



NINTH ITEM ON THE AGENDA

**329th Report of the Committee
on Freedom of Association****Contents**

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Part I

Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951) met at the International Labour Office, Geneva on 7, 8 and 15 November 2002, under the chairmanship of Professor Paul van der Heijden.
2. The member of Salvadorean nationality was not present during the examination of the case relating to El Salvador (Case No. 2190).

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3. Currently, there are 102 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 31 cases on the merits, reaching definitive conclusions in 20 cases and interim conclusions in 11 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

New cases

4. The Committee adjourned until its next meeting the examination of the following cases: Nos. 2209 (Uruguay), 2211 (Peru), 2213 (Colombia), 2214 (El Salvador), 2215 (Chile), 2216 (Russian Federation), 2217 (Chile), 2218 (Chile), 2219 (Argentina), 2220 (Kenya), 2221 (Argentina), 2222 (Cambodia), 2223 (Argentina), 2224 (Argentina), 2225 (Bosnia and Herzegovina), 2226 (Colombia), 2227 (United States), 2228 (India) and 2229 (Pakistan), since it is awaiting information and observations from the governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Observations requested from governments

5. The Committee is still awaiting observations or information from the governments concerned in the following cases: Nos. 1865 (Republic of Korea), 2087 (Uruguay), 2127 (Bahamas), 2132 (Madagascar), 2158 (India), 2161 (Venezuela), 2164 (Morocco), 2185 (Russian Federation), 2186 (China), 2187 (Guyana), 2192 (Togo), 2193 (France), 2194 (Guatemala), 2199 (Russian Federation) and 2200 (Turkey).

Partial information received from governments

6. In Cases Nos. 2046 (Colombia), 2088 (Venezuela), 2096 (Pakistan), 2103 (Guatemala), 2111 (Peru), 2138 (Ecuador), 2151 (Colombia), 2169 (Pakistan), 2179 (Guatemala), 2203 (Guatemala), 2204 (Argentina) and 2206 (Nicaragua), the governments have sent partial information on the allegations made. The Committee requests all these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

7. As regards Cases Nos. 1888 (Ethiopia), 1986 (Venezuela), 2105 (Paraguay), 2134 (Panama), 2166 (Canada), 2170 (Iceland), 2171 (Sweden), 2173 (Canada), 2178 (Denmark), 2180 (Canada), 2182 (Canada), 2189 (China), 2191 (Venezuela), 2196 (Canada), 2197 (South Africa), 2207 (Mexico), 2208 (El Salvador), 2210 (Spain) and 2212 (Greece), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Withdrawal of a complaint

8. As regards Case No. 2202 (Venezuela), the complainant organization, the Latin-American Central of Workers (CLAT) has withdrawn its complaint given that the draft legislation (the subject of the complaint) was abandoned.

Urgent appeals

9. As regards Cases Nos. 2130 (Argentina), 2144 (Georgia), 2162 (Peru) and 2168 (Argentina), the Committee observes that despite the time which has elapsed since the submission of the complaints, it has not received the observations of the governments. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit or complete their observations or information as a matter of urgency.

Non-receivable complaint

10. The Committee decided to declare the complaint submitted by the Petroleum Workers Union of Mexico (STPRM), dated 5 July 2002, not receivable as it does not refer to matters linked to freedom of association.

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

11. The Committee once again considers it necessary to draw the Governing Body's special attention to Cases Nos. 1787 (Colombia), 2090 (Belarus), 2154 (Venezuela), 2184 (Zimbabwe) and 2201 (Ecuador) because of the extreme seriousness and urgency of the matters dealt with therein.

Transmission of cases to the Committee of Experts

12. The Committee draws the legislative aspects of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Honduras (Case No. 2100), The former Yugoslav Republic of Macedonia (Case No. 2133), Bosnia and Herzegovina (Case No. 2140) and Japan (Cases Nos. 2177 and 2183).

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

Case No. 1992 (Brazil)

13. The Committee last examined this case, concerning dismissals following a strike and other anti-union acts, at its March 2002 meeting [see 327th Report, paras. 27-29]. On that occasion, it requested the Government to inform it of the final outcome of the remaining judicial proceedings.
14. In a communication dated 29 May 2002, the Government states that another four workers have been reinstated.
15. *The Committee notes this information with interest and requests the Government to inform it of the final outcome of the remaining judicial proceedings.*

Case No. 2156 (Brazil)

16. The Committee last examined this case at its March 2002 meeting [see 327th Report, paras. 198-203]. On that occasion, the Committee deeply deplored the murder of the trade union leader Carlos Alberto Santos and urged the Government to ensure that the investigations to clarify the facts and determine those responsible were concluded rapidly so that anyone having participated in this murder, including the perpetrators, were punished as required by law. The Committee also requested the Government to keep it informed of developments in the legal proceedings.
17. In a communication dated 29 May 2002, the Government states that the Ministry of Labour and Employment, based on information from the Ministry's Regional Unit in the State of Sergipe, informed it that the police investigation opened in that State to clarify the facts and determine those responsible was concluded on 15 May 2002, and led to the discovery of two unidentified bodies, which could be those of the trade unionist's murderers, although there was not enough evidence yet to reach such a conclusion. The Government states further that a special task force has been set up at state level, composed of officers of the federal police and the civil police, with responsibility for carrying out an in-depth inquiry. The eyewitnesses of the crime are under maximum protection.
18. *The Committee notes this information and requests the Government to keep it informed of the results of the investigations opened and the corresponding legal proceedings aimed at ensuring that those responsible for the murder of Mr. Carlos Alberto Santos are promptly punished.*

Case No. 1957 (Bulgaria)

19. The Committee last examined this case, which concerns the eviction of trade union premises and confiscation of trade union property of the National Syndical Federation (GMH), at its March 2002 meeting [327th Report, paras. 30-32]. On that occasion, the Committee recalled that this case, which dates back to March 1998, involved very serious allegations of freedom of association principles, i.e. acts by the authorities which make it extremely difficult, if not impossible, for a trade union to function normally. The Committee once again requested the Government to initiate, as soon as possible, discussions with the complainant organization in order to settle the issues of trade union premises and confiscation of trade union property of the GMH.

20. In a communication dated 11 September 2002, the Ministry of Labour and Social Policy recalls that the premises on 8 Christo Belchev St. was given to the management of the Ministry of Commerce/present Ministry of Economy. It indicates that it has once again sent a letter to the Ministry of Economy, asking for assistance in finding a solution to this case. The Government also indicates that other existing and unsettled property issues such as unpaid rent to the Ministry constitute obstacles for the settlement of the present case.
21. *The Committee notes this information. It regrets that more than three years after the filing of the complaint, the Government has not settled the issues of trade union premises and confiscation of trade union property of the GMH. The Committee once again urges the Government to hold, without delay, discussions with the complainant organization with a view to settling the pending issues, and requests to be kept informed of developments.*

Case No. 1989 (Bulgaria)

22. The Committee last examined this case at its meeting in November 2001, when it once again requested the Government to keep it informed of the outcome of the independent commission established to examine the allegations of harassment and anti-union discrimination against the members of the TUEPB [see 326th Report, paras. 24-26].
23. In a communication dated 11 September 2002, the Government indicates that a meeting was held between the Ministry of Labour and Social Policy and the President of TUEPB, Mr. Yordan Manolov, where the wish of both sides for the implementation of the independent commission was reconfirmed. The Government states that following this meeting, both partners agreed that the representatives of the employers' and employees' organizations and the States, represented by the Ministry of Labour and Social Policy, would be invited to participate in the independent commission. They also agreed that the host of the first session would be the Ministry of Labour and Social Policy.
24. *The Committee takes note of this information with interest. The Committee trusts that the Government will take steps without delay to ensure that the first session of the independent commission takes place.*

Case No. 2047 (Bulgaria)

25. The Committee last examined this case at its meeting in November 2001. On that occasion, it urged the Government to take the necessary measures rapidly in order to conduct a poll to determine whether PROMYANA and the Association of Democratic Syndicates (ADS) did meet the necessary requirements to establish representativeness for participation in the National Tripartite Council. It further requested the Government to keep it informed of the progress made in this respect [see 326th Report, paras. 27-30].
26. In a communication dated 11 September 2002, the Government states that a draft law on amendments and supplements to the Labour Code, including a part that concerns the representativeness of the workers' organizations, has been submitted to the National Assembly. The Government indicates that, following the adoption of these amendments, secondary legislation will shortly be elaborated, which will regulate the order of establishment of available criteria for representativeness of employers' and employees' organizations at national level, under which each workers' organization will be able to apply for representativeness.
27. *The Committee takes due note of this information. It asks the Government to provide it with a copy of the amendments to the Labour Code as soon as they have been adopted by the National Assembly. It also requests the Government to keep it informed of*

developments regarding the new legislation which will regulate the criteria for representativeness of workers and employers' organizations at the national level.

Case No. 1995 (Cameroon)

28. The Committee last examined this case at its meeting in March 2002 [see 327th Report, paras. 204-213]. On that occasion, the Committee recalled that the complaint had originally been set out in a communication sent in October 1998, and urged the Government to take all the necessary measures to ensure that Mr. Olongo, formerly a staff delegate at SONEL dismissed in 1988, receive full compensation, given that the 14 years that had elapsed since his dismissal made reinstatement difficult. The Committee requested the Government to keep it informed in this respect.
29. In a communication dated 4 July 2002, the Government states that there has been no progress in the judicial procedures concerning Mr. Olongo's case, and that a letter of reminder has been sent to the Minister of Justice asking him to instruct the Supreme Court to give a definitive ruling.
30. *The Committee notes this information. It once again regrets that, more than two years after the first examination of the case and 14 years after the dismissal of Mr. Olongo, he has still not been reinstated or received compensation. The Committee recalls that justice delayed is justice denied, and expresses the strong hope that the Government will in the near future be able to report a positive outcome of proceedings currently under way before the Supreme Court. The Committee requests the Government to inform it of the Supreme Court's decision once it has been handed down, and to keep it informed of developments in the matter of compensation for Mr. Olongo.*

Case No. 2141 (Chile)

31. At its June 2002 meeting, the Committee formulated the following recommendations on the issues still pending [see 328th Report, para. 20]:

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

32. In its communication of 3 September 2002, the Government states that the criminal proceedings concerning the death of Mr. Luis Lagos and the serious injuries sustained by Mr. Donaldo Zamora are presently being judged since the prosecution was filed on 4 July 2002. The period of time granted to the complainants to contest the transfer has not yet expired. At the same time, the Court entered a temporary and partial non-suit for the alleged homicide of Mr. Lagos and the alleged attempted homicide of the seriously injured worker, in favour of Mr. Hernández, an executive from the FABISA enterprise. Both decisions to enter a non-suit were appealed by the complainants and the Court of Second Instance is now processing these appeals. The only complainants in this case are the relatives of the victims.
33. As regards the situation of the 23 workers dismissed following the strike, during the collective bargaining process, the Government states that the 18 workers dismissed shortly

after the strike was concluded went to the tribunal to request legal compensation for unfair dismissal. With regard to the other five workers who were later dismissed, they came to an agreement with the employer for the payment of compensation according to their years of service and signed the corresponding final discharges, thereby terminating their working relationship.

34. *The Committee notes this information. The Committee requests the Government to keep it informed of the outcome of the legal proceedings concerning the death of Mr. Luis Lagos and the serious injuries sustained by Mr. Donaldo Zamora during the strike held at the FABISA enterprise in May 2001. The Committee also requests the Government to keep it informed of the sentence handed down by the judicial authority concerning the dismissal of 18 workers following the conclusion of the said strike.*

Case No. 2104 (Costa Rica)

35. The Committee last examined this case concerning restrictions of the right of collective bargaining in the public sector and unfair labour practices in the education sector at its March 2002 meeting [see 327th Report, paras. 507-524]. On this occasion, the Committee made the following conclusions and recommendations:

- The Committee expresses its deep concern at the situation with regard to the right of collective bargaining in the public sector, which constitutes a serious violation of Convention No. 98 and trusts that this situation may be resolved once the Legislative Assembly ratifies Conventions Nos. 151 and 154.
- As regards the allegations of anti-union discrimination by the University of Costa Rica, the Committee notes with interest the Government's statements to the effect that the anti-union actions in question (dismissal procedure against trade union official Mr. Luis Enrique Chacón Solano, pay cuts, blacklists with threats of pay cuts, etc.) have been remedied, and that the University authorities have been urged in future to refrain from taking action of that type. Taking into account the fact that an appeal may be lodged against the administrative resolution confirming the existence of these unfair practices, the Committee requests the Government to keep it informed of any appeal that may be lodged and any new decision.
- The Committee requests the Government to keep it informed of the outcome of the complaint lodged by the administrative authorities to the courts after confirming that the Ministry of Education had committed violations in the matter of trade union leave.

[Specifically, the complainant organization had supplied a copy of a resolution by the administrative authorities dated 7 November 2001, which confirmed certain actions by the Ministry of Education with regard to trade union leave that violated the principles of ILO Conventions Nos. 87, 98 and 135.]

36. In a communication dated 3 June 2002, the complainant organization (SINDEU) states that the trade union official Mr. Luis Enrique Chacón was dismissed in spite of previous resolutions by the administrative authorities that provided this official with protection.
37. In a communication dated 17 May 2002, the Government sends a copy of draft law No. 14730, concerning the reform of article 192 of the Political Constitution to guarantee collective bargaining in the public sector, which went before the legislative plenary on 10 May 2002. The explanatory preamble of the draft law refers to the conclusions of the ILO technical assistance mission that visited the country recently and recognizes that "obviously the prevailing legal uncertainty has greatly hindered legal and constitutional performance, and has moreover given rise to excessive constraint of the right to collective bargaining". The Government hopes that this plenary session will approve the draft law, which will allow ratification of Conventions Nos. 151 and 154. The new article will allow

the granting of the right to collective bargaining in the public sector to public employees who are governed by the statute of civil servants and carry out public administration as representatives of the public authorities (upper-level management employees in public administration, such as members of executive boards of institutions, executive presidents, managers and heads of diplomatic missions; high-level supervisory employees for public finance, such as auditors, sub-auditors and the Comptroller-General of the Republic; employees in positions of trust, the Attorney-General of the Republic, the Council for Public Defence and employees of similar nature). This constitutional reform will be implemented under ordinary law. Moreover, the Government repeats that it has submitted to the Legislative Assembly draft laws for the ratification of Conventions Nos. 151 and 154 concerning collective bargaining in the public sector.

38. *The Committee notes with interest the Government's intention to adapt its legislation to the ILO standards relating to collective bargaining and the steps it has taken to do so, which include a constitutional reform (which has been submitted to the legislative plenary) and the submission of draft legislation for the ratification of Conventions Nos. 151 and 154. The Committee hopes that progress will be made in the near future and requests the Government to keep it informed in this respect.*
39. *With regard to the other two recommendations made at its previous meeting, the Committee notes that the Government has not sent the information requested of it and therefore the Committee repeats these requests, that the Government:*
- *with regard to the matter of unfair labour practices at the University of Costa Rica noted by the administrative authorities, keep it informed of any appeal and any new decision;*
 - *keep it informed of the outcome of the complaint lodged by the administrative authorities to the courts after confirming that the Ministry of Education had committed violations in the matter of trade union leave.*
40. *Finally, the Committee requests the Government to send its observations on the dismissal of the trade union official, Mr. Luis Enrique Chacón.*

Cases Nos. 1987 and 2085 (El Salvador)

41. At its May-June 2002 meeting, the Committee requested the Government to keep it informed of the results of the request of registration presented by the Trade Union Federation of Salvadorian Workers of the Food, Beverage, Restaurants, Hotels and Food Sectors (FESTSSABHRA) and hoped that this federation would rapidly be granted legal personality. It also requested the Government to take the necessary measures to amend the legislation on various points [see 328th Report, paras. 44-47].
42. In a communication dated 6 June 2002, the FESTSSABHRA states that after having given up its previous name, FESTSA, it once again requested registration of legal personality.
43. In a communication dated 8 July 2002, the Government states that on 27 May 2002 the FESTSSABHRA submitted to the General Labour Directorate the documentation relating to its establishment in order to obtain legal personality. The following were involved in establishing this federation: the Trade Union of the Lido Enterprise Ltd., the Confectionary Workers' Industrial Trade Union, the Workers' Trade Union of the Foremost Dairy Products Enterprises Ltd., the Workers' Trade Union of Nestlé Ltd., El Salvador, and the Workers' Trade Union of Salinitas Club Ltd. On 1 July 2002, the Secretariat of Labour and Social Protection approved the constitution of the federation and ordered that it be published in the *Official Bulletin* along with the resolution granting legal personality.

44. *The Committee is pleased to note that the FESTSSABHRA has been granted legal personality. However, the Committee notes that the Government has sent no new information with regard to the changes to trade union legislation on the points mentioned in previous examinations of the case. The Committee therefore repeats its previous recommendations and requests the Government to take the necessary measures to amend the legislation on the following points in order to bring it into conformity with freedom of association principles: the reform of the Labour Code provisions setting out excessive formalities for recognition of trade unions and acquisition of legal personality contrary to the principle of free establishment of trade union organizations (requirement that trade unions of independent institutions should be works unions), that made it difficult to set up a trade union (minimum number of 35 workers to establish a works union) or that in any case made it temporarily impossible to establish a trade union (requirement to wait for six months before applying for recognition of a new trade union when a first request is rejected), and measures taken to amend the national legislation so that it would recognize the right of association of state workers, with the sole possible exception of the armed forces and police, in conformity with freedom of association principles. The Committee requests the Government to keep it informed in this respect.*

Case No. 1978 (Gabon)

45. The Committee last examined this case, which concerns the existence and free functioning of trade union structures of the Gabonese Confederation of Free Trade Unions (CGSL) in the SOCOFI enterprise and the dismissal of trade unionists for exercising their right to strike, at its March 2002 meeting [see 327th Report, paras. 58-60]. On that occasion, the Committee requested the Government to keep it informed of the decision of the Court of Appeal on the legality of the strike launched by the CGSL at the SOCOFI enterprise in 1997.
46. In its communication of 11 September 2002, the Government merely provides some information on issues that are no longer pending in this case, and fails to provide any information concerning the decision of the Court of Appeal on the legality of the 1997 strike at the SOCOFI enterprise.
47. *The Committee notes with regret that no new information on the pending issue in this case has been provided by the Government. Therefore, the Committee can only deplore, once again, the fact that more than five years after the strike was launched at the SOCOFI enterprise, the workers who were dismissed for involvement in the strike are still waiting for the Court's decision. The Committee once again urges the Government to take the necessary measures – if the strike is ruled to have been lawful – to ensure that the workers dismissed for exercising the right to strike are reinstated in their posts without loss of pay or, if this is not possible, that they be compensated. Furthermore, the Committee reminds the Government that justice delayed is justice denied.*

Case No. 1970 (Guatemala)

48. The Committee last examined this case concerning murders and dismissals at its March 2002 meeting [see 327th Report, paras. 61-66]. On that occasion it made the following recommendations on the issues still pending:
- The Committee once again requests the complainant to send further information with regard to the murder of Cesáreo Chanchavac.
 - The Committee notes that the judicial proceedings relating to dismissals at the Ofelia and La Patria farms (dismissed in August 1995) and the Santa Fe and La Palmera farms are still pending. The Committee requests the Government to provide specific

information in this respect, and also to provide information on the dismissals at the El Arco farm (1997) and the alleged impossibility of negotiating a collective agreement at the San Carlos Miramar farm. The Committee hopes that the rulings relating to the dismissals are handed down and that the negotiation of a collective agreement at the San Carlos Miramar farm make progress in the near future and requests the Government to keep it informed in this respect.

49. In its communications dated 20 and 27 September 2002, the Government states that Guatemalan workers currently have a special public prosecutor's office which deals with allegations relating to murders and death threats resulting from their union activity. It also points out that it is difficult to provide satisfactory information because some complaints date from a long time ago. The Government also supplies information on a series of acts of violence, which are not contained in the allegations.
50. *The Committee notes once again that the complainant organization has not sent further information concerning the murder of the trade union member Cesáreo Chanchavac. The Committee once again requests the complainants to send further information in respect of this murder. As regards the proceedings concerning dismissals at the Ofelia, La Patria, Santa Fe and La Palmera farms, the alleged dismissals at the El Arco farm and the alleged impossibility of negotiating a collective agreement at the San Carlos Miramar farm, the Committee notes with regret that the Government has not sent any observations in this respect. The Committee once again requests the Government to keep it informed on the rulings that are handed down in relation to these dismissals and to promote the negotiation of a collective agreement at the San Carlos Miramar farm.*

Cases Nos. 2017 and 2050 (Guatemala)

51. The Committee examined these cases at its meeting in March 2002 and made the following recommendations on the allegations that remained pending [see 327th Report, para. 604]:
- regarding the Tanport S.A. company, the Committee hopes that the existing discrimination will be ended without delay and requests the Government to inform it of the result of the legal proceedings undertaken to protect the money owed to the UNSITRAGUA members who were dismissed because of the company's closure;
 - as regards the Ace International S.A. assembly plant, the Committee requests the Government urgently to communicate the court resolutions handed down on the serious allegations submitted of discrimination and intimidation;
 - as regards the closure of Cardiz S.A., the Committee expresses the hope that the judicial authority will pronounce on this case without delay and requests the Government to keep it informed of developments in that regard. It also requests the Government to ensure that no worker be detained for anti-union reasons;
 - the Committee requests the Government to indicate the legal grounds for the cancellation of the registration of all of the officers of the trade union at María de Lourdes de Génova Farm and emphasizes that it would have been appropriate to retain all of the trade union officers except the farm administrator;
 - as regards the allegations relating to the death threats against the secretary-general of the union at the María de Lourdes de Génova Farm, Mr. Otto Rolando Sacuqui García, the threats made against the union's secretary for the settlement of disputes, Mr. Walter Oswaldo Apen Ruiz, and his family, to force him to relinquish his post in the municipality of Tecún Umán, and the dismissal of the founders of the trade union at Hidrotecnica S.A., established in 1997, the Committee:
 - urges the Government to organize without delay an investigation into these allegations and keep it informed of developments;

- notes that the necessary measures should be taken so that trade unionists who have been dismissed for activities related to the establishment of a trade union are reinstated in their functions, if they so wish; and
- urges the Government promptly to take the necessary measures to guarantee the trade unionists' physical safety;
- as regards the allegations relating to the death threats received by members of the Workers' Union of Banana Plantations of Izabal (SITRABI), the threats by the Bandegua company to leave the country if the workers do not agree to a reduction of their rights under the collective agreement, the dismissals threatened and carried out by that company (25 dismissals at five farms), and the raid on the premises of the Trade Union of Electricity Workers of Guatemala, with destruction and theft of property, the Committee requests the Government:
 - urgently to take the necessary measures to protect the security of the threatened trade unionists, place the cases of the alleged death threats and raid before the Attorney-General without delay and keep it informed of the penal sanctions applied;
 - to ensure that anti-union dismissals do not take place and investigate the motives for the dismissals that have occurred; and
 - to ensure respect for the collective agreement and keep it informed of developments in the situation;
- as regards the other serious allegations that remain pending, the Committee strongly reiterates its recommendation that the Government should:
 - as a matter of urgency take steps to carry out a judicial investigation into the death threats made against the trade unionist José Luis Mendía Flores, ensure that he has been reinstated in his post in accordance with the court resolution, and keep the Committee informed in this regard;
 - ensure compliance with the court orders to reinstate the workers dismissed at the company La Exacta and send its observations promptly on the alleged delays in the investigation into the murders in 1994 of four rural workers (see the names below, in the second communication of UNCITRAGUA) who had tried to form a trade union, and keep the Committee informed of the results of the judicial proceedings under way in respect of these murders; and
 - take the necessary measures (legislative and other) to ensure that the reinstatement orders are complied with;
- as regards the recent allegation concerning the murder of a trade union official, Mr. Baudillo Armado Cermeño Ramírez, the Committee requests the Government to ensure that the appropriate independent judicial investigations are conducted as soon as possible in order to establish the facts and circumstances of the incident, define responsibilities, punish the perpetrators and thus avoid a repetition of such occurrences and requests the Government to keep it informed in this regard.

52. In its communication dated 5 March 2002, CIOSL alleges that Mr. Miguel Angel Ochoa González, leader of the Union of Professional Pilots and Road Freight Haulage, was kidnapped by three persons on 14 February 2002. He was physically and verbally abused and then abandoned. It also alleges that Mr. Ochoa, together with Mr. Wilson Armelio Carreto López, received death threats in a letter on 15 February 2002.

53. In its communication dated 1 April 2002, UNSITRAGUA states that, in violation of a court ruling, the Banco de Crédito Hipotecario Nacional, a state-owned bank, dismissed 170 workers without obtaining legal dispensation. In its communication dated 7 May 2002, UNSITRAGUA states that 90 of the bank's workers have availed themselves of a retirement plan. Moreover, after more than three years, the Conciliation Tribunal has still not pronounced (nor called the parties to a hearing) on the collective labour dispute that began on 5 August 1997. In a communication received by the ILO on 3 June 2002,

UNSTRAGUA states that up to 200 workers have now been dismissed, despite the relevant court ruling, and that more workers are under pressure to renounce their contracts and claim unemployment benefits. In addition, on 22 March the bank suspended trade union officials' permits and is conducting surveillance on the officials and persecuting them. In its communication dated 29 July 2002, UNSTRAGUA complains that a further 100 workers were dismissed by the bank on 27 July, despite the relevant court ruling and other rulings by the labour inspectorate. The trade union officials' permits were suspended once more on 26 July.

- 54.** In its communication dated 3 June 2002, UNSTRAGUA reports that the legal authorities have still not pronounced on the case of the Tanport S.A. assembly plant and that, in the case of the Ace International S.A. assembly plant, the Constitutional Court upheld the sentence of the Supreme Court of Justice, violating freedom of association and opening the doors to the fraudulent dissolution of enterprises as a means of breaking up trade unions. UNSTRAGUA also explains that, in 1994, the police evacuation of a peaceful sit-in at the San Juan del Horizonte farm (operated by the Exacta company) led to the killing of three trade unionists, Efraín Recinos, Basilio Guzmán and Diego Orozco; a further 11 workers were injured and 45 were arrested; and the trade unionist José García González was kidnapped and murdered. There has still been no judicial investigation. The company also dismissed 60 workers, who have not been reinstated despite a court ruling.
- 55.** In its communication of May 2002, the CUSG points out that many dismissals of trade unionists took place in the María de Lourdes farm, the Hidrotécnica company, the municipality of Jalapa and the municipality of Tecpán and that the dismissed have not been reinstated despite judicial rulings ordering reintegration. In the case of the municipality of Tecpán, the Supreme Court ruled in the final instance in favour of the workers and imposed a fine on the municipality. In the municipality of Jalapa, the collective agreement has been violated. The municipality has refused to comply with recommendations of the Ministry of Labour on the violations of the collective agreement. In the municipality of Malacatán, the collective agreement was also violated. The Parque Zoológico Nacional La Aurora refused to negotiate a new collective agreement with the union and has promoted a solidarist association putting pressure on workers to affiliate with it.
- 56.** In its communications of 3 July 2002 and 27 September 2002, the Government reports that although the case of the Banco de Crédito Hipotecario Nacional has been brought before justice, the labour inspectorate is simultaneously favouring high level meetings in order to find a solution in favour of the workers. Also, on 25 April 2002, conciliation was achieved on one of the points of conflict (the question of suspension of trade union permits) thanks to the mediation of the Minister of Labour; moreover, three administrative punitive inquiries are under way in order to impose fines on the bank. Concerning the company "Ace International", the issue is before justice and the company remains closed. The assembly plant Tanport is also closed. The labour inspection tried to obtain compliance with the judicial order which has pronounced on this case but it did not manage to locate the headquarters of the enterprise. With respect to these last two cases, the Government reports that it has created a tripartite National Assembly Plant Authority, in order to improve social and labour relations in this sector and find solutions to cases like the ones mentioned above. The threats against the trade union official, Miguel Angel Ochoa González, are being examined by the authorities.
- 57.** In its communication of 27 September 2002, the Government sent observations on the María de Lourdes farm, the Hidrotécnica company and the municipality of Jalapa, but without referring specifically to the questions pending before the Committee. The Government adds that the Ministry of Labour made a mediation effort and that judicial ruling was pronounced in the case of the Tecpán municipality (favourable to the union according to the complainant organization). Concerning the case SITRABI, the incidents

continue to be examined by the criminal justice system and the Minister of Labour continues to hold meetings with the parties in order to achieve positive results. Concerning the case of the La Exacta farm, a declaration has been signed in which the responsibility of the authorities in the events which took place is implicitly recognized. This case is examined in the context of the judicial system. Concerning the Parque Zoológico Nacional La Aurora, this case was examined by the labour inspectorate and within the tripartite committee on international labour issues. The case of the municipality of Malacatán was favourably resolved.

- 58.** *The Committee takes note of the Government's observations. The Committee underlines the gravity of the questions raised in the allegations, in particular with regard to acts of violence (assassinations, aggressions, threats) and anti-trade union discrimination (including cases of non-compliance with judicial orders) and expresses its profound preoccupation in this respect.*
- 59.** *The Committee notes that according to the Government, the threats against the trade union official, Miguel Angel Ochoa González, are being examined by the authorities. The Committee regrets that the Government was not sent observations on allegations relative to (1) the judicial rulings concerning the Cordiz S.A. company; (2) the kidnapping, aggressions and threats against the trade unionist of the María de Lourdes farm, Walter Oswaldo Apen Ruiz and his family, and the death threats against the trade union officials Roland Sacuqui García, Wilson Armelio Larreto López and José Luis Mendía Flores; (3) the assassination of the trade unionists of the La Exacto Farm Efrain Recinos, Basilio Guzmán and Diego Orozco, the injury of 11 workers and the detention of 45 workers from this farm; (4) the assassination of the trade unionist, José García González, and the trade union Leader, Bandillo Amado Cermeño; (5) the raid against the Luz and Fuerza union. The Committee requests the Government to send its observations on these allegations and to indicate the state of the respective proceedings. The Committee deplors these acts of violence against trade unionists, expresses its great preoccupation before this situation and points out to the Government that a free and independent trade union movement can only develop in a climate free from violence, threats and intimidation. The Committee requests the Government to guarantee security to all threatened trade unionists who have been mentioned in this case.*
- 60.** *Concerning the conflict relative to Banco de Crédito Hipotecario Nacional, the Committee notes that a negotiating committee has been set-up on all the questions before the authorities (negotiation of a new collective agreement, massive dismissals, etc.) and observes that at first, the suspension of trade union permits was resolved but that the complainant organization has come back with allegations that the permits were suspended once more on 26 July 2002. The Committee observes that the conflict was brought before justice. The Committee insists on the importance of respecting judicial rulings which prohibit dismissals without legal authorization, hopes that the negotiating Committee will be able to find a solution to the conflict in a short period of time and requests the Government to keep it informed of the progress of the Committee. The Committee requests the Government to communicate any ruling on these allegations.*
- 61.** *The Committee observes that the Government has sent insufficient or imprecise information on other pending questions: cases of SITRABI, María de Lourdes farm, Hidrotécnica company, Jalapa municipality (violation of the collective agreement), and Parque Zoológico Nacional. The Committee requests the Government to send additional information on these allegations. The Committee requests the Government to confirm that the trade unionist, José Luis Mendía Flores, has been reinstated in his post as ordered by the judicial authority.*

62. *The Committee observes that other cases (pending during the latest examination of the case) have been brought before justice (Ace Internacional company, Tanport company, La Exacta farm). The Committee reiterates its previous recommendations on these questions and asks the Government to send additional information. The Committee notes that according to the Government, the case of the municipality of Malacatán has been resolved.*
63. *The Committee regrets to observe that in this as well as previous cases, the complainant organizations have highlighted the non-compliance with judicial rulings ordering reinstatement. The Committee requests the Government to ensure the reintegration of all the trade unionists who have not yet been reinstated in their posts in various companies and farms mentioned in this case, despite judicial orders which have been pronounced in this sense and to keep it informed in this respect.*

Case No. 2100 (Honduras)

64. The Committee last examined this case, concerning the refusal to grant workers the right to organize trade unions of their own choosing without previous authorization and the obstruction of trade union pluralism, at its June 2001 meeting [see 325th Report, paras. 414-432]. On that occasion, the Committee requested the Government to take into account that the free exercise of the right to establish and join trade unions implies the free determination of the structure and composition of these trade unions, and that workers should be free to decide whether they prefer to establish, at the primary level, a works union or another form of basic organization, such as an industrial or craft union. The Committee also requested the Government to amend its legislation to bring it into conformity with Conventions Nos. 87 and 98, and to guarantee that workers had the right to establish and join the organizations of their own choosing. Lastly, it requested the Government, considering the foregoing, to inform it of any new requests submitted by SITRAIMASH for legal personality.
65. In its communication of 2 September 2002, the Government indicates that it will take the recommendations formulated by the Committee concerning this case into account once the Labour Code has been amended according to a tripartite procedure. Furthermore, it states that although the current labour legislation still has some shortcomings, all workers and employers enjoy freedom of association. As regards the procedure for trade union registration, the Government explains that the competent bodies check that registration requests meet all of the legal requirements so as to avoid any subsequent cancellations, and that if not all the necessary conditions are met, it provides the interested parties with the relevant observations so that the indicated flaws can be corrected and, therefore, the objectives of Convention No. 87 are met. With regard to the procedure for obtaining legal personality through registration, the Government states that this is governed by an administrative resolution, without the right of workers and employers to establish organizations of their own choosing being undermined. Lastly, the Government states that SITRAIMASH has not made another request for registration with the Labour Administration.
66. *The Committee notes this information and brings the legislative aspect of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

Case No. 2114 (Japan)

67. The Committee examined this case at its June 2002 session, where it made the following recommendations [328th Report, para. 416]:

- (a) The Committee recalls that teachers should have the right to bargain collectively.
- (b) So far as the impartiality of the personnel commissions are concerned, the Committee requests the Government to take the necessary steps to ensure that the members of personnel commissions are persons whose impartiality commands general confidence and that workers' organizations have a meaningful voice in the appointment of the members of these commissions; it further requests to be kept informed of developments in this regard.
- (c) The Committee requests the Government to take the appropriate measures to amend the relevant provisions of the Local Public Service Law so that personnel commissions have the power to give binding decisions with regard to salaries, working hours and other working conditions of local public employees. It also requests the Government to keep it informed of developments in this regard and draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case.
- (d) The Committee expresses the firm hope that future recommendations of personnel commissions will be fully and promptly implemented.
- (e) The Committee requests the Government to take appropriate measures to encourage and promote the full development and utilization of machinery for voluntary negotiation with a view to the regulation of terms and conditions of employment by means of collective agreements for public school teachers, in conformity with Articles 4 and 6 of Convention No. 98. It asks the Government to keep it informed of developments in this regard.

68. In a communication of 30 August 2002, the Government states that it finds it very regrettable that the Committee refused to adjourn this case and examine it in conjunction with the complaints filed by two other workers' organizations (Case No. 2177, RENGU; Case No. 2183, ZENROREN) in connection with the current civil service reform, but rather chose to examine it on the merits. *The Committee points out that it has already addressed this argument and considered that the present case could be dealt with independently of the issues stemming from said reform, which it said it would address "in the two other complaints concerning specifically and directly said reform" [328th Report, para. 415]. The Committee finds a further justification for having proceeded in this manner in the latest Government's own statement that "Case No. 2114 was a special case, isolated both in its geographical and chronological context".*

69. The Government further states, as regards recommendation (c), that it is inappropriate for the Committee to request such measures as amendments to domestic law, since that would unduly restrict the administrative discretion of a government. *The Committee recalls that: the purpose of its procedure is to promote respect for trade union rights in law and in fact [Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996, para. 4]; that the matters dealt with by the ILO in respect of working conditions and promotion of freedom of association cannot be considered to be undue interference in the internal affairs of a sovereign State since such issues fall within the terms of reference that the ILO has received from its Members, who have committed themselves to cooperate with a view to attaining the objectives that they have assigned to it [Digest, ibid., para. 3]; and where national laws, including those interpreted by the high courts, violate the principles of freedom of association, it has always considered it within its mandate to examine the laws, provide guidelines and offer the ILO's technical assistance to bring the laws into compliance with these principles, as set out in the Constitution of the ILO and the applicable Conventions [Digest, ibid., para. 8].*

70. As regards the appointment of the members of the personnel commissions (recommendation (b)), the Government reiterates that the commissions are not composed of three parties representing labour or management. Therefore, the Government cannot accept the request that it move to ensure a meaningful voice for labour in the selection process. *In this regard, the Committee recalls that in mediation and arbitration*

proceedings, it is essential that all the members of the bodies entrusted with such functions should appear to be impartial both to the employers and the workers concerned.

71. As regards the right of teachers to bargain collectively (recommendations (a) and (e)), and the need to take appropriate measures to promote the full development and utilization of machinery for voluntary negotiation to regulate teachers' terms and conditions of employment by means of collective agreements (recommendation (e)), the Government describes, as it has already done, the system of salary recommendations by the personnel commissions and reiterates that the decision to delay full implementation of the recommendations of the commissions was of exceptional measure in order to deal with extraordinary circumstances. The Government states that public school teachers benefit from statutory terms and conditions of service and, as such, are public servants excluded from the application Convention No. 98, under its Article 6. The extent to which public servants are to be excluded from the application of Convention No. 98 should be determined through a judgement on whether they benefit from statutory terms and conditions of service.
72. *As there seems to exist in this respect a fundamental misconception, the Committee recalls that the exemption in Article 6 of Convention No. 98 does not apply to teachers, be they employed in public or private schools. As has been stated many times, all public service workers **other than those engaged in the administration of the State** should enjoy collective bargaining rights [Digest, *ibid.*, para. 793]. A distinction must be drawn between, on the one hand, public servants who by their functions are directly engaged in the administration of the State (that is, civil servants employed in government ministries and other comparable bodies) as well as officials acting as supporting elements in these activities and, on the other hand, persons employed by the government, by public undertakings or by autonomous public institutions. **Only the former category can be excluded from the scope of Convention No. 98** [Digest, *ibid.*, para. 794]. If this were not the case, Convention No. 98 would be deprived of much of its scope. In this context, the Committee requests once again the Government to take appropriate measures to encourage and promote the full development and utilization of machinery for voluntary negotiation with a view to the regulation of terms and conditions of employment by means of collective agreements for public school teachers.*

Case No. 2009 (Mauritius)

73. The Committee last examined this case at its March 2002 meeting, on which occasion it had called upon the parties to come promptly to an agreement on all the modalities concerning the granting and use of time-off facilities to teachers' unions [see 327th Report, paras. 81-83].
74. In a communication dated 22 August 2002, the Government indicates that at a meeting held on 29 July 2002, under the chairmanship of the Ministry of Civil Service Affairs and Administrative Reforms, the Ministry of Education and Scientific Research and the Government Teachers' Union agreed to the granting of time-off facilities to office bearers of the Union as follows: (i) president, secretary and treasurer – on a "as and when required basis"; (b) other committee members – one day per week. This agreement was reached on the understanding that the Government Teachers' Union will ensure that its members do not abuse the facilities granted.
75. *The Committee takes note of this information with satisfaction.*

Case No. 2106 (Mauritius)

- 76.** The Committee examined this case at its March 2002 meeting [see 327th Report, paras. 84-88] concerning two distinct issues: (a) the annulment of a decision, made by the previous government on the eve of a general election, to pay an interim increase to public servants; and (b) the failure to apply an agreement, also concluded on the eve of a general election, on various conditions of work on a state-owned sugar milling enterprise. On that occasion, the Committee had noted that, notwithstanding the parties' differing appreciation on the nature and extent of the consultations and discussions which were held, a national tripartite meeting took place, which led to salary increases being granted to public servants on a sliding scale in favour of the lowest-paid category of personnel. The Committee further noted that private and public sector workers alike will henceforth get a statutory yearly bonus, which complements the compensation package. Noting that no judicial proceedings have been filed concerning the claim for Rs300, which claim might be taken up with the Pay Research Bureau (PRB) as part of the ongoing salary review exercise, the Committee requested the Government to keep it informed of the outcome, if any, of these PRB proceedings. Noting that the Government intends to take into account its previous conclusions and recommendations as regards the situation at the Rose Belle Sugar Estate, the Committee requested the Government to keep it informed of developments in this respect.
- 77.** The Government states in a communication of 1 June 2002 that the PRB has invited trade unions to submit memoranda for its consideration in the context of the current salary review exercise. Most of the trade unions have already submitted their memoranda and the PRB is presently conducting consultations with them. The report of the PRB is due in July 2003. The Mauritius Labour Congress has been informed in July 2001 by the Ministry of Finance that it may, if it so wishes, take up the matter with the PRB in the context of the ongoing review exercise of the public sector pay and grading. The Government points out that the president of the Federation of the Civil Service Union has made a public statement after the recommendations of the Committee on Freedom of Association that the ILO has been misled and that it refuses to discuss the issue of Rs300 with the PRB. The Government also indicates that two national tripartite meetings were held in May 2002 where all the federations of trade unions were present to discuss the payment of salary compensation; the unions were briefed about the economic situation and the constraints which the country has to face as a result of the international events and the violent cyclone which caused extensive damage last year. The Government agreed to pay, from 1 July 2002, a compensation of 6.5 per cent in favour of the lowest-paid category of personnel.
- 78.** Regarding the Rose Belle Sugar Estate issue, the Government indicates that since September 2001 several meetings, chaired by the Chairman/General Manager of the Rose Belle Sugar Estate, have been held with the union representatives where they were briefed on the Rose Belle Sugar Estate's financial situation. Two unions have declared a trade dispute at the Permanent Arbitration Tribunal on the issue of the introduction of a 40-hour week during crop season on the basis of a five-day week, payment of overtime to workers in certain occupations, increase of the prescribed rates in the Remuneration Order by 11 per cent or otherwise; the matter is still under the Tribunal's consideration. A judicial proceeding has also been filed by the Artisans' and General Workers' Unions concerning the non-implementation of the 40-hour week during crop season and the non-payment of the remaining balance of arrears from 1 January 1998 to November 1999; after several postponements, the case was struck off as the complainants were absent on the day of court hearing. The Rose Belle Sugar Estate has closed down since December 2001 because of its precarious financial situation. Prior to its closure, meetings were held with the union representatives and the workers, who were informed of the developments. Negotiations were held with the workers concerning the compensation and other benefits granted to them; the Government states that the employees concerned were fully satisfied with it.

79. *The Committee notes this information and requests the Government to inform it of the final decision concerning the claim for Rs300 as an interim increase to public servants, as a result of a previous decision of the authorities.*

Case No. 2115 (Mexico)

80. The Committee examined at its March 2002 meeting this case, which relates to the refusal to register amendments to the by-laws of the Progressive Trade Union of Workers of the Construction Industry of the Mexican Republic (SPTICRM) so that it may include in its activities any industrial establishment and/or branch of construction involved in gas installations, gas pipelines, electricals and electricity [see 327th Report, paras. 664-683]. On that occasion, the Committee made the following recommendation:

As regards the refusal by the Directorate-General for the Registration of Associations to register the amendments to an organization's by-laws, the Committee expresses the hope that when examining the issue raised in the present case the competent judicial authorities will take into account the principle according to which the free exercise of the right to establish and join trade unions implies the free determination of the structure and composition of unions, that the national legislation should only lay down formal requirements as regards trade union constitutions, and the constitutions and rules should not be subject to prior approval by the public authorities, and requests the Government to keep it informed of developments.

81. In a communication dated 28 May 2002, the Government refers to the legislation in force and states that it complies with the principles of the Committee on Freedom of Association. The Government adds that the Tenth Collegiate Circuit Court for labour affairs will decide the issue raised by the complainant organization and that the Government will comply with the ruling handed down.
82. The SPTICRM sent further information in a communication dated 13 June 2002. The organization includes the ruling of the Tenth Collegiate Circuit Court for labour affairs of 6 June 2002 and states that, in spite of the ruling being in its favour, the Government continues not to "take note" of the amendments to the constitution of the trade union. In the ruling of 6 June 2002, the Court considers it "wrong that the Under-Secretary for Labour and Social Security endorse the refusal to take note [of the amendments to the trade union's by-laws] based on article 360 of the Federal Labour Law, which does not lay down requirements for the modification of internal trade union by-laws", and that

... the correct procedure is to change the ruling being challenged in order to uphold the "amparo" proceedings filed by the complainant trade union organization so that the competent authority, namely the Under-Secretary for Labour and Social Security, vacates the resolution being challenged and, in its place, issues another in which it examines with full jurisdiction the conformity of the proposed by-law amendments and, with full autonomy, soundly and on justifiable grounds, decides what is in accordance with the law, without basing its decision on the provisions of article 360 of the Federal Labour Law as these are not applicable to by-law amendments.

83. In its communication dated 20 September 2002, the Government refers to the abovementioned ruling and emphasizes that after having examined the file, the administrative authorities took note of the by-laws on 16 August 2002. In a communication dated 23 September 2002, the complainant organization raises objections concerning certain aspects of a decision of the administrative authority on this question, in particular, to the extent in which they require that the trade union's objectives should be limited to the federal level.
84. In a communication of 5 November 2002, the Government states that the First District Tribunal rejected the allegations of the trade union. The Government adds that the trade

union is registered at the federal level and that, as a general rule, the construction industry falls within the competence of the local authorities except in case of works undertaken in the federal zone.

85. *The Committee notes the information provided by the Government. The Committee invites the complainant organization to provide clarifications, if it considers it appropriate, on the aspects of the administrative authority's decision that it contests, in the light of the latest observations made by the Government.*

Case No. 2136 (Mexico)

86. The Committee last examined this case at its June 2002 meeting [see 328th Report, paras. 491-529]. On that occasion the Committee requested the Government to keep it informed of the rulings issued in the proceedings initiated by a group of workers who had been dismissed for supporting the application by ASPA to conclude a collective labour agreement and, if it transpired that the dismissals had been due to legitimate trade union activity, to ensure that the workers concerned were reinstated in their posts, without loss of pay.
87. In a communication dated 24 June 2002, the Trade Union Association of Airline Pilots of Mexico (ASPA) stated that the Consorcio Aviaksa S.A. de C.V. (AVIACSA) company was continuing to disregard the right of airline pilots to negotiate collectively. It emphasizes that originally the collective agreement signed between the company and the Trade Union of Workers in Aeronautics, Similar and Related Industries of the Mexican Republic (STIAS) did not include airline pilots and that they were subsequently included without being consulted. The complainant organization reiterates that it enjoys a majority of votes from the pilots and as such it was appropriate for it to negotiate collectively, in accordance with the provisions of articles 388 and 389 of the Federal Labour Law. The complainant organization adds that, with a view to deciding definitively who enjoyed the majority, the Federal Council for Conciliation and Arbitration ordered, on 27 February 2002, that a new ballot should be held involving only the AVIACSA pilots. That ballot took place on 13 March 2002. On that occasion, of 111 pilots who participated, 65 voted for ASPA and 46 for STIAS, but in the course of the ballot, the ballot list from Tijuana was stolen, and this was reported to the Attorney-General's Office of the Republic. Consequently, the Federal Council for Conciliation and Arbitration ordered that the pilots who participated in the ballot in Tijuana should attend a hearing on 1 April 2002 in order to confirm their votes. On that occasion, the complainant organization reports that various individuals hired by AVIACSA assaulted the members of ASPA, and this was reported to the criminal court.
88. In addition, the complainant organization alleges that the collective labour agreement between Consorcio Aviaksa S.A. de C.V. (AVIACSA) and STIAS contains various clauses which violate the freedom of association. Clause 4 of the agreement states that if all or some of the workers of a particular speciality separate from or leave the union, they will be replaced by workers who are members of the union.
89. Finally, the complainant organization states that the company again dismissed more pilots in April and May 2002 for voting in favour of ASPA at the last ballot on 13 March 2002.
90. In a communication dated 11 September 2002, the Government states that, in its last examination of the case, the Committee determined that, since the Government of Mexico had demonstrated that the most representative trade union in the AVIACSA company was the Trade Union of Workers in Aeronautics, Similar and Related Industries of the Mexican Republic (STIAS) (which signed the collective agreement in force), it does not appear that the principles of collective bargaining were violated by denying ASPA the right to

negotiate a specific collective agreement for the pilots' group. The Committee emphasized that the system of collective bargaining with exclusive rights for the most representative trade union is compatible with the principle of freedom of association. This is a matter to be decided on the basis of national law and practice.

91. With respect to the contents of the collective labour agreement concluded between AVIACSA and the Trade Union of Workers in Aeronautics, Similar and Related Industries of the Mexican Republic (STIAS), the Government of Mexico states that it unfailingly respects the effective recognition of the right to collective bargaining, in accordance with articles 386 to 403 of the Federal Labour Law.
92. Such collective agreements must also cover the minimum labour standards laid down in section XXVII of article 123, paragraph A of the Political Constitution of the United Mexican States and article 56 of the Federal Labour Law states that under no circumstances shall conditions of labour be inferior to those laid down in that law and shall be proportionate to the importance of the services in question and shall be the same for the same kinds of work.
93. The Government adds that, in any case, any worker who considers his rights to be violated, is entitled to take action to assert them according to the terms of the Federal Labour Law itself.
94. With regard to ASPA's assertion that it is incorrect that the ballots were general with the participation of the entire AVIACSA workforce, the Government points out that, since it demonstrated that a trade union with greater representativity existed in the AVIACSA company, it did not appear that the principles of collective bargaining had been violated by denying ASPA the right to negotiate a specific agreement for the pilots' group. In addition, the Sixth Collegiate Tribunal on Labour of the First Circuit, in the appeal brought by ASPA in case No. DT.17536/2001, ordered solely the AVIACSA pilots to be balloted, making the previous ballot null and void. The Federal Council for Conciliation and Arbitration, pursuant to the ruling of the Collegiate Tribunal, was obliged to comply and complied in full with the order, holding a new ballot on 13 March 2002 exclusively for the pilots. The Collegiate Tribunal, in granting ASPA the right to appeal, did not rule on the substance of the problem. In no part of the ruling was it established that the ballot should be thus conducted because the right to sign the collective labour agreement was in dispute, in relation to that category of workers. What this ruling considered was that the ballot should be held as requested by ASPA, i.e. exclusively for the pilots, on purely procedural grounds.
95. As regards the theft of the voting list in Tijuana, Baja California, the clerk commissioned to conduct the ballot confirmed that the list had been stolen containing the names, votes, forms of identification, signatures and objections from the airline pilots who had participated in the ballot up to 1700 hours on 3 March 2002. In accordance with article 782 of the Federal Labour Law, the Council summoned the pilots who had participated in the ballot in this entity to appear on 1, 2, 3, 4 and 5 April 2002 and cast their votes freely before the agreements secretary. This was necessary in order to identify who had voted and for which union, so as to ensure legal certainty and avoid leaving any of the parties defenceless.
96. On 1 April 2002 acts of violence occurred involving ASPA, AVIACSA and the Trade Union of Workers in Aeronautics, Similar and Related Industries of the Mexican Republic (STIAS), demonstrating clear irresponsibility and lack of respect towards the authority and those subject to it. The agreements secretaries Pedro Antonio Ruiz and Rodríguez and Enrique Sebastián Fonseca Aguilar noted these occurrences in a formal record. Subsequently, Special Council No. 2 ordered, in an official document, that the record and a

certified copy of the aforementioned agreement be handed over to the Federal Public Prosecutor's Office and warned the parties to conduct themselves with due respect and consideration in the hearings or proceedings concerned, cautioning them that disciplinary measures set forth in the Federal Labour Law would otherwise be imposed.

- 97.** As regards the alleged unfair dismissal of pilots who voted for ASPA in the ballot of 13 March 2002, it should be pointed out that they can take legal action for unfair dismissal so that the Federal Council for Conciliation and Arbitration can determine whether they were unfairly dismissed on account of their trade union activity.
- 98.** In conclusion, the Government affirms that during the proceedings concerning the right to sign the AVIACSA collective agreement, the parties were able to exercise their rights in accordance with the law and take action against those resolutions which they considered affected them. The authorities acted in accordance with Convention No. 87.
- 99.** *The Committee notes the information from the complainant organization and the Government's observations. As regards the negotiation of a collective agreement by the airline pilots, in its previous examination of the case the Committee concluded that "as the Government has demonstrated that the most representative trade union at AVIACSA is STIAS (the holder of the collective agreement), it does not appear that the principles of collective bargaining have been violated by denying the complainant organization the right to negotiate a specific collective agreement for the pilots. The Committee notes that systems of collective bargaining with exclusive rights for the most representative trade union and those where it is possible for a number of collective agreements to be concluded by a number of trade unions within a company are both compatible with the principles of freedom of association. This is a matter to be decided on the basis of national legislation and practice" [see 328th Report, para. 526]. The Committee notes the communication from the complainant organization on the content and circumstances in which the collective agreement in force was concluded, and its explanations which reveal that national law grants the possibility of a specific collective agreement for a particular category of workers, as is the case with the pilots, and notes that in the last ballot held on 13 March 2002, in accordance with the ruling of the Sixth Collegiate Tribunal on Labour of the First Circuit, in which only the airline pilots were to participate, ASPA obtained the majority of the votes. The Committee requests the Government to take measures to promote discussions between the parties with a view to considering the possibility of concluding a specific collective agreement for the pilots; otherwise it should ensure that the pilots' trade union organizations can participate in the negotiation of the enterprise collective agreement.*
- 100.** *As regards the acts of violence which took place during the hearing of 1 April, which was held because of the theft of the Tijuana voting list in order to identify who the workers had voted for, the Committee notes the Government's information that the Public Prosecutor's Office cautioned the parties and warned them of disciplinary sanctions and requests it to keep it informed of any judicial decision in this respect which may remain pending.*
- 101.** *As regards the dismissals of the ASPA members referred to by the Committee in its previous examination of the case, the Committee observes that the judicial proceedings are still pending. The Committee requests the Government to take the appropriate measures to ensure that those proceedings are concluded as quickly as possible and, if the anti-union nature thereof is proven, that the dismissed workers are reinstated immediately, without loss of pay. In addition, the Committee notes with concern the allegations relating to the dismissal of new workers for voting in favour of the ASPA trade union organization. The Committee notes the high number of dismissals in the context of a collective bargaining dispute and that the Government merely points out the existence of the possibility of taking legal action. The Committee recalls that no person should be dismissed or prejudiced in*

his or her employment by reason of trade union membership or legitimate trade union activities [see *Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, para. 696]. The Committee requests the Government to ensure that the relevant inquiries are conducted immediately and, if the anti-union nature of these latest dismissals is proven, to consider the possibility of ensuring the reinstatement of these workers as soon as possible. The Committee requests the Government to keep it informed in this respect.

102. As regards the allegations concerning the clauses of the collective agreement, the Committee notes the Government's information that the guidelines to be followed by collective agreements are established in law and that any worker who considers his rights to have been violated may take legal action. The Committee has emphasized on a previous occasion that "problems related to union security clauses should be resolved at the national level, in conformity with national practice and the industrial relations system in each country. In other words, both situations where union security clauses are authorized and those where these are prohibited can be considered to be in conformity with ILO principles and standards on freedom of association" [see *Digest*, op. cit., para. 323].

Case No. 2020 (Nicaragua)

103. The Committee last examined this case, relating, in particular, to anti-union dismissals, at its June 2000 meeting [see 321st Report, paras. 42-50]. On that occasion, the Committee, after having noted that the workers who had accepted settlements could not be reinstated as the matter had been resolved once and for all, made the following conclusions and recommendations:

The Committee regrets that the Government has not interceded on behalf of the 367 dismissed workers and recalls the principle that it would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation in cases where employers can, in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker, if the true reason is the worker's trade union membership or activities.

104. In a communication dated 6 June 2002, the Government sent the ruling of the Appeals Court, Managua District, Labour Division, dated 17 May 2002. By virtue of this, the Nicaraguan Telecommunications Company (ENTEL) shall reinstate, within three days of notification of the decision to the plaintiffs, Plácido H. Rojas Vilchez, Mario Rafael Malespín Martínez (who had trade union privileges) and Yarbín José Roa Vallejos in the same positions that they held and in identical working conditions, with the corresponding payment of the usual salaries owing to each one of them from the date of their dismissal until their reinstatement. The plaintiffs shall collect the social allowances and benefits to which they are entitled, in accordance with the law and the collective labour agreement in force.
105. The Committee notes this information and repeats once again the principle mentioned in its previous conclusions and recommendations.

Case No. 2006 (Pakistan)

106. This case concerns a ban on trade union rights and activities at the Karachi Electric Supply Corporation (KESC) and the forced retirement of trade union officials at KESC and at the Pakistan Water and Development Authority (WAPDA). When it last examined this case, the Committee urged once again the Government to lift the ban on trade union activities at KESC, and requested it to restore without delay the rights of the KESC Democratic Mazdoor Union as collective bargaining agent [326th Report, paras. 120-123].

- 107.** In a communication of 26 August 2002, the Government indicates that the KESC is being privatized and that the Ministry of Labour has taken up the issue of the protection of workers' rights in that process with the Federal Steering Committee monitoring the restructuring and privatization of KESC. In that context:
- a package of compensation for KESC employees will be developed in consultation with employees' representatives, under a Memorandum of Agreement between the relevant ministries and the All Pakistan State Workers Action Committee (APSWAC);
 - upon being privatized, KESC will avoid the inclusion of any provision that may affect workers' right to form trade unions under Conventions Nos. 87 and 98;
 - KESC will enter a bilateral agreement with employees' representatives to maintain good order and discipline in the unit after privatization; that agreement may include provisions for the bilateral resolution of issues without resorting to industrial action.
- 108.** *The Committee takes note of this information. Recalling that the Government should, without delay, lift the ban on trade union activities at KESC and restore the rights of the KESC Democratic Mazdoor Union as collective bargaining agent, the Committee urges once again the Government to take such measures without delay and to keep it informed of developments in the process of KESC privatization, in particular as regards the preservation of workers' rights. The Committee further requests the Government to provide it with a copy of the agreement between the ministries and the APSWAC, once it is concluded.*

Case No. 2086 (Paraguay)

- 109.** The Committee last examined this case at its June 2002 meeting [see 328th Report, paras. 552-569], on which occasion it formulated the following recommendations:
- (a) Taking into account the serious flaws in the legal proceedings, both procedural and of substance, and in particular the lengthy duration of the pre-trial detention, as well as the fact that there was a denial of justice since no tribunal ruled on the requests for conditional or final release of trade union leaders, the Committee believes that all necessary measures should be taken to ensure the release of Alan Flores, Jerónimo López and Reinaldo Barreto Medina. Furthermore, the Committee hopes that the judicial bodies will speed up the proceedings, requests the Government to keep it informed of any judicial decision issued in this respect, and hopes that these decisions will be made in accordance with Conventions Nos. 87 and 98.
 - (b) The Committee requests the Government to keep it informed of any proceedings that Florinda Insaurralde may bring against resolution No. 321/99 and Decree No. 7081/2000, which led to her dismissal.
- 110.** In a communication of September 2002, the complainant organizations criticize the conditions under which the trade union leaders Alan Flores and Jerónimo López are detained (a dirty and badly lit dungeon) and allege that their lives had been threatened in their place of detention. They also allege that the Judge of First Instance of the Criminal Courts violated constitutional provisions by recently refusing to liberate the abovementioned trade union leaders for having served part of the sentence imposed on them.
- 111.** In its communication of 6 September and 7 October 2002, the Government states with regard to the legal proceedings concerning Alan Flores, Jerónimo López and Reinaldo Barreto Medina that: (1) in order to hear the appeal against the sentence handed down in

the first instance, as well as the appeal against other decisions, the Second Chamber of the Criminal Court of Appeal has been constituted; (2) the members of the Chamber of the Court of Appeal are collectively in the process of reading the entire content of the file and have taken measures in order that the appeal be resolved shortly; and (3) the criminal judge of justice enforcement No. 7 handed down a ruling to liberate Alan Flores and Jerónimo López for having served the minimum sentence and to apply substitute measures (house arrest) instead of preventive detention.

- 112.** *The Committee notes this information and, in particular, the fact that the trade union leaders Alan Flores and Jerónimo López are currently under house arrest. However, taking into account its previous comments, the serious flaws in the legal proceedings concerning the two trade union leaders noted in the previous examination of the case, the time gone by since the sentence was handed down in the first instance (over one year) without the relevant appeal having been decided, and the fact that the accused have already served the minimum sentence imposed on them in the first instance, the Committee profoundly regrets that no measure has been taken to release Reinaldo Barreto Medina, Jerónimo López and Alan Flores.*
- 113.** *Lastly, the Committee reiterates its recommendation concerning the dismissal of Florinda Insaurralde and that it be kept informed of all motions filed.*

Case No. 1796 (Peru)

- 114.** At its November 2001 meeting, the Committee requested the Government to keep it informed of the final outcome of the proceedings concerning the trade union leader, Mr. Delfín Quispe Saavedra [see 326th Report, paras. 127-129].
- 115.** In communications dated 15 April and 27 May 2002, the Government states that the two legal proceedings (on repayment of social benefits – which had already been declared without grounds – and the payment of arbitration awards – the appeal of which was quashed) initiated by Mr. Delfín Quispe Saavedra against the Iron and Steel Enterprise of Peru were withdrawn, and therefore there are no legal proceedings recorded on the invalidity of the dismissal of Mr. Delfín Quispe Saavedra.
- 116.** *The Committee notes this information and recalls to the Government the general conclusion that it made at its first examination of the case in which it requested that the necessary measures be taken to ensure that in future the application of such staff reduction programmes is not used to carry out acts of anti-union discrimination [see 304th Report, para. 458].*

Case No. 1813 (Peru)

- 117.** At its June 2001 meeting, the Committee expressed the hope that the judicial proceedings under way at that time (concerning the death of the trade unionists Messrs. Alipio Chueca and Juan Marco Danayre Cisneros as a result of shots fired by CORDECALLAO security staff) be concluded in the near future and requested the Government to keep it informed in that regard [see 325th Report, para. 63].
- 118.** In its communication of 29 August 2002, the Government states that the proceedings in question are on hold until the oral proceedings are rescheduled.
- 119.** *The Committee highlights that justice delayed is justice denied, once again expresses the firm hope that the judicial proceedings in question be concluded in the near future and requests the Government to keep it informed of the outcome of these proceedings.*

Case No. 2076 (Peru)

- 120.** The Committee last examined this case at its June 2002 meeting [see 328th Report, paras. 65-67]. The Committee requested the Government: (1) to confirm whether the trade union leaders Mr. Rey Fernández Patiño and Mr. Adriel Vargas Cáritas had in fact been reinstated in their posts; and (2) to communicate the final outcome of the proceedings concerning trade union officials Mr. Heraldo Torres Osnayo and Mr. Juan Ayulo Petzoldt. The Committee regretted that more than two years after the alleged events had taken place, it did not have the information that the Government had requested of the enterprise (to confirm the reinstatement of the trade union leaders Mr. Rey Fernández Patiño and Mr. Adriel Vargas Cáritas) and requested the Government to take measures without delay so that this information can be provided to the Committee.
- 121.** In its communications of 29 August and 18 September 2002, the Government encloses the final judgements concerning trade union officials Mr. Heraldo Torres Osnayo and Mr. Juan Ayulo Petzoldt which ordered their reinstatement in their posts. The Government confirms that the trade union officials Mr. Rey Fernández Patiño and Mr. Adriel Vargas Cáritas were reinstated in their posts.
- 122.** *The Committee notes with satisfaction the information sent by the Government.*

Case No. 2098 (Peru)

- 123.** The Committee last examined this case, concerning the dismissal of trade union officials, the request for the cancellation of the registration of a trade union and non-observance of a collective agreement, at its March 2002 meeting [see 327th Report, paras. 738-761]. On that occasion, the Committee made the following recommendations:
- the Committee once again requests the Government to promptly keep it informed of the ruling handed down by the Supreme Court concerning the dismissal of the trade union official Mr. Amílcar Zelada;
 - as regards the dismissal of the trade union leader Mr. Hipólito Luna Melgarejo (of the trade union of the Agroindustrial San Jacinto SA Enterprise), the Secretary-General and seven leaders of the Single Trade Union of Workers of the Agroindustrial Laredo SA Enterprise, the Committee notes the Government's indication that the trade union leader Mr. Dionisio Cruz Ramos (Agroindustrial Laredo SA Enterprise) has benefited from a judicial order for reinstatement in his job and that it will keep the Committee informed of the judgements to be handed down in respect of the dismissals of the other trade union leaders. As concerns the dismissals of Mr. Carlos Alberto Paico and Mr. Alfredo Guillermo de la Cruz Barrientos (members of the Board of the Trade Union of Workers of the Industrial Nuevo Mundo Company) and that of the union members and former officials Mr. Alfonso Terrones Rojas and Mr. Zósimo Riveros Villa, the Committee requests the Government to investigate without delay the dismissals and, if it finds that the persons in question were indeed dismissed because of their trade union activities, that it take measures to ensure their reinstatement in their posts. The Committee requests the Government to keep it informed of the development of all legal proceedings connected with the dismissals;
 - the Committee repeats its previous observation on the need for the Government to take measures to amend the legislation with a view to reducing the minimum number of workers required by law to constitute non-enterprise trade unions.
- 124.** In its communications dated 6 June and 14 September 2002, the Government states that, with regard to the ruling of the Supreme Court on the dismissal of the trade union official Mr. Amílcar Zelada, it declared irreceivable the appeal lodged by the official. Concerning the other alleged dismissals, the Government asked the judicial authorities for information. With regard to the reduction of the minimum number of workers required by law to

constitute non-enterprise trade unions, the Government states that the National Council for Labour and Social Promotion, comprised of workers' and employers' representatives and representatives from social organizations linked to the sector, has elaborated a draft law to modify the current law on collective labour relations, in particular those referring to collective labour rights. The new article 14 of this law will state that "in order to establish themselves and to maintain their existence, trade unions shall have as members at least twenty (20) workers, for enterprise trade unions; or at least fifty (50) workers, for trade unions not falling into this category".

125. *Having noted the information provided by the Government, the Committee:*

- *notes that the Supreme Court ruled irreceivable the appeal lodged by the trade union official Mr. Amílcar Zelada;*
- *as regards the dismissal of the trade union leader Mr. Hipólito Luna Melgarejo (of the trade union of the Agroindustrial San Jacinto SA Enterprise), the Secretary-General and seven leaders of the Single Trade Union of Workers of the Agroindustrial Laredo SA Enterprise, the Committee takes note of the judicial order for reinstatement in his job of trade union leader Mr. Dionisio Cruz Ramos (Agroindustrial Laredo SA Enterprise), and once again requests the Government to keep it informed of the rulings handed down on the dismissals of the other trade union leaders. As regards the dismissals of Mr. Carlos Alberto Paico and Mr. Alfredo Guillermo de la Cruz Barrientos (members of the Board of the Trade Union of Workers of the Industrial Nuevo Mundo Company) and of the trade union members and former officials Mr. Alfonso Terrones Rojas and Mr. Zósimo Riveros Villa, the Committee, while taking note that the Government is waiting for certain information, requests it once again to investigate without delay the dismissals and, if it finds that the persons in question were indeed dismissed because of their trade union activities, that it take appropriate measures to ensure their reinstatement in their posts. The Committee also, once again, requests the Government to keep it informed of the development of all legal proceedings connected with the dismissals; and*
- *finally, as regards the need to take measures to amend the legislation with a view to reducing the minimum number of workers required by law to constitute non-enterprise trade unions, the Committee notes the draft law to modify the current law on collective labour relations as regards collective labour rights and that the new article 14 of this law will fix the minimum number of workers for enterprise trade unions at 20 and that for non-enterprise trade unions at 50. The Committee requests the Government to keep it informed of developments with regard to this draft law.*

Case No. 1826 (Philippines)

- 126.** The Committee last examined this case at its March 2002 session [327th Report, paras. 98-100], which concerns lengthy delays and several postponements of the trade union certification election (first requested in February 1994) at Cebu Mitsumi Inc., in the Danao export processing zone. On that occasion, the Committee had noted the Government's communication indicating that the certification dispute was submitted to a mediator-arbitrator, who was supposed to resolve the issue before 31 January 2002. In view of the lengthy delays, the Committee expressed the firm hope that the mediator-arbitrator would issue very shortly a decision fully taking into account freedom of association principles. It requested the Government to provide it with a copy of that decision, and to keep it informed of developments. The Committee requested once again the Government to provide information on the suspension of Mr. Ulalan, president of the Cebu Mitsumi Employees' Union, and on steps taken with a view to establishing

legislative framework allowing for a fair and speedy certification procedure, providing adequate protection against acts of interference by employers in such matters.

- 127.** In its communication of 20 May 2002, the Government indicates that on 3 April 2002, the mediator-arbitrator has ruled that certification election at Cebu Mitsumi was a failure, as the total number of valid votes cast in the 4 May certification election was less than the majority of all eligible employees in the bargaining unit. In addition, the Government informs that the counsel for the petitioner (Cebu Mitsumi Inc. Employees Union) has filed a Memorandum of Appeal, while the counsel for respondent (Mitsumi Inc.) has filed its reply Memorandum of Appeal, and that all records of the case have been endorsed to the Labor and Employment Secretary on 7 May 2002, for review and resolution.
- 128.** *The Committee takes note of this information. The Committee expresses its deep regret that the question of trade union certification at Cebu Mitsumi has not yet been resolved, despite the fact that it first examined this question over seven years ago. It urges the Government to expedite the proceedings concerning the Appeal of the mediator-arbitrator's decision on the certification election at Mitsumi, and hopes that the decision will be compatible with freedom of association principles. With regard to the other issues concerning this case, the Committee regrets that, once again, the Government has not provided any information and requests it to provide information on the suspension of Mr. Ulalan and on steps taken with a view to establishing a legislative framework allowing for a fair and speedy certification process, providing adequate protection against acts of interference by employers in such matters.*

Case No. 1972 (Poland)

- 129.** The Committee last examined this case at its June 2002 meeting where it requested the Government to keep it informed of the outcome of the judicial proceedings concerning Mr. Grabowski, Chairperson of the workers' organization, Sprawiedliwosc [328th Report, paras. 68-70].
- 130.** In a communication of 27 August 2002, the Government provided the judgement issued on 6 May 2002 by the District Court of Warsaw Praga-South. The Court held that the dismissal of Mr. Grabowski was justified and had no connection with his trade union activities. Considering that his reinstatement "would be incompatible with the social and economic objectives of the law and the principles of community life", the court dismissed his claim for reinstatement but awarded him a compensation for unlawful termination of contract in the amount of three months salary, with interest from the date of dismissal.
- 131.** *The Committee takes note of this information.*

Case No. 2094 (Slovakia)

- 132.** The Committee last examined this case, which concerned amongst other things allegations regarding a legislation which would restrict the right to strike, at its March 2002 session [see 327th Report, paras. 104-106]. It had previously requested the Government to take full account of the principles of freedom of association in the drafting of the amendments of Act No. 2/1991, Collection of Laws on Collective Bargaining, and trusted that all the relevant amendments would be adopted in the near future. In this regard, the Committee later noted that the amendments to Act No. 2/1991 were reflected in Act No. 209/2001, Collection of Laws, which came into force on 1 January 2002.
- 133.** In a communication of 20 May 2002, the complainant organization acknowledges that following the complaint it lodged, and the subsequent recommendations by the Committee,

the Act on Collective Bargaining was amended. However, the complainant organization expresses its deep concern over the fact that the Government has considered that the strike staged by the Trade Union Association of Railwaymen in June 2001, which was the basis for the complaint in this case, was a political one and was thus “beyond the principles of freedom of association”. The complainant organization insists on the fact that the said strike was aimed at defending the employees’ interests and that the railwaymen had a legitimate right to organize it.

- 134.** In a communication dated 13 September 2002, the Government indicates that in a statement of January 2002, it categorized the strike staged by the Trade Union Association of Railwaymen, based on the nature of claims demanded via strike action, as a protest (political) strike and not as an occupational or trade union strike. The Government explains that in June 2001 the complainant organization issued a statement in order to coordinate the strike action in several regions, which stated: “We inform everyone that the strike action being prepared on 14 June 2001 is not a strike pursuant to the Act on Collective Bargaining. The objective of the strike is the protection of economic and social interests of employees of the Slovak Republic Railways.” Thus, according to the Government, the objective of the strike was directed against the restructuring of the Slovak Republic railways and was not directly of an occupational nature.
- 135.** *The Committee has taken note of the follow-up information provided by the complainant organization as well as the detailed reply from the Government. The Committee wishes to recall that the occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers. Furthermore, while purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government’s economic and social policies. Finally, the Committee recalls that the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members’ interests.*

Case No. 1581 (Thailand)

- 136.** The Committee last examined this case at its March 2002 meeting when it expressed its concern over the maintenance by the State Enterprise Labour Relations Act (SELRA) of a situation of trade union monopoly in state enterprises, broad powers granted to the Registrar to oversee certain internal affairs of the trade union, a general prohibition of strikes and severe penalties for strike action, even when peaceful. The Committee asked the Government to take necessary measures to amend the SELRA so as to bring it fully into conformity with the principles of freedom of association. It further requested the Government to send a copy of the additional proposed amendments to the Labour Relations Act that at the time were under consideration by the Council of State [see 327th Report, paras. 107-112].
- 137.** The Committee notes the Government’s communication of 7 October 2002 in which the Government indicates that the SELRA was a result of a democratic process, agreed upon and supported by all concerned parties. The Government further states that since the Act has been in force, it has benefited employers, state enterprise employees and the public at large. Referring to the observations of the Committee, the Government states that the commented sections of the Act were adopted with a view to enable a state enterprise trade union to become a consolidated, strong and true representative organization of state

enterprise employees, to prevent a problem related to power struggles among trade union leaders caused by the competition in establishing a state enterprise trade union, as well as to enable the labour administration to be transparent, able to bring response to real needs of employees, good relations within the organization and to generate peace and stability. According to the Government, in order to achieve the said objectives, the Registrar has to be granted with discretion to oversee activities of a trade union. As concerns strike prohibition, the Committee notes that the Government states that the state enterprises of Thailand are established to run businesses for national security, to provide essential public services and to run businesses for sake of national economy; any industrial action is therefore forbidden.

- 138.** *The Committee takes note of this information. It regrets that no progress has been made in respect of its previous recommendations. Accordingly, the Committee reiterates its previous comments and once again urges the Government to take the necessary measures to amend the act in order to bring it fully into conformity with the principles of freedom of association and to keep it informed of any developments in this regard. It recalls to the Government that the technical assistance of the Office is available in this respect, should the Government so desire.*

Case No. 2126 (Turkey)

- 139.** The Committee last examined this case at its meeting in March 2002 when it requested the Government to: take the necessary measures to guarantee the right of Dok Gemi-Iş to organize and represent its members in the Pendik and Alaybey shipyards; institute an independent investigation into the allegations of impending anti-union dismissals of 1,100 workers at the Haliç and Camialtı shipyards; institute independent investigations into the allegations of harassment and intimidation of Dok Gemi-Iş members by management, including the dismissal of the maximum number of workers allowed by law (nine per month), and the dismissal of some 200 workers at the ship-scraping site at Aliaga the day after they had agreed to join the union and to take the necessary remedial steps if these allegations are proven to be true, including reinstatement in their jobs or adequate compensation for damages suffered by those dismissed; and amend the dual criteria for representational rights set forth in section 12 of Act No. 2822 [see 327th Report, paras. 805-847.]
- 140.** In a communication dated 9 September 2002, the Government reiterates the explanations given in its initial response to the complaint concerning the designation of the Pendik and Alaybey shipyards as within the national defence sector and concludes that it is not legally possible for the management to grant competence to the Dok Gemi-Iş to represent workers in these military shipyards. As regards the allegations of impending anti-union dismissals, the Government states that the national legislation provides effective protection for freedom of association and any acts contrary to this principle can be appealed to the courts. In light of the independence of the judiciary, the Government states that it is not possible to institute an inquiry or investigation upon a final verdict of a court of law. As regards the allegations of management harassment and intimidation of Dok Gemi-Iş members, the Government once again states that such matters can be appealed to the courts and that, in any event, they were not substantiated. Finally, in respect of the dual criteria for representational rights, the Government states that a Committee of Academics, including the social partners, has been established with the objective of bringing national legislation into conformity with international labour standards and the draft texts will soon be submitted to the National Assembly.
- 141.** *While taking due note of the information provided by the Government, the Committee expresses its deep regret at the Government's unwillingness to give effect to its recommendations on all the matters raised, with the exception of the question of dual*

criteria for representational rights. In these circumstances, the Committee first considers it necessary to recall its conclusion that the classification of the Pendik and Alaybey shipyards as part of the national defence sector constituted a violation of both the organizational and the representational rights of the workers affiliated to Dok Gemi-Iş. The Committee came to this conclusion, amongst other reasons, because it considered that the distinction made between shipbuilding in the commercial sector and that carried out for naval purposes bordered on the illogical, particularly given the identical nature of the functions carried out by the workers and the fact that there is no distinction between their status as employee. The workers in these shipyards were one day considered within the shipbuilding sector and the next day were classified as within the national defence sector; the result being that, from one day to the next, their union could no longer represent them. The Committee therefore once again calls on the Government to take the necessary measures to guarantee the right of Dok Gemi-Iş to organize and represent its members in the Pendik and Alaybey shipyards and to keep it informed of the progress made in this regard. As concerns the institution of independent investigations into the allegations of impending dismissals, harassment and intimidation, while noting the Government's reference to the mandate of the courts in this respect, the Committee considers that these allegations, which concern large numbers of workers and relate to an overall question of the industrial relations climate in certain shipyards, might best be settled, for all concerned, by an independent investigation. In the absence of any pending court cases on these matters which might understandably give rise to a problem of conflicting mandates in the event an investigation was initiated, the Committee once again urges the Government to institute independent investigations into these pending matters with the aim of improving the overall industrial relations climate and redressing any acts of anti-union discrimination. It requests the Government to keep it informed of the progress made in this regard. Finally, the Committee requests the Government to keep it informed of any developments in the drafting of amendments concerning the dual criteria for representational purposes.

Case No. 2018 (Ukraine)

- 142.** The Committee last examined this case at its June 2002 meeting when it requested the Government to ensure that the criminal proceedings against the president of the Independent Trade Union of Workers of the Ilyichevsk Maritime Commercial Port (the NPRP) are carried out with diligence [see 328th Report, paras. 79-82].
- 143.** In its communication dated 23 August 2002, the Government indicated that the Odessa regional administration examined the questions of violation by the administration of the Ilyichevsk Maritime Commercial Port of the NPRP's trade union rights. Upon verification, it had been found that the port administration has not been transferring trade union dues for a period of 14 months. However, the Government indicated that starting August 2002, the port administration began paying off the debt and had transferred 14,000 griven to the trade union's account. Furthermore, the Government indicated that according to section 46 of the Law on Trade Unions, "persons who by their acts or failure to act impede the legitimate activity of trade unions shall be liable to the disciplinary, administrative or criminal responsibility". Therefore, it has been recommended to the NPRP to file a complaint with the courts. The Government further stated that in order to find a solution to the conflict at the Ilyichevsk Maritime Commercial Port, the Ministry of Labour and Social Policy of Ukraine had requested, in August 2002, collaboration from the Ministry of Transport. As concerns the criminal and civil proceedings against the president of the NPRP, Mr. Boychouk, the Government stated that, according to Mr. Boychouk's declaration of 14 August 2002, all the proceedings against him have been dropped.
- 144.** *The Committee notes this information with interest and requests the Government to continue to keep it informed of any further developments relating to this case.*

Case No. 2038 (Ukraine)

- 145.** The Committee last examined this case at its November 2001 meeting when it noted with interest the Government's statement that the proposed amendments to the Trade Unions Act would take into account the conclusions of the ILO technical assistance mission [see 326th Report, paras. 165-167].
- 146.** In a communication dated 12 March 2002, the Free Trade Union's Federation of Ukraine indicates that on 13 December 2001, the Supreme Rada of Ukraine adopted the Act amending the Trade Unions Act, and more particularly its sections 11 and 16. According to the new section 16, for collective bargaining purposes, trade unions are subject to legalization through registration by the Ministry of Justice or district and local administrations of justice. According to the complainant, the new version of section 16 continues to violate trade union rights as it maintains the requirement of registration of a trade union. Such a requirement, according to the complainant, is tantamount to previous authorization to establish a trade union. While obtaining legal personality upon its creation, a trade union cannot fully exercise its activities without satisfying the condition set by section 16. Moreover, the complainant provides examples of difficulties encountered by unregistered trade unions. The complainant has suggested an amendment to section 16 of the Act, which is currently before the Rada committee dealing with social and labour matters. According to the proposed amendment, trade unions would no longer be subject to registration, but only to legalization by the Department of Statistics.
- 147.** In communications dated 25 April, 12 July and 30 August 2002, the Government indicates that, in order to engage in bargaining at the appropriate level for the regulation through collective agreement of labour and socio-economic relations, trade unions, their organizations and associations are subject to legalization (official registration) through registration. The registration of all-Ukrainian trade unions and their associations is carried out by the Ministry of Justice of Ukraine, and that of other trade unions and their associations by the Main Directorate of Justice of the Ministry of Ukraine for the Crimea Autonomous Republic, and the regional, district and municipal justice directorates. The registration certificate is delivered and trade unions are included in the register of public associations on the basis of the documents required by section 16 (trade union by-laws, founding documents, etc.) within one month from the application date. Paragraph 10 of the section amended in December 2001 provides that trade unions and confederations of trade unions acquire their legal personality from the moment of their establishment (approval of by-laws). Legal personality is also acquired by the organizations affiliated to the trade union carrying out its activity on the basis of its by-laws. Thus, according to the Government, legalization through registration does not constitute previous authorization for the establishment of a trade union. The Government further states that there are 86 presently registered trade unions. Moreover, it considers that the fact that the Free Trade Union's Federation has participated, without being registered, in the negotiation of the General Agreement for 2002-03 demonstrates that the new procedure does not put trade unions in a situation of dependency upon the executive bodies. In light of the above, the Government states, in its communication of 30 August, that the current wording of section 16 of the Act is in conformity with international standards and therefore does not need to be amended. However, in its communication of 12 July, the Government had indicated that the fact that the Act implies a distinction between the acquisition by a trade union of a legal personality (which occurs as soon as its by-laws are approved) and official legal recognition of trade unions created certain difficulties with regard to the interpretation of standards concerning the inclusion of trade unions in the appropriate state registers. In this respect, on 6 June 2002, a meeting of the National Social Partnership Council proposed to the Government to request the Ministry of Justice, in collaboration with representatives of trade unions and employers' organizations, to propose possible amendments to the Act.

148. *The Committee takes note of this information. It notes with interest that, according to the current wording of section 16 of the Trade Unions Act, trade unions and confederations of trade unions acquire their legal personality from the moment of their creation. As concerns trade union registration, the Committee recalls that, in many countries, organizations are required to register; such legislation is not in principle incompatible with the Convention. However, problems of compatibility with the Convention may arise where, in practice, competent administrative authorities make excessive use of their powers and are encouraged to do so by vagueness of the relevant legislation. The Committee notes that the Government itself has acknowledged that the distinction between the acquisition by a trade union of a legal personality (which occurs as soon as its by-laws are approved) and official legal recognition of a trade union creates certain difficulties with regard to the interpretation of standards concerning the inclusion of trade unions in the appropriate state registers and that the National Social Partnership Council is of the opinion that section 16 needs to be amended. The Committee also notes from the complainant's communication that application of section 16 continues to pose practical difficulties for trade unions. The Committee also notes that the complainant formulated an amendment to section 16 of the Act. In the Committee's view, and on the basis of the information provided by both the complainant and the Government, the proposed amendment would be compatible with Convention No. 87. The Committee has previously emphasized the importance it attaches to the promotion of dialogue and consultation on matters of mutual interest between the public authorities and the workers' organizations [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th (revised) edition, 1996, paras. 924-928]. The Committee therefore requests the Government to engage in full consultations with the social partners on the possible amendment of section 16 of the Act in order to resolve this issue to the satisfaction of all the parties concerned. It requests the Government to keep it informed in this respect.*

Case No. 2075 (Ukraine)

- 149.** The Committee last examined this case at its November 2001 meeting when it requested the Government to engage immediately in discussions with the All-Ukrainian Trade Union "Solidarnost" with a view to establishing the date necessary for its registration and to indicate to the union any purely procedural formalities which might still need to be carried out by the union so that it may be registered without delay. The Committee also called upon the Government to take the necessary measures to ensure the reactivation of the union's bank account [see 326th Report, paras. 168-170].
- 150.** In a communication dated 7 June 2002, the Government repeats the information it previously provided according to which, following a ruling of 6 April 2000, the Supreme Court of Arbitration of Ukraine rejected the application made by "Solidarnost" to the Ministry of Justice to quash the decision of the Ministry concerning its registration. Following the ruling of 6 April 2000, "Solidarnost" once again filed the necessary registration documents with the Ministry of Justice on 26 April 2000. In accordance with section 16 of the Act on Trade Unions, their rights and safeguard of their activities, the registration authority carried out checks on the branches of the trade union and found that the documents submitted did not correspond to the status claimed. Registration was therefore refused.
- 151.** *The Committee deeply regrets that the Government has not provided any new information concerning this case and that while the complaint was lodged in March 2000, the complainant organization has still not been able to obtain its registration. The Committee recalls that 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. Therefore, the Committee once again urges the Government to engage actively in discussions with the All-Ukrainian Trade Union*

“Solidarnost” with a view to establishing the date necessary for its registration. It once again requests the Government to keep it informed of the measures effectively taken to ensure the registration of the complainant organization as well as the measures taken concerning the reactivation of the union’s bank account.

Case No. 2146 (Yugoslavia)

- 152.** The Committee last examined this case at its meeting in March 2002 when it requested the Government to take the necessary steps to repeal all provisions of the Yugoslav Law on the Chamber of Commerce which would give rise to compulsory membership or financing. It further requested the Government to ensure that employers may freely choose the organization they wish to represent their interests in the collective bargaining process and that the results of any such negotiations would not be subjected to the approval of the legislatively constituted Chamber of Commerce [see 327th Report, paras. 884-898].
- 153.** In a communication dated 6 June 2002, the complainant in this case, the Yugoslav Union of Employers, indicated that it had not yet received any communication from the Government on the steps it intended to take in accordance with the Committee’s recommendation.
- 154.** In a communication dated 2 September 2002, the Government indicates that intensive activities have been undertaken in recent months aimed at the adoption of the constitutional charter, which should define the attributions of the federal State. Once the constitutional charter is adopted, activities aimed at implementing federal regulations will be pursued.
- 155.** *The Committee takes due note of the information provided by the Government. Recalling the importance it attaches to the right of employers to establish and join the organization of their own choosing and to the voluntary nature of collective bargaining, the Committee expresses the firm hope that the Government will take the necessary steps in the very near future to repeal the provisions of the Yugoslav Law on the Chamber of Commerce which give rise to compulsory membership or financing and to ensure that employers may freely choose the organization they wish to represent their interests in the collective bargaining process without any interference by the legislatively constituted Chamber of Commerce. It requests the Government to keep it informed of the progress made in this regard.*

Case No. 2081 (Zimbabwe)

- 156.** The Committee last examined this case at its March 2002 meeting [see 327th Report, paras. 136-138] concerning the need to ensure that section 120(2) of the Labour Relations Act of 1985 is amended in line with freedom of association principles. On that occasion the Committee requested the Government to keep it informed of the outcome of the parliamentary debate on the Labour Amendment Bill.
- 157.** In a communication dated 6 August 2002, the Government limited itself to indicating that it did not have new information on the case.
- 158.** *The Committee once again expresses the firm hope that section 120(2) of the Labour Relations Act of 1985 will be amended in line with freedom of association principles, including those enunciated in its conclusions during its first examination of this case [see 323rd Report, paras. 567-570]. It again urges the Government to take the necessary measures to amend the legislation in this respect, and to keep it informed.*

* * *

159. Finally, as regards Cases Nos. 1843 (Sudan), 1851 (Djibouti), 1854 (India), 1880 (Peru), 1890 (India), 1922 (Djibouti), 1930 (China), 1937 (Zimbabwe), 1942 (China/Hong Kong Special Administrative Region), 1952 (Venezuela), 1959 (United Kingdom/Bermuda), 1961 (Cuba), 1965 (Panama), 1973 (Colombia), 1996 (Uganda), 2014 (Uruguay), 2027 (Zimbabwe), 2031 (China), 2042 (Djibouti), 2043 (Russian Federation), 2051 (Colombia), 2053 (Bosnia and Herzegovina), 2067 (Venezuela), 2084 (Costa Rica), 2091 (Romania), 2102 (Bahamas), 2109 (Morocco), 2113 (Mauritania), 2120 (Nepal), 2124 (Lebanon), 2125 (Thailand), 2128 (Gabon), 2129 (Chad), 2135 (Chile), 2137 (Uruguay), 2139 (Japan), 2142 (Colombia), 2143 (Swaziland), 2148 (Togo), 2160 (Venezuela) and 2167 (Guatemala), 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. 1785 (Poland), 1826 (Philippines), 1900, 1943, 1951, 1975, 2083, 2119, 2145 (Canada), 1925 (Colombia), 1991 (Japan), 2048 (Morocco), 2058 (Venezuela), 2116 (Indonesia), 2118 (Hungary), 2147 (Turkey) and 2165 (El Salvador), which it will examine at its next meeting.

CASE NO. 2153

INTERIM REPORT

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

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

- 160.** The Committee examined this case at its March 2002 meeting, and on that occasion it presented an interim report to the Governing Body [see 327th Report, paras. 140-161, approved by the Governing Body at its 283rd Session (March 2002)].
- 161.** The SNAPAP sent new allegations in communications dated 7 and 9 March, 2 and 10 April, 8 May and 26 October 2002.
- 162.** The Government sent its observations in a communication dated 10 April 2002.
- 163.** Algeria has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 164.** In its previous examination of the case in March 2002, the Committee made the following recommendations [see 327th Report, para. 161]:
- (a) The Committee requests the Government to take the necessary measures to ensure that the workers who are members of the SNAPAP may establish and join federations and confederations of their own choosing. It requests the Government to keep it informed in this respect.

- (b) The Committee requests the Government to send without delay its observations concerning the specific allegations made by the SNAPAP regarding the prohibition on establishing a trade union section in hospitals, sanctions, suspensions, physical assault, transfers and intimidation of trade union members and officers, and closure of trade union premises. Moreover, as concerns the allegations of dismissals, internment and arbitrary measures against its members forcing them to take exile, the Committee requests the SNAPAP to provide any additional information it considers useful in this regard.
- (c) Expressing its profound concern at the SNAPAP's allegation that, since it presented its complaint to the ILO, the Algerian authorities have refused all contact with it and reneged on promises previously made to it, the Committee requests the Government to send its observations in this respect without delay.

B. New allegations

165. In its communications of March, April and May 2002, the complainant organization alleges, firstly, that in March 2002 the public authorities closed the SNAPAP office in Oran, in order to use it to store the files of candidates in the legislative elections. Moreover, the complainant organization attaches a copy of an administrative decision of the Prefecture of Oran suspending from work eight trade union members on the ground that they encouraged public employees to observe a strike at the headquarters of the Prefecture. In addition, the complainant organization alleges that the public authorities, and more particularly the Prefect of Oran, undertook a campaign to intimidate and harass the Secretary-General of the SNAPAP, this campaign being notably manifested by the forcible closure of the premises of an association presided by the Secretary-General of SNAPAP, premises in which the trade union also carried out its activities. The complainant organization asserts that these actions, on top of the refusal of the Government to meet with the officials of the SNAPAP, serve only to prove that the Government still acknowledges only the UGTA as a social partner. Finally, in a communication of 26 October 2002, the complainant organization alleges that the eight Oran trade unionists mentioned above have received a suspended sentence because they were on a hunger strike.

C. The Government's new observations

166. In a communication dated 10 April 2002, the Government emphasizes, firstly, that the authorities have not, at any time, set limits on freedom of association and have in no way taken steps to oppose the workers of the SNAPAP establishing federations and confederations of their own choosing. The Government states that the allegations of the SNAPAP relate to official recognition of the Algerian Confederation of Autonomous Trade Unions (CASA), which requires the latter to be in conformity with Act No. 90-14 of 2 June 1990, relating to procedures for the exercise of the right to organize. In fact, the SNAPAP apparently exercised its right to organize in the framework of the planned confederation, without awaiting the legal decision of the Ministry of Labour and Social Security. The Government emphasizes, furthermore, that the law of 1990 mentioned above has not been the object of any comment in the context of the regular supervisory procedures of the ILO. The Ministry of Labour and Social Security has therefore acted by following the law in question, in the framework of which it began bargaining procedures during a series of meetings in order to help the SNAPAP establish the CASA. Moreover, in order to remove the difficulties that might arise from the interpretation of provisions relating to the right of the social partners to establish federations and confederations of their own choosing, the Government is considering, in consultation with the social partners, beginning a review of the texts relating to freedom of association. The Government requests technical assistance from the ILO with regard to this in order to implement effectively the recommendations of the Committee on this point.

No. 90-14 of 2 June 1990, it is considering, in consultation with the social partners, beginning a review of the texts relating to freedom of association. In this respect, the Committee welcomes the request for technical assistance from the Government with regard to this issue and reminds it that the Office is available to review the ways in which this might take place. Moreover, it requests the Government to keep it informed with regard to the recognition of the CASA as a trade union confederation.

172. *With regard to the allegations that the Algerian authorities have refused all contact with the SNAPAP following the lodging of the complaint with the ILO, the Committee notes the statement of a meeting held between the Ministry of Labour and Social Security and certain trade union organizations, including the SNAPAP, five months after the complaint was lodged. The Committee hopes that the discussions between the Government and the SNAPAP will continue in the future in the spirit of full cooperation. Moreover, with regard to the allegations of favouritism towards the UGTA and the issue of the representativeness of the latter and that of the SNAPAP, in the absence of new elements in the case, the Committee refers to its comments made during the previous examination of the case [see 327th Report, paras. 156-157].*

173. *With regard to the specific allegations of the SNAPAP concerning the prohibition on establishing a trade union section in hospitals and repeated acts of anti-union discrimination, the Committee notes the information provided by the Government regarding the cases of the three workers in this sector. Moreover, the Committee notes that the complainant organization has provided no further information concerning the allegations of dismissals, internments and other arbitrary measures taken towards the members of the SNAPAP forcing them to take exile. The Committee notes, however, that in its most recent communications, the complainant organization reports a number of obstacles to the exercise of trade union rights in the Prefecture of Oran, particularly with regard to the closure of the SNAPAP office in Oran, the suspension of eight trade union members on the ground that they encouraged public employees to observe a strike, the fact that they received a suspended sentence because they were on a hunger strike, and a campaign to intimidate and harass the Secretary-General of SNAPAP. The Committee requests the Government to send its observations with regard to these new allegations without delay.*

The Committee's recommendations

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

(a) Regarding the difficulties that might arise from the interpretation of certain provisions of Act No. 90-14 of 2 June 1990, relating to the right of the social partners, notably the members of the SNAPAP, to establish federations and confederations of their own choosing, the Committee welcomes the request for technical assistance from the Government on this issue and reminds it that the Office is available to review the ways in which this might take place. Furthermore, the Committee requests the Government to keep it informed with regard to the recognition of the CASA as a trade union confederation.

(b) Noting the recent allegations of obstacles to the exercise of trade union rights in the Prefecture of Oran, particularly with regard to the closure of the SNAPAP office in Oran, the suspension of eight trade union members on the ground that they encouraged observation of a strike, the fact that they received a suspended sentence, and a campaign to intimidate and harass the

Secretary-General of the complainant organization, the Committee requests the Government to send its observations with regard to these new allegations without delay.

CASE NO. 2131

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

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

- **the General Confederation of Labour of the Argentine Republic (CGT) and**
- **the Asociación Argentina de Aeronavegantes (AAA)**

Allegations: The complainants allege that the Ministry of Labour, Employment and Human Resources Training forced trade union organizations by a resolution to adopt new collective labour agreements at the company Aerolíneas Argentinas S.A., and that the latter decided not to renew the employment contracts of 58 cabin crew employees.

- 175.** The complaints in the present case are contained in a communication dated 30 May 2001 from the Asociación Argentina de Aeronavegantes (AAA) and a communication of June 2001 from the General Confederation of Labour of the Argentine Republic (CGT). The Government sent its observations in a communication dated 29 May 2002.
- 176.** Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 177.** In their respective communications of 30 May and June 2001, the Asociación Argentina de Aeronavegantes (AAA) and the General Confederation of Labour (CGT) objected to resolution No. 30/2001, passed by the Ministry of Labour, Employment and Human Resources Training under the terms of Act No. 24013, which required all trade unions and undertakings in the sector in question to form negotiating committees with a view to modifying the collective agreements in force; a framework agreement was proposed at the same time. According to the complainants, the authorities have forced the trade unions to accept new collective labour agreements while denying them the right to defend acquired rights.
- 178.** The Asociación Argentina de Aeronavegantes also states that, in view of its refusal to accept the new framework agreement, Aerolíneas Argentinas S.A. decided not to renew the employment contracts of 58 cabin crew employees. Lastly, the complainant states that the Ministry of Labour passed resolution No. 119/2001 requiring the company to regularize the situation of the employees in question (a copy of the resolution is supplied with the complaint).

B. The Government's reply

- 179.** In its communication of 29 May 2002, the Government reiterates the observations which it made in the context of Case No. 2095 [see the Committee's 327th Report, paras. 165-168] on resolution No. 30/2001 and Act No. 24013 to which the complainants have objected. To summarize, the Government emphasizes that: (1) given the fact that the company had claimed to be in crisis, which meant that it could not continue to operate with the same number of employees as before, and since dismissals had begun in the sector, the Ministry of Labour did all that was legally in its power to revoke the dismissals that had taken place and to preserve jobs in the company; and (2) the authorities did not suspend or annul the existing agreement between the parties by decree or suspend contracts that had already been negotiated, nor did they cancel collective agreements and impose renegotiation; on the contrary, the procedure to which the complainants have objected is intended to harness and promote collective bargaining in crisis situations with a view to avoiding unilateral solutions that are detrimental to jobs. It should also be noted that at no time was the autonomy of the parties concerned compromised. If the parties fail to reach an agreement, the matters in dispute are not settled through compulsory arbitration by the labour authorities (unless the parties seek such arbitration by consensus).
- 180.** Lastly, the Government states that in December 2001, the company Aerolíneas Argentinas S.A. attended insolvency proceedings, and in this context collective talks began, a three-year collective agreement having been concluded by the Asociación Argentina de Aeronavegantes (AAA), among other sector unions.

C. The Committee's conclusions

- 181.** *The Committee notes that in the present case, the complainants object to resolution No. 30/2001 of the Ministry of Labour, Employment and Human Resources Training, which was passed under the terms of Act No. 24013, by which the Government, in view of the economic crisis facing Aerolíneas Argentinas S.A., called on all the sector unions and the company in February 2001 to establish negotiating committees to modify the collective agreements in force, and also proposed a framework agreement. The Government notes that the complainant alleges that, since it did not accept the proposed framework agreement, the company Aerolíneas Argentinas S.A. in reprisal decided not to renew the employment contracts of 58 cabin crew employees.*
- 182.** *The Committee notes that, when it examined a previous complaint at its March 2002 meeting, it formulated certain comments on the ministerial resolution and the Act to which the complainants have objected. The Committee also notes that the Government reiterates the arguments which it put forward on that occasion. Under the circumstances, the Committee refers to its conclusions regarding the previous complaint in question [see 327th Report, Case No. 2095, para. 172]:*

Moreover, the Committee considers that Act No. 24013 and resolution ST No. 30/2001 establish consultation machinery to achieve solutions by consensus to crisis situations and do not oblige the parties to renegotiate the terms of collective agreements. Therefore the Committee will not continue its examination of the allegations.

- 183.** *As regards the allegation that the company decided not to renew the contracts of 58 cabin crew employees in reprisal for the refusal by one of the complainants (AAA) to accept a framework agreement, the Committee notes that the Government passed resolution No. 119/2001 which states that "the Ministry has an obligation to do its utmost to maintain social peace and protect employment, and must therefore adopt all necessary measures to resolve the present dispute", and that "it is appropriate to require the employer to regularize the situation of the employees in question, in the conviction that this will help to*

remove the obstacles to agreements that would resolve their differences". The Committee urges the Government to undertake an investigation of this matter and, if it is found that the non-renewal of the contracts of the 58 employees was linked to the exercise of trade union rights, to draw the necessary conclusions with a view to the possible renewal of those contracts. The Committee requests the Government to keep it informed of developments in this matter.

The Committee's recommendation

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

As regards the allegation regarding the decision not to renew the employment contracts of 58 cabin crew employees in reprisal for the refusal by one of the complainants, the Asociación Argentina de Aeronavegantes, to accept a framework agreement, the Committee urges the Government to undertake an investigation of this matter and, if it is found that the non-renewal of the contracts of the 58 employees was linked to the exercise of trade union rights, to draw the necessary conclusions with a view to the possible renewal of those contracts. The Committee requests the Government to keep it informed of developments in this matter.

CASE NO. 2157

DEFINITIVE REPORT

Complaints against the Government of Argentina presented by

- **the Confederation of Education Workers of Argentina (CTERA) and**
- **the Latin American Federation of Workers in Education and Culture (FLATEC)**

Allegations: The complainant organizations allege a violation of the right to strike of education workers by virtue of the promulgation of ministerial resolutions; they also allege a failure to deduct trade union dues and the denial of trade union leave in the sector.

185. The complaints are set out in the communications from the Latin American Federation of Workers in Education and Culture (FLATEC) dated 10 and 25 September 2001 and from the Confederation of Education Workers of Argentina (CTERA) dated 14 September 2001. The FLATEC subsequently provided additional information in the communications dated 8 November 2001, 5 March, 1 May and 10 June 2002. The CTERA submitted new allegations and additional information in the communications of 2 and 30 October 2001. The Government sent its observations in the communication dated 14 August 2002.

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

A. The complainant's allegations

187. In their communications of 10, 14 and 25 September, 30 October and 8 November 2001, and 5 March and 1 May 2002, the Latin American Federation of Workers in Education and Culture (FLATEC) and the Confederation of Education Workers of Argentina (CTERA) state that the Ministry of Labour, Employment and Social Security violated the right to strike of education workers by promoting resolution No. 480/2001, which qualified state and private education as essential services during the period of compulsory schooling, and resolved to incorporate the action that could be taken in said field into the standards of Executive Decree No. 843/2000 concerning strikes in essential services (FLATEC sent a copy of the rulings of first and second instance which declared the Decree and the aforementioned ministerial resolution unconstitutional).
188. In its communication of 30 October 2002, the CTERA contests resolution No. 632/2001 of 3 October issued by the Ministry of Labour which, based on the stipulations of said resolution No. 480/01, provided that the action to be carried out by the aforementioned organization on 4 October 2001 should be integrated into the standards of Decree No. 843/00 concerning strikes in essential services.
189. Lastly, in its communication dated 2 October 2002, the CTERA alleges that: (1) the administrative authority of the province of La Rioja has not deducted trade union dues from teachers affiliated to the Association of Teachers and Professors of La Rioja (AMP) since May 1999; and (2) on 1 July 1999, the Secretariat of Educational Development of the Ministry of Education and Culture of the province of La Rioja decided to suspend the granting of trade union leave (granted by resolution No. 196 of 20 April 1987) and/or secondments requested by the AMP until said organization duly demonstrated that it had been granted legal trade union status by the Ministry of Labour.

B. The Government's reply

190. In its communication of 14 August 2002, the Government states with regard to the allegations concerning resolution No. 480/01 of the Ministry of Labour, Employment and Social Security and Executive Decree No. 843/01 that the Argentine Trade Union of Private Tutors (SADOP) filed an action for *amparo* (enforcement of constitutional rights) before the courts requesting a precautionary measure to prevent the Decree and aforementioned resolution from being enforced. The Government adds that the judicial authorities approved said action and ordered the Ministry of Labour to abstain from applying said standard to the trade union organization SADOP and the education workers it represents.

C. The Committee's conclusions

191. *The Committee observes that in this case the complainant organizations contest resolutions (Nos. 480/01 and 632/01) of the Ministry of Labour, Employment and Social Security which include the sector of education in the essential services regulated by Executive Decree No. 843/00. In this regard, the Committee notes that the Government states that the judicial authority declared that resolution No. 480/01 was unconstitutional when qualifying the sector of education as an essential service. Furthermore, the Committee observes that contested resolution No. 632/2001 was based on resolution No. 480/01, which, as already pointed out, was declared unconstitutional. The Committee recalls that the right to strike may be restricted or prohibited: (1) in the **public service** only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) and that the*

education sector does not constitute an essential service in the strict sense of the term [see Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996, paras. 526 and 545].

- 192.** *As regards the allegations, according to which: (1) the administrative authority of the province of La Rioja has not deducted trade union dues from teachers affiliated to the Association of Teachers and Professors of La Rioja (AMP) since May 1999; and (2) on 1 July 1999 the Secretariat of Educational Development of the Ministry of Education and Culture of the province of La Rioja decided to suspend the granting of trade union leave (granted by resolution No. 196 of 20 April 1987) and/or secondments requested by the AMP until said organization duly demonstrated that it had been granted legal trade union status by the Ministry of Labour, the Committee notes with regret that the Government has not sent its observations; the Committee requests the Government to take measures to conduct an investigation into the alleged events and, if these allegations and their anti-union nature prove to be true, to take the necessary measures to restore the deduction of trade union dues and guarantee the enjoyment of trade union leave.*

The Committee's recommendation

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

Regretting that the Government has not sent its observations, the Committee requests it to take measures to conduct an investigation into the allegations concerning the failure to deduct trade union dues from AMP members and the denial of trade union leave to AMP officials and, if these allegations and their anti-union nature prove to be true, to take the necessary measures to restore the deduction of trade union dues and guarantee the enjoyment of trade union leave.

CASE NO. 2188

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

Complaint against the Government of Bangladesh presented by

- **Public Services International (PSI) and**
- **the Bangladesh Diploma Nurses Association (BDNA)**

Allegations: The complainants allege that the President and ten members of the BDNA have been harassed and persecuted on account of their trade union activities.

- 194.** The complaint is set out in a communication dated 19 March 2002, from Public Services International (PSI), on behalf of the Bangladesh Diploma Nurses Association (BDNA).
- 195.** The Government submitted its reply in a communication dated 15 June 2002.

196. Bangladesh 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 Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

197. In its communication of 19 March 2002, PSI alleges on behalf of its affiliated organization, the Bangladesh Diploma Nurses Association (BDNA), that the President of that organization, Ms. Taposhi Bhattacharjee, together with ten other senior BDNA members, have been subjected to harassment and persecution on account of their trade union activities.

198. Ms. Taposhi is a senior staff nurse at the Shahid Sorwardi Hospital in Dhaka. She has worked as a nurse in the public health sector for 22 years and, in view of her professional merit, was granted a scholarship from the World Health Organization to take part in an MSc extension course at the University of Adelaide, Australia, where she was due to submit her final thesis in December 2001. On 7 October 2001, she received a written notice that she was suspended from her post at the hospital and from her leave of absence because she had allegedly participated, on 15 September 2001, in a political meeting, which is illegal under Bangladesh public service rules.

199. Ms. Taposhi submits that she was never given an opportunity to present her case. She denies the allegations, which appeared first in a newspaper, and which she immediately rejected. The inquiry report she was shown on 10 February 2002 is completely false and based on adverse testimony; when confronted with it, she provided clear evidence that these allegations were false. The managers of the building where the meeting was supposed to have taken place ("Audit Bhavan") confirmed that no meeting was held there on 15 September 2001, as Friday and Saturday are a government holiday; the building was closed and the entrance locked. The BDNA has tried unsuccessfully to resolve the case with the employer, the Ministry of Health and other authorities.

200. Thereafter, the Director of Nursing Services issued warnings against the General Secretary and nine other members of the BDNA, because they had written to protest against the suspension of Ms. Taposhi and requested that it be withdrawn. The complainant can only conclude that all these measures against Ms. Taposhi and the other executive members of BDNA are motivated by their legitimate trade union activities.

B. The Government's reply

201. In its communication of 15 June 2002, the Government states that, as a public servant, Ms. Taposhi Bhattacharjee is governed by the provisions of:

- the Government Servants (Discipline and Appeal) Rules, 1985;
- the Government Servants (Special Provisions) Ordinance, 1979; and
- the Government Servants (Conduct) Rules, 1979.

202. While article 38 of the Constitution guarantees the right to form unions "... subject to any reasonable restrictions imposed by law in the interest of morality or public order", article 27 provides that "nobody is above law and everybody is equal before law".
203. Under the Government Servants (Discipline and Appeal) Rules, 1985, a public servant may be dismissed for misconduct, which means: conduct prejudicial to good order or service discipline or contrary to any provision of the Government Servants (Conduct) Rules, 1979; conduct unbecoming an official, which includes submitting petitions containing wild, vexatious, false or frivolous accusations against the Government. Public servants may also be dismissed under the Government Servants (Special Provisions) Ordinance, 1979, if they engage in any activity which interferes with discipline and obstructs performance of duties by any other public servant, including inciting other public servants to be absent from, or not to perform, their duties.
204. Under the Government Servants (Conduct) Rules, 1979, criticism of the Government, publication of leaflets, taking part in politics by assisting any political movement in relation to the affairs of Bangladesh, and approaching directly or indirectly any foreign aid agency, constitute offences for which a public servant may be dismissed under the Government Servants (Discipline and Appeal) Rules, 1985.
205. Ms. Taposhi was suspended on 7 October 2001 and an inquiry committee, composed of the Principal of the Nursing Institute of the Dhaka Medical College Institute, was set up on 8 December 2001. This inquiry officer took evidence from seven nurses and the nursing supervisor, and submitted her report on 27 January 2002, concluding that the charges against Ms. Taposhi had been proved. The notice of dismissal was issued on 10 February 2002 and she was removed from service on 26 February 2002.
206. According to the Government, it is on record that Ms. Taposhi printed, published and circulated a leaflet inciting the public in general, and public servants in particular, to rise against the then Non-partisan Caretaker Government, which amounts to sedition, treason and subversion.
207. On 9 March 2002, Ms. Taposhi filed a petition to the High Court Division of the Supreme Court against her dismissal notice, which was stayed by the court on 10 March 2002. The order of the court has been carried out, and Ms. Taposhi is in her job.
208. The Government adds that Ms. Taposhi requested the intervention of PSI without giving them complete information, while the matter of her dismissal was pending in court. Since the case is sub judice, any action taken by anybody would constitute contempt of court; the steps taken by Ms. Taposhi was an act of utter disregard to law and judicial norm. Article 117 of the Constitution of Bangladesh provides that complaints about service matters must be filed with the Administrative Tribunal, but Ms. Taposhi chose instead to petition the High Court Division of the Supreme Court, where the matter is now pending. As the Judiciary in Bangladesh is completely independent from the Executive, the Government cannot take any further steps in this regard.

C. The Committee's conclusions

209. *The Committee notes that this case concerns the dismissal of the president of a trade union organization and threats against ten senior members of its executive committee. The Government justifies the sanction against Ms. Taposhi on the grounds that she printed, published and circulated a leaflet inciting the public in general, and public servants in particular, to rise against the Government. Ms. Taposhi flatly denies having committed these acts which she says are a complete fabrication; she further submits that she was*

never given an opportunity to present her defence and that these measures are due to her trade union activities.

- 210.** *Concerning the Government's argument that, since the case is sub judice, Ms. Taposhi should not have sought PSI's intervention with the ILO and any action by anybody would constitute contempt of court, the Committee recalls that although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, it has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures [Digest of Decisions and Principles of the Freedom of Association Committee, 4th edition, 1996, Annex I, para. 33].*
- 211.** *As regards the provisions relied upon by the authorities to suspend and dismiss Ms. Taposhi, the Committee notes that the public service rules, in particular the outright prohibition of any political activity in the Government Servants (Conduct) Rules, 1979, are couched in rather wide language. The Committee further notes that the Government's characterization of her acts is also strongly worded. It recalls that, although holders of trade union office do not, by virtue of their position, have the right to transgress legal provisions in force, these provisions should not infringe the guarantees of freedom of association nor should they sanction activities which in accordance with the principles of freedom of association should be considered as legitimate trade union activities [Digest, op. cit., para. 42].*
- 212.** *As regards the facts at hand, the Committee notes that the evidence adduced by the Government is rather sparse as it limits itself to stating that it is "on record" that Ms. Taposhi did commit these acts, without submitting supporting material evidence (the impugned leaflet) or testimonial evidence (that she was the person who actually published and circulated the leaflet, or that she incited other public servants to rise against the Government). It also appears from the documents submitted to the Committee that these accusations first arose out of a newspaper report, on the basis of which she was suspended, on 7 October 2001. In addition, according to the Government's own observations, it was only two months later (8 December 2001) that an inquiry committee was set up. Furthermore, it is not challenged that Ms. Taposhi was not given a real opportunity to give her version and present her case (the inquiry officer merely read her the report, which Ms. Taposhi says is untrue and based on false and adverse testimony), nor that the location where the meeting allegedly took place was closed and locked, as the date in question was a government holiday.*
- 213.** *Given the seriousness of the charges and their consequences, as well as the overall frailty of evidence, the Committee considers that it would have been more consonant with due process for the hospital management to hold an inquiry first, and then eventually take appropriate measures after hearing Ms. Taposhi. In the circumstances, the Committee considers that the real motives behind her dismissal might be related to her status and activities as President of the BDNA.*
- 214.** *As regards the current situation of Ms. Taposhi, the Committee notes that the High Court Division of the Supreme Court issued a staying order against her dismissal notice, following which she has been reinstated in her job. It appears however that the merits of the case are still being considered by the High Court but the Committee is not in a position to appreciate on which basis the ruling was made, as it was not provided with a copy thereof. Expressing the firm hope that the Court will take into account the considerations mentioned above on the circumstances of Ms. Taposhi's dismissal, as well as principles of freedom of association, when examining the case on the merits, the Committee requests the Government to provide it with a copy of the staying order issued on 10 March 2002, and with a copy of the final decision once it is issued. Noting that Ms. Taposhi has been*

reinstated in her functions pending the court decision, the Committee requests the Government to take all measures at its disposal to ensure that Ms. Taposhi be definitely reinstated in her job, should the court decide that her dismissal was due to her trade union activities. The Committee requests the Government to keep it informed of developments in this respect.

- 215.** *The findings of possible trade union discrimination above are reinforced by the coincidental warnings issued to the ten senior members of BDNA's executive committee, because they had protested against Ms. Taposhi's suspension and dismissal. The Committee recalls that the right of petition is a legitimate activity of trade union organizations and that persons who sign such trade union petitions should not be reprimanded or punished for this type of activity [Digest, op. cit., para. 719]. The Committee urges the Government to ensure that the warnings issued to these ten workers be withdrawn from their personal files.*

The Committee's recommendations

- 216.** *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 provide it with a copy of the staying order issued by the High Court on 10 March 2002, and with a copy of the final decision once it is issued.*
- (b) Noting that Ms. Taposhi has been reinstated in her functions pending the court decision, the Committee requests the Government to take all measures at its disposal to ensure that Ms. Taposhi be definitely reinstated in her job, should the court decide that her dismissal was due to her trade union activities. The Committee requests the Government to keep it informed of developments in this respect.*
- (c) The Committee urges the Government to give appropriate directions to the management of the Shahid Sorwardi Hospital so that the warnings issued to the ten members of the trade union executive committee be withdrawn from their personal files, and to keep it informed in this respect.*

- 167.** Furthermore, the Government states that four autonomous trade union organizations, the SNAPAP among them, held a meeting with representatives of the Ministry of Labour and Social Security which culminated in the signing of a statement by the parties (a copy of this statement is attached to the Government's communication). Therefore, contrary to the allegations of the SNAPAP, according to which the authorities refused all contact with it following the lodging of the complaint with the ILO, this statement shows that a meeting took place on 23 December 2001, i.e. five months after the SNAPAP had lodged its original complaint with the ILO.
- 168.** With regard to the allegations of favouritism towards the UGTA, the Government states that the SNAPAP, according to its degree of representativeness with regard to the other trade union organizations, receives financial subsidies to help it carry out its trade union activities. While the amount of the subsidy (850,000 Algerian dinars) is less than that received by the UGTA, the Government states that this is calculated with regard to the trade unions involved according to the legislative texts in force which are based solely on the criteria of representativeness for the allocation of rights. Moreover, to this day, the SNAPAP has not lodged documents approving the representativeness that it claims with regard to the governmental authorities and the social partners.
- 169.** Regarding the specific allegations relating to the health sector, the Government provides the following clarifications:
- Mr. Iftene Kamel, former president of the Social Works Committee, Bologhine, was reinstated in accordance with the decision of the Appeals Committee of the Prefecture of Algiers;
 - Mr. Bechar Lounes, an employee at the University Hospital Centre, was reassigned according to a decision taken by his general sector which undertook to pay him all the back wages owing;
 - the appeal launched by Mr. Choukri Noureddine, member of the SNAPAP, against the sanctions applied against his dental-surgeon wife in the health sector of El Harrach was declared unfounded by the health and population directorate of the Prefecture of Algiers, because this measure was justified by the refusal of the party concerned to be on call in her seventh month of pregnancy when the regulations in force exempted women from being on call only from the eighth month of pregnancy.

D. The Committee's conclusions

- 170.** *The Committee recalls that this case concerns allegations of obstacles to the establishment of a trade union confederation, favouritism with regard to a trade union organization and repeated anti-union harassment.*
- 171.** *With regard to the application of the SNAPAP to establish a confederation (entitled CASA), the Committee notes that the Government repeats its previous reply, to the effect that the application for official recognition of CASA did not conform with the provisions of Act No. 90-14 of 2 June 1990, relating to procedures for the exercise of the right to organize and that this Act has not been the object of any comment in the context of the regular supervisory procedures of the ILO. The Committee recalls that in this respect, during its previous examination of the case, it considered that the provisions of the law mentioned above did not pose a problem from the standpoint of the principles of freedom of association but that the Government's interpretation of these provisions seemed to pose a problem. The Committee notes, moreover, that the Government states that it began a series of meetings in order to help the SNAPAP establish the CASA and that in order to remove the difficulties that might arise from the interpretation of certain provisions of Act*

CASE NO. 2090

INTERIM REPORT

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

- **the Belarusian Automobile and Agricultural Machinery Workers' Union (AAMWU)**
- **the Agricultural Sector Workers' Union (ASWU)**
- **the Radio and Electronics Workers' Union (REWU)**
- **the Congress of Democratic Trade Unions (CDTU)**
- **the Federation of Trade Unions of Belarus (FPB)**
- **the Belarusian Free Trade Union (BFTU)**
- **the International Confederation of Free Trade Unions (ICFTU) and**
- **the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)**

Allegations: The complainants allege that the government authorities: continue to seriously interfere with trade union activities and elections, in particular as concerns the presidency of the trade union federation; has withdrawn the long tradition of check-off facilities; and appointed Workers' delegates to the 2002 International Labour Conference without consultation with the representative workers' organizations. They provide additional information on the dismissal of a trade unionist at the Mogilev automobile plant and the continuing refusal to register the Belarus Free Trade Union for workers at the Khimvolokno State Production Amalgamation.

217. The Committee has examined the substance of this case on several occasions, when it presented interim reports to the Governing Body [324th Report, paras. 133-218, 325th Report, paras. 111-181, and 326th Report, paras. 210-244, approved by the Governing Body at its 280th, 281st and 282nd Sessions (March, June and November 2001)]. The International Confederation of Free Trade Unions (ICFTU) transmitted new allegations in respect of the complaint in communications dated 19 December 2001 and 18 September and 10 October 2002. The Federation of Trade Unions of Belarus (FPB) submitted additional information in communications dated 28 March and 31 May 2002 and the Belarusian Free Trade Union (BFTU) provided additional information in a communication dated 5 February 2002. Finally, the Belarusian Automobile and Agricultural Machinery Workers' Union (AAMWU) sent new allegations concerning this case in communications dated 31 July, 12 September and 11 October 2002.

218. The Government transmitted additional information in reply to the new allegations in communications dated 8 May and 22 October 2002.

219. Belarus 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

220. At its November 2001 session, the Governing Body approved the following recommendations in the light of the Committee's interim conclusions:

- (a) The Committee requests the Government to take the necessary measures to institute an independent investigation into the complainant's allegations that pressure and intimidation were used against the workers of the Belarus Metallurgical Plant with the aim of undermining the established trade union structure and to keep it informed of the outcome of the investigation.
- (b) Bearing in mind the principle that the repartition of trade union dues among various trade union structures is a matter to be determined solely by the trade unions concerned, the Committee once again requests the Government to establish, as a matter of urgency, a truly independent investigation into the claims of delayed transfer of union dues made by the complainants and to take the necessary measures to ensure the payment of any dues owed. It requests the Government to keep it informed of the outcome of these investigations.
- (c) The Committee urges the Government to take the necessary measures, as a matter of urgency, to ensure that Presidential Decree No. 8 is amended so that workers' and employers' organizations may benefit freely, and without previous authorization, from the assistance which might be provided by international organizations for activities compatible with freedom of association. The Government is requested to keep the Committee informed of the measures taken in this regard.
- (d) The Committee requests the Government to take the necessary measures to initiate an independent investigation into the allegations raised by the BFTU concerning the unlawful entry into union premises and the confiscation and destruction of union property and papers and to ensure that any confiscated property and papers are promptly returned to the union. The Government is requested to keep the Committee informed of the outcome of the investigations.
- (e) The Committee requests the Government to take the necessary measures to initiate an independent investigation into the allegations concerning the destruction of trade union papers by the Chief Economic Directorate of the Presidential Administration and to keep it informed of the outcome of the investigation.
- (f) The Committee once again urges the Government to take the necessary measures to eliminate the obstacles to registration caused by the legal address requirement and to provide detailed information on the status of the requests for registration noted in its previous examination of this case.
- (g) The Committee requests the Government to take the necessary measures to ensure that Presidential Decree No. 11 is modified so that restrictions on pickets are limited to cases where the action ceases to be peaceful or results in a serious disturbance of public order and so that any sanctions imposed in such cases will be proportionate to the violation incurred. The Committee also requests the Government to provide information in reply to the complainants' allegations concerning the restrictions placed on picketing action and, in particular, the refusal to allow a picket to take place in front of the Ministry of Industry.
- (h) The Committee once again requests the Government to keep it informed of the progress made in instituting independent investigations into: the allegations of threats of dismissal made to members of the GPO "Khimvolokno" Free Trade Union and to the members of the Free Trade Union at the "Zenith" Plant; the allegations of the refusal to employ the re-elected chairperson of the Free Trade Union of Metalworkers at the Minsk Automobile Plant, Mr. Marinich; the questions surrounding the establishment of a regional trade union of electronics industry workers by the Research and Production

Association of the Integral Amalgamation and the decision taken at the Tsvetotron Plant to affiliate to the new regional union; and the allegations concerning threats and pressure placed upon the workers at the Rechitskij Hardware Plant in Gomel to leave the branch union and set up new unions. The Government is also requested to keep the Committee informed of the outcome of these investigations.

- (i) The Committee requests the Government to provide information on the measures taken in accordance with its previous recommendations to ensure the reinstatement of Mr. Evmenov and Mr. Bourgov in their posts with full compensation for any lost wages and benefits.

B. The complainants' additional allegations

- 221.** In its communication dated 19 December 2001, the International Confederation of Free Trade Unions (ICFTU) sent new allegations concerning a governmental decree suppressing the check-off system in Belarus and attached a copy of a declaration made by the Federation of Trade Unions of Belarus (FPB) on 18 December 2001 in this regard. According to the ICFTU, the check-off system had been the usual practice in the country and its abolition could only be interpreted as an intentional undermining of the trade unions.
- 222.** In the attached declaration, the FPB states that the Council of Ministers Decree No. 1804 of 14 December 2001, entitled "On measures to protect the rights of trade union members", abolishes the previously existing system of cashless transfers of trade union membership dues upon member application. According to the FPB, the true intention behind the Decree is to financially suffocate and eliminate trade unions as independent workers' organizations. Furthermore, the Decree is in contradiction with the existing industrial tariff and local agreements, as well as collective agreements, and with the Labour Code which provides for the obligation of an employer to "make deductions from workers' wages on their written request in order to settle cashless payments", applicable also to trade union dues.
- 223.** The FPB further contends that the Decree violates the Constitutional Court decision of 21 February 2001 on the payment order of trade union membership dues. The FPB protests against this gross violation of workers' rights, interference in the internal affairs of trade unions and impediment to the exercise of their lawful activities. In a communication dated 28 March 2002, the FPB forwarded the decision of the Constitutional Court in respect of Decree No. 1804.
- 224.** In its communication dated 5 February 2002, the Belarusian Free Trade Union (BFTU) indicates that, along with Mr. Evmenov and Mr. Bourgov, another trade union leader was dismissed for refusal to work on his day off, Mr. Evgenov. It states that this information had been provided in its previous complaint. Mr. Evgenov, like Mr. Bourgov, was dismissed from the Mogilev automobile plant, while Mr. Evmenov was dismissed from the open-stock society glass plant "Oktyabr" in the Mogilev area.
- 225.** The BFTU also provided a copy of a decision of the Court of Leninskij district of Grodno concerning the refusal to register the Belarusian Free Trade Union of the workers of the Khimvolokno State Production Amalgamation. The refusal to register the BFTU had been previously upheld on the basis of the requirement set out in the Decree "on some measures to improve activities of political parties, trade unions and other public organizations" that the union have members representing at least ten percent of the total number of workers at the enterprise. Thus, out of the 5,680 workers at the Khimvolokno State Production Amalgamation, the union must have 568 members. The district court then upheld this previous decision for this reason and also on the basis that some of the members of the local union, in particular Mr. Cherney and Mr. Parfinovich were not employees of the

enterprise. According to the district court, this fact was in violation of the legislation which provides that union members must work for the employer in question.

- 226.** The BFTU contends, however, that the 10 per cent membership requirement only applies to separate trade unions with specific statutes, whereas the trade union at issue in this case is a local union and part of the organizational structure of the BFTU with the only professional requirement being that laid down in its statutes (three persons). Similarly, the BFTU states that the requirement to be a worker in the particular enterprise does not apply and adds that Mr. Cherney (now a pensioner) and Mr. Parfinovich were sacked from the plant for their trade union activities.
- 227.** In its communication of 31 May 2002, the FPB complains that the Ministry of Labour had sent the names of two enterprise union chairpersons to the ILO Credentials Committee in respect of the constitution of the country's delegation to the ILO Conference in June 2002. The trade union of one of these enterprises, the Minsk Automobile Plant, had been forced to leave the branch union affiliated to the FPB under the pressure of local authorities.
- 228.** The FPB considers this action on the part of the Government to be a serious violation of the ILO Constitution and proves yet again that the Government has no intention to follow the recommendations in the case before the Committee. The FPB insists that the interests of workers be represented by the most representative workers' organizations.
- 229.** In its communication dated 31 July 2002, the Belarusian Automobile and Agricultural Machinery Workers' Union (AAMWU) sent new allegations concerning government interference in the internal affairs of trade unions and continuing violations of trade union rights. In particular, the AAMWU refers to: the Council of Ministers Decree No. 1804 which prohibits automatic transfer of trade union dues in contravention of national laws and the Belarus Constitution; the establishment of "tame" or "management" trade unions at industrial plants (for example, new "management unions have been established at the Minsk Automobile Plant, the Mogilev Automobile Plant, the Minsk Computer Combine, etc.); the launching of a campaign (linked to the Presidential Administration) in May 2001 to create new regional trade unions which would not be affiliated to the Federation of Trade Unions of Belarus.
- 230.** According to the AAMWU, the FPB has begun to break up under these centrifugal forces. Under pressure from the new president of the Academy of Sciences (a former deputy head of the Presidential Administration), the Academy of Sciences union left the FPB. Trade unions representing workers in state institutions, the health service and railways have also announced their desire to leave the FPB.
- 231.** The AAMWU further alleges that the chairperson of the Mogilev Regional Association of Trade Unions met with the head of the Presidential Administration to work out proposals for replacing the FPB leadership. On 2 July 2002, President Lukashenko decided to appoint L. Kozik, deputy head of the Presidential Administration, to the post of president of the FPB. For one week regional trade union associations held plenary meetings in all regions and issued demands for Vitko's (the then president of the FPB) resignation and resolutions of no confidence.
- 232.** According to the AAMWU, the entire campaign was directed by the Presidential Administration, which also held talks with Vitko. Members of the FPB Council were subjected to administrative pressures before the plenary. The municipal and regional authorities and enterprise management demanded that Kozik be put forward and elected at the plenary. Council members were summoned to attend municipal and regional executive committees and meetings with representatives of relevant industry ministries. Management threatened them with dismissal if they failed to vote for Kozik. The AAMWU transmitted

with its communication a statement made by a worker at the Borisov Automobile and Tractor Electrical Equipment Plant describing the attempts that were made to coerce him into proposing Mr. Kozik for the post of FPB president.

- 233.** The same treatment was experienced by other trade union activists and even the state-run press regarded Kozik's election to the presidency of the FPB as an appointment by President Lukashenko. Mr. Kozik won a formal majority of votes at the FPB plenary and was thus confirmed as president. Mr. Vitko "voluntarily" resigned.
- 234.** An interesting development followed Kozik's election. At undertakings where "management" unions had been created, the management ordered company accounts offices to carry out deductions and bank transfers of trade union membership dues. In such cases, Decree No. 1804 seemed no longer to apply. Moreover, deductions were made from all workers' wages, even those who were not members of the trade union in question.
- 235.** The AAMWU concludes that the FPB has now been subordinated to the Lukashenko regime by the appointment of Kozik as president. Workers' organizations have been turned into corporate state structures whose function is not to defend the interests of workers but to keep workers compliant.
- 236.** The AAMWU supplements these allegations in its communication dated 12 September 2002. In particular, it provides further details on the manner in which the Government interfered in the activities of the trade unions with respect to the election of the new chairperson of the FPB and the subsequent discharging of Mr. Yaroshuk from the post of chairperson of the Agricultural Sector Workers' Unions (ASWU).
- 237.** Besides providing more specific information on the intervention of the Government in the "voluntary resignation" of Mr. Vitko, the AAMWU notes that, after the election of Mr. Kozik, the relations between the Government and the FPB, which had been non-existent since the departure of Mr. Gontcharik last year, had suddenly been re-established and a meeting of the National Council on Labour and Social Matters has been held. The FPB had indeed become a sort of subordinate unit within the Presidential Administration. Mr. Kozik carries out confidential missions on the instructions of President Lukashenko. He is the head of the Commission of the Union Treaty with Russia and of the Belarusian-Iraqi Trade and Economic Cooperation Commission. Indeed, Mr. Kozik visited Iraq from 30 August to 3 September 2002 to deliver a message from Mr. Lukashenko to Saddam Hussein.
- 238.** The complainant further specifies that, upon instructions from the Presidential Administration, the plenum of the Council of the ASWU discharged Mr. Yaroshuk from the post of chairperson. This was done in gross violation of the Statute of the ASWU, according to which a chairperson is elected to and discharged from the post only by the Trade Union Congress. In further violation of the Statute, a new chairperson was elected at the plenum of the Council, upon the recommendation of the Minister of the Agrarian and Industrial Complex. Thus, the director of the Department of the Ministry of Agriculture, Mr. Samasyuk, has become the new chairperson.
- 239.** While concluding that it was very difficult to provide additional witness testimony and documentary evidence because the threats and intimidation carried out by the Government have frightened people out of lodging written complaints, the AAMWU was able to forward with its communication of 11 October 2002 the testimony of E.V. Burak, former vice-president of the FPB, concerning the systematic pressure and intimidation by the Government aimed at weakening the influence of the trade union, undermining its finances and replacing its leadership. As regards his own situation, Mr. Burak states that his dismissal from his post as vice-president of the FPB contravened the organization's own

by-laws. While he was elected by the plenary, he was dismissed under an order signed by Mr. Kozik (a copy of the order was attached to his testimony).

240. In its communication dated 18 September 2002, the ICFTU also expresses its deep concern over the Government's campaign to destroy the independent trade union movement in Belarus, beginning with the steps taken to create "yellow" unions, the pressure placed upon regional union structures to withdraw from the FPB and ultimately leading to the plan to remove the legitimate leadership of the FPB.
241. Following the election of Mr. Kozik as chairperson of the FPB, the ICFTU states that President Lukashenko presented him with an award for his work in the Presidential Administration, issued him a "state certificate" of appointment to the post of chairperson of the FPB and declared him to be a "statesman".
242. The ICFTU emphasizes however that the basis for an independent trade union movement still exists in Belarus. There are many union leaders and rank-and-file members who do not accept "yellow" unions and have already declared their intention to withdraw from such organizations. However, the Government has already decided to purge the trade union movement of all independently minded leaders and members.
243. Under this pressure, Mr. Mirochnik, president of the Brest regional Association of Trade Unions was removed by a regional union conference. Mr. Kovsh, president of the Brest regional Committee of Science and Education Unions, who had supported Mr. Vitko at the 16 July plenum, received a "recommendation" to resign from his union post.
244. In addition, government officials or senior members of management were also appointed to lead individual union structures. Hence, the new president of the Brest Association of Trade Unions is Nikolai Basalai, hitherto head of the government administration's Executive Committee for the Moscow district of the city of Brest. And on 22 August in Polotsk, at the plenum of the regional organization of construction workers' unions, the Deputy Director for Social Affairs and Information of the "OAO Stroitel'nyi Trest N9" enterprise, in other words, a senior member of management, was elected as chairperson of the regional union committee.
245. In an apparent move to defuse an earlier complaint to the ILO Committee on Freedom of Association, severe measures were also taken against union leaders who had signed that complaint. On 10 September 2002, Mr. Alexander Yaroshuk, president of the ASWU, who had personally signed the ILO complaint, opposed the eviction of Mr. Vitko and the dismissal of Mr. Starikevich (see below) was removed by his union's plenum. Leaders of some of the union's regional committees claimed that, owing to Mr. Yaroshuk's opposition to the Government, they were unable to conduct "social partnership at workplaces". Thereafter, in violation of the union's constitution, which allows the election of the union president only by the organization's congress, the plenum elected as new president of the union, Mr. Vladmiir Samasyuk, former Deputy Agriculture Minister, hitherto working as head of the Investment Department at the Agriculture Ministry.
246. Similar purges are being carried out in the independent unions' media. Hence, one of Mr. Kozik's first moves upon taking over the FPB leadership was to dismiss the editor of the FPB newspaper "Belaruski Chas", Mr. Aleksander Starikevich. Earlier on 25 July, the FPB presidium had opposed the dismissal of Mr. Starikevich.
247. The ICFTU wishes to underscore that the collection of precise information about violations of trade union rights in Belarus has become very difficult, owing to a pervasive climate of fear amongst independent-minded trade union leaders and members. There is no doubt for the ICFTU that this is the result of the various repressive measures taken by the Belarus

Government against the trade union movement, whose members and their families are regularly intimidated and threatened by government officials and employers.

- 248.** Meanwhile, the government-appointed leader of the FPB, Mr. Kozik, continues to devote most of his attention to matters of the State, instead of focusing on trade union work. This is best illustrated by his recent mission to Iraq, in September 2002, when he was entrusted by President Lukashenko to hand over a personal letter from him to Mr. Saddam Hussein. Furthermore, Mr. Kozik has retained his function of co-chairperson of the joint Belarusian-Iraqi Trade and Economic Cooperation Commission. He also continued to run the Commission on the Unification Treaty between Belarus and the Russian Federation. The ICFTU considers that the holding of such very senior government positions is fully incompatible with the exercise of important trade union responsibilities.
- 249.** In its communication dated 10 October 2002, the ICFTU transmits a translation of a speech delivered by the President of Belarus, Aleksander Lukashenko, to the recent Congress of the Federation of Trade Unions of Belarus. In this speech, the Head of State, according to the ICFTU, made a number of threats, veiled or open, against the independence and autonomy of trade unions. He also strongly called upon the trade unions to support the State's – and in particular the President's own – policies. This applied, amongst other issues, to ideological work as well as political surveillance of the population, dubbed by President Lukashenko as "societal control". The ICFTU strongly believes that such and other statements by the Head of State constitute unacceptable interference by the authorities in the internal affairs of workers' organizations and thus represent severe breaches of the principles of freedom of association, the right to organize and the right to collective bargaining.

C. Further replies of the Government

- 250.** In a communication dated 8 May 2002, the Government states that Decree No. 1804 was adopted with the aim of resolving the situation that had arisen as a result of employers who had increasingly fallen into arrears with the transfer to trade union accounts of funds deducted from workers' wages for the payment of trade union dues. The Government recalled that the Federation of Trade Unions of Belarus (FPB) had complained in September 2001 that arrears in union dues owed by employers totalled 3 billion roubles.
- 251.** The decision of the Council of Ministers placed employers under the obligation to reimburse workers, by 1 February 2002, the funds that had been deducted from their wages for union dues but which had not been transferred to the accounts of the trade unions concerned. According to the Government, the Decree provides that the payment of trade union dues shall be carried out personally by the workers, without deductions being made from their wages, in order to avoid such arrears in future.
- 252.** The Decree eliminated the practice of deduction by employers of union dues from workers' wages for non-cash transfer to the trade unions' accounts through the accounting departments of organizations, which had been introduced in the territory of the former USSR by a Decree of the Presidium of the All-Union Central Council of Trade Unions in 1982. It had also always been possible to pay dues personally when a worker so desired.
- 253.** As concerns the complainant's reference to section 107 of the Labour Code, the Government points out that the first paragraph provides that wage deductions for non-cash transfer may only be made in the cases prescribed by law. Thus, the worker's agreement to such transfers is not sufficient in the absence of a corresponding legal provision specifically referring to the non-cash transfer of trade union dues. According to the Government, no such legal basis exists at present in the country.

- 254.** While taking due note of the Constitutional Court's indication that the method of personal payment of trade union dues was not optimal and needed improvement, the Government maintains that its decision was justified and was aimed at eliminating violations and preventing potential conflicts. The Government also refers to the options available to workers to apply for bank transfers of union dues to trade union accounts.
- 255.** The Government concludes that Decree No. 1804 was adopted by the Council of Ministers within the powers conferred upon it, is not contrary to the Constitution and other laws of Belarus and does, in its opinion, not violate the provisions of ILO Conventions.
- 256.** In its communication dated 22 October 2002, the Government, referring to the procedures established in the Republic of Belarus for the registration of trade unions and their organizational units, points out that there are now two Republic-level associations of trade unions in Belarus: the Federation of Trade Unions of Belarus and the Association of Trade Unions "Belarusian Congress of Democratic Trade Unions", 26 branch unions, 24 enterprise unions and some 26,000 organizational units of trade unions.
- 257.** Since the promulgation of Decree No. 2 of 26 January 1999 of the President of the Republic of Belarus respecting certain measures to regulate the activity of political parties, trade unions and other public organizations, all the trade unions have undergone registration, with only isolated cases of organizational units of trade unions not being registered. Six trade unions were registered in the first half of 2002. There were no cases of refusal to register trade unions. During that period no complaints relating to refusal to register organizational units of trade unions were received by the Ministry of Justice of the Republic of Belarus.
- 258.** As regards Presidential Decree No. 8 the Government states that this Decree does not hinder trade unions from receiving free foreign aid intended for their legal activities in accordance with their by-laws. In 2002, the humanitarian aid department of the President's Administration received seven applications from trade unions for the registration of free foreign aid. No cases of refusal of trade union applications for registration of free foreign aid or of misuse of aid have come to light.
- 259.** As regards the matters relating to internal trade union democracy and trade union elections, the Government states that it does not interfere in these matters. They are governed by the Act of the Republic of Belarus respecting trade unions and by the trade unions' by-laws. At the same time, the Government states that any shift in the balance of power within trade unions, which has the effect of the advancement of some trade union officers and the removal of others, objectively results in some being dissatisfied. It is mainly to this that the Government attributes the complaints recently presented to the ILO.
- 260.** In the Government's view, the legal framework in Belarus affords the necessary opportunities for rank and file trade union members and their leaders to defend their rights, including the rights to apply to the judicial and other competent bodies. The recent elections in the Federation of Trade Unions of Belarus (FPB) took place openly and publicly. The results of the presidium of the FPB and its subsequent plenary session, at which F.P. Vitko was retired and L.P. Kozik was elected president of the FPB, were widely publicized. The plenary session was open to representatives of the state authorities, public organizations and the press. L.P. Kozik's election as president of the FPB took place in accordance with point 5.7.6 of the FPB's by-laws.
- 261.** In conclusion, the Government refers to the latest events in the development of social dialogue in Belarus. On 9 August 2002, the National Council on Labour and Social Affairs, a consultative body with equal participation of representatives of the Government, employers' organizations and trade unions, held a meeting at which it took a decision to set

up within the Council a tripartite group of experts on the application of ILO international labour standards. On 18 October 2002, the group of experts held its first meeting, at which it examined its draft regulations (subject to approval by the National Council) and matters relating to the development of technical cooperation between Belarus and the ILO. On this same day, Order No. 1282 of the Council of Ministers of the Republic of Belarus respecting deductions from workers' wages for the purpose of non-cash payments was adopted. Under the Order, paragraph 2 of Order No. 1804 of 14 December 2001 of the Council of Ministers of the Republic of Belarus, respecting measures to protect the rights of trade union members was amended to read as follows: "2. The payment of trade union membership dues shall be carried out personally by the workers or, at their written request, by deduction of such dues by the employer from the workers' pay, in order to be transferred through the non-cash method." The right to transfer trade union dues to the accounts of trade unions through the non-cash method (check-off system) has thus been restored.

D. The Committee's conclusions

- 262.** *The Committee notes that the new allegations in this case refer to the unilateral withdrawal of the check-off system by order of the Council of Ministers on 14 December 2001, which the complainants contend is aimed at the elimination of any independent workers' organizations. The complainants also provide additional information concerning new acts of interference by the public authorities in the internal affairs of trade unions and, in particular, they allege that the Government has forced the resignation of the president of the Federation of Trade Unions of Belarus (FPB) and imposed the election of the new president, Mr. Kozik, formerly deputy chief of the Presidential Administration. Intimidation has also allegedly been used to replace other regional and sectoral trade union leaders. Further allegations refer to the continuing non-registration of trade union organizations, the dismissal of a trade union leader for not working on a non-workday, and the Government's appointment of non-representative union leaders as delegates to the ILO Conference.*
- 263.** *While noting the indication in the Government's communication of 22 October 2002 that the check-off system which had been terminated by Decree No. 1804 of December 2001 "on measures to protect the rights of trade union members" has now been restored by Order No. 1282 of 18 October 2002, the Committee considers that, in the light of the circumstances surrounding these two decisions, it is nevertheless important to examine the conformity of Decree No. 1804 with freedom of association principles, as well as its impact. The Committee notes that Decree No. 1804 provided that the payment of trade union membership dues should be undertaken by trade union members personally, without deducting the fees from their salaries, thus ending a long history of the use of check-off facilities to pay union dues. Violations were to be sanctioned under the law. The Committee further notes that the Constitutional Court determined that this Decree was constitutional on the basis of existing legislation. According to the Court's judgement, the Labour Code provision obliging the employer to make deductions from workers' wages for cashless transfers at the request of the worker refers only to cases where the legislation expressly provides for such transfers (e.g. alimony payments, compensation for material damage). There is apparently no express provision indicating that such transfers must be made in respect of trade union dues.*
- 264.** *While the complainants state that this Decree runs counter to existing collective agreements, the Constitutional Court points out that the General Agreement for 1998-2000 provided for such transfers, while the Agreement for 2001-03, signed on 25 May 2001, contains no analogous provision. The Court further found that it was within the competence of the Government to issue such a Decree as it is entitled by the lawmaker to adopt enforceable enactments in elaboration of the provisions of the Labour Code.*

265. *The Constitutional Court noted that the introduction of the check-off system during the Soviet period had resulted in the increase of the state influence on trade unions and a weakening of relations between trade union leaders and their members. In this respect, the Court felt that Decree No. 1804 would be likely to reduce the dependence of trade unions on employers carrying out the requisite transfers. The Court added, however, that such an alteration would not promote the development of harmonious labour relations and should be avoided. It concluded that there was a need to improve the mechanism for the payment of trade union dues and suggested that the solution might be found in a new General Agreement, the improvement of the Labour Code, the Law on Trade Unions, or other laws.*
266. *Indeed, the Committee would recall that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 435]. Moreover, emphasizing that the principle of consultation and cooperation between the public authorities and employers' and workers' organizations at the industrial and national levels is one to which importance should be attached [see **Digest**, op. cit., para. 925], the Committee deeply regrets that this decision – purportedly made to protect the rights of unions and their members – was issued without any consultation with the social partners concerned, despite the dramatic effect it was likely to have on the functioning of trade unions. Furthermore, in the light of the complainants' allegation that check-off facilities were reintroduced in respect of management-controlled unions, and subsequently the Government's indication that these facilities were restored by Order No. 1282, following a change in the trade union leadership, the Committee cannot but wonder whether the real intentions on the part of the Government were not rather aimed at weakening a trade union movement that it held in disfavour. Under these circumstances, the Committee cannot but condemn the manipulation of the trade union movement apparently intended by the issuance of Decree No. 1804 terminating check-off facilities, only to be restored once the leadership of the FPB had changed.*
267. *Secondly, the Committee notes the complainants' allegations concerning the composition of the Government delegation to the ILO Conference in June 2002. While noting that the Government has not yet replied to these allegations and that these matters are essentially within the mandate of the Credentials Committee, the Committee notes the following conclusion drawn in the report of the Credentials Committee to the ILO Conference (before which the Government had sent a written reply):*

These elements, taken together with the Committee on Freedom of Association's deep concern over allegations of Government interference in trade union activities cast serious doubts as to the actual purpose of this year's nomination. In light of all of the above, the Committee considers that the nomination of the Workers' delegation to the Conference had been in clear violation of article 3, paragraph 5, of the Constitution, thus warranting the invalidation of the credentials of the Workers' delegation. Since, in the absence of the Workers' delegation to the Conference, such recommendation would be without any practical purpose, the Committee decided not to propose it this year. It nevertheless expects that the Government would, next year, do its utmost to abide by the obligations it freely accepted when it became a Member of the ILO, including the obligation to nominate the Workers' delegation to the Conference after full consultations with the most representative organizations in the country and without any interference in this process [see ILC Provisional Record No. 5D, 90th Session, Geneva, 2002].

268. *The Committee expresses its deep concern over the violation noted by the Credentials Committee in respect of article 3, paragraph 5, of the Constitution and the significant negative impact such government interference can have on the overall respect for freedom of association in the country. It urges the Government to ensure in the future that all decisions concerning the participation of workers' organizations in tripartite bodies, both*

*national and international, are taken in full and meaningful consultation with the trade unions whose representativeness has been objectively proved [see **Digest**, op. cit., para. 943].*

- 269.** *The Committee further notes that the complainants' most recent allegations refer to continuing pressure by the government authorities aimed at bringing the overall trade union movement under state control, in particular through the virtual appointment of the former deputy head of the Presidential Administration to the post of president of the Federation of Trade Unions of Belarus (FPB) and other pressure brought to bear to replace regional and industrial union leaders. The Committee takes due note of the Government's declaration that this complaint is mainly due to the dissatisfaction of some when the shift in the balance of power within trade unions has the effect of the advancement of some trade union officers and the removal of others. The Government maintains that the recent elections in the FPB took place openly and publicly and that the plenary session was open to representatives of the state authorities, public organizations and the press. It states that L.P. Kozik was elected in accordance with the FPB's by-laws and adds that the legal framework in the country affords the necessary opportunities for rank and file trade union members and their leaders to apply to the judicial and other competent bodies to defend their rights.*
- 270.** *In this respect, the Committee also takes due note of the specific allegations made by the complainants concerning the pressure brought to bear by the public authorities on the election process and the testimony provided in this respect. The Committee further notes that, while the newly elected president has apparently now been replaced in the Belarusian-Iraqi Trade and Economic Cooperation Commission, he continued to act in his authority as representative of the Executive branch of the Government when visiting Iraq in early September and delivering a message from the President of Belarus to the President of Iraq. The Committee also notes the long speech made by the President of Belarus to the FPB Congress in September wherein he refers to his support for the new president and his support for "everything animate and creative that will be going on in our trade union organization". Criticizing trade union activities in the recent past, the President suggested that those who had been unsuccessful should just simply leave. He stated that he has passed over materials for societal control to the new FPB president, Mr. Kozik, and suggested that the federation should take over the role of the former party organizations that were responsible for discipline.*
- 271.** *The Committee considers it of fundamental importance to recall that any interference by the authorities and the political party in power concerning the presidency of the central trade union organization in a country is incompatible with the principle that organizations shall have the right to elect their representatives in full freedom. When the authorities intervene during the election proceedings of a union, expressing their opinion of the candidates and the consequences of elections, this seriously challenges the principle that trade union organizations have the right to elect their representatives in full freedom [see **Digest**, op. cit., paras. 395 and 397]. Furthermore, on numerous occasions the Committee has considered that the presence of public authorities during a trade union election constitutes undue interference with the right of workers to elect their officers in full freedom.*
- 272.** *The Committee also notes with deep concern the further allegations of interference in regional trade union elections, including the removal of Mr. Mirochnik, president of the Brest Regional Association of Trade Unions, Mr. Kovsh, president of the Brest Regional Committee of Science and Education Unions and Mr. Yaroshuk, president of the ASWU (complainant in this case). Mr. Mirochnik and Mr. Yaroshuk have apparently been replaced with former government officials.*

273. *In the light of the above, the Committee cannot but conclude that there has been undue interference by the public authorities in recent trade union elections in Belarus. The Committee emphasizes that the right of workers' organizations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interests of their members. For this right to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair the exercise of this right [see **Digest**, op. cit., para. 353].*
274. *The Committee therefore strongly urges the Government to institute an independent investigation immediately into the allegations relating to government interference in trade union elections with the aim of rectifying any effects of this interference, including, if necessary, the holding of new elections in circumstances where an independent body with the confidence of the workers concerned can ensure that there will be no interference, pressure or intimidation by the public authorities. The Committee requests the Government to keep it informed of the progress made in this regard.*
275. *Moreover, recalling the importance which it attaches to the 1952 resolution of the International Labour Conference concerning the independence of the trade union movement which affirms that "Governments in seeking the cooperation of trade unions to carry out their economic and social policies should recognize that the value of this cooperation rests to a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement and should not attempt to transform the trade union movement into an instrument for the pursuance of political aims", the Committee expresses its deep concern at the apparent confusion of roles demonstrated by the new FPB president's activities on national and international commissions with widespread political implications which cannot be considered as directly affecting the fundamental mission of the trade union movement to promote the economic and social advancement of workers and which may seriously compromise the independence of that movement. In this respect, the Committee considers that the statement made by the President of Belarus suggesting that the FPB should take over the role of the former party organizations responsible for discipline represents a clear attempt to transform the trade union movement into an instrument for the furtherance of its political aims. It therefore urges the Government to refrain from any further such attempts in the future so that the Belarus trade union movement may act in full freedom and independence.*
276. *The Committee also notes the additional allegations presented by the Belarusian Free Trade Union (BFTU) concerning the trade union leader, Mr. Evgenov, dismissed for refusal to work on his day off (unpaid voluntary labour, known as "subbotnik"). The Committee recalls from its previous examination of this case that it had been called upon to examine the anti-union dismissals of two other trade union leaders, Mr. Evmenov and Mr. Bourgov, for not working the "subbotnik". The Committee had found that these dismissals were not justified and urged the Government to take the necessary measures to ensure that these two trade unionists were reinstated in their posts with full compensation for any lost wages and benefits [see 324th Report, para. 212, and 325th Report, paras. 175-177]. The Committee now requests the Government to investigate the circumstances surrounding the dismissal of Mr. Evgenov and if it is found that he was dismissed for not working on the "subbotnik" or for any other reason related to his trade union activity to ensure that he is reinstated in his post with full compensation for any lost wages and benefits. The Government is requested to keep the Committee informed on the measures taken in respect of the reinstatements of Mr. Evmenov, Mr. Evgenov and Mr. Bourgov.*
277. *The Committee deeply regrets that, once again, the Government has not provided any of the information requested in its previous examination of this case on the measures taken to*

institute independent investigations into: the threats of dismissal made to members of the GPO "Khimvolokno" Free Trade Union and to the members of the Free Trade Union at the "Zenith" Plant; the allegations of the refusal to employ the re-elected chairperson of the Free Trade Union of Metalworkers at the Minsk Automobile Plant, Mr. Marinich; the questions surrounding the establishment of a regional trade union of electronics industry workers by the Research and Production Association of the Integral Amalgamation and the decision taken at the Tsvetotron Plant to affiliate to the new regional union; and the allegations concerning threats and pressure placed upon the workers at the Rechitskij Hardware Plant in Gomel to leave the branch union and set up new unions. The Committee once again requests the Government to keep it informed of the progress made in instituting these investigations, as well as their outcome.

- 278.** *The Committee further notes from the allegations made by the BFTU that the Belarusian Free Trade Union of the Workers of the Khimvolokno State Production Amalgamation is still being refused registration on the basis of the requirements established under Decree No. 2 "on some measures to improve activities of political parties, trade unions and other public organizations" (10 per cent minimum membership, occupational requirement for trade union membership) which have previously been criticised by this Committee and the Committee of Experts on the Application of Conventions and Recommendations as being in violation of the right of workers to form organizations of their own choosing under Article 3 of Convention No. 87. The Committee therefore urges the Government to take the necessary measures to ensure that the BFTU is registered immediately and to eliminate all obstacles to trade union registration which had been noted in its previous reports [see in particular, 324th Report, paras. 197-202]. It requests the Government to keep it informed of all measures taken in this regard.*
- 279.** *Finally, the Committee notes with deep regret that, with the exception of a general indication that it had not received any complaints concerning Decree No. 8 and that seven applications from trade unions to receive foreign funds had been approved, the Government has provided no additional information as to the measures it has taken in respect of the following recommendations made when this case was last examined one year ago: the need to amend Presidential Decree No. 8 so that workers' and employers' organizations may benefit freely, and without previous authorization, from the assistance which might be provided by international organizations for activities compatible with freedom of association; the need to initiate an independent investigation into the allegations raised by the BFTU concerning the unlawful entry into union premises and the confiscation and destruction of union property and papers and to ensure that any confiscated property and papers are promptly returned to the union; and the need to amend Presidential Decree No. 11 so as to ensure that restrictions on pickets are limited to cases where the action ceases to be peaceful or results in a serious disturbance of public order and so that any sanctions imposed will be proportionate to the violation incurred. The Committee urges the Government to provide information on the measures taken in this respect.*
- 280.** *In conclusion, the Committee notes with deep alarm that since the submission of this complaint in 2000 it has not been able to note any progress towards the implementation of its recommendations. To the contrary, it would appear that a serious deterioration in the respect of trade union rights has occurred in the country. It therefore urges the Government to take all necessary measures to bring the national law and practice into conformity with freedom of association principles as a matter of urgency.*

The Committee's recommendations

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

- (a) *Recalling that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided, the Committee cannot but condemn the manipulation of the trade union movement apparently intended by the issuance of Decree No. 1804 terminating check-off facilities, only to be restored once the leadership of the FPB had changed.*
- (b) *The Committee urges the Government to ensure in the future that all decisions concerning the participation of workers' organizations in tripartite bodies, both national and international, are taken in full and meaningful consultation with the trade unions whose representativeness has been objectively proved.*
- (c) *Recalling that the right of workers' organizations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interests of their members, the Committee strongly urges the Government to institute an independent investigation immediately into the allegations relating to government interference in trade union elections, with the aim of rectifying any effects of this interference, including, if necessary, the holding of new elections in circumstances where an independent body with the confidence of the workers concerned can ensure that there will be no interference, pressure or intimidation by the public authorities. The Committee requests the Government to keep it informed of the progress made in this regard.*
- (d) *Regretting that certain declarations in the speech of the President of Belarus to the FPB Congress in September 2002 represent a clear attempt to transform the trade union movement into an instrument for the pursuance of political aims, the Committee urges the Government to refrain from any further such attempts in the future so that the Belarus trade union movement may act in full freedom and independence.*
- (e) *The Committee strongly urges the Government to investigate the circumstances surrounding the dismissal of Mr. Evgenov and, if it is found that he was dismissed for not working on the "subbotnik" or for any other reason related to his trade union activity, to ensure that he is reinstated in his post with full compensation for any lost wages and benefits. The Government is requested to keep the Committee informed on the measures taken in respect of the reinstatements of Mr. Evgenov, Mr. Evmenov and Mr. Bourgov.*
- (f) *Regretting that the Government has provided no information in respect of its previous recommendations, the Committee once again requests the Government to keep it informed of the progress made in instituting independent investigations into: the allegations of threats of dismissal made to members of the GPO "Khimvolokno" Free Trade Union and to the members of the Free Trade Union at the "Zenith" Plant; the allegations of the refusal to employ the re-elected chairperson of the Free Trade Union of Metalworkers at the Minsk Automobile Plant, Mr. Marinich; the questions surrounding the establishment of a regional trade union of electronics*

industry workers by the Research and Production Association of the Integral Amalgamation and the decision taken at the Tsvetotron Plant to affiliate to the new regional union; and the allegations concerning threats and pressure placed upon the workers at the Rechitskij Hardware Plant in Gomel to leave the branch union and set up new unions. The Government is also requested to keep the Committee informed of the outcome of these investigations.

- (g) *The Committee urges the Government to take the necessary measures to ensure that the BFTU trade union at the Khimvolokno State Production Amalgamation is registered immediately and to eliminate all obstacles to trade union registration which had been noted in its previous reports. It requests the Government to keep it informed of all measures taken in this regard.*
- (h) *The Committee urges the Government to provide information on the measures taken in respect of its previous recommendations on the following points: the need to amend Presidential Decree No. 8 so that workers' and employers' organizations may benefit freely, and without previous authorization, from the assistance which might be provided by international organizations for activities compatible with freedom of association; the need to initiate an independent investigation into the allegations raised by the BFTU concerning the unlawful entry into union premises and the confiscation and destruction of union property and papers and to ensure that any confiscated property and papers are promptly returned to the union; and the need to amend Presidential Decree No. 11 so as to ensure that restrictions on pickets are limited to cases where the action ceases to be peaceful or results in a serious disturbance of public order and so that any sanctions imposed will be proportionate to the violation incurred.*

CASE No. 2140

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

**Complaints against the Government of Bosnia and Herzegovina
presented by**

- **the Employers of the Federation of Bosnia and Herzegovina and**
- **the Employers' Confederation of Republika Srpska**
(SAVEZ POSLODAVACA)

Allegations: The complainants allege that employers' confederations cannot obtain registration as employers' organizations and do not engage in collective bargaining.

282. The complaints are contained in communications from the Employers of the Federation of Bosnia and Herzegovina and the Employers' Confederation of Republika Srpska (SAVEZ POSLODAVACA) dated 14 and 19 June 2001, respectively.

283. In the absence of a reply from the Government, the Committee had to postpone its examination of the case three times. At its June 2002 meeting [see 328th Report, para. 8],

the Committee issued an urgent appeal to the Government drawing its attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it might present a report on the substance of the case at its next meeting if the information and observations of the Government had not been received in due time (GB.284/8, paragraph 8).

- 284.** Bosnia and Herzegovina 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

- 285.** In their communications dated 14 and 19 June 2001, the Employers of the Federation of Bosnia and Herzegovina and the Employers' Confederation of Republika Srpska (SAVEZ POSLODAVACA) allege that legal obstacles impede the registration and legal recognition of employers' confederations and seriously hinder the commencement of their activities. The complainants state moreover that employers' confederations are not invited to consultations and do not engage in collective bargaining at the level of the Republic.
- 286.** The complainants state that they have been trying, along with other employers' confederations for more than three years now, to obtain the registration and recognition of an employers' confederation that they intend to establish at the level of the Republic of Bosnia and Herzegovina under the name of "Employers' Confederation of the Republic of Bosnia and Herzegovina". The complainants state that it is impossible under the current legal regime to obtain the registration of employers' confederations and that, without registration, these organizations are unable to hire employees, collect funds from members, open a bank account, use their proper stamp, print letterheads, envelopes, etc. In addition, they cannot participate in activities organized by the ILO in the Republic.
- 287.** Concerning their own status, the complainants state that they themselves also have been unable to register as employers' organizations and had to register, after several months and a lot of pressure, as "citizens' associations" in the two entities of the Republic, namely, the Federation of Bosnia and Herzegovina and the Republika Srpska. As a result of their status, their membership can consist only of natural persons, for instance, enterprise managers, while enterprises cannot join as members. The complainants allege that they face a lack of funds and are unable to hire competent staff due to the impossibility of collecting membership fees from enterprises. In addition, the members of the board cannot act as representatives of the organization although some of them meet regularly and all of them maintain contacts with local organizations of employers. The complainants allege that these administrative difficulties and obstructions have seriously hindered the commencement of their activities.
- 288.** The complainants state that a few months before communicating their complaint, they had brought their case to the Presidency of the Republic of Bosnia and Herzegovina and the Government of the Federation of Bosnia and Herzegovina. The Presidency had promised to set up a working group with representatives of the Government and employers from both entities of the Republic to start legislative work on this question. The complainants allege that, although a solution had been promised for the near future, no action has been taken so far.
- 289.** The complainants state that, in the absence of registration, the confederation that they intend to establish is not invited to consultations on issues of interest to its members and is unable to engage in collective bargaining at the national level. The complainants state moreover that, in general, no employers' organization is consulted or involved in the decision-making process at the national level, although the interests of employers are

affected by the decisions taken on social and economic issues by the Presidency, the Government and the Parliament of Bosnia and Herzegovina.

B. The Committee's conclusions

- 290.** *The Committee deplores the fact that, despite the time which has elapsed since the presentation of the complaint and, bearing in mind the extreme gravity of the allegations, the Government has not provided in due time the comments and information requested by the Committee, although it was invited to send its reply on several occasions, including by means of an urgent appeal at its June 2002 meeting. In these circumstances, and in accordance with the applicable rule of procedure [see 127th Report of the Committee, para. 17, approved by the Governing Body at its 184th Session], the Committee is bound to present a report on the substance of this case, in the absence of the information it had hoped to receive in due time from the Government.*
- 291.** *The Committee reminds the Government, first, that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations concerning violations of freedom of association is to ensure respect for the rights of employers' and workers' organizations in law and in fact. If this procedure protects governments against unreasonable accusations, governments on their side should recognize the importance of formulating, for objective examination, detailed factual replies concerning the substance of the allegations brought against them [see First Report of the Committee, para. 31].*
- 292.** *The Committee notes that the present complaint concerns allegations of obstacles to the registration of employers' confederations and the exercise of their right to collective bargaining.*
- 293.** *The Committee notes that the complainants, namely, the Employers of the Federation of Bosnia and Herzegovina and the Employers' Confederation of Republika Srpska (SAVEZ POSLODAVACA), have been trying without success, for more than three years now, to obtain registration and legal recognition of an employers' confederation that they intend to establish at the level of the Republic of Bosnia and Herzegovina under the name of "Employers' Confederation of the Republic of Bosnia and Herzegovina". The Committee notes that, according to the complainants, the current legal regime does not allow the registration and legal recognition of employers' confederations and that without registration employers' organizations are not vested with legal personality and cannot commence their activities. Moreover, they are not invited by the Government to participate in activities organized by the ILO in the Republic.*
- 294.** *The Committee notes that according to the complainants, they themselves have also been unable under the law to register as employers' organizations and had to accept registration as citizens' associations at the level of the two entities of the Republic. The Committee notes that the complainants state that, as a result of their legal status, they face serious constraints concerning their membership, their sources of revenue and the organization of their administration. In particular, the complainants are not entitled to accept enterprises as members and receive membership fees from them, while the members of their board cannot act as representatives of the organization. The Committee notes that, according to the complainants, these constraints have seriously hindered the commencement of their activities. The Committee notes that the complainants state that no steps have been taken by the Government to amend the current legislative framework, despite assurances to the contrary.*
- 295.** *In the absence of any reply from the Government, the Committee observes that the current legislative framework in the area of registration constitutes such an obstacle to the*

establishment of employers' confederations that it deprives employers and their organizations of the fundamental right to establish occupational organizations of their own choosing. The Committee recalls that under Article 2 of Convention No. 87, ratified by Bosnia and Herzegovina, workers and employers without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. The Committee recalls that this implies for the organizations themselves the right to establish and join federations and confederations of their own choosing [Digest, para. 606]. The Committee recalls moreover that requirements must not be such as to be equivalent in practice to previous authorization, or as to constitute such an obstacle to the establishment of an organization that they amount in practice to outright prohibition [Digest, para. 244]. In particular, the acquisition of legal personality by federations and confederations shall not be made subject to conditions of such a nature as to restrict the exercise of [this] right [Digest, para. 607]. The Committee observes, moreover, that obstructions to the commencement of the activities of employers' confederations, due to a legal status which is unrelated to their objectives, amount in practice to an obstacle to the establishment of such organizations. The Committee recalls in this respect that, in accordance with Article 3 of Convention No. 87, 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 [Digest, para. 447]. The Committee requests the Government to initiate discussions with the complainants as soon as possible with a view to finalizing the registration process of the complainants and the Employers' Confederation of the Republic of Bosnia and Herzegovina, under a status conducive to the full and free development of their activities as employers' organizations. The Committee requests to be kept informed of developments in this respect.

296. *The Committee notes with concern that, in the absence of registration and legal personality, the envisaged confederation is not invited by the authorities to consultations and does not engage in collective bargaining at the level of the Republic of Bosnia and Herzegovina. Moreover, the Committee notes the allegations that no employers' organization is consulted or involved in the decision-making process at the level of the Republic. In the absence of any reply from the Government, the Committee recalls the Principle laid down in Article 4 of Convention No. 98, ratified by Bosnia and Herzegovina, to the effect that measures appropriate to national conditions shall be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation and emphasizes the importance which it attaches to the right of representative organizations to negotiate, whether these organizations are registered or not [Digest, para. 784]. The Committee requests the Government to take all necessary measures urgently to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' and workers' organizations in conformity with Convention No. 98.*

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

The Committee's recommendations

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

- (a)** *The Committee deplores the fact that the Government has not replied to the allegations despite the fact that it was invited to do so on several occasions, including by means of an urgent appeal, and urges it to reply promptly.*

- (b) *The Committee requests the Government to initiate discussions with the complainants as soon as possible with a view to finalizing the registration process of the complainants and the Employers' Confederation of the Republic of Bosnia and Herzegovina, under a status conducive to the full and free development of their activities as employers' organizations. The Committee requests to be kept informed of developments in this respect.*
- (c) *The Committee requests the Government to bring its legislation concerning registration of employers' organizations in conformity with Convention No. 87.*
- (d) *The Committee requests the Government to take all necessary measures urgently to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' and workers' organizations in conformity with Convention No. 98.*
- (e) *The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of the case.*

CASE NO. 2150

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

**Complaint against the Government of Chile
presented by
the Single Central Organization of Chilean Workers (CUT)**

Allegations: Dismissal in December 1999 by the Municipality of Empedrado of the president of a health workers' association established in September 1999, who was covered by trade union immunity.

- 299.** The complaint is contained in a communication from the Single Central Organization of Chilean Workers (CUT) dated 23 May 2001.
- 300.** The Government sent its observations in a communication dated 6 May 2002.
- 301.** 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

- 302.** In its communication dated 23 May 2001, the Single Central Organization of Chilean Workers (CUT) states that the Association of Health Workers of the Municipality of Empedrado was established on 14 September 1999. As recorded in the founding document, Ms. Juana Contreras Labarca joined the executive committee and took office as President. The employer was informed of this on 13 September of the same year. In addition, the

Maule Regional Labour Directorate notified the mayor of the Municipality of Empedrado on 22 February 2001 that the Association had been validly established, had been granted legal personality and that its president, Ms. Contreras Labarca, was covered by trade union immunity, all of the above in accordance with the provisions of Act No. 19,296.

- 303.** The complainant alleges that the Municipality of Empedrado terminated the employment relationship of Ms. Juana Contreras Labarca as of 1 January 2000 by Decree No. 102 of 30 December 1999. The complainant adds that it petitioned the Maule Regional Office of the Comptroller on 7 January 2000 to instruct the employer to reinstate her immediately in her post and in the duties which she was performing at the time of the unlawful dismissal. This petition was examined and accepted by the Regional Office of the Comptroller, which handed down Decision No. 000589 of 9 March 2000, stating that “the post occupied by Ms. Juana Contreras Labarca cannot be eliminated from the health staff of the Municipality of Empedrado, given her status of trade union official, as stated”.
- 304.** The complainant states further that the Maule Regional Office of the Comptroller, by Decision No. 000869 of 23 March 2000, ordered the immediate execution of the abovementioned decision and that the case had been examined by the Legal Department of the Office of the Comptroller-General of the Republic, which issued Decision No. 34451 of 8 September 2000, confirming the decision of the Maule Regional Office of the Comptroller, ordering immediate execution of its decisions and stating further that this situation was in violation of legal and constitutional provisions. Lastly, the complainant states that an appeal for protection was filed with the Talca Court of Appeals on 2 February 2001 requesting the reinstatement of Ms. Contreras Labarca in accordance with the order of the Office of the Comptroller-General of the Republic.

B. The Government’s reply

- 305.** In its communication dated 6 May 2002, the Government states that on 14 September 1999, the Municipal Council of the Municipality of Empredrado, composed of six democratically elected members belonging to four different political parties, agreed on the establishment of staffing levels of the Municipal Department of Primary Health Care for the year 2000, which included a 44-hour reduction in the last category, i.e. category “D”. The Maule Health Service was notified of this agreement on 15 September 1999 and did not object to the elimination of staff in category “D”. The Government points out that the only member of staff in category “D” was Ms. Juana Contreras Labarca.
- 306.** The Government states that the contract of Ms. Juana Contreras Labarca, a category “D” worker, with the municipality was terminated as of 1 January 2000 by Municipal Decree No. 102 of 30 December 1999, based on the agreement reached in the Municipal Council in September 1999. The Municipal Decree also ordered that she be paid statutory compensation.
- 307.** The Government adds that section 48 of Act No. 19,378, laying down regulations for municipal primary health care, lists the grounds for termination of the employment relationship of staff and provides in clause (i) that employees who are members of primary health-care staff shall only be removed from such staff as a result of a reduction or change in staffing levels in accordance with section 11 of the Act. Section 11 lays down the factors to be taken into consideration by the administrative body to set appropriate staffing levels for carrying out the health activities each year, which must conform to the procedure laid down in section 12 of the Act. According to the administrative case law of the Office of the Comptroller-General of the Republic, in cases where the establishment of staffing levels involves a reduction or modification, it is for the municipality to exercise its own discretion in determining which employees will be affected by such measures and cease to be staff members on the grounds set forth in section 48(i) of Act No. 19,378. Moreover,

this is consistent with the definition of staffing levels set forth in section 10 of the Act, under which it is for each administrative body to determine the total weekly hours of work required for its activities.

- 308.** The Government states that on 2 February 2001, Ms. Contreras Labarca filed an appeal for protection with the Talca Court of Appeal claiming violation of the constitutional guarantee of protection of work and requesting that she be reinstated. On 13 July 2001, the Talca Court of Appeals ruled the appeal inadmissible. The worker concerned subsequently filed an appeal with the Supreme Court, which upheld the decision of the Court of Appeals and ruled the appeal inadmissible.
- 309.** According to the Government, as at May 2002, the worker in question has not gone to the Municipality of Empedrado to sign the release terminating her employment relationship, neither has she collected the compensation awarded to her in accordance with the law. Lastly, the Government states that in view of the above, Ms. Juana Contreras Labarca should bring the case before the ordinary courts by proceeding to enforce her rights against the Municipality of Empedrado, as the labour departments are not competent to rule on violations of labour legislation committed by the municipalities against their employees.

C. The Committee's conclusions

- 310.** *The Committee observes that in this case, the complainant alleges that in December 1999 the administration of the Municipality of Empedrado terminated the contract of Ms. Juana Contreras Labarca, president of the Association of Health Workers of the Municipality of Empedrado, who was covered by trade union immunity.*
- 311.** *The Committee notes that the Government states that: (1) on 14 September 1999, the Municipal Council of the Municipality of Empedrado, in determining the staffing levels of the Municipal Department of Primary Health Care for the year 2000, reduced category "D" by 44 hours; (2) the only employee in category "D" was Ms. Contreras Labarca; (3) the employment contract of Ms. Contreras Labarca with the municipality was terminated by a Municipal Decree of December 1999, based on an agreement reached in the Municipal Council, and payment of statutory compensation was ordered; (4) the worker concerned filed an appeal for protection with the Talca Court of Appeals, which was ruled inadmissible, and subsequently appealed against the decision in the Supreme Court, which upheld the appealed decision; (5) Ms. Contreras Labarca has not gone to the Municipality of Empedrado to collect the compensation awarded to her in accordance with the law; and (6) the worker in question may bring the case before the ordinary courts by proceeding to enforce her rights against the Municipality of Empedrado, given that the labour departments (the administrative authority) are not competent to rule on violations of labour legislation.*
- 312.** *Firstly, the Committee emphasizes that decisions determining staffing levels for employees which reduce or increase hours of work in certain categories of employees and municipalities do not in themselves constitute a violation of trade union rights. However, the Committee considers that if the decisions adopted in such cases are likely to affect the job stability of trade union leaders, the trade unions concerned should be consulted. The Committee requests the authorities to take measures to this end in future.*
- 313.** *Secondly, as regards the termination of the contract of trade union leader Ms. Contreras Labarca, the Committee recalls that the Workers' Representatives Recommendation, 1971 (No. 143), provides that:*

Workers' representatives in the undertaking should enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers'

representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.

6. (1) *Where there are not sufficient relevant protective measures applicable to workers in general, specific measures should be taken to ensure effective protection of workers' representatives.*

(2) *This might include such measures as the following:*

(a) *detailed and precise definition of the reasons justifying termination of employment of workers' representatives;*

(b) *a requirement of consultation with, an advisory opinion from, or agreement of an independent body, public or private, or a joint body, before the dismissal of a workers' representative becomes final;*

[...]

(f) *recognition of a priority to be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce.*

314. *The Committee observes that in this case, Ms. Contreras Labarca was covered by the special protection of job stability under Chilean legislation by virtue of her trade union office and that this was recognized by the Office of the Comptroller-General of the Republic. In these circumstances, and bearing in mind the content of Recommendation No. 143, the Committee requests the Government and the authorities of the Municipality of Empedrado to take measures to reinstate the trade union leader in question, without loss of earnings, in a comparable post if the one she occupied has been eliminated, and to keep it informed of any developments.*

The Committee's recommendations

315. *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 measures to ensure that decisions to determine staffing levels of workers which reduce or increase hours of work of certain categories of employees in municipalities are the subject of consultations with the trade union organizations concerned.*

(b) *As regards the termination of the employment relationship of trade union leader Ms. Juana Contreras Labarca, the Committee, bearing in mind Recommendation No. 143, requests the Government and the authorities of the Municipality of Empedrado to take measures to reinstate the trade union leader in question, without loss of earnings, in a comparable post if the one she occupied has been eliminated, and to keep it informed of any developments.*

CASE NO. 2172

INTERIM REPORT

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

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

316. The complaint is set out in a communication from the Trade Union of Pilots and Technicians of Lan Chile (SPTLC) dated 29 January 2002. The Government sent its observations in a communication of 31 July 2002.

317. 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

318. In its communication of 29 January 2002, the Trade Union of Pilots and Technicians of Lan Chile S.A. makes allegations concerning a series of illegal labour practices contrary to Conventions Nos. 87 and 98 in connection with negotiations aimed at concluding a new collective agreement. The complainant organization explains that in 2001, Chile witnessed an intense labour dispute between the trade union and Lan Chile S.A., which is the

country's largest commercial air transport company. Before contractual negotiations began on 15 October 2001, when the parties were legally obliged to maintain the status quo, the company started a fierce and very publicized campaign against the trade union. Consequently, the trade union reacted by taking industrial action, which included "work-to-rule", in an attempt to counteract the practices used against it. As a result of the campaign carried out by the company, in both the place of work and the press, the trade union has lost over 80 per cent of its members in recent months.

- 319.** Initially, the company tried to rid itself of unionized pilots by transferring them to recently created subsidiary enterprises. The company achieved this by negotiating directly with trade union members and promising them fast-track promotion in these subsidiaries provided they withdrew trade union membership. Between May and September 2001, the company managed to transfer collective work units to subsidiaries or enterprises abroad, although at significantly higher operational costs.
- 320.** The company subsequently dismissed various pilots, all of whom were active members of the trade union. On 14 September 2001, the company dismissed 73 unionized pilots, supposedly for "disciplinary" reasons. In particular, the company dismissed all pilots who attended a speech given that month by John Darrah, President of the Allied Pilots Association. Another 13 pilots and trade union members were later dismissed for disciplinary reasons between 1 and 4 October. At the same time, 22 pilots were dismissed owing to a reduction in the workforce. Many of the pilots dismissed days before the collective bargaining process began were very active members of the trade union; eight of these pilots were former directors of the trade union.
- 321.** The management then launched a final assault on the remaining members and, both directly and indirectly, threatened them with dismissal. For example, various supervisors telephoned the wives or other family members of pilots to threaten and intimidate them into exerting pressure on their husbands to withdraw trade union membership and sign individual contracts with the company. Furthermore, the company called upon the services of non-unionized pilots to circulate rumours that key members of the trade union had withdrawn their membership or cooperated with the company. This effort led more than 150 members to withdraw trade union membership.
- 322.** Discrimination against the trade union can be seen to a greater extent in the company's refusal to honour seniority with regard to flight training for new aeroplanes. Pilots are usually trained to operate new aeroplanes in order of seniority. However, following the trade union's industrial action "work-to-rule", all flight training was cancelled. When the school was later re-opened, the company excluded all trade union members, independently of their seniority, from participating in flight training. The trade union presented this complaint to the company, but no action has been taken.
- 323.** In view of the loss of so many pilots, the company was, and is still, in desperate need of pilots. Since the company does not wish to ease the pressure exerted on the trade union, it is contracting non-unionized pilots from Peru or Ecuador, amongst other countries, and in many cases to the full knowledge, and with the consent, of the Civil Aviation Authorities (DGAC) and the Government of Chile.
- 324.** Lan Chile is starting to offer dismissed pilots with reinstatement in an effort to ensure adequate staffing levels during the next period of heavy air traffic. However, reinstatement comes at a very high cost. Former trade union pilots wishing to return must write a letter by their own hand in which they accept individual responsibility for any damage that may have been caused during the industrial action, "work-to-rule" and state that the trade union told them to participate in this action. When a pilot is reemployed by the company, or one

of the subsidiaries, he is not covered by the existing collective agreement but by an individual employment contract.

- 325.** To date, nearly 300 of the 400 trade union members no longer work for the company or were pressurized in withdrawing their membership, or persuaded to do so; the number of members went from 420 to 114. Furthermore, the company initiated legal action for harassment against one of the directors of the trade union just before negotiations began. A company representative announced a second case of legal action, but this has still not been presented. The pilots dismissed illegally have initiated legal proceedings against the company demanding their reinstatement. It is estimated that a decision on this issue will take more than two years.
- 326.** The complainant organization points out that the reported events describe a campaign aimed at breaking up the trade union.

B. The Government's reply

- 327.** In its communication of 31 July 2002, the Government explains that during the second semester of 2001, in the months prior to the expiry of the collective agreement for pilots and technicians, a climate began to develop that was hardly suitable for the negotiations planned for October of that year between Lan Chile S.A. and the Trade Union of Pilots and Technicians of Lan Chile S.A. It should be noted that this situation developed following the attack and destruction of the Twin Towers in the United States, and that this incident obviously had an effect on some of the events denounced by the trade union, but does not provide a single or sufficient explanation.
- 328.** The Government then lists a series of events which, as it points out, constitute anti-union practices.

Individual bargaining between the enterprise and pilots

- 329.** During the second quarter of 2001, the enterprise created subsidiary enterprises to which some unionized pilots were transferred following individual bargaining, which provided them with access to improved financial conditions, and their withdrawal of trade union membership. This process was public knowledge and was even encouraged by company executives.

Publicity campaign against collective bargaining

- 330.** The atmosphere being experienced within Lan Chile S.A. was made known to the public through articles in the press that appeared repeatedly from August 2001 onwards. These articles pointed out that the collective bargaining process to be carried out by the pilots was a threat to the enterprise and to the country's economy given that the bargaining appeared to be intrinsically linked to conflicts and paralysis. These conclusions stem from articles that appeared in the "El Mercurio" newspaper during August 2001.
- 331.** In a public notice, the trade union's executive board qualified these articles in the press as a campaign against the trade union in order to discredit the workers' organization and discourage collective bargaining by generating a negative public opinion. The trade union responded by implementing the industrial action entitled "work-to-rule", consisting in fulfilling the provisions of aeronautical regulations to the letter. This obviously involved the non-infringement of applicable standards, but also involved straying from the usual practices employed by the enterprise in air navigation processes, and which are outside the regulations, in order to cut costs for fuel and other consumables.

Mass dismissal of active trade union members

- 332.** These events were followed by the mass dismissal of unionized pilots. Between 14 September and 4 October 2001, the company dismissed 108 members. In 23 of these cases the company invoked “company requirements” as the reason for the dismissals and in 85 cases it invoked the “serious breach of contractual obligations”. When the enterprise describes the serious breach of contractual obligations, it refers, *inter alia*, to confusing situations which led to delays for some flights. However, there is no clear relationship between the delays and the breach of contracts or internal regulations.
- 333.** Following the dismissal of these 85 workers, the company reinstated 40 of them. Amongst those not reinstated were eight former trade union directors and workers who participated in the 1995 legal strike. Therefore, the measure was highly discriminatory given that, in essence, it affected the most active members of the organization, namely those who were dismissed for respecting a trade union agreement consisting in “work-to-rule”, without violating contractual or legal standards.
- 334.** The 37 workers affected filed a motion to vacate the dismissals before the Fifth Labour Court of First Instance of Santiago, filed under “Bustamante and Others versus Lan Chile S.A.” (Case No. 5196-2000).

Reduction in the workers’ negotiating power

- 335.** The dismissals prior to the commencement of collective bargaining had repercussions on the collective bargaining process promoted by the trade union in that only 111 members participated. This represents a 200 per cent reduction in the number of participants compared with the previous collective bargaining process. The process was concluded without a strike and a four-year collective agreement was signed, with a 56 per cent reduction in the pay increase that otherwise would have been due. At the same time, the enterprise came to an agreement with three groups of pilots, who during the previous negotiation process formed part of the trade union, in the form of 62-month collective agreements with a lower pay adjustment.

Pressure exerted by Lan Chile S.A. for the withdrawal of trade union membership

- 336.** Following inspections by the employment services during the course of 2001, it was established that unionized pilots and technicians were subjected to intense pressure aimed at making them withdraw membership from their trade union organization. This is shown in documents and communications issued by the employer which offer improved conditions of work that are incompatible with continued trade union membership. This approach was also reflected in the implicit threats of dismissal that were made by some supervisors and acknowledged by some workers during conversations with the officer from the Labour Inspectorate. As a result, the trade union executive board received membership withdrawals from mid-2001 until the first-quarter of 2002; it currently has only 71 members.

Discrimination against trade union members with regard to training

- 337.** Lan Chile S.A. excluded trade union members from flight training for operating the new company airplanes. This was subsequently taken up by the trade union executive board with the employer, but this measure was not reversed. In the past, training was considered a recompense for pilots’ seniority. According to the information collected during the inspections conducted in the enterprise, such exclusion became apparent shortly before the

collective bargaining process began. According to the information provided by the trade union executive board, this segregation still continues during the present year.

Conditions for the reinstatement of dismissed pilots

338. According to the information collected during the inspections conducted in the company in 2001, 40 pilots dismissed for disciplinary reasons, for having participated in the action entitled “work-to-rule”, were reinstated by the employer with the condition that they write a letter in which they had to acknowledge responsibility for the possible damage the industrial action may have caused; furthermore, they had to blame the trade union for forcing them into the alleged transgression. With their new individual contracts, these pilots did not regain the collective benefits that they had previously enjoyed.

Replacement of dismissed unionized pilots by recruiting foreign pilots

339. The company failed to comply when requested for information by the inspectors in order to determine the legality of such recruitment. As a result of this conduct, the enterprise was fined on three occasions, on the most recent occasion, it was given the maximum administrative sanction for hindering the labour inspector’s work.

Harassment of trade union officials: Failure to grant the work agreed upon and professional disqualification

340. In August 2001, a complaint was made about the suspension from everyday duties of the trade union directors, Messrs. Nibaldo Jorquera and Artidoro Leal, and Lan Chile S.A. was sanctioned for failing to grant the work agreed upon in the employment contract. This also happened to the official Baldovino Bendix.

341. This conduct began to take the form of excluding trade union officials from work schedules, which are documents used to notify each pilot of his flight itinerary, rest periods, training activities and other events for the following month. The collective agreement obliges the employer to provide this document.

342. In January 2002, another administrative fine was issued for failing to provide the officials Jozcef Szita, Artidoro Leal, Nibaldo Jorquera and Baldovino Bendix with work schedules and for failing to grant the first two mentioned officials the agreed upon work.

343. It should be pointed out that, according to the provisions of the Civil Aeronautical Authority, in order to keep their license, pilots must be accredited with a determined number of flight hours. Without such a license they cannot work as pilots or co-pilots. In practice this amounts to professional disqualification and makes it impossible for them to work for this, or another, aviation company since they fail to meet the essential requirements.

344. Moreover, the Government indicates the effects of the action taken by Lan Chile S.A. which constitutes anti-union and unfair practices in collective bargaining:

- *Trade union membership.* After having been the most representative union and bringing together nearly all of the pilots and technicians at Lan Chile S.A., with 400 members, the Trade Union of Pilots and Technicians now has only 71 members, as a result of the dismissals, membership withdrawals and creation of subsidiary enterprises.

- *Trade union executive board.* In October 2001, the trade union executive board was composed of five members. In the first-quarter of 2002, only one director remained in service since three officials left the company, in one case following legal proceedings which lead to an agreement, and in the other cases following out-of-court negotiations. The last reorganization of the executive board, on 16 May 2001, only enabled the election of three directors.
- *Trade union assets.* In view of the reduction in membership, the trade union stopped receiving a significant amount of resources, in the form of trade union dues. Therefore, the trade union was forced to move to smaller headquarters and reduce the number of officers and advisers.
- *Collective bargaining.* The collective bargaining of pilots, which until 2001 had been carried out exclusively by the Trade Union of Pilots and Technicians, was significantly fragmented during the last negotiating process, and therefore led to fewer collective benefits. Moreover, by negotiating separately, three groups signed instruments for 62 months, whereas the trade union did so for 48 months. Thus, during future negotiations, the pilots of Lan Chile S.A. will not be able to bargain collectively in the regulated manner or at the same time, and therefore, they will not be able to negotiate with their counterpart on an equal footing given that action, such as strikes, will be very difficult to sustain in this context.
- *Mass dismissal of pilots.* The case in which 37 pilots are requesting a motion to vacate dismissals, before the Fifth Labour Court of First Instance of Santiago, filed under “Bustamante and Others versus Lan Chile S.A.” (Case No. 5196-2000), is in the evidentiary stage. Undoubtedly, the most marked event in this case, owing to its seriousness and the number of workers affected, is the mass dismissal of members. The reasons given for these dismissals by the company are not connected to the global setback in civil aviation following the events of 11 September 2001. The strategy developed by the company prior to the collective bargaining process with the aim of weakening the trade union actor with which it had to negotiate, shows that internal factors were the cause. The use of this strategy weakened the trade union, decreased the workers’ negotiating prospects and was of serious detriment to those workers who were disqualified from carrying out their profession. Furthermore, this strategy devastated the trade union organization, clearing the way for the company to exert its power without an appropriate counterweight, which, before these events, had been provided by the Trade Union of Pilots and Technicians as a strong and independent trade union organization capable of establishing the counterbalance required in labour relations.

345. Lastly, the Government declares that the conduct by Lan Chile S.A. aimed at making pilots renounce withdraw trade union membership is covered fully in the stipulations of article 291, paragraph (a) of the Labour Code, which states:

Article 291. The following persons, in particular, are guilty of committing a violation of freedom of association:

- (a) Those who exert physical or moral force on workers in order to obtain their trade union membership, or membership withdrawal, or so that a worker abstains from belonging to a trade union, and those who similarly stop a worker from promoting the establishment of a trade union organization, or oblige him to do so.

Therefore, the trade union should file a complaint for anti-union practices against Lan Chile S.A. before the labour courts. For the information of the Committee on Freedom of Association, the Government attached a copy of a recent ruling, which recognizes the validity of ILO Conventions Nos. 87 and 98, accepts the complaint made by a trade union

for anti-union practices in its enterprise and sentences the enterprise in question to pay a fine to the National Training and Employment Service (SENCE).

C. The Committee's conclusions

346. *The Committee decided to present an interim report on this case, considering that information was lacking. In particular, the Committee requests the Government to solicit information from the employers' organizations concerned, with a view to having at its disposal their views, as well as those of the enterprise concerned, on the questions at issue. The Committee will then re-examine this case taking into account the information received.*
347. *The Committee observes that in this case the complainant alleges that Lan Chile S.A. conducted a campaign to break up its organization, which began in 2001, and which took the form of a series of illegal practices of anti-union discrimination, above all in connection with negotiations aimed at concluding a new collective agreement. According to the complainant, these practices include a publicity campaign against the trade union, the mass dismissal of unionized pilots, threats of dismissal, pressure exerted on pilots and their family members so that the former withdraw union membership, discrimination against union members with regard to training, the recruitment of dismissed pilots in subsidiary enterprises under anti-union conditions (the acceptance of individual responsibility for the industrial action entitled "work-to-rule", a statement that the trade union ordered them to participate in this action and agreement to be covered by individual employment contracts rather than the collective agreement), and the harassment of a trade union official.*
348. *The Committee notes the statements made by the Government which confirm the allegations, qualify the alleged events as anti-union practices and even include (given that the Government's reply came six months after the allegations) more recent events contrary to trade union rights. Generally speaking, the Committee emphasizes the seriousness of the allegations, which have been confirmed by the Government, and expresses its deep concern in view of the number, and nature, of the anti-union practices which were discriminatory or contrary to collective bargaining, and resulted in trade union membership dropping from 400 to 71.*
349. *More specifically, the Committee notes the statements made by the Government in which it states that:*
- *the action entitled "work-to-rule" taken by the trade union consisted in fulfilling the provisions of aeronautical regulations to the letter, which obviously did not involve the infringement of applicable standards; no contractual or legal standards were violated;*
 - *between 14 September and 4 October 2001, the enterprise dismissed 108 trade union members. In 23 of these cases, the enterprise invoked "company requirements" and in 85 cases it involved a "serious breach of contractual obligations". However, in these 85 cases, there is a clear relationship between the delays and the breaches in contractual obligations (or internal regulations). Following the dismissal of these 85 workers, the company reinstated 40 and amongst those not reinstated were eight former trade union directors and workers who participated in the 1995 legal strike. Therefore, the measure was highly discriminatory given that, in essence, it affected the most active members of the organization, namely those who were dismissed for respecting a trade union agreement consisting in "work-to-rule", without violating contractual or legal standards. Three of the five members of the trade union executive board left the company following legal proceedings (which lead to an agreement or*

out-of-court negotiations). Thirty-seven pilots affected filed a request to vacate the dismissals before the Fifth Labour Court of First Instance of Santiago;

- *the dismissals reduced the negotiating power of the workers (participants decreased by 200 per cent compared with the previous collective bargaining process) and while the enterprise signed a new collective agreement, it also came to an agreement with three groups of pilots that had formed part of the trade union. The collective agreement with the trade union was for four years (48 months) with a 56 per cent reduction in the pay increase that otherwise would have been due, whereas the collective agreements with the groups of workers were for 62 months and a lower pay adjustment. Therefore, the pilots will not be able to bargain collectively at the same time and a strike will be very difficult to sustain in this context;*
- *it has been established that unionized pilots and technicians were subjected to intense pressure aimed at making them withdraw trade union membership. This is shown in documents and communications issued by the employer which offer improved conditions of work that are incompatible with continued trade union membership. This approach was also reflected in the explicit threats of dismissal that were made by some supervisors and acknowledged by some workers during conversations with the officer from the Labour Inspectorate. The trade union can legally file a complaint before the courts for these events and have the company fined;*
- *according to the inspections conducted within the enterprise, the latter excluded trade union members from flight training for operating new company aeroplanes;*
- *40 pilots dismissed for having participated in the “work-to-rule” action were reinstated with the condition that they write a letter in which they had to acknowledge responsibility for the possible damage the industrial action may have caused, as well as blame the trade union for forcing them into the alleged transgression. In their new individual contracts, these pilots did not regain the collective benefits that they had previously enjoyed;*
- *the administrative authority fined the enterprise on two occasions for failing to grant the work agreed upon in the employment contract or for failing to provide four trade union officials with their work schedules (to keep their licence, pilots must be accredited with a specific number of flight hours, and the inability to do so amounts, in practice, to professional disqualification).*

350. *As regards the allegations relating to acts of anti-union discrimination (mass dismissal for conducting trade union activities, pressure exerted on pilots and their family members in order that the former withdraw their trade union membership, the exclusion of trade union members from training for operating new aeroplanes, the failure to grant the work agreed upon in the employment contracts of trade union officials and the reinstatement of more than half of those dismissed under anti-union conditions), the Committee notes that the Government confirms these allegations, that more than half of those dismissed were reinstated and that three came to an agreement within the framework of legal proceedings. The Committee notes that the Government also suggests that the pressure exerted by the enterprise so that pilots withdraw trade union membership could lead to legal proceedings in which the company could be given a punitive fine for anti-union practices. The Committee also notes that the acts of harassment against four trade union officials (failure to grant work) were sanctioned on two occasions with a fine imposed by the administrative authority.*

351. *The Committee deeply deplores all of the anti-union practices described and highlights that no person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, whether past or present [see **Digest of***

*decisions and principles of the Freedom of Association Committee, 1996, para. 690], and that protection against anti-union discrimination should apply more particularly in respect of 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 the workplace or, with the employer's consent, during working hours [see **Digest**, op. cit., para. 694]. Furthermore, no person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see **Digest**, op. cit., para. 696] and legislation should lay down explicitly remedies and penalties against acts of anti-union discrimination in order to ensure the effective application of Article 1 of Convention No. 98 [see **Digest**, op. cit., para. 697]. To this effect, respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial [see **Digest**, op. cit., para. 741].*

- 352.** *In the present case, the Committee highlights the importance that the discriminatory practices suffered by the complainant organization and its members be rectified and sanctioned without delay, and notes with concern that, according to the complainant organization, the proceedings relating to the dismissal of pilots will take more than two years.*
- 353.** *The Committee requests the Government to keep it informed of the result of legal proceedings that are currently in course or that will intervene by reason of the previously mentioned anti-union dismissals and practices and expects that dissuasive and effective sanctions, along with compensatory measures, will be imposed without delay in order to put a stop to the enterprise's anti-union practices in the future. The Committee requests the Government to initiate discussions with a view to the possible reinstatement of the 37 pilots who have taken legal action to oppose their dismissal.*
- 354.** *With regard to the allegations that the enterprise bargained with individual pilots for anti-union purposes, the Committee observes that the Government confirms this individual bargaining and also refers to bargaining with groups of pilots for anti-union purposes and in order to prevent pilots from bargaining collectively in a simultaneous manner in the future. The Committee emphasizes that the Collective Agreements Recommendation, 1951 (No. 91), provides that for the purpose of this Recommendation, the term 'collective agreements' means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more representative workers' organizations, or, in the absence of such organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations, on the other. In this respect, the Committee emphasized that the said Recommendation stresses the role of workers' organizations as one of the parties in collective bargaining. Direct negotiation between the undertaking and its employees, by-passing representative organizations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted [see **Digest**, op. cit., para. 786]. Furthermore, the Committee recalls that in one previous case it found it difficult to reconcile the equal status given in the law to individual and collective contracts with the ILO principles on collective bargaining, according to which the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations should be encouraged and promoted, with a view to the regulation of terms and conditions of employment by means of collective agreements. In effect, it seemed that the Act allowed collective bargaining by means of collective agreements, along with other alternatives, rather than promoting and encouraging it [see **Digest**, op. cit., para. 911].*

355. *Therefore, the Committee requests the Government to take measures to prevent Lan Chile S.A. from bargaining for anti-union purposes with individual pilots or non-unionized groups of pilots, and to keep it informed of legal action that may be initiated with regard to such practices.*

The Committee's recommendations

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

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

CASE NO. 1787

INTERIM REPORT

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

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

Allegations: The complainants allege murders, abductions, physical assaults, death threats, and other acts of violence against trade union officials and members; the complainants also allege failure by the Government to adopt the measures needed to put an end to the serious situation of impunity.

357. The Committee last examined this case during its meeting in June 2002 [see 328th Report, paras. 84-124]. The International Confederation of Free Trade Unions (ICFTU) sent new allegations in communications dated 26 April, 8 May, 6 and 13 June, 4 and 10 July, and 6 and 29 August and 30 September 2002, as did the World Federation of Trade Unions in communications dated 17 April, 8 and 14 May, 26 June, 1 and 18 July, and 7, 19 and 23 August 2002, and the Cali Union of Municipal Enterprise Workers (SINTRAEMCALI) in a communication dated 12 June 2002.

358. The Government sent its observations in communications dated 5 and 6 June, 18 July and 13 September 2002.

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

A. Previous examination of the case

360. In its June 2002 meeting, the Committee made the following recommendations on the allegations that were still pending which, for the most part, referred to acts of violence against trade union members and acts of anti-union discrimination [see 328th Report, para. 124]:

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

- (b) The Committee urges the Government to continue to send its observations on progress in investigations already begun (Annex II) and to take steps promptly to begin investigations into the murders, abductions, disappearances, attempted murders and death threats reported in Annex I and those mentioned in the section “new allegations” of this report.
- (c) The Committee requests the complainants to formulate comments on the Government’s statements that certain murdered persons were allegedly not members of trade unions and, if applicable, provide further information.
- (d) The Committee once again in the strongest terms urges the Government to take the necessary steps to end the intolerable situation of impunity and to punish those responsible for the numerous acts of violence and to achieve provable results in disbanding the paramilitary and other violent revolutionary groups.
- (e) The Committee requests the Government to provide clear information about the programme of protection for 2002 and expresses the firm hope that this protection will be extended to all workers who are members and officials of trade unions whose personal safety is threatened, including members of ASODEFENSA.
- (f) The Committee requests the Government to take the necessary steps to carry out an unrestricted assessment of the risk run by threatened trade unionists and to provide adequate protection measures.
- (g) The Committee requests the Government to take steps to send a new consolidated list prepared by the Sub-Committee on the Unification of the List of Victims for the period 1991-2002.
- (h) The Committee once again recalls that it would be advisable to deal specifically with situations in which violence against trade union members is very intensive – for example in the sectors including education, the petroleum industry, the health services as well as municipal and departmental administrations. Such information should also refer to regions where acts of violence occur most frequently, such as the departments of Valle del Cauca and Antioquia and the municipality of Barrancabermeja, especially in the Empresa de Petróleo de Colombia and the Empresa de Gas de Barrancabermeja. The Committee also requests the Government to send all the information available to it which could help better to combat impunity and examine the causes of the acts of violence against trade union members. The Committee once again reminds the Government of its responsibility for the protection of workers against acts of violence and finally for a proper factual and analytical assessment of each and every crime committed. The Committee again suggests that the complainants and the Government seek technical assistance from the Office for this assessment.

B. New allegations

Murders

- (1) Luis Miguel Rubio Espinel, member of the North Santander Teachers’ Trade Union Association (ASINORTH), on 15 July 2001;
- (2) Carmenza Pungo, member of the National Association of Workers and Employees in Hospitals, Clinics, Dispensaries and Community Health Units (ANTHOC), on 2 September 2001, on the banks of the River Piedra;
- (3) Sandra Liliana Quintero, member of the National Association of Workers and Employees in Hospitals, Clinics, Dispensaries and Community Health Units ANTHOC-CUT, on 16 March 2002, in the Department of Cundinamarca;
- (4) Gustavo Oyuela Rodríguez, member of the Nariño Teachers’ Union SIMANA FECODE, on 19 March 2002, in the Department of Nariño;

- (5) Efraín Urrea Marín, member of the National Association of Workers and Employees in Hospitals, Clinics, Dispensaries and Community Health Units ANTHOC-CUT, on 21 March 2002, in San Carlos;
- (6) María Nubia Castro, member of ANTHOC-CUT, on 21 March 2002, in San Carlos;
- (7) Eddy Socorro Leal Barrera, member of the North Santander Teachers' Trade Union Association (ASINORTH), on 31 March 2002, in Salazar;
- (8) Nelsy Gabriela Cuesta Córdoba, abducted on 4 April 2002, in Yondo;
- (9) Heliodoro Sierra, member of the Single Union of Education Workers of Quindío (SUTEQ), on 7 April 2002, in the Department of Quindío;
- (10) Freddy Armando Girón Burbano, activist in the Cauca Teachers' Association (ASOINCA-CUT), on 7 April 2002;
- (11) Diofanol Sierra Vargas, official of the Food Industry Workers' Trade Union (SINTRAINAL-CUT), on 8 April 2002, in Barrancabermeja;
- (12) Jhon Jairo Durán, member of the National Association of Civil Servants and Judicial Employees (ASONAL JUDICIAL-CUT), on 13 April 2001, in Nariño, at the hands of guerrillas;
- (13) Tito Libio Hernández Ordóñez, President of the Pasto Subcommittee of the Union of University Workers and Employees of Colombia (SINTRAUNICOL), on 16 April 2002, in the city of Pasto, Department of Nariño;
- (14) Javier de Jesús Restrepo, member of ASONAL JUDICIAL-CUT, on 16 April 2002, in Puerto Rico, Department of Florencia;
- (15) Said Ballona Gutiérrez, member of the North Santander Teachers' Trade Union Association (ASINORTH), on 18 April 2002, in Tarra, Department of North Santander;
- (16) Jhon Fredy Marín, President of the Curillo section of the National Association of Workers and Employees in Hospitals, Clinics, Dispensaries and Community Health Units (ANTHOC), on 18 April 2002, in Curillo, Department of Arauca;
- (17) Agustín Colmenares, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April 2002;
- (18) Alberto Martínez, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April 2002;
- (19) Juan Sepúlveda, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April 2002;
- (20) Albeiro Ledesma, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April 2002;
- (21) José Hurtado, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April 2002;
- (22) Enrique Suárez, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April;

- (23) Luis Enrique Guisa, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April 2002;
- (24) Ricardo Eliécer Ruiz, President of the Trade Union of Workers of Bello municipality, on 3 May 2002;
- (25) Edilberto Arango Isaza, member of the National Association of Workers and Employees in Hospitals, Clinics, Dispensaries and Community Health Units (ANTHOC-CUT), on 3 May 2002, in the Department of Antioquia;
- (26) Froilán Hilario Peláez Zapata, member of the CUT Executive Committee, on 6 May 2002, in the Department of Antioquia;
- (27) Jairo Ramos, member of the Union of Electricity Workers of Colombia (SINTRAELECOL-CUT), on 1 June 2001;
- (28) Adalberto Tukamoto Palomino, a SINTRAELECOL-CUT activist, on 1 June 2002, in the Department of Meta;
- (29) Isaías Gómez Jaramillo, member of the Antioquia Teachers' Association (ADIDA-CUT), on 1 June 2002, in the Department of Meta;
- (30) Hernán de Jesús Ortiz, a member of the National Board of the Single Confederation of Workers of Colombia (CUT) and official of the Colombian Teachers' Federation (FECODE), on 4 June 2002;
- (31) Eduardo Vasques Jiménez, member of ADIDA-CUT, on 4 June 2002, in the Department of Magdalena;
- (32) Jhon Jairo Alvarez Cardona, member of the National Board of SINTRATEXTIL-CUT, on 5 June 2002, in the municipality of Rionegro;
- (33) César Blanco, official of the Bucaramanga section of the USO, in June 2002, in Bucaramanga;
- (34) Carlos Julio Gómez, official of the Municipal Association of the La Plata Commune Action Committee, on 12 June 2002, in La Plata;
- (35) Luis Enrique Coiran, President of the Tame section of ANTHOC, on 19 June 2002, in Tame;
- (36) Helio Rodríguez Ruiz, official of the National Trade Union of Workers in the Catering, Hotel and Allied Occupations (HOCAR-CUT), on 20 June 2002, in Barrancabermeja;
- (37) Manuel Antonio Fuertes Arévalo, former Vice-President of the Tuquerres subcommittee of SINTRAELECOL-CUT, on 29 June 2002, in the Department of Nariño;
- (38) José González Barros, activist of the Trade Union of Official Workers and Public Employees of the municipality of Sabanagrande (SINTRAOPUSA-CUT), on 2 July 2002, in the municipality of Sabanagrande;
- (39) Roberto Rojas Pinzón, member of ANTHOC-CUT, on 26 July 2002, in the Department of Arauca;

- (40) Wilfredo Camargo Aroca, member of the National Union of Farmworkers (SINTRAINAGRO), on 31 July 2002, in Puerto Wilches, Department of Santander;
- (41) Rodrigo Gamboa Coy, President of the César subcommittee of the Incora Workers' Union (SINTRADIN-CUT), on 31 July 2002, in Valledupar in the Department of César;
- (42) Felipe Santiago Mendoza, member of USO, on 15 August 2002, in the Department of Santander;
- (43) Amparo Figueroa, member of ANTHOC-CUT, on 15 August 2002, in the Department of Cauca;
- (44) Francisco Méndez Díaz, member of the Sucre Teachers' Association (ADES-FECODE-CUT), on 15 August 2002, in the Department of Sucre;
- (45) Blanca Ludivia Hernández, Vice-President of the National Health and Social Security Trade Union (SINDES), who was found dead on 15 August 2002 after being abducted the previous week in the Department of Quindío.

Acts of violence

- (1) José Antonio González Luna, Director of the Human Rights Department of the ICFTU, who on 1 May 2002 was brutally assaulted by members of the security forces;
- (2) Henry Alberto Mosquera, of the Trade Union of Workers of Yumbo municipality, under circumstances similar to those described above;
- (3) Ricardo Valbuena, of the Trade Union of Workers of Yumbo municipality, under circumstances similar to those described above.

Abductions and disappearances

- (1) José Ernesto Ricaurte, member of ANTHOC-CUT, who disappeared on 26 September 2001;
- (2) Jairo Domínguez, member of the Single Union of Workers in the Construction Materials Industry (SUTIMAC-CUT), on 3 July 2002;
- (3) Arturo Escalante Moros, member of the Workers' Trade Union (USO), on 27 September 2001;
- (4) Arturo Vázquez Galeano, activist in the Trade Union of Workers and Employees of the Department of Antioquia, on 5 April 2002;
- (5) Miguel Angel Rendón Graciano, Vice-President of the Chocó Subcommittee of the Sena Public Employees' Trade Union, on 6 April 2002, in the Department of Chocó;
- (6) attempted abduction of the daughter of William Mendoza, President of the National Trade Union of Food Industry Workers (SINALTRAINAL), which was foiled by the police;
- (7) Alberto Herrera, Pedro Barrios, Eleazar Becerra and Salvador Vasquez, members of SINTRAELECOL-CUT, on 4 July 2002, in Fundación, Department of Magdalena;

- (8) Jorge Amiro Genecco Martínez, member of ANTHOC-CUT, on 9 July 2002, in Bogotá, Department of Cundinamarca;
- (9) Gonzalo Ramírez Triana, activist in USO, on 30 July 2002, in the Department of Cundinamarca;
- (10) Alonso Pamplona, former member of the Claims Committee of the USO, who was abducted on 31 July 2002 and released on 1 August 2002, after receiving four bullet wounds, in the Department of Santander;
- (11) on 20 August 2002 the following 27 individuals were abducted in the Department of Chocó, including a number of retirees and workers of the Cali Municipal Trade Union: Flower Enrique Rojas, President of the Cali Trade Union of Workers (SINTRAMUNICIPIO); María del Carmen Rendón; Jair Rendón; Antonio Bejarano; Henry Salcedo; Diego Valencia; Carlos Salinas; Beatriz Orozco; Soledad Fals; Elécer Ortiz; Jaime Sánchez Ballén; Pedro Potosí; Oscar Ivan Hernández; Gerardo Machado; Néstor Naráez; Libaniel Arciniegas. All are trade union members.

Attempted murders

- (1) Hebert Cuadros, member of the Valle del Cauca Single Union of Education Workers (SUTEV), on 16 November 2001;
- (2) Daniel Orlando Gutiérrez Ramos, coordinator of the Human Rights Department of the National Drivers' Union of Colombia (SINDINALCH-CGTD), on 3 January 2002;
- (3) Sigilfredo Grueso, activist in the Cali Municipal Workers' Union (SINTRAEMCALI), on 10 January 2002;
- (4) Gaspar Guzmán, member of the Union of Electricity Workers of Colombia (SINTRAELECOL), on 16 April 2002;
- (5) Rubén Castro Quintana, President of the Bolívar Subcommittee of SINTRAELECOL;
- (6) Carlos Hernán Sánchez Díaz, member of the Yumbo Workers' Trade Union who was the victim of a murder attempt on 3 May 2002 in Yumbo;
- (7) Antonio Zamanete, member of the Yumbo Workers' Trade Union, who was the victim of a murder attempt on 3 May 2002 in Yumbo;
- (8) the national headquarters of the Union of Electricity Workers of Colombia (SINTRAELECOL), on 8 July 2002 in Bogotá;
- (9) Omar Romero Díaz, member of the Single Union of Workers in the Construction Materials Industry (SUTIMAC-CUT), on 13 August 2002, in Cali.

Threats

- (1) Against trade union officials in Yumbo;
- (2) Hernando Hernández Pardo;
- (3) Domingo Tovar Arrieta, Director of the Organization Department and Human Rights Ombudsman of the CUT;
- (4) Fernando Vargas, President of the Cauca Teachers' Association (ASOINCA);

- (5) Patricia Pinzón, President of the Cauca Section of ANTHOC;
- (6) Mario de Jesús Castañeda, President of the Huila Subcommittee of the CUT;
- (7) Oscar Sánchez, General Secretary of the CUT Cauca Subcommittee;
- (8) Hermes Ortiz, Municipal Branch President of ANTHOC;
- (9) Francisco Bolaños, member of the San José Hospital Strike Committee;
- (10) Jorge Muñoz, district board official of ANTHOC;
- (11) the headquarters of SINTRAEMCALI;
- (12) the headquarters of SINTRAHOINCOL;
- (13) the headquarters of SINTRAOFAN.

361. In a recent communication dated 30 September 2002, the ICFTU states that on 16 September 2002 the country's rural workers' organizations, with the support of trade unions, organizations of human rights and other organized sectors, were mobilized on the basis of their right of peaceful protest consecrated in the Constitution. The protest was stigmatized by government members who prohibited workers' marches during that day due to suspected infiltrations by the guerrilla. These declarations put the lives of social and trade union leaders in imminent danger. Despite such declarations, the complainant organization notes that a series of death threats had been received from the paramilitaries. On 7 September the joint paramilitary command of Colima declared that the leaders of the social mobilization in the South-West of Colombia were a military target and threatened the communities that would participate in the day of protest as being a military target. The complainant organization adds that members of the police and the national army violently attacked and arrested many people who participated in the organization of the events of 16 September. This way, between 12 and 20 September, the following trade union officials were detained: Raúl Herrera, trade union official of the SUMAPAZ region; Rubén Robles, General Secretary, departmental Union of Sugar Agricultural Workers and official of FENSUAGRO; Ana María Andera Ablanado and Daniel Bustos Gutiérrez, international delegates of the Spanish NGO, SOLDEPAZ PACHAKUTTI; Mauricio Rubiano, Human Rights Secretary of the Youth Department of CUT (who was released without suffering ill-treatment); María Isabel Lenis, Ombudsperson, regional delegate of the Valle del Cauca branch; Otoniel Ramírez, President of the CUT, Valle del Cauca sub-executive board; Berenice Celeita, President of NOMADESC, a human rights organization; Oscar Figueroa and Angel Tovar, officials of the Cali Municipal Workers' Union (SINTRAEMCALI).

C. Further replies of the Government

362. In its communications dated 6 June, 18 July and 30 September 2002, the Government endorses the statement that "freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed", and emphasizes that it is not only freedom of association that is affected, but work and productive activity in general. The problem of violence which has affected Colombia (harassment, murders, abductions, disappearances and displacements of persons perpetrated by illegal guerrilla groups, paramilitaries, drug traffickers and organized criminals) has always been recognized by the Government as a state of affairs that is profoundly inimical to the fundamental freedoms, and is in no way a question of a particular situation against trade unionists. The worsening in the armed conflict in Colombia, which was described previously, affects all sectors and strata of

Colombian society: employers and workers, social and political leaders, clergy and lay people, private individuals and public officials.

- 363.** In the light of these facts, it must be concluded that what exists in Colombia is a serious public order problem which has a profound effect on civil life and peaceful coexistence; this is not in any way the result of government negligence, but a situation that has been going on for more than 40 years and which, as a result of recent events (the break up of peace talks with the FARC and ELN and the escalation of the conflict), is deteriorating, rather than improving.
- 364.** The Government understands that the best decision that the State can make when faced with a situation of violence linked with armed conflict is a decision to seek peace. The Government accordingly ordered the establishment of a demilitarized zone with a view to holding talks with the guerrilla chiefs of the FARC, formed its own team of negotiators, sought the support of the international community, and at the same time went ahead with talks both in Colombia and outside the country with the other guerrilla group (ELN). Despite the Government's efforts, talks with the FARC and ELN were broken off in the first half of 2002.
- 365.** On the other hand, with regard to the specific area of freedom of association, the Government indicates that promotion of and respect for trade unionism as a basic institution of society has been and continues to be one of its guiding principles. Act No. 584 of 2000 introduced a major reform of collective labour law by bringing it into conformity with ILO Conventions Nos. 87, 98, 151 and 154. In its rulings C-797/00, C-567/00, C-201/02 and T-568/99, the Constitutional Court of Colombia declared that a number of provisions of the Substantive Labour Code, which allowed the Government to intervene in the internal affairs of trade unions, were not enforceable. Similarly, the right to take part in social protest is now also protected: in the last two years, no strike has been declared illegal. Social dialogue and consultation are part of government policy, and as a result hundreds of collective agreements have been concluded (200 in the last 12 months). Where this is not possible, arbitration tribunals can be convened at the request of the trade union organizations.
- 366.** Violations of the fundamental freedoms of trade unionists have been closely associated with the deterioration in the armed conflict, since the illegal armed groups (paramilitary and guerrilla) are the main culprits of such violations. The Government adds that it has repeatedly called for respect for trade union organizations as an element of Colombian civil society, and at the same time has strengthened the protection programmes of the Ministry of the Interior. Concern about the number of trade union officials, NGO members and journalists at high risk has prompted a significant increase in the budget for the Protection Programme, from 3,440,802,000 pesos in 1999 to 27,542,000,000 pesos for the year 2002. This has made it possible to respond to the increasing number of requests for protection, a fact reflected by the greater number of individuals protected under the Programme. That number increased from 177 in 1999 to 880 in 2000 and 2,354 in 2001, a total increase between 1999 and 2001 of 1,229 per cent. Between 2001 and 2002, there will be a further increase of 6.2 per cent, taking the total number of protected persons to 2,500.
- 367.** Protection consists of a package of soft and hard protection measures. The soft measures include the following: humanitarian assistance grants equivalent to three times the legal minimum wage for a period of up to six months; provision of means of communication, such as cellular or satellite telephones; assistance with relocation; provision of national or international airline tickets; assistance with transport costs overland or by water transport; and training in self-defence and security. Hard measures include bullet-proofing for

premises and vehicles, and provision of bodyguards, means of communication and weapons.

- 368.** With regard to protection given to leaders of the Workers' Trade Union (USO), the Ministry of the Interior, ECOPETROL and DAS on 21 March 2002 signed an inter-agency agreement with FONADE for one year. This agreement provides for the expenditure of 2.9 billion pesos, which can be increased and extended, and includes 15 separate protection schemes, as follows: for the members of the National Executive Board, one collective scheme and one individual scheme for Hernando Hernández, Hernando Meneses, Gabriel Alvis, and Jorge Gamboa; for Daniel Rico Serpa; for Julio Carrascal of the Bolívar Subcommittee; one collective scheme for the Bogotá Subcommittee; three protection schemes for the subcommittees based in Barrancabermeja; one collective protection scheme for the Puerto Salgar section of USO; one collective protection scheme for Orito and one collective protection scheme for Apiay. All these protection schemes are currently being implemented.
- 369.** At the same time, the Government, with regard to the assessment of the protection programme as recommended in the Committee's 328th Report (para. 124(*h*)), states that the Ministry of the Interior, with the assistance of the ILO and the Office in Colombia of the United Nations High Commissioner for Human Rights, is already carrying out such an assessment and the results will be made known to the Committee as soon as they are available.
- 370.** With regard to the problem of justice, the Colombian Government recognizes the critical situation of impunity with regard to crimes committed against trade union leaders, but points out that this situation, too, is not unique to them, but rather, symptomatic of the fragility of Colombian justice in general. However, the Attorney-General's Office is attempting by various means to combat the activities of organized criminal groups that have created serious security problems including attempts on the lives and physical integrity of prosecutors and agents of the Technical Investigation Section (CTI). The Colombian authorities have also recently taken a crucial step in combating impunity for crimes against the civilian population perpetrated by armed groups, including crimes committed by the paramilitary groups, by signing and ratifying the treaty establishing the new International Criminal Court that will try war crimes.
- 371.** Similarly, there has been an improvement in the results of the actions carried out by the Colombian armed forces against the illegal self-defence groups, as can be seen from the comparative table (reproduced below) contained in the report submitted by the Human Rights Office of the Ministry of Defence which sets out the results of such operations during 1999, 2000 and 2001.

	1999	2000	2001
Enemy combatants:			
Killed, wounded	35	92	116
Captured	286	312	992
Equipment confiscated:			
Weapons	202	441	822
Ammunitions	23 166	74 464	146 855
Communications equipment	46	129	320
Vehicles	69	120	199
Boats	1	1	8

372. The Government supplies a report (reproduced below) on cases reported in 2000, 2001 and 2002 of murders, abductions, attempted murders and threats against trade unionists relating to Case No. 1787, including information on any judicial proceedings currently under way.

Murders 2000-02

- (1) Arturo Alarcón. According to the 327th Report, this murder took place on 18 January 2001 in the municipality of Piendamó, Department of Cauca. The victim was a member of ASOINCA, a branch of FECODE. According to the NGO Justicia y Paz/CINEP in the edition of *Noche y Niebla* for the first quarter of 2001, “Eight armed men on four motorcycles ... killed three individuals ... [including] Arturo, a teacher in ... Mondomo ...”. According to the source, these murders occurred in the municipality of Santander de Quilichao, in the Department of Cauca. Arturo Alarcón is not included in the “List of teachers murdered in 2001” drawn up by the Colombian Teachers’ Federation (FECODE). The Attorney-General’s Office has reported that “no progress is being made in the investigation of these incidents. The subunit has made inquiries at the District Prosecutor’s Office and the local unit of the Piendamó CTI, but no information is available. Information was also requested from the URI Registry, without success”.
- (2) Rafael Atencia Miranda. According to the 327th Report, he was a member of the Workers’ Trade Union (USO) and was murdered on 18 March 2001 in the municipality of Barrancabermeja, Department of Santander. His name does not appear in the “Table of murders, woundings and disappearances of workers of the Petroleum Industry Workers’ Trade Union” produced by the USO. Registered under File No. 22675 with the Attorney-General’s Office. The investigation is being carried out by the Barrancabermeja Prosecutors’ Office 9 and is currently at the examination of evidence stage.
- (3) Jairo Balvuela, who was murdered in the municipality of Buga, Department of Valle, on 10 October 2001. He was an official of the Buga section of the Trade Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES). The Attorney-General’s Office has stated that the investigation is currently at the examination of evidence stage with the Cali Human Rights Unit.

- (4) Victor Carrillo, who according to the 327th Report was an official of SINTRAELECOL, was murdered in the municipality of Málaga, Department of Santander, on 1 March 2001 at a paramilitary roadblock. His name does not figure in the “Report on murders, harassment, disappearances, detentions, psychological terrorism and threats against trade union officials and workers in the electrical sector belonging to SINTRAELECOL” produced by that union’s National Executive Board. The Attorney-General’s Office has reported that “the investigative subunit of Bucaramanga trade unionists has notified the relevant authorities with a view to the registration of the victim’s death”.
- (5) Francisco Isaías Cifuentes, who was listed in the 327th Report as a member of ASOINCA, a branch of FECODE in Popayán. He was murdered on 26 April 2001, in the city of Popayán, Department of Cauca. Justicia y Paz/CINEP reports in the edition of *Noche y Niebla* for the second quarter of 2001, that “he was a member of the Cauca Teachers’ Association (ASOINCA), He was behind the creation of the National Association for Solidarity Assistance (ANDAS), Cauca section ...”. According to the “List of teachers murdered in 2001”, he was murdered during incidents that occurred one Thursday night. The Attorney-General’s Office has reported that it has so far been unable to establish any motives. The investigation is being conducted by the Special Prosecutor’s Office 007 under File No. 32667.
- (6) Saúl Alberto Colpas Castro, who was listed in the 327th Report as president of the Trade Union of Agricultural Workers in the Department of Atlántico (SINTRAGRICOLAS) was murdered in the Department of Atlántico on 13 July 2001. Registered under File No. 103242. The Attorney-General’s Office has reported that with the resolution of 10 September 2001 it has taken over the case and ordered the opening of a preliminary investigation and intelligence operations aimed at identifying the guilty parties.
- (7) Julio César Díaz Quintero, listed in the 327th Report as a member of the Trade Union of Workers of the Social Security Institute (SINTRAISS). He was murdered on 16 February 2001, in the municipality of Barrancabermeja in the Department of Santander. The investigation is being carried out by the Barrancabermeja Prosecutor’s Office 6 and is at the examination of evidence stage. Registered under File No. 22276.
- (8) Alfredo Florez, listed in the 327th Report as a member of the Trade Union of Workers employed in the Production of Oils and Derivative Products (SINTRAPROCEITES). He was murdered in the municipality of Puerto Wilches, Department of Santander, on 11 February 2001. The Attorney-General’s Office has reported that the trade unionists’ Investigation Subunit of Bucaramanga has notified the relevant authorities with a view to registration of the victim’s death.
- (9) José Luis Guette Montero, who was murdered in the city of Ciénaga, Department of Magdalena, on 25 January 2001. He was president of the Magdalena section of the National Union of Farmworkers (SINTRAINAGRO). According to the National Police, a suspected paramilitary has been charged with the murder and is in detention. Registered as File No. 21292. The Attorney-General’s Office has reported that a person has been held in preventive detention in connection with the case, and that evidence is being gathered with a view to shedding light on the crime and identifying the guilty parties.
- (10) Saulo Guzmán Cruz, who according to the 327th Report was president of the Trade Union of Health Workers of Aguachica and was murdered on 11 April 2001 in the municipality of Aguachica, Department of César. The investigation is being carried out by the Prosecutor’s Office, Section 21, and is at the examination of evidence stage. Registered as File No. 8422.

- (11) Darío Hoyos Franco, murdered in the municipality of Fusagasugá, Department of Cundinamarca, on 3 March 2001. A member of the Trade Union and Solidarity Movement in Support of the Rural Workers' Struggles. Registered as File No. 10101. The Attorney-General's Office has reported that through a resolution of 14 March 2001, preventive detention measures have been taken against persons implicated in the crime. It adds that the deceased was a representative for Latin America in the National Federation of Miners and a member of the Urabá branch of SINTRAINAGRO. The Attorney-General's Office has reported that this murder is being investigated by the Special Agency (File No. 5872) which was established on 21 May 2001. Special Agent: P251 JP1.
- (12) Cervando Lerma Guevara, who according to the 327th Report was a member and prominent activist in the Petroleum Industry Workers' Trade Union (USO). He was murdered on 10 October 2001 in the municipality of Barrancabermeja, Department of Santander. The investigation is being carried out by the Barrancabermeja Prosecutor's Office 008, and is at the examination of evidence stage, under File No. 24701.
- (13) Aury Sara Marruego, murdered in the *corregimiento* of La Pava, Department of Bolívar, on 5 December 2001. Official of the Petroleum Industry Workers' Trade Union (USO). Registered as File No. 82425. The investigation is at the examination of evidence stage, hearing witness testimonies, etc., and is being conducted by the First Special Prosecutor delegated to the "Gaula".
- (14) Nilson Martínez Peña, listed in the 327th Report as a member of the Union of Workers in the Oil Palm and Related Industries (SINTRAPALMA), murdered on 12 February 2001 in the municipality of Puerto Wilches, Department of Santander. Justicia y Paz/CINEP, in the edition of *Noche y Niebla* for the first quarter of 2001, states with regard to the murder of Nilson Martínez that: "Members of paramilitary forces executed two workers employed by the Monterrey and Bucarelia palm-growing enterprises at Caño Murciélago. Raúl was a member of the Union of Workers in the Palm Oil and Related Industries (SINTRAPALMA)." The names of the murdered workers were Raúl Gil and Nilson Martínez, according to CINEP. The investigation is being carried out by the Barrancabermeja Prosecutor's Office 2 and is at the examination of evidence stage. Registered as File No. 22365.
- (15) Aldo Mejía Martínez, listed in the 327th Report as President of the Codazzi section of SINTRACUEMPONAL, murdered in the municipality of Codazzi, Department of César, on 3 April 2001. The investigation is at the examination of evidence stage and is in the hands of the Codazzi Prosecutor's Office 27, as File No. 281.
- (16) Cándido Méndez, listed in the 327th Report as a member of the National Mining and Energy Workers' Trade Union, La Loma section, murdered in the municipality of Chiriguana on 18 February 2001. Registered under File No. 6619. The investigation is in the hands of the Chiriguana Prosecutor's Office 22 and is at the examination of evidence stage.
- (17) Doris Núñez Lozano, murdered on 16 August 2001 in the municipality of Fusagasugá, Department of Cundinamarca. Doris was a member of the Claims Committee of the Union of Electricity Workers of Colombia (SINTRAELECOL), Fusagasugá section. The Attorney-General's Office reported that it took the case over with the resolution of 18 September 2001 and ordered an evidence-gathering mission. Registered under File No. 54401.
- (18) Pablo Antonio Padilla López, listed in the 327th Report as vice-president of the Trade Union of Workers employed in the Production of Oils and Derivative Products (SINTRAPROACEITES), San Alberto section, murdered in the municipality of San

Alberto, Department of César on 16 February 2001 by paramilitaries. Registered as File No. 134686. The investigation is being carried out by the Special Prosecutor's Office 4 and is at the examination of evidence stage.

- (19) Luís Alberto Pedraza Serrano, listed in the 327th Report as a member of the Petroleum Industry Workers' Trade Union (USO), murdered on 24 March 2001 in the municipality of Arauca, Department of Arauca, by paramilitaries. In the "Table of murders, woundings and disappearances of members of the Petroleum Industry Workers' Trade Union" produced by the USO, the name of Mr. Luís Alberto Pedraza does not appear. According to the Attorney-General's Office, "the legal situation of the suspects has yet to be resolved. One person has been detained and one other has been declared absent". Registered under File No. 1874.
- (20) Samuel Segunda Peña Sanguino, listed in the 327th Report as a member of the National Mining and Energy Workers' Union (SINTRAMIENERGETICA), murdered in the municipality of Soledad, Department of Atlántico on 11 June 2001. Registered under File No. 23998. The investigation is being carried out by Special Prosecutor's Office 4 and is at the examination of evidence stage.
- (21) Walter Dione Perea Díaz, murdered in the municipality of Copacabana, Department of Antioquia, on 26 January 2001. In the "List of teachers murdered in 2001" he is listed as a "teacher at the San Luis Gonzaga Secondary School in the municipality of Copacabana, Department of Antioquia, murdered on 26 January 2001 during the night at his home". According to the Attorney-General's Office, the resolution of 16 July 2001 orders that certain evidence be examined and judicial proceedings initiated. Registered under File No. 3436.
- (22) Isabel Pérez Guzmán, listed in the 327th Report as a member of the National Union of Workers in the Registry of Births, Marriages and Deaths (SINTRAREGINAL), murdered on 8 July 2001 in the Department of Sucre. Registered under File No. 163301. According to the Attorney-General's Office, witness testimonies have been obtained including descriptions of the suspects.
- (23) Jaime Sánchez, listed in the 327th Report as a member of SINTRAELECOL, murdered on 20 March 2001 in the municipality of Sabana de Torres, Department of Santander. Mr. Sánchez is not included in the "Report on murders, harassment, disappearances, detentions, psychological terrorism and threats against union officials and workers of the electrical sector belonging to SINTRAELECOL" produced by the union's National Executive Board. Justicia y Paz/CINEP in the edition of *Noche y Niebla* for the first quarter of 2001 states with regard to the murder that "members of an armed group shot and killed two workers at the Santander Electrical Enterprise". The investigation is being conducted by the Barrancabermeja Prosecutor's Office 8 and is at the examination of evidence stage. Registered under File No. 23082.
- (24) Gustavo Soler, listed in the 327th Report as an official of the National Mining and Energy Workers' Trade Union (SINTRAMIENERGETICA), murdered on 6 October 2001 in the city of Valledupar, Department of César. The investigation is being conducted by Special Prosecutor 5 and is at the examination of evidence stage.
- (25) Oscar Darío Soto Polo, listed in the 327th Report as vice-president of the Executive Council of the Córdoba Family Benefits Fund (COMFACOR), murdered in the city of Montería, Department of Córdoba, on 21 June 2001. Registered as File No. 20421. According to the Attorney-General's Office, "a statement was received from one Luz Marina Lara Castro on 29 June 2001".

- (26) Juan Rodrigo Suárez Mira, murdered in the municipality of Bello, Department of Antioquia, on 21 March 2001. Member of ADIDA. According to the “List of teachers murdered in 2001” produced by the Colombian Teachers’ Federation (FECODE), he was a teacher at the Manrique College in the municipality of Medellín and was murdered on 21 March 2001 in that city. Registered as File No. 42.647. The investigation is at the examination of evidence stage, statements have been obtained and the inquiry is in the hands of the Bello District Prosecutor 5.
- (27) James Orlando Urbano Morales, listed in the 327th Report as an official of the Valle Workers’ Trade Union, a subsidiary of the CGTD, murdered in the municipality of Jamundí, Department of Valle del Cauca, on 12 July 2001. According to the document sent to the Ministry of Labour and Social Security on 18 September 2001, Mr. James Urbano Morales was murdered, but there is no confirmation of his status as a member or official of SINTRADEPARTAMENTO. Registered under File No. 88651. The investigation is being carried out by the Jamundí District Prosecutor’s Office 103 and is at the examination of evidence stage.
- (28) Miguel Angel Vargas Zapata, murdered on 16 May 2001 in the city of Valledupar, Department of César. President of the University Teachers’ Association (ASPU), César section, according to a document signed by the National Treasurer in Bogotá and dated 30 May 2001. According to the Attorney-General’s Office, one person has been implicated, arrested and brought before the First Special Prosecutor’s Office. Registered under File No. 134565.
- (29) Ana Rubiela Villada, listed in the 327th Report as a member of the Valle Trade Union of Education Employees (SUTEV-CUT), disappeared on 27 September 2001 in the Department of Valle del Cauca and was found dead on 26 October 2001. Registered under File No. 7-1801. The investigation is at the examination of evidence stage and is in the hands of the Seventh Prosecutor’s Office, Sevilla.
- (30) Huber Galeano, murdered on 11 November 2001 in the city of Pereira, Department of Risaralda. Activist of the Trade Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES), Pereira. Registered under File No. 693688. The investigation is in the hands of the Prosecutor’s Office 18, Pereira.
- (31) Libardo de Jesús Usme Salazar, murdered in the city of Villavicencio, Department of Meta, on 6 June 2001. A member of the Union of Electricity Workers (SINTRAELECOL) employed at the Antioquia Power Company (EADE). The investigation is at the preliminary stage of examining evidence, in accordance with a resolution of 30 August 2001. The case is being investigated by the Medellín Special Prosecutor’s Office under File No. 457881.
- (32) Gerardo de Jesús Raigoza Cardona, who according to the 324th Report was murdered in the city of Pereira, Department of Risaralda. According to the Colombian Teachers’ Federation, “Gerardo de Jesús Raigoza Cardona, a teacher at the Official Deogracias Cardona College in the city of Pereira, was found after having been brutally murdered on some undetermined date around the middle of the previous week and was identified today, Monday, 24 April 2000”. The Attorney-General’s Office reported that the investigation was closed on 3 January 2001 and reopened on 25 January 2001. Resolution No. 157 of 6 April 2001 assigned the case to the Prosecutor’s Office 2 delegated to the Higher Court, as File No. 60127.
- (33) Edgar Mariño Pereira Galvis, who according to the 324th Report was murdered on 25 June 2000 in the city of Villavicencio, Department of Meta. According to information provided by the Single Confederation of Workers of Colombia (CUT), he

was a worker at the Puerto Lleras Hospital in Meta, and as a result of continual threats had moved to Villavicencio. Registered under File No. 23729. According to the Attorney-General's Office, the motive of the murder appears to have been robbery, rather than the victim's trade union activities.

- (34) Arelis Castillo Colorado, who according to the 324th Report was murdered in the municipality of Caucasia, Department of Antioquia, on 28 July 2000. The Colombian Teachers' Federation (FECODE) in its "List of teachers murdered in 2000", dated 10 August 2001, describes him as a teacher at the Gabriel Mistral School in the *corregimiento* of Cuiturú, municipality of Caucasia, Department of Antioquia, and states that he was murdered in that municipality on 28 July 2000. It says nothing about his membership of FECODE. The investigation is being carried out by the Special Investigation Subunit under File No. 2859. The investigation is at the preliminary stage and is examining evidence.
- (35) Jesús Antonio Posada Marín, who according to the 324th Report was murdered on 11 May 2000 in the municipality of San Francisco, Department of Antioquia. He is described in the "List of teachers murdered in 2000" produced by the Colombian Teachers' Federation as a teacher in the Los Yerbales Rural School in the district of Aquitania, San Francisco, and was murdered on the Medellín-Bogotá highway on 11 May 2000. His status as a member of FECODE is not established. Registered as File No. 1441. According to the Attorney-General's Office, the investigation has been suspended.
- (36) Jaime Enrique Barrera, murdered in the municipality of Anzá, Department of Antioquia, on 10 June 2000. According to the Colombian Teachers' Federation in its "List of teachers murdered in 2000", Jaime Enrique Barrera was the Rector of the Ascensión de Montoya de Porra College in the District of Güita, municipality of Anzá, Department of Antioquia, and was a social studies graduate of the University of Antioquia. He was a former delegate of the Antioquia Teachers' Association (ADIDA), and was murdered on 10 June 2000. The investigation is being carried out by the Special Prosecutor's Office and is at the preliminary stage and examining evidence under File No. 1966.
- (37) Jorge Andrés Ríos Zapata, murdered on 5 January 2000 in the city of Medellín, Department of Antioquia. According to the Colombian Teachers' Federation in its "List of teachers murdered in 2000", Mr. Ríos Zapata was employed as a teacher at the Ciudadela Las Américas School. Registered under File No. 319866. The investigation is at the preliminary stage and is examining evidence.
- (38) Diego Fernando Gómez, murdered in the municipality of Barrancabermeja, Department of Santander, on 13 July 2000. An official of the Trade Union of Workers of the Social Security Institute (SINTRAISS). Justicia y Paz/CINEP states with regard to this murder that paramilitaries belonging to the AUC known as "El Macon" and "El Canoso" executed an official of the Trade Union of Workers of the Social Security Institute who was also a prominent sporting figure in the city. Registered under File No. 20030. The Attorney-General's Office has reported that "the investigation is gathering evidence. A commission of judicial investigators comprising members of the Technical Investigation Section (CTI) and the Judicial Intelligence Service (SIJIN) is carrying out a mission with a view to establishing the motives, circumstances and possible culprits of the murders of workers at the Primero de Mayo Social Security Clinic in Barrancabermeja which took place in July and August 2000."
- (39) Leonardo Betancourt Méndez, murdered on 22 August 2000 in the municipality of Dos Quebradas, Department of Risaralda. Justicia y Paz/CINEP states with regard to

this murder that “armed men shot down and killed the teacher and academic coordinator Juan Manuel González in the Buenos Aires district. The Risaralda Teachers’ Union condemned the murder and stated that teachers continued to be the victims of the violence that prevails in the country.” The “List of teachers murdered in 2000” produced by the Colombian Teachers’ Federation (FECODE) does not include the name Leonardo Betancourt Méndez. Registered under File No. 5297. According to the Attorney-General’s Office, the investigation was suspended on 23 March 2001.

- (40) Miguel Angel Pérez, murdered in the city of Medellín, Department of Antioquia, on 11 September 2000. Member of SINTRASINTETICOS. His trade union membership is being verified by the Internal Human Rights Group of the Ministry of Labour and Social Security. According to the Attorney-General’s Office, the Medellín trade unionists’ subunit has reported that the data supplied are insufficient and will apply to the Assignments Office of the Medellín Directorate for information on the status of the preliminary investigation.
- (41) Alfredo Germán Delgado Ordoñez, murdered on 13 November 2000 in the Department of Nariño. Member of FECODE. Justicia y Paz/CINEP states with regard to this murder that paramilitaries of the “Libertadores del Sur” faction of the AUC executed three teachers from the Diego Luis Córdoba College. The executions took place at 9 p.m. in the El Palmar sector. The teachers were returning to their places of work in an automobile after a holiday weekend when they were stopped by the killers who had a list of names. Only his name appears in the “List of teachers murdered in 2000” produced by the Colombian Teachers’ Federation (FECODE). Registered under File No. 27094. According to the Attorney-General’s Office, some evidence has been examined, but it has not yet been possible to identify the killers.
- (42) Jairo Vicente Vallejo Champutics, murdered in the municipality of Linares, Department of Nariño, on 13 November 2000. Justicia y Paz/CINEP states with regard to this murder that paramilitaries belonging to the “Libertadores del Sur” faction of the AUC executed three teachers from the Diego Luis Córdoba College. The executions took place at 9 p.m. in the El Palmar sector. The teachers were returning to their places of work in an automobile after a holiday weekend when they were stopped by the killers, who had a list of names. Only his name is included in the “List of teachers murdered in 2000” produced by the Colombian Teachers’ Federation (FECODE). Registered under File No. 27094. According to the Attorney-General’s Office, some evidence has been examined, but it has not yet been possible to identify the killers.
- (43) Carlos Eliécer Prado, murdered on 21 May 2001 in the city of Cali, Department of Valle. Justicia y Paz/CINEP in its quarterly publication *Noche y Niebla* for April-June 2001 reports that “armed men murdered a member of the Cali Trade Union of Public Enterprise Workers (SINTRAEMCALI) with 11 gunshots at 7 o’clock at the intersection of 15th Avenue and 59th Street”. The Internal Human Rights Group of the Ministry of Labour and Social Security is in the process of verifying the victim’s trade union status. The investigation is being carried out by the “Life Unit” of Public Prosecutor’s Office 17 and is currently at the preliminary stage and examining evidence under File No. 424801.
- (44) Sandro Antonio Ríos, murdered in the city of Pereira, Department of Risaralda, on 30 October 2001. According to information supplied by the Trade Union of Workers and Employees of Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES), Mr. Sandro Antonio Ríos was a member of this trade union. Registered under File No. 68572. The Attorney-General’s Office has stated

that the investigation is being carried out by the Pereira Prosecutor's Office 18 (Prosecutor: Dr. Nancy Ramírez Pulgarín).

- (45) Magnolia Plazas Cárdenas, murdered on 5 December 2001 in the Department of Caquetá. Member of ASONAL JUDICIAL. The Internal Group of the Ministry of Labour and Social Security is in the process of verifying her trade union status. According to the Attorney-General's Office, the investigation of this murder was transferred to the Florencia Special Prosecutor's Office.
- (46) Rafael Jaimes Torra, murdered in the municipality of Barrancabermeja, Department of Santander, on 20 March 2002. Treasurer of the Workers' Trade Union (USO). Registered under File No. 1196. The investigation is being carried out by the National Directorate of Prosecutors (*Dirección Nacional de Fiscalías*), which through its resolution of 23 April 2002 ordered the examination of evidence. An inter-institutional commission was formed by representatives of the CTI, DAS and SIJIN to investigate this murder. On 14 April 2002, two investigators of the Human Rights and Humanitarian Law Unit of the Attorney-General's Office were sent to take statements from employees at the company Marped Ltd., from relations of the victim, from a guard and from persons living near the place where the murder occurred, as well as to gather documents and carry out a comparative analysis.
- (47) Carmen Pungo de Sánchez, murdered on 2 September 2001 in the municipality of Tambo, Department of Cauca. The Support Unit of the National Body for Human Rights and International Humanitarian Law has indicated that, through its resolution of 28 January 2002, the case was taken over and examination of evidence was ordered (statements, CTI commission). Registered under File No. 464284. The Internal Group of the Ministry of Labour and Social Security is in the process of verifying the victim's trade union membership.
- (48) Julián de J. Durán murdered in January 2000, member of SINTRAISS. Registered as Elkin de Jesús Durán Sanchez. His trade union membership has not been verified. He is not on the list of assassinations which took place between January and December 2000, elaborated by the CUT and presented to the Subcommittee for the Unification of the List of Victims of Workers' Human Rights Violations, which has been verified by the Internal Workers' Human Rights Group of the Ministry of Labour and Social Security.
- (49) Eliécer Corredor, murdered in January 2000, member of SINTRAISS. He is not on the list of assassinations which took place between January and December 2000, elaborated by the CUT and presented to the Subcommittee for the Unification of the List of Victims of Workers' Human Rights Violations, which has been verified by the Internal Workers' Human Rights Group of the Ministry of Labour and Social Security.
- (50) Miguel Angel Mercado, murdered in January 2000, member of SINTRAISS. He is not on the list of assassinations which took place between January and December 2000, elaborated by the CUT and presented to the Subcommittee on the Unification of the List of Victims of Workers' Human Rights Violations of the Ministry of Labour and Social Security.

Abductions

- (1) Jaime Duque Castro, abducted on 24 March 2001 in the municipality of Santa Bárbara, Department of Antioquia. President of the Santa Bárbara section of the Single Trade Union of Industrial Construction and Materials' Workers (SUTIMAC).

According to the Attorney-General's Office, "the preliminary investigation began on 24 March 2001 and the victim was released on 7 April". Registered as File No. 1590.

- (2) Gilberto Agudelo Martínez, abducted in 2000. President of the Union of University Workers of Colombia (SINTRAUNICOL). The investigation is at the preliminary stage and examining evidence, under File No. 834.
- (3) Gerzain Hernández Giraldo, abducted on 24 February 2001. Not listed in the "Report on murders, harassment, disappearances, detentions, psychological terrorism and threats against union officials and workers in the electrical sector belonging to SINTRAELECOL" produced by the National Executive Board of the Union of Electricity Workers of Colombia (SINTRAELECOL). The investigation is being conducted by Special Prosecutor's Office 1 and is at the examination of evidence stage. Registered as File No. 29208.
- (4) William Hernández, who disappeared on 22 June 2001 in the Department of César. ECOPETROL employee. Not listed as a member of the Workers' Trade Union in the document supplied by that organization in June 2002. The investigation is at the preliminary examination of evidence stage, and is being conducted by Special Prosecutor's Office 1.
- (5) Rodrigo Aparicio, who disappeared on 22 June 2001 in the Department of César. ECOPETROL employee. Not listed in the document supplied by the Workers' Trade Union (USO) in June 2002 as a member of that union. The investigation is at the preliminary examination of evidence stage and is being conducted by Special Prosecutor's Office 1.
- (6) Eduardo Franco, who disappeared on 22 June 2001 in the Department of César. ECOPETROL employee. The document supplied by the Workers' Trade Union (USO) in June 2002 does not list him as a member of the union. The investigation is at the preliminary examination of evidence stage and is being conducted by Special Prosecutor's Office 1.
- (7) Jaime Sampayo, disappeared on 22 June 2001 in the Department of César. ECOPETROL employee. The document supplied by the Workers' Trade Union (USO) in June 2002 does not list him as a member of the union. The investigation is at the preliminary examination of evidence stage and is being conducted by Special Prosecutor's Office 1.
- (8) Julio Cabrales, disappeared on 22 June 2001 in the Department of César. ECOPETROL employee. The document supplied by the Workers' Trade Union (USO) in June 2002 does not list him as a member of the union. The investigation is at the preliminary examination of evidence stage and is being conducted by Special Prosecutor's Office 1.
- (9) Diego Quiguanas González, disappeared on 29 June 2000. Member of SINTRAEMCALI. Registered under File No. 415952. The investigation is being conducted by the "Gaula Urbana" Special Prosecutor's Office assigned to the Cali Special Unit and is at the examination of evidence stage.
- (10) Leonardo Avedaño, abducted on 5 January 2002 on the road leading from the municipality of Puerto Berrio to the municipality of Yondó in the Department of Antioquia. His name is not included in the "Report on threats, attempted murders and murders within SINTRAEMSDES" dated 23 May 2002. The investigation is at the preliminary examination of evidence stage, under File No. 4628.

- (11) Julio Ernesto Cevallos Guzmán, disappeared on 15 October 2001 in the municipality of San Rafael, Department of Antioquia. Member of ADIDA. Registered under File No. 3407. The investigation is being conducted by the Antioquia Prosecution Directorate and is at the examination of evidence stage.

Attempted murders

- (1) Gustavo Alejandro Castro Londoño. An attempt on his life was made on 15 January 2001 in the city of Villavicencio, Department of Meta. Member of CUT. Registered under File No. 37443. The investigation is at the preliminary stage and is examining evidence. The Internal Human Rights Group of the Ministry of Labour and Social Security is in the process of verifying his union membership.
- (2) Ricardo Navarro Bruges. An attempt to murder him was made on 12 January 2001 in the city of Santa Marta, Department of Magdalena. Member of SINTRAUNICOL. The investigation is at the preliminary stage and is examining evidence, under File No. 21102. The Internal Human Rights Group of the Ministry of Labour and Social Security is in the process of verifying his union membership.
- (3) Ezequiel Antonio Palma. An attempt on his life was made in the municipality of Yumbo, Department of Valle del Cauca, on 11 January 2001. Member of the Yumbo Municipal Workers' Union. Registered under File No. 117364. According to the Attorney-General's Office, the investigation is at the preliminary stage and is examining evidence, and the CTI has been asked to take action. The Internal Human Rights Group of the Ministry of Labour and Social Security is in the process of verifying the victim's union membership.
- (4) María Elisa Valdés Morales. An attempt was made to murder her on 26 March 2001. Member of SINDESS. The investigation is being carried out by the Third Prosecutor's Office and is at the preliminary stage of examining evidence, under File No. 394882.
- (5) John Jairo Ocampo Franco. An attempt on his life was made on 9 August 2001 in the city of Armenia, Department of Quindio. Member of the Single Union of Education Workers of Quindio (SUTEQ). Registered under File No. 463476. The Support Unit of the National Human Rights and International Humanitarian Law Unit in Cali states that it took the case over on 18 January 2002 and ordered that formal statements be taken from witnesses to the incident and from John Jairo Ocampo himself, as well as obtaining other evidence. A resolution of 8 February 2002 ordered statements to be obtained, and the CTI was instructed to examine evidence. On 17 May 2002 the Armenia SIJIN and CTI were instructed to act. Under the supervision of the Support Unit of the Cali CTI, intelligence work will be carried out with a view to identifying those responsible for the attack on Mr. Ocampo, and to determining whether or not it was motivated by his trade union activity.

Threats

- (1) Hernando Hernández Pardo, who was subjected to threats from 6 July 2001 onwards in the municipality of Barrancabermeja, Department of Santander. President of the Petroleum Industry Workers' Trade Union (USO). The investigation is being carried out by the Barrancabermeja Special Prosecutor and is at the examination of evidence stage. Registered under File No. 1805. Mr. Hernando Hernández has been provided with "hard" protection measures by ECOPETROL, and the Protection Programme of the Ministry of the Interior has provided him with two cellular telephones and a radio.

- (2) Alexander López Maya, who was the subject of threats from 2000 onwards. Congressional Representative and former president of SINTRAEMCALI. Registered under File No. 403605. The investigation is at the preliminary stage and is examining evidence. According to the Ministry of the Interior, “hard” protection measures provided for Mr. Alexander López Maya during the year 2001 under the protection programme included the provision of two cellular telephones, one bullet-proof vehicle and one radio.
 - (3) Alirio Uribe Muñoz, who has been threatened on a number of occasions during the past five years. President of the Society of Lawyers. Registered under File No. 912. The Attorney-General’s Office has reported that “statements have been obtained from Henry Cubillos, Reynaldo Villalba Vargas, Luis Guillermo Pérez Casas and others. On 13 August 2001 reports were compiled on the statements that had been obtained”. The headquarters of the Society of Lawyers has been provided with armoured protection by the Ministry of the Interior under the Programme of Protection for Trade Union Officials and Human Rights Defenders; this has been implemented in accordance with the recommendations made by the institution that carried out the necessary technical survey of the headquarters in question.
 - (4) Hernando Montoya, who received threats during the year 2000. Official of the Cartago Municipal Workers’ Trade Union (SINTRAMUNICIPIO). According to the Attorney-General’s Office, “Mr. Hernando Montoya was asked to provide additional information in connection with his complaint. The results of the Cartago CTI Commission are awaited. The case has been transferred to the Cali Special Investigation Subunit”. Registered under File No. 2910. A statement was obtained on 5 April 2002. The Programme of Protection for Trade Union Officials and Human Rights Defenders run by the Ministry of the Interior has provided bullet-proofing for the headquarters of SINTRAMUNICIPIO in Cartago, as well as humanitarian assistance grants, national airline tickets and a radio for communications.
 - (5) Julián Cote, who received death threats on 20 September 2001. Member of the Workers’ Trade Union (USO). Registered under File No. 1950. The investigation is being carried out by the Barrancabermeja Special Prosecutor’s Office and is examining evidence. Mr. Julián Cote has been provided with a cellular telephone as part of a communications network for persons protected under the Programme of Protection for Trade Union Officials and Human Rights Defenders run by the Ministry of the Interior.
 - (6) Fredys Rueda, who received death threats on 20 September 2001. Member of the Workers’ Trade Union (USO). Registered under File No. 1950. The investigation is being carried out by the Barrancabermeja Special Prosecutor’s Office and is examining evidence.
- 373.** As regards the full list of murders, abductions, threats and attempted murders during the year 2002, the Government states that the Internal Human Rights Working Group of the Ministry of the Interior is in the process of checking the relevant lists of victims. A meeting of the Subcommittee responsible for consolidating these lists has been planned for the month of August, in accordance with the recommendation in paragraph 124(g) of the 328th Report; once that verification process has been concluded, a report will be submitted.

D. The Committee’s conclusions

- 374.** *Once again, despite the fact that the Committee has examined this case on 11 previous occasions [see the 297th, 304th, 306th, 309th, 311th, 314th, 319th, 322nd, 324th, 327th*

and 328th Reports], the Committee notes with deep concern the new reports by the complainants of murders, attempted murders, abductions and threats which show that the situation of violence in Colombia continues to be extremely serious. Since the last examination of this case in June 2002 [see the 328th Report], 45 murders, 37 abductions and nine attempted murders have been reported.

375. In general, the Committee takes note of the Government's observations in which it reiterates its views on the origins of the prevailing violence, reports on the measures taken to eradicate it and provides a list of the investigations being conducted into the murders, abductions, disappearances and threats against numerous trade union officials. More specifically, the Committee notes that the Government reiterates its view that the situation of violence that has afflicted the country for more than 40 years is not directed against the trade union movement, but rather, affects all sectors of the population, and that the Government is deploying the resources available to it to investigate these incidents and punish those responsible. The Committee notes the information supplied by the Government regarding the military operations undertaken against paramilitary groups. The Committee notes with interest the increase in the number of suspects captured (992 in 2002, an increase of about 600 since 1999) and in the number of weapons, munitions and vehicles confiscated. Nevertheless, the facts suggest that the measures adopted are insufficient to put an end to or reduce the violence directed against trade union officials. Under these circumstances, the Committee once again urges the Government to do everything in its power to achieve verifiable results in dismantling the paramilitary groups and other violent revolutionary groups.

Murders considered in previous examinations of the case

376. Once again the Committee notes the list of investigations conducted by various state agencies with regard to 48 murders, 11 abductions, five attempted murders and five threats. The Committee nevertheless notes with regret, as it did in its previous examination of the case, that according to the information contained in these lists, very little progress has been made in these investigations, given that in only one of the cases reported have the possible guilty parties been identified, and in one other a statement has been obtained from an individual. At the same time, the Committee regrets that the number of investigations conducted by the Government and reported to the Committee is considerably lower than the number of acts of violence reported by the complainants which have yet to be investigated. The Committee feels bound to reiterate the principle according to which "the killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events" and that "justice delayed is justice denied" [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 51 and 56]. The Committee, under these circumstances, must demand that the Government take immediate measures to ensure that the investigations cover all the alleged acts of violence and make significant progress with a view to the effective punishment of those responsible. The Committee urges the Government to continue to send its observations on progress made in the investigations already begun (Annex II), and to take measures to ensure that investigations begin without delay into the other murders, abductions, disappearances, attempted murders and threats referred to in Annex I, as well as those referred to in the section on "new allegations" in this report.

377. The Committee again notes that there are discrepancies between the accounts of the complainants and the Government with regard to the trade union membership of a number of the victims (Arturo Alarcón, Rafael Atencia Miranda, Victor Carrilo, Luis Alberto

Pedraza Serrano, Jaime Sánchez, James Orlando Urbano Morales, Arelis Castillo Colorado, Jesús Antonio Posada Marín, Leonardo Betancourt Méndez, Gerzain Hernández Giraldo, William Hernández, Rodrigo Aparicio, Eduardo Franco, Jaime Sampayo, Julio Cabrales, Leonardo Avendaño). The Committee also notes with regret that neither the Government nor the complainants have sent any information regarding the presumed non-membership of other victims listed in its previous report (Mauricio Vargas Pabón, Leominel Camp Núñez, Melva Muñoz López, Juan José Neira, Justiniano García, José Antanasio Fernández Quiñónez, Margarita María Pulgarín Trujillo, Julio César Betancourt, Islem de Jesús Quintero, Alejandro Álvarez Isaza, James Antonio Pérez Chima, Jesús María Cuellar, Juan Cástulo Jieménez Gutiérrez, Aníbal Pemberty, Esneda de las Mercedes Monsalve Holguín, Gloria Nubia Urán Delgado, Luis Hernán Campano Guzmán, Miguel Angel Barreto Racine, Alejandro Vélez Jaramillo, Efraín Becerra, Alfredo Castro Haydar, Luis Mesa Almanza, Alexander Mauricio Marín Salazar) [see 328th Report, para. 115]. The Committee must once again urge both the complainants and the Government to send without delay the information needed to clarify this aspect of the case and to enable it to establish an accurate list of all the victims.

New murders and acts of violence

378. *The Committee once again notes with the gravest concern that 43 murders are reported to have occurred in 2002, which, when added to those reported in the previous examination of this case, make a total of 83 murders for the year in question. The Committee reiterates again that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see **Digest**, op. cit., para. 46]. The Committee requests the Government to indicate the reasons why, on 23 March 2001, the Attorney-General suspended the investigation into the murder of trade unionist Leonardo Betancourt Mendez.*

Impunity

379. *The Committee notes the list of investigations conducted at the national level by the Attorney-General's Office. The Committee has also noted the overall figures for captures of paramilitary personnel given by the Government. However, with regard to the investigations, the Committee once again deeply deplors that they have made little progress and then are suspended for want of evidence. The Committee considers that the prevailing delay in the administration of justice and the suspension of proceedings are corollaries of a deeply rooted impunity which not only serves to discredit the credibility of the Government, but also fails to improve the situation. In this respect, the Committee is bound once again to regret the fact that, despite the various bodies that have been established and the investigations conducted by those bodies, and even in some cases the arrests of suspects, the Government has not thus far reported any actual convictions of individuals for the murder of trade unionists. Under the circumstances, the Committee again requests the Government, with the same emphasis as it did in its previous examination of the case, to take the necessary measures to put an end to the intolerable situation of impunity and punish those responsible for the innumerable acts of violence.*

Measures to protect trade unionists

380. *The Committee notes the information provided by the Government regarding the Programme of Protection for threatened trade unionists and the increase in the Programme's budget compared to 1999. The Committee also notes the increased number of trade unionists provided with protection: in 1999 the Programme had a budget of 3,440,802,000 pesos and protected 177 trade unionists, while the budget planned for the*

Programme in 2002 is 27,542,000,000 pesos and will protect 2,500 trade unionists. The Committee notes with interest the expansion of the Programme of Protection and requests the Government to continue to carry out a non-restrictive assessment of the risk to which threatened trade unionists are exposed, so as to ensure that protection is extended to all individuals at risk and thus prevent murders and disappearances, and to continue providing appropriate protective measures. The Committee requests the Government to send all relevant information in this regard. Lastly, the Committee notes the inter-agency agreement concluded by the Ministry of the Interior, ECOPETROL, DAS and FONADE which, although more limited in scope, provides for protective measures for officials of the Workers' Trade Union.

Discrepancies between the accounts of the Government and the complainants with regard to the actual number of trade unionists murdered in recent years

- 381.** *The Committee notes that the Government has not yet sent the consolidated list of victims for the period 1991-2000 prepared by the Subcommittee on the Unification of the List of Victims referred to in the previous examination of the case. The Committee requests the Government once again to send the list in question without delay.*

Other concerns of the Committee

- 382.** *The Committee once again recalls [see 327th Report, para. 344(g) and 328th Report, para. 124(h)] that it would be advisable to deal specifically with situations in which violence against trade union members is very intensive, for example, in such sectors as education, the petroleum industry and the health services, as well as municipal and departmental administrations. Such information should also refer to regions where acts of violence occur with most frequency, such as the Departments of Valle del Cauca and Antioquia and the municipality of Barrancabermeja, particularly in the Empresa de Petróleo de Colombia and the Empresa de Gas de Barrancabermeja. The Committee also requests the Government to send all the information available to it which could help better to combat impunity and examine the causes of violence against trade union members. The Committee once again reminds the Government of its responsibility for the protection of workers against acts of violence and for a proper factual and analytical assessment of each crime committed. The Committee reminds the complainants and the Government that they may request technical assistance from the Office for this assessment.*
- 383.** *Finally, the Committee notes the communication of the ICFTU dated 30 September 2002 which denounces the recent threats and arrests of numerous trade union officials for having participated in the protest march and strike of 16 September. The Committee requests the Government to send its observations in this respect.*

The Committee's recommendations

- 384.** *In the light of the foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *While noting that the violence affects all sectors of the population, the Committee expresses its deep concern once again at the situation of violence against trade union officials and members, and reiterates that freedom of association can only be exercised in conditions in which fundamental*

human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed.

- (b) The Committee once again urges the Government to do everything in its power to achieve verifiable results in dismantling the paramilitary groups and other violent revolutionary groups.*
- (c) The Committee requests the Government to take measures to ensure that the investigations cover all the alleged acts of violence and to ensure that the investigations make significant progress with a view to punishing the guilty parties, and urges the Government to continue to send its observations on progress made in investigations already begun (Annex II) and to take measures to ensure that investigations are begun without delay into the other murders, abductions, disappearances, attempted murders and threats referred to in Annex I, as well as those mentioned in the section on “new allegations” in the present report. The Committee requests the Government to indicate the reasons why, on 23 March 2001, the Attorney-General suspended the investigation into the murder of trade unionist Leonardo Betancourt Mendez.*
- (d) The Committee must once again urge both the complainants and the Government without delay to send the information needed to clarify the discrepancies that exist with regard to the trade union membership of some of the victims.*
- (e) Deploring that despite the numerous requests of the Committee, the Government has not thus far reported any convictions of individuals for the murder of trade unionists, the Committee once again requests the Government with the same emphasis as in its previous examination of the case to take the necessary measures to put an end to the intolerable situation of impunity and to punish all those responsible for the innumerable acts of violence.*
- (f) The Committee requests the Government to continue carrying out a non-restrictive assessment of the risk to which threatened trade unionists are exposed, so as to ensure that protection is extended to all individuals at risk and thus prevent murders and disappearances, and to continue providing appropriate protective measures. The Committee requests the Government to send all relevant information in this regard.*
- (g) The Committee once again requests the Government to send the consolidated list of victims for the period 1991-2000 prepared by the Subcommittee on the Unification of the List of Victims referred to in its previous examination of the case.*
- (h) The Committee once again reminds the Government [see 327th Report, para. 344(g) and 328th Report, para. 124(h)] that it would be advisable to deal specifically with situations in which violence against trade union members is very intensive, for example in such sectors as education, the petroleum industry and the health services, as well as municipal and departmental administrations. The Committee reminds the complainants*

and the Government that they may request the technical assistance from the Office for this assessment.

- (i) In respect of the allegations of threats and arrests of numerous trade union officials for having participated in the protest march and strike of 16 September, the Committee requests the Government to send its observations thereon.*
- (j) The Committee recommends the Governing Body to consider the possibility of transmitting the matters concerning Colombia which are before the Committee on Freedom of Association to the Fact-Finding and Conciliation Commission to support the present efforts of the ILO in clarifying and helping in the actual situation and to consider their development in association with the Government and the Colombian employers' and workers' organizations.*

Annex I

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

Murders

- (1) Carmen Emilio Sánchez Coronel, official delegate of the North Santander Teachers' Union;
- (2) Aristarco Arzallug Zúñiga, 30 August 2000, member of SINTRAINAGRO;
- (3) Víctor Alfonso Vélez Sánchez, 28 March 2000, member of EDUMAG;
- (4) Edgar Cifuentes, 4 November 2000, member of ADE;
- (5) Juan Bautista Banquet, 17 October 2000, member of SINTRAINAGRO;
- (6) Edison Ariel, 17 October 2000, member of SINTRAINAGRO;
- (7) Darío de Jesús Borja, 1 April 2000, member of ADIDA;
- (8) Henry Ordóñez, 20 August 2000, member of the Meta Teachers' Association;
- (9) Javier Jonás Carbone Maldonado, Secretary-General of SINTRAELECOL, 9 June 2000, in Santa Marta;
- (10) Candelaria Florez, wife of Alberto Ruiz Guerra, member of ADEMACOR, affiliate of FECODE, 17 June 2000, by paramilitaries;
- (11) Francisco Espadín Medina, member of SINTRAINAGRO, 7 September 2000, in the municipality of Turbo;
- (12) William Iguarán Cottes, member of SINTRAUNICOL, 11 September 2000 in Montería, by paramilitaries;
- (13) Carlos Cordero, member of ANTHOC, 6 December 2000, in Peñas Blancas, by paramilitaries;
- (14) Gabriela Galcano, official of ANTHOC, 9 December 2000, in Cúcuta, by paramilitaries;
- (15) Ricardo Florez, member of SINTRAPALMA, 8 January 2001;

- (16) Jairo Cubides, member of SINTRADEPARTAMENTO, 21 January 2001 in Cali; the murder coincided with the change in the executive board of the union, when the previous executive board was in the process of being recognized by the Ministry of Labour;
- (17) Carlos Humberto Trujillo, member of ASONAL JUDICIAL, 26 January 2001, in the municipality of Buga;
- (18) Elsa Clarena Guerrero, member of ASINORT, 28 January 2001, in the municipality of Ocaña at a military roadblock;
- (19) Carolina Santiago Navarro, member of ASINORT, 28 January 2001, in the municipality of Ocaña;
- (20) Alfonso Alejandro Naar Hernández, member of ASEDAR, affiliate of FECODE, 8 February 2001, in the municipality of Arauca;
- (21) Raúl Gil, member of SINTRAPALMA, 11 February 2001, in the municipality of Puerto Wilches;
- (22) Edgar Manuel Ramírez Gutiérrez, Vice-President of SINTRAELECOL, North Santander Branch, in Concepción, on 22 February 2001. He had been abducted by paramilitaries the previous day and had received threats because he was a prominent leader at the time of the crime;
- (23) Jaime Orcasitas, Vice-President of SINTRAMIENERGETICA, in the Loma de Potrerillo coal mine, on 12 March 2001;
- (24) Andrés Granados, member of SINTRAELECOL, on 20 March 2001 in the municipality of Sabana, by paramilitaries;
- (25) Alberto Pedroza Lozada, on 22 March 2001;
- (26) Robinson Badillo, official of SINTRAEMSDDES, in Barrancabermeja on 26 March 2001, by paramilitaries;
- (27) Mario Ospina, member of ADIDA-FECODE, in the municipality of Santa Bárbara, on 27 March 2001;
- (28) Jesús Antonio Ruano, member of ASEINPEC, in the municipality of Palmira, on 27 March 2001;
- (29) Leyder María Fernández Cuellar, wife of Francisco Isaías Cifuentes, on 26 April 2001;
- (30) Frank Elías Pérez Martínez, member of ADIDA-FECODE, between the municipalities of Santa Ana and Granada, on 27 April 2001;
- (31) Darío de Jesús Silva, member of ADIDA-CUT, in the municipality of Sabaneta, on 2 May 2001;
- (32) Juan Carlos Castro Zapata, member of ADIDA-CUT, in the municipality of Copacabana, 9 May 2001;
- (33) Eugenio Sánchez Díaz, President of SINTRACUEMPONAL, in the municipality of Codazzi, on 10 May 2001;
- (34) Julio Alberto Otero, member of ASPU-CUT, in Santa Marta on 14 May 2001, by paramilitaries;
- (35) Henry Jiménez Rodríguez, member of SINTRAEMCALI, in Cali, on 25 May 2001;
- (36) Nelson Narváez, official of SINTRAUNICOL, in Montería on 29 May 2001, in the Department of Córdoba;
- (37) Humberto Zárate Triana, member of SINTRAOFICIALES, in Villavicencio, on 5 June 2001, in the Department of Meta;
- (38) Gonzalo Zárate Triana, official of ASCODES, in Villavicencio, on 5 June 2001, in the Department of Meta;
- (39) Manuel Enrique Charris Ariza, member of SINTRAMIENERGETICA, in the municipality of Soledad, on 11 June 2001, in the Department of Atlántico;

- (40) Edgar Thomas Angarita Mora, member of ASEDAR and FECODE, in the Department of Arauca, on 12 June 2001, after taking part in a barricade on the Vía Fortul Sarabena in protest against draft law 012;
- (41) Germán Carvajal Ruiz, President of the executive subcommittee of SUTEV, Obando Branch, FECODE-CUT, on 6 July 2001, in the Department of Valle del Cauca. Because of his dedication to the trade union movement, he was declared a military target in the Department of Caquetá, for which reason he was forced to arrange his transfer to the Department of Valle del Cauca where he was finally executed;
- (42) Hugo Cabezas, member of SIMANA-FECODE, on 9 July 2001, in the Department of Nariño;
- (43) Lucila Rincón, activist in ANTHOC-CUT, on 16 July 2001, in the Department of Tolima, by paramilitaries together with other members of her family when they were searching for another family member in captivity;
- (44) Obdulia Martínez, member of EDUCESAR-FECODE-CUT, on 22 July 2001, in the Department of César;
- (45) María Helena Ortiz, special prosecutor, member of ASONAL-CUT, on 28 July 2001, in the Department of Santander; her husband, Néstor Rodríguez, and her son were seriously wounded;
- (46) Segundo Florentino Chávez, Secretary-General of the Union of Local Government Officials and Public Employees of the municipality of Dagua, on 13 August 2001, in the Department of Valle del Cauca. He had been the victim of numerous threats and had urgently requested the establishment of security arrangements for trade union officials. A scheme was approved on 10 July 2001, but subject to budgetary approval;
- (47) Miryam de Jesús Ríos Martínez, member of ADIDA, on 16 August 2001, in the Department of Antioquia;
- (48) Manuel Pájaro Peinado, Treasurer of the Barranquilla District Union of Civil Servants (SINDIBA), on 16 August 2001, in the Department of Atlántico. He had asked to be included in the Ministry of the Interior's protection programme but had not received any reply. His murder occurred at a time when the trade union was making a series of protests against the application of Law No. 617 by the district administration, aimed at mass dismissals of workers;
- (49) Héctor Eduardo Cortés Arroyabe, member of ADIDA-CUT, disappeared on 16 August 2001 and was found dead on 18 August 2001 in the Department of Antioquia;
- (50) Fernando Euclides Serna Velásquez, member of the collective security scheme of national CUT in Bogotá, disappeared on 18 August 2001, and was found murdered the following day in the Department of Cundinamarca. He was a member of the CUT collective security scheme;
- (51) Evert Encizo, member of the Meta Teachers' Association (ADEM-CUT), on 22 August 2001, in the Department of Meta. He was a teacher working with forcibly displaced persons;
- (52) Yolanda Paternina Negrete, member of ASONAL-CUT, on 29 August 2001, in the Department of Sucre. She was a special judge for public order matters and was responsible for numerous high-risk proceedings;
- (53) Miguel Chávez, member of ANTHOC-CUT, on 30 August 2001, in the Department of Cauca;
- (54) Manuel Ruiz, CUT trade union official, on 26 September 2001, in the Department of Córdoba;
- (55) Ana Ruby Orrego, member of the El Valle Single Education Workers' Trade Union (SUTEV-CUT), on 3 October 2001, in the Department of Valle del Cauca;
- (56) Jorge Iván Rivera Manrique, member of the Risaralda Teachers' Union (SER-CUT), on 10 October 2001, in the Department of Risaralda;
- (57) Ramón Antonio Jaramillo, official of SINTRAEMSDES-CUT, on 10 October 2001, in the Department of Valle del Cauca, when paramilitaries were carrying out a massacre in the region;
- (58) Luis López and Luis Anaya, President and Treasurer of the San Silvestre Union of Transport Drivers and Workers (SINCOTRAINER-CUT), on 16 October 2001, in the Department of Santander;

- (59) Arturo Escalante Moros, member of USO, disappeared on 27 September 2001 and was found dead on 19 October 2001;
- (60) Luis José Mendoza Manjares, member of the executive board of the Trade Union Association of University Teachers (ASPU-CUT), on 22 October 2001, in the Department of César;
- (61) Martín Contreras Quintero, official and founder member of SINTRAELECOL-CUT, on 23 October 2001, in the Department of Sucre;
- (62) Carlos Arturo Pinto, member of the National Association of Civil Servants and Judicial Employees (ASONAL-CUT), on 1 November 2001, in Cúcuta, Department of North Santander;
- (63) Pedro Cordero, member of the Nariño Teachers' Trade Union, on 9 November 2001, in the Department of Nariño;
- (64) Luis Alberto Delgado, member of the Nariño Teachers' Trade Union (SIMANA-CUT), on 10 November 2001, in the Department of Nariño. Mr. Delgado had been the victim of an attempted murder the previous day in the municipality of Tuquerres, Department of Nariño;
- (65) Edgar Sierra Parra, member of ANTHOC-CUT, was abducted on 3 October 2001 in the municipality of Tame, Department of Aranca and was found dead on 10 November 2001 in the municipality of Rondón, Department of Arauca, with signs of torture;
- (66) Tirso Reyes, member of the Bolívar Single Teachers' Union (SUDEB-CUT), on 2 November 2001, in the Department of Bolívar;
- (67) Emiro Enrique Pava de la Rosa, official of the Magdalena Medio subcommittee of USO, on 13 November 2001, in the Department of Antioquia;
- (68) Diego de Jesús Botero Salazar, trade unionist in Valle del Cauca, prosecutor in the municipal subcommittee, on 14 November 2001, in Valle del Cauca;
- (69) Gonzalo Salazar, President of the Single Union of Policemen of Colombia, SINUVICOL-CUT, on 24 November 2001, in Cali;
- (70) Jorge Eliécer González, President of the Natagaima Branch of ANTHOC-CUT, was abducted and murdered on 25 November 2001, with signs of severe torture, in the Department of Tolima;
- (71) Javier Cote, Treasurer of the National Association of Civil Servants and Judicial Employees (ASONAL-CUT), on 3 December 2001, in the Department of Magdalena;
- (72) Enrique Arellano, found dead at the beginning of December 2001;
- (73) Francisco Eladio Sierra Vásquez, President of the executive committee of the Andean Branch of the Antioquia Union of Municipal Officials (SINTRAOFAN-CUT). The members of the executive committee had been summoned by the AUC in Farallones de Bolívar (Department of Antioquia). At that meeting, each of the officials was called by name and interrogated about his function in the trade union and his union responsibilities, after which Mr. Sierra Vásquez was taken away and murdered. At the same meeting, the commander, "Manuel", a member of that paramilitary organization interrogated and questioned José David Tabora, a second member of the central executive committee. All the members of the committee are constantly threatened;
- (74) Edgar Herrán, President of the National Union of Drivers (SINDINALCH), Villavicencio Branch, on 26 December 2001;
- (75) Carlos Alberto Bastidas Corral, member of the Nariño Teachers' Union (SIMANA-CUT) on 8 January 2002;
- (76) Luis Alfonso Jaramillo Palacios, delegate of the Medellín Branch of the Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES-CUT), on 11 January 2002, in Medellín, Department of Antioquia, murdered for his defence of the workers;
- (77) Enoc Samboni, CUT official, on 12 January 2002, in the Department of Cauca, by paramilitaries who stole his trade union papers. Enoc Samboni was involved in the Ministry of the Interior protection programme and the Inter-American Human Rights Commission of the Organization of American States, and had asked for protection measures;

- (78) Sister María Roperó, former President of the Community Mothers Trade Union (SINDIMACO-CUT), on 16 January 2002, in Cúcuta by paramilitary groups. Sister Roperó was noted for her hard work in support of the human rights of workers and children and had received several death threats;
- (79) Jaime Ramírez, member of the Antioquia Trade Union of Public Officials and Employees (SINTRAOFAN), on 2 June 2001, in Antioquia by paramilitaries;
- (80) Armando Buitrago Moreno, member of the National Association of Officials and Employees of the Judicial Branch (ASONAL), on 6 June 2001;
- (81) Julián Ricardo Muñoz, member of ASONAL, on 6 June 2001 in Bogotá;
- (82) Carlos Alberto Vidal Hernández, member of ASONAL, on 11 June 2001, in Bogotá;
- (83) Edgar Thomas Angarita Mora, activist of the Arauca Teachers' Association (ASEDAR), on 11 June 2001, in Barrancones;
- (84) Fabio Eliécer Guio García, member of ASONAL, on 19 June 2001 in Neiva, by the FARC;
- (85) Luz Marina Torres, Risaralda Teachers' Trade Union, on 22 June 2001, in Risaralda;
- (86) Cristóbal Uribe Beltrán, member of the National Association of Workers and Employees in Hospitals, Clinics, Dispensaries and Community Health Units (ANTHOC), on 28 June 2001 in Tibu, by paramilitaries;
- (87) Eduardo Edilio Alvarez Escudelo, member of the National Association of Civil Servants and Judicial Employees (ASONAL) on 2 July 2001 in Antioquia, by guerrilla forces;
- (88) William Mario Upegui Tobón, member of the Antioquia Teachers' Association, on 9 July in Antioquia;
- (89) Luciano Zapata Agudelo, member of ASONAL, on 10 July 2001;
- (90) Hernando Jesús Chica, activist of the Trade Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES), on 13 July 2001, by paramilitaries;
- (91) Margort Pisso Rengifo, member of ASONAL, on 17 July 2001, in Popayán;
- (92) Ramón Chaverra Robledo, member of the Union of Local Government Officials and Public Employees of Antioquia, SINTRAOFAN, on 19 July 2001 in Antioquia, by paramilitaries;
- (93) Fidel Seguro, member of SINTRAOFAN, on 19 July 2001 in Antioquia, by paramilitaries;
- (94) Prasmacio Arroyo, member of the Magdalena Teachers' Union (SINTRASMAG), on 26 July 2001 in Magdalena;
- (95) Hernando Arcila Ramírez, member of Guaviare Teachers' Association (ADEG), on 1 August 2001 in Guaviare;
- (96) Luz Ampara Torres Agudelo, member of the Antioquia Teachers' Association (ADIDA), on 2 August 2001, in Antioquia;
- (97) Efraín Toledo Guevara, member of the Caquetá Teachers' Association (AICA), on 5 August 2001 in Caquetá;
- (98) Nancy Tez, activist of the El Valle Single Union of Education Workers (SUTEV), on 5 August 2001, in Valle del Cauca, by paramilitaries;
- (99) Jorge Antonia Alvarez Vélez, member of the Single Union of Workers in the Construction Materials Industry (SUTIMAC), on 6 August 2001 in Antioquia;
- (100) Angela Andrade, activist of the Union of Workers in Children's Homes, on 6 August 2001, in Nariño, by paramilitaries;
- (101) José Padilla Morales, member of the César Teachers' Association, on 8 August 2001, in Aguachica;
- (102) Luis Pérez Ríos, member of ASONAL, on 9 August 2001, in Quindío;
- (103) Hugo López Cáceres, member of ASONAL, on 14 August 2001, in Barranquilla;

- (104) Gloria Isabel García, member of the Risaralda, Teachers' Union (SER), on 16 August 2001, in Risaralda;
- (105) Miryam de Jesús Ríos Martínez, member of the Antioquia Teachers' Association, on 16 August 2001, in Antioquia;
- (106) César Bedoya Ortiz, activist of the University Teachers' Association (ASPU), on 16 August 2001, in Bolívar;
- (107) César Arango Mejía, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 24 August 2001, in Risaralda;
- (108) Ricardo Monroy Marín, official of the Incora Union of Workers (SINTRADIN), on 25 August 2001, in Tolima;
- (109) Jorge Freite Romero, member of the Atlántico University Retirees' Association (ASOJUA), 29 August 2001, in Barranquilla, by paramilitaries;
- (110) Luis Ernesto Camelo, activist of the Santander Teachers' Union (SES) on 2 September 2001, in Santander, by paramilitaries;
- (111) Marcelina Saldarriaga, activist of the Antioquia Teachers' Association (ADIDA), on 5 September 2001, in Antioquia;
- (112) Rafael Pineda, president of the Barbosa Section of the Bank Employees' Union (UNEB), on 8 September 2001, in Santander;
- (113) Juan Eudes Molina Fuentes, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 9 September 2001, in Guajira;
- (114) Gilberto Arbeláez Sánchez, member of the Antioquia Teachers' Association Subcommittee (ADIDA), 9 September 2001, in Antioquia;
- (115) Luis Alfonso Aguirre, activist of the Single National Union of Workers in the Mining, Energy, Metallurgical, Chemical and Allied Industries of Colombia (FUNTRAENERGETICA), on 10 September 2001, in Antioquia;
- (116) Juan Diego Londoño Restrepo, secretary of the Continental Ceramics Workers' Trade Union, on 11 September 2001, in Antioquia, by paramilitaries;
- (117) Hernando de Jesús Montoya Urrego, activist of the Antioquia Teachers' Association (ADIDA), on 13 September 2001, in Antioquia, by paramilitaries;
- (118) Alga Rosa García Marín, member of ANTHOC, on 17 September 2001, in Antioquia;
- (119) Jacobo Rodríguez, member of the Caquetá Teachers' Association, on 18 September 2001 in Caquetá, by paramilitaries;
- (120) Yolanda Cerón Delgado, member of the Nariño Teachers' Union (SIMANA), on 18 September 2001 in Nariño, by paramilitaries;
- (121) Juan David Corzo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 20 September 2001, in Cúcuta, by paramilitaries;
- (122) Bibiana María Gómez Bedoya, member of the Antioquia Teachers' Association (ADIDA), on 22 September 2001, in Antioquia;
- (123) Jenny Romero Rojas, ANTHOC, on 23 September 2001, in Meta;
- (124) Antonio Mesa, member of the University Workers' Union (SINTRAUNICOL), on 25 September 2001 in Barranquilla, by paramilitaries;
- (125) Germán Elías Madrigal, member of the Antioquia Teachers' Association, on 28 September 2001, in Antioquia;
- (126) Plutarco Herrera Gómez, member of the Claims Committee of the National Union of Cargo Handlers in Colombian Maritime Ports, on 30 September 2001 in Valle del Cauca, by paramilitaries;
- (127) Servando Lerma, member of the Petroleum Industry Workers' Trade Union (USO), on 10 October 2001 in Santander;

- (128) Luz Mila Rincón, ANTHOC, on 10 October 2001 in Tolima, by paramilitaries;
- (129) Gustavo Castellón Fuentes, activist of the Union of Family Benefit Fund Workers of Barrancabermeja (SINALTRACOFAN), on 20 October 2001 in Barrancabermeja, by paramilitaries;
- (130) Jesús Agreda Zambrano, activist of the Nariño Teaching Union (SIMANA), on 20 October 2001, by paramilitaries;
- (131) Expedito Chacón, ANTHOC, on 24 October 2001 in Santander;
- (132) Milena Pereira Plata, ASINORTH, on 30 October 2001 in Santander, by the FARC;
- (133) Edith Manrique, activist of Caldas Teachers' United (EDUCAL), on 6 November 2001 in Caldas, by paramilitaries;
- (134) Eriberto Sandoval, member of the National United Federation of Agricultural Workers (FENSUAGRO), on 11 November 2001 in Ciénaga, by paramilitaries;
- (135) Eliécer Orozco, FENSUAGRO, on 11 November 2001 in Ciénaga, by paramilitaries;
- (136) Jorge Julio Céspedes, activist of Caldas Teachers' United (EDUCAL), on 24 November 2001 in Caldas, by paramilitaries;
- (137) María Leida Montoya, activist of the Antioquia Teachers' Association, on 30 November 2001 in Antioquia;
- (138) Luis Alfonso Gaviria Meneses, activist of SINTRAEMSDES, on 30 November 2001 in Antioquia, by paramilitaries;
- (139) Luz Carmen Preciado, activist of the Nariño Teaching Union (SIMANA), on 30 November 2001 in Nariño, by FARC;
- (140) Santiago González, SIMANA, 30 November 2001 in Nariño, by the FARC;
- (141) Herlindo Blando, member of the Union of Teachers and Lecturers of Boyacá, on 1 December 2001 in Boyacá, by paramilitaries;
- (142) Generoso Estrada Saldarriaga, member of the Union of Electricity Workers of Colombia (SINTRAELECOL), on 4 December 2001 in Antioquia;
- (143) Germán Darío Ortiz Restrepo, member of the Antioquia Teachers' Association (ADIDA), on 7 December 2001 in Antioquia;
- (144) Alberto Torres, member of the Antioquia Teachers' Association (ADIDA), on 12 December 2001 in Antioquia;
- (145) James Estrada, activist of the Antioquia Teachers' Association (ADIDA), on 13 December 2001 in Antioquia;
- (146) José Raúl Orozco, President of the Continental Ceramic Workers' Union, on 14 December 2001 in Antioquia, by paramilitaries;
- (147) Jairo Antonio Chima, SINTRAEMSDES, on 22 December 2001 in Antioquia, by paramilitaries;
- (148) Eduardo Alfonso Suárez Díaz, delegate of the Petroleum Industry Workers' Trade Union (USO), on 23 December 2001 in Antioquia, by paramilitaries;
- (149) Iván Velasco Vélez, Union of University Workers, on 27 December 2001 in Valle del Cauca, by paramilitaries;
- (150) Bertilda Pavón, member of ANTHOC, on 2 January 2002 in Valledupar, by paramilitaries;
- (151) Carlos Arturo Alarcón, member of the Antioquia Teachers' Association (ADIDA), on 12 January 2002 in Antioquia;
- (152) Rubén Arenas, member of the Antioquia Teachers' Association (ADIDA), on 16 January 2002 in Antioquia;
- (153) Rubí Moreno, member of ANTHOC, on 20 January 2002 in César, by paramilitaries;

- (154) Víctor Alberto Triana, Association of Employees of ECOPETROL (ADECO), on 21 January 2002, by paramilitaries; Carlos Padilla, President of the Union of Workers in the Fray Luis de León Hospital, member of the General Confederation of Democratic Workers and UTRADEC, on 28 January 2002, in the municipality of Plato Magdalena, after receiving threats;
- (155) Carmen Elena García Rodríguez, organization secretary of the Municipal Executive Board of the César Health Union (SIDESC), shot dead when she was leaving her work at the Eduardo Arredondo Daza Hospital in Valledupar, on 29 January 2002;
- (156) Walter Oñate, in the same circumstances as the previous victim;
- (157) Jairo Alonso Giraldo, activist of the Antioquia Teachers' Association, on 1 February 2002, in Antioquia;
- (158) Gloria Eudilia Riveros Rodríguez, teacher at the Inocencio Chincá College in the municipality of Tame, in a FARC attack on the municipal police station, on 2 February 2002;
- (159) Oscar Jaime Delgado Valencia, teacher at the Camilo Torres de Armenia College, Department of Quindío, shot dead on 4 February 2002;
- (160) Oswaldo Enrique Borja Martínez, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 6 February 2002 in Sucre, by paramilitaries;
- (161) Henry Mauricio Neira, member of ANTHOC, on 7 February 2002 in Arauca;
- (162) Nohora Elsy López, official of the National Union of Childcare Workers in Welfare Homes, on 7 February 2002 in Antioquia, by paramilitaries;
- (163) Adolfo Flórez Rico, activist of the National Union of Workers in the Construction Industry (SINDICONS), on 7 February 2002 in Antioquia, by paramilitaries;
- (164) Julio Galaneo, community leader and former employee of EMCALI, shot dead on 11 February 2002. His wife, also a trade union activist, escaped unhurt from the attack;
- (165) Angela María Rodríguez Jaimes, member of the Santander Teachers' Union (SES-CUT), in the municipality of Piedecuesta, Department of Santander, shot dead on 12 February 2002;
- (166) Néstor Rincón Quinceno, Riseralda Teachers' Union, on 14 February 2002;
- (167) Alfredo González Páez, member of the Association of Employees of INPEC (ASEINPEC), on 15 February 2002 in Tolima, by paramilitaries;
- (168) Oswaldo Meneses Jiménez, ASEINPEC, on 15 February 2002 in Tolima, by paramilitaries;
- (169) Barqueley Ríos Mena, member of the Antioquia Teachers' Association, on 16 February 2002 in Antioquia;
- (170) Juan Manuel Santos Rentería, member of the Antioquia Teachers' Association, on 16 February 2002 in Antioquia;
- (171) Fernando Cabrales, President of the National Haulage Federation, on 18 February 2002 in Valle del Cauca, by paramilitaries;
- (172) José Wilson Díaz, member of the Union of Electricity Workers of Colombia (SINTRAELECOL), on 21 February 2002 in Huila, by the FARC;
- (173) Cecilia Gallego, Secretary for Women's Affairs of the Executive Committee of Colombian Farmers' Action (ACC), in the municipality of Macarena, on 25 February 2002;
- (174) Hugo Ospina Ríos, member of the Riseralda Teachers' Union (SER), on 26 February 2002 in Riseralda;
- (175) Marcos Antonio Beltrán, activist of SUTEV, on 1 March 2002 in Valle del Cauca;
- (176) Roberto Carballo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 6 March 2002 in Bolívar;
- (177) Juan Montiel, member of the Ciénaga subcommittee of the National Union of Farmworkers (SINTRAINAGRO), Department of Magdalena, on 7 March 2002;

- (178) Emilio Villeras Durán, member of the Ciénaga subcommittee of the National Union of Farmworkers (SINTRAINAGRO), Department of Magdalena, on 7 March 2002;
- (179) Alirio Garzón Córdoba, member of the National Union of Workers in the Registry of Births, Marriages and Deaths (SINTRAREGINAL), on 10 March 2002 in Huila;
- (180) Carlos Alberto Molano, SINTRAREGINAL, on 10 March 2002 in Huila;
- (181) Eduardo Chinchilla Padilla, activist of the Union of Workers in the Oil Palm and Related Industries (SINTRAPALMA-CUT), on 11 March 2002;
- (182) Luis Omar Castillo, member of the Union of Electricity Workers of Colombia (SINTRAELECOL), at the Río Bobo Electricity Generating Station, in the Department of Nariño, on 20 March 2002, by paramilitaries;
- (183) Juan Bautista Cevallos, member of the Union of Electricity Workers of Colombia (SINTRAELECOL), at the Río Bobo Electricity Generating Station, in the Department of Nariño, on 20 March 2002, by paramilitaries;
- (184) Ernesto Alfonso Giraldo Martínez, prosecutor delegate of the Antioquia Teachers' Association (ADIDAS-CUT), was shot and seriously wounded on 21 March 2002. On 22 March, when he was being transferred to the San Vicente Hospital in Medellín, he was taken from the ambulance and murdered by the FARC;
- (185) Alfredo Zapata Herrera, official of the of the Single Union of Workers in the Construction Materials' Industry – Santa Bárbara Branch (SUTIMAC-CUT), was abducted on 2 April and found dead on 3 April in Santa Bárbara; the trade union is being threatened by paramilitaries;
- (186) Oscar Alfonso Jurado, official of the Union of Chemical Industry Workers, Yumbo Branch, Department of El Valle, on 8 April 2002, by extreme right-wing groups;
- (187) Hernán de Jesús Ortiz, member of the national board of the Single Confederation of Workers of Colombia, on 12 April 2002 in Celda, by paramilitaries;
- (188) José Robeiro Pineda, former official of SINTRAELECOL, on 12 April 2002 in Celda, by paramilitaries.

Abductions and disappearances

- (1) Alexander Cardona, USO official;
- (2) Ismael Ortega, Treasurer of SINTRAPROACEITES, San Alberto (César);
- (3) Walter Arturo Velásquez Posada, of the Nueva Floresta School, in the municipality of El Castillo, in the El Ariari Educational District, Department of Meta;
- (4) Nefatalí Romero Lombana of Aguazúl (Casanare) and Luis Hernán Ramírez, teacher from Chámeza (Casanare), members of SIMAC-FECODE;
- (5) Roberto Cañarte M., member of SINTRAMUNICIPIO, Bugalagrande, in the Paila Arriba estate (Valle);
- (6) Germán Medina Gaviria, member of the Cali Municipal Enterprises Union (SINTRAEMCALI), on 14 January 2001, in the neighbourhood of El Porvenir, town of Cali;
- (7) Julio César Jaraba, member of SINTRAISS, disappeared on 23 February 2001;
- (8) Paula Andrea Gómez Mora (daughter of Edinson Gómez, member of SINTRAEMCALI, who was threatened on several occasions), abducted on 18 April 2001 and released on 20 April 2001;
- (9) Eumelia Aristizabal, member of ADIDA, disappeared on 19 April 2001;
- (10) Rosa Cecilia Lemus Abril, official of FECODE, attempted abduction foiled on 14 May 2001;
- (11) Six workers in public enterprises in Medellín belonging to SINTRAEMSDES were abducted in the Department of Antioquia on 12 June 2001;
- (12) Cristina Echeverri Pérez, member of EDUCAL-CUT, on 1 July 2001, near the town of Manizales;

- (13) Alfonso Mejía Urión, member of ADUCESAR-FECODE-CUT, disappeared on 4 July 2001;
- (14) Jairo Tovar Díaz, member of ADUCESAR-FECODE-CUT, on 29 July 2001, near the municipality of Galeras;
- (15) Julio Enrique Carrascal Puentes, member of the national executive committee of CUT, abducted on 10 August 2001;
- (16) Winston Jorge Tovar, member of ASONAL-CUT, abducted near the municipality of Dagua;
- (17) Alvaro Alberto Agudel Usuga, member of ASONAL-CUT, disappeared on 20 August 2001;
- (18) Jorge Feito Romero, member of the Association of Pensioners of the University of Atlántico (ASOJUA), on 28 August 2001;
- (19) Ricaurte Jaunten Pungo, official of ANTHOC-CUT, on 2 September 2001;
- (20) Alvaro Laiton Cortés, President of the Boyacá Teachers' Union, on 2 September 2001, released shortly after being abducted;
- (21) Marco Tulio Agudero Rivero, ASONAL-CUT, in the municipality of Cocorna, on 5 October 2001;
- (22) Iván Luis Beltrán, member of the executive committee of FECODE-CUT, on 10 October 2001;
- (23) Carlina Ballesteros, member of the Bolívar Single Teachers' Union (SUDEB-CUT), on 5 November 2001;
- (24) Jorge Enrique Posada, member of ASONAL, on 5 November 2001;
- (25) Jhon Jaimes Salas Cardona, delegate of ADIDA-CUT, on 26 November 2001;
- (26) Carlos Arturo Alarcón Vera, member of the Antioquia Teachers' Association (ADIDA-CUT), on 12 January 2002.
- (27) Gilberto Torres Martínez, General Secretary of the Single Petroleum Pipeline Subcommittee of the Workers' Trade Union (USO), in the municipality of Monterrey, abducted by paramilitaries on 25 February 2002 and released on 7 April 2002;
- (28) Hugo Alberto Peña Camargo, President of the Arauca Rural Workers' Association (ACA), detained in the *corregimiento* of Caño Verde, Department of Arauca, without a judicial warrant, on 13 March 2002;
- (29) José Pérez, member of the Workers' Trade Union (USO), in Quebrada La Nata, Department of Casanare, on 25 March 2002 by paramilitaries; and
- (30) Hernando Silva, member of the Workers' Trade Union (USO), abducted in la Quebrada La Nata, Department of Casanare, on 25 March 2002 by paramilitaries.

Attempted murders

- (1) Albeiro González García, President of ASODEFENSA, coffee sector, was ordered to a war zone although he was not a soldier, and refused. He was then victim of an attack on 24 September 1998; he is now in exile in Europe;
- (2) Ricardo Herrera, official of SINTRAEMCALI, was the victim of an attack in Cali, on 19 September 2000;
- (3) Wilson Borja Díaz, President of the Federation of Workers in the State Service (FENALTRASE), on 14 December 2000 was intercepted by hired assassins who shot at him, causing serious injuries. He is now in a critical condition under medical supervision;
- (4) César Andrés Ortiz, member of the CGTD, on 26 December 2000;
- (5) Héctor Fabio Monroy, member of AICA-FECODE, was the victim of a gunshot attack on 23 February 2001;
- (6) Attack on the executive board of SINTRAEMCALI in the outskirts of the town of Cali, when they were attending a working group to make proposals concerning the Cali Enterprise Recovery Plan, on 10 June 2001;

- (7) María Emma Gómez de Perdomo, member of ANTHOC, was the victim of an attack in which she was wounded by four bullets, in the town of Honda, on 13 June 2001;
- (8) Clemencia del Carmen Burgos, member of ASONAL-CUT, who was investigating the financing networks of the AUC self-defence groups, on 11 July 2001;
- (9) Omar García Angulo, member of SINTRAEMECOL, on 16 August 2001;
- (10) Carlos Arturo Mejía Polanco, member of the Yumbo Branch subcommittee of the Single Union of Workers in the Construction Materials Industry (SUTIMAC-CUT), on 16 November 2001;
- (11) Daniel Orlando Gutiérrez Ramos, member of the Cali Municipal Enterprises Union (SINTRAEMCALI), on 3 January 2002;
- (12) Sigilfredo Grueso, activist in the Cali Municipal Enterprises Union (SINTRAEMCALI), on 10 January 2002;
- (13) Albeiro Foreno, official of the Cartago Municipal Workers' Union (SINTRAMUNICIPIO), on 13 February 2002. Shots were fired at him by a paramilitary on 13 February 2002. Had already been a victim of attacks; and
- (14) National Union of Food Industry Workers (SINTRAINAL), in the Department of Valle del Cauca, on 14 February 2002, when shots were fired at the premises.

Death threats

- (1) Juan de la Rosa Grimaldos, President of ASEINPEC;
- (2) María Clara Baquero Sarmiento, President of ASODEFENSA;
- (3) Giovanni Uyazán Sánchez;
- (4) Reinaldo Villegas Vargas, member of the “José Alvear Restrepo” Society of Lawyers;
- (5) The following officials and members of USO: Carlos Oviedo, César Losa, Ismael Ríos, José Meneses, Julio Saldaña, Ladislao Rodríguez, Luis Linares, Rafael Ortiz, Ramiro Luna;
- (6) Rosario Vela, member of SINTRADEPARTAMENTO;
- (7) Numerous officials and members of FECODE;
- (8) Jorge Nisperuza, President of the CUT subcommittee, Córdoba;
- (9) María de Jesús Castañeda, President of the CUT subcommittee, Huila;
- (10) Gerardo Rodrigo Genoy Guerrero, President of the National Union of Workers, SINTRABANCOL;
- (11) Otoniel Ramírez, President of the CUT subcommittee, Valle;
- (12) José Rodrigo Orozco, member of the CUT-CAUCA executive board;
- (13) Against SINTRHOINCOL workers on 9 July 2001;
- (14) Leonel Pastas, official of the National Colombian Institute for Agrarian Reform (INCORA), on 14 August 2001;
- (15) Rusbel, INCORA official, on 14 August 2001;
- (16) Edgar Púa and José Meriño, Treasurer and Prosecutor of ANTHOC, on 16 August 2001;
- (17) Gustavo Villanueva, ANTHOC official, on 16 August 2001;
- (18) Jesús Tovar and Ildis Jarava, ANTHOC officials, were followed by heavily armed men from 16 August 2001;
- (19) Workers in the Union of Local Government Officials and Public Employees of Antioquia (SINTRAOFAN) were intimidated by paramilitaries to make them give up their trade union membership;
- (20) Aquiles Portilla, FECODE official, victim of pursuit on 29 August 2001;

- (21) Edgar Mojica and Daniel Rico, President and Press Secretary respectively of the Petroleum Industry Workers' Trade Union (USO), threatened by AUC members;
- (22) Over Dorado Cardona, official of ADIDA, on 19 September 2001;
- (23) Orlando Herrán, Rogelio Pérez Gil, Edgar Alvarez Cañizales, Dalgy Barrera Gamez, Jorge Vázquez Nivia, Javier González, Humberto Castro, Cervulo Bautista Matoma, members of the CGTD, received threats and were the victims of pursuit;
- (24) Jaime Goyes, Jairo Roseño, Rosalba Oviedo, Pedro Layton, Ricardo Chávez, Diego Escandón, Luis Ortega, trade union officials in the Department of Nariño, were threatened with death by the AUC on 8 October 2001;
- (25) On 26 October 2001, the entire executive board of SINTRAVIDRICOL-CUT was threatened with death;
- (26) Jorge Eliécer Londoño, member of SINTRAEMSDES-CUT, received death threats on 2 November 2001;
- (27) Carlos Alberto Florez Loaiza, member of the national executive board of the Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES), on 5 January 2002;
- (28) José Homer Moreno Valencia, member of SINTRAEMSDES-CUT, on 10 January 2002;
- (29) Luis Hernández, president of SINTRAEMCALI.

Persecution

- (1) Esperanza Valdés Amortegui, Treasurer of ASODEFENSA, victim of illegal espionage through the installation of microphones in her workplace;
- (2) Henry Armando Cuéllar Valbuena, harassed and physically assaulted;
- (3) Carlos González, President of the Union of University Workers of El Valle, assaulted by police, on 1 May 2001;
- (4) Freddy Ocoro, President of the Bugalagrande Union of Municipal Workers, assaulted by police, on 1 May 2001;
- (5) Jesús Antonio González, director of the CUT Department of Human and Trade Union Rights, assaulted by police, on 1 May 2001.

Sending civilians to war zones

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

- (1) Carlos Julio Rodríguez García, member of ASODEFENSA;
- (2) José Luis Torres Acosta, member of ASODEFENSA;
- (3) Edgardo Barraza Pertuz;
- (4) Carlos Rodríguez Hernández;
- (5) Juan Posada Barba.

Detentions

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

Annex II

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

Arturo Alarcón, Rafael Atencia Miranda, Jairo Balvuela, Víctor Carrillo, Francisco Isafas Cifuentes, Saúl Alberto Colpas Castro, Julio César Díaz Quintero, Alfredo Florez, José Luis Guette Montero, Saulo Guzmán Cruz, Darío Hoyos Franco, Cervando Lerma Guevara, Aury Sara Marrugo, Nilson Martínez Peña, Aldo Mejía Martínez, Cándido Méndez, Doris Núñez Lozano, Pablo Antonio Padilla López, Luis Alberto Pedraza Serrano, Samuel Segundo Peña Sanguino, Walter Dione Perea Díaz, Isabel Pérez Guzmán, Jaime Sánchez, Gustavo Soler, Oscar Darío Soto Polo, Juan Rodrigo Suárez Mira, James Orlando Urbano Morales, Miguel Angel Vargas Zapata, Ana Rubiela Villada, Huber Galeano, Libardo de Jesús Usme Salazar, Gerardo de Jesús Raigoza Cardona, Edgar Mariño Pereira Galvis, Arelis Castillo Colorado, Jesús Antonio Posada Marín, Jaime Enrique Barrera, Jorge Andrés Ríos Zapata, Diego Fernando Gómez, Leonardo Betancourt Méndez, Miguel Angel Pérez, Alfredo Germán Delgado Ordóñez, Jairo Vicente Vallejo Champutics, Carlos Eliecer Prado, Sandro Antonio Ríos, Magnolia Plazas Cárdenas, Rafael Jaimes Torra, Carmen Pungo de Sánchez, Jaime Duque Castro, Gilberto Agudelo Martínez, Gerzain Hernández Giraldo, William Hernández, Rodrigo Aparicio, Eduardo Franco, Jaime Sampayo, Julio Cabrales, Diego Quiguanas González, Leonardo Avendaño, Julio Ernesto Ceballos Guzmán, Gustavo Alejandro Castro Londoño, Ricardo Navarro Bruges, Ezequiel Antonio Palma, Maria Elisa Valdés Morales, John Jairo Ocampo Franco, Hernando Hernández Pardo, Alexander López Maya, Alirio Uribe Muñoz, Hernando Montoya, Julián Cote, Fredys Rueda, Julián de J. Durán, Eliécer Corredor, Miguel Angel Mercado.

CASES NOS. 1948 AND 1955

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

Complaints against the Government of Colombia presented by

- the Single Confederation of Workers of Colombia (CUT) and
- the Trade Union of Workers of the Bogotá Telecommunications Enterprise (SINTRATELEFONOS)

Allegations: The complainant organizations allege anti-union dismissals, excessive delays in the judicial proceedings initiated with relation to those dismissals and death threats against trade union leaders belonging to the trade union organization SINTRATELEFONOS

- 385.** The Committee last examined these cases at its March 2002 meeting [see 327th Report, paras. 345-367, approved by the Governing Body at its 283rd Session (March 2002)]. The Trade Union of Workers of the Bogotá Telecommunications Enterprise (SINTRATELEFONOS) sent further allegations and additional information in a communication dated 17 June 2002.
- 386.** The Government sent its observations in communications dated 9 April, 31 May and 4 June 2002.

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

A. Previous examination of the cases

- 388.** In its previous examination of these cases, with regard to allegations of acts of anti-union discrimination, the Committee made the following recommendations [see 327th Report, para. 367]:

Regarding the 23 trade union members of SINTRATELEFONOS who were dismissed by the Bogotá Telecommunications Enterprise (ETB), the Committee requests the Government to provide information on whether the ETB has begun legal proceedings and, if this is not the case, that those workers dismissed be immediately reinstated and paid the wages owing to them. The Committee requests the Government to keep it informed of developments in this respect.

Regarding the dismissal of Martha Querales, member of SINTRATELEFONOS, for having reported corruption among members of the ETB management, the Committee requests the Government to take steps to ensure that an independent investigation is promptly undertaken into the circumstances of her dismissal, and if this is confirmed to have taken place for anti-union reasons that she be immediately reinstated and paid the wages owing to her. The Committee requests the Government to keep it informed of developments.

The Committee requests the Government to keep it informed of the outcome of the judicial proceedings launched by the workers from the Engativa office in 1999.

Regarding the association of Elías Quintana and Carlos Socha with the ETB and their membership of SINTRATELEFONOS, the Committee requests the Government to carry out an inquiry into the matter and to resolve any prejudicial action taken against these persons for anti-union reasons. The Committee requests the Government to keep it informed of the outcome of this inquiry.

B. New allegations and additional information

- 389.** In its communication of 17 June 2002, the Trade Union of the Bogotá Telecommunications Enterprise (SINTRATELEFONOS) alleges in connection with the recommendation made by the Committee regarding the 23 trade union members of SINTRATELEFONOS who were dismissed by the Bogotá Telecommunications Enterprise (ETB) that: (1) the trade union officials Sandra Patricia Cordero Tovar, Rafael Humberto Galvis Jaramillo and Rodrigo Hernán Acosta Barrios have not been reinstated and the legal proceedings they initiated have continued for over four-and-a-half years without any judgement being handed down; and (2) seven of the dismissed workers reached an agreement with the enterprise.
- 390.** The complainant organization SINTRATELEFONOS alleges that: (1) on 11 June 2002 it received three telephone calls from callers who identified themselves as being from the United Self-Defence Forces of Colombia (AUC), and told the trade union official Rafael Galvis to forget about his family; (2) Ms. Sandra Cordero, an official of SINTRATELEFONOS, is obliged temporarily to leave the country for Canada for the same reasons, protected by the CLC of Canada; (3) Mr. Manuel Rodríguez, an official of SINTRATELEFONOS, has already received the report from the Ministry of the Interior suggesting which measures of protection are to be taken; and (4) in general terms the whole of the executive committee of SINTRATELEFONOS is under threat, without any protection.

C. Further replies of the Government

391. In its communication dated 9 April 2002, the Government states the following with regard to the recommendations made by the Committee at its March 2002 session: (1) regarding the 23 trade union members of SINTRATELEFONOS who were dismissed by the ETB, the Government repeats that the proceedings are under way before the Ordinary Labour Court. The Ministry of Labour reiterated to the representative of the ETB its readiness to carry out another conciliation hearing in the future so that the parties can together decide whether to put an end to the proceedings mentioned; (2) with regard to the dismissal of Ms. Martha Querales, a member of SINTRATELEFONOS, from the enterprise ETB, the Government indicates that the ETB stated that Ms. Martha Querales was dismissed unilaterally and was awarded the corresponding compensation and legal benefits. The Government adds that the Committee's recommendation will be made known to the ETB; (3) concerning the outcome of the judicial proceedings brought by the workers dismissed from the Engativa office in 1999, the Government indicates that they are in the preliminary stages and that it will send the corresponding observations later; and (4) as regards the association of Mr. Elías Quintana and Mr. Carlos Socha with the ETB and their membership of SINTRATELEFONOS, the Government points out that the Committee requested the complainant organization to certify their membership and that this is a necessary requirement in order to begin the corresponding inquiry [however, the Committee requested the Government to undertake an inquiry in its previous report on the case].

392. In its communication of 4 June 2002, the Government states with regard to the complaint submitted by the trade union organization SINTRATELEFONOS that a conciliation hearing was held on 16 May 2002. During the hearing both parties made their positions clear and expressed their views on the recommendations made by the Committee on Freedom of Association at its March 2002 meeting. The Government adds that in accordance with the Committee's recommendations, the Territorial Directorate of Labour and Social Security of Cundinamarca began an administrative labour inquiry against the ETB. In this connection it convened a conciliation hearing for the enterprise and the trade union organization on 24 May 2002. That hearing did not take place as the trade union organization did not attend.

D. The Committee's conclusions

393. *The Committee recalls that at its March 2002 meeting it made the following recommendations: (i) regarding the 23 trade union members of SINTRATELEFONOS who were dismissed by the enterprise ETB, the Committee requests the Government to provide information on whether the ETB has begun legal proceedings and, if this is not the case, that those workers dismissed be immediately reinstated and paid the wages owing to them; (ii) regarding the dismissal of Martha Querales, a member of SINTRATELEFONOS, for having reported corruption among members of the ETB management, the Committee requests the Government to take steps to ensure that an independent investigation is promptly undertaken into the circumstances of her dismissal, and if this is confirmed to have taken place for anti-union reasons that she be immediately reinstated and paid the wages owing to her; and (iii) regarding the association of Elías Quintana and Carlos Socha with the ETB and their membership of SINTRATELEFONOS, the Committee requests the Government to carry out an inquiry into the matter and to resolve any prejudicial action taken against these persons for anti-union reasons. The Committee requests the Government to keep it informed of the outcome of this inquiry.*

394. *In this respect, the Committee observes that according to SINTRATELEFONOS: (1) seven of the 23 workers dismissed from this trade union reached an agreement with the ETB; (2) the 16 others include, however, trade union officials Sandra Patricia Cordero Tovar,*

Rafael Humberto Galvis Jaramillo and Rodrigo Hernan Acosta who have not been reinstated; and (3) the legal proceedings brought by these dismissed persons have not been concluded in over four years.

- 395.** *Likewise, the Committee notes the Government's confirmation that the legal proceedings relating to the dismissals are currently before the Ordinary Labour Court, that a conciliation hearing was conducted during which the parties stated their positions concerning these allegations, and that the administrative authority has initiated an inquiry into these allegations. The Committee understands that this inquiry also covers the allegations relating to Mr. Elías Quintana and Mr. Carlos Socha.*
- 396.** *The Committee regrets that the legal proceedings relating to the dismissals initiated over four years ago have not yet been concluded. The Committee recalls 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 the trade union rights of the persons concerned" [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 749]. This being the case, the Committee: (1) expects that the judicial authorities will rapidly rule on the legal proceedings initiated by the 16 trade union officials and workers affiliated to SINTRATELEFONOS who were dismissed by the enterprise ETB and requests the Government to send a copy of the judgements handed down; (2) requests the Government to ensure the expedition of the proceedings relevant to the dismissed trade union officials and workers of SINTRATELEFONOS, so that a final decision is reached in the very near future, and that if the judicial authority affirms that these dismissals were of an anti-union nature, to take immediate measures for the reinstatement of the dismissed without loss of wages; and (3) also asks the Government to take steps to ensure that the administrative inquiry initiated with regard to the dismissals of Ms. Martha Querales, Mr. Elías Quintana and Mr. Carlos Socha of the ETB is completed very soon and to send the corresponding results.*
- 397.** *Furthermore, at its March 2002 meeting, the Committee also requested the Government to keep it informed of the outcome of the judicial proceedings brought by the workers dismissed from the Engativa office in 1999. The Committee notes the Government's information that the proceedings in question are in the preliminary stages. The Committee expresses the hope that these proceedings will be finalized in the very near future and requests the Government to keep it informed about the final result.*
- 398.** *Lastly, the Committee regrets to see that the Government has not sent its observations about the recent alleged threats made by the United Self-Defence Forces of Colombia (a paramilitary group) against the members of the executive committee of the trade union organization SINTRATELEFONOS and in particular against the trade union officials Rafael Galvis, Sandra Cordero and Manual Rodríguez. In this respect, the Committee requests the Government promptly to take measures to provide protection to the threatened officials and to keep it informed in this respect.*

The Committee's recommendations

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

- (a) *The Committee: (1) expects that the judicial authorities will rapidly rule on the legal proceedings initiated by 16 trade union officials and workers affiliated to SINTRATELEFONOS who were dismissed by the enterprise ETB and requests the Government to send a copy of the judgements handed down; (2) in view of the fact that the legal proceedings concerning the dismissal of 16 trade union officials and workers of SINTRATELEFONOS have not been concluded after over four years, requests the Government to ensure the expedition of these proceedings so that a final decision is reached in the very near future, and if the judicial authority affirms that these dismissals were of an anti-union nature, to take immediate measures for the reinstatement of the dismissed without loss of wages; and (3) also asks the Government to take steps to ensure that the administrative inquiry initiated with respect to the dismissals of Ms. Martha Querales, Mr. Elías Quintana and Mr. Carlos Socha of the ETB is completed very soon and to send the corresponding results.*
- (b) *With regard to the judicial proceedings brought by the workers dismissed from the Engativa office in 1999, the Committee expresses the hope that these proceedings will be finalized in the very near future and requests the Government to keep it informed about the final result.*
- (c) *In respect of the recent alleged threats made by the United Self-Defence Forces of Colombia (a paramilitary group) against the members of the executive committee of the trade union organization SINTRATELEFONOS, and in particular the trade union officials Rafael Galvis, Sandra Cordero and Manuel Rodríguez, the Committee requests the Government promptly to take measures to provide protection to the threatened officials and to keep it informed in this respect.*

CASE No. 1962

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

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

- **the Single Confederation of Workers of Colombia (CUT)**
- **the General Confederation of Democratic Workers (CGTD)**
- **the Public Works Trade Union (SINTRAMINOBRAS)**
- **the National Union of State Employees of Colombia (UTRADEC) and others**

Allegations: The complainant organizations allege anti-union dismissals in State or municipal institutions, and the impossibility for public servants to negotiate claims.

400. The Committee last examined this case at its March 2002 meeting [see 327th Report, paras. 368-411 approved by the Governing Body at its 283rd Session (March 2002)]. The Trade Union of Public Servants and Employees of the Colombian Institute of Hydrology, Meteorology and Land Development (SINALTRAHIMAT) sent additional information in a communication dated 15 April 2002.

401. The Government sent its observations in communications dated 15 February, 9 April, 31 May, 6 June and 10 July 2002.
402. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

403. In its previous examination of the case at its March 2002 meeting, the Committee made the following recommendations [see 327th Report, para. 411]:
- (a) Regarding the workers dismissed at the Municipality of Neiva in violation of the collective labour agreement, the Committee reiterates once again its previous recommendation to the Government and requests it to take the necessary measures to ensure that the competent authorities of the Municipality of Neiva pay compensation to all workers dismissed in violation of the collective labour agreement, and to keep it informed of the reconciliation meetings held for this purpose.
 - (b) Regarding the dismissal of the trade union leaders of SINALTRAHIMAT, the Committee requests the Government once again to continue making efforts to find these trade union leaders employment in positions that will become available in the future.
 - (c) Regarding the dismissal of the trade union leaders of SINTRADESAI, the Committee requests the Government to take steps to conclude as soon as possible the administrative labour inquiry into the Governor's office of San Andrés, and to keep it informed of the outcome.
 - (d) Regarding the mass dismissal and the lifting of the trade union immunity of the officials of the Public Works Trade Union of Cúcuta so that they can be dismissed, the Committee requests the Government to send its observations without delay.
 - (e) Regarding the dismissal of the trade union official Gladis Correa Ojeda, the Committee requests the Government to keep it informed of the proceedings in progress.
 - (f) Regarding the dismissal of the trade union leaders of SINTREMAR, Rigo Idilio Torres and Alvaro Moreno, the Committee requests the Government to keep it informed of the outcome of the proceedings; the Committee notes that the ruling ordering the reinstatement in their jobs of the other trade union leaders has been complied with but it requests the Government to provide new information on the situation given that the complainants have pointed out that there are new proceedings against these reinstatements.
 - (g) Regarding the allegation that the Mayor's office of the Municipality of Arauca is trying to dismiss Antonio Marín Bravo, legal adviser for SINTREMAR, the Committee requests the Government to keep it informed in this respect.
 - (h) Regarding the political persecution of Fermín Vargas Buenaventura, a lawyer for the trade union, the Committee requests the Government to ensure that the relevant state body begins without delay an inquiry into the situation and requests the Government to keep it informed of developments.
 - (i) Regarding the dismissal and the criminal proceedings against Juan Bautista Oyola Palomá, the Committee hopes that the criminal proceedings will be concluded in the near future and, should Mr. Oyola Palomá be judged innocent, that he is reinstated in his job and with his trade union office without delay. The Committee requests the Government to keep it informed in this respect.
 - (j) Regarding the following allegations: (a) the dismissal of Pamela Newball, leader of the Public Works Trade Union of the Municipality of Cúcuta, and the start of proceedings to lift the trade union immunity of nine trade union leaders; (b) the refusal of the Government to negotiate the claims of public servants; and (c) the dismissal of all

workers and trade union members of the Public Servants and Employees' Trade Union of Pitalito-Huila by the Municipality of Pitalito, the Committee requests the Government to send its observations without delay.

B. Additional information from the complainants

404. In its communication dated 15 April 2002, the Trade Union of Public Servants and Employees of the Colombian Institute of Hydrology, Meteorology and Land Development (SINALTRAHIMAT) states that the Administrative Dispute Department of the Council of State rejected the appeal made by the Single Confederation of Workers of Colombia (CUT)–Huila Section against the decision of the Huila Administrative Tribunal concerning the request for reinstatement of the trade union leaders dismissed from the National Institute of Land Development (INAT).

C. Further replies of the Government

405. In communications dated 15 February, 9 April, 31 May, 6 June and 10 July 2002, the Government states as follows [with regard to the recommendations made in para. 411 of the 327th Report by the Committee at its March 2002 meeting]:

- (a) Regarding subparagraph (a), the Ministry of Labour and Social Security, in the interest of reaching an agreement between the Municipality of Neiva and the trade union, arranged a reconciliation meeting, during which it was agreed that the Municipality would comply with the recommendations of the Committee on Freedom of Association provided that there was budgetary support from the Government. The trade union organization, for its part, said that it was willing to agree on compensation in accordance with the provisions of Law No. 50 of 1990.
- (b) Regarding subparagraph (b), the Government held reconciliation meetings between INAT and the trade union organization SINALTRAHIMAT with the aim of agreeing on the reinstatement of the five dismissed trade union leaders or, failing this, on appropriate compensation. In this respect, the chief of the INAT Legal Department stated that INAT was not ordered to reinstate these workers, that their status of persons under appraisal was being debated in the proceedings, and that the courts considered that the suppression of their jobs was based on the Constitution; it states that it therefore proceeded to the recognition of the respective compensation, which was cancelled at the time. In addition, the Government recalls that reinstatement is impossible since the jobs do not exist anymore because of the restructuring of INAT.
- (c) Regarding subparagraph (c) concerning the dismissal of the members of the executive committee of the trade union organization SINTRADESAI, the Ministry of Labour and Social Security of the islands of San Andrés and Providencia, by means of resolution No. 00191 of 31 December 2001, sanctioned the Governor's office of the Island Department of San Andrés, Providencia and Santa Catalina.
- (d) Regarding subparagraph (d), it states that it will send its observations shortly.
- (e) Regarding subparagraph (e), it states that the judicial proceedings are still in the preliminary stages and the outcome will be communicated.
- (f) Regarding subparagraphs (f) and (g) concerning the allegations presented by the trade union organization SINTREMAR, it states that the first-instance rulings concerning the reinstatement of the trade union leaders Rigo Idilio Torres and Alvaro Moreno were confirmed by higher judicial authorities and the workers in question were reinstated under a reconciliation procedure, and the municipal administration will comply with the judicial rulings concerning the lifting of the trade union immunity of Mr. Marín, who at present is continuing to work in the Mayor's office of Arauca.
- (g) Regarding subparagraph (h) concerning the political persecution of the lawyer for the trade union, Fermín Vargas Buenaventura, it states that the Ministry of Labour and Social Security is not competent to deal with this type of complaint since it is for the

Superior Council of the Judicature to supervise proceedings concerning lawyers involved in litigation in the country.

- (h) Regarding subparagraph (i) on the criminal proceedings against Juan Bautista Oyola, it states that the proceedings are in the final stages and it will communicate the outcome thereof in due course.
- (i) Regarding subparagraph (j), it states that: (1) Pamela Newball belongs to the SINTRADESAI trade union and, with regard to her dismissal, the Government of the Island Department of San Andrés, Providencia and Santa Catalina was sanctioned; (2) the Government ratified the Labour Relations (Public Service) Convention, 1978 (No. 151), and therefore, in the event of failure by public entities and organizations to initiate collective bargaining in response to claims from public employee unions, trade union organizations shall inform the competent authorities of such refusal so that the latter may take appropriate action; and (3) the Huila Territorial Office began an administrative labour inquiry against the Municipality of Pitalito, which is in its preliminary stages.

D. The Committee's conclusions

- 406.** *The Committee observes that the allegations in the present case refer to anti-union dismissals and the refusal to negotiate collectively with public servants.*
- 407.** *With respect to workers dismissed at the Municipality of Neiva in violation of the collective agreement, the Committee had requested the Government to take the necessary measures to ensure that the authorities of the Municipality pay compensation to the dismissed workers. The Committee observes that the Government states that the Ministry of Labour and Social Security held a reconciliation meeting between the parties, during which it was agreed that the Municipality would comply with the Committee's recommendations provided that it received budgetary support from the Government. In this regard, the Committee requests the Government to ensure that its recommendations are complied with, so that full compensation is paid immediately to the workers dismissed in the Municipality of Neiva in violation of the collective agreement.*
- 408.** *Regarding the dismissal of the trade union leaders of SINALTRAHIMAT, with respect to whom the Committee had requested the Government to continue making efforts to find them employment in positions that would become available in the future, the Committee notes that the complainant organization states that the Council of State rejected the appeal made by CUT – Huila Section concerning the request for reinstatement of the leaders in question and that the Government states that the representatives of INAT indicated at a reconciliation meeting held by the Ministry of Labour that the courts did not order the reinstatement of the dismissed leaders, that the posts that they occupied no longer exist as a result of restructuring of INAT and that the appropriate compensation has been paid to them. Consequently, the Committee will not continue with the examination of these allegations.*
- 409.** *Regarding the dismissals of the trade union leaders of SINTRADESAI, with respect to whom the Committee requested that the administrative labour inquiry which had been started should be concluded as soon as possible, the Committee notes that the Government states that the Ministry of Labour and Social Security of the islands of San Andrés and Providencia sanctioned the Government of the Island Department of San Andrés, Providencia and Santa Catalina in this respect by means of resolution No. 00191 of 31 December 2001. In addition, the Committee notes that that resolution included the dismissal of Pamela Newball (trade union leader of SINTRADESAI and not of the Public Works Trade Union of the Municipality of Cúcuta, as mentioned in the previous report). Consequently, the Committee requests the Government to ensure that the trade union*

leaders in question are reinstated in their jobs, without loss of earnings or are compensated fully.

- 410.** *As regards the dismissal of the trade union leaders of SINTREMAR, Rigo Idilio Torres and Alvaro Moreno, whose reinstatement had been ordered by the judicial authorities, the Committee duly notes that the Government states that the trade union leaders in question have been reinstated under a reconciliation process.*
- 411.** *Regarding the allegation that the Mayor's office of the Municipality of Arauca is trying to dismiss Antonio Marín Bravo, trade union official of SINTREMAR, the Committee notes that the Government states that the decision of the judicial authority on proceedings under way concerning the lifting of the trade union immunity of this trade union official will be complied with and that currently he is continuing to work in the Mayor's office of Arauca. The Committee requests the Government to keep it informed of the ruling which is issued in the judicial proceedings concerning the lifting of the trade union immunity of Antonio Marín Bravo, trade union official of SINTREMAR.*
- 412.** *Regarding the judicial proceedings concerning the dismissal of the trade union leader Gladis Correa Ojeda and the criminal proceedings under way concerning the trade union leader Juan Bautista Oyola Palomá (which resulted in his dismissal), the Committee notes that the Government states that both sets of proceedings are under way. Consequently, the Committee expresses the firm hope that both sets of proceedings will be concluded shortly and requests the Government to inform it of the outcome thereof.*
- 413.** *With regard to the mass dismissal and lifting of trade union immunity of the leaders of the Public Works Trade Union of Cúcuta so that they can be dismissed, the Committee notes with regret that the Government is merely indicating that it will send its observations shortly. The Committee urges the Government to take measures to ensure that an investigation is launched and, if it is ascertained that the dismissals or the lifting of trade union immunity have occurred as a result of trade union activities, to take measures to ensure that the dismissed workers are reinstated in their jobs and that trade union immunity is restored. The Committee requests the Government to keep it informed in this respect.*
- 414.** *Regarding the alleged political persecution of Fermín Vargas Buenaventura, a lawyer for the trade union, the Committee notes that the Government indicates that it is not within the competence of the Ministry of Labour and Social Security to deal with this kind of complaint. In this respect, the Committee urges the Government to take the necessary measures to ensure that the competent authority launches an inquiry in this respect and to keep it informed of the outcome thereof.*
- 415.** *As regards the alleged dismissal of all the workers and members of the Public Servants and Employees' Trade Union of Pitalito-Huila by the Municipality of Pitalito, the Committee notes that the Government states that the Huila Territorial Office launched an administrative labour inquiry against the Municipality, which is in its preliminary stages. In this respect, the Committee requests the Government to speed up the inquiry and, if it is concluded that the dismissals occurred for anti-trade union reasons, to take measures to ensure that the dismissed workers are reinstated in their jobs without loss of earnings. The Committee requests the Government to keep it informed in this respect.*
- 416.** *Finally, regarding the alleged refusal of the Government to negotiate the claims of public servants, the Committee notes that the Government indicates that it has ratified the Labour Relations (Public Service) Convention, 1978 (No. 151), and that in the event of failure by public entities and organizations to initiate the collective negotiation of claims, the competent authorities should be informed accordingly so that they can take appropriate*

action. In this respect, the Committee requests the Government to ensure that the provisions of Convention No. 151 are fully implemented, so that the right of public servants to collective bargaining is guaranteed.

The Committee's recommendations

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

- (a) *Regarding the workers dismissed at the Municipality of Neiva in violation of the collective labour agreement, the Committee requests the Government to ensure that full compensation is paid immediately to the workers dismissed at the Municipality of Neiva in violation of the collective labour agreement.***
- (b) *Regarding the dismissals of the trade union leaders of SINTRADESAI, including Pamela Newball, the Committee, observing that the administrative authority sanctioned the Government of the Island Department of San Andrés, Providencia and Santa Catalina in this respect, requests the Government to ensure that the trade union leaders in question are reinstated in their jobs without loss of earnings or are compensated fully.***
- (c) *Regarding the alleged attempt of the Mayor's office of the Municipality of Arauca to dismiss Antonio Marín Bravo, trade union official of SINTREMAR, the Committee requests the Government to keep it informed of the ruling adopted in the judicial proceedings concerning the lifting of the trade union immunity of this SINTREMAR official.***
- (d) *Regarding the judicial proceedings concerning the dismissal of the trade union leader Gladis Correa Ojeda and the criminal proceedings concerning the trade union leader Juan Bautista Oyola Palomá which gave rise to his dismissal, the Committee expresses the firm hope that the proceedings will be concluded shortly and requests the Government to inform it of the outcome thereof.***
- (e) *Regarding the mass dismissal and lifting of trade union immunity of the leaders of the Public Works Trade Union of Cúcuta so that they can be dismissed, the Committee urges the Government to take measures to ensure that an inquiry is conducted and, if it is concluded that the dismissals or the lifting of trade union immunity have been the result of their trade union activities, to take measures to ensure that the dismissed workers are reinstated in their jobs and that trade union immunity is restored. The Committee requests the Government to keep it informed in this respect.***
- (f) *Regarding the alleged political persecution of Fermín Vargas Buenaventura, a lawyer for the trade union, the Committee urges the Government to take the necessary measures to ensure that the competent authority launches an inquiry in this respect and to keep it informed of the outcome thereof.***
- (g) *Regarding the alleged dismissal of all the workers and members of the Public Servants and Employees' Trade Union of Pitalito-Huila by the Municipality of Pitalito, the Committee requests the Government to speed up***

the inquiry and that, if it is concluded that the dismissals occurred for anti-trade union reasons, it should take measures to ensure that the injured parties are reinstated in their jobs without loss of earnings. The Committee requests the Government to keep it informed in this respect.

- (h) *Regarding the alleged refusal of the Government to negotiate collectively the claims of public servants, the Committee requests the Government to ensure that the provisions of the Labour Relations (Public Service) Convention, 1978 (No. 151) are fully implemented, so that the right of public servants to collective bargaining is guaranteed.*

CASE No. 2068

INTERIM REPORT

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

- **the General Confederation of Democratic Workers (CGTD)**
- **the General Confederation of Democratic Workers (CGTD), Antioquia branch**
- **the Single Confederation of the Workers of Colombia (CUT), Antioquia executive board and**
- **25 other Colombian trade unions**

Allegations: Withholding of trade union dues and dismissal of workers in the Textiles Rionegro enterprise; denial of trade union leave and dismissal of trade union officers in the Santa Fe de Bogotá administration; dismissal of trade union officers and members in the Puerto Berrío municipality; attempted anti-union dismissals in the TODELAR enterprise; aggression against and detention of trade union officers and members in the Bogotá Water Supply and Sewerage Enterprise; refusal to reinstate FAVIDI trade union officers notwithstanding a court order; physical aggression against a trade union member of the Banco Popular; militarization of a hospital; dismissal of an officer of the ACEB.

- 418.** The Committee last examined this case at its June 2002 meeting [see 328th Report, paras. 125-228].
- 419.** The Government sent partial observations in communications dated 6 June, 18 July and 10 September 2002.
- 420.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as well as the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

421. At its June 2002 meeting, the Committee formulated the following recommendations [see 328th Report, para. 228]:

- (a) As regards the allegations of violation of the right to strike, presented by UNEB, the failure to transfer to the trade union the dues withheld by the Textiles Rionegro enterprise, presented by SINTRATEXIL and the dismissal of 34 workers of Textiles Rionegro who had peacefully and legally demanded their wages, in respect of which the Committee had requested the Government to take certain measures to communicate information, the Committee requests the Government to send its observations relating to these allegations without delay.
- (b) As regards the allegations concerning denial of trade union leave and subsequent dismissal of trade union officers for having taken such leave in the Santa Fe de Bogotá administration, the Committee requests the Government to keep it informed of the final result of the administrative labour dispute against the Bogotá Transport Executive.
- (c) As regards the allegations concerning aggression against and detention of union leaders and members at the Water Supply and Sewerage Enterprise of Bogotá, presented by SINTRACUEDUCTO, the Committee requests the Government without delay to take measures to carry out the necessary investigations and keep it informed of the result.
- (d) As regards the dismissal of the trade union officers of SINTRAYOPAL, Ms. Sandra Patricia Russi and Ms. María Librada García, the Committee requests the Government to keep it informed of the results of the investigation and, if the dismissals are found to be anti-union, to take measures immediately to reinstate the two officers in their posts with payment of lost salary.
- ...
- (g) As regards the dismissal of trade union leaders and members in the Puerto Berrío municipality, the Committee requests the Government to keep it informed of the development of these proceedings and ensure that the workers dismissed for anti-union reasons be reinstated in their posts, with payment of lost salary.
- (h) As regards the dismissal and refusal to reinstate the leaders of FAVIDI, Ms. Lucy Jannet Sánchez Robles and Ms. Ana Elba Quiroz de Martín, the Committee requests the Government to provide information on the actions taken by the two leaders to date and the results.
- (i) As regards the proceedings to lift trade union immunity at Textiles Rionegro and Radial Circuito Todelar de Colombia, the Committee requests the complainant organizations to send more information on the allegations in order that the Government may conduct the necessary investigations.
- (j) As regards the physical aggression against the trade unionist Ms. Claudia Fabiola Díaz Riascos by the security staff of the Banco Popular and the militarization of the Julio Méndez Barreneche Central Hospital, the Committee requests the Government to send the response from the Coordinator of the Office for the Defence of Human Rights of the Ministry of Labour and Social Security as soon as it is received.
- ...
- (l) As regards the allegations of: (a) persecution, harassment and intimidation at the Lorencita Villega de Santos University Children's Hospital; (b) repression against trade unionists in connection with the presentation of a petition to Citibank and interference at the Banco Popular, presented by UNEB; (c) failure to comply with the collective agreement, presented by SINTRACUEDUCTO; (d) the dismissal of trade union leaders in the Magdalena district administration and the Julio Méndez Barreneche Central Hospital, presented by SINTRASMAG; and (e) anti-union discrimination in restructuring processes presented by the Association of Workers of Banco Central Hipotecario (ASTRABAN), the Committee requests the Government to keep it informed of the final result of the investigations by the Cundinamarca regional director.
- ...

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

422. The allegations referred to in the latter recommendation are reproduced below:

- the Official Employees’ Association of the Municipality of Medellín (ADEM) and the Public Employees’ Trade Union of the Municipality of Medellín (SIDEM) allege: (a) the dismissal of 83 employees of the Municipality of Medellín with trade union immunity; (b) failure to comply with a memorandum of understanding signed on 20 February 2001 agreeing to their reinstatement; (c) the subcontracting of new employees, deprived of the right to freedom of association, to do the work formerly done by the dismissed workers; (d) the lack of consultation in the administrative restructuring process launched by the Council of Medellín in March 2001; and (e) the mayor’s threats to punish all participants in the strike called for 6 March 2001 in response to the failure to comply with the memorandum of understanding;
- the Trade Union Association of Employees of the National Penitentiary and Prison Institute (ASEINPEC) alleges: (a) the murder of trade union officers, Jesús Arley Escobar, Fabio Humberto Burbano Córdoba, Jorge Ignacio Bohada Palencia and Jaime García; (b) the constant threats received by the union’s leaders; (c) anti-union persecution through measures against union leaders including sanctions, disciplinary proceedings and transfers; (d) the dismissal of union leaders in violation of trade union immunity; (e) the suspension of trade union leaders without pay for having conducted a peaceful demonstration; and (f) pressure on members to leave the union;
- the Colombian Association of Banking Employees (ACEM) alleges the dismissal of a union leader following criminal proceedings against him in which he was cleared;
- the Trade Union of Workers of Sintéticos S.A. (SINTRASINTETICOS) alleges: (a) pressure and threats by the Odissey Ltd. enterprise to force workers to leave the union; (b) interference by the enterprise in internal union matters; (c) delays in the settlement of proceedings before tribunals relating to violation of freedom of association; (d) sanctions against trade union leaders for making use of trade union leave; and (e) the enterprise’s refusal to hold meetings for collective bargaining;
- the National Union of Textile Industry Workers (SINTRATEXTIL) alleges that: (a) in the Facricato enterprise: (1) there is violation of the collective agreement; (2) trade union leave is denied; and (3) trade union leaders are denied access to the premises; (b) in the Enka enterprise: (1) non-fulfilment of agreements concluded between the President of the company and the trade union; (2) violation of the collective agreement through the conclusion of contracts with companies to conduct work directly covered by the collective agreement; (3) distribution of the hardest tasks to unionized workers; (c) in the Coltejer enterprise: dismissals on the grounds of restructuring, in violation of a collective agreement; and (d) in the Textiles Rionegro enterprise, (1) favouritism towards one of the enterprise trade unions to the detriment of the industry union, and (2) violation of the collective agreement.

B. The Government’s reply

423. In its communication dated 18 July 2002, the Government states the following:

Paragraph (a) of the Committee’s recommendations

424. As regards the failure to transfer to the trade union the dues withheld by the Textiles Rionegro enterprise, the Labour and Social Security Inspector of Rionegro initiated an administrative labour investigation and summoned the parties to a hearing, at which the enterprise undertook to pay the dues. As regards the dismissal of 34 employees of the Textiles Rionegro enterprise, the Government takes due note and will send its observations at a later date concerning the judicial proceedings initiated by these workers.

Paragraph (b) of the recommendations.

425. As regards the allegations concerning denial of trade union leave and subsequent dismissal of trade union officers for having taken such leave in the Santa Fe de Bogotá administration, presented by the Trade Union of Public Employees of the Transit and Transport Secretariat (SETT), the Government states that the Cundinamarca Regional Directorate is conducting an administrative labour investigation and that it will send its observations in due course. In addition, the Government states that the First Division of the Cundinamarca Administrative Tribunal is currently examining the action for nullity filed against Decree No. 069 of 1997 ordering the restructuring of the District Transit Secretariat. In reply to a request from the Technical Support Group on Cases and Interventions before the ILO, the Clerk's Office of the abovementioned Division reports that these proceedings are now at the evidence gathering stage and observations on the decision handed down by the Tribunal will be sent in the near future. Concerning the reinstatement of the dismissed trade union officers, the Government attaches the ruling of the 19th Labour Court of the Bogotá Circuit.

Paragraph (c) of the recommendations

426. As regards the allegations concerning violation of the right to strike and acts of aggression against and detention of union leaders and members in the Water Supply and Sewerage Enterprise of Bogotá, presented by SINTRACUEDUCTO, the Government states that the Cundinamarca Regional Directorate of Labour and Social Security initiated an administrative labour investigation against the Water Supply and Sewerage Enterprise of Bogotá and a ruling has been handed down in the first instance, in which it was decided that no police or administrative measures are to be taken against the enterprise, on the grounds that these are disputes which according to the law can only be settled in court. The ruling is now final, given that the appeals provided for by the law have not been lodged. Ruling No. 189 of 6 February 2002 is attached.

Paragraph (d) of the recommendations

427. As regards the dismissal of Ms. María Librada García, an officer of SINTRAYOPAL, the Government states that a complaint was filed with the Yopal labour court, which ruled against the trade union officer. This decision was upheld by the Yopal District Higher Court, and therefore an action for the protection of constitutional rights (*tutela* proceedings) has been filed with the Council of State. As regards Ms. Sandara Russi, the Government states that she has not filed any judicial proceedings. An administrative labour investigation is now being carried out by the Casanare Regional Directorate of Labour and Social Security against the Yopal town council. The Government states that it will send the results of the investigation.

Paragraph (g) of the recommendations

428. As regards the dismissal of trade union leaders and members in the Puerto Berrío municipality, the Government states that the Labour and Social Security Inspectorate of Puerto Berrío has initiated an administrative labour investigation against the Puerto Berrío

municipal council, which is now at the evidence gathering stage, and that it will send the results.

Paragraph (h) of the recommendations

429. As regards FAVIDI's refusal to participate in collective bargaining, the Government states that the Cundinamarca Directorate of Labour and Social Security initiated an administrative labour investigation and summoned the parties to conduct the relevant proceedings, of which the record is attached. As regards the cases of Ms. Lucy Janeth Sánchez and Ms. Ana Elvira Quiroz de Martí, they filed judicial proceedings with the 18th Labour Court of the circuit, which ordered their reinstatement in a ruling dated 30 October 1998, which was revoked by the Labour Chamber of the Higher Court of the Santa Fe de Bogotá judicial district in a ruling dated 12 August 1999.

Paragraph (i) of the recommendations.

430. As regards the allegations concerning proceedings to lift trade union immunity at the Radial Circuito Todelar enterprise, the Government states that the Cundinamarca Directorate of Labour and Social Security initiated an administrative labour investigation against the enterprise which is currently at the evidence gathering stage. Observations on the final outcome will be sent.

Paragraph (j) of the recommendations

431. As regards the physical aggression against the trade unionist Ms. Claudia Fabiola Díaz Riascos by the security staff of the Banco Popular and the militarization of the Julio Méndez Barreneche Central Hospital, the Government reports that the Ministry of Labour and Social Security will notify the Office for the Defence of Human Rights.

Paragraph (l) of the recommendations

432. As regards the allegations of persecution presented by SINTRAINFANTIL, ASTRABAN and SINTRASMAG, the Cundinamarca and Magdalena Regional Directorates of Labour and Social Security initiated administrative labour investigations into the matter, which are at the evidence gathering stage. The Committee will be informed of their results.

Paragraph (p) of the recommendations

433. In its communication of 10 September 2002, the Government refers to matters which did not figure in the allegations. The Government also states that SIDEM has withdrawn its lawsuits.
434. As regards the dismissal of Mr. Hugo Leonel Gándara Martínez from Banco Ganadero, as alleged by ACEB, the Government states in a communication dated 6 June 2002 that the Ministry of Labour, through its Sucre Regional Directorate, initiated an administrative labour investigation against the Corozal branch of Banco Ganadero; the parties have been notified of the opening of the investigation and the Committee will be informed of the results.
435. The Committee further states that the special representative of the Banco Ganadero informed it that Mr. Hugo Leonel Gándara Martínez was employed at the bank from 3 January 1974 to 3 August 1995, his last post being that of secretary of the Corozal branch, in the Department of Sucre. It states that Mr. Martínez's contract of employment was terminated unilaterally for just cause as of 3 August 1995, his dismissal being based on the following facts:

- At the beginning of 1995 the bank, through its internal control bodies and in particular the office of the internal auditor, found that the bank had been defrauded in the years immediately preceding out of an amount totalling approximately 5,200,000 pesos in the form of loans granted to himself by the then manager, Mr. Luis Urbano Olmos, irregular loans to third parties, entering fictitious transactions in the accounts and other fraudulent acts, resulting in material damage to the institution in the same amount.
- The bank accordingly filed a criminal complaint in order to identify the perpetrators with the Attorney-General's Office, given that the criminal act included falsifying documents in the private and public domain, among other punishable acts.
- In addition, the bank terminated the contracts of employment of the manager, Mr. Urbano Olmos and other staff of the branch, including that of Mr. Hugo Leonel Gándara Martínez, and hence it is not correct to state, as does the trade union complaint, that the bank had terminated only Mr. Gándara Martínez's contract of employment up to the point when the criminal court subsequently ruled on the criminal liability of those who had been called to account by the Attorney-General's Office.
- As regards the just cause invoked by the bank as grounds for terminating Mr. Gándara Martínez's contract of agreement, it should be pointed out that this decision was not based on an assumption that he was guilty, i.e. the grounds for the bank's decision were not the illegal act in which he may have participated, but the grave negligence he had displayed and the serious breach of his professional obligations and duties; in other words, his passive attitude with respect to the irregularities observed to have been committed in the branch of which he was secretary constituted serious professional misconduct accordingly, a copy of the notification of termination of his contract is enclosed.
- As stated previously, Mr. Gándara Martínez filed a complaint with the ordinary court against Banco Ganadero in order to obtain his reinstatement, with a subsidiary claim for payment of compensation for wrongful dismissal. Mr. Gándara Martínez renounced his principal claim for reinstatement at the first hearing. Upon completion of the proceedings, the Mixed Court of the Corozal Circuit handed down a ruling on 25 April 1997, releasing the bank from the claims to compensation for wrongful dismissal and compensatory allowance, given that the court found the termination of contract to have been in accordance with the law, and merely sentenced Banco Ganadero to pay 491,555.55 pesos in compensation for the delay in paying the severance pay due. The decision was upheld by a ruling of the Higher Court of the Sincelajo Judicial District on 20 February 1998. In view of this, Mr. Gándara decided to file an appeal for review with the Labour Chamber of the Supreme Court of Justice which, on 10 December 1998, and after carrying out a detailed analysis of the body of evidence, and noting and examining the notification of termination of employment, decided not to annul the ruling handed down in the second instance, as it found that the lower courts did not err in finding the dismissal justified. It is clear from the above that Mr. Gándara Martínez, both in the proceedings before the courts and in his extraordinary appeal for review, duly exercised his fundamental right to contest and defend.

C. The Committee's conclusions

436. *The Committee observes that when it analysed this case concerning acts of anti-union discrimination and harassment at its June 2002 meeting, it had requested the Government to take certain measures or communicate information in respect of these matters [see 328th report, paras. 125-228]. Generally speaking, given the large number of allegations of anti-union discrimination which have remained pending for a long time, the Committee emphasizes that “no person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, whether past or present” [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 690], and that “protection against anti-union discrimination should apply more particularly in respect of 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 the workplace or, with the employer’s consent, during working hours” [see **Digest**, op. cit., para. 694]. Furthermore, “no person should be dismissed or prejudiced in his or her employment by reason of trade union membership of legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment” [see **Digest**, op. cit., para. 696] and “legislation should lay down explicitly remedies and penalties against acts of anti-union discrimination in order to ensure the effective application of Article 1 of Convention No. 98” [see **Digest**, op. cit., para. 697]. Accordingly, “respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial” [see **Digest**, op. cit., para. 741].*

Paragraph (a) of the Committee’s recommendations at its June 2002 meeting

437. *The Committee notes the hearing conducted at the request of the Labour and Social Security Inspector, during which the Textiles Rionegro enterprise undertook to pay the trade union dues that had been withheld. As regards the dismissal of 34 employees of the Textiles Rionegro enterprise and allegations of violation of the right to strike presented by the UNEB, the Committee requests the Government to inform it without delay on the investigations carried out and any judicial measures adopted.*

Paragraphs (b), (g), (i) and (l) of the recommendations

438. *As regards (a) the denial of trade union leave and subsequent dismissal of trade union officers for having taken such leave in the Santa Fe de Bogotá administration, (b) the dismissal of trade union officers and members in the Puerto Berrío municipality, (c) the proceedings to lift trade union immunity at the Radio Difusora Profesional Ltda. – TODELAR enterprise and (d) the persecution alleged by SINTRAINFANTIL, ASTRABAN and SINTRASMAG, the Committee notes the information sent by the Government to the effect that the Cundinamarca and Magdalena Regional Directorates of Labour and Social Security and the Puerto Berrío Labour and Social Security Inspectorate have initiated administrative labour investigations into these matters, which are at the evidence gathering stage, and that it will be informed of the results of these investigations. The Committee requests the Government to continue keeping it informed in this respect.*

Paragraph (c) of the recommendations

439. *As regards the allegations concerning aggression against and detention of union leaders and members at the Water Supply and Sewerage Enterprise of Bogotá, the Committee notes that an administrative labour investigation was initiated by the Cundinamarca Regional Directorate of Labour and Social Security, in accordance with the points contained in the complaint presented by SINTRACUEDUCTO, and that a ruling was handed down in which it was decided that no police or administrative measures would be taken against the abovementioned enterprise, on the grounds that these are disputes which according to the law can only be settled in court. The Committee notes that this ruling is final as the appeals provided for by the law have not been lodged.*

Paragraph (d) of the recommendations

440. *The Committee takes note of the judicial decisions concerning the dismissal of Ms. María Librada García. The Committee requests the Government to keep it informed of the outcome of the tutela proceedings filed with the Council of State. The Committee also requests the Government to keep it informed of the results of the administrative labour investigation initiated by the Casanare Regional Directorate of Labour and Social Security against the Yopal town council.*

Paragraph (h) of the recommendations

441. *As regards the dismissal and refusal to reinstate the leaders of FAVIDI, Ms. Lucy Janeth Sánchez and Ms. Ana Elvira Quiroz de Martín, the Committee notes the information sent by the Government to the effect that these persons filed judicial proceedings with the 18th Labour Court of the circuit, which ordered their reinstatement in a ruling dated 30 October 1998, but that this ruling was revoked by the Labour Chamber of the Superior Court of the Santa Fe de Bogotá judicial district, in a ruling dated 12 August 1999. The Committee requests the Government to transmit a copy of the revocation ruling and to inform it whether this ruling has become final, and if not, whether an appeal has been lodged against it.*

Paragraph (j) of the recommendations

442. *As regards the physical aggression against the trade unionist Ms. Claudia Fabiola Díaz Riascos by the security staff of the Banco Popular and the militarization of the Julio Méndez Barreneche Central Hospital, the Committee notes that the Government states that it will notify the Office for the Defence of Human Rights in this regard. The Committee regrets to observe that when it last analysed this case the Government had already informed it that it would send a letter concerning the allegations to that Office. The Committee recalls that “where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention” and that “justice delayed is justice denied” [see *Digest*, *op. cit.*, paras. 56 and 754]. The Committee requests the Government to take the necessary measures to ensure that the investigation is carried out without delay and to keep it informed of its outcome.*

Paragraph (p) of the recommendations

- 443.** *As regards the alleged dismissal of the trade union officer of the ACEB, Mr. Hugo Leonel Gándara Martínez, for anti-union reasons, the Committee notes the ruling handed down by the Labour Chamber of the Supreme Court of Justice upholding the ruling handed down in the second instance clearing Banco Ganadero.*
- 444.** *As regards the allegations submitted by ADEM and SIDEM on the violation of the agreement under which the Government had undertaken to reinstate the 83 workers enjoying trade union protection, and on the lack of consultations during the administrative restructuring process initiated by the Council of Medellín, the Committee notes that, in its reply, the Government limits itself to stating that SIDEM has withdrawn its lawsuits. In this respect, the Committee requests the Government to communicate its observations on the allegations made by ADEM.*
- 445.** *As regards the allegations presented by ADEM, SINTRASINTETICOS, SINTRATEXTIL and ASEINPEC, the Committee regrets to note that despite the fact that these allegations were put forward in its previous examination of the case, the Government states that only now will it notify the Office for the Defence of Human Rights of the Ministry of Labour and Social Security. Moreover, the Committee observes that given the nature of certain allegations (anti-union dismissals, threats of sanctions in the event of a strike, lack of consultation in restructuring processes), the bodies competent to handle them would perhaps be the labour courts rather than the Office for the Defence of Human Rights. The Committee requests the Government to send its observations on the allegations without delay.*
- 446.** *The Committee requests the Government to send its observations without delay concerning these allegations and urgently in respect of the allegations of murder of trade union leaders Jesús Arley Escobar, Fabio Humberto Burbano Córdoba, Jorge Ignacio Bohada Palencia and Jaime García, in order that it may formulate its recommendations in full possession of the facts.*

The Committee's recommendations

- 447.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *As regards the dismissal of 34 workers of Textiles Rionegro and the allegations of violation of the right to strike presented by UNEB, the Committee requests the Government to inform it without delay on the investigations carried out and any judicial measures adopted;*
- (b) *As regards (a) the denial of trade union leave and subsequent dismissal of trade union officers for having taken such leave in the Santa Fe de Bogotá administration, (b) the dismissal of trade union officers and members of the Puerto Berrío municipality; (c) the proceedings to lift trade union immunity at the Radio Difusora Profesional Ltda. – TODELAR enterprise and (d) the persecution alleged by SINTRAINFANTIL, ASTRABAN and SINTRASMAG, the Committee requests the Government to continue keeping it informed in this respect.*

-
- (c) *As regards the dismissal of Mrs. María Librada García, the Committee requests the Government to keep it informed of the results of the administrative labour investigation initiated by the Casanare Regional Directorate for Labour and Social Security against the Yopal town council.*
- (d) *As regards the ruling handed down on 12 August 1999 by the Superior Court of the Bogotá Judicial District revoking the reinstatement of FAVIDI leaders Ms. Lucy Janeth Sánchez and Ms. Ana Elvira Quiroz de Martín, the Committee requests the Government to transmit a copy of the revocation ruling and to inform it whether this ruling has become final and, if not, whether an appeal has been lodged against it.*
- (e) *As regards the physical aggression against the trade unionist Ms. Claudia Fabiola Díaz Riascos by security staff of the Banco Popular and the militarization of the Julio Méndez Barreneche Central Hospital, the Committee requests the Government to take the necessary measures to ensure that the investigation is carried out without delay and to keep it informed of its outcome.*
- (f) *As regards the allegations submitted by ADEM on the violation of the agreement under which the Government had undertaken to reinstate the 83 workers enjoying trade union protection, and on the lack of consultations during the administrative restructuring process initiated by the Council of Medellín, the Committee requests the Government to send its observations in this respect.*
- (g) *As regards the additional allegations presented by ADEM, and the allegations presented by SINTRASINTETICOS, SINTRATEXTIL, ASEINPEC, the Committee requests the Government to send its observations on the allegations without delay.*
- (h) *The Committee requests the Government to send its observations urgently in respect of the allegations of murder of trade union leaders Jesús Arley Escobar, Fabio Humberto Burbano Córdoba, Jorge Ignacio Bohada Palencia and Jaime García, in order that it may formulate its recommendations in full possession of the facts.*

CASE NO. 2097

INTERIM REPORT

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

- **the Trade Union of Workers of Antioquia Department (SINTRADEPARTAMENTO)**
- **the National Trade Union of Workers of AVINCO S.A. (SINTRAVI)**
- **the National Trade Union of Workers of Procter and Gamble Colombia (SINTRAPROCTERG)**
- **the Trade Union of Workers of “Manufacturas de Colombia” (SINTRAMANCOL)**
- **the Trade Union of Workers of “Cementos del Nare S.A.” (SINTRACENARE)**
- **the Union of State Workers of Colombia (UTRADEC)**
- **the Single Confederation of Workers of Colombia (CUT), Antioquia executive board and**
- **the Union of “Official” Workers and Public Employees of the General Hospital of Medellín (SINTRA Hospital General de Medellín)**

Allegations: The complainant organizations allege dismissals of trade union officials protected by trade union immunity and the dismissal of trade unionists on anti-union grounds. They also allege that the Government has not adopted the necessary measures to give effect to the provisions of Convention No. 151 concerning the negotiation of the employment conditions of public officials.

- 448.** The Committee last examined this case at its June 2001 meeting [see 325th Report, paras. 338-353, approved by the Governing Body at its 281st Session (June 2001)]. The National Trade Union of Workers of Procter and Gamble Colombia (SINTRAPROCTERG) and the Trade Union of Workers of Antioquia Department (SINTRADEPARTAMENTO) sent additional information concerning their complaints in communications dated 28 June and 30 August 2001. The Trade Union of Workers of “Cementos del Nare S.A.” (SINTRACENARE) and the Union of State Workers of Colombia (UTRADEC) also submitted allegations relating to this case. The Single Confederation of Workers of Colombia, Antioquia executive board, and the Union of “Official” Workers and Public Employees of the General Hospital of Medellín (SINTRA Hospital General de Medellín) submitted all allegations related to these questions in their communications dated 4 and 16 June and 22 May 2002.
- 449.** The Government sent its observations in communications dated 3 June and 4 September 2001 and 1 April, 4 June and 18 July 2002.
- 450.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. Previous examination of the case

451. At its June 2001 meeting, following its examination of allegations relating to acts of discrimination and persecution against trade union officials and trade unionists in various enterprises, the Committee made the following recommendations [see 325th Report, para. 353, subparas. (b) and (c)]:

The Committee urges the Government to take immediate steps to begin an independent inquiry covering all the allegations made by the National Trade Union of Workers of AVINCO S.A. concerning different anti-union acts in the company AVINCO S.A. (dismissal of five workers covered by trade union immunity after they had formed a trade union organization at the company; pressure put on workers to accept a collective agreement and the subsequent withdrawal of non-statutory benefits from unionized workers; pressure on workers to make them leave the union; intransigence on the part of the company in refusing to negotiate a list of demands), and that it communicate its own observations on the basis of the inquiry's findings.

The Committee requests the Government to communicate its observations on the allegations made recently by the Trade Union of Workers of Procter and Gamble Colombia (SINTRAPROCTERG). The Committee also requests the complainant to supply the names of persons who, according to the allegations, have been victims of anti-union acts. Finally, the Committee asks the Government to send its observations on the recent allegations presented by SINTRAMANCOL.

[SINTRAPROCTERG alleges numerous anti-union acts by the company against union members (for example: pay raises for non-unionized workers; suspension of two union members for inadvertent errors in clocking in; dismissal of 25 workers in 1996 after they had joined the union; dismissal of a worker in 1998 after he had joined the union; dismissal in 1999 of a worker covered by trade union immunity after he had presented a list of demands; offers of money to the union's president, vice-president and executive secretary to persuade them to leave the company and thus weaken the union; a request to suspend the trade union immunity of the president, based on a report which accused him of sleeping during working hours; surveillance of the union secretary by company guards; moves to concentrate union members in a single work area; disciplinary summonses of workers joining the union with a view to intimidating them; pressure on the President, Mr. Juan Manuel Estrada, which led to his resignation from the union presidency; refusal to grant trade union leave; and offers of cash to unionized workers to encourage them to leave the company). SINTRAMANCOL explains that the owners of the enterprise Mancol Popayán S.A. decided to liquidate the said enterprise and requested authorization from the public authorities to close it definitively. The Ministry of Labour authorized the closing of the enterprise and on 4 May 1999, all the workers were dismissed. The complainant organization alleges that with regard to the trade union officials, the enterprise initiated proceedings with the judicial authorities in order to obtain authorization for their dismissal. However, on 4 December 2000, and without having obtained that authorization, the enterprise dismissed the 12 SINTRAMANCOL officials. The complainant organization indicates that it initiated legal proceedings against this decision but since the enterprise does not exist anymore, it is impossible to execute any judgement. Therefore, the complainant organization considers that the Government should bear the responsibility for these violations of trade union rights and should compensate the workers accordingly.]

B. Additional information and new allegations

452. In a communication dated 28 June 2001, the National Trade Union of Workers of Procter and Gamble Colombia (SINTRAPROCTERG) states that it has reached a conciliation settlement with Procter and Gamble Industrial Colombia Ltd. in respect of the complaint submitted to the Committee.

- 453.** In a communication dated 30 August 2001, the Trade Union of Workers of Antioquia Department (SINTRADEPARTAMENTO) notes that the 13 workers who had been dismissed together with 35 others following a work stoppage in the Department applied to the judicial authorities but did not receive a judgement in their favour and were not reinstated. The complainant organization alleges that these union members were dismissed on the same grounds as the 35 workers who had been dismissed and later reinstated.
- 454.** In its communication dated 16 October 2001, the Trade Union of Workers of “Cementos del Nare S.A.” (SINTRACENARE) alleges that Mr. Héctor Gómez, former trade union official and member of the union, was dismissed on 25 May 1995 in an act of anti-union persecution. The complainant organization indicates that it requested the enterprise to set up a dismissals committee, which was done on 18 August 1995, and it declared the dismissal of Mr. Gómez to be unjust and ordered his reinstatement, together with the payment of the wages and benefits he had failed to receive. The complainant organization states that the enterprise appealed against the decision made by the dismissals committee before the High Court of Medellín which ordered that the arbitral award be set aside and also indicates that the special judicial review proceedings lodged before the Labour Chamber of the Supreme Court of Justice were unsuccessful.
- 455.** In its communication dated 11 April 2002, the Union of State Workers of Colombia (UTRADEC) alleges that on 8 December 2000 the State ratified Convention No. 151 but that the measures necessary to implement the provisions of the Convention in respect of the negotiation of the employment conditions of public officials have not been adopted (according to the complainant organization, the legal secretariat of the Office of the President of the Republic twice refused to issue the regulatory decree to adopt measures to comply with the Convention).
- 456.** In their communications dated 4 and 16 June and 22 May 2002, the Single Confederation of Workers of Colombia, Antioquia executive board and the Union of “Official” Workers and Public Employees of the General Hospital of Medellín (SINTRA Hospital General de Medellín), allege that on 5 December 2001, they presented a document to the Labour Ministry which contained the petitions addressed to the administration of the General Hospital of Medellín, in order to start a negotiating round concerning these petitions. They added that the administration of the hospital has systematically refused to start the process of direct settlement of the labour dispute. For this reason, the trade union undertook public action for the application of the law before the Administrative Tribunal of Antioquia which ordered that the General Hospital of Medellín should apply Article 8 of Convention No. 151. The complainants point out that despite the decision of the Administrative Tribunal, the administration of the hospital has been refusing to start the negotiation.

C. Further replies of the Government

- 457.** In its communication of 3 June 2001, the Government states that the Ministry of Labour and Social Security, through the Territorial Directorate of Antioquia, initiated an administrative labour inquiry against the enterprise AVINCO S.A. in respect of the points contained in the complaint submitted to the ILO by SINTRAVI.
- 458.** The Government states that two conciliation hearings were scheduled. At the first, the enterprise AVINCO S.A. requested a copy of the complaint submitted to the ILO to enable it to respond. The legal representative of the enterprise AVINCO S.A. said that a trade union had been set up within the enterprise, and that in accordance with labour legislation, deductions for trade union dues had been made and also that trade union leave was granted. With respect to collective bargaining, the enterprise representative indicated that the meetings corresponding to the direct settlement stage had been held and that no agreement had been reached, resulting in the request to convene an arbitration tribunal in

accordance with the provisions of Decree No. 801 of 1998 and Act No. 584 of 2000, which is the recognized channel for the settling of disputes directly between parties. The representative also stressed that with respect to the other rights to which the trade union considers it is entitled, and which have allegedly been violated, the decisions handed down by the administrative and judicial bodies have been adhered to.

- 459.** The Government states that the enterprise failed to attend the second hearing scheduled by the Territorial Directorate of Antioquia and the trade union organization confirmed the facts contained in the complaint submitted to the ILO; as a result it was decided to continue with the administrative labour inquiry, which is currently at the evidence stage. The Government indicates that it will inform the ILO of the final result of the inquiry.
- 460.** In its communication dated 4 September 2001, the Government states with regard to the pending allegations submitted by the complainant organization SINTRAMANCOL that the enterprise Manufacturas Colombianas Popayán “Mancol S.A.” terminated the employment contracts of the trade union officials of SINTRAMANCOL without prior approval by the labour judge, thereby infringing the provisions of article 405 of the Labour Code, which requires a legal decision prior to the dismissal of a worker covered by trade union immunity. In addition, it violated article 39 of the Constitution by failing to recognize the trade union immunity covering the members of the executive committee. The Government states that the Territorial Directorate of Cauca consequently handed down resolution No. 018 of 11 June 2001 in which the enterprise was ordered to pay 35 prevailing legal minimum wages (equivalent to 10,010,000 Colombian pesos). The Government indicates that an application for reconsideration was lodged against this resolution; this is currently being processed and the Government will subsequently send further observations on this application.
- 461.** In its communication of 4 June 2002, the Government states, with respect to the allegations submitted by the trade union organization SINTRACENARE, that Mr. Héctor Gómez was dismissed by the enterprise Cementos del Nare S.A., citing article 88, No. 17 of the in-house regulations and No. 8, clause (ñ) of the individual contract which provide that it is prohibited to participate actively or passively in acts of protest or meetings carried out in the various workplaces or in any of the enterprise’s facilities either during or outside working hours. The enterprise’s facilities include the areas where the managers’, professionals’ and employees’ offices are situated.
- 462.** The Puerto Nare branch of the trade union organization SUTIMAC consequently requested the enterprise concerned to convene the committee responsible for ruling on whether a worker’s dismissal has been just or unjust, in accordance with the provisions of clause 13 of the collective labour agreement. In an award dated 24 August 1995, the committee decided to reinstate the worker, a situation covered by clause 13, No. 3(2) of the prevailing collective labour agreement, which provides as follows: “If the committee decides by a majority to reinstate or retain the worker in his post, the company may insist on its decision to dismiss, in which case it shall pay the worker the following compensation plus an additional 12 per cent”.
- 463.** Clause 13, No. 5 of the collective agreement indicates as follows: “The decisions of the committee, with the exception of the authority given to the enterprise to insist on the dismissal, cannot be appealed against and are obligatory for the parties which have expressly resolved to submit this type of difference to the arbitration provided for in this clause and in so doing have renounced seeking recourse through legal channels”. Nevertheless, the Government indicates that the enterprise applied to the Labour Chamber of the High Court of Medellín, in order to homologate the decision of the abovementioned committee; the High Court of Medellín decided to set aside the arbitral award handed

down on 24 August 1995 by the arbitration tribunal convened in this matter and instead declared that the dismissal of the worker Mr. Héctor Gómez had been for just cause.

- 464.** The Government adds that, as previously stated, SINTRACENARE submitted a claim against the enterprise Cementos del Nare S.A. for violation of clause 13 of the collective labour agreement to the Antioquia Regional Directorate of the Ministry of Labour and Social Security. In resolution No. 0082 of 18 March 1996, the administrative authority sanctioned the enterprise Cementos del Nare S.A. for violation of the abovementioned clause of the collective labour agreement. This decision was confirmed in resolution No. 0211 of 5 June 1996. Subsequently, the Regional Director of Labour and Social Security of Antioquia decided in resolution No. 085 of 27 August 1996 on the appeal lodged by the enterprise and revoked the two abovementioned resolutions, a decision based on the ruling handed down by the Labour Chamber of the High Court of Medellín. The Government indicates that if Mr. Héctor Gómez does not agree with the Government's decision, he should initiate judicial administrative proceedings.
- 465.** In its communication dated 18 July 2002 the Government transmits, with regard to the allegations submitted by the trade union organization UTRADEC, a copy of the record signed by the district administration and the district trade union organizations, describing the establishment of a committee for consultation about the employment conditions of district public officials.

D. The Committee's conclusions

- 466.** *At its June 2001 meeting, the Committee urged the Government to take steps to begin an independent inquiry covering all the allegations made by the complainant organization SINTRAVI (the dismissal of five workers covered by trade union immunity after they had formed a trade union organization at the company AVINCO S.A.; pressure put on workers to accept the collective agreement and subsequent withdrawal of non-statutory benefits from unionized workers; pressure on workers to make them leave the union; and intransigence by the company in refusing to negotiate a list of demands) and requested it to communicate its observations on the basis of the inquiry's findings.*
- 467.** *In this respect, the Committee notes the Government's information that: (1) an administrative labour inquiry was initiated on the allegations submitted by the complainant organization and two conciliation hearings were scheduled; (2) during the first conciliation meeting, the enterprise representative indicated that: with respect to collective bargaining, meetings had been held corresponding to the direct settlement stage, but given that no agreement was reached, a request was made to convene an arbitration tribunal; as regards the other rights that the complainant organization considers have been violated, the enterprise is adhering to the decisions handed down by the administrative and judicial bodies; and (3) given that the enterprise representatives did not attend the second conciliation hearing and that the complainant organization confirmed the facts contained in the complaint, it was decided to continue with the administrative inquiry, which is currently at the evidence stage.*
- 468.** *The Committee regrets that the inquiry initiated by the authorities into serious allegations of violations of trade union rights has not yet been completed. In these circumstances, the Committee urges the Government: (1) to take measures to ensure that the inquiry is completed as soon as possible, that it covers all the allegations and to send the results; (2) if it is found that the five dismissed workers were covered by trade union immunity and that there was not just cause to dismiss them, to take measures to ensure the aggrieved workers are reinstated in their jobs, with no loss of pay and benefits; and (3) to keep it informed about the ruling handed down by the arbitration tribunal in relation to the collective bargaining process between SINTRAVI and AVINCO S.A.*

- 469.** *Concerning the allegations submitted by SINTRAMANCOL (still pending during the last examination of the case) relating to the dismissal of 12 trade union officials from the enterprise Mancol Popayán S.A., without authorization by the judicial authorities, the Committee notes the Government's confirmation that the enterprise dismissed the trade union officials without judicial authorization thus violating the provisions of article 405 of the Labour Code and article 39 of the Constitution by failing to recognize trade union immunity. Likewise, the Committee notes the Government's statement that, on that basis, the Territorial Directorate of Cauca sanctioned the enterprise with the payment of a fine of 35 legal minimum wages (sum equivalent to 10,010,000 Colombian pesos) and that the enterprise has lodged an application for reconsideration of the administrative resolution which imposed the sanction.*
- 470.** *In these circumstances, observing that the administrative authority has concluded that the dismissals in question were undertaken in violation of the provisions of national legislation, the Committee requests the Government to take measures to facilitate the reinstatement of the dismissed trade union officials and, if it is confirmed that the enterprise no longer exists as the complainant organization indicates, to ensure that the persons concerned are fully compensated.*
- 471.** *As regards the alleged dismissal of 13 workers from the Department of Antioquia affiliated to the complainant organization SINTRADEPARTAMENTO together with a further 35 workers (who were later reinstated) following a work stoppage, the Committee notes with regret that the Government has not sent its observations. It observes, however, that in its previous examination of the case, when dealing with the allegation concerning the dismissal of workers from the Department, the Government had informed it that the 35 workers who had been reinstated had taken legal action and that the 13 remaining had not done so [see 325th Report, para. 349]. The Committee notes the complainant organization's statement that the 13 workers who were not reinstated also took legal action but that they were unsuccessful, although they had been dismissed on the same grounds as the 35 who were reinstated. This being the case, the Committee requests the Government to notify it of the specific grounds for the dismissal of these 13 workers and to send a copy of the corresponding legal decision.*
- 472.** *Regarding the allegation submitted by the complainant organization SINTRACENARE concerning the anti-union dismissal of the trade union official Mr. Héctor Gómez from the enterprise Cementos del Nare S.A. on 25 May 1995, the Committee notes the Government's information that: (1) to dismiss Mr. Gómez the enterprise invoked the provisions of the in-house regulations and the individual contract which do not permit active or passive participation in acts of protest or meetings carried out at the workplace or in any of the enterprise's facilities either during or outside working hours; (2) in accordance with the collective agreement, the trade union requested the convening of a committee responsible for deciding whether or not the dismissal had been for just cause; (3) the committee in question decided to reinstate the worker on 24 August 1995; (4) clause 13(5) of the collective agreement provides that the decisions of the committee, with the exception of the authority given to the enterprise to insist on the dismissal – in which case it must pay the worker the compensation due plus an additional 12 per cent – cannot be appealed against and are obligatory for the parties; the latter expressly decided to submit this type of difference to arbitration as provided in the clause in question and consequently renounced using legal channels; (5) the enterprise applied to the High Court of Medellín in order to homologate the ruling of the dismissals committee and that court decided to set aside the ruling and declared that the dismissal of Mr. Héctor Gómez had been for just cause; (6) consequently, the complainant organization submitted a claim against the enterprise to the Ministry of Labour and Social Security, Antioquia Regional Directorate, for the violation of clause 13 of the collective agreement and by way of resolutions dated 18 March and 5 June 1996, the administrative authority sanctioned the*

enterprise; and (7) the enterprise lodged an appeal against these resolutions and the Regional Director of Labour and Social Security of Antioquia decided to revoke them on the basis of the ruling handed down by the High Court of Medellín, with the possibility remaining that Mr. Gómez could initiate judicial administrative proceedings.

473. In this respect, first of all the Committee regrets that the decision of a body established in accordance with the prevailing collective agreement was not respected. The Committee observes with concern that it has recently examined allegations concerning non-compliance with current collective agreements and recalls that on that occasion it stressed that “the Collective Agreements Recommendation, 1951 (No. 91) provides in Part III that ‘collective agreements should bind the signatories thereto and those on whose behalf the agreements is concluded’ and emphasizes therefore that ‘agreement should be binding on the parties’ and that ‘mutual respect for the commitment undertaken in the collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground’” [see 325th Report, Case No. 2068, Colombia, para. 329].

474. More specifically in relation to the dismissal of Mr. Héctor Gómez from the enterprise Cementos del Nare S.A., so as to be able to give its views with all the information before it, the Committee requests the Government: (1) to send it the text of the legal decision to set aside the ruling of the dismissals committee ordering his reinstatement; (2) to inform it whether Mr. Gómez has initiated judicial administrative proceedings; and (3) to inform it whether he has been paid the corresponding compensation dismissal plus an additional 12 per cent, which the Government indicated he would be entitled to under the provisions of the prevailing collective agreement.

475. With respect to the allegations submitted by the Union of State Workers of Colombia (UTRADEC) concerning the Government’s failure to adopt measures to comply with the provisions of Convention No. 151 relating to the negotiation of the employment conditions of public officials, the Committee notes the Government’s information that the district administration and the district trade union organizations signed a document recording the establishment of a committee for the consultation of the employment conditions of district public officials. In this respect, the Committee recalls that when it gave its views recently concerning a complaint submitted against the Government of Colombia, it referred to the right to collective bargaining of public servants, and therefore refers to the conclusions made on that occasion [see 325th Report, Case No. 2068, Colombia, para. 323]:

The Committee observes that, while some categories of public servants must have already enjoyed the right to collective bargaining under Convention No. 98, this right is recognized in general for all public servants as of the ratification of Convention No. 154 on 8 December 2000. In these circumstances, recalling that special modalities of application may be fixed with regard to collective bargaining in the public service, the Committee requests the Government to take the necessary measures to ensure that the right of public servants to collective bargaining is respected in accordance with the provisions of the Convention which has been recently ratified.

476. The Committee requests the Government to take measures without delay to ensure that these recommendations are fully applied.

477. Concerning the allegations submitted by the complainant organization SINTRAPROCTERG that had remained pending, the Committee notes that in a communication dated 28 June 2001 that organization stated that it had reached a conciliation settlement with Procter and Gamble Industrial Colombia Ltd. concerning the complaint submitted to the Committee. This being the case, the Committee will not pursue the examination of the allegations submitted by this organization.

478. Finally, the Committee requests the Government to communicate its observations on the allegations submitted recently by the Single Confederation of Workers of Colombia (CUT), Antioquia executive board, and the Union of "Official" Workers and Public Employees of the General Hospital of Medellín (SINTRA Hospital General de Medellín).

The Committee's recommendations

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

- (a) The Committee regrets that the inquiry initiated by the authorities into serious allegations of violations of trade union rights submitted by the complainant organization SINTRAVI has not yet been completed and urges the Government: (1) to take measures to ensure that the inquiry is completed as soon as possible, that it covers all the allegations and to send its results; (2) if it is found that the five dismissed workers were covered by trade union immunity and that there was not just cause to dismiss them, to take measures to ensure the aggrieved workers are reinstated in their jobs, with no loss of pay and benefits; and (3) to keep it informed about the ruling handed down by the arbitration tribunal in relation to the collective bargaining process between SINTRAVI and AVINCO S.A.
- (b) Observing that the administrative authority has concluded that the dismissals of the 12 trade union officials belonging to the organization SINTRAMANCOL occurred in violation of the national legislation, the Committee requests the Government to take measures to facilitate the reinstatement of the dismissed trade union officials and if it is confirmed that the enterprise no longer exists, as the complainant organization indicates, to ensure that the persons concerned are fully compensated.
- (c) With respect to the allegation concerning the dismissal of 13 workers from the Department of Antioquia affiliated to SINTRADEPARTAMENTO together with a further 35 workers (who were later reinstated) following a work stoppage, the Committee requests the Government to notify it of the specific grounds for the dismissal of these 13 workers and to send a copy of the corresponding legal decision.
- (d) Regarding the dismissal of Mr. Héctor Gómez from the enterprise Cementos del Nare S.A., so as to be able to give its views with all the information before it, the Committee requests the Government: (1) to send it the text of the legal decision setting aside the ruling of the dismissals committee ordering his reinstatement; (2) to inform it whether Mr. Gómez has initiated judicial administrative proceedings; and (3) to inform it whether he has been paid the corresponding compensation for dismissal plus an additional 12 per cent, which the Government indicated he would be entitled to under the provisions of the prevailing collective agreement.

- (e) *Recalling that special modalities of application may be fixed with regard to collective bargaining in the public service, the Committee requests the Government to take the necessary measures to ensure that the right of public servants to collective bargaining is respected in accordance with the provisions of the Convention which has been recently ratified.*
- (f) *The Committee requests the Government to communicate its observations on the allegations submitted by the Single Confederation of Workers of Colombia (CUT), Antioquia executive board, and the Union of “Official” Workers and Public Employees of the General Hospital of Medellín (SINTRA Hospital General de Medellín).*