



ELEVENTH ITEM ON THE AGENDA

**330th 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 6, 7 and 21 March 2003, under the chairmanship of Professor Paul van der Heijden.
 2. The members of Salvadorean, French, Guatemalan, Indian, Mexican, Pakistani and Swedish nationality were not present during the examination of the cases relating to El Salvador (Case No. 2208), France (Case No. 2193), Guatemala (Cases Nos. 2103, 2179, 2194, 2203 and 2230), India (Case No. 2158), Mexico (Case No. 2207), Pakistan (Case No. 2229) and Sweden (Case No. 2171), respectively.
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3. Currently, there are 99 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 41 cases on the merits, reaching definitive conclusions in 30 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. 2233 (France), 2234 (Mexico), 2235 (Peru), 2237 (Colombia), 2238 (Zimbabwe), 2239 (Colombia), 2240 (Argentina), 2241 (Guatemala), 2242 (Pakistan), 2243 (Morocco), 2244 (Russian Federation), 2245 (Chile), 2246 (Russian Federation) and 2247 (Mexico), 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. 2087 (Uruguay), 2164 (Morocco), 2172 (Chile), 2174 (Uruguay), 2216 (Russian Federation), 2218 (Chile), 2219 (Argentina), 2221 (Argentina), 2222 (Cambodia), 2223 (Argentina), 2224 (Argentina), 2225 (Bosnia and Herzegovina) and 2227 (United States).

Partial information received from governments

6. In Cases Nos. 2068 (Colombia), 2096 (Pakistan), 2097 (Colombia), 2138 (Ecuador), 2153 (Algeria), 2154 (Venezuela), 2177 (Japan), 2183 (Japan), 2187 (Guyana), 2201 (Ecuador), 2204 (Argentina), 2211 (Peru) and 2215 (Chile), 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. 1865 (Republic of Korea), 2162 (Peru), 2209 (Uruguay), 2213 (Colombia), 2214 (El Salvador), 2217 (Chile), 2220 (Kenya), 2226 (Colombia), 2228 (India), 2231 (Costa Rica), 2232 (Chile) and 2236 (Indonesia), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Urgent appeals

8. As regards Cases Nos. 2127 (Bahamas), 2132 (Madagascar), 2169 (Pakistan), 2185 (Russian Federation) and 2199 (Russian Federation), 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.

Questions of receivability

9. In communications dated 7 and 21 May 2002, the Mandate Trade Union, representing the Irish staff employed in the administrative support section of the South African Embassy in Dublin, submitted a complaint against the Government of South Africa for failure to ensure the respect for freedom of association and collective bargaining rights in its Embassy in Ireland. These communications were transmitted to the Government of South Africa in accordance with the complaints procedure, which subsequently replied in a communication dated 8 October 2002 stating that the relationship between an embassy as employer and its locally recruited personnel is governed by the law of the country in which the embassy is situated and emphasizing that neither the South African Constitution, nor the statute law, has application to the employment by an embassy of locally recruited personnel. In light of the contradictory understandings between the complainant and the Government of South Africa in respect of the country whose jurisdiction would be applicable in this case, the Committee would invite the Government of Ireland to indicate whether Irish law indeed governs the employment relationship between locally recruited personnel and the South African Embassy.

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

10. The Committee considers it necessary to draw the Governing Body's special attention to Cases Nos. 1787 (Colombia), 2189 (China), 2090 (Belarus) and 2203 (Guatemala) because of the extreme seriousness and urgency of the matters dealt with therein. Furthermore, the Committee wishes to draw the special attention of the Governing Body to the extremely serious and urgent situation in Venezuela, which has been shown by the continuing progression of complaints brought before the Committee concerning repeated violations of freedom of association for both the workers' and employers' organizations. In this respect, the Committee would refer to its examination in the present report of Cases Nos. 2058, 2067, 2088, 2160, 2161 and 2191.

Transmission of cases to the Committee of Experts

11. The Committee draws the legislative aspects of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Hungary (Case No. 2118), Canada (Cases Nos. 2166, 2173, 2180, 2196) and Pakistan (Case No. 2229).

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

Case No. 2131 (Argentina)

12. At its November 2002 meeting, the Committee urged the Government to undertake an investigation and requested to be kept informed about the alleged non-renewal of the contracts of 58 cabin crew employees in reprisal for the refusal by one of the complainant organizations, the Asociación Argentina de Aeronavegantes (AAA), to accept a framework agreement. The Committee also asked the Government, if it was found that this non-renewal was linked to the exercise of trade union rights, to draw the necessary conclusions with a view to the possible renewal of those contracts [see 329th Report, para. 184].
13. In its communication of 6 January 2003, the Government states that the situation has returned to normal, and this has been confirmed by the complainant organization (the AAA).
14. *The Committee notes this information with interest.*

Case No. 2157 (Argentina)

15. At its November 2002 meeting, the Committee made the following recommendations [see 329th Report, paragraph 193]:

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.

16. In its communication of 28 November 2002, the Government states that these problems have been resolved. Specifically, trade union leave has been regularized, and Resolution No. 392/02 of March 2002 ordered the deduction of trade union dues.
17. *The Committee notes this information with interest.*

Case No. 1992 (Brazil)

18. At its November 2002 meeting, the Committee had noted with interest the judicial decisions reinstating in their posts four additional officials of the Brazilian Post and Telegraph Enterprise, who had been dismissed following the strike of September 1997, and requested the Government to inform it of the final outcome of the remaining judicial proceedings [see 329th Report, paras. 13-15]. The total number of workers dismissed was 54 and the Government has regularly provided information on the judgements of reinstatement.

19. In its communication of 17 January 2003, the Government provides a table giving the status of proceedings concerning the 54 dismissed workers. According to this table, the court has ordered the reinstatement of 28 workers and confirmed the dismissal in a few cases; the remaining cases have not been finally decided yet.
20. *The Committee notes this information and, considering that these dismissals occurred in September 1997, hopes that the pending proceedings will be concluded without delay. It requests the Government to keep it informed of developments in this respect.*

Case No. 2047 (Bulgaria)

21. The Committee last examined this case at its meeting in November 2002. On that occasion, it requested the Government to keep it informed of developments regarding the new legislation which would regulate the criteria for representativeness of workers' and employers' organizations at the national level [see 329th Report, paras. 25-27].
22. In a communication dated 8 January 2003, the Government states that the new amendments to the Labour Code concerning, in particular, the criteria and the order of establishing representativeness of workers' organizations entered into force on 2 January 2003. The Government also indicates that on the basis of the amendments, a regulation on determination of the presence of criteria for representativeness is being elaborated. It further states that after the adoption of the regulation by the Council of Ministers, an invitation will be addressed to the parties concerned in order to conduct a poll.
23. *The Committee takes due note of this information. The Committee notes that the amendments to the Labour Code do not change the criteria for establishing representative status, which has been previously considered by the Committee to be in conformity with the principles of freedom of association. The Committee hopes that the relevant regulation will be rapidly adopted so that a poll to determine the representativeness of PROMYANA and the Association of Democratic Syndicates (ADS) can take place in the near future. It asks the Government to provide it with a copy of the regulation in question as soon as it has been adopted.*

Case No. 1900 (Canada/Ontario)

24. The Committee last examined this case, which concerns the rights of association of agricultural and domestic workers, and certain specified professionals (architects, dentists, land surveyors, lawyers and doctors) at its June 1999 meeting. The Committee recalled the necessity for all workers, without distinction whatsoever, to be able to organize freely, and to exercise fully all related rights and enjoy the necessary protection elaborated within the purview of freedom of association principles and drew the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations [316th Report, paras. 28-30].
25. In a communication dated 2 February 2002, the Canadian Labour Congress (CLC) refers to the decision issued in December 2001 by the Supreme Court of Canada, which ruled that the exclusion of agricultural workers from the right of freedom of association was unconstitutional, and gave the Government 18 months to remedy the situation. The CLC wrote to the Minister of Labour in December 2001, requesting that the exclusion of agricultural workers be repealed. No action was taken and no consultations were undertaken with organized labour.

26. In a communication of 3 October 2002, the Government states that, while the Supreme Court decision in *Dunmore* mandates the extension of some legislative protections to agricultural workers to ensure they have the right to form associations, it does not require their inclusion in a full statutory bargaining regime. The Government adds that this decision concerns only agricultural workers, and that it does not plan any legislative amendments as regards the other categories of workers concerned in this case; it reiterates that there are legitimate reasons for the exclusion of certain workers from the general statutory bargaining regime since laws enacted with industrial settings in mind are not always suitable for non-industrial workplaces. The Government is concerned about the possible implications of family farm unionization and argues that Ontario's harvests and food supply must not be vulnerable to disruptions caused by strikes and lockouts.
27. *The Committee notes this information. As regards agricultural workers, the Committee further notes that the Government of Ontario introduced Bill No. 187 in October 2002 (Agricultural Employees Protection Act, 2002) which gives agricultural employees the right to form or join an employees' association; it appears however that this legislation does not give agricultural workers the right to establish and join trade unions and to bargain collectively. As regards the other categories of workers concerned in the present complaint, the Committee notes with regret the Government's stated intention to maintain the status quo. Recalling once again that all workers, with the sole possible exception of armed forces and police, should have the right to organize, the Committee strongly urges the Government to amend its legislation so that all the categories of workers fully enjoy this right and to keep it informed of developments.*

Case No. 1943 (Canada/Ontario)

28. When it last examined this case, which concerns government interference in the impartiality of the process of arbitration, the Committee noted that the Ontario Court of Appeal had ruled in November 2000 that "abandoning the established practice of selecting chairpersons from the roster and the unilateral adoption by the Minister of a practice of personally selecting retired judges to replace them ... gives rise to a reasonable apprehension of bias and gives the appearance of interference with the institutional independence and the institutional impartiality of the boards of arbitration" [324th Report, paras. 24-26].
29. In a communication dated 2 April 2002, the Canadian Labour Congress (CLC) mentions that the Government has appealed the decision of the Court of Appeal to the Supreme Court of Canada. According to the CLC, this indicates that, rather than reverting to the prior appointment system or entering into consultation process with unions and employers, the Government continues to take steps to establish and implement a system that does not have the confidence of the parties. This continuing intention has been confirmed by two legislative measures taken following the decision of the Court of Appeal. Firstly, section 20(5) of the *Ambulance Services Collective Bargaining Act, 2001*, provides that the Minister may appoint a person not recognized as mutually acceptable to both trade unions and employers; in addition, the legislation specifically empowers the Minister to depart from past practice concerning the appointment of chairs of arbitration boards and to do so without notice or consultation with social partners. Secondly, similar provisions were included in back-to-work legislation involving education workers. The *Back to School Act (Toronto and Windsor), 2001*, named designated individuals to act as interest arbitrators; if they did not agree, the Minister could appoint a replacement without previous experience as arbitrator, who was not recognized as mutually acceptable to both trade unions and employers; and the legislation specifically empowers the Minister to depart from past practice concerning the appointment of chairs of arbitration boards and to do so without notice or consultation with employers and trade unions. For the CLC, these legislative measures continue to impair the confidence of the parties in the independence and

impartiality of the arbitration process, and demonstrate the Government's continued unwillingness to establish such procedures, in consultation with workers' and employers' organizations.

30. In its communication of 3 October 2002, the Government states that it has yet to appoint arbitrators under the Ambulance Services Collective Bargaining Act. It would prefer that the parties choose their own arbitrator but the wide discretion given to the Minister to appoint an arbitrator allows the Government to assist quickly the parties in resolving labour disputes. As regards the Back to School Act (Toronto and Windsor), 2001, the Government intervened to legislate education support staff back to work. The mediation-arbitration process was fair and open, and the individuals designated in the Act were well-respected mediators and arbitrators. In Toronto, the parties were able to reach agreement without arbitration; in Windsor, the dispute was resolved by arbitration. The Government requests the Committee to defer its examination of the case until the Supreme Court of Canada has rendered a decision.
31. *The Committee notes this information. Stressing once again that chairpersons of arbitration boards should not only be strictly impartial but should also be seen to be so, the Committee strongly urges the Government to take legislative measures to ensure that these principles are respected in the designation of arbitration boards and chairs, in order to gain and maintain the confidence of both sides in the system. The Committee requests the Government to keep it informed of developments and to provide it with a copy of the decision of the Supreme Court of Canada once it is issued.*

Case No. 1951 (Canada/Ontario)

32. The Committee has been called on several occasions to examine this case, which dealt with a piece of legislation (Bill No. 160) that prevented school principals and vice-principals from forming and joining organizations of their own choosing. Other issues raised were proper consultations with unions on changes brought to existing collective bargaining structures and on the consequences of educational policy on the conditions of employment of workers concerned. When it last examined this case at its March 2002 session, the Committee called the attention of the Government on the implications of the Supreme Court decision in the Dunmore case and requested it, once again, to amend Bill No. 160 [see 327th Report, paras. 33-35].
33. In its communication of 3 October 2002, the Government briefly states that it maintains its position, which Canadian courts have consistently upheld, and that no legislative amendments are planned or envisaged in this respect.
34. *The Committee notes with regret that no progress whatsoever could be achieved in this matter. It recalls that, while it may be appropriate to provide, for example, that school principals and vice-principals should not be included in the same bargaining units as teachers, they should nevertheless have the right to form and join organizations of their own choosing, have access to collective bargaining, and enjoy effective protection from anti-union discrimination and employer interference. The Committee strongly urges the Government, once again, to amend Bill No. 160 along these lines and to keep it informed of developments.*

Case No. 1975 (Canada/Ontario)

35. When it last examined this case, which deals with provisions which deny the right to organize to workers involved in community participation activities (Bill No. 22) and a piece of legislation which makes it more difficult for construction workers to enforce their

right to organize (Bill No. 31) the Committee reiterated its deep regret at the Government's repeated lack of cooperation, urged it once again to amend these legislative provisions and requested to be kept informed of developments [327th Report, paras. 36-38].

36. In a communication dated 2 February 2002, the complainant organization mentions that it wrote to the Minister of Labour, pointing out that the exclusion of workers in the Workfare programme was inconsistent with the decision of the Supreme Court of Canada in Dunmore, and that the impugned provisions of Bill No. 22 should be repealed.
37. In its communication of 3 October 2002, the Government maintains its position regarding Bill No. 22 and states that no amendments are planned or envisioned. As regards Bill No. 31, the Government indicates that the project agreement framework has been modified to provide greater flexibility and stability in the construction industry: project owners and trade unions can agree to apply project agreements to multiple and future projects, and trade unions are entitled to challenge the addition of new projects under certain conditions.
38. *Noting the information provided by the Government in connection with Bill No. 31, the Committee recalls that either workers' or employers' representatives in the construction industry should be entitled to initiate collective bargaining below provincial level at any stage of the process. As regards Bill No. 22, the Committee deeply regrets the Government's repeated lack of cooperation and the absence of constructive dialogue, and strongly urges it, once again, to amend this legislation, to ensure that workers involved in community participation activities be granted the right to organize. The Committee requests to be kept informed of developments in connection with Bill No. 22.*

Case No. 2083 (Canada/New Brunswick)

39. The Committee last examined this case, which concerns the rights of association and collective bargaining of casual workers, at its June 2002 session [328th Report, paras. 15-17]. It expressed once again the hope that the Government would take rapidly the necessary legislative measures to ensure that these categories of workers enjoyed these rights and requested to be kept informed of developments.
40. In a communication dated 16 September 2002, the Government of New Brunswick states that this is a complex issue, which requires obtaining advice from a number of departments with shared responsibility over government workers, e.g. the Department of Training and Employment Development, the Department of Finance and the Office of Human resources. The Government had also undertaken a survey of other Canadian jurisdictions, including the Federal Government, to examine how this question is dealt with, and was awaiting the results of a federal report addressing the rights of such workers in the Federal public service. Having now obtained both these documents, the Government currently examines them and the implications they may have on the provincial legislation.
41. *The Committee takes note of this information. Trusting that the Government will conclude the examination of the survey and the report in the near future, the Committee recalls once again that casual workers should have the right to establish and join organizations of their own choosing and bargain collectively. The Committee reiterates its hope that the Government will take rapidly the necessary legislative measures and requests to be kept informed of developments in this respect.*

Case No. 2119 (Canada/Ontario)

42. The Committee examined this case on the merits at its March 2002 meeting [327th Report, paras. 214-259]. The Committee requested the Government to amend its legislation so that free collective bargaining could take place on the consequences of educational policy decisions on the conditions of employment of teachers. The Committee also requested the complainant and the Government to provide more information on the modifications brought to the established standard teaching time, under the Education Accountability Act (EAA).
43. In its communication of 3 October 2002, the Government states that, while the amount of instruction time is a matter of educational policy, the parties are entitled to bargain collectively on the consequences of that policy decision on conditions of employment, e.g. salary and benefits, leaves of absence, teacher-pupils ratio, class size (within certain limits), paid leave for union activities, etc. Furthermore, in the Stability and Excellence in Education Act, 2001 (SEAA) the Government provided greater flexibility to the parties by broadening the definition of what may be included as instructional time. Within these parameters, school boards and unions can still negotiate teachers' workloads. A series of consultations were held with teachers' unions prior to the introduction of the SEAA, which reflects these consultations.
44. As regards teaching time modifications, the EAA did not force teachers to perform "extra" instructional time. However, the Government modified the way instruction time is measured to ensure that the same standard was applied uniformly across the province: whereas the standard time had previously been expressed in the form of time (four hours and ten minutes per day, for a total of 1,250 minutes per week) the standard was restated as an average of 6.67 eligible programmes per year. So, while the manner in which the established standard was measured has been changed, the Government is not asking teachers to do anything more than meet the established standard. The complainants did not provide information in this respect.
45. *The Committee notes the information provided by the Government as regards the possibility of collective bargaining on the consequences of educational policy decisions for teachers, including the allocation of instruction time, and on the modifications brought to the established standard teaching time by the EAA.*

Case No. 2145 (Canada/Ontario)

46. The Committee examined this case on the merits at its March 2002 meeting [327th Report, paras. 260-311]. The Committee urged once again the Government to take measures: to ensure that teachers in Ontario are entitled to exercise the right to strike; to avoid having recourse to back-to-work legislation; to ensure that recourse to arbitration for the settlement of disputes concerning teachers in Ontario be voluntary and that such arbitration, once freely chosen by the parties, be truly independent and in line with freedom of association principles.
47. In its communication of 3 October 2002, the Government states that there have been no new developments in this matter. Negotiation by the parties is the most desirable means of resolving disputes and the Government acts as neutral facilitator through its mediation and conciliation services. As a general rule, it lets the collective bargaining process run its course, but it is sometimes necessary to legislatively terminate a dispute to safeguard public interest concerns. According to the Government, recourse to back-to-work legislation was necessary in the circumstances that prevailed in this case; it was limited to that specific round of negotiations and the teachers' general right to strike has not been affected. The mediation-arbitration process included in the legislation was fair and open;

the parties mutually agreed to the appointment of the mediator-arbitrator and, with his assistance, entered into letters of agreement that formed the basis of a new collective agreement.

48. *The Committee notes this information. While taking note of the Government's arguments that this back-to-work legislation was necessary in the circumstances, that it was limited to this specific round of negotiations (Hamilton Wentworth School Board in November 2000) and that the teachers' general right to strike has not been affected, the Committee must recall the concern it expressed in view of the repeated recourse to such legislation in Ontario and its long-term negative effects on the labour relations climate [see 327th Report, para. 303]. The Committee recalls that workers in non-essential services, which is the case of teachers, should have the right to strike, not only in legislation, but should also be able to exercise it in practice when needed to support their bargaining demands. It requests the Government, once again, to avoid having recourse in future to back-to-work legislation in situations that do not endanger the life, personal safety or health of the whole or part of the population. The Committee further recalls its previous comments that the disputes settlement process should be voluntary and independent.*

Case No. 1973 (Colombia)

49. At its meeting of November 2001, the Committee urged the Government to take the necessary measures to carry out without delay an inquiry on the application of an agreement containing better pay and working conditions than those provided for in the collective agreement of managerial and confidential employees and of technical staff, on condition that they do not join or that they leave either of the two first-level trade union organizations existing in the ECOPETROL company [see 326th Report, paras. 49-50].
50. In a communication of 13 January 2003, the Government indicates that the Territorial Directorate of Labour and Social Security, Bogotá and Dinamarca, launched a labour administrative inquiry against ECOPETROL on the basis of the complaint filed by ADECO for violation of the right to organize, non-payment of pay increases, payment of trade union dues and implementation of staff allowance scales, all of which were contained in Agreement 01 of 1977, which provided pay and working conditions more favourable than the collective agreement. This inquiry is still pending. The Government indicates that, as regards the implementation of Agreement 01 of 1977, it is impossible to grant privileges to any given trade union organization as long as there exists a collective agreement covering all workers.
51. *The Committee deplors that the inquiry on facts which date back to more than two years has not been completed yet. In these circumstances, the Committee expresses the hope that this inquiry will be concluded soon and requests the Government to keep it informed of its final result.*

Case No. 2051 (Colombia)

52. At its March 2002 meeting, the Committee urged the Government to carry out an investigation on the following allegations: (1) the offer of employment in cooperatives, under threat of dismissal, to the workers of Confecciones de Colombia Ltd. having a fixed-term contract; (2) whether these cooperatives were bona fide ones, since they were managed by the employers, the workers worked on the same premises, with the same bosses and the same machinery as the workers still with the enterprise; (3) whether the company did order a mass dismissal of cooperative workers in February 1999; and (4) whether the creation of the labour cooperatives has had disastrous consequences for the workers and their trade unions [see 327th Report, paras. 50-53].

53. In its communication of 30 May 2002, the Medellin local of the Trade Union of Textile Industry Workers (SINTRATEXIL-Medellin) reiterates its previous allegations and adds that, not only the labour cooperatives operate on the company premises with the same bosses and managers, but also that the roster of employees and the payroll are managed by the Health and Safety Department of the company.
54. In its communication of 13 January 2003, considering that there are no new allegations, the Government reiterates the comments made in its communication of 4 September 2001, where it had indicated that the Ministry of Labour and Social Security, through the Coordination of Inspection and Prevention Services of the Antioquia Territorial Directorate, had issued resolution No. 1822 of 1 November 2001, which dismissed the proceedings against Confecciones Colombia Everfit-Indulana. The Government adds that the inquiry showed that there existed within the enterprise four labour cooperatives (CODESCO, COTEXCON, SERVIEMPRESAS and PARTICIPEMOS) each with a manager and an office on the company premises, and that the machinery which belongs to the company is at the disposal of the cooperatives under a leasing contract. These cooperatives have their financial, administrative and operational autonomy in the execution of the contracts made with Confecciones Colombia. The Government adds that it was not possible to ascertain whether the workers had been obliged to leave the company and to become members of the labour cooperatives, and that it has been proved that the company has not unilaterally dismissed any employee during the last six months. The Government concludes by stating that the abovementioned resolution has not been appealed.
55. *The Committee takes due note of the information provided by the complainant organization and the Government. It notes with regret that the latter has not undertaken a new exhaustive inquiry to determine: whether these cooperatives were bona fide ones (taking into account the new allegations of 30 May 2002); whether there were mass dismissals of workers in 1999, and; the negative consequences for the workers and their trade unions. The Committee urges once more the Government to carry out without delay, and finalize rapidly, an inquiry on these allegations, and to keep it informed of its result.*

Case No. 2142 (Colombia)

56. The Committee examined this case which concerns the refusal of registration of an enterprise trade union and anti-union dismissals at its March 2002 meeting [see 327th Report, paras. 439-446]. The Committee then made the following recommendations: (1) as regards the fact that the trade union of Inca Metal S.A. was unable to obtain legal personality as a trade union, the Committee requests the Government to ensure that the trade union is granted legal personality as soon as it complies with the requirements laid down in law (in particular to have a minimum membership of 25 workers); and (2) as regards the dismissal of 22 workers from the enterprise in 1999, the Committee requests the Government to recommend to Inca Metal S.A., should it anticipate hiring new workers, to make every effort to rehire as many as possible of the 22 workers who were dismissed for economic and restructuring reasons.
57. In a communication dated 13 January 2003, the Government indicates that: (1) as regards the registration of SINTRAINCAMEL, the Antioquia Territorial Directorate has received no registration request to date; and (2) it cannot interfere into the company's hiring procedures as regards the 22 workers dismissed in August 1999 for economic and restructuring reasons.
58. *The Committee notes this information. It requests the Government to ensure that SINTRAINCAMEL be registered without delay, if it fulfils the legal requirements in this respect. The Committee takes note of the Government's observations concerning the dismissal of 22 workers from Inca Metal S.A. due to a process of economic restructuring.*

*It notes, however, that based on the allegations submitted by the complainant in the previous examination of the case [see 327th Report, para. 441], these workers were the founders of the former enterprise trade union and had refused the collective agreement of 1998. In addition, after these dismissals, the company hired more than 200 workers. The Committee recalls the principle contained in Recommendation No. 143 on the protection and facilities to be afforded to workers' representatives in cases of staff reductions, which mentions among the specific measures to be taken "that recognition of a priority should be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce" [see **Digest of decisions and principles of the Freedom of Association Committee**, 1996, 4th edition, para. 960]. In these circumstances, the Committee requests once more that the Government recommend to Inca Metal S.A., should it anticipate hiring new workers, to make every effort to rehire as many as possible of the 22 dismissed workers.*

Case No. 1961 (Cuba)

59. At its June 2002 meeting, the Committee made the following conclusions and recommendations on the issues that were still pending [see 328th Report, paras. 28-43]:

- the Committee is bound to note that the Government still refuses to recognize the CUTC, in spite of the fact that more than six years have elapsed since it requested official registration, and requests the Government to ensure that the CUTC can operate freely and that the authorities refrain from any interference such as restricting the organization's fundamental rights;
- the Committee highlighted (after having noted that the Government had declared that none of the persons mentioned in the complaint were detained) that the Government had not referred specifically to the detention or arrest of Mr. Sixto Rolando Calero and his wife, Mr. Pedro Pablo Alvarez Ramos (several times), Ms. Gladys Linares Blanco and her husband, Mr. Humberto Mones Lafita, Mr. Carmelo Agustín Díaz Fernández and Mr. Pedro Pablo Hernández Mijares, all of whom, according to the WCL, were trade union members or leaders, detained in the circumstances described by the complainant (the organization of a trade union congress), or to that of the journalist, Mr. Víctor Rolando Arroyo;
- moreover, the Committee notes that the Government failed to reply explicitly to other specific acts allegedly committed by the authorities in order to prevent the national congress of the CUTC from taking place (harassment of CUTC members, threats of arrest, confiscation of documents, pressure to prevent the holding of a press conference, police intimidation through the deployment of state security agents around the site of the press conference);
- given the insufficient information provided by the Government, the Committee requests it to provide full information on all the issues raised in this case.

60. In its communication of 24 December 2002, the Government reiterates its previous statements and indicates that, in relation to a request made by a so-called organization named the Single Council of Cuban Workers (CUTC) before the Ministry of Justice, the latter considered that the trial brief did not meet the requirements established by the Associations Act No. 54 of 1985, and shelved the request, with the explanation that this Act does not provide for the creation of trade unions; furthermore, trade unions do not require prior authorization. As regards the alleged arrests of four citizens who claim to be trade union officials, it was proven that the only one of them remaining in detention in October 2000 (and later released), at the disposal of the courts, was Mr. Pedro Pablo Alvarez, for criminal activities completely unrelated to trade union activities.

61. The Government adds that the unity of the Cuban trade union movement is one of the greatest achievements of Cuban workers. Trade union activity is conducted on a daily basis

in workplaces, and in all of its decision-making bodies, with the participation of representatives elected by the workers themselves, without interference, arrests, pressure, threats or intimidation, contrary to the WCL's allegations.

62. Recent investigations have proven, yet again, that no workplace in the country has any trade union organization corresponding to the name CUTC. It was only possible to access information distributed under this name through foreign broadcasts and Internet services.
63. One of the representatives and promoters of the so-called CUTC abroad is Mr. René Laureano Díaz González (who is not mentioned in the complaint), who has been proven responsible for terrorist activities against the Cuban people, amongst others, a dynamite attack against the Tallapiedra Thermoelectric Power Station in the City of Havana. Mr. Laureano devised plans to introduce counterfeit money into Cuba and has been behind acts of sabotage against the Cuban electricity sector which were carried out by members recruited within the country.
64. The persons mentioned in the complaint are not known amongst Cuban workers, and neither could they be, simply because they are not involved in any form of employment. These people have not been elected by any body of workers, and they do not represent anyone.
65. The Government then provides the following information on the persons mentioned in the complaint:
 - Mr. Pedro Pablo Alvarez Ramos. Unemployed since 2000. Calls himself the “general secretary” of the non-existent CUTC. This individual enjoys freedom of movement and action, despite the fraudulent nature of his public opinions and statements. He has close and periodic links with agents in Havana defending the interests of a foreign State.
 - Ms. Gladys María Magdalena Linares Blanco. Sixty years of age (five years over the retirement age for women). Unemployed. Has close links with, and receives financing from, Mr. Enrique Blanco, who is a representative in Puerto Rico of the well-known terrorist organization, Independent and Democratic Cuba, for conducting counter-revolutionary activities. Ms. Gladys Linares Blanco, after blatantly and publicly stealing received money, had to be kept away from “trade union business”, following instructions given by agents in Havana defending the interests of a foreign State. The same occurred with Mr. Humberto Mones Lafita.
 - Mr. Carmelo Agustín Díaz Fernández. Sixty-five years of age (five years over the statutory retirement age for men). He voluntarily terminated his employment in 2000 and calls himself a trade union press reporter. In reality, he carries out activities directed by agents in Havana defending the interests of a foreign State, which pays for the false information invented by this man.
 - Mr. Víctor Rolando Arroyo Carmona. Unemployed since 2000, when he voluntarily left the Provincial Directorate of Physical Planning of Pinar del Río, where he worked as a designer. He has close links with the terrorist organization, the Cuban American National Foundation. He is described as a “thief” by his fellow counter-revolutionaries because on repeated occasions he has stolen money sent from abroad for his own personal use. In September 2001, he was accused of abusing minors after beating his wife's son on two occasions, causing after-effects, and threatening another child who was present at the time. On 14 February 2002, the chief of agents in Havana defending the interests of a foreign State visited him at his home and rewarded his criminal activities with additional funding and 40 radio receivers with

their respective chargers, four batteries, a ground antenna and earphones. Naturally, she also informed him of new activities for consolidating the “virtual trade unionism” that this foreign State is trying to create.

- Mr. Sixto Rolando Calero Ramos. Unemployed for health reasons since 1997, when he presented a medical certificate. He was paid his salary in full for the next two years. In 1998, he began to receive 50 per cent of his usual salary and will continue to do so until November 2002, when he will have to submit a new medical expertise in accordance with labour legislation. He had previously been dismissed from the Ministry of Education, where he worked as a teacher, following criminal acts of a sexual nature against students from the school where he worked. His wife, Ms. Faustina de la Caridad Feijoo Rodríguez, was dismissed from her workplace for stealing and illegally selling construction clothing and materials.
 - Mr. Pedro Pablo Hernández Mijares. He is not in Cuba. He left the country in February 2002 heading for the United States.
- 66.** The Government points out that trade unionist status should not be given to a list of names before checking whether they really represent a body of workers, or at least not before checking that the labour relationship required for the exercise of legitimate trade union activity exist.
- 67.** As part of the various activities being promoted by a foreign State against the Cuban revolution, organizations from this country are being used which are established to create fictitious organizations and imaginary leaders of the opposition, with a view to establishing links with organizations in Europe and North America.
- 68.** It has been discovered that the agents in Havana defending the interests of a foreign State have provided more than \$300,000 to promote internal tension within our country and generate an artificial climate of alleged violations of trade union rights.
- 69.** It is obvious that the phoney trade unionists mentioned in the communication have turned the development of phantom and virtual “trade unionism” into a lucrative business. These persons are not conducting any trade union work and do not have the support of any body of workers from this country.
- 70.** *As regards the alleged refusal by the authorities to recognize the CUTC, the Committee notes the statements made by the Government and the fact that it completely puts into question the CUTC’s representational nature and the election of so-called officials by any body of workers, at the same time as highlighting the counter-revolutionary characteristics of these persons. However, the Committee reminds the Government that during its previous examination of the case it observed that the CUTC was affiliated to CLAT and WCL, which are international trade union organizations, that the annexes to the membership application to the WCL (sent by the complainant) contained more than 400 signatures of Cuban workers, that the annexes also include a communication sent by the CUTC in 1995 to the Register of Inscriptions of the Ministry of Justice, seeking “to be entered in the corresponding register of inscriptions” and subsequently mentioning four workplaces [see 328th Report, para. 40].*
- 71.** *The Committee observes that at its December 2002 meeting, the Committee of Experts on the Application of Conventions and Recommendations made an observation on the application of Convention No. 87, in which it points out the following:*
1. With regard to trade union monopoly, the Committee notes that, according to the Government, these issues are being examined as part of the Labour Code revision process.

Articles 2, 5 and 6 of the Convention. Regarding the need to delete from the Labour Code of 1985 the reference to the Confederation of Workers, the Committee again emphasizes that trade union pluralism must remain possible in all cases. Accordingly, the law must not institutionalize a de facto monopoly. Even where at some point all workers have preferred to unify the trade union movement, they should still remain free to set up unions outside the established structure, should they so wish (see *General Survey of 1994 on freedom of association and collective bargaining*, paragraph 96).

Article 3 of the Convention. With regard to the need to amend Legislative Decree No. 67 of 2983, which confers on the Confederation of Workers the monopoly to represent the country's workers on government bodies, the Committee urges the Government to amend this provision in order to ensure trade union pluralism, for instance by replacing the reference to the "Confederation of Workers" by the term "most representative organization".

The Committee again expresses the firm hope that the draft revision of the Labour Code will be adopted in the very near future and will take account of the provisions of the Convention. The Committee requests the Government to send the Office a copy of the draft revision.

2. Regarding the recommendations of the Committee on Freedom of Association in Case 1961 (see *328th Report*, June 2002), in which the Government was asked to ensure the recognition of the Single Council of Cuban Workers (CUTC) and to allow the latter full freedom to carry out its legitimate trade union activities without any threats, intimidation or pressure, the Committee notes that the Government reiterates its observations submitted in the framework of Case No. 1961 to the effect that the above organization has not been shown to carry on any union activities and that, consequently, the persons concerned cannot be assigned any union representational duties being neither leaders nor representatives of any group of workers in any entity in the country. The Committee reiterates that the freedom, de facto and de jure, to establish organizations is the foremost among trade union rights and is the essential prerequisite without which the other guarantees enunciated in Conventions Nos. 87 and 98 would remain a dead letter (see *General Survey*, op. cit., paragraph 44). The Committee hopes that the necessary measures will be taken to ensure that all workers enjoy this right both in law and in practice.

72. *The Committee shares the opinion of the Committee of Experts and requests the Government to take measures so that national legislation and practice are brought into line with Convention No. 87.*
73. *As regards the alleged arrests of CUTC trade unionists (who were later released), the Committee notes that, according to the Government, Mr. Pedro Pablo Alvarez was detained and put at the disposal of the courts on the grounds of criminal activities and later released. The Committee observes that the Government has not explained the nature of the criminal activities carried out by this person. Neither has it indicated the charges for which the seven other unionists (who were later released) were arrested in relation to the allegations made in the complaint (in its reply, the Government refers to other circumstances and events).*
74. *The Committee requests the Government in the future to respect the principle according to which "The detention of trade union leaders or members for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular" [see **Digest of decisions and principles of the Freedom of Association Committee**, 1996, para. 71].*
75. *Lastly, as regards the allegations concerning the harassment of CUTC members, threats of arrest, the confiscation of documents, pressure to prevent a press conference from taking place, and police intimidation at the site of this press conference, the Committee observes that the Government has not specifically referred to these allegations. In this regard, the Committee is therefore bound to deplore these threats and acts of intimidation which, together with the other problems observed in the present case, demonstrate that the exercise of trade union rights of organizations independent of the official union structure,*

*is extremely difficult, if not impossible. Therefore, the Committee highlights that “the right to express opinions through the press or otherwise is an essential aspect of trade union rights” and that “the right of an employers’ or workers’ organization to express its opinion uncensored through the independent press should in no way differ from the right to express opinions in exclusively occupational or trade union journals” [see *Digest, op. cit.*, paras. 153 and 156]. The Committee requests the Government to ensure that these principles are respected.*

Cases Nos. 1987, 2085 and 2190 (El Salvador)

76. At its November 2002 meeting, the Committee made the following recommendations in Cases Nos. 1987 and 2085 [see 329th Report, para. 44]:

The Committee 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.

77. At its November 2002 meeting, the Committee made the following recommendations in Case No. 2190 [see 329th Report, para. 492]:

- The Committee strongly urges the Government as a matter of urgency to ensure that the national legislation of El Salvador is amended so that it recognizes the right of association of workers employed in the service of the State, with the sole possible exception of the armed forces and the police.
- The Committee expects that the trade union ATRAMEC will be recognized as soon as possible, as it was established since 24 March 2000.
- The Committee requests the Government to take the necessary measures to amend the legislation on the points mentioned in its conclusions, so as to bring it into conformity with the principles of freedom of association. It requests the Government to keep it informed in this respect.
- The Committee draws the Government’s attention to the availability of the technical assistance of the Office in this respect should it so desire.

78. In its communication of 27 January 2003, the Government reiterates the contents of its previous communications in Cases Nos. 1987, 2085 and 2190, where it had mentioned that its legislation had been amended in 1994 with the ILO’s technical assistance and that it contained several improvements (which the Government elaborates upon) as regards trade union rights, which have been recognized by the Regional Office for Latin America and the Caribbean. The Constitution and the Labour Code (which, according to the Regional Office, contains numerous improvements) recognize freedom of association rights for workers and employers in the private sector and for the workers of autonomous official institutions, and give state workers the right to establish associations; these are the result of sovereign decisions, in conformity with society expectations. The governmental plan called “New Alliance” elaborates a strategy linking the legal framework to the requirements of the national and international labour markets. Finally, as the Constitution and the Labour Code give freedom of association rights only to private sector workers and

employers and to workers of autonomous official institutions, it is not legally possible to grant legal personality to the self-proclaimed Trade Union of Workers of the Ministry of Education (ATRAMEC).

79. *The Committee notes this information and regrets that the Government's position did not change as regards both the necessity to amend the legislation to bring it into full conformity with freedom of association principles, and the legal recognition of ATRAMEC. The Committee emphasizes that the fact that the legislation amended in 1994 contains improvements does not mean that there is no problem left to solve. Accordingly, the Committee reiterates its previous recommendations and requests the Government to re-examine its position as regards both the trade union legislation and ATRAMEC. The Committee recalls once again to the Government that it may avail itself of the ILO's technical assistance.*

Case No. 2165 (El Salvador)

80. At its June 2002 meeting, the Committee formulated the following recommendations on the pending allegations of acts of anti-union discrimination at El Salvador International Airport as part of staff reduction measures [see 328th Report, para. 251]:

- the Committee requests the Government to take the necessary measures urgently to ensure that an investigation is carried out to determine the reasons why such a high proportion of unionists and workers' representatives were dismissed and, if it transpires that any of these dismissals were due to trade union membership or legitimate union activities, that it takes the necessary measures to ensure the reinstatement of those workers in their jobs, without loss of pay. The Committee requests the Government to keep it informed in this regard as a matter of urgency;

The Committee had observed that the Government had not denied that over half of the workers dismissed were members of SITINPEP, and that 24 of them were workers' representatives in various commissions and committees [see 328th Report, para. 247].

- as concerns the allegation of the militarization of El Salvador International Airport on 24 and 25 September 2001, the Committee requests the Government to take measures to carry out an investigation to determine the reasons for this militarization and the extent to which it interfered with trade union activities and to keep it informed urgently of the outcome of this investigation.

81. In its communication of 30 August 2002, the Workers' Union of the National Institute for Public Employees' Pensions (SITINPEP) indicates that the dismissals from the INPEP had anti-union purposes and affected 55 union members (namely 42.5 per cent of the total number of members), 28 of whom were officials in trade union structures.

82. In its communication of 13 September 2002, the Federation of Public Service Workers' Trade Unions of El Salvador (FESTRASPEP) states that as regards the partial agreement of 26 February 2002 between the Autonomous Port Executive Commission (CEPA) and SITEAIES, the latter decided to halt its judicial and administrative proceedings in El Salvador since it considered that the country's institutions do not function properly, but said Federation has not withdrawn its complaint before the ILO given that these agreements must be overseen and improved until all of the airport workers obtain the employment benefits and conditions they enjoyed prior to militarization. The FESTRASPEP alleges that more workers have renounced their trade union membership under pressure from the management following the 26 February 2002 agreement. The FESTRASPEP sent a report from the Prosecutor's Office for the Defence of Human Rights of El Salvador which indicates the following [it is not known whether the following is a statement by the Prosecutor's Office or the trade union official's version]:

Following an inspection at the site, it has come to light that the El Salvador International Airport authorities prevented a General Assembly from taking place within the establishment at SITEAIES headquarters on 12 October 2002. Military police reserves were positioned in the area surrounding the terminal to prevent this meeting from taking place. When questioned, they said they had been given orders by the airport's security chief to prevent suspended workers from entering the building and "to prevent the Assembly from taking place on these premises". For this reason members of the Assembly met on rented premises in order to hold the aforementioned Assembly and elect new trade union officials.

83. In its communications of 8, 28 October and 10 December 2002, the Government sent a copy of the agreement signed by the Port Executive Commission and 64 workers (whose contracts were suspended) terminating their individual employment contracts and establishing the specific amounts that they would receive. At the same time, the trade union SITEAIES decided to renounce any claims made before an institution, including the complaint made before the ILO (the same person who made the complaint to the ILO signed the agreement). The Government adds that no act of militarization occurred at the airport and that trade union rights were not obstructed. This case related to the suspension of individual employment contracts owing to *force majeure* as outlined in the Labour Code. The Government states that the administration had informed staff and the Union on many occasions of the financial situation of the INPEP which would lead to staff reductions. It also discussed the actual status of the institution's finances and the imminent staff reductions with the trade union's officials. Both unionized and non-unionized workers were amongst the staff whose posts were frozen. The jobs belonging to members of the executive board of the trade union and its former officials were respected; some officials with trade union immunity had their jobs frozen because they had failed to inform the institution of their trade union confederation membership, but had accepted their redundancy with the condition that their salaries be paid for the period during which they had been covered by trade union immunity; this condition was met. The redundancies were not motivated by trade union membership or trade union activities; affiliated and non-affiliated staff are currently working at the institution.
84. *The Committee observes that, unlike SITEAIES, the complainant organizations SITINPEP and FESTRASPEs have not withdrawn their complaints. The Committee notes that 64 workers, SITEAIES and the institution CEPA reached an agreement. The Committee observes that the versions provided by the complainant organizations and the Government concerning the anti-union nature of the termination of contracts at the airport differ, as do their versions of the militarization of the airport in October 2001 and the alleged obstruction of the exercise of trade union rights. The Committee recalls that, generally speaking, the right of organizations to hold meetings and demonstrations must be guaranteed and that the authorities should resort to the use of force only in situations where law and order is seriously threatened. Lastly, the Committee requests the Government, SITINPEP and FESTRASPEs jointly to examine the situation of other members of these organizations (not the 64 members already mentioned) who allege that they have been prejudiced for trade union reasons, with a view to their reinstatement in their jobs or the payment of compensation.*

Case No. 2123 (Spain)

85. At its November 2002 meeting, the Committee requested the Government to take measures in order to give preference as far as possible to collective bargaining in determining the conditions of employment of public servants. To this effect, the Committee requested the Government to open negotiations with representative trade union organizations without delay in order to re-establish professional relations on solid and firm ground in an atmosphere of mutual trust. The Committee requested the Government to keep it informed of any measure taken in this respect [see 329th Report, para. 534].

86. In its communication of 26 November 2002, the Government states that the process of collective bargaining with public servants has already taken place with positive results; an agreement was concluded between the administration and trade unions on 15 November 2002 for the 2003-04 period (the Government sent a copy of this agreement).

87. *The Committee notes this information with interest.*

Cases Nos. 2017 and 2050 (Guatemala)

88. At its meeting of November 2002, the Committee formulated the following conclusions and recommendations on the pending questions [see 329th Report, paras. 51-63]:

- The Committee regrets that the Government has not sent its observations on the allegations concerning: (1) the judicial rulings relating to the closure of the Cardiz S.A. company; (2) the kidnapping, assaults and threats against the trade unionist of the Santa María de Lourdes Farm, Walter Oswaldo Apen Ruiz and his family, and the death threats against the trade union leaders Rolando Sacuqui García, Wilson Armelio Carreto López and José Luis Mendía Flores; (3) the murder of the trade unionists of the Exacta Efraín Recinos Farm, Basilio Guzmán and Diego Orozco, the injuries to 11 workers and the detention of 45 workers from that farm; (4) the murder of the trade unionist José García González and the trade union leader Baudillo Amado Cermeño; and (5) the raid on the Luz y Fuerza Union. The Committee requests the Government to send its observations on these allegations indicating the status of the respective proceedings. The Committee deplores these acts of violence against trade unionists, expresses its great concern at this situation and points out to the Government that a free and independent trade union movement can only develop in a climate free of violence, threats and intimidation. The Committee requests the Government to guarantee the security of all the threatened trade unionists listed in this case.
- With respect to the dispute involving the Banco de Crédito Hipotecario Nacional, the Committee takes note that a negotiating committee has been set up for all the pending issues (negotiation of a collective agreement, mass dismissals, etc.) and observes that the suspension of trade union leave had been initially resolved but that the complainant organization has now alleged that they were suspended again on 26 July 2002. The Committee observes that the dispute is the subject of court proceedings. The Committee stresses the importance of complying with judicial rulings which prohibit dismissals without legal authorization, hopes that the negotiating committee can quickly find a solution to the dispute and requests the Government to keep it informed of progress in that committee. The Committee requests the Government to communicate any ruling on these allegations.
- The Committee observes that the Government has sent insufficient or imprecise information on the other pending questions: the cases of SITRABI, the Santa María de Lourdes farm, the Hidrotécnica company, the municipality of Jalapa (breach of collective agreement) and the National Zoological Park. 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 job as ordered by the judicial authority.

[Santa María de Lourdes Farm: the Committee had requested the Government to indicate the legal grounds for the cancellation of the registration of all of the officers of the trade union and emphasized that it would have been appropriate to retain all of the trade union officers except the farm administrator.

With respect to the allegations of dismissal of the founders of the trade union formed in 1997 in Hidrotécnica S.A., the Committee:

- urged the Government to organize without delay an investigation into these allegations and keep it informed of developments;

- stated 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].

[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), 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].
- The Committee observes that other labour cases (outstanding from the last examination of the case) are the subject of judicial proceedings (Ace Internacional Company, Tanport Company, La Exacta farm). The Committee reiterates its previous recommendations on these questions and requests the Government to send additional information.

[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 Internacional S.A. assembly plant, the Committee had requested the Government urgently to communicate the court resolutions handed down on the serious allegations sent of discrimination and intimidation.

With respect to the La Exacta farm, the Committee had requested the Government to ensure compliance with the court orders on reinstatement of the workers dismissed from the La Exacta farm.]

89. In its communication of 25 October 2002, the Guatemala Workers' Union (UNSITRAGUA) states that the employer-controlled trade union SITRACOBSA (a fact admitted by the Government) opposed the decision by the Ministry of Labour to reactivate workers belonging to the legitimate trade union (SITECOBSA) of the Corporación Bananera S.A. and to declare void the suspension of those workers' contracts of employment. UNSITRAGUA adds that on 2 September 2002, SITRACOBSA contributed to the negative and intimidatory attitude of the company (which has reinforced security at the entrance to the farm with heavily armed security guards and dogs) by assembling its members and temporary workers to intimidate SITECOBSA workers and UNSITRAGUA officers who were seeking together with labour inspectors to reinstate the SITECOBSA members as ordered by the Ministry of Labour. In a recent communication of 18 February 2003, the International Confederation of Free Trade Unions (ICFTU) sent additional information on some of the allegations in the complaint.

90. In its communication of 30 December 2002, the Government states that it will provide information on the rulings concerning the Cardiz S.A. and Ace Internacional companies. The Government adds that the cancellation of the registration of the trade union officers of the Santa María de Lourdes farm was due to the expiry of the executive board on 21 April 2000 without a new board being appointed. On 18 September of that year, a new board was registered with the Ministry of Labour on submission of the appropriate documentation, but the Central Trade Union CUSG objected that the general assembly had included persons who were not members of the trade union, and the registration was

therefore ordered to be cancelled. On 8 January, a new executive board was registered once the irregularities had been corrected.

91. As to the alleged threats against the trade union officer, Otto Rolando Sacuqui, this person was no longer working at the Santa María de Lourdes farm and is now a supervisor of labour inspectors in the Ministry of Labour. As regards the threats against the SITRABI members, the Government points out that there are no complaints before the Presidential Human Rights Commission and that during a visit by the Attorney-General to the area to investigate the case no complaints materialized. There is now a good collective bargaining climate in the area.
92. With respect to the break-in of the office of the Luz y Fuerza union, a criminal investigation is under way and the Government gives details of the actions undertaken. Finally, the Secretary-General of the trade union has not come forward to collaborate in the investigations.
93. As to the threats against the unionist José Luis Mendía Flores, the Government reports that he changed his workplace and that his trade union confirmed that in any case the threats ceased two years ago.
94. The Government states that it will inform the Committee about the judicial proceedings concerning the murder of the trade unionists at the La Exacta farm (Efraín Recinos, Basilio Guzmán and Diego Orozco) and other acts of violence, the injuries to 11 workers and the detention of 45 workers from that farm.
95. With respect to the murder of the trade union official Baudillo Amado Cermeño Ramez, the Government sent a summary of the police and judicial proceedings in the case and provided the names of two suspects.
96. As regards the threats against the trade unionists Miguel Angel Ochoa and Wilson Armelio Carreto López, the Government states that according to a search of Ministry of Labour records, these persons do not belong to any trade union. Moreover, there has been no complaint to the Attorney-General. Neither has the complainant organization provided details.
97. As to the alleged violation of the collective agreement in the municipality of Jalapa, the Government states that the mayor responsible has been suspended from his duties and the present mayor has been able to restore collective bargaining and harmony between the parties.
98. *The Committee takes note of the Government's explanations as to the reasons for the cancellation of the executive board of the trade union of the Santa María de Lourdes farm and observes that this matter was subsequently resolved in a satisfactory manner. The Committee also takes note that there are no complaints of threats against the trade unionist Otto Rolando Sacuqui, and that he has changed jobs and is now chief of inspectors in the Ministry of Labour. The Committee also takes note that the trade unionist José Luis Mendía Flores has changed his workplace and that his trade union confirmed that the previous threats had ceased. The Committee also takes note of the police and judicial proceedings concerning the murder of the trade unionist Baudillo Amado Cermeño Ramírez and requests the Government to inform it of the ruling in that case. The Committee further notes that according to the Government Mr. Miguel Angel Ochoa and Wilson Armelio Carreto López are not members of any trade union and that no complaints have been sent in respect of threats against these persons to the Attorney-General; the Committee invites the complainants to send comments on these observations. The Committee further takes note that, according to the Government, collective bargaining has*

been restored in the municipality of Jalapa following the appointment of a new mayor. Finally, the Committee takes note that the Secretary-General of Luz y Fuerza had not come forward to collaborate in the investigations into the break-in of the trade union headquarters, and stresses the importance of the trade union assisting in order to determine the circumstances of the break-in so as to identify the guilty parties.

- 99.** *Lastly, the Committee regrets that the Government has not provided information on the other pending questions. The Committee requests the Government to send the requested information and observations without delay and observes that the Government has announced that it is sending information on some of these questions. The Committee also requests the Government to send its observations on the allegations contained in the UNSITRAGUA communication of 25 October 2002 and on the recent ICFTU communication of 18 February 2003.*

Case No. 2167 (Guatemala)

- 100.** At its meeting in June 2002, the Committee made the following recommendations on matters that had remained pending [see the Committee's 328th Report, para. 304]:

- Strongly emphasizing the importance that employers' and workers' organizations should be consulted by the authorities on matters of mutual interest, including the preparation and application of legislation which affects their interest and the determination of minimum wages, as well as the importance of consultations taking place in good faith, confidence and mutual respect, and of the parties having sufficient time to express their views and discuss them in full, the Committee requests the Government to take these principles into account on social and economic matters, particularly with regard to setting minimum wages, drafting the code of labour procedure and developing new tax laws, and to ensure that it attaches the necessary importance to agreements reached between workers' and employers' organizations.
- Deploping the harassment and intimidation of employers, the Committee draws the Government's attention to the fact that employers' and workers' organizations must be allowed to conduct their activities in defence of their interests in a climate that is free from pressure, intimidation, harassment, threats or efforts to discredit them or their leaders, which includes the adulteration of documents. The Committee requests the Government to ensure respect for this principle in future.
- Lastly, the Committee requests the Government to keep it informed of any judicial decisions taken with regard to this case.

- 101.** In its communication of 30 December 2002, the Government refers to the efforts and progress it has made in social dialogue and to the various tripartite consultations that have taken place. The Government also sends a recent press cutting concerning a call to the private sector to help find joint solutions to the country's problems.

- 102.** *The Committee notes the Government's information, and again requests the Government to keep it informed of any judicial decision specifically as concerns the alleged harassment and intimidation of the employer in this complaint, as it had requested in its previous examination of the case.*

Case No. 2118 (Hungary)

103. The Committee last examined this case at its March 2002 meeting [see 327th Report, paras. 605-644]. On this occasion, the Committee made the following conclusions and recommendations:

- (a) Concerning the legal interpretation of the Hungarian Act on Strike, the Committee notes that in the case of the February 2000 strike, the decision following the re-examination proceedings has not yet been rendered and requests the Government to keep it informed of the latest developments in this case and to provide a copy of the re-examination decision.
- (b) Recalling that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers, the Committee requests the Government to ensure that these organizations are involved in the discussion proceedings prior to the adoption of new labour legislation.
- (c) The Committee requests the Government to keep it informed of all developments and provide copies of the judicial decisions regarding the alleged violation of paragraph 21(2) of the Labour Code by Order No. Gy. 26-46/2000 on the management of labour affairs and the decision on the implementation of the Instructions for Clothing No. K-6441/2000.
- (d) With regard to the allegation of the non-implementation of the annex of the collective agreement between the Directorate of Rolling Stock of the Hungarian State Railways and the Free Trade Union of the Railway Employees of Hungary at the Northern Mechanical Office of Traffic-Manager of MAV Rt. following Decree No. 1508/1999, the Committee recalls that such non-implementation of the collective agreement, even on a temporary basis, does violate the right to bargain collectively as well as the principle of bargaining in good faith and that agreements should be binding on the parties. The Committee requests the Government to transmit a copy of the judicial decision regarding this matter.
- (e) The Committee requests the Government to take the necessary measures to ensure that the instructions from the Deputy General Manager for Public and Labour Relations are repealed and to keep it informed in this regard.
- (f) Regarding the complainant's premises presently occupied by the law firm, the Committee asks the Government to ensure that the complainant regains its premises.

104. In a communication dated 14 October 2002 the Government states with regard to point (a) above, that the Supreme Court abrogated the decree of the Industrial Court of Budapest which had qualified the February 2000 strike as unlawful.

105. Concerning point (b) of the Committee's recommendations, that is, the carrying out of tripartite consultations prior to the introduction of draft legislation affecting collective bargaining or conditions of employment, the Government provides information on the activities of the National Labour Council between April 1999 and February 2002.

106. Concerning point (c) of the Committee's recommendations, that is the alleged violation of paragraph 21(2) of the Labour Code by Order No. Gy. 24-26/2000 on the management of labour affairs and the implementation of the Instructions for Clothing No. K-6441/2000, the Government states that the Industrial Court of Budapest rejected the complainant's grievances and found that these measures were lawful. The decisions were made final and absolute in the absence of an appeal.

107. The Government explains its position with regard to items (d) and (e) of the Committee's recommendations as follows. Concerning the alleged non-implementation of the annex of the collective agreement at the Northern Mechanical Office of Traffic-Manager of MAV Rt. following Decree No. 1508/1999, the Government states that the matter is still pending

before the Industrial Court and that the adjudicating judge has requested the Constitutional Court's position in respect of the pertinent sections 33(3), (4), (5) and (7) of the Hungarian Labour Code which set forth the bargaining power of trade unions based on their results at the election of the works council. According to these provisions, collective agreements may be concluded: (a) jointly by all trade unions if their cumulative power represents an absolute majority of the votes cast in the elections for works councils (section 33(3) of the Labour Code); or (b) jointly by certain trade unions each one of which represents at least 10 per cent of the votes cast in these elections and have obtained altogether more than 50 per cent of the votes (sections 33(4) and 29(4) of the Labour Code); and (c) individually, only where one trade union has received more than 65 per cent of the votes cast in the elections for works councils (section 33(5) of the Labour Code).

- 108.** The Government states that the Constitutional Court found these provisions unconstitutional because their application prevents the trade union with the widest support from concluding a collective agreement with the employer. According to the Court's position, this rule restricts the right of representation as provided under the Constitution. In this case, the trade union winning more than 50 per cent but less than 65 per cent of the votes cast, i.e. the Free Trade Union of Railway Workers, cannot alone conclude an agreement with the employer without the other trade union, which is also representative but with less support, i.e. the Trade Union of Hungarian Railwaymen, which is the complainant in this case. The Government adds that the same percentage requirements apply with regard to the termination of collective agreements (sections 31(1) and (3) of the Labour Code).
- 109.** The Government holds that these provisions are not unconstitutional because they are intended to encourage trade unions to come to an agreement with each other and make a coalition in order to gain larger support from the workers. This is important because, on the one hand, the effect of the collective agreement extends to all employees and, on the other, the collective agreement could contain not only provisions more favourable than those contained in the Labour Code, but also provisions which are less favourable when this is permitted by the law (e.g. in respect of the annual amount of overtime). Moreover, trade unions which received less support in the elections to the works councils and whose position differs in respect of the issues regulated by the collective agreement from the other trade unions intending to form a coalition, are authorized to take action in the field of advocacy. The Government further states that the lack of agreement between the parties in this case cannot be attributed to the legislation. The Government informs the Committee that subsequent to the promulgation of the Constitutional Court's position on this matter and the resolution of the law suit, it will submit a copy of the award as requested by the Committee.
- 110.** Regarding point (f) of the Committee's recommendations, namely, reinstatement in the complainant's premises, the Government states that following consultations with MAV Rt., the premises were returned to the complainant.
- 111.** *The Committee takes note of this information. With regard to Point (a) of its previous recommendations, the Committee notes with interest that the Supreme Court abrogated a decree of the Industrial Court which, based on a particular interpretation of the Hungarian Act on Strike, had qualified the February 2000 strike as unlawful. With regard to point (f) of its recommendations, the Committee also notes with interest that the complainant organization was allowed to return to its premises.*
- 112.** *With regard to point (b) of its recommendations, the Committee takes note of the material provided concerning tripartite consultations prior to the introduction of legislation in the area of collective bargaining and conditions of employment for the period April 1999 to February 2002.*

113. *With respect to point (c) of its recommendations, the Committee notes that the Decrees of the Industrial Court of Budapest which rejected the complainant's grievances concerning the alleged violation of paragraph 21(2) of the Labour Code and the implementation of the Instructions for Clothing No. K-6441/2000, became final and absolute in the absence of an appeal.*
114. *With respect to point (d), the Committee notes that the legal suit filed by the complainant organization for non-implementation of the annex to the collective agreement at the Northern Mechanical Office of Traffic-Manager of MAV Rt., following Decree No. 1508/1999, is still pending before the Industrial Court and that in the framework of this law suit, a question has been referred to the Constitutional Court which seems to have declared section 33(3), (4), (5) and (7) of the Labour Code unconstitutional. The Committee requests the Government to keep it informed of the outcome of the proceedings before the Industrial Court and the measures taken pursuant to the decision of the Constitutional Court.*
115. *In this respect, the Committee recalls that in accordance with Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee observes that it might be difficult in practice for trade unions to attain a percentage of 65 per cent (individually) or 50 per cent (jointly) as required by section 33 of the Labour Code in order to be able to engage in collective bargaining, especially at the level of the enterprise or branch of activity. The Committee requests the Government to take all necessary measures as soon as possible to amend section 33 of the Labour Code so as to bring it in line with the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.*
116. *With regard to point (e), the Committee notes with concern that the Government does not provide any information concerning measures to repeal the instructions from the Deputy General Manager for Public and Labour Relations according to which trade union activities should be continuously monitored, formal and informal conversations reported and any programme or events organized by the trade union brought to the employer's knowledge. The Committee once again recalls that respect for the principle of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions. It is even more important that employers exercise restraint in this regard [see *Digest*, *op. cit.*, para. 761]. The Committee once again urges the Government to take all necessary measures as soon as possible to ensure that the instructions are repealed and to keep it informed in this respect.*

Case No. 1854 (India)

117. The Committee last examined this case at its June 2002 meeting [see 328th Report, paras. 48-49]. On that occasion, the Committee recalled that this very serious case concerning the murder of a trade unionist (Ms. Ahilya Devi) who was organizing rural workers, goes back to 1995, and requested the Government to provide it with the judgment of the District Session Court, Purnea, where trial was to begin soon on the accused (Messrs. Bhirigunath Gupta, Rattan Gosh, Papan Chaki and Narsingh Singh), as well as to keep it informed of developments concerning the arrest of the other two accused (Messrs. Shri Munna Punjabi, alias Jai Prakash and Shri Shrawan Giri) who had been declared absconding parties.

- 118.** In communications dated 12 September 2002 and 3 and 10 January and 3 March 2003, the Government states that the hearing of the case was initially fixed for September 2002 and has been postponed on three occasions until 10 March 2003.
- 119.** *The Committee takes note of this information. The Committee notes with regret that judicial hearings on this very serious case have not taken place yet, eight years after the murder of Ms. Ahilya Devi. The Committee reminds the Government that justice delayed is justice denied and hopes that it will be in a position to report substantial progress in this case in the very near future. The Committee requests the Government to provide it with the judgment of the Court as soon as it is issued and to keep it informed of developments concerning the arrest of the two absconding parties.*

Case No. 2139 (Japan)

- 120.** The Committee examined this case on its merits at its June 2002 meeting. It concerns allegations of preferential treatment granted to certain workers' organizations in the appointment of nominees to the central and prefectural labour relations commissions, and various other central and local councils. It recommended that the Government take appropriate measures, based on freedom of association principles, to afford fair and equal treatment to all representative trade union organizations, with a view to restoring the confidence of all workers in the fairness of the composition of labour relations commissions and other councils [see 328th Report, para. 447].
- 121.** In a communication dated 27 December 2002, the Government indicates that, upon expiry of the 26th term of the Central Labour Relations Commission (CLRC), 15 employer members, 15 worker members and 15 public members were appointed on 16 November 2002 for a two-year term. In choosing worker members, the Government took into account the recommendations of trade unions and various factors, including the organizational situation of each trade union. As a result, all worker members appointed for the 27th term of the CLRC originate from RENGO, a confederation other than the complainant organization, which still has no representative on that body. As regards prefectural labour relations commissions (PLRCs) the Government indicates that members have been appointed in 21 of the 47 prefectures upon expiry of the previous terms. The number of worker members coming from trade unions affiliated with the complainant organization has been raised from four to six.
- 122.** *The Committee notes with interest that the number of worker members coming from trade unions affiliated with the complainant organization and appointed to the PLRCs has been raised, thereby resulting in a more balanced composition of such bodies. It notes with regret that this has not been the case as regards appointments to the Central Labour Relations Commission, despite the fact that the Government, after having been informed of the Committee's recommendation, recently had an opportunity to correct the existing imbalance in the CLRC composition, which is now set for two years. The Committee hopes that the Government will take remedial measures on the occasion of appointments for the 28th term of the CLRC or before that, should worker member positions become vacant in the meantime. The Committee requests the Government to keep it informed of developments.*

Case No. 2048 (Morocco)

- 123.** The Committee last examined this case at its March 2001 meeting [see 324th Report, paras. 60-62]. On that occasion, the Committee expressed the firm hope that the decisions of the Rabat Court of Appeal and of the Court of the First Instance of Rabat concerning the events which took place in September 1999 during the social dispute at the Avitema farm

would be reached without delay and again requested the Government to communicate these decisions to it as soon as they had been handed down.

124. In a communication dated 25 September 2002, the Government stated that the ruling of the Court of the First Instance of Rabat had been upheld in one case (that of Mr. Abdesslam Labied) by suspending the detention and still imposing the fine. In six of the cases (those of Mrs. Naïma Dkiki, Nouzha Hafidi, Touria Al Maoui, Samira Ouchak, Ghannou Al Otmani and Saadia Zaïri) the Court of Appeal suspended the one month suspended sentence whilst still imposing the fine. In two cases (those of Mrs. Jemaa Dkiki and Mr. Mohammed Ikour Laabidi Lhaj), the Court of Appeal handed down a two-month suspended prison sentence; a fine seems to have been imposed in only one of these two cases. In one case (that of Mr. Mohammed Choukri), the Court of Appeal handed down a two-month custodial sentence and imposed a fine. The Committee notes, according to the information with which it has been provided, that in one case (that of Mr. Abdelkader Khatri), the Court of Appeal pronounced a suspended prison sentence and imposed a fine but that the precise duration of the sentence was not given comprehensively. The other prisoners were given a two-month suspended prison sentence and fined. Finally, the Court of Appeal upheld the ruling of the Court of the First Instance administering the costs jointly to all the defendants.

125. *The Committee takes note of this information. It regrets that some workers at the Avitema farm who had enjoyed conditional release have been given suspended prison sentences and that even in one case, a custodial prison sentence has been given. Furthermore, it notes that according to the information provided by the Government, the Court of Appeal had suspended some sentences to one month's suspended sentence or upheld the suspension of the sentence; it is however difficult for the Committee, on the basis of the information provided by the Government, to understand the precise significance of this "suspension". Generally, the Committee cannot reach entirely objective conclusions without the text of the judgement handed down in the appeal; it was for this reason that it requested at its previous examinations to obtain a copy of the judgement and that it urges the Government once again that this document finally be submitted to it. Moreover, the Committee notes that the Government does not provide any information regarding the prosecution for assault and battery brought in accordance with the Penal Code before the Court of the First Instance of Rabat in the cases of Mr. Abderrazak Chellaoui, Mr. Bouazza Maâche and Mr. Abdeleslam Talha. The Committee expresses the firm hope that the Court has already handed down its decision or that it will do so in the very near future. The Committee requests the Government to ensure that it receives a copy of the judgement in question.*

Case No. 2106 (Mauritius)

126. The Committee last examined this case, which concerns the annulment of an interim increase for public servants decided by a previous government just before a general election, and the failure to apply an agreement on various working conditions in a state-owned sugar milling enterprise, at its November 2002 meeting. It noted that a satisfactory agreement had been concluded in the sugar enterprise and requested the Government to inform it of the final decision concerning the pay claim [see 329th Report, paras. 76-79].

127. In a communication dated 31 December 2002, the Government states that a review conducted by the Pay Research Bureau (PRB) should be completed by June 2003. In addition to the salary compensation, already mentioned, granted to all workers in July 2002, the Government agreed to grant, with effect from January 2003, an allowance to primary-school teachers, who constitute a significant percentage of public officers. A meeting was also held on 23 December 2002 between authorities and representatives of all the federations of public officers, where the Government proposed a special allowance

(5 per cent of basic monthly salary, up to a maximum of rs.750) to all public officers, except those who have already benefited from an allowance. Such advance is an interim increase pending the report of the PRB. The Government considers that the matter at issue is being progressively and appropriately addressed.

128. *Noting with interest this resuming of social dialogue and collective bargaining, the Committee requests the Government to keep it informed of developments once the final decision is made.*

Case No. 2113 (Mauritania)

129. During its previous examination of this case [see 328th Report, paras. 56-58], the Committee requested the Government to keep it informed of the outcome of the investigations under way into the alleged arrest of trade union leaders following a fishermen's protest march.
130. In a communication dated 8 January 2003, the Government once again highlights that the fishermen had not applied to the competent authorities for permission to carry out the march. The Government adds that the competent authorities had asked them to conform to the regulations in force, in particular the provisions governing the organization of street demonstrations. The Government states that no arrests or questioning took place following this attempt to hold an unauthorized demonstration. The Government also comments that the Free Confederation of Workers of Mauritania (CLTM) has never referred the alleged arrests to the Minister of the Interior.
131. *The Committee takes note of the information provided by the Government. It notes that the Government has not referred to the investigations that were "under way", to repeat the terms used in its penultimate communication of 10 January 2002. Therefore, the Committee requests the Government to provide information on the investigations that were conducted as well as their outcome, particularly as regards the leaders of the National Fisheries Federation whose names are cited in paragraph 367 of the Committee's 326th Report. The Committee asks the Government to keep it informed in this respect.*

Case No. 2136 (Mexico)

132. At its meeting in November 2002, the Committee formulated conclusions on an allegation that had remained pending in relation to this case and refers to the dismissal of members of ASPA. The complainant (ASPA) had alleged in June 2001 that, following ASPA's decision to demand a collective agreement for AVIACSA pilots, a number of pilots had been unfairly dismissed only because they supported ASPA, including Captain Emilio Alberto Zárate González, Captain Andrés Flores López, Captain Gerardo Gorriá Carmona, Captain Ismael Cruz Román, Captain Marcos Guillermo Mendoza Escobar, Captain Luis Fernando del Río Leal, Captain Manuel Tostado Almazán, Captain José Eduardo Rodríguez Normandía, Captain Gerardo Serrato Sala, Captain Jorge Eduardo Moreno Aguirre, Captain Ari Rafael Rose Errejón and Captain Mario Rafael Escalera Cárdenas. As a consequence of the unfair dismissals, individual appeals against dismissal were lodged and are being processed by Special Council No. 2 of the Federal Council for Conciliation and Arbitration under case numbers 332/2000, 333/2000, 334/2000, 336/2000 and 350/2000 [see the Committee's 328th Report, para. 497]. In June 2002, ASPA alleged that the company again dismissed more pilots between April and May 2002 for voting in favour of ASPA at the most recent ballot on 13 March 2002 [see the 329th Report, para. 89]. At its November 2002 meeting, the Committee made the following recommendations [see the 329th Report, para. 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.

133. In its communication of 21 January 2003, the Government supplied information on the status of the cases relating to the 12 individuals named by the complainants that are currently being examined by the Federal Council for Conciliation and Arbitration (a jurisdictional body) and have not yet been concluded. The Government states that it is this Council that will have to rule on whether the workers were dismissed unjustifiably for their trade union activities. In its communication dated 14 February 2003, the Government requests the complainant to indicate the court and the number of the file of any other cases of dismissal that have not been resolved.

134. *Under these circumstances, the Committee requests the Government to inform it of the outcome of all of the cases relating to dismissals and hopes that judicial rulings will be handed down in the near future.*

Case No. 1965 (Panama)

135. At its meeting in June 2002, the Committee made the following recommendations on matters that remained pending [see the 328th Report, para. 61]:

The Committee recalls that the Government had requested the Procurator-General of the Nation to carry out an investigation into the allegations of a raid on SUNTRACS headquarters and ill-treatment suffered by unionists during their detention, and requests the Government to ensure that this investigation is carried out quickly, and to keep it informed of the results thereof. The Committee also requests the Government to keep it informed of the judicial proceedings concerning the dismissal of the five aforementioned workers, and of the fund to compensate the Aribesa workers who cannot be reinstated.

136. In its communication of 28 November 2002, the Government reiterates that as regards the alleged raid on SUNTRACS headquarters and ill-treatment, investigations by the Ministry of Labour have not found any corroborating documents or other evidence. The Government adds that the Attorney-General's office has stated that efforts to summon those who consider themselves to have been affected by these alleged acts have been almost entirely unsuccessful, and it has not been possible to take any statements. As regards the dismissals, the Government states that the workers Porfirio Beitia, Francisco López, Eugenio Rivas, Darío Ulate and Julio Trejos have lodged a complaint of unjustified dismissal; Mr. Francisco López won a ruling against the company; in the case of Mr. Eugenio Rivas, the case against the company was quashed on the grounds that it had lapsed; and the cases relating to Darío Ulate, Porfirio Beitia and Julio Trejos are still pending.

137. *The Committee notes this information. It regrets that the investigations on the alleged raid at SUNTRACS headquarters and ill-treatment have not produced any results owing to the lack of cooperation on the part of those involved. The Committee requests the Government to communicate the final judicial ruling on the dismissals of Darío Ulate, Porfirio Beitia and Julio Trejos.*

Case No. 1826 (Philippines)

138. When it last examined this case, which concerns lengthy delays and several postponements of a trade union certification election (first requested in February 1994) at Cebu Mitsumi Inc., in the Danao export processing zone, the Committee expressed its deep regret that the certification issue had not yet been resolved despite the lengthy period elapsed and urged the Government to expedite related proceedings. The Committee also regretted once again that the Government had not provided any information on other issues, notably the suspension of Mr. Ulalan, President of the Cebu Mitsumi Employees' Union, and the steps taken to adopt a legislative framework establishing a fair and speedy certification process providing adequate protection against acts of interference by employers in certification matters [see 329th Report, paras. 126-128].

139. In a communication of 6 January 2003, the Government states that the Department of Labour conducted a continuation of the pre-election conference on 13 November 2002, which was supposed to be pursued on 10 January 2003, and that the Committee will be informed. The Government did not provide any other information.

140. *The Committee takes note of this information. Recalling that this case was first examined seven years ago, after it had to launch an urgent appeal to the Government, the Committee must once again express its deep concern at the inordinate delays intervened in the present case, which concerns the very existence of a trade union, and urges the Government to speed up as a matter of urgency the process of certification at Cebu Mitsumi Inc. and to inform it of concrete results obtained in this respect. The Committee deeply regrets that the Government did not provide any other information on the other issues (the suspension of Mr. Ulalan, and the steps taken to establishing a fair and speedy certification process providing adequate protection against acts of interference by employers in such matters) and strongly requests it once again to provide this information without delay.*

Case No. 1785 (Poland)

141. The Committee last examined this case at its November 2001 meeting when it requested the Government and the complainant to confirm that all claims pending before the Revindication Commission have been settled. It further requested the Government to keep it informed on developments concerning the status of the Employees' Recreation Fund and the future regulation of the legal status of property of the former Trade Unions' Association and other trade union organizations dissolved under martial law [see 326th Report, paras. 143-147].

142. In its communication dated 17 September 2002, the Government provides detailed information on the discharge of non-cash liabilities resulting from decisions of the Social Revindication Commission in the form of treasury bonds. As on 10 September 2002, there were three proceedings on restitution of assets forfeited by trade unions and social organizations under martial law conducted before the Commission and nine proceedings before the Supreme Administrative Court. The Government adds that it will keep the Committee informed if the legislative works on regulation of the status of the Employees' Recreation Fund, which had not been finished by the parliamentary elections, are recommenced.

143. *The Committee takes due note of this information and requests the Government to continue to keep it informed in respect of the remaining claims pending before the Social Revindication Commission and any further developments in respect of the status of the Employees' Recreation Fund.*

Case No. 2148 (Togo)

144. The Committee last examined this case at its March 2002 meeting [see 327th Report, paras. 781-804]. On that occasion, the Committee requested the Government to rapidly rescind the decrees declaring the teachers absent without leave and to restore the rights of all teachers still affected by these decrees. The Committee requested the Government to keep it informed of developments in this regard.
145. In a communication dated 31 December 2002, the Government informed the Committee that a consultation had taken place with the National Union of Independent Trade Unions of Togo (UNSIT) to identify the teachers who, after the regularizations carried out by the Ministry of the Civil Service, Labour and Employment, have not been called back to work and who wish to return to duty. The Government maintains that, during this consultation, it had been agreed that UNSIT would hand over a list of the teachers in question to the Government at the next meeting. This meeting took place on 27 December 2002, and according to the Government, UNSIT postponed the submission of the list. The Government states that it is still willing to continue consultation with UNSIT in order to identify these teachers with a view to their recall to work.
146. *The Committee takes note of the information provided by the Government. It recalls that the central point of the complaint was a strike organized by a teachers' union demanding the payment of arrears and outstanding debts. Noting that the strike was legal, the Committee had requested the Government, on the one hand, to rapidly revoke the decrees on the basis of which it had undertaken measures of retribution against the workers who had exercised their right to strike within the law; on the other hand, the Committee requested the Government to restore the rights of all teachers still affected by these decrees.*
147. *Whilst noting that two consultation meetings had taken place with UNSIT, the Committee notes that the information provided by the Government made no mention of measures to rescind the decrees in question and that it falls to the Government to undertake them. Consequently, the Committee again urges the Government to rescind without delay the decrees in question and to restore the rights of all teachers affected by these decrees and not just of the teachers who have had their situation regularized by the Government. The Committee requests the Government to keep it informed of developments in respect of these two elements.*

Case No. 2126 (Turkey)

148. The Committee last examined this case at its November 2002 meeting [see 329th Report, paras. 139-141]. On that occasion, the Committee expressed its deep regret at the Government's unwillingness to give effect to the recommendations set out in its 327th Report [see para. 847] on all the matters raised, with the exception of the question of dual criteria for representational rights. Recalling its conclusions that the classification of the Pendik and Alaybey shipyards as part of the national defence sector constituted a violation of both the organizational and representational rights of the workers affiliated to Dok Gemis-Is, the Committee once again called on the Government to take the necessary measures to guarantee the right of Dok Gemis-Is to organize and represent its members in the Pendik and Alaybey shipyards and to keep it informed of the progress made in this

regard. Regarding the institution of independent investigations into the allegations of impending dismissals, harassment and intimidation, the Committee once again urged 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. The Committee requested the Government to keep it informed of the progress made in this regard. Finally, the Committee requested the Government to keep it informed of any developments in the drafting of amendments concerning the dual criteria for representational purposes.

149. In a communication dated 7 January 2003, the Government reaffirms that trade unions can freely be established in Turkey and that any trade union thus established can freely exercise its trade union rights. Further, under the national legislation, any worker fulfilling the statutory requirements can freely join a trade union and benefit from the activities of the trade union of which he or she is a member. The Government states that if any complaint regarding unlawful acts such as harassment or intimidation towards Dok Gemi-Is members reaches the Ministry of Labour and Social Security, it will be examined thoroughly by the relevant institutions, including the Labour Inspection Department, in accordance with the legislation and administrative procedure. The Government indicates that no complaint has been lodged with the Ministry of Labour and Social Security on this issue so far.
150. *In taking note of this information, the Committee must once again express its deep regret at the Government's unwillingness to give effect to the recommendations of the Committee concerning the right of Dok Gemi-Is to organize and represent its members in the Pendik and Alaybey shipyards and the anti-union discrimination acts mainly directed against Dok Gemi-Is members.*
151. *In particular, the Committee notes that the Government does not provide any information on the measures it was requested to take so as to guarantee fully the organizational and representational rights of the workers affiliated to Dok Gemi-Is. The Committee would also like to draw the Government's attention to the last comments made by the Committee of Experts on the Application of Conventions and Recommendations on the issue. The Committee therefore urges once again the Government to take the necessary measures so as to guarantee the right of Dok Gemi-Is to organize and represent its members in the Pendik and Alaybey shipyards and to ensure that any lost membership in this union as a result of the classification of these shipyards as falling within the national defence be immediately restored. The Committee requests the Government to keep it informed in this regard.*
152. *On the issue of anti-union discrimination exerted against Dok Gemi-Is members, in view of the information provided by the Government, the Committee must recall that the Government is responsible for preventing all acts of anti-union discrimination and that it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th (revised) edition, 1996, para. 738]. The Committee notes that the Ministry of Labour and Social Security is the same authority who, under Act No. 2821 on trade unions, had the authority to change the classification of the Pendik and Alaybey shipyards and that this change in classification resulted in the loss of representational rights for the Dok Gemi-Is trade union. Further, the Committee would like to refer the Government to the comments made by the Committee of Experts on the Application of Conventions and Recommendations on the need to take the necessary measures to amend its legislation to ensure a more effective protection of workers against all acts of anti-union discrimination (including dismissal). The Committee notes in this respect that the Government was asked to submit a copy of a new draft bill amending in particular Act No. 2821. In these*

circumstances, the Committee urges the Government once again to institute independent investigations into all the allegations of anti-union discrimination and to keep it informed in this respect.

Case No. 2038 (Ukraine)

- 153.** The Committee last examined this case at its November 2002 meeting when it requested the Government to engage in full consultations with the social partners on the possible amendment of section 16 of the Trade Unions Act, which had created certain difficulties with regard to the interpretation of standards concerning the inclusion of trade unions in the appropriate state registers [see 329th Report, paras. 145-148].
- 154.** In communications dated 17 October and 6 November 2002, the Free Trade Union's Federation of Ukraine provides examples of difficulties encountered by unregistered trade unions. In particular, the complainant mentions trade unions (local trade unions of the Free Trade Union of Miners of Ukraine and the Free Trade Unions' Confederation of Lugansk region), which the regional administrative statistics department refuses to include in the State Registry of Enterprises and Organizations without a preliminary registration by the branches of Ministry of Justice. As a consequence, those trade unions, having obtained legal personality upon their creation, cannot exercise their activities. The complainant further states that a working group was created in order to examine whether the Trade Unions Act is in conformity with the freedom of association Conventions. According to the complainant, this working group was created with the sole aim of delaying the decision on a possible amendment of section 16 of the Act. Furthermore, the complainant states that members of executive power and the Federation of Trade Unions of Ukraine are using mass media means to block the adoption of the amendments to section 16 proposed by the complainant.
- 155.** In its communications dated 25 November 2002 and 24 January 2003, the Government indicates that the Cabinet of Ministers asked the Ministry of Justice and the State Registry of Enterprises and Organizations to examine the refusal by the statistics authorities to include the Free Trade Unions' Confederation of Lugansk region and trade union bodies of the Independent Trade Union of Miners in the State Registry. The National Department of Statistics gave its approval to include those trade unions in the registry without obtaining official legal recognition, by a procedure based on a verification of the organization's compliance with its declared status. The relevant certificate of inclusion of such unions in the State Registry includes therefore a note to the effect that the union "has not been registered with the judicial authorities". In the communication of 24 January 2003, the Government indicates that under the legislation in force, official legal recognition of public organizations and their associations is not the responsibility of the state statistic authorities and therefore inclusion of trade union organizations in the State Registry signifies only that they are considered for the purposes of identification and clarification. In its first communication, the Government indicates however that in order to resolve similar situations, work is being done to prepare amendments to existing laws and regulations.
- 156.** *The Committee takes note of this information. The Committee notes with interest that the National Department of Statistics gave its approval to include the Free Trade Unions' Confederation of Lugansk region and trade union bodies of the Independent Trade Union of Miners in the State Registry of Enterprises and Organizations. It notes, however, that according to the complainant these are only some of the examples of a workers' organization encountering difficulties with regard to their inclusion in the State Registry. The Committee considers that where the difficulties with regard to the interpretation of standards concerning the inclusion of trade unions in the appropriate state registers create situations where competent authorities make excessive use of their powers, problems of compatibility with Convention No. 87 may arise. The Committee notes the Government's*

indication that work is being done to prepare amendments to existing laws and regulations in order to resolve those difficulties. The Committee requests the Government to keep it informed of any developments in the preparation, in full consultation with the social partners, of amendments to the existing law which may resolve this issue to the satisfaction of all the parties concerned.

Case No. 2079 (Ukraine)

- 157.** The Committee last examined this case at its November 2002 meeting when it requested the Government to clarify the situation of the Volynskaya Province division of the All-Ukraine Trade Union “Capital/Region” as far as its registration with local authorities is concerned. The Committee further requested the Government to set up an independent inquiry into the dismissal of Mr. Linik, and if there was evidence that he had been dismissed for reasons linked to his legitimate trade union activities, to take all necessary measures to reinstate him in an appropriate position, without loss of wages or benefits. Finally, the Committee requested the Government to continue to keep it informed of the measures effectively taken to bring the Trade Unions Act into full conformity with the provisions of Conventions Nos. 87 and 98 [see 329th Report, paras. 765-778].
- 158.** In its communication dated 18 October 2002, the complainant alleges the illegal lay-offs of 1,150 workers at the Lutsk Bearing Plant. According to the complainant, among the people fired, Ms. Lubov Vaschuk was fired because of her trade union activities and without the consent of the trade union of which she is a member.
- 159.** In its communication of 8 January 2003, the Government, in reply to the above allegation, states that on the instructions of the Ministry of Labour and Social Policy, the Territorial State Labour Inspectorate of Volyn region had examined the complaint and found that those measures were taken due to restructuring of the enterprise and that the conditions of lay-offs were established with the agreement of the trade union committees at the enterprise. The Government adds that in the particular case of Ms. Lubov Vaschuk, the approval of the trade union was obtained.
- 160.** *The Committee notes the statements of the Government and the complainant. In light of the fact that the complainant’s allegation of illegal lay-offs does not refer in any way to the question of trade union membership or trade union activities (with the exception of Ms. Vaschuk, one out of the 1,150 workers dismissed and concerning whom the Government and the complainant have provided contradictory statements), the Committee considers that this allegation does not call for further examination.*
- 161.** *The Committee regrets that no information has been provided by the Government in respect of its previous recommendations. Accordingly, the Committee once again requests the Government to clarify the situation of the Volynskaya Province division of the All-Ukraine Trade Union “Capital/Region” as far as its registration with local authorities is concerned and to set up an independent inquiry into the dismissal of Mr. Linik, and, if there is evidence that he had been dismissed for reasons linked to his legitimate trade union activities, to take all necessary measures to reinstate him in an appropriate position, without loss of wages or benefits. The Committee requests the Government to keep it informed in this respect.*

Case No. 2058 (Venezuela)

- 162.** At its November 2000 meeting, the Committee made the following recommendation: “The Committee hopes that the Government will register the trade union SINTRANES as a trade union soon. It requests the Government to inform it of any court rulings that have been, or may be, handed down in future on the matter” [see 323rd Report, para. 554]. The complainant had indicated that the trade union was registered in June 1998, and the Government had stated that the judicial authorities had suspended the administrative ruling legalizing the union and it was now for the appellate courts to give a final ruling.
- 163.** In a communication dated 28 September 2000, the Government had indicated that the matter was before the courts, and in its communication of 1 October 2002 the Government recalls that the union had been registered on 15 June 1998.
- 164.** *The Committee regrets that the Government has given no further details on the legal status of this case. It urges the Government to supply this information and to communicate any court ruling that has been or may in future be handed down on this matter.*

Case No. 2067 (Venezuela)

- 165.** At its November 2001 meeting, the Committee submitted a number of legislative questions to the Committee of Experts and also made the following recommendations [see 326th Report, para. 517]:

The Committee once again strongly urges the Government to put an end to the functions of the National Electoral Council as it is established in the National Constitution and to repeal the Special Statute on the renewal of trade union leadership. The Committee requests the Government to keep it informed of any steps taken in this regard. Moreover, if this Statute has been applied from the date of its promulgation to that of the examination of this case, the Committee urges the Government to take steps to ensure that the trade unions which so wish may hold new elections governed by the provisions of their by-laws and without any interference whatsoever by the authorities or by bodies that have nothing to do with workers' organizations.

- 166.** In communications of 15 November 2001 and 1 March and 22 October 2002, the Venezuelan Workers' Confederation (CTV) indicated that the authorities, and in particular the President of the Republic, deny that the CTV is the most representative organization. It also alleges that the authorities have made statements to the media interfering in the electoral process of the CTV discrediting it, as well as criticizing its president. The CTV sent press cuttings in support of its claims to demonstrate the hostility directed against it. The CTV also refers to the fact that the authorities are promoting a parallel confederation loyal to the government party. It adds that in January 2002 the workers of the Trade Union of Workers of the Construction Industry of Caracas, Vargas and the State of Miranda, while participating in a demonstration, were mercilessly repressed by order of the Mayor's Office of Municipio Libertador on 17 January 2002; 12 workers were injured by the municipal police force – five were shot, four were attacked by dogs and three were beaten. The mayor of the municipality also ordered a construction company to stop contracting trade union members, describing unemployment as one of the “advantages” of trade union membership. Furthermore, the Minister of Labour did not invite the CTV to the tripartite committee (discussion on the minimum wage) and more recently it was not consulted about a draft bill relating to conflict resolution in the event of economic crisis (mass dismissals).

- 167.** In its communication of 15 July 2002, the ICFTU states that on the afternoon of 11 July, following a mass march which peacefully and democratically called for the necessary changes to be made to overcome the current political, economic and social crisis affecting Venezuela, a group of approximately 100 motorized individuals, politically identified with the Government, aggressively and violently stormed the area surrounding the headquarters of the CTV, yelling threats and throwing dangerous objects and homemade explosives at the premises, even firing guns, resulting in extensive damage to the lower floor of the building. A number of witnesses, including trade union officials, journalists and other people using the building, confirmed this allegation, which was corroborated by Commissioner Miguel Mora, chief of the Andrés Bello municipal police station. The ICFTU considers that the aggression directed at the CTV's premises is just one of a number of occurrences that confirm an ongoing anti-union climate upheld by the Government and its forces. Despite the fact that there were no victims, this attack could have injured dozens of people who were working in the building.
- 168.** With its communication of 18 February 2002, the Government sent a long communication on the trade union election procedure and the results of the electoral process, with 2,850 trade union organizations having concluded the procedure to date. It referred to a number of specific irregularities adding that 1,180 collective agreements have been concluded with the mediation of the Ministry of Labour. It included press cuttings to show that members of the CTV were satisfied with the results of the elections.
- 169.** In an extensive communication dated 4 November 2002, the Government states that the CTV is the most representative trade union organization and it is untrue that the authorities do not recognize this organization as the legitimate representative of its affiliated workers. The problem is of another kind; more specifically, it is an intra-union problem as those who proclaimed themselves the legitimate and legally elected members are being challenged by other candidates who participated in the electoral process, and in this respect challenges remain that have yet to be decided. Complaints and civil procedures, administrative and penal disputes have been brought by these trade unions and by first and second level organizations, particularly for the violation of the applicable regulations and the trade union by-laws approved by the CTV. Consequently, the Government cannot say which are the legitimate and legal representatives, or it could be accused of interference and favouritism. The self-proclaimed members of the executive committee of the CTV (including the self-proclaimed president) have undertaken actions contrary to the rule of law and to democracy and they had a high level of involvement and responsibility in the coup d'état of 11 April 2002 and continue to carry out conspiratorial activities, even supporting a military uprising to destabilize the democracy and interfere with human rights. The Government denies that it is developing an anti-union policy against the CTV and indicates that the CTV's allegations (hostile treatment, refusal to recognize its officials and promoting the creation of a parallel confederation) reveal the response of the Venezuelan people to the abovementioned attitude of its self-proclaimed officials. The allegation that the President of the Republic is promoting a workers' confederation loyal to his party is absolutely false and lacking in any proof. The President has in fact met with a number of organizations (including some affiliated to the CTV), currents and social movements at the request of these sectors, which consider that the self-proclaimed officials of the CTV lack legitimacy, and they have sought to promote a process of social dialogue and have asked for clean and transparent elections for the executive committee of the CTV. The Government responded that it cannot and must not interfere in electoral processes by reason of the Constitution.
- 170.** As to the allegation that the CTV was not consulted concerning a draft bill, the Government says that through the media it convened all interested persons and workers' and employers' organizations and that subsequently consultations were held with the organizations that took the initiative to participate; for example, employers' organizations

such as FEDECAMARAS submitted their observations. A meeting was also convened for interested trade union organizations to participate in. It is therefore untrue that the CTV was not invited or that it was prevented from participating in this process; the self-proclaimed president of the CTV refused to participate or neglected to do so and the Government invites him to take an active role in the social and trade union dialogue that is under way in the country.

- 171.** *With regard to its previous recommendation concerning the need to put an end to the functions of the National Electoral Council (CNE) in respect of trade union elections, the Committee deplores the fact that the Government has not sent any observations in this connection. The Committee observes that the Committee of Experts on the Application of Conventions and Recommendations referred to this matter at its December 2002 meeting in an observation that is reproduced below:*

Article 293 and the eighth transitional provision, which provide that the Electoral Authority (the National Electoral Council) is responsible for organizing the elections of occupational unions and that, pending promulgation of the new electoral laws provided for in the Constitution, electoral process will be convened, organized, managed and supervised by the National Electoral Council. In this respect, the Committee notes the Government's statements that: (i) the draft Bill to amend the Organic Labour Act proposes an amendment to section 433, which provides that trade union organizations may request the cooperation of the Electoral Authority for the holding of elections to their executive bodies; (ii) once this provision has received parliamentary approval, it will repeal the Special Transitional Rules for the renewal of trade union leadership; and (iii) the eighth transitional provision of the Constitution of the Republic is no longer in force and is not therefore applicable. Notwithstanding the Government's observations, the Committee considers that it should amend article 293 of the Constitution of the Republic to remove from paragraph 6 the power entrusted to the Electoral Authority, through the National Electoral Council, to organize the elections of trade unions, and it requests the Government to provide information in its next report on any measure adopted in this respect. The Committee also notes that the direct contacts mission expressed its concern with regard to the draft Electoral Bill, which maintains the intervention of the National Electoral Council in trade union matters. In this regard, the Committee notes that on 30 October 2002 approval was given to the Organic Act respecting the Electoral Authority, which contains provisions that are not in conformity with the Convention (for example section 33, which makes the National Council competent for organizing trade union elections, proclaiming the elected candidates, monitoring elections and declaring them null and void, hearing and resolving appeals and investigating complaints). The Committee once again reminds the Government that the regulation of trade union election procedures and arrangements must be done by trade union statutes and not by a body outside the workers' organizations. In these conditions, the Committee requests the Government to take measures to amend article 293 of the Constitution of the Republic and the Organic Act respecting the Electoral Authority, which provides for its intervention in the elections of workers' organizations, and to provide information in its next report on any measures adopted in this respect.

- 172.** *The Committee fully shares the point of view expressed by the Committee of Experts and urges the Government to amend article 293 of the Constitution and the Organic Act respecting the Electoral Authority as indicated.*

- 173.** *As regards the alleged support of a parallel trade union confederation by the authorities, the alleged interference by the authorities in the electoral process of the CTV, and the discrediting of the CTV and its president by means of hostile statements made by the President of the Republic to the media, the Committee notes the Government's statements in which it emphatically denies that the authorities are promoting a parallel trade union confederation, that it refuses to recognize the representativity of the CTV and that it has interfered in the electoral process, and indicating that the electoral process of the CTV and its self-proclaimed leaders has been contested before the competent authorities by other trade union organizations and their representatives. The Committee nevertheless*

*emphasizes that the numerous press cuttings sent by the CTV show that the members of the executive committee of the CTV were insulted and discredited by the authorities, and it consequently urges the Government to take measures to ensure that the authorities refrain from making intimidating statements to the CTV. Furthermore, concerning the challenges to the CTV's electoral process, the Committee stresses that the authorities must not deprive the members of the executive committee of the CTV of legitimacy in the absence of a pronouncement by the judicial authority nullifying the elections. Indeed, the Committee has pointed out on previous occasions that in order to avoid the danger of serious limitation on the right of workers to elect their representatives in full freedom, complaints brought before labour courts by an administrative authority challenging the results of trade union elections should not – pending the final outcome of the judicial proceedings – have the effect of suspending the validity of such elections [see **Digest of decisions and principles of the Freedom of Association Committee**, 1996, para. 404]. The Committee therefore asks the Government to recognize the executive committee of the CTV.*

- 174.** *As to the alleged lack of consultation of the CTV concerning a draft bill, the Committee notes that the Government invited generally through the press, all trade union organizations to participate in consultations and that the CTV failed to attend, nor did it present any observations in writing. The Committee observes that the Government has not referred to a similar allegation relating to its failure to invite the CTV to the tripartite committee to discuss the minimum wage. The Committee wishes to emphasize that the most representative confederation at the national level cannot be treated as if it were just another trade union organization and that in cases such as those alleged it should have been invited directly, formally and individually, and not through the press, to participate in the process. The Committee asks the Government in future to duly respect and consult it on all draft bills relating to labour issues and to abide by its status as the most representative trade union confederation.*
- 175.** *In this respect the Committee stresses that the most representative employers' and workers' organizations, and in particular the confederations, should be consulted at length by the authorities on matters of mutual interest, including everything relating to the preparation and application of legislation concerning matters relating to them and to the fixing of minimum wages; this would contribute to legislation, programmes and measures that the public authorities have to adopt or apply being more solidly founded and to greater compliance and better implementation. This being the case, the Government should, as far as possible, also base itself on the consensus of workers' and employers' organizations, which should share the responsibility for achieving well-being and prosperity for the community in general. This is particularly true in light of the growing complexity of problems facing societies, and also, of course, facing the people of Venezuela. No public authority should claim to hold all knowledge nor presume that what it proposes will always and entirely satisfy the objectives in any given situation. The Committee requests the Government to apply these principles in future.*
- 176.** *Lastly, the Committee observes with concern, and deplors the fact, that the Government has not responded to the serious allegations of anti-union violence submitted by the ICFTU in its communication of 15 July 2002 nor to the allegations by the CTV concerning acts of violence against members of the Trade Union of Workers of the Construction Industry of Caracas, Vargas and the State of Miranda and against the CTV. The Committee urges the Government to send its observations in this respect without delay and immediately to carry out an urgent investigation into these allegations.*

Case No. 2160 (Venezuela)

- 177.** At its June 2002 meeting, the Committee urged the Government “to take the necessary measures without delay to ensure that: (a) the trade union of the Corporación INLACA enterprise, called the Trade Union of Revolutionary Workers of the New Millennium, is registered; and (b) all of the workers of the enterprise who were dismissed for having participated in the establishment and application for registration of the trade union in question are reinstated. The Committee requests the Government to keep it informed in these respects” [see 328th Report, para. 660].
- 178.** In its communication of 11 November 2002, the Government states that the trade union founders opted for a category of trade union (“enterprise union”) which could not legally include workers who were not working for the same employer. The Government states that the new union has initiated a legal challenge to the decision of the Ministry of Labour not to register it, and adds that it invites the founders to choose a different category of trade union.
- 179.** *The Committee notes the Government’s information and requests the Government to supply a copy of any court ruling regarding the refusal to register the complainant. At the same time, the Committee deplors the fact that the Government has not supplied any information in connection with its recommendation concerning the reinstatement of all the workers who were dismissed for participating in the establishment of the union in question, and urges the Government to take measures without delay to ensure that these workers are reinstated in their posts. The Committee requests the Government to keep it informed in this regard.*
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- 180.** Finally, as regards Cases Nos. 1813 (Peru), 1843 (Sudan), 1880 (Peru), 1890 (India), 1930 (China), 1957 (Bulgaria), 1959 (United Kingdom/Bermuda), 1970 (Guatemala), 1991 (Japan), 2006 (Pakistan), 2014 (Uruguay), 2018 (Ukraine), 2031 (China), 2053 (Bosnia and Herzegovina), 2084 (Costa Rica), 2086 (Paraguay), 2098 (Peru), 2104 (Costa Rica), 2109 (Morocco), 2115 (Mexico), 2120 (Nepal), 2124 (Lebanon), 2125 (Thailand), 2128 (Gabon), 2129 (Chad), 2133 (The former Yugoslav Republic of Macedonia), 2135 (Chile), 2137 (Uruguay), 2140 (Bosnia and Herzegovina), 2141 (Chile), 2143 (Swaziland), 2146 (Yugoslavia), 2147 (Turkey), 2150 (Chile), 2163 (Nicaragua), 2176 (Japan), 2188 (Bangladesh), 2195 (Philippines) and 2198 (Kazakhstan), 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. 1937 (Zimbabwe), 1952 (Venezuela), 1955 (Colombia), 1962 (Colombia), 1996 (Uganda), 2027 (Zimbabwe), 2075 (Ukraine), 2081 (Zimbabwe), 2116 (Indonesia), 2156 (Brazil), 2175 (Morocco) and 2181 (Thailand), which it will examine at its next meeting.

CASE NO. 2130

DEFINITIVE REPORT

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

Allegations: The complainant organization alleges that the authorities refuse to grant legal trade union status to the Fishing and Allied Workers' Union (SIPES) claiming that it is absolutely essential that dependent employment relationships exist in the sector, whereas in reality only 20 per cent of the workers in the fish manufacturing sector have dependent employment relationships and 80 per cent of them are enrolled in the fraudulent outsourcing system of cooperative associations established to lower labour costs and in which employers recruit their workforce through intermediaries. The right to establish representation committees in enterprises is also being denied.

181. The complaint is set out in a communication from the Congress of Argentine Workers (CTA) dated 10 June 2001. The Government submitted its reply in the communication of 2 December 2002.

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

A. The complainant's allegations

183. In its communication of 10 June 2001, the Congress of Argentine Workers (CTA) claims that the Fishing and Allied Workers' Union (SIPES) was established as a trade union association on 14 July 2000 with the aim of bringing together workers involved in the fishing and related industries from the entire coastline situated within the national territory. Despite the fact that this trade union has more than 500 members and tried to obtain legal trade union status in accordance with the regulations of Act No. 23551, the authorities (the Ministry of Labour) refuse to grant this request claiming that it is absolutely essential to guarantee "dependent employment relationships" in the sector, along with the respective wage receipts granted by the employer. The complainant points out that it has become impossible to meet this requirement owing to the characteristics of the affiliated employees (see below). This is preventing the trade union in question from exercising its right to represent and defend its members within national territory, in flagrant violation of Convention No. 87. Furthermore, the trade union is being denied the right to establish representation committees in enterprises.

184. The complainant organization explains that only 20 per cent of the workers involved in manufacturing in Buenos Aires have a dependent employment relationship. The remaining

80 per cent work through the fraudulent outsourcing of cooperative associations, which are established by the very employers in the sector with the aim of lowering labour costs in the difficult economic circumstances.

- 185.** The CTA explains that according to Argentinian law, workers (or service providers) are indirect *employees* of the “beneficiary of the service” (when intermediary recruitment is legitimate) and direct employees when the recruitment process is fraudulent. In either case, the beneficiary of the service must meet all labour and social security standards for workers with dependent employment relationships.
- 186.** To deal with the abovementioned elusive practice, continues the complainant, the State adopted various (but partial) measures to address this fraudulent situation. For example, the National Executive Power Decree No. 2025/94 and the National Institute of Cooperative Action Resolution No. 1510/94 suspended the granting of trade union registration to “labour cooperatives” to give less leeway for labour fraud. However, employers continued to recruit their workforce through intermediaries, which are still “irregular” and only exist because of the distressing situation of workers and various forms of pressure. In response to the aforementioned administrative provision, another strategy used by employers was to “hire” the registration details of cooperative associations.
- 187.** The recent adoption of Act No. 25250, section 4, of which confirms the power of the State Police to detect labour fraud, could be included as a measure taken to monitor the abovementioned situation, but it is completely ineffective in practice owing to its bothersome bureaucracy.
- 188.** However, for social security purposes, resolutions were issued by the General Directorate of Taxation such as Resolution No. 4328/97 which considers the mediation of cooperative associations to be fraudulent (“When the social objective and purpose of such associations focus on the provision of a labour force to third parties, the workers should be considered to be *dependent* and, therefore, contributors to the respective social security system”). As a result, the diverse and so-called cooperative associations that are proliferating, namely those which are merely borrowed names or frontmen, adopted various techniques, such as changing their name or widening their statutory objective to include “production”.

B. The Government’s reply

- 189.** In its communication of 2 December, the Government declares that the SIPES has on no occasion made any request to the administrative authority for trade union registration and/or legal trade union status. In this respect, the allegations are completely false since there is no factual substance to them whatsoever. This highlights the dishonesty of the complainant organizations and the abusive use of the procedure.

C. The Committee’s conclusions

- 190.** *The Committee observes that in this case the complainant organization alleges that the authorities refuse to grant legal trade union status to the Fishing and Allied Workers’ Union (SIPES) claiming that it is absolutely necessary that dependent employment relationships exist in this sector, whereas in reality only 20 per cent of workers in the fish manufacturing sector have dependent employment relationships and 80 per cent of them are enrolled in the fraudulent outsourcing system of cooperative associations established to lower labour costs and in which employers recruit their workforce through intermediaries.*

191. *The Committee notes that according to the Government, the SIPES has not requested the authorities for trade union registration or legal trade union status. The Committee concludes that this case does not require a more detailed examination unless the complainant organizations provide specific information in this respect.*

The Committee's recommendation

192. *In light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not require a more detailed examination unless the complainant organizations provide specific information in this respect.*

CASE No. 2168

DEFINITIVE REPORT

**Complaint against the Government of Argentina
presented by
the Union of Staff and Workers of the Provincial and
Municipal Public Administration of Salta (SEOAP)**

Allegations: The complainant organization alleges unjustified delays and the obligation to comply with requirements that violate Convention No. 87 in order to obtain registration.

193. The complaint is set out in a communication of December 2001 from the Union of Staff and Workers of the Provincial and Municipal Public Administration of Salta (SEOAP).

194. The Government sent its observations in a communication dated 15 January 2003.

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

A. The complainant's allegations

196. In its communication of December 2001, the Union of Staff and Workers of the Provincial and Municipal Public Administration of Salta (SEOAP) alleges that the relevant authorities of the Ministry of Labour refused to accept the trade union's application for registration, which had been submitted in May 2000.

197. According to the complainant, the registration was refused on the basis of questions and requirements which violated the provisions of Convention No. 87 in application of an administrative resolution of October 2000 calling for certain requirements to be met (declaration that the statutes submitted had been approved by the assembly, declaration of the members of the executive committee, and confirmation of the employee status of the workers belonging to the trade union) and of another resolution of 20 September 2001 calling for compliance with two of the previous requirements and of new requirements relating to the trade union's statutes (including elimination of abbreviations which might cause confusion as to the name of the organization; modification of the provisions on refusal of membership of the organization, expulsion or resignation; the lack of precision

on the number of members of the provincial executive board; the need for the executive board to be elected by an assembly or extraordinary congress; the need for direct action measures to comply with the law; and the requirement that the trade union could not be dissolved while there was a certain number of members).

B. The Government's reply

198. In its communication of 15 January 2003, the Government states that the Union of Staff and Workers of the Provincial and Municipal Public Administration of Salta (SEOAP) duly initiated the process in the Ministry of Labour, requesting registration as a trade union. Under the relevant procedures, the relevant authority requested the complainant to comply with the formal and substantive requirements under Law No. 23551 and its regulatory Decree No. 467/88 and additional rules, in order to process the application for registration. Up to now, the complainant has not complied with this request, and thus the registration has not been finalized for reasons outside the Ministry of Labour's control and solely attributable to the complainant.

199. The Government adds that on no occasion has the ILO Committee of Experts on the Application of Conventions and Recommendations commented upon Law No. 23551, as concerns section 21 and others concerning the minimum requirements to be satisfied in an application for registration as a trade union. It can therefore be concluded that the formalities laid down in national regulations on the constitution and functioning of workers' and employers' organizations are consistent with the provisions of Convention No. 87 and, in the specific case of Argentina, there is no contradiction with the guarantees laid down in this international standard.

200. The Government states that the requirements under Law No. 23551 for registration as a trade union, which were not satisfied by the complainant, do not conflict with the principles of freedom of association, and, as mentioned above, have never been the subject of observations by the ILO supervisory bodies. It indicates that the questions to which the complainant objects were as follows: (1) the constituent act of the trade union and the assembly act approving the text of the trade union statutes do not satisfy the requirements laid down in article 27 of the administrative rules of procedure; (2) it is not clear from the text of the assembly act which supposedly approved the statutes what text was actually approved by the assembly; and (3) 16 articles of the statutes presented conflict with the provisions of Law No. 23551, its regulatory decree and additional rules concerning the minimum requirements to be satisfied by trade unions.

201. The Government states that the Union of Staff and Workers of the Provincial and Municipal Public Administration of Salta (SEOAP) has not so far complied with these points, despite the fact that the finding was notified personally to its Secretary-General on 2 November 2001, who stated that the organization would comply. Finally, the Government states that, with consideration to the principle of freedom of association, if the complainant satisfies the minimum requirements laid down in Law No. 23551 and its regulatory Decree No. 467/88 for obtaining registration as a trade union, the administrative authority will act accordingly.

C. The Committee's conclusions

202. *The Committee observes that the Provincial and Municipal Public Administration of Salta (SEOAP) alleges that the relevant authorities of the Ministry of Labour have refused to grant registration as a trade union to this organization since May 2000. According to the complainant, questions and observations which violate the provisions of Convention No. 87 were used as grounds for not granting registration. (The observations refer to the*

declaration that the statutes submitted are the text approved by the assembly; the statement concerning the membership of the executive committee; and the certification of the employee status of workers who are members, and various articles of the trade union's statutes on the elimination of abbreviations that might give rise to confusion as to the name of the organization; the modification of the provisions on refusal of membership of the organization, expulsion or resignation of a member; the lack of precision on the number of members of the provincial executive board; the need for the executive board to be elected by an assembly or extraordinary congress; the need for direct action measures to be governed by law; and the need that the trade union should not be dissolved while there was a certain number of members.)

- 203.** *The Committee observes that the Government states in its reply that: (1) the relevant authority requested the complainant to comply with the legal requirements under Law No. 23551 and its regulatory Decree No. 467/88 and additional rules in order to process the registration; (2) at no time have the ILO Committee of Experts on the Application of Conventions and Recommendations or other ILO supervisory bodies objected to the minimum requirements to be met by the application for registration laid down in the current law, which is consequently considered consistent with the provisions of Convention No. 87; (3) up to now the SEOAP has not complied with the observations formulated by the administrative authority (of 20 September 2001) which were notified on 2 November 2001; and (4) in general the queries concerning the application for registration refer to problems with the constituent act of the trade union and the act of the assembly which approved the statutes and the contradiction between various articles of the SEOAP statutes and the Trade Unions Act and additional rules.*
- 204.** *In this respect, the Committee considers that the requirements asked of the complainant by the administrative authority to process the trade union registration do not seem to raise problems of compatibility with the principles of freedom of association. However, the Committee regrets that the registration procedure followed in this case has taken so long, partly because the complainant did not comply with the points raised by the administrative authority and in part due to administrative delays.*
- 205.** *Nevertheless, the Committee takes note of the desire to respect the principles of freedom of association and to register the SEOAP as a trade union, provided that the complainant meets the minimum requirements established by Law No. 23551 and its regulatory decree. In these circumstances, the Committee invites the complainant to meet the legal requirements indicated by the administrative authority and expresses the hope that, as affirmed by the Government, once the SEOAP has done so, its registration as a trade union will be quickly realized.*

The Committee's recommendation

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

The Committee invites the complainant to meet the legal requirements indicated by the administrative authority and expresses the hope that, as affirmed by the Government, once the SEOAP has done so, its registration as a trade union will be quickly realized.

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 Belarusian Trade Union of Air Traffic Controllers (BPAD)**
- **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' pending allegations concern: serious interference by government authorities with trade union activities and elections, in particular as concerns the presidency of the trade union federation; dismissals of Mr. Evgenov, Mr. Eymenov and Mr. Bourgov and threats of dismissal against members of the GPO "Khimvolokno" and "Zenith" Free Trade Unions; refusal to employ the re-elected chairperson of the Free Trade Union of Metalworkers at the Minsk Automobile Plant, Mr. Marinich; non-registration of the BFTU trade union at the Khimvolokno State Production Amalgamation; interference in internal trade union activities by virtue of Presidential Decrees Nos. 8 and 11.

207. 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, 326th Report, paras. 210-244 and 329th Report, paras. 217-281, approved by the Governing Body at its 280th, 281st, 282nd and 285th Sessions (March, June and November 2001 and November 2002)]. The Belarusian Free Trade Union (BFTU) sent additional information relating to this case in a communication dated 4 February 2003 and the Congress of Democratic Trade Unions (CDTU) submitted new allegations in a communication dated 5 February 2003. The Belarusian Trade Union of Air Traffic Controllers (BPAD) joined the complaint and submitted new allegations in a communication dated 6 February 2003. Finally, the International Confederation of Free Trade Unions (ICFTU) sent supplementary information in a communication dated 19 February 2003.

208. The Government transmitted additional information in reply to the Committee in a communication dated 4 January 2003.
209. 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

210. At its November 2002 session, the Governing Body approved the following recommendations in the light of the Committee's interim conclusions:
- (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 effectively promote the interests of their own 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.

B. The complainants' additional allegations

211. In its communication dated 4 February 2003, the Belarusian Free Trade Union (BFTU) transmits additional information concerning the continuing harassment and anti-union discrimination of trade union activist, Mr. Evmenov. By a communication dated 5 February 2003, the Congress of Democratic Trade Unions (CDTU) presented new allegations relating to continuing favouritism of the Federation of Trade Unions of Belarus (FPB) and discrimination of all other trade unions. The Belarusian Trade Union of Air Traffic Controllers (BPAD) submits new allegations on 6 February 2003 concerning anti-union discrimination on the part of management and interference in its internal affairs by state bodies. Finally, the International Confederation of Free Trade Unions (ICFTU), in its communication of 19 February 2003, contends that the Government has taken no concrete steps to implement the Committee's recommendations and provides supplementary information of anti-union discrimination and Government interference, including specific allegations relating to the Minsk regional trade union organization of employees of the cultural sphere.

C. The Government's further reply

212. In its communication dated 4 January 2003, the Government recalls that the Council of Ministers adopted Order No. 1282 respecting deductions from workers' wages for the purpose of bank transfers on 18 September 2002. This established the right to deduct trade union dues from workers' wages for the purpose of effecting bank transfers to trade union accounts. The Government emphasizes once again that the adoption of Council of

Ministers Order No. 1804 of 14 December 2001 respecting measures to safeguard the rights of trade union members was prompted by the fact that employers were seriously in arrears with payments of the amounts deducted from workers' wages. Order No. 1804, in essence, eliminated automatic deductions of trade union dues without the knowledge of workers and without regard to the means available to the enterprise. Deductions of trade union dues are now made only with the written consent of the workers concerned. The Government also points out that in December 2002 the parties added supplementary provisions to the 2001-03 general agreement between the Government, republic-level employers' associations and trade unions in order to facilitate direct bank transfers of trade union dues.

- 213.** Great importance is attached in Belarus to consultation between the state authorities and social partners on the major issues of social and economic development, and to the work of the tripartite consultative bodies. The social partners are required to be involved in drawing up any legislation with a bearing on citizens' social and labour rights. In Belarus, such matters are dealt with by the National Council for Labour and Social Issues. This is a consultative body in which representatives of the Government, employers and workers participate on an equal basis. Its most recent sittings took place on 9 August and 4 December 2002.
- 214.** During the 9 August 2002 meeting, the National Council decided to set up a permanent tripartite "group of experts on issues relating to the application of the ILO's international labour standards". The regulations of the group were approved by the National Council at its meeting of 4 December 2002. The group of experts was set up at the initiative of the Ministry of Labour and Social Protection with a view to implementing the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The work of the group is directed towards ensuring a constant process of consultation between Government, employers and trade unions on the implementation in Belarus of international Conventions and Recommendations, as well as other aspects of cooperation between Belarus and the ILO.
- 215.** The Government has examined the questions concerning union elections raised in the Committee's report. As indicated in previous observations, the Government does not interfere in the internal affairs of trade unions. Such matters are governed by the Trade Unions Act and the unions' own by-laws. At the same time, the Government has shown that elections in the Federation of Trade Unions of Belarus (FPB) and branch unions complied with national law and union by-laws. The FPB elections were held in an open and transparent way. Leonid Kozik was elected to the post of President of the Federation in accordance with point 5.7.6 of the Federation's by-laws.
- 216.** Further to information already supplied by the Government, Mr. Yaroshuk was elected Chairman of the National Committee of the Union of Agro-Industrial Workers at that Committee's 8th plenary sitting on 15 April 1999, but was released from his post on 10 September 2002, also by decision of the plenary, fully in accordance with points 7.5, 7.6 and 11.3 of the union's by-laws.
- 217.** Mr. Mirochnik was released from his post as Chairman of the Brest district trade union association by a general meeting of the association, in accordance with the relevant regulations. Of the 198 delegates present at the meeting, only two did not support the move. Mr. Kovsh was released from his post as Chairman of the Brest district committee of the Trade Union of Education and Science Workers at his own request, following his retirement.
- 218.** As regards the dismissals of Mr. Evgenov, Mr. Evmenov and Mr. Bourgov, the Government set out its position in detail in earlier comments. At this time, the Government

noted that these workers were dismissed entirely in accordance with legislation, and this has been confirmed on a number of occasions by the courts.

- 219.** Furthermore, in its previous comments the Government drew attention to the lack of evidence to support allegations that members of the Free Trade Union of Belarus at the “Khimvolokno” Production Association in the city of Grodno and at the “Zenith” plant in Mogilev had been threatened with dismissal. According to the Government, no workers have been dismissed at these plants.
- 220.** The Government also states that it had provided detailed clarification with regard to the establishment of a regional trade union for workers employed at the “Integral” Research and Production Association and the disaffiliation of the primary trade union organization at the “Tsvetotron” plant in Brest from the branch union representing workers in the radio-electronics industry. It reiterated its previous points and indicated that the reason given for the disaffiliation was a disagreement between the primary union organization and the branch union regarding the contributions to the union’s republic-level committee. A total of 1,250 workers (out of 1,517 workers at the Plant) joined the new primary organization.
- 221.** As regards the disaffiliation of the primary trade union organization of the Belarus Metallurgical Plant from the branch metalworkers’ union, the Government reiterates that the reason for this was the absence of the necessary collaboration between the republic-level council of the metalworkers’ union and the primary trade union organization at the Belarus Metallurgical Plant, as well as the numerous proposals from workers to establish an occupational metalworkers’ union. The primary trade union organization at the Belarus Metallurgical Plant thus, in accordance with its union by-laws and with legislation, established the Trade Union of Metallurgical Workers at the Belarus Metallurgical Plant and disaffiliated from the republic-level council of the metalworkers’ trade union. More than 14,500 workers at the plant (97 per cent of the total workforce) have joined the new union.
- 222.** The Government also refers to its previous replies in respect of Presidential Decree No. 8 of 12 March 2001 on certain measures to improve the procedures for receiving and using non-reimbursable foreign aid. At that time, it had indicated that the established procedure for registering such aid was simple and took little time. The Decree does not prevent trade unions from receiving foreign assistance intended to help them carry out their statutory duties. In 2002, the Department for Humanitarian Assistance received seven applications from trade unions wishing to register foreign aid, all of which were granted.
- 223.** On 7 May 2001, Presidential Decree No. 11 (“respecting measures to improve procedures for organizing meetings, rallies, public marches and demonstrations or other such mass events and picketing in the Republic of Belarus”) was adopted. According to point 1.5 of the Decree:

[...] political parties, trade unions and other organizations whose officials fail to establish appropriate procedures for organizing or holding meetings, rallies, public marches, demonstrations and picketing shall, if this results in serious [financial] loss infringements of the rights and legitimate interests of citizens or organizations, or prejudice to the interests of the State or society, be liable to closure in accordance with the established procedure for responding to violations of legislation respecting meetings, rallies, public marches, demonstrations and picketing.

“Serious loss” here is understood to mean the loss of any sum equivalent to at least 10,000 times the minimum wage established on the day the violation occurs. “Infringements of the rights and legitimate interests of citizens or organizations, or prejudice to the interests of the State or society” are understood to mean disruption of the event itself, temporary

stoppage of an organization's operations, disruption of transport, loss of life, or serious physical injury to one or more individuals.

- 224.** Negligence and irresponsibility in the organization of mass demonstrations, etc. may have very serious consequences. These may arise not only if the event ceases to be peaceful but in a number of other situations: poor organization of crowds leaving or entering, e.g. sports venues, use of public transport when leaving the scene, failure to keep to an agreed route, failure to observe safety regulations during a demonstration, etc. Decree No. 11 provides for the possibility of closing down organizations that fail to observe established procedures for organizing public demonstrations. However, such violations leading to serious loss, infringements of the rights and interests of citizens or organizations, or prejudice to the interests of the State or society, do not automatically mean that the organization responsible will be closed down. This is possible only when established legal procedures are followed, which means that a court order is needed and must take into account all the relevant circumstances. It is also possible to lodge an appeal against any such decision. Since the adoption of the Decree on 7 May 2001, there have been no closures of trade unions as a result of violations of the established procedures for holding public demonstrations in Belarus.
- 225.** In conclusion, the constructive nature of the Committee's recommendations is assisting efforts in the Republic to strengthen social dialogue and promote the development of social partnership. The Government is currently considering questions relating to trade union registration and proposals for improving legislation in this area. In 2002, a number of steps were taken to develop constructive collaboration between the Government, trade unions and employers' organizations. The Ministry of Labour and Social Protection and the social partners have formulated a set of proposals on priority areas for cooperation between Belarus and the ILO; the right to have trade union dues transferred has been established; the National Council for Labour and Social Issues has been reactivated; and a tripartite Group of Experts on the application of ILO standards has been established.
- 226.** The Government of Belarus is confident that these positive trends in the development of social dialogue and tripartism in Belarus will be maintained in 2003. This should enable Case No. 2090 to be settled very quickly.

D. The Committee's conclusions

- 227.** *The Committee notes that the pending allegations in this case concern: serious interference by government authorities with trade union activities and elections, in particular as concerns the presidency of the trade union federation; dismissals of Mr. Evgenov, Mr. Evmenov and Mr. Bourgov and threats of dismissal against members of the GPO "Khimvolokno" and "Zenith" Free Trade Unions; refusal to employ the re-elected chairperson of the Free Trade Union of Metalworkers at the Minsk Automobile Plant, Mr. Marinich; non-registration of the BFTU trade union at the Khimvolokno State Production Amalgamation; and interference in internal trade union activities by virtue of Presidential Decrees Nos. 8 and 11.*
- 228.** *In the first instance, the Committee notes with regret that the recent reply from the Government does little more than reiterate previous comments made by the Government to the Committee. It regrets, in particular, that the Government has provided no new information on measures taken to implement the Committee's previous recommendations, which had been based on a careful analysis of the complainants' allegations and the Government's replies.*

229. *As concerns the most urgent of the Committee's previous recommendations – the need to institute an independent investigation into the allegations relating to government interference in trade union elections, with the aim of rectifying any effects of this interference – the Committee notes that the Government merely repeats previous statements that the elections were carried out in accordance with the law and the relevant by-laws. The Government has not, however, provided any information as to the efforts made to establish an independent investigation into these matters, inspiring the confidence of all parties concerned, so that the doubts cast over the elections of the Federation of Trade Unions of Belarus (FPB), the Agricultural Sector Workers' Union (ASWU), the Brest Regional Association of Trade Unions and the Brest Regional Committee of Science and Education Unions can be either fully dispelled or appropriately redressed. The Committee therefore once again urges the Government to establish independent investigations, having the confidence of all parties concerned, into the allegations of government interference in the abovementioned elections, with the aim of rectifying any effects of this interference, and to keep it informed of the progress made in this regard.*
230. *The Committee further notes the Government's indications that the social partners are involved in drawing up legislation relating to citizens' social and labour rights through the tripartite National Council for Labour and Social Issues and that this Council has decided to set up a permanent tripartite "Group of Experts on issues relating to the application of the ILO's international labour standards". It notes from the corresponding Regulations that the Group of Experts is also to be tripartite. In light of the allegations in this complaint concerning serious obstacles to the free functioning of independent workers' organizations, and recalling that, when setting up joint committees dealing with matters affecting the interests of workers, governments should make appropriate provision for the representation of different sections of the trade union movement having a substantial interest in the questions at issue [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 944], the Committee requests the Government to provide information on the extent to which alternative organizations representing workers, such as those present in the complaint, may participate in the various national tripartite bodies, such as the National Council for Labour and Social Issues and the Group of Experts on issues relating to the application of international labour standards and to reply to the complainants' new allegations in this regard.*
231. *As concerns the dismissal of three trade union leaders for refusal to work on their day off (unpaid voluntary labour, known as "subbotnik"), the Committee notes the Government's reiteration that these individuals were dismissed in accordance with the law and that the courts confirmed this. The Committee must, however, once again recall that it had already examined the dismissals of two of the trade union leaders, Mr. Evmenov and Mr. Bourgov and found that they were not justified. The Committee thus urged the Government to take the necessary measures to ensure the reinstatement in their posts of these two trade unionists with full compensation for any lost wages and benefits [see 324th Report, para. 212; 325th Report, paras. 175-177; and 329th Report, para. 276]. In the absence of any new information justifying the dismissal of Mr. Evgenov, apparently also dismissed for refusing to work the "subbotnik", the Committee would also request the Government to take the necessary measures 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 of the measures taken in respect of the reinstatements of these three trade union leaders and to reply to the new allegations made in respect of Mr. Evmenov.*

- 232.** *While regretting that the Government has not provided any information 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 Committee takes due note of the Government’s statement that there is no evidence to support these allegations and that no workers have been dismissed at these plants. The Committee would recall, however, that, when it first examined these allegations [see 324th Report, para. 209], the Government had provided the same reply, despite the documents attesting to such pressure accompanying the initial complaint (including allegations of anti-union tactics carried out by the enterprises in the form of bribes offered to union members to encourage their withdrawal from the union and the presentation of statements of resignation to workers). Recalling that such acts are contrary to Article 2 of Convention No. 98, which provides that workers’ and employers’ organizations shall enjoy adequate protection against any acts of interference by each other or each other’s agents in their establishment, functioning or administration [see **Digest**, op. cit., para. 760], the Committee once again requests the Government to institute independent investigations into the allegations of anti-union tactics made in respect of the GPO “Khimvolokno” Free Trade Union and the Free Trade Union at the “Zenith Plant” and to keep it informed of developments in this regard.*
- 233.** *The Committee notes that the Government merely repeats its previous statements concerning the establishment of the regional trade union for workers at the “Integral” Research and Production Association and the disaffiliation of the primary trade union organization at the “Tsvetotron” plant in Brest from the branch union representing workers in the radio-electronics industry. The Committee would recall, however, that it had thoroughly examined this question at its meeting in May-June 2001 on the basis of the detailed allegations presented by the complainants [see 325th Report, paras. 169-171]. The Committee would therefore once again urge the Government to institute an independent investigation into the allegations of managerial pressure for the establishment of a regional trade union of electronics industry workers and for the affiliation of the Tsvetotron plant to the new regional union and to keep it informed of the outcome of the investigation.*
- 234.** *Furthermore, noting that the Government has not replied to the alleged refusal to employ the re-elected chairperson of the Free Trade Union of Metalworkers at the Minsk Automobile Plant, Mr. Marinich, the Committee requests the Government to provide information on this point and invites the complainants to provide any additional information it might have as to the current status of Mr. Marinich.*
- 235.** *Noting that the Government has also not indicated the measures taken to implement its previous recommendation concerning the Belarusian Free Trade Union at the Khimvolokno State Production Amalgamation, the Committee once again urges the Government to take the necessary steps for the registration of this trade union and to eliminate any remaining obstacles to trade union registration noted in its previous reports [see 324th Report, paras. 197-202]. It requests the Government to keep it informed of all measures taken in this regard.*
- 236.** *Furthermore, the Committee notes that the Government merely repeats its previous observations with respect to Presidential Decrees Nos. 8 and 11. While duly noting the Government’s indication that these decrees have not been used either to refuse any requests for foreign assistance or to dissolve unions, the Committee must recall its previous conclusions that the powers granted in these decrees permit serious interference with the right of workers’ and employers’ organizations to formulate their programmes*

and organize their activities freely [see 326th Report, paras. 238 and 242]. The Committee therefore once again urges the Government 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 and Presidential Decree No. 11, so as to ensure that restrictions on picketing and other demonstrations called by workers' or employers' organizations 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.

237. *Finally, the Government is requested to reply urgently to the new allegations and supplementary information transmitted in the complainants' communications of February 2003.*

The Committee's recommendations

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

- (a) In light of the fact that the Government has taken no steps to implement its previous recommendations, the Committee must once again urge the Government to:*
 - (i) establish independent investigations, having the confidence of all parties concerned, into the allegations of government interference in the elections of the Federation of Trade Unions of Belarus (FPB), the Agricultural Sector Workers' Union (ASWU), the Brest Regional Association of Trade Unions and the Brest Regional Committee of Science and Education Unions, with the aim of rectifying any effects of this interference;*
 - (ii) institute independent investigations into the allegations of anti-union tactics made in respect of the GPO "Khimvolokno" Free Trade Union and the Free Trade Union at the "Zenith Plant";*
 - (iii) institute an independent investigation into the allegations of managerial pressure for the establishment of a regional trade union of electronics industry workers and for the affiliation of the Tsvetotron plant to the new regional union;*
 - (iv) take the necessary steps for the registration of the Belarusian Free Trade Union at the Khimvolokno State Production Amalgamation and to eliminate any remaining obstacles to trade union registration noted in its previous reports;*

(v) *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 and Presidential Decree No. 11, so as to ensure that restrictions on picketing and other demonstrations called by workers' or employers' organizations 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 Government is requested to keep the Committee informed of the progress made in this regard and the outcome of the investigations.

- (b) *The Committee requests the Government to provide information on the extent to which alternative organizations representing workers, such as those present in the complaint, may participate in the various national tripartite bodies, such as the National Council for Labour and Social Issues and the Group of Experts on issues relating to the application of international labour standards and to reply to the complainants' new allegations in this regard.*
- (c) *The Government is requested to keep the Committee informed of the measures taken in respect of the reinstatements of Mr. Evgenov, Mr. Evmenov and Mr. Bourgov and to reply to the new allegations made in this respect of Mr. Evmenov.*
- (d) *The Committee requests the Government to provide information on the alleged refusal to employ the re-elected chairperson of the Free Trade Union of Metalworkers at the Minsk Automobile Plant, Mr. Marinich, and invites the complainants to provide any additional information it might have as to the current status of Mr. Marinich.*
- (e) *The Government is requested to reply urgently to the new allegations and supplementary information transmitted in the complainants' communications of February 2003.*

CASES NOS. 2166, 2173, 2180 AND 2196

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

**Complaints against the Government of Canada
concerning the Province of British Columbia
presented by**

Case No. 2166

- the Canadian Labour Congress (CLC)
- the National Union of Public and General Employees (NUPGE)
- the Health Sciences Association of British Columbia (HSA)
- the International Confederation of Free Trade Unions (ICFTU) and
- Public Services International (PSI)

Case No. 2173

- the Canadian Labour Congress (CLC)
- the British Columbia Nurses' Union (BCNU)
- the Canadian Teachers' Federation (CTF)
- the British Columbia Teachers' Federation (BCTF)
- the Canadian Union of Public Employees, British Columbia Division (CUPE)
- the International Confederation of Free Trade Unions (ICFTU) and
- Education International (EI)

Case No. 2180

- the Canadian Labour Congress (CLC)
- the National Union of Public and General Employees (NUPGE)
- the British Columbia Government and Service Employees' Union (BCGSEU)
- the Health Sciences Association of British Columbia (HSA)
- the International Confederation of Free Trade Unions (ICFTU) and
- Public Services International (PSI)

Case No. 2196

- the Canadian Association of University Teachers (CAUT)

Allegations: The complainants allege that the Government of British Columbia has adopted several pieces of legislation (Bills Nos. 2, 15, 18, 27, 28 and 29) in respect of public service employees, which contravene ILO Conventions and freedom of association principles on collective bargaining.

239. The complaint in Case No. 2166 is contained in a communication dated 18 December 2001 from the Canadian Labour Congress (CLC), the National Union of Public and General Employees (NUPGE) and the Health Sciences Association of British Columbia (HSA). It was supported by the International Confederation of Free Trade Unions (ICFTU) and Public Services International (PSI) in communications both dated 19 December 2001. This complaint concerns Bills Nos. 2 and 15.

240. The complaint in Case No. 2173 is contained in a communication dated 7 February 2002 from the Canadian Labour Congress (CLC), the British Columbia Nurses Union (BCNU),

the British Columbia Teachers Federation (BCTF), the Canadian Teachers Federation (CTF) and the Canadian Union of Public Employees, British Columbia Division (CUPE). It was supported by the International Confederation of Free Trade Unions (ICFTU) in a communication dated 18 February 2002. It was complemented by Education International (EI) in communications dated 15 March and 4 July 2002. This complaint concerns Bills Nos. 15, 18, 27 and 28.

- 241.** The complaint in Case No. 2180 is contained in a communication dated 1 March 2002 from the Canadian Labour Congress (CLC), the National Union of Public and General Employees (NUPGE), the British Columbia Government and Service Employees Union (BCGSEU) and the Health Sciences Association of British Columbia (HSA). It was supported by the International Confederation of Free Trade Unions (ICFTU) in a communication dated 4 March 2002, and by Public Services International (PSI) in a communication dated 14 March 2002. This complaint concerns Bills Nos. 27, 28 and 29.
- 242.** The complaint in Case No. 2196 is contained in a communication dated 14 May 2002 from the Canadian Association of University Teachers (CAUT). This complaint concerns Bill No. 28.
- 243.** The Government of Canada transmitted the replies of the Government of British Columbia for these cases in communications dated 10 October 2002 and 31 January 2003.
- 244.** Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), nor the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

Case No. 2166 (Bills Nos. 2 and 15)

- 245.** The complaint in this case is filed by the Canadian Labour Congress (CLC) and the National Union of Public and General Employees (NUPGE) on behalf of the Health Sciences Association of British Columbia (HSA). The HSA regroups some 10,800 health science professionals and its bargaining agent is the Paramedical Professional Bargaining Association (PPBA). The bargaining agent for the various employers involved is the Health Employers' Association of British Columbia (HEABC). Historically, the working conditions of health science professionals and nurses have been relatively comparable.
- 246.** On 29 January 2001, the parties began to negotiate the renewal of their collective agreement, which was to expire 31 March 2001. Negotiations progressed in some matters but no agreement could be reached. On 20 April, union members voted at 90 per cent in favour of strike action; the parties agreed upon the appointment of a mediator. On 3 May, the employer tabled a wage offer ranging from 5.5 per cent to 14 per cent over three years, depending on the categories of employees, which the union refused, considering that this was a divisive tactic. The mediator withdrew from the dispute and the union served strike notice. Between 18 May and 18 June 2001, it engaged in rotating withdrawals of services, but maintained essential services at all times (at no time, did HEABC apply to the Labour Relations Board to obtain increases in staff levels, as allowed under the essential services legislation). On 19 June, the Government appointed a special mediator.
- 247.** The dispute was about to escalate when the legislative assembly was called into an emergency session and, on 20 June 2001, passed the *Health Care Services Continuation Act* (Bill No. 2), which ordered HSA members to cease their lawful strike during a "cooling off period" and ordered the parties to resume bargaining. All workers returned to

work on 21 June 2001 and PPBA returned to the bargaining tables. The employers' offer remaining unchanged, HSA went back on strike on 23 and 24 July 2001, despite Bill No. 2 and in spite of an order to cease strike action issued on 20 July 2001 by the Labour Relations Board. The complainants maintained essential services, despite the employers' refusal to supply the traditional infrastructure to ensure that essential services were met.

- 248.** On 9 August 2001, the Government enacted the *Health Care Service Collective Agreements Act* (Bill No. 15) which, according to the complainants, imposed essentially the conditions of work contained in the employers' last offer. The legislation imposed a collective agreement whereby, over a period of three years, 40 per cent of the paramedical professionals would receive a 5.5 per cent increase, the other 60 per cent would get a 14 per cent increase, and the nurses a 23 per cent increase. The complainants submit that the legislation not only created an internal differential within PPBA, it also eroded the comparability with other groups of employees.
- 249.** The complainants further allege that the Government did not consult the workers' organizations adequately before imposing a legislative settlement. While there had been contacts and discussions throughout the dispute, the union was not informed until five minutes before the legislation was introduced, in spite of earlier government commitments that it would be informed in advance of the course of action chosen. The Government ignored the most appropriate approach, which would have been to secure recommendations from an independent third party, and impose them if necessary. Instead, it simply forced the employers' last offer upon HSA members. The complainants allege that Bills Nos. 2 and 15 violate the rights to organize and bargain collectively in the public sector, as set out in ILO Conventions and recognized by freedom of association principles.

Case No. 2173 (Bills Nos. 15, 18, 27 and 28)

- 250.** The complaint in this case was filed on 7 February 2002 by the Canadian Labour Congress (CLC) on behalf of the British Columbia Nurses' Union (BCNU) which regroups 23,000 nurses, the British Columbia Teachers' Federation (BCTF) which regroups 45,000 teachers of the public education sector from kindergarten to high school, and the Canadian Union of Public Employees (CUPE).
- 251.** In addition to Bill No. 15 (described above in connection with Case No. 2166), this complaint concerns the *Skills Development and Labour Statutes Amendment Act* (Bill No. 18), the *Education Services Collective Agreement Act* (Bill No. 27) and the *Public Education Flexibility and Choice Act* (Bill No. 28). Taken together, these laws have affected over 100,000 workers in the health and education sectors by legislatively: (i) imposing a collective agreement; (ii) depriving workers of the right to freely negotiate terms and conditions of employment; and (iii) restricting arbitrarily the right to strike. The complainants allege that Bills Nos. 15, 18, 27 and 28 constitute a clear violation of Canada's obligations under ILO Conventions and of its other international commitments.
- 252.** As regards the health sector, the Nurses' Bargaining Association commenced negotiations with HEABC to renew the collective agreement which covered nurses working in hospitals and other publicly funded health-care facilities. As they had not reached agreement, the nurses engaged in a limited strike on 13 April 2001; they maintained all essential services at the required level and withdrew services that amounted to overtime. This limited strike was forced to cease with the adoption of Bill No. 2 on 19 June 2001, which ordered nurses back to work and their agent to resume bargaining. Bill No. 15 was adopted on 9 August 2001, before a facilitator appointed by the Industrial Inquiry Commissioner could make any recommendations. The complainants' allegations regarding Bill No. 15 are essentially the same as those submitted in Case No. 2166.

- 253.** As regards the education sector, the first group of complainants (BCNU, BCTF, CUPE) explain that teachers have only had collective bargaining rights since 1987 (after a successful complaint to the Freedom of Association Committee, Case No. 1350). In 1993, the law concerning essential services was amended to provide that the right to strike, in conformity with internationally recognized standards, would be restricted only in cases involving serious danger to the health, safety and welfare of the population (section 72 of the British Columbia *Labour Relations Code*). In March 2001, negotiations began to renew the collective agreement covering the provincial teachers' unit, which was due to expire on 30 June 2001. According to the complainants, the employer had brought major concession demands to the table, and there was virtually no progress in the negotiations. No industrial action had yet been taken when Bill No. 18 became law on 16 August 2001.
- 254.** The complainants allege that Bill No. 18, which amends section 72 of the *Labour Relations Code* seriously restricts, and in practice prohibits, the right to strike for workers in the public education system, for the following reasons:
- the legislator extended the concept of “essential services” to both teaching and non-teaching employees in the public school system;
 - the legislation restricted the right to strike by legislating that, before a strike or lockout has commenced, the parties must not strike or lockout until the designation of essential services is made by the Board (section 72(6));
 - the legislator abrogated the right to strike by imposing on the concerned workers the obligation to supply, provide or maintain its facilities in full function, production and service (section 72(8));
 - section 158 of the *Labour Relations Code* reinforced the application of section 72(6) and (8) by providing significant sanctions for individuals and unions who do not comply with the law.
- 255.** After the adoption of Bill No. 18, the negotiations came to an impasse and, in October 2001, the teachers considered commencing a gradual job action, which would involve only the withdrawal of minor administrative and reporting functions, while ensuring that all instruction would continue for all students in all programmes. The employers applied to the British Columbia Labour Relations Board, under the newly amended section 72, requesting the Board to designate which actions (among those contained in the union's proposals) would be considered as “essential services”. The Board ruled that most of the minor services to be withheld under the initial phase of the proposal were not “essential”, even under the new wording. The complainants point out that the Government rejected the Board's decision and indicated that the legislature might be recalled to end the dispute.
- 256.** In their communication of 4 July 2002, the other group of complainants (Education International (EI), British Columbia Teachers' Federation (BCTF), Canadian Teachers' Federation (CTF)) allege that the Government has enacted yet further legislation (the *Education Services Collective Agreement Act* (Bill No. 27) and the *Public Education Flexibility and Choice Act* (Bill No. 28) which violates the most fundamental principles of freedom of association and free collective bargaining.
- 257.** From 1987 to 1994, collective agreements had been freely negotiated in all 75 local school boards. In 1994, the Government changed the bargaining structure and a province-wide agreement, carrying forward the previous local agreements, was signed in 1996. In January 2002, the parties were in negotiation for the renewal of the second provincial agreement. The union requested a 23 per cent wage increase over three years (similar to that of nurses) and the employer offered 7.6 per cent. The parties agreed upon the appointment of a

neutral facilitator. On 22 January 2002, the employer submitted a revised proposal and further negotiations took place, during all of which teachers did not withdraw any instructional services, since they were prevented from doing so by Bill No. 18. The Government then decided to introduce Bills Nos. 27 and 28.

- 258.** Taken together, the *Education Services Collective Agreement Act* (Bill No. 27) and the *Public Education Flexibility and Choice Act* (Bill No. 28) cancelled the limited right to strike still retained by teachers, as it “deemed” a collective agreement to exist. They unilaterally imposed unfavourable terms and conditions of employment to teachers for a period of three years. They removed previously agreed collective agreement provisions, e.g. section 2(1)(a)(iv) of Bill No. 27 which provides that ten local agreements “are void and cease to have any effect”; according to the complainants, this means that the Government has eliminated in ten areas of the province all the local terms and conditions of employment on such matters as seniority rights, leaves of absence, hours of work, etc. Bill No. 27 also eliminated the possibility for teachers to negotiate provisions dealing with the consequences of the Government’s actions. Bill No. 28 granted school boards the right to change unilaterally the school calendar, and rendered void any negotiated collective agreement provision that would conflict with the changes brought by the employer.
- 259.** The complainants add that they fully support the parallel complaints filed by other workers’ organizations in the health and education sectors and, in light of the nature and degree of the violation of international standards, request the ILO to send a study and information mission to British Columbia to investigate the complaint.

Case No. 2180 (Bills Nos. 27, 28 and 29)

- 260.** The complaint in this case is filed by the Canadian Labour Congress (CLC) and the National Union of Public and General Employees (NUPGE) on behalf of the British Columbia Government and Service Employees’ Union (BCGSEU), which regroups over 60,000 employees of the provincial Government, and of the Health Sciences Association of British Columbia (HSA).
- 261.** In addition to Bills Nos. 27 and 28 (described above in connection with Case No. 2173) this complaint concerns the *Health and Social Services Delivery Improvement Act* (Bill No. 29). The complainants’ allegations regarding Bills Nos. 27 and 28 are essentially the same as those submitted in Case No. 2173. Bill No. 27 was introduced and adopted without any consultation with teachers’ unions; the legislation imposed for a period of three years, pay and working conditions reflecting the employer’s position; there was no reference to independent impartial arbitration; and strikes were prohibited. As regards Bill No. 28, the complainants add that, over the years, teachers and non-teaching staff had negotiated and won collective agreement provisions on several aspects, e.g. size of class, courses they should teach, number of hours of instruction. To achieve these terms, they had to make compromises on other issues. In the name of “flexibility and choice” the Government now gives employers the right to override these negotiated provisions, without compensation, consultation, arbitration or agreement; and Bill No. 28 operates retroactively (section 4(2)). The Bill also overrides provisions protecting the job security of employees and permits “contracting out”, allowing employers in the education sector to use non-union staff or services, notwithstanding previously negotiated collective agreement provisions. Finally, the legislation is not temporary, as it contains no “sunset” clause.
- 262.** Regarding the *Health and Social Services Delivery Improvement Act* (Bill No. 29), the complainants indicate that, before the adoption of that legislation, virtually all employers in the health sector and social services sector were covered by collective agreements. These employees had achieved significant progress through difficult strikes and

compromises on several matters, including job security, mobility of jobs and wages. The complainants allege that Bill No. 29 wipes out this progress: it imposed unfavourable and unacceptable terms reflecting the employers' position, giving Bill No. 29 priority over the Labour Relations Code of British Columbia; it permits the employer to override collective agreements and to "contract out" to non-union employers; it allows government interference in the future choice of bargaining agents by employees; it interrupts already negotiated contracts.

- 263.** The complainants request that all these Acts be repealed, that affected employees receive compensation, and that the Government comply with ILO Conventions in future. In view of the complexity and degree of these violations, the complainants request that an ILO study and information mission be established to look into these complaints.

Case No. 2196 (Bill No. 28)

- 264.** The complaint in this case is filed by the Canadian Association of University Teachers (CAUT) on behalf of the College Institute Educators' Association (CIEA), which is made up of 7,000 faculty and staff members employed in colleges, universities and institutes in the post-secondary education sector.

- 265.** The complaint concerns the *Public Education Flexibility and Choice Act*, Bill No. 28 (described above in connection with Cases Nos. 2173 and 2180). The complainant organization points out that Bill No. 28 also applies to faculty members in post-secondary colleges, universities and institutes. It voids key working conditions that were once freely negotiated, and deprives workers of the right to freely negotiate these terms and conditions. The complainant alleges that this legislation violates Conventions Nos. 87, 98, 151 and 154, essentially for the same reasons as those submitted in Case No. 2173. Without consulting trade unions, the Government has removed critical working conditions from the scope of collective bargaining, and has handed these issues to the sole prerogative of employers. The complainant also refers to the other Bills mentioned in the above complaints.

General conclusions

- 266.** The complainants in each of the abovementioned cases allege that Bills Nos. 2, 15, 18, 27, 28 and 29 violate ILO Conventions and freedom of association principles, and created a situation where employers are not inclined to utilize collective bargaining procedures, but rather refuse to bargain and await the legislated imposition of their concession demands, in both the public health and educational sectors. The complainants add that this discourages the use of voluntary bargaining between employers and workers for the settlement of conditions of employment. The complainants in Cases Nos. 2166, 2173 and 2180 request that the ILO send a study and information mission to British Columbia to investigate the complaints, in light of the nature and degree of the violation of international standards.

B. The Government's reply

General

- 267.** In its communication of 26 July 2002, the Government explains in respect of all the complaints the economic and fiscal background that prevailed at the time, and states that it was faced with the rising cost of debt servicing and an increasing deficit:
- changes in the global economy and public sector expenditure commitments have led to unsustainable pressures on the budget that needed to be addressed;

- budget estimates for 2002-03 predicted that the debt level would increase from \$36.4 billion to \$43.9 billion over the next three years;
- overall taxpayer supported debt, as a percentage of provincial GDP was expected to increase to 25 per cent in fiscal year 2003-04;
- the present fiscal plan prepared by the Government calls for a reduction of the deficit to \$1.8 billion in 2003-04 and its complete elimination in 2004-05;
- health and education expenditures by the province represented 64.4 per cent of the total expenditure in 2001-02, a figure that would reach 66.5 per cent by fiscal year 2002; wage costs account for significant percentages of the total expenditure (76 per cent in the education sector; from 62.3 per cent to 80 per cent in the health sector).

268. In addition, recent labour market trends indicate that:

- public sector wage settlements have surpassed private sector increases (2.3 per cent in 2001 and 2.44 per cent in 2002, as compared to 1.65 per cent and 1.80 per cent for the same years);
- effective wage adjustment in base rates for British Columbia shows that public settlements (2.8 per cent) exceeded those in the provincial private sector (1.7 per cent);
- the provincial rate of unemployment has exceeded the national average since 1998;
- the average number of employees in key public sector areas (education, health, social services and public administration) has increased significantly in the last three years, to 22.1 per cent of the total provincial employment.

269. The Government adds that it was recently elected with a wide mandate to improve fiscal accountability and reduce the public deficit and the debt. The measures it took through Bills Nos. 2, 15, 18, 27, 28 and 29 were not adopted arbitrarily but rather to respond to a preoccupying situation in the public health and education sectors. Any restrictions on collective bargaining or on the right to strike were exceptional measures, enacted in view of the difficult economic and fiscal situation, in the context of protracted and difficult labour disputes, which could have serious consequences in the health and education sectors.

270. In its communication of 8 August 2002, the Government considers that the complaints are fundamentally frivolous, vexatious, mostly driven by political motivation, and completely without merit. It adds that it would not be appropriate to discuss the issues raised in connection with Bills Nos. 27, 28 and 29, since several complainants have filed proceedings in this respect in the Supreme Court of British Columbia.

Case No. 2166 (Bills Nos. 2 and 15)

271. In its communication of 26 July 2002, the Government submits that neither the *Health Care Services Continuation Act* (Bill No. 2), nor the *Health Care Service Collective Agreements Act* (Bill No. 15) infringe on the substantive provisions of Convention No. 87. The Government had to act as it felt that there was a significant threat on the health and safety of citizens, and that the health-care system was in danger.

272. Negotiations between HEABC and the bargaining associations of the nurses and the paramedical professionals had been going on since January 2001, and the nurses' collective agreement was to expire on 31 March 2001. The negotiations had reached an

impasse and the nurses were heading towards a full strike. As a result of the job action by nurses and other health-care professionals, 6,300 surgeries had been cancelled during that period, dozens of British Columbians had to leave the province for urgent medical treatment. Prior to introducing the legislation, the Government attempted to resolve the impasse. The Ministers of Finance, Health Planning and Health Services met with the leaders of the British Columbia Nurses' Union on 11 June 2001 and, while stressing that they were not there to negotiate a collective agreement, which was the responsibility of the employers' bargaining agent (HEABC), they offered the union a "partnership" to discuss the fundamental issues. The union rejected that offer the following day. Nevertheless, the Ministers of Finance and Health Services met again with the leaders of the nurses' union on 15 June 2001.

- 273.** During the seven months leading up to the introduction of the legislation, the HEABC had made an offer (based on directions from the Ministry of Finance as to what was reasonable and affordable given the province's economic and fiscal position) to the nurses' bargaining agent. According to the Government, the offer was very generous by the standards then prevailing in the public sector. The offer was rejected by 96 per cent of the members who had voted. On 14 June 2001, the Ministers of Health Planning and Health Services met again with representatives of HSA and reiterated their offer of partnership to discuss the issues. The offer was rejected.
- 274.** Considering that the situation had reached a crisis level that required emergency and definitive action, the Government introduced Bill No. 2, which came into force on 20 June 2001. Bill No. 2 provided for the possibility of a "cooling off" period, to give the parties time to resolve their differences and find short-term and long-term solutions; it also required both bargaining agents to resume or commence collective bargaining and to make every reasonable effort to conclude a collective agreement. Pursuant to the Act, on 20 June the Minister of Labour imposed a 50-day cooling off period, during which no agreements were concluded. The Minister imposed a further ten-day cooling off period on 9 August 2001, the day when Bill No. 15 was passed.
- 275.** Bill No. 15 ended the cooling off period prescribed under Bill No. 2. As regards nurses, section 2(1) of Bill No. 15 provided that the collective agreement between the parties would be comprised of: the terms and conditions of the previous agreement; the provisions agreed upon during the negotiations; and the provisions of the settlement package tabled on 16 July 2001 by the employers' bargaining agent (HEABC). Section 3(1) of Bill No. 15 provided similar provisions as regards paramedical professionals. These settlements are to expire on 31 March 2004.
- 276.** The Government submits that this legislation was introduced as a last option, which was necessary to end the dispute and to ensure that patients would receive the health care they needed. According to the Government, the settlement provided a fair compensation package, with competitive rates. Nurses received a 23.5 per cent wage increase over three years, which brought them to parity with nurses in neighbouring Alberta and the highest total compensation package in Canada. Paramedical professionals received increases from 5.5 per cent to 14.25 per cent over three years. All of which at a time when public sector increases were in the 2 per cent to 3 per cent range.

Case No. 2173 (Bills Nos. 15, 18, 27 and 28)

- 277.** In its communication of 26 July 2002, the Government submits that neither of these Acts infringes the substantive provisions of Convention No. 87. As regards the *Health Care Service Collective Agreements Act* (Bill No. 15) the Government refers to its arguments in Case No. 2166.

278. As regard the *Skill Development and Labour Statutes Amendment Act* (Bill No. 18), the Government submits that this piece of legislation, by amending the Labour Relations Code and the *Pension Benefits Standard Act*, delivers four specific commitments made during the election campaign: restore education as an essential service; restore the workers' right to secret ballots; eliminate sector bargaining in the construction industry; and restore pensions to workers where those have been withheld. On the issue of essential services, the Government indicates that over 4 million days had been lost in strikes by teachers during the last ten years. Bill No. 18 restores education as an essential service as it was until 1993; it gives the Labour Relations Board the authority to designate services that need to be maintained if their disruption would pose an immediate and serious threat to the delivery of educational programmes. According to the Government, Bill No. 18 does not take away the teachers' right to strike or their right to bargain collectively, but recognizes that the right to education must take precedence over the right to strike. It provides that while teachers and support staff still have the right to strike, they will have to maintain in schools a level of services as determined by the Labour Relations Board, on a case-by-case basis. The legislation brings a balance between the rights of workers to put pressure on employers through industrial action and the right of students to receive an education. The Government adds that the consultation process was very extensive in that the voters were consulted, since these legislative objectives were clearly enunciated in the election platform.

279. As regards the *Education Services Collective Agreement Act* (Bill No. 27) and the *Public Education Flexibility and Choice Act* (Bill No. 28), the Government states that it is not appropriate to discuss these laws in the ILO context, since they are currently challenged before the Supreme Court of British Columbia by various unions of the health and education sectors. It nevertheless provides the following observations.

280. Bill No. 27, which came into force on 27 January 2002, ended a lengthy teachers' dispute and provided for a collective agreement giving teachers a 7.5 per cent increase over three years, expiring on 30 June 2004. That settlement makes British Columbia teachers some of the highest paid in Canada. The Government felt compelled to take some action to review the bargaining process in the education sector as the dispute had lasted ten months and the disruption was causing great harm to students; in addition, no settlement had been achieved in this sector since 1994. Section 5 of the Act also provides for the appointment of a commission to review the structure and procedure of collective bargaining in the education sector.

281. The Government states that Bill No. 28, which came into force on 28 January 2002, was enacted to provide a more flexible, more responsive and better managed education system by returning decision-making to parents and locally elected school boards regarding issues such as class size, the structure of the school day and school year; the legislation gives school boards some flexibility on class size, within certain limits established in the Act. For non-classroom educators (librarians, counsellors, etc.), Bill No. 28 allows these decisions to be driven by student needs, parent concerns and local priorities, and not by rigid, provincially imposed, ratios, negotiated at the bargaining table. Collective bargaining continues as regards teachers' wages and benefits.

Case No. 2180 (Bills Nos. 27, 28 and 29)

282. In its communication of 26 July 2002, the Government submits, as regards Bills Nos. 27 and 28, the same observations as in Case No. 2173, and reiterates it would not be appropriate to discuss these issues in the ILO context until these court cases are concluded.

283. Regarding the *Health and Social Services Delivery Improvement Act* (Bill No. 29), which came into force on 28 January 2002, the Government states that it was enacted to

restructure the health-care system and to reduce the escalating costs of health services. The Act simplifies notice and lay-off provisions, eliminates inflexible job security provisions, allows health authorities to transfer functions and staff with greater flexibility, and to determine the most efficient and cost effective way of providing administrative support services. The Government also denies the complainants' allegation that the Act empowers it to intervene in the employees' choice of bargaining agent. The Government adds that, prior to its election, wide dialogue and consultations were held on the health-care issue throughout the province, with 350 witnesses heard and 700 written submissions received. According to the Government, there was a huge problem of sustainability with the health-care system: it represented 38.9 per cent of the 2001 budget and costs \$26 million a day to operate; its costs have grown three times faster than the British Columbia economy; labour costs are by far the largest factor in health care and British Columbia has the highest labour costs of any province in Canada. The existing system would collapse if the situation were not addressed.

Case No. 2196 (Bill No. 28)

- 284.** In its communication of 26 July 2002, the Government submits, as regards Bill No. 28, the same observations as those submitted in Case No. 2173, including that the case should not be discussed as it is sub judice.
- 285.** In its supplementary observations of 20 January 2003, the Government states that the purpose and effect of the impugned Acts is, in essence, to remove certain matters from the scope of collective bargaining in order to ensure that health and education management has the ability to provide flexible, efficient and cost-effective service delivery. The matters which have been removed from the scope of collective bargaining include: in the area of education, class size, method of instruction and the setting of the school calendar; and, in the health sector, the ability to transfer functions and services from one health-care facility to another. By ensuring that health care and education management has the unfettered ability to make and implement decisions in this area, the statutes increase their accountability to the public in respect of efficient and cost-effective delivery of crucial public services.
- 286.** The Government submits that Convention No. 87 does not mandate that trade unions are able to bargain collectively on each and every issue which arises in the context of employment. If it did, signatory governments could not legislate to protect minimum wages or hours of work standards, or make mandatory health and safety rules regardless of the desire of an employer and the trade union representing its workers to bargain some different, lesser standards. The trade unions affected by these statutes are powerful social and political entities in the province; they are engaged in collective bargaining in the public sector and provide essential services to the population. The Government cannot and must not concern itself solely with the interests of trade unions in maximizing the scope of collective bargaining and the control of trade unions in the workplace; rather, the Government must weigh those interests against the public interest in ensuring that the public delivery of health and education services remains universal and sustainable. Convention No. 87 was not intended to interfere with the ability of signatory governments to balance competing social interests in a manner which best serves the public interest. Nor is it for the ILO to second guess the Legislature's decision as to the relative value and importance of competing social policy choices in health and education; so long as these choices are made through a democratic political process and do not undermine the fundamental rights of workers to organize, to select their bargaining agent and to engage in collective bargaining, there is no violation of Convention No. 87.

C. The Committee's conclusions

287. *The Committee notes that these complaints concern six Acts adopted by the Government of British Columbia in connection with labour relations, and in particular the right to strike and collective bargaining in the health and education sectors, namely:*

- *the Health Care Services Continuation Act (entitled “Bill No. 2” before its adoption);*
- *the Health Care Services Collective Agreements Act (entitled “Bill No. 15” before its adoption);*
- *the Skills Development and Labour Statutes Amendment Act (entitled “Bill No. 18” before its adoption);*
- *the Education Services Collective Agreement Act (entitled “Bill No. 27” before its adoption);*
- *the Public Education Flexibility and Choice Act (entitled “Bill No. 28” before its adoption); and*
- *the Health and Social Services Delivery Improvement Act (entitled “Bill No. 29” before its adoption).*

General

288. *As regards the Government's submission, in its communication of 8 August 2002, that the complaints are fundamentally frivolous, vexatious, driven by political motivation, without any merit, and only serve to trivialize the important role of the Committee on Freedom of Association, the Committee notes that the impugned Acts affected large numbers of employees in the health and education sectors, and imposed terms and working conditions for an extended period of time, i.e. three years. Furthermore, they do constitute, prima facie, an interference by the authorities in the regular bargaining process, since the Government intervened legislatively to put an end to a legal strike (Bill No. 2) and to impose the contents of collective agreements (Bills Nos. 15 and 27). Whether, and to what extent, these Bills and the other pieces of legislation (Bills Nos. 18, 28 and 29) amounted to violations of freedom of association principles is for the Committee to determine. The Committee recalls in this respect that when a State decides to become a Member of the ILO, it accepts the fundamental principles embodied in the Constitution and Declaration of Philadelphia, including the principles of freedom of association [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 10] and all governments are obliged to respect fully the commitments undertaken by ratification of ILO Conventions [see **Digest**, op. cit., para. 11].*

289. *Regarding the Government's argument that it would not be proper to comment on Bills Nos. 27, 28 and 29 while they are challenged in the Supreme Court of British Columbia, the Committee recalls that governments should recognize the importance for their own reputation of formulating detailed replies to the allegations brought by complainant organizations, so as to allow the Committee to undertake an objective examination [see **Digest**, op. cit., para. 20]. The Committee also points out 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 [see **Digest**, op. cit., Annex I, para. 33]. The Committee trusts that the competent provincial tribunal will take freedom of association principles into account in its ruling on these issues, as was done by the Supreme Court of Canada in the Dunmore Case (2001 CSC 94).*

290. *The Committee also notes the Government's detailed observations on the province economic climate, the budget constraints, the fiscal objectives and the pressures in the public sector which, according to the Government, obliged it to intervene legislatively in order to avoid a national crisis in the health and education sectors. The Committee is aware that collective bargaining in the public sector calls for verification of the available resources in public bodies, that such resources are dependent on state budgets and that the period of duration of collective agreements in the public sector does not always coincide with the duration of the budgetary laws – a situation which can give rise to difficulties. In so far as the income of public bodies depends on state budgets, it would not be objectionable – after wide discussion and consultation between the concerned employers' and employees' organizations in a system having the confidence of the parties – for wage ceilings to be fixed in state budgetary laws, and neither would it be a matter for criticism that the Ministry of Finance prepare a report prior to the commencement of collective bargaining with a view to ensuring respect of such ceilings. Irrespective of any opinion expressed by the financial authorities, the bargaining parties should, however, be free to reach an agreement; if this is not possible, any exercise by the public authorities of their prerogatives in financial matters which hampers the free negotiation of collective agreements is incompatible with the principle of freedom of collective bargaining. In the light of the above, provision should be made for a mechanism which ensures that both trade unions and employers are adequately consulted and may express their points of view to the financial authority responsible for the wage policy [see **Digest**, op. cit., para. 898]. Therefore, while taking fully account of the financial and budgetary difficulties facing governments, the Committee considers that the authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants. Where circumstances rule this out, measures of this kind should be limited in time and protect the standard of living of the most affected workers. In other words, a fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the bargaining parties, on the one hand, and measures which must be taken by the Government to overcome their budgetary difficulties, on the other hand [see **Digest**, op. cit., para. 899].*

Case No. 2166 (Bills Nos. 2 and 15)

291. *The Committee notes that the complainants in this case alleges that Bill No. 2 forced them to cease the strike action they had engaged in (while maintaining essential services) to support the renegotiation of their collective agreement, that the working conditions ultimately imposed through Bill No. 15 essentially reflected the employers' last offer, that the differentiated wage increases were inadequate and divisive, and that there was no adequate consultation with workers' organizations. The Government submits for its part that the negotiations with nurses and paramedical professionals had reached an impasse, that the situation was rapidly deteriorating as many surgeries and medical procedures had to be cancelled, and that the nurses were heading towards a full strike. The Government adds that the legislative settlement was imposed as a last option as the health and safety of the population was threatened, that took into account the province budgetary and fiscal situation and, in any event, that the settlement provided a fair compensation package, when compared both with the remuneration of the same categories of workers in neighbouring provinces and with the increases granted in other branches of the public sector in British Columbia.*

292. *The Committee notes that this case concerns the health sector, which it considers as an essential service in the strict sense of the term, where the right to strike can be restricted or even prohibited [see **Digest**, op. cit., para. 544]. Therefore, Bill No. 2 cannot be said **in itself** to violate freedom of association principles. However, where the right to strike is legitimately restricted or prohibited, adequate protection should be given to the workers to compensate them for the limitation thereby placed on their freedom of action with regard*

to disputes affecting such services. Restrictions on the right to strike should be accompanied by adequate, impartial and speedy compensatory procedures, such as conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented [see **Digest**, *op. cit.*, paras. 546-547]. Based on the information available, the Committee concludes that the workers in question did not benefit from such impartial and adequate compensatory procedures and that sections 2 and 3 of Bill No. 15 essentially imposed the employers' last offer.

293. *The Committee further notes that the "deemed collective agreement" imposed by virtue of Bill No. 15 does not permit much variation, even if the parties later agreed upon such modifications, and that this imposed agreement expires on 31 March 2004, i.e. approximately three years and nine months from the expiry of the previous agreement, a duration that the Committee has considered excessive when discussing restraints on collective bargaining [see **Digest**, *op. cit.*, para. 887].*

294. *The Committee therefore concludes that the Health Care Services Collective Agreements Act (Bill No. 15) violated freedom of association principles inasmuch as it did not respect the autonomy of the bargaining parties and legislatively imposed working terms and conditions, without the workers being able to submit the dispute to mutually and freely chosen independent and impartial arbitration. The Committee firmly requests the Government to avoid in future having recourse to such legislative intervention, and strongly hopes that the next round of negotiations will be held in accordance with the principles mentioned above. The Committee recommends that, to that effect, the Government adopt in the meantime a flexible approach, should the parties agree upon variations of the so-called "deemed agreement" amounting in fact to a legislatively imposed settlement. The Committee requests to be kept informed of developments in this respect.*

Case No. 2173 (Bills Nos. 15, 18, 27 and 28)

295. *The Committee notes that the complainants in this case submit similar allegations as those made in Case No. 2166 as regards Bill No. 15, and that the Government provides essentially the same reply. The Committee thus refers to the conclusions and recommendations made above in this respect (see paragraph 294 above).*

296. *As regards the other pieces of legislation mentioned in this complaint, the complainants allege that Bills Nos. 18, 27 and 28 have affected large numbers of workers in the education sector by legislatively imposing a collective agreement, depriving workers of the right to negotiate freely their terms and conditions of employment, and restricting arbitrarily their right to strike. The Government submits for its part that: Bill No. 18, *inter alia*, restored education as an essential service and brings a balance between the right of workers to put pressure on employers and the right of students to receive an education; Bill No. 27 ended a teachers' dispute that had lasted ten months and caused great harm to students, and that the settlement imposed makes British Columbia teachers among the best paid in Canada; Bill No. 28 was enacted to provide a more flexible education system by returning to local school boards some issues such as class size, structure of school day and school year, etc.*

297. *The Committee notes that this complaint, by contrast to Case No. 2166, concerns the education sector, which it does not consider as an essential service in the strict sense of the term where the right to strike could be restricted or prohibited [see **Digest**, *op. cit.*, para. 545]. Recalling that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interest [see **Digest**, *op. cit.*, para. 475], the Committee concludes that the provisions of*

Bill No. 18 which make education an essential service are in violation of freedom of association principles and should be repealed. In addition, once Bill No. 27 entered into force, a collective agreement was “deemed” to exist and, given the existing labour relations system in British Columbia (and the other provincial and federal jurisdictions) any strike that might have been ongoing would become illegal. Nevertheless, the Committee recalls that minimum services may be established in this sector, in full consultation with social partners, in cases of strikes of long duration.

- 298.** *As regards the collective bargaining process during that dispute, based on the information available, the Committee concludes that there were no adequate consultations, and that Bill No. 27 unilaterally imposed a legislative settlement for a period of three years in the education sector, thereby not respecting the autonomy of the bargaining parties. The Committee reiterates here the comments made in Case No. 2166 concerning both the excessive length of this imposed agreement and the limited possibility of variation even if the parties would later agree upon modifications. The Committee firmly requests the Government to avoid in future having recourse to such legislated settlement, and strongly hopes that the next round of negotiations will be held in accordance with the principles mentioned above. The Committee recommends that, to that effect, the Government adopt in the meantime a flexible approach and consider changes to the legislation on working conditions if the parties concerned agree. The Committee requests to be kept informed of developments in this respect.*
- 299.** *Noting further that section 5 of Bill No. 27 provides for the appointment of a commission to review the structure and procedure of collective bargaining in the education sector, the Committee requests the Government to indicate whether such a commission has been appointed. Recalling that where a government seeks to alter bargaining process structures in which it acts actually or indirectly as employer, it is particularly important to follow an adequate consultation process, whereby all objectives perceived as being in the overall interest can be discussed by all parties concerned, in keeping with the principles established in the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), [see **Digest**, op. cit., para. 856], the Committee recommends that the Government closely associate employers and trade unions in that open and neutral process and requests it to keep it informed of developments in this respect.*
- 300.** *As regards the Public Education Flexibility and Choice Act (Bill No. 28), the Committee notes that the Act removed from collective bargaining some matters previously negotiated (class size, assignment of courses to teachers, structure of school year and school days, etc.) and returned decision-making to teaching institutions in this respect, within certain limits established in the Act. The Committee also notes that the Act operates retroactively since article 4(2) of Bill No. 28 voids collective agreement provisions previously concluded in such matters. The Committee recalls that, while the determination of broad lines of educational policy is not a matter for collective bargaining between the competent authorities and teachers’ organizations, it may be normal to consult these organizations on such matters [see **Digest**, op. cit., para. 813]. This is particularly important in cases such as the present one, where the issues in question were previously negotiated, with the usual give and take process, which means that the parties probably gave away some demands in return for concessions, which are now being taken away through legislative decision. Such a unilateral action by the authorities cannot but introduce uncertainty in labour relations which, in the long term, can only be prejudicial. The Committee therefore recommends, in the higher interest of sound and stable industrial relations, that the issues raised in connection with Bill No. 28 be made part of the mandate of the commission established under section 5 of Bill No. 27 to re-examine the structure and procedure of collective bargaining in the education sector. The Committee requests the Government to keep it informed of developments in this respect.*

Case No. 2180 (Bills Nos. 27, 28 and 29)

- 301.** *The Committee notes that the complainants in this case submit similar allegations as those raised in Case No. 2173 concerning Bills Nos. 27 and 28, and that the Government provides essentially the same reply. The Committee therefore refers to the conclusions and recommendations made above in these respects (see paragraph 298 above).*
- 302.** *As regards the Health and Social Services Delivery Improvement Act (Bill No. 29), the Committee notes that this legislation introduced major changes to the existing system of labour relations in the health and social sectors, which affected previously negotiated collective agreement provisions and will have a lasting effect on the collective bargaining regime of employees in these sectors. While taking into account the tax and budget considerations put forward by the Government, the Committee considers it essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers [see **Digest**, op. cit., para. 931] which was not the case here. The Committee recommends that such full and detailed consultations be held with representative organizations in the health and social sectors; to be meaningful, these consultations should be held under the auspices of a neutral and independent facilitator that would have the confidence of all parties, in particular trade unions and their members whose rights are mostly affected by Bill No. 29.*

Case No. 2196 (Bill No. 28)

- 303.** *The Committee notes that the complainants in this case submit similar allegations as those raised in Case No. 2173 concerning Bill No. 28, and that the Government provides a similar reply. The Committee therefore refers to the conclusions and recommendations made above in this respect (see paragraph 300 above).*

Concluding remarks

- 304.** *The Committee notes that all the Acts complained of in these cases involve a legislative intervention by the Government in the bargaining process, either to put an end to a legal strike, to impose wage rates and working conditions, to circumscribe the scope of collective bargaining, or to restructure the bargaining process. Recalling that the voluntary negotiation of collective agreements, and therefore the autonomy of bargaining partners, is a fundamental aspect of freedom of association principles [see **Digest**, op. cit., para. 844] and that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests [see **Digest**, op. cit., para. 475], the Committee regrets that the Government felt compelled to resort to such measures and trusts that it will avoid doing so in future rounds of negotiations. The Committee also points out that repeated recourse to legislative restrictions on collective bargaining can only, in the long term, prejudice and destabilize the labour relations climate if the legislator frequently intervenes to suspend or terminate the exercise of rights recognized for unions and their members. Moreover, this may have a detrimental effect on workers' interests in unionization, since members and potential members could consider it useless to join an organization the main objective of which is to represent its members in collective bargaining, if the results of bargaining are constantly cancelled by law [see **Digest**, op. cit., para. 875]. The Committee also hopes that, in future, full, frank and meaningful consultations will be held with representative organizations in all instances where workers' rights of freedom of association and collective bargaining are at stake. The Committee brings the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee's recommendations

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

(a) *As regards the education sector (Bills Nos. 18, 27 and 28):*

- (i) *the Committee requests the Government to repeal the provisions of Bill No. 18 which make education an essential service, and to adopt legislative provisions ensuring that workers in this sector may enjoy and exercise the right to strike, in accordance with freedom of association principles;*
- (ii) *the Committee nevertheless recalls that minimum services may be established in this sector, in full consultation with social partners in cases of strikes of long duration;*
- (iii) *the Committee requests the Government to adopt a flexible approach and to consider amending the relevant provisions of Bill No. 27 so that the bargaining parties may, by agreement, vary the working conditions unilaterally imposed by the impugned legislation;*
- (iv) *the Committee recommends that the Government establish, with appropriate safeguards of neutrality and independence, the commission provided for in Bill No. 27 to review the structure and procedures of collective bargaining in the education sector, and that it include in its mandate the issues raised in connection with Bill No. 28.*

(b) *As regards the health and social services sectors (Bills Nos. 2, 15 and 29):*

- (i) *the Committee requests the Government to amend its legislation to ensure that workers in this sector enjoy adequate protection measures, to compensate them for the limitation placed on their right to strike, in accordance with freedom of association principles;*
- (ii) *the Committee requests the Government to adopt a flexible approach and to consider amending the relevant provisions of Bill No. 15 so that the bargaining parties may, by agreement, vary the working conditions imposed by the impugned legislation;*
- (iii) *the Committee recommends that full and detailed consultations be held with representative organizations, under the auspices of a neutral and independent facilitator, to review the collective bargaining issues raised in connection with Bill No. 29.*

(c) *The Committee requests the Government to refrain from having recourse in future to legislatively imposed settlements, and to respect the autonomy of bargaining partners in reaching negotiated agreements.*

(d) *The Committee requests the Government to ensure in future that appropriate and meaningful consultations be held with representative*

organizations when workers' rights of freedom of association and collective bargaining may be affected.

- (e) The Committee requests the Government to provide it with the judicial decisions concerning the current court challenges mentioned in the present complaints.*
- (f) The Committee requests the Government to keep it informed of developments on all the above issues.*
- (g) The Committee draws the legislative aspects of these cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

CASE NO. 2182

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

**Complaint against the Government of Canada
concerning the Province of Ontario
presented by
— the Ontario Federation of Labour (OFL) and
— the Canada Labour Congress (CLC)**

Allegations: The complainants allege that some provisions of the Ontario Labour Relations Act encourage the decertification of workers' organizations by requiring employers to post and distribute in the workplace documents setting out the process to terminate trade union bargaining rights.

- 306.** The complaint in the present case is contained in a communication from the Ontario Federation of Labour and the Canadian Labour Congress, dated 9 March 2002.
- 307.** In a communication of 10 October 2002, the Federal Government transmitted the reply of the Government of the Province of Ontario.
- 308.** Canada has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), nor the Collective Bargaining Convention, 1981, (No. 154).

A. The complainants' allegations

- 309.** The Ontario Federation of Labour (OFL), affiliated to the Canadian Labour Congress, is made up of 650,000 workers in more than 1,500 affiliated local unions. This complaint concerns some provisions of the Labour Relations Amendment Act, 2000 (Bill No. 139) which, according to the OFL, infringe guarantees of freedom of association and, in particular, ILO Conventions Nos. 87, 98 and 151. These provisions encourage the

decertification of workers' organizations by requiring employers to post and distribute in the workplace documents prepared by the Minister of Labour, setting out the process to terminate trade union bargaining rights.

310. Bill No. 139 passed third reading and received royal assent in December 2000. These provisions are now contained in section 63.1 of the Labour Relations Act (the LRA), which provides:

63.1(1) Within one year after the day the Labour Relations Amendment Act, 2000, receives royal assent, the Minister shall cause to be prepared and published a document describing the process for making an application for a declaration that the trade union no longer represents the employees in a bargaining unit. ...

63.1(3) The document shall explain who may make an application, when an application may be made and the procedure, as set out in this Act and in any rules made by the chair of the Board ... that the Board follows in dealing with an application.

63.1(4) An employer with respect to whom a trade union has been certified as a bargaining agent ... shall use reasonable efforts:

- (a) to post and keep posted a copy of a document published under this section in a conspicuous place in every workplace of the employer at which employees represented by the trade union perform work;
- (b) to post and keep posted with that copy a notice that any employee represented by the trade union may request a copy of the document from the employer;
- (c) once in each calendar year, to provide a copy of the document to all employees of the employer who are represented by the trade union; and
- (d) upon the request of an employee ... to provide a copy of the document to him or her, even though the employer has previously provided or will subsequently provide the employee with a copy of the document.

63.1(5) An employer shall not be found to be in violation of this Act as a result of doing anything set out in subsection (4).

311. In accordance with these provisions, the Minister of Labour prepared and published a document describing the process for decertification in December 2001. A copy of the poster and brochure were mailed that same month to all employers who had registered a collective bargaining relationship with the Ministry of Labour.

312. The complainants allege that section 63.1 of the LRA contravenes Convention No. 87, ratified by Canada, and is entirely inconsistent with the Government's obligations under international law to encourage, promote and protect the right of employees to bargain collectively. This provision constitutes a powerful message by the State of its opposition to the unionization of employees and a clear interference with that right. By virtue of freedom of association principles, all workers have the right to establish and join organizations of their own choosing; governments must take measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between unions and employers, and must allow trade unions to operate in full freedom.

313. The complainants submit that this provision constitutes a significant interference with the rights of employees to join and participate in the activities of trade unions. Rather than meeting its obligations at international law to encourage the process of collective bargaining, the Government of Ontario clearly intends to weaken trade unions and to encourage individuals not to exercise their right to organize or to engage in collective bargaining. Rather than encouraging the exercise of the right to collective bargaining the Government has chosen in a discriminatory and one-sided manner to promote the decertification of existing trade unions by conducting a campaign which can only be seen as designed to encourage interference with the exercise of trade union freedoms.

- 314.** Labour relations boards and academics have consistently noted that communications by employers to employees interfering with decisions relating to certification and decertification constitute unfair labour practices. Given the responsive nature of the employment relationship, messages sent by an employer may overly influence employees in the exercise of their right to join a union. Where that message from an employer is coupled with the imprimatur of the State, it cannot but interfere with the rights of employees to join workers' organizations and to participate in their activities. The fact that the distribution of such documents by an employer would otherwise be viewed as an unfair labour practice and unlawful interference with employees' rights under the LRA is made plain by subsection 63.1(5) which absolves an employer from liability under the Act for complying with the requirements to post and distribute.
- 315.** The legislation in question is noteworthy in that it advises employees only of their rights to decertify under the Labour Relations Act. It does not mention any of the rights that are intended to protect freedom of association including the right to engage in certification and in lawful activities of trade unions and to be free from discrimination or anti-union reprisal, all matters which are covered by the LRA. There is simply no precedent for the selective highlighting of only one particular legislative provision, and there is no other requirement in the employment field for the distribution by an employer of legislative information to individual employees on an annual basis. The conclusion to be drawn from this selective posting, taken together with the unprecedented requirement of individual distribution on an annual basis to each individual employee, is that the provisions are calculated to influence and interfere with employees' exercise of freedom of association.
- 316.** In addition, the Government has not chosen to require that similar posters or brochures be distributed in non-union workplaces advising employees of their rights to unionize, thus making it plain that the intention of the legislative provisions is not to inform employees about relevant labour relations laws in an even-handed fashion but is rather to interfere with the right of employees who have chosen to unionize. The Government may argue that employees did not have sufficient knowledge of their right to decertify, but the trade union movement has not been provided with empirical evidence that this is the case, nor do any such studies appear to have been performed by the Government. Further, while the Government may argue that employees receive information on unionization from trade unions, under Ontario law, unions are precluded from entering into workplaces by the operation of trespass laws. The fact that the Government is unwilling to place equivalent obligations on employers to inform employees of their rights to organize under the same legislation indicates that the Government wants to interfere in the employees' choice, to erode the existing unionized base and to oppose collective bargaining as the preferred means for the resolution of disputes between employers' and workers' organizations.
- 317.** The provisions requiring employers both to post and distribute information cannot but send a powerful message that both the State and the employer prefer that employees not be unionized. There is nothing in the brochure which reassures employees as to their right to remain members of a trade union and not to be discriminated against as a result of union activity, and no mention is made of the employers' obligation to recognize and bargain with trade unions. This skewed message can only be viewed as intended to, and having the effect of, discouraging unionization and interfering with the workers' right freely to associate.

B. The Government's reply

- 318.** In its communication of 3 October 2002, the Government of Ontario submits that the obligation made to employers in unionized workplaces to post a decertification information poster under Bill No. 139 does not violate ILO Conventions Nos. 87, 98, 151 and 154.

- 319.** The Labour Relations Amendment Act, 2000 (Bill No. 139), which received royal assent on 21 December 2000, among other things, amended the Labour Relations Act, 1995 (LRA) to require within one year the publication of a document describing the process for making an application for a declaration that a trade union no longer represents the employees in a bargaining unit. The decertification document was published on 14 December 2001. One English and one French copy of each of the poster and the brochure, together with an explanatory cover letter, were sent out to all employers who had filed a copy of their collective agreement with the Ministry of Labour as required by the LRA.
- 320.** The document sets out neutral factual information about union decertification. It explains who may make an application, when an application may be made and the procedure as set out in the Act and in the rules of the Ontario Labour Relations Board (OLRB). Every unionized employer is required to use reasonable efforts to post a copy of the document in the workplace, provide a copy of the document to every unionized employee once per calendar year and provide a copy to unionized employees who request it. Compliance with these reasonable efforts requirements by an employer will not constitute an unfair labour practice under the Act.
- 321.** Generally, the statutory reasonable efforts to post and distribute apply to employers with a collective bargaining relationship governed by the LRA. These requirements do not apply to employers who have no unionized employees or employers whose unionized employees are governed under other statutes, for example, firefighters covered by the Fire Protection and Prevention Act, 1997; police and related employees covered by the Police Services Act or the Public Service Act; employees of a college covered by the Colleges Collective Bargaining Act; or teachers covered by the Education Act and the Provincial Schools Negotiations Act.
- 322.** The law provides that if the Minister believes that the document has become out of date for various reasons, the Minister must ensure that a new document is prepared and published within one year after the previous document becomes out of date. The OLRB is responsible for the interpretation and enforcement of the LRA. There is no specific enforcement mechanism in section 63.1 of the LRA. However, in the event of a complaint and a determination that there has been a contravention of the LRA, the OLRB has broad powers to enforce the Act.
- 323.** The Government of Ontario submits that these provisions support workplace democracy and the individual right of workers freely to decide whether they wish to be represented by a union and continue with union representation. Certification information is made available to employees by unions during an organization drive but, until now, there had been little information available to employees about decertification. Unions did not provide it and employers were generally prohibited from doing so. The purpose of the decertification poster is simply to inform employees of their rights under the LRA, which they may otherwise not be aware of, by providing neutral, factual information.
- 324.** The complainants have provided no evidence of how the posting of information about employees' rights to choose whether to continue to be represented by a union prevents employees who wish to remain represented by a union from doing so. In fact, under the LRA, employees are protected from an employer's influence in a decertification process. The document clearly states that the employer must not be involved in the decertification process under section 63 of the LRA. Employees are protected from employer interference with their right to freedom of association pursuant to section 63(16) of the LRA, which states as follows: "Despite subsections (5) and (14), the Board may dismiss the application [for decertification] if the Board is satisfied that the employer or a person acting on behalf

of the employer initiated the application or engaged in threats, coercion or intimidation in connection with the application”.

- 325.** Several sections of the LRA provide further protections for employees of their right to unionize: section 5, which provides that every person is free to join a trade union of the person’s own choice and to participate in its lawful activities; section 72, which prohibits employers from interfering with employees’ rights on the basis of their trade union membership; section 76, which prohibits the use of intimidation or coercion to compel any person to become, refrain from becoming, to continue or cease to be a member of a trade union, or exercising other rights under the LRA; section 80, which provides rights of reinstatement of employees in case of violation; and enforcement provisions (sections 96 and 104).
- 326.** As regards the complainants’ arguments that unions are prevented from entering into workplaces to distribute information to non-unionized employees due to trespass laws, which allegedly created an imbalance that favours decertification of unions and disadvantage employees’ attempts to decide to join unions and engage in collective bargaining, the Government states that unions are free to distribute information about employees’ right to join a union, and exercise this right in Ontario. Under the LRA, union organizers who do not work for a particular employer generally do not have the right to enter that employer’s property to persuade employees to join their union. However, where employees live on property either owned or controlled by the employer, such as in remote logging or mining camps, the OLRB may direct that a trade union representative be provided access to the property for the purpose of persuading the employees to join a trade union. The law is an attempt to balance property rights with the right of employees to join a union. However, employees of a workplace are not prohibited from persuading their fellow employees at the same workplace to sign union cards before work or during a break. Unions are also not prohibited from distributing leaflets to employees as they enter or leave a workplace. Furthermore, in response to Bill No. 139, the complainant indicated that it would be distributing “how to join a union” materials to assist organizing drives in non-union workplaces.
- 327.** As regards the complainants’ allegation that the Government failed to consult workers’ organizations prior to implementing Bill No. 139, the Government states that it is committed to strengthening individual worker rights. Prior to the introduction of Bill No. 139, workers’ organizations and the general public were able to express their views about reforms both by direct communications with the Government and through the legislative process.

C. The Committee’s conclusions

- 328.** *The Committee notes that this case concerns section 63.1 of the Labour Relations Act of Ontario (the “LRA”) which provides that employers in unionized settings must post and circulate information, prepared by the Ministry of Labour, on rules and procedures for trade union decertification. The complainants allege in essence that these provisions violate ILO Conventions and freedom of association principles on the right to organize and bargain collectively. The Government of Ontario denies that the provisions amount to such a violation and replies that the purpose of the decertification information is simply to provide employees with neutral and factual information on their rights under the Act, which they may otherwise be unaware of.*
- 329.** *The Committee recalls that measures should be taken to guarantee freedom of association, which includes the effective recognition of collective bargaining. This necessarily implies the taking of positive steps, conducive to achieving freedom of association and the collective regulation of employment terms and conditions.*

- 330.** *The Committee considers that the provisions challenged in the present case cannot promote and encourage freedom of association. Quite the contrary, the poster and accompanying notice, being information prepared by the Ministry of Labour and posted in unionized workplaces with the Ministry's formal endorsement may be considered, at best, as a message by the Government that a decertification application would be entertained favourably and, at worst, as an incitement to apply for decertification, thus contravening Convention No. 87 ratified by Canada.*
- 331.** *The Government's argument that the object of this provision is to provide neutral and factual information might have been more convincing had the amending legislation introduced parallel provisions, with the official endorsement of the Labour Ministry, to inform workers in all non-unionized workplaces (not only in "remote logging or mining camps") of their right to organize and the procedures to do so, and of the various existing legal guarantees to ensure the free exercise of that right, e.g. protection against trade union discrimination (before and during certification), protection against employer interference, etc.*
- 332.** *The Committee further notes the contents of section 63.1(5), which provides that: "An employer shall not be found to be in violation of this Act as a result of doing anything set out in subsection (4)." Subsection 63.1(4) requires in some detail employers to "use reasonable efforts": to post and keep posted the decertification document in a conspicuous place in every unionized workplace [s. 63.1(4)(a)]; to post and keep posted a notice informing any unionized employee that they may request a copy of the document [s. 63.1(4)(b)]; once a year, to provide a copy of the document to all unionized employees [s. 63.1(4)(c)]; and, upon request of a unionized employee, to provide a copy of the document even though the employee has already been provided with the document [s. 63.1(4)(d)]. The Committee can only conclude that section 63.1(5) constitutes a pre-emptive provision to avoid possible unfair labour practices proceedings from being filed by trade unions; this also removes much weight to the Government's argument as to the wide redress powers of the OLRB, in respect of acts done by employers in accordance with section 63.1.*
- 333.** *The Committee considers that section 63.1 of the LRA does not encourage the promotion of freedom of association, is not conducive to harmonious labour relations and may rather ultimately prove counterproductive by creating a recurring climate of confrontation over certification issues. The Committee considers that it would be actually advantageous for the Government to avoid this type of provision and therefore requests it to repeal section 63.1 of the LRA and to keep it informed of developments in this respect.*

The Committee's recommendation

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

The Committee requests the Government of Ontario to repeal section 63.1 of the Labour Relations Act and to keep it informed of developments in this respect.

CASE NO. 2186

INTERIM REPORT

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

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

- 335.** In communications dated 14 March and 24 April 2002, the International Federation of Airline Pilots' Associations (IFALPA) presented a complaint of violations of freedom of association against the Government of China/Hong Kong Special Administrative Region.
- 336.** The Government furnished its observations in a communication dated 25 November 2002.
- 337.** China has declared the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), applicable in the territory of Hong Kong Special Administrative Region, with modifications, and has declared the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), applicable without modifications.

A. The complainant's allegations

- 338.** In its communication dated 14 March 2002, the International Federation of Airline Pilots' Associations (IFALPA) expresses grave concern over the unjust treatment of one of their member associations, the Hong Kong Aircrew Officers' Association (HKAOA) who represent the pilots of Cathay Pacific Airways and its subsidiary companies Veta Limited and USA Basing Limited. IFALPA adds that the manner in which Cathay Pacific, under the leadership of its parent company, the Swire Group, has treated its pilots and their representative body goes against the very principles which the ILO is intended to protect and promote.
- 339.** IFALPA states that the dispute between Cathay Pacific and the HKAOA is one of the longest running industrial disputes in aviation history as, for several years now, the union has tried to engage management in a constructive conversation about fair pay and benefits and basic safety policies, without any success. Despite repeated attempts, Cathay has refused to enter into a meaningful dialogue with the leadership of the union and made it clear that their number one intention is to eliminate the union in its entirety. IFALPA attaches a large number of documents as evidence of its allegations, including the complaints lodged with the Labour Department by four dismissed HKAOA officers. The name of the officers does not appear in the documents submitted.
- 340.** It is alleged in the complaints inter alia that the attack on the pilots' terms and conditions of employment started in 1994 when an industrial dispute concerning working time ended

with the unilateral issuance by management of an offer of new individual contracts of employment in the absence of an agreed settlement with HKAOA. The letter which was sent to each pilot at home, started by repeatedly warning the pilots that: “what I have to say is of vital importance to you and your family [...] it is with the utmost regret that I report we have been unable to reach an agreement [with HKAOA] [...] What we have done is to take the ‘negotiating fat’ out of our proposal and build in the safeguards which protect against fatigue and provide an acceptable lifestyle. The most generous package we are able to provide is now on offer to those of you who wish to take it [...] note – you do not have to accept the new package – it is only for those who volunteer. If you choose not to accept the offer [...] your salary will only rise by normal increments [...] until it reaches a competitive level and you will not be eligible for a basing. Those who wish to transfer to the new conditions must [sign and] return the attached acceptance form within one month [...] This is a one-off offer.” In addition to the fact that those who did not choose to sign the offer would suffer a pay freeze and lose the prospect of being based outside of Hong Kong, one dismissed HKAOA officer notes that as a result of his decision not to sign the “voluntary” offer, he was demoted, suffered a reduction in pay and saw his career progression effectively stop.

- 341.** According to the complaints, no progress was achieved when the renegotiation of the conditions of service began in 1997, and HKAOA realized that the company was intent on levering the contract down further. In 1998 the talks stalled because the company refused to discuss any issues unless the union was first prepared to agree to pay concessions and refused an independent third party audit of its finances, as requested by the union in order to determine whether or not such concessions were justified. As a result, the union instituted a withdrawal of goodwill by refusing to work on days off and simply complying with the terms and conditions of the contract of employment, a strategy termed “contract compliance”.
- 342.** According to the complaints, in 1999 a fresh round of negotiations commenced with the company again demanding pay concessions. Talks culminated in management (the Deputy Chairman and Chief Executive and the Director Flight Operations) writing to all the senior pilots informing them that, unless they signed a new contract that imposed 28 per cent pay cuts on some pilots by a deadline of 11 June 1999, they would be dismissed. IFALPA attaches the letter in question and, after informing each pilot that “the only remaining option [...] is to appeal to you again as individuals”, invited them to return to the company a signed declaration of their acceptance of the new conditions of service or their intention to join the voluntary separation scheme. “I am afraid that having failed to reach a negotiated settlement [with HKAOA] there can be no third option. A notice to terminate current employment contracts will be issued on 11 June to all A scale crew members who have not elected to accept the new conditions of service or who have not applied for the voluntary separation scheme.” The pilots are also informed in the letter that the salary concessions will be set off by an increase in the value of stock options: “In effect the Cathay Pacific share price now needs to grow at approximately 7 per cent per annum over the next ten years to return 100 per cent of the salary concession for Hong Kong-based crew. Such a long-term rate of growth in an equity market should be considered reasonable by any measure.”
- 343.** IFALPA also attaches a letter to all crew members dated 8 June 1999 in which the Chief Executive of Cathay Pacific states: “You have been advised that we will terminate the current contract of any A scale crew member who does not accept the 1999 conditions of service or apply for the voluntary separation scheme [...] I am aware that the HKAOA has set up a process [...] in an attempt to secure protection for individuals [...] If you want to place your career and your family’s welfare in the hands of a third party, that is your choice but we will press ahead whether the number of affected crew is 81 or 381.” The

Labour Department acted in a conciliatory role during these negotiations and agreement was reached just prior to the unilaterally imposed deadline.

344. According to the complaints, the agreement left a number of the union's concerns unaddressed, in particular, rostering practices. It was agreed that fresh talks on these would commence by the end of October 1999 but they never led to an agreement, primarily because the company has been demanding significant concessions from the pilots. In addition to this, the pay concessions agreed to in 1999 were on the basis that the company was in serious financial trouble as, repeatedly, pilots had been informed by management. Thus, when at the end of 2000 the company declared an after tax profit attributable to shareholders of HKD5.005 billion, following a profit for 1999 of HKD2.191 billion, many of the pilots felt that they had been lied to. In 2001, the union requested that, in light of the company's miraculous financial recovery, the outstanding issues on remuneration and benefits, such as the provident funds, be addressed and that the pay cuts agreed to in 1999, which were to be implemented over a three-year period, be reviewed. To date, the union's objectives have still not been met.

345. IFALPA submits further evidence in order to demonstrate Cathay Pacific's refusal to enter into meaningful dialogue with the union. This includes:

- the complaint lodged with the Labour Department by the former HKAOA President and current Chief Negotiator who stated that during negotiations on rostering practices in 2001, Cathay Pacific engaged in aggressive rostering tactics in order to delay negotiations (assigning flying duties in a way that the members of the HKAOA negotiating team are not present for meetings at the same time; assigning flying duties at weekends after a week of negotiations in order to wear down the negotiators), to the point that the Labour Department became concerned at the lack of progress in negotiations and the infrequency of the meetings;
- text in the *Crews Bulletin* (company newsletter addressed to the crew) of August 1998 in which the Director Flight Operations notes that the initiation of industrial action concerning rostering practices in the form of contract compliance could lead to management reviewing "all contractual matters" and adding: "Think about 92 GDOs [guaranteed days off] per year and not the 140 plus that some get and how that would impact your lifestyle. Think about long-term sick leave. The sad fact is that a career or life-threatening illness could happen to any of us.";
- letters of October-November 1997 and January 1998 in which the Director Flight Operations refuses to acknowledge and discuss letters signed on behalf of the HKAOA President, including a letter dated 13 January 1998, which informs the administration that HKAOA intends to initiate court proceedings with regard to the "erosion of the benefits [and] terms of employment in a unilateral manner" especially in the area of rostering practices;
- letters of June-December 1997 and March 1998 in which the Director Flight Operations rejects a dozen requests for rostered time off for attendance of symposiums and meetings for the sole reason that HKAOA had initiated contract compliance;
- a letter of September 1996 in which the then Director Flight Operations refuses to negotiate a basings agreement with HKAOA, noting that "your representatives were not interested in moving forward in a constructive manner [...] I regret that joint progress was not made [...] it would be pointless to reopen the discussion with your representatives";

- a letter of February 1996 in which the Director Flight Operations suspends the regularly held meetings between HKAOA and management, in protest for the content and tone of a HKAOA survey;
 - letters of November-December 1995 and January 1996 in which the Director Flight Operations suspends all meetings between HKAOA and management because HKAOA intended to table a motion at a forthcoming extraordinary general meeting concerning work on GDOs;
 - letters of July 1995 addressed by the Director Flight Operations to the HKAOA President, concerning the distribution of three anonymous letters that expressed extreme anti-company opinion to approximately 1,200 pilots (according to management's estimates). Although HKAOA's President expressed "regret" and accepted "responsibility" for the incident, the company considered "withdrawing the facility of your [i.e. HKAOA's] monthly dues collection or withdrawal of recognition of the Association";
 - a letter of May 1995 in which Cathay Pacific's Managing Director refuses to address the questions raised in a circular letter by B scale personnel on their terms of employment.
- 346.** IFALPA alleges that Cathay Pacific's desire to bust the union took a dangerous turn with the unfair termination of 51 employees without cause. The complainant states that, not so coincidentally, all except one of these pilots were union members. The action was clearly designed to try to dismantle the union as an effective representative group, as the group of sacked pilots included top union negotiators and a number of the union's committee members.
- 347.** According to the complaints lodged with the Labour Department by four dismissed HKAOA officers, on 3 July 2001 the membership of the union voted to take limited industrial action; in direct response to this, on 5 and 9 July 2001, the company sacked 51 pilots of which 50 were union members. Eight were trade union officers or involved in the day-to-day operations of the trade union. Three out of four members of the HKAOA negotiating team were also dismissed. According to the complaints, the dismissals were due to no other reason than the trade union activities of the HKAOA members and in particular, the industrial action staged by HKAOA on 3 July 2001. This flagrant act of industrial intimidation was calculated to frighten the remainder of the unionized pilots into "toeing the line" and deter them from exercising their freedom of association rights. It was, moreover, a tactic designed to attempt to remove the more experienced negotiators in the union's ranks.
- 348.** The dismissed HKAOA officers state, as proof of their allegations that the Director Flight Operations of Cathay Pacific admitted in particular in his affidavit to the Hong Kong Labour Department, that the company undertook an assessment of all aircrew as a result of the initiation of limited industrial action on 3 July 2001. This resulted in the identification of 51 pilots for termination because they were not working in the interests of CPA. The complainants also emphasize that the Director Flight Operations stated that the pilots were "not terminated on the ground of any or any alleged misconduct" and that "none of the plaintiffs were dismissed for any or any alleged offence or for any or any alleged breach of contract" (sic).
- 349.** The four dismissed HKAOA officers also refer to the criteria on the basis of which individuals were selected for dismissal according to the Director Flight Operations. These appear to be "warning [...] about absences from work", "warning [...] in respect of disciplinary action" and "attitude [which] was unhelpful and uncooperative". According to

the dismissed HKAOA officers, to the extent that these criteria apply in their case, they correspond to incidents which constitute harassment and intimidation as a result of their trade union activities and cannot be relied upon to justify their dismissal. With regard to warnings about absences from work, they state that in response to increased absences from work noted at the height of the industrial dispute in 1999, Cathay Pacific had instituted an “absence management programme” which involved the creation of blacklists of pilots based on their attendance records, the dispatch of letters to the pilots, and the implementation of a series of humiliating and intimidating “incentives and disincentives” including, inter alia, loss of job and full body check designed to intimidate pilots who reported unfit for duty on more than a certain number of occasions.

350. With regard to disciplinary warnings, the dismissed officers refer to a number of instances where such action was used in order to intimidate trade union officers:

- the HKAOA Secretary indicates that disciplinary and grievance proceedings were instituted against him on two occasions in 2000 and 2001 for acts which do not constitute disciplinary offences or violations of the law. He states that these incidents were acts of intimidation for his trade union activities as a result of which his health has suffered. In 2001, this HKAOA officer was summarily dismissed just minutes after the disciplinary and grievances proceedings had exonerated him of all charges. With regard to this incident, the Director Flight Operations noted in his affidavit that the officer in question would have been dismissed anyway irrespective of the outcome of the proceedings;
- the HKAOA Deputy Director Welfare claims that he has been the victim of an assault by a Cathay Pacific manager involving physical violence, insulting and foul language and threats of dismissal. He claims that although the manager later apologized, this incident probably drew management’s attention to his case when blacklists of trade unionists were drawn up;
- the former HKAOA President and current Chief Negotiator reports several attacks on the integrity of trade union officers including an attempt to dismiss one trade union leader, an attempt to classify another one as permanently unsuitable for command, and the withdrawal of an offer for promotion after a pilot became a trade union officer;
- IFALPA also attaches the text of a warning addressed on 18 July 1995 by the Director Flight Operations to a trade union officer with regard to the abovementioned incident of three anonymous letters expressing extreme anti-company opinion: “Should your conduct be, once again, prejudicial to the interests, good name or reputation of the company, serious consideration will be given to your suitability for continued employment. This letter will remain on your personal file.”

351. The dismissed officers also indicate that the decision to terminate their employment did not seem to be justified by any commercial reasons, bearing in mind the cost of training a pilot and that the employer avoided stating the real motives of the dismissals because of the criminal responsibility involved under Hong Kong law.

352. IFALPA submits the *Crews Bulletin* of September 2001, from which it appears that shortly after the dismissals, negotiations took place between management and HKAOA concerning the reinstatement of the dismissed trade unionists. The Director Flight Operations states: “Clearly both sides have suffered since the [HK]AOA Committee launched into its carefully planned campaign of industrial action against the company. The airline has lost revenue which cannot be recovered and 51 pilots have lost their jobs. In an effort to restart negotiations the company proposed a process by which all 51 crew

members could apply to rejoin the airline. In order to enable such crew members to rejoin at the same rank, same seniority number and same point on the salary scale, the company and all other crew members would be required to agree to a temporary variation in the conditions of service. [...] The company would then establish a means of interviewing all individuals who wish to be re-employed. Such a process would be necessary if the company was to regain confidence in an individual. Any talk of ‘winding the clock back’ to 1st July and pretending that contracts have not been terminated is not practical and not possible. However I am advised that that is the only option acceptable to the HKAOA Committee. They have made it crystal clear through their representatives that unless there is complete and unconditional reinstatement of all individuals, then there will be no negotiation and certainly no agreement. [...] [This] is a demonstration of misplaced trade unionism.” In the complaints submitted to the Labour Department reference is made to a similar incident which took place in 1996 when several employees were invited to rejoin the company under lower conditions of employment and after being interviewed.

353. IFALPA adds that in addition to the company’s intention to break up the union, the pattern of employee abuse has continued after the dismissal of the trade unionists with the institution of a number of intimidatory tactics against HKAOA members. As evidence, IFALPA attaches certain documents which include:

- the *Crews Bulletin* of September 2002 in which the Director Flight Operations warns crew members that whatever the reason for which they might have participated in industrial action in the past, “it is now time to face reality. Job protection of those in current employment is now the name of the game. [...] From this point forward we have little choice but to demonstrate far less tolerance towards any pilot who undertakes industrial action that is contrary to the company’s interest. If you have any trouble interpreting ‘company’s interest’, then my advice is very simple: just do your job in accordance with normal custom and practice and to the best of your ability”;
- the *Crews Bulletin* of March 2002 in which the Deputy Director Flight Operations explains in graphic detail the loss of wages and benefits that will be suffered at the expiration of the current agreement with HKAOA and goes on to say: “Why can’t non-[HKAOA] members revalidate their own policy agreements or negotiate a pay rise? [...] The company will only negotiate pay and benefits agreements with the body representing the majority of flight crew in Cathay Pacific and is only prepared to do so if that representative body is prepared to work for the mutual benefit of both the company and the flight crew alike and is not intent on working directly against the company’s interests. The Association’s current ‘aims’ are extreme and give little cause for optimism. [...] A way forward is only going to be found if the company and all flight crew, both [HK]AOA and non-[HK]AOA members, begin to work together in a mutually constructive fashion to find solutions”;
- the *Crews Bulletin* of January/February 2002, in which the Director Flight Operations welcomes an initiative by a captain to seek the views of all pilots as to whether the present leadership of the HKAOA should step aside, stating: “There can and will be no further industrial discussions or negotiations with the current leadership [...] Further development rests with the pilot community and the company will neither endorse nor discourage any particular prospective candidate or group of candidates”;
- a letter to all crew members of January 2002 in which the Director Flight Operations states that “it is unthinkable that there could be any meaningful dialogue with an [HK]AOA leadership hell-bent on trying to damage the revenue streams and the safety reputation of the airline. [...] What does this mean for your contract? Simply put, [...] it will mean: No increase in salary. [...] No roster practice agreement [...] No re-negotiation of the side agreements [...] We can only hope that a degree of

common sense will eventually return. [...] The matter lies very much in your own hands.”

354. According to IFALPA, perhaps even more disturbing is the fact that these actions have gone completely unchecked by Hong Kong’s governing authorities raising serious concerns on the part of the international labour community about the commitment of Hong Kong to basic human and labour rights.

B. The Government’s reply

355. In its communication dated 25 November 2002, the Government provides an account of the events leading to the latest dispute and the current impasse between HKAOA and Cathay Pacific:

1999

- in March 1999, Cathay Pacific put forward to its pilots a proposal on pay concessions;
- negotiations between Cathay Pacific and HKAOA on the proposal broke down in May;
- on 1 June 1999 HKAOA passed a resolution in its Extraordinary General Meeting (EGM) to call a strike ballot in the event Cathay Pacific dismissed any pilot who refused to sign up for the proposal;
- Cathay Pacific reported an increase in the number of pilots reporting sick as well as flight cancellations from 28 May 1999;
- the Labour Department of the Hong Kong Special Administrative Region (HKSAR) offered its conciliation service and conciliation meetings commenced on 5 June 1999. On 10 June 1999 Cathay Pacific reached a deal with HKAOA on a three-year agreement on pay and conditions of service. Both parties also agreed to form a working group with a view to devising a better roster system.

2000

- direct negotiations between Cathay Pacific and HKAOA on roster practice continued throughout 2000 but the two sides were unable to reach agreement on all the roster issues;
- meanwhile, HKAOA had from July 2000 launched a work-to-rule campaign called “contract compliance”, under which the pilots would not answer calls from Cathay Pacific management to work on their days off;
- in early December 2000, HKAOA passed a motion in its EGM to vote on taking further action that could lead to flight disruptions during Christmas;
- the Labour Department again offered its conciliation service to both sides. Consequent to the conciliation meetings, both parties reached an agreement on interim roster practice before Christmas;
- Cathay Pacific and HKAOA resumed direct negotiation on long-term roster practice and meetings were held from late December 2000.

2001

- in March 2001, HKAOA sought to set aside the three-year agreement of June 1999 and put forward to Cathay Pacific a package of demands for improved pay and benefits. Cathay Pacific considered the demands unacceptable. The two sides held separate meetings to deal with the pay and benefits issues without success;
- with both the negotiations on roster and on pay and benefits coming to an impasse, both sides turned to the Labour Department for assistance in June 2001. A series of conciliation meetings were held;
- on 20 June 2001, HKAOA passed a motion at its EGM to take industrial action from 1 July if agreement on roster, pay and benefits was still not reached by then;
- on 28 June 2001, HKAOA rejected a counter offer of a package proposal on roster, pay and benefits put forward by Cathay Pacific. Negotiations broke down;
- on 29 June 2001, HKAOA announced postponement of its industrial action to 3 July. At the same time, Cathay Pacific set a deadline for HKAOA to accept its counter offer by 30 June;
- on 1 July 2001, Cathay Pacific withdrew its counter offer;
- on 3 July 2001, HKAOA launched a work-to-rule campaign called maximum safety strategy, under which the pilots would operate according to the maximum safety procedures;
- Cathay Pacific reported increases in the number of pilots reporting sick as well as in flight delays;
- Cathay Pacific dismissed three pilots on 5 July 2001 and another 49 on 9 July 2001. Cathay Pacific stated in a press statement that the dismissal decision was based on a review of the employment history of all its pilots, that it had lost confidence in the dismissed employees and that their continued employment would not be in the best interests of the company;
- the Labour Department tried to bring the two sides back to the negotiation table without success. Cathay Pacific stated that HKAOA must drop all industrial action before negotiation could resume. HKAOA stated that any settlement must include reinstatement of the dismissed pilots. Both parties found the precondition for further negotiation set by the other party unacceptable;
- on 9 July 2001, Cathay Pacific announced a package of pay, benefits and roster arrangement with improvement in various terms. The new pay and benefits took immediate effect. The new roster arrangement was to come into effect on 1 August 2001;
- in September 2001, HKAOA launched phase 2 of its maximum safety strategy;
- in early October 2001, HKAOA announced a recruitment ban on Cathay Pacific whereby it would refuse membership to new recruits of Cathay Pacific, and pass the names of the new recruits to pilot unions in their home countries;
- in late October 2001, HKAOA announced the lifting of its contract compliance campaign. Following this announcement, Cathay Pacific and HKAOA resumed direct

negotiation and a meeting was held. However, both sides maintained their previous positions and would not compromise. Negotiations again came to a halt;

- in November 2001, a group of dismissed pilots brought civil action in the High Court against Cathay Pacific for having terminated their employment in breach of their contracts;
- also in November 2001, nine of the dismissed pilots lodged a complaint with the Labour Department against Cathay Pacific for breach of section 21B of the Employment Ordinance for having terminated their employment by reason of exercising their rights in respect of trade union membership and activities. The Labour Department conducted an investigation into the complaint and sought the advice of the Department of Justice. The latter has decided not to take prosecution action because there was insufficient evidence to substantiate an offence. The complainants were duly informed in December 2001.

2002

- in January 2002, HKAOA reinstated its contract compliance campaign. Cathay Pacific responded with a letter to all pilots stating its stance that there could not be any further dialogue with HKAOA while industrial action targeted at damaging the airline's revenue streams and safety reputation was under way;
- in June 2002, 21 of the dismissed pilots sought the Labour Department's assistance to file claims against Cathay Pacific at the Labour Tribunal for civil remedies for unreasonable and unlawful dismissal under the Employment Ordinance. The Labour Tribunal heard the case in July 2002 and ruled that it be transferred to the High Court to be dealt with, together with the civil action brought by the pilots earlier on the same issue. The case is pending hearing.

356. The Government states that Cathay Pacific has not refused dialogue with HKAOA which at the end of 2001 represented 1,423 of Cathay Pacific's 1,700 pilots. Cathay Pacific and HKAOA have been bargaining over pay, benefits and roster issues since 1999 and have struck two deals of settlement in previous disputes. Negotiations over the latest dispute ceased only after January 2002 with HKAOA launching a new round of industrial action and Cathay Pacific refusing to negotiate further while the industrial action was under way.

357. The Government further states that the allegation that the Hong Kong Special Administrative Region Government has left any unjust actions by Cathay Pacific unchecked is totally ungrounded and that all necessary steps were taken to safeguard the statutory and contractual rights of the pilots. Upon the dismissal of 51 pilots by Cathay Pacific in July 2001, the Labour Department promptly advised HKAOA of the relevant provisions of the Employment Ordinance and the channels available for the pilots to seek redress should they feel aggrieved. Nine dismissed pilots subsequently lodged complaint in November 2001 with the Labour Department against Cathay Pacific for having terminated their employment in contravention of the anti-union discrimination provisions under the Employment Ordinance. The Labour Department conducted an immediate and thorough investigation into the complaint. The pilots and Cathay Pacific management were interviewed. Witness statements were provided by the pilots. Written submission was obtained from Cathay Pacific. The case was passed to the Department of Justice for scrutiny. After careful examination, the Department of Justice advised that there was insufficient evidence to establish the alleged offence under the Employment Ordinance and decided not to take prosecution action. The pilots were informed in December 2001.

358. The Government further states that in June 2002, 21 dismissed pilots approached the Labour Department for direct referral to the Labour Tribunal for adjudication of claims

against Cathay Pacific for civil remedies for unreasonable and unlawful dismissal under the Employment Ordinance. The Labour Department promptly assisted the pilots to file their claims at the Labour Tribunal. At the hearing in July 2002, the Labour Tribunal ruled that the case should be transferred to the High Court because the claimants had in November 2001 initiated civil action against Cathay Pacific at the High Court on the same issue. The case is now pending hearing at the High Court.

- 359.** The Government states that it attaches great importance to upholding industrial harmony in Hong Kong. However, Hong Kong follows the principle of free market economy and it is not the Government's policy to interfere with private sector operations. The employer and employees of an enterprise are in the best position to deal with matters of mutual concern through direct negotiation. In this regard, the Labour Department actively promotes voluntary collective bargaining at the enterprise level through voluntary conciliation service and assistance as a neutral intermediary in the settlement of disputes.
- 360.** The Government believes that constructive dialogue is the best way to resolve the present dispute. The Labour Department's conciliation efforts facilitated the amicable conclusion of the previous dispute in June 1999 and December 2000. The Labour Department has spared no efforts to persuade the two sides to resume dialogue and has made every endeavour within the framework of the voluntary conciliation system to help resolve the differences. However, it requires two willing parties to have a negotiation, and participation in conciliation is voluntary. The ongoing dispute between HKAOA and Cathay Pacific over the setting of new terms and conditions of employment is a dispute of interest. The current deadlock is due to the uncompromising positions taken by both sides in this round of negotiation. The Labour Department stands ready to render its conciliation service to both parties to resolve the dispute.
- 361.** The Government states, moreover, that the allegations for breaches of Conventions Nos. 87 and 98 are totally unjustified. Hong Kong has a well-established labour relations system which provides for the basic rights of employees and employers by prescribing in the law the minimum employment standards, on the basis of which they are free to negotiate the terms and conditions of employment. Should the statutory or contractual rights of either party be infringed, there is an independent and reliable judicial system to seek redress and justice.
- 362.** The Government further adds that employees' statutory rights and benefits are guaranteed under the Employment Ordinance, Part IVA of which prohibits an employer from dismissing an employee by reason of exercising his rights in respect of trade union membership and activities. An employer who is found in breach of this provision is subject to criminal prosecution and is liable upon conviction to a fine of HKD100,000. Moreover, under Part VIA of the Employment Ordinance, an employee who is dismissed on ground of his exercising his trade union rights is entitled, within 12 months immediately after the dismissal, to claim civil remedies for unreasonable and unlawful dismissal by his employer. Remedies awarded by the Labour Tribunal may include an order to reinstatement or re-engagement subject to the consent of both the employer and employee, or an award of terminal payments and compensation up to a maximum of HKD150,000.
- 363.** Furthermore, the Government states that there is in place an effective mechanism for employees to seek redress if they are deprived of their statutory or contractual rights. Aggrieved employees can lodge their claims with the Labour Department which will render conciliation services. They can also seek adjudication of their claim at the Labour Tribunal, which provides speedy and inexpensive service and they can bring civil action for damages for breach of the employment contract under common law. On the side of law enforcement, the Labour Department takes a serious view of complaints about non-compliance with the Employment Ordinance. Investigation will be conducted into all

complains and prosecution action will be taken against the employer if there is sufficient evidence to substantiate an offence.

- 364.** With regard to collective bargaining, the Government notes that article 27 of the Basic Law guarantees freedom of speech and association. Article 18, section 8, of the Bill of Rights Ordinance prohibits restrictions on freedom of association, except as prescribed by law in the interests of national security or public safety. Article 16 gives everyone the right to hold opinions without interference and guarantees freedom of expression. Thus, employers and employees and their respective organizations are free to exchange their views voluntarily, bargain freely and enter into collective agreements on the terms and conditions of employment. The Government believes that for collective bargaining to be effective, it should assume a voluntary character.
- 365.** The Government states that it has made sustained efforts to promote voluntary negotiation both at the enterprise and industry level through the setting up of the Workplace Consultation Promotion Unit (WCPU) in 1998. WCPU provides a comprehensive range of services to encourage employers to enter into direct and ongoing negotiation with their employees or workers' unions on employment issues and promotes the setting up of industry-based tripartite committees to discuss and agree on industry-specific issues.
- 366.** In conclusion, the Government states that legislation has been enacted in Hong Kong to implement Conventions Nos. 87 and 98 and the Government has been assisting HKAOA members throughout their dispute with Cathay Pacific. The case is now pending in the High Court which, after examining all the evidence and witnesses' testimonies from both sides, will decide whether Cathay Pacific is in breach of the legislation and, if it so finds, will grant the appropriate remedies. Given the independence of the judiciary, it is the function and role of the Court to make these determinations and the Government cannot, and must not, interfere with the judicial process. Moreover, the Government states that since all the complaints are directed against Cathay Pacific and are yet to be proven in court, the allegations directed against Hong Kong are unfounded and should be dismissed.

C. The Committee's conclusions

- 367.** *The Committee notes that this case concerns allegations that Cathay Pacific Airways dismissed 50 pilots by reason of their trade union activities, refused to enter into meaningful negotiations, tried to break up the union and committed other acts of intimidation and harassment, while the Government has left these practices unchecked.*
- 368.** *The Committee observes that on 5 and 9 July 2001, just a few days after the initiation of industrial action by HKAOA over pay, benefits and rostering practices, 51 pilots were dismissed. Fifty of these pilots were trade union members including eight officers and three members of the union negotiating team. The Committee notes that according to the complainant, the trade union officers were dismissed without reason and the company representative indicated (in his affidavit at the Labour Department of Hong Kong and in his declaration before the Superior Court of the State of California) first, that the dismissals were not due to any offence or breach of contract and, second, that as a direct result of the industrial action initiated by HKAOA, Cathay Pacific reviewed the employment history of all its crew and selected pilots for dismissal based on criteria like "warning [...] about absences from work", "warning [...] in respect of disciplinary action" and "attitude [which] was unhelpful and uncooperative". The Committee notes that according to the complainants these criteria cannot be relied upon to justify their dismissal because they point towards incidents of harassment and intimidation against them. The Committee also takes note of the statement made in the **Crews Bulletin** of September 2001 that the dismissals were a result of the industrial action undertaken by HKAOA.*

369. *The Committee notes that the Government does not provide any information as to the exact motives for the dismissals. The Committee also notes the Government's statement that pursuant to complaints by nine trade union officers for anti-union dismissals, the Labour Department and the Department of Justice undertook an investigation into the motives for the dismissal based on interviews of the pilots and written submissions from Cathay Pacific. However, no action was taken because there was insufficient evidence to substantiate an offence. The Committee notes that the Government has not provided the material of the investigation.*
370. *The Committee observes that Cathay Pacific's representative repeatedly confirmed that the dismissals were a direct result of the industrial action undertaken by HKAOA. With regard to the criteria which have been put forward as a basis for the dismissals, the Committee is of the view that generic reasons like "attitude [which] was unhelpful and uncooperative" cannot provide an objective criterion for selection. With regard to criteria such as warnings about absences from work and warnings concerning disciplinary action, the Committee observes that increased absences from work had been noted whenever HKAOA initiated industrial action in the form of contract compliance and that according to the complainant, the company had set up blacklists on the basis of the attendance record and had sent letters to workers in an effort to intimidate them to report for duty. The Committee also observes that according to the complainant and the evidence submitted, disciplinary proceedings and warnings had been used by Cathay Pacific in the past as a means to intimidate trade union officers and prevent them from exercising lawful trade union activities. The Committee observes that under these circumstances, there is a likelihood that the number of warnings in a worker's file concerning attendance and disciplinary action could be closely related to his trade union membership and activities.*
371. *In these circumstances, the Committee expresses concern at the dismissal of 50 trade union members and officers following the lawful staging of industrial action, which is authorized under Part V of the Labour Relations Ordinance (CAP.55). The Committee recalls that no person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 748]. The dismissal of trade union leaders by reason of union membership or activities is also contrary to Article 1 of Convention No. 98, and could amount to intimidation aimed at preventing the free exercise of their trade union functions [see **Digest**, op. cit., para. 730].*
372. *Furthermore, given the gravity and nature of the allegations, the Committee expresses concern at the decision not to initiate legal proceedings for absence of sufficient evidence. The Committee notes that the basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed [see **Digest**, op. cit., para. 739] and that 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]. The Committee notes that it may often be difficult, if not impossible, for a worker to furnish proof of an act of anti-union discrimination of which he has been the victim and that workers face many practical difficulties in proving the real nature of their dismissal or denial of employment, especially when seen in the context of blacklisting, which is a practice whose very strength lies in its secrecy [see **Digest**, op. cit., paras. 740, 710]. The Committee requests the Government to transmit the material of the investigation conducted.*

- 373.** *The Committee notes that the complainant provides information on certain unsuccessful negotiations between the company and HKAOA concerning the reinstatement of the dismissed pilots and that the Government provides information on another conciliation effort which did not succeed. The Committee notes that in November 2001, a group of dismissed pilots brought civil action to the High Court against Cathay Pacific for breach of contract and that in June 2002, 21 dismissed pilots filed claims at the Labour Tribunal for civil remedies for unreasonable and unlawful dismissal under the Employment Ordinance. The Labour Tribunal ruled that the case be transferred to the High Court where it is pending. The Committee notes the Government's statement that the High Court will, after examining all the evidence and witnesses' testimonies, decide the case and, if applicable, grant the appropriate remedies.*
- 374.** *The Committee underlines the need to ensure by specific provisions accompanied by civil remedies and penal sanctions the protection of workers against acts of anti-union discrimination at the hands of employers [see **Digest**, op. cit., para. 746] and recalls that the remedy of reinstatement should be available to those who were victims of anti-union discrimination [see **Digest**, op. cit., para. 755]. The Committee hopes that the High Court will give its ruling as soon as possible and requests the Government to keep it informed of the outcome of the civil action brought before it by the pilots who were dismissed following the staging of industrial action and, if the Court finds that the dismissals were on anti-union grounds, to take all necessary measures with a view to the possible reinstatement of the pilots in their previous employment, without loss of pay, and to ensure that the enterprise faces any legal sanctions imposed.*
- 375.** *With regard to the substantive issues of the dispute, the Committee notes that according to the complainant and the Government, the dispute between HKAOA and Cathay Pacific over pay, benefits and roster issues dates as far back as 1999. The Committee notes that according to the complainant, over these years Cathay Pacific has refused to enter into any kind of meaningful dialogue with HKAOA but has rather tried to delay negotiations, intimidate the union, its members and their families, avoid meetings and mislead the union on the economic position of the company. The Committee also notes that according to the complainant, on two occasions the company sent individual letters to the pilots in the absence of an agreed settlement with HKAOA inviting them to either accept the unilaterally modified conditions of service or suffer adverse consequences such as a pay freeze or immediate dismissal. Moreover, the Committee notes that according to the complainant, Cathay Pacific has made it clear that its number one intention is to eliminate the union in its entirety and that after the dismissals of July 2001, the pattern of employee abuse has continued with the institution of further intimidatory tactics against the aircrew. Finally, the Committee notes that the complainant alleges that the Government has left these acts unchecked.*
- 376.** *The Committee notes that the Government has not provided any specific comments on allegations concerning intimidatory, dilatory and misleading negotiating practices. The Committee notes that according to the Government, Cathay Pacific has not refused dialogue, since negotiations between Cathay Pacific and HKAOA have been going on over these years, and that the current dispute is the result of the uncompromising attitude adopted by both parties. The Committee takes particular note from the chronology of the dispute provided by the Government that new conditions of service concerning roster, pay and benefits were unilaterally issued by the company on 9 July 2001, that is, the day of the dismissals. Finally, the Committee notes that the Government states that allegations against the Hong Kong authorities are unfounded because the evidence demonstrates that the complaint is directed exclusively against Cathay Pacific and is yet to be proven in court.*

377. However, the Committee draws attention to the many instances in which threats are addressed against HKAOA, its members and their families (August 1998, July 1995), dialogue between HKAOA and management is refused (May 1995, September 1996, October-November 1997, January 1998), trade union facilities are withdrawn as reprisal for industrial action (June-December 1997, March 1998), and meetings are suspended in retaliation for lawful trade union activities (January-February 1996, November-December 1995). The Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from pressure or threats of any kind against the leaders and members of these organizations and it is for governments to ensure that this principle is respected.
378. Furthermore, the Committee deplores certain recent acts of interference and intimidation, in particular, the open threats of dismissal in case of industrial action addressed to all pilots in the **Crews Bulletin** (company newsletter) of September 2002; the implicit invitation to replace the HKAOA leadership in the **Crews Bulletin** of March 2002 and January/February 2002; the detailed and graphic illustration of the loss of pay and benefits which will be suffered by the aircrew as a result of their affiliation to and support for HKAOA, in the letter to all crew members of January 2002 and the **Crews Bulletin** of January/February 2002.
379. The Committee emphasizes that Article 2 of Convention No. 98 establishes the total independence of workers' organizations from employers in exercising their activities [see **Digest**, op. cit., para. 759] and provides that workers' and employers' organizations shall enjoy adequate protection in this respect. The Committee also 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**, op. cit., 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]. Noting that this is a long-running and serious dispute, the Committee requests the Government to take all necessary measures as soon as possible to put an immediate end to all acts of interference, anti-union discrimination and intimidation against HKAOA and its members, prevent their recurrence in the future and keep it informed of measures taken in this respect, including any legal action that may be initiated with regard to such acts.
380. The Committee expresses concern at allegations that management engaged in aggressive rostering practices as a means to delay the negotiations and wear out the HKAOA negotiating team in 2001. The Committee also takes note of allegations that workers were misled into believing that the financial condition of the company was bad, when in fact the company made significant gains, and the written assurances provided by the company in 1999 that there was a reasonable prospect that the company's share price would increase by 7 per cent every year in the coming ten years so that pilots would be compensated in the long run for wage cuts. The Committee also notes with concern that the HKAOA was asked to accept a "temporary variation" in the conditions of service in return for the possible reinstatement of the dismissed pilots. The Committee recalls the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations [see **Digest**, op. cit., para. 814] and emphasizes that the principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided [see **Digest**, op. cit., para. 816].
381. The Committee expresses particular concern at the three instances in which Cathay Pacific unilaterally issued new conditions of service and invited pilots to accept them in

their individual capacity or else suffer grave consequences (1994, 1999 and 2001). The Committee deplores the fact that the latest such incident took place on the same day that a large number of trade union members and officers were dismissed. The Committee notes that this strategy places workers before a disconcerting dilemma, namely, to give up their right to collective bargaining or else suffer a wage freeze or lose their jobs.

- 382.** *The Committee recalls that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employer or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements [see **Digest**, op. cit., para. 781]. When examining various cases in which workers who refused to give up the right to collective negotiation were denied a wage rise, the Committee considered that it raised significant problems of compatibility with the principles of freedom of association, in particular as regards Article 1(2)(b) of Convention No. 98. In addition, such a provision can hardly be said to constitute a measure 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", as provided in Article 4 of Convention No. 98 [see **Digest**, op. cit., para. 913].*
- 383.** *The Committee notes that the conditions of service which were unilaterally imposed by management in 2001 have not been agreed upon with HKAOA and that their application is in flagrant violation to the voluntary nature of collective bargaining and Article 4 of Convention No. 98. The Committee requests the Government to take all necessary measures as soon as possible to put an immediate end to practices which are contrary to Article 4 of Convention No. 98 and to encourage and promote negotiations in good faith between Cathay Pacific Airways and HKAOA with a view to finding a rapid and comprehensive solution on all outstanding issues. The Committee requests to be kept informed in this respect.*

The Committee's recommendations

- 384.** *In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee expresses concern at the dismissal of 50 HKAOA members and officers following the lawful staging of industrial action in July 2001 and the decision not to institute legal proceedings against Cathay Pacific for absence of sufficient evidence; the Committee requests the Government to provide the material of the investigation conducted on this case.*
 - (b) The Committee hopes that the High Court will give its ruling as soon as possible and requests the Government to keep it informed of the outcome of the civil action brought before the High Court by the pilots who were dismissed following the industrial action staged in July 2001 and, if the Court finds that the dismissals were on anti-union grounds, to take all necessary measures with a view to the possible reinstatement of the pilots in their previous employment without loss of pay, and to ensure that the enterprise faces any legal sanctions imposed.*
 - (c) Noting that this is a long-running and serious dispute, the Committee requests the Government to take all necessary measures as soon as possible to put an immediate end to all acts of interference, anti-union discrimination*

and intimidation against HKAOA and its members, prevent their recurrence in the future and keep it informed of measures taken in this respect, including any legal action that may be initiated with regard to such acts.

- (d) *The Committee requests the Government to take all necessary measures as soon as possible in order to put an immediate end to practices which are contrary to Article 4 of Convention No. 98 and to encourage and promote negotiations in good faith between Cathay Pacific Airways and HKAOA with a view to finding a rapid and comprehensive solution to all outstanding issues. The Committee requests to be kept informed in this respect*

CASE No. 2189

INTERIM REPORT

Complaints against the Government of China presented by

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

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

- 385.** The complaint is contained in communications from the International Confederation of Free Trade Unions (ICFTU) dated 27 March, 2 June, 19 August 2002 and 10 January 2003. The International Metalworkers' Federation (IMF) associated itself with the complaint and made additional allegations in a communication dated 3 April 2002.
- 386.** The Government sent a reply to some of the allegations in a communication dated 26 September 2002.
- 387.** China has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

- 388.** In its communication dated 27 March 2002, the International Confederation of Free Trade Unions (ICFTU) lodged a formal complaint against the People's Republic of China for violations of the principles of freedom of association, on the basis of the facts detailed below and in attached documents, including two letters sent on 15 and 27 March 2002 to President Jiang Zemin.
- 389.** The two letters in question concern repressive measures, including threats, intimidation, intervention by security forces, beatings, detentions, arrests and other mistreatment meted out to leaders, elected representatives and members of independent workers' organizations in Heilongjiang, Liaoning and Sichuan Provinces. All the events described therein occurred in the course of March 2002.
- 390.** Ranging at the very top of the ICFTU's concerns in this context is the personal situation of Mr. Yao Fuxin, aged 56, leader of the independent workers' organization at the Ferrous Alloy Factory (FAF) in Liaoyang arrested on 17 March 2002. The ICFTU adds that he has been severely mistreated by public security officials after being detained or, worse still, that he may actually have been killed while under official custody.
- 391.** Mr. Yao Fuxin's arrest came just days after over 10,000 retrenched workers, mostly from FAF, staged a mass demonstration in Liaoyang, demanding that a solution be found to the economic and social problems encountered by the retrenched workers, that legal measures be taken against the corrupt managers of the factory and that the Public Security Service refrain from arresting any of the workers' freely elected representatives.
- 392.** In response, the local authorities reacted with typical intimidation, threats and, eventually, brutal force. On 11 March, the Public Security Bureau (PSB) officials warned several organizers that they were involved in illegal activities. The ICFTU firmly and categorically rejects this charge, since the workers were doing nothing more than peacefully exercising their legitimate rights, guaranteed under ILO Conventions Nos. 87 and 98.
- 393.** On the morning of 12 March, the workers marched on the headquarters of the Liaoyang municipal government, demanding a meeting with local officials, which was finally granted later that day. Mr. Pang Qingxiang, aged 58, and 12 other workers' representatives met with the China Communist Party (CCP) Liaoyang Committee's Deputy General Secretary, deputy mayors, the General Secretary of the Government and Legislative Committee, the Liaoyang Chief Justice, General Prosecutor and the head of the local PSB. Workers were assured that no arrests would be made.
- 394.** Five days later, the PSB arrested Mr. Yao Fuxin and launched a large security operation to capture a dozen more independent workers' representatives. The next day, 18 March, over 30,000 workers from approximately 20 state-owned enterprises (SOEs) marched on the city government and PSB offices, demanding Mr. Yao Fuxin's release, but the police denied he had been arrested.
- 395.** However, the authorities' repression of the independent workers' movement did not end with Mr. Yao Fuxin's arrest. On 18, 19 and 20 March, tens of thousands of Liaoyang workers from different factories gathered in front of the city government offices demanding Mr. Yao Fuxin's release. On 20 March, as more than 2,000 FAF workers had once again gathered in front of the City Hall demanding his release, another worker representative, named Gu Baoshu, went inside the security bureau headquarters to negotiate but was immediately detained. A worker who saw this informed the workers outside who then broke into the office and rescued Gu.

- 396.** Meanwhile, the city government had deployed a large contingent of armed police in an attempt to stop the workers' protest. Towards the end of the morning, the workers decided to return home but, in order to protect their elected representatives, more than 40 elderly workers surrounded them in a circle. Not far from the City Hall, about 100 police attacked and beat the group of elderly workers. Forcing their way through the protective circle, the police arrested three of the representatives. Scores of elderly workers were injured in the police action, although their exact number, identities and present state of health are still unknown.
- 397.** The three workers' representatives who were arrested during the police action on 20 March (in addition to Yao Fuxin, arrested on 17 March) are: Pang Qingxiang; Xiao Yunliang; and Wang Zhaoming. The next morning, around 1,000 workers from the FAF once again gathered in front of the city government offices. They demanded the release of the four arrested workers' representatives. In the midst of the protest action, Guo Suxiang (56 years old), wife of arrested leader Pang Qingxiang, was also arrested by the police (she was released the following day). Another worker from the Liaoyang Fibre Factory tried to intervene, shouting, "This arrest is wrong!". As a result, the police also arrested him and took him away. His name is still unknown but he remains in detention.
- 398.** On 21 March, the city's Bal Ta District PSB issued a notice of detention to the families of the four workers' representatives for "illegal demonstration". They are being held at Tieling City detention centre. Finally, the wife of Yao Fuxin had been visited by the District Director of the PSB at her place of residence, who informed her that her husband was "in a very serious condition at the hospital after having suffered a heart attack" and that "the PSB had already sent an amount of 10,000 yuan to the hospital for his medical treatment".
- 399.** When checked with his relatives, it was determined that Mr. Yao Fuxin was in a perfect state of health at the time of his arrest and that he had never before experienced any heart problems. The ICFTU thus queried whether Yao Fuxin was in a critical state of health as a result of having been beaten, tortured or otherwise mistreated while in the custody of Liaoyang public security officials or, worse still, whether he might actually have been killed by such officials or by personnel under their direct authority. The International Metalworkers' Federation, in its communication dated 3 April 2002, also raised its concern over Yao Fuxin's health and the fate of the other detained workers' representatives.
- 400.** The complainant also refers to a sit-in demonstration at Petrochina's Petroleum Administration Bureau (PAB) headquarters in Daqing, on or around 24 March, where some 500 workers were intimidated and threatened by nearly 1,000 police and paramilitary forces, some in full riot gear and to a strike which began on 13 March 2002 at the Guangyuan Textile Factory in Sichuan Province where workers were demanding that factory management negotiate retrenchment terms. Several strikers were beaten up by the police at the picket line outside the factory and about a dozen at the textile factory were detained on or around 18 March.
- 401.** As regards the workers' protest at the Daqing Petroleum Company, the complainant recalls the situation of 50,000 workers at the Daqing Oilfield, in Heilongjiang Province, who had been engaged in a collective action since 1 March 2002, in protest at their employers' unilateral breach of their retrenchment contracts.
- 402.** Three thousand workers of the Daqing Oilfield gathered in front of the Daqing PAB on 1 March to protest at the suppression by the company of winter heating subsidies amounting to RMB3,000 per year and at the arbitrary increase in the amount that each worker is required to pay into the social security fund, from 2,600 yuan per year in 2000 to 4,600 yuan this year. The workers concerned formed the Daqing PAB Retrenched

Workers' Provisional Union Committee and elected representatives. Solidarity demonstrations were held by workers in the Xinjiang and Shengli Oilfields, as well as in the Liahe Oilfields, in Liaoning Province.

- 403.** In its communication dated 2 June 2002, the complainant provides additional information concerning developments in several of the abovementioned cases and about a new case in Sichuan.

Developments in Liaoyang (Liaoning Province)

- 404.** In respect of the four workers' representatives arrested in Liaoyang in March 2002 (Yao Fuxin, Pang Qingxiang, Xiao Yunliang and Wang Yhaoming), the complainant adds that they were charged on 30 March with organizing "illegal demonstrations" – a charge that carries a prison sentence of five years.
- 405.** The first of those arrested, Yao Fuxin was in very serious condition. On 11 April, Yao Fuxin's wife, Guo Xiujing, was allowed to see her husband, held in Tieling jail (120 km from Liaoyang), for the first time since he was picked up by police. Guo said her husband's right side was numb, his right hand shook and his right leg was weak. It is believed that he has suffered a stroke caused by the onset of heart disease, itself following his brutal treatment at the hands of the police. (Yao Fuxin had no previous record of heart or any other disease.) Although he had been briefly hospitalized in March, he was returned to the Tieling detention centre where his condition has since deteriorated. In spite of this, Yao Fuxin is being denied access to medical treatment, including a return to hospital or being released on medical parole.
- 406.** The complainant indicates that, since its initial submission of the complaint, much more information has come to light about the events leading to the March 2002 protests. In fact, problems affecting the FAF and other enterprises in and around Liaoyang had already started several years earlier. This information, as well as details of the March 2002 protests which were not available earlier, was attached to the communication.
- 407.** On or around 11 April, relatives of Xiao Yunliang organized for a lawyer to take up his defence. However, police had turned down a request by Xiao's lawyer to visit him, saying Xiao had refused a lawyer.
- 408.** On 15 April, Liaoyang workers went to the city government complaints bureau to seek the release of the four detainees. In order to avoid further arrests, the workers decided against further street protests, but instead sent several representatives, including Gu Baoshu (who was picked up the next day), to negotiate with the Government. Nevertheless, the workers' caution and attempt to enter into negotiations failed with Gu's arrest. On 16 April, two plain-clothes police knocked on Gu Baoshu's door. Then, they opened the door with a key, tied Gu up and beat him. After factory workers learned about this, scores of them rushed to the building where he lived and tussled with the police who arrested him. The police stationed outside pushed the blockading workers aside and took Gu in a police car.
- 409.** The workers submitted on the spot an application for a demonstration to the Chief Secretary of the municipal government, who came to the factory to pacify the workers. However, the Chief Secretary immediately declared that the application should bear the name of the organizers; otherwise it would be invalid. The workers refused to enter any names on the application; moreover, they stated that, were Gu Baoshu not released and were the permission to demonstrate not approved, they would collectively visit Beijing to petition or they would block the railway. Under such pressure from the workers, Gu Baoshu was released the same night. He had been cruelly beaten by the officers during

detention. Gu demanded that the PSB pay his medical costs and investigate who was responsible for the beating. The authorities replied with further threats of detention.

410. On 5 May, around midnight, workers secretly posted notices on walls of the labour housing area, calling on workers to collectively petition the authorities on 7 and 8 May to release the detainees. The following morning, the notices were cleared by police. For two consecutive days thereafter, 400-500 workers who had heard about the notices posted on the walls earlier, gathered in front of the municipal government building again and requested the release of all arrested workers' representatives. Guo Xiujing and another three workers' representatives also submitted an application for demonstration, signed with 20 workers' names. The PSB rejected the application without giving any reason.

411. On 9 May, hundreds of workers once again gathered in front of the municipal government building and held up a banner saying "strongly demand the government release the arrested workers' representatives". Officials charged out from the government building and tried to seize the banner, but failed. The following day, workers demanded a dialogue with the Mayor. Two officials of the municipal government's complaints bureau appeared and said that, if the workers appointed representatives, they would arrange for them to meet the Mayor. But the workers refused because they were worried that the municipal government once again only wanted to pinpoint the workers' leaders to arrest them. Finally, the head of the complaints bureau came out and accepted a petition letter from the workers and promised to forward it to the Mayor at once. The petition letter sent to the Mayor contained five demands:

- that the government release the arrested workers' representatives; failing that, that court action begin as soon as possible, as the workers' representatives must not be kept locked up indefinitely;
- that the city government make public the report on forced bankruptcies and respond to the workers' reasonable demands within a time limit;
- an increase in the clampdown on corrupt officials and giving the FAF workers a clear statement about their claims in the near future;
- that the government lawfully punish those police officers who abused their legal positions and assaulted Gu Baoshu in a most cold-blooded way;
- that, for humanitarian reasons, the government should allow the FAF workers in separate groups and occasions to visit their jailed representatives in the Tieling (Iron Peak) detention centre.

The petition letter also expressed that the FAF workers would petition Beijing with collective demonstrations unless the city government speedily satisfy these demands.

412. On 15 May, several hundred workers from the FAF again assembled in front of the government buildings to raise banners and peacefully petition the Government for the release of detainees. At just after 10 a.m., more than ten plain-clothes police officers charged out of the government building's courtyard, attacked the workers with punches and kicks and seized their banners. Clashes followed as the workers protected the banners. During the clashes, the son of a retired FAF worker, whose mother had been beaten during the police assault, demanded to know why they had attacked his mother. As a result, he was severely beaten by the police and then taken away. In the end, the city complaints bureau arranged for the release of the woman's son.

413. In a separate incident, Wang Dawei, another key person in the FAF workers' struggle, went to Beijing to file complaints at numerous central government departments but was

completely ignored. After he called Guo Xiujing's family once, early in his journey, to tell them about his progress with the complaints, he disappeared. He remains unaccounted for and the complainant fears that he has also been arrested.

Repression in Daqing (Heilongjiang Province)

- 414.** In addition to the information provided in its initial complaint, the complainant adds that the deployment of 800 paramilitary police in Daqing City to disperse protesting workers was followed by a campaign of intimidation in which dozens of workers were detained for periods of up to two weeks and released on the condition that they would no longer participate in the demonstrations. Moreover, several representatives of the independently formed PAB Retrenched Workers' Provision Union Committee in Daqing City were detained on 11 March during negotiations with officials. These independent unionists, along with another 60 workers involved in protest actions in Daqing City, are still unaccounted for. Neither the government authorities nor the All-China Federation of Trade Unions (ACFTU) have responded to ICFTU inquiries on this subject. In March, however, the Heilongjiang Provincial Federation of Trade Unions was quoted by the *Ming Pao* newspaper, in its issue dated 28 March, as declaring: "The ACFTU will not tolerate workers organizing in this way."
- 415.** In late March, during one of the demonstrations in Daqing's "Iron Man" Square, a 50-year-old woman, married to a retrenched Daqing worker, was beaten and arrested after she delivered a speech. It was reported she was staging a hunger strike in a detention centre. On 27 March, Li Yan, a 60-year-old retired worker, was also arrested. The whereabouts of both persons are unknown at the time of writing.
- 416.** In the period since the complaint was submitted, more information has come to light concerning the social context in Daqing. Hence, in October 2001, over 300 laid-off women workers from the Daqing Blanket Factory collectively petitioned in front of government offices, demanding that the Government either renegotiate their original redundancy packages in line with Daqing City's official policy or reinstate them in their jobs. While the pattern for redundancy packages in the region amounted to RMB3,500 per year of service, the 3,000 odd workers had been dismissed with a one-off payment of RMB10,000. Meanwhile, their factory had been sold to a private investor and had resumed production with replacement workers.
- 417.** On 15 October 2001, riot police attacked several hundred female workers after they had assembled in front of the city hall. Two male and three female workers were arrested and many more were injured, some severely. When colleagues demonstrated the following day, demanding the prisoners' release, they were told that the detainees would only be released if their colleagues paid for room and board costs for the duration of their detention.
- 418.** A further demonstration on 23 October 2001 led to the arrest of two more workers' leaders. Meanwhile, the ACFTU said it was not concerned with the case, while simultaneously acknowledging that it had not been involved in the factory's initial restructuring operation, two years earlier, in violation of existing laws. As for city council authorities, they refused to confirm the number of those arrested but stated that the workers had "engaged in illegal behaviour through shouting slogans and pasting up banners". They also said the workers had already been properly compensated under existing laws.

Sentence of workers rights' advocates in Sichuan

- 419.** The complainant states that Hu Mingjun and Wan Sen, two democratic opposition activists who advocated workers' rights in Sichuan, have been sentenced to heavy prison terms. Hu Mingjun and Wang Sen are provincial leaders in the Sichuan Province of the China

Democratic Party (CDP), which is not recognized by the authorities. Hu was living in Chengdu and Wang in Dayhou when on 18 December 2000 about 1,000 workers of Dazhou Steel Factory organized a public demonstration, as they had not been paid for one year. Both Hu and Wang had contacts with the demonstrating workers.

420. The CDP of Sichuan issued a statement containing three demands:

- workers should be allowed to organize their own trade unions in accordance with the International Covenant on Economic Social and Cultural Rights (ICESCR), which had recently been signed by the Chinese Government (the complainant recalls however that China ratified the ICESCR later in February 2001, with a formal reservation on article 8(a) of the Covenant, the provision that specifically guarantees freedom of association for trade union purposes);
- that the Government guarantee the unemployed workers the right to livelihood by improving the social security system;
- that the Government solve the root problem of corruption which had brought about the demonstrations.

421. Wang was arrested on 30 April 2001 in Dazhou; as for Hu, he was arrested on 30 May. They were charged of “inciting to subvert the power of the State” – a charge that carries a maximum sentence of five years’ imprisonment. Over one year later, on 30 May 2002, they were sentenced in a secret trial at the Dazhou Intermediate People’s Court on charges of subversion, which is a more serious charge, frequently levelled at independent labour activists. The charge was apparently changed during the trial itself and the complainants’ sources consider this as proof of the official hard line against workers’ organizers after the mass protests in Liaoyang. The “evidence” used in their trial was the abovementioned statement issued by the CDP in Sichuan. They were accused of, in the name of the “hostile organization” of the CDP, inciting and organizing the workers in Dazhou to demonstrate and thus disrupting social stability.

422. Hu was sentenced to 11 years, and he has reportedly already decided that he would not appeal; Wang was sentenced to ten years. Earlier reports indicated that a third individual, Zheng Yongliang had also been arrested in this case. It is not known whether he has since been released or whether he was also sentenced in the same trial.

423. In its communication dated 19 August 2002, the ICFTU adds that an independent labour activist was detained last June in Shanxi Province for trying to set up a federation for retired workers. Di Tiangui, 57, formerly a state employee at Dazhong Machinery Factory, has spent more than two months shackled and handcuffed at a detention centre in Taiyuan, capital of Shanxi province. Di was detained by police on the evening of 1 June on suspicion of “establishing an illegal organization”. He had reportedly angered the authorities by co-authoring a declaration, earlier that year, urging the establishment of a national federation representing 30 million workers retired from state-owned enterprises.

424. Mr. Di and other activists were apparently motivated to take action after seeing how retirees were paid little or no pensions and were deprived of basic social services such as health care. They decided to seek the establishment of a nationwide retired workers’ federation after seeing that petitions along official channels had led nowhere. Police formally arrested Di on 15 July on charges of “incitement to subvert state power”. This charge can – and generally does – lead to heavy prison sentences. Furthermore, such arrests and indictments are clearly practised by the authorities in order to deter other potentially interested workers from joining efforts at independent trade union activity.

Indeed, it is now being reported that, intimidated by the stern treatment of Di, other independent labour activists in the area have gone into hiding.

- 425.** The news of Mr. Di's detention was confirmed earlier this month by a police official in Taiyuan, who however denied that the prisoner had been mistreated. This is in stark contrast to reports by his relatives, who are extremely worried that Di "will not be able to stand the physical strain". They point to the fact that he suffers from high blood pressure and vasculitis and that his health has deteriorated precipitously while in detention. When he was visited in jail on 21 June he had reportedly "become thinner", and "his feet had ulcers and were so swollen he could not even wear shoes, and he was shackled in a way making it impossible for him to stand upright".
- 426.** The complainant emphasizes that the detention of any independent trade unionists or workers' rights activists is unacceptable under ILO principles. Moreover, it expresses its shock at the treatment of prisoners in China, particularly that of labour rights' detainees. In the complainant's view, the treatment inflicted on Mr. Di is brutal, painful and completely inappropriate and, as such, amounts to torture.
- 427.** Finally, in its communication dated 10 January 2003, the ICFTU expresses its deep concern over the impending trial of Yao Fuxin and Pang Qingxiang under the recently altered charge of subversion, a charge which may carry a punishment of life imprisonment or even death.

B. The Government's reply

- 428.** In its communication dated 26 September 2002, the Government provides the following information.
- 429.** The Government states that, in the past few months, it has made an extensive investigation of related individuals and incidents, including visits to such relevant departments as the Ministries of Public Security, State Security and Judiciary Affairs, the ACFTU and local governments.

Textile mill, Guangyuan City, Sichuan Province

- 430.** At the beginning of 2002, Guangyuan City Textile Factory in Sichuan Province went bankrupt. Unsatisfied with the compensation they received after the enterprise sold off its fixed assets, some of the workers repeatedly gathered inside and around the grounds of the factory, blocking the major routes of traffic in the city and disturbing the normal social order in Guangyuan City. In the end, the issues of compensation and settlements for workers following bankruptcy of the enterprise were solved through mediation by a tripartite investigation group comprising the governments of Sichuan Province and the city, the trade union and the enterprise. Investigations show that no clashes took place during the entire event.

Ferroalloy Group Ltd., Liaoyang City, Liaoning Province

- 431.** The Liaoyang City Ferroalloy Group Ltd. in Liaoning Province, a municipalized enterprise, had suffered successive years of loss in production management ever since 1996. In October 2001, a proposal for bankruptcy was accepted after consideration by the Congress of Staff Representatives in the Liaoyang City Ferroalloy Group. In November, the bankruptcy process was formally put into motion.
- 432.** From 11 to 21 March 2002, more than 500 persons from the Liaoyang City Ferroalloy Group, including staff members employed at the time and retirees, made a collective

appeal to the municipal government, demanding that managers with corrupt behaviour in the enterprise be punished, that the standard for one-time settlement payments and financial compensation be improved, and that outstanding payments for wages and social security insurance be settled. In response to the workers' demands, an investigation group was immediately organized by the municipal government, and meticulous in-depth investigations were made of the issues put forward by the appellants. The following measures have been taken:

- (1) *Punishment of corrupt individuals in accordance with the law.* Judicial bodies investigated illegal and criminal acts committed by corrupt individuals in the enterprise, and dealt with them in accordance with the law: one person received a sentence; legal proceedings are being taken against one person; one person is being held in custody as a criminal; three persons are on bail awaiting trial; and records have been established for the investigation of seven persons.
- (2) *Multilateral mobilization of funds to ensure basic living necessities for the workers.* The enterprise made an initial allocation of nearly 30 million Chinese yuan for settlement payments to the workers, and prepares to make retroactive payment of the workers' wages and social security insurance by means of converting bankrupt assets into cash. Key points of the settlement scheme include: a worker whose age is within five years of the legal age for retirement will be able to go through procedures for early retirement, his or her pension being paid monthly by social security insurance agencies; workers who were employed before the system of labour contracts was introduced will receive a one-time settlement payment equivalent to three times the average salary paid last year to workers of enterprises in the city concerned; workers who entered into employment after the system of labour contracts was introduced will receive a one-time financial compensation.
- (3) *Assisting in the re-employment of laid off workers.* At the end of March and then at the beginning of April 2002, municipal departments of labour employment held two large-scale consultations on employment, the topic being the organization of employment assistance fairs for workers laid off by the Liaoyang City Ferroalloy Group. As a result, preliminary employment agreements were reached for a total of more than 1,000 person-times, thus solving the employment problem of some of the people concerned.

433. At this time, a worker at the Liaoyang City Rolling Mill, Yao Fuxin, and three workers at the Liaoyang City FAF, Pang Qingxiang, Xiao Yunliang and Wang Zhaoming, jointly carried out planned activities of terrorism and sabotage, severely threatening public security, disrupting public order and damaging public property. As they had broken the law public security authorities summoned them for trial in accordance with the law, and applied forcible measures. In view of the fact that their behaviour violated the relevant provisions in the *Criminal Law of the People's Republic of China* and the *Law of the People's Republic of China Governing Meetings, Parades and Demonstrations*, on 27 March 2002 after approval by the Liaoyang City People's Procurator, the public security authorities of Liaoyang City arrested Yao Fuxin and the other aforementioned persons in accordance with the law on charges of holding illegal meetings, parades and demonstrations. At present, records are being established to hear the case.

Daqing oilfields

434. In the face of intense competition on the international oil markets during the past few years, the Daqing Oil Company adopted a series of restructuring measures, including staff reduction to increase efficiency, with the view of improving its management and competitiveness. Beginning in 2000, part of the workforce voluntarily terminated labour

contracts with the enterprise on the basis of applications by the persons concerned, approval by the enterprise and notarization. Throughout this process, the enterprise not only paid the full amount of compensation as determined, but also paid an additional large sum of one-time grant-in-aid to each individual, so as to ensure the basic living conditions of those who had terminated labour relations.

- 435.** At the beginning of 2002, thousands of individuals who terminated labour relations with the Daqing Oil Administration Bureau upon payment of a compensation changed their mind and demanded that they be re-employed. On 1 March 2002, they gathered in the office building of the Daqing Oil Administration Bureau. On 4 March, part of the group stopped trains on the Bingzhou railway. Afterwards a part of the group started to assault the office building of the Daqing Oil Administration Bureau and smashed automobiles. In order to maintain proper order and prevent any deterioration of the situation, the police were sent out to carry out their duty.
- 436.** After the incident occurred, governments at all levels expressed considerable concern. The central Government organized a tripartite investigation group comprising representatives of relevant ministries and commissions, the trade union and the enterprise, which went to Daqing to conduct investigations at the scene. With the participation of representatives of those who had terminated their labour contracts upon payment of a compensation, the governments of Heilongjiang Province and Daqing City, the China Oil head office and the Daqing Oil Administration Bureau, a number of discussions were held and observations were heard from those who had terminated their labour contracts upon payment of compensation.
- 437.** After soliciting comments from all parties, the China Oil head office issued *Preliminary suggestions on further improving the management for those who had terminated their labour contracts upon payment of a compensation*, requesting the Daqing Oil Administration Bureau to earnestly carry out work on those who had terminated their labour contracts, make further efforts to solve the problem for such individuals of continuous participation in social security insurance schemes, and actively create conditions to assist their re-employment, with a view to maintaining the momentum of comprehensive reforms and sustainable development throughout the group company. Requests were also made to give close attention to overcoming actual difficulties encountered in their daily lives.
- 438.** There is information indicating that, at this point in time, those who had terminated their labour contracts have accepted the aforementioned measures. Throughout the management of the entire incident, no clashes occurred between the police and demonstrators.
- 439.** The Government adds more generally that China is in the process of transition from a planned economy to a socialist market economy. In order to improve management and competitiveness, it is inevitable that state-owned enterprises would choose to conduct economic restructuring and lay off part of their workforce. There is no doubt that the reforms are moving in the right direction, and China will unswervingly move along the route of restructuring and opening to the outside world. As China is the largest developing country in the world with an enormous population, it would be hard to avoid the emergence of any conflicts in the process of economic restructuring. China has the determination and the capability to solve these problems through intensive reforms and to achieve simultaneous development in the economic and social fields.
- 440.** The Chinese Government pays great attention to protecting the basic rights of laid-off workers, the unemployed, the retirees and other low-income social populations, and to properly arranging for their lives. Since 1998, the Chinese Government has creatively adopted a “triple security” system, which includes a scheme to ensure basic living

necessities for workers laid off by state-owned enterprises, an unemployment insurance scheme and a scheme to ensure minimum living standards for urban inhabitants. Meanwhile, measures have been taken to ensure the timely and full payment of basic living allowances to workers laid off by state-owned enterprises and pensions to retirees.

441. China has made great efforts to reform its social security insurance system. Through more than a decade of efforts, it has established a preliminary social security insurance system independent of the enterprises. Particularly in recent years, systems for pension, health insurance, unemployment insurance, insurance against work-related injuries and maternity insurance have been improved, the collection of premiums has been intensified, and social security coverage has been further extended. Through its efforts to establish a social security system and to promote employment, China has provided a basic social security net for persons from every walk of life, effectively protecting the right of citizens to life and development (which is the basis of human rights) and the right of citizens to employment (which is the basis of decent labour). The results achieved and the experience created by China are important contributions to the work on international labour affairs, and have gained wide recognition among international circles.
442. The Government further asserts that it has always protected and paid attention to the democratic rights of all citizens, including the right to freedom of association. There are explicit provisions to this effect in the Constitution, the Labour Law and the Trade Union Law. As a responsible member of the International Labour Organization, China recognizes and respects all the principles stipulated in the ILO Constitution, including the principle of freedom of association, and has made unremitting efforts to achieve these principles.
443. It must be pointed out, however, that the incidents which occurred in 2002 in certain places in China as mentioned in Case No. 2189 are simply labour disputes resulting from the adjustment of interests during the reduction of the enterprise workforce, and are in no way related to the freedom of association. In Liaoyang City, Yao Fuxin and his three accomplices took advantage of certain workers who were making an appeal to the authorities, and repeatedly planned illegal activities to disturb public order and endanger public security. Such behaviour has nothing to do with freedom of association. No responsible government of a state governed by law would have sat by and watched. Allegations from the ICFTU are at variance with the facts, and constitute a misunderstanding and misinterpretation of the facts.
444. The Government concludes that the facts concerned in this case are already fairly clear, and that there should be no need for discussion by the Committee on Freedom of Association. Nevertheless, in the spirit of promoting cooperation and enhancing understanding, the Government expresses its willingness to maintain dialogue with the Committee.

C. The Committee's conclusions

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

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

- 446.** *The Committee notes with concern the specific allegations concerning the arrest and detention of Yao Fuxin, Pang Qingxiang, Xiao Yunliang, Wang Zhaoming, leaders and representatives of the independent workers' organization at FAF, on charges of illegal demonstration, following a mass demonstration in March 2002 in support of over 10,000 retrenched workers. The arrests on 20 March of the latter three representatives were reportedly accompanied by violent and forceful police intervention resulting in numerous injuries to many of the demonstrators. The complainant further alleges that Gu Baoshu, worker representative, and Guo Suxiang, wife of arrested leader Pang Qingxiang, were also briefly arrested and detained and an unidentified protesting worker from the Liaoyang Fibre Factory remains in detention. Besides the allegations of violent police intervention during the demonstration on 20 March aimed at the release of Yao Fuxin, further allegations were made of police violence and beatings in respect of subsequent demonstrations on 15 May.*
- 447.** *The Committee also notes with deep concern the allegations that Yao Fuxin's health is in a very serious condition and the suspicions of torture or other mistreatment surrounding his detention. In particular, the complainant alleges that Yao Fuxin is suffering from a stroke caused by the onset of heart disease, itself following his brutal treatment at the hands of the police. After a brief hospitalization in March, he was returned to the Tieling detention centre where, despite the continuing deterioration of his health, he has allegedly been denied access to medical treatment, including a return to hospital or release on medical parole.*
- 448.** *Allegations of mistreatment and beatings were also made by the complainant in respect of the brief detention of Gu Baoshu. The complainant further alleges that the police turned down a request by Xiao Yunliang's lawyer to visit him, stating that Xiao had refused a lawyer. Finally, the Committee notes the allegation that Wang Dawei disappeared following his interventions in respect of the FAF struggle.*
- 449.** *As concerns the demonstrations at the Ferroalloy Group, brought about by the consequences of the factory's bankruptcy, the Government indicates that an investigation group was immediately organized to look into the claims put forward by the workers concerning corruption at the enterprise and financial compensation for wages and social security. It further notes the Government's report of measures taken to punish corrupt individuals, mobilize funds to ensure workers' basic living needs and to assist in the re-employment of the laid-off workers.*
- 450.** *More generally, the Committee notes the various explanations given by the Government concerning the consequences of the process of transition from a planned economy to a socialist market economy and the multiple steps taken by the Government to solve the resulting problems and to protect workers' basic rights. While stating that it has always protected and paid attention to the democratic rights of all citizens, including the right to freedom of association, the Government adds that the incidents that are the subject of this complaint are simply labour disputes resulting from the adjustment of interests during the reduction of the enterprise workforce and are in no way related to freedom of association.*
- 451.** *The Government links this general context to the particular case of the FAF workers, stating that Yao Fuxin, Pang Qingxiang, Xiao Yunliang and Wang Zhaoming took advantage of certain workers who were making an appeal to the authorities and repeatedly planned activities of terrorism and sabotage, severely threatening public security, disrupting public order and damaging public property. The Government states that they were summoned for trial in accordance with the law on charges of holding illegal meetings, parades and demonstrations, and that forcible measures were applied by the*

public security authorities. The Government concludes that the ICFTU allegations are at variance with the facts and constitute a misinterpretation of them.

452. While taking due note of the explanations given by the Government concerning the measures taken to respond to workers' demands and to ensure basic living needs, the Committee notes with regret that very little information has been provided in respect of the only issue before it for which it has any competence, that is the question of ensuring respect for the basic principles of freedom of association. This sparseness of information is all the more regretted in light of the detailed information provided by the complainants concerning the role and activities of the four FAF workers' representatives. While noting the Government's general indication that these workers' representatives allegedly planned illegal activities to disturb public order and endanger public security, the Committee observes that the Government provides no detail as to the specific illicit nature of their activities yet admits that the entire context was one of a labour dispute. In the light of the information provided by the Government, the Committee requests the Government to drop the charges relating to terrorism, sabotage and subversion.
453. In these circumstances, the Committee must recall that the detention of trade union leaders or members for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 71]. Further, noting that the Government has not supplied any information in reply to the specific allegations of violent police intervention in the workers' demonstrations, other than to state that the public security officials had applied "forcible measures" against the alleged lawbreakers, the Committee recalls that workers should enjoy the right to peaceful demonstration to defend their occupational interests. The authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of law and order should be in due proportion to the danger to law and order that the authorities are attempting to control and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace [see **Digest**, *op. cit.*, para. 132].
454. In the light of the above, the Committee requests the Government to institute an impartial and independent investigation into the allegations of violent police intervention in respect of the demonstrations in relation to the workers' struggle at FAF in Liaoyang on 20 March and 15 May 2002. The Government is asked to provide detailed information to the Committee on the outcome of this investigation and to indicate the measures taken to compensate any injured workers. The Committee further requests the Government to institute an independent investigation into the allegations concerning the serious condition of Yao Fuxin's health and the suspicions of torture or mistreatment surrounding his detention. The Government is asked to inform the Committee of the outcome of this investigation and of any measures taken in the event that it is found that Yao Fuxin has been mistreated while in detention, including the measures taken to ensure that he receives any necessary medical treatment.
455. As for the brief detentions of Gu Baoshu, worker representative, and Guo Suxiang, wife of arrested leader Pang Qingxiang, the Committee recalls that the arrest, even if only briefly, of trade union leaders and trade unionists for exercising legitimate trade union activities constitutes a violation of the principles of freedom of association [see **Digest**, *op. cit.*, para. 70]. Further noting the allegations that Gu Baoshu was beaten during his brief detention, the Committee requests the Government to institute an independent investigation into these allegations and to inform the Committee of the outcome and of any measures taken in the event that it is found that Gu Baoshu was mistreated while in detention.

Finally, it requests the Government to provide any information it may have in respect of the whereabouts of Wang Dawei.

456. *As for the arrest and detention of Yao Fuxin, Pang Qingxiang, Xiao Yunliang and Wang Zhaoming, in light of the insufficiency of the Government's reply as to the precise nature of the activities resulting in the disturbance of public order and endangered public security and the fact that the initial charge of illegal demonstration was converted to "subversion" nine months after the incident and two weeks before trial (a crime which reportedly carries a penalty of up to life imprisonment or even the death penalty), the Committee requests the Government to provide specific and detailed information on the charges brought against these four workers' representatives. In the meantime, the Committee recalls that it has considered the sentencing of trade unionists to long periods of imprisonment, very often on the grounds of "disturbance of public order", in view of the general nature of the charges, might make it possible to repress activities of a trade union nature [see **Digest**, op. cit., para. 64]. With this in mind, the Committee requests the Government to take the necessary steps for the immediate release of any of the FAF workers' representatives still detained and to ensure that the charges brought against them are dropped. It requests the Government to keep it informed of the measures taken in this regard.*

457. *As concerns the allegations concerning Xiao Yunliang's lawyer's lack of access to his client, the Committee recalls that detained trade unionists, like anyone else, should benefit from normal judicial proceedings and have the right to due process, in particular, the right to be informed of the charges brought against them, the right to have adequate time and facilities for the preparation of their defence and to communicate freely with counsel of their own choosing, and the right to a prompt trial by an impartial and independent judicial authority [see **Digest**, op. cit., para. 102]. The Committee requests the Government to ensure that due process of the law is guaranteed in respect of all the workers' representatives named in this complaint.*

Petrochina Petroleum Administration Bureau (PAB)
headquarters, Daqing (Heilongjiang Province)

458. *The Committee notes the allegations concerning the intimidation and threats by some 1,000 police and paramilitary forces against workers during a sit-in demonstration at Petrochina's PAB headquarters in March 2002. According to the complainant, workers at this demonstration were detained for up to two weeks and released on the condition that they would no longer participate in the demonstrations. The Committee notes with particular concern the allegations that several representatives of the independently formed PAB Retrenched Workers' Provisional Union Committee and another 60 workers involved in protest actions in Daqing City were reportedly detained on 11 March and are still unaccounted for. The complainant also alleges the arrest and detention of an unidentified 50-year-old woman and a retired worker, Li Yan, whose whereabouts are unknown.*

459. *The Committee notes the background information on the dispute in the Daqing oilfields provided by the Government and its explanation that workers had changed their mind in respect of a compensation payment offered during a restructuring process of the company and had demanded to be re-employed. According to the Government, in March 2002, these workers stopped trains, started an assault on the office building of the PAB and smashed cars. While indicating that, in order to maintain proper order and prevent deterioration of the situation, the police were sent in to carry out their duty, the Government adds that no clashes occurred between the police and demonstrators. Subsequently, a tripartite investigation group (comprising, according to the Government, representatives of relevant ministries and commissions, the trade union and the enterprise) was established and various measures were proposed in respect of social security insurance and conditions for*

re-employment. The Government adds that there is information indicating that those who had terminated their labour contracts have accepted these measures.

- 460.** *While noting the efforts made by the Government to resolve this dispute through a tripartite investigation group, the Committee notes with regret that, other than a general statement to the effect that there were no clashes between the police and demonstrators, the Government has not replied to the allegations concerning the detention on 11 March of several representatives of the independently formed PAB Retrenched Workers' Provisional Union Committee and some 60 other workers involved in the protest actions in Daqing City, as well as an unidentified 50-year-old woman and a retired worker, Li Yan, all of whom, according to the complainant, are still unaccounted for. Recalling that the detention of trade union leaders or members for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular [see **Digest**, *op. cit.*, para. 71], the Committee requests the Government to reply specifically to these allegations and to provide any information at its disposal concerning arrests which may have been made in connection with the protests in Daqing, whether any individuals are still being detained and any charges which may have been brought against them.*

Police intervention at a strike at the Guangyuan Textile Factory,
the sentencing of workers' advocates in Sichuan Province
and the detention of an independent labour activist
in Shanxi Province

- 461.** *In Sichuan Province, the allegations refer to police intervention in a strike action at the Guangyuan Textile Factory, also in March 2002, where several strikers were beaten up by the police at the picket line outside the factory and about a dozen were detained. The complainants also allege that two democratic opposition activists, Hu Mingjun and Wang Sen, (and possibly a third activist mentioned in earlier reports, Zheng Yongliang) have been sentenced to heavy prison terms for acting on behalf of the organizing workers.*
- 462.** *The Committee notes that, according to the Government, the Guangyuan Textile Factory workers, unsatisfied with the compensation they had received when the textile mill went bankrupt, had repeatedly gathered inside and around the grounds of the factory, blocking the major routes of traffic in the city and disturbing the normal social order in Guangyuan. According to the Government, the issues of compensation were solved through mediation by a tripartite investigation group.*
- 463.** *While noting the Government's general indication that the workers had disturbed the normal social order in the city, the Committee must recall the importance it attaches to the principle mentioned above that the intervention of the forces of law and order should be in due proportion to the danger to law and order that the authorities are attempting to control and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace. In light of the numerous allegations in this complaint concerning the excessive use of force by the police in various disputes taking place in different parts of the country, the Committee requests the Government to consider preparing relevant instructions for the forces of law and order aimed at eliminating the danger of resorting to the use of excessive violence when controlling demonstrations.*
- 464.** *Finally, the Committee notes that the Government has not replied to the allegations concerning the two democratic opposition activists, Hu Mingjun and Wang Sen (and possibly Zheng Yongliang) who have reportedly been sentenced to heavy prison terms for acting on behalf of the organizing workers, nor to the allegations that an independent*

labour activist, Di Tiangui, formerly a state employee at Dazhong Machinery Factory, was detained on 1 June 2002 in Shanxi Province for trying to set up a federation for retired workers and charged with “incitement to subvert state power”. The Committee requests the Government to provide detailed information in this respect and, in particular, as regards the concerns raised over Di Tiangui’s health and the allegations of mistreatment.

* * *

- 465.** *On a more general note, and giving full consideration to the context of transition described by the Government and its determination to achieve simultaneous development in economic and social fields, the Committee considers that it is precisely within this context that the only durable solution to the apparently increasing social conflict experienced in the country is through full respect for the right of workers to establish organizations of their own choosing by ensuring, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party [see **Digest**, op. cit., para. 273]. While noting the Government’s statement that freedom of association is guaranteed through the explicit provisions in its Constitution, the Labour Law and the Trade Union Law, the Committee must refer to its earlier conclusions in respect of certain significant legislative obstacles to the full guarantee of freedom of association. In particular, in its examination of Case No. 2031 [321st Report, para. 165], the Committee recalled that, during its examination of two previous complaints presented against the Government of China [see 286th Report (Case No. 1652) and 310th Report (Case No. 1930)], it had concluded that the obligations set forth in sections 5, 8 and 9 of the Trade Union Act prevented the establishment of trade union organizations that were independent of the public authorities and of the ruling party, whose mission should be to defend and promote the interests of their constituents and not to reinforce the country’s political and economic system. The Committee had further noted that sections 4, 11 and 13 resulted in the imposition of a trade union monopoly and that the requirement that grass-roots organizations be controlled by higher level trade unions and that their constitutions should be established by the National Congress of Trade Union Members, constituted major constraints on the right of unions to establish their own constitutions, organize their activities and formulate programmes. Consequently, the Committee had concluded that many provisions of the Trade Union Act were contrary to the fundamental principles of freedom of association and had requested the Government to take the necessary steps to ensure that the provisions in question were modified.*
- 466.** *In conclusion, the Committee strongly believes that the development of free and independent organizations and negotiation with all those involved in social dialogue is indispensable to enable a government to confront its social and economic problems and resolve them in the best interests of the workers and the nation. Indeed, a balanced economic and social development requires the existence of strong and independent organizations which can participate in the process of development [see **Digest**, op. cit., paras. 24 and 25]. In this context, the Committee requests the Government once again to examine the possibility of a direct contacts mission being undertaken to the country in order to promote the full implementation of freedom of association. The Committee expresses the hope that the Government will respond positively to this suggestion which has been made in a constructive spirit with a view to assisting the Government to find appropriate solutions to the existing problems.*

The Committee’s recommendations

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

- (a) *The Committee requests the Government to institute an impartial and independent investigation into the allegations of violent police intervention in respect of the demonstrations in relation to the workers' struggle at the Ferrous Alloy Factory in Liaoyang on 20 March and 15 May 2002. The Government is asked to provide detailed information to the Committee on the outcome of this investigation and to indicate the measures taken to compensate any injured workers.*
- (b) *The Committee further requests the Government to institute an independent investigation into the allegations concerning the serious condition of Yao Fuxin's health and the torture or mistreatment surrounding his detention. The Government is asked to inform the Committee of the outcome of this investigation and of any measures taken in the event that it is found that Yao Fuxin has been mistreated while in detention, including the measures taken to ensure that he receives any necessary medical treatment.*
- (c) *The Committee requests the Government to institute an independent investigation into the allegations that Gu Baoshu was beaten during his brief detention and to inform the Committee of the outcome of this investigation and of any measures taken in the event that it is found that he was mistreated. It also requests the Government to provide any information it may have in respect of the whereabouts of Wang Dawei.*
- (d) *Given the Government's indication that the events occurring at the Ferrous Alloy Factory fell within the context of a labour dispute, the Committee requests the Government to drop all charges relating to terrorism, sabotage and subversion.*
- (e) *The Committee also requests the Government to provide specific and detailed information on the charges brought against Yao Fuxin, Pang Qingxiang, Xiao Yunliang and Wang Zhaoming. In the meantime, it requests the Government to take the necessary steps for the immediate release of any of the FAF workers' representatives still detained and to ensure that the charges brought against them are dropped. The Government is requested to keep the Committee informed in this regard.*
- (f) *The Committee requests the Government to ensure that due process of the law is guaranteed in respect of all the workers' representatives named in this complaint.*
- (g) *The Committee requests the Government to reply specifically to the allegations that representatives of the PAB Retrenched Workers' Provisional Union Committee and some 60 other workers involved in protest actions in Daqing City as well as an unidentified 50 year old woman and a retired worker, Li Yan, were detained on 11 March. It further requests the Government to provide any information at its disposal concerning arrests which may have been made in connection with the protests in Daqing, whether any individuals are still being detained and any charges which may have been brought against them.*
- (h) *In light of the numerous allegations in this complaint concerning the excessive use of force by the police in various disputes taking place in*

different parts of the country, the Committee requests the Government to consider preparing relevant instructions for the forces of law and order aimed at eliminating the danger of resorting to the use of excessive violence when controlling demonstrations.

- (i) *The Committee requests the Government to provide detailed information concerning the two democratic opposition activists, Hu Mingjun and Wang Sen, (and possibly Zheng Yongliang) who have reportedly been sentenced to heavy prison terms for acting on behalf of the organizing workers and on the allegations that an independent labour activist, Di Tiangui, was detained on 1 June 2002 in Shanxi Province for trying to set up a federation for retired workers. The Government is asked, in particular, to provide information concerning Di Tiangui's health and the allegations of his mistreatment in detention.*
- (j) *The Committee requests the Government once again to examine the possibility of a direct contacts mission being undertaken to the country in order to promote the full implementation of freedom of association. The Committee expresses the hope that the Government will respond positively to this suggestion which has been made in a constructive spirit with a view to assisting the Government to find appropriate solutions to the existing problems.*

CASE NO. 1787

INTERIM REPORT

Complaints against the Government of Colombia presented by

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

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

468. The Committee last examined this case at its November 2002 meeting [see 329th Report, paras. 357-384]. The International Confederation of Free Trade Unions (ICFTU) sent new

allegations in a communication dated 8 October 2002; the World Federation of Trade Unions in communications dated 3 and 9 September and 18, 27 and 28 November 2002; and the Single Confederation of Workers of Colombia (CUT), Antioquia Section Directorate, in a communication of 15 November 2002. In a recent communication of 3 February 2003, the ICFTU submitted new allegations. The Government sent its observations in a communication dated 15 January 2003.

- 469.** 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

- 470.** At its November 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 329th Report, para. 384]:

- (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, in particular, in the departments of Valle del Cauca and Antioquia and the municipality of Barrancabermeja, especially the Empresa de Petróleo de Colombia and the Empresa de Gas de Barrancabermeja. The Committee reminds the complainants and the Government that they may request 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.

B. New allegations

471. The complainant organizations complain of the following acts of violence against trade union officials and members:

Murders

- (1) Jorge Alberto Alvarez, member of SUTIMAC, on 6 August 2001 in the outskirts of Santa Bárbara;
- (2) Adolfo de Jesús Munera López, Vice-President of the CUT executive subcommittee, Atlántico and member of SINALTRAINAL, on 31 August 2002, in Barranquilla, Department of Atlántico;
- (3) Oswaldo Moreno Ibagüe, leader of the Meta Civic Human Rights Committee and President of the Communal Action Committee, in Villavicencio, on 3 September 2002;
- (4) César Gómez, President of the Pamplona Subcommittee of the National Union of University Workers of Colombia (SINTRAUNICOL), on 5 September 2002, in the municipality of Pamplona, Department of North Santander;
- (5) Oscar de Jesús Payares, member of the Atlántico Teachers' Association (ADEA-FECODE-CUT), on 6 September 2002, in Barranquilla, Department of Atlántico;
- (6) Alfonso Morelly Zárate, member of the Magdalena branch of the Association of University Teachers (ASPU-CUT), on 7 September 2002, in Marta, Department of Magdalena;
- (7) Gema Lucía Jaramillo, member of the Antioquia Teachers' Association (ADIDA-FECODE-CUT), on 9 September 2002, in the municipality of San Andrés de Cuerquia, Department of Antioquia;
- (8) Miguel Lora Gómez, member of the executive committee of the Confederation of Workers of Colombia (CTC), on 9 September 2002;

- (9) José Fernando Mena Alvarez, member of the Magdalena Teachers' Union (EDUMAG-FECODE-CUT), on 10 October 2002, in the municipality of Palermo, Department of Magdalena;
- (10) Oscar David Polo Charry, member of the Magdalena Workers' Union (EDUMAG-FECODE-CUT), on 28 October 2002, in the municipality of Pivijay, Department of Magdalena;
- (11) Jairo Vera, member of the Colombian Institute for Agrarian Reform (SINTRADIN-CUT), on 23 November 2002, in Bucaramanga, Department of South Santander.

Acts of violence

Several workers, members of the Cali Municipal Enterprises Union (SINTRAEMCALI), were assaulted by police officers during the Permanent Assembly on 1 October 2002.

Abductions and disappearances

- (1) Victor Manuel Jiménez Frutos, Vice-President of the Agricultural Workers' Union of the Department of Atlántico (SINTRAGRICOLAS-FENSUAGRO-CUT), disappeared on 22 October 2002, in the municipality of Ponedera, Department of Atlántico;
- (2) Ramón Alzate, Javier Agudelo, Jhon Jairo Sánchez and Rafael Montoya, members of SUTIMAC, were abducted on 6 April 2001 and released on 11 April.

Assaults

Cali Municipal Enterprises Union (SINTRAEMCALI): on 3 September 2002 a powerful bomb exploded causing material damage at the place where workers' meetings are normally held.

Threats

- (1) Against the officials of the Cali Municipal Enterprises Union (SINTRAEMCALI): Alexander López Maya, Luis Hernández and the other members of the executive committee received a communication from paramilitary groups;
- (2) Gerardo González Muñoz, member of FENSUAGRO-CUT;
- (3) Domingo Rafael Tovar Arrieta, CUT Organizing Director;
- (4) workers and members of the Arauca Power Company, by paramilitaries;
- (5) in Arauca, activists of the Teachers' Association (ASEDAR) and National Association of Workers and Employees in Hospitals and Clinics (ANTHOC);
- (6) Henry Ocampo, President of the Caldas Workers' Federation (FEDECALDAS), by paramilitaries;
- (7) Saúl Suárez Donado, activist of the Workers' Trade Union, by paramilitaries: when he complained of the incident to the Human Rights Unit in the Attorney-General's Office, on 19 September 2002, he was detained on a charge of rebellion;

- (8) the Cartagena branch of the National Union of Workers in the Food Industry (SINALTRAINAL) by Self-defence Groups of Colombia (AUC) on 19 September 2002;
- (9) Eduardo Camacho Rugeles, health secretary and member of the Commission on Human Rights, Ever Tique Giron, education secretary and member of the executive committee of the Union of University Workers (SINTRAUNICOL-CUT) and Pedro Edgar Galeano Olaya, secretary for cooperative affairs, by paramilitaries of the Tolima Block in the Department of Tolima on 16 October 2002;
- (10) Carlos Dimate, Antonio Guerrero, Demetrio Guerrero, Marcos Moreno, Diógenes Correa, officials of the Union of Small Farmers of the Department of Cundinamarca (SINTRAGRICUN) and Gerardo González, official of the National United Federation of Agricultural Workers (FENSUAGRO-CUT);
- (11) Gustavo Guamanga, president of the Union of Small Farmers of the Department of Cauca (SINPEAGRIP), in October 2002, in the city of Popayán;
- (12) Efraín Holguín, Fernando Trujillo Lozada and José Eduardo Villa Garzón, officials of the Workers' Union of the Empresa de Acueducto y Alcantarillado of Bogotá (SINTRACUEDUCTO-CUT), in October 2002;
- (13) Nicolás Acevedo Cuartas, President of the Apartadó branch of the National Union of Bank Employees (UNEB-CUT), on 29 October 2002 in the city of Bogotá;
- (14) Willain Mendoza, President of SINALTRAINAL, on 9 October 2002;
- (15) the Executive Committee of SUTIMAC, Santa Bárbara branch, on various occasions between April and May 2001.

Detentions and harassment

Mario de Jesús Castañeda, President of the CUT-HUILA subcommittee, on 28 October 2002 for distributing propaganda concerning the national strike convened by the CUT.

- 472.** In its communication dated 3 February 2003, the ICFTU alleges: (1) threats have been made against the President of the Union of Coca Cola workers, Wilian Mendoza and his family; (2) the assault of Mr. Nicolás Hernandez Cabrera, General Secretary of FENSUAGRO on 20 December 2002; (3) the murder of José Marcelino Diaz González, President of the College of Rectors and Directors (COLDIZ), affiliated to the Aranca Teachers' Association (ASEDAR-FECODE), on 13 January 2003 and Abelardo Barbora Paéz, member of FENSUAGRO on 21 January 2003 in Santander; (4) the detention of Mr. Hernando Hernández, Secretary of International Affairs of the USU and former Vice-President of the CUT, Nubia Ester Gonzalez, officer of the Union of Small and Medium Agricultural Enterprises of Sucre (SINDAGRICULTORES) and Policarpo Camacho and Gloria Holguin, directors of the Agricultural Union of the municipality of Calarcá; (4) the withdrawal of protection for Mr. Guillermo Rivera Plata, Vice-President of the National Union of Workers of the Agricultural and Fisheries Union (SINTRAINAGRO); and (6) the non-application of the Agreement of 29 January 2002 made between the Government, the workers of municipal enterprises of Cali and the community of Cali under the terms of which the non-privatization of the enterprises had been decided.

C. The Government's reply

473. In its communication of 15 January 2003, the Government states that:

In compliance with the undertaking by the national Government given by the Vice-President of the Republic during the 285th meeting of the Governing Body in November 2002, the Government has for the first time made a considerable inter-institutional effort to collect and process the relevant information and present, as on this occasion, the most comprehensive reply possible. That is why, firstly, the sources of the information to which the Government refers in its reply are quoted. Secondly, brief explanations are provided of the structure and stages of the investigations required under our current law to clarify the alleged facts. The Government's wish is that this will give the freedom of association division, the Committee on Freedom of Association and the Governing Body itself more information on which to base its recommendations on the matter and better understand the situation in Colombia. Thirdly, statistics are provided on the status of various complaints to the Committee on Freedom of Association. In this way, we hope to provide information to illustrate more precisely the work of the Attorney-General's Office and the Colombian State in general.

474. This reply was prepared on the basis of information provided by the Attorney-General's Office, the Ministry of Defence, the Ministry of the Interior and the national police, and checked and summarized by the Human Rights Office in the Ministry of Labour and Social Security. The Government complies punctiliously with the Committee's requirements concerning the verification of the status of trade union leader or official of the person at the end of each of the replies, indicating whether or not the person has that status.

475. In addition, information that could not be obtained from the abovementioned sources is being sought from enterprises and trade unions for the purpose of checking and/or clarifying data that is doubtful or where there is insufficient information to make an official response.

476. The Government points out that the 329th Report repeats allegations by the same person, which leads to confusion and has a negative impact on the perception of the problem of violence and impunity in Colombia. The Government requests this situation to be reviewed and the information corrected. The following are such cases: Carlos Arturo Alarcón, Daniel Orlando Gutiérrez and Sigilfredo Grueso.

477. The Government provides a brief description of the structure of the investigative stage of the penal process (inquiries and substages) which must be conducted in Colombia to clarify the alleged facts. We hope that these explanations will help to clarify the current status of the investigations. The investigation has two main stages: the preliminary investigation or inquiries and prosecution. Under article 319 of the Criminal Procedures Code:

Where there is doubt as to whether it is appropriate to open a prosecution, the purpose of the preliminary investigation shall be to determine whether or not there are grounds for criminal proceedings. It shall take the necessary measures to determine whether the incident has occurred, regardless of how it has come to the attention of the authorities; whether it is a criminal offence and whether criminal proceedings are justified and shall gather the evidence essential to identify or determine the perpetrators or other parties to the act". On completion of the preliminary investigation, a decision will be made either to open the investigation or not to proceed (inhibitory decision). Thus, "the official who has directed or conducted the preliminary investigation, if competent, will also open and conduct the prosecution, unless the case has been transferred (article 329 of the Criminal Procedures Code).

**Information on the list in the “new allegations”
section of the 329th Report of the Committee on
Freedom of Association**

Murders

- (1) Carmenza Pungo, member of ANTHOC, on 2 September 2001, on the banks of the River Piedra. According to the general report of investigations carried out by the Attorney-General’s Office into violations of trade union members’ human rights, the investigation into this case is being conducted by the support unit of the National Human Rights Unit, in Cali, File No. 464282. The investigation is at the prosecution stage and a warrant was issued for the arrest of a person;
- (2) 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. According to the information provided by the Attorney-General’s Office, the investigation into the murder is being conducted by the National Human Rights and International Humanitarian Law Unit (DIH) in Neiva, File No. 1386. The investigation is currently active (prosecution stage), a person has been arrested and a decision on that person’s legal situation is pending;
- (3) Gustavo Oyuela Rodríguez, member of the Nariño Teachers’ Union (SIMANA FECODE), on 19 March 2002, in the Department of Nariño. According to the information provided by the Attorney-General’s Office, he was murdered in the municipality of Ortega, Department of Tolima and the preliminary inquiries are being conducted by Prosecutor’s Office 47, Guamo, Ibagué Section Directorate, File No. 3740. It is currently at the examination of evidence stage. The prosecutor also reported that on checking the membership of the person concerned with the Nariño Education Office and SIMANA, he is not a teacher and thus not a member of SIMANA. Moreover, having carried out the relevant inquiries, there is no investigation in any judicial authority in Nariño;
- (4) 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 the municipality of San Carlos, Department of Antioquia. According to the information provided by the Attorney-General’s Office, the responsible authority of the investigation is the National Human Rights Unit and International Humanitarian Law Unit (DIH). The investigation is at the preliminary stage, File No. 1295. The prosecutor states that Mr. Urrea Marín was not a member of any trade union;
- (5) María Nubia Castro, member of ANTHOC-CUT, on 21 March 2002, in the municipality of San Carlos, Department of Antioquia. According to the information provided by the Attorney-General’s Office, the preliminary inquiries into the murder are being conducted by Special Prosecutor’s Office 19, Antioquia Section Directorate (DSF), File No. 549773;
- (6) Eddy Socorro Leal Barrera, member of the North Santander Teachers’ Association (ASINORT), on 31 March 2002 in the municipality of Salazar. The Attorney-General’s Office reports that the preliminary inquiries are being conducted by Prosecutor’s Office 4, Life Unit (*Unidad de Vida*) Cúcuta Section Directorate (DSF), File No. 44160;

- (7) Nelsy Gabriela Cuesta Córdoba, abducted on 4 April 2002, in the municipality of Yondo. The Attorney-General's Office reports that the preliminary inquiries are being conducted by Special Prosecutor's Office 23 (Terrorism), Medellín under File No. 570-031. The investigation is at present active. Mrs. Cuesta Córdoba's trade union membership has yet to be established;
- (8) Heliodoro Sierra, member of the Single Union of Education Workers of Quindío (SUTEQ), on 7 April 2002, in the Department of Quindío. The Attorney-General's Office reports that the preliminary inquiries are being conducted by the Public Prosecutor's Office (Life Unit) Section Directorate (DSF), Armenia, File No. 44967;
- (9) Freddy Armando Girón Burbano, activist of the Cauca Teachers' Association (ASOINCA-CUT), on 7 April 2002 while travelling on public transport in the municipality of El Patía. The Ministry of Defence in its communication MDD-HH-725 of 31 October 2002 states that the investigation is being conducted by the Prosecutor's Office, Bordo, Cauca, and is at the examination of evidence stage, File No. 56590;
- (10) Diofanol Sierra Vargas, official of the Food Industry Workers' Trade Union (SINTRAINAL-CUT), on 8 April 2002, in Barrancabermeja, Department of Santander. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the murder investigation is at the prosecution stage and is being conducted by the support unit of the National Human Rights Unit and International Humanitarian Law Unit (DIH), Bucaramanga, File No. 13177. Two people are at present under arrest;
- (11) Jhon Jairo Durán, member of the National Association of Civil Servants and Judicial Employees (ASONAL JUDICIAL-CUT), on 13 April 2001, in Nariño, by guerrillas. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the murder investigation is at the preliminary stage and is being conducted by the support unit of the National Human Rights Unit and International Humanitarian Law Unit (DIH), Medellín, File No. 073;
- (12) 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. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by Prosecutor's Office 4, File No. IP51227, and is now at the examination of evidence stage;
- (13) Javier de Jesús Restrepo, member of ASONAL JUDICIAL-CUT, on 16 April 2002, in the municipality of Puerto Rico, Department of Florencia. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the preliminary inquiries are currently being conducted by the support unit of the National Human Rights Unit and International Humanitarian Law Unit (DIH), Neiva, File No. 1208, and are now at the examination of evidence stage. The Attorney-General's Office confirms that Mr. Javier de Jesús Restrepo is not a member of ASONAL JUDICIAL;
- (14) Said Ballona Gutiérrez, member of the North Santander Teachers' Trade Union Association (ASINORTH), on 18 April 2002, in the municipality of Tarra, Department of North Santander. The Attorney-General's Office reports that the preliminary murder inquiries are being conducted by Special Prosecutor's Office 3, Cúcuta Section Directorate, File No. 46079. Mr. Ballona Gutiérrez was an ASINORTH grass-roots worker;

- (15) 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 the municipality of Curillo, Department of Arauca. According to the information provided by the Attorney-General's Office, the responsible authority of the investigation is Prosecutor's Office 13, Belén de los Andaquíes, Florencia Section, File No. 24380 and is now at the prosecution stage;
- (16) Agustín Colmenares, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April 2002. In reply to letter DH.214 of 16 June 2002 from the Human Rights Office of the Ministry of Labour and Social Security, the Attorney-General's Office reports that the investigation is at the preliminary stage, examination of evidence. The FARC is suspected of being responsible;
- (17) Alberto de Jesús Martínez Estrada, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April 2002. In reply to letter DH.214 of 16 June 2002 from the Human Rights Office of the Ministry of Labour and Social Security, the Attorney-General's Office reports that the investigation is at the preliminary stage, examination of evidence;
- (18) Juan Sepúlveda, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April 2002. In reply to letter DH.214 of 16 June 2002 from the Human Rights Office of the Ministry of Labour and Social Security, the Attorney-General's office reports that the investigation is at the preliminary stage, examination of evidence;
- (19) Albeiro Ledesma, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April 2002. In reply to letter DH.214 of 16 June 2002 from the Human Rights Office of the Ministry of Labour and Social Security, the Attorney-General's Office reports that the investigation is at the preliminary stage, examination of evidence;
- (20) José Hurtado, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April 2002. In reply to letter DH.214 of 16 June 2002 from the Human Rights Office of the Ministry of Labour and Social Security, the Attorney-General's Office reports that the investigation is at the preliminary stage, examination of evidence;
- (21) Enrique Suárez, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April 2002. In reply to letter DH.214 of 16 June 2002 from the Human Rights Office of the Ministry of Labour and Social Security, the Attorney-General's Office reports that the investigation is at the preliminary stage, examination of evidence;
- (22) Luis Enrique Guisa, official of the National Union of Farmworkers (SINTRAINAGRO), in the Department of Antioquia, on 26 April 2002. In reply to letter DH.214 of 16 June 2002 from the Human Rights Office of the Ministry of Labour and Social Security, the Attorney-General's Office reports that the investigation is at the preliminary stage, examination of evidence;
- (23) Ricardo Eliécer Ruiz, President of the Trade Union of Workers of Bello municipality, on 3 May 2002. The Prosecutor's Office reports that the investigation is at the preliminary stage, conducted by the Bello Prosecutor's Office, Medellín. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade unionists' human rights, the investigation has now reached the examination of evidence stage;

- (24) 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. According to information provided by the Attorney-General's Office, the preliminary inquiries into the murder are being conducted by Special Prosecutor's Office 19 (Terrorism), Medellín, File No. 402-073;
- (25) Froilán Hilario Peláez Zapata, member of the CUT Executive Committee, on 6 May 2002, in the Department of Antioquia. The Attorney-General's Office, in its general report into violations of trade unionists' human rights, reports that the investigation is being conducted by the Trade Union Unit, Special Prosecutor 16, Medellín, File No. 562612, and is currently at the examination of evidence stage. The report states that Mr. Peláez Zapata was a teacher, member of ADIDA-FUTRAN-CUT, Antioquia subcommittee;
- (26) Jairo Ramos, member of the Union of Electricity Workers of Colombia (SINTRAELECOL-CUT), on 1 June 2001 in the municipality of Túquerres in the Department of Nariño. According to the general report of investigations by the Attorney-General's Office into violations of trade unionists' human rights, the authority conducting the investigation into this incident is Prosecutor's Office 33, Túquerres-Pasto, File No. 1119, prosecution stage;
- (27) Adalberto Tukamoto Palomino, a SINTRAELECOL-CUT activist, on 1 June 2002, in the Department of Meta. According to the general report of investigations by the Attorney-General's Office into violations of trade unionists' human rights, the authority conducting the investigation into this incident is Prosecutor's Office 18, Villavicencio File No. 71358. It is at the preliminary stage, preliminary inquiries having been ordered on 1 June 2002;
- (28) Isaías Gómez Jaramillo, member of the Antioquia Teachers' Association (ADIDA-CUT), on 1 June 2002, in the Department of Meta. According to the general report of investigations by the Attorney-General's Office into violations of trade unionists' human rights, the authority conducting the investigation is Prosecutor's Office 89, Life Unit 1, Medellín, File No. 586755, and it is currently at the examination of evidence stage;
- (29) Hernán de Jesús Ortiz, a member of the National Committee of the Single Confederation of Workers of Colombia (CUT) and official of the Colombian Teachers' Federation (FECODE), on 4 June 2002. According to the general report of investigations by the Attorney-General's Office into violations of trade unionists' human rights, the authority conducting the investigation is Prosecutor's Office 3 in the Manizales High Court, File No. 62144140;
- (30) Eduardo Vasques Jiménez, member of ADIDA-CUT, on 4 June 2002, in the Department of Magdalena, The Attorney-General's Office reports that the investigation is being conducted by the Second Special Prosecutor's Office, Santa Marta, File No. 31186 and is currently at the examination of evidence stage, following a statement taken from a person on 2 September 2002;
- (31) Jhon Jairo Alvarez Cardona, member of the National Committee of SINTRATEXIL-CUT, on 5 June 2002, in the municipality of Rionegro. According to the general report of investigations by the Attorney-General's Office into violations of trade unionists' human rights, the authority conducting the investigation into this incident is Prosecutor's Office 71, Rionegro, File No. 5845, and is currently at the examination of evidence stage;

- (32) César Blanco, official of the Bucaramanga branch of USO, on 17 June 2002, in the city of Bucaramanga, Department of Santander. On 28 August 1995, there was an attempted murder in the city of Tibú, North Santander in which he was seriously wounded. The general report of investigations by the Attorney-General's Office into violations of trade unionists' human rights records an investigation into aggravated homicide conducted by the support unit of the National Human Rights Unit, Bucaramanga, File No. 1366, currently at the preliminary stage. The Prosecutor's Office reports that the investigation is at present active;
- (33) Héctor Julio Gómez Cuellar, official of the Municipal Association of the La Plata Commune Action Committee (which is not a trade union), on 12 June 2002, in the municipality of La Plata. The Attorney-General's Office reports that the preliminary investigations are being conducted by Prosecutor's Office 23, La Plata, Neiva Section Directorate, File No. 1527. The investigation is currently assigned to the Technical Group (CTI);
- (34) Luis Enrique Coiran, President of the Tame Section of ANTHOC, on 19 June 2002, in the municipality of Tame. The Prosecutor's Office stated in its communication No. 3118 of 7 October 2002 that the investigation has reached the prosecution stage, File No. 595. A person has been arrested;
- (35) 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. The Attorney-General's Office reports that the preliminary investigations are being conducted by Prosecutor's Office 5, Bucaramanga, File No. 27099. The investigation is currently suspended. Mr. Rodríguez Ruiz is a trade union leader;
- (36) Manuel Antonio Fuertes Arévalo, former Vice-President of the Tuquerres subcommittee of SINTRAELECOL-CUT, on 29 June 2002, in the Department of Nariño. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently at the preliminary stage and is being conducted by Special Prosecutor's Office 4, Pasto, File No. 56028 and the Prosecutor's Office is now examining the evidence. The Prosecutor's Office found that on the date of the incident, Mr. Fuertes Arévalo had ceased to be a member of the subcommittee of the TELECOM-TUQUERRES union two years earlier;
- (37) 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. According to the Attorney-General's Office, the Prosecutor's Office, Barranquilla Section Directorate, Barranquilla reports that the Prosecutor's Office Judicial Information System (SIJUF) shows no record of an investigation into this murder. The Sabanagrande police station was requested to report which authority exhumed the body and to which prosecutor's office it was sent;
- (38) Roberto Rojas Pinzón, member of ANTHOC-CUT, on 26 July 2002, in the municipality of Cravo Norte, Department of North Santander. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the preliminary stage, and is being conducted by Prosecutor's Office 1, Arauca Section Directorate, File No. 13924, and is at the examination of evidence stage;
- (39) Wilfredo Camargo Aroca, member of the National Union of Farmworkers (SINTRAINAGRO), on 31 July 2002, in the municipality of Puerto Wilches, Department of Santander. According to the general report of investigations conducted

by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the preliminary stage (examination of evidence), and is being conducted by Prosecutor's Office 5, Barrancabermeja Section, File No. 27419;

- (40) Rodrigo Gamboa Coy, President of the César subcommittee of the INCORA Workers' Union (SINTRADIN-CUT), on 31 July 2002, in the city of Valledupar, Department of César. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently at the preliminary stage, and is being conducted by Prosecutor's Office 4, Life Unit, File No. 145854, and is currently at the examination of evidence stage. According to a communication dated 24 December 2002 addressed to the Office of Human Rights in the Ministry of Labour, his office in the SINTRADIN subcommittee was First President. He was an all-round expert working in the field, in the indigenous communities welfare programme, and maintained constant contact with the indigenous communities in the Department of César;
- (41) Felipe Santiago Mendoza, member of USO, on 15 August 2002, in the municipality of Tibú, Department of Santander. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the preliminary stage, and is being conducted by Prosecutor's Office 4, Life Unit, Cúcuta, File No. 51581, and is currently at the examination of evidence stage;
- (42) Amparo Figueroa, member of ANTHOC-CUT, on 15 August 2002, in the municipality of Miranda, Department of Cauca. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the preliminary stage, and is being conducted by the Prosecutor's Office, Corinto-Popayán Section, File No. 2328, and is currently at the examination of evidence stage;
- (43) Francisco Méndez Díaz, member of the Sucre Teachers' Association (ADES-FECODE-CUT), on 15 August 2002, in the municipality of Chalcá, Department of Sucre. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation into this incident is at the preliminary stage, and was opened on 28 August 2002 by Prosecutor's Office 2 in the Specialized Criminal Circuit Court, Sincelejo Section, File No. 26411. It remains to be established whether he was a member of the Sucre Teachers' Association (ADES-FECODE-CUT);
- (44) 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 municipality of Córdoba, Department of Quindío. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the responsible authority of the investigation is Prosecutor's Office 10, Calarcá Section, Quindío, File No. 9129-1323-10.

Acts of violence

José Antonio González Luna, Director of the Human Rights Department of the ICFTU, who was brutally assaulted on 1 May 2002 by members of the security forces. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is at a

preliminary stage and being conducted by Prosecutor's Office 30, Cali Section. Mr. Jesús Antonio González Luna was a member of the CUT Human Rights Executive Committee.

Abductions and disappearances

- (1) José Ernesto Ricaurte, member of ANTHOC-CUT, who disappeared on 26 September 2001. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation into this incident is active, at the preliminary stage, and being conducted by Prosecutor's Office 1, Purificación-Ibagué Section, File No. 3190, and is currently at the examination of evidence stage;
- (2) Jairo Domínguez, member of the Single Union of Workers in the Construction Materials Industry (SUTIMAC-CUT), abducted on 3 July 2002 and subsequently murdered on 10 July the same year in the municipality of Monte Bello, Department of Antioquia. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the responsible authority in the investigation is the Prosecutor's Office, Santa Bárbara, which reported that it was not possible to ascertain if the deceased was a member of the Cementos El Cairo Workers' Union and indeed there is evidence that he was an independent contractor for the cement company;
- (3) Arturo Escalante Moros, member of the Workers' Trade Union (USO), on 27 September 2001, subsequently murdered in the municipality of Barrancabermeja, Department of Santander on 19 September 2001. The Attorney-General's Office is currently taking the necessary steps to ascertain the authority conducting the investigation, the file number and the status of proceedings;
- (4) Arturo Vázquez Galeano, activist in the Trade Union of Workers and Employees in the municipality of Abejorral, Department of Antioquia, on 5 April 2002. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage of examination of evidence, and is being conducted by Prosecutor's Office 53, Rionegro East *Gaula* (District), Antioquia, File No. 568855. The Prosecutor's Office reports that Mr. Vázquez Galeano was a member of the Single Confederation of Workers of Colombia (CUT);
- (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. He was abducted on 6 April 2002 while travelling from the municipality of Itsmina to the city of Quibdó, on the road between the municipality of Atrato near the Doña Josefa *corregimiento* (settlement) and was released on 9 June to a committee of the diocese of Quibdó in the *corregimiento* of Boca de Capaz. This is according to information provided by the Ministry of Defence in its communication MDD-HH-725 of 31 October 2002, which information was taken from the CUT communication dated 19 April 2002;
- (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. This case does not involve a person belonging to the target population, i.e. trade union members and officials. The Attorney-General's Office reports that the investigation into the attempted abduction of Karen Mendoza Díaz in Barrancabermeja, Santander, on 18 June 2002, is being conducted by the rural *gaula*, Bucaramanga Section, File No. 915. It is at the preliminary stage and currently active;

- (7) Alberto Herrera, Pedro Barrios, Eleazar Becerra and Salvador Vasquez, members of SINTRAELECOL-CUT, on 4 July 2002, in the municipality of Fundación, Department of Magdalena. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation into the incident is active, at the preliminary stage (examination of evidence), and is being conducted by Special Prosecutor's Office 4, *Gaula* of Magdalena, File No. 32081. The report also establishes that the abducted persons were members and workers of the TRANSELCA S.A. company, but the Attorney-General's Office reports that they were released on 7 July 2002 by Frente XIX of the FARC. It is therefore clear that these gentlemen are not at present in captivity and that the FARC guerrilla group was responsible for the crime;
- (8) Jorge Amiro Genecco Martínez, member of ANTHOC-CUT, on 9 July 2002, in Bogotá, Department of Cundinamarca. The Ministry of Labour requested information from the ANTHOC branch as to whether the gentleman concerned had indeed been the victim of an abduction and, if so, whether he was currently in captivity or had been released. No reply has been received;
- (9) Gonzalo Ramírez Triana, USO activist, on 30 July 2002, in the Department of Cundinamarca. He was a member of the Workers' Trade Union but there is no record of his membership in the executive committee;
- (10) Alonso Pamplona, former member of the USO Claims Committee, who was abducted on 31 July 2002 and released on 1 August 2002, with four bullet wounds, in the municipality of Sabana de Torres, Department of Santander, and released on 1 August of the same year. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, Special Prosecutor's Office 3, Bucaramanga is conducting the investigation, File No. 143384, and this is currently at the examination of evidence stage. Mr. Pamplona was a member of USO.

Attempted murders

- (1) Daniel Orlando Gutiérrez Ramos, coordinator of the Human Rights Department of the National Drivers' Union of Colombia (SINDINALCH-CGTD), on 3 January 2002. According to a communication of 23 December 2002 from the President of SINDINALCH, Mr. Daniel Orlando Gutiérrez Ramos has been connected with that organization as a human rights delegate since 15 May 2001. His relationship is that of trade union activist, there is no employment relationship and its duration depends on decisions adopted by the executive committee as there is no fixed term;
- (2) Sigilfredo Grueso, activist in the Cali Municipal Workers' Union (SINTRAEMCALI), on 10 January 2002. The Attorney-General's Office reported that the authority conducting the investigation is Prosecutor's Office 31, Cali Section. On 2 March 2002, the Prosecutor's Office took charge of the proceedings. On 2 May 2002, the examination of evidence was ordered. A request was made to locate José Homer Moreno Valencia and Carlos Alberto Florez Loaiza (parties to the investigation) since no information appears in the report of the complaint;
- (3) Gaspar Guzmán, member of the Union of Electricity Workers of Colombia (SINTRAELECOL), on 16 April 2002. The Bolívar Police Department reported that on 31 May 2002, a suspect was held by Bolívar police station No. 2 and subsequently released. It also reports that the investigation is at the prosecution stage;

- (4) Rubén Castro Quintana, President of the Bolívar Subcommittee of SINTRAELECOL. According to a report of the Ministry of Defence dated 31 October 2002, this attempted murder took place on 16 April 2002 in Cartagena. In this respect, the Bolivar Police Department reported that on 31 May 2002 a suspect was held by Bolívar police station No. 2 and subsequently released. It also reports that the investigation is at the prosecution stage. In addition, the Attorney-General's Office reports that Prosecutor's Office 4, Cartagena Section, is conducting the investigation into threats against Mr. Castro Quintana received on 29 May 2002 in Cartagena, File No. 94615. This investigation is also at the examination of evidence stage;
- (5) Carlos Hernán Sánchez Díaz, member of the Yumbo Workers' Trade Union who was the victim of a murder attempt on 3 May 2002 in the municipality of Yumbo. In its letter No. 02315 of 22 July the Attorney-General's Office reports that Prosecutor's Office 14, Yumbo Section (Valle) is conducting the investigation, which is at the preliminary stage, examination of evidence, File No. 119002;
- (6) Antonio Zamanete, member of the Yumbo Workers' Trade Union, who was the victim of a murder attempt on 3 May 2002 in the municipality of Yumbo. In its letter No. 02315 of 22 July the Attorney-General's Office reports that Prosecutor's Office 14, Yumbo Section (Valle) is conducting the investigation, which is at the preliminary stage, examination of evidence, File No. 119002;
- (7) at the national headquarters of the Union of Electricity Workers of Colombia (SINTRAELECOL), on 8 July 2002 in the city of Bogotá. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the attack on the SINTRAELECOL headquarters, the investigating authority, the file number and the status of the proceedings have still to be ascertained;
- (8) Omar Romero Díaz, member of the Single Union of Workers in the Construction Materials Industry (SUTIMAC-CUT), on 13 August 2002, in the city of Cali, Department of Valle del Cauca. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, Prosecutor's Office 22, Life Unit, is conducting the investigation, which is currently at the examination of evidence stage, File No. 512206.

Threats

- (1) Hernando Hernández Pardo. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by the Special Prosecutor's Office, Barrancabermeja, File No. 1805, and is currently at the examination of evidence stage. It is also known that, at that time, Mr. Hernández Pardo was Vice-President of the Single Confederation of Workers of Colombia (CUT) and President of the Petroleum Industry Workers' Trade Union (USO). The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2001", Mr. Hernández Pardo was provided with protection measures;
- (2) Domingo Tovar Arrieta, Director of the Organization and Human Rights Coordinator of the CUT. The Attorney-General's Office reports that there are records of four currently active investigations involving Mr. Tovar Arrieta, the status of which is as follows. The first investigation into threats on 3 April 1996, in the city of Bogotá, is being prosecuted by the Technical Group (CTI), Prosecutor's Office, Bogotá, File No. 54266. However, a decision of 27 May 2002 ordered the investigation to be

suspended and archived. The second investigation for threats from January 1997 to February 1998 in Bogotá was conducted by the Anti-Abduction and Special Unit in Bogotá, File No. 249068. The investigation is currently the subject of trial proceedings and was submitted to the Criminal Circuit Court on 28 December 1999. The third investigation into threats against the person is being conducted by the Bogotá Anti-Abduction Unit, File No. 323327. It is at the examination of evidence stage and was sent to the Prosecutor's Office, regional directorate for the *Gaula*. Finally, the last investigation into threats against the person, on 22 September 1998, is being conducted by the Prosecutor's Office, Bogotá Section, File No. 464924-380694, and is at the examination of evidence stage. On 20 February 2001, a photo identification procedure was arranged. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2001 and 2002", Mr. Tovar Arrieta was provided with protection measures;

- (3) Fernando Vargas, President of the Cauca Teachers' Association (ASOINCA). The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2001 and 2002", Mr. Vargas was provided with protection measures;
- (4) Patricia Pinzón, President of the Cauca Branch of ANTHOC. According to the Attorney-General's Office, the investigation into threats received in Popayán, Cauca, on 15 August 2002 is being conducted by Prosecutor's Office 1, Ibagué Section, Popayán Section Directorate, File No. 36957. The investigation was transferred to the police department on 30 December 2002. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2001 and 2002", Mrs. Pinzón was provided with protection measures;
- (5) Mario de Jesús Castañeda, President of the HUILA-CUT Subcommittee. According to the general report of investigations into violations of trade unionists' human rights, an investigation into threats against the person is being conducted by the Prosecutor's Office, Neiva Section, File No. 47993, and is at the preliminary stage. Currently, a statement by the complainant is awaited in order to determine the facts of the incident and establish whether the complainant has instituted proceedings and thus to determine whether there is an investigation into the same incidents by another authority. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2001 and 2002", Mr. Jesús Castañeda was provided with protection measures;
- (6) Oscar Sánchez, General Secretary of the CUT Cauca Subcommittee. According to the Attorney-General's Office, the investigation into threats against the person received on 13 September 2001 in Popayán, Cauca, is being conducted by Prosecutor's Office 2, Ibagué Section, Popayán Section Directorate, File No. 38174. The investigation was transferred to the police department on 10 October 2001. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2001 and 2002", Mr. Sánchez was provided with protection measures;
- (7) Hermes Ortiz, Municipal Branch President of ANTHOC. According to the Attorney-General's Office, the investigation into threats against the person received on 13 September 2001 in Popayán, Cauca, is being conducted by Prosecutor's Office 2, Ibagué Section, Popayán Section Directorate, File No. 38174. The investigation was

transferred to the police department on 10 October 2001. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of “Measures actually taken for trade union leaders and activists during 2001 and 2002”, Mr. Ortiz was provided with protection measures;

- (8) Francisco Bolaños, member of the San José Hospital Strike Committee. According to the Attorney-General’s Office, the investigation into threats against the person received on 13 September 2001 in Popayán, Cauca, is being conducted by Prosecutor’s Office 2, Ibagué Section, Popayán Section Directorate, File No. 38174. The investigation was transferred to the police department on 10 October 2001. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of “Measures actually taken for trade union leaders and activists during 2001 and 2002”, Mr. Bolaños was provided with protection measures;
- (9) Jorge Muñoz, district board official of ANTHOC department executive committee. According to the Attorney-General’s Office, the investigation into threats against the person received on 13 September 2001 in Popayán, Cauca, is being conducted by Prosecutor’s Office 2, Ibagué Section, Popayán Section Directorate, File No. 38174. The investigation was transferred to the police department on 10 October 2001. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of “Measures actually taken for trade union leaders and activists during 2001 and 2002”, Mr. Muñoz was provided with protection measures;
- (10) SINTRAEMCALI headquarters. According to the general report of investigations carried out by the Attorney-General’s Office into violations of trade union members’ human rights, an investigation is being conducted into an assault on the executive committee of SINTRAEMCALI in Cali, Department of Valle, on 19 June 2001. Inquiries are at present in hand to locate the cases in the Attorney-General’s Office. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of “Measures actually taken for trade union leaders and activists during 2001 and 2002”, SINTRAEMCALI headquarters were provided with protection measures;
- (11) SINTRAOFAN headquarters. According to the general report of investigations carried out by the Attorney-General’s Office into violations of trade union members’ human rights, an investigation is being conducted into threats against SINTRAOFAN headquarters and its members, received on 16 December 2001 at the village of Farallones de Bolívar via the municipality of Andes de Bolívar in the Department of Antioquia. This investigation is being conducted by the support unit of the National Human Rights Unit and International Humanitarian Law Unit (DIH) in Medellín, File No. 43, and is currently at the examination of evidence stage. An investigation is also being carried out into threats against the headquarters of SINTRAOFAN received in Medellín, Antioquia, on 9 December 1999 by Special Prosecutor’s Office, (Terrorism), Medellín Section Directorate, File No. 334-178, and is at the preliminary stage. This investigation is currently active.

Information relating to 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, ASINORTH, murdered in Sardinata, Department of North Santander on 5 August 2002 while travelling from Cúcuta to Ocaña, when he was murdered at a paramilitary roadblock with seven other persons. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation into this case is being conducted by the support unit of the National Human Rights Unit, Cúcuta, File No. 23833. The investigation is currently at the prosecution stage. Certified copies were made to continue investigating these incidents against other persons;
- (2) Aristarco Arzallug Zúñiga, 30 August 2000, member of SINTRAINAGRO, murdered in the municipality of Turbo, Department of Antioquia. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation into this murder is being conducted by the Special Prosecutor's Office 21 (Terrorism), Medellín Section Directorate, File No. 383-558. It is at the preliminary stage and currently active;
- (3) Víctor Alfonso Vélez Sánchez, 28 March 2000, member of EDUMAG, murdered in Medellín, Department of Antioquia. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the preliminary inquiries into this murder are being conducted by Prosecutor's Office 10, Life Unit, Medellín Section Directorate, File No. 340-549. The investigation was archived on 11 December 2002;
- (4) Edgar Cifuentes, 4 November 2000, member of ADE. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, inquiries are in hand to locate all the cases (authority conducting the investigation, file number and status);
- (5) Juan Bautista Banquet, 17 October 2000, in Santa Marta, member of SINTRAINAGRO. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the Prosecutor's Office, National Directorate, Santa Marta reports that there is no record in the SIJUF. The Prosecutor's Office is also seeking further information on the incident to clarify the facts;
- (6) Edison Ariel, 17 October 2000, member of SINTRAINAGRO, in Santa Marta. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the Prosecutor's Office, National Directorate, Santa Marta reports that there is no record in the SIJUF. The Prosecutor's Office is also seeking further information on the incident to clarify the facts;
- (7) Darío de Jesús Borja, 1 April 2000, member of ADIDA, in the municipality of Dabeiba, Antioquia. According to the general report of investigations carried out by

the Attorney-General's Office into violations of trade union members' human rights, preliminary inquiries in this investigation are being conducted by the Prosecutor's Office, Dabeiba Section, Medellín Section Directorate, File No. 1909. The investigation has been suspended since 12 October 2000;

- (8) Henry Ordóñez, murdered in Puerto Rico, Meta, on 6 March 1999, member of the Meta Teachers' Association. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by the support unit of the National Human Rights Unit and International Humanitarian Law Unit (DIH), Villavicencio, File No. 25705. Examination of evidence is currently in progress;
- (9) Javier Jonás Carbone Maldonado, Secretary-General of SINTRAELECOL, 9 June 2000, Santa Marta. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, he was murdered in Santa Marta, Bolivar. The investigation is being conducted by Prosecutor's Office 10, Cartagena Section, File No. 56462, and is active, at the prosecution stage, and the last action was the legal decision of 17 July 2002, remand in custody;
- (10) Candelaria Florez, wife of Alberto Ruiz Guerra, member of ADEMACOR, affiliate of FECODE, 17 June 2000, by paramilitaries. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is at the preliminary stage and is being conducted by rapid response unit 17, File No. 9236. On 20 October 2000, the case was provisionally archived, since the organization to which she belonged and post had still not been established. However, it is known that her husband was a member of ADEMACOR;
- (11) Francisco Espadín Medina, member of SINTRAINAGRO, 7 September 2000, in the municipality of Turbo, Department of Antioquia. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the special trade union investigations subunit did not find any record, and the Prosecutor's Office, Turbo Section will deal with the matter. If an investigation is in progress, a request will be made to transfer it to the special subunit. The authority conducting the operation, the file number and the status of the proceedings are not known;
- (12) William Iguarán Cottes, member of SINTRAUNICOL, 11 September 2000, in Montería, by paramilitaries. The Attorney-General's Office reports that Mr. Iguarán Cottes is known by the name Hugo Alfonso Iguarán Cottes. The investigation is reported to be conducted by the first Special Prosecutor's Office, Montería, File No. 10370, and is now at the examination of evidence stage. In addition it reported that, by a decision of 5 September 2002, an order was made to receive all the statements ordered in previous decisions and which had not been accepted in order not to have to provide assistance to the persons making the statements. The Prosecutor's Office reports that the deceased, a member of SINTRAUNICOL, was the victim of an attack on 2 May 2000, into which the office conducted an investigation which was transferred to the Special Prosecutor's Office for homicide;
- (13) Carlos Cordero, member of ANTHOC, 6 December 2000, in Peñas Blancas, Department of North Santander, by paramilitaries. The Attorney-General's Office is making the necessary inquiries to locate the cases in the Attorney-General's Office;

- (14) Gabriela Galcano, official of ANTHOC, 9 December 2000, in Cúcuta, Department of North Santander, by paramilitaries. The Attorney-General's Office is making the necessary inquiries to locate the cases in the Attorney-General's Office;
- (15) 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. The Attorney-General's Office reports that Prosecutor's Office 22, Cali Section, is conducting the preliminary inquiries, File No. 407487, and the investigation is currently active;
- (16) Carlos Humberto Trujillo, member of ASONAL JUDICIAL, 26 January 2001, in the municipality of Bugalagrande, Department of Valle. The Attorney-General's Office reports that the investigation is at the preliminary stage and is being conducted by Special Prosecutor's Office 5, Buga, File No. 30847. The investigation was made the subject of an inhibitory decision on 27 May 2002;
- (17) Elsa Clarena Guerrero, member of ASINORTH, 28 January 2001, in the municipality of Ocaña, at a military roadblock, Department of North Santander. The Attorney-General's Office reports that the responsible authority is Prosecutor's Office 3, Ocaña Section, Cúcuta Section Directorate, File No. 2001-0033. The investigation is at the preliminary stage, but by a decision of 9 October 2001 it was archived (current status);
- (18) Carolina Santiago Navarro, member of ASINORTH, 28 January 2001, in the municipality of Ocaña, Department of North Santander. The Attorney-General's Office reports that the responsible authority is Prosecutor's Office 3, Ocaña Section, Cúcuta Section Directorate, File No. 2001-0033. The investigation is at the preliminary stage, but by a decision of 9 October 2001 it was archived (current status);
- (19) Alfonso Alejandro Naar Hernández, member of ASEDAR, affiliate of FECODE, 8 February 2001, in the municipality of Arauca, Department of Arauca. The Attorney-General's Office is making the necessary inquiries to locate the cases;
- (20) Raúl Gil, member of SINTRAPALMA, 11 February 2001, in the municipality of Puerto Wilches, Department of Santander. The Attorney-General's Office is making the necessary inquiries to locate the cases in the Attorney-General's Office;
- (21) Edgar Manuel Ramírez Gutiérrez, Vice-President of SINTRAELECOL, North Santander Branch, in Concepción, Department of North Santander, 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. The Attorney-General's Office reports that the responsible authority of the preliminary inquiries is the support unit of the National Human Rights Unit, Bucaramanga Section Directorate, File No. 1372. The investigation is currently active;
- (22) Jaime Orcasitas, Vice-President of SINTRAMIENERGETICA, in the Loma de Potrerillo coal mine, on 12 March 2001, in the same circumstances and conditions as the previous trade union official; his name, which is really Víctor Hugo Orcasitas, is included in the Colombian Government's reply to the 327th Report of the Committee on Freedom of Association;
- (23) Andrés Granados, member of SINTRAELECOL, on 20 March 2001, in the municipality of Sabana, by paramilitaries. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade

union members' human rights, he was murdered in Barrancabermeja, Santander, on 20 March 2001. The investigation is being conducted by Prosecutor's Office 8, Barrancabermeja Section, File No. 23082, and is at the examination of evidence stage;

- (24) Robinson Badillo, official of SINTRAEMSDES, in Barrancabermeja on 26 March 2001, by paramilitaries. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by Prosecutor's Office 6, Barrancabermeja Section, File No. 22773, and is at the preliminary stage. Present status: an inhibitory decision was delivered on 31 December 2001;
- (25) Mario Ospina, member of ADIDA-FECODE, in the municipality of Santa Bárbara, on 27 March 2001. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the examination of evidence stage and is being conducted by the trade union investigations subunit in Special Prosecutor's Office 16, Medellín, File No. 462966;
- (26) Frank Elías Pérez Martínez, member of ADIDA-FECODE, between the municipalities of Santa Ana and Granada, on 27 April 2001. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the examination of evidence stage and is being conducted by the trade union investigations subunit in Special Prosecutor's Office 19, Medellín, File No. 444852;
- (27) Darío de Jesús Silva, member of ADIDA-CUT, in the municipality of Sabaneta, on 2 May 2001. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the examination of evidence stage and is being conducted by Prosecutor's Office 132, Life Unit 3, Medellín, File No. 436463;
- (28) Juan Carlos Castro Zapata, member of ADIDA-CUT, in the municipality of Copacabana, 9 May 2001. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the preliminary stage and is being conducted by the Prosecutor's Office, Bello Section, File No. 461377. The Prosecutor's Office reports that it has not so far been possible to show the link with ADIDA. However, it was stated that the death had no connection with trade union activity or membership of ADIDA;
- (29) Eugenio Sánchez Díaz, President of SINTRACUEMPONAL, in the municipality of Codazzi, on 10 May 2001. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the examination of evidence stage and is being conducted by Prosecutor's Office 27, Codazzi Section. The Prosecutor's Office is looking for the file number of the investigation;
- (30) Julio Alberto Otero, member of ASPU-CUT, in Santa Marta, on 14 May 2001, by paramilitaries. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the prosecution stage and is being conducted by Special Prosecutor's Office 1, Santa Marta, File No. 23290. A person (now free)

was arrested, tried on 23 May 2001, and immediately released because the legal procedures required by the law for his arrest had not been satisfied;

- (31) Henry Jiménez Rodríguez, member of SINTRAEMCALI, in Cali, on 25 May 2001. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the examination of evidence stage and is being conducted by Prosecutor's Office 14, Cali Section, Offences against Life Unit, File No. 425235;
- (32) Nelson Narváez, official of SINTRAUNICOL, in Montería on 29 May 2001, in the Department of Córdoba. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the prosecution stage and is being conducted by Prosecutor's Office 1, Life Unit, Montería, File No. 19922;
- (33) Humberto Zárate Triana, member of SINTRAOFICIALES, in Villavicencio, on 5 June 2001, in the Department of Meta. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by the National Human Rights Unit and International Humanitarian Law Unit (DIH), File No. 1110;
- (34) Gonzalo Zárate Triana, official of ASCODES, in Villavicencio, on 5 June 2001, in the Department of Meta. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by the National Human Rights Unit and International Humanitarian Law Unit (DIH), File No. 1110;
- (35) Manuel Enrique Charris Ariza, member of SINTRAMIENERGETICA, in the municipality of Soledad, on 11 June 2001, Department of Atlántico. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the prosecution stage and is being conducted by Prosecutor's Office 37, Barranquilla Section, File No. 97529. The Attorney-General's Office also stated that on 20 March 2002, it was decided to prosecute the accused: Erwin Arturo Pérez Díaz was remanded in custody and Jorge Eliécer Urdaneta Camargo was released.
- (36) 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. The necessary inquiries are in hand to locate the cases in the Attorney-General's Office;
- (37) 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. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the preliminary stage (examination of evidence) and is being conducted by Prosecutor's Office 36, Cartago Section, File No. 1928;

- (38) Hugo Cabezas, member of SIMANA-FECODE, on 9 July 2001, in the Department of Nariño. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the preliminary stage (examination of evidence) and is being conducted by Special Prosecutor's Office 1, Pasto Section, File No. 40395;
- (39) Luz Mila 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. The Attorney-General's Office reports that the murder of Mrs. Rincón appears to be listed, and is being investigated by Special Prosecutor's Office 4, Ibagué, Ibagué Section Directorate, File No. 66159, at the preliminary stage. The investigation is currently active;
- (40) Obdulia Martínez, member of EDUCESAR-FECODE-CUT, was murdered in Chiriguana, Department of César, on 22 July 2001. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the preliminary stage (examination of evidence) and is being conducted by Prosecutor's Office 5 and Special Prosecutor's Office 6, Valledupar, File No. 136160;
- (41) 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. An investigation is in progress, at the prosecution stage, conducted by the National Human Rights Unit and International Humanitarian Law Unit (DIH), National Unit Directorate, File No. 1074. It is currently active. As to the trade union organization to which she belongs, the investigation has found no evidence that she is a member of any trade union;
- (42) 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. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the preliminary stage (examination of evidence) and is being conducted by the National Human Rights Unit and International Humanitarian Law Unit (DIH), File No. 1064. The Attorney-General's Office reports that examination of evidence and judicial hearings were ordered by a decision of 13 February 2002;
- (43) Miryam de Jesús Ríos Martínez, member of ADIDA, on 16 August 2001, in the Department of Antioquia. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently active, at the preliminary stage and is being conducted by Prosecutor's Office 111, Marinilla Section, File No. 3344. The Attorney-General's Office reports that an inhibitory decision was delivered on 26 April 2002;
- (44) 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. Appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;

- (45) 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. According to the Attorney-General's Office, the responsible authority is the Prosecutor's Office, Barbosa Section, File No. 4097, preliminary stage, current status, inhibitory decision of 30 October 2002;
- (46) 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. The Attorney-General's Office reports in respect of the investigation that appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;
- (47) Evert Encizo, member of the Meta Teachers' Association (ADEM-CUT), on 22 August 2001, in the Department of Meta. He was a teacher, head of the Reliquia school, working with forcibly displaced persons. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by the support unit of the National Human Rights Unit and International Humanitarian Law Unit (DIH), Villavicencio, File No. 53220;
- (48) 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. According to the Attorney-General's Office, Mrs. Paternina Negrete was Special Prosecutor 29, but it does not state whether or not she was a member of the National Association of Civil Servants and Judicial Employees (ASONAL-CUT). The Attorney-General's Office reports that the murder investigation is being conducted by the National Human Rights Unit and International Humanitarian Law Unit (DIH), File No. 1079; stage – prosecution;
- (49) Miguel Chávez, member of ANTHOC-CUT, on 30 August 2001, in the Department of Cauca. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by Special Prosecutor's Office 3, Popayán, File No. 37411. It is currently at the examination of evidence stage;
- (50) Manuel Ruiz, CUT trade union official, on 26 September 2001, in the Department of Córdoba. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by the Special Prosecutor's Office, Medellín. However, the file number and status of the investigation is still being sought at present;
- (51) 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. The Attorney-General's Office reports that an inhibitory decision was delivered on 26 April 2002;
- (52) Jorge Iván Rivera Manrique, member of the Risaralda Teachers' Union (SER-CUT), on 10 October 2001, in the Department of Risaralda. The Attorney-General's

Office reports in respect of the investigation that appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;

- (53) Ramón Antonio Jaramillo, official of SINTRAEMSDDES-CUT, on 10 October 2001, in the Department of Valle del Cauca, when paramilitaries were carrying out a massacre in the region. The Attorney-General's Office reports in respect of the investigation that appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;
- (54) 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. The Attorney-General's Office reports that the responsible authority is Special Prosecutor 4, Bucaramanga, File No. 119945; stage – prosecution, responsible authority – Special Prosecutor 6, Bucaramanga, File No. 153265; stage – preliminary; current status – active;
- (55) Arturo Escalante Moros, member of USO, disappeared on 27 September 2001 and was found dead on 19 October 2001, in Barrancabermeja, Santander. The Attorney-General's Office reports in respect of the investigation that appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;
- (56) 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. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by Special Prosecutor's Office 6, Valledupar, File No. 138726. It is currently at the examination of evidence stage;
- (57) Martín Contreras Quintero, official and founder member of SINTRAELECOL-CUT, on 23 October 2001, in the Department of Sucre. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, he was murdered in the *corregimiento* of Pérez, in the municipality of Sampues, Department of Sucre. The investigation is active, at the prosecution stage and is being conducted by Special Prosecutor's Office 2, Sincelejo, File No. 18970;
- (58) 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. The Attorney-General's Office reports the following: directorate – National Unit; responsible authority – National Human Rights Unit and International Humanitarian Law Unit (DIH), File No. 1106; stage – preliminary; current status – active; organization: the investigation shows no evidence of any trade union membership;
- (59) Pedro Cordero, member of the Nariño Teachers' Trade Union, on 9 November 2001, in the Department of Nariño. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by Prosecutor's Office 33, Tuquerres Section, File No. 1239. It is currently at the examination of evidence stage;
- (60) Luis Alberto Delgado, member of the Nariño Teachers' Trade Union (SIMANA-CUT), on 10 November 2001. Mr. Delgado had been the victim of an attempted murder the previous day in the municipality of Tuquerres, Department of Nariño. According to the general report of investigations carried out by the Attorney-

General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by Prosecutor's Office 33, Tuquerres Section, File No. 1239. It is currently at the examination of evidence stage;

- (61) 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. The Attorney-General's Office reports: crime – murder; Section Directorate – Cúcuta; responsible authority – Special Prosecutor, Arauca, File No. 808; stage – preliminary; current status – examination of evidence;
- (62) Tirso Reyes, member of the Bolívar Single Teachers' Union (SUDEB-CUT), on 2 November 2001, in the Department of Bolívar. The Attorney-General's Office reports: crime – murder, date and place: Bolívar, 12 November 2001; Section Directorate – Cartagena; responsible authority – Prosecutor 9 Life Section, File No. 86510; stage – preliminary; current status – active: organization – SUDEB-CUT;
- (63) Emiro Enrique Pava de la Rosa, official of the Magdalena Medio subcommittee of USO, on 13 November 2001, in the Department of Antioquia. The Attorney-General's Office reports: crime – murder; date and place – Puerto Triunfo Antioquia, 13 November 2001; Section Directorate – Medellín; responsible authority – Prosecutor 24, Life Section; File No. 1895; stage – preliminary; current status – inhibitory decision, 28 June 2002;
- (64) Diego de Jesús Botero Salazar, trade unionist in Valle del Cauca, prosecutor in the Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES-CUT), Cafetero-Pereira-Cartago area subcommittee, on 14 November 2001, in Valle del Cauca. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by Prosecutor's Office 17, Cartago Section, File No. 8917SG. It is currently at the examination of evidence stage;
- (65) Gonzalo Salazar, President of the Single Union of Policemen of Colombia, SINUVICOL-CUT, on 24 November 2001, in Cali. The Attorney-General's Office reports: crime – murder (it was established that the intention was to hurt him); date and place – Cali-Valle, 24 November 2001; Section Directorate – Cali; responsible authority – Prosecutor 46, Cali Section; File No. 455582; stage – trial sentence awaited; current status – active;
- (66) 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. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the prosecution stage and is being conducted by Prosecutor's Office 7a, Ibagué Section, File No. 70701. Two persons are currently connected, one accused with an arrest warrant in force and another in custody, by decision of 29 July 2002;
- (67) Javier Cote, Treasurer of the National Association of Civil Servants and Judicial Employees (ASONAL-CUT), on 3 December 2001, in the Department of Magdalena. The Attorney-General's Office reports on the murder of Mr. Cote: crime – murder; date and place – Santa Marta, Magdalena, 1 December 2001;

Section Directorate – National Human Rights Unit and International Humanitarian Law Unit (DIH); responsible authority – National Unit; File No. 1123; stage – preliminary; current status – active;

- (68) Enrique Arellano, the bodyguard of the above, found dead at the beginning of December 2001. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, they were murdered in the *corregimiento* of Pava between Vizo and María la Baja, Department of Magdalena, on 5 December 2001. The investigation is active, at the prosecution stage and is being conducted by the National Human Rights Unit and International Humanitarian Law Unit (DIH), File No. 1117. The Attorney-General's Office also reported that, on 25 January 2002, the prosecution against three persons was opened for murder of a protected person together with aggravated abduction for ransom and conspiracy to commit crimes;
- (69) 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 to a meeting by the Self-defence Groups of Colombia (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 Taborda, a second member of the central executive committee. All the members of the committee are constantly threatened. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by the support unit of the National Human Rights Unit and International Humanitarian Law Unit (DIH), Medellín, File No. 43. It is at the preliminary stage, examination of evidence and is currently active;
- (70) Edgar Herrán, President of the National Union of Drivers (SINDINALCH), Villavicencio Branch, on 26 December 2001. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by the National Human Rights Unit and International Humanitarian Law Unit (DIH), Villavicencio, File No. 61916. An order was made on 16 April 2002 to take statements from witnesses and others;
- (71) Carlos Alberto Bastidas Corral, member of the Nariño Teachers' Union (SIMANACUT), on 8 January 2002, in the municipality of Aldana, Department of Nariño. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by Prosecutor's Office 22, Pasto Section, File No. 871, and is currently at the examination of evidence stage;
- (72) 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 defending workers. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by Prosecutor's Office, Life Unit 1, Medellín, File No. 525496, and is currently at the examination of evidence stage;

- (73) 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 protection programme of the Ministry of the Interior and the Inter-American Human Rights Commission of the Organization of American States, and had asked for protection measures. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by the support unit of the National Human Rights Unit and International Humanitarian Law Unit (DIH), Cali, File No. 474220, and is currently at the preliminary stage. His connection with the CUT has yet to be established. According to the list of "Measures actually taken for trade union leaders and activists during 2001 and 2002" provided by the Ministry of the Interior, programme of protection of witnesses and threatened persons, there was no request for protection measures by Mr. Enoc Samboni, thus he was not a beneficiary of the protection measures actually provided during 2001 and 2002;
- (74) Sol María Roperó, former President of the Community Mothers Trade Union (SINDIMACO-CUT), on 16 January 2002, in Cúcuta, by paramilitary groups. Mrs. Roperó was noted for her hard work in support of the human rights of workers and children and had received several death threats. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation into the incident is active, at the preliminary stage and is being conducted by Prosecutor's Office 6, Life Unit, Cúcuta, File No. 42501. It is currently at the examination of evidence stage;
- (75) Jaime Ramírez, member of the Antioquia Trade Union of Public Officials and Employees (SINTRAOFAN), on 2 June 2001, in Antioquia, by paramilitaries. Prosecutor's Office 31, El Santuario, Antioquia, is conducting the preliminary inquiries, File No. 2782. An order was made on 16 August 2001 to transfer the investigation to the Special Prosecutor's Office in Medellín;
- (76) Armando Buitrago Moreno, member of the National Association of Officials and Employees of the Judicial Branch (ASONAL), on 6 June 2001. The Attorney-General's Office reports that it is making the necessary inquiries to locate the cases in the Attorney-General's Office. Thus the authority conducting the investigation, the file number and its status cannot be established. His connection with ASONAL remains to be established;
- (77) Julián Ricardo Muñoz, member of the National Association of Officials and Employees of the Judicial Branch (ASONAL), on 6 June 2001, in Bogotá. The Attorney-General's Office reports that it is making the necessary inquiries to locate the cases in the Attorney-General's Office. Thus the authority conducting the investigation, the file number and its status cannot be established. His connection with ASONAL remains to be established;
- (78) Carlos Alberto Vidal Hernández, member of the National Association of Officials and Employees of the Judicial Branch (ASONAL), on 11 June 2001, in Bogotá. In the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the murder of Mr. Vidal Hernández is recorded as follows: crime – murder; date and place – Bogotá D.C., 11 June 2001; Direction – National Unit; responsible authority – National Human Rights Unit and International Humanitarian Law Unit (DIH); File No. 1039; stage – prosecution; current status – active; organization – the investigation shows no evidence that he belonged to any trade union;
- (79) Edgar Thomas Angarita Mora, activist of the Arauca Teachers' Association (ASEDAR), on 11 June 2001, in Barrancones. The Attorney-General's Office

reports in respect of the investigation that appropriate inquiries are in hand to locate the cases in the Attorney-General's Office. Thus the authority conducting the investigation, the file number and its status cannot be established;

- (80) Fabio Eliécer Guio García, member of the National Association of Officials and Employees of the Judicial Branch (ASONAL), on 19 June 2001, in Neiva, by the FARC. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by the National Human Rights Unit and International Humanitarian Law Unit (DIH), File No. 1044, and is currently at the prosecution stage. His connection with ASONAL has yet to be established;
- (81) Luz Marina Torres, Risaralda Teachers' Trade Union, on 22 June 2001, in Risaralda. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, in view of the public order circumstances, the investigation was reassigned from the *Gaula* on 16 August 2001 to Special Prosecutor's Office 3, Pereira, File No. 976. The investigation is currently at the prosecution stage;
- (82) 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. The Attorney-General's Office reports in respect of the investigation that appropriate inquiries are in hand to locate the cases in the Attorney-General's Office. Thus the authority conducting the investigation, the file number and its status cannot be established;
- (83) Eduardo Edilio Alvarez Escudelo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 2 July 2001, in Antioquia, by guerrilla forces. The Attorney-General's Office reports in respect of the investigation that appropriate inquiries are in hand to locate the cases in the Attorney-General's Office. Thus the authority conducting the investigation, the file number and its status cannot be established. His connection with ASONAL has yet to be established;
- (84) William Mario Upegui Tobón, member of the Antioquia Teachers' Association, on 9 July 2001, in Antioquia. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by the trade union investigations subunit, Special Prosecutor's Office 16, Medellín, File No. 469862. The investigation is currently at the examination of evidence stage;
- (85) Luciano Zapata Agudelo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 10 July 2001. Natural death from osteoplasmosis in Medellín in 2001;
- (86) Hernando Jesús Chica, activist of the Trade Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDDES), on 13 July 2001, by paramilitaries. The Attorney-General's Office reports the following: crime – murder; date and place – La Ceja, Antioquia, 13 July 2001; Section Directorate – Medellín; responsible authority – special terrorism prosecutor 14; File No. 451-359; stage – preliminary; current status – active;
- (87) Margort Pisso Rengifo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 17 July 2001, in Popayán. The Attorney-

General's Office reports the following: crime – none, death from natural causes; date and place – Popayán, Cauca, 16 June 2001; responsible authority – Section Prosecutor concerned;

- (88) 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. The Attorney-General's Office reports the following: crime – murder; date and place – city of Bolívar, Antioquia; Section Directorate – Medellín; responsible authority – Special Prosecutor 16; File No. 483-453; stage – preliminary;
- (89) Fidel Seguro, member of the Union of Local Government Officials and Public Employees of Antioquia (SINTRAOFAN), on 19 July 2001, in Antioquia, by paramilitaries. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by the trade unions investigations subunit, Special Prosecutor's Office 16, Medellín, File No. 483453. The investigation is currently at the examination of evidence stage;
- (90) Hernando Arcila Ramírez, member of Guaviare Teachers' Association (ADEG), on 1 August 2001 in the Department of Guaviare. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is currently at the preliminary stage, examination of evidence, and is being conducted by Special Prosecutor's Office 15, San José del Guaviare, File No. 52579;
- (91) Luz Ampara Torres Agudelo, member of the Antioquia Teachers' Association (ADIDA), on 2 August 2001, in Antioquia. The Attorney-General's Office reports the following: crime – murder; date and place – Frontino, Antioquia, 2 August 2001; Section Directorate – Medellín; responsible authority – prosecutor, Frontino Section; File No. 1139; stage – preliminary; current status – active;
- (92) Efraín Toledo Guevara, member of the Caquetá Teachers' Association (AICA), on 5 August 2001, in Caquetá. The Attorney-General's Office reports the following: crime – murder; date and place – Caquetá, 5 August 2001; Section Directorate – Florencia; responsible authority – Prosecutor's Office 40, Florencia Section; File No. 17175; stage – preliminary; current status – suspended;
- (93) Nancy Tez, activist of the El Valle Single Union of Education Workers (SUTEV), on 5 August 2001, in Valle del Cauca, by paramilitaries. The Attorney-General's Office reports the following: crime – murder; date and place – Florida, Valle, 5 August 2001; Section Directorate – Cali; responsible authority – Prosecutor's Office 137, Florida Section; File No. 407487; stage – preliminary; current status – active; organization – to be confirmed;
- (94) Jorge Antonia Alvarez Vélez, member of the Single Union of Workers in the Construction Materials Industry (SUTIMAC), on 6 August 2001, in Antioquia. The Attorney-General's Office reports that the murder investigation is at the preliminary stage and is being conducted by the Prosecutor's Office, Santa Bárbara Section, File No. 1702. It is currently at the examination of evidence stage. The Prosecutor's Office has not yet established the role he played within the trade union;
- (95) Angela Andrade, activist of the Union of Workers in Children's Homes, on 6 August 2001, in Nariño, by paramilitaries. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade

union members' human rights, the investigation is currently at the preliminary stage, examination of evidence, and is being conducted by the National Human Rights Unit and International Humanitarian Law Unit (DIH), File No. 1170;

- (96) José Padilla Morales, member of the César Teachers' Association, on 8 August 2001, in Aguachica. The Attorney-General's Office reports the following: crime – murder; date and place – Aguachica, César, 8 August 2001; Section Directorate – Valledupar; responsible authority – Prosecutor's Office 20; File No. 8665; stage – preliminary; current status – inhibitory decision of 22 February 2002;
- (97) Luis Pérez Ríos, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 9 August 2001, in Quindío. The Attorney-General's Office reports the following: crime – culpable homicide; date and place – Calarcá, Quindío, 9 August 2001; Section Directorate – Armenia; responsible authority – Prosecutor's Office 10, Calarcá Section; File No. 8013-10; stage – preliminary; current status – inhibitory decision of 25 February 2002;
- (98) Hugo López Cáceres, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 14 August 2001, in Barranquilla. The Attorney-General's Office reports the following: crime – the death was due to pneumonia and not violent causes; date and place – Barranquilla, Atlántico, 14 August 2001;
- (99) Gloria Isabel García, member of the Risaralda, Teachers' Union (SER), on 16 August 2001, in Risaralda. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by the Prosecutor's Office, Pereira Section, File No. 806. The Prosecutor's Office also reports that on 9 November 2001 a no-show was declared. On 10 January 2002, remand in custody was ordered. On 8 April 2002 the investigation was ordered closed;
- (100) Miryam de Jesús Ríos Martínez, member of the Antioquia Teachers' Association, on 16 August 2001, in Antioquia. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the murder investigation is being conducted by Prosecutor's Office 111, Marinilla Section, Medellín, File No. 3344. The Prosecutor's Office reports that an inhibitory decision was delivered on 26 April 2002;
- (101) Ricardo Monroy Marín, official of the Incora Union of Workers (SINTRADIN), on 25 August 2001, in Tolima. Concerning the murder investigation, the Attorney-General's Office reports the following: crime – murder; date and place – road from Ataco to Coyaima, 25 August 2001; Section Directorate – Ibagué; responsible authority – Prosecutor's Office 29, Purificación Section; File No. 3106; stage – preliminary; current status – active;
- (102) Jorge Freite Romero, member of the Atlántico University Retirees' Association (ASOJUA), 29 August 2001, murdered in Ciénaga, Department of Magdalena, by paramilitaries. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, concerning the investigation into the murder of Mr. Freite Romero, the Prosecutor's Office reports the following: crime – abduction and aggravated homicide; date and place – Ciénaga, Magdalena, 28 August 2001; Section Directorate – National Unit; responsible authority – National Human Rights Unit and DIH; File No. 1096; stage – preliminary; current status – active; organization – the investigation has revealed no evidence that he belonged to any trade union;

- (103) Rafael Pineda, president of the Barbosa Section of the Bank Employees' Union (UNEB), on 8 September 2001, in Santander. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by the National Human Rights Unit, File No. 1086, and is at the prosecution stage. The Prosecutor's Office also reports that, on 25 January 2002, a no-show was declared for Leonardo Ortiz González alias "Nardo", accused of murder, personal assault and manufacture, trafficking and carrying firearms or munitions;
- (104) Juan Eudes Molina Fuentes, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 9 September 2001, in Guajira. The Attorney-General's Office reports that it was a case of culpable homicide in a traffic accident on 9 November 2001;
- (105) 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. The Attorney-General's Office reports that the investigation is being conducted by Special Prosecutor 16, Medellín, File No. 559928, and is at the preliminary stage, currently examination of evidence;
- (106) Juan Diego Londoño Restrepo, secretary of the Continental Ceramics Workers' Trade Union, on 11 September 2001, in Antioquia, by paramilitaries. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by Special Prosecutor 14, Medellín, and is at the preliminary stage. On 6 February 2002, the prosecutor opened proceedings and ordered the Rionegro criminal police investigation unit to undertake the examination of the evidence;
- (107) Hernando de Jesús Montoya Urrego, activist of the Antioquia Teachers' Association (ADIDA), on 13 September 2001, in Antioquia, by paramilitaries. The Attorney-General's Office reports the following concerning this murder: crime – homicide; date and place – Granada, Antioquia, 13 September 2001; Section Directorate – Medellín; responsible authority – Prosecutor's Office, Santuario Section, File No. 3065; stage – preliminary; current status – active;
- (108) Yolanda Cerón Delgado, member of the Nariño Teachers' Union (SIMANA), on 18 September 2001, in Nariño, by paramilitaries. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by the National Human Rights Unit and International Humanitarian Law Unit (DIH), Cali, File No. 1190. It is currently active, at the preliminary stage (examination of evidence);
- (109) Juan David Corzo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 20 September 2001, in Cúcuta, by paramilitaries. The Attorney-General's Office reports that appropriate inquiries are in hand to locate the cases in the Attorney-General's Office. Thus the authority conducting the investigation, the file number and its status cannot be established. His connection to ASONAL also remains to be established;
- (110) Jenny Romero Rojas, ANTHOC, on 23 September 2001, in Meta. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is at the preliminary stage and is being conducted by the support unit of the National Human Rights Unit and International Humanitarian Law Unit (DIH), Villavicencio, File No. 62116. It is currently at the examination of evidence stage;

- (111) Cervando Lerma, member of the Petroleum Industry Workers' Trade Union (USO), on 10 October 2001, in Santander. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, he was murdered in Barrancabermeja, Santander, on 10 October 2001. The investigation is at the preliminary stage and is being conducted by Prosecutor's Office 8, Barrancabermeja Section, File No. 24701. It is currently at the examination of evidence stage;
- (112) Jesús Agreda Zambrano, activist of the Nariño Teachers' Union (SIMANA), on 20 October 2001, by paramilitaries. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, he was murdered in the municipality of Sandoná, Department of Nariño, on 20 October 2001. The investigation is at the preliminary stage and is being conducted by Prosecutor's Office 2, Pasto Section, File No. 42969. It is currently at the examination of evidence stage;
- (113) Expedito Chacón, ANTHOC, on 24 October 2001, in Santander. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, he was murdered in the municipality of Socorro, Santander, on 24 October 2001. The investigation into the incident is at the preliminary stage (evidence) and is being conducted by the National Human Rights Unit, File No. 1124. By a decision of 9 and 10 May 2002, a statement was taken from two persons;
- (114) Luz Carmen Preciado, activist of the Nariño Teachers' Union (SIMANA), on 30 November 2001, in Nariño, by the FARC. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation into the incident is being conducted by Prosecutor's Office 29, Tumaco Section, File No. 768. It is currently suspended. The Prosecutor's Office reports that suspension was ordered on 19 June 2002;
- (115) Santiago González, SIMANA, on 30 November 2001, in Nariño, by the FARC. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation into the incident is being conducted by Prosecutor's Office 29, Tumaco Section, File No. 768. It is currently suspended. The Prosecutor's Office reports that suspension was ordered on 19 June 2002;
- (116) José Raúl Orozco, President of the Continental Ceramic Workers' Union, on 14 December 2001, in Antioquia, by paramilitaries. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, he was murdered in Carmen de Viboral, Department of Antioquia, on 14 December 2001. The investigation is active and is being conducted by Special Prosecutor's Office 14, Medellín, File No. 508440-560739, and is at the preliminary stage. On 15 May 2002, the Special Prosecutor's Office 14, Medellín, opened proceedings and ordered the Rionegro criminal police to examine the evidence;
- (117) Jairo Antonio Chima, SINTRAEMSDES, on 22 December 2001, in Antioquia, by paramilitaries. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active and is being conducted by the trade union investigations subunit, Special Prosecutor's Office 14, Medellín, File No. 540143, and is at the preliminary stage, currently examination of evidence;

- (118) Eduardo Alfonso Suárez Díaz, delegate of the Petroleum Industry Workers' Trade Union (USO), on 23 December 2001, in Antioquia, by paramilitaries. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active and is being conducted by Prosecutor's Office 6, Barrancabermeja Section, File No. 25474. It is currently at the examination of evidence stage;
- (119) Bertilda Pavón, member of ANTHOC, on 2 January 2002, in Valledupar, by paramilitaries. The Attorney-General's Office reports that the investigation is being conducted by Prosecutor's Office 17, Life Unit, Section Directorate (DSF), Valledupar, and is currently at the trial stage, File No. 140678;
- (120) Carlos Arturo Alarcón, member of the Antioquia Teachers' Association (ADIDA), on 12 January 2002, in Antioquia. There is no record of homicide in the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights. However, his abduction is recorded in Medellín, Antioquia, 12 January 2002. Shortly after his abduction, on 6 February 2002, he was released at a place between Yarumal and the *corregimiento* of Cedeño, Antioquia. In this respect, the Attorney-General's Office reports that there was no indication that the case had been received in the assigning office of the Section Directorate (DSF) in Medellín. The same report of the Attorney-General's Office also records the murder of a namesake, Arturo Alarcón, a member of ASOINCA, in the *corregimiento* of Piendamó, in the municipality of Santander de Quilichao, Department of Cauca, on 18 January 2001. He was a schoolteacher in Llanito. On this murder, the Attorney-General's Office reports that there is no investigation into the incident. The subunit made inquiries in the section Prosecutor's Office and the local Technical Group (CTI), Piendamó, but there is no information on the matter. Inquiries were also made of the URI registry, with negative results;
- (121) Rubén Arenas, member of the Antioquia Teachers' Association (ADIDA), on 16 January 2002, in Antioquia. The Attorney-General's Office reports that the preliminary investigation is being conducted by Special Prosecutor's Office 16, Medellín Section, Section Directorate (DSF), Valledupar, File No. 623793. The investigation is currently active;
- (122) 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. The investigation is being conducted by Special Prosecutor's Office 8, Valledupar, File No. 141139. The current status of the investigation is that it is closed, the Attorney-General's Office reporting that an inhibitory decision was made by a decision of 16 October 2002;
- (123) Jairo Alonso Giraldo, activist of the Antioquia Teachers' Association, on 1 February 2002, in Antioquia. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by Special Prosecutor 19, Medellín, File No. 549670. It is currently at the examination of evidence stage;
- (124) 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. The Attorney-General's Office reports that an active investigation is being conducted by Special Prosecutor's Office 3, Section Directorate (DSF), Cúcuta, File No. 50374;

- (125) Oscar Jaime Delgado Valencia, teacher at the Camilo Torres de Armenia College, Department of Quindío, shot dead on 4 February 2002. The Attorney-General's Office reports that the preliminary inquiries in the investigation were conducted by Prosecutor's Office 3, Life Unit, Section Directorate (DSF), Armenia, and that the case is currently at the trial stage, File No. 42315;
- (126) Oswaldo Enrique Borja Martínez, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 29 January 2002, in Sucre, by paramilitaries. According to information provided by the Attorney-General's Office, the investigation could not be found in the assignments office of the Prosecutor's Office, Valledupar Section Directorate. More information about the facts is needed;
- (127) Henry Mauricio Neira, member of ANTHOC, on 7 February 2002, in Arauca, Department of Arauca. The Attorney-General's Office reports that the preliminary inquiries in the investigation are being conducted by the Prosecutor's Office 3, Section Directorate (DSF), Saravena Section, Cúcuta, File No. 3438;
- (128) Nohora Elsy López, official of the National Union of Childcare Workers in Welfare Homes, on 7 February 2002, in Antioquia, by paramilitaries. According to communication No. 074110, of 18 September 2002, from Mr. Fernando Walter Torres Montoya, administrative coordinator of the Medellín Family Welfare Institute (ICBF), received by the Human Rights Office in the Ministry of Labour and Social Security on 30 September 2002, and following a full review of the existing files, it was found that Mrs. Nohora Elsy López was not an official of the Antioquia regional ICBF. She could therefore not have been a trade union official in that entity. The Attorney-General's Office found no record of an investigation conducted in any of its sections in the country into the murder of Mrs. Nohora López;
- (129) 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. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation into homicide is being conducted by Prosecutor's Office 26, Crimes against Life Unit, Cali Section, File No. 470844, and is at the preliminary stage, currently examination of evidence. His trade union membership has yet to be established;
- (130) 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. The Attorney-General's Office reports that the preliminary inquiries in the investigation are being conducted by the Special Prosecutor's Office 4, Section Directorate (DSF), Bucaramanga, File No. 123084;
- (131) Néstor Rincón Quinceno, Risaralda Teachers' Union, on 14 February 2002. The Attorney-General's Office reports that investigation is active, at the preliminary stage and is being conducted by the Prosecutor's Office, Pereira Section, File No. 3208. It is currently at the examination of evidence stage;
- (132) Alfredo González Páez, member of the Association of Employees of INPEC (ASEINPEC), on 15 February 2002, in Tolima, by paramilitaries. According to the information provided by the Attorney-General's Office, it was not possible to find the investigation in the assignments office of the Section Directorate (DSF), Cundinamarca and the Prosecutor's Office, Girardot Section. More information is required as to the facts;

- (133) Oswaldo Meneses Jiménez, ASEINPEC, on 15 February 2002, in Tolima, by paramilitaries. According to the information provided by the Attorney-General's Office, it was not possible to find the investigation in the assignments office of the Section Directorate (DSF), Cundinamarca, and the Prosecutor's Office, Girardot Section. More information is required as to the facts;
- (134) Barqueley Ríos Mena, member of the Antioquia Teachers' Association, on 16 February 2002, in Antioquia. The Attorney-General's Office reports that the preliminary inquiries into the murder investigation are being conducted by the El Santuario Unit, Section Directorate (DSF), Antioquia, File No. 3360;
- (135) Juan Manuel Santos Rentería, member of the Antioquia Teachers' Association, on 16 February 2002, in Antioquia. The Attorney-General's Office reports that the preliminary inquiries into the murder investigation are being conducted by the El Santuario Unit, Section Directorate (DSF), Antioquia, File No. 3360;
- (136) Fernando Cabrales, President of the National Haulage Federation, on 18 February 2002, in Valle del Cauca, by paramilitaries. The Attorney-General's Office reports that the preliminary inquiries into the murder investigation are being conducted by the Prosecutor's Office 27, Life Unit, DSF, Cali, File No. 471663;
- (137) José Wilson Díaz, member of the Union of Electricity Workers of Colombia (SINTRAELECOL), on 21 February 2002, in the municipality of Macarena, Department of Meta, by the FARC. According to the information provided by the Attorney-General's Office, it was not possible to find the investigation in the assignments office of the Section Directorate (DSF), Cundinamarca, and the Prosecutor's Office, Villavicencio Section. More information is required as to the facts;
- (138) 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. According to memorandum No. 001 sent by Dr. Jaime Martínez Pico, labour and social security inspector in Granada, Meta, on 9 January 2003, to the Human Rights Office of the Ministry of Labour and Social Security, for relevant legal purposes, I can inform your office that, after a thorough review of this office's files, no record was found of a trade union registration for the Colombian Farmers' Action union in the municipality of Macarena. This is in response to the telephone request by the territorial director of the Ministry of Labour in Meta. Thus, in the light of the foregoing, the Colombian Government requests that more information should be provided on the trade union connections of Mrs. Cecilia Gallego, and the facts of her murder, so that further information can be provided in respect of this case;
- (139) Hugo Ospina Ríos, member of the Risaralda Teachers' Union (SER), on 26 February 2002, in Risaralda. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation into homicide is being conducted by Prosecutor's Office 6, Life Unit, Pereira, File No. 74765. A person was charged in his absence on 24 April 2002 and the legal situation was resolved by an arrest warrant on 21 June 2002. He was captured in Cali on 8 August 2002 and charged. The evidence is currently being examined;
- (140) Marcos Antonio Beltrán, activist of SUTEV, on 1 March 2002, in Valle del Cauca. According to the information provided by the Attorney-General's Office, the Coordinator of the Palmira Unit states that no investigation is being conducted into this incident and suggests that further information on the facts should be provided;

- (141) Juan Montiel, member of the Ciénaga subcommittee of the National Union of Farmworkers (SINTRAINAGRO), Department of Magdalena, on 5 June 2002. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by Special Prosecutor's Office 2, Santa Marta, File No. 30436. The investigation is currently at the examination of evidence stage. On 21 August 2002, a report of the mission requested from the Administrative Security Department (DAS) was received;
- (142) Emilio Villeras Durán, member of the Ciénaga subcommittee of the National Union of Farmworkers (SINTRAINAGRO), Department of Magdalena, on 5 June 2002. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is active, at the preliminary stage and is being conducted by Special Prosecutor's Office 2, Santa Marta, File No. 30435. The investigation is currently at the examination of evidence stage. On 8 August a report was received from DAS on the high risk involved in the mission requested of the DAS;
- (143) 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. The Attorney-General's Office reports that the preliminary inquiries into the murder are being conducted by Special Prosecutor's Office 5, Neiva Section Directorate, File No. 51170;
- (144) Carlos Alberto Molano, SINTRAREGINAL, on 10 March 2002, in Huila. The Attorney-General's Office reports that the preliminary inquiries into the murder are being conducted by Special Prosecutor's Office 5, Neiva Section Directorate, File No. 51170;
- (145) Eduardo Chinchilla Padilla, activist of the Union of Workers in the Oil Palm and Related Industries (SINTRAPALMA-CUT), on 11 March 2002. The murder of Mr. Chinchilla Padilla in the municipality of Puerto Wilches, Department of Santander, is listed in the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights. However, the date of the incident, the authority conducting the investigation, file number and status of the investigation are not recorded. The Attorney-General's Office reports that this data remains to be located;
- (146) 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. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by Prosecutor's Office 4, Pasto Section, File No. 50498, and is at the preliminary stage. Those inquiries were initiated on 2 April 2002. Various evidence has been obtained, tasks have been assigned to the Technical Group (CTI), there has been a reply from the police authorities, but it has not been possible so far to establish the motives or identify those responsible;
- (147) 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. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by Prosecutor's Office 4, Pasto Section, File No. 50498, and is at the preliminary stage. Those inquiries were initiated on 2 April 2002. Various evidence

has been obtained, tasks have been assigned to the Technical Group (CTI), there has been a reply from the police authorities, but it has not been possible so far to establish the motives or identify those responsible;

- (148) Ernesto Alfonso Giraldo Martínez, prosecutor for 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. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation into the incident is being conducted by Special Prosecutor's Office 19, Medellín, File No. 549670, and is at the preliminary stage. The investigation is currently active and at the examination of evidence stage;
- (149) Alfredo Zapata Herrera, official 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. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation into the incident is being conducted by Special Prosecutor's Office 23, Medellín, File No. 559892, and is at the preliminary stage. The investigation is currently active and at the examination of evidence stage;
- (150) 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. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by Prosecutor's Office 21, Cali Section, File No. 481115 and is at the preliminary stage, currently examination of evidence. His connection with the Union of Chemical Industry Workers, Yumbo Branch, remains to be established;
- (151) Hernán de Jesús Ortiz, member of the national executive of the Single Confederation of Workers of Colombia, on 12 April 2002, in Celda, by paramilitaries. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by the third prosecutor to the Manizales High Court, File No. 62144140, and is at the preliminary stage. At 25 June 2002, inquiries were being conducted to establish the character and identity of the material authors and other accessories to the incident, in coordination with the DAS and the Technical Group (CTI), Manizales Section, where it is sought to open judicial proceedings;
- (152) José Robeiro Pineda, former official of SINTRAELECOL, on 12 April 2002, in Celda, by paramilitaries. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by the third prosecutor to the Manizales High Court, File No. 62144140 and is at the preliminary stage. At 25 June 2002, inquiries were being conducted to establish the character and identity of the material authors and other accessories to the incident, in coordination with the DAS and the Technical Group (CTI), Manizales Section, where it is sought to open judicial proceedings. According to the Prosecutor's Office, Mr. Pineda was a member of EDUCAL-Caldas, but his office remains to be established.

Abductions and disappearances

- (1) Alexander Cardona, USO official. According to the Attorney-General's Office, the investigation is being conducted by the Special Prosecutor's Office, *Gaula-Santander*, in Bucaramanga, File No. 14502, and is at the preliminary stage, currently examination of evidence. In the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, there is no record of the exact date of the incident and the trade union organization remains to be established;
- (2) Walter Arturo Velásquez Posada, of the Nueva Floresta School, in the municipality of El Castillo, in the El Ariari Educational District, Department of Meta. The Attorney-General's Office reports in respect of the investigation that appropriate inquiries are in hand to locate the cases in the Attorney-General's Office. Mr. Velásquez Posada's connection with the trade union and his office still remain to be established;
- (3) Roberto Cañarte M., member of SINTRAMUNICIPIO, Bugalagrande, in the Paila Arriba estate (Valle). The investigation is being conducted by Special Prosecutor's Office, Buga, File No. 21338, and is at the preliminary stage. By an order of 9 January 2002, a date was fixed for the exhumation of Mr. Roberto Cañarte, but this could not be carried out because it was not possible to travel to the municipality of Bugalagrande;
- (4) Germán Medina Gaviria, member of the Cali Municipal Enterprises Union (SINTRAEMCALI), on 14 January 2001, in the neighbourhood of El Porvenir, city of Cali. The investigation was initially conducted by the Cali trade union subunit, but the Cali Special Prosecutor's Office reports that there is at present no investigation in progress into the incident. His trade union and the office he held have yet to be established;
- (5) Cristina Echeverri Pérez, member of EDUCAL-CUT, on 1 July 2001, near the town of Manizales. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the authority conducting the investigation is the second prosecutor to the *Gaula-Caldas*, Manizales, and is at the preliminary stage. This Prosecutor's Office commenced preliminary inquiries related to this abduction on 3 July 2001. Evidence has been examined with a view to identifying possible authors;
- (6) Jesús Alfonso Mejía Urión, member of ADUCESAR-FECODE-CUT, disappeared on 4 July 2001. The investigation is being conducted by Special Prosecutor's Office 5 and 6, Valledupar, File No. 764, and is at the preliminary stage, currently examination of evidence;
- (7) Jairo Tovar Díaz, member of ADUCESAR-FECODE-CUT, on 29 July 2001, in the outskirts of the municipality of Galeras. The investigation is being conducted by Prosecutor's Office 16, Sincelejo Section, File No. 16950;
- (8) Julio Enrique Carrascal Puentes, member of the national executive committee of CUT, abducted on 10 August 2001, in the municipality of María la Baja, Department of Bolívar. According to the Attorney-General's Office, he was released on 20 August 2001 and, with respect to the investigation into the abduction, all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;

- (9) Winston Jorge Tovar Mesa, member of ASONAL-CUT, abducted near the municipality of Dagua, Department of Valle del Cauca, on 20 August 2001. According to the Attorney-General's Office, all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;
- (10) Alvaro Alberto Agudel Usuga, member of ASONAL-CUT, disappeared on 20 August 2001. The Attorney-General's Office reports that all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;
- (11) Jorge Feito Romero, member of the Association of Pensioners of the University of Atlántico (ASOJUA), on 28 August 2001. On the investigation into the abduction, the Attorney-General's Office reports that all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;
- (12) Alvaro Laiton Cortés, President of the Boyacá Teachers' Union, on 2 September 2001, released shortly after being abducted. On the investigation into the abduction, the Attorney-General's Office reports that all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;
- (13) Marco Tulio Agudero Rivero, ASONAL-CUT, in the municipality of Cocorna, Department of Antioquia, on 5 October 2001. On the investigation into the abduction, the Attorney-General's Office reports that all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;
- (14) Iván Luis Beltrán, member of the executive committee of FECODE-CUT, on 10 October 2001. On the investigation into the abduction, the Attorney-General's Office reports that all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;
- (15) Jorge Enrique Posada, member of ASONAL, on 5 November 2001. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the authority conducting the investigation into the abduction is the Special Prosecutor's Office, Medellín, Section Directorate (DSF), Antioquia, and is at the preliminary stage, examination of evidence. The Prosecutor's Office reports that, in a telephone conversation, Jorge Enrique Posada said that he had not been a member of the National Association of Civil Servants and Judicial Employees (ASONAL);
- (16) Jhon Jaimes Salas Cardona, delegate of ADIDA-CUT, on 26 November 2001. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the authority conducting the investigation into the disappearance of Mr. Salas Cardona is the Prosecutor's Office unit attached to the rural *Gaula*, Antioquia, fourth brigade, File No. 1930 and is at the preliminary stage. The Prosecutor's Office reports that the investigation began in the Prosecutor's Office unit attached to the Criminal Circuit Court based in Frontino, for the crime of abduction for ransom, File No. 1930, and was transferred on 7 December 2001 to the Prosecutor's Office unit assigned to the rural *Gaula*, Antioquia, fourth brigade. Mr. Salas Cardona was rector of the Milagrosa college. His connection with the Antioquia Teachers' Association remains to be established;
- (17) 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. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the

authority conducting the investigation into the incident is Prosecutor's Office 12, Duitama Section, Santa Rosa de Viterbo, File No. 30171, and is at the preliminary stage. The investigation is active and at the examination of evidence stage;

- (18) José Pérez, member of the Workers' Trade Union (USO), in the La Nata gorge, Department of Casanare, abducted on 25 March 2002 by members of the José David Suárez Front of the ELN when travelling by a back road from the Yopal forest to the ECOPETROL pumping station in the municipality of Araguaneý, in the village of La Niata, municipality of Yopal, Department of Casanare. He was released on 3 May 2002 in the main park of the municipality of Labranzagrando (Boyacá) through the mediation of the International Red Cross, the media and the Casanare Regional Ombudsman. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation into the abduction is being conducted by Prosecutor's Office 5, attached to the *Gaula* of Yopal, File No. 30169, and is at the preliminary stage, currently examination of evidence, preliminary inquiries having commenced on 26 March 2002;
- (19) Hernando Silva, member of the Workers' Trade Union (USO), abducted in the La Nata gorge, Department of Casanare, abducted on 25 March 2002 by members of the José David Suárez Front of the ELN when travelling by a back road from the Yopal forest to the ECOPETROL pumping station in the municipality of Araguaneý, in the village of La Niata, municipality of Yopal, Department of Casanare. He was released on 3 May 2002 in the main park of the municipality of Labranzagrando (Boyacá) through the mediation of the International Red Cross, the media and the Casanare Regional Ombudsman. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation into the abduction is being conducted by Prosecutor's Office 5, attached to the *Gaula* of Yopal, File No. 30169, and is at the preliminary stage, currently examination of evidence, preliminary inquiries having commenced on 26 March 2002.

Attempted murders

- (1) Albeiro González García, President of ASODEFENSA, Cafetero 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. According to communication No. 04146 addressed to the Human Rights Office in the Ministry of Labour and Social Security, dated 24 December 2002, signed by Dr. Alvaro Paris Barón, legal adviser to ASODEFENSA, Mr. Albeiro González García worked in the Cafetero area. As a public employee, he worked as a driver for about eight years. He was the subject of death threats which he reported to the Ministry of Defence, seeking a transfer to another part of Colombia. As he did not achieve this, he sought political asylum and is at present abroad. This communication makes no mention of Mr. Albeiro González being a trade union leader or member, and it cannot therefore be stated that he was President of ASODEFENSA;
- (2) Ricardo Herrera, official of SINTRAEMCALI, was the victim of an attack in Cali, on 19 September 2000. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, he was the victim of threats in Cali, Valle, on 27 September 2000. The investigation is being conducted by Prosecutor's Office 75, Cali Section, File No. 391287, and is at the preliminary stage, currently examination of evidence. The Prosecutor's Office reports that protection measures were requested, pending the Technical Group (CTI) report. In fact, the Ministry of the Interior, programme of

protection of witnesses and threatened persons, reports that, according to the list of “Measures actually taken for trade union leaders and activists during 2001”, Mr. Ricardo Herrera was provided with the following protection measures: cellphone, Avantel radio, a standard vehicle, worth 54,370,060 pesos. In 2002, he was provided with a cellphone and Avantel radio as protection measures worth 1,464,000 pesos;

- (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. According to the general report of investigations conducted by the Attorney-General’s Office into violations of trade union members’ human rights, the investigation is being conducted by the National Human Rights Unit, File No. 943C. The Prosecutor’s Office reports that on 18 March 2002 Jhon Fredy Peña Avila was charged as the suspected co-author of the attempted murder, and concurrently with conspiracy to commit a crime. The current status of the investigation is that it has gone to trial. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of “Measures actually taken for trade union leaders and activists during 2001”, Mr. Wilson Borja Díaz was provided with the following protection measures: cellphone, Avantel radio, a standard vehicle, armoured vehicle, tickets and national humanitarian assistance worth a total of 285,721,420 pesos. In 2002 he was provided with a cellphone, an Avantel radio and national humanitarian assistance, inter alia, as protection measures worth 2,850,648 pesos;
- (4) César Andrés Ortiz, member of the CGTD, on 26 December 2000. According to the general report of investigations conducted by the Attorney-General’s Office into violations of trade union members’ human rights, he suffered a gunshot wound to the shoulder while he was walking through his neighbourhood on 26 December 2000. A young man died and six other persons were wounded in the attack. On the investigation into the incident, the Attorney-General’s Office reports that all appropriate inquiries are in hand to locate the cases in the Attorney-General’s Office;
- (5) Héctor Fabio Monroy, member of AICA-FECODE, was the victim of a gunshot attack on 23 February 2001. According to the general report of investigations conducted by the Attorney-General’s Office into violations of trade union members’ human rights, all appropriate inquiries are in hand to locate the cases in the Attorney-General’s Office;
- (6) attack on the executive committee 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. The Attorney-General’s Office reports that efforts are in hand to identify the authority conducting the investigation, the file number and the status of the investigation;
- (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. According to the general report of investigations conducted by the Attorney-General’s Office into violations of trade union members’ human rights, the investigation is being conducted by Prosecutor’s Office 48, Honda Section, File No. 5245, and is at the preliminary stage, currently examination of evidence. The Prosecutor’s Office stated that the police authorities were charged with locating and identifying the suspects in the case. A preliminary investigation is being conducted in the same Prosecutor’s Office for suspected criminal threats against staff of the

San Juan de Dios Hospital in Honda, and this is at the examination of evidence stage;

- (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. The Attorney-General's Office reports that all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office and to locate the authority conducting the investigation;
- (9) Omar García Angulo, member of SINTRAEMECOL, on 16 August 2001. The Attorney-General's Office reports that all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office and to locate the authority conducting the investigation. The type of relationship between Mr. García Angulo and SINTRAEMECOL, Fusagasuga Section, remains to be established;
- (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. According to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by the support unit of the National Human Rights Unit in Cali, File No. 468731. A person has been arrested in connection with the incident. On 24 May 2002, the investigation was ordered to be closed, the notice period is running and, once final, the office will decide on the merit of the case;
- (11) Albeiro Foreno, official of the Cartago Municipal Workers' Union (SINTRAMUNICIPIO), on 13 February 2002, was the victim of a shot fired at him by a paramilitary. He had already been a victim of attacks and, according to the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, the investigation is being conducted by Prosecutor's Office 17, Cartago Section, File No. 9082. It is currently at the examination of evidence stage;
- (12) 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. In the general report of investigations conducted by the Attorney-General's Office into violations of trade union members' human rights, only one investigation into threats against the National Union of Food Industry Workers (SINTRAINAL), in Bugalagrande, Valle, has been recorded since 1 June 2000. The investigation into this incident is active and is being conducted by the Cali Section Unit, File No. 392158. The investigation is currently at the examination of evidence stage. Despite this, the Human Rights Office of the Ministry of Labour and Social Security wrote to the Attorney-General's Office to ask it to decide on the apparent attack on 14 February 2002 against SINTRAINAL's premises.

Death threats

- (1) Juan de la Rosa Grimaldos, President of ASEINPEC. The Attorney-General's Office reports that the complaint of death threats against Mr. Juan de la Rosa Grimaldos received in May 2000 in the city of Bogotá is recorded. However, the Attorney-General's Office states that all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office and to locate the authority conducting the investigation. In the Ministry of the Interior's list of "Measures actually taken for trade union leaders and activists during 2001 and 2002, there is no record of any request for protection by Mr. Juan de la Rosa Grimaldos, and therefore no protection measures were provided during that period;

- (2) María Clara Baquero Sarmiento, President of ASODEFENSA. The Attorney-General's Office reports that the complaint of death threats against Mrs. María Clara Baquero Sarmiento received on 1 October 2000 in Bogotá, Cundinamarca, is recorded. The investigation into the incident is at the preliminary stage and is being conducted by the National Human Rights Unit, File No. 978. It is currently at the examination of evidence stage, and admission of witness statements was ordered on 6 March 2002. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2001", Mrs. María Clara Baquero Sarmiento was provided with the following protection measures: subsistence and accommodation, bodyguards and tickets worth a total of 19,526,292 pesos;
- (3) Jorge Nisperuza, President of the CUT subcommittee, Córdoba. The Attorney-General's Office reports that the complaint of death threats against Mr. Jorge Nisperuza received in the city of Montería, Córdoba, is recorded. However, the Attorney-General's Office states that all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;
- (4) María de Jesús Castañeda, President of the CUT subcommittee, Huila. The Attorney-General's Office reports that the report of a complaint of death threats against Mrs. María de Jesús Castañeda received in the city of Neiva, Department of Huila, is recorded. The investigation is active, at the preliminary stage and is being conducted by the First Prosecutor's Office, Neiva Section, File No. 47993. The Prosecutor's Office also states that a statement by the victim is awaited, to determine the facts and establish if a complaint has already been entered by the victim and thus to determine whether any other authority is conducting an investigation into the same incident. Finally, the Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2001", Mrs. María de Jesús Castañeda was provided with the following protection measures: standard vehicle worth a total of 52,753,725 pesos;
- (5) Gerardo Rodrigo Genoy Guerrero, President of the National Union of Workers, SINTRABANCOL. The Attorney-General's Office reports that the complaint of death threats against Mr. Gerardo Rodrigo Genoy Guerrero received in the city of Bogotá, Cundinamarca, is recorded. However, the Attorney-General's Office states that all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office;
- (6) Otoniel Ramírez, President of the CUT subcommittee, Valle. The Attorney-General's Office reports that the report of a complaint of death threats against Mr. Otoniel Ramírez received in June 2001 in Yumbo is recorded. However, the Attorney-General's Office states that all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office. According to the Ministry of the Interior, programme of protection of witnesses and threatened persons, and the list of "Measures actually taken for trade union leaders and activists during 2001", Mr. Ramírez, President of the CUT subcommittee, Valle, and member of SUTIMAC, Yumbo branch, was provided with the following protection measures: Avantel radio worth a total of 1,616,335 pesos. During 2002, he had an Avantel radio and cellphone as protection measures worth a total of 1,465,113 pesos;
- (7) José Rodrigo Orozco, member of the CUT-Cauca executive committee. The Attorney-General's Office reports that the complaint of death threats against Mr. José Rodrigo Orozco received in Popayán, Cauca, is recorded. However, the Attorney-General's Office states that all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office. The Human Rights Unit in the Ministry

of Labour and Social Security was also informed that Mr. Orozco was an official of the CUT, Department of Cauca. According to the Ministry of the Interior, programme of protection of witnesses and threatened persons, and the list of “Measures actually taken for trade union leaders and activists during 2001”, Mr. José Rodrigo Orozco was provided with the following protection measures: national humanitarian assistance and a cellphone worth a total of 2,645,932 pesos. During 2002, he had a cellphone worth 1,014,465 pesos as a protection measure;

- (8) Leonel Pastas, official of the National Colombian Institute for Agrarian Reform (INCORA), on 14 August 2001. The Attorney-General’s Office reports that the complaint of death threats against Mr. Leonel Pastas received in Bogotá, Cundinamarca, on 14 August 2001, is recorded. However, the Attorney-General’s Office states that all appropriate inquiries are in hand to locate the cases in the Attorney-General’s Office;
- (9) Rusbel, INCORA official, on 14 August 2001. The Attorney-General’s Office reports that the complaint of death threats against Mr. Rusbel received in Bogotá, Cundinamarca, on 14 August 2001, is recorded. However, the Attorney-General’s Office states that all appropriate inquiries are in hand to locate the cases in the Attorney-General’s Office;
- (10) Edgar Púa and José Meriño, Treasurer and Prosecutor of ANTHOC, on 16 August 2001. The Attorney-General’s Office reports that the report of a complaint of death threats against Mr. Edgar Púa and Mr. José Meriño received in Barranquilla, Atlántico, on 16 August 2001, is recorded. However, the Attorney-General’s Office states that all appropriate inquiries are in hand to locate the cases in the Attorney-General’s Office;
- (11) Gustavo Villanueva, ANTHOC official, on 16 August 2001. The Attorney-General’s Office reports that the complaint of death threats against Mr. Gustavo Villanueva received in Polonuevo, Antioquia, on 16 August 2001, is recorded. The investigation into the incident is being conducted by Prosecutor’s Office 21, offences against public security, public health and others, File No. 106351, which is at the preliminary stage, currently examination of evidence;
- (12) 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. The Attorney-General’s Office reports that the investigation into the incident is active and is being conducted by the support unit of the National Human Rights Unit and International Humanitarian Law Unit (DIH), Medellín, File No. 43, which is at the preliminary stage, currently examination of evidence;
- (13) Aquiles Portilla, FECODE official, victim of harassment on 29 August 2001. The Attorney-General’s Office reports that the investigation into the incident is active and is being conducted by Prosecutor’s Office 14, Pasto Section, File No. 45718, and is at the preliminary stage, currently examination of evidence. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of “Measures actually taken for trade union leaders and activists during 2001”, Mr. Aquiles Portilla was provided with the following protection measures: standard vehicle for a total value of 52,753,725 pesos. During 2002, he had a cellphone and Avantel radio as protection measures, total value 1,465,130 pesos;
- (14) Edgar Mojico and Daniel Rico, President and Press Secretary respectively of the Petroleum Industry Workers’ Trade Union (USO), threatened by members of the

Self-defence Groups of Colombia (AUC). The Attorney-General's Office states that all appropriate inquiries are in hand to locate the cases in the Attorney-General's Office. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2001 and 2002", Mr. Edgar Mojico and Mr. Daniel Rico were provided with the following protection measures: in 2001 cellphones for a total value of 929,329 pesos and, during 2002, they were also given a cellphone, total value 1,014,465 pesos;

- (15) Over Dorado Cardona, official of ADIDA, on 19 September 2001. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation into this case is being conducted by the support unit of the National Human Rights Unit and International Humanitarian Law Unit (DIH), Medellín, File No. 61, and is at the preliminary stage, currently examination of evidence. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2001 and 2002", Mr. Over Dorado was provided with the following protection measures: in 2001 Avantel radio for a total value of 686,403 pesos and, during 2002, he was also given an Avantel radio, total value 753,725 pesos;
- (16) 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 harassment. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation into this case is being conducted by Prosecutor's Office 241 of the Offences against Personal Freedoms Unit and Special Prosecutor's Offices 5 and 6, Valledupar. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2002", Mr. Cervulo Bautista was provided with the following protection measures: special humanitarian assistance (transport and removal expenses) for a total value of 3,700,000 pesos;
- (17) 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 Self-defence Groups of Colombia (AUC) on 8 October 2001. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation into this case is being conducted by Prosecutor's Office 14, Pasto Section, File No. 45718;
- (18) Carlos Alberto Florez Loaiza, member of the national executive committee of the Union of Workers and Employees in the Public Services, Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES), on 5 January 2002. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation into this case is active, at the preliminary stage and is being conducted by Prosecutor's Office 31, Cali Section. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2001 and 2002", Mr. Carlos Alberto Florez Loaiza was provided with the following protection measures: in 2001 he was given an Avantel radio, national tickets and humanitarian assistance for a total value of 1,254,773 pesos. During 2002, he was given an Avantel radio, national tickets and national humanitarian assistance, total value 3,545,018 pesos;

- (19) José Homer Moreno Valencia, member of SINTRAEMSDES-CUT, on 10 January 2002. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation into this case is active, at the preliminary stage and is being conducted by Prosecutor's Office 31, Cali Section. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2002", Mr. José Homer Moreno was provided with the following protection measures: national humanitarian assistance for a total value of 1,854,000 pesos;
- (20) Luis Hernández, president of SINTRAEMCALI. According to the general report of investigations carried out by the Attorney-General's Office into violations of trade union members' human rights, the investigation into this case is active, at the preliminary stage and is being conducted by Prosecutor's Office 30, Cali Section. The Ministry of the Interior, programme of protection of witnesses and threatened persons, reports that, according to the list of "Measures actually taken for trade union leaders and activists during 2001 and 2002", Mr. Luis Hernández was provided with the following protection measures: in 2001 he was given a cellphone, total value 929,932 pesos. In 2002 he was also given a cellphone, total value 1,014,465 pesos.

Harassment

- (1) Esperanza Valdés Amortegui, Treasurer of ASODEFENSA, victim of illegal espionage through the installation of microphones in her workplace. According to communication No. 04146 of 24 December 2002, signed by the legal adviser to ASODEFENSA, there is no mention of Mrs. Esperanza Valdés' position as trade union leader or official;
- (2) Freddy Ocoro, President of the Bugalagrande Union of Municipal Workers, assaulted by police, on 1 May 2001. The investigation is active, at the preliminary stage and is being conducted by Special Prosecutor's Office 4, Cali, File No. 396788. It is currently at the examination of evidence stage. During 2002, in addition, he was granted national humanitarian assistance, an Avantel radio and a cellphone total value 4,246,113 pesos. In addition, the Ministry of the Interior, in a letter of 5 August 2002 to the Human Rights Office of the Ministry of Labour and Social Security, stated that "as a protection measure, the risk control and evaluation committee approved Mr. Freddy Ocoro Botero's leaving the country temporarily, travelling from Bogotá to Lyon (France)".

478. With respect to the comments of the Committee in paragraphs 361 and 383 of the 329th report, on the strike of 16 September which "was stigmatized by government members who prohibited workers' marches during that day due to suspected infiltration by the guerrilla", the Government wishes to inform the Committee that, based on the "evaluation of the national and rural strike" by the national police, intelligence department, dated 22 September 2002, the strike of 16 September, a national day of protests convened by the principal unions in the country, and a rural strike organized by social and rural movements in the departments of Huila, Tolima and Cauca took place under normal conditions. The Government respected the right of protest provided that the rights to work and movement of people were respected. The national protests passed off relatively normally, in the form of gatherings, marches and paralysis of activities in the health, education, oil, civil aviation, justice and civil service sectors. In 19 capital cities there were marches with large-scale participation. In Bogotá, 12,000 demonstrators gathered and at national level it is estimated that some 20,000 people took part in the marches.

479. One of the major concerns of the day was the paralysis of workers in civil aviation, which temporarily affected air traffic. Valle, Antioquia, Cundinamarca, Santander, Huila, Risaralda and Quindío were the departments with the highest levels of participation in the strike.
480. As to the national strike, there were four marches, 83 gatherings and 30 information meetings. At regional level, there were 118 protest actions, consisting of 36 marches, 19 meetings, 58 gatherings, a sit-in at INCORA in Pereira, which was dislodged, and four explosive devices were detonated in Pasto and Cali. The Government annexes below the consolidated reports of the Ministry of the Interior and the national police on the situations that arose in various areas of the country during the strike which illustrate the normal pattern of activities in different sectors and areas of the country.
481. With respect to the Committee's comments in paragraphs 369 and 380 of the 329th Report, "with regard to the assessment of the protection programme as recommended in the Committee's 328th Report (para. 124(h)), which 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", the Colombian Government informs the Committee that this assessment has already been done, and involves a comprehensive report which covers, inter alia, the following matters: (1) framework for protection programmes; (2) legal framework (international regulatory framework and recommendations of international bodies, legal framework, powers of institutions and competent authorities involved in the programmes); (3) political framework (programmes of protection, protection policy, public and regular recognition of the legitimacy of trade union activity, links between the Government, law enforcement and human rights defenders, etc.); (4) administrative structure of the programmes (methods, procedures and processes of protection programmes, treatment of requests for protection, request for examination of the level of risk, procedure for responding to emergency cases, etc.); (5) financial structure (budget and other sources of finance); (6) protection measures (soft protection and hard protection); (7) results of surveys of beneficiaries and bodyguards; (8) conclusions; (9) recommendations.

Brief outline of the most important conclusions and recommendations formulated in the report of the protection programme of the Ministry of the Interior

482. The recommendations are divided into three main groups: preventive policies, functional structure and operational recommendations. As to the first, the suggestion is for greater participation by regional authorities in developing protection programmes. Thus, for example, it is recommended that protection programmes of the Ministry should be coordinated with local authorities (governors, mayors and police chiefs). These authorities should set up the departmental and municipal commissions provided in Law No. 62 of 1993, to support and coordinate the programmes.
483. As regards the recommendations concerning the functional infrastructure, it is recommended that protection work should be assigned to a proper bodyguard agency, dedicated exclusively to that task, and totally separate from intelligence and counter-intelligence activities, operating in its own premises. It is also recommended that it should have instructors, supervisors and security experts. It is further recommended that the Risk Control and Assessment Committees (CRERs) should be reorganized so that they are more flexible and effective, with greater participation by the sectors of civil society represented in them.

484. As regards the operational recommendations, it is suggested that, in addition to training in protection, bodyguards should be given training in other subjects such as international humanitarian law and human rights.
485. It is also recommended that the processes of selecting and training bodyguards should be totally transparent, thus ensuring that those selected do not have any background which might suggest hostility to the groups of persons protected under the programmes. The group did not agree on the relationship with the organization which would have authority over the bodyguard group. Different opinions were expressed on that question.
486. It is further recommended that the beneficiaries of the programmes should endeavour to create a culture of self-protection, engaging in activities and conduct such as to reduce their level of vulnerability.
487. The treatment of the information on the programmes must be absolutely and strictly confidential. Equally, the procedures for requests for security should be simplified and standardized, thus making it possible to implement provisional measures applicable to beneficiaries for whom protection measures have not been confirmed.
488. Finally, it is recommended that the financial planning of the programme should be revised, with a permanent executor for the resources, the value of considering UNDP as the executing agency, and possible integration of the programmes funds.
489. With respect to the comments of the Committee in paragraph 378 of the 329th Report, on case No. 1787, on the suspension, on 23 March 2001, of the investigation into the murder of trade unionist Leonardo Betancourt Mendez, the Colombian Government states that, according to a letter sent to the Human Rights Office of the Ministry of Labour and Social Security by the Attorney-General's Office on 14 January 2002, an inhibitory decision was taken on 23 March 2001 in the murder case No. 5297, the killing of Mr. Leonardo Betancourt Mendez, and the case was archived on 22 April of the same year.
490. The Prosecutor's Office 25 in the Criminal Circuit Court of Dosquebradas, Risaralda, notified the reasons for the suspension of the case to the effect that the evidence presented, especially report UIPJ 143 by the DAS Section, did not provide eyewitnesses to the facts or the motives for killing him, let alone identify and locate the suspects. In the light of the foregoing, it is concluded that the archiving of the cases was justified.
491. Finally, in its communication of 3 February 2003, the Government provided information on the adoption, on 15 January 2003, of the "Working Plan of the Inter-institutional Committee for the Prevention of Violations and the Protection of Workers' Human Rights". This Plan has been set up by two working groups. The first deals with questions relative to justice and workers' human rights protection as well as their possible violations; the second deals with the promotion and protection of freedom of association and the right to collective bargaining. The main objective of the Plan is to overcome the impunity with which violations of freedom of association meet, taking into account the recommendations of the Committee on Freedom of Association.

D. The Committee's conclusions

492. *Once again, the Committee notes with deep concern the new reports by the complainant organizations of murders, attempted murders, abductions and threats against trade unionists. Since the last examination of this case [see the 329th Report], 11 murders, two abductions, one attempted murder and 15 threats have been reported. According to the allegations sent by the complainants, from January 2002 to the end of January 2003, 40 trade union officials and 60 members have been murdered.*

493. *The Committee also notes the Government's observations in which it briefly reports in general terms the investigative stage of the penal process. This process has two stages, the preliminary inquiries and the prosecution. The first stage, intended to determine whether or not there are grounds for prosecution, ends with a decision to open the investigation leading to prosecution or an inhibitory decision, closing the proceedings. The Government has sent a list of investigations into acts of violence and the measures adopted to provide protection to threatened trade unionists.*

494. *The Committee notes, once again, the list of investigations conducted by various state organizations. The Committee observes that, on this occasion, the Government makes reference to a large number of murders and acts of violence covered in earlier examinations of the case. Nevertheless, the Committee finds from a reading of this list that, with respect to 81 complaints of murders, acts of violence, abductions, disappearances, attempted murders and threats covered in section B "New allegations" of the previous examination of the case:*

- *in 60 of them there are investigations (almost all at the preliminary stage);*
- *inquiries are being made to determine whether investigations are being conducted and which authority is conducting them in nine of them;*
- *no information is provided in respect of six of them;*
- *it reports detention or arrest of persons involved in the incidents in five of them and suspension of proceedings in one of them.*

In no case is an actual conviction reported.

495. *With respect to the 265 complaints of murders, abductions, disappearances, attempted murders, death threats and harassment reported in 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), the Committee finds that:*

- *investigations have been initiated in 120 of them (almost all at the preliminary stage);*
- *there are no investigations or inquiries are in hand to determine if investigations are in progress and which authority is conducting them in 54 cases;*
- *investigations have been suspended or archived or there is an inhibitory decision (end of the preliminary stage) in 17 cases;*
- *the Government has not sent any information in respect of 56 of them;*
- *the Government reports that there are persons in detention or under arrest in eight cases;*
- *the Government reports that four deaths were due to natural causes;*
- *in two cases, persons were released.*

In no case is an actual conviction reported.

496. *The Committee notes the comprehensive nature of the Government's reply. It also observes that, although the Government has sent information concerning many investigations in progress, the number of pending complaints of acts of violence reported by the*

complainants remains very high. Moreover, in almost all the cases, the investigations are at the preliminary stage with the collection of evidence. The number of culprits identified or detained is very small. Some investigations have been suspended, archived or subject to an inhibitory decision which, as the Government states, amounts to the conclusion of the investigation. In any case, the Committee observes that none of the investigations initiated have ended with the actual conviction of those responsible for the acts of violence against trade union officials.

497. Furthermore, the Committee notes with regret that, since the last examination of the case, there have been complaints of 11 murders, two abductions, one attempted murder and 15 threats. Once again, the Committee reiterates that freedom of association can only be exercised in conditions in which fundamental human rights and, in particular, those relating to human life and personal safety, are fully respected and guaranteed [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 46].
498. Reiterating its previous observations and observing that the climate of violence affects all sectors of society, 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 does not help the credibility of the Government, nor does it 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 serious situation of impunity continues. The Committee therefore again requests the Government 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.
499. The Committee once again urges the Government to 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.
500. The Committee takes note of the Government’s information concerning the investigation into the murder of Leonardo Betancourt Méndez, which was subject to an inhibitory decision. In other words, as the circumstances of the incident, witnesses and suspects cannot be determined, the authorities have decided not to pursue the investigation.
501. As to the trade union status of some of the victims, where there are discrepancies between the accounts of the complainants and the Government, the Committee takes note that the Government denies the status of trade union official or member of a considerable number of victims. The Committee requests the complainants to send the necessary information to clarify the trade union status of those persons.
502. With respect to the programme of protection established by the Ministry of the Interior, the Committee takes note of the evaluation undertaken in the context of that programme which includes assessments of: the legal and policy framework for protection programmes, protection policy, administrative structure of the programmes, methods, procedures and processes of protection programmes, treatment of requests for protection, request for examination of the level of risk, receivability criteria for cases, procedure for responding to emergency cases, financial structure, protection measures (soft protection and hard

protection). The Committee also takes note of the operational recommendations which resulted from that evaluation which suggest, *inter alia*, that beneficiaries of the programmes should endeavour to create a culture of self-protection and to engage in activities and conduct such as to reduce their level of vulnerability; that the treatment of the information on the programmes must be absolutely and strictly confidential. Equally, the procedures for requests for security should be simplified and standardized, thus making it possible to implement quickly provisional measures applicable to beneficiaries for whom protection measures have not been confirmed. According to the information provided by the Government, the Committee notes that a number of trade union officials are provided with protection measures. The Committee requests the Government to continue to increase the protection of all trade unionists who are at risk and to keep it informed of the development of the protection programme. Moreover, the Committee takes note of the adoption of the “Working Plan of the Inter-institutional Committee for the Prevention of Violations and the Protection of Workers’ Human Rights”. The Committee requests the Government to continue to keep it informed of the evolution of this Plan.

- 503.** *With respect to the allegations by ICFTU on threats against and detention of many trade union officials for taking part in the strike on 16 September 2002, the Committee takes note of the Government’s information that the strike was conducted in conditions of normality and that the right to protest was respected in all cases where the rights to work and movement of persons were respected. The Committee also takes note that, according to the Government, they passed off relatively normally, in the form of gatherings, marches and paralysis of activities in the health, education, oil, civil aviation, justice and civil service sectors. In 19 capital cities there were marches with large-scale participation. In Bogotá, 12,000 demonstrators gathered and at national level it is estimated that some 20,000 people took part in the marches. The Committee observes, however, that the Government does not mention the ban on some marches, nor the detention of the trade union officials Raúl Herrera, regional official of SUMAPAZ, Rubén Robles, Secretary General of the Agricultural Workers’ Union of the Department of Sucre and official of FENSUAGRO, Ana María Andrea Ablanado and Daniel Bustos Gutiérrez, international delegates of the Spanish NGO SOLDEPAZ PACHAKUTTI, Mauricio Rubiano, Human Rights Secretary of the CUT Youth Department, María Isabel Lenis, regional defender, Valle del Cauca Section, Otoniel Ramírez, President of NOMADESC, human rights organization, Oscar Figueroa and Angel Tovar, officials of the Cali Municipal Enterprises Union (SINTRAEMCALI). The Committee urges the Government to take measures to investigate these complaints without delay and, if it is found that the detentions were for legitimate trade union activities, that those concerned should immediately be released if they are still in detention. The Committee requests the Government to keep it informed in this respect.*
- 504.** *The Committee deplores the fact that the Government did not implement its previous recommendations. In order to combat impunity more effectively and address the causes of acts of violence against trade unions adequately, the Committee once again requests the Government, as it did in its previous recommendations, to inform it of the frequency of acts of violence against trade unionists in each industrial sector and each region.*
- 505.** *Finally, the Committee takes note of the recent communication of the ICFTU dated 3 February 2003 in which it alleges threats, assaults, the murder of two trade union leaders, the detention of four trade union leaders, the denial of protection to a union leader and the non-application of an agreement made on 29 January 2002 between the Government, the workers of the Municipal Enterprises of Cali (EMCALI) and the Community of Cali under the terms of which the non-privatization of the enterprises had been decided. The Committee requests the Government to send its observations on these matters without delay.*

The Committee's recommendations

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

- (a) *Observing the comprehensive nature of the Government's response as well as the fact that the climate of violence affects all sectors of society, the Committee nevertheless notes with the utmost concern the extreme gravity of the complaints and regrets that it is bound to observe that, since the last examination of the case, there have been complaints of 11 murders, two abductions, one attempted murder and 15 threats. Once again, the Committee reiterates that freedom of association can only be exercised in conditions in which fundamental human rights and, in particular those relating to human life and personal safety, are fully respected and guaranteed.*
- (b) *The Committee 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.*
- (d) *The Committee requests the complainants to send the information necessary to clarify the trade union status of those victims who the Government claims do not possess such status.*
- (e) *The Committee requests the Government to continue to increase the protection of all trade unionists who are at risk and to keep it informed of the development of the protection programme.*
- (f) *The Committee requests the Government to continue to keep it informed of the evolution of the "Working Plan of the Inter-institutional Committee for the Prevention of Violations and the Protection of Workers' Human Rights".*
- (g) *With respect to the allegations by ICFTU on threats against and detention of many trade union officials for taking part in the strike on 16 September 2002, the Committee urges the Government to take measures to investigate these complaints without delay and, if it is found that the detentions were for legitimate trade union activities, that those concerned should immediately be released if they are still in detention. The Committee requests the Government to keep it informed in this respect.*

- (h) *The Committee deplores that the Government did not implement its previous recommendations with respect to impunity. In order to combat impunity more effectively and address the causes of acts of violence against trade unions adequately, the Committee requests the Government to inform it of the intensity of acts of violence against trade unionists in each industrial sector and each region.*
- (i) *As concerns the recent communication of the ICFTU dated 3 February 2003, the Committee requests the Government to send its observations on the matters raised therein without delay.*
- (j) *With regard to the question of the Fact-Finding and Conciliation Commission, the Committee recalls the recommendation made at its November 2002 session.*

Annex I

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

Murders

- (1) Edison Ariel, 17 October 2000, SINTRAINAGRO;
- (2) Francisco Espadín Medina, member of SINTRAINAGRO, 7 September 2000, in the municipality of Turbo;
- (3) Carlos Cordero, member of ANTHOC, 6 December 2000, in Peñas Blancas, by paramilitaries;
- (4) Gabriela Galeano, official of ANTHOC, 9 December 2000, in Cúcuta, by paramilitaries;
- (5) Ricardo Florez, member of SINTRAPALMA, 8 January 2001;
- (6) Elsa Clarena Guerrero, member of ASINORTH, 28 January 2001, in the municipality of Ocaña, at a military roadblock;
- (7) Alfonso Alejandro Naar Hernández, member of ASEDAR, branch of FECODE, 8 February 2001, in the municipality of Arauca;
- (8) Raúl Gil, member of SINTRAPALMA, 11 February 2001, in the municipality of Puerto Wilches;
- (9) Alberto Pedroza Lozada, 22 March 2001;
- (10) Jesús Antonio Ruano, member of ASEINPEC, in the municipality of Palmira, 27 March 2001;
- (11) Leyder María Fernández Cuellar, wife of the above, 26 April 2001;
- (12) Edgar Thomas Angarita Mora, member of ASEDAR and FECODE, in the Department of Arauca, 12 June 2001, in the Department of Arauca, when taking part in a block of the Vía Fortul Sarabena as a protest against Law No. 012;
- (13) Manuel Pájaro Peinado, Treasurer of the Barranquilla District Union of Civil Servants (SINDIBA), 16 August 2001, in the Department of Atlántico, had requested to be included in the Ministry of the Interior protection programme but had not received a reply. He was murdered when the trade union was engaged in a series of protests against law No. 617 of the district administration, the aim of which was the mass dismissal of workers;

- (14) Fernando Euclides Serna Velásquez, member of the collective security scheme of the National CUT, Bogotá, disappeared on 18 August 2001, and was found murdered the next day in the Department of Cundinamarca. He was a member of the collective security scheme of the National CUT;
- (15) Yolanda Paternina Negrete, member of ASONAL-CUT, 29 August 2001, in the Department of Sucre. She was a special public order judge and responsible for numerous high risk cases;
- (16) Miguel Chávez, member of ANTHOC-CUT, 30 August 2001, in the Department of Cauca;
- (17) Manuel Ruiz, official of CUT, 26 September 2001, in the Department of Córdoba;
- (18) Ana Ruby Orrego, member of El Valle Single Education Workers' Trade Union (SUTEV-CUT), 3 October 2001, in the Department of Valle del Cauca;
- (19) Ramón Antonio Jaramillo, prosecutor of SINTRAEMSDDES-CUT, on 10 October 2001, in the Department of Valle del Cauca, when paramilitaries were carrying out a massacre in the region;
- (20) Arturo Escalante Moros, member of USO, disappeared on 27 September and found dead on 19 October 2001;
- (21) Armando Buitrago Moreno, member of the National Association of Officials and Employees of the Judicial Branch (ASONAL), 6 June 2001;
- (22) Julián Ricardo Muñoz, member of the National Association of Officials and Employees of the Judicial Branch (ASONAL), 6 June 2001, in Bogotá;
- (23) Edgar Thomas Angarita Mora, activist of the Arauca Teachers' Association, ASEDAR, 11 June 2001, in Barrancones;
- (24) 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;
- (25) 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;
- (26) Prasmacio Arroyo, member of the Magdalena Teachers' Union (SINTRASMAG), on 26 July 2001, in Magdalena;
- (27) Efraín Toledo Guevara, member of the Caquetá Teachers' Association (AICA), on 5 August 2001, in Caquetá;
- (28) César Bedoya Ortiz, activist of the University Teachers' Association (ASPU), on 16 August 2001, in Bolívar;
- (29) César Arango Mejía, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 24 August 2001, in Risaralda;
- (30) Luis Ernesto Camelo, activist of the Santander Teachers' Union (SES), on 2 September 2001, in Santander, by paramilitaries;
- (31) Marcelina Saldarriaga, activist of the Antioquia Teachers' Association (ADIDA), on 5 September 2001, in Antioquia;
- (32) Gilberto Arbeláez Sánchez, member of the Antioquia Teachers' Association Subcommittee (ADIDA), 9 September 2001, in Antioquia;
- (33) Jacobo Rodríguez, member of the Caquetá Teachers' Association, on 18 September 2001, in Caquetá, by paramilitaries;
- (34) Juan David Corzo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 20 September 2001, in Cúcuta, by paramilitaries;
- (35) Bibiana María Gómez Bedoya, member of the Antioquia Teachers' Association (ADIDA), on 22 September 2001, in Antioquia;
- (36) Antonio Mesa, member of the University Workers' Union (SINTRAUNICOL), on 25 September 2001, in Barranquilla, by paramilitaries;

- (37) Germán Elías Madrigal, member of the Antioquia Teachers' Association, on 28 September 2001, in Antioquia;
- (38) 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;
- (39) Gustavo Castellón Fuentes, activist of the Union of Family Benefit Fund Workers of Barrancabermeja (SINALTRACOFAN), on 20 October 2001, in Barrancabermeja, by paramilitaries;
- (40) Milena Pereira Plata, ASINORTH, on 30 October 2001, in Santander, by the FARC;
- (41) Edith Manrique, activist of Caldas Teachers' United (EDUCAL), on 6 November 2001, in Caldas, by paramilitaries;
- (42) Eriberto Sandoval, member of the National United Federation of Agricultural Workers (FENSUAGRO), on 11 November 2001, in Ciénaga, by paramilitaries;
- (43) Eliécer Orozco, FENSUAGRO, on 11 November 2001, in Ciénaga, by paramilitaries;
- (44) Jorge Julio Céspedes, activist of Caldas Teachers' United (EDUCAL), on 24 November 2001, in Caldas, by paramilitaries;
- (45) María Leida Montoya, activist of the Antioquia Teachers' Association, on 30 November 2001, in Antioquia;
- (46) Luis Alfonso Gaviria Meneses, activist of the Trade Union of Workers and Employees in the Public Services Agencies and Decentralized Institutions of Colombia (SINTRAEMSDES), on 30 November 2001, in Antioquia;
- (47) Herlinda Blando, member of the Union of Teachers and Lecturers of Boyacá, on 1 December 2001 in Boyacá, by paramilitaries;
- (48) Generoso Estrada Saldarriaga, member of the Union of Electricity Workers of Colombia (SINTRAEELECOL), on 4 December 2001, in Antioquia;
- (49) Germán Darío Ortiz Restrepo, member of the Antioquia Teachers' Association (ADIDA), on 7 December 2001, in Antioquia;
- (50) Alberto Torres, member of the Antioquia Teachers' Association (ADIDA), on 12 December 2001, in Antioquia;
- (51) James Estrada, activist of the Antioquia Teachers' Association (ADIDA), on 13 December 2001, in Antioquia;
- (52) Iván Velasco Vélez, Union of University Workers, on 27 December 2001, in Valle del Cauca, by paramilitaries;
- (53) Rubí Moreno, member of ANTHOC, on 20 January 2002, in César, by paramilitaries;
- (54) 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;
- (55) Walter Oñate, shot dead when leaving work at the Eduardo Arredondo Daza Hospital in Valledupar, on 29 January 2002;
- (56) Oscar Jaime Delgado Valencia, teacher at the Camilo Torres de Armenia College, Department of Quindío, shot dead on 4 February 2002;
- (57) Oswaldo Enrique Borja Martínez, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 6 February 2002, in Sucre, by paramilitaries;
- (58) Nohora Elsy López, official of the National Union of Childcare Workers in Welfare Homes, on 7 February 2002, in Antioquia, by paramilitaries;
- (59) Adolfo Flórez Rico, activist of the National Union of Workers in the Construction Industry (SINDICONS), on 7 February 2002, in Antioquia, by paramilitaries;

- (60) Alfredo González Páez, member of the Association of Employees of INPEC (ASEINPEC), on 15 February 2002, in Tolima, by paramilitaries;
- (61) Oswaldo Meneses Jiménez, ASEINPEC, on 15 February 2002, in Tolima, by paramilitaries;
- (62) José Wilson Díaz, member of the Union of Electricity Workers of Colombia (SINTRAELECOL), on 21 February 2002, in Huila, by the FARC;
- (63) 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;
- (64) Marcos Antonio Beltrán, activist of SUTEV, on 1 March 2002, in Valle del Cauca;
- (65) Roberto Carballo, member of the National Association of Civil Servants and Judicial Employees (ASONAL), on 6 March 2002, in Bolívar;
- (66) Eduardo Chinchilla Padilla, activist of the Union of Workers in the Oil Palm and Related Industries (SINTRAPALMA-CUT), on 11 March 2002;
- (67) Luis Miguel Rubio Espinel, member of the North Santander Teachers' Association, ASINORTH, 15 July 2001;
- (68) 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.

Abductions and disappearances

- (1) Ismael Ortega, Treasurer of SINTRAPROACEITES, San Alberto (César);
- (2) Walter Arturo Velásquez Posada, of the Nueva Floresta School, in the municipality of El Castillo, in the El Ariari Educational District, Department of Meta;
- (3) Nefatalí Romero Lombana, of Aguazúl (Casanare), and Luis Hernán Ramírez, teacher from Chámeza (Casanare), members of SIMAC-FECODE;
- (4) Germán Medina Gaviria, member of the Cali Municipal Enterprises Union (SINTRAEMCALI), on 14 January 2001, in the neighbourhood of El Porvenir, town of Cali;
- (5) Julio César Jaraba, member of SINTRAISS, disappeared on 23 February 2001;
- (6) 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;
- (7) Eumelia Aristizabal, member of ADIDA, disappeared on 19 April 2001;
- (8) Rosa Cecilia Lemus Abril, official of FECODE, attempted abduction foiled on 14 May 2001;
- (9) six workers in public enterprises in Medellín belonging to SINTRAEMSDES were abducted in the Department of Antioquia on 12 June 2001;
- (10) Julio Enrique Carrascal Puentes, member of the national executive committee of CUT, abducted on 10 August 2001;
- (11) Winsgton Jorge Tovar, member of ASONAL-CUT, abducted near the municipality of Dagua;
- (12) Alvaro Alberto Agudel Usuga, member of ASONAL-CUT, disappeared on 20 August 2001;
- (13) Jorge Feite Romero, member of the Association of Pensioners of the University of Atlántico (ASOJUA), on 28 August 2001;
- (14) Ricaurte Jaunten Pungo, official of ANTHOC-CUT, on 2 September 2001;
- (15) Alvaro Laiton Cortés, President of the Boyacá Teachers' Union, on 2 September 2001, released shortly after being abducted;
- (16) Marco Tulio Agudero Rivera, ASONAL-CUT, in the municipality of Cocorna, on 5 October 2001;
- (17) Iván Luis Beltrán, member of the executive committee of FECODE-CUT, on 10 October 2001;

- (18) Carlina Ballesteros, member of the Bolívar Single Teachers' Union (SUDEB-CUT), on 5 November 2001;
- (19) 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;
- (20) Hernando Silva, member of the Workers' Trade Union (USO), abducted in La Quebrada La Nata, Department of Casanare, on 25 March 2002, by paramilitaries;
- (21) Arturo Escalante Moros, member of the Workers' Trade Union (USO), on 27 September 2001;
- (22) 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;
- (23) Gonzalo Ramírez Triana, activist in USO, on 30 July 2002, in the Department of Cundinamarca;
- (24) 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 members of the union.

Attempted murders

- (1) César Andrés Ortiz, member of the CGTD, on 26 December 2000;
- (2) Héctor Fabio Monroy, member of AICA-FECODE, was the victim of a gunshot attack on 23 February 2001;
- (3) attack on the executive committee 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;
- (4) Clemencia del Carmen Burgos, member of ASONAL-CUT, who was investigating the financing networks of the AUC self-defence groups, on 11 July 2001;
- (5) Omar García Angulo, member of SINTRAEMECOL, on 16 August 2001;
- (6) Hebert Cuadros, member of the Valle del Cauca Single Union of Education Workers (SUTEV), on 16 November 2001;
- (7) the national headquarters of the Union of Electricity Workers of Colombia (SINTRAEELECOL), on 8 July 2002 in Bogotá.

Acts of violence

- (1) Henry Alberto Mosquera, of the Trade Union of Workers of Yumbo municipality, under circumstances similar to those described above;
- (2) Ricardo Valbuena, of the Trade Union of Workers of Yumbo municipality, under circumstances similar to those described above.

Death threats

- (1) Juan de la Rosa Grimaldos, President of ASEINPEC;
- (2) Giovanni Uyazán Sánchez;
- (3) Reinaldo Villegas Vargas, member of the "José Alvear Restrepo" Society of Lawyers;
- (4) 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;

- (5) Rosario Vela, member of SINTRADEPARTAMENTO;
- (6) numerous officials and members of FECODE;
- (7) Jorge Nisperuza, President of the CUT subcommittee, Córdoba;
- (8) Gerardo Rodrigo Genoy Guerrero, President of the National Union of Workers, SINTRABANCOL;
- (9) José Rodrigo Orozco, President of the CUT-Cauca executive committee;
- (10) against SINTRAHOINCOL workers on 9 July 2001;
- (11) Leonel Pastas, official of the National Colombian Institute for Agrarian Reform (INCORA), on 14 August 2001;
- (12) Rusbel, INCORA official, on 14 August 2001;
- (13) Edgar Púa and José Meriño, Treasurer and Prosecutor of ANTHOC, on 16 August 2001;
- (14) Jesús Tovar and Ildis Jarava, ANTHOC officials, were followed by heavily armed men from 16 August 2001;
- (15) Edgar Mojico and Daniel Rico, President and Press Secretary respectively of the Petroleum Industry Workers' Trade Union (USO), threatened by AUC members;
- (16) On 26 October 2001, the entire executive board of SINTRAVIDRICOL-CUT was threatened with death;
- (17) Jorge Eliécer Londoño, member of SINTRAEMSDES-CUT, received death threats on 2 November 2001;
- (18) against trade union officials in Yumbo;
- (19) The headquarters of SINTRAHOINCOL.

Harassment

- (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) 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; and
- (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

Carmen Emilio Sánchez Coronel, Aristarco Arzalluz Zúñiga, Víctor Alfonso Vélez Sánchez, Darío de Jesús Borja, Henry Ordóñez, Javier Jonás Carbone Maldonado, Candelaria Florez, William Iguarán Cottes, Jair Cubides, Carlos Humberto Trujillo, Carolina Santiago Navarro, Edgar Manuel Ramírez Gutiérrez, Jaime Orcasitas, Andrés Granados, Robinson Badillo, Mario Ospina, Frank Elías Pérez Martínez, Darío de Jesús Silva, Juan Carlos Castro Zapata, Eugenio Sánchez Díaz, Julio Alberto Otero, Henry Jiménez Rodríguez, Nelson Narváez, Humberto Zárate Triana, Gonzalo Zárate Triana, Manuel Enrique Charris Ariza, Germán Carvajal Ruiz, Hugo Cabezas, Lucila Rincón, Obdulía Martínez, María Helena Ortiz, Segundo Florentino Chávez, Miryam de Jesús Ríos Martínez, Héctor Eduardo Cortés Arroyabe, Evert Encizo, Yolanda Paternina Negrete, Miguel Chávez, Manuel Ruiz, Ana Ruby Orrego, Luis López y Luis Anaya, Luis José Mendoza Manjares, Martín Contreras Quintero, Carlos Arturo Pinto, Pedro Cordero, Luis Alberto Delgado, Edgar Sierra Parra, Tirso Reyes, Emiro Enrique Pava de la Rosa, Diego de Jesús Botero Salazar, Gonzalo Salazar, Jorge Eliécer González, Javier Cote, Enrique Arellano, Francisco Eladio Sierra Vásquez, Edgar Herrán, Carlos Alberto Bastidas Corral, Luis Alfonso Jaramillo Palacios, Enoc Samboni, Sol María Roperó, Jaime Ramírez, Fabio Eliécer Guio García, Luz Marina Torres, William Mario Upegui Tobón, Luciano Zapata Agudelo, Hernando Jesús Chica, Margort Pisso Rengifo, Ramón Chaverra Robledo, Fidel Seguro, Hernando Arcila Ramírez, Luz Amparo Torres Agudelo, Nancy Tez, Jorge Antonio Alvarez Vélez, Angela Andrade, José Padilla Morales, Luis Pérez Ríos, Hugo López Cáceres, Gloria Isabel García, Miryam de Jesús Ríos Martínez, Ricardo Monroy Marín, Jorge Freite Romero, Rafael Pineda, Juan Eudes Molina Fuentes, Luis Alfonso Aguirre, Juan Diego Londoño Restrepo, Hernando de Jesús Montoya Urrego, Alga Rosa García Marín, Yolanda Cerón Delgado, Jenny Romero Rojas, Servando Lerma, Luz Mila Rincón, Jesús Agreda Zambrano, Expedito Chacón, Luz Carmen Preciado, Santiago González, José Raúl Orozco, Jairo Antonio Chima, Eduardo Alfonso Suárez Díaz, Bertilda Pavón, Carlos Arturo Alarcón, Rubén Arenas, Carmen Elena García Rodríguez, Jairo Alonso Giraldo, Gloria Eudilia Riveros Rodríguez, Oscar Jaime Delgado Valencia, Henry Mauricio Neira, Julio Galeano, Angela María Rodríguez Jaimes, Néstor Rincón Quinceno, Barqueley Ríos Mena, Juan Manuel Santos Rentería, Fernando Cabrales, Hugo Ospina Ríos, Juan Montiel, Emilio Villeras Durán, Alirio Garzón Córdoba, Carlos Alberto Molano, Luis Omar Castillo, Juan Bautista Cevallos, Ernesto Alfonso Giraldo Martínez, Alfredo Zapata Herrera, Oscar Alfonso Jurado, Hernán de Jesús Ortiz, José Robeiro Pineda, Carmenza Pungo, Sandra Liliana Quintero, Gustavo Oyuela Rodríguez, Efraín Urrea Marín, María Nubia Castro, Eddy Socorro Leal Barrera, Nelsy Gabriela Cuesta Córdoba, Heliodoro Sierra, Freddy Armando Girón Burbano, Diofanol Sierra Vargas, Jhon Jairo Durán, Tito Libio Hernández Ordóñez, Javier de Jesús Restrepo, Said Ballona Gutiérrez, Jhon Fredy Marín, Agustín Colmenares, Alberto Martínez, Juan Sepúlveda, Albeiro Ledesma, José Hurtado, Enrique Suárez, Luis Enrique Guisa, Ricardo Eliécer Ruiz, Edilberto Arango Isaza, Froilán Hilario Peláez Zapata, Jairo Ramos, Adalberto Tukamoto Palomino, Isaías Gómez Jaramillo, Hernán de Jesús Ortiz, Eduardo Vasques Jiménez, Jhon Jairo Alvarez Cardona, César Blanco, Carlos Julio Gómez, Luis Enrique Coiran, Helio Rodríguez Ruiz, Manuel Antonio Fuertes Arévalo, Roberto Rojas Pinzón, Wilfredo Camargo Aroca, Rodrigo Gamboa Coy, Felipe Santiago Mendoza, Amparo Figueroa, Francisco Méndez Díaz, Blanca Ludivía Hernández, Alexander Cardona, Roberto Cañarte M., Cristina Echeverri Pérez, Alfonso Mejía Urión, Jario Tovar Díaz, Jorge Enrique Posada, Jhon Jaimes Salas Cardona, Carlos Arturo Alarcón Vera, Gilberto Torres Martínez, José Pérez, Hernando Silva, José Ernesto Ricaurte, Jairo Domínguez, Arturo Vázquez Galeano, Miguel Angel Rendón Graciano, the daughter of William Mendoza, Alberto Herrera, Jorge Amiro Genecco Martínez, Alonso Pamplona, Albeiro González García, Ricardo Herrera, Wilson Bojar Díaz, María Emma Gómez de Perdomo, Carlos Arturo Mejía Polanco, Daniel Orlando Gutiérrez Ramos, Albeiro Forero, the National Food Industry Workers' Trade Union (SINTRAINAL), Sigilfredo Grueso, Gaspar Guzmán, Rubén Castro Quintana, Carlos Hernán Sánchez, Antonio Zamanete, Omar Romero Díaz, María Clara Baquero Sarmiento, Mario de Jesús Castañeda, Otoniel Ramírez, José Rodrigo Orozco, Gustavo Villanueva, the workers of the Antioquia Union of Municipal Officials of the Department of Antioquia (SINTRAOFAN), Aquiles Portilla, Over Dorado Cardona, Orlando Herrán, Rogelio Pérez Gil,

Edgar Alvarez Cañizales, Dalgy Barrera Gamez, Jorge Vázquez Nivia, Javier González, Humberto Castro, Cervulo Bautista Matoma, Jaime Goyes, Jairo Roseño, Rosalba Oviedo, Pedro Layton, Ricardo Chávez, Diego Escandón, Luis Ortega, Carlos Alberto Florez Loaiza, José Hemer Moreno, Luis Hernández, Domingo Tovar Arrieta, Fernando Vargas, Patricia Pinzón, Mario Jesús Castañeda, Oscar Sánchez, Hermes Ortiz, Francisco Bolaños, Jorge Muñoz, headquarters of SINTRAEMCALI, headquarters of SINTRAOFAN, Sigilfredo Grueso, Gaspar Guzmán, Rubén Castro Quintana, Carlos Hernán Sánchez Díaz, Antonio Zamanete, Omar Romero Díaz.

CASE NO. 2046

INTERIM REPORT

Complaints against the Government of Colombia presented by

- **the Colombian Union of Beverage Industry Workers (SINALTRAINBEC)**
- **the Union of Pilsen Workers (SINTRAPILSEN)**
- **the Nation Union of Food and Dairy Products Workers (SINALTRAPROAL)
(formerly SINTRANOEL)**
- **the National Union of Bavaria S.A. Workers (SINALTRABAVARIA) and**
- **the National Union of Caja Agraria Workers (SINTRACREDITARIO)**

Allegations: Dismissals and sanctions inflicted on workers belonging to SINALTRABAVARIA for participating in a strike in the company on 31 August 1999; failure to comply with the collective agreement, refusal to deduct union dues, intimidation of workers to force them to sign a collective agreement, denial of leave for trade union affairs, dismissal of numerous officials and members of various branches and pressure to accept a voluntary retirement plan in the Bavaria S.A. company; non-recognition of the right of SINALTRAINBEC to participate in collective bargaining in the Cervecería Unión company; anti-union persecution against 47 founders of the Colombian Union of Food, Beer, Malt, Drinks, Juices, Refreshments, Mineral Water Workers of Colombia (USITAC)), disciplinary measures to remove the union immunity of Messrs. William de Jesús Puerta Cano, José Evaristo Rodas and other officials of the organization, seizure of trade union information bulletins on the foundation of USITAC and pressure on the workers; mass dismissals due to the restructuring of the Caja de Crédito Agrario into the Banco de Crédito Agrario; dismissal of officials in disregard of their union immunity and failure to comply with orders for the reinstatement by the Caja de Crédito Agrario of certain of these officials; refusal by the Antioquia trade union registry to register the change of SINTRANOEL (an enterprise union) into SINALTRAPROAL (an industry union).

507. The Committee last examined this case at its meeting of March 2002 [see 327th Report, paras. 412-438, approved by the Governing Body at its 283rd Session (March 2002)]. The

National Union of Bavaria S.A. Workers (SINALTRABAVARIA) submitted new allegations in communications of 12 June, 27 September and 16 December 2002. The Colombian Union of Beverage Industry Workers (SINALTRAINBEC) submitted new allegations dated 11 April, 15 August and 21 October 2002.

508. The Government sent its observations in communications of 15 February, 9 April, 31 May, 10 July, 19 November and 30 December 2002 and 15 and 20 January 2003.

509. 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

510. At its meeting of March 2002, on examining allegations of acts of discrimination and anti-union practices in various companies, the Committee formulated the following recommendations [see 327th Report, para. 438]:

- as regards the alleged dismissals of members of SINALTRABAVARIA for having participated in the strike of 31 August 1999, the Committee deplores the fact that despite the time which has elapsed, no decision has been taken in this regard and requests the Government to take measures to expedite the administrative proceedings and to transmit new information in this respect as soon as possible;
- as regards the alleged failure to recognize the right of SINALTRAINBEC to participate in collective bargaining in the Cervecería Unión enterprise, and the allegations concerning persecution for having put forward a list of demands, the Committee requests the Government to open the relevant administrative inquiries without delay and to keep it informed in this respect;
- the Committee requests the Government to recommend to the recently established Banco Agrario, should it anticipate hiring new workers, to make every effort to rehire as many as possible of the workers and trade union officers who have lost their jobs. The Committee requests the Government to keep it informed in this respect; and
- as regards the dismissal of trade union officers, disregarding their trade union immunity, and the failure to carry out the court orders for the reinstatement of some of these officers by the Caja de Crédito Agrario, the Committee urges the Government to take steps without delay to ensure that the court decisions ordering their reinstatement are carried out and requests it to keep it informed of the final outcome of the rest of the judicial proceedings.

B. New allegations

511. In its communication of 11 April 2002, the Colombian Union of Beverage Industry Workers (SINALTRAINBEC) indicates that in the face of the anti-union persecution against the members of the union, the Colombian Union of Food, Beer, Malt, Drinks, Juices, Refreshments, Mineral Water Workers (USITAC) was founded in the city of Barranquilla on 16 March 2002. The complainant organization alleges that the company quickly took measures against the 47 founder members, initiating disciplinary measures to remove the union immunity of Messrs. William de Jesús Puerta Cano, José Evaristo Rodas and other officials of the organization (Jorge William Restrepo Tamayo, José Luis Alberto Ruiz Acevedo, Orlando de Jesús Martínez Cuervo, Humberto Alvarez Muñoz, Omar Ruiz Acevedo, Carlos Alberto Monsalve Luyán, José Heriberto Aguirre and Luis Restrepo Pabón). In addition, the complainant organization alleges that the company seized trade union information bulletins about the foundation of USITAC and threatened the officials so that the bulletins would not be distributed in the company. It alleges that as a result of the company pressure on the workers, eight have left the union and nine have withdrawn

through voluntary early retirement. Finally, in its communication dated 21 October 2002, SINALTRAINBEC alleges the refusal to grant William de Jesús Puerta Cano paid leave so that he could attend the Trade Union Training Programme in the United States for which he had been chosen.

- 512.** In its communications of 12 June, 27 September and 16 December 2002, the National Union of Bavaria S.A. Workers (SINALTRABAVARIA) alleges: (i) failure to apply the current collective agreement; (ii) refusal to deduct trade union dues in Cervecería Cali and the Cervecería Aguila company; (iii) intimidation of workers to make them sign a collective agreement, offering money in exchange and barring trade union officers from entering the factories to prevent them from advising the workers; (iv) refusal to negotiate a new collective agreement in Bavaria S.A.; (v) denial of trade union leave; and (vi) dismissal of officers and members of various company branches and pressure to accept a voluntary retirement plan. The complainant organization indicates that in the case of (i) and (ii), separate actions for protection were decided in favour of the workers.
- 513.** In its communication of 12 June 2002, the Nation Union of Food and Dairy Products Workers (SINALTRAPROAL) alleges refusal to register the amendment of the statutes by the Antioquia registration department. In fact, the complainant indicates that on 3 May 1999, the Noel Food Industries was split into two companies: Noel Food Industries S.A. and Noel Biscuit Company S.A. As a result of this, the Union of Noel Workers (SINTRANOEL), an enterprise union which represented the workers in the former Noel Food Company S.A. had to change into an industry union to represent the workers of both companies. The complainant organization alleges that an extraordinary meeting of 23 May 1999 elected a new executive committee and the statutes were amended to change SINTRANOEL, an enterprise union into SINALTRAPROAL, an industry union.
- 514.** The complainant organization points out that in resolution No. 1541 of 2 July 1999 issued by the Chief of the Cundinamarca Territorial Directorate of Trade Union Regulation and Registration, the amendment of the statutes was registered. The complainant organization adds that there followed a series of inconsistent administrative acts by the various parties involved: (1) resolution No. 2123 of 10 September 1999 which refused the action for recourse (*reposición*) and appeal submitted by Noel Food Industries S.A. and confirms resolution No. 1541; (2) Ministry of Labour resolution No. 2408 of 12 October 1999 which revokes resolution No. 1541 approving the amendment of the statutes; (3) resolution No. 285 of the Cundinamarca Territorial Director of Labour which allowed the appeal by SINALTRAPROAL and revoked resolution No. 2408, once again upholding resolution No. 1541 approving the amendments; (4) actions for protection submitted by the former executive committee of the former SINTRANOEL union (prior to the amendment of the statutes) to the Cundinamarca Division of the Judiciary which was accepted by Decision No. 496 of 4 May 2001; (5) this decision was overturned by Decision No. 9798-02T of 11 September 2001 of the Disciplinary Chamber of the Supreme Council of the Judiciary which again declared resolution No. 1541 applicable. (The complainant encloses a copy of all the abovementioned decisions.) Finally, the complainant states that despite the favourable decision, the Antioquia Territorial Directorate of Labour and Social Security, in resolution No. 2284 of 20 November 2001, refused to register the amendment in the Antioquia register. The complainant entered a new action for recourse (*reposición*) which was refused in resolutions Nos. 000070 of 25 January 2002 and 524 of 2 April 2002 issued by separate departments of the Ministry of Labour.

C. The Government's reply

- 515.** In its communications of 9 April, 4 June and 10 July 2002 and 15 and 20 January 2003, the Government states as follows:

- (i) as regards the alleged dismissals and sanctions inflicted on worker members of SINALTRABAVARIA for having participated in a strike in the enterprise on 31 August 1999, the Ministry of Labour and Social Security decided in resolution No. 000222 of 8 February 2002 not to take enforcement measures against the Bavaria S.A. company (since the parties can thus resort to the courts);
- (ii) as regards the alleged failure to recognize the right of SINALTRAINBEC to participate in collective bargaining in the Cervecería Unión enterprise and the alleged acts of persecution for presenting demands, the Ministry of Labour and Social Security decided in resolution No. 002505 of 11 December 2001 to exonerate the company. An appeal against this resolution was submitted to the Antioquia Territorial Department, which upheld resolution No. 002505 because there had been a collective agreement in the company in force up to 31 August 2002 between Cervecería Unión S.A. and CERVUNION, which is the majority union and because under the applicable law, there can only be one collective agreement in a company. As to the founding of the Colombian Union of Food, Beer, Malt, Drinks, Juices, Refreshments, Mineral Water Workers of Colombia (USITAC), the Government indicates that the registration of this organization has still not been finalized. The Government finally points out that: (1) as concerns the denial of paid leave to Mr. Puerta Cano, the Office of the Human Rights of the Ministry of Labour and Social Security informed the Human Rights Unit of the Attorney-General of this matter for relevant action; and (2) as concerns the alleged persecution of the founding trade union leaders and members of SINALTRAINBEC and USITAC, the same machinery for the defence of fundamental rights is available to them;
- (iii) as to the allegations concerning the Banco de Crédito Agrario (formerly the Caja de Crédito Agrario), the Ministry of Labour and Social Security arranged a meeting between the Banco de Crédito Agrario and the complainant organization with a view to reaching an agreement, but the meeting did not produce a successful outcome.

516. With respect to the new allegations submitted by SINALTRABAVARIA concerning failure to fulfil the collective agreement, refusal to deduct union dues and intimidation of workers to make them sign a collective agreement, the Government states in its communications of 16 April, 10 September and 30 December 2002:

- (i) that with a view to dealing with the complaint submitted by SINALTRABAVARIA, it had asked the territorial labour and social security directorates of Santander, Valle and Boyacá to open administrative inquiries into the Bavaria S.A. company. In Santander, the inquiry was quickly concluded. The Government adds that in resolution No. 000089 of 18 March 2002, the coordinator of the Inspection and Surveillance in the Valle Territorial Labour and Social Security Directorate, concluded two administrative inquiries. In the first one, it decided to fine Bavaria S.A. ten times the current minimum wage for breach of the collective agreement and in the second investigation, it left the parties free to resort to the ordinary labour court. Appeals were made against this decision and were decided in Decree No. 0703 of 4 April 2002, action for recourse (*reposición*), upholding the decision in resolution No. 000089 of 18 March 2002 and granting leave to appeal, the result of which will be notified in due course;
- (ii) as regards the Boyacá Territorial Labour and Social Security Directorate, the Government states that in resolution No. 000105 of 8 May 2002, it was decided not to impose a sanction on Bavaria S.A. and to leave the parties free to resort to the ordinary labour court. That resolution was upheld;
- (iii) the Government adds that SINALTRABAVARIA submitted a complaint against Bavaria S.A. for alleged collective dismissal. The parties were summoned to the

Tenth Labour Inspection Unit of the Inspection and Surveillance Group on several occasions but the proceedings did not take place because the trade union did not attend at any time;

- (iv) as regards the request for investigation by SINALTRABAVARIA of the alleged coercion by the company to make the workers accept a collective agreement, the Government states that the Twelfth Labour Inspection Unit initiated an inquiry on 20 November 2002, the trade union did not attend the meeting with the company and thus the inquiry is still in progress. The Fifteenth Labour Inspection Unit is investigating the allegation by SINALTRABAVARIA against Bavaria S.A. concerning the closure of some factories and the alleged collective dismissals, under reference No. 39553 of 14 September 2001, and a decision on the complaint is now pending.

517. With respect to the registration of the SINALTRAPROAL organization, in its communication of 19 November 2002, the Government replies that the Antioquia Territorial Directorate issued resolution No. 2284 of 20 November 2001 refusing registration of the SINALTRAPROAL organization because the former members of the SINTRANOEL executive committee had not consented to the repeal of the administrative act registering them as officers of SINTRANOEL. Consequently, the new executive committee of SINTRANOEL was not recognized and the amendment of SINTRANOEL's statutes by the new executive committee to change it to SINALTRAPROAL was invalid and could not be registered.

D. The Committee's conclusions

518. *The Committee observes that this case concerns numerous acts of discrimination and anti-union persecution and restrictions on collective bargaining in various companies and institutions.*

Bavaria S.A. company

519. *As regards the alleged dismissals of members of the SINALTRABAVARIA union for having participated in the strike of 31 August 1999, the Committee notes the Government's information that the Ministry of Labour and Social Security decided in resolution No. 000222 of 8 February 2002 not to institute administrative proceedings against the Bavaria S.A. enterprise, so as to allow the parties to resort to the courts. The Committee requests the Government to take measures to expedite all proceedings that may be initiated and to inform it of any judicial decision that may be issued.*

520. *With respect to the new and serious allegations submitted by SINALTRABAVARIA concerning failure to apply the collective agreement, the refusal to deduct union dues, intimidation of workers to make them sign a collective agreement and preventing the union from entering the premises to advise workers in that connection, the refusal to allow trade union leave and the dismissal of many officers and members of various branches and pressure to accept a voluntary retirement scheme, the Committee notes the Government's information that various administrative inquiries were initiated, most of which are in progress. The Committee notes the fine imposed on the company of ten times the current statutory minimum wage for breach of the collective agreement in one of the inquiries conducted by the Valle Territorial Directorate of Labour and Social Security. The Committee requests the Government to take steps to ensure that these inquiries are concluded without delay and to continue to keep it informed of the results thereof. In addition, the Committee notes that the Government states that some inquiries, such as those concerning the alleged mass dismissals and coercion by the company to make the*

workers accept a collective agreement, cannot be concluded because the trade union does not attend hearings when invited. Given that it cannot verify these statements made by the Government, the Committee cannot pronounce itself in this respect. In these conditions, the Committee requests the complainants to provide their comments in this respect.

Cervecería Unión S.A.

- 521.** *With respect to the alleged failure to recognize the right of SINALTRAINBEC to participate in collective bargaining in the company, the Committee notes the Government's information that the Ministry of Labour and Social Security in its resolution No. 002505 of 11 December 2001 exonerated the company from responsibility, and that this decision was upheld by the Antioquia Territorial Directorate because there was already a collective agreement in force in the company up to 31 August 2002 with the majority union SINTRACERVUNION and that under the law, there could not be more than one collective agreement in that situation.*
- 522.** *As regards the recent allegations of anti-union persecution against the 47 founders of the Colombian Union of Food, Beer, Malt, Drinks, Juices, Refreshments, Mineral Water Workers of Colombia (USITAC) in Barranquilla on 16 March 2002, disciplinary measures to remove the union immunity of Messrs. William de Jesús Puerta Cano, José Evaristo Rodas and other officials of the organization, the seizure of trade union information bulletins about the foundation of USITAC, pressure on the workers which resulted in eight leaving the union and voluntary early retirement of nine of them, and the refusal to grant paid leave in order to attend a trade union training course in the United States, the Committee regrets that the Government merely reported that the registration of USITAC had not yet been finalized and that the Office of the Human Rights of the Ministry of Labour and Social Security informed the Human Rights Unit of the Attorney-General of the denial of leave to Mr. Puerta Cano. The Committee therefore once again reiterates that no person should be prejudiced in his or her employment by reason of his or her 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] for carrying out legitimate trade union activities. The Committee requests the Government to fully guarantee the trade union rights of the founders of USITAC. The Committee requests the Government to take measures to conduct an inquiry into these allegations and to send its observations thereon.*

Caja de Crédito Agrario and Banco de Crédito Agrario

- 523.** *With respect to the mass dismissals due to the conversion of the Caja de Crédito Agrario into the Banco de Crédito Agrario, the Committee notes the Government's information that the Ministry of Labour and Social Security arranged a meeting but that it did not yield a positive outcome. The Committee requests the Government to continue to keep it informed of efforts to find a consensual solution in this regard.*
- 524.** *As to the dismissal of officers due to failure to recognize their union immunity and failure to comply with the orders for reinstatement of some of those officers by the Caja de Crédito Agrario, the Committee regrets that the Government has not sent its observations thereon and again urges it to take measures without delay to ensure compliance with the court orders for reinstatement. The Committee requests the Government to keep it informed thereof.*

Noel Food Industries and Noel Biscuit Company S.A.

- 525.** *As to the alleged refusal by the Antioquia trade union registry to register the change of SINTRANOEL (an enterprise union) into SINALTRANOEL (an industry union), as a result of the splitting of Noel Food Industries into Noel Food Industries and Noel Biscuit Company S.A. and despite a decision by the Supreme Judiciary Council which approved the change, the Committee notes the Government's information that the Antioquia Territorial Directorate refused registration because the legal requirement of consent by the executive committee, the former executive committee of SINTRANOEL, recorded in that directorate's trade union register, had not been met.*
- 526.** *In this respect, the available documentation shows that the new executive committee (of SINALTRAPROAL, an organization changed into an industry union) is registered in the trade union register of the Cundinamarca department but not in the Antioquia department. However, the former executive committee (of the original company prior to its transformation, SINTRANOEL) continues to be considered legitimate and, according to the Antioquia administrative authority, the consent of the former executive committee of SINTRANOEL is required in order to process the registration. It also appears from the available documentation that this matter has been the subject of a judicial decision in favour of the SINALTRAPROAL executive committee. The Committee recalls the principle whereby in order to avoid the risk of seriously undermining the right of workers to elect their representatives freely, actions whereby the results of elections are contested in labour courts by an administrative authority should not have the effect of suspending the validity of such elections where the final result of the judicial proceedings is not known [see Digest, 4th edition, 1996, para. 404].*

The Committee's recommendations

- 527.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) As regards the alleged dismissals of members of SINALTRABAVARIA for having participated in the strike of 31 August 1999, the Committee requests the Government to take measures to expedite all proceedings that may be initiated and to keep it informed of any judicial decision that will be issued.*
 - (b) As regards the new and serious allegations by SINALTRABAVARIA concerning failure to apply the collective agreement, the refusal to deduct union dues, intimidation of workers to make them sign a collective agreement and preventing the union from entering the premises to advise workers in that connection, the refusal to allow trade union leave and the dismissal of many officers and members of various branches and pressure to accept a voluntary retirement scheme, the Committee requests the Government to take steps to ensure that these inquiries are concluded without delay and to continue to keep it informed of the outcomes thereof.*
 - (c) The Committee requests the complainants to provide their comments concerning the Government's observations according to which certain investigations cannot be concluded because the complainant organization does not attend hearings.*

- (d) *As regards the recent allegations of anti-union persecution against the 47 founders of the Colombian Union of Food, Beer, Malt, Drinks, Juices, Refreshments, Mineral Water Workers of Colombia (USITAC) in Barranquilla on 16 March 2002, disciplinary measures to remove the union immunity of Messrs. William de Jesús Puerta Cano, José Evaristo Rodas and other officials of the organization, the seizure of trade union information bulletins about the foundation of USITAC, pressure on the workers which resulted in eight of them leaving the union, as well as on the denial of paid trade union leave to trade union officer William de Jesús Puerta Cano, the Committee requests the Government to carry out an inquiry into these matters and send its observations thereon; meanwhile, the Committee requests the Government to fully guarantee the trade union rights of the founders of USITAC.*
- (e) *With respect to the mass dismissals due to the conversion of the Caja de Crédito Agrario into the Banco de Crédito Agrario, the Committee requests the Government to continue to keep it informed of efforts to find an agreed solution.*
- (f) *As to the dismissal of officers due to failure to recognize their union immunity and failure to comply with the orders for reinstatement of some of those officers by the Caja de Crédito Agrario, the Committee again urges the Government to take measures without delay to ensure compliance with the court orders for reinstatement. The Committee requests the Government to keep it informed thereof.*
- (g) *As to the alleged refusal by the Antioquia trade union registry to register the change of SINTRANOEL (an enterprise union) into SINALTRAPROAL (an industry union), the Committee notes that there is a judicial decision in favour of the SINALTRAPROAL. The Committee recalls the principle whereby in order to avoid the risk of seriously undermining the right of workers to elect their representatives freely, complaints whereby the results of elections are challenged in labour courts by an administrative authority should not have the effect of suspending the validity of such elections where the final result of the judicial proceedings is not known.*

CASE NO. 2151

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

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

- **the Union of Public Servants of the Districts and Municipalities of Colombia (UNES)**
- **the Single Confederation of Workers of Colombia (CUT) and**
- **Public Services International (PSI)**

Allegations: In the present case concerning restructuring in more than 30 public institutions, the complainants allege numerous acts of anti-union discrimination (termination of employment of union officials without the judicial authorization required by law, and of many union members, in particular through dismissals, “voluntary” retirement plans and individual settlements which workers were “persuaded” to accept; failure to consult the trade unions on these processes of restructuring, and re-hiring of dismissed workers under service contracts which make union membership impossible. In some cases, termination of employment violated collective agreements in force guaranteeing security of employment. Lastly, the complainants allege other anti-union acts in some public institutions: refusal to grant trade union leave, dismissals and violations of the right of collective bargaining.

- 528.** The complaint is contained in communications from the Union of Public Servants of the Districts and Municipalities of Colombia (UNES) dated 9 July, 3 September, 3, 5, 13, 21, 23 and 30 October, 15 November and 25 December 2001; 15 and 18 January, 3 February, 12 March, 8 April, 24 and 28 May, 6, 7, 11, 13 and 14 June, 5 and 12 July, 9, 12, 16 and 30 August, 2 and 3 September, 3, 17 and 23 October, and 5 and 15 November 2002; and in communications from the Single Confederation of Workers of Colombia (CUT) and Public Services International (ISP) dated 3 and 23 October 2001 respectively.
- 529.** The Government sent its observations in communications dated 9 November 2001 and 14, 18, 23, 28 and 30 January, 1, 4, 6, 12, 18, 19, 20 and 21 February, 5, 6, 7 and 13 June, 10 and 11 September, 7 October 2002 and 21 January 2003.
- 530.** 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. The complainants' allegations

531. In its communications of 9 July, 3 September, 3, 5, 13, 21, 23 and 30 October, 15 November and 25 December 2001; 15 and 18 January, 3 February, 12 March, 8 April, 24 and 28 May, 6, 7, 11, 13 and 14 June, 5 and 12 July, 9, 12, 16 and 30 August, 2 and 3 September, 3, 17 and 23 October, and 5 and 15 November 2002, the Union of Public Servants of the Districts and Municipalities of Colombia (UNES), the Single Confederation of Workers of Colombia (CUT) and Public Services International (PSI) allege that, as part of the restructuring processes in the public sector, there have been numerous acts of anti-union discrimination in various public institutions. Specifically, the trade union organizations make the following allegations:

- (a) mass dismissals of thousands of workers, including many trade union members and officials (Bogotá Mayor's Office, Public Works Department of the Capital District, Institute for Urban Development (IDU), District Public Services Enterprise (EDIS), District Administrative Department for Community Action, Department of Education, Department of Transport, Department of Finance, General Secretariat, Government Secretariat, Administrative Department of the Environment, Administrative Land Registry Department, Administrative Department of District Planning, Administrative Civil Service Department, IDEP Institute, Institute of Recreation and Sport (IDRD), District Culture and Tourism Institute (IDCT), District Institute for Child Protection (IDIPRO), La Candelaria Corporation, the Philharmonic Orchestra, Savings and Housing Found (FAVIDI), the Botanical Garden, District Accounts Office, Council of Bogotá, Cundinamarca Welfare Authority, Administrative Department of Social Welfare of the Capital District, Cundinamarca Department of Public Works, Agriculture and Economic Development, Capital District Social Security Fund, San Blas Hospital, Bogotá Telecommunications Company (ETB), Officials of Tolima Department, the Victoria III and Vista Hermosa Hospitals, El Valle University, and the Social Security Fund). In some cases, the complainant gives comparative figures for the total number of dismissals and the number of union members dismissed, without indicating the total number of workers and union members at the establishment in question;
- (b) in most cases, there were no consultations with the unions before restructuring took place;
- (c) the dismissals in some cases violated collective agreements guaranteeing stability of employment and stipulating that dismissals could be carried out only for legally valid reasons (IDU, EDIS, San Blas and Victoria III Hospitals, Bogotá Public Works Department);
- (d) in other cases, according to the complainants, the collective agreements laid down the manner in which restructuring was to be carried out (Administrative Department for Community Action, Cundinamarca Public Works Department, Bogotá Public Works Department).
- (e) the public bodies and privatized companies drew up voluntary retirement plans and settlement procedures which, according to the complainants, workers were persuaded to accept by the offer of inducements (CODENSA, EMGESA and the Bogotá Power Company, the Bogotá Telecommunications Company (ETB), the Tolima Transport Department (SINTRATOLIMA), the Tolima Drinks Plant (SINTRABECOLICAS), and the District Institute for Recreation and Sport (IDRD));
- (f) recruitment of new workers and, in some cases, the same workers, but under service contracts which, according to the complainants, meant that they could not join or establish trade unions;

- (g) the dismissal of trade union officers without applying to the courts for suspension of trade union immunity (Institute of Urban Development (SINDISTRITALES and SINTRASISE), Bogotá Council (SINDICONCEJO)); and
- (h) other anti-union acts (in Cundinamarca, dismissal of officials of SINTRABENEFICIENCIAS for forming the trade union; in the Transport Department, refusal of trade union leave and subsequent dismissal of SINTRASISE officials; at the El Valle University, violation of the right of collective bargaining of SINTRAUNICOL).

B. The Government's reply

532. In its communications of 9 November 2001, 14, 18, 23, 28 and 30 January, 1, 4, 6, 12, 18, 19, 20 and 21 February, 5, 6, 7 and 13 June, 10 and 11 September, 7 October 2002 and 21 January 2003, the Government generally states that:

- (a) restructuring in the public sector took place in accordance with national legislation and implementing regulations and/or administrative regulations adopted by the competent authorities and adapted to the needs of each of the organizations concerned;
- (b) there have been no unjustified dismissals, and restructuring initiatives have been provided for in the law and were based on technical studies which concluded that they were necessary. In each case, provision was made by the competent authority, in decrees applicable to every institution, for voluntary individual settlements, voluntary retirement plans or redundancies, with appropriate compensation in all cases, as well as other benefits such as training and job placement;
- (c) some of the restructuring initiatives were planned under the terms of collective agreements in which management and unions together established the best way of carrying out the restructuring;
- (d) restructuring was carried out under the supervision of the Ministry of Labour, and in the great majority of cases in which appeals were made to administrative courts or the Constitutional Court, the management action was found to be justified;
- (e) with regard to the allegations that the trade union immunity of union officials was not respected, the Government states that a number of trade union organizations were established on the same date as restructuring orders were issued, with the aim of allowing the unions founders to invoke trade union immunity and thus avoid redundancy; and
- (f) as regards the allegations regarding the violation of the right of collective bargaining at El Valle University, a final agreement was signed on 3 July 2002.

C. The Committee's conclusions

533. *The Committee notes that in the present case concerning restructuring in more than 30 public institutions which affected thousands of workers, the complainants allege numerous acts of anti-union discrimination (termination of employment of trade union officials without the judicial authorization required under legislation, and of many union members, in particular through dismissals, "voluntary" retirement plans and settlements which workers were "persuaded" to accept; failure to consult the trade union organizations on these restructuring initiatives and the re-hiring of laid-off workers under service contracts which made trade union membership impossible. In some cases,*

termination of employment violated collective agreements in force guaranteeing security of employment. Lastly, the complainants allege other anti-union acts at certain public institutions: refusal to grant trade union leave, dismissals and violation of the right of collective bargaining.

- 534.** *The Committee notes the Government's statements to the effect that restructuring was carried out in accordance with legislation and on the basis of technical studies which showed that it was necessary, by means of individual voluntary settlements, voluntary retirement plans or redundancies, with appropriate compensation and provision of training and job placement; some restructuring initiatives were planned in collective agreements; in the great majority of administrative or judicial appeals, the actions of management were found to have been justified. With regard to the allegations of failure to respect the trade union immunity of union officials in some cases, the Government has pointed out that a number of trade union organizations were established on the same date as restructuring orders were issued, with the aim of allowing the unions founders to invoke trade union immunity and thus avoid redundancy.*
- 535.** *As regards the restructuring of the public administration and the public services, the Committee is bound to recall that it can examine allegations concerning economic rationalization programmes and restructuring processes, whether or not they imply redundancies or the transfer of enterprises or services from the public to the private sector, only in so far as they might have given rise to acts of discrimination or interference against trade unions [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 935].*
- 536.** *In the present case, the number of public institutions affected by restructuring shows that the measures in question are general measures and have affected all workers, not just trade union members. With the information currently available, the Committee is unable to determine whether the restructuring initiatives in question were undertaken solely for the purpose of rationalization or whether, under cover of those initiatives, there have been acts of anti-union discrimination. However, the supporting documents sent in indicate that there are legal means for challenging the measures affecting trade unionists. As regards trade union officials, the complainant states that some were dismissed without the suspension by a court of their trade union immunity, which is required by law. The Committee refers to a principle which it has emphasized on previous occasions:*
- In cases of staff reductions, the Committee has drawn attention to the principle contained in the Workers' Representatives Recommendation, 1971 (No. 143), which mentions amongst the measures to be taken to ensure effective protection to these workers, that recognition of a priority should be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce (Article 6(2)(f)) [see **Digest**, op. cit., para. 960].*
- 537.** *Under these circumstances, the Committee requests the Government to take cognizance of this principle and to investigate whether in the public institutions concerned in this case the trade union immunity of the trade union officials were suspended by a court (as required by law), and if that is not the case, to take steps to reinstate them in their posts without loss of pay and, if that is not feasible, to provide them with full compensation.*
- 538.** *As regards the failure to consult the trade union organizations concerned during some of the restructuring initiatives, the Committee notes that the Government indicates only that the restructuring processes in the Administrative Department for Community Action, the Cundinamarca Public Works Department and the Bogotá Public Works Department were planned in collective agreements and that, with regard to the other restructuring processes, the Government states that they were ordered through legislation, ordinances*

or decrees and administrative decisions. The Committee deeply regrets that in certain cases the authorities did not consult or try to reach an agreement with the trade unions.

- 539.** *In this regard, the Committee has indicated on a number of occasions its regret that in the rationalization and staff-reduction process, the government did not consult or try to reach an agreement with the trade union organizations [see **Digest**, op. cit., final sentence of para. 935]. The Committee urges the Government to take measures to ensure that in future the trade union organizations concerned are duly consulted.*
- 540.** *With regard to the complainants' allegations regarding the rehiring of dismissed workers under service contracts which, according to the complainants, do not allow the worker to join a union, the Committee regrets that the Government has not sent its observations on the matter, and recalls that under the terms of Convention No. 87, all workers without distinction must enjoy the right to join organizations of their choosing. The Committee requests the Government to ensure that this principle is respected.*
- 541.** *As regards other allegations of anti-union discrimination, namely: (a) the dismissal of SINTRABENEFICENCIAS officials for setting up a union in Cundinamarca district; and (b) refusal to grant trade union leave and subsequent dismissal of SINTRASISE officials in the Transport Department, the Committee regrets that no observations have been received from the Government, requests the Government to carry out an investigation in this matter and, if the allegations are found to be true, to take measures to reinstate the dismissed workers and ensure that the right to trade union leave is effectively enforced.*
- 542.** *Lastly, as regards the allegation concerning violations of the right of collective bargaining at El Valle University, the Committee notes with interest the Government's statement to the effect that a final agreement was signed on 3 July 2002.*

The Committee's recommendations

- 543.** *In the light of the foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee requests the Government to take account of the principle according to which a priority should be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce.*
 - (b) The Committee requests the Government to investigate whether in the public institutions concerned in the present case the trade union immunity of trade union officials has been suspended by a court (as required by law) and, if that is not the case, to take steps to reinstate them in their posts without loss of pay and, if that is not feasible, to provide them with full compensation.*
 - (c) Deeply regretting that in certain cases the authorities did not consult or try to reach an agreement with the trade unions, the Committee urges the Government to take measures to ensure that in any restructuring initiatives in future the relevant trade union organizations are duly consulted.*
 - (d) As regards the complainants' allegations regarding the rehiring of dismissed workers under service contracts which, according to the complainants, do not allow workers to join unions, the Committee recalls that, under the terms of Convention No. 87, all workers without distinction must enjoy the right to*

join organizations of their choosing. The Committee requests the Government to ensure that this principle is respected.

- (e) *As regards the other allegations regarding anti-union discrimination, which are: (a) the dismissal of SINTRABENEFICENCIAS officials for setting up a union in Cundinamarca district; and (b) the refusal to grant trade union leave and subsequent dismissal of SINTRASISE officials in the Transport Department, the Committee requests the Government to carry out an investigation in this matter and, if the allegations are found to be true, to take measures to reinstate the dismissed workers and ensure that the right to trade union leave is effectively enforced.*

CASE NO. 2159

DEFINITIVE REPORT

Complaint against the Government of Colombia presented by

- **the National Trade Union of Workers in Food and Dairy Enterprises (ASPROAL)**
- **the National Food Industry Trade Union (SINTRALIMENTICIA) and**
- **the Single Confederation of Workers of Colombia (CUT) – Antioquia Executive Subcommittee**

Allegations: The complainant organizations allege difficulties in the collective bargaining process and with the check-off facility resulting from the application of a collective agreement not negotiated by the trade unions.

544. The complaint is contained in a communication from the National Trade Union of Workers in Food and Dairy Enterprises (ASPROAL), the National Food Industry Trade Union (SINTRALIMENTICIA) and the Single Confederation of Workers of Colombia (CUT) – Antioquia Executive Subcommittee dated 23 October 2001. In a communication dated 14 December 2001, the complainant organizations sent new allegations, and in a communication dated 20 June 2002, ASPROAL sent further information. The Government sent its observations in communications dated 4 and 6 June and 22 October 2002.

545. 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. The complainants' allegations

546. In their communications of 23 October and 14 December 2001 and 20 June 2002, the National Trade Union of Workers in Food and Dairy Enterprises (ASPROAL), the National Food Industry Trade Union (SINTRALIMENTICIA) and the Single Confederation of Workers of Colombia (CUT) – Antioquia Executive Subcommittee state that ASPROAL and SINTRALIMENTICIA presented a list of demands to Galletas Company S.A. and Noel Food Industries S.A. in March 2001. These demands were not resolved by direct bargaining. The trade union organizations requested that an arbitration

tribunal be set up, which took place through resolutions of the Ministry of Labour and Social Security. The trade union organizations state that the resolutions were appealed by the enterprises.

547. The complainant organizations add that, while waiting for the establishment of the arbitration tribunal, the enterprises negotiated a collective agreement with other workers' organizations (SINTRACOMNOEL and SINALTRALAC) and began to deduct trade union dues from members of ASPROAL and SINTRALIMENTICIA for benefiting from the agreement. According to the complainant organizations, this situation forced them to have recourse to the law.

548. Subsequently, Galletas Company S.A. summoned ASPROAL and SINTRALIMENTICIA in order to find a solution to the collective dispute and a complementary agreement to the existing collective agreement was signed with the enterprise. However, the complementary collective agreement has still to be settled between ASPROAL and SINTRALIMENTICIA, on the one hand, and Noel Food Industries S.A., on the other.

B. The Government's reply

549. In communications dated 4 and 6 June and 22 October 2002, the Government states that on 24 May and 8 October 2002, in Medellín, complementary agreements to the collective labour agreement was signed between the trade union organizations ASPROAL and SINTRALIMENTICIA and the Galletas Company S.A. and Industria Alimenticia Noel, thus ending the conflict.

C. The Committee's conclusions

550. *The Committee notes that, in the present case, the complainant organizations state that: (1) given the impossibility of collective bargaining with the Galletas Company S.A. and Noel Food Industries S.A., the trade union organizations ASPROAL and SINTRALIMENTICIA requested the administrative authorities to set up an arbitration tribunal; (2) the Ministry of Labour convened an arbitration tribunal through two resolutions that were appealed by the enterprises; (3) the enterprises negotiated a collective agreement with other trade unions and began to deduct trade union dues from members of ASPROAL and SINTRALIMENTICIA for benefiting from the agreement referred to (the complainant organizations state that they filed judicial proceeding in this respect); (4) a complementary agreement to the existing collective agreement at Galletas Company S.A. was signed, but a similar agreement needs to be signed with Noel Food Industries S.A.*

551. *The Committee notes with interest the complementary agreements to the collective labour agreement that was concluded between ASPROAL and SINTRALIMENTICIA, on the one hand, and Galletas Company S.A. and Noel Food Industries S.A., on the other, which ended the conflict.*

The Committee's recommendation

552. *In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.*