need to bring the entire economic and production sector of the nation - and not only transportation by sea, river and lake and ports, the subject of this complaint - into line with the new conditions imposed by growing international competition; (4) that major international transporters prefer to unload their goods in the ports of neighbouring countries and then transport them to Argentina over land which is cheaper; and (5) the recent incorporation of the economy into a regional integration framework (MERCOSUR) which requires the free circulation of goods, services and production factors between the signatory parties (Decree No. 817/92).

126. In this case, over and above the magnitude of the economic requirements to which the Government refers, the Committee would like to point out that on previous occasions [see, for example, 281st Report, Case No. 1586 (Nicaragua), para. 434], in examining allegations of the annulment and forced renegotiation of collective agreements for reasons of economic crisis, the Committee was of the view that "legislation which requires the renegotiation of agreements in force is contrary to the principles of free and voluntary collective bargaining enshrined in Convention No. 98" and insisted that the Government "should have endeavoured to ensure that the renegotiation of collective agreements in force resulted from an agreement reached between the parties concerned".

127. In this respect, the Committee would like to emphasize that the suspension of the validity of the 62 collective agreements in question, along with the obligation to renegotiate them, were in fact tantamount to their derogation and, furthermore, that these requirements were imposed by a decree. In these circumstances, with account being taken of the principles set forth in the previous paragraph, the Committee cannot accept the derogation - without the agreement of the parties - of such collective agreements freely entered into by the parties and believes that such measures violate the principle of free and voluntary collective bargaining established in Article 4 of Convention No. 98. Therefore, it requests the Government to ensure that, in future, these principles are respected fully.

128. The Committee requests the Government to ensure, if it wishes the clauses of a collective agreement to be brought into line with the economic policy of the country and the requirements resulting from the latter's integration into an international common market, that attempts are made to persuade the parties to take account voluntarily of such considerations, without imposing on them renegotiation of the collective agreements in force.

129. As regards the matter concerning the need for future collective agreements to respect the productivity criteria, the Committee has already expressed its views on this subject in a previous case presented by the CGT, the complainant organization in this case [see 286th Report, Case No. 1639 (Argentina), paras. 90, 91 and 92] and it refers to the conclusions reached and the recommendation made at that time:

The Committee is aware that at times, when confronted with economic restructuring in general, and inflation in particular, governments may adopt measures which entail restrictions on the negotiation of wage rates in collective agreements. In this respect, the Committee wishes to point out that it has already had occasion to give its opinion on similar allegations to the effect that collective bargaining is being subordinated to the interests of the Government's economic policy in Argentina, and specifically to productivity criteria [see 279th Report, Cases Nos. 1560 and 1567 (Argentina), paras. 680-716]. In November 1991, when it dealt with these cases, the Committee examined a Decree (No. 1757/90) under which "clauses of the agreements may be waived (by the administrative authority in the public sector) if they disrupt productivity, hinder or interfere with the administration of the enterprise" [see 279th Report, para. 707].

In these circumstances, the Committee restates the conclusions reached at its November 1991 meeting at which it recalls that both the Committee and the Committee of Experts on the Application of Conventions and Recommendations had insisted "that if within the context of a stabilization policy a government may consider for compelling reasons that wage rates cannot be fixed freely by collective bargaining (in the present case the fixing of wage scales excludes index-linking mechanisms and must be adjusted to increases of productivity), such a restriction should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period and that it should be accompanied by adequate safeguards to protect workers' living standards. This principle is all the more important because successive restrictions may lead to a prolonged suspension of wage negotiations, which goes against the principle of encouraging voluntary collective negotiations" [see 279th Report, Cases Nos. 1560 and 1567 (Argentina), para. 714, and 233rd Report, Cases Nos. 1183 and 1205 (Chile), para. 482].

Consequently, taking into account the specific nature of the system of collective bargaining in Argentina and noting that the limitations on collective bargaining go beyond a reasonable period, the Committee expresses the hope that the Government will be able, as soon as possible, to meet the objectives of its economic plan so as fully to restore the right to collective bargaining.

## The Committee's recommendations

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

(a) The Committee requests the Government to ensure that, in the future, the principles of free and voluntary collective bargaining be fully respected.

(b) The Committee requests the Government to ensure if it wishes the clauses of a collective agreement to be brought into line with the country's economic policy and the requirements of the country's integration into an international common market, that attempts are made to persuade the parties to take account voluntarily of such considerations, without imposing on them renegotiation of the collective agreements in force.

## Case No. 1696

## COMPLAINT AGAINST THE GOVERNMENT OF PAKISTAN PRESENTED BY THE INTERNATIONAL FEDERATION OF BUILDING AND WOODWORKERS (IFBWW)

131. In a communication dated 29 January 1993, the International Federation of Building and Woodworkers (IFBWW) submitted a complaint of violations of freedom of association against the Government of Pakistan. It sent additional information relating to its complaint in a communication dated 20 August 1993.

132. The Government supplied its observations on the case in a communication dated 3 October 1993.

133. Pakistan has ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

### A. The complainant's allegations

134. In its complaint of 29 January 1993, the IFBWW alleges that the Industrial Relations Ordinance of 1969 (IRO) violates Convention No. 87, since the limited scope and restriction on the right to organize for certain categories of workers defined under it represents a barrier for workers to form and join trade unions, as illustrated by the deregistration of its affiliate, the Forest Employees' and Workers' Union - Balochistan Khuzdar, on 25 July 1992.

135. The IFBWW explains that the Forest Employees' and Workers' Union - Balochistan Khuzdar (hereinafter "the union") has been struggling to obtain legal registration since 1987 and gives a summary of events leading to its registration in 1989 and its subsequent

deregistration in 1992. On 22 October 1987, the union applied for registration under sections 5, 6 and 7 of the IRO but the office of the Registrar of Trade Unions - Balochistan refused registration on 27 October. The union appealed the Registrar's decision in the First Labour Court Balochistan which upheld the position of the union and instructed the Registrar to register the union on 31 October. An appeal was filed before the Labour Appellate Tribunal which set aside the order of the Labour Court and remanded the matter on 31 March 1988. The union again applied for registration which the Registrar refused on 28 April 1988. On 16 May the union appealed the Registrar's rejection of certification in the Third Labour Court which ruled in favour of the union on 29 June 1988. The IFBWW attaches a copy of this decision to its complaint. However, on 4 January 1989 the Registrar once again refused to certify the union. On 29 April 1989 an appeal was filed before the First Labour Court which ruled in favour of the union. As a result, the Registrar filed an appeal before the Labour Appellate Tribunal which however was rejected on 28 August 1989. Therefore, on 16 September 1989 the union received certification of registration.

136. After certification, the union contends that the Forestry Department of Balochistan attempted to create a rival union. Under Pakistani law, if two or more unions exist in an establishment or workplace, the Registrar must conduct a secret ballot to ascertain which union represents the majority of the workers in order to issue a certificate for collective bargaining. As a result, a ballot was conducted and on 22 September 1990 the union was certified as bargaining agent for workers employed in the Forestry Department (Annex 4). The union points out that after having lost in its efforts to decertify the union through a ballot, the Forestry Department initiated action in the High Court of Balochistan. The Forestry Department argued that forestry workers, as government employees, were civil servants and as such under the law, could not form trade unions. It further argued that it was neither an establishment nor an industry within the meaning of the Standing Orders Ordinance of 1968 and therefore its employees could not be defined as "workers" and could not form an association.

137. The High Court ruled in favour of the Forestry Department's appeal, basing its judgement on the definition of the term "workman/worker" under the IRO. The court stated, inter alia, that: "In order to form a union under the IRO, each category of the employees has to prove the nature of work or the salary being drawn by such a category and all other ingredients which bring them into the category of a worker or workman under the Factories Act, or Workmen's Compensation Act, before formation of any union or applying to the Registrar for registration of such a union. In fact, employees working in a government department and whose services are regulated under statutory rule are prima facie civil servants unless they prove through evidence otherwise that they fall within the category of worker/workman under the Factories Act, 1934, or the Workmen's Compensation Act, 1923." Hence the High Court concluded that many of the forestry workers who had joined the union could not be defined as

"workmen" but rather were civil servants. As such, it deregistered the union on 25 July 1992. The court did, however, allow that those workers who could be defined as "workmen" could make a fresh application to the Registrar for union recognition. The union appealed to the Supreme Court which, however, upheld the High Court's decision on 7 October 1992.

138. The IFBWW contends that the definition of "workmen" under the IRO is worded in such a way that it excludes the vast majority of workers and employees from forming or joining trade unions. The IFBWW also underlines that, regardless of the definition applied by the High Court in defining some of the Forestry Department workers as "civil servants", these workers should not be barred from forming a trade union as prescribed by Convention No. 87. Finally, the IFBWW contends that the Forestry Department's continuous pursuit of the union in the courts, its alleged efforts to set up an alternative union and the Registrar's persistent denial of the union's legal registration all represent unacceptable interference on the part of public authorities aimed at restricting forestry workers' rights to organize a trade union. It adds that the complexity of the judicial system is not conducive to the establishment of trade unions in general and as such, acts as a barrier to freedom of association in Pakistan.

## B. The Government's reply

139. In its communication of 3 October 1993, the Government submits that the Balochistan High Court had examined in depth the petition concerning the legal registration of the Forest Employees' and Workers' Union, but having taken note of the relevant provisions of the labour laws, ruled that the registration should be withdrawn. However, it also ruled that those members of the union who fell within the category of "worker/workman" under the Factories Act, 1934, the Workmen's Compensation Act, 1923, and the Industrial Relations Ordinance, 1969, were entitled to file fresh applications for registration to the Registrar.

140. The Government further points out that the forest employees filed an appeal in the Supreme Court of Pakistan which upheld the decision of the High Court. It ruled that in the present case, the primary objective of the Forestry Department was to explore all avenues for the advancement of a particular field and to cater to the needs of the public at large. The resulting cost was to be borne from public funds. The function of the Forestry Department was to protect the forests from destruction which was necessary for a healthy environment. For the performance of its duties, it carried out research in its specific field. From the nature of its work, it could not be deduced by any stretch of the imagination that it was running any industry. Whatever little business that was done was ancillary to the main objective. Moreover, the forestry workers were not employed

to run any industry. Thus, the ingredients of any industry were lacking in the present case.

141. The Government is of the view that those forestry employees who are allowed by the courts to file a fresh application for registration to the concerned Registrar should do so and those who do not fall under the category of "worker/workman" should refrain from such illegal activities. It is quite clear that the decision of the courts is based on the national legal framework which is not in contravention with the relevant international labour standards. The Government further submits that it has always honoured its commitments under ratified international labour standards including Conventions Nos. 87 and 98. Moreover, article 17 of the Pakistani Constitution adequately guarantees trade union rights throughout the country.

## C. The Committee's conclusions

142. The Committee notes that the allegations in this case concern the fact that the definition of the term "worker" in the industrial relations legislation restricts the right to organize, as well as acts of interference by the public authorities aimed at barring Forestry Deparment workers from forming a trade union. The complainant contends more generally that the restrictions contained in national legislation on the right to organize for certain categories of workers are incompatible with Convention No. 87.

143. The Committee notes, in effect, that the Forest Employees' and Workers' Union - Balochistan Khuzdar (the union) had attempted to obtain legal registration since 1987, but only received certification of registration on 16 September 1989. The Committee notes with concern that this delay was attributable to the Registrar's persistent refusal to register the union during the above-mentioned period. It considers this delay to be all the more serious since it would appear that the Registrar refused to certify the union despite having been instructed to do so by various judicial instances which ruled in favour of the union on appeal (notably on 31 October 1987, 29 June 1988 and 29 April 1989). In this respect, the Committee would recall that if the conditions for the granting of registration are tantamount to obtaining prior permission from the public authorities for the establishment or functioning of a trade union this would undeniably constitute an infringement of Convention No. 87. Moreover, where a complicated and lengthy registration procedure exists, or where the competent administrative authorities may exercise their powers with great latitude, these factors are such as to create a serious obstacle for the establishment of a trade union and lead to a denial of the right to organize without previous authorization [see Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, paras. 275 and 281].

144. The complainant further asserts that following registration of the union on 16 September 1989, the Forestry Department of Balochistan initiated action in the High Court of Balochistan, arguing that forestry workers, as government employees, were civil servants and, as such under the law, could not form trade unions. In the Government's view, the High Court ruled in favour of the Forestry Department's appeal only after having taken account of the relevant provisions of the national labour laws which were not in contravention of the relevant international labour standards. The Committee would, however, draw the Government's attention to the fact that the standards contained in Convention No. 87 apply to all workers "without distinction whatsoever" and are therefore applicable to employees of the State; in view of the importance of the right of employees of the State and local authorities to constitute and register trade unions, the prohibition of the right of association for workers in the service of the State is incompatible with the generally accepted principle that workers, without distinction whatsoever, should have the right to establish organizations of their own choosing without previous authorization [see Digest, op. cit., paras. 213 and 215]. The Committee therefore requests the Government to take the necessary steps to ensure that registration is granted once again to the Forest Employees' and Workers' Union - Balochistan Khuzdar.

## The Committee's recommendations

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

(a) The Committee requests the Government to ensure that the conditions for the granting of registration are not tantamount to obtaining prior permission from the public authorities for the establishment or functioning of a trade union, in conformity with Convention No. 87, and that the registration procedure is not so complicated and lengthy as to create a serious obstacle for the establishment of a trade union.

(b) The Committee draws the Government's attention to the fact that the standards contained in Convention No. 87 apply to all workers "without distinction whatsoever," and are therefore applicable to employees of the State; in view of the importance of the right of employees of the State and local authorities to constitute and register trade unions, the Committee requests the Government to ensure that workers in the service of the State have the right to establish organizations of their own choosing without previous authorization. In this respect, the Committee requests the Government to review the definition of the term "worker" in the legislation or industrial relations.

(c) The Committee requests the Government to take the necessary steps to ensure that registration is granted once again to the Forest Employees' and Workers' Union - Balochistan Khuzdar.

(d) The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case regarding Convention No. 87.

## Case No. 1715

## COMPLAINT AGAINST THE GOVERNMENT OF CANADA (MANITOBA) PRESENTED BY - THE CANADIAN LABOUR CONGRESS (CLC) - THE NATIONAL UNION OF PROVINCIAL GOVERNMENT EMPLOYEES (NUPGE) AND - THE MANITOBA GOVERNMENT EMPLOYEES UNION (MGEU)

146. In a communication dated 12 May 1993, the Canadian Labour Congress (CLC) submitted a complaint of violations of freedom of association against the Government of Canada (Manitoba), on behalf of the National Union of Public and General Employees (NUPGE) and the Manitoba Government Employees Union (MGEU). The Public Services International (PSI) expressed its support to the complaint in a communication dated 18 May 1993.

147. The federal Government, in a communication of 30 November 1993 transmitted the observations and information from the Government of Manitoba, dated 28 October 1993.

148. Canada has ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). It has not ratified the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), or the Collective Bargaining Convention, 1981 (No. 154).

### A. The complainant's allegations

149. The complainant organizations allege that the Public Sector Reduced Workweek and Compensation Management Act ("Bill 22"), tabled 5 April 1993, violates Convention No. 87. This legislation allows the Manitoba Government unilaterally to impose a reduced work week on the 100,000 public sector employees in Manitoba through a ten-day lay-off programme. It nullifies certain sections of collective agreements in order to allow the Government to institute its lay-off plan for all Manitoba's public sector workers. The legislation will reduce the

public sector payroll by some $300 million, or approximately 4 per cent of the wages of each public sector employee.

150. The complainants point out that in a recent complaint against another legislation concerning public servants (Bill 70, Public Sector Compensation Management Act) which froze Manitoba public servants' wages for a year through a one-year extension of collective agreements, the Committee on Freedom of Association regretted in its recommendations that the Government had not given priority to collective bargaining as a means of determining employment conditions of its public servants, trusted that it would refrain from taking such measures in the future, and stressed the importance of adequate consultation prior to the introduction of legislation through which the Government seeks to alter the bargaining structures in which it acts actually or indirectly as employer [284th Report, Case No. 1604, para. 325].

151. Since the Government would probably submit that Bill 22 is implemented as a result of the exceptional economic and fiscal circumstances in the province, as it did with respect to Bill 70, the complainants state that the Government did not provide documentation to the provincial union to support its economic arguments.

152. Bill 22, which represents the second legislative interference in public sector labour relations in the province of Manitoba during the last two years, is designed to reduce compensation of all public sector employees by approximately 4 per cent by instituting a mandatory lay-off of up to a maximum of 15 days for all employees of the provincial Government, Crown corporations, health-care facilities, municipalities, school boards, universities and colleges. The legislation also reduces the amount paid to provincial court judges, doctors, members of the Legislative Assembly and members of the Government's boards and commissions.

153. The legislation, which expires on 31 December 1995, is divided into three sections: reduced work week and reduced compensation for the majority of public sector employees; reduced compensation for medical practitioners; and reduced compensation for members of the Legislative Assembly. The first part of the legislation allows employers, after consultation with the bargaining agent, to implement a maximum 15-day lay-off programme. If no agreement is reached with the bargaining unit, the employer has a unilateral right to establish and implement the lay-off programme. The days in which employees are laid off are classified in the legislation as "leaves of absence without pay". Under the second part of the legislation, total fee payments to doctors will be reduced by 2 per cent. The final part of the legislation reduces the salaries of members of the Legislative Assembly by 3.8 per cent.

154. Section 3 of Bill 22 allows the legislation to prevail over all collective agreements governing the working conditions, benefits and wages of public sector employees in Manitoba. Specifically, with respect to provincial government employees, the legislation nullifies

those contract clauses governing hours of work, pay practices, pay plans, union recognition and security, scope of bargaining, lay offs, bumping rights and the grievance and arbitration procedure. The legislation will also impact on future superannuation benefits for older workers because those benefits are based on the average salary of an employee's best three years of earnings. All sections of the legislation also prevail over any arbitration award or decision, therefore not allowing any independent third party interpretation of the legislation, including how it is implemented.

155. Section 5(4) of the legislation requires an employer to commence consultations with the appropriate bargaining unit for the purpose of reaching an agreement on the details of the lay-off programme. If no agreement is reached between the employer and a union after 30 days of consultation, section 5(5) allows the employer to take unilateral action with a view to establishing and implementing the maximum 15-day lay-off programme. The complainants are deeply concerned about this section of the legislation, simply because it gives the employer the right to implement lay-off programmes in an unjust and unequal manner. An employer, for example, would have the right to lay off those employees whom it personally disliked during days in the middle of the week and could structure lay offs for those employees whom it personally liked on Mondays and/or Fridays, thus ensuring that those employees received long weekends. It is obvious that this legislation provides employers the opportunity to treat employees very differently and unequally depending on their views of the personal relationship with an individual employee. In those circumstances, there is no avenue to appeal specific lay-off measures if the union or individual employees feel that the lay-off programme has been implemented in a biased and inequitable manner.

156. Section 12 of the legislation deems all the days on lay-off as "days of leave without pay" and "not to be a lay-off within the meaning of any other legislation, regulation or labour relations contract or award". This section of the legislation would result in the loss of two weeks of unemployment insurance benefits for those employees who are laid off on a permanent basis, or for more than 15 days, during the next 52 weeks, since under Canada's unemployment insurance system, employees must be laid off for a period of two working weeks to be eligible to unemployment insurance benefits. The Government's lay-off programme will not count as the two-week waiting period for unemployment insurance benefits.

157. The complainants further submit that there was no adequate consultation prior to introduction of Bill 22. Upon learning through the press, in December 1992, that the Government considered rolling back public servants' wages, the President of MGEU requested clarification from the Minister Responsible for the Civil Service, who verbally denied such intention. Following further requests from MGEU, the Minister only mentioned the Government's "preference" not to have lay offs or legislative limitations. This correspondence was followed by a meeting on 11 January 1993 of the Civil Service Joint Council, made up of three union representatives and three Government ministers.

Unable to give the public sector unions assurances about the Government's intention to legislate a public sector restraint programme, the Civil Service Minister indicated that a meeting with the Finance Minister would be required to get clarification.

158. Another meeting of the Joint Council was held on 2 February 1993 which the Finance Minister attended. He indicated that the Government was looking for an undefined voluntary wage roll-back to minimize future lay offs, and informed the unions that this measure could be implemented within the terms of the current collective agreement, or the Government could bring in specific restraint legislation. MGEU representatives at the meeting indicated that they would have to consult with the union's membership before considering opening up the current collective agreement for renegotiations. The Finance Minister indicated that he would agree to give the union time to consult with its members. The President of MGEU sent a letter dated 5 February 1993 indicating his organization would respond by the end of the month.

159. MGEU immediately set up a series of five province-wide membership meetings. The first two meetings took place on 9 and 10 February and the third one was set for 12 February. However, MGEU's President received a phone call at about midnight on 11 February from the Civil Service Minister, who indicated that the Government had unilaterally decided to introduce a reduced work week and that the announcement would be made on 12 February. This announcement was faxed to MGEU's offices at 12.30 p.m. on 12 February, the exact time a press conference was being held by the Finance Minister and the Civil Service Minister, announcing the Government's plan to institute a ten-day lay-off plan. Upon completion of consultations with its members, MGEU informed the Civil Service Minister, on 26 February 1993, that they did not accept a reopening of the collective agreement nor a voluntary wage roll-back.

160. The complainants refer to the principle established by the Committee in that respect: "The establishment of a tripartite group to examine the question of wages and the anti-inflationary measures ... should be promoted between public authorities and employers' and workers' organizations with the general objective of achieving mutual understanding and good relations between them with a view to developing the economy as a whole or individual branches thereof, improving conditions of work and raising standards of living. In particular, the authorities should seek the views, advice and assistance of employers' and workers' organizations, in an appropriate manner in respect of such matters as the preparation and implementation of laws and regulations affecting their interests." [Digest of decisions and principles of the Freedom of Association Committee, 1985, 3rd edition, para. 651.] They submit that, by its action leading up to the introduction of Bill 22, the provincial Government showed total disregard and lack of commitment to the consultative process.

161. The complainants conclude that in view of the unilateral nature of the legislation, the fact that it nullifies many contract clauses contained in public sector employees' collective agreements, and that it does not allow recourse to an independent third-party system to arbitrate on different interpretations of the legislation, Bill 22 is a blatant violation of the fundamental principles of freedom of association, as established by ILO Convention No. 87. In addition, placing the full burden of the provincial deficit and debt on public sector workers in the province is unjustified and unfair. At the very least, pirnciples of fairness would dictate that the Government attempts to negotiate and consult in good faith with the public sector bargaining agents.

## B. The Government's reply

162. In its communication of 28 October 1993, the Government of Manitoba submits that Bill 22 does not violate Convention No. 87, and takes issue with certain information submitted by the MGEU.

163. On the first point, the Government states that Bill 22 in no way infringes the substantive provisions of Convention No. 87, since it does not restrict workers' rights to establish or form organizations of their own choosing, to draw up their own constitutions and rules, elect their representatives, organize their administration and formulate their programmes. It does not dissolve or suspend workers' organizations, infringe on workers' organizations' rights to join federations, impede their legal personality, or contravene the law of the land.

164. On the second issue, the Government argues that a number of statements made by MGEU are inaccurate, misleading and/or incomplete. Once the record is corrected and clarified, it will be clear that the introduction of Bill 22 was a reasonable action, not inconsistent with ILO principles.

165. The Canadian economy, including Manitoba, has recently begun to emerge from a severe and prolonged recession. Like other governments across Canada, the province of Manitoba is facing serious fiscal difficulties brought about by increasing demands in the priority areas of health, education and family services, reduced transfers from the federal Government and the heavy debt load incurred by previous administrations. In addition to these structural problems, the recent recession increased the difficult circumstances. While the economy is now moving forward, the lingering effects of the recent recession will continue to have a negative impact on provincial revenues for some time. In his 1993 budget speech, the Finance Minister indicated that all Manitobans would be affected to some extent by fiscal measures taken to remedy problems which had grown over decades.

166. In meeting its priorities over the years, the Government has incurred significant debt, over 10 per cent of its expenditure being required simply to meet interest costs thereon. This large debt significantly constrains the Government's ability to respond effectively to priority needs, like health and education services. For several years the Government has faced serious limitations in its revenue, which included reduced collections by the province because of the recession and reductions in transfers from the federal Government totalling $130 million. This is in addition to further reductions of $167 million in equalization estimates as a result of a change in the methodology for calculating population.

167. There is a significant lag between improved economic performance and improved provincial revenues. Revenue for 1993/94 is expected only to increase by 0.2 per cent above the 1992/93 revenue estimates. These factors resulted in a deficit for 1992/93, i.e. some $230 million higher than was budgeted. Unless the Government continued its efforts to control expenditure, the high deficits and ever-growing debt would have continued. The Government therefore instituted a variety of measures to bring expenditure in line with revenue, and reduced its programme expenditure in 1993/94 by 2 per cent.

168. The province also introduced Bill 22 as a means to facilitate public sector employers' efforts to meet their budget requirements without the necessity of substantial lay offs. These measures continue the efforts of the province to live within its means. As 80 per cent of programme costs are labour costs, either directly as wages for civil servants or indirectly as funding for wages in other areas of the public sector, these measures unavoidably affect public employees.

169. Bill 22 does not, as the MGEU contends, allow the Government "unilaterally to impose a reduced work week on the 100,000 public sector employees in Manitoba through a ten-day lay-off programme". The Bill does provide an innovative mechanism which will allow public sector employers to implement reduced work-week programmes after consultation with employee representatives to assist them in meeting their budget requirements without having to permanently lay off substantial numbers of employees. In addition, employers' and employees' representatives can enter into agreements on alternate methods for achieving their financial requirements.

170. The legislation does not nullify any clauses of collective agreements. For example, negotiated salary increases will be granted. In the case of the MGEU, its members will receive a 2.3 per cent salary increase in September 1993.

171. In order to ensure that reduced work-week programmes can be implemented fairly and equitably, the legislation does allow for some modification of the application of certain provisions solely for the purpose of implementing reduced work weeks. In the absence of such legislative assistance, a disproportionate impact would be felt by those on the lower end of the seniority scale, which in many cases are

women, aboriginal, visible minority and disabled employees. The legislation allows the impact to be shared equally by all employees, including executive and excluded employees. For all purposes other than reduced work weeks the existing provisions of collective agreements remain in full force and effect.

172. The legislation classifies these days off as leaves of absence without pay in order to protect employee benefits to the greatest extent possible. Many collective agreements in Manitoba allow for the continuation of benefit coverage and accrual for short term leaves of absence without pay, while benefits cease immediately upon lay off. For example, under the Government Employees' Master Agreement, vacation continues to accrue until the leave exceeds more than half of a month.

173. With respect to application of the days off to particular employees, the obligation on employers remains to act fairly and reasonably in establishing schedules and procedures for determining individual days off.

174. The legislation will not affect employees' entitlement to unemployment insurance benefits in the manner described in the MGEU submission. Even if the days off in the Government's programme were considered lay off days, they would not count for the unemployment insurance waiting period since they will be taken on a scheduled basis throughout the year. Employees who are laid off on a permanent basis would be required to serve a continuous two-week waiting period in any event.

175. As regards MGEU's allegations on the lack of adequate consultations, the Government submits that it has demonstrated the type of broad consultation outlined in the Committee's principle quoted by the complainant [Digest, op. cit., para. 651].

176. For several years, the economic and fiscal challenges facing the province have been outlined publicly in provincial budget addresses and background papers, public statements by the Finance Minister and analysis by respected third parties. The MGEU was also made aware of these difficulties during contract negotiations both with the civil service and publicly funded agencies the employees of which it represented. By late 1992 it had become clear that the fiscal challenges facing the province were continuing and that additional restraint measures were required. In response to a letter from the President of the MGEU, the Minister Responsible for the Civil Service indicated that the Government hoped acceptable measures could be agreed to by the parties. At an 11 January 1993 meeting of the Joint Union/Management Council the Minister indicated to the MGEU representatives that the province was prepared to consider viable options that they may wish to bring forward. This same offer was extended at a 2 February 1993 meeting with the Finance Minister at which he outlined in some detail the province's fiscal difficulties. He also advised the MGEU representatives that he required a response

within two weeks, as the end of the 1992/93 fiscal year was fast approaching and the 1993/94 budget needed to be finalized quickly.

177. In its letter of 5 February 1993 MGEU ignored this request and indicated a reply would be given by the end of February. Needing to finalize budget decisions, the Government decided to announce a proposed reduced work week programme. While the Minister was unable to reach MGEU's President until late in the evening, the day prior to the announcement, attempts had been made to reach him since early in the day but he was travelling in rural Manitoba. The Minister's letter of 12 February 1993 to MGEU indicated very clearly that the Government was "prepared to continue discussions on the possible range of options". MGEU's response of 26 February 1993 indicated it was not prepared to continue discussions.

178. In its letter of 23 March 1993, the Minister outlined that, in announcing the proposed reduced work week programme the Government had not made a final decision on how it would proceed. Because of MGEU's refusal to discuss alternatives and the specific application of a reduced work week programme to its members, the Minister indicated the following: "As we have indicated previously, we do not support further substantial lay offs to meet the necessary financial targets nor do we wish to pursue a legislated reduction in rates of pay. That is why, in the absence of any reasonable alternatives put forward by the MGEU, we have determined that the reduced work week programme, which will affect all employees equally regardless of service or level in the organization, is the preferred approach. ... It is most regrettable that the MGEU has chosen not be involved in the effort to ensure the impact on employees is minimized. I will need to consult with my Cabinet colleagues on how we will proceed in light of the MGEU's refusal to enter into discussions on these issues. Our deliberations will be guided by our desire to ensure to the extent possible our actions will minimize the impact on our employees."

179. The deliberations determined that the best approach would be legislation which would ensure all employees in an organization could be impacted equally regardless of seniority, that could be utilized by all public employers if they chose, which required consultation with employee representatives and which impacted collective agreements to the minimum extent possible. Bill 22 was drafted based on these principles.

180. In the Manitoba system of government, introduction of a Bill into the legislature in no way signifies the consultation process is complete. A committee of the legislature meets to review each piece of legislation and interested parties are given the opportunity to make representations to the Committee on their concerns including suggesting amendments to the Bill. The Committee then refers the Bill with any amendments it deems necessary to the legislature. The Bill is then given full consideration and debate in the legislature before the final legislation is passed by the democratically elected legislature. The relevant Committee heard over 150 presentations including

submissions by most, if not all, Manitoba unions whose employees might be impacted by the legislation.

181. Finally, Bill 22 contains a required consultation period between an employer wishing to implement a reduced work week programme under the legislation and the representatives of the affected employees. In addition, agreements between the parties on alternative arrangements are not precluded. For example, an agreement between Manitoba hospitals and nurses was reached on a wage reduction. Also a number of Manitoba public employers have entered into agreements with employee representatives on the implementation of reduced work week programmes.

182. While the Government of Manitoba can certainly understand the ILO's desire to have effective consultation, such outcomes are not possible if one of the parties, in this case the MGEU, is not prepared to enter into reasonable discussions. The Government suggests that the MGEU's actions indicate that it, not the Government, showed its total disregard and lack of commitment to the consultative process.

183. The Government concludes that Bill 22 is a reasonable response to exceptional, difficult fiscal circumstances. It does not restrict employees' rights to collective bargaining; existing negotiated salary increases and benefit plans remain in effect and the provisions of collective agreements remain in full force and effect, except where some modification is necessary to implement an equitable reduced work week programme. This is accomplished within a legislated framework which limits this to a maximum of two years and which enshrines in legislation a mandatory consultation process. Not only did the Government not violate ILO Convention No. 87, it acted in a manner consistent with the broader principles of the ILO.

## C. The Committee's conclusions

184. The Committee notes that the allegations in this case relate to an intervention in the public sector collective bargaining process by the Government of Manitoba (Canada), which imposed to most provincial public servants a ten-day leave without pay. According to the complainant, this amounts approximately to a 4 per cent pay cut for public sector employees.

185. Section 4(2) of the Public Sector Reduced Work Week and Compensation Management Act (the "Act") provides that public sector employers "may require employees to take leave without pay", not to exceed 15 days in a 12-month pay period. An employer which intends to implement such a reduced work week must serve notice of its intention to the union and to the minister in charge of labour relations (section 5(1) and (2)). Under section 5(4), a union that receives such notice must commence consultations with the employer for the purpose of reaching an agreement on the implementation of the reduced

work week: number of days and dates to be taken by each employee; manner and frequency of corresponding pay deductions; any other matter considered relevant by the parties. Section 5(5) provides that, if no agreement is reached with 30 days of serving the notice, the employer may determine all these points. The agreement or the employer's decision becomes binding on the parties upon filing with the minister. Similar provisions in the Act, concerning medical practitioners and members of the Legislative Assembly, are not germane to this complaint.

186. The Committee notes that, although lay-off periods are quite common in the private sector, this is the first time it is called upon to consider a scheme of compulsory reduced work week in the public sector. While agreeing with the Government that these measures do not involve violations of Convention No. 87, the Committee notes that they do raise issues as regards the principles of freedom of association, in as much as they affect the voluntary nature of collective bargaining. The Act only requires "consultations" on its implementation, and public servants have no choice but to accept the employer's decision if no agreement is reached.

187. The Government invokes essentially the same fiscal and economic reasons it had put forward in Case No. 1604 [see 284th Report, paras. 286-325] to justify its actions, arguing that it had no other choice in view of the severity and the length of the recession the province is facing. The Committee then recalled in that respect that "where, for compelling reasons of national economic interest and as part of its stabilization policy, a government considers that it is not possible for wage rates to be fixed freely through collective bargaining, any restrictions should be imposed as an exceptional measure and only to the extent that is necessary without exceeding a reasonable period, and should be accompanied by adequate safeguards to protect workers' living standards" [ibid., para. 321]. While the particulars of this case are different, since the restrictions in public spending are achieved through a compulsory reduced work week rather than through a wage freeze, the Committee considers that the same rationale applies.

188. The Committee deplores that despite its previous calls to the Government to refrain from taking such measures, it has once again failed to give priority to collective bargaining as a means of negotiating a change in the employment conditions of public servants, and that the legislative authority felt compelled to adopt the Public Sector Reduced Work Week and Compensation Management Act, particularly in view of the fact that this Act followed immediately the previous legislative intervention which froze public sector wages for one year. The Committee is of the opinion that this action went beyond what it has previously considered as acceptable and urges the Government to take the necessary measures so that the legislation be amended accordingly.

189. The Committee notes that a significant part of the arguments both in the complaint and the reply deal with the issue of

consultations, a subject it commented upon in Case No. 1604 [ibid., para. 324], and which calls for some development.

190. According to the complainant organization, the MGEU learned through the press, some time in December 1993, that the Government was considering rolling back public servants' wages. This was followed by two meetings, on 11 January and 2 February 1994, and an exchange of correspondence. While the MGEU was consulting its membership, its President was advised on 11 February 1993 of the Government's decision to impose a reduced work week, i.e. the day before the public announcement was made. The complainants conclude that the Government showed total disregard and lack of commitment to the consultative process.

191. The Government takes a different view, arguing that the economic and fiscal difficulties facing the province were known long before to the MGEU, through budget speeches, public statements and previous bargaining rounds. At the meetings of 11 January and 2 February, the representatives of MGEU were informed that the Government was prepared to consider viable alternatives they would bring forward, but they ignored it. Needing to finalize budget decisions, the Government decided to announce a proposed reduced work week programme, and indicated in its letter of 12 February that it was prepared to continue discussions on the possible range of options. The Government considered the letter of MGEU of 26 February as an indication that they were not prepared to do so. The Government adds that the legislative committee heard over 150 presentations on the Bill, including submissions by most Manitoba unions whose members could be affected by the legislation. Finally, the Act embodies a required consultation period before a reduced work week may be implemented. It concludes that the MGEU, and not the Government, showed total disregard and lack of commitment to the consultative process.

192. The Committee is struck by the apparent lack of communication which prevailed throughout this period, culminating with the MGEU's letter of 26 February informing the Government that the union would not reopen the collective agreement nor accept a voluntary wage roll-back, and the reply thereto, dated 23 March, whereby the Government stated it would proceed in the absence of any reasonable alternative proposed by the MGEU. The complainant states that the Bill was introduced "without any consultation or even the knowledge of any Manitoba public sector union", whereas the Government submits that there was adequate consultation and that the MGEU is entirely to blame for the refusal to enter into reasonable discussions.

193. The Committee considers that it would serve little purpose even to attempt apportioning responsibilities for that situation. It can only note from the evidence available that the reduced work week option (as opposed to a wage roll-back or other form of compensation restraint) was mentioned for the first time on 11 February, at a time the MGEU was still consulting its membership on a "reopening of the collective agreement", and that Bill 22 was tabled on 5 April.

Furthermore, no indication was given as to whether some of the views expressed by public sector trade unions during the legislative hearings following the tabling of the Bill were taken into account in the drafting of the final text, which might have helped the Committee to evaluate whether the reduced work week was only a proposal at the time it was announced publicly, as the Government alleges, or if it was a fait accompli, leaving no room for discussion.

194. The Committee recalls that real, fully open and adequate consultations are particularly important in situations such as the present one, where one of the bargaining partners is also the legislative authority. Such consultations imply that they be undertaken in good faith and that both partners have all the information necessary to make an informed decision.

195. The Committee also appreciates the complainant's concern that the Act may be applied in an unequal manner, since it allows employers to determine the compulsory days off without pay, in the absence of an agreement on the subject. Should a blatant case of discriminatory treatment occur, based on personal preferences or other reasons, there is no avenue of appeal, for instance, through the grievance arbitration process. The Committee suggests that the Act should provide guarantees to prevent all risks of unequal treatment.

## The Committee's recommendations

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

(a) The Committee deplores that, despite its previous calls to the Government to refrain from intervening in the collective bargaining process, it has once again failed to give priority to collective bargaining as a means of negotiating a change in the employment conditions of public servants, and that the legislative authority felt compelled to adopt the Public Sector Reduced Work Week and Compensation Management Act, particularly in view of the fact that this Act followed immediately the previous legislative intervention which had frozen public sector wages for one year. The Committee is of the opinion that this action went beyond what it has previously considered as acceptable, and urges the Government to take the necessary measures so that the legislation is amended accordingly.

(b) The Committee requests the Government to ensure that, in the future, consultations in good faith be undertaken in such circumstances and that both partners have all the information necessary to make an informed decision.

(c) The Committee suggests that the Act should provide guarantees to prevent all risks of unequal treatment.

## Case No. 1725

## COMPLAINT AGAINST THE GOVERNMENT OF DENMARK PRESENTED BY THE DANISH UNION OF JOURNALISTS (DJ)

197. In a communication dated 12 July 1993, the Danish Union of Journalists (DJ) submitted a complaint of violation of freedom of association against the Government of Denmark.

198. The Government sent its observations on this case in a communication dated 28 October 1993.

199. Denmark has ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

### A. The complainant's allegations

200. In its communication of 12 July 1993, the Danish Union of Journalists (DJ) alleges that the Draft Settlement drawn up by the Public Conciliator for the dispute which arose during negotiations on the renewal of collective agreements between it and the Danish Newspaper Employers' Association (DDFF) violates its trade union rights and its right to negotiate collectively.

201. The DJ explains that the Public Conciliator is the head of the Conciliation Board, which is a government institution charged with the task of contributing to the settlement of disputes between employers and employees in accordance with the provisions of the Conciliation in Industrial Disputes Act, No. 5, of 18 January 1934, as amended by Act No. 63 of 25 March 1961 and Act No. 520 of 23 December 1970. The three national Conciliators are appointed by the Minister of Labour, upon the recommendation of the Industrial Court. The law provides for various procedures which allow the Public Conciliator to attempt to mediate between the parties.

202. The complainant organization states that in December 1992 it entered into negotiations with the Danish Newspaper Employers' Association (DDFF) with a view to renewing the collective agreements which came into effect on 1 March 1991 and were to expire on 28 February 1993. These agreements cover 1,879 journalists, including some journalist trainees and photographers, employed by several newspapers, press agencies and radio stations. During these negotiations, the DJ gave the highest priority to introducing a system of sabbatical leave of six weeks with full pay. The organization

states that this claim was prompted by a desire to assist the 9 per cent of its members who were unemployed and by consideration for the social welfare of employed members. On 8 February 1993, after seven rounds of negotiation, the case was handed over to the Public Conciliator. On 14 March 1993, after three more rounds of negotiation, the Public Conciliator found that it served no purpose to continue the mediation between the DJ and the DDFF.

203. The complainant organization points out that on 24 March 1993 the Public Conciliator held a meeting with the Danish Employers' Federation (DA), of which the DDFF is a member, and the Danish Federation of Trade Unions (LO), of which the DJ is not a member. At this meeting it was decided - without consulting the DJ - that the Draft Settlement for collective agreements between the DA and the LO should also cover collective agreements for which the parties themselves could not agree to a renewal, including agreements involving organizations not affiliated with the LO. This concerned, among others, the collective agreements for journalists.

204. On 26 March 1993 the Public Conciliator invited the DJ and the DDFF to meet for a technical consultation on the Draft Settlement. The complainant organization points out that this consultation concerned only economic questions and did not cover employment-creation measures, such as the introduction of a sabbatical leave system. The Public Conciliator maintained the position that the DJ should be covered by the Draft Settlement accepted by the DA and the LO.

205. The complainant organization states that it objected to this procedure and that in its opinion the negotiations with the DDFF should continue in order to find a solution regarding the subject of sabbatical leave. It referred to the provisions of the collective agreements between it and the DDFF and which are intended to settle disputes. These provisions stipulate that when negotiations concerning the renewal of a collective agreement have not been concluded by the time the collective agreement expires, the collective agreement will remain in effect until the conclusion of a new agreement or until one of the parties has initiated a stoppage of work (strike, blockade or lockout) on behalf of its members. These provisions also stipulate that the DDFF may not give notice of a lockout or boycott before 15 April 1993 unless the DJ itself has given notice of collective actions against one or more members of the Danish Employers' Federation. The complainant organization notes that it did not give notice of a strike.

206. This notwithstanding, according to the complainant organization the Public Conciliator on 27 March 1993 made public a Draft Settlement covering approximately 700,000 workers organized under agreements between the DA and the LO. The draft renews inter alia collective agreements concluded between the DDFF, as a member

organization of the DA, and the DJ; the agreements apply to nearly 1,900 employees in the field of journalism.

207. This draft includes several Draft Settlements covering occupational fields which vary widely in nature. As a result, the 1,900 votes of the DJ were counted together with approximately 700,000 votes of workers organized in the LO, and the Public Conciliator only took into consideration the overall outcome. The draft was adopted with 67.4 per cent approving, and 35.4 per cent of those eligible voted. The DJ points out that its members rejected the draft, with 88.9 per cent voting against, and 71.6 per cent of those eligible voting. If the outcome of the vote by members of the DJ had been considered separately, the draft would not have been adopted, as 63.4 per cent of those entitled to vote actually voted against it, and the law stipulates that a simple majority of voters, representing at least 35 per cent of all eligible union members, is sufficient to reject the agreement. According to the complainant organization, the Public Conciliator stated that "this is a good example of what the linking clause is for. It is there to ensure that a small group in a workplace - there are only 2,000 journalists - shall not be able to obstruct what others accept ...".

208. The complainant organization believes that the Public Conciliator acted in violation of Conventions Nos. 87 and 98. First, there was no reason for him to submit a Draft Settlement for collective agreements between the DDFF and the DJ. There was also no reason to decide, with the agreement of the DA and the LO, that a Draft Settlement covering these two federations should cover collective agreements concluded by the journalists. The DJ was thus in effect deprived of the possibility to negotiate freely the renewal of collective agreements to which it was a party and, as a last resort, to initiate a strike with a view to obtaining a new collective agreement. It was also impossible for it to defend its claim to sabbatical leave as an employment-creation measure, since such a claim was neither proposed nor negotiated for the majority of Danish workers, who are organized under agreements between the DA and the LO.

209. According to the DJ, the Public Conciliator intervened in the collective bargaining which was taking place between it and the DDFF at a time when it was quite unnecessary to do so since collective agreements which are in effect remain in force until the conclusion of a new agreement or until a strike or lockout begins. Its intervention was all the more unnecessary since the DJ had not called a strike, and there was a very small risk of sympathy strikes because the main dispute concerned a trade union - the DJ - which is not affiliated with a trade union confederation.

210. Finally, the DJ indicates that section 12 of the Conciliation in Industrial Disputes Act, which provides for the possibility to link together in a single Draft Settlement the Draft Settlements of all occupational fields (with the exception of work

managers), must be considered together with section 11, which reads as follows: "Within each federation (trade union or trade union branch) the decision as to the acceptance or rejection of a Draft Settlement shall be taken either by a ballot or by an ad hoc meeting. For a Draft Settlement to be rejected by ballot on the workers' side the majority of those participating in the ballot and in no case less than 35 per cent of all members entitled to vote must have voted against it."

## B. The Government's reply

211. The Government states that on 27 March 1993 the Public Conciliator submitted a Draft Settlement for the renewal of collective agreements in most of the private sector, and namely in occupational fields represented by the Danish Employers' Federation (DA) and the Danish Federation of Trade Unions (LO). The draft also provided for the renewal of collective agreements concluded between the DDFF and the DJ.

212. The Government explains that Danish trade unions have traditionally been established as national federations along occupational lines. These national federations are divided into local trade unions. At the enterprise level, workers are organized into various trade unions according to the nature of their work. Danish trade unions are therefore not industrial trade unions. Furthermore, the Danish labour market is characterized by a very high organization rate and there is a large number of collective agreements between the individual national trade union federations on the one hand, and their employer counterparts on the other. There are over 600 collective agreements in the fields covered by the DA and the LO.

213. According to the Government, over 90 per cent of all Danish workers are reportedly covered by a collective agreement or an adhesion agreement (an agreement between a trade union federation and an unorganized employer, which refers to the collective agreement normally applying within the occupational field concerned). Most collective agreements are valid for two years and must be renewed on 1 March or 1 April of odd-numbered years. Since negotiations for the renewal of collective agreements take place at the same time throughout the labour market, the social partners aim to obtain a uniform negotiation process. Before the collective agreements expire, the social partners begin negotiations on their renewal by exchanging their claims. If the negotiations are not concluded before the collective agreement expires, the agreement generally continues to be applicable until a new collective agreement has been concluded or until one of the parties withdraws from the negotiations by directly initiating industrial action. In the case of journalists, who have special rules for industrial action, it was agreed that the DJ had an exclusive right to take industrial action with effect until 15 April 1993.

214. As regards the Public Conciliator, the Government explains that it is the task of the Public Conciliator to assist the social partners in renewing collective agreements and settling industrial disputes. The powers of the Public Conciliator are laid down in the Conciliation in Industrial Disputes Act, and the Government has no influence on the action taken by the Public Conciliator. The Public Conciliator is in no way obliged to take into consideration the implications of his decisions for the country's economy when attempting to draw up a Draft Settlement acceptable to all the parties concerned. The sole objective is to find a compromise. The Public Conciliator has certain powers in this respect: he may decide that the negotiations should continue between the parties, under his supervision; he may at his own initiative decide to play a conciliatory role during the negotiations; he may decide that industrial action duly announced during the conciliation should be postponed for 14 days; if he finds it appropriate, he may submit a Draft Settlement after consulting the representatives of the parties as regards the formal and technical aspects of the draft, which is subsequently voted upon by both sides; and he may direct that a number of Draft Settlements are to constitute, in whole or in part, a single draft.

215. As regards the negotiations for the renewal of collective agreements concluded between the DDFF and the DJ, the Government mentions that these negotiations began in the autumn of 1992 and that on 15 December the parties reached an agreement which stipulated, inter alia, that in the event that the negotiations were not concluded by 2 February 1993 at the latest, they would continue with the assistance of a Public Conciliator. The parties later changed this deadline to 8 February.

216. As regards the sabbatical leave scheme which the complainant organization was unable to negotiate, the Government indicates that the DDFF stated that at no point did it accept the calculations on which the claim of the DJ were based and that, during the negotiations, the DJ had another claim which had been given the same priority.

217. According to the Government, the DDFF indicated that after about 20 rounds of negotiations the DJ took the initiative to call in the Public Conciliator, who was appointed on 17 February. When the Public Conciliator decided to abandon his efforts at conciliation, the DJ reportedly asked the Public Conciliator on 1 March 1993 to take over the conduct of the negotiations personally. After three more rounds of negotiation, the Public Conciliator stated on 14 March 1993 that he saw no purpose in continuing the conciliation attempts, and decided on 24 March 1993 to include in the overall Draft Settlement which he intended to propose his Draft Settlement for collective agreements for journalists. On 26 March 1993 the DDFF and the DJ

participated in a technical examination of the draft, which was made public the following day.

218. The Government also indicates that, according to the DDFF, although the DJ did not give formal notice of industrial action, it failed to state that industrial action was taken without notice at a number of newspapers and press agencies and in violation of the collective agreements, in order to protest against the course of the collective negotiations. Moreover, the DJ reportedly brandished the threat of a strike as a means of bringing pressure to bear on the newspaper publishers. Such a strike could have paralysed approximately 70 per cent of the Danish press.

219. The Government denies the allegations that Conventions Nos. 87 and 98 were violated by the Public Conciliator's decision to propose an overall Draft Settlement. It mentions that according to the information at its disposal negotiations on the renewal of collective agreements covering journalists did take place, first between the parties themselves, and later - in accordance with the agreed-upon negotiating procedures - within the framework of the public conciliation service, with the assistance of a Public Conciliator and, finally, with the Public Conciliator.

220. Taking into account the nature of the Danish trade union movement as described above (with several trade unions represented at each workplace for each occupational field) the Government considers that a strike by a small group - the journalists - would paralyse nearly all the country's media. Other workers in this field, for whom collective agreements would have been concluded, would thus have been involved in the dispute. Furthermore, the Public Conciliator's power to link various Draft Settlements should be seen in the context of the special conditions governing Danish collective agreements, nearly all of which expire and are renegotiated at the same time every second year. Both this system and the Conciliation Act reflect the way Danish employers and workers would like this question to be handled. This ensures solidarity in situations where a majority of the workers concerned approve the Draft Settlement, and avoids involving workers in disputes which concern only a small minority. As this case shows, the system does not mean that the parties are excluded from negotiations. Furthermore, each party is entitled to vote to accept or reject the draft.

221. The Government concludes that, in its view, the power of the Public Conciliator to link various Draft Settlements (for which the votes are taken as a whole) is not contrary to the ILO Conventions. It states that it would be deeply concerned if this rule had to be abolished, unless such a change was generally desired by the Danish social partners.

## C. The Committee's conclusions

222. The Committee notes that the allegations in this case involve a decision taken by the national Conciliator to include the Draft Settlement for the renewal of collective agreements between the complainant organization, the Danish Union of Journalists (DJ), and the Danish Newspaper Employers' Association (DDFF), in a single draft (by means of the "linking clause" of section 12 of the Conciliation in Industrial Disputes Act) together with the Draft Settlement for the renewal of collective agreements concluded between the Danish Federation of Trade Unions (LO) and the Danish Employers' Federation (DA). According to the DJ, this decision violated its rights to collective negotiation.

223. The Committee notes that the facts of this case are not in dispute. In December 1992 the DJ and the DDFF began negotiating to renew the collective agreements that were to expire on 28 February 1993. Following a series of unsuccessful negotiations, the parties decided to call upon a Public Conciliator. The Public Conciliator decided, after a few more rounds of negotiations, that there was no purpose in continuing the mediation between the two parties. The national Conciliator then presented, on 27 March 1993, a single Draft Settlement for the renewal of collective agreements that were then in effect in most of the private sector, and namely in the occupational fields covered by agreements between the LO and the DA. This Draft Settlement included the renewal of the collective agreements concluded between the DJ and the DDFF.

224. The Committee recalls that it has already had the opportunity to express an opinion concerning the powers given to the national Conciliator by the Conciliation in Industrial Disputes Act [see 254th Report, Case No. 1418, paras. 222 to 227]. The Committee must determine whether the legislation which allows the Conciliator to link various Draft Settlements in a single draft violate the right of the DJ to voluntary negotiation.

225. The Committee observes firstly that this decision was taken on 27 March 1993, while the collective agreements to which the DJ was a party were still in effect, since the complainant organization had not begun a strike.

226. The Committee also notes that, following the intervention of the Public Conciliator, the DJ was deprived of the possibility to continue to negotiate on certain subjects which were of the highest priority to it. While the Act provides that the Public Conciliator must discuss the form and substance of the draft with representatives of each of the parties (section 4.3), the DJ was only invited to a meeting on 26 March 1993 to examine the technical aspects of the draft.

227. Finally, the Committee observes that the Conciliation in Industrial Disputes Act includes a number of protective clauses, in so

far as an overall Draft Settlement must be submitted to a vote and adopted by the members of the parties concerned. The complainant organization indicates that its members rejected the overall draft by 88.9 per cent, while 67.4 per cent of the workers concerned by the overall draft voted for its adoption. The Committee would therefore recall, as it has in previous cases, that the extension of an agreement to an entire sector of activity - in this case, journalism - contrary to the views of the organization representing most of the workers in a category covered by the extended agreement is liable to limit the right of free collective bargaining of that majority organization and that this system makes it possible to extend agreements containing provisions which might result in a worsening of conditions of work of the category of workers concerned. [See, for example, 217th Report, Case No. 1087 (Portugal), para. 233, 250th Report, Case No. 1364 (France), para. 136, and 254th Report, Case No. 1418 (Denmark), para. 225.]

228. Taking account all of the aforementioned, the Committee considers that certain aspects of the Danish legislation and national practice are not completely in conformity with the principle of free bargaining of collective agreements with a view to regulating the terms and conditions of employment by means of collective agreements, as recognized in Article 4 of Convention No. 98. It invites the Government and the social partners to re-examine the legislation and practice in this regard.

## The Committee's recommendations

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

(a) The Committee considers that certain aspects of the Danish legislation and national practice are not completely in conformity with the principle of free bargaining of collective agreements with a view to regulating the terms and conditions of employment by means of collective agreements, as recognized in Article 4 of Convention No. 98. It invites the Government and the social partners to re-examine the legislation and practice in this regard.

(b) The Committee draws this case to the attention of the Committee of Experts on the Application of Conventions of Recommendations.

## IV. CASES IN WHICH THE COMMITTEE REQUESTS TO BE KEPT INFORMED OF DEVELOPMENTS

### Cases Nos. 1434 and 1477

### COMPLAINTS AGAINST THE GOVERNMENT OF COLOMBIA PRESENTED BY
- THE WORKERS CENTRAL ORGANIZATION OF COLOMBIA (CUT)
- THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)
- THE WORLD CONFEDERATION OF ORGANIZATIONS OF THE TEACHING PROFESSION (WCOTP)
- THE WORLD FEDERATION OF TRADE UNIONS (WFTU)
- THE TRADE UNIONS INTERNATIONAL OF PUBLIC AND ALLIED EMPLOYEES (TUI)
- THE LATIN AMERICAN CENTRAL OF WORKERS (CLAT)
- THE GENERAL CONFEDERATION OF LABOUR (CGT) AND
- THE NATIONAL FEDERATION OF STATE WORKERS (FENALTRASE)

230. The Committee has examined these cases on several occasions, most recently at its February 1993 meeting when it presented an interim report to the Governing Body [see 286th Report of the Committee, paras. 346-359, approved by the Governing Body at its 255th (March 1993) Session]. The International Confederation of Free Trade Unions (ICFTU) presented new allegations in communications dated 7 July, 2 August and 28 October 1993. The Government sent new observations in communications dated 19 April, 16 September, 12 and 22 October, and November 1993.

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

### A. Previous examination of the cases

232. The complainants' allegations still pending relate to the murder and disappearance of trade union leaders and members; criminal proceedings under way against several trade union leaders; and acts of anti-trade union discrimination in the Bank of Caldas and the National Federation of Coffee Growers.

233. At its meeting of February 1993, the Committee made the following recommendations [see 286th Report of the Committee, para. 359]:

> The Committee also deeply regrets that the Government has not provided information on the murder of trade union official Emilio Rueda Ortíz, as well as on the murder or disappearance several

years ago of the following trade union officials and trade unionists. Murdered: Heriberto López (14.2.90), Apolinar Fabra (8.7.90), Román Hernández (17.7.90) and Freddy Enrique Mejía (17.7.90). Missing: Luis Alberto Builes, Alvaro Usuga, Elvia Marina Díaz, Marcial Alonso González and Lucio Serrano Luna. The Committee urges the Government to inform it whether judicial inquiries have been opened with the intention of clarifying the facts and judging and sentencing the guilty parties in order to prevent a recurrence of such situations.

The Committee urges the Government to keep it informed of any appeal made to the judicial authorities by the unions of the Bank of Caldas regarding anti-trade union discrimination.

The Committee also requests to be kept informed of the results of any appeal for violation of collective agreements against the National Federation (of employers) of Coffee Growers.

New allegations

234. In its communication of 7 July 1993 the ICFTU reports that "hired assassins", including children and teenagers armed by drug traffickers and paid to kill, are seriously undermining the stability of democracy in Colombia. They have on numerous occasions attacked the Colombian trade union movement and are continuing to do so. Moreover, the existence of numerous paramilitary groups and/or "death squads" closely linked to the armed forces has seriously affected trade union leaders and workers both in the countryside and in the towns, and these groups are considered responsible for most of the "disappearances". The paramilitary groups (civilian self-defence patrols) were set up by the army to fight against insurgents. In 1989 the Government, acknowledging that these groups were illegal, revoked the order which made it possible for the armed forces to establish them. In practice there has been no change, and the threats and intimidation continue. In February 1989, after a series of murders and following intense and difficult negotiations, the trade union movement reached an agreement with the Government which called, inter alia, for the inclusion of a trade union representative in the Human Rights Commission of the Chief Prosecutor's Office. Despite these efforts, hardly any progress has been made in pacifying the country and protecting it from this bloody violence. In March 1993 the Workers Central Organization of Colombia (CUT) reported that 1,020 trade union leaders and activists had been murdered since the Organization was established in 1987.

235. Specifically, the ICFTU denounces the following acts of violence committed against trade union leaders and trade unionists:

In 1991

The Federation of Colombian Teachers (FECODE) reported that some of its trade union leaders and members were murdered: Marta Luz Loaiza Valencia, 28 January 1991; Jairo Sandoval Enciso, 6 February 1991; Marta Gavalo Rivas, also in February 1991; Víctor Velázquez Padilla, 20 February 1991; Alberto Gómez, 26 February 1991; Oscar Arias, 5 March 1991; Omar Ramírez and Edgar Osorio, 23 March 1991; José Ignacio Vargas, 27 March 1991; Albeiro Londoño, 2 April 1991; Santos Medivelso Coconubo, 5 April 1991; José Omar Patiño, 7 April 1991; Saúl Espinoza, 8 April 1991; Edgar Poe Foronda, 21 April 1991; Cicerón Ortiz Parada, 18 May 1991. Journalists murdered: Julio Daniel Chaparro and Jorge Torres, in the town of Segovia, 25 April; Libardo Méndez and Carlos Rodríguez, of Radio Caracol, 20 May. Farm workers: On 20 June 1991 Benedicto Cubides, a member of the regional section of the National Association of Farm Workers and Consumers, was arrested by soldiers belonging to the "Luciano D'Eluyer" and "Nueva Granada" army battalions; on 29 June 1991 Alonso Lara Martínez, the Secretary of the Sabana de Torres Communal Action association (in the Department of Santander) and his wife, Luz María Villabona, were killed by soldiers who reportedly belonged to Mobile Brigade No. 2 or to the Guanes Battalion; on 29 June Antonio Palacios Urrea was killed by members of the army in Los Comuneros, a suburb of Fusagasugá, in the Department of Cundinamarca. The following incidents were reported by the Trade Union of the Sugar Cane Industry (SINTRACAÑAZUCOL-CUT) and took place in the San Carlos sugar plantation, in the Department of Valle: on 25 April Aníbal Silvestre was murdered; on 29 April Alvaro Quintero was kidnapped, and his whereabouts are still unknown; on 3 May 1991, a former trade union leader, Guillermo Rojas, was murdered. The Trade Union of Workers in the Agricultural Industry (SINTRAINAGRO) reported that in April 1991 Mr. Jacobo Beltrán Novoa, the President of the trade union, received death threats at a SINTRAINAGRO branch established in Ciénega, Department of Magdalena; on 15 May 1991 Alfredo Parejo Gómez, a member of the Disputes Committee, was murdered while on his way to the Toledo farm; on 23 May 1991 Rodrigo Navarro Pinto and Roberto Valet Fuentes, employees of the "Las Brisas" oil company and members of the Puerto Vilches branch of SINTRAINAGRO, were reported missing; on 20 June 1991 Luis Eduardo Padilla, Teófilo Carrillo and David Osuna, members of the Claims Negotiations Committee at the San Pedro farm, were murdered in the Magdalena banana-producing region; on 21 June 1991 Eduardo and Martín Arias, agricultural workers in Puerto Vilches, Santander, were murdered;

In 1992

Barrancabermeja: on 24 January 1992 24 workers were massacred; on 7 July 1992 the trade unionists Jorge Múñoz Flores and Tarcisio Solórzano Tamayo were murdered; on 9 July 1992 seven farmworkers were killed in a bomb explosion; on 30 July 1992 René Tavera, a member of the National Farmworkers' Association (ANUC) and Parmenio Ruiz, the President of the Trade Union of Drivers of the San Silvestre Transport

Company, were murdered; on 23 January 1992 two workers disappeared in the FRONTINO gold-mines in Segovia; on 30 January 1992 Luis Eduardo Sierra, the trade union leader at the mines was arrested by soldiers; in February 1992 Jesús Aníbal Angel was murdered; on 27 January 1992 two members of the Trade Union of Workers of the National Agrarian Institute (SINTRAINAGRO), Antonio Espitia Safra, a member of the national executive, and Jairo Paroi Restrepo, a member, were murdered on the Turbo road in Apartadó, Urabá; on 27 January 1992 Félix Vega Paez and Alvaro Berrío Sotelo, two workers who had represented their trade union in negotiations, were murdered in Carepa, Urabá; on 14 February 1992 three farmworkers were murdered in the Pechilin and Naranjal districts; on 27 March 1992 Mr. Emetrio Rueda, the trade union leader of the FENSUAGRO, was murdered; on 25 April 1992 the farmworker-trade unionist Jaime Marrugo Labriego was murdered; Joaquín Chamorro, a worker, was kidnapped from his residence and killed; on 27 April 1992 four farmworkers were found dead in El Floral; Benancio and Reynaldo Narvaez were tortured and hanged at the Fusileros Army Battalion; Gabriel Tapia was also murdered; on 19 May 1992 Matías Funes, a trade union leader of farmworkers, was attacked at his residence; on 22 June 1992 Gabriel Florez Oviedo, the President of the National Farmworkers' Association (ANUC) of San Vicente de Chucuri, was arrested by people reportedly from the army; on 7 July 1992 Mr. José Ramirez, the trade union leader of the FENSUAGRO, was murdered; on 7 July 1992, Moisés Narvaez Gómez, a clerk of the ANUC, was killed in Sincelejo, Sucre; on 17 July 1992 Luís Ramos Toledo, a rural trade union leader, was killed by members of the Nueva Granada army battalion; on 19 July 1992 Pablo León was tortured and received death threats from members of the army's Mobile Brigade No. 2; on 23 July 1992 Darío Vázquez was murdered; on 18 September 1992 11 farmworkers were murdered in the banana-producing region of Urabá;

In 1992-93

On 28 January 1993 as the national congress of the CUT was being held, Jesús Alirio Guevara, a member of the national executive of the Workers Central Organization of Colombia (CUT) and the Vice-President of the National Trade Union of Workers in the Agricultural Industry (SINTRAINAGRO), was kidnapped in Villa Alicia, in the Apartadó municipal jurisdiction in Urabá, and was later killed; on 26 February 1993 Oliverio Molina, the General Secretary of SINTRAINAGRO, was murdered in Medellín; on 5 March 1993 Arturo Murillo, Orlando Ortega, Jonny N., Wilmar Pájaro, Ercilio Quinto and Ana Acosta were murdered; the same day Dagoberto Herrera and Jairo Bedoya were injured; on 30 January 1992 María Elena Ordóñez and Arturo Valencia, respectively the President and Secretary of Finance of the Trade Union of Electrical Workers of Cauca, were attacked by the police; on 29 February 1992 César Chaparro, a member of the SINTRENAL in La Dorada, Caldas, was arrested (and died on 4 March); on 2 March 1992 Luz Miryam Peñaloza, a member of the Teachers' Trade Union (SINDES) was murdered; on 4 March 1992 a bomb exploded in Yumbo, in the Department of Valle, in the office of Mr. Fidel Castro, the President of the Trade Union of

Municipal Workers, injuring trade union members Consuelo Castañeda and Luis Carlos Lozano; on 18 May 1992 the wife of one of the leaders of a CUT local (the Association of Bank and Trade Employees (ADEBIC), of Caldas), was kidnapped and threatened; on 4 June 1992 Samuel Fernando Rojas Motoa, one of the leaders of the CUT in the Cauca valley, was kidnapped and tortured; on 9 June 1992 Humberto Murillo was arrested by soldiers and later murdered; the teacher and trade unionist Jorge Ernesto Bernal Dueñas was constantly threatened by state security forces throughout the year; on 6 July 1992 Luis Eduardo Tejada, the General Secretary of the Trade Union of Workers of Caldas, and Jorge Eliécer Toro, a member of the same union, were murdered in Neira, Caldas; on 6 July 1992 Fabio Giraldo Gil, Vice-President of the Trade Union of Construction Workers (SUTIMAC), was murdered in Nare; Mr. Alvaro Roa, a leader of SUTIMAC, was wounded in an attack in Medellín; on 17 July 1992 Emilio Vásquez Vallecillas, the second Vice-President of the Confederation of Workers of Colombia (CTC) and President of the Trade Union of Workers of the Pichichí Sugar Plantation, was murdered; on 2 October 1992 Audelo Chaparro, Reynaldo Rivera Chaparro and Ismael Amaya were murdered; on 22 November 1992 Amparo Torres, the President of the Trade Union of Employees of the University of the Cauca Valley, was attacked; on 22 November 1992 heavily armed men illegally detained Nubia Jiménez and Elisa Impus, officials of the Workers Central Organization of Colombia (CUT,) as they were travelling to the trade union's premises in Neiva, in the Department of Huila; on 30 May 1993 the following trade unionists were detained in the Quilcacé jurisdiction, on the Vereda Diez de Abril: Gerardo Ordóñez, Treasurer of the Trade Union of Agricultural Workers of Cauca; Luciano Caicedo, Angel Rubén García, Rubén Hernán Muñoz, Adelmo Serna, Jesús María Campo and Manuel Santos Astaiza, all members of the trade union; on 11 June 1993 200 workers from the banana-producing region of Magdalena were arrested; as regards the Colombian Petroleum Enterprise (ECOPETROL) the following incidents took place: on 18 May 1992 Luis Fernando León and Luis Enrique Lázaro Uribe, both members of the enterprise's trade union, were murdered; in January 1993 Mr. Luis Lombana, an ECOPETROL worker and trade union activist in the Workers' Trade Union (USO), a member association of the CUT, was murdered; on 8 January 1993 Mr. Nicomedes Gutiérrez, a member of the USO, was murdered in Barrancabermeja; on 17 February 1993 workers were attacked during a national strike organized by the CUT, and 70 workers were detained (they were later released) in Bogotá, Manizales, Barranquilla, etc., and the Vice-President of the Cartago Public Workers' Trade Union Mrs. María Palacio, was murdered; the same day Mr. Germán Cohen, a town councillor, was murdered in Urabá.

236. In addition, the ICFTU reports numerous violations of the trade union rights of the workers of various enterprises. Specifically, the ICFTU mentions the following cases:

- the Holguín Group's steel mill, located in the Indias-Carretera Bolívar industrial zone of Cartagena: in June the factory was paralysed by labour disputes which prompted the workers to form a

trade union. As a result nine workers were dismissed, including five members of the recently established trade union;

- the Colombian Petroleum Enterprise (ECOPETROL): in 1992, 56 workers were given leave for security reasons, of these only 18 were permitted to return to their jobs; 16 had "temporary work assignments" and two outside the country;

- Colgate Palmolive: on 15 January 1991 Héctor Fabio Mendoza Machado, the titular member of the Statutory Claims Commission of the company's trade union, was dismissed even though he held office in the trade union. The labour chamber of the Cali Superior Court ordered his reinstatement in July 1992. The day after his reinstatement was ordered by the competent authorities, he was again dismissed;

- at the Croydon footwear enterprise, trade union leaders were threatened and beaten for carrying out work stoppages;

- on 23 October 1992 the Trade Union of Workers of the Family Compensation Fund of Cauca reported that trade unionists had been subjected to harassment, including dismissals and the irregular termination of employment contracts;

- in February 1993 leaders of the Trade Union of Workers of the Maizena Company in Cali reported that for over one year the "Maizena SA" Corn Industries Company had constantly harassed trade union leaders and workers, in violation of trade union immunity and of the collective agreement;

- in the private sector there is a policy whereby "counter claims" are presented and workers, especially those with the most seniority, are pressured to relinquish their rights under the previous scheme, and to accept the provisions of Act No. 50, in effect exchanging their job security for fixed-term contracts (generally for a period of three years), and other flexibility measures. Through the Decree providing for the enforcement of Act No. 60 of 1991, the Government established compensation plans which pay out bonuses to workers who "voluntarily" retire and which pay compensation to dismissed workers;

- in September 1991 the Trade Union of Electrical Workers presented a single national list of claims. The Government refused to engage in negotiations with it as a trade union representing the industry. The Government's refusal affected more than 12,000 electrical workers, and when the workers carried out peaceful protests, penalties were imposed on trade union leaders and workers in various locations;

- article 50 of the National Constitution recognizes the right to strike, except in essential public services. Since the necessary regulations have not been adopted to give effect to the Constitution, the Government has assumed the right to decide

which services are "essential". Trade union leaders, activists and workers have been dismissed on the basis of the "illegality" of work stoppages; this has affected the following numbers of workers: Colombian Port Authority, 8,000; Bogotá Electrical Energy Enterprise, 20; Atlantic Electric Company, 18; Atlantic Coast Electric Corporation, 15; Guavio Hydroelectric Company, 200; Banco Popular, 31; Banco Cafetalero, 27; AVIANCA, 48.

237. In its communication of 2 August 1993 the ICFTU denounces the following acts of violence committed against trade union leaders and trade unionists. Murders: Gustavo and Iván Bedoya of COLCARBURO in April 1993; Jelo Parra, a worker at the Nare Cements enterprise on 20 May 1993; Orlando Gaviria on 20 May 1993; Mr. Luis Carlos Pérez, the President of the Federation of Transport Workers (FEDETRANS), in the Fontibón district in Bogotá on 25 June 1993; Hernando Valencia Laso, a member of the national executive of the Union of State Workers of Colombia (UTRADEC), on 30 June 1993. Kidnapping attempts and detention: on 29 March 1993 two unidentified persons attempted to kidnap Mrs. Teresa Montes Ovalle; on 30 April 1993 three unknown people attempted to kidnap the son of Mrs. Teresa Montes, Javier Enrique Burgos; in April 1993 Mrs. Teresa Montes was illegally interrogated by two men who said they belonged to the Technical Corp of the Special Prosecution's Office; on 29 June 1993 in the town of Duitama, soldiers of the Silva Plazas Battalion stopped Mr. José Joaquín Montes Ovalle's vehicle, in which he was travelling with the daughters of Yolanda and Teresa Montes; they were detained for four hours.

238. In its communication of 28 October 1993 the ICFTU reports that Mr. Jairo Alivio Serrano Rincón (of the national and local directorate of the National Trade Union of Workers of Bavaria) was murdered in September 1993. Finally, the ICFTU reiterates several allegations which were already presented in the framework of Cases Nos. 1620 and 1625, and already examined by the Committee.

## B. The Government's reply

239. In its communication of 16 September 1993 the Government states that the right of freedom of association is established in section 38 of Act No. 50 of 1990: "Workers and employers have the right, without prior authorization, to form organizations as they see fit, and to join such organizations, on condition only that they observe their by-laws". Article 39.2 of the National Constitution establishes that: "the internal structure and functioning of trade unions and social and occupational organizations shall be subject to the law and shall respect the principles of democracy". Section 45 of Act No. 50 outlines the requirements which must be fulfilled by each trade union in respect of the law, and section 44 stipulates that: "any trade union is a legal entity by virtue of its very establishment, as from the date of its constitutent assembly".

240. As regards infringements of the right of freedom of association, they are defined as criminal acts and punished in accordance with the detailed provisions of section 39 of Act No. 50 of 1990. They may also give rise to administrative sanctions. The right to freedom of association is now enshrined in the Constitution; through Act No. 50 of 1990, the State has established more effective machinery to ensure the prompt settlement of disputes. Furthermore, the Ministry ensures the right to collective bargaining, facilitating the quick settlement of disputes by intervening when requested to do so by the parties, by convening arbitration courts when called for by law, or by imposing the appropriate penalties on enterprises refusing to enter into a dialogue when claims and demands are filed in due form. In 1993 (through June) 65 new trade union organizations came into existence and 224 collective agreements were signed. (Source: Planning Directorate of the Ministry of Labour.)

241. As regards the possible revision of the Anti-terrorism Act, the Government points out that such action is reserved for the competent government authorities, and namely the Congress of the Republic.

242. As regards the numerous allegations of acts of violence committed against trade unionists, the Government points out that the cases regarding the following people are currently at various stages of investigation: Hernando Valencia Laso, the Montes Ovalle families, Luis Carlos Pérez, Martha Luz Loaiza Valencia, Jairo Sandoval Enciso, Marta Gavalo Rivas, Víctor Vásquez Padilla, Alberto Gómez, Oscar Arias, Omar Ramírez, José Ignacio Vargas, Albeiro Londoño, José Omar Patiño Rincón, José Santo Mendivelso Coconubo, Edgar Poe Foronda, Cicerón Ortiz Parada, Alejandro Salazar Paz and others (those murdered at Los Uvos), Julio Daniel Chaparro and Jorge Enrique Torres Navas, Alonso Lara Martínez and Marina Villaborna Forero, Bendicto Cubides Forero and María Sánchez, Aníbal Silvestre and Javier Rengifo, Alvaro Quintero, Guillermo Rojas, Jacobo Beltrán Novoa, Alfredo Parejo Gómez, Rodrigo Navarro Pinto and Robert Valet Fuentes, Martín Arias and Eduardo Arias, Luis Eduardo Tejada and others, Antonio Palacios Urrea and others (those murdered at Fusagasugá), Ligia Patricia Cortés Colmenares and others, Félix Juvenal Vega Rodelo, Jaime Arturo Marrugo Jaraba, Benancio and Reynaldo José Narváez Figueroa, Gabriel Ovidio and others, José Ramírez Vergara, Moisés Narváez Gómez, Luis Ramos Toledo, Pablo León, Darío Vásquez and Fernando Sarmiento, Jesús Alirio Guevara Angarita, Aroldo Gallego and others, Oliverio Molina (José Oliveros Molina, according to the Special Prosecutor), María Elena Ordoñez and Arturo Valencia Castillo, Vladimir Hincapié Galeano and César Chaparro Navia, Samuel Fernando Roja Mota, Raquel Judith and Jorge Ernesto Bernal Dueñas, Humberto Murillo and others, and Emilio Valencia Vallecilla. As regards the allegation of a massacre of 24 workers on 24 January 1992 in Barrancabermeja, the Government is certain that this incident did not take place.

243. On the other hand, the Government also reports that the following cases are not included in the Ministry of Labour's registry: Luis Eduardo Padilla, Teófilo Carrillo, David Osuna; 9 July 1992 seven

farmworkers murdered by a bomb blast; 23 January 1992 two workers of the Frontino mines; February 1992 Jesús Aníbal Angel; 14 February 1992 the death of three farmworkers in Pechilín and Naranjal; Emeterio Rueda, the leader of FENSUAGRO; 27 April 1992 the death of four farmworkers in El Floral; trade unionist Gabriel Tapia; 19 May 1992 the attack on the leader of the farmworkers' union, Matías Funes; 5 March 1993 deaths in the Manzana and Flora banana farms; 2 March 1992 Luz Miriam Peñaloza, Soacha; Consuelo Castañeda, Luis Carlos Lozano, Yumbo; Alvaro Roa, Medellín, and Nubia Jiménez and Elisa Impus, Nevia.

244. In its communication of 12 October 1993 the Government reports that it is investigating the case of Mr. Valencia Lasso Hernando, that the Montes Ovalle family's complaints are being investigated by the Special Prosecutor, and that no evidence of harassment has been found.

245. In its communications of 19 April and 22 October 1993 the Government reports that the courts have ordered investigations into the murders of Emilio Rueda Ortiz, Heriberto López, Apolinar Fabra, Román Hernández and Freddy Enrique Mejía, and into the disappearances of Luis Alberto Builes, Alvaro Usuga, Marcial Alonso González and Lucio Serrano Luna.

246. In its communication of November 1993 the Government states that, as regards the problem of violence in Colombia and measures being taken to combat it, a plethora of forces contribute to the generalized context of violence in the country. They include widespread social violence, political violence and violence linked to drug trafficking. Among these, according to studies conducted by the CINEP, only 10 per cent is attributable to political violence. It should be emphasized that the Colombian State is not opposed to trade unionism; on the contrary, the Government has every interest in defending the rights of workers. The problem in the country with respect to this defence is one involving the deinstitutionalization of the handling of disputes between the social partners. On the one hand, some employers, allied with officials of the Administrative Department of Security or officials of other state security organizations, are harassing trade union leaders; they are not, however, doing so with impunity. On the other hand, trade unionists are forging alliances with guerrilla and other forces to harass employers or their agents. The State, which is concerned about this generalized violence and deinstitutionalization, is trying to create an awareness that forces having nothing to do with social and labour questions should not interfere in relations between employers and workers.

247. The Government points out that the first phase of the National Strategy against violence, to which it referred in previous communications, resulted in the following successes: greater leadership of the civilian authorities in ensuring security; a stronger system of justice, a better-equipped law enforcement service and a more effective intelligence service; the State has retaken the initiative against those responsible for violent acts; there are

fewer kidnappings in Colombia; there is an open door to dialogue for those who genuinely want peace; and the defence and promotion of human rights are priorities for the Government.

248. The Government is making progress in the second stage of the National Strategy against violence, which aims at a policy to ensure that the citizens are safe and that there is peaceful coexistence. This policy is based on a two-pronged approach: the consolidation of efforts to strengthen the systems of justice and law enforcement, and the strengthening of prevention and security, under the leadership of the national Government, the governors and mayors. Toward that end, the following activities will be conducted with a view to overcoming the insecurity in Colombian society: maintaining efforts to strengthen the systems of justice and law enforcement, as well as continuing to modernize the intelligence services, offering them the latest technologies, placing the highest priority on reforming the national police and modernizing the country's penitentiary system; strengthening prevention through comprehensive programmes for those at high-risk; continuing to consolidate the planning of security, justice and defence-related affairs in the country, to draw up policies and find resources within the framework of the National Development Plan; the Government will continue to call upon the community to cooperate with the authorities, conveying the message that the only way to attain greater security is through civil solidarity, with the State and society playing complementary roles.

249. The defence and promotion of human rights have been and remain a priority for the Government. The Government will continue its work of teaching and disseminating the fundamental rules of human rights and will strengthen its monitoring machinery both within and outside public institutions to prevent, investigate and punish any violations. Finally, the Government reports that as regards the death and disappearance of trade unionists in respect of whom it has not provided information, it has communicated their names to the Special Prosecutor and to the Chief Prosecutor with a view to obtaining information on the status of criminal and administrative proceedings under way.

250. As regards the allegations concerning violations of trade union rights at various enterprises, the Government reports the following:

- BANK OF CALDAS - NATIONAL FEDERATION OF COFFEE GROWERS: the trade union filed suit in Bogotá against the Bank of Caldas for infringement of the right of association. In addition, suits brought before the regular labour court by the workers covered by trade union immunity have to date resulted in various rulings in their favour. Consequently, the enterprise has had to pay the corresponding compensation along with other legal and contractual benefits. There are currently three claims of trade union immunity in the city of Manizales, and another in Armenia, related to this subject. The Ministry of Labour held to the legal position that the request to convene a binding arbitration

court should not be granted, as the workers did not observe the requirements laid down in section 61 of Act No. 50 of 1990;

- HOLGUIN STEEL GROUP: numerous workers were dismissed as a consequence of the economic crisis affecting the enterprise. The Ministry of Labour fined the enterprise for not having requested the appropriate authorization. The workers later held a work stoppage, which was declared illegal by the Ministry. The enterprise subsequently reached some agreements with its workers. In the end, the enterprise closed. There is no information as regards ongoing legal proceedings;

- COLOMBIAN PETROLEUM ENTERPRISE (ECOPETROL): this is perhaps the enterprise which offers the greatest job security in the country, covering fully 97 per cent of its staff. The remaining 3 per cent is composed of workers who retire every year and also those who pass away prior to retirement. There have been no collective dismissals of workers at the enterprise;

- COLGATE PALMOLIVE: in this case the State cannot be held to be at fault, as the legal proceedings concluded that the dismissed worker should be reinstated. The Ministry, for its part, had no legal competence to order such reinstatement. The worker is thus fully entitled to appeal to a regular labour court in the event of a new dismissal. The Ministry shall endeavour to reconcile the differences between the worker and the enterprise and secure his reinstatement as quickly as possible;

- CROYDON ENTERPRISE: to date, the Ministry has no knowledge of problems or threats made against unionized workers, nor does it have any knowledge of any allegations made in this respect;

- CONFACAUCA ENTERPRISE: the Inspection and Monitoring Division of the Regional Labour Directorate of Cauca issued resolution No. 007 on 3 April 1993, imposing a penalty on Confacauca of the equivalent of seven monthly minimum wages for having violated section 405 of the CST (Labour Code) by transferring a worker protected by trade union immunity. As regards the dismissal of four workers, it was established that each had been subject to disciplinary action culminating in the termination of their contracts, and that no anti-union activities were involved;

- MAIZENA ENTERPRISE S.A.: a collective agreement was reached with the participation of the Ministry of Labour, bringing to an end the labour dispute caused by the workers' presentation of a list of claims. There were no actions which could be considered anti-union activities, nor were there any violations of the right to collective bargaining and association. The Government has no knowledge of claims currently pending. As regards the allegation concerning the presentation of counter-claims, the Government points out that no such legal term exists in Colombian law and that the Constitution establishes that all obligations in the country are subject to subsequent modification. The Labour Code

thus provides for the possibility of employers' presenting proposals for modifications to clauses in collective agreements whenever they believe their renegotiation likely to be necessary within the framework of collective bargaining; in this way the law ensures equality with regard to the claims which may be raised by the parties at any given time. As regards the Decree providing for the enforcement of Act No. 60 of 1991, under the state modernization and restructuring programme and in light of the economic situation, the Government did indeed establish plans for compensated retirement and bonuses for those workers who retire voluntarily, as well as compensation for those who are dismissed as part of this policy;

- TRADE UNION OF ELECTRICAL WORKERS: the single list of claims presented by the trade union of electrical workers was settled when the collective agreement was signed, bringing the dispute to an end. This marked the first time a single list of claims presented by the workers of various electrical enterprises was settled at branch level, thus not only saving time for the parties concerned, but also resources. This has served as an example for other negotiations. There were no attempts to undermine the right of association; collective bargaining took place successfully and neither the trade union leaders nor the workers were penalized as a consequence of the protest mentioned by the complainants. Furthermore, the Government has no knowledge of any claims brought before the regular labour court.

251. As regards the right to strike, this right is enshrined in the National Constitution. The right to strike is nevertheless subject to regulations set by the Congress, which is empowered to determine and define which activities are essential public services. Where the Ministry declared strikes illegal, it acted in accordance with the legislation in force when the events took place. Indeed, it cannot do otherwise as regards public services until the Congress adopts the corresponding regulatory Act. As regards the specific allegations of dismissals at the following enterprises: COLOMBIAN PORTS, BOGOTA ELECTRICAL ENERGY ENTERPRISE, ATLANTIC ELECTRIC ENTERPRISE, ATLANTIC COAST ELECTRIC CORPORATION, GUAVIO HYDROELECTRIC ENTERPRISE, BANCO POPULAR, BANCO CAFETERO and AVIANCA, no dismissals took place as a result of strikes at these enterprises, but all these enterprises have been restructured as a consequence of the policy of economic openness and the modernization of the State.

## C. The Committee's conclusions

252. The Committee notes that the allegations in this case refer to the murders of and numerous acts of violence against trade union leaders and trade unionists, to acts of anti-trade union discrimination and violations of trade union rights at various enterprises.

253. As regards the acts of violence, the Committee notes from the Government's replies: that there is a generalized climate of violence in the country, fueled by a variety of forces (drug traffickers, guerrilla groups, paramilitary groups, criminals, death squads, etc.); that the State is not opposed to trade unions, but on the contrary is very interested in defending the rights of workers; that the Government's efforts have been hampered in defending these rights by the fact that some employers have become associated with certain officials of the Administrative Department of Security or officials of other state security organizations which harass trade union leaders, while on the other hand, some trade unionists have become associated with guerrilla and other forces in order to harass employers or their agents; that the State is trying to create an awareness that forces have nothing to do with social and labour questions should not interfere in relations between employers and workers; that during the first phase of the National Strategy against violence some progress was made (greater leadership of the civil authorities in ensuring security, a stronger and better-equipped justice system, fewer kidnappings, etc.); that the second stage of the Strategy against violence is based on a two-prong approach including the strengthening of the justice system and forces of public order, as well as the strengthening of preventive measures and security planning under the leadership of the national Government, the governors and mayors. Finally, the Committee notes that the Government states that the defence and promotion of human rights have always been and remain a priority for the Government, that the teaching and dissemination of the fundamental rules of human rights will continue, and that monitoring of human rights will be strengthened to prevent, investigate and punish all violations.

254. The Committee first of all notes the difficult situation in the country, and in particular the upsurge of violence; it emphasizes the extreme gravity of the new allegations, which refer to the death and disappearance of numerous trade union leaders and trade unionists, which it deeply deplores. The Committee also must recall that a climate of violence such as that surrounding the murder or disappearance of trade union leaders constitutes a serious obstacle to the exercise of trade union rights and that such acts require severe measures to be taken by the authorities.

255. More specifically, as regards the allegations of murders, disappearances, attacks and death threats against trade union leaders and trade unionists, the Committee deeply deplores these killings and violations of the basic human rights of a large number of trade union leaders and trade unionists. The Committee notes the observations of the Government according to which more than 61 of the cases reported are in various stages of investigation, and that information on the status of legal and/or administrative proceedings currently under way has been requested from the competent authorities for the other cases. Similarly, as regards the allegation of the massacre of 24 workers in Barrancabermeja, the Committee notes that the Government denies that this incident took place. In these circumstances the Committee requests the Government to keep it informed of developments

in the legal proceedings under way. The Committee recalls that the absence of judgements against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, which is extremely damaging to the exercise of trade union rights.

256. As regards the allegations pending concerning the murders of the following trade union leaders: Heriberto López, Apolinar Fabra, Román Hernández and Freddy Enrique Mejía, and the disappearances of Luis Alberto Builes, Alvaro Usuga, Elvia Marina Díaz, Marcial Alonso González and Lucio Serrano Luna, the Committee notes that the Government reports that these incidents are currently the subject of criminal inquiries. The Committee requests the Government to keep it informed of developments in these proceedings.

257. As regards the allegations concerning detention and arrests, the Committee regrets that the Government did not send observations on the same. The Committee notes that, according to the complainants, the 70 workers detained in relation with the national strike of 17 February 1993 were released. As regards the other alleged cases of detention (22 November 1992, 30 May and 11 June 1993) the Committee is unable to determine whether those concerned have been released. The Committee therefore requests the Government to keep it informed of any such release and of any indictments which may have taken place, indicating the charges. The Committee draws the attention of the Government to the fact that the arrest - even if only briefly - of trade union leaders and trade unionists for exercising legitimate trade union activities constitutes a violation of the principles of freedom of association [see Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 88].

258. As regards the allegations of anti-trade union discrimination at the Bank of Caldas and the National (employers') Federation of Coffee Growers, the Committee notes that the Government states that the SINDEBANCALDAS trade union filed suit against the Bank of Caldas for infringement of the right of association, that the workers protected by trade union immunity have filed appeals with the labour court and that appeals have been filed in the cities of Manizales and Armenia. In these circumstances the Committee requests the Government to keep it informed of the outcome of these appeals filed and emphasizes the principle according to which no one should be subject to anti-trade union discrimination for carrying out legitimate trade union activities.

259. As regards the allegations of violations of the rights of workers at various enterprises, the Committee notes that the Government reports that in the case of the Holguín Steel Group numerous workers were dismissed from the enterprise for economic reasons, that the Ministry of Labour penalized the enterprise for not having requested the appropriate authorization and that the workers came to an agreement with the enterprise, which subsequently closed. Similarly, the Committee notes that the Government denies that any dismissals took place at the ECOPETROL enterprise, and claims that in

the case of the Maizena S.A. enterprise, there were no anti-trade union activities and that the workers signed a collective agreement. Furthermore, the Committee notes that in the case of the allegation concerning the Trade Union of Electrical Workers, the Government points out that a collective agreement was signed bringing the dispute to an end, and denies that workers were penalized as a consequence of the protest mentioned by the complainants.

260. As regards the alleged dismissal of the trade union leader Mr. Héctor Fabio Mendoza Machado from the Colgate Palmolive enterprise even though his reinstatement had been ordered by a court of law, the Committee notes that the Government confirms that this second dismissal took place, and that while the worker may once again file suit, the Ministry will endeavour to reconcile the parties with a view to obtaining his reinstatement. The Committee trusts that the Government's handling of this case will ensure the permanent reinstatement of the dismissed trade unionist and requests the Government to keep it informed in this respect.

261. As regards the allegation concerning threats and beatings to which various trade union leaders were subjected at the Croydon enterprise, the Committee notes that the Government reports that it has no knowledge of problems or threats against the unionized workers of the enterprise, as no complaints have been filed. The Committee would like to point out that although those concerned have not filed suit at the national level, a complaint has been presented to the Committee. The Committee thus requests the Government to carry out an inquiry, and should the allegations prove to be founded, to take the measures necessary to sentence the guilty parties in order to prevent a recurrence of such situations.

262. As regards the allegations concerning the dismissal of trade unionists of the Cauca Family Compensation Fund and proceedings initiated against them, the Committee notes that the Government states that the enterprise was penalized for having transferred a worker protected by trade union immunity and that four workers were dismissed after the appropriate disciplinary procedures were fulfilled. The Committee observes that although the complainants do not provide specific information concerning this allegation (the number of trade unionists concerned, names, dates of dismissal, the beginning of legal action, etc.), the Government provides no information concerning the specific incidents leading to the disciplinary procedures. In these circumstances the Committee requests the Government to carry out an inquiry in this respect and, should it be confirmed that the workers were dismissed for exercising their trade union activities, to take measures to ensure that they are reinstated in their posts.

263. As regards the allegation to the effect that there is a policy in the private sector of presenting counter-claims and pressuring workers to give up their previous conditions of employment to become subject to the provisions of Act No. 50 (replacing their job security with fixed-term contracts) and that the Government, through a Decree providing for the enforcement of Act No. 60, established

compensated retirement plans consisting of bonuses for those voluntarily retiring and compensation for dismissed workers, the Committee notes that the Government states that the Labour Code provides for the possibility that employers may propose modifications to clauses in collective agreements when they consider that they may be renegotiated. The Committee observes that these allegations are formulated in extremely general terms, without specific data. None the less, the Committee observes that as regards the problems of the application of Act No. 50 and the Decree providing for the enforcement of Act No. 60, which were promulgated as part of the state modernization programme, it has already had occasion to express its opinion, and takes this opportunity to reiterate its conclusions [see 286th Report, Case No. 1625 (Colombia), paras. 395-397]:

> The Committee takes note of the Government's statements on short-term contracts of employment and their alleged generalization as a result of Act No. 50 and on the thousands of jobs allegedly lost as a consequence of Act No. 60 and the Decrees providing for its enforcement ... which have given and will continue to give rise to rationalization programmes in the public sector. The Committee notes in particular that, according to the Government, Act No. 50 seeks to revive the economy, investment and employment creation ... The Committee is aware that contraction of the public sector and/or a greater employment flexibility, do not in themselves constitute violations of the freedom to association. However, there is no doubt that these changes have significant consequences in the social and trade union spheres, particularly in view of the increased job insecurity to which they can give rise. The Committee is therefore of the view that employers' and workers' organizations should be consulted as to the scope and form of the measures adopted by the authorities ...
>
> The Committee therefore invites the Government to take the necessary steps to ensure that, within the framework of the standing tripartite commission foreseen by the new National Constitution (article 56), discussions be initiated with the social partners aimed in particular at ensuring that the Government's restructuring policies do not have detrimental consequences for the exercise of trade union rights.

264. As regards the allegation according to which the Government is assuming the right to determine which are the essential services in which strikes are forbidden and has proceeded to declare some strikes illegal, causing a large number of dismissals in public sector enterprises, the Committee notes that the Government denies that dismissals took place as a consequence of strikes in the public sector enterprises mentioned by the complainants, and points out that these enterprises were simply restructured as part of the state modernization programme. Moreover, the Committee observes that this allegation has already been examined in detail in the framework of Case No. 1625 and consequently refers to its previous conclusions on this matter.

## The Committee's recommendations

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

(a) The Committee notes the difficult situation in the country and the upsurge of violence and emphasizes the extreme gravity of the allegations which refer to the death and disappearance of trade union leaders and trade unionists. Recalling that the absence of judgements against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, which is extremely damaging for the exercise of trade union rights, the Committee requests the Government to keep it informed of the developments in all legal proceedings under way concerning the murders, disappearances and attacks involving trade union leaders and trade unionists.

(b) As regards the detention of trade unionists on 22 November 1992, and 30 May and 11 June 1993, the Committee requests the Government to keep it informed of any release or of any indictments which may have been handed down, indicating the charges. The Committee draws the attention of the Government to the fact 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.

(c) The Committee requests the Government to keep it informed of the developments in cases filed by members of the SINDEBANCALDAS trade union against the Bank of Caldas in both criminal and labour courts. The Committee emphasizes the principle according to which no one should be subject to anti-trade union discrimination for carrying out legitimate trade union activities.

(d) The Committee trusts that the Government will succeed in obtaining the reinstatement of the trade unionist Mr. Héctor Fabio Mendoza Machado in the Colgate Palmolive enterprise and requests the Government to keep it informed in this respect.

(e) The Committee requests the Government to conduct an inquiry at the Croydon enterprise and, should it be confirmed that some trade union leaders were threatened and beaten, to take the measures necessary to sentence the guilty parties in order to prevent a recurrence of such situations.

(f) The Committee requests the Government to conduct an inquiry at the Cauca Family Compensation Fund and, should it be confirmed that workers were dismissed for exercising trade union activities, to take measures to ensure that they are reinstated.

## Cases Nos. 1620 and 1702

## COMPLAINTS AGAINST THE GOVERNMENT OF COLOMBIA PRESENTED BY
## - THE GENERAL CONFEDERATION OF LABOUR (CGT)
## - THE LATIN AMERICAN CENTRAL OF WORKERS (CLAT) AND
## - THE WORLD CONFEDERATION OF LABOUR (WCL)

266. The Committee examined these cases at its meetings of February and May 1993 when it presented an interim report to the Governing Body [see 286th and 287th Reports of the Committee, paras. 360-384 and 490-505, approved by the Governing Body at its 255th and 256th Sessions (March and May 1993)]. The Government sent new information in a communication of November 1993.

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

### A. Previous examination of the cases

#### Case No. 1620

268. In its communication of 30 January 1992, the CLAT had denounced the infringement of the rights of workers and their organizations in different enterprises. According to the CLAT, workers of the SINTRACEITALES trade union in the Empresa Aceitalera S.A. enterprise, in defence of their right to collective bargaining, did not accept the new labour system established by Act No. 50 of 1990 under which, with the authorization of the superintendency of companies and the Ministry of Labour, the enterprise created six subsidiary enterprises and announced its own liquidation so as to leave more than 800 workers of the said trade union without jobs. In the same way, in the Agrarian, Industrial and Mining Credit Fund, in the National Railways, in the Bank of the Republic, in TELECOM (the allegation concerning this enterprise is examined in Case No. 1686), in the Telephone Company of Bogotá, in the Territorial Credit Institute and COLPUERTOS, which are state-dependent enterprises, policies of "adjustment and privatization" were carried out, with trade union activity being subject to a "scorched earth" policy. More specifically, in the Colombian Ports enterprise (COLPUERTOS), under the provisions of Decree No. 035, the Government rejected the provisions of the recently concluded collective agreement, thereby violating Colombian legislation which guarantees the right to collective bargaining. This situation affects more than 2,000 workers who are on the point of retirement and who, as a result of the Government Decree mentioned above, will only be entitled to

termination allowances. Furthermore, the CLAT points out that in the San Juan de Dios Hospital in Santa Marta, more than 500 workers have gone on strike following an attempt by the Government to dismiss workers with more than ten years' service without providing the compensation required by the provisions of the respective collective agreement. Finally, the CLAT alleges that the National Community Roads Fund will cease activities in 1993 and dismiss more than 1,500 workers who will join the ranks of the 150,000 workers whom the Colombian State is threatening to dismiss to "remedy the fiscal deficit".

269. In the absence of any observations from the Government on these allegations, at its meeting of February 1993 the Committee made the following recommendation [see 286th Report of the Committee, para. 384]: "The Committee requests the Government to furnish its observations on the allegations concerning violations of trade union rights in enterprises named by the CLAT".

Case No. 1702

270. In its communications of 19 March and 21 April 1993, the WCL stated that the reorganization of the administration of the department of Córdoba resulted in the dismissal of seven trade union leaders and 200 members of the National Union of State Employees (UTRADEC), who were not compensated. At its meeting of May 1993, in the absence of any observations from the Government on these allegations, the Committee noted that these allegations were forwarded to the Government recently and requested it to respond as soon as possible [see 287th Report, para. 505].

## B. The Government's replies

271. In its communication of November 1993, the Government states that when the National Government adopted the new economic plan based on the internationalization of the economy, and in compliance with the constitutional mandate of modernizing the State in line with just social, political, territorial and economic needs (article 20 transitional of the National Political Constitution), it was anticipated that the labour market would experience some economic maladjustment which would affect the employment of some long-standing workers and require the introduction of vocational training, retraining and advanced training programmes in line with the new methods, processes and technological developments required for private and some state enterprises. In an act of social responsibility, the Government had studies carried out on establishing which sectors of the economy would be more affected by the opening up of the economy and what would be its effect on employment, with a view to establishing programmes to deal with cases of termination of employment and facilitate the re-recruitment of workers concerned, in

accordance with economic circumstances and the occupational profile of the workers.

272. In response to this official concern, an integrated labour adaptation system (SAL) was drawn up and implemented which covered all private enterprises in the country which had to dismiss workers because of the temporary or definitive closing down of operations or administrative adjustments designed to increase the level of competitiveness in the external economy and the Labour Adaptation Service for the Public Sector (SAL-SP) for all public servants whose jobs would be eliminated as a result of the state modernization policies. The programme is designed to avoid the loss of jobs and to increase the employment alternatives of the workers laid off through vocational training or retraining, labour mediation or self-employment (employees, associate staff, micro or medium-sized enterprises, etc.). The Government had to apply article 20 of the new National Political Constitution, which was issued by an Act of the Constituent Assembly in 1991, which states: "... The National Government, within a period of 18 months after the entry into force of this Constitution and with account being taken of the evaluation and recommendations of a commission made up of three experts in public administration or administrative law appointed by the Council of State; three members appointed by the National Government and one in representation of the Colombian Federation of Municipalities, shall suppress, merge or restructure bodies within the executive branch, public establishments, industrial and commercial enterprises and national mixed-economy companies with a view to bringing them into line with the provisions of the present constitutional reform and in particular with the redistribution of functions and resources which it establishes." On the basis of these provisions, 62 bodies and 65,000 workers will be affected in three years, although the Government established several alternatives to assist the workers concerned: the payment of life annuities; compensation in accordance with Act No. 50 of 1990 or collective agreement, and special employment programmes through the adoption and application of Decree No. 2151 of 1992 which obliges all bodies affected to apply the labour adaptation system (SAL) in the public sector. This shows that faced with possible dismissals the Government has proposed solutions whose success will strengthen the organization of workers, either in grass-roots trade unions, industry, economic activities or sectors, pressure groups, etc.

273. As regards the specific allegations made by the complainants in Case No. 1620, the Government states the following:

- ACEITALERA S.A. ENTERPRISE. Because of the economic crisis which it was facing, the Aceitalera S.A. enterprise went into liquidation with the knowledge of the Superintendency of Companies and the Liquidation Board, and since no solution was found to the problem, the liquidators approved the liquidation of the enterprise, which was carried out in accordance with the legal regulations. The enterprise made a request to the Ministry of Labour to authorize its closure and the respective economic study was carried out to determine the feasibility of the

closure. Subsequently, workers and the enterprise, through conciliation, reached an agreement on existing differences. At no moment was there any action which might be considered as anti-trade union conduct.

- AGRARIAN CREDIT FUND. The administration, in accordance with the government policy for the modernization of the State (section 20 transitional of the National Constitution and executive decrees) and the restructuring of some establishments and institutions, drew up a plan for the voluntary departure of all its workers, who were given the possibility of receiving compensation which exceptionally was higher than that stipulated by the Labour Code for such cases. According to the Government, at no time was this process motivated by discriminatory anti-trade union policy.

- NATIONAL RAILWAYS. The process for the liquidation of this enterprise was due to the economic crisis which it had faced for many years prior to the modernization and restructuring process of state enterprises. Within the liquidation process, the enterprise established a plan for pensions, compensations and the full recognition of the social benefits of its workers. At no time was the liquidation process a result of anti-trade union policies by the enterprise or the Government.

- BANK OF THE REPUBLIC. This institution introduced a partial programme within the state modernization and restructuring plans. It was partial in the sense that the institution merely made reforms in certain areas and departments. There was close collaboration with the trade union organization of the body and the trade union organization itself allowed all its members full freedom in accepting or not the plans presented by the Bank for its modernization. These plans included a programme for the retirement of employees with more than 20 years' service in the institution even if workers were not of retirement age to receive a pension. At no time were collective dismissals made nor was there any anti-trade union action. To date, no judicial proceedings have been initiated against the Bank.

- TELEPHONE COMPANY OF BOGOTA. At the beginning of 1993, the enterprise opted for a restructuring plan. Under this plan, functions were reallocated, staff were redistributed and areas of responsibility were redefined. At no time were staff dismissed nor were there any programmes of voluntary departures. In the same way, at no time was trade union action hindered or made subject to conditions, nor was any pressure exercised against trade union officials; a proof of this is the fact that a new collective agreement was signed for the period 1 January 1994 to 31 December 1995.

- TERRITORIAL CREDIT INSTITUTE. No dismissals have been registered in this body and the administration of the institute has not carried out any anti-trade union policies.

- COLPUERTOS. This enterprise embarked on a process of restructuring which was the result of the financial and administrative crisis which had occurred in the years before the state modernization and restructuring policy (Act No. 1 of January 1991, Decree No. 035 of January 1992, Decree No. 036 of January 1992 and Resolution No. 0300 of May 1993). Notwithstanding this process, the enterprise at all times respected the standards established by the collective labour agreement for all legal purposes. Furthermore, there was a voluntary withdrawal programme for workers who wished to leave, and who could choose between special or standard compensation. The enterprise pensioned off a large number of workers who, either through collective agreement or in an agreement with the enterprise or under the provisions of the law, benefited from this prerogative. At no time did the enterprise or the Government fail to respect the acquired rights of the workers and there was no pressure exerted for the workers to select any of the alternatives proposed concerning their departure. There was constant consultation and dialogue with the trade union organizations of the enterprise concerning the departure plans and other basic aspects covered by the collective agreement. (The form of the liquidation of social benefits, pensions, compensation and bonuses was made on the basis of the collective agreements in force; the total number of workers compensated was 9,900 and the amounts paid as benefits were approximately 130 billion pesos; for the purposes of the liquidation of COLPUERTOS, account was taken of the legal system in force and there was a series of meetings between the general manager of the liquidation process and the trade union officials representing port workers during which agreements and clarifications were reached which were registered with the Ministry of Labour and Social Security.)

- SAN JUAN DE DIOS HOSPITAL - SANTA MARTA. There were no collective dismissals or any infringements of freedom of association at the San Juan de Dios Hospital in Santa Marta.

- NATIONAL COMMUNITY ROADS FUND. With regard to the allegation made by the CLAT that more than 1,500 workers will be laid off beginning in 1993, the Government states that this was one of the other government organizations included in the national plan for the modernization and restructuring of the State. These policies involved no anti-trade union activity nor collective dismissals.

274. As regards the allegations made in Case No. 1702, the Government states that under the Ordinances Nos. 03 of 17 December 1991 and 07 of 12 November 1992, promulgated by the Departmental Assembly of Córdoba, and Decree No. 000845 of 31 December 1991, the local administration was restructured and some posts were suppressed and more than 200 workers dismissed. These dismissals were not the result of an anti-trade union policy but exclusively due to the restructuring plans. Trade union officials took legal action in the ordinary labour courts of Montería, and in some cases the rulings in

the first instance were in favour of the "official" workers, although the superior court revoked the decision. The Government states that the other workers dismissed (public employees) were not compensated and initiated proceedings in the ordinary labour courts.

## C. The Committee's conclusions

275. The Committee observes that the allegations pending from its examination of these cases in February and May 1993 refer to different infringements of the rights of workers and their organizations (job stability and collective bargaining) in several enterprises, as a result of restructuring.

276. The Committee notes the general observations of the Government that under the new National Constitution, it was decided to suppress, merge or restructure bodies in the executive branch, public enterprises, industrial and commercial enterprises and mixed economy companies in the public sector. According to the Government, this was due to the economic crisis and the need to modernize state enterprises and institutions. It also notes that an integrated labour adaptation system has been introduced to help all private enterprises in the country which have to lay off workers because of temporary or final closing down of operations and the establishment of the Labour Adaptation Service for the public sector on behalf of public servants whose jobs have been suppressed as a result of the state modernization policies.

277. As regards the allegations made by the complainants in Case No. 1620, it was alleged that in the Aceitalera S.A. enterprise, since the workers affiliated with the trade union (SINTRACEITALES) had not accepted the new labour scheme established by Act No. 50, the enterprise established six subsidiary enterprises so as to leave more than 800 workers of the said trade union without jobs. The Committee notes the observations of the Government that this enterprise was liquidated because of the economic crisis which it was facing although workers were able to reach an agreement with the enterprise.

278. The Committee notes that the Government denies that there were dismissals in the following state enterprises: Bank of the Republic, Telephone Company of Bogotá, Territorial Credit Institute, the National Community Roads Fund, and the San Juan de Dios Hospital of Santa Marta.

279. As regards the Agrarian, Industrial and Mining Credit Fund, and the National Railways, the Committee notes the observations of the Government that in the first of these enterprises workers accepted a programme of voluntary departure and that the second enterprise was liquidated as a result of financial problems, with full compensation being provided to workers and without the liquidation having any anti-trade union purpose. As regards the COLPUERTOS enterprise, the