On 28 November 1996, an appeal was lodged against the reinstatement order. The appeal was allowed and the reinstatement order was revoked. The case is currently on appeal before the Fourth Division of the Court of Appeals of the Department of Mazatenango.
- El Tesoro Farm. On 26 May 1998, the Fourth Division of the Court of Appeals of the Department of Mazatenango gave a ruling confirming the reinstatement of the workers. The employer initiated *amparo* proceedings against that order. The Supreme Court of Justice confirmed the ruling handed down by the Fourth Division. The employer lodged an appeal before the Constitutional Court, which is still pending.
- San Carlos Miramar Farm. The matter has been settled by the courts; the legal criteria involved are not open to discussion and undoubtedly not a matter for the Committee on Freedom of Association. It therefore seems pointless to include this once again in the present case.
- Productos Alimenticios René S.A. According to the registry of the General Labour Inspectorate, no complaints have been received concerning inhuman measures and exclusion of workers.
- San Rafael Panam y Ofelia Farms. With regard to the dismissal of 15 workers from these farms, a collective dispute of a social and economic character (No. 102/97) was filed against the agricultural enterprise La Patria. The workers were dismissed by the company on the date referred to in the Committee's previous recommendation; reinstatements were proposed on 26 October 1995 and ordered on 27 October by the Seventh Labour and Social Security Court of Guatemala which was responsible for examining the dispute. Following the refusal to reinstate the workers in question, the Retalhuleu Labour Court doubled the fines imposed and on 24 July 1998 referred the matter to the Justice of the Peace of Santa Bárbara in the Department of Suchitepéquez.
- Ofelia Farm. With regard to the collective social and economic disputes under File No. 108/97, a number of requests for reinstatement have been disregarded by the employers. It is not clear whether any of the workers dismissed at the enterprises in question have been reinstated.
- Santa Anita Farm. On 26 November 1993, the Second Lower Court of Chimaltenango heard a claim for reinstatement in favour of Mr. Julio Lacan Xajil and other workers and against the Santa Anita agricultural exporting enterprise. On 7 June 1995, the Seventh Labour and Social Security Court of Guatemala, by appointment of the Supreme Court of Justice, upheld the claim for reinstatement. On 28 July 1995, an appeal was lodged against the ruling of 7 June 1995 by the Santa Anita S.A. enterprise and the case was referred to the competent jurisdictional division. On 16 December 1997, the file was referred back to the First Labour and Social Security Court by the competent jurisdictional Division, which upheld the original ruling of 7 June 1995. On 7 March 1998, the Justice of the Peace of the Municipality of San Miguel Pochuta in the Department of Chimaltenango was instructed to execute the order to reinstate the workers. On 19 May 1998, an order of referral to the district Public Prosecutor's Office was issued against the company's legal representative for failure to implement the order to reinstate the workers. On 4 January 1999, the company's request for *amparo* against the First Labour and Social Security Court of

Chimaltenango was turned down. On 29 March 1999, the Constitutional Court upheld the ruling of 4 January 1999 by the First Division of the Labour Appeals Court. On 5 July 1999, the case was ruled to be admissible; the parties were informed that the case was before the court and that it remained for certification of the case to be referred to the district Public Prosecutor's Office so that it could proceed.

- La Patria Farm. The Labour and Social Security Court of Retalhuleu is examining the matter of the dismissals on 23 August 1995 and 14 March 1996 of two trade unionists from the La Patria Farm during the collective social and economic dispute under File No. 102/97 (case against La Patria agricultural enterprise). The workers in question were indeed dismissed by the enterprise in question on those dates, and their reinstatement was proposed on 26 October 1995 and ordered on 27 October by the Seventh Labour and Social Security Court of Guatemala, which was responsible for examining the dispute. The Retalhuleu Labour Court, in the light of the refusal to reinstate the workers, doubled the fines imposed and on 24 July 1998 referred the case to the Justice of the Peace of Santa Bárbara in the Department of Suchitepéquez. On 10 October 1998, a judgement was handed down against the La Patria S.A. agricultural industrial enterprise for failure to comply with the original order.
- Santa Fe and La Palmera Farms. Following the dismissal of workers at the San Luis agricultural enterprise, which owns the Santa Fe and La Palmera Farms, the Ministry of Labour and Social Security, at the request of the workers in question, summoned the parties to a conciliation board. Since no agreement was reached between the parties, the available administrative means of conciliation were ruled to be exhausted. On 28 January 1999, the workers filed a collective dispute, No. 06/99, with the Retalhuleu Labour Court, seeking among other things an order summoning the enterprise. The summons was subsequently suspended because the name of the owner enterprise was written incorrectly. On 8 March 1999, the workers lodged an appeal in the jurisdictional division against the court ruling and the appeal is still pending.
- Trade Union of Workers of the Congress of the Republic. Although a collective agreement was signed in early 1996 with an ad hoc committee, on 23 July of this year talks were completed on a collective agreement on working conditions with the Trade Union of Workers of the Congress of the Republic; that agreement safeguards the position of trade union representatives in collective bargaining.
- Allegation that the Ministry of Labour refuses to approve any provisions relating to social and economic benefits in collective agreements. According to the Government, this assertion is without foundation. Since December 1998 until the present, the Ministry has certified 11 collective agreements on working conditions and approved nine extensions of other such agreements on working conditions, in both the private and public sectors, without expressing any reservations or declaring such provisions to be invalid.

D. The Committee's conclusions

255. The Committee must first deplore the extreme gravity of the allegations in this case. Moreover, the Committee deeply regrets that the Government has not supplied complete observations on most of the questions still pending, despite the time that has elapsed since the complaint was first presented and despite the fact that it was invited to formulate its comments and observations on a number of occasions, including through an urgent appeal.

256. In these circumstances, and in accordance with the relevant rule of procedure [see 127th Report, para. 17, approved by the Governing Body at the 184th Session in November

1971], the Committee feels obliged to present a report on the substance of the case without the benefit of the information which it had hoped to receive from the Government.

- 257.** *The Committee recalls that the purpose of the whole procedure is to promote respect for trade union rights in law and in fact, and the Committee is confident that, if it protects governments against unreasonable accusations, governments on their side will recognize the importance for the protection of their own good name of formulating for objective examination detailed factual replies to such detailed factual charges as may be put forward [see the Committee's First Report, para. 31, approved by the Governing Body in March 1952].*
- 258.** *The Committee notes that the allegations which remained pending at its examination of this case at its meeting in June 1999 refer to various acts of violence (murders, physical assaults, death threats, etc.) against trade union officials and members, and to numerous acts of anti-union discrimination and attempts to obstruct the collective bargaining process. In this regard, the Committee notes with deep concern that, since its last examination of the case, two trade union officials have been murdered – including one against whom a death threat had already been alleged in the context of this case – and another two have received death threats.*
- 259.** *In this context, the Committee wishes to draw the Government's attention to the fact that "Freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed" and that "In the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts" [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 46 and 53]. Under these circumstances, the Committee requests the Government to ensure that these principles are fully respected.*

Allegations that had remained pending and new allegations concerning acts of violence

Murders

- 260.** *With regard to the investigations that have been initiated into the murders of the trade unionists Luis A. Bravo and Pablo A. Guerra, the Committee notes the Government's statement to the effect that: (1) the case of Mr. Luis A. Bravo was examined by the Commission for Historical Clarification and that the Commission's report is now in the hands of the Secretary-General of the United Nations; and (2) with regard to the case of Mr. Pablo A. Guerra, the lower criminal court responsible for narcotics offences and crimes against the environment has found it impossible to include the case in its timetable since 1996, and for that reason the case remains pending. Under these circumstances, the Committee: (i) requests the Government to communicate without delay the outcome of the investigation conducted by the Commission for Historical Clarification into the murder of the trade unionist Mr. Luis A. Bravo; and (ii) firmly hopes that the judicial proceedings relating to the murder of the trade unionist Mr. Pablo A. Guerra, which began in 1995, will be completed rapidly, and requests the Government to communicate the final outcome of those proceedings.*
- 261.** *With regard to the judicial proceedings relating to the death threats against the General Secretary of the Trade Union of Pilots in Fuel and Allied Transport, Mr. Oswaldo Monzón Lima, the Committee deplores that Mr. Monzón Lima was murdered on 23 June 2000. The Committee deeply regrets the murder of this trade union official, and urges the*

Government to take immediate measures to initiate a judicial inquiry with a view to clarifying the facts, determining responsibility, and punishing those responsible. The Committee requests the Government to keep it informed in this regard.

- 262.** *With regard to the alleged murders of members of the Trade Union of Workers of the Municipality of Zacapa (SINTRAMUZAC), namely the following: (1) Mr. Robinson Manolo Morales Canales, the organization's Secretary, murdered on 12 January 1999; (2) Mr. Hugo Rolando Duarte Córdón, murdered on 28 January 1999; and (3) Mr. José Alfredo Chacón Ramírez, murdered on 28 January 1999, the Committee notes the Government's statements to the effect that: (i) a judicial inquiry was instituted into the murder of Mr. Robinson Manolo Morales Canales; that inquiry is currently at the investigation stage and one person has been arrested; (ii) a judicial inquiry was instituted into the murder of Mr. Hugo Rolando Duarte Córdón; two persons have been indicted, two witnesses have been summonsed but failed to appear and, given the absence of any concrete evidence, the judge has ruled that it is not possible to issue arrest warrants; and (iii) there is no record of any complaint in connection with the alleged murder of Mr. José Alfredo Chacón Ramírez. Under these deplorable circumstances, the Committee: (1) requests the Government to keep it informed of the outcome of the judicial proceedings currently under way in relation to the murder of Mr. Robinson Manolo Morales Canales; (2) hopes that the judicial authorities will take steps to expedite the judicial proceedings in connection with the murder of Mr. Hugo Rolando Duarte Córdón, and requests the Government to keep it informed in this regard; and (3) requests the Government to initiate an immediate judicial inquiry into the murder of Mr. José Alfredo Chacón Ramírez and keep it informed in this regard.*
- 263.** *With regard to the murder on 22 June 1999 of Mr. Baldomero de Jesús Ramírez, General Secretary of the Trade Union of Workers of the Municipality of Santa Lucía, Cotzumalguapa, Department of Escuintla, the Committee notes the Government's information that a judicial inquiry into this matter has begun and is currently at the investigation stage. Under these circumstances, the Committee requests the Government to keep it informed of the outcome of the investigation now under way.*
- 264.** *With regard to the alleged murder of the trade unionists Cesario Chanchavac, Carlos Lijuc, José Vivas, Carlos Solórzano and Ismael Mérida, the Committee deplores that the Government has not stated whether judicial investigations have begun in these cases. Under these circumstances, the Committee requests the Government to ensure that such investigations begin soon and to keep it informed in this regard.*

Death threats

- 265.** *With regard to the judicial inquiry into the death threats against the official of the Trade Union of Workers of Agropecuaria Atilán S.A. and Panamá Farm, Mr. Juan Guitérrez García, and against other members of the trade union in question, for demanding payment of wages, the Committee notes that the Government refers to observations already made in the context of this case. Under these circumstances, the Committee urges the Government to keep it informed of the outcome of the inquiry and to provide protection to the trade union officials and members who have been threatened.*
- 266.** *With regard to the allegation concerning death threats against Mr. Maximiliano Alvarez Gonzaga and Ms. Zonia de Alvarez, the Committee notes the Government's statements to the effect that a judicial investigation found that there had been a dispute between individuals concerning their respective work spaces and that this was a commercial dispute. Under these circumstances, the Committee will not pursue its examination of this allegation.*

267. *With regard to the alleged death threats against the following trade union officials and members: (1) Rolando Quinteros and Mario Garza, of the United Trade Union of Taxi Drivers and Allied Workers of La Aurora International Airport; (2) José Angel Urzúa, Elmer Salguero García, Herminio Franco Hernández, Everildo Revolio Torres, Feliciano Izep Zuruy and José Domingo Guzmán; (3) the trade union officials of the Trade Union of the Santa Fe and La Palmera Farms; and (4) José Pinzón, General Secretary of the CGTG, and Rigoberto Dueñas, Deputy General Secretary of the CGTG, the Committee requests the Government to take steps to begin immediate judicial investigations and to provide protection to all the individuals who have been threatened. The Committee requests the Government to keep it informed of the final outcome of these investigations.*

Raids on homes and attempted abduction

268. *With regard to the investigation into the raid on the home and attempted abduction of Mr. David Urizar Valdez, the Committee notes the Government's information that in his statement to the Public Prosecutor, Mr. David Urizar Valdez stated that there had at no time been any attempt to abduct him or raid his home. Under these circumstances, the Committee will not pursue its examination of this allegation.*

269. *With regard to the alleged raid on the home of the trade union official Mr. Francisco Ajtzoc Ajcac by the employer (El Arco Farm), the Committee regrets that the Government has not supplied observations on this matter. Under these circumstances, the Committee requests the Government to take steps to begin an immediate investigation into the allegation and, if it is found to be true, to take steps to punish those responsible and prevent any recurrence in future. The Committee requests the Government to keep it informed in this regard.*

Physical assaults

270. *With regard to the allegation concerning harassment by the Hotel Camino Real of trade union officials and the physical assault (stabbing) of the trade union's General Secretary, the Committee regrets that the Government has not provided observations on this matter. Under these circumstances, the Committee requests the Government to take steps to begin an immediate investigation into the matter and, if the allegation is found to be true, to take steps to punish those responsible and prevent any recurrence in future. The Committee requests the Government to keep it informed in this regard.*

Allegations concerning acts of anti-union discrimination upon which the judicial authority has not yet rendered final judgements

271. *With regard to the progress made in the legal proceedings concerning the dismissal on 7 August 1994 of the three founding members of the Standing Committee of United Workers of the El Arco Farm and the failure to comply with a court reinstatement order issued on 14 December 1994, the Committee notes the Government's statement to the effect that: (i) during the proceedings, the employer provided evidence that the person accused did not exist; (ii) there was no relationship between the workers concerned and the enterprise; and (iii) the case is still pending. In this regard, the Committee deeply deplores that six years have elapsed since the judicial authorities handed down their first judgement.*

272. *With regard to the progress in the proceedings concerning the dismissal on 22 May 1995 and in October 1996 of the seven founding members of the trade union organization at the Santa Lucía La Mayor Farm, the Committee notes the Government's statement to the effect*

that: (i) the administrative authorities ordered the reinstatement of the workers in question in an official decision dated 30 September 1997; (ii) the Justice of the Peace of Chiquimulilla upheld that decision; (iii) the company did not allocate any work to the workers concerned and told them that it would not be reinstating them; (iv) the company initiated “amparo” proceedings, stating that it was not possible to reinstate the workers in question because it did not own the farm on which they worked; and (v) the Labour and Social Security Appeals Court must give a ruling on the matter. The Committee deplors that the legal proceedings have been going on for three years and may be prolonged even further.

- 273.** *With regard to the judicial proceedings concerning the dismissal on 28 November 1996 of 25 members of the trade union at the La Argentina Farm, the Committee notes that according to the Government, the judicial authorities ordered the reinstatement of the workers, but that on 28 November 1996 the reinstatement order was challenged and that the matter is currently the subject of an appeal in the Court of Appeals in the Department of Mazatenango. The Committee deplors the fact that the judicial proceedings have been going on for four years and may be prolonged even further.*
- 274.** *With regard to the proceedings concerning the dismissal on 2 April 1997 of ten workers at the El Tesoro Farm for presenting a list of demands, the Committee notes the government statement to the effect that the Court of Appeal of the Department of Mazatenango ordered the reinstatement of the workers on 26 May 1998, a decision that was confirmed by the Supreme Court of Justice, and that the employer lodged an appeal before the Constitutional Court which must give a ruling on the matter.*
- 275.** *With regard to the alleged dismissal on 28 October 1993 of 40 unionized workers, including all the members of the Executive Committee of the Trade Union of Santa Anita Farm, the Committee notes that, according to the Government, the judicial authorities ordered the reinstatement of the dismissed workers and that various appeals have been lodged. The Committee deplors that the judicial proceedings have been going on for seven years.*
- 276.** *As concerns the allegations examined in the five previous paragraphs, deeply concerned at the excessive duration of the proceedings, which constitutes a denial of justice, the Committee requests the Government to ensure that the competent judicial authorities take a rapid decision to permit the safeguard of the interests of the workers concerned, if necessary by their provisional reinstatement in their posts until the courts have rendered a final decision. The Committee requests the Government to keep it informed in this respect.*

Other matters

- 277.** *With regard to the alleged impossibility of negotiating a collective agreement at the San Carlos Miramar Farm, the Committee deplors the fact that the Government confines itself to stating that the matter has been settled by the courts and that the legal criteria applied are not open to discussion and that this is not a matter for the Committee. In this regard, the Committee emphasizes that it is within its competence to determine whether the legislation and its application in a specific case are in conformity with the principles of freedom of association. Moreover, the Committee requests the Government to keep it informed of any decision taken by the judicial authorities with regard to this allegation.*
- 278.** *With regard to the request to ensure that the trade union official reinstated at the Productos Alimenticios René S.A. enterprise will not be excluded or subjected to inhuman measures, the Committee notes, that according to the Government, no complaints of this kind have been received by the General Labour Inspectorate. Under these circumstances, the Committee will not pursue its examination of this allegation.*

279. *With regard to the alleged dismissal of 15 workers at the San Rafael Panam and Ofelia Farms for presenting a list of demands and the failure to comply with the reinstatement order, the Committee notes that according to the Government, the judicial authorities ordered the reinstatement of the workers in question on 25 October 1995; that following the failure to comply with that order, fines imposed on the farms were doubled; and that the Justice of the Peace of Santa Bárbara has been instructed to deal with the matter of reinstatement. In this regard, the Committee requests the Government to endeavour to give effect to the judicial order by reinstating the workers dismissed five years ago, and to keep it informed in this regard.*
280. *With regard to the alleged dismissals on 23 August 1995 and 14 March 1996 of two trade unionists at the La Patria y Anexo Farm and the failure to comply with a judicial reinstatement order, the Committee notes the Government's statement to the effect that: (i) the judicial authorities ordered the reinstatement of the workers, dismissed in August 1995, on 27 October 1995; (ii) following the refusal of the enterprise to reinstate the workers, the fines imposed were doubled; and (iii) on 10 October 1998, the judicial authorities gave a judgement against the enterprise for non-compliance. In this regard, the Committee deeply deplores the failure to comply with the judicial order to reinstate the dismissed workers and urges the Government to endeavour to enforce the order in question. The Committee requests the Government to keep it informed in this regard.*
281. *With regard to the allegation concerning the dismissal of trade union officials and workers at the Santa Fe and La Palmera Farms for forming a trade union and presenting a list of demands to the judicial authorities, the Committee notes the Government's statement to the effect that: (i) the Ministry of Labour and Social Security ordered the parties to attend a conciliation board; since no agreement was reached, the administrative means of resolving the dispute were declared exhausted; and (ii) judicial proceedings began in 1999 and remain pending. In this regard, the Committee hopes that the proceedings will be concluded in the near future, and requests the Government to keep it informed of the outcome of the proceedings.*
282. *With regard to the allegation that the Trade Union of Workers of the Congress of the Republic was unable to negotiate a collective agreement on conditions of work in 1995, since another agreement had been signed in the meantime without that union's participation, the Committee notes that, according to the Government, on 23 July 1999 a collective agreement on working conditions was concluded with the trade union. Under these circumstances, the Committee will not pursue its examination of this allegation.*
283. *With regard to the allegation that the Ministry of Labour and Social Security denies approval for any provisions in collective agreements relating to economic and social benefits with financial implications for the employers, by declaring them to be subject to reservations and therefore invalid, the Committee notes that, according to the Government, between December 1998 and 27 August 1999, the Ministry certified 11 collective agreements on working conditions and approved nine extensions to existing collective agreements, both in the private sector and in the public sector, without formulating any reservations or declaring the provisions to be invalid. In the light of this information, the Committee will not pursue its examination of this allegation.*

The Committee's recommendations

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

- (a) *Deploing the extreme gravity of the allegations in this case and noting with deep concern the large number of acts of violence against trade union officials and members that have been alleged, and the fact that, since its last examination of the case, two trade union officials have been murdered – including one against whom a death threat had already been alleged in the context of this case – and another two have received death threats, the Committee wishes to draw the Government’s attention to the fact that freedom of association can only be exercised in conditions in which fundamental human rights, and particularly those relating to human life and personal safety, are fully respected and guaranteed, and that in the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing repetition of such acts, and requests the Government to ensure that these principles are fully respected.*

Allegations concerning acts of violence

Murders

- (b) *The Committee: (i) requests the Government to communicate without delay the outcome of the investigation conducted by the Commission for Historical Clarification into the murder of the trade unionist Mr. Luis A. Bravo; and (ii) hopes that the judicial proceedings relating to the murder of the trade unionist Mr. Pablo A. Guerra, which began in 1995, will be completed soon, and requests the Government to communicate the final outcome of those proceedings.*
- (c) *The Committee profoundly regrets the murder of the General Secretary of the Trade Union of Pilots in Fuel and Air Transport, Mr. Oswaldo Monzón Lima, and urges the Government to take immediate measures to initiate a judicial inquiry with a view to clarifying the facts, determining responsibility, and punishing those responsible. The Committee requests the Government to keep it informed in this regard.*
- (d) *The Committee: (1) requests the Government to keep it informed of the outcome of the judicial proceedings currently under way in relation to the murder of Mr. Robinson Manolo Morales Canales; (2) hopes that the judicial authorities will take steps to expedite the judicial proceedings in connection with the murder of Mr. Hugo Rolando Duarte Cordón, and requests the Government to keep it informed in this regard; and (3) requests the Government to initiate an immediate judicial enquiry into the murder of Mr. José Alfredo Chacon Ramirez and keep it informed in this regard.*
- (e) *The Committee requests the Government to keep it informed of the outcome of the investigation into the murder on 22 June 1999 of Mr. Baldomero de Jesús Ramírez, General Secretary of the Trade Union of Workers of the Municipality of Santa Lucía, Cotzumalguapa, Department of Escuintla.*

- (f) *With regard to the alleged murder of the trade unionists Cesario Chanchavac, Carlos Lijuc, José Vivas, Carlos Solórzano and Ismael Mérida, the Committee requests the Government to ensure that investigations begin soon and to keep it informed in this regard.*

Death threats

- (g) *The Committee urges the Government to keep it informed of the outcome of the judicial investigation into alleged death threats against the official of the Trade Union of Workers of Agropecuaria Atilán S.A. and Panamá Farm, Mr. Juan Guitérrez Garcia, and against other members of the trade union in question, for demanding payment of wages, and to provide protection to the trade union officials and members who have been threatened.*
- (h) *With regard to the alleged death threats against the following trade union officials and members: (1) Rolando Quinteros and Mario Garza, of the United Trade Union of Taxi Drivers and Allied Workers of La Aurora International Airport; (2) José Angel Urzúa, Elmer Salguero García, Herminio Franco Hernández, Everildo Revolio Torres, Feliciano Izep Zuruy and José Domingo Guzmán; (3) the trade union officials of the Trade Union of the Santa Fe and La Palmera Farms; and (4) José Pinzón, General Secretary of the CGTG, and Rigoberto Dueñas, Deputy General Secretary of the CGTG, the Committee requests the Government to take steps to begin immediate judicial investigations and to provide protection to all the individuals who have been threatened. The Committee requests the Government to keep it informed of the final outcome of these investigations.*

Raids on homes and attempted abductions

- (i) *The Committee requests the Government to take steps to begin an immediate investigation into the allegation concerning the raid on the home of the trade union official Mr. Francisco Ajtzoc Ajcac by the employer (El Arco Farm), and, if it is found to be true, to take steps to punish those responsible and prevent any recurrence in future. The Committee requests the Government to keep it informed in this regard.*

Physical assaults

- (j) *The Committee requests the Government to take steps to begin an immediate investigation into the allegation concerning harassment by the Hotel Camino Real enterprise against trade union officials and the physical assault (stabbing) of the trade union's General Secretary and, if the allegations are to be found true, to take steps to punish those responsible and prevent any recurrence in the future. The Committee requests the Government to keep it informed in this regard.*

Allegations concerning acts of anti-union discrimination upon which the judicial authority has not yet rendered final judgements

- (k) *As concerns the questions relating to the dismissal of three trade union officials on 7 August 1994 at the El Arco Farm; the dismissals on 22 May*

1995 and in October 1996 of the seven founding members of the Trade Organization of the Santa Lucía La Mayor Farm; the dismissal on 28 November 1996 of 25 members of the Trade Union of the La Argentina Farm; the dismissal on 2 April 1997 of ten workers at the El Tesoro Farm for presenting a list of demands; and the dismissal on 28 October 1993 of 40 unionized workers, including all the members of the Executive Committee of the Trade Union of Santa Anita Farm, the Committee, deeply concerned at the excessive duration of the proceedings, which constitutes a denial of justice, requests the Government to ensure that the competent judicial authorities take a rapid decision to permit the safeguard of the interests of the workers concerned, if necessary by their provisional reinstatement in their posts until the courts have rendered a final decision. The Committee requests the Government to keep it informed in this respect.

Other questions

- (l) With regard to the alleged impossibility of negotiating a collective agreement at the San Carlos Miramar Farm, the Committee, emphasizing that it is within its competence to determine whether the legislation and its application are in conformity with the principles of freedom of association, requests the Government to keep it informed of any decision taken by the judicial authorities with regard to this allegation.*
- (m) With regard to the dismissal of 15 workers at the San Rafael Panam and Ofelia Farms for presenting a list of demands and the failure to comply with the reinstatement order, the Committee requests the Government to endeavour to give effect to the judicial order to reinstate the workers dismissed five years ago, and to keep it informed in this regard.*
- (n) With regard to the dismissals on 23 August 1995 and 14 March 1996 of two trade unionists at the La Patria y Anexo Farm, the Committee deeply deplores the failure to comply with the judicial reinstatement order, and urges the Government to endeavour to enforce the order in question. The Committee requests the Government to keep it informed in this regard.*
- (o) With regard to the dismissal of trade union officials and workers at the Santa Fe and La Palmera Farms for forming a trade union and presenting a list of demands to the judicial authorities, the Committee hopes that the proceedings now under way will be concluded in the near future, and requests the Government to keep it informed of the outcome of those proceedings.*
- (p) The Committee invites the Government to accept a direct contacts mission within the framework of the follow-up to the recommendations in this case.*

CASES NOS. 2017 AND 2050

INTERIM REPORT

Complaints against the Government of Guatemala

presented by

- the International Confederation of Free Trade Unions (ICFTU) and**
- the Trade Union of Workers of Guatemala (UNSITRAGUA)**

Allegations: Acts of anti-union discrimination and intimidation, acts of violence against trade unionists, violation of a collective agreement

- 285.** The complaint in Case No. 2017 is contained in a communication dated 5 March 1999 from the Trade Union of Workers of Guatemala (UNSITRAGUA). That organization sent new allegations in a communication dated 31 March 1999.
- 286.** The complaint in Case No. 2050 is contained in a communication dated 14 September 1999 from the International Confederation of Free Trade Unions (ICFTU). The ICFTU sent additional information in communications dated 28 September 1999 and 20 January 2000, and new allegations in a communication dated 14 March 2000.
- 287.** The Government sent partial information in communications dated 7 July and 30 November 1999.
- 288.** In view of the lack of complete information from the Government on questions still pending, the Committee was obliged to postpone its examination of this case on two occasions. At its meeting in June 2000, the Committee drew the Government's 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 at its 184th Session in November 1971, it would present a report on the substance of these cases at its next meeting, even if the complete information and observations requested had not been received in due time [see 321st Report, para. 9, approved by the Governing Body at its 278th Meeting (June 2000)]. To date information has still not been received from the Government on all the questions raised.
- 289.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

Case No. 2017

- 290.** In its communication of 5 March 1999, the Trade Union of Workers of Guatemala (UNSITRAGUA) alleges that the Puerto Quetzal port enterprise, a decentralized and autonomous institution, has been violating the collective agreement in force, specifically articles 12 and 81, by failing to pay the "wage increment" of four trade union officials on the grounds that they are authorized to work for the union full time and the increment is therefore not applicable to them, and the company has not given effect to resolutions of the joint committee to restore the entitlements of those officials. UNSITRAGUA adds that the company has also disregarded the right of the trade union under the terms of government Agreement No. 122-94 to nominate workers' representatives on the company's pensions and retirement committee. At the same time, despite the fact that the collective agreement

gives trade union representatives immediate access to any workplace where disputes arise, company representatives have expelled trade union officials from workplaces and insulted them. UNSITRAGUA also alleges that the company is attempting to weaken the union by implementing a voluntary retirement plan.

- 291.** In its communication of 18 March 1999, UNSITRAGUA alleges that, following the establishment of a union on 28 September 1998 at the textiles enterprise Tampont S.A. (formerly Confecciones Minerva S.A.), the company dismissed 26 workers in mid-November 1998. In March 1999, the judicial authorities ordered the reinstatement of these workers. In February 1999, the company asked the courts to annul the contracts of employment of six members of the union's executive committee and consultative committee, but at a subsequent meeting with the labour inspectorate agreed to reinstate them and undertook not to apply any sanctions. However, the company assigned these workers to other duties and put pressure on them to leave the company, indicating that they would regret it if they did not accept the proposed redundancy settlement. The company eventually dismissed them.
- 292.** UNSITRAGUA adds that in March 1999, following Hurricane Mitch, as part of the illegal action to dismiss 462 workers and suspend more than 100 others at the Corporación Bananera S.A. (COBSA), Mr. Marvin Leonel Cerón Hernández and Mr. Julián Guisar García, union officials of SITRACOBSA, were detained by order of the Ministry of the Interior on charges of coercion and causing damage. It is also known unofficially that about 150 orders have been issued for the arrest of officials of the unions SITECOBSA and SITECOBSAGOSA, including Jorge Estrada and Marco Vinicio Hernández Fabián.

Case No. 2050

- 293.** In its communications of 14 and 28 November 1999 and 20 January and 14 March 2000, the International Confederation of Free Trade Unions (ICFTU) alleges that the establishment of a trade union prompted the assembly enterprise Ace Internacional S.A., which was established with Korean funds, to issue warning letters, suspend workers without pay and adopt various acts of anti-union intimidation and discrimination including the following: (1) sexual harassment by one of the personnel heads – at the instigation of the company's director – of Mrs. Josefina Sian Rejopachi, the union's General Secretary, who was suspended without pay for three days when she rejected the harasser's attention; (2) pressure and intimidation by company representatives in an effort to force Mrs. Francisca Ramírez Calo, the union's treasurer, Mrs. Herlinda Estrada and Mrs. María Virginia Gutiérrez to sign blank sheets of paper and accept redundancy settlements; (3) the dismissal of 35 workers, mostly union members, in August 1999; more dismissals took place in September. The ICFTU also draws attention to a number of serious violations of labour law by the company, as well as physical and verbal assaults and acts of intimidation against workers who decide to join the union.
- 294.** The ICFTU adds that on 16 September 1999, the dismissed workers were reinstated in their posts by order of the judicial authorities. Nevertheless, the company exerted pressure on all the workers who had not been dismissed to resign and sign redundancy settlements. As a result of this, of the 500 workers employed by the company when the dismissals began, only 18 now remain. The company closed down its operations in November 1999 and made no effort at all to reinstate the several hundred workers who were dismissed for establishing a trade union.
- 295.** The ICFTU also alleges that death threats were made against the trade unionist Mr. José Luis Mendía Flores, who was forced to leave his home. He was dismissed from a

private police force and has not been reinstated in his post, despite a court ruling in his favour.

296. The ICFTU also alleges that at the assembly enterprise Tamport S.A., which is located in Zone 12 of Guatemala City, the owners have been maintaining an inflexible attitude towards workers who have formed a trade union and dismissed them without any valid reason, as well as carrying out other anti-union measures. Lastly, the company La Exacta failed to comply with 67 court orders for the reinstatement of workers dismissed in 1994, and no progress has been made in the case of the murder in 1994 of four rural workers who had attempted to establish a union.

B. The Government's reply

297. In its communications of 7 July and 30 November 1999, the Government states with regard to the Puerto Quetzal enterprise that the collective agreement in force provides for a wage increment, but this is subject to a satisfactory performance appraisal. For such an increment to be granted, the employee's work performance has to be assessed, and the increment is thus more like a bonus or reward for satisfactory performance. The same collective agreement also grants four union officials the privilege of not having to work for the company in that they have permanent leave of absence, and this is used by the officials in question. As a result of this, their work cannot be assessed because they are not working for the company; since the condition of a satisfactory performance appraisal is not met in their case, it is not possible to grant the increase. However, the company has indicated to the Ministry that as soon as the workers in question resume work for the company, their work will be assessed and the increment paid. There is thus no anti-union discrimination, since the officials on leave of absence do not meet the conditions for the pay increment. The Government also adds that on 17 March 1999, the union nominated its representatives on the pensions and retirement committee; they have assumed their duties and continue to carry them out, and the allegation regarding usurpation of the right to nominate these representatives is therefore without foundation. As regards the complaints of instances of ill treatment, the Government states that according to the company these have not occurred, and that the complaint arose because of the requirement to wear uniforms and exercise restraint with regard to telephone calls, matters which are governed by the personnel regulations currently in force. The Government has also stated that according to the company, it has not implemented and has no intention of implementing a voluntary retirement plan, and the complaint in this regard is completely without foundation.

298. As regards the allegations concerning the company Tamport S.A., the Government states that the company complied with the ruling of the labour judge by reinstating the following women employees: Claudia Leticia Juárez Hernández; Norma Mirina Barillas Herrera; and Rubí Lorena González García. It did not reinstate Otoniel López Cam, Jeremías Samuel Sinay Pirir and Oscar Geovany Sum Najera, because they had submitted their resignations and renounced their entitlements in accordance with the law. However, the women employees who were reinstated complained that they were being transferred to a different section where they were paid less than before their dismissals. The employer stated that this was due to a lack of work, but that it would move the workers back as soon as possible, once a satisfactory agreement was reached between the parties, and that the appropriate preparations were made at the company by the labour inspectors.

C. The Committee's conclusions

299. *Firstly, the Committee deeply regrets that the Government has not supplied observations on all the questions still pending, despite the time that has elapsed since the complaint was*

presented and despite the fact that it has been invited to present comments and observations on a number of occasions, including through an urgent appeal.

- 300.** *Under these circumstances, and in accordance with the relevant procedure [see 127th Report, para. 17, approved by the Governing Body at its 184th Session in November 1971], the Committee feels obliged to present a report on the substance of this case without the benefit of all the information which it had hoped to receive from the Government.*
- 301.** *The Committee recalls that the purpose of the whole procedure is to promote respect for trade union rights in law and in fact, and the Committee is confident that, if it protects governments against unreasonable accusations, governments on their side will recognize the importance for the protection of their own good name of formulating for objective examination detailed factual replies to such detailed factual charges as may be put forward [see the Committee's First Report, para. 31, approved by the Governing Body in March 1952]. In these circumstances, the Committee requests the Government to transmit as a matter of urgency complete observations on the allegations.*
- 302.** *The Committee notes with concern that in the present cases, the complainant has alleged various anti-union acts of discrimination and intimidation, threats against a trade unionist and violations of collective bargaining rights.*
- 303.** *As regards the allegations concerning the Puerto Quetzal port enterprise, the Committee notes the Government's statements to the effect that the union representatives have taken up their duties on the pensions and retirement committee and it is not the case that the company has implemented or intends to implement a voluntary retirement plan. The Committee also notes the Government's statement to the effect that the company denies the alleged ill treatment of trade union representatives and maintains that the problem is linked to the requirement to wear regulation uniforms and exercise restraint in the use of telephones. As regards the alleged failure to comply with the collective agreement in force regarding a "wage increment" for four trade union officials, the Committee notes that, according to the Government, the collective agreement in force makes that increment conditional on a performance appraisal, which is not possible in the case of the officials in question, since they have been granted full leave of absence in connection with their union duties. However, the Committee notes that article 81 of the collective agreement states the following:*

ARTICLE 81. GOVERNMENT INCREASES

The company undertakes, once this agreement is in force, to pay to all its employees the pay increases awarded by the Government to public sector workers, including basic pay, bonuses or other forms of remuneration; on this assumption, the relevant government order will apply. If in the event the Government-prescribed increase is greater than the increment due for the year in question as established in the Plan of Grades, the company shall pay the difference in question.

The company undertakes to pay the wage increments provided for in article 33 of the current Regulations governing the grading of posts and administration of wages and salaries on the first of January each year from 1998 onwards, taking into account the provisions of the preceding article.

The Committee concludes that this clause is applicable to all workers of the company and considers that the failure to apply the "wage increment" to the four trade union officials in question violates the collective agreement and constitutes an act of anti-union discrimination in that it rules out any wage increment for the trade union officials. The

Committee requests the Government to take measures to ensure that article 81 of the collective agreement at the Puerto Quetzal company is applied to the trade union officials, thereby ensuring that wage increases are not denied to such officials.

- 304.** *With regard to the dismissal or pressure placed on six trade unionists to make them resign from their posts at Tamport S.A. in February 1999 (following the dismissal in November 1998 of 26 workers who had formed a trade union and whose reinstatement was ordered by a court of law), the Committee notes that according to the Government, the judicial authority ordered the reinstatement of these six persons, three of whom were not actually reinstated because they had submitted their resignations from the company and renounced their entitlements. The other three were reinstated, albeit in a different section and on lower pay. The Committee notes the willingness of the company to move these workers back once a satisfactory agreement is reached, and requests the Government to confirm that they have indeed been moved back and that they receive at least the same wages as before their dismissal. Noting that in the company Tamport S.A., there have on a number of occasions been dismissals that were subsequently annulled by the courts, the Committee wishes to emphasize the principle that “No person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment” [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 696].*
- 305.** *As regards the allegations concerning the detention of the SITRACOBSA officials Marvin Leonel Cerón and Julián Guisar García and the issue of numerous orders for the arrest of officials of SITECOBSA and SITECOBSAGOSA (including Jorge Estrada and Marco Vinicio Hernández Fabián), the Committee requests the Government to send its observations on this matter as a matter of urgency. Furthermore, the Committee requests the Government to carry out an investigation into this matter and to annul the orders and release the detainees if it is found that these actions were in response to legitimate trade union activities.*
- 306.** *With regard to the allegations concerning the assembly company Ace Internacional S.A., the Committee notes with concern that they refer to serious acts of anti-union discrimination and intimidation, including a case of sexual harassment against a trade union member, dismissals and pressure to force trade unionists and workers to resign. The Committee also notes that, according to the complainant, the judicial authority ordered the reinstatement of a large number of dismissed workers and that the company subsequently closed its operations in November 1999 after putting pressure on the remaining workers (about 500, according to the ICFTU) to resign and accept a redundancy settlement. The Committee urges the Government to send its observations on these allegations as a matter of urgency. Furthermore, the Committee requests the Government to carry out an investigation into this matter and, if the allegations are proven to be true, to take the necessary measures to remedy the situation.*
- 307.** *As regards the allegations concerning the trade unionist José Luis Mendía Flores, the Committee urges the Government to take steps as a matter of urgency to carry out a judicial inquiry into the death threats allegedly made against him and to ensure that he has been reinstated in his post in accordance with the court’s ruling. The Committee requests the Government to keep it informed in this regard.*
- 308.** *Lastly, the Committee requests the Government to ensure compliance with the court orders to reinstate workers dismissed at the company La Exacta since 1994 and to send its observations promptly on the alleged delays in the investigation into the murders in 1994 of four rural workers who had tried to form a trade union. Moreover, the Committee*

requests the Government to keep it informed of the results of the judicial proceedings under way in respect of these murders and trusts that the guilty parties will be punished.

The Committee's recommendations

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

- (a) The Committee deeply regrets that, despite an urgent appeal, the Government has not sent complete observations on the allegations, despite their serious nature and requests it to do so as a matter of urgency as well as to send the information requested below.*
- (b) The Committee requests the Government to take steps to ensure the application to the trade union officials of article 81 of the collective agreement at the Puerto Quetzal port enterprise, which relates to the "wage increment", in such a way as not to exclude these officials from any wage increase.*
- (c) While noting that the Tampont S.A. company has already reinstated three unionists, the Committee requests the Government to confirm that these unionists have been given posts in which they receive at least the same wages as before.*
- (d) The Committee urges the Government to send its observations as a matter of urgency on the allegations concerning the detention of the SITRACOBSA officials Marvin Leonel Cerón and Julián Guisar García, and the numerous orders for the arrest of SITECOBSA and SITECOBSAGOSA officials (including Jorge Estrada and Marco Vinicio Hernández Fabián). The Committee requests the Government to carry out an investigation into this matter and to annul the orders and release the detainees if it is found that these actions were in response to legitimate trade union activities.*
- (e) The Committee urges the Government as a matter of urgency to send its observations on the allegations of anti-union discrimination and intimidation at the company Ace Internacional S.A. The Committee requests the Government to carry out an investigation into this matter and, if the allegations are proven to be true, to take the necessary measures to remedy the situation.*
- (f) The Committee requests the Government as a matter of urgency to take steps to carry out a judicial investigation into the death threats made against the trade unionist José Luis Mendía Flores, and to ensure that he has been reinstated in his post in accordance with the court ruling. The Committee requests the Government to keep it informed in this regard.*
- (g) The Committee requests the Government to ensure compliance with the court orders to reinstate the workers dismissed at the company La Exacta and to send its observations promptly on the alleged delays in the investigation into the murders in 1994 of four rural workers who had tried to form a trade union. Moreover, the Committee requests the Government to*

keep it informed of the results of the judicial proceedings under way in respect of these murders and trusts that the guilty parties will be punished.

CASE NO. 2021

DEFINITIVE REPORT

**Complaint against the Government of Guatemala
presented by
– the Coordinating Committee of Agricultural, Commercial,
Industrial and Financial Associations (CACIF) and
– the International Organization of Employers (IOE)**

***Allegations: Non-compliance with judicial decisions
to evacuate property***

- 310.** The complaint is contained in a communication dated 21 April 1999 from the International Organization of Employers (IOE), also acting on behalf of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF). The Government has submitted its observations in communications of 27 August 1999, 25 February and 4 May 2000.
- 311.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 312.** In their letter of 21 April 1999, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) and the International Organization of Employers (IOE) draw attention to the incidents related hereinafter and, more specifically, to the fact that the Government of Guatemala violated ILO Convention No. 87 by permitting the occupation of, and damage to, three banana plantations – resulting in major unemployment and financial loss – and by disregarding the judicial decisions to evacuate them.
- 313.** The complainants explain that in February 1998 a group of persons invaded the Bananera Mopá and Bananera Panorama plantations in the Department of Izabal in the north-east of Guatemala. The economic losses amounted to millions, and hundreds of persons became unemployed. The occupation was carried out by a group of former workers of a contract labour firm; they were advised and led by the Trade Union of Banana Plantation Workers of Izabal (SITRABI) of the Banana Development Company of Guatemala, S.A. (BANDEGUA) which owns the land leased to independent producers (Bananera Mopá and Bananera Panorama) who, in turn, supply their produce to the abovementioned company. The former workers were persuaded by SITRABI to commit criminal acts and, by force and coercion together with a group of inhabitants of the village of El Cedro, took possession of vehicles and of all installations of the Bananera Mopá and Bananera Panorama plantations, thereby causing major damage to private property. The group of occupiers was led by SITRABI, a trade union which placed pressure on the BANDEGUA company to cancel the leases of the occupied plantations and to cede them to the occupiers; in the event of resistance, SITRABI threatened to pursue the occupation of the plantations and to halt all work on BANDEGUA operations until the plantations were transferred to the occupiers.

314. The complainants add that, apart from the invasion of the Bananera Mopá and Bananera Panorama plantations, the same group of persons moved into the Bananera Panchoy o Paraíso plantation on 13 April 1998. That plantation's workers resisted the invasion and were surrounded by the intruders and confined to the plantation. Moreover, they were harassed and threatened day and night by the occupiers, as stated in the report of 16 April 1998 signed by the Labour Inspector, Mr. Francisco Duarte Aldana, one paragraph of which reads:

... the workers voice the wish to appear in this report as representatives of the other 85 workers and they state that, at present, the latter are not organized in any way and that a group of workers that do not belong to the plantation are harassing them night and day, that they are surrounded within its installations which they are not permitted to leave; consequently, they request the labour, judicial and all competent authorities to intervene forthwith to protect them, as they fear that, at any moment, they may be in personal danger. Similarly, they state for the record that they are short of food, medicines and drinking water and request the inspectors to report immediately to their higher authorities to intervene.

On the Bananera Panchoy plantation, the intruders barricaded and cordoned off all access roads; this prompted the plantation owners to send in drinking water, provisions and medicines by helicopter to the besieged workers that were resisting the invasion.

315. The complainants indicate that the representatives of the three plantations took all appropriate court action to obtain the evacuation and detention of those responsible who, in the case in question, are SITRABI leaders. In any event, the courts ruled in favour of the enterprises: the strike in the Bananera Mopá and Bananera Panorama plantations was declared illegal and, in each case, an order was issued to evacuate the plantations having undergone invasion. Nevertheless, these orders were not enforced by the competent authorities, with the exception of one instance on 25 March 1998 when 400 police officers attempted to carry out the instructions to seize and evacuate the responsible parties from the Bananera Mopá and Bananera Panorama plantations; this attempt failed, given that the police were not prepared for dealing with a crowd of more than 3,000 persons, mobilized and urged on by SITRABI; they had not asked for the necessary reinforcements to execute the court order. This was the first and only attempt made by the authorities to fulfil their duty.

316. Accordingly, Guatemala experienced an income shortfall of millions of dollars, hundreds of persons became unemployed, private property rights and freedom of movement and of work were violated with impunity.

317. In the complainants' view, the Government failed throughout to fulfil its constitutional obligation to apply and enforce the law; by negligence or intent it did not comply with the court orders that were designed to re-establish law and order that had been overturned by the occupiers, i.e. to preserve the rule of law.

B. The Government's reply

318. In its communications of 27 August 1999, 25 February and 4 May 2000, the Government states that all of the alleged action against the Mopá and Panorama plantations was taken by workers and trade unionists and not by the Government of the Republic. The complaint reveals no restriction placed upon the right to organize, freedom of trade union action or freedom to engage in union activities; consequently, no act has been committed in violation of freedom of association. The Government indicates that, as stated in the complaint, when the police attempted to evacuate the plantations, the command of the approximately 400 officers discovered that there were about 3,000 persons on the land and

that it was a matter of good judgement to avoid a blood bath which, at that stage, would have been tantamount to a barbaric act committed by the Government. Legal theory teaches that it is always preferable to avoid the greater evil; if, at that point, the evacuation did not take place but a massacre was avoided, logic and reason indicate that the chief of police acted correctly. In any event, this is unrelated to freedom of association.

- 319.** The Government refers to earlier observations that it submitted in relation to Case No. 1960, regarding the events having taken place on these banana plantations; it had emphasized the repeated action taken by the Government to resolve the dispute on the plantations but which subsisted on account of the dismissal of hundreds of workers. The Government states that this dispute was settled on 8 February 2000, as a collective agreement was signed.

C. The Committee's conclusions

- 320.** *The Committee observes that the complainant organizations allege that: (1) the Government permitted the occupation of, and damage to, three banana plantations by workers and other persons led by the trade union SITRABI, who used force and coercion, taking possession of vehicles and installations of two plantations (Mopá and Panorama), invaded a further one (Paraíso) meeting with the resistance of the workers who were harassed and threatened and not allowed to leave, as the intruders closed off the access roads; these incidents caused major damage to private property; (2) the Government did not respect the orders to evacuate the occupied plantations, with the exception of one instance in which there was an insufficient number of police officers present and the necessary reinforcements were, nevertheless, not requested; and (3) accordingly, hundreds of people became unemployed, private property rights were violated as well as the freedom of movement and of work, with ensuing income shortfalls for the country of millions of dollars.*
- 321.** *The Committee notes that this case is related to Case No. 1960 (complaint presented by the International Confederation of Free Trade Unions) also examined in this report (see paragraphs 214-247).*
- 322.** *In the case at hand, the Committee takes note of the Government's statement and, in particular, that: (1) the acts of violence on the Mopá and Panorama plantations were carried out by workers and trade unionists and not by the Government and that no acts were committed in violation of freedom of association; (2) the police did not evacuate the Mopá and Panorama plantations for the sake of avoiding a massacre whereas 3,000 persons were on the plantations and there were approximately 400 police officers.*
- 323.** *In view of Case No. 1960 and this case, the Committee deplores the general climate of violence in this dispute.*
- 324.** *The Committee wishes to bring to the Government's attention that, by virtue of Article 8, paragraph 1, of Convention No. 87: "In exercising the rights provided for in this Convention workers and employers in their respective organizations, like other persons or organized collectivities, shall respect the law of the land." In these circumstances, the Committee profoundly deplores the action taken by certain workers; according to the complainant there were criminal acts against individual freedoms, property rights and the freedom to work, together with threats and coercion. The Committee recalls that: "The rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and 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 considers that occupation of plantations by workers and by other persons is contrary to Article 8 of Convention No. 87.*

- 325.** *Consequently, whereas it takes note of the Government's explanation regarding the reasons why, in this case, it was unable to evacuate the Mopá and Panorama plantations, the Committee requests the Government, in future, to enforce the evacuation orders pronounced by the judicial authorities whenever criminal acts are committed on plantations or at places of work in connection with industrial disputes.*

The Committee's recommendation

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

Deploring the general climate of violence in the dispute in the banana sector, and expressing the hope that the agreements concerned will put an end to this climate of violence, the Committee requests the Government, in future, to enforce the evacuation orders pronounced by the judicial authorities whenever criminal acts are committed on plantations or at places of work in connection with collective disputes.

CASE NO. 1991

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

Complaint against the Government of Japan presented by

- the Japanese National Railway Workers' Union (KOKURO) and**
- the All National Railway Locomotive Engineers' Union (ZENDORO)**

Allegations: Acts of anti-union discrimination

- 327.** The Committee examined the substance of this case at its November 1999 meeting when it presented an interim report to the Governing Body [see 318th Report, paras. 232-271, approved by the Governing Body at its 276th Session (November 1999)].
- 328.** ZENDORO provided additional information in a communication dated 12 April 2000. The Government furnished its observations in communications dated 7 February, 19 April, 13 June, 15 September and 24 October 2000.
- 329.** Japan has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 330.** The Committee had noted that this case involved two sets of allegations during its previous examination thereof. The first related to the fact that following the decision to privatize the Japanese National Railways ("JNR") in 1987, the succeeding corporations known as the Japan Railway Companies ("JR companies") did not hire many KOKURO and ZENDORO members solely on account of their trade union membership. Moreover, pursuant to the

JR companies' refusal to hire these workers, they were redeployed to the JNR Settlement Corporation which subsequently dismissed a large number of them in 1990. The second set of allegations related to the complainants' contention that although 18 local labour relations commissions (LLRCs) and the Central Labour Relations Commission (CLRC) recognized the existence of unfair labour practices and accordingly issued relief orders to ensure that the JR companies took measures to redress their discriminatory practices, the companies concerned sought to avoid taking such measures by constantly appealing the relief orders. The complainants thereby concluded that for all intents and purposes, there was no effective protection of the right to organize in the Japanese system.

- 331.** More specifically, the Committee had noted that the alleged discrimination at the time of recruitment – and the subsequent loss of jobs – arose within the context of the privatization of the JNR. In the case at hand, the complainants had alleged that 7,600 workers who were refused employment by the JR companies in April 1987 were members of KOKURO and ZENDORO. The Committee had noted that the Government did not refute the allegations that these 7,600 workers were refused employment by the JR companies and redeployed to the JNR Settlement Corporation which subsequently, in April 1990, laid off 1,047 employees. In order to make an informed decision in full knowledge of all the facts on the reasons for which these workers were refused employment by the JR companies, the Committee had requested the Government to provide additional information in this regard.
- 332.** Furthermore, the Committee had regretted to note that these 1,047 KOKURO and ZENDORO members were still suffering the consequences of the refusal to employ them as they were still unemployed and risked being unemployed for a further period of time since according to the complainants, the judicial proceedings could take several more years. In this regard, the Committee had noted the Government's statement that it had made attempts in the past to solve the dispute between the JR companies and the workers concerned and that it would continue to pursue its efforts to resolve the issue of the dismissed KOKURO and ZENDORO members. The Committee had therefore urged the Government to actively encourage negotiations between the JR companies and the complainants with a view to rapidly reaching a satisfactory solution for the parties and which would ensure that the workers concerned were fairly compensated.
- 333.** Regarding the allegations that the legal system in Japan did not protect the right to organize since relief orders against unfair labour practices which were issued by labour relations commissions could be cancelled by the courts and employers constantly had recourse to the courts in order to delay the implementation of these orders, the Committee had considered that while it was important that a judicial authority be able to judge cases concerning dismissals and their illegality, it had also considered that it was the responsibility of the Government to ensure the application of international labour Conventions concerning freedom of association which had been freely ratified and which must be respected by all state authorities, including the judicial authorities. In the situation at hand, the Committee had noted that the issue of the dismissals of KOKURO members was pending before the Tokyo High Court and that of the dismissals of ZENDORO members was pending before the Tokyo District Court. The Committee had therefore trusted that the decisions handed down would be in line with Convention No. 98.
- 334.** Finally, the Committee had stressed that cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies could be really effective. In the case at hand, the Committee had observed with concern that there had been an excessive delay in the proceedings concerning KOKURO and ZENDORO members which was due in no small measure to the constant appeals made against the relief orders issued by the 18 local labour relations commissions as well as by the Central Labour Relations Commission, thereby suspending the relief orders in question. The Committee had noted, however, the Government's indication that a new

Code of Civil Procedure which had been enacted the previous year had defined procedures which would speed up the clarification of disputes and the organization of the evidence, and that other allowances had been established to make the concentrated evidence inspection easier and therefore a shortening of the time of trial could be expected. The Committee had requested the Government to provide the relevant extracts from this new Code of Civil Procedure.

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

- (a) In order to make an informed decision in full knowledge of the facts on the reasons for which the Japan Railway Companies (JR companies) refused to employ a number of KOKURO and ZENDORO members, the Committee requests the Government to provide additional information in this regard.
- (b) The Committee urges the Government to actively encourage negotiations between the Japan Railway Companies and the complainants with a view to rapidly reaching a satisfactory solution for the parties and which would ensure that the workers concerned are fairly compensated; it requests the Government to keep it informed of any progress made in this regard.
- (c) Recalling that it is the responsibility of the Government to ensure the application of international labour Conventions concerning freedom of association which have been freely ratified and which must be respected by all state authorities, including the judicial authorities, the Committee trusts that the decisions handed down by the courts concerning the dismissals of KOKURO and ZENDORO members will be in line with Convention No. 98. It requests the Government to keep it informed of the outcome of these court proceedings.
- (d) The Committee requests the Government to transmit the relevant extracts of the new Code of Civil Procedure and expects that the procedures established by the newly enacted Code of Civil Procedure will be effective and expeditious so as to guarantee that cases concerning anti-union discrimination, contrary to Convention No. 98, are examined rapidly in the future with a view to securing really effective remedies; it requests the Government to keep it informed of any developments in this regard.

B. The complainant's additional information

336. In a communication dated 12 April 2000, ZENDORO indicates that the Tokyo District Court, on 29 March 2000, handed down a decision that cancels the relief orders previously issued by the Central Labour Relations Commission (CLRC) for the victims of unfair labour practices. This court decision denies the responsibility of the Japan Railway Companies ("JR companies") for unfair labour practices in the case of employment discrimination against ZENDORO members. ZENDORO points out that the Committee on Freedom of Association, in November 1999, adopted interim recommendations concerning Case No. 1991, stating, *inter alia*, "the Committee trusts that the decisions handed down by the courts concerning the dismissals of KOKURO and ZENDORO members will be in line with Convention No. 98". The recent decision of the Tokyo District Court, however, clearly runs counter to the Convention. ZENDORO then goes on to explain why.

337. First of all, ZENDORO contends that the court's interpretation that the discrimination which occurred at the time of recruitment against ZENDORO members does not constitute an unfair labour practice is wrong. Section 7, item 1, first paragraph of the Trade Union Law of Japan prohibits employers from "discharging or otherwise treating in a disadvantageous manner a worker by reason of such a worker being a member of a trade

union, or having tried to join or organize a trade union, or having performed proper acts of a trade union”. This legal provision corresponds to Article 1, paragraph 2(b), of Convention No. 98: acts calculated to “cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours”. The CLRC decided that refusal of employment by the JR companies on the ground of union affiliation constituted disadvantageous treatment based on union affiliation. This correct interpretation of Convention No. 98 and section 7, item 1, of the Trade Union Law is that disadvantageous treatment based on union affiliation throughout the process of employment, from recruitment to dismissal, is prohibited. An overwhelming majority of the Japanese labour law society supports this interpretation of the Convention and the law. The decision of the Tokyo District Court, however, adopted a more restrictive interpretation of the abovementioned legal provision, stating that, in general, rejection by an enterprise of hiring workers based on their union membership does not constitute an unfair labour practice in so far as it concerns the case of *new recruitment* since “freedom of hiring” should be guaranteed to the employer and that section 7, item 1, does not prohibit disadvantageous treatment by reason of union membership at “recruitment”. This conclusion contained in the Tokyo District Court decision is an interpretation that clearly contradicts Convention No. 98.

- 338.** ZENDORO adds that, concerning the recruitment procedure of workers by the JR companies, it was confirmed on several occasions during the course of the parliamentary deliberations on the Japan National Railways Reform related bills that candidates for hiring should not be treated unfavourably because of their union affiliation. The Tokyo District Court decision acknowledges the fact that the Japanese Parliament’s additional resolution adopted at the same time as the JNR Reform Laws, as well as the replies given by the Minister of Transport during the parliamentary deliberation clearly illustrate that one of the intentions of the legislature was to prevent that, when selecting candidates to be hired, those workers who belonged to the unions that had accepted the JNR reform were given priority over the workers who belonged to the unions that opposed the reform. The Tokyo District Court decision, however, on the ground that this legislature’s intention was not formally inscribed in any specific provisions of the Reform Laws, developed an astonishingly formalistic interpretation of these laws and concluded that the discrimination by the JR companies in recruitment and hiring of employees did not constitute an unfair labour practice.
- 339.** ZENDORO further points out that the discrimination at the time of recruitment in question occurred during the process of the privatization and division of the Japan National Railways carried out according to the JNR Reform Laws. The Tokyo District Court decision, however, excessively emphasizes the fact that the discrimination at the time of recruitment occurred during a process, which was determined by specific laws, namely the JNR Reform Laws. On the grounds that these laws provide that Japan National Railways is responsible for selecting candidates among its employees, the decision concluded that the JR companies were not responsible for any discriminatory selection made by the JNR nor for the refusal of employment by the JNR on the basis of union affiliation resulting from that selection. The Tokyo District Court decision thus denies the responsibility of the JR companies for unfair labour practices, without referring to the reasons why the ZENDORO members were refused employment by the JR companies. The decision does not at all touch upon the reason for refusal of employment, i.e. whether or not the workers were refused employment on the basis of their union affiliation, and denies the responsibility of the JR companies on the sole ground of the formalities regarding the division of the JNR into private companies.
- 340.** Finally, section 7, item 1, second paragraph, of the Japanese Trade Union Law prohibits “setting the non-affiliation with any trade union or withdrawal from the union as

conditions of hiring". This legal provision corresponds to Article 1, paragraph 2(a), of Convention No. 98: acts calculated to make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership. The Tokyo District Court decision admits that this particular provision can be applied to the new recruitment made by the JR companies. It also recognizes that, if the JNR has added discriminatory conditions against trade union members when setting conditions of recruitment by the JR companies and if this has resulted in the non-employment of union members, the JR companies are to be held responsible for unfair labour practices.

341. ZENDORO contends that the Tokyo District Court decision has been made in complete disregard of ILO Conventions and workers' right to organize themselves in unions, with the pre-set intention of denying the responsibility of the JR companies for unfair labour practices which occurred during the process of division and privatization of the JNR under the national policy. ZENDORO indicates that it is determined to appeal against the decision and win a favourable judiciary decision. However, as the Committee has rightly indicated, with the cancellation of the orders issued by the CLRC, it will certainly take a long time until the judicial settlement of the case. Given the very difficult conditions of the complainants, it must be said that the recent decision of the Tokyo District Court has increased the responsibility of the Japanese Government for settling the case. In addition, as the court decision invokes the governmental replies made during parliamentary deliberations and the provisions of the JNR Reform Laws as reasons for the denial of the responsibility of the JR companies, it can be said that, in a sense, this fact itself confirms the responsibility of the Japanese Government in settling the case. Meanwhile, ZENDORO has repeatedly requested the Government to observe the Committee's recommendations and make efforts to promote negotiations between the unions and the JR companies. To date, however, the Government has not made any effort to solicit the JR companies to hold negotiations with the unions. ZENDORO therefore wishes to request the Committee on Freedom of Association to issue recommendations to the Government for promoting an early settlement of the present case.

C. The Government's reply

342. In a communication dated 9 February 2000, the Government indicates first of all that in order to understand the reasons for which the Japan Railway Companies (JR companies) refused to employ a number of KOKURO and ZENDORO members, it is necessary to explain the background to the reform of the Japan National Railways (JNR). The JNR started to run deficits from 1964 and the situation kept on deteriorating. The reason why the JNR's managerial condition deteriorated to such a catastrophic state was that it could not cope appropriately with the changes in the environment of the railway business, and that it continued its style of old-fashioned management. Given such a situation, the Supervisory Committee for the JNR Reconstruction reached the conclusion that the only way to reconstruct the businesses managed by the JNR was to divide the managerial scale into appropriate business units, eliminate government involvement as much as possible through privatization, and allocate the employees efficiently to aim for private enterprise level productivity. It was under this policy that the JNR reform was to be carried out. Hence, regional division and drastic lay-offs became the essentials of the JNR reform. It is necessary to note the fact that the number of employees had to be reduced from about 277,000 at the beginning of 1986 to about 215,000.

343. In August 1985, the Government established the Employment Measures Headquarters headed by the Prime Minister and assisted by the Minister of Transport and the Minister of Labour and others. In December, the Cabinet adopted the "Basic Policy on JNR Redundant Employees Re-employment Measures". The Government thereby announced that it would make national efforts to secure re-employment of the JNR employees. Specifically, it strongly requested public sector entities such as government agencies and local public

entities as well as general industrial circles to hire the employees and enacted a law including a provision to pay special benefits to voluntary retirees. It hence took all imaginable measures. The JNR itself also took diverse measures for its employees such as dispatch to private enterprises, “wide-area transfers” and acceptance by JNR affiliates.

- 344.** Regarding wide-area transfers, the Government explains that the JNR’s railway business was to be divided up into seven companies based on regions. However, as for the JR Hokkaido and the JR Kyushu companies whose cash flow had been expected to deteriorate, the numbers to be hired had to be limited from the beginning. For this reason, it was found that if the division and privatization was implemented according to the report of the Supervisory Committee for the JNR Reconstruction, one in two personnel would be in excess in Hokkaido and one in three in Kyushu. Moreover, Hokkaido and Kyushu had less re-employment opportunities in private enterprises so that elimination of regional imbalances between the scale of redundant employees and employment opportunities became an important issue. For this reason, the JNR implemented “wide-area transfers” from 1986 to recruit transferees from Hokkaido to Tokyo, Nagoya and other regions from eastern Japan and from Kyushu to the western Japan regions, mainly Osaka. Such transfers were very trying for the employees as they had to leave the area where they were used to living and sell homes, etc. However, more employees than expected cooperated and the project produced great outcomes. Nevertheless, most of the personnel who accepted this transfer belonged to TETSURO (Railway Workers’ Union) or DORO (Locomotive Workers’ Union) and the members of KOKURO and ZENDORO which opposed the reform of the JNR were uncooperative (table 1).

Table 1. The number of those transferred over a wide area (April 1985-March 1987)

| | KOKURO | ZENDORO | DORO | TETSURO | Others |
|---------------|----------|---------|---------|---------|--------|
| Transferees | 653 | 0 | 1 791 | 561 | 813 |
| Union members | 165 400 | 2 400 | 31 400 | 28 700 | 49 000 |
| Percentage | 0.4% (1) | 0 | 6% (15) | 2% (5) | 2% (5) |

Notes: The union members are rough figures as of April 1986. Parentheses: each union's figure when the KOKURO's percentage is converted into 1. "Others" includes non-union members and managers.

- 345.** At present, the JR Soren (Japan Confederation of Railway Workers’ Union) constituting about 40 per cent of all JR employees takes the position that the “non-hiring issue has been solved”. It points out that the reason for this is that there are many people who wanted to be re-employed by their local JRs at the time of the reform but who accepted wide-area transfers by cooperating with the reform. These people could not accept that the persons who failed to cooperate with the reform would be re-employed by their local JRs as they wished even though some ten years have passed. The JR Rengo (Japan Railway Trade Unions Confederation), also constituting about another 40 per cent of the personnel, takes a similar position.
- 346.** The Government goes on to explain the JR companies’ hiring criteria. These criteria were determined by the Establishment Committee of each succeeding corporation. They mainly consisted of the following three points:
- those under the age of 55 as of 31 March 1987;
 - those healthy enough to execute duties;
 - those suited for the operations of the new company in view of their service records in the JNR.

Among these, “service records in the JNR” were to be assessed comprehensively and fairly based on the knowledge, skills and aptitude for jobs and the daily service records based on materials such as the personnel control records. KOKURO and ZENDORO claim that as a result of discrimination on the basis of the labour union to which one belonged, the hiring rates of their members were lower compared to those belonging to other unions in some regions. The reason for this is believed to be that many of KOKURO/ZENDORO members had some problems with their service records such as absence from work without notice, etc. That is, if the selection were to be made objectively and fairly based on such service records, the rate at which the KOKURO/ZENDORO members would be hired had to be low to some extent. It is believed that the JNR did not intentionally discriminate against KOKURO/ZENDORO members.

347. The Government acknowledges that the nationwide hiring rates by unions show that those of KOKURO members are low compared to those of other unions. However, figure-wise, over 80 per cent of KOKURO members were hired (table 2). In view of the fact that many of the members of this union continued to be employed by their local JRs (Hokkaido and Kyushu), there is a view that this re-employment figure is not so low (table 3). On the other hand, as regards ZENDORO, the nationwide hiring rate of its members was about 60 per cent (table 2). A main factor is believed to be the following: about 60 per cent of ZENDORO members lived in Hokkaido (which is over five times that of other unions’ rate; table 3). In spite of this, they persisted with employment by their local JR. Hokkaido produced the greatest number of redundant employees among all areas so that the number to be hired by the JR Hokkaido had to be lower. Given such a situation, if ZENDORO, which had many members in Hokkaido, persisted with employment by their local JR, their hiring rate had to be low. Furthermore, ZENDORO had alleged that in five locomotive departments within Hokkaido (Otaru, Naebo, Iwamizawa, Takikawa and Tomakomai) the hiring rate for union members of DORO and TETSURO by the local JR was 100 per cent, whereas the hiring rate for union members of ZENDORO was remarkably lower [318th Report, para. 245]. The Government points out that this discussion does not take into consideration employees who accepted the wide-area transfers. In other words, 895 union members of DORO and TETSURO accepted wide-area transfers from Hokkaido to Honshu in cooperation with the JNR reform. (On the other hand, none of the ZENDORO members accepted wide-area transfers.) Considering that almost all JNR employees wished to be employed by their local JR, naturally those employees who accepted wide-area transfers should be taken into account when calculating the hiring rate of the local JR. However, in its calculations, ZENDORO excluded many of those not employed by the local JR and included the figures of those who accepted wide-area transfers, and concluded that the hiring rate of union members of DORO and TETSURO to the local JRs was 100 per cent. Therefore, it has to be said that ZENDORO’s calculations were manipulated.

Table 2. The number hired by JRs and those moved to the Settlement Corporation

| | KOKURO | ZENDORO | TETSUDOROREN | Others |
|---|--------|---------|--------------|--------|
| Hired by JRs (a) | 36 000 | 1 200 | 127 000 | 36 500 |
| Moved to the Settlement Corporation (b) | 8 400 | 800 | 6 300 | 7 500 |
| Union members (a)+(b) | 44 400 | 2 000 | 133 300 | 44 000 |
| Hiring rate by JRs (a/a+b) | 81% | 60% | 95% | 83% |

Notes: (a) is as of 1 April 1987, (b) is as of 1 May 1987. (a) and (b) are approximate. “TETSUDOROREN” was established in February 1987 by combining TETSURO, DORO and others. “Others” include non-union members and those of TETSUSANRO.

Table 3. Ratios of Hokkaido members to all union members

| | KOKURO | ZENDORO | DORO | TETSURO |
|-------------------|---------|---------|--------|---------|
| Hokkaido members | 17 800 | 1 400 | 3 600 | 100 |
| All union members | 165 400 | 2 400 | 31 400 | 28 700 |
| Percentage | 11% | 58% | 11% | 0% |

348. The Government then proceeds to explain the relationship between Establishment Committees for the JRs and JNR. The relationship between the Establishment Committees and the JNR in terms of the hiring procedure is clearly stipulated in section 23 of the JNR Reform Act (Annexes I and II). The said provision prescribes for the Establishment Committees to recruit the employees (subsection 1) and to make notification regarding their hiring (subsection 3). As is clear, the recruitment and hiring of the employees of the succeeding corporations were to be carried out under the responsibility and authority of the Establishment Committees. However, the JNR authorities kept the career, service records and other data of the JNR employees to be hired. In addition, the recruitment of personnel and the confirmation of their desires, etc. had to be carried out in a short period and in a massive work volume. It was therefore decided that the JNR would carry out these operations and prepare the lists of candidates on this basis (subsection 2) instead of the succeeding corporations (JRs). Therefore, the preparation of the lists by the JNR was carried out under its authority and responsibility, and it is not possible to place any responsibility for the act of list preparation by the JNR on the JRs.

349. The Government further stresses the absence of essential identity between the JNR and the JRs. ZENDORO points out the fact that “the JR companies entirely succeeded JNR’s entire assets, facilities, equipment and institutional structure necessary for the railway business”, as the reason for which the JRs must be held responsible for the unfair labour practices carried out by the JNR [318th Report, para. 250]. However, section 22 of the JNR Reform Act prescribes that “each succeeding corporation shall take over the rights and obligations of the JNR which have been prescribed by the transfer plan in the way as prescribed therein at the time of establishment of the respective succeeding corporations”. Therefore, the JRs had taken over from the JNR only those assets and liabilities related to the railway business “on a restricted basis” according to the transfer plan. It must be noted that all other JNR assets and liabilities (long-term liabilities amounting to US\$243 billion and land and other assets for their repayment) were transferred to the JNR Settlement Corporation (reference 1). Also, from the viewpoint of the type of corporations, while the JRs are stock companies (commercial companies) established for profit, the JNR Settlement Corporation is a public corporation like the JNR. This is the major difference between the JNR and the JRs (reference 2).

Reference 1

- Section 15, JNR Reform Act

When the Japanese National Railways transfers its businesses to the succeeding corporations, the national Government shall transfer the Japanese National Railways to the Japanese National Railways Settlement Corporation. It shall have the Settlement Corporation carry out the operations to dispose the assets and liabilities not transferred to the succeeding corporations. It shall also provisionally have it carry out operations to promote the re-employment of its employees.

- Section 2, Supplementary Provisions, Japanese National Railways Settlement Corporation Law

The Japanese National Railways shall become the JNR Settlement Corporation upon enforcement (i.e. 1 April 1987) of the provision of section 2 of the Supplementary Provisions of the Reform Act. (The rest omitted.)

Reference 2

■ Section 2, Japanese National Railways Act

The Japanese National Railways shall be a public corporation. It is not a commercial company as prescribed by the provisions of article 35 of the Civil Code or the Commercial Law related to commercial companies and other corporations.

- 350.** The Government goes on to explain at length the employment measures taken by the JNR Settlement Corporation, as well as the state of re-employment of JNR employees in the process of the reform of the JNR (Annex III). The 7,628 persons who were not re-employed when the JRs started in April 1987 were to become JNR Settlement Corporation employees and re-employment measures were taken for them by the JNR Settlement Corporation for three years. There is a view that, while as many as 1,047 KOKURO and other union members were finally dismissed by the JNR Settlement Corporation and that they and their families have been forced to undergo a hard living until today, this is because they never responded to the additional hiring by the JRs and the generous re-employment measures taken by the JNR Settlement Corporation and had chosen this path intentionally. The following paragraphs make this point clear by adding some information on the additional hiring undertaken by the JRs and the re-employment measures taken by the JNR Settlement Corporation. The Government adds that ZENDORO's claim that "all of the 7,600 workers who were refused employment by the JRs in April 1987 were members of KOKURO and ZENDORO" [318th Report, para. 266] is false because over 1,000 of them were TETSUDOROREN and other union members.
- 351.** When the JR companies started, the numbers hired by the JR Hokkaido and the JR Kyushu were more or less as initially planned. However, the other JR companies hired less than what was initially planned. As a consequence of this, the Ministry of Transport requested the JR companies to additionally recruit, and through cooperation by the JR companies, additional hiring was carried out four times. In the first recruitment that started from May 1987, one month after the JRs started, the JR East offered jobs for "about 7,000" which amounted to almost all of the employees requiring re-employment. When the other JR companies were included, the job offers exceeded 13,000. In the second wide-area additional hiring carried out in December 1988, the companies did not prescribe any recruitment limits so that, in reality, they recruited any number. These additional hirings were designed to relieve former JNR employees who desired to remain in the railway business and could not be employed by the JR Hokkaido or the JR Kyushu for reasons of capacity. Therefore, unlike the case of "newly recruiting employees", without preparing a list of candidates, anyone who applied could be employed by the JRs. In fact, all employees, including KOKURO and ZENDORO members who really wanted to be employed were hired. However, KOKURO/ZENDORO persisted in seeking employment by their local JRs under the policy from the JNR days of "opposition to the reform of the JNR" and "reversion to the original region and position", so that the number who applied did not reach what had been expected initially. In the final analysis, only 1,606 returned to the JRs by making use of these additional hiring opportunities (90 per cent of these were KOKURO/ZENDORO members (table 4)).

Table 4. The number of those additionally hired

| KOKURO | ZENDORO | TETSUSANRO | TETSUDOROREN | Other | Total |
|--------|---------|------------|--------------|-------|-------|
| 1 036 | 401 | 127 | 8 | 34 | 1 606 |
| (65%) | (25%) | (8%) | (0.5%) | (2%) | |

Notes: TETSUSANRO is the union split from KOKURO in February 1997. Parenthesis are ratios of each union's members additionally hired to the total.

- 352.** Additionally, for the unemployed, the JNR Settlement Corporation strove to secure employment through all kinds of methods, such as by seeking opportunities not just in the public sector, but in the private industrial circles as well, and by actively visiting companies. For the unemployed, it provided employment consultation on a daily basis, arranged for job offers based on each individual's desires, and implemented education and training for acquiring the knowledge, skills and qualifications necessary for employment. The average number of the employment consultation sessions amounted to 74 times per person and 34 jobs were offered per person. Hence, the re-employment measures taken were very generous both system-wise and institutionally. As a result, 6,581 persons excluding the 1,047 found employment and amicably left the JNR Settlement Corporation (see Annex III). In April 1990, upon completion of the JNR Settlement Corporation's employment measures operations, the 1,047 persons who were still not employed were dismissed by the JNR Settlement Corporation. Regarding these 1,047 persons, ZENDORO claimed that "these 1,047 KOKURO and ZENDORO members are still suffering" [318th Report, para. 251]. However, in reality, they had many opportunities to find employment and stabilize their living conditions by utilizing various opportunities such as the additional hirings by the JR companies and employment measures promoted by the JNR Settlement Corporation. Moreover, 96.5 per cent of these 1,047 persons were concentrated in Hokkaido and Kyushu where the re-employment was extremely difficult. However, they persisted with the policy of "reversion to the original region and position" (521 persons in Hokkaido and 489 in Kyushu). In other words, it is necessary to note that the 1,047 union members have fallen into the present state partly because KOKURO and ZENDORO executive committees have been placing the highest priority on the union policy of "opposition to the reform of the JNR" and "reversion to the original region and position".
- 353.** The Government then indicates that the main developments pursuant to the dismissal of the 1,047 persons by the JNR Settlement Corporation in April 1990 are as described in the Committee's interim report [318th Report, paras. 257, 258, 261, 263 and 264]. The Government provides additional information on several opportunities for resolution that existed during this period. First of all, on 28 May 1992, the Central Labour Relations Commission (CLRC) proposed a solution (Chairman Ishikawa's proposal) to the JRs, KOKURO and ZENDORO. Regarding this proposal, Mr. Okuda, then Minister of Transport, released a comment that "both sides are expected to examine positively the possibility of a settlement without insisting on past contentions and principles". Also, Mr. Kondo, then Minister of Labour, released a comment that "while labour and management may have their own positions, I also would like to request strongly that labour and management settle this issue quickly and amicably based on the proposal". In response, Mr. Sumita, then President of JR East, released a comment that while the proposal had many problems, the company would like to examine if it could cope in some form with the proposed employment measures. In contrast, KOKURO released its chairman's statement that "today's proposal entirely ignored the orders issued by the 17 Prefectural Labour Relations Commissions and must be said to be unfair. We cannot accept the proposal". ZENDORO also released its chairman's statement that "ZENDORO has demanded full settlement based on the Prefectural Labour Relations Commissions' orders and reinstatement of the 1,047 to their local JRs but these were not accepted so that we cannot accept the proposal at all. The proposal ignores the keen pleas of the dismissed, and their families, who have no choice but to find employment in their local JRs. The

proposal is to abandon the powers and roles of the Central Labour Relations Commission as an agency to benefit workers". Finally, in June 1992, KOKURO submitted a reply to Chairman Ishikawa that "we cannot accept the proposal. As a condition for solving the non-hiring issue, we will continue to demand an apology for the unfair labour practices, and demand that our local JRs employ all of the persons covered by the remedial orders retroactively to 1 April 1987". Hence, unfortunately, the prospects of the settlement based on Chairman Ishikawa's proposal melted away. In view of the circumstances in those days, there was a possibility for the JRs and the unions to at least negotiate a settlement of the problem based on Chairman Ishikawa's proposal. The fact was that KOKURO and ZENDORO unilaterally rejected the proposal without examining it at all.

354. The Government then describes the efforts made towards reaching a political settlement. On 28 May 1998, in relation to the non-hiring issue involving KOKURO, the Tokyo District Court rendered a judgement which supported the JR's claim, and cancelled the CLRC's order that had more or less acknowledged KOKURO's contentions. In view of the fact that the court decision rejected the KOKURO claim, the then three ruling parties (the Liberal Democratic Party, the Social Democratic Party and the Sakigake Party), genuinely pushed for a political solution to this problem such as by proposing to the union side that it negotiate with the JR companies in order to reach a realistic solution. Amid such movement, in its Provisional Convention held on 18 March 1999, KOKURO organizationally adopted "approval of the JNR Reform Act" which had been the greatest bottleneck in starting the negotiations. Along with the Liberal Party, the Liberal Democratic Party informally put together the specific conditions for the JRs and KOKURO to start negotiations (such as for KOKURO to acknowledge that the JR companies were not legally responsible). These specific conditions were put into a document "Start of KOKURO-JR companies' negotiations" (Annex IV), and continued adjustments were made for the commencement of negotiations with the Social Democratic Party coordinating for KOKURO. However, in June 1999 an incident occurred in which the KOKURO executive committee sent this document to its local organs thus making it public. Also, in the KOKURO Regular National Convention held in August of the same year, the executive committee said it wanted to "press for settlement through negotiations by breaking through the present situation through political party negotiations" based on the policy adopted in the 18 March Provisional Convention that organizationally adopted "approval of the JNR Reform Act". However, criticism of the executive committee erupted in relation to the progress report after the approval of the JNR Reform Act, and that revealed intra-KOKURO conflict of opinions regarding this issue with some members demanding revocation of the policy that approved the Reform Act. In view of such movements within KOKURO, the related parties such as the LDP and the JR developed suspicions about whether KOKURO truly intended to settle the issue. This created a fissure in the relationship of trust being constructed between the union and the political parties concerned, and the positive mood that was growing in anticipation of the commencement of negotiations subsided.

355. In conclusion, the Government asserts that KOKURO and ZENDORO should understand that the time has come for them to flexibly examine more realistic solutions. In starting the negotiations with the JRs also, KOKURO needs to stick with the policy of approving the JNR Reform Act adopted in the March 1999 Provisional Convention. This problem has been continuing for some ten years and the Government hopes for a settlement as quickly as possible. But the Government had done everything that it could have done according to the legal system related to the reform of the JNR, and that seeking for a solution in line with "reversion to the original place and position" demanded by the unions would be to reject this legal system itself. Given the facts that the hiring procedure and system based on the JNR Reform Act are not in violation of the Constitution of Japan and the ILO Conventions, and that the Supreme Court has ruled that the JRs are not responsible for the acts carried out by the JNR in relation to the said procedure, in solving this problem, the

Government believes that the only recourse is a political solution from a humanitarian viewpoint. Fortunately, the Social Democratic Party is now taking the initiative in coordinating KOKURO opinions and continuing discussions with the LDP on the conditions and time for restarting negotiations. The Government hopes that these inter-party discussions will produce outcomes towards solving the problem.

- 356.** With regard to the Committee's second recommendation that efforts be made by the Government in order to encourage negotiations between the JRs and unions [318th Report, para. 271(b)], the Government provides the following information. Moves to settle this issue have been discussed mainly through deliberations between the ruling Liberal Democratic Party and the Social Democratic Party. The Government explained details of the Committee's recommendations to both parties. Furthermore, after the recommendations were adopted on 18 November 1999, the Government held discussions with KOKURO on 3 December 1999, and ZENDORO and ZENROREN (National Confederation of Trade Unions to which ZENDORO is affiliated) on 7 December 1999. In addition, on 26 November a meeting between ZENDORO, ZENROREN and the Minister of Transport, Mr. Nikai, was held to try to reach an early settlement of this issue. Then a meeting between KOKURO and the Minister of Labour, Mr. Makino, and a meeting between KOKURO and the Minister of Transport, Mr. Nikai, were carried out on 27 December. Furthermore, the Ministry of Transport summoned all JR companies on 28 November 1999 to explain the significance of the Committee's recommendations and discussed future measures to resolve the issue. Hence, deliberations for starting discussions between the unions and the JRs are being energetically carried out between the Liberal Democratic Party and the Social Democratic Party, which continue to modify conditions for starting negotiations between both parties by receiving opinions from KOKURO and the JRs with respect to the contents of a document mentioned earlier entitled "Start of KOKURO-JR companies' negotiations" (Annex IV).
- 357.** Moreover, KOKURO stated in policies at a regular conference in August 1999 that it would promote its requests for settlement by the Government. Furthermore, after receiving the Committee's recommendations, KOKURO held a conference to report on the recommendations on 9 December. In the conference, Mr. Miyasaka, Secretary-General, stated that "the basic course for settlement was to urge the Government to settle the issue politically. Firstly, we should try to break the present deadlock mainly through deliberations between the Liberal Democratic Party and Social Democratic Party and then try to press the Government to settle it through discussions". Consequently, in KOKURO, a move to encourage an amicable settlement through deliberations between the political parties is taking place.
- 358.** However, according to the Government, one of the factors that makes settlement of this issue difficult is the serious conflict between unions within the JR companies that had agreed to the Japan National Railways Reform and KOKURO and ZENDORO that opposed it. The JR Rengo (77,000 persons, approximately 40 per cent of the total number of union members, major unions of four corporations including the JR Central, JR West, JR Shikoku and JR Kyushu) and the JR Soren (Japan Confederation of Railway Workers' Union, incorporating 75,000 persons, approximately 40 per cent of total union members, major unions of the JR East, Hokkaido and Freight) which agreed with the shift from JNR to the JRs, are not very flexible on this issue as illustrated in comments made by both chairmen (reference 3).

Reference 3

- Comments by Mr. Kadono, chairman of the JR Rengo at a regular convention in June 1999

"As the JR Rengo has insisted, we express our expectation that an early settlement will be made from a social and humanitarian viewpoint. However, the Government and the Liberal Democratic Party are once again questioning the intentions of the Kokuro in approving the reform act, suggesting that the policies of Kokuro remain vague. If the Kokuro approves the concept of the Japan National Railways Reform Act and pursues internally the establishment of sound labour-management relations, reliability cannot be obtained within and from outside companies until privatization is actually realized, and organization names and characteristics are reformed according to the reform divided into seven companies."

- Comments by Mr. Shibata, the chairman of the JR Soren at a Regular Convention in June 1999

"We have been consistent in insisting that the 'non-hiring' issue has already been solved and the problem of the 1,047 persons should be addressed outside our company. We call on the Government to stop the unfairness between 70,000 persons who have cooperated with the reform of the JNR and are apt to hold out stubbornly."

- 359.** Another obstacle to early resolution of this problem lies in the disagreement within KOKURO. As mentioned earlier, KOKURO's policy is to "clarify that it approved the Japan National Railways Reform Act" at a provisional convention on 18 March 1999. On the other hand, at a regular convention in August of the said year, opinions requesting the withdrawal of already-established policies, such as "approval of the Act" were presented. For example, one individual commented "if we approve the Japan National Railways Reform Act, we give up our fighting channels which will lead to a crash of the Labour Relations Commissions System. We need to create a situation by not approving the Act". There were also counter arguments. For example, "the topic of whether or not the JRs bear responsibility for unfair labour practice is now being discussed, so things cannot move forward. Therefore it is important to carry out the negotiations towards an amicable settlement mainly through a return to the local JRs, monetary compensation and the normalization of labour-management relations". From such circumstances, it is clear that various opposing opinions exist on the method of achieving a settlement, even within KOKURO. Consequently, many are of the view that this will become a major stumbling block in reaching a settlement.
- 360.** With regard to the judiciary, the Government points out that besides the cases of non-hiring of KOKURO/ZENDORO members, there are other cases pertaining to the interpretation of section 23 of the JNR Reform Act. Thus, judgements pertaining to the "Doro Chiba non-hiring case" and the "Kokuro Akita reshuffling case" were issued by the Supreme Court on 17 December 1999. Since this is the first time the Supreme Court has handed down judgements on the interpretation of section 23 of the JNR Reform Act, it appears that these judgements will have a major influence on a series of lawsuits pertaining to non-hiring cases presently pending at the courts. With respect to the "Doro Chiba case", which is related to the non-hiring of union members of the Doro Chiba (Chiba Railway Locomotive Engineers' Union) at the start of JRs, the Supreme Court completely supported the original judgement (reference 4) and rejected the union's claims. Furthermore, in the Kokuro Akita reshuffling case, KOKURO had a dispute with the JR East concerning the injustice of employee reshuffling by the JNR immediately before the division and privatization of the JNR. A judgement similar to the Doro Chiba case was issued in this case. Moreover, with regard to "Doro Mita (Mito Railway Locomotive Engineers' Union) reshuffling case," which is similar to the Kokuro Akita reshuffling case, on 27 January 2000, the Supreme Court judged in favour of the JR East, supporting the Tokyo High Court judgement which states that the JNR and the Establishment Committees are legally different subjects.

Reference 4

Dora Chiba case: Tokyo High Court judgement (23 May 1995)

- (1) There are no legal grounds to the assertion that essential identity exists between the JNR and the JRs.
- (2) Since the act of screening candidates conducted by the JNR is exclusively the authority and responsibility of the JNR, the JNR does not assist in the screening of candidates belonging under the authority of the Establishment Committees.
- (3) Although the Establishment Committees have the authority and responsibility to select candidates by screening a list of registered persons, the Committees did not have the authority to hire JNR employees who were not registered on lists.
- (4) The JRs do not have any reason to bear responsibility for actions of the JNR. Furthermore, the non-hiring was a justifiable act in accordance with the Japan National Railways Reform Act. Consequently, there is no reason to put responsibility on the JRs for unfair labour practices.

361. Finally, with regard to the Committee's last recommendation [318th Report, para. 271(d)], the Government attaches to its reply the relevant extracts of the new Code of Civil Procedure which was enforced on 1 January 1998. According to statistics of the Supreme Court, the average trial periods for already settled first-instance lawsuits in the district courts before and after enforcement of the new Code of Civil Procedure are as follows:

| | 1989 (in months) | 1996 (in months) | 1997 (in months) | 1998 (in months) |
|--|---------------------|---------------------|---------------------|---------------------|
| First-instance civil regular lawsuits | 12.4 | 10.2 | 10.0 | 9.3 |
| Labour cases (civil suits) | 22.4 | 15.6 | 15.4 | 13.0 |
| Labour cases (administrative suits) | 41.8 | 28.8 | 30.8 | 21.4 |

Note: Labour cases (civil suits) are regular civil suits such as a claim for payment of wages; whereas, labour cases (administrative suits) are administrative suits such as a suit for cancellation against disciplinary punishment of civil servants or a suit for cancellation against a remedial order made by the Labour Relations Commission. Moreover, the average trial periods for cases concerning all administrative lawsuits in 1998 was 11.2 months for a review by a Court of Appeals and 9.9 months for a higher appeal (the last instance) respectively.

362. In a communication dated 19 April 2000, the Government points out that the Tokyo District Court handed down its judgement on 29 March 2000 as regards the cases of non-hiring of ZENDORO members. The Government recalls that this decision follows a lawsuit filed by JR Hokkaido and JR Freight seeking annulment of the remedial order made by the CLRC in February 1994. This remedial order concerned unfair labour practices in the non-hiring of ZENDORO members and JR Hokkaido and JR Freight were ordered to rehire them through a fair selection process. The Tokyo District Court agreed with these two JR companies and cancelled the CLRC's order. The CLRC filed an appeal against this decision to the Tokyo High Court on 11 April 2000. The Government adds that other trials concerning the non-hiring issue by the JRs of KOKURO members are proceeding.

363. In a communication dated 13 June 2000, the Government provides detailed observations in respect of ZENDORO's most recent communication dated 12 April 2000, which deals with the decision of the Tokyo District Court of 29 March 2000 cancelling the relief orders previously issued by the CLRC for unfair labour practices against ZENDORO members. First of all, the Government addresses ZENDORO's claim that the decision of the Tokyo District Court adopted a more restrictive interpretation of section 7, item 1, of the Trade Union Law, by stating that rejection by an enterprise of hiring workers based on their union membership does not constitute an unfair labour practice as far as it concerns the case of *new recruitment* since "freedom of hiring" should be guaranteed to the employer

and that section 7, item 1, does not prohibit disadvantageous treatment by the reason of union membership at “recruitment”. The actual judgement, however, states as follows:

According to the meaning of the latter part of item 1 of section 7 of the Trade Union Law, the Establishment Committee is not allowed to violate the worker's rights to bargain collectively by presenting discriminatory criteria at recruitment, even though the Committee has the freedom of hiring. If discriminatory hiring criteria, in which members of the union in favour of JNR reforms are given priority over members of the union against the reforms, are presented and outwardly expressed, these criteria are not permitted due to the infringement of the right for members of the union against the reforms to bargain collectively.

Therefore, according to the Government, this judgement indicates that some cases of discrimination at recruitment would possibly constitute an unfair labour practice. Consequently, the assertion of ZENDORO that “this does not constitute an unfair labour practice as far as it concerns the case of new recruitment” and “this conclusion clearly contradicts ILO Convention No. 98” is incorrect.

- 364.** Regarding ZENDORO's claim that the Tokyo District Court decision developed an astonishingly formalistic interpretation of the JNR laws, and concluded that the JR companies were not responsible for any discriminatory selection made by the JNR nor for the refusal of employment by the JNR on the basis of union affiliation resulting from that selection, the Government replies that this assertion is incorrect. What the judgement actually states is, in the hiring criteria prescribed by the Establishment Committees, only the criterion “those suited for the operations of the new companies in view of their service records in the JNR” may be applied in a discriminatory manner against union members. But this criterion is meant to encompass those candidates whose service records were not inferior to the general working standards and other merits in the JNR; hence the application of this criterion does not necessarily result in the selection of candidates to be hired that is discriminatory against union members. Consequently, it cannot be said that discriminatory treatment was taken as a result of the JNR's application of this criterion. The judgement further states that, of the series of procedures for hiring the JR's employees, an act taken by the JNR for the recruitment of employees can be regarded as an act taken by the Establishment Committees. The Establishment Committees, therefore, bear the responsibility for unfair labour practices in the event that the JNR added the discriminatory conditions of recruitment against the union members, even though the Establishment Committees did not prescribe the discriminatory hiring criteria against union members. However, according to the court, there was insufficient evidence to indicate that the JNR added discriminatory conditions of recruitment against union members.
- 365.** The Government then goes on to agree with the complainants' claim that the Tokyo District Court decision recognizes that, if the JNR had added discriminatory conditions against trade union members when setting conditions of recruitment by the JR companies and if this had resulted in the non-employment of union members, then the JR companies are to be held responsible for unfair labour practices. The Government points out, however, that the District Court, after having examined in depth ZENDORO's “claims”, found that there was insufficient evidence to substantiate the existence of discriminatory recruitment conditions.
- 366.** With regard to ZENDORO's assertion that, given the very difficult conditions of the complainants, the recent decision of the Tokyo District Court has increased the responsibility of the Japanese Government for settling the case, the Government responds that ZENDORO should examine more realistic solutions in this regard. Hence, instead of giving priority to the policy of “reversion to the original place and position”, ZENDORO should examine more realistic ways of addressing the problem. Finally, regarding

ZENDORO's claim that the Government has not made any effort to solicit the JR companies to hold negotiations with the unions, the Government indicates that it has taken all necessary steps in accordance with the JNR Reform Laws. Now, from a humanitarian point of view, it has no choice but to seek a political solution to the said problem.

- 367.** In its communication dated 15 September 2000, the Government states that consultations between the political parties in an attempt to restart negotiations between the JRs and the complainants, and which had been described in the Government's earlier replies, have borne fruit. In effect, on 30 May 2000, an agreement was reached between the ruling majority parties, including the Liberal Democratic Party (LDP) and the Social Democratic Party (SDP), which coordinates KOKURO's opinions, on "overcoming the non-hiring issue by the JRs" (hereinafter "the Four Party Agreement" reproduced in Annex V). The Government points out that the Four Party Agreement was the result of efforts made at the political level to resolve this issue from a humanitarian point of view. With the conclusion of the Four Party Agreement, the Government indicates that both the LDP and the SDP have made public statements concerning this issue (see Reference 5).

Reference 5

- Statement by the LDP

"We consider that this Agreement is a large step towards a solution of this issue which has become prolonged over such a long period of time. It is important that the parties concerned implement the points established in this Agreement in a steady manner. The LDP also wishes to continue its efforts towards a speedy solution of this issue. Furthermore, the LDP strongly desires that the KOKURO continue its efforts even more, with a new determination towards a speedy solution of this issue".

- Statement by the SDP

"We strongly desire that with this Agreement, we should now consider the past as history. We should not miss this chance for an early settlement of this issue through the initiation of concrete deliberations between the various parties in a serious manner. The SDP requests that KOKURO confirm the contents of today's Agreement with the convening of the Provisional National Convention in a prompt manner and that it establish normal and democratic labour-management relations with each JR company".

- 368.** As regards the reaction of KOKURO to this Agreement, the Government indicates that a meeting of the Central Executive Committee was convened on 29 May 2000. The Executive Committee came to the firm understanding that this issue could be solved within a political framework and accepted the Four Party Agreement in the belief that if it were not accepted, a political solution would become more distant. Based on this Agreement, the Executive Committee convened a Provisional National Convention on 1 July, and confirmed in an institutional decision that "the JRs do not bear legal responsibility". However, during the course of the Convention, there were some union members who opposed the guidelines of the Executive Committee. Hence, the Four Party Agreement was not accepted and the Convention had to be adjourned. Regarding ZENDORO's position on this issue, the Government indicates that it did not clarify its position for or against the Four Party Agreement during the course of its periodic assembly held from 26 to 28 August 2000. According to the Government, however, KOKURO is recognized as having a lot of influence over ZENDORO which is awaiting the former's final decision on this issue.

- 369.** In its most recent communication of 24 October 2000, the Government states that a vote was held among KOKURO members from 26 to 29 September 2000 to determine the level of acceptance of the Four Party Agreement. According to the announcement of the Central Executive Committee, 98.3 per cent of the 23,635 members qualified to vote cast ballots, with 13,033 (55.1 per cent) voting in favour of the agreement, 8,511 (36 per cent) voting against, 1,140 (4.8 per cent) undecided and 401 (1.7 per cent) abstaining; 550 votes (2.3 per cent) were either invalid or left blank. The Central Executive Committee stated

that “as a result of the one vote referendum, these results hold a significant meaning showing the will of all the union members. At the 67th Periodic Conference to be held on 28 and 29 October, the results of the one vote referendum will be reported on, and an Activity Guideline will be proposed, and we will determine that a speedy resolution in the political arena to the JR labour-management struggles, including the JR non-hiring cases, should be obtained. To all those who are trying to reach a resolution, such as persons concerned in politics and Government, we shall repeat the determination of a speedy and total resolution in the political arena”. The Government states that at the 67th Periodic Conference, the recognition of the acceptance of the Four Party Agreement should be sought.

- 370.** With respect to the cases concerning the non-recruitment of KOKURO members pending before the Tokyo High Court, the Government informs the Committee that KOKURO requested the Court to postpone handing down its decision in order to allow time for resolution in the political arena, which KOKURO believed could be jeopardized if the Court pronounced on the matter. As a result, the Tokyo High Court decided to delay giving judgement until 8 November 2000.

D. The Committee’s conclusions

- 371.** *During its previous examination of this case, the Committee had noted that the allegations related to the fact that, following the decision to privatize the Japanese National Railways (“JNR”) in 1987, the succeeding corporations known as the Japan Railway Companies (“JR companies”) did not hire many KOKURO and ZENDORO members solely on account of their trade union membership. The Committee had further noted that the Government did not refute the allegations that approximately 7,600 workers were refused employment by the JR companies and redeployed to the JNR Settlement Corporation which subsequently, in April 1990, laid off 1,047 employees. In order to make an informed decision on the reasons for which these workers were refused employment by the JR companies, the Committee had requested the Government to provide additional information in this regard.*
- 372.** *The Committee takes note of the new and detailed information submitted by the Government in this regard in its communication dated 9 February 2000. The Committee notes the Government’s statement that, when the “Basic Policy on JNR Redundant Employees’ Re-employment Measures” was adopted in December 1985, the Government undertook to make national efforts to secure re-employment of the JNR employees concerned. The Government adds that the JNR itself also took diverse measures for its employees such as dispatch to private enterprises, wide-area transfers and acceptance by JNR affiliates. However, in spite of all the above measures, the Government acknowledges that 7,628 persons were not re-employed when the JRs started in April 1987 and went on to become JNR Settlement Corporation employees (see Annex III). The Committee nevertheless notes the Government’s first contention that not all of these 7,628 workers were KOKURO and ZENDORO members as alleged by ZENDORO [see 318th Report, para. 266] because over 1,000 of them were TETSUDOROREN and other union members (TETSUDOROREN was established in February 1987 by combining the Railway Workers’ Union (TETSURO) and the Locomotive Workers’ Union (DORO), which supported the privatization policy). Furthermore, the Committee takes note of the Government’s statement that, although the nationwide hiring rates of KOKURO members (80 per cent) and ZENDORO members (60 per cent) were lower compared to those of other unions (see table 2 of the Government’s reply), a main factor is believed to be as follows below.*
- 373.** *According to the Government (as well as the complainants’ previous submission [318th Report, para. 243]), the JNR’s railway business was divided into seven companies based on regions – the railway companies of Hokkaido, East Japan, Central Japan, West Japan,*

Shikoku and Kyushu, and Japan Freight. However, according to the more recent information provided by the Government, the members to be hired by the JR Hokkaido and the JR Kyushu companies had to be limited from the beginning since these companies' cash flow was expected to deteriorate. Hence, it was found that if the division and privatization of JNR was implemented according to the report of the Supervisory Committee for the JNR Reconstruction, one in two personnel would be in excess in Hokkaido and one in three in Kyushu. For this reason, the JNR implemented "wide-area transfers" to recruit transferees from Hokkaido to Tokyo, Nagoya and other regions from eastern Japan and from Kyushu to the western Japan regions, mainly Osaka. The Government points out that, although such transfers were very trying for the employees concerned, more employees than expected cooperated. Nevertheless, most of the personnel who accepted this transfer belonged to TETSURO or DORO, and KOKURO and ZENDORO members who opposed the JNR reform were uncooperative.

- 374.** *The Committee notes in effect that, out of the total number of those transferred, 6 per cent of DORO members, 2 per cent of TETSURO members and 2 per cent of non-union members and managers accepted wide-area transfers whereas only 0.4 per cent of KOKURO members and none of the ZENDORO members accepted such transfers (see table 1 in the Government's reply). The Committee further notes the Government's statement that many KOKURO and ZENDORO members persisted in being employed by their local JRs (Hokkaido and Kyushu), but that re-employment in these two regions was extremely difficult and that these two regions therefore produced the greatest number of redundant employees among all areas. Given the limited number of personnel to be hired in Hokkaido and Kyushu, it was only natural that the hiring rate of KOKURO and ZENDORO members, who refused transfers to other regions unlike other union members, had to be lower. More specifically, as regards ZENDORO's allegation that in five locomotive departments within Hokkaido (Otaru, Naebo, Iwamizawa, Takikawa and Tomakomai), the hiring rate for union members of DORO and TETSURO by the local JR was 100 per cent, whereas the hiring rate for union members of ZENDORO was remarkably lower [318th Report, para. 245], the Committee notes the Government's reply that this allegation does not take into consideration employees who accepted the wide-area transfers. The Committee notes in effect that the discrepancy in the hiring rates of the respective union members is largely due to the fact that a large number of DORO and TETSURO members (895) were hired by the new companies because they accepted wide-area transfers from Hokkaido to Honshu in cooperation with the JNR reform, whereas none of the ZENDORO members accepted wide-area transfers.*
- 375.** *For all the abovementioned reasons, the Committee notes that according to the new information provided by the Government one of the main reasons for which a larger number of union members other than those from KOKURO and ZENDORO were hired by the JR companies was that the former accepted the JNR scheme of wide-area transfers to other regions which the latter did not (or did so to a smaller extent). Inasmuch as KOKURO and ZENDORO members insisted on being re-employed by the new companies in the original region and position and other union members did not, it cannot be said that the issue of anti-union discrimination arises in that context since it appears to the Committee that a larger number of DORO and TETSURO members were hired by the JR companies (though not necessarily their local JRs) due to their willingness to accept wide-area transfers to other regions and not because of their union affiliation; conversely, a larger number of KOKURO and ZENDORO members were not hired by the JR companies, especially those in Hokkaido and Kyushu, because a larger number of them refused wide-area transfers to other regions. The Committee is reinforced in its views by the fact that, of the 7,628 workers (of whom 6,600 were KOKURO and ZENDORO members) who were not re-employed when the JRs started in April 1987, 6,581 workers found employment subsequently, either by making use of additional wide-area hiring opportunities by the JRs (1,606 workers, 90 per cent of whom were KOKURO/ZENDORO members returned to the*

JRs; see table 4 in the Government's reply), or through other re-employment measures taken by the JNR Settlement Corporation. The Committee notes that, of the 1,047 KOKURO and ZENDORO members who were dismissed by the JNR Settlement Corporation in April 1990 (see Annex III), 96.5 per cent were concentrated in Hokkaido and Kyushu (521 persons in Hokkaido and 489 in Kyushu).

- 376.** *That being said, the Committee would nevertheless recall its previous recommendation to the Government to actively encourage negotiations between the JR companies and the complainants with a view to rapidly reaching a satisfactory solution for the parties and which would ensure that the 1,047 workers concerned were fairly compensated in view of the fact that they were still suffering the consequences of being unemployed since April 1990 [see 318th Report, paras. 267 and 271(b)]. In this respect, the Committee notes the Government's statement that it has taken various measures to resolve the issue, including holding discussions with KOKURO, ZENDORO and the JR companies in order to encourage an amicable solution through deliberations between the Liberal Democratic Party (LDP) and the Social Democratic Party (SDP). The Committee observes that ruling majority parties and the SDP are responsible for setting the conditions to the start of negotiations between the complainants and the JRs which are set out in a document entitled "Start of KOKURO-JR companies' negotiations" (see Annex IV). The Committee also notes from the Government's most recent communication that consultations between the ruling majority parties (including the LDP) and the SDP have resulted in the adoption of a Four Party Agreement on 30 May 2000. The Committee notes with interest that the contents of this Agreement (reflected in Annex V) would appear to set out conditions aimed at encouraging negotiations between the JR companies and the complainants, with a view to rapidly reaching a satisfactory solution for the parties and which would ensure that the workers concerned are fairly compensated, as recommended by the Committee during its previous examination of this case [see 318th Report, para. 271(b)]. Considering that this Four Party Agreement offers a real possibility of speedily resolving the issue of non-hiring by the JRs, the Committee would urge all parties concerned to consider accepting this Agreement; it requests the Government to keep it informed of any progress made in this regard.*
- 377.** *As regards the Committee's previous recommendation trusting that the decisions handed down by the courts concerning the dismissals of KOKURO and ZENDORO members will be in line with Convention No. 98 [318th Report, para. 271(c)], the Committee notes from the additional information provided by ZENDORO that the Tokyo District Court, on 29 March 2000, handed down a decision that denies the responsibility of the JR companies for unfair labour practices in the case of employment discrimination against ZENDORO members. According to ZENDORO, this decision clearly contradicts Convention No. 98. This is because the correct interpretation of Convention No. 98 and section 7, item 1, of the Trade Union Law of Japan is that disadvantageous treatment based on union affiliation throughout the process of employment, from recruitment to dismissal, is prohibited. An overwhelming majority of the Japanese labour law society supports this interpretation of the Convention and the law. The decision of the Tokyo District Court, however, adopted a more restrictive interpretation of the abovementioned legal provision, stating that, in general, rejection by an enterprise of hiring workers based on their union membership does not constitute an unfair labour practice in so far as it concerns the case of new recruitment since "freedom of hiring" should be guaranteed to the employer and that section 7, item 1, does not prohibit disadvantageous treatment by reason of union membership at "recruitment". According to ZENDORO, this conclusion contained in the Tokyo District Court decision is an interpretation that clearly contradicts Convention No. 98.*
- 378.** *The Committee notes, however, that the Government rejects ZENDORO's interpretation of the court ruling. In the Government's view, what the court decision actually states is that*

under the terms of section 7 of the Trade Union Law, the Establishment Committee of a JR company is not allowed to violate the worker's right to bargain collectively by adding discriminatory criteria at recruitment, even though the Establishment Committee has "freedom of hiring". If such discriminatory hiring criteria were applied, in which members of the union in favour of JNR reforms were given priority over members of the union against the reforms, then these discriminatory criteria would not be allowed because they would constitute an unfair labour practice.

- 379.** *In view of the differing interpretations given to the Tokyo District Court decision on this point by ZENDORO and the Government, the Committee would merely recall that the protection against acts of anti-union discrimination provided for in Convention No. 98 guarantees protection at all times against acts of anti-union discrimination: at recruitment and during the period of employment, including the time of work termination.*
- 380.** *As regards ZENDORO's allegation that the Tokyo District Court developed an astonishingly formalistic interpretation of the JNR laws and concluded that the JR companies were not responsible for any discriminatory selection made by the JNR nor for the refusal of employment by the JNR on the basis of union affiliation resulting from that selection, the Committee notes that the Government disputes this allegation. According to the Government, what the judgement actually states is that, in the hiring criteria prescribed by the Establishment Committees of the JRs, only the criterion "those suited for the operations of the new companies in view of their service records in the JNR" may eventually be applied in a discriminatory manner against union members. However, since this criterion is meant to apply to candidates whose service records are on par with the general working standards in the JNR, the court ruled that it could not be said that discriminatory treatment was taken as a result of the JNR's application of this criterion. According to the Government, the judgement further states the Establishment Committees bear the responsibility for unfair labour practices in the event that the JNR added discriminatory recruitment conditions against certain union members, even if the Establishment Committees did not prescribe such discriminatory hiring criteria. However, according to the Tokyo District Court, there was insufficient evidence to indicate that the JNR had applied such discriminatory conditions of recruitment against certain union members. The Committee notes in effect that ZENDORO agrees with this interpretation of the court decision in the latter part of its submission wherein it states that the Tokyo District Court decision admits that section 7, item 1, second paragraph of the Trade Union Law can be applied to the new recruitment carried out by JR companies. This provision prohibits "setting the non-affiliation with any trade union or withdrawal from the union as conditions of hiring". The Committee notes that, according to ZENDORO, the court decision also recognizes that, if the JNR has added discriminatory conditions against trade union members when setting conditions of recruitment by the JR companies and if this has resulted in the non-employment of union members, the JR companies are to be held responsible for unfair labour practices.*
- 381.** *The Committee notes that, while the Tokyo District Court has handed down a decision in respect of the issue of the non-recruitment of ZENDORO members, the issue of the non-recruitment of KOKURO members is still pending before the Tokyo High Court. The Committee notes further that according to the latest information from the Government, the Tokyo High Court decided to delay giving judgement until 8 November 2000. The Committee requests the Government to keep it informed of the outcome of the ruling by the Tokyo High Court.*
- 382.** *Finally, during its previous examination of this case, the Committee had recalled that effective and expeditious procedures were necessary in processing cases of anti-union discrimination with a view to securing really effective remedies. In this regard, the Committee had noted the Government's indications that a new Code of Civil Procedure*

had defined procedures which would speed up the clarification of disputes and the organization of evidence, and that other allowances had been established to make the concentrated evidence inspections easier so that a shortening of the trial period could be expected [see 318th Report, para. 270]. The Committee had requested the Government to provide the relevant extracts from this new Code of Civil Procedure. The Committee takes due note of this information provided by the Government (see Annex VI). It also takes note of the statistics provided by the Government in its reply on the average trial periods for already settled first-instance lawsuits in the district courts before and after enforcement of the new Code of Civil Procedure.

The Committee's recommendations

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

- (a) The Committee urges all parties concerned to accept the Four Party Agreement adopted on 30 May 2000 which sets out conditions aimed at encouraging negotiations between the Japan Railway Companies and the complainants with a view to rapidly reaching a satisfactory solution for the parties and which would ensure that the workers concerned are fairly compensated; it requests the Government to keep it informed of any progress made in this regard.***
- (b) The Committee recalls the principle that the protection against acts of anti-union discrimination provided for in Convention No. 98 guarantees protection at all times against acts of anti-union discrimination: at recruitment and during the period of employment, including the time of work termination.***
- (c) Noting that the issue of the non-recruitment of KOKURO members is still pending before the Tokyo High Court, the Committee requests the Government to keep it informed of the outcome of the decision of the Tokyo High Court.***

Annex I

Japanese National Railways Reform Act (Law No. 87, 4 December 1986)

(Employee of succeeding corporations)

Section 23. (1) The Establishment Committees (or the succeeding corporation if this corporation is one designated by the Minister of Transport as per the provision of subsection 1 of section 11) (hereinafter referred to as "Establishment Committees, etc.") of the succeeding corporations shall recruit employees by presenting each corporation's labour conditions and hiring criteria to JNR's employees through the JNR.

(2) When the labour conditions and the hiring criteria are presented to its employees as per the provision of the preceding section, the Japanese National Railways shall confirm the desires of its employees to be employed by the succeeding corporations. For each succeeding corporation, the Japanese National Railways shall select the persons to become succeeding corporations' employees, from those who have indicated the desire to become their employees, in accordance with hiring

criteria of the succeeding corporations in the same section, and put them on lists and submit them to the Establishment Committees, etc.

(3) Among the Japanese National Railways employees on the lists as per the preceding section, those who received the notice of the hiring from the Establishment Committee, etc., and who are employees of the Japanese National Railways upon enforcement of the provision of the Supplementary Provisions of subsection 2, are hired as employees of the succeeding corporations upon its establishment.

(4) The items to become the contents of the labour conditions to be presented as per the provision of subsection 1, the method of presentation as per the provision of the same subsection, the method of confirming the employees' desires as per the provision of subsection 2, and other matters necessary to enforce the provisions of the preceding three sections shall be prescribed by the Ministry of Transport Ordinance.

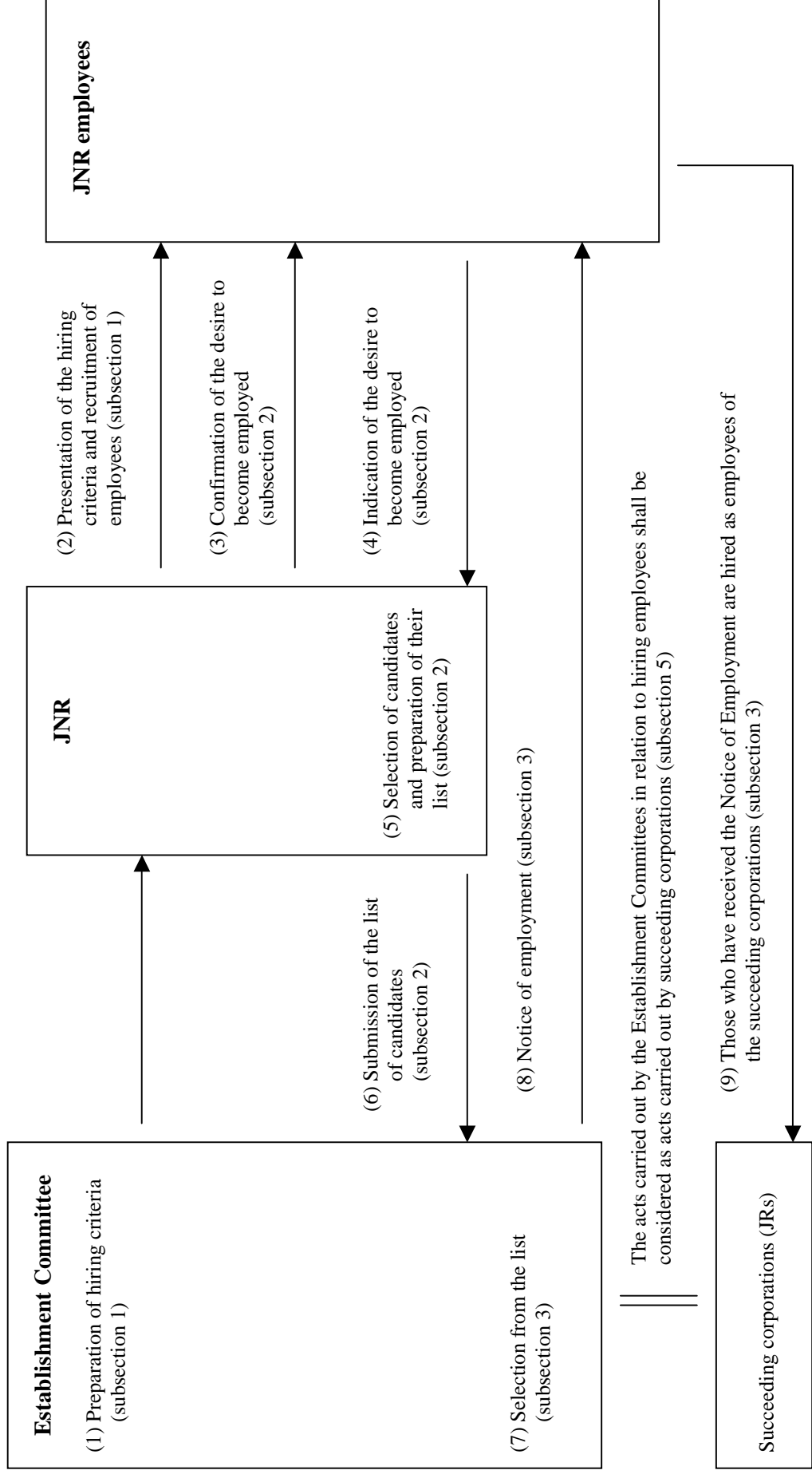
(5) With relation to hiring of employees of the succeeding corporation (excluding corporations designated by the Minister of Transport as per the provision of subsection 1 of section 11) the acts carried out by the Establishment Committee of the succeeding corporations and the acts carried out on the Establishment Committee of the relevant succeeding corporations shall be considered as acts carried out by and on the succeeding corporations, respectively.

(6) When an employee of the Japanese National Railways becomes an employee of a succeeding corporation as per the provisions of subsection 3, he is not paid the retirement allowance based on the Law of Lump Sum Payment on Retirement for National Public Employees (Law No. 182 of 1953).

(7) When a succeeding corporation is to pay a retirement allowance upon retirement of its employees to whom is applied the provision of the preceding subsection, it shall regard the employees' term of service at the Japanese National Railways as that at the succeeding corporation.

Annex II

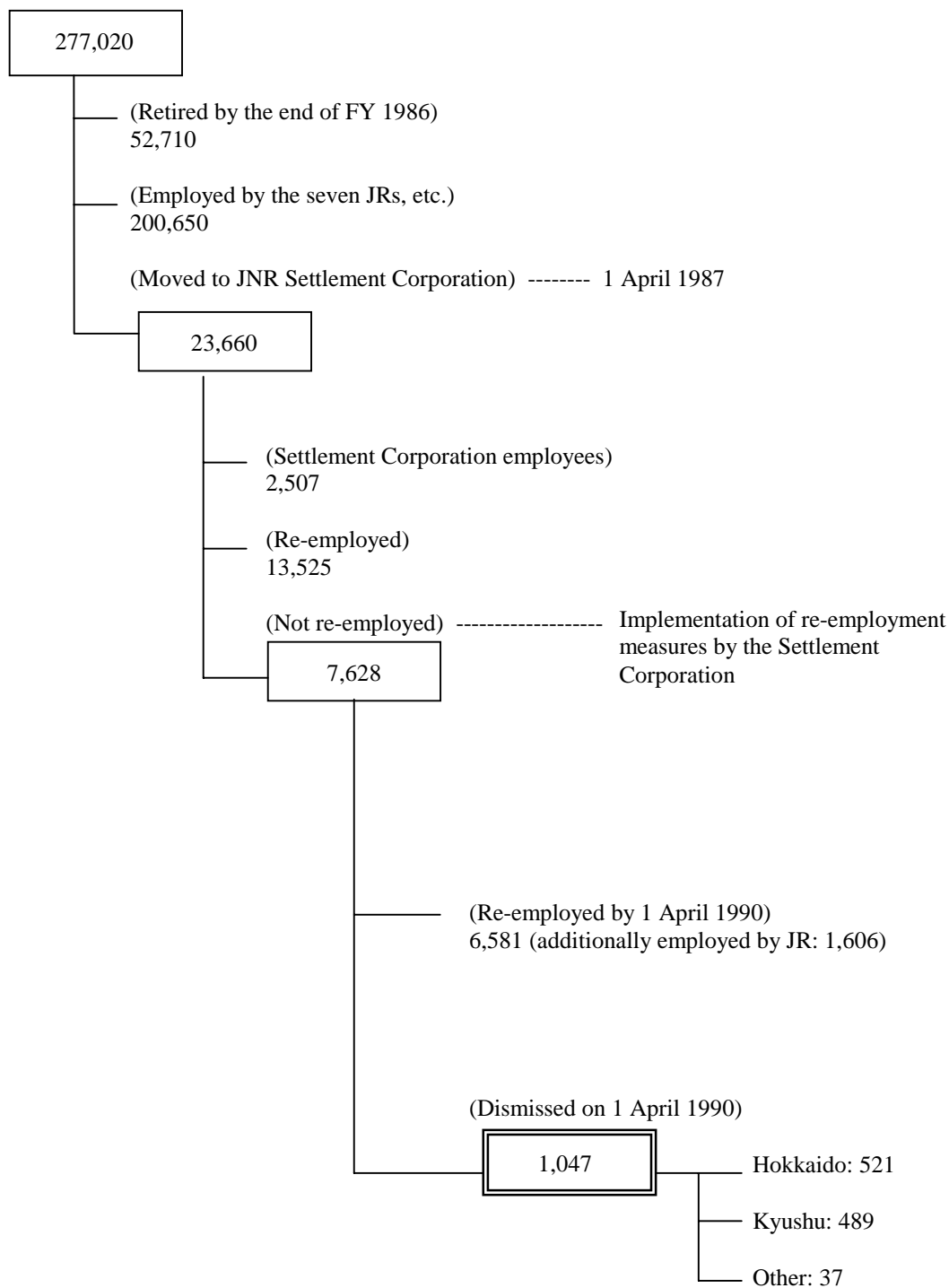
The scheme of section 23 of the Japanese National Railways Reform Act



Annex III

State of re-employment of Japanese National Railways employees

Number of employees at the beginning of FY 1986



Annex IV

Start of the KOKURU-JR companies' negotiations

1. For the KOKURU (National Railway Workers' Union) and the JR companies to start negotiations, it is necessary for the KOKURO to accept the following points.
 - (1) The KOKURU must recognize that the JR companies are not legally responsible for the non-hiring issue. In its negotiations with the JR companies, it is to talk about the solutions (hiring afresh) from a humanitarian viewpoint apart from the non-hiring issue on condition that the labour-management relationship should be soundly constructed.
 - (2) Since this is a labour-management issue, the negotiations are to be carried out between the parties concerned. There will be no government-labour-management negotiations.
 - (3) By watching the progress of the negotiations, the KOKURO is to withdraw the suits at least related to the Japanese National Railways reform which were brought until the JR companies were established, at an appropriate time.
 - (4) The JR companies' counter parties are to be the KOKURO's area headquarters. However, in the case of JR Freight, the counter party may be the KOKURO headquarters since there are no corresponding area headquarters.
2. If the above conditions are satisfied, the Liberal Democratic Party and the Liberal Party will request the JR companies to start the negotiations with KOKURO and to examine the situation from a humanitarian viewpoint.
3. This issue also involves monetary compromise in court between KOKURO and the Japan Railway Construction Public Corporation (former Japanese National Railways). This issue will be discussed by the Liberal Democratic Party, the Liberal Party and the Social Democratic Party by watching the progress of the KOKURO-JR companies' negotiations.

Annex V

The Four-Party Agreement on overcoming the non-hiring issue by the JRs

30 May 2000

The Liberal Democratic Party (LDP)

The Komei Party

The Conservative Party

The Social Democratic Party (SDP)

1. Concerning the non-hiring issue by the JRs, the LDP, the Komei Party, the Conservative Party and the SDP confirm their efforts towards an early settlement of this issue from a humanitarian point of view, within the following framework:
2. The KOKURO recognizes that the JRs bear no legal responsibility in this matter. This recognition shall be determined at the Provisional National Convention.

3. Having received such a decision by the National Convention of KOKURO, the three items of “Employment”, “Withdrawal of Law Suits”, and the “Payment of Reconciliation Compensation” shall be implemented according to the following procedures:
 - (a) The majority parties request of each JR company to initiate deliberations within each area headquarters of KOKURO and to take into consideration the maintenance of employment of KOKURO union members from a humanitarian viewpoint.
 - (b) The SDP requests of KOKURO that the lawsuits regarding the JNR Reforms, at least from the time of initiation of the JRs, shall be withdrawn in a rapid manner after the institutional decision stated in 2 above.
 - (c) The majority parties and the SDP shall consider the positioning, the amount and the procedure of the payment of the Reconciliation Compensation, etc.
4. Based on the aforementioned guidelines, the majority parties and the SDP shall cooperate in a mutual manner towards the settlement of this issue.

Annex VI

The relevant extracts of the Code of Civil Procedure

* Since the new Code of Civil Procedure enacted in 1996 has 400 provisions in all, the Government has only provided an extract of the main provisions which shorten the time of trial.

1. ***Provisions concerning arrangement proceedings of point at issue and evidence***

Subsection 1: Preliminary oral argument

Article 164 (Commencement of preliminary oral argument)

The court may, upon determining it necessary to arrange points at issue and evidence, conduct preliminary oral argument under the provisions of this subsection.

Article 165 (Confirmation of facts which should be proven, etc.)

1. The court shall confirm with the parties the facts which should be proven by the following examination of evidence at the end of the preliminary oral argument.

2. The presiding judge may, upon determining it proper, cause the parties to submit a document which summarizes the conclusions of the arrangement of points at issue and evidence in the preliminary oral argument at the conclusion thereof.

Article 166 (Conclusion by non-appearance of party, etc.)

In cases where a party does not appear on the appointed date, or does not submit a preliminary document or offer evidence within the period designated in accordance with the provisions of article 162, the court may conclude the preliminary oral argument.

Article 167 (Advancement of offensive or defensive measures after conclusion of preliminary oral argument)

A party who advanced offensive or defensive measures after the conclusion of preliminary oral argument shall, if the adversary party requests, explain to the adversary

party the reason why such measures could not have been advanced before the conclusion of preliminary oral argument.

Subsection 2: Preparations for argument proceedings

Article 168 (Commencement of preparations for argument proceedings)

The court may, upon determining it necessary for conducting the arrangement of points at issue and evidence, after hearing opinions of the parties, refer the case to preparations for argument proceedings.

Article 169 (Date set for preparations for argument proceedings)

1. Preparations for argument proceedings shall be conducted at a date which both parties are able to attend.

2. The court may admit such persons, as deemed proper, to listen to the proceedings. However, with regard to a person whom a party has requested to attend, unless it deems that there exists danger of causing hindrance to the conduct of proceedings, the court shall admit such person to listen.

Article 170 (Acts of litigation, etc., in preparations for argument proceedings)

1. The court may cause the parties to submit preliminary documents.

2. On a date set for the preparations for argument proceedings, the court may render decisions with regard to the offering of evidence or any other decisions which may be rendered on an occasion other than a date set for oral argument, and examine documents (including articles prescribed in article 231).

3. In cases where a party resides in a remote place or in any other cases the court determines proper, the court may, after hearing opinions of the parties, and in accordance with the provisions of the Rules of the Supreme Court, conduct proceedings on a date set for the preparations for argument proceedings by means which enable the court and both parties to communicate simultaneously by transmission and reception of voice; provided that this shall apply only to cases where one of the parties appeared on such date.

4. The party who did not appear on the date referred to in the preceding paragraph and who was involved in the proceedings referred to in the paragraph shall be deemed to have appeared on such date.

5. On the date referred to in paragraph 3, the party in the preceding paragraph may not withdraw the suit, compromise, or abandon or acknowledge the claim. However in cases where the party has submitted a document stating that the party abandons or acknowledges the claim, this provision shall not apply to the abandonment or acknowledgement of the claim.

6. The provisions of articles 148 to 151 inclusive, article 152, paragraph 1, and articles 153 to 159 inclusive, 162, 165 and 166 shall apply *mutatis mutandis* to preparations for argument proceedings.

Article 171 (Preparations for argument proceedings by commissioned judge)

1. The court may have commissioned a judge to conduct preparations for argument proceedings.

2. In cases where a commissioned judge conducts preparations for argument proceedings, such judge performs the duty of the court and presiding judge under the provisions of the preceding two articles (except for the preceding article, paragraph 2). However, adjudication with regard to the objection prescribed by article 150 as applied *mutatis mutandis* in article 170, paragraph 6, shall be rendered by the court before which the suit is pending.

3. A commissioned judge who conducts preparations for argument proceedings may render decisions with regard to the entrustment of investigations under the provisions of article 186, the request for an expert witness, and the request for transmission of document (including articles referred to in article 229, paragraph 2, and article 231).

Article 172 (Cancellation of decision referring to preparations for argument proceedings)

The court may, upon determining it proper, upon motion or upon its own authority, cancel a decision referring to preparations for argument proceedings. However, in cases where both parties so motion, it shall cancel the decision.

Article 173 (Statement of conclusion of preparations for argument proceedings)

The parties shall state the results of preparations for argument proceedings in oral argument.

Article 174 (Advancement of offensive or defensive measures after conclusion of preparations for argument proceedings)

The provisions of article 167 shall apply *mutatis mutandis* to a party who advanced offensive or defensive measures after the conclusion of preparations for argument proceedings.

Subsection 3: Preparatory proceedings by document

Article 175 (Commencement of preparatory proceedings by document)

In cases where a party resides in a remote place or in any other cases deemed proper, the court may, after hearing opinions of the parties, refer the case to preparatory proceedings by document (this shall mean proceedings to arrange points at issue and evidence by submittal of preliminary documents, etc., without the appearance of the parties).

Article 176 (Measures, etc., of preparatory proceedings by document)

1. Preparatory proceedings by document shall be conducted by the presiding judge. However, in a high court they may be conducted by a commissioned judge.
2. The presiding judge or a commissioned judge in a high court (in the following paragraph referred to as “the presiding judge, etc.”) shall designate the period prescribed in article 162.
3. The presiding judge, etc., may, upon determining it necessary, hold a conference with both parties, regarding matters relating to the arrangement of points at issue and evidence or any other matters which are necessary for the preparations for oral argument, by means which enable the court and both parties to communicate simultaneously by transmission and reception of voice in accordance with the provisions of the Rules of the Supreme Court. In such cases a court clerk may be caused to record the results of the conference.
4. The provisions of articles 149 (except for paragraph 2) and 150, and article 165, paragraph 2, shall apply *mutatis mutandis* to preparatory proceedings by document.

Article 177 (Confirmation of fact which should be proven)

The court shall, on the date set for oral argument after the conclusion of preparatory proceedings by document, confirm with the parties the facts which should be proven by the subsequent examination of evidence.

Article 178 (Advancement of offensive or defensive measures after conclusion of preparatory proceedings by document)

With regard to a case in which preparatory proceedings by document had concluded, a party, who on the date for oral argument advanced offensive or defensive measures after the statement of matters which are written in the document referred to in article 165, paragraph 2, as applied *mutatis mutandis* in article 176, paragraph 4, or the confirmation under the provisions of the proceeding article had been made, shall, if the adversary party requests, explain to the adversary party the reason why such measures could not have been advanced before such statement or confirmation.

2. Provision concerning concentrated examination of evidence

Article 182 (Concentrated examination of evidence)

To the extent possible, examination of witnesses and the parties themselves should be made in concentration after conclusion of the arrangement of points at issue and evidence.

3. The revision of the system of asking for explanation

Article 149 (Authority to ask for explanation, etc.)

1. The presiding judge may question the parties or require them to present evidence on matters of fact and law, on a date set for oral argument or an occasion other than such date, in order to clarify the relationships involved in the litigation.

2. An associate judge of the panel may take the measures prescribed in the preceding paragraph after so informing the presiding judge.

3. The parties may ask the presiding judge to make any necessary questions on a date set for oral argument or on an occasion other than such date.

4. In cases where the presiding judge or an associate judge of the panel has taken measures on an occasion other than the date set for oral argument in accordance with the provisions of paragraph 1 or 2 relating to matters which tend to cause a considerable change on the offensive or defensive measures, the judge shall notify the adversary party of the contents thereof.

Article 151 (Disposition for explanation)

1. The court may take the following dispositions in order to clarify the relationships involved in the litigation:

- (i) order the appearance of a principal party or the legal representative of the principal party on a date set for oral argument;
- (ii) have a person, who manages or assists in business for a party and who is deemed proper by the court, make statements on a date set for oral argument;
- (iii) order the production of such items as documents concerning the litigation, documents referred to in the litigation and other articles which are in the possession of the parties;
- (iv) retain documents and other articles produced by a party or a third person at the court;

- (v) inspect or order an expert opinion;
- (vi) entrust investigations.

2. The provisions concerning the investigation of evidence shall apply *mutatis mutandis* to the provisions for inspection, expert opinions and entrustment of investigations provided for under the preceding paragraph.

4. The introduction of the principle of advancing offensive or defensive measures at the appropriate time

Article 156 (Time for advancing offensive or defensive measures)

Offensive or defensive measures shall be advanced at the appropriate time in accordance with the progress of the litigation.

5. Others

- (1) Examination by means of communication by transmission and reception of images, etc.

Article 204 (Examination by means of communication by transmission and reception of images, etc.)

In cases where a witness who resides in a remote place is examined, the court may, in accordance with the provisions of the Rules of the Supreme Court, examine the witness by means which enable persons at a distance to communicate, each being able to recognize the state of the other by transmission and reception of images and voice.

- (2) Special provisions concerning large-scale suit

Article 268 (Examination of witness, etc., by commissioned judge)

With regard to a case relating to a large-scale suit (this means a suit which has considerably many parties and considerably many witnesses or parties themselves to be heard), if the parties have no objection, the court may have a commissioned judge hear witnesses or the parties themselves in the courthouse.

Article 269 (Constitution of panel)

1. In a district court, with regard to a case referred to in the preceding article, a ruling that the trial and adjudication be conducted by a panel comprised of five judges may be rendered by such panel.

2. In cases referred to in the preceding paragraph, three or more assistant judges may neither simultaneously join the panel, nor become the presiding judge.

Provisions are extracted from “The bilingual edition of Code of Civil Procedure and Rules of Civil Procedure”.

“The bilingual edition of Code of Civil Procedure and Rules of Civil Procedure”

Published by the Hosokai Foundation

Translated by Masatoshi Kasai, Assistant Professor of Kyoto University

CASE No. 2048

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

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

- **the Moroccan Labour Union (UMT)**
- **the Arab Maghreb Workers' Union (USTMA) and**
- **the International Confederation of Free Trade Unions (ICFTU)**

Allegations: Arrest of trade union officers and members following strikes

- 384.** The Committee examined this case at its March 2000 session, when it submitted an interim report to the Governing Body [see 320th Report, paras. 699-722, approved by the Governing Body at its 277th Session, March 2000].
- 385.** The Government sent its observations in communications dated 2 June, 3 July and 12 July 2000.
- 386.** Morocco has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); however, it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 387.** At its March 2000 session, in the light of the Committee's interim conclusions, the Governing Body had approved the following recommendations:
- (a) Concerning the alleged cases of torture in the AVITEMA factory, the Committee expresses its profound concern and requests the Government to institute an independent judicial inquiry without delay in order to determine responsibility and punish the guilty parties and to keep it informed in this respect.
 - (b) Concerning the prison terms, fixed or suspended, imposed on the 21 workers who had participated in a strike at the AVITEMA factory, the Committee notes that the workers have been released but that an appeal is pending. The Committee reminds the Government that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike. The Committee requests the Government to transmit the decision of the Rabat Court of Appeal in this matter. Furthermore, the Committee hopes that measures will be taken so that the unionists may be reinstated in their jobs.
 - (c) Concerning the employer's refusal to allow the workers who had exercised their right to strike in the AVITEMA factory to return to work, the Committee urges the Government to take all the necessary measures without delay to ensure that these workers are able to return to work and to keep it informed in this respect.
 - (d) Concerning the sentencing to heavy prison terms of the three members of the fishermen's trade union affiliated to the UMT, the Committee expresses the hope that measures will be taken so that the workers may benefit from an amnesty. It requests the Government to keep it informed in this respect.

B. The Government's new observations

- 388.** In its communication of 2 June 2000, the Government points out that on May Day (1 May 2000), the King pardoned a number of persons prosecuted or charged for taking part in certain industrial disputes, including the collective disputes in the AVITEMA farm and the coastal fishing industry in Agadir. It nevertheless specifies in its communication of 3 July 2000 that the wage earners in the AVITEMA farm had been conditionally released.
- 389.** The workers involved in the dispute at the AVITEMA farm brought an action before the Court of First Instance of Rabat on grounds of violence and torture against Mr. Abderrazak Chellaoui, the owner of the farm, Mr. Bouazza Maâche, member of the Menzah police, and Mr. Abdeslam Talha, member of the auxiliary police force of Ain Aouda. Following inquiries carried out by the Criminal Investigation Department, the Public Prosecutor instituted proceedings against these three persons for misuse of authority, in accordance with section 231 of the Moroccan Penal Code.
- 390.** The complaints lodged by these same workers on grounds of alleged violations of the Labour Code by the owner of the AVITEMA farm were handed over by the Public Prosecutor to the Criminal Investigation Department so that it might carry out an inquiry. During their visit to the premises, the labour inspection services noted various infractions of the law in force and drafted a report that they transmitted to the competent legal authorities. According to the Government, all these actions bear witness to the objectivity and impartiality of the labour inspection administration and contradict all the allegations of the authority's connivance and partiality in the industrial dispute at the AVITEMA farm.
- 391.** In its communication of 12 July 2000, the Government stresses that the Ministry of Employment abides by the legal provisions applicable within this sphere of competence and has always done everything to promote the respect of workers' rights. The Minister summoned the owner of the farm several times, who always refused to appear before the Committee of Inquiry and Arbitration on the grounds that there was no collective dispute in his enterprise. The Government does not obstruct the free exercise of freedom of association; it has taken several steps and signed a number of agreements (of which it encloses the text) for the protection of trade unions and the promotion of social dialogue. In this case, the Government should not be held responsible for the impetuous and unlawful actions of an individual against whom proceedings have been instituted by a Moroccan court, which alone is competent to hand down a decision in this respect.

C. The Committee's conclusions

- 392.** *The Committee notes that, in the context of the industrial dispute at the AVITEMA farm, the workers concerned were released on bail on Labour Day. The Committee reminds the Government once again that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike. The Committee trusts that the competent authorities will uphold this provisional measure and requests the Government once again to transmit the decision of the Rabat Court of Appeal in this matter once it has been handed down.*
- 393.** *As regards the alleged cases of torture and ill treatment, the Committee notes that judicial proceedings have been instituted on grounds of assault and grievous bodily harm under the Penal Code and requests the Government to communicate to it the ruling of the Court of the First Instance of Rabat on this matter once it has been handed down.*
- 394.** *The Committee notes however that no information has been provided concerning the reinstatement of the 21 strikers at the AVITEMA farm and the employer's refusal to allow*

the workers who had exercised their right to strike to return to work. Expressing the hope that measures will be taken to reinstate the trade unionists concerned in their posts, and recalling that respect for the principles of freedom of association requires that workers should not be dismissed or refused re-employment on account of their having participated in a strike or other industrial action, the Committee urges the Government once again to take without delay all the necessary measures to ensure that the workers dismissed from AVITEMA farm are reinstated in their posts and to keep it informed in this respect.

395. *As regards the dispute involving the fishermen in the port of Agadir, the Committee notes with interest that the workers concerned have been pardoned.*

The Committee's recommendations

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

- (a) The Committee requests the Government to transmit the decision of the Rabat Court of Appeal concerning the AVITEMA farm workers conditionally released, as soon as it has been handed down.*
- (b) The Committee requests the Government to communicate to it, once it has been handed down, the ruling of the Court of the First Instance of Rabat concerning Mr. Abderrazak Chellaoui, Mr. Bouazza Maâche and Mr. Abdeslam Talha.*
- (c) The Committee once again urges the Government to ensure that all the necessary measures are taken without delay so that the workers dismissed from AVITEMA farm are reinstated in their posts and to keep it informed in this respect.*

CASE No. 2034

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

Complaint against the Government of Nicaragua presented by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)

Allegations: Unjustified dismissals of trade union officials

397. The Committee examined this case at its meeting in March 2000 and on that occasion presented an interim report to the Governing Body [see 320th Report, paras. 735-746, approved by the Governing Body at its 277th Session in March 2000]. The Government sent its observations in a communication dated 7 June 2000.

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

A. Previous examination of the case

399. In its previous examination of the case concerning allegations of unjustified dismissals of trade union officials, the Committee made the following recommendations [see 320th Report, para. 746]:

The Committee requests the Government to ensure the reinstatement of trade union leader Juan Osabas Varela and to send its observations on the alleged dismissals of the other members of the executive committee of the trade union at the El Relámpago plantation.

The Committee requests the Government to inform it of any ruling given on the application for reinstatement and payment of back wages presented by the trade union officials at the Emma plantation (Mr. Bayardo Manguía Fuentes and Mr. Manuel de Jesús Canales).

B. The Government's reply

400. In its communication of 7 June 2000, the Government states that as regards Mr. Juan Osabas Varela, article 129 of the Political Constitution provides for the separation of powers, and under the terms of article 159 the judiciary alone has the power to hand down and enforce legal rulings. As the Committee was informed before, the Chinandega District Labour Inspectorate in a decision dated 11 June 1998 rejected the application for the dismissal of Mr. Juan Osabas Varela because it considered that there were no grounds for dismissal. However, the parties to the dispute are obliged to exhaust the legal means provided for under legislation for the enforcement of rulings or decisions, as established under article 46 *in fine* of the Labour Code. Since no other workers were said to have been dismissed from the El Relámpago plantation, no observations were sent in this regard.

401. The Government adds that as regards the Committee's recommendation (b), decisions by the Chinandega District Labour Inspectorate and a ruling of the El Viejo Court ordered the reinstatement of Mr. Bayardo Manguía Fuentes and Mr. Manuel de Jesús Canales and payment of back wages owed to them; as indicated above, they must exhaust the available legal means for enforcing the ruling and/or decisions in accordance with article 46 *in fine* of the Labour Code.

C. The Committee's conclusions

402. *In its previous examination of the case, when it considered allegations concerning unjustified dismissals of trade union officials, the Committee requested the Government to ensure the reinstatement of the trade union official Mr. Juan Osabas Varela, to send its observations on the alleged dismissals of the other members of the executive committee of the trade union at the El Relámpago plantation, and to inform it of any ruling handed down on the claim by the trade union officials at the Emma plantation, Mr. Bayardo Manguía Fuentes and Mr. Manuel de Jesús Canales, for reinstatement and payment of back wages.*

403. *Firstly, the Committee wishes to draw the Government's attention to the following principles relating to acts of anti-union discrimination against trade union officials and members: "The government is responsible for preventing all acts of anti-union discrimination", and "In cases of the dismissal of trade unionists on the grounds of their trade union membership or activities, the Committee has requested the government to take the necessary measures to enable trade union leaders and members who had been dismissed due to their legitimate trade union activities to secure reinstatement in their jobs and to ensure the application against the enterprises concerned of the corresponding legal*

sanctions” [see *Digest of decisions and principles of the Freedom of Association Committee*, 4th (revised) edition, 1996, paras. 738 and 756].

- 404.** *With regard to the reinstatement of the trade union official Mr. Juan Osabas Varela at the El Relámpago plantation, the Committee notes the Government’s statement to the effect that, as it informed the Committee on a previous occasion, the Chinandega District Labour Inspectorate refused the application to dismiss the official in question because it considered that there were no grounds for dismissal, and that it was the responsibility of the parties concerned to exhaust all available legal means of enforcing any ruling or decision. In this regard, the Committee deeply regrets that the Government has not taken the necessary measures to ensure the reinstatement of the trade union official Mr. Juan Osabas Varela – whose dismissal was overruled two years ago by the administrative authorities – which the Committee had requested at its meeting in March 2000. Under these circumstances, the Committee urges the Government to ensure that Mr. Juan Osabas Varela is reinstated in his post and that any back wages owed to him are paid. The Committee requests the Government to keep it informed in this regard.*
- 405.** *As regards the alleged dismissal of the other members of the executive committee of the trade union at the El Relámpago plantation, the Committee notes the Government’s statement to the effect that no other executive committee members have been dismissed apart from Mr. Varela. Under these circumstances, noting that the complainant has not provided any specific details (names, posts held, etc.) of these alleged dismissals, the Committee will not pursue its examination of this allegation.*
- 406.** *As regards the court application brought by the trade union officials of the Emma plantation, Mr. Bayardo Munguía Fuentes and Mr. Manuel de Jesús Canales, in connection with their dismissals, the Committee notes that there have been decisions by the Chinandega District Labour Inspectorate and a ruling by the El Viejo Court ordering the reinstatement of the officials in question and payment of any back wages owed to them; the officials must exhaust available legal means of ensuring that the decisions and/or ruling are enforced. In this regard, noting that both the administrative and the judicial authorities have ordered the reinstatement of the union officials dismissed at the Emma plantation, the Committee urges the Government to ensure that Mr. Bayardo Munguía Fuentes and Mr. Manuel de Jesús Canales are reinstated in their posts and any back wages paid. The Committee requests the Government to keep it informed of any measures taken in this regard.*

The Committee’s recommendations

- 407.** *In the light of the foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee urges the Government to ensure that the trade union official Mr. Osabas Varela is reinstated in his post at the El Relámpago plantation and any back wage owed to him paid. The Committee requests the Government to keep it informed of any measures taken in this regard.*
- (b) *Noting that both the administrative and the judicial authorities have ordered the reinstatement of the union officials dismissed at the Emma plantation, the Committee urges the Government to ensure that Mr. Bayardo Munguía Fuentes and Mr. Manuel de Jesús Canales are reinstated in their posts and any back wages paid. The Committee requests the Government to keep it informed of any measures taken in this regard.*

CASE NO. 2006

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

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

- **the All Pakistan Federation of Trade Unions (APFTU) and**
- **the Federation of Oil, Gas, Steel and Electricity
Workers (FOGSEW-Pakistan)**

***Allegations: Denial of trade union and collective bargaining rights for
workers of the Pakistan Water and Power Development Authority
(WAPDA) and of the Karachi Electric Supply Corporation (KESC)***

- 408.** The Committee examined the substance of this case at its November 1999 meeting when it presented an interim report to the Governing Body [see 318th Report, paras. 324-352, approved by the Governing Body at its 276th Session (November 1999)].
- 409.** The APFTU provided additional information in communications dated 4 January and 5 May 2000. The Government supplied its observations in communications dated 16 March and 25 May 2000.
- 410.** Pakistan has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 411.** During its previous examination of the case, the Committee had noted that the allegations in this case concerned the denial of trade union and collective bargaining rights for workers of the Pakistan Water and Power Development Authority (WAPDA) as well as for workers of the Karachi Electric Supply Corporation (KESC) pursuant to the issuance of Presidential Ordinances which excluded the application of the Industrial Relations Ordinance, 1969, to these two public utilities.
- 412.** More specifically, with regard to the situation of WAPDA workers, the Committee had noted that Presidential Ordinance No. XX dated 22 December 1998 had suspended the trade union and collective bargaining rights of more than 130,000 WAPDA workers. The Committee had also noted the Government's reply that the promulgation of this Ordinance was an exceptional measure which was essential for the welfare of the community and the health of the country's economy. According to the Government, the massive theft of electricity, rampant corruption and inefficiency in WAPDA, an organization which had initially been established for the development of water and power resources of the country, had seriously affected the viability of the organization. The Government had further indicated that although the management of WAPDA had tried various measures to restore the financial viability of the organization and to reintroduce a culture of efficiency, accountability and discipline, it was helpless in taking disciplinary action against the delinquents largely due to interference and pressure by the union and corrupt elements therein. In order to avert a complete collapse of WAPDA, which would have caused great human suffering and economic hardship, the Government was constrained to seek the assistance of the armed forces in restoring the financial health of the organization through checking pilferage/power theft.

- 413.** While noting the Government's statement that a number of office-bearers of the Pakistan WAPDA Hydro Electric Central Labour Union were either directly or indirectly involved in corrupt activities in WAPDA, the Committee was of the view that to deprive many thousands of workers of their trade union organization because illegal activities had been carried out by some leaders or members constituted a clear violation of the principles of freedom of association. The Committee had considered that if it was found that certain members of the trade union had committed excesses going beyond the limits of normal trade union activity, they could have been prosecuted under specific legal provisions and in accordance with ordinary judicial procedure, without involving the suspension and subsequent dissolution of an entire trade union movement.
- 414.** Moreover, the Committee had noted that the management of WAPDA had issued an order in February 1999 that trade union dues would no longer be deducted from the wages of workers pursuant to Presidential Ordinance No. XX. The Committee had considered that the suspension of the practice of deducting trade union dues coupled with the suspension of trade union activities risk jeopardizing the very existence of the APFTU's affiliate, the WAPDA Hydro Electric Central Labour Union. Finally, the Committee had noted that the Deputy Registrar of the National Industrial Relations Commission cancelled the registration of the union in March 1999 and had emphasized that the cancellation of registration of an organization by the registrar (or deputy registrar) of trade unions was tantamount to the suspension or dissolution of that organization by administrative authority which constituted a clear violation of Article 4 of Convention No. 87. In this respect, the Committee had noted that the WAPDA Hydro Electric Central Labour Union had filed an appeal to the Lahore High Court against the decision of the Deputy Registrar.
- 415.** For all the abovementioned reasons, the Committee had strongly deplored the promulgation of Presidential Ordinance No. XX of 1998 which suspended the trade union rights of WAPDA workers and prevented the WAPDA Hydro Electric Central Labour Union from carrying out its normal trade union activities including receiving its trade union dues. In this respect, the Committee had noted that although Presidential Ordinance No. XX had elapsed on 22 April 1999, it was repromulgated as Ordinance No. V, 1999, with effect from 24 May 1999. The Committee had requested the Government to confirm that Ordinance No. V had elapsed and if this was not the case, to repeal it immediately.
- 416.** Finally, the Committee had noted with serious concern the allegations of the Federation of Oil, Gas, Steel and Electricity Workers (FOGSEW-Pakistan) in a communication dated 8 June 1999 to the effect that the Government had excluded the Karachi Electric Supply Corporation (KESC) from the purview of the Industrial Relations Ordinance, 1969, through two Presidential Ordinances issued on 27 May 1999 with the result that the FOGSEW's affiliate, the KESC Democratic Mazdoor Union, had been banned by the new management of KESC with effect from 31 May 1999. Noting that the Government had not replied to these serious allegations, the Committee had urged the Government to provide its observations thereon without delay.
- 417.** At its November 1999 session, in light of the Committee's interim conclusions, the Governing Body approved the following recommendations:
- (a) The Committee deplores that the Government violated its obligations arising from Conventions Nos. 87 and 98.
 - (b) Noting that the Pakistan WAPDA Hydro Electric Central Labour Union has filed an appeal to the Lahore High Court against the decision of the Deputy Registrar to cancel its registration, the Committee requests the Government to keep it informed of the outcome of the decision handed down by the Lahore High Court.

- (c) Deploring the promulgation of Presidential Ordinance No. XX of 1998 which suspended the trade union rights of WAPDA workers and prevented the WAPDA Hydro Electric Central Labour Union from carrying out its normal trade union activities, the Committee urges the Government to refrain in the future from having recourse to measures of suspension or dissolution through administrative channels which constitute serious infringements of the principles of freedom of association.
- (d) The Committee requests the Government to confirm that Ordinance No. V, 1999, which repromulgated Ordinance No. XX of 1998, elapsed on 24 September 1999. If this is not the case, the Committee urges the Government to repeal Ordinance No. V, 1999, immediately, with a view to re-establishing the registration of the Pakistan WAPDA Hydro Electric Central Labour Union; it also requests the Government to ensure that the practice of deducting trade union dues is resumed without delay. It asks the Government to keep it informed of measures taken to give effect to its recommendations.
- (e) The Committee urges the Government to reply without delay to the allegations of the Federation of Oil, Gas, Steel and Electricity Workers (FOGSEW) contained in a communication dated 8 June 1999.
- (f) The Committee deplores the fact that certain WAPDA and KESC union officials were forcibly retired.

B. The complainants' additional information

- 418.** In a communication dated 4 January 2000, the APFTU contends that Ordinance No. V, 1999, which places restrictions on the fundamental trade union rights of 130,000 WAPDA workers was repromulgated. Although this Ordinance was supposed to elapse on 23 December 1999, it is still in force due to the suspension of some articles of the Constitution of Pakistan, the enforcement of a new provisional Constitution as well as the absence of a parliament.
- 419.** In a communication dated 5 May 2000, the APFTU indicates that the Government has decided to restore the fundamental trade union rights of 140,000 WAPDA workers and that the ban on trade unions has been lifted.

C. The Government's reply

- 420.** In a communication dated 16 March 2000, the Government states that it has already provided detailed information on the existence of extremely grave circumstances which led to the invocation of article 245 of the Constitution. The decision was taken as an exceptional measure, essential for the welfare of the community, organization and health of the country's economy. The Government points out that it has time and again reiterated its commitment to fully respect the fundamental workers' right of freedom of association. Despite the existing circumstances, the Government has maintained regular contacts with the leadership of the suspended unions. Moreover, it is committed to restoring trade union rights in WAPDA and KESC as soon as the situation normalizes and the two enterprises once again become viable and productive.
- 421.** In this context, the concerned authorities have chalked out a phased programme for restructuring of the WAPDA and KESC and for the eventual restoration of the trade unions concerned. Since the restructuring of the two organizations is near completion, the following programme for the restoration of trade unions is being considered by the Government. First of all the ban on trade union activities in WAPDA and KESC would

continue up to 31 October 2000. However, in the light of the recommendations by the Committee on Freedom of Association, the following time frame will be observed: (i) registration of voters will be undertaken with effect from 1 July 2000. This will be completed by 31 August 2000; (ii) arrangements to hold a referendum to determine the collective bargaining agent will be completed by 31 October 2000; (iii) union activities will start thereafter. In the interim period, WAPDA and KESC management will maintain regular consultations with labour at various tiers to resolve the difficulties of workers and address their concerns.

422. In a communication dated 25 May 2000, the Government states that the Chief Executive of Pakistan has lifted the ban on trade union activities in WAPDA, which earlier had been imposed as temporary measures.

D. The Committee's conclusions

423. *The Committee wishes to recall that the allegations in this case concern the denial of trade union and collective bargaining rights for workers of the Pakistan Water and Power Development Authority (WAPDA) as well as for workers of the Karachi Electric Supply Corporation (KESC) pursuant to the issuance of presidential ordinances which excluded the application of the Industrial Relations Ordinance, 1969, to these two public utilities.*
424. *As regards the current situation of WAPDA workers, the Committee notes from the new additional information provided by the All Pakistan Federation of Trade Unions (APFTU) as well as the Government that the ban on trade union activities in WAPDA has now been lifted by the Chief Executive of Pakistan. The Committee takes due note of this information.*
425. *Furthermore, during its previous examination of this case, the Committee had noted that the management of WAPDA had issued an order in February 1999 that trade union dues would no longer be deducted from the wages of workers [see 318th Report, para. 348]. The Committee had considered that the suspension of the practice of deducting trade union dues coupled with the suspension of trade union activities risked jeopardizing the very existence of the APFTU's affiliate, the WAPDA Hydro Electric Central Labour Union and had therefore requested the Government to ensure that the practice of deducting trade union dues was resumed without delay. Noting that the Government has not provided any information on measures taken to this effect, the Committee once again requests the Government to ensure that the practice of deducting trade union dues is resumed without delay in WAPDA; it requests it to keep it informed of developments in this respect.*
426. *As regards the legal organizational structure of the Pakistan WAPDA Hydro Electric Central Labour Union, the Committee had noted during its previous examination of this case that the Deputy Registrar of the National Industrial Relations Commission had cancelled the registration of the union in March 1999. In this regard, the Committee had emphasized that the cancellation of registration of an organization by the registrar (or deputy registrar) of trade unions was tantamount to the suspension or dissolution of that organization by administrative authority which constituted a clear violation of Article 4 of Convention No. 87 and that cancellation of a trade union's registration should only be possible through judicial channels [see 318th Report, para. 348]. In this respect, the Committee had noted that the WAPDA Hydro Electric Central Labour Union filed an appeal to the Lahore High Court against the decision of the Deputy Registrar, and had requested the Government to keep it informed of the outcome of the decision handed down by the Lahore High Court. Noting that the Government does not provide any information in this regard, the Committee once again requests the Government to keep it informed of the outcome of the appeal filed by the union to the Lahore High Court.*

427. Moreover, the Committee would recall that during its previous examination of this case, it had noted with serious concern the allegations of the Federation of Oil, Gas, Steel and Electricity Workers (FOGSEW-PAKISTAN) in a communication dated 8 June 1999 to the effect that the Government had excluded the Karachi Electric Supply Corporation (KESC) from the purview of the Industrial Relations Ordinance, 1969, through two Presidential Ordinances issued on 27 May 1999 with the result that the FOGSEW's affiliate, the KESC Democratic Mazdoor Union, had been banned by the new management of KESC with effect from 31 May 1999. Noting that the Government had not replied to these serious allegations, the Committee had urged the Government to provide its observations thereon without delay (see 318th Report, para. 350). The Committee now notes with serious concern that the Government, in its recent reply, broadly justifies its decision to suspend trade union activities in KESC for more or less the same reasons that led it to take a similar decision in the case of WAPDA, namely that the decision is an exceptional measure which is essential for the welfare of the community and the health of the country's economy. The Government affirms that it is nevertheless committed to restoring trade union rights in KESC as soon as the enterprise becomes viable and productive again. In this regard, the Committee first reminds the Government once again that the Committee of Experts on the Application of Conventions and Recommendations has emphasized that the freedom of association Conventions do not contain any provision permitting derogation from the obligations arising under the Convention, or any suspension of their application, based on a plea that an emergency exists [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 186]. Furthermore, the Committee considers that the viability or productivity of an enterprise must not be a precondition for the guarantee of the fundamental rights of freedom of association. Moreover, if a number of office-bearers of the KESC Democratic Mazdoor Union were allegedly directly or indirectly involved in corrupt activities in KESC resulting in the massive theft of electricity (as in the case of the Pakistan WAPDA Hydro Electric Central Labour Union according to the Government), the Committee is of the view that to deprive many thousands of workers of their trade union organization because illegal activities have been carried out by some leaders or members constitutes a clear violation of the principles of freedom of association [see **Digest**, *op. cit.*, para. 667]. The Committee considers that if it was found that certain members of the trade union had committed excesses going beyond the limits of normal trade union activity, they could have been prosecuted under specific legal provisions and in accordance with ordinary judicial procedure, without involving the suspension and subsequent dissolution of an entire trade union movement [see report of the Commission of Inquiry on the observance by Poland of Conventions Nos. 87 and 98, **Official Bulletin** (Vol. LXVII), 1984, para. 492]. Noting however that, according to the Government, the ban on trade union activities of the KESC would continue up to 31 October 2000, the Committee requests the Government to confirm that the ban on KESC has indeed been lifted and that the workers' trade union rights have been restored. It further urges the Government to restore the collective bargaining rights of KESC workers without delay and requests the Government to keep it informed of developments in this regard.

428. Lastly, the Committee notes the Government's statement that, in the context of restoring trade union rights in WAPDA and KESC, the Government plans to make arrangements to hold a referendum in both establishments in order to determine the collective bargaining agent (CBA) in each organization by 31 October 2000. The Committee considers nevertheless that if the authorities have the power to hold polls for determining the majority union which is to represent the workers for the purposes of collective bargaining, such polls should always be held in cases where there are doubts as to which union the workers wish to represent them [see **Digest**, *op. cit.*, para. 826]. In the case at hand however and in light of the information at its disposal, it is the Committee's view that there is no credible evidence to support the Government's position that such doubts exist and that new elections should be held to determine the CBA unions in WAPDA and KESC. In

effect, the Committee notes from the information previously provided by the complainants – which the Government did not contest – that the Pakistan WAPDA Hydro Electric Central Labour Union was the largest industry-wide trade union in the country, was representing WAPDA workers for the past 50 years and was again recently declared to be the collective bargaining agent for WAPDA workers through a referendum held at the national level on 29 December 1997 [see 318th Report, para. 328]. Similarly, the KESC Democratic Mazdoor Union was duly elected as CBA in the establishment as a result of a referendum held on 23 February 1999 [see 318th Report, para. 332]. The Committee therefore believes that it is solely the Government's actions that led to the cancellation of the rights of the two abovementioned unions as CBAs. As such, the Committee is of the view that these rights should be restored to the two unions concerned without delay and that the Government should take the appropriate measures to this end. It requests the Government to keep it informed of developments in this regard.

429. Finally, as concerns the last point in the Committee's previous recommendations, the Committee requests the Government to keep it informed of any developments in respect of the WAPDA and KESC union officials who were forcibly retired.

The Committee's recommendations

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

- (a) The Committee notes that the ban on trade union activities in the Pakistan Water and Power Development Authority (WAPDA) has now been lifted.*
- (b) The Committee once again requests the Government to ensure that the practice of deducting trade union dues is resumed without delay in WAPDA. It asks the Government to keep it informed of developments in this regard.*
- (c) Reiterating the principle that recourse to measures of suspension or dissolution of trade union organizations through administrative channels constitutes a clear violation of Article 4 of Convention No. 87, the Committee once again requests the Government to keep it informed of the outcome of the appeal filed by the Pakistan WAPDA Hydro Electric Central Labour Union to the Lahore High Court against the decision of the Deputy Registrar to cancel its registration.*
- (d) The Committee requests the Government to confirm that the ban on trade union activities in KESC which was to continue until 31 October has now been lifted and that the workers' trade union rights have now been restored. It further urges the Government to restore the collective bargaining rights of KESC workers without delay and requests the Government to keep it informed of developments in this regard.*
- (e) The Committee requests the Government to take the appropriate measures to ensure that the rights of the Pakistan WAPDA Hydro Electric Central Labour Union and the KESC Democratic Mazdoor Union, respectively, as collective bargaining agents (CBAs) are restored to them without delay. It asks the Government to keep it informed of developments in this regard.*

- (f) *The Committee requests the Government to keep it informed of any developments in respect of the WAPDA and KESC union officials who were forcibly retired.*

CASE NO. 2049

INTERIM REPORT

Complaint against the Government of Peru

presented by

- **the General Confederation of Workers of Peru (CGTP)**
- **the Unified Trade Union of Petroleum, Energy, Oil and Refinery Workers of the Grau Region (SUTPEDARG) and**
- **the Federation of Petroleum Workers of Peru (FETRAPEP)**

Allegations: Restrictive collective bargaining legislation; detentions and bodily harm in the course of a strike to protest at the negative consequences for railway workers of the leasing to a private consortium of the principal relevant state enterprises' infrastructure; and the sanctioning of a trade union leader

- 431.** The complaints are contained in communications from the General Confederation of Workers of Peru (CGTP) and the Unified Trade Union of Petroleum, Energy, Oil and Refinery Workers of the Grau Region (SUTPEDARG), dated 3 August and 1 June 1999 respectively, and in a communication from the Federation of Petroleum Workers of Peru (FETRAPEP), dated 13 April 2000. The CGTP forwarded fresh allegations by letters of 31 August 1999 and 9 June 2000, and the FETRAPEP in a communication of 6 June 2000. The Government responded by letter of 1 February, 27 April and 12 September 2000.
- 432.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 433.** In its communication of 3 August 1999, the General Confederation of Workers of Peru (CGTP) alleges that article 11 of Emergency Decree No. 011-99, published on 14 March 1999, established that, in 1999, state enterprises would conduct their pay policy for staff, whether covered by collective bargaining or not, through the award of a single productivity bonus which would not constitute a part of their basic remuneration and would be governed by resolution of the Ministry of Economics and Finance. In accordance with the aforementioned article, Ministerial Resolution No. 075-99-EF was published on 10 April 1999; this set the guidelines for the award of the Single Productivity Bonus (BUP), as well as the guidelines for simplifying the pay system of workers in state enterprises. The requirements established by the resolution for the award of the bonus in state enterprises were as follows: (a) the amount to be awarded should be set in accordance with the worker's level of responsibility, contribution and commitment, as reflected in an evaluation process conducted prior to the award; the evaluation criteria may be approved solely by the directorate, i.e. without the involvement of the trade union; (b) the resulting amount may be paid in instalments; (c) prior to this, the pay system must have been simplified on the basis of only two structural components (basic remuneration and consolidated bonus) and the integral remuneration agreements must have been signed in

cases where remuneration exceeds 5,600 nuevo sols; (d) in the case of staff covered by collective bargaining, bonuses must be set and awarded as part of the collective bargaining process; and (e) a worker's total present income plus bonus (which as such may not be considered as a pay increase) may under no circumstances exceed the Maximum Income Level (TMI) established for the general manager or equivalent official in each enterprise. Similarly, the award of the BUP will depend in the last instance upon the extent to which the management objectives have been achieved, as set out in the management agreement concluded between the state enterprise and the Office of State Institutions and Bodies (OIOE), as stipulated by articles 10 and 11 of the aforementioned Ministerial Resolution. Those agreements specifically state the enterprise's commitments and the productivity bonus entitlement, provided that a high percentage of the planned objectives for 1999 are achieved, failing which, no authorization will be issued to make bonus payments subject to the limits set in the agreement.

- 434.** Furthermore, in accordance with the regulations applicable to collective bargaining, as cited by the CGTP, the directorates of state enterprises must submit to the OIOE, for its approval, the agreements signed with trade unions; this is required by Act No. 27012, the Public Sector Budget Act; this constitutes a further encroachment upon the parties' collective independence, above and beyond the constraints imposed by that instrument.
- 435.** According to the CGTP, the strategy of placing the productivity bonus award exercise within the collective bargaining process is part of a policy gradually to replace the increases or compensation agreed upon with the workers. This constitutes an attempt to obviate the bargaining phase which, at present, addresses increases in remuneration, with implications in terms of compensation for service time, allowances, leave and others, in an endeavour to move on to the stage of regulating non-remuneration-related increases without any positive implications for workers' rights and, apparently, without any extra labour costs for enterprises and with a further reduction in the Peruvian workers' standard of living.
- 436.** Accordingly, organizations such as the Federation of National Ports Enterprise Workers (FENTENAPU) and the Union of SEDEPAL Workers (SUTESAL) were coerced into signing their collective agreements with the respective state enterprises under the conditions imposed by the aforementioned instructions which, hence, limit the agreements regarding wage increases and, in particular, remuneration-related increases for the benefit of their members.
- 437.** Furthermore, the members of the National Unified Federation of Health Workers (FENUTSSA) received a clear refusal from the Ministry of Health to negotiate upon the list of claims they presented this year, with the argument that, this year, the education sector required extra finances for the purpose of increasing the pay of administrative staff in various regions of the country. Similarly, the list of claims presented to the Ministry of Education by the United Education Trade Union of Peru (SUTEP), the Unified Trade Union of Education Centre Workers (SUTACE) and the National Federation of Education Administrative Workers (FENTASE) was disregarded upon grounds similar to those invoked in the health sector. All of this occurred despite the fact that salaries of public servants in health and education have been frozen for several years.
- 438.** In its communication dated 31 August 1999, the CGTP alleges that on 19 July 1999 the Government handed over the railways of the state enterprise ENAFER S.A. to a consortium of private companies with domestic and foreign capital. This meant the dismissal of all workers already having undergone three staff rationalization operations involving more than 4,000 lay-offs since 1991. The dismissals constitute a case of abuse by the Government, given that a technical study by the World Bank indicates that the staff necessary for the enterprise to function is 1,859 workers. The new operator is only required

to recruit former ENAFER S.A. workers to meet its own needs; the recruitment is for one year and may be carried out directly or through third parties. In this way, the majority of the 1,772 workers will lose their jobs whereas they are above 40 years of age and, also, the majority of those that manage to be recruited will be so by third parties. The CGTP points out that the offers made to the trade unions by ENAFER S.A. to bring about their acceptance of the terminations was to pay compensation to the tune of 186 nuevo sols (less than US\$60) in respect of each year of service – which is equivalent to the present basic wage of an ENAFER S.A. worker with 25 to 30 years of service. This remuneration is lower than the minimum remuneration for the purpose of calculating compensation, which is currently set at 370 nuevo sols per year of service and an indemnity of \$1,000. The enterprise's proposals were turned down.

- 439.** The railway union representatives made a counter-proposal: recruitment guarantees for a minimum of five years; an increase in basic remuneration comprising 186 nuevo sols of basic wage, an “economic package” of 500 nuevo sols per month that had already been paid; a compensatory bonus of \$5,000, etc. This counter-proposal was rejected and ENAFER S.A. sent out notarial letters to each of the 1,772 workers. These letters invited them to accept its proposal, setting a deadline of 19 August 1999 for the return of the signed letters, failing which they were threatened with termination as part of a collective dismissal already accepted by the Ministry of Labour, with the loss of the \$1,000 indemnity and with not being included in the list of workers to be supplied to the new operator for recruitment purposes. The CGTP adds that, in these circumstances, it was agreed to call a strike on 20 August 1999. On 25 August, the Government initiated indiscriminate, unjustified and brutal repression of railway workers, their spouses and children camping out around the railway stations of Chosica (Lima), Cuzco and Arequipa. This violent repression left many people injured with contusions and instances of asphyxia, above all amongst the children and women on account of the large quantity of tear gas used by the police. In Cuzco, 75 workers were detained. On 26 August, there was industrial action in Lima, organized jointly by the telephone- and dockworkers' unions, as well as in Arequipa and Chosica to protest at the police repression. Meetings were held with the chairpersons of the National Congress Labour and Transport Committees as well as with the Deputy Minister of Transport although, to date, the Government's position has remained unchanged and it has declared the strike illegal.
- 440.** In its communication of 1 June 1999, the Unified Trade Union of Petroleum, Energy, Oil and Refinery Workers of the Grau Region (SUTPEDARG) alleges that its member, Mr. José Fernández Guzmán, was sanctioned by a two-day suspension without pay by the administration of “Petróleos del Perú” for having taken part in the strike declared by several trade unions on 28 April 1999, which called for the Government to rectify its economic policy, including the demand for free collective bargaining. The complainant organization attaches the letter of dismissal in which the aforementioned member is admonished for having taken part in the strike whereas his post was considered essential for the upholding and continuity of minimum services and he had put the refinery's activities at grave risk.
- 441.** In its letters of 13 April and 6 June 2000, the Federation of Petroleum Workers of Peru (FETRAPEP) alleges that the trade unions of the state enterprise Petróleos del Perú (PETROPER), after several months of negotiations during which the workers resisted the enterprise's proposal (award of a Single Productivity Bonus with acceptance of the consolidation of existing working conditions in a consolidated bonus on the basis of Emergency Decree No. 011-99), entered into a conciliation procedure presided over by the Ministry of Labour with the parties agreeing to take the collective bargaining to arbitration. FETRAPEP adds that the arbitration award was based on the workers' proposal, inasmuch as it set a wage increase and threw out the enterprise's proposal. Nevertheless, the enterprise challenged the arbitration award before the Labour Chamber of the High Court

of Justice of Lima, invoking Emergency Decree No. 011-99. The Labour Chamber decided, as a precaution, to put the award in abeyance. The complainant adds that on 6 February 2000, the Government extended Emergency Decree No. 011-99 by Emergency Decree No. 004-2000. FETRAPEP points out that the Lawyers' College of Lima questioned the constitutionality of Emergency Decree No. 011-99 before the Constitutional Guarantees Tribunal.

442. In its communication of 9 June 2000, the CGTP also alleges that Emergency Decree No. 004-2000 extends the application of Emergency Decree No. 011-99 beyond the year 2000 and restricts collective bargaining in the public sector.

B. The Government's reply

443. In its communications of 1 February, 27 April and 12 September 2000, the Government states that Emergency Decree No. 011-99, published on 14 March 1999, was issued in keeping with article 118(19) of the Political Constitution of Peru. That constitutional text empowers the President of the Republic to issue extraordinary measures, in the form of emergency decrees with the force of law, when the national interest so requires and she/he is called upon to report to Congress; these emergency decrees constitute extraordinary measures that the President may issue in respect of economic or financial matters as required by the country's circumstances. The emergency decree in question awarded a "special bonus" to public administration workers within the framework of the law on administrative careers and public sector remuneration (Legislative Decree No. 276). In article 11 of the same text, there is indication that the bodies covered by article 12 of the 1999 Public Sector Budget Act (No. 27013), i.e. the state-run enterprises and all enterprises in which the State has a majority holding, will conduct their pay policy for 1999 through the award of a Single Productivity Bonus which will not be part of basic remuneration and will be determined by resolution of the Ministry of Economics and Finance.

444. The Government goes on to say that Ministerial Resolution No. 075-99-EF/15 was published on 1 April 1999, which confirmed the award of the aforementioned bonus as well as the streamlining of the remuneration system for workers in state enterprises. The requirements established in the text for the award of the Single Productivity Bonus are:

- (a) the amount shall be established with account being taken of the worker's level of responsibility, contribution and commitment, as reflected in an evaluation process. The criteria for this evaluation shall be set by the director, directorate or board of the relevant enterprise;
- (b) the resulting amount may be paid in instalments;
- (c) the remuneration system shall already have been simplified by restructuring, although without any variation in staff income. Similarly, the system's simplification should be agreed to in the course of collective bargaining;
- (d) in the case of staff covered by collective bargaining, the bonus will be awarded within the collective bargaining process;
- (e) the total amount of worker remuneration, including the bonus, will not exceed the maximum annual income established for the general manager or equivalent official in the relevant body.

445. The Government believes that none of these requirements violates any constitutional provision; moreover, the Ministerial Resolution does not stipulate that collective

agreements must be approved by the OIOE but states that the internal control offices of the respective enterprises shall supply the OIOE with a report containing details of the remuneration received by the workers in the sector. Similarly, it points out that the directors, directorate or boards shall provide the OIOE with the 1998 budget evaluation. The sole instance of prior approval required by the OIOE applies to an official receiving remuneration higher than that of the general manager or equivalent official. In that case, if it were decided to maintain that level of remuneration, the grounds for it being upheld should be submitted to the OIOE for approval. However, that is unrelated to the approval of the collective agreement.

- 446.** The Government stresses that: (1) the legal machinery for the issue of Emergency Decree No. 011-99 and Ministerial Resolution No. 075-99-EF/15 were respected; they are constitutional and in keeping with the standards applicable to public sector and state enterprise workers; (2) the procedures applicable to the award of the Single Productivity Bonus are an integral part of the collective bargaining and, in this way, are in compliance with the provisions of the Constitution and relevant international conventions; and (3) the Ministerial Resolution does not make the applicability of collective agreements contingent upon OIOE approval.
- 447.** With regard to the limitation applicable to remuneration above the maximum annual income for the general manager or equivalent official in the relevant sector, there are precedents (and the Government supplies examples) in which, by collective agreement and arbitration award, the remuneration established by the OIOE has been exceeded. Similarly, it should be emphasized that the rights recognized by collective agreement or arbitration award take precedence over any other text, maintaining the agreement's effective application and independence.
- 448.** Furthermore, the streamlining of the remuneration system addressed by Ministerial Resolution No. 075-99-EF/15 does not imply any variation in staff income and there is no wage freeze or elimination of other rights, in view of the fact that the simplification involves restructuring of the components but no change to income levels. As concerns the allegations of FETRAPEP, the Government states that the order of the High Court may be appealed in accordance with the legislation in force and that, according to the same complainant, the High Court decided in its favour.
- 449.** With regard to the allegation that Mr. José Fernández Guzmán, a SUTPEDARG member, was suspended for two days without pay for having taken part in the strike called in "Petróleos del Perú", the Government states that this was on account of his failure to report for work on 28 April 1999 despite the fact that the trade union and the said worker had been notified that he was part of essential staff. In this regard, the right to strike is recognized in the Collective Industrial Relations Act, but that text stipulates in article 82 that: "Whenever the strike affects essential public services, or in the instance addressed by article 78, the workers engaged in the dispute shall guarantee the availability of essential staff for the purpose of preventing a total stoppage and for securing the continuity of the necessary activity (...)."
- 450.** With regard to the allegations concerning ENAFER S.A., the Government explains in detail the legal procedures applied under the Promotion of Private Investment in State Enterprises Act up to and including the publication of Supreme Decree No. 014-98-TR on 24 September 1998, authorizing the directorate of ENAFER S.A. to implement the staff rationalization programme approved by the Private Investment Promotion Commission (COPRI) at its meeting of 6 October 1998. The Government goes on to say that ENAFER S.A. carried out a staff rationalization programme on account of the company's unsound economic and financial situation necessitating administrative reorganization. The ENAFER S.A. directorate, in Agreement No. 1 of Session No. 023/98, authorized the

administration to take all necessary action for the due application of the aforementioned Decree. Having authorized the said Agreement's implementation as of 21 January 1999, the application for staff reductions was presented to the Ministry of Labour and Social Protection which issued Order No. 066-99-DRTPSL-DPSC-SDNC for the withdrawal of all of the company's workers; this was done in compliance with article 46 and following Legislative Decree No. 728 "Labour Productivity and Competitiveness Act", with no appeal being lodged. It should be pointed out that, by public auction on 19 July 1999, the Railway Consortium of Peru was granted the operating licence for ENAFER S.A. assets. This transfer involved the recruitment by the Railway Consortium of Peru of 60 per cent of the staff having worked for ENAFER S.A. The above infers that the programme implemented by ENAFER S.A. was conducted within the relevant legal framework, with the Government reaffirming its respect for the international conventions to which it is party.

C. The Committee's conclusions

451. *The Committee observes that in the present complaint the complainant organizations allege the publication and application of standards contrary to the principle of collective bargaining as foreseen in Convention No. 98, refusal by the authorities to negotiate with public sector organizations, pressure exerted by ENAFER S.A. upon workers to accept termination with the payment of insufficient compensation, as part of a privatization process, as well as the sanctioning of a SUTPEDARG member for having taken part in a strike.*
452. *With regard to Emergency Decree No. 011-99, Ministerial Resolution No. 075-99-EF/15 and Emergency Decree No. 004-2000, the Committee notes that the Government states, contrary to the allegations, that these texts do not encroach upon the right to collective bargaining in the public administration, given that these texts: (1) do not stipulate that collective agreements must be approved by the Office of State Institutions and Bodies (OIOE); the sole requirement is that a report be supplied to the said Office regarding the details of remuneration received by workers in the sector; (2) stipulate, with regard to the special bonus as a function of productivity as registered in the worker's evaluation and following the streamlining of the remuneration system, that it will be awarded within the collective bargaining context; and (3) the OIOE alone must give its approval to cases in which the total remuneration of workers (including the bonus) exceeds the remuneration level of the general manager of the respective enterprise. In order that the Committee may be in a position to make a fully informed decision, it requests the Government to indicate whether the affiliates covered by the collective agreement and who have received a negative evaluation have the right to receive the special bonus negotiated by the parties. The Committee further requests the Government to provide additional information on the other points in the Decrees which had been mentioned by the Government and by the complainant.*
453. *With regard to the allegations in respect of the privatization of ENAFER S.A. and pressure exerted upon workers to accept termination with the payment of insufficient compensation, the Committee takes note of the Government's explanations on the lawfulness of the privatization process and that, in the first instance, all workers were laid off and, subsequently, the Railway Consortium of Peru recruited 60 per cent of the staff that had worked for ENAFER S.A. The Committee notes that there was no appeal lodged against the resolution in question. In this regard, the Committee wishes to recall the following principle:*

The Committee can examine allegations concerning economic rationalization programmes and restructuring processes, whether or not they imply redundancies or the transfer of enterprises or services from the public to the private sector, only in so far as they might have given rise to acts of

discrimination or interference against trade unions. In any case, the Committee can only regret that in the rationalization and staff-reduction process, the government did not consult or try to reach an agreement with the trade union organizations.

[See Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996, para. 935.]

- 454.** *With regard to the allegations in respect of the two-day suspension without pay of Mr. José Fernández Guzmán, a SUTPEDARG member, for having taken part in the strike in “Petróleos del Perú”, the Committee takes note of the Government’s statement to the effect that this was on account of his failure to report for work on 28 April 1999, despite the fact that the trade union and the said worker had been informed that he was part of essential staff. In these circumstances, given that it is legitimate to secure a minimum service in the petroleum sector, the Committee will not pursue the examination of this allegation.*
- 455.** *Furthermore, the Committee regrets that the Government has not replied to the other allegations regarding: (1) the refusal by the authorities to negotiate with the public sector trade unions FENUTSSA, SUTEP, SUTACE and FENTASE, whose workers’ wages have been frozen for several years; and (2) the declaration that a strike in ENAFER S.A. was unlawful, as well as physical attacks upon, and the detention of, strikers. The Committee urges the Government to send, without delay, its observations on these allegations.*

The Committee’s recommendations

- 456.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee urges the Government to send, without delay, its observations regarding the following allegations:*
- the refusal by the authorities to negotiate with the public sector trade unions FENUTSSA, SUTEP, SUTACE and FENTASE, whose workers’ wages have been frozen for several years;*
 - the declaration that a strike in ENAFER S.A. was unlawful; physical attacks upon, and the detention of, strikers.*
- (b) As regards Emergency Decrees Nos. 011-99 and 004-2000, and Ministerial Resolution No. 075-99-EF/15, which have been criticized by the complainant, in order to make a fully informed decision the Committee requests the Government to indicate whether those affiliates covered by the collective agreement and who have received a negative evaluation, are entitled to the special bonus negotiated by the parties. The Committee further requests the Government to provide additional information on the other points in the Decrees which had been mentioned by the Government and by the complainants.*

CASE No. 2059

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

**Complaint against the Government of Peru
presented by
the Federation of Employees of Banco Continental (CFEBC)**

Allegations: Dismissals and anti-union practices

- 457.** The complaint is contained in a communication of the Federation of Employees of Banco Continental (CFEBC) dated 30 September 1999. The Government sent its observations in a communication dated 4 August 2000.
- 458.** Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 459.** In its communication dated 30 September 1999, the Federation of Employees of Banco Continental (CFEBC) alleges that Banco Continental has been pursuing an anti-union policy, carrying out intimidation against unionized workers to pressure them to leave the trade union and discourage new members from joining it. It states the following in support of its allegation:
- the trade union had had more than 1,200 members; as a result of a programme of economic incentives for voluntary resignation (with dismissal as the only alternative) stimulated by the Government through the Act respecting privatization (which began in the bank in 1993), membership was reduced by 50 per cent. The current number of members is 170;
 - the bank has been pursuing a policy of intimidating staff by hiring young persons under the Youth Training Programme laid down in the Employment Promotion Act, who work in exploitative and dehumanizing conditions that are contrary to human dignity, and who are warned that they run a risk if they join the trade union;
 - Banco Continental's anti-union policy is reflected in anti-union discrimination in awarding promotions or salary increases virtually exclusively to non-unionized workers or using raises to encourage workers to leave the trade union. It is also reflected in the use of restructuring and the introduction of new systems or technologies as a pretext to move large numbers of workers to new offices and workstations, where they are obliged to perform work they had never done before;
 - the bank has launched an intimidation campaign, compelling workers to sign a letter of voluntary resignation, primarily targeted at unionized workers;
 - as an act of anti-union discrimination, Mr. Juan Manuel Oliveros Martínez (candidate for press and information secretary of the trade union) and Mr. Jorge Mercado Puente de la Vega (secretary for internal affairs, minutes and external affairs) have been dismissed on account of their trade union office.

- 460.** As regards Mr. Juan Manuel Oliveros Martínez, the complainant points out that this occurred when the worker ran for trade union office on the “Trade Union Unity” list for the period 1998-2000. Despite the fact that section 29(b) of Presidential Decree No. 003-97-TR and section 46(a) of the regulations made under it, Presidential Decree No. 001-96-TR, prescribe a period of protection against dismissal for workers who are duly registered as candidates for election as workers’ representatives (30 days before and 30 days after the election of trade union executives), Banco Continental dismissed him without giving any reason for the dismissal, during the period in which he was protected according to the principle of freedom of association, after he had been ordered by a representative of the bank to withdraw his candidature; after his dismissal he was elected as press and information secretary. He brought a suit for nullity against his dismissal, but the court of first instance ruled that his suit was unfounded and an appeal is now pending before the Second Labour Court of Lima.
- 461.** As regards trade union officer Mr. Jorge Mercado Puente de la Vega, the complainant states that he was invited by the head of industrial relations at the bank to tender his “voluntary resignation” because the bank had decided to make him redundant on the grounds that they needed to bring in younger staff. As he refused to resign, he was dismissed without being given the reason for the dismissal. He has brought a suit for nullity against the dismissal, in which a ruling has not yet been handed down by the court of first instance.

B. The Government’s reply

- 462.** In its communication of 4 August 2000, the Government states that the fact that the complainant organization had 1,200 members at one time and its membership has now been reduced by 50 per cent is not due to an anti-labour policy on the part of the State. A worker who decided to opt for voluntary resignation or to accept a package of incentives would be covered by the grounds for termination of the contract of employment laid down in section 16(b) of the consolidated text of Legislative Decree No. 728 respecting productivity and competitiveness, approved by Presidential Decree No. 003-97-TR. Opting to accept an incentive package terminates the contract of employment and this decision taken by the worker, in which the State does not intervene, implies that it is also the worker’s intention to terminate the relationship with the trade union. Hence it is incorrect to assert that the State of Peru does not respect freedom of association, since termination of the relationship is the worker’s wish and takes place according to his or her decision, and this act on the part of the worker cannot be described as infringing his or her freedom of association. In any case, the worker is authorized by law to contest in the courts any act by the employer that is prejudicial to his or her rights. Hence the assertion that the State of Peru is engaged in an alleged anti-labour or anti-union policy, reflected in economic incentive programmes, is entirely unfounded.
- 463.** The Government states further that it is incorrect to allege that there is a policy of intimidation against unionization of young persons who have concluded youth training agreements in support of the assertion of violation of Conventions Nos. 87 and 98 by the State of Peru, to the detriment of unionized workers’ rights, since the legal status of these young persons is not that of a worker.
- 464.** The Government points out in this respect that national legislation provides for protective mechanisms against harassment perpetrated by the employer against any worker, prescribed by the consolidated text of Legislative Decree No. 728 respecting productivity and competitiveness, approved by Presidential Decree No. 003-07-TR. The purpose of the Youth Training Programme, however, is to provide young persons aged between 16 and 25 years with theoretical and practical knowledge at work so that they may take up an economic activity in a specific occupation. The consolidated text of Legislative Decree

No. 728, the Job Training and Promotion Act, approved by Presidential Decree No. 002-97-TR, describes the objectives and formalities of the system but at no point does it give the young trainee the status of a worker. Hence the provisions on workers' labour relations laid down in Legislative Decree No. 25593 are not applicable to young persons in the Youth Training Programme.

- 465.** Concerning the allegation of anti-union discrimination with regard to the workers' economic status, reflected in the award of promotions virtually exclusively to non-unionized workers or using salary increases to encourage workers to leave the union, the Government states that a policy of this kind, expressed in specific cases, could be contested in court, which is in fact the normal procedure in comparative law legislation, for reviewing and judging acts by the employer. Competence for determining and judging anti-union discrimination does not lie with the Ministry of Labour and Social Welfare, but with the judicial branch, especially in the case of an act of harassment or an anti-union act. Where anti-union discrimination is found to have taken place, legislation provides for machinery to protect unionized workers. Thus, in the case of harassment, the worker may bring a suit to put a stop to the harassment, and if the suit is upheld the employer will be ordered to cease the harassment and pay a fine commensurate with the seriousness of the offence. Another option in this case would be to terminate the contract of employment, in which case the worker will demand payment of the compensation prescribed by law, irrespective of the fine or social benefits owing to him or her. Moreover, the Political Constitution of 1993 guarantees freedom of association in the following terms:

Article 28. "The State recognizes the rights of unionization, collective bargaining and strikes. To protect its democratic exercise, the State:

1. guarantees trade union freedom;
2. encourages collective bargaining and promotes the peaceful settlement of labour disputes. Collective agreements are binding on the contracting parties;
3. regulates the right to strike so that it may be exercised in keeping with the national interest. The State determines exceptions and limitations to it."

- 466.** As regards the alleged anti-union discrimination by Banco Continental using the pretext of restructuring and introducing new systems or technologies to move large numbers of workers to new offices and workstations where they have to perform work that they had never done before, the Government points out that the Peruvian legal system also provides for protective mechanisms in situations of this kind. Legislative Decree No. 25593, the Industrial Relations Act, provides as follows:

Section 30. "Trade union immunity guarantees the right of certain workers not to be dismissed or transferred to other establishments of the same enterprise without just cause being duly demonstrated, or without the worker's consent. The worker's consent shall not be required if the transfer does not prevent the worker from performing trade union duties."

- 467.** It may be concluded from the above that trade union immunity provides substantial protection to trade union officers, and that in a case of alleged harassment in the form of unjustified transfer, they may institute proceedings before the jurisdictional body to demand that the employer cease the harassment, in accordance with section 4(2)(b) of Act No. 2663, the Labour Procedure Act:

Section 4. "Competence *rationae materiae*. Competence *rationae materiae* is determined by the nature of the claim and by the following provisions in particular:

[...]

2. The labour courts are competent to examine individual or collective claims in legal disputes concerning:

[...]

(b) Cessation of harassment by an employer”.

468. As regards the allegation that the bank has been applying a programme of intimidation whereby workers are obliged to sign a letter of voluntary resignation, targeting mainly unionized workers, the Government states that if anti-union discrimination were taking place in Banco Continental, this would constitute a violation of the rights laid down in the legislation for unionized workers, for which judicial means of protection are laid down by the State, of which the trade union or complainant workers may avail themselves. Resignation is a voluntary act and cannot be imposed by the enterprise.

469. As regards the allegation that, as an act of anti-union discrimination, Mr. Juan Manuel Oliveros Martínez and Mr. Jorge Mercado Puente de la Vega were dismissed on account of their trade union office, the Government points out that the consolidated text of Legislative Decree No. 728 respecting productivity and competitiveness, approved by Presidential Decree No. 003-97-TR, provides as follows:

Section 29. “A dismissal shall be null if it is motivated by: (a) membership in a trade union or participation in trade union activities [...]”

470. If the worker was dismissed on account of his being a trade union member, he may bring an action before the judiciary as the competent body, and if it is upheld the worker has two options under section 34 of the same Act:

Section 34. “[...] In cases of null dismissal, if the worker’s action is upheld he or she shall be reinstated, unless, in executing sentence, the worker opts for the compensation prescribed in section 38.”

471. In the two cases referred to by the complainant, both workers chose to take legal action as provided by law, and hence proceedings to nullify the dismissals are under way. The parties will have to abide by the court decision, as is the case of any domestic complaint.

472. The Government concludes that the complaint of alleged violation of Conventions Nos. 87 and 98 does not provide sufficient evidence in support of these assertions and that the acts of discrimination referred to are cases covered by legislation, for which means of protection for the workers are in place. Moreover, the judicial proceedings instituted in the case of the two persons mentioned by the complainant effectively demonstrate the guarantee that exists to protect the rights of these workers, who in a situation of alleged infringement of their right of freedom of association availed themselves of the means of protection afforded by national legislation, and the present complaint was presented without awaiting the result of these proceedings.

C. The Committee’s conclusions

473. *The Committee observes that in this case the complainant alleges that Banco Continental has pursued an anti-union policy reflected in various acts of discrimination or intimidation against workers and trade union officers, and in the dismissal of a candidate for trade union office (Mr. Juan Manuel Oliveros Martínez) and the dismissal of a trade union officer (Mr. Jorge Mercado Puente de la Vega).*

474. *As regards the alleged anti-union campaign pursued by Banco Continental, the Committee observes that according to the complainant this policy is reflected in pressure brought to bear on unionized workers to leave the trade union, in the award of promotions or salary increases virtually exclusively to non-unionized workers, in anti-union transfers and in economic incentives to encourage workers – and unionized workers in particular – to resign from their jobs, with dismissal as the only alternative; all of this leading to a huge decrease in union membership. The Committee notes the Government’s observations to the effect that: (1) the option to accept an incentive plan effectively terminates the contract of employment, but this decision is taken at the worker’s will and moreover the law authorizes the worker to contest in the courts any act of the employer that is prejudicial to his or her rights; (2) if there has been a policy to award promotions or wage increases to non-unionized workers in specific cases, this could be contested in court; (3) trade union officers and other workers enjoying trade union immunity are protected by law against transfers and hence in such cases may take action before the courts; (4) legislation provides for judicial means of protection for workers compelled to sign a letter of voluntary resignation. In this respect, while the Committee notes the Government’s statements to the effect that the complainant has not provided effective evidence in support of its assertions, and observes in this respect that the complainant has not provided the names of the persons who have been prejudiced in their rights, nor has it indicated whether the persons concerned have lodged administrative or judicial appeals, the Committee has to emphasize the seriousness of these allegations and the fact that, according to the complainant, the membership of the complainant organization has dropped from 1,200 to 170. The Committee therefore requests the Government to carry out, as a matter of urgency, an inquiry into these acts of anti-union discrimination and intimidation and to keep it informed in this respect.*

475. *As regards the allegations concerning the young persons holding youth training contracts, the Committee observes that, according to the Government, the legislation does not deem them to be workers and they are not covered by the provisions concerning workers’ industrial relations. The Committee would refer to the conclusions it formulated on this issue [see 304th Report, Case No. 1796, para. 464]:*

In this respect, the Committee draws the Government’s attention to the fact that “under the terms of Article 2 of Convention No. 87 ratified by Peru, all workers – with the sole exception of members of the armed forces and police – should have the right to establish and to join organizations of their own choosing. The criterion for determining the persons covered by that right, therefore, is not based on the existence of an employment relationship, which is often non-existent, for example in the case of agricultural workers, self-employed workers in general or those who practice liberal professions, who should nevertheless enjoy the right to organize” [see *Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, para. 235]. In the view of the Committee, persons hired under training agreements should also have the right to organize. The Committee therefore requests the Government to take the necessary steps so as to guarantee this right to the workers concerned both in law and in practice. Furthermore, the Committee requests the Government to ensure that the employment conditions of these workers are covered by the collective agreements in force in the enterprises where they are employed.

476. *Lastly, concerning the dismissal of a candidate to trade union office (Mr. Juan Manuel Oliveros Martínez) and the dismissal of a trade union officer (Mr. Jorge Mercado Puente de la Vega), the Committee notes that, according to the Government, the legislation provides that a dismissal is null if it is motivated by membership in a trade union or participation in trade union activities, and that both of these persons have chosen to nullify their dismissals. In this respect, the Committee notes that both proceedings have not been concluded, despite the fact that this complaint is dated 30 September 1999. In previous*

cases, the Committee has drawn attention to the fact that “cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of trade union rights of the persons concerned” [see *Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, para. 749]. The Committee notes that the proceedings concerning the dismissal of the trade unionists, Mr. Juan Manuel Oliveros Martínez and Mr. Jorge Mercado Puente de la Vega, have already taken 14 months. Given that the procedure concerning allegations of anti-union discrimination should be rapid, the Committee requests the judicial authorities, in order to avoid a denial of justice, to pronounce on the dismissals without delay and stresses that any further undue delay in the proceedings could in itself justify the reinstatement of these persons in their posts. The Committee requests the Government to keep it informed in this respect.

The Committee’s recommendations

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

- (a) *The Committee requests the Government to carry out, as a matter of urgency, an inquiry into the alleged anti-union discrimination and intimidation perpetrated in the Banco Continental, and in particular into the allegations concerning pressure brought to bear on unionized workers to leave their union, the award of promotions or salary increases virtually exclusively to non-unionized workers, anti-union transfers, and economic incentives for workers – and unionized workers in particular – to resign from their employment, with dismissal as the only alternative. The Committee requests the Government to keep it informed in this respect.*
- (b) *Considering that persons hired under training agreements should also have the right to organize, the Committee requests the Government to take the necessary steps so as to guarantee this right to the workers concerned both in law and in practice. Furthermore, the Committee requests the Government to ensure that the employment conditions of these workers are covered by the collective agreements in force in the enterprises where they are employed.*
- (c) *The Committee notes that the proceedings concerning the dismissal of Messrs. Juan Manuel Oliveros Martínez and Jorge Mercado Puente de la Vega have already taken 14 months. The Committee, therefore, requests the judicial authorities, in order to avoid a denial of justice, to pronounce on the dismissals without delay and stresses that any further undue delay in the proceedings could in itself justify the reinstatement of these persons in their posts.*

CASE No. 2089

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

**Complaint against the Government of Romania
presented by
the National Trade Union Confederation “Cartel Alfa”**

*Allegations: Adoption of an order suspending collective
agreements in the public sector*

- 478.** The complaint in the present case is contained in communications dated 12 and 15 June 2000 from the National Trade Union Confederation “Cartel Alfa”. The National Federation of Electricity Trade Unions “Univers” also provided information on the case in a communication of 13 June 2000.
- 479.** The Government sent its reply in a communication dated 31 July 2000.
- 480.** Romania 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). It has not ratified the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant’s allegations

- 481.** In its communications of 12 and 15 June, the Confederation “Cartel Alfa” states that the Government adopted Acts Nos. 130 and 143 in 1996 and 1997 respectively. These Acts confer a binding character on collective labour agreements while improving protection of workers and employers against government discrimination and interference. Despite this, the Government in May 2000 enacted emergency Order No. 58/2000, sections 5 and 21 of which empower the Government to suspend collective agreements and unilaterally amend their contents, necessitating renegotiation of conditions of employment, in contravention of Convention No. 98.
- 482.** According to section 5(1) of Order No. 58/2000, the amount allocated for basic wages and salaries in the budgets for the year 2000 of certain state entities named in the appendices (autonomous bodies, national companies, commercial enterprises in which the State is the majority shareholder) may not exceed the average sum allocated for that budget item during the fourth quarter of 1999. Under section 5(2) of the Order, budget items corresponding to basic wages and salaries, supplementary payments, premiums and other wage-related entitlements must be indicated separately in the relevant budgets. Section 21 suspends any provisions in contracts of employment and any other provisions contrary to this interim Order (which is to remain in force until 31 December 2000).
- 483.** In its communication of 13 June 2000, the Trade Union Federation “Univers” states, for example, that in the electricity company whose workers it represents, application of the Order in practice means wage cuts of 25 per cent, the loss of all non-wage benefits, non-payment of overtime, etc.

B. The Government's reply

484. In its communication of 31 July 2000, the Government explains that, despite the fact that overall economic targets for 1999 were achieved, some were not met. For example, the income policies of local authorities and state enterprises disregarded financial discipline; although wage targets were met during the first six months of the year, they were not met during the final two quarters, which were the basis of wages policy implemented in the autonomous bodies and national companies; and a number of bodies whose budgets are subject to government approval recorded arrears or deficit increases, both in nominal and real terms.
485. The Government therefore concluded that, taking into account the deficits recorded at the end of 1999, it was necessary to implement a restrictive wage policy in these public sector bodies if it was to meet inflation and wage protection targets. These financial, economic and fiscal targets, which were set out in the Budget Act (No. 76/2000), were supposed to be implemented by Order No. 58/2000; the latter provided for a number of emergency measures which were to be applied in those companies that had recorded the biggest losses in 1999.
486. Nevertheless, given that there were a number of obstacles to implementation of the Order, the Government considered it necessary to amend it. Following talks during the second half of June with representatives of the five national representative trade union confederations, including "Cartel Alfa", it was agreed that Order No. 58/2000 should be amended by emergency Order No. 117/2000, which was published on 4 July 2000 in the country's *Official Gazette*.
487. Order No. 117/2000, which will remain in force until 31 December, contains provisions for the gradual reduction of arrears, deficits and debts, as well as annual cost-reduction and productivity targets. The programmes in question must set specific targets for the entire period covered by the Order. Budgets must respect existing legal constraints and reflect the realities of the market. These measures are especially necessary, given that a number of collective agreements were negotiated without regard to the employers' likely future resources.
488. Section 21 of Order No. 58/2000 has been repealed and section 5 has been amended to read as follows:
- 5.1. The economic entities whose revenue and expenditure budgets are not approved [... until 31 December 2000] owing to their unrealistic nature or because they fail to comply with laws already in force shall be revised by the authorities in accordance with said laws.
 - 5.2. In such cases as described in section 5.1, a renegotiation process shall be initiated by the parties to the agreements currently in force.
489. By negotiating with the trade unions, the Government has shown both its willingness to engage in dialogue with the social partners and its respect for trade union rights and the international labour Conventions which it has ratified. The complaint is therefore unfounded.

C. The Committee's conclusions

490. *The Committee notes that the present case concerns regulations introduced by decree in the context of budget restrictions which allow the suspension for a specified period of existing collective agreements in the public sector.*

491. *While recalling that “suspension or derogation by decree – without the agreement of the parties – of collective agreements freely entered into by the parties violates the principle of free and voluntary collective bargaining established in Article 4 of Convention No. 98” [Digest of decisions and principles of the Committee on Freedom of Association, 4th edition, 1996, para. 876], the Committee also notes that the Government has held talks on this matter with the representative trade union organizations and that these talks have led to a consensus on amendments to the procedures for implementing emergency Order No. 58/2000. The Committee invites the Government and the complainant to keep it informed of any developments in this regard.*

The Committee’s recommendation

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

Noting that the Government has held talks with the trade union organizations on procedures for implementing an emergency Order suspending collective agreements freely entered into in the public sector and has reached a consensus on amendments to the original text of that Order, the Committee invites the Government and the complainant to keep it informed of developments in this regard.

CASE No. 2043

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

Complaint against the Government of the Russian Federation presented by the Primary Trade Union Organization Zashchita (Defense) of the Murommashzavod Company

Allegations: Withholding of trade union dues by employer

493. This complaint was presented in a communication dated 9 August 1999 from the Primary Trade Union Organization Zashchita (Defense) of the Murommashzavod Company.

494. The Government indicated in a communication of 3 January 2000 that it needed more time to investigate and report on the matter. The Committee postponed the examination of this case on three occasions. At its June 2000 meeting [see 321st 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.

495. The Russian Federation 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. The complainant's allegations

496. In its communication of 9 August 1999, the complainant organization submits that it was accredited as representative of the workers at Murommashzavod Ltd., a mechanical engineering plant located in the City of Murom, Department of Vladimir, and registered on 12 July 1996 with the Ministry of Justice. Up to October 1995, in accordance with Agreement No. 13 of 6 December 1994, the trade union dues withheld from the members' pay were credited to Zashchita's account. Since November 1995, however, the employer continued to deduct trade union dues but failed to credit them to the trade union account. Zashchita made repeated enquiries with the company's management, without any reply whatsoever.
497. The complainant instituted proceedings before the Arbitration Tribunal of the Vladimir Oblast, which ruled in its favour on 28 April 1999, and ordered the company to pay Zashchita arrears of 8.089,50 roubles (a copy of the order is attached to the complaint). As management refused to comply, the complainant applied on 26 May 1999 to the municipal bailiff of Murom for enforcement of the Tribunal's order. The bailiff has failed to enforce the order so far.
498. The complainant submits that through its actions the employer is in violation of Agreement No. 13 of 6 December 1994, article 314 of the Civil Code, as well as articles 225, 226, 228 and 232 of the Labour Code, and that it also failed to comply with the Tribunal's ruling.

B. The Committee's conclusions

499. *The Committee deplores the fact that, despite the time which has elapsed since this complaint was filed, the Government has not replied to the allegations, although it was invited to do so on several occasions, including by means of an urgent appeal at its June 2000 meeting.*
500. *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 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].*
501. *The Committee notes that this case concerns the refusal by an employer to remit to the organization representing its workers the trade union dues collected on their behalf. It also notes that the Arbitration Tribunal upheld the complaint filed by the trade union in this respect, but that the authorities in charge of the execution of court orders failed to take measures to enforce it.*
502. *The Committee further observes that whilst, generally speaking, "the deduction of trade union dues is a matter which should be dealt with through collective bargaining between employers and all trade unions without legislative obstruction" [see **Digest of decisions and principles of the Committee on Freedom of Association**, 4th edition, 1996, para. 326], the obligation to withhold and remit trade union dues in this case is not only a*

legal one but is also founded on an agreement dating back to 1994, with an established practice akin to a vested right.

503. *The Committee underlines that the Zashchita trade union has had to operate without these resources for five years now, which could cause its increasing financial difficulties and, in practice, could prevent workers and their organization from enjoying the rights provided for in Conventions Nos. 87 and 98. The Committee therefore requests the Government urgently to take all appropriate measures so that the arrears owing to Zashchita be paid immediately by Murommashzavod Ltd., and that the situation be remedied as regards future remittances. The Committee requests the Government to keep it informed of developments.*

504. *Noting that the authorities in charge of the execution of court decisions failed to take such measures in this case, in spite of an unequivocal order to that effect, the Committee recalls that a “considerable delay in the administration of justice with regard to the remittance of trade union dues withheld by an enterprise is tantamount to a denial of justice” [Digest, *ibid.*, para. 328]. It invites the Government to give appropriate directions to said authorities to promptly enforce the execution of court decisions and to avoid the repetition of such situations in the future.*

The Committee’s recommendations

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

(a) The Committee requests the Government urgently to take all appropriate measures so that the arrears owing to Zashchita be paid immediately by Murommashzavod Ltd., and that the situation be remedied as regards future remittances. The Committee requests the Government to keep it informed of developments.

(b) The Committee invites the Government to give appropriate directions to the authorities to promptly enforce the execution of court decisions and to avoid the repetition of such situations in the future.

CASE NO. 2075

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

Complaint against the Government of Ukraine presented by the All Ukrainian Trade Union “Solidarnost” (AUTU-Solidarnost)

Allegations: Revocation of union registration

506. *In communications dated 17 February and 24 March 2000 the All Ukrainian Trade Union “Solidarnost” submitted a complaint of violations of freedom of association against the Government of Ukraine.*

507. *The Government sent its observations in communications dated 30 March and 24 May 2000.*

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

A. The complainant's allegations

509. In its communication dated 17 February 2000, the All Ukrainian Trade Union "Solidarnost" complains of the revocation of their registration, granted on 30 December 1999, by resolution No. 2 of the Board of the Ministry of Justice dated 9 February 2000. The only reason given for the revocation was that the registration was contrary to the laws in force, without any further explanation. At the same time, the Board of the Ministry of Justice gave a special instruction to the National Bank of Ukraine to close the accounts of the union and also ordered the dispatch of the news of the revocation in the mass media.

510. The complainant explains that, under the law (section 18 of the Act on Trade Unions, their Rights and Safeguard of their Activities), the dissemination in mass media of the cancellation of a certificate of registration may only take place in the case of forced trade union dissolution to be determined by the courts. According to the complainant the action taken by the Board of the Ministry of Justice was therefore an act of dissolution which should only be carried out by the courts and was thus in violation of the Ukrainian Constitution, the UN Declaration of Human Rights and ILO Convention No. 87.

511. In its communication dated 24 March 2000, the complainant adds that the regional justice administrations in Kiev, Cherkassy and Herson have issued orders to cancel the registration of trade union links and states that the public prosecutor's departments and the civil forces interfere in trade union activity. The complainant appealed to the court against the decision of the Board of the Ministry and attached to its complaint a number of documents relevant to its appeal. In a letter to the President of Ukraine which was attached to the complaint, the complainant also indicates that it had not received any notification of the alleged irregularities in its documents and that it had only received official communication of the decision to cancel its registration on 28 February, several weeks after the decision was taken.

B. The Government's reply

512. In its communication dated 30 March 2000, the Government states that the All Ukrainian Trade Union "Solidarnost" was indeed registered on 30 December 1999 under the Act on Trade Unions, their Rights and Safeguard of their Activities. The Government adds, however, that it was found upon further verification that the information provided, mainly concerning the number of members, the legal addresses of certain district organizations and the legitimacy of the constituent assembly of the All-Ukrainian Confederation, did not correspond to the real situation. In view of the unreliability of the documents, the Board of the Ministry of Justice adopted resolution No. 2 cancelling the registration of this union.

513. The Government adds that the decision to cancel the registration of the All Ukrainian Trade Union "Solidarnost" did not constitute forcible dissolution, an act which can only be ordered by a court. Furthermore, the Government indicated that the union filed a suit with the Supreme Court of Arbitration to declare null and void the cancellation of its registration and the Ministry filed a corresponding counter-suit.

514. In its communication dated 24 May 2000, the Government indicates that the Supreme Court of Arbitration has examined the suit and the counter-suit and found in favour of the Ministry of Justice in its ruling of 6 April 2000. The ruling declares the record of the constituent assembly of the "Solidarnost" union and its by-laws, as well as the conclusions

initially reached by the Ministry of Justice when it first registered the union in December 1999, to be invalid. The Procedural Code of Arbitration provides that rulings, decisions and orders of the arbitration court acquire force of law immediately after they are adopted and are binding on enterprises, organizations and officials.

C. The Committee's conclusions

- 515.** *The Committee notes that the allegations in this case concern the administrative decision to cancel a previously granted union registration and the Government's pursuit of this action with a request to the bank to close the union's account, a decision to publish the cancellation in the mass media, regional administration orders to cancel union links and interference in trade union activity by the public prosecutor departments and civil forces.*
- 516.** *In the first instance, the Committee notes that, according to the Government, the registration of the All Ukrainian Trade Union "Solidarnost" was cancelled because of inaccuracies concerning the number of members, the legal addresses of certain district organizations and the legitimacy of the constituent assembly of the All-Ukrainian Confederation. On appeal, the Court of Arbitration found in favour of the Ministry of Justice declaring the record of the constituent assembly of the "Solidarnost" union and its by-laws to be invalid.*
- 517.** *The Committee observes that there is no mention in the documentation provided by the Government, or by the complainant, of the union not having met basic criteria for registration, but rather cancellation appears to rest solely on the unreliability of the information provided. In this respect, it appears that no efforts were made to rectify and review this information with the All Ukrainian Trade Union "Solidarnost", but rather a decision was taken to cancel the union's registration with immediate effect, without notifying the union, and orders were sent to the bank to close the union's accounts and to the regional administrations to nullify organizational links.*
- 518.** *While noting the Government's statement that the Ministry's action did not constitute "dissolution" of the union, the Committee recalls that the cancellation of registration of an organization by the registrar of trade unions is tantamount to the suspension or dissolution of that organization by administrative authority. If the principle that an occupational organization may not be subject to suspension or dissolution by administrative decision is to be properly applied, it is not sufficient for the law to grant a right of appeal against such administrative decisions; such decisions should not take effect until the expiry of the statutory period for lodging an appeal, without an appeal having been entered, or until the confirmation of such decisions by a judicial authority. Furthermore, in view of the serious consequences which dissolution of a union involves for the occupational representation of workers, the Committee has considered that it would appear preferable, in the interest of labour relations, if such action were to be taken only as the last resort, and after exhausting other possibilities with less serious effects for the organization as a whole [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 669 and 677].*
- 519.** *The Committee is not in a position to judge the factual veracity of the information provided by the complainant with its registration application. It does however consider that the queries raised by the verification of the Board of the Ministry of Justice, which according to the legislation is to take place within one month of the application and prior to granting registration, should have been dealt with directly with the complainant. Given the information made available to it, the Committee must conclude that no efforts were made by the government authorities to resolve the alleged discrepancies in a manner so as to avoid the particularly serious effects of dissolution.*

- 520.** *Furthermore, while not specifically raised in the present case, the Committee considers it useful to recall its conclusions in a previous case concerning Ukraine in respect of the national requirements for registration [see 318th Report, Case No. 2038]. In that case, the Committee, noting that section 11 of the Act on Trade Unions, their Rights and Safeguard of their Activities (hereinafter, the Trade Union Act) required organizational links in the majority of administrative territorial units in order to obtain all-Ukrainian trade union status, recalled that requirements regarding territorial competence and number of union members should be left for trade unions to determine in their own by-laws. The Committee found that this requirement, read with section 16 of the Act which provides for compulsory registration of a union carried out by a legalizing body that will verify the correspondence of the status of a union in respect of section 11, was not compatible with the provisions of Convention No. 87 [see 318th Report, paras. 528-530].*
- 521.** *In light of the above and given the very serious consequences of the Board of the Ministry of Justice's decision to cancel the complainant's registration, the Committee requests the Government to engage immediately in discussions with the All Ukrainian Trade Union "Solidarnost" with a view to establishing the data necessary for its registration and to indicate any pure procedural formalities which may still need to be carried out by the union so that it may be re-registered without delay. The Committee requests the Government to keep it informed of the progress made in this respect.*
- 522.** *As concerns the closing of the complainant's bank accounts, the Committee notes from a bank communication attached to the complaint that the complainants were informed on 18 February that the flow of funds in its account was suspended. In this respect, the Committee recalls that the freezing of union bank accounts may constitute a serious interference by the authorities in trade union activities [see **Digest**, *op. cit.*, para. 439]. The Committee therefore calls upon the Government to take the necessary measures without delay to ensure the reactivation of the bank account of the All Ukrainian Trade Union "Solidarnost" and to keep it informed of any progress in this respect.*
- 523.** *Given the general nature of the complainant's allegations of interference in its activities by the public prosecutor's departments and civil forces, the Committee will limit itself to recalling the importance it attaches to the principle that freedom of association implies not only the right of workers and employers to form freely organizations of their own choosing, but also the right for the organizations themselves to pursue lawful activities for the defence of their occupational interests [see **Digest**, *op. cit.*, para. 447]. It expects that the Government will take all necessary measures to ensure that the authorities do not infringe upon this right.*

The Committee's recommendations

- 524.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *Given the very serious consequences of the Board of the Ministry of Justice's decision to cancel the complainant's registration, the Committee requests the Government to engage immediately in discussions with the All Ukrainian Trade Union "Solidarnost" with a view to establishing the data necessary for its registration and to indicate any pure procedural formalities which may still need to be carried out by the union so that it may be re-registered without delay. The Committee requests the Government to keep it informed of the progress made in this respect.*

- (b) *Recalling that the freezing of union bank accounts may constitute a serious interference by the authorities in trade union activities, the Committee calls upon the Government to take the necessary measures without delay to ensure the reactivation of the bank account of the All Ukrainian Trade Union “Solidarnost” and to keep it informed of any progress in this respect.*
- (c) *As concerns the allegations of interference in the activities of the All Ukrainian Trade Union “Solidarnost” by the public prosecutor’s departments and civil forces, the Committee expects that the Government will take all necessary measures to ensure that the authorities do not infringe upon the right to exercise their activities.*

CASE No. 2079

INTERIM REPORT

**Complaint against the Government of Ukraine
presented by
the Volyn Regional Trade Union Organization of the
All-Ukraine Trade Union “Capital/Regions”**

*Allegations: Adoption of legislation contrary to freedom of
association; denial of legal recognition to trade unions
harassment and intimidation of trade union activists*

525. The complaint of the Volyn Regional Trade Union Organization of the All-Ukraine Trade Union “Capital/Regions” is contained in communications dated 2 and 22 February, 25 May and 9 September 2000. The Government sent its observations in communications dated 5 June and 28 July 2000.
526. Ukraine has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant’s allegations

Allegations of a legislative nature

527. The Volyn Regional Trade Union Organization of the All-Ukraine Trade Union “Capital/Regions” explains firstly that on 8 April 1999, the Supreme Council of the Ukraine adopted the Act on Trade Unions, their Rights and Safeguard of their Activities (hereinafter the “Act”), which entered into force on 6 October 1999. The complainant alleges that sections 11 and 16 of the said Act are contrary to Article 2 of Convention No. 87. More specifically, the complainant explains that the provisions of section 11, by stipulating the conditions for providing trade unions with local, regional and All-Ukrainian status – according to which in order to provide a trade union with regional and All-Ukrainian status it should unite more than half of the workers of the appropriate industry or should have its organizational units in the majority of administrative territories in Ukraine – are violating the constitutional principle of the equality of all trade unions. According to the complainant, this section creates unequal conditions for the trade unions of Ukraine and only strengthens the monopoly rights of the Federation of Trade Unions of Ukraine, which is the successor of the communist trade unions.

528. Concerning the provisions of section 16 which provides that the legalization of a trade union shall be compulsory and shall be carried out by way of its registration in accordance with the conditions set out in section 11, the complainant considers that the fact that a union can be established only after its registration by the state bodies leads to state interference in the process of creating a trade union.

Allegations of a factual nature

529. Secondly, the complainant explains that in accordance with article 36(3) of the Constitution of Ukraine, a trade union affiliated to the All-Ukraine Trade Union “Capital/Regions” was established at the Volynoblenergo enterprise in the second half of 1999. On 27 January 2000, the Volynoblenergo trade union informed the management of the establishment of the new union and of the start of collective bargaining on a number of issues relating to the socio-economic rights of the workers. On 22 February 2000, the newly created union received a written notification from the management informing it that the recognition of the union as a legal entity would not be considered and that the Ministry of Justice would be requested for confirmation of the legalization of the All-Ukraine Trade Union “Capital/Regions”. Moreover, the public prosecutor’s office would be requested to institute proceedings against the trade union officers for carrying out trade union activities without having been legalized.
530. The complainant explains that a similar situation has occurred at the Lutsk Bearing Plant enterprise since the trade union in that enterprise has not been legalized in accordance with section 16 of the Act on Trade Unions and that court proceedings were initiated against the leaders and activists of that union.
531. Following the non-recognition of the trade unions at the Volynoblenergo enterprise and at the Lutsk Bearing Plant enterprise, the complainant organization claims that the members of these unions started facing very serious acts of anti-union discrimination, namely repression and persecution of activists and trade union leaders and disregard of legislation by the employers and the representatives of the authorities. More specifically, concerning the situation of the trade union at the Volynoblenergo enterprise, the complainant explains that the leader of this union, Mr. Jura, was warned in April 2000 that his contract would be terminated as a result of his trade union activities. The trade union is currently working in illegal conditions which is punishable under Ukrainian legislation. Some of the trade union members who could not withstand the psychological pressure withdrew from the union. Furthermore, the complainant alleges that the public authorities instructed the police to use repressive measures against the trade union leaders and to initiate legal proceedings against them. As for the situation at the Lutsk Bearing Plant enterprise, the complainant claims that since early April 2000, the employers have instructed the security guards not to let the leader of the union, Mr. Vdovichenko, onto the premises of the enterprise. At the same time, the employers, with the active support of the authorities, have established an anti-trade union committee. Finally, the complainant claims that a collective agreement for 1999-2000 drafted by the employers was adopted without consultation of the union and that 223 workers were laid off at the end of 1999 without informing the union.
532. In a recent communication dated 9 September 2000, the complainant alleges that a new wave of repression against the leaders, activists and members of the Volyn Free Trade Union has taken place. This repression includes in particular an attack on Mr. V. Chupikov, leader of the Free Trade Union at the Voltex enterprise, the dismissal of Mr. Shavernev, trade union activist at the Lutsk Bearing Plant enterprise and the renewed refusal to allow the leader of that union onto the premises of the enterprise.

B. The Government's reply

Allegations of a legislative nature

533. In its communication of 5 June 2000, the Government indicates that in accordance with the Ukrainian Constitution, only the Constitutional Court of Ukraine has the jurisdiction to resolve issues relating to the constitutionality of laws. Therefore, the Government states that the issue of amending or supplementing the Act on Trade Unions can only be resolved following a ruling by the Constitutional Court of Ukraine. In this regard, the Court is currently examining an appeal by a group of Ukrainian Parliamentarians concerning the constitutionality of articles 8, 11 and 16 of the Act. The decision of the Court is still due.

Allegations of a factual nature

534. Concerning the situation of the trade union at the Volynoblenergo enterprise, the Government indicates that the complaints of that union were examined several times by the Ministry's Chief State Labour Inspectorate and the Volyn regional state labour inspectorate. As a result of verifications, records of violations were drawn up and sent to the enterprise management with instructions for the violations to be eliminated. These concerned, in particular, remuneration, the settlement of wage arrears, working conditions, staff reductions and the conclusion of the collective agreement. The Chief State Labour Inspectorate informed the president of the union in writing that the employer had taken steps to eliminate the violations on all the points mentioned in the inspectorate's instructions.

535. Concerning the situation of the trade union at the Lutsk Bearing Plant enterprise, the Government indicates that according to the information provided by the Volyn regional labour inspectorate, the matters set forth in the complaint were examined several times at the enterprise level. According to the Government, upon verification, the drafting of the collective agreement for 1999-2000 was done with the direct participation of the trade union. Furthermore, no violation was found to have taken place when 223 workers were dismissed without consulting the union. Upon verification, it was found that the dismissal of these workers in connection with staff reductions took place in accordance with Ukrainian labour legislation.

536. Finally, the Government states that it was explained to the complainants that the activity of the trade union in the enterprise is regulated by the Act on Trade Unions and failure on their part to comply with the provisions of this Act may be contested in court by the employers. The Government also indicates that according to the Ministry of Justice, as of 25 July 2000, the All-Ukraine Trade Union "Capital/Regions" had not been registered.

C. The Committee's conclusions

537. *The Committee observes that this case relates to two sets of allegations, namely allegations of a legislative nature related to certain provisions of the Act on Trade Unions, their Rights and Safeguard of their Activities, and allegations of a factual nature related to the denial of legal recognition of trade unions, harassment and intimidation of trade union activists.*

538. *With regard to the allegations of a legislative nature, the Committee recalls that it has already examined similar allegations in the context of Case No. 2038 [see 318th Report, paras. 517-533]. In this case, which concerned the compliance with freedom of association*

principles of sections 11 and 16 of the Act on Trade Unions, the Committee had made the following recommendation:

- (a) *Considering that sections 11 and 16 of the Act on “Trade Unions, their Rights and Safeguard of their Activities” are in violation of Convention No. 87 and that new consultations with all trade unions, including the complainant organizations, should take place in order to eliminate the shortcomings of the said Act, the Committee requests the Government to take all necessary measures to bring sections 11 and 16 of the Act into full conformity with the provisions of that Convention and to keep it informed in this regard.*

539. *In a recent communication of 30 October 2000, the Committee has been informed of the decision of the Ukrainian Constitutional Court, published on 24 October 2000, in which the Court declared unconstitutional certain provisions of articles 8, 11 and 16 of the Act on Trade Unions, their Rights and Safeguard of their Activities. In these circumstances, while expressing the firm hope that the Government will give effect to the Court’s decision, the Committee does not intend to examine once again this aspect of the case and will only recall the recommendation it formulated in the context of Case No. 2038.*

540. *Concerning the other allegations, the Committee observes firstly that the trade unions at the Volynoblenergo enterprise and at the Lutsk Bearing Plant enterprise have not yet acquired legal personality since the All-Ukraine Trade Union “Capital/Regions” has not yet been registered. This fact is not contested by the Government. According to the complainant, this non-recognition has led to numerous acts of anti-union discrimination, including criminal proceedings against trade unions leaders. In this regard, the Committee recalls that Article 7 of Convention No. 87 provides that “the acquisition of legal personality by workers’ and employers’ organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 thereof”. A legislation is thus compatible with the terms of the Convention if it automatically confers legal personality on the organization in question at the time of establishment, be it without formalities being observed or following a registration procedure. Although the founders of a trade union should comply with the formalities prescribed by legislation, these formalities should not be of such a nature as to impair the free establishment of organizations [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 248]. In the present case, the Government has not clearly indicated why the All-Ukraine Trade Union “Capital/Regions” had not yet been registered. Therefore, the Committee requests the Government to take the necessary measures to ensure that, once the registration formalities have been observed, the trade unions at the Volynoblenergo and Lutsk Bearing Plant enterprise obtain legal recognition and are able to exercise freely their activities.*

541. *Concerning the allegations of anti-union discrimination, namely the harassment, intimidation and initiation of legal proceedings against trade union leaders and activists for carrying out trade union activities, the Committee notes that the Government acknowledges that certain violations had been noted by the Chief State Labour Inspectorate but that management had taken steps to eliminate the violations in question. However, according to the complainant, the leader of the trade union at the Lutsk Bearing Plant enterprise is still being prevented from entering the premises of the enterprise. Furthermore, the union leaders of the Volynoblenergo and Lutsk Bearing Plant enterprises are still facing legal proceedings for carrying out their trade union activities. In this regard, the Committee recalls that measures designed to deprive trade union leaders and members of their freedom entail a serious risk of interference in trade union activities and, when such measures are taken on trade union grounds, they constitute an infringement of the principles of freedom of association [see **Digest**, *op. cit.*, para. 74]. The Committee regrets that the Government has not provided any information on these allegations and*

requests it to transmit its observations on this aspect of the case without delay. It also requests the Government to transmit its observations on all the new allegations submitted by the complainant in its most recent communication.

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

The Committee's recommendations

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

- (a) Considering that sections 11 and 16 of the Act on "Trade Unions, their Rights and Safeguard of their Activities" are in violation of Convention No. 87 and taking note of the recent decision of the Ukrainian Constitutional Court on the unconstitutionality of certain provisions of the said Act, the Committee requests the Government to take all necessary measures to bring sections 11 and 16 of the said Act into full conformity with the provisions of that Convention and to keep it informed in this regard.*
- (b) The Committee requests the Government to take the necessary measures to ensure that, once the registration formalities have been observed, the trade unions at the Volynoblenergo and Lutsk Bearing Plant enterprises do acquire legal recognition and are able to exercise freely their activities.*
- (c) The Committee regrets that the Government has not provided any information on the allegations of harassment, intimidation and initiation of legal proceedings against the leaders of the unions at the Volynoblenergo and Lutsk Bearing Plant enterprises and requests it to transmit its observations on this aspect of the case without delay. It also requests the Government to transmit its observations on all the new allegations submitted by the complainant in its most recent communication.*
- (d) The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.*

CASE No. 2058

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

**Complaint against the Government of Venezuela
presented by
the Trade Union of Congressional Employees and
Workers – New Trade Union Structures (SINTRANES)**

Allegations: Obstruction of bargaining for a collective agreement

544. *The complaint is contained in a communication from the Trade Union of Congressional Employees and Workers – New Trade Union Structures (SINTRANES) dated*

23 September 1999. The Government sent its observations in a communication dated 16 May 2000.

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

A. The complainant's allegations

546. In its communication of 23 September 1999, the Trade Union of Congressional Employees and Workers – New Trade Union Structures (SINTRANES) states that on 12 May 1998 the Ministry of Labour issued an award according to which, in view of the existing gap in legislation regarding the registration and legal recognition of trade union organizations representing employees of the legislative assembly, the Labour Inspectorate should recognize any unions which the officials in question might establish. On 15 June 1998, the Labour Inspectorate in the federal district placed the trade union on the appropriate register. The complainant adds that on 23 June 1998 it presented a collective agreement for discussion, after the legal representatives of Congress had been notified with a view to beginning talks. The complainant states that, in view of the impossibility of actually holding talks on the collective agreement and of the fact that available administrative procedures were exhausted, it applied to the courts for sanctions and for an order to resume talks.

B. The Government's reply

547. In its communication of 16 May 2000 the Government states that the National Legislative Council (formerly the Congress of the Republic) indicated that it did not acknowledge the alleged link between itself as an employer and members of SINTRANES, since a court ruling of 15 October 1998 by the Ninth Labour Court of the Caracas metropolitan area had suspended Administrative Ruling No. 16-6-1998 of 15 June 1998 by the Labour Inspectorate of Libertador municipality in the federal district granting legal recognition to SINTRANES. This ruling followed an application by the Trade Union of Congressional Employees (SECRE) and others to overturn Administrative Ruling No. 16-6-1998.
548. The Government adds that the former Congress of the Republic, as an employer, is not a party to the proceedings initiated by its workers' trade unions related to it (SECRE and SINTRACRE for the clerical and office workers and SINOLCRE for the manual workers) aimed at overturning the administrative ruling which established SINTRANES as a legal entity. This is thus an inter-union dispute in which the employer cannot assume powers which are not rightfully its own. The employer in this particular case is within its rights not to enter into talks with the supposed trade union until a competent court rules on the matter, in this case, the Ninth Labour Court of the Caracas metropolitan area and the corresponding appeal court which must hear the case either *de oficio* or at the request of the lower court. Furthermore, the main problem with legal recognition of the trade union *SINTRANES Congreso* lies in the fact that Congress employees can regard themselves as public servants; their terms and conditions of employment are governed by the personnel statutes of that institution which were approved in 1981 and, where there is any gap in these provisions, by the Act respecting the administrative service (*ley de carrera administrativa*) and its implementing regulations. These instruments are subject to the legal principles established in section 8 of the Organic Labour Act; consequently, the administrative service is governed, first, by the statutes already referred to, and, secondly, by the Organic Labour Act.

549. The Government states that the former Congress never discussed a collective agreement with this supposed trade union organization since by the time of the court ruling, the conciliation talks on the proposed collective agreement for congressional employees had been suspended, and Congress, in accordance with section 519 of the Organic Labour Act, at the first conciliation meeting convened by the labour inspector made allegations and argued that such talks were inadmissible, basing its arguments on the provisions of section 514 of the Organic Labour Act according to which employers are required to negotiate collective labour agreements with the trade union which represents the absolute majority of the workers in their sector. The supposed trade union *SINTRANES Congreso* does not have, and has never had, the attributes of a trade union at all, let alone an absolute majority of workers, white collar or manual, which would give it the authority to negotiate with the employer on the proposed collective agreement supposedly presented by the referred trade union organization; the legitimate trade unions of the former Congress are SECRE (Trade Union of Congressional Employees), SINTRACRE (Trade Union of Congressional Workers), and SINOLCRE (Trade Union of Legislative Workers of Congress).

C. The Committee's conclusions

550. *The Committee notes that in the present case the complainant organization claims that, under the terms of a ruling by the Ministry of Labour, it was placed on the official register of trade union organizations; that subsequently, on 23 June 1998 it presented a collective agreement for discussion; and that from then onwards there were attempts to obstruct talks on that agreement.*

551. *In this regard, the Committee takes note of the Government's statement to the effect that: (1) it does not acknowledge any link between the complainant and the former Congress (currently the National Legislative Committee), since the courts in 1998 suspended the administrative ruling which had legalized the trade union SINTRANES, following an application to the court by other trade union organizations in the sector. That court ruling has been the subject of an appeal and a final ruling has yet to be made; and (2) the former Congress has never discussed a collective agreement with the complainant, since the latter does not have and has never had the attributes of a trade union organization, let alone the authority to represent the absolute majority of workers in this specific sector.*

552. *With regard to recognition of the complainant as a trade union, the Committee recalls that under the terms of Article 2 of Convention No. 87, all workers without distinction whatsoever have the right to establish and join organizations of their own choosing without previous authorization, subject only to the rules of the organization concerned, and 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 (revised) edition, 1996, para. 206]. The Committee hopes that the Government will register the trade union SINTRANES as a trade union organization soon. It requests the Government to inform it of any court rulings that have been, or may be, handed down in future on this matter.*

553. *As regards the allegation regarding obstacles encountered by the complainant in its attempts to negotiate a collective agreement, it is the Committee's understanding that the right of collective bargaining can be exercised only when the trade union in question has been registered and only in as much as it is sufficiently representative, and it declines at present to draw any other conclusions on the matter.*

The Committee's recommendation

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

The Committee hopes that the Government will register the trade union SINTRANES as a trade union soon. It requests the Government to inform it of any court rulings that have been, or may be, handed down in future on the matter.

CASE No. 2081

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

Complaint against the Government of Zimbabwe presented by the Zimbabwe Congress of Trade Unions (ZCTU)

Allegations: Government interference in internal trade union affairs

555. In a communication dated 30 March 2000, the Zimbabwe Congress of Trade Unions (ZCTU) presented a complaint of violations of freedom of association against the Government of Zimbabwe.

556. The Government furnished its observations in a communication dated 27 April 2000.

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

A. The complainant's allegations

558. In its complaint dated 30 March 2000, the ZCTU alleges that the Government has violated freedom of association principles by interfering in the running of the affairs of the ZCTU. In this regard, it points out that the Labour Relations Act gives the Government, through the Minister of Labour, sweeping autocratic powers to interfere in the running of the affairs of trade unions. Apart from registration and deregistration powers (sections 27-57), the Minister can also forcefully cause investigations to be carried out in the running of the affairs of trade unions (section 120(2)). Indeed, the Act is littered with provisions that empower the Minister to administer trade unions and, in some cases, employers' organizations.

559. More specifically, the ZCTU asserts that in February 2000 the Government appointed an investigator in terms of section 120(2) of the Labour Relations Act in the belief that the ZCTU's funds and property "are being misappropriated or misapplied and the federation's affairs are being conducted in a manner that is detrimental to the interests of its members" (a copy of the Minister's letter is attached to the complaint and appears as Annex I to this case). Despite the ZCTU's protests in writing (the text of the ZCTU's letter is attached to the complaint and appears as Annex II to this case), the ZCTU indicates that the Government has insisted on carrying out the investigations.

- 560.** The ZCTU has challenged the constitutionality of these investigations in the courts, since article 21 of the Constitution of Zimbabwe relating to freedom of association protects the independent administration of the affairs of trade unions. In these circumstances, the ZCTU strongly objects to the law and practice of government interference in trade union business, as evidenced by the existence of autocratic laws (Labour Relations Act, as quoted) and the implementation by the Government of these enabling provisions. Convention No. 87 is very clear on these issues and, in the ZCTU's opinion, the Labour Relations Act is grossly in violation of Convention No. 87.
- 561.** Although the ZCTU is seeking legal redress through the courts, it urgently appeals to the Committee to examine the complaint with a view to assisting the ZCTU to: (a) have the compulsory investigations stopped; and (b) have section 120(2) of the Labour Relations Act amended to bring it in line with freedom of association principles.

B. The Government's reply

- 562.** In a communication dated 27 April 2000, the Government indicates that it is true that the Minister of Labour appointed an investigator to look into the financial affairs of the ZCTU in terms of section 120(2) of the Labour Relations Act (Chapter 28:01). The Government points out that the section in question ensures that the Minister responsible for labour administration protects workers' funds and properties from being used for non-worker activities.
- 563.** The Government further explains that sections 27-57 of the said Act (which the ZCTU alleges gives too much power to the Minister regarding registration and deregistration of trade unions, employers' organizations and their federations) are about regulating the manner in which these organizations can be formed and the circumstances in which they can be done away with in the national interest. This type of requirement is the standard norm in pieces of labour legislation worldwide. These are public organizations funded by special groups of the public, i.e. workers and employers.
- 564.** With regard to the ZCTU's specific complaint of investigation into its financial affairs by the Ministry, the Government contends that it all started with the ZCTU's formation of a political party – the Movement for Democratic Change (MDC) – a move which was resented by some of the trade unions affiliated to it. According to the Government, this objection is based on the freedom to freely associate with political parties of an individual's choice. When the ZCTU sponsored the launch of the MDC, some trade union organizations affiliated to it and opposed to the use of the federation's funds for political purposes called the Ministry to intervene. The Ministry had even before the launch of the MDC sought legal opinion from the Attorney-General's Office about the need to safeguard workers' funds and property.
- 565.** In any event, when the investigator commenced the investigation on 28 February 2000, the MDC was still using the ZCTU's offices and facilities. The Government emphasizes that it was against this background that the Minister invoked the provision of section 120 of the said Act. It is not that the Government is against the involvement of trade unionists in political matters.

C. The Committee's conclusions

- 566.** *The Committee notes that the allegations in this case are of both a legislative and factual nature in respect of the issue of government interference in internal trade union affairs.*

567. *As regards the legislative aspect of the case, the complainant alleges that, while the Constitution of Zimbabwe protects the independent administration of trade union affairs, subsection (2) of section 120 of the Labour Relations Act of 1985 gives sweeping powers to the Government to interfere in the running of the affairs of trade unions (section 120 is reproduced in full in Annex III to this case). The Government maintains that the provision in question protects workers' funds and properties from being used for non-worker activities. The Committee, for its part, notes that subsection (1) of section 120 stipulates that the Minister may order that any trade union or federation be investigated if the Minister has reasonable cause to believe that the property or funds of any trade union, or federation are being misappropriated or misapplied, or that the affairs of any trade union, or federation are being conducted in a manner that is detrimental to the interests of its members as a whole. The Committee further notes that, under the terms of subsection (2), the Minister can appoint an investigator who shall at all reasonable times and without prior notice, enter any premises (paragraph (a)); question any person employed on the premises (paragraph (b)); and inspect and make copies of and take extracts from any books, records or other documents on the premises (paragraph (c)).*
568. *The Committee considers that the abovementioned provisions give rise to two different sets of problems from the standpoint of freedom of association. As regards paragraphs (a) and (b) of subsection (2) of section 120, the Committee has emphasized on previous occasions that the right of the inviolability of trade union premises 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 and any search of trade union premises, or of unionists' homes, without a court order constitutes an extremely serious infringement of freedom of association [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 175 and 177]. Moreover, searches of trade union premises should be made only following the issue of a warrant by the ordinary judicial authority where that authority is satisfied that there are reasonable grounds for supposing that evidence exists on the premises material to a prosecution for a penal offence and on condition that the search be restricted to the purpose in respect of which the warrant was issued [see **Digest**, op. cit., para. 180]. The Committee is of the view that paragraphs (a) and (b) of subsection (2), which authorize an investigator appointed by the Minister to enter trade union premises and question any person employed there at all reasonable times and without prior notice, clearly do not respect the principles enunciated above.*
569. *Secondly, as regards paragraph (c) of subsection (2), which authorizes an investigator, at all reasonable times and without prior notice, to inspect and make copies and take extracts from any books, records or other documents on trade union premises, the Committee has previously held that the control exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reports. The discretionary right of the authorities to carry out inspections and request information at any time entails a danger of interference in the internal administration of trade unions. Moreover, as regards certain measures of administrative control over trade union assets, such as financial audits and investigations, the Committee has considered that these should be applied only in exceptional cases, when justified by grave circumstances (for instance, presumed irregularities in the annual statement or irregularities reported by members of the organization), in order to avoid any discrimination between one trade union and another and to preclude the danger of excessive intervention by the authorities which might hamper a union's exercise of the right to organize its administration freely, and also to avoid harmful and perhaps unjustified publicity or the disclosure of information which might be confidential [see **Digest**, op. cit., paras. 443 and 444]. The Committee considers, consequently, that the powers of supervision contained in paragraph (c) of subsection (2) are not limited to exceptional cases; rather this provision gives excessive powers of inquiry to the administrative authorities into the financial management*

of trade unions, thereby violating the right of workers' (and employers') organizations to organize their administration without interference by the public authorities.

- 570.** *For all the abovementioned reasons, the Committee would request the Government to take the necessary measures to ensure that subsection (2) of section 120 of the Labour Relations Act is amended in line with freedom of association principles enunciated in the preceding paragraphs. The Committee further requests the Government to keep it informed of any progress made in this regard.*
- 571.** *As regards the factual aspects of this case, the Committee notes that the complainant asserts that, in February 2000, the Government appointed an investigator under section 120(2) of the Labour Relations Act to look into the ZCTU's funds and property over the ZCTU's objections in writing thereto. The Committee notes that the Government does not refute this allegation but rather justifies the appointment of an investigator by the Minister responsible for labour administration in order to protect workers' funds and properties from being used for non-worker activities. According to the Government, it was obliged to appoint an investigator because when the ZCTU sponsored the launch of a political party – the Movement for Democratic Change (MDC) – some trade union organizations affiliated to the ZCTU were opposed to the use of the federation's fund for political purposes and called on the Ministry of Labour to intervene. The Government adds that, when the investigator commenced the investigation on 28 February 2000, the MDC was still using the ZCTU's offices and facilities.*
- 572.** *In this regard, the Committee would recall that it has reaffirmed the principle expressed by the International Labour Conference in the resolution concerning the independence of the trade union movement that governments should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, **nor should they attempt to interfere with the formal functions of a trade union movement because of its freely established relationship with a political party** (emphasis added). Furthermore, provisions imposing a general prohibition on political activities by trade unions for the promotion of their specific objectives are contrary to the principles of freedom of association [see **Digest**, *op. cit.*, paras. 451 and 452]. In the situation at hand, it would appear to the Committee that the Government has practically resorted to banning the ZCTU from resorting to such political activities since, in the Government's own words, it invoked section 120(2) of the Labour Relations Act and initiated the investigation into the ZCTU's financial affairs because the federation sponsored the launch of an opposition political party, the Movement for Democratic Change (MDC).*
- 573.** *The Committee also notes the Government's statement that, when the ZCTU sponsored the launch of the MDC, some trade union organizations affiliated to the ZCTU who were opposed to the use of the federation's funds for political purposes called on the Ministry of Labour to intervene. As the Committee pointed out in a preceding paragraph, measures of supervision over trade union assets, such as investigations, should be applied only in exceptional cases, for example in order to investigate a complaint or irregularities reported by members of the organization. Hence, measures of supervision over the administration of trade unions may be useful if they are employed only to prevent abuses and to protect the members of the trade union themselves against mismanagement of their funds. However, it would seem that measures of this kind may, in certain cases, entail a danger of interference by the public authorities in the administration of trade unions and that this interference may be of such a nature as to restrict the rights of organizations or impede the lawful exercise thereof, contrary to the principles of freedom of association. It may be considered, however, to some extent, that a guarantee exists against such interference where the official appointed to exercise supervision enjoys some degree of independence of the administrative authorities and where that official is subject to the control of the judicial authorities [see **Digest**, *op. cit.*, para. 442].*

574. *The Committee notes, however, that the investigator responsible for carrying out the investigations into the ZCTU's financial affairs is appointed by the Minister (subsection (2) of section 120) and therefore enjoys no degree of independence of the administrative authorities. In the concrete case at hand, the Committee notes that the investigator is the Under Secretary of Administration and Finance of the Ministry of Public Service, Labour and Social Welfare. Moreover, the Committee notes with concern that the investigator is not subject to the control of the judicial authorities since, under the terms of subsection (3) of section 120, the investigator is obliged to report the results of his investigation solely to the Minister and, in so doing, may recommend, in the case of a registered federation, that such federation be deregistered and wound up or be administered in terms of subsection (7) (subparagraphs (i) and (ii) of paragraph (b) of subsection (3)). In these circumstances, the Committee urges the Government to take the necessary measures to stop forthwith the ongoing investigations into the ZCTU's financial affairs. It requests it to keep it informed of developments in this regard. It also requests the Government to ensure in future that measures of supervision over the administration of trade unions are exercised by an official who is independent of the administrative authorities and who is subject to the control of the judicial authorities.*

The Committee's recommendations

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

- (a) The Committee requests the Government to take the necessary measures to ensure that section 120(2) of the Labour Relations Act of 1985 is amended in line with freedom of association principles, including those enunciated in its conclusions. The Committee further requests the Government to keep it informed of any progress made in this regard.*
- (b) The Committee urges the Government to take the necessary measures to stop forthwith the ongoing investigations by a government-appointed investigator into the financial affairs of the Zimbabwe Congress of Trade Unions (ZCTU); it requests the Government to keep it informed of developments in this regard.*
- (c) The Committee requests the Government to ensure in future that measures of supervision over the administration of trade unions are exercised by an official who is independent of the administrative authorities and who is subject to the control of the judicial authorities.*

Annex I

Minister of Public Service,
Labour and Social Welfare
Private Bag 7707/7750
Causeway

25 February 2000

The Acting Secretary General
Zimbabwe Congress of Trade Unions

Attention: I. Zindoga

**Re: Appointment of an investigator in terms of section 120
of the Labour Act 28:01 to investigate the financial affairs
of the Zimbabwe Congress of Trade Unions**

Due to recent developments in the labour movement I have reasons to believe that the ZCTU's funds and property are being misappropriated or misapplied and the federation's affairs are being conducted in a manner that is detrimental to the interests of its members.

Accordingly, the situation calls for investigations therefore in terms of section 120(2) of the Labour Relations Act (Chapter 28:01). I have appointed an investigator to carry out a thorough investigation and report his findings to me.

The investigator, Mr. M. Siziba, Under Secretary, Administration and Finance, of my Ministry will be starting the investigation on 28 February 2000.

Your cooperation is greatly appreciated.

(Signed)

F.L. Chitauro (Mrs.) MP
Minister of Public Service, Labour and Social Welfare

Annex II

Zimbabwe Congress of Trade Unions (ZCTU)

Chester House
88 Speke Avenue
PO Box 3549
Harare

2 March 2000

The Minister of Public Service, Labour
and Social Welfare
Compensation House
Harare

Dear Honourable Minister,

Re: Appointment of an investigator

Reference is hereby made to your letter dated 25 February 2000, in which you introduced an investigator to investigate our financial affairs.

Whilst taking note of this development, we feel, as one of the social partners, we deserved to be given an opportunity through a meeting with your office to clarify any issues that you felt needed to be clarified.

Meanwhile, our National Executive Committee will convene soon to deliberate over your decision.

We strongly feel this was not necessary at all.

Yours faithfully,

(Signed)

I.M. Zindoga,
Acting Secretary General.

Annex III

Labour Relations Act

Part XV General

120. Investigation of trade unions and employers' organizations

(1) If the Minister has reasonable cause to believe that the property or funds of any trade union, employers' organization or federation are being misappropriated or misapplied, or that the affairs of any trade union, employers' organization or federation are being conducted in a manner that is detrimental to the interests of its members as a whole, the Minister may order that such trade union, employers' organization or federation may be investigated.

(2) For the purpose of any investigation referred to in subsection (1), the Minister shall appoint in writing an investigator who shall, at all reasonable times and without prior notice, have power –

- (a) to enter any premises; and
- (b) to question any person employed on the premises; and
- (c) to inspect and make copies of and take extracts from any books, records or other documents on the premises;

connected with or related to the trade union, employers' organization or federation under investigation.

(3) An investigator appointed in terms of subsection (2) shall report the results of his investigation to the Minister as soon as practicable and, in so doing, may recommend, having regard to all the circumstances of the case, that –

- (a) in the case of an unregistered trade union, employers' organization or federation such trade union or employers' organization or federation be wound up; or
- (b) in the case of a registered or certified trade union, employers' organization or registered federation such trade union, employers' organization or federation –

- (i) be deregistered and wound up; or
- (ii) be administered in terms of subsection (7).

(4) During the period of investigation of a trade union, employers' organization or federation no person who is or has been an office-bearer of the trade union, employers' organization or federation concerned shall, without the consent of the investigator, in any way expend or dispose of any property of the trade union, employers' organization or federation concerned.

(5) An investigator shall not refuse to grant consent in terms of subsection (4) in respect of any expenditure or disposal which is in the ordinary and lawful course of business of the trade union, or employers' organization or federation concerned.

(6) Where the Minister accepts a recommendation made in terms of paragraph (a) or subparagraph (i) of paragraph (b) of subsection (3), he shall –

- (a) in the case of an unregistered trade union, employers' organization or federation make application to the High Court; or
- (b) in the case of a registered trade union, employers' organization or federation make application to the Tribunal;

for the trade union, employers' organization or federation concerned to be wound up in terms of its constitution.

(7) Where the Minister accepts a recommendation made in terms of subparagraph (ii) of paragraph (b) of subsection (3), he shall make application to the Tribunal to appoint an administrator and such assistants as the administrator may require, to administer the affairs of the trade union, employers' organization or federation in respect of which the recommendation was made:

Provided that an administrator may not be appointed for more than six months or until the next annual general meeting of the trade union, employers' organization or federation concerned whichever is the later.

(8) An administrator appointed in terms of subsection (7) shall administer the affairs of the trade union, employers' organization or federation concerned in such a manner as to rectify the matters for the rectification of which he was appointed and, in so doing, may make an order –

- (a) prohibiting any person who is or has been an office-bearer of the trade union, employers' organization or federation concerned from –
 - (i) expending, disposing of or in any way dealing with any property of the trade union, employers' organization or federation concerned; or
 - (ii) operating any account with any bank, building society or other financial institution on behalf of the trade union, employers' organization or federation concerned:

Provided that the administrator shall authorize any transaction or expenditure which he is satisfied forms part of the ordinary and lawful course of business of the trade union, employers' organization or federation concerned:

- (b) directing any person who is or has been an office-bearer of the trade union, employers' organization or federation concerned to refund or return to such trade union, or employers' organization or federation any property which he has misappropriated from such trade union, employers' organization or federation.

(9) The administrator shall submit for registration any order made in terms of subsection (8) to whichever court would have had jurisdiction to make such an order had the matter been determined by it.

(10) Where an order has been registered in terms of subsection (9), it shall have the effect, for purposes of enforcement, of a civil judgement of the appropriate court.

(11) Any person who –

(a) makes any false representation to, or otherwise hinders or obstructs, an investigator or administrator in the performance of his functions under this section; or

(b) contravenes subsection (4);

shall be guilty of an offence.

Geneva, 9 November 2000.

Max Rood,
Chairperson.

Points for decision: Paragraph 122; Paragraph 131; Paragraph 150; Paragraph 161; Paragraph 175; Paragraph 200; Paragraph 213; Paragraph 247; Paragraph 284; Paragraph 309; Paragraph 326; Paragraph 383; Paragraph 396; Paragraph 407; Paragraph 430; Paragraph 456; Paragraph 477; Paragraph 492; Paragraph 505; Paragraph 524; Paragraph 543; Paragraph 554; Paragraph 575.