

government forces left eight people dead, dozens of injured and over 300 of the 300,000 demonstrators detained. In addition, the Government declared the demonstration illegal and persecuted the participants by expelling the students from their schools and by denying the salaries and holidays due to the workers. The WFTU expresses alarm at the Government's action all the more so since the demonstration concerned the deterioration of living and working conditions in the country.

191. In its communication of 21 January 1985, the ICFTU states that its affiliate - the Confederation of Ecuadorian Free Trade Union Organisations (CEOSL) - together with other trade union confederations called a 48-hour general strike as from 10 January in view of the indiscriminate increase in the price of foodstuffs, transport tariffs and basic necessities. It alleges that the Government reacted violently and this resulted in the death of 15 workers, dozens of injured and the imprisonment of hundreds of persons. According to the ICFTU, the premises of the CEOSL were broken into by the police.

B. The Government's reply

192. In its communication of 1 February 1985, the Government explains the background to the incidents referred to by the complainants: on 28 December 1984 it decided to increase the price of various petroleum-related products and, consequently, the price of public transport. It points out that, by virtue of Act No. 107 of 4 November 1982, salaried workers receive an automatically adjusted transport subsidy and that, accordingly, the workers were not affected by the increases as regards their movement to and from the workplace. According to the Government, at the same time, it announced the immediate introduction in the legislature of several bills of a social nature which included proposed subsidies to compensate for the increase in the cost of living; in addition, the National Congress was discussing a law to fix a new minimum wage and a general increase in salaries and wages.

193. According to the Government, despite its explanations concerning the need for revision of prices and tariffs, the FUT and organisations of teachers and students decided on a general work stoppage on 9 and 10 January 1985, a stoppage which was not legally called since, under the Labour Code, strikes should be called in connection with a collective labour dispute and at the level of the undertaking or workplace. The Government states that it informed the public of the illegality of the work stoppage and of the risk that workers who arbitrarily occupied the workplaces might be considered as committing serious acts of misconduct possibly leading to requests from the authorities to terminate the employment relationship. Nevertheless, the Government also made it clear that, with a view to avoiding damage, it would not eject workers who occupied factories. The Government states that its balanced and moderate attitude was

headed by the vast majority of workers who reported normally for work. According to inquiries carried out in Quito, about 85 per cent of the undertakings continued to function normally, and the situation was similar throughout the country.

194. The Government states that during the work stoppage the organisations involved arranged for certain groups of activists to disrupt pedestrian and vehicular traffic and to create a general climate of unrest; those workers who wished to continue working were faced with barricades, fires and threats of physical aggression. Faced with this and with a view to preserving law and order, the Government called for police intervention which remained within the limits of recommended prudence, avoiding the use of firearms and only resorting to tear-gas bombs and high-pressure water hoses. According to the Government, owing to the cautious behaviour of the police, the damage caused by the violent demonstrations was reduced to a minimum.

195. The Government stresses that there was no loss of life due to police action although two deaths occurred due to a dynamite explosion in a terrorist refuge in Quito; one other death occurred from a fall into a deep trench and another apparently from an electric shock; a minor also died in unknown circumstances; it appears that a policeman also was killed when run down by an unidentified vehicle. The Government maintains that the number of wounded persons was vastly less than that alleged by the complainants and that most of them suffered the after-effects of tear-gas. According to police sources, the number of persons held after the disturbances was not in the hundreds and no one was detained for more than 48 hours. The Government states that some workers were among those detained, and they were mainly the activists responsible for the street violence.

196. According to the Government, the police did not raid the CEOSL headquarters and no complaint has been received in this connection by the Ministry of Labour.

197. Lastly, the Government recalls that it has always respected freedom of association which is guaranteed in the Ecuadorian Constitution (article 31(h)) and Labour Code (section 436). It reiterates that the movement of 9 and 10 January 1985 was not labour-related and that the Government refrained from repressive action. No worker who took part in the work stoppage has lost his job and there has been no persecution. It regrets that there were indirect victims and states that after the event it announced publicly its willingness to dialogue with the trade union leadership so as to solve the problems affecting both the workers and the other sectors of the community. According to the Government, the FUT has not responded positively to this whereas other major groups of workers have.

C. The Committee's conclusions

198. The Committee notes that this case concerns allegations of deaths, injury and detention of workers due to government intervention in a peaceful work stoppage to protest over price increases in January 1985, as well as an alleged raid on the premises of one of the complainants' affiliates.

199. The Committee must first note the conflicting versions of the events given by the complainants and the Government: according to the complainants the protest was peaceful and related to working and living conditions in the country, whereas the Government claims that the organisations responsible for the work stoppage resorted to street violence and that the protest was not labour-related; the complainants allege eight or 15 deaths due to police intervention, whereas the Government maintains that the forces of order acted with utmost caution and that the six deaths which occurred were indirect consequences of the protestors' violence; the complainants allege over 300 arrests whereas the Government states that only some workers were among those detained; the Government also denies the alleged raid by police on a union's headquarters.

200. The Committee deplores the fact that at least six persons lost their lives during the strike and regrets the lack of information (such as the names of the deceased, their trade union affiliation, whether inquiries into the deaths were carried out) which might have enabled it to decide with certainty whether these deaths were directly linked to the exercise of trade union activities.

201. As regards the alleged mass arrest of workers who participated in the work stoppage, the Committee notes the Government's explanation that the strike was not legal under the legislation in force and its indication that the workers detained were the instigators of the street violence. The Committee observes that, according to the Government, no one was detained for more than 48 hours and there have been no dismissals or persecution of workers who took part in the work stoppage. In this connection the Committee feels bound to recall that the Committee of Experts on the Application of Conventions and Recommendations - in the framework of its examination of Ecuador's observance of Convention No. 87 - has for many years been commenting on the legislation concerning strikes; in particular it has called for the repeal of the penalty of imprisonment laid down in Legislative Decree No. 105 for the instigators of collective work stoppages. It would, accordingly, draw the Government's attention to the principle that strike action in defence of the workers' social and economic interests is one of the means of action which should be available to workers' organisations and that any intervention by the police or armed forces should be limited strictly to the maintenance of law and order. [See, for example, 234th Report, Case No. 1227 (India), para. 312.]

202. In view of the lack of detailed information that has been supplied by the ICFTU as regards the alleged raid by the police on its affiliate's headquarters during the work stoppage and the Government's denial that any such raid took place, the Committee is not in a position to reach any conclusion on this allegation and accordingly considers that this aspect of the case does not call for further examination.

The recommendations of the Committee

203. In these circumstances, the Committee recommends the Governing Body to approve this report and, in particular, the following conclusions:

- (a) As regards the allegations concerning the death and injury of workers during the work stoppage the Committee deplores the fact that at least six persons lost their lives during the strike.
- (b) As regards the alleged mass arrest of workers who participated in the work stoppage, the Committee would draw the Government's attention to the principle that strike action in defence of the workers' social and economic interests is one of the means of action which should be available to workers' organisations, and that intervention by the police or armed forces in strike action should be limited strictly to the maintenance of law and order.
- (c) The Committee considers that the allegation concerning the raid on the premises of one of the complainants' affiliates by the police during the work stoppage of 9 and 10 January 1985 does not call for further examination.

CASES IN WHICH THE COMMITTEE HAS REACHED
INTERIM CONCLUSIONS

Cases Nos. 1098 and 1132

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF
FREE TRADE UNIONS, THE WORLD FEDERATION OF TRADE UNIONS,
THE NATIONAL WORKERS' CONVENTION OF URUGUAY AND THE PERMANENT
CONGRESS OF TRADE UNION UNITY OF LATIN AMERICAN WORKERS
AGAINST THE GOVERNMENT OF URUGUAY

204. The Committee examined these cases at its November 1982, May 1983 and February and November 1984 meetings, when it presented interim reports to the Governing Body [see 218th Report of the

Committee, paras. 631 to 654, 226th Report of the Committee, paras. 141 to 153, 233rd Report of the Committee, paras. 382 to 391, and 236th Report of the Committee, paras. 354 to 361, which were approved by the Governing Body at its 221st, 223rd, 225th and 228th Sessions in November 1982, May-June 1983 and February and November 1984 respectively]. The Government has since sent additional information in communications dated 12 and 26 March and 3 May 1985.

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

A. Previous examination of the cases

206. When the Committee examined these cases at its November 1984 meeting, it made the following recommendations on the allegations which were pending:

- (a) The Committee notes that the Government has transmitted to the judicial authorities the Committee's request that measures be taken to secure the release of ten trade union leaders and trade unionists (Alberto Casas Rodríguez, Daniel Uriarte Pintos, Gene Mateos Calvete, Nelson Cuello Camejo, Ramón Freire Pizzano, Armando Coronel Bález, Humberto Bonelli, Helvecio Bonelli Arias, Alberto Urruty Pizarro and Elbio Quinteros Bethancourt, in respect of whom it wished to be kept informed of any action taken) and that it has also expressed the hope that this request will be heeded. The Committee requests the Government to keep it informed of any decision taken in this regard.
- (b) With reference to the list of 34 trade unionists detained, tried or sentenced in respect of whom the Committee had requested the Government to indicate the concrete acts of which they were accused (Milton Morales - in detention; David Calleros, Jesús Eguren, Jaime López, María Martínez, Carlos Mechoso, Roberto Meirelles, Dimar Silva - all undergoing trial; Jorge Alvarez, Rubén Bello, Diego Brugnole, Jaime Bugarín, Julio Durante, José Glisenti, Carlos Guerrero, Miguel Guzmán, Yolanda Ibarra, Luis Iguini, Raúl Larraya, Wilman Lasena, Francisco Laurenzo, Waldemar de León, León Lev, Miguel Longo, Francisco Maiorana, Guillermo Martiello, Leandro Moreira, Rogelio Ortiz, Norberto Quintana, Ramón R. Reyes, Tomás Rivero, Washington Rodríguez Belletti, Hugo Rossi and Edgardo Torres - all sentenced), the Committee observes that the Government has indicated in a general manner the acts which led to their trial and that some of these activities have no connection whatsoever with freedom of association and constitute offences under ordinary law. However, some of the other activities of which they are accused might have been carried out within the framework of trade union activities. The Committee therefore requests the Government to re-examine the

situation of these persons with a view to the release of those who may have been detained for engaging in activities of a trade union character. It also requests that the Government supply information on this matter.

B. The Government's reply

207. In its communications of 12 and 26 March 1985 the Government states that Luis Washington Rodríguez Belletti is in hiding and that all the other persons mentioned by the complainants, with the exception of Rubén Bello and León Lev (the latter of whom was sentenced for forgery) have been freed, some of them in application of the law of amnesty for political offences.

C. Conclusions of the Committee

208. In connection with the allegations which remained pending, the Committee notes with satisfaction the release of 41 of the 44 trade union leaders and trade unionists who had been arrested, brought to trial or sentenced, some of them as a result of the application of the law of amnesty for political offences. As regards the remaining three persons who had been sentenced, the Committee notes that Luis Washington Rodríguez Belletti (a sugar workers' leader) is in hiding and that Rubén Bello (a port workers' leader) and León Lev (a member of a bank workers' union) are serving prison sentences (the latter for forgery). The Committee requests the Government to indicate the concrete facts serving as grounds for the sentences passed on the first two trade unionists mentioned in order to enable it to determine whether or not these sentences were based on trade union activities.

The Committee's recommendations

209. In these circumstances, the Committee recommends the Governing Body to approve this interim report, and in particular the following conclusions:

- (a) The Committee notes with satisfaction that 41 of the 44 trade union leaders and trade unionists who had been arrested, brought to trial or sentenced have now been released, some of them as a result of the application of the law of amnesty for political offences.

(b) As regards the three remaining persons, who had been sentenced, the Committee notes that Luis Washington Rodríguez Belletti (a sugar workers' leader) is in hiding and that Rubén Bello (a port workers' leader) and León Lev (a member of a bank workers' union) have been sentenced to imprisonment (the latter for forgery). The Committee requests the Government to indicate the concrete facts serving as grounds for the sentences passed on the first two trade unionists mentioned in order to enable it to determine whether or not these sentences were based on trade union activities.

Cases Nos. 1176, 1195 and 1215

COMPLAINTS PRESENTED BY THE PERMANENT CONGRESS OF TRADE UNION
UNITY OF LATIN AMERICAN WORKERS, THE AUTONOMOUS TRADE UNION
FEDERATION OF GUATEMALA, THE INTERNATIONAL CONFEDERATION OF
FREE TRADE UNIONS AND THE WORLD FEDERATION OF TRADE UNIONS
AGAINST THE GOVERNMENT OF GUATEMALA

210. The Committee examined Cases Nos. 1176, 1195 and 1215 together at its November 1984 meeting, when it presented an interim report to the Governing Body [see 236th Report of the Committee, paras. 401 to 425, approved by the Governing Body at its 228th meeting (November 1984)]. The Committee had already examined Case No. 1195 [see 230th Report of the Committee, paras. 689 to 699, approved by the Governing Body at its 224th Session (November 1983)].

211. In the absence of observations from the Government on these three cases, the Committee addressed an urgent appeal to the Government at its February 1985 meeting [see 238th Report, para. 20], remarking that, in conformity with the procedure in force, it would present a report at its next meeting on the substance of these cases even if the Government's information or observations had not been received at that date.

212. New allegations were presented by the Autonomous Trade Union Federation of Guatemala (12 February 1985), the International Confederation of Free Trade Unions (ICFTU) (10 May 1985) and the Inter-American Regional Organisation of Workers (ORIT) (10 May 1985).

213. Since the last examination of the cases the Government has sent certain observations in a communication dated 30 April 1985.

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

A. Previous examination of the cases

215. When the Committee examined Cases Nos. 1176, 1195 and 1215 at its November 1984 meeting, it made the following recommendations on the allegations which remained pending [see 236th Report, para. 425]:

- "(a) The Committee expresses its deep concern at the serious nature of the allegations which refer to the detention, kidnapping, assassination or threats of execution of trade union leaders and deplors the fact that the Government has not sent detailed information in this respect.
- (b) The Committee urges the Government to indicate whether it is true that the trade union leader Julián Revolorio has been assassinated and, if this is the case, to carry out a judicial inquiry with a view to elucidating the facts in full, determining responsibilities and punishing the guilty parties.
- (c) While expressing its profound concern, the Committee requests the Government to send as a matter of urgency specific observations on the alleged decision to execute the trade union leaders and trade unionists mentioned by the complainants (Raimundo Pérez, Yolanda Urízar Martínez de Aguilar, Manuel Francisco Contreras, José Luis Ramos, Luis Estrada, Víctor Ascón and Lucrecia Orellana). The Committee also requests the Government, if such a decision has in fact been taken, to rescind it.
- (d) In addition, it requests the Government to send information on the whereabouts and situation of these trade union leaders and trade unionists and on those who have allegedly been detained or kidnapped (Graciela Samayoa and her two children, Fermín Solano and Antonia Argüeta). The Committee also requests the Government to indicate the reasons for the alleged detentions and to carry out a judicial inquiry into the alleged kidnappings (which appears to have been initiated only with regard to Mrs. Urízar) with a view to determining the whereabouts of those concerned, elucidating the facts in full, determining responsibilities and punishing the guilty parties.
- (e) The Committee requests the Government to inform it as soon as possible of developments in the requested investigations and draws its attention to the principle that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to the inviolability of human life and personal safety, are fully respected and guaranteed.
- (f) The Committee requests the Government to send its observations on the allegations contained in FASGUA's communication of 10 October 1984 (the closing down of operations at the Universal Textiles Factory with a view to destroying the union and the kidnapping of the brother of the trade unionist Valerio Oscar)."

B. The Government's reply

216. The Government states that the persons mentioned by the complainants [and whose names are listed in subparas. (b), (c) and (d) above] have not been and are not detained in any detention centre in the country. Nevertheless, the appropriate authorities are continuing their investigations in order to establish the whereabouts of these persons.

C. New allegations

217. In its communication of 12 February 1985 the Autonomous Trade Union Federation of Guatemala (FASGUA) alleges that Sergio Vinicio Samayoa Morales, the son of Mrs. Graciela Samayoa, was shot with a machine gun on 2 February 1984 in a coffee warehouse on Aguilar Batres Street, No. 29-41, in Zone II of Guatemala city. In the evening of the same day, when Sergio Vinicio Samayoa was in the Roosevelt hospital, ten armed men made their way into the hospital and took him away to an unknown destination.

218. In their communications of 10 May 1985, the ICFTU and ORIT allege that on 12 April 1985 a group of armed individuals, presumably from the Government's security service, abducted Felicita Florida Alma Lucero (a leader of the Trade Union of Workers in Adams S.A.) and another unidentified person. The Government allegedly has not acknowledged this arrest.

D. The Committee's conclusions

219. Firstly, the Committee expresses its deep concern at the serious nature of the situation which is characterised by the detention, kidnapping, assault or assassination of trade union leaders and other persons connected with the trade union movement, all the more so since some of the allegations date from January 1983 and the whereabouts of the abducted persons still remain unknown.

220. The Committee takes note of the Government's statements, in particular that the persons mentioned by the complainants have not been and are not being held in any detention centre in the country. The Committee presumes from these statements that the Government implicitly denies the alleged decision to execute seven trade union leaders and unionists (Raimundo Pérez, Yolanda Urizar, Manuel Francisco Contreras, José Luis Ramos, Luis Estrada, Víctor Ascón and Lucrecia Orellana).

221. The Committee also observes that, as regards these seven persons and the others who were allegedly murdered (Julián Revolorio) or abducted (Graciela Samayoa and her two children, Fernán Solano and Antonia Argüeta), the authorities are continuing investigations so as to establish their whereabouts.

222. Since some of the allegations date from January 1983, the Committee urges the Government to do its utmost to ensure that the investigations under way - which should be conducted by the judiciary - result in the whereabouts of those who have disappeared being clarified, the facts being elucidated in full, responsibilities being determined and the guilty parties being punished. The Committee requests the Government to inform it of developments on this point.

223. The Committee draws the attention of the Government to the principle that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to the inviolability of human life and personal safety, are fully respected and guaranteed [see, for example, 223rd Report, Case No. 1233 (El Salvador), para. 682].

224. The Committee also requests the Government to send its observations on the allegations contained in the communications from FASGUA dated 10 October 1984 (the closing down of operations at the Universal Textiles Factory with a view to breaking the trade union and the kidnapping of the brother of the trade unionist, Valerio Oscal) and 12 February 1985 (concerning the alleged assault on Mr. Sergio Vinicio Samayoa Morales and his abduction when he was in hospital), as well as those contained in the communications from the ICFTU and ORIT dated 10 May 1985 (abduction of the trade union leader Felicita Floridalma Lucero).

The Committee's recommendations

225. In these circumstances, the Committee recommends the Governing Body to approve the present interim report, and in particular the following conclusions:

- (a) The Committee expresses its deep concern at the serious nature of the situation which is characterised by the detention, kidnapping, assault or assassination of trade union leaders and other persons connected with the trade union movement, all the more so since some of the allegations date from January 1983 and the whereabouts of the abducted persons remain unknown.
- (b) The Committee urges the Government to do its utmost to ensure that the investigations under way - which should be conducted by the judiciary - result in the whereabouts of those who have disappeared being clarified (Julián Revolorio, Raimundo Pérez, Yolanda Urfizar, Manuel Francisco Contreras, José Luis Ramos, Luis

Estrada, Víctor Ascón, Lucrecia Orellana, Gracida Samayoa and her two children and Antonia Argüeta), the facts being elucidated in full, responsibilities being determined and the guilty parties being punished. The Committee requests the Government to inform it of developments on this point.

- (c) The Committee draws the Government's attention to the principle that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to the inviolability of human life and personal safety, are fully respected and guaranteed.
- (d) The Committee requests the Government to send its observations on the allegations contained in FASGUA's communications of 10 October 1984 (the closing down of operations at the Universal Textiles Factory with a view to destroying the union and the kidnapping of the brother of the trade unionist Valerio Oscal) and 12 February 1985 (assault on, and kidnapping of, Mr. Sergio Vinicio Samayoa Morales), as well as on those contained in the communications from the ICFTU and ORIT dated 10 May 1985 (abduction of the trade union leader Felicita Floridalma Lucero).

Case No. 1190

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION
OF FREE TRADE UNIONS, THE WORLD FEDERATION OF TRADE UNIONS,
THE PERUVIAN GENERAL CONFEDERATION OF WORKERS AND THE
FEDERATION OF MUNICIPAL WORKERS OF PERU AGAINST THE
GOVERNMENT OF PERU

226. The Committee already examined this case at its May 1984 meeting when it presented an interim report to the Governing Body. [See paras. 500 to 520 of the 234th Report of the Committee approved by the Governing Body at its 226th session (May-June 1984).] At its February 1985 meeting, the Committee, noting that the Government, despite a number of appeals, had still not sent the information which had been requested of it, addressed an urgent appeal to it to send its information as a matter of urgency. [See 238th Report of the Committee, para. 20.] The Government sent certain information in a communication received on 25 February 1985.

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

I. Allegations relating to violent deaths and arrests during a national strike held in March 1983

228. The present case referred first of all to a national strike called by the Democratic Trade Union Front on 10 March 1983 for wage increases, a halt to the rise in prices of basic essentials, a rescheduling of the foreign debt with regard to the International Monetary Fund and the review of petroleum contracts. This strike is alleged to have resulted in the violent death of four persons, whom the complainants mentioned by name, and by the arrest of about 200 persons, including three officials of the Peruvian General Confederation of Workers (CGTP), whose names were mentioned by the complainants.

229. The Government did not deny that a national strike took place but said that it began to take a violent turn when the strikers stoned two transport units of the forces of order, obliging members of the Republican Guard to use their firearms to repulse the attack. This resulted in a number of dead and wounded, and the Government indicated that, in order to cope with the situation, it had been obliged to suspend the constitutional guarantees and take the necessary security measures. According to the Government, following an inquiry, 84 persons were arrested on charges of offences against life and personal safety and attacks on public property.

230. At its May 1984 meeting the Committee on Freedom of Association, while deploring the seriousness of the events, requested the Government to inform it of the outcome of the judicial inquiries made by the ordinary courts into the deaths and injuries that had taken place. It also requested the Government to inform it of the outcome of the judicial inquiries relating to the 84 persons who were still under arrest and information on the situation of the three CGTP leaders who had been mentioned by name: Jorge Rabines Bartra, Hernán Espinoza Segovia and Juan Calle Mendoza.

231. In its communication of 25 February 1985, the Government confines itself to repeating its earlier statements regarding the events which took place in connection with the national strike of 10 March 1983, which had led it to suspend constitutional guarantees and had caused the Republican Guard to take security measures. The Government adds that it has asked the Ministry of the Interior and the Public Prosecutor for information on the events which occurred on the occasion of the national strike, and that it is awaiting a reply.

232. The Committee recalls that in the present case the Government acknowledges that 84 persons were arrested following the violent events of 10 March 1983 but that it has supplied no information on the situation of the three CGTP leaders whom the complainants mentioned by name and who are said to have been arrested following this strike. In general, the Committee, while deploring the circumstances in which the national strike of 10 March 1983 took place, recalls the importance of negotiation and agreement with the

different groups of society in order to avoid clashes and to ensure the development of good industrial relations. As regards this aspect of the case the Committee again requests the Government to supply detailed information on the situation of the 84 persons arrested on the occasion of the national strike of 10 March 1983, and in particular to indicate whether they have been tried and sentenced or whether they have been released. As regards the three CGTP leaders whom the complainants mentioned by name, who are also alleged to have been imprisoned as a result of the strike of 10 March 1983, the Committee urges the Government to indicate whether these persons were arrested, whether they are at present in detention, or whether they have been released. On the latter point, in particular, the Committee finds it unacceptable that a specific allegation referring to the imprisonment of three trade union leaders who have been mentioned by name, which is said to have taken place over two years ago, should remain without comment from the Government.

II. Allegations relating to restrictions on the right to strike

233. The complainants also alleged that Presidential Decree No. 0010-83-PCM of 25 February 1983 on the regulation of work stoppages in the civil service, section 1 of which provides that the lawfulness or otherwise of work stoppages (in the public services) shall be determined by the heads of public institutions, constitutes a violation of freedom of association of the persons concerned, since the text empowers the employer to play "judge and party to the dispute" inasmuch as he is empowered to declare a strike illegal. The complainants also mentioned that a Bill submitted to Parliament on 30 May 1983 aimed at punishing with imprisonment strikes causing damage to property or traffic stoppages, the taking of civil servants as hostages during strikes, and hunger strikes.

234. In its reply of 25 February 1985, the Government indicates that the Office of the President of the Council of Ministers, in a Note No. 379-84 PCM/AJ, considered that Presidential Decree No. 0010-83-PCM "does not restrict the right to strike, since its purpose is merely to determine the bodies within the administrative structure which are competent to declare a strike legal or illegal and an appeal may be lodged with the National Civil Service Council against any such declaration". The Government adds that the right to strike is a constitutional right of workers which may be lawfully exercised and, in view of the fact that the legislation in question was not promulgated, this constitutional right may not be deemed subject to restriction. The Government also states that the Committee's observations on the strike Bill have been conveyed to the Chamber of Deputies.

235. The Committee has examined Presidential Decree No. 0010-83-PCM of 25 February 1983, which specifies the administrative authorities competent to pronounce on the lawfulness of strikes in the civil service. In this connection the Committee notes with satisfaction, like the Committee of Experts on the Application of Conventions and Recommendations, that Peru has granted the right to strike to civil servants in application of Article 61 of the Constitution and section 24 (m) of the Legislative Decree on administrative careers. The Committee observes, however, that under section 1 of the Presidential Decree criticised by the complainants, the heads of public institutions are empowered to declare unlawful collective work stoppages that are not in conformity with the provisions of the Presidential Decrees on the right to organise of public servants. While noting the information supplied by the Government concerning the right of appeal to the National Civil Service Council, the Committee considers that the Presidential Decree criticised by the complainants, which grants the heads of public institutions the right to pronounce on the illegality of strikes of civil servants, is contrary to the principles of freedom of association. The unlawful nature of a strike should be determined by a judicial and not by an administrative authority, and must not be declared by the employer, who would thus be playing the role of judge and party to the dispute. The Committee therefore invites the Government to amend its legislation so as to guarantee that the unlawful nature of a strike is determined by a judicial and not an administrative authority, and wishes to draw the attention of the Committee of Experts to this aspect of the case.

236. As regards a Bill of May 1983 whose purpose, according to the complainants, was to punish strikers causing damage to property or the taking of civil servants as hostages during strikes, the Committee observes that the Act on general strikes has not yet been adopted.

III. Allegations relating to the withdrawal of legal personality from several trade union organisations

237. In its communication of 4 June 1983 the CGTP alleged that legal personality had been withdrawn from the National Federation of Film Workers, the Union of Workers at FINISTERRE SA and the TTX Workers' Union.

238. The Government has supplied no information on this aspect of the case. However, the complainants, who were given the opportunity of supplying additional information on this allegation, have sent no information on these withdrawals indicating when they took place or in what circumstances. In these circumstances the Committee considers that these allegations are too vague to warrant further examination.

IV. Allegations relating to the arrest of
two leaders of the CGTP and the occupation
of the premises of a trade union

239. The CGTP also alleged that Jesús Ramírez Alejo, General Secretary of the CGTP for the region of Callao, had been arrested on 7 June 1983, that the premises of the Federation of Peruvian Crew Members in Callao had been occupied and that Gregorio Bazán Tello, Vice-President of the CGTP, had been arrested.

240. The Government has sent no information on these aspects of the case, and the complainant has not given details of the alleged reasons for the arrest of the above-mentioned CGTP leaders or on the occupation of the trade union premises in question.

241. While regretting the vague nature of the allegations, the Committee can only recall in general that arrested trade unionists, like other persons, are entitled to the fair administration of justice and that persons who have been arrested for the lawful exercise of trade union activities must immediately be released. The Committee also recalls that trade union premises should be inviolable and that it should not be possible to enter them without a court warrant.

The Committee's recommendations

242. In these circumstances, the Committee recommends the Governing Body to approve the present interim report, and in particular the following conclusions:

- (a) The Committee deeply deplores the circumstances in which the national strike of 10 March 1983 took place and recalls the importance of negotiation and agreement with the different groups of society in order to avoid clashes and to ensure the development of harmonious industrial relations.
- (b) As regards the arrest of 84 persons in connection with the national strike of 10 March 1983 which, according to the Government, took place in an atmosphere of violence, the Committee again requests the Government to supply information on their situation, and in particular, to indicate whether they are still under arrest, whether they have been tried and sentenced, or whether they have been released.
- (c) Regarding the allegation concerning the arrest of three CGTP leaders, who are also said to have been imprisoned, following the general strike of 10 March 1983, namely Jorge Rabines Bartra, Hernán Espinoza Segovia and Juan Calle Mendoza, the Committee requests the Government to indicate whether these persons have in fact been arrested and whether they are at present in prison or

free. The Committee finds it unacceptable that a specific allegation relating to the imprisonment of three trade union leaders who have been mentioned by name, which is said to have taken place over two years ago, should remain without comment from the Government.

- (d) As regards Presidential Decree No. 0010-83-PCM of 25 February 1983 criticised by the complainants, the Committee considers that it is contrary to freedom of association that the right to declare a strike in the civil service illegal should lie with the heads of public institutions, which are thus judges and parties to a dispute. It therefore invites the Government to amend its legislation so as to guarantee that the illegality of a strike is determined by a judicial and not an administrative body. The Committee wishes to draw the attention of the Committee of Experts to this aspect of the case.
- (e) Regarding the alleged arrest of two leaders of the CGTP, Jesús Ramírez Alejo (on 7 June 1983) and Gregorio Bazán Tello, and the allegation that the premises of the Federation of Peruvian Crew Members were occupied, the Committee recalls that arrested trade unionists, like other persons, are entitled to the fair administration of justice, and that persons who have been arrested for having lawfully exercised trade union activities must be released immediately. The Committee also stresses the inviolable nature of trade union premises and recalls that it should not be possible to enter them without a court warrant.

Case No. 1216

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF
FREE TRADE UNIONS AND THE INTERNATIONAL FEDERATION
OF PLANTATION, AGRICULTURAL AND ALLIED WORKERS
AGAINST THE GOVERNMENT OF HONDURAS

243. The Committee already examined this case at its May 1984 meeting and presented interim conclusions to the Governing Body in its 234th Report, paragraphs 571 to 584 (approved at its 226th Session, May-June 1984). The Government supplied partial information in communications dated 12 June, 24 August and 31 October 1984.

244. At its meeting in February 1985, the Committee addressed an urgent appeal to the Government for complete details on the outstanding issues in this case. It pointed out to the Government that, in accordance with the procedural rules in force, it would present a report on this case at its next meeting even if the Government's further observations had not been received. [See 238th Report, para. 20, approved by the Governing Body at its 229th Session,

February-March 1985.] No further communications have been received from the Government.

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

A. Previous examination of the case

246. This case concerns the murder of four trade union leaders who were named in the complaint and who were members of the Workers' Union of the Agricultural and Cattle Raising Company of Sula (SITRACOAGS) and the serious wounding of three other union leaders on 29 March 1983 allegedly by vigilantes in the pay of the manager and owners of the company. It also concerns the subsequent assassination by an unknown person of another named trade union leader of the National Peasants' Association (ANACH) at Danli and the dismissal of 260 members of SITRACOAGS. The Government replied that, on 30 March 1983, proceedings had been instituted in the district criminal court against four named accused for murder and attempted murder and that, as at July 1983, the proceedings were at the indictment stage.

247. In these circumstances, the Committee recommended the Government Body to approve the following conclusions:

- The Committee expressed its deep concern at the serious nature of the allegations which concerned the assassination of three trade union leaders and a trade unionist of SITRACOAGS and a trade union leader of ANACH, the attempted assassination of three other leaders of SITRACOAGS and the subsequent dismissal of 260 members of SITRACOAGS, especially since the complainant organisations had stressed the involvement in the alleged events of the manager and owners of the Agricultural and Cattle Raising Company of Sula, on which the Government had not commented.
- The Committee expressed its deep concern at the assassinations and the serious physical attacks against the trade union leaders and trade unionists concerned and requested the Government to inform it of developments in the judicial investigations under way into the crimes and to send it the text of the judgement to be handed down.
- The Committee regretted that the Government has not replied to the allegations concerning the assassination of the trade union leader of ANACH, Jacobo Hernández and the dismissal of 260 members of SITRACOAGS. It requested the Government to transmit its observations on these allegations as a matter of the greatest urgency and to open - if it had not already done so - a judicial inquiry into the assassination of this trade union leader and to inform it of the results.

- In general, the Committee drew the Government's attention to the fact that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed. The Committee requested the Government to take urgent and appropriate measures to ensure that there would be no recurrence of the incidents that were described in this complaint.

B. The Government's replies

248. In a communication dated 12 June 1984, the Government encloses a note, dated 17 May 1984, from the Supreme Court advising that the judge at first instance had called a stay in proceedings in the murder trial as concerns three of the accused and that, although two further accused had escaped from prison, the trial against them was at the indictment stage.

249. In a communication of 24 August 1984, the Government indicates that it is awaiting further information from the Supreme Court as to whether the murder case is being heard or has been finalised. As regards the 260 SITRACOAGS members who were allegedly dismissed, it states that investigations are under way as to whether the dismissals in fact took place and to ascertain the reasons. The Government also states that it has requested the Supreme Court to supply information on the alleged murder of the ANACH trade union leader, Jacobo Hernández, in April 1983.

250. In a communication of 31 October 1984, the Government supplies information from the Labour Inspectorate on the 260 alleged dismissals. It states that the undertaking did restructure its personnel over 1983-84 and there were staff reductions and some direct dismissals, both with payment of social benefits. The majority of dismissed workers opted to settle their problems through the Regional Office of the Ministry of Labour in San Pedro Sula.

C. The Committee's conclusions

251. The Committee regrets that in spite of the time which has elapsed since the last examination of this case, the serious nature of the allegations and the many requests made to the Government, the latter has not sent detailed observations on all the outstanding aspects of this case.

252. Consequently, the Committee is bound to recall that the purpose of the whole procedure is to promote respect for trade union rights in law and in fact, and it is confident that if it protects

governments against unreasonable accusations, governments on their side should recognise the importance of formulating for objective examination detailed replies to the allegation submitted against them.

253. As regards the trial of certain persons accused of the murder or attempted murder of trade union leaders and members of SITRACOAGS in March 1983, the Committee notes with regret that proceedings - now only against two accused - were still at the indictment stage in May 1984 with no final decision being handed down. It draws the Government's attention to the importance it has always attached to a prompt and independent legal investigation of alleged cases of death and assault of trade unionists with a view to elucidating the facts, identifying the persons responsible and taking proceedings against them. The Committee, accordingly, urges the Government to communicate information on the latest developments in the proceedings, and, if the trial has been concluded, to send it the text of the judgement.

254. As regards the alleged involvement of the employers in the murders and attempted murders, the Committee deeply regrets that the Government has never commented on this serious allegation. It considers that, since this matter falls within the competence of the criminal courts, a criminal inquiry should be carried out. It urges the Government to supply information on any such investigations.

255. The Committee notes with regret that no concrete information has been supplied on the alleged murder of the ANACH trade union leader, Mr. Jacobo Hernández, in April 1983. It would again draw attention to the principle set out above concerning the necessity of speedy and independent legal investigations into allegations of this nature and urges the Government to supply information on this aspect of the case.

256. As regards the alleged dismissal of 260 members of SITRACOAGS after the assassinations of March 1983, the Committee notes that the complainants do not specifically state that this took place as a consequence of trade union membership or activities. On the other hand, the Government indicates that the majority left voluntarily with payment of certain benefits. It also notes from the Government's reply that there were some direct dismissals with compensation, a majority of which were challenged through the Regional Office of the Ministry of Labour.

257. In addition to the information supplied by the complainants and the Government, the Committee observes that s. 125 of the Honduran Constitution protects workers against unjustified dismissal and empowers a dismissed worker to choose between compensation or reinstatement in his post. It also observes that s. 96(3) of the Labour Code prohibits employers from dismissing or in any way prejudicing their employees because of lawful trade union activities or membership and that the labour courts have wide jurisdiction in reviewing observance of the Code (Part IX). The Committee would accordingly express the hope that all necessary steps have been or

will be taken to ensure that all cases of unfair dismissal that are brought to the attention of the authorities will be dealt with rapidly.

The Committee's recommendations

258. In these circumstances, the Committee recommends the Governing Body to approve this interim report, and, in particular, the following conclusions:

- (a) The Committee regrets that, in spite of the time which has elapsed since the previous examination of this case, the serious nature of the allegations and the many requests made to the Government, the latter has not communicated detailed observations on all the outstanding aspects of the complaint.
- (b) As regards the assassinations and serious wounding of a total of eight trade union leaders and members of SITRACOAGS and ANACH in March and April 1983, the Committee notes with regret that proceedings in the murder trial were still at the indictment stage in May 1984 and that no concrete information has been supplied on investigations into the murder of the ANACH trade union leader.
- (c) The Committee draws the Government's attention to the importance it has always attached to a prompt and independent legal investigation being carried out into alleged cases of death and assault of trade unionists with a view to elucidating the facts, identifying the persons responsible and taking proceedings against them. It urges the Government to supply information on the latest development in the proceedings and to send it the text of any judgement which has been handed down.
- (d) The Committee stresses the seriousness of the allegation concerning the involvement of the manager and owners of the Agricultural and Cattle Raising Company of Sula in the murders and attempted murders. It considers that since this allegation falls within the competence of the criminal courts, a criminal investigation should be carried out and urges the Government to supply information on any such investigations.
- (e) The Committee urges the Government to supply information concerning the alleged murder of the ANACH trade union leader, Mr. Jacobo Hernández.
- (f) As regards the 260 SITRACOAGS unionists who were dismissed after the assassinations in March 1983, the Committee expresses the hope that all cases of unfair dismissal that are brought to the attention of the authorities will be dealt with rapidly.

- (g) Given the seriousness of the allegations in this case and the lack of information before the Committee, it requests the Government to consent to the carrying out of a direct contacts mission to the country in order that the various aspects of this case may be fully examined.

Case No. 1271

COMPLAINT PRESENTED BY THE WORLD CONFEDERATION OF ORGANISATIONS
OF THE TEACHING PROFESSION AGAINST THE GOVERNMENT OF HONDURAS

259. The complaint of the World Confederation of Organisations of the Teaching Profession was presented in a communication dated 23 March 1984. At its meeting in February 1985 the Committee, having noted that despite several requests the Government had still not sent the information and observations requested from it appealed to it to supply its observations as a matter of urgency. The Committee also drew the Government's attention to the fact that, in accordance with the rule of procedure established in paragraph 17 of its 127th Report, approved by the Governing Body, the Committee could submit a report on the substance of the matter even if the Government's observations had not been received by its next session (238th Report of the Committee, para. 20). Since then the Government has still not furnished information or observations on the matter.

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

A. Allegation of the complainant organisation

261. The complaint of violation of freedom of association is lodged against the Government of Honduras by the World Confederation of Organisations of the Teaching Profession (WCOTP) on behalf of its affiliate, the Professional College for the Advancement of Teaching in Honduras (COLPROSUMAH). According to the WCOTP, the Government has interfered with the right of organisations to draw up their rules and to elect their representatives by adopting legislative measures, and with the right of the most representative organisation to elect its representatives to advisory bodies by withdrawing this right of representation from genuine representatives of the teaching personnel of Honduras and giving it to a dissident group set up with the support of the Government and of the police and military.

262. The WCOTP explains that on 26 September 1983 the Government adopted Legislative Decree No. 170-83 to promulgate an Act respecting

the Professional College for the Advancement of Teaching in Honduras (COLPROSUMAH), repealing the previous Act of 11 December 1964 on the matter. The new Act was published in the Official Gazette on 15 October 1983. It was prepared without the participation of this trade union organisation and, in drafting it, Parliament established new standards for the election of the executive committee of the organisation stipulating that trade union leaders may not be re-elected until two two-year periods had elapsed (sections 25 and 26 of the Act). According to the WCOTP, this text was adopted with a view to prejudicing the trade union executive of the COLPROSUMAH and in order to favour a group of teachers who have taken over the organisation with the support of the Government.

263. The WCOTP states that the adoption of this legislation and the change of trade union representatives on the various advisory bodies must be seen against the background of the events of 1982-1983 which were the subject of a complaint to the Committee on Freedom of Association (Case No. 1166 concerning the dismissal of teachers, the occupation of trade union premises and the confiscation of the assets of COLPROSUMAH).

264. The WCOTP recalls that, in the case in question, the Government had adopted repressive measures following a strike and a demonstration, dismissing 300 teachers, 31 of whom remained unemployed, and subjecting the schools to military supervision. Moreover, the Government had supported a dissident group within COLPROSUMAH, made up of 25 persons who, with a view to disrupting the annual meeting in December 1982, had organised a parallel meeting at which a different trade union executive was elected and recognised by the authorities. Furthermore, during the annual meeting of COLPROSUMAH, elements of the National Department for Investigations and members of the public security forces took possession of the COLPROSUMAH premises, preventing trade unionists from entering. Shortly afterwards, a representative of the Supreme Court of Justice handed over the COLPROSUMAH assets and property to the dissident group.

265. The WCOTP adds that since the setting up of this dissident group which, according to its affiliate, is not trusted by the teaching personnel of Honduras, the genuine representatives of COLPROSUMAH have been divested of the right to represent the teachers on the various advisory bodies and institutions established by the Act respecting COLPROSUMAH. This Act provides for co-operation between the educational authorities and COLPROSUMAH on teaching matters (section 6(f)).

266. According to the WCOTP, this proves that the allegations made in Case No. 1166 concerning the close links between this group and the Government were well founded and proves also the erroneous nature of the Government's statements concerning the events leading up to the election of the COLPROSUMAH executive committee. The WCOTP recalls that the Government stated "these are events which fall exclusively within the competence of this organisation" and "the participation of the Government cannot exceed that permitted by the

laws of the country" (230th Report, Case No. 1166, para. 109). However, the WCOTP maintains that, by modifying the representation of the teaching personnel on the various public bodies, the Government has interfered in the trade union affairs of this organisation.

267. The complainant organisation concludes by stating that the dissident group is still occupying the COLPROSUMAH premises and enjoying the use of its assets, including the dues of the union's members. Moreover, the Government attempted to ban a meeting of the United Front of Teachers of Honduras and interfered in the activities of the College of Secondary School Teachers (COPEMH) and of the first Primary Teachers' College (PRICPHMA), as is borne out by the newspaper articles attached to the WCOTP's communication. The complainant organisation furnishes the list of teachers who have not been reinstated despite the assurances given on this point by the Government.

B. The Committee's conclusions

268. The present complaint concerns allegations of interference by the Government in the affairs of a teachers' union of Honduras by legislative measures and the non-reinstatement of teachers dismissed following a labour dispute despite assurances given on the matter by the Government.

269. First of all, the Committee deplores the fact that the Government has failed to supply observations on this case despite the time that has elapsed since the complaint was presented and despite the numerous requests made to it.

270. The Committee considers it necessary to draw the Government's attention to the fact that the purpose of the whole procedure concerning allegations of infringements of freedom of association is to ensure respect for freedom of association both in law and in fact. The Committee recalls that while this procedure protects governments against unreasonable accusations, the governments should in turn recognise the importance of supplying, for objective examination, detailed replies to the allegations made against them.

271. In the present case, the complainant organisation has attached the text of the Legislative Decree of 23 September 1983 to establish rules for the trade union organisation which is the subject of the complaint. The Committee is obliged to observe that the Government, by adopting this Act, has seriously undermined the right of this organisation to draw up its rules freely and that it has also undermined the workers' right freely to elect their representatives by adopting legislative measures forbidding teachers to re-elect their trade union leaders until two two-year periods have expired.

272. The Committee recalls with firmness that in ratifying Convention No. 87 the Government undertook to leave workers' organisations themselves the right to draw up their constitutions and rules and to elect their representatives in full freedom. The Committee draws the Government's attention to the fact that public authorities must refrain from any interference which would restrict this right or impede the lawful exercise thereof.

273. The Committee therefore requests the Government to indicate what measures it envisages taking to repeal the provisions of the national legislation which are incompatible with the Convention and to enable the organisation in question to adopt itself its own rules in accordance with Article 3 of Convention No. 87.

274. Furthermore, the Committee observes with regret that, despite the Government's assurances in Case No. 1166, a number of teachers dismissed on account of a strike have still not been reinstated. The Committee considers that the dismissal of workers because of a strike, which is a lawful trade union activity, constitutes serious discrimination in employment and is contrary to Convention No. 98, ratified by Honduras. It insists that the Government should indicate what measures it envisages taking to secure the reinstatement of the teachers whose names are given in the Annex to this case.

The Committee's recommendations

275. In these circumstances, the Committee recommends the Governing Body to approve this interim report and in particular the following conclusions:

- (a) The Committee deplores the fact that, despite the time that has elapsed since the complaint was lodged and despite the numerous requests made to it, the Government has not communicated its observations on this case.
- (b) As regards the Government's interference in the rules of an organisation and in the elections of trade union leaders by its adoption of a 1983 Act to issue rules for COLPROSUMAH, a teacher's organisation affiliated to the complainant confederation, the Committee recalls with firmness that, in ratifying Convention No. 87, the Government undertook to leave it to workers' organisations themselves to draw up their own constitutions and rules and to elect their representatives in full freedom. The Committee therefore requests the Government to state what measures it envisages taking to repeal the provisions of the national legislation which are incompatible with the Convention and to enable the organisation to adopt itself its own rules in accordance with Article 3 of Convention No. 87.

- (c) With regard to the non-reinstatement of a number of teachers who were dismissed on account of a strike in 1982 (and whose names are given in the Annex to this case), the Committee considers that dismissal on account of a strike constitutes serious discrimination in employment for the exercise of a lawful trade union activity and is contrary to Convention No. 98, ratified by Honduras. It insists that the Government should state what measures it envisages taking to secure the reinstatement of the dismissed teachers whose names are given by the complainant organisation.
- (d) The Committee requests the Government to consent to the carrying out of a direct contacts mission to the country so that the various aspects of this case may be fully examined.

ANNEX

List of teachers dismissed by the Ministry of Education

1. Omar Edgardo Rivera
2. Herminio Alcerre Cáliz
3. Sócrates Saúl Coello
4. Orlando Turcios
5. Juan Ramón Miralda
6. Santos Gabino Carbajal
7. Adalid Romero
8. Galel Cárdenas
9. Jorge Gálvez
10. Venancio Ocampo
11. Marco Tulio Mejía
12. Luis Alonso Canales
13. Alba de Mejía
14. Francisco Marcelino Borjas
15. Odavia Chinchilla
16. Margarita Escobar
17. Maribel Gómez Robleda
18. Felix Chinchilla
19. Isabel Traperos
20. Manlio Ernesto Ayae
21. Armando Acosta
22. Justo Pastor Bonilla
23. Eloisa Escoto de Berrios
24. Edil Adonay Carranza
25. Miguel Angel Berrios
26. Wilberto Mendez
27. Isidro Rivas
28. Ramón Zavala
29. Marco Aurelio Pinto
30. Marco Antonio Vallecillo
31. Ivan Diaz Pan Chamé

Case No. 1305

COMPLAINT PRESENTED BY THE NATIONAL ASSOCIATION OF PUBLIC
EMPLOYEES AGAINST THE GOVERNMENT OF COSTA RICA

276. The National Association of Public Employees (ANEP) presented a complaint of violations of trade union rights in a communication dated 25 September 1984; it sent additional information in communications dated 15 October and 22 November 1984. The Government sent its observations in communications dated 8 November 1984 and 21 February 1985.

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

A. The complainant's allegations

278. In its communication of 25 September 1984, the ANEP alleges that the Government violated Articles 3 and 4 of Convention No. 87 in that it suspended this organisation by administrative authority and at the same time it froze its assets and refused to hand over the check-off funds paid by ANEP's members.

279. According to ANEP, in accordance with its duly registered by-laws, on 25 August 1984, it held its annual general meeting which elected a new national executive committee. As required by the labour legislation, the new committee communicated the results of the election to the Department of Social Organisations of the Ministry of Labour and Social Security for it to update its records and issue the corresponding certificate of legal personality. The group which lost the elections lodged with the Department an appeal against the results and the Department decided to investigate the validity of the elections.

280. The ANEP states that the authorities consequently suspended the registration of the election results until a decision had been taken on the objection. They froze the ANEP's bank accounts and instructed the autonomous and semi-autonomous institutions and central bodies to refuse to hand over the check-off funds they collected from ANEP's membership. This, claims the ANEP, amounts to administrative suspension of a trade union organisation. It stresses that the Ministry has no power to do this under the national legislation and observes that the provisions of Act No. 1860 on the functions of the Ministry of Labour do not empower the authorities to interfere in the internal affairs of a trade union, or in its elections, or after its elections in order to decide if they were valid or not.

281. Lastly, the complainant cites several previous decisions of the Committee on Freedom of Association concerning government intervention in the internal administration of unions and in elections.

282. In its communication of 15 October 1984, the ANEP states that on 11 September 1984 it formally challenged the Ministry's decision to investigate the validity of the elections. In a decision dated 29 September, the Minister rejected this appeal and authorised the investigation to continue.

283. In its communication of 22 November 1984, the ANEP alleges that members of the Intelligence and Security Directorate of the Ministry of Public Security violently broke into the ANEP headquarters and took possession of some of its property. According to the ANEP, these persons also detained, without any reason being given, five leaders of the trade union, namely the Executive Director and Messrs. Johnny García Campos, Franklin Benavides, Hermán Guardiola and Víctor Arce. It claims that this action is part of the policy aimed at impairing the development of the trade union movement in the country.

B. The Government's reply

284. In its communication of 8 November 1984, the Government states that it has not violated Convention No. 87 since the Convention itself (in Articles 3.2 and 8) obliges workers' organisations to respect the law of the land. The Labour Code of Costa Rica, continues the Government, in s. 334, requires that trade unions "be governed by the democratic principles of majority rule, the secret ballot and one vote per person" and, in s. 337, it empowers the Ministry of Labour and Social Security "to exercise the strictest possible supervision over social organisations for the exclusive purpose of ensuring that the said organisations operate in conformity with the statutory provisions". The Government states that the authorities are therefore obliged to inspect, prosecute and intervene to ensure compliance with the legislation and the legal principles which govern the functioning of trade unions. This obligation is especially important when a request is made by a member of a trade union who considers that his rights have been violated.

285. According to the Government, in the present case, on 30 August 1984, a member of the ANEP and unsuccessful candidate for the post of Secretary-General in the elections of 25 August 1984, Mr. José Gerardo Riba Bazo, presented an objection to the Department of Social Organisations requesting nullification of the general assembly and therefore of the election results. The Government supplies a copy of his objection from which it appears that he disputes the election proceedings on the following grounds: the electoral committee criticised the candidates presented by Mr. Bazo's faction within the ANEP; the ballot paper presented by the other faction in the ANEP contained the names of candidates who were not workers employed by the

State, which is contrary to ANEP's constitution; some ANEP officers delayed processing membership applications of 450 prospective members which were lodged by representatives of Mr. Bazo's faction 15 days before the date fixed for the general assembly; some ANEP officers concealed the general list of voters from representatives of Mr. Bazo's faction until 23 August 1984 and the additional list was not presented until 25 August; these lists contained serious errors such as the repetition of the same name or identity number and the inclusion of persons who did not have the right to vote; the electoral committee met in the same place as the elections.

286. The Government adds that the decision of 29 September 1984 to reject the appeal against Mr. Bazo's objection was correctly made by the Ministry of Labour since it followed the principle of legality which governs the public administration.

287. In conclusion, the Government stresses that the Department of Social Organisations is acting on the request of a member of the ANEP and not ex officio and that its investigation is not at all arbitrary. It states that it respects freedom of association and that the authorities' action is not aimed at obstructing or interfering in the formation of or affiliation to trade unions.

288. In its communication of 21 February 1985, the Government reiterates the background to the complaint and adds that the faction within the ANEP which won the elections sought injunctions (amparo) against three employees of the Ministry of Labour in an attempt to halt the inquiry into the election results and held public demonstrations criticising the Minister. According to the Government, bills were posted depicting the Minister as having committed a series of "offences". Without the Minister having so requested, the authorities decided to watch the ANEP headquarters with a view to seizing this offensive propaganda. Consequently, on 14 November 1984 the following persons were apprehended carrying about 500 posters ready for distribution throughout the country: Víctor Arce Quesada, Franklin Benavides Flores, Rafael A. Cordero Herrera and Fidel Hermán Guardiola Solís. On the same day, following a judicial order and in accordance with the legal formalities, the ANEP's premises were raided. Various posters were confiscated and Mr. Johnny García Campos was detained. The Government, accordingly, denies that any other property belonging to the union was taken away and points out that all those detained were released at 7 p.m. the same day.

C. The Committee's conclusions

289. The Committee notes that this case concerns a dispute over trade union elections in the ANEP which allegedly gave rise to the suspension of that organisation by administrative authority and,

subsequently, a raid on its premises by the authorities and detention of five ANEP officers.

290. The Committee notes the Government's statement that its decision to investigate the validity of the elections was legally based on the Ministry of Labour's obligation to ensure that the unions operate in conformity with the provisions of the Labour Code concerning democratic voting procedures. It also notes that the decision to carry out an investigation arose out of a complaint by a candidate in the elections that there were irregularities in the election procedures which justified their annulment.

291. The Committee would first point out that the ILO supervisory bodies have frequently had occasion to formulate principles and considerations relating to intervention by the authorities in matters concerning contested elections in trade union organisations. Generally, it has been considered that the principles of freedom of association do not preclude outside control of the internal activities of an organisation if it is alleged that the law or rules have been infringed. Since measures taken by the administrative authorities are liable to be arbitrary, however, the supervisory bodies have considered that, while inquiries may be necessary in cases where irregularities have occurred or are alleged, such questions should be referred to the judicial authorities in order to guarantee an expeditious, impartial and objective procedure.

292. The Committee requests the Government to supply full information on the results of the inquiries that have been undertaken and to indicate whether any procedure exists for application to the courts concerning any administrative decision that may be taken in the matter.

293. Secondly, as regards the interim measures that have been taken against the union, the Committee notes that nothing in the Labour Code or Act No. 1860 on the functions of the Ministry of Labour would appear to authorise the administrative authorities to suspend the registration of the election results, to freeze the union's bank accounts and to defer payment of check-off funds while the investigation is being carried out. In this connection, the Committee has stated in previous cases [See, for example, 230th Report, Case No. 1134 (Cyprus), para. 389.] that in order to avoid the danger of serious limitations on the right of workers to elect their representatives in full freedom, cases in which the results of trade union elections are challenged should not - pending the final outcome of the proceedings - have the effect of paralysing the operations of trade unions.

294. The Committee accordingly trusts that the measures taken by the Government will be lifted and that the elected workers' representatives will be authorised to fulfil their duties in full freedom until such time as a decision on the validity of the elections is reached and that an appeal to the courts may be made, if necessary, for a final decision in the matter.

295. As regards the raid by the authorities on ANEP's premises on 14 November 1984, the Committee notes the Government's statement that this was carried out following a judicial order and in accordance with the legal formalities with a view to seizing propaganda documents that were considered offensive. Since confiscation was restricted to the various posters that were said to constitute the offence and no other union property was seized, the Committee considers that this aspect of the case does not call for further examination.

296. As regards the detention of five named ANEP leaders on 14 November 1984, the Committee observes that they were held in connection with the legal confiscation of certain literature and were, according to the Government, released the same day without charges being brought. The Committee would generally draw the Government's attention to the principle that the detention of trade union leaders for reasons connected with the exercise of trade union activities, without specific charges being made against them involves a restriction on trade union rights. [217th Report, Case No. 1031 (Nicaragua), para. 120.]

The Committee's recommendations

297. In these circumstances, the Committee recommends the Governing Body to approve this interim report and, in particular, the following conclusions:

- (a) The Committee draws the Government's attention to the principle that in cases where the results of trade union elections are challenged such questions should be referred to the judicial authorities in order to guarantee an impartial and objective procedure which should also be expeditious.
- (b) The Committee requests the Government to supply full and detailed information on the results of the inquiries that have been undertaken and to indicate whether any procedure exists for application to the courts concerning any administrative decision that may be taken in the matter.
- (c) In order to avoid the danger of serious limitations on the right of workers to elect their representatives in full freedom, cases involving a challenge to the results of trade union elections should not - pending the final outcome of the proceedings - have the effect of paralysing the operations of trade unions.
- (d) The Committee hopes that the measures taken by the Government will be lifted and that the workers' representatives who won the ANEP elections in August 1984 will be authorised to fulfil their duties in full freedom until a decision on the validity of the elections is reached and that, if necessary, an appeal may be made to the courts for a final decision in the matter.

- (e) The Committee considers that the raid on ANEP's headquarters on 14 November 1984 does not call for further examination.
- (f) As regards the temporary detention of five named ANEP leaders on 14 November 1984 in connection with the legal confiscation of certain literature, the Committee would generally draw the Government's attention to the principle that the detention of trade union leaders for reasons connected with the exercise of trade union activities without specific charges being brought against them involves a restriction on trade union rights.

Case No. 1309

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF
FREE TRADE UNIONS, THE WORLD CONFEDERATION OF LABOUR,
THE WORLD FEDERATION OF TRADE UNIONS AND
OTHER TRADE UNION ORGANISATIONS
AGAINST THE GOVERNMENT OF CHILE

298. The Committee examined this case at its February 1985 meeting, when it presented an interim report to the Governing Body. [See 238th Report, paras. 330 to 364, approved by the Governing Body at its 229th Session (February-March 1985).]

299. The complainant organisations have since addressed the following communications to the ILO: International Confederation of Free Trade Unions (ICFTU): 22 February, 11 March, 1, 26 and 29 April and 9 and 17 May 1985; National Federation of Unions of Special Crews, Fishermen and Allied Branches of Chile: 28 February 1985; World Federation of Trade Unions (WFTU): 25 March and 4 April 1985; Works Union No. 6 of the National Copper Corporation of Chile: 26 March 1985; World Confederation of Labour (WCL): 29 March 1985; Federation of Auxiliary Seamen of Chile (FEMBACH): 1 April 1985; World Confederation of Organisations of the Teaching Profession (WCOTP): 15 April 1985; the National Grouping of Workers: May 1985. The Government sent observations in communications dated 6, 12 and 28 March 1985, 8, 10 and 22 April and 2 May 1985.

300. Chile has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

301. The complaints presented in the present case concerned a number of events that had taken place in Chile since September 1984.

The allegations referred to the intervention of the forces of order on the occasion of the day of protest held on 4 September 1984, which is said to have resulted in the death of ten persons, many injuries and over 1,000 arrests. The complainants referred in particular to the case of Juan Antonio Aguirre Ballesteros, who, they said, had been arrested and tortured and whose body had been subsequently found. In this connection the Government indicated that Mr. Aguirre had not been arrested by the police and that he had been found dead for reasons which had not been established.

302. It appeared, in the light of the allegations made, that the headquarters of certain trade union organisations had been attacked by the police and that material had been destroyed and documentation confiscated. The Government did not furnish any information in its reply on the reasons for the searches. Moreover, according to the complainants, arrests had been allegedly made during these operations and the persons concerned had allegedly been mistreated during their detention. It is alleged that they were subsequently banished. In this connection the Government provided information on some of the persons mentioned by the complainants and pointed out that some of them had been released or that others had been arrested during searches made of the premises of extreme left political organisations.

303. Finally, the complainant organisations alleged that the proclamation of the state of siege had had very serious consequences for the exercise of trade union rights, in particular the right of assembly. According to the Government, the state of siege had been proclaimed because of the terrorist attacks which had been made in the country.

304. At its February-March 1985 Session, the Governing Body approved, in particular, the following conclusions of the Committee:

- "- The Committee expresses its concern at the serious nature of the allegations made by the complainants. It stresses that the absence of civil liberties removes all meaning from the concept of trade union rights and that the rights conferred on the employers' and workers' organisations must be based on respect of these civil liberties.
- As regards the deaths which occurred during the protest day of 4 September 1984, the Committee believes that such serious events should lead the authorities to take effective measures with a view to establishing the facts and punishing the guilty parties. It requests the Government to indicate whether an impartial and in-depth inquiry has been carried out into these events and, if so, to inform it of the outcome.
- As regards the death of Mr. Juan Antonio Aguirre Ballesteros, which allegedly occurred following his arrest, the Committee requests the Government to take all the necessary measures to clarify the circumstances of his death

and to determine responsibilities. It requests the Government to furnish information on any inquiry taken and to inform it of the outcome.

- As regards the attack by the police on certain trade union premises, the Committee draws to the attention of the Government that the protection of trade union property is one of the basic civil liberties required for the normal exercise of trade union rights. It recalls that the search by the police of trade union premises should only be made following the issue of a warrant by the ordinary judicial authority. The Committee requests the Government to furnish information on the circumstances of the operations carried out against the trade union premises and in particular to indicate their purpose and reason.
- As regards the arrests and banishment of trade union leaders, the Committee notes that some of the persons mentioned in the complaints are free but that others have been banished. It stresses that the banishment of trade union leaders or trade unionists because of their trade union activities is incompatible with the principles of freedom of association. The Committee notes furthermore that the Government has not furnished any information on some of the persons mentioned in the complaints as having been arrested, or on the allegations made concerning the ill-treatment of the persons arrested. It requests the Government to furnish its observations on these matters.
- The Committee expresses the firm hope that the restrictions concerning the right of trade union organisations to hold meetings will be lifted in the very near future and it requests the Government to inform it of any measures taken to this end."

B. New allegations

305. In its communications of 22 February and 11 March 1985, the ICFTU refers to the removal of Mr. Manuel Bustos from executive office in the National Confederation of Textile, Clothing and Allied Workers' Union of Chile and Workers' Union No. 1 of the undertaking SUMAR S.A. In Resolution No. 287, issued by the Labour Directorate on 6 February 1985, it is stated that Mr. Bustos was tried and sentenced in 1981, and that according to the legislation in force he is consequently banned from holding trade union office. The Labour Directorate thus pronounced him unfit to exercise trade union functions. The ICFTU states that the person concerned and his organisation have appealed against this administrative decision, the text of which it attaches.

306. The allegations made by the National Federation of Unions of Special Crews, Fishermen and Allied Branches of Chile and the Federation of Auxiliary Seamen of Chile refer to the banishment of some of their leaders. The former organisation mentions the case of its president, Sergio Olivares Alfaro, and another officer, Guillermo Risco Uribe. The latter organisation refers to the banishment of Carlos Cueto Hernández, the national treasurer, who was arrested with Sergio Aguirre, an officer of the Federation of the Port Undertaking of Chile and President of the National Confederation of Maritime and Port Workers and Fishermen of Chile (CONAMAPOCH), and Salatiel Sánchez Abarca, General Secretary of CONAMAPOCH.

307. In their communications dated respectively 25 and 29 March 1985, the WFTU and the WCL allege that the premises of the National Development Project, a legally constituted body, were besieged by the forces of order on 15 February 1985. During this operation, several trade union leaders were beaten up, dispossessed of their personal effects and documents and threatened with death. The persons concerned were Julio Valderrama Ríos, President of the Union of Independent Telephone Workers; Samuel Astorga, President of PROASIN, a trade union assistance bureau; Octavio González, an officer of the National Union of Building Workers; Herminio Rodríguez, an officer of the Metropolitan Workers' Command; Luis Espinoza and René Bonavides, President and General Secretary respectively of the National Commission of Municipal Workers; and Engelberto Frías, Vice-President of PRODEN. Sergio Sánchez, a former officer of the Unitary Central of Workers, and a journalist were also subjected to ill-treatment. The WCL also attaches to its communication a list of 28 trade union leaders, together with the names of their unions, who are said to have been banished. Some of these leaders were already mentioned in the complainants' earlier communications.

308. Works Union No. 6 of the National Copper Corporation of Chile explains in its complaint that on 30 January 1985 the military government of the Province of Chafaral advised the organisation of its decision to forbid trade union assemblies because of the state of siege in force and for reasons of national security. This decision was confirmed on 7 February. The military government also forbade the holding of by-elections in the trade union on 9 March 1985, although it had authorised them four days previously.

309. In their communications dated respectively 1, 4 and 15 April 1985, the ICFTU, the WFTU and the WCOTP expressed their grave concern at the attack made by the forces of order on the headquarters of the Professional Association of Teachers of Chile (AGECH) and the abduction of officers of that organisation. Thus, on 28 March 1985, Mónica Araya, Alejandro Traverso, Eduardo Osorio, Nelson Bermúdez and José Tolosa were taken away. The WCOTP and the ICFTU state that these persons were later interrogated about their activities, tortured and released. The following day, individuals in civilian clothing forcibly dragged into a vehicle Manuel Guerrero, president of the Metropolitan Sector of AGECH, and José Manuel Parada, an official of the Vicariate of Solidarity. Shots were fired at persons attempting

to come to their rescue. The bodies of Messrs. Guerrero and Parada were subsequently found horribly mutilated. In its communication of 26 April 1985, the ICFTU indicates that appeals for protection were lodged by the eight AGECH leaders because, following these events, they were followed and threatened. The persons involved are: Jorge Pavez, Guillermo Scherpping, Alejandro Traverso, Samuel Bellos, Eduardo Osorio, Maria Rozas, Fernando Azula and Carlos Baeza.

310. According to the WFTU and the WCOTP, these events are linked with the national strike of 30 October 1984 in which AGECH took part. The WCOTP states that reprisals began with the arrest on 29 October 1984 of four members of AGECH: Juan Ruiz Campes, president of the Provincial Council of Llanquihue; Pedro Ramírez Suárez, a member of the Provincial Council of Cachapoal; and two other members of AGECH.

311. Still according to WCOTP, trade union leaders were dismissed, banished or arrested following the strike of 30 October 1984. Thus, under the state of siege declared on 15 November 1984, about 20 active members of AGECH were banished to various parts of the country. They included Víctor Raúl Manríquez Torres, Vice-President of the Metropolitano Provincial Council of AGECH, and the executive of the Provincial Council of AGECH at Arica: Benjamín Sierra de la Fuente, President; Linio Tapia González, Vice-President; Oscar Arancibia Villalba, General Secretary; and five other members. The ICFTU also refers to the arrest of professors Patricio García and Sergio Leval and of the student Alexis Olivares during the transfer of Mr. Guerrero's body. Regarding Manuel Guerrero Ceballos, who had been found dead after being abducted, the WCOTP states that a warrant had been issued for the arrest of this AGECH leader in November 1984. This warrant had been countermanded by the Minister of the Interior in mid-March 1985 and Mr. Guerrero had immediately resumed his trade union functions. Moreover, his home had been ransacked on 17 November 1984 and he had appealed to the courts for protection.

312. The WCOTP also indicates that the Ministries of Education and the Interior had still refused by the end of March 1985 to accept AGECH's requests for a meeting to discuss the arrests and banishments. The Association's correspondence is also alleged to be under surveillance.

313. In the view of the WCOTP, the state of siege declared for three months in November 1984 and extended for a further three months is merely a means of preventing the realisation of the democratic aspirations of the various groups making up Chilean society, including the trade unions. The WCOTP considers that the national strike was not a sufficient ground for declaring the state of siege and that the sole purpose of the latter was to legalise repression by conferring broad powers upon the Government and the military.

314. In its communication of 1 April 1985 the ICFTU mentions the arrest of six trade union leaders of the Port of San Antonio: Sergio Aguirre, Salatiel Sánchez, Luis de la Cruz Ordenes Sepúlveda, Pablo

Dianta, Carlos Cueto and Dario Zapata. In its communication of 29 April 1985, the ICFTU also refers to the arrest, on 26 April, of 200 persons who were holding an artistic and cultural demonstration in the Chilectra trade union's headquarters. These persons were arrested during a search of the premises and included several trade union leaders: Victor Hugo Gac, Vice-President of the National Trade Union Co-ordinating Body; Eduardo Loyola, Legal Adviser to the National Grouping of Workers; and Manuel Dinamarca, a former officer of the Unitary Central of Workers. The National Grouping of Workers states that most of the arrested persons were released on 28 and 30 April 1985. However, 12 of them were banished for repeated violations of the law and attacks on public order.

315. In its communication of 26 April 1985, the ICFTU refers to a brutal attack on 9 April by a group of ten armed and masked civilians on the Building Confederation's premises. The trade union leaders present were ill-treated and had personal effects and property stolen. Their identity cards were confiscated. After this attack the police came to the premises and took away Manuel Bustamante and José Luis Figueroa for their statements. Subsequently, on 18 April, the Ministry of the Interior convoked the Confederation's leaders, Sergio Troncoso, Manuel Bustamante and José Estorgio. The ICFTU fears that they have been arrested. In a subsequent communication, dated 17 May 1985, the ICFTU states that all these trade union leaders were charged at the request of the Ministry of Labour.

316. The ICFTU also mentions the banishment of Adrian Fuentes, President of the National Trade Union Co-ordinating Body of Concepción, to the north of the country. This measure was taken after he had only enjoyed 25 days' freedom after his earlier banishment.

317. According to the ICFTU, Eugenio Madrid, Secretary General of the General Confederation of Land Transport, Miguel Arancibia, trade union adviser and several officers of the peasant organisation ADMAPU, including the President, José Santos Millao, Domingo Marileo and Manuel Liquil, have been arrested and banished. The ICFTU points out that José Santos Millao had already been arrested in January 1985 following the search of trade union premises. He was brought before the military courts on charges of illegal possession of weapons. He was subsequently released with no charges being held against him.

318. Finally, the WCL requests in several of its communications that the ILO send a mission to Chile as a matter of urgency.

C. The Government's replies

319. As regards the deaths which occurred during clashes with the police particularly on 4 September 1984, the Government indicates that an inquiry is being carried out by the competent criminal courts which

will decide who was responsible for the deaths upon completion of the investigations. The Government cannot interfere in these matters because of the independence of the judiciary.

320. As regards the death of Juan Antonio Aguirre Ballesteros, an inquiry is being undertaken by the ad hoc Military Prosecutor appointed by the Supreme Court at the request of the Chilean Roman Catholic Church. The proceedings are at the investigatory stage which is carried out in secret.

321. As regards the search of the headquarters of the El Surco National Confederation, the Government states that this organisation lodged an appeal with the Santiago Court of Appeal against the National Information Centre in respect of arbitrary and unlawful acts allegedly committed during the search. This appeal was rejected by the Court of Appeal on 9 November 1984. The Ministry of the Interior has informed the Court of Appeal that it did not order the searches of several trade union premises which took place recently.

322. The Government reaffirms that both the searches of the headquarters of the El Surco Confederation and the arrests which took place at the same time were not made on account of trade union activities but on account of partisan political activities on the part of the persons concerned, in violation of current legislation.

323. According to the Government, the arrest and subsequent banishment of certain persons are measures which it had to take given the clandestine partisan political activities that they were involved in. These measures were taken by virtue of the powers vested in the President of the Republic by the Constitution during the state of siege.

324. The Government states that five of the persons named on the list prepared by the Committee and annexed to its previous report were neither arrested nor affected by any measure restricting their freedom. Nine other persons have been released (see the annex to this case). Mr. Renato Columbano, of unknown profession, is not a trade union leader and was arrested on 7 November 1984 for his terrorist activities. The following day he was placed on the disposal of the competent court and at the end of his trial was found guilty. He was able to choose his own defence counsel.

325. The Government also indicates that the Santiago Court of Appeal rejected the appeals for protection lodged by the lawyers of Carlos Opazo Bascuñan, Segundo Cancino Fernández, Luis Peña Robles, Humberto Arcos Vera and Luis Enrique Avendaño Atenas, trade union leaders who have been banished to different parts of the country.

326. The Government indicates that the removal from office of Mr. Manuel Bustos was cancelled by the Labour Directorate. It explains that under section 21(3) of Legislative Decree No. 2756 of 1979 on trade union organisations, trade union leaders must not have been convicted or be on trial for offences or crimes liable to

sentences of imprisonment or for offences relating to the management of trade union assets. Under section 23(4) of the same Legislative Decree, removal from office shall be determined by the Directorate of Labour within 90 days and there is a time limit of five working days for the lodging of an appeal to the courts. Mr. Bustos received a prison sentence in 1981. Despite that, he was elected to office in the Workers' Union No. 1 of the undertaking SUMAR S.A. in 1982 and then to the Textile Confederation in 1984. The Labour Directorate should have declared him ineligible for office after his election in 1982 but only did so in 1985. Its decision was therefore taken outside the prescribed time and has been annulled. The Government has thus shown its wish to maintain harmonious relations with the leaders of the organisations having legal personality.

327. As regards the allegations concerning Mr. Sergio Olivares Alfaro, the Government states that he was arrested and banished to Quirihue until 18 March 1985. This measure, which was taken by the authorities in virtue of powers granted by the Constitution to the President of the Republic during the state of siege, was in no way related to Mr. Olivares's trade union activities but to his participation in clandestine political meetings.

328. The Government indicates that Mr. Guillermo Risco Uribe was not arrested and that he is free. A warrant for his arrest issued on 4 February 1984 under the provisions governing the state of siege was not acted on. The ground for the warrant was participation in clandestine political meetings where protest action against the Government was decided on.

329. Referring to the kidnapping of the leaders of AGECH, the Government states in its communications of 8 April and 2 May 1985 that a number of persons were kidnapped on the public thoroughfare by unidentified individuals. According to the Government, these events are part of a pattern of criminal acts ranging from bomb attacks on banks and undertakings to the violent death of two security officials at Concepción and armed retaliation to police procedures. The recent discovery of arsenals of weapons in various places throughout the country, adds the Government, proves the existence of an organised campaign to prevent the country from returning to normal and to destabilise the Government. Following the kidnapping and murder of Messrs. Parada, Guerrero and Natino, which the Government strongly condemned, the authorities requested the Supreme Court to appoint a senior magistrate to investigate the events and punish the guilty parties. The Court appointed Judge Cánovas Robles, who at once ordered the police services to open an inquiry. Identikit portraits were made of the three suspects and distributed to all the media on the express instructions of the Government. The proceedings are thus at the investigation stage, which, in accordance with the Code of Criminal Procedure is secret, so as not to hinder investigations. The Government concludes by regretting these events and condemning them with the utmost vigour. It is confident that the judicial courts will soon cast light on all aspects of these events, and for this purpose has ordered its bodies and institutions to collaborate as

fully as possible with the courts. The Government and the organs within its jurisdiction played no part in the search of the premises of AGECH or in the kidnapping of its officers, who were released on 29 March.

330. Both the lawyers of the abducted persons and the National Directorate of AGECH lodged a complaint before the Eighth Criminal Court of Santiago for abduction and unlawful association for criminal purposes. Information in the press indicated that there might be a connection between these events and the kidnapping on 29 March of Messrs. Parada, Guerrero and Natino. If this is proven, Judge Cánovas Robles will also be entrusted with the inquiry.

331. The Government indicates that six persons were arrested at the Port of San Antonio by virtue of powers vested in the President of the Republic by the Constitution during the state of siege. These persons were banished to Inca de Oro, Toconao and Caspana. According to the Constitution such banishment can last no longer than 90 days. This measure had no link to the presumed trade union activities of the persons concerned.

D. The Committee's conclusions

332. Before examining each of the aspects of the case, the Committee must stress its deep concern at the difficulties facing a large number of Chilean trade union organisations and their leaders. In particular, it points out that, since its last meeting, the complainants have sent to the ILO communications referring to extremely serious measures or events such as deaths, abductions, arrests and banishment of trade union leaders, the attack on headquarters of organisations and the ban on trade union meetings and elections. The Committee considers that such a climate of violence directed at the trade union movement can only lead to a general feeling of insecurity and fear which seriously threatens the exercise of trade union activities. The Committee is of the opinion that the Government should urgently take every measure necessary to put an end to this atmosphere; this implies that respect for the human rights which are essential for the development of trade union activities be guaranteed, in particular the right to personal freedom and security, protection against arbitrary arrest and freedom of assembly, opinion and expression.

333. The first allegations made in this case concerned the deaths during the National Protest Day of 4 September 1984. The Committee notes the Government's statements that an inquiry is being carried out by the competent criminal courts. It requests the Government to supply information on developments in the inquiry and its eventual results.

334. As regards the death of Mr. Juan Antonio Aguirre Ballesteros which took place after his arrest, the Committee notes that an inquiry has also been opened and that it is at present at the investigatory stage. The Committee expresses the hope that this inquiry will lead to the rapid determination of responsibilities in this matter. It requests the Government to continue to supply information on this point.

335. As regards the attacks on trade union premises, the Committee deplores the fact that, according to the complainants' allegations, since its previous meeting other trade union organisations have been subjected to such acts, especially in the teaching and building sectors. The Committee notes that the Government denies having ordered any searches of the trade union premises involved. It considers that, if this is the case, orders should be given for inquiries to be undertaken with a view to finding the perpetrators of these attacks, which seriously affect freedom of association and call for severe measures by the authorities against those responsible. The Committee requests the Government to supply information on any inquiries which have been carried out in this regard.

336. The Committee notes that a judicial inquiry has been instituted into the death of Messrs. Guerrero and Parada. It requests the Government to supply information on developments in this inquiry and its results.

337. As regards the alleged arrest and banishment of trade unionists, the Committee takes note of the information communicated by the Government on some of the persons mentioned by the complainants (see Annex). In particular, it notes that some of them have not been arrested, that others have been released and that those who were banished were so treated for reasons not connected to trade union activities such as, for example, clandestine partisan political actions. The Committee must, however, observe that, as regards these latter persons, the Government's statements are of a general nature since they do not refer to the specific concrete acts on which the banishments were based. Consequently, the Committee is unable to come to a decision as to the trade union nature of the activities which were the basis of these measures. Moreover, the Committee notes with concern that many of the persons subjected to banishment orders hold trade union office. It considers that the accumulation of these measures considerably weakens the organisations by depriving them of their leaders and thus limiting their possibility of carrying out activities for the defence and promotion of the interests of their members. The Committee requests the Government to supply information on the situation of the persons concerning whom it has not yet replied, as well as on the concrete acts which were the basis for the measures taken against them.

338. As regards the allegations concerning the right of assembly, the Committee must note with regret that the Government has taken no measures to lift the restrictions limiting the exercise of this

right. On the contrary, the Committee has received new allegations that these restrictions have been imposed on a works union in the National Copper Corporation. Since the Committee has not yet received the Government's reply on this latter point, it requests it to supply its observations in this respect as soon as possible.

339. Finally, the Committee notes that the decision to remove Mr. Manuel Bustos from his trade union functions has been annulled by the Labour Directorate. It must, however, recall that when it examined the trade union legislation adopted in June 1979, it considered that provisions concerning ineligibility for reasons of criminal conviction or prosecution could jeopardise the principles of freedom of association. In fact, conviction and prosecution for activities which by their nature could not constitute a genuine threat to the proper exercise of trade union functions should not be grounds for disqualification from holding trade union office. [See 197th Report, Case No. 823, para. 384.]

The Committee's recommendations

340. In these circumstances, the Committee recommends the Governing Body to approve this interim report and, in particular, the following conclusions:

- (a) The Committee expresses its deep concern at the difficulties facing a large number of Chilean trade union organisations and their leaders. It considers that the Government should urgently take every measure necessary to put an end to this climate of violence; this implies that respect for the human rights essential for the development of trade union activities be guaranteed.
- (b) As regards the deaths which took place during the National Protest Day of 4 September 1984, the Committee requests the Government to supply information on developments in the inquiry opened into this matter and on its eventual results.
- (c) As regards the death of Messrs. Aguirre, Guerrero and Parada, the Committee expresses the firm hope that the inquiries under way in these matters will lead to the rapid determination of responsibilities; it requests the Government to continue to supply information on these inquiries.
- (d) As regards the attacks on trade union premises, the Committee deplores the fact that such acts have again been committed against trade union organisations. It notes that the Government denies having ordered searches of these premises and requests the Government to order that inquiries be undertaken with a view to finding the perpetrators of these acts which call for severe measures by the authorities against those found responsible. It

- requests the Government to supply information on any inquiries which have been carried out in this regard.
- (e) As regards the arrest and banishment of trade unionists, the Committee notes the information supplied by the Government, in particular, that some persons were not arrested and that others are free. It considers that the accumulation of these banishment measures considerably weakens trade union organisations by depriving them of their leaders and hindering their activities. It requests the Government to supply information on the situation of the persons - listed in the Annex - concerning whom it has not yet replied and on the concrete acts which were the basis for the measures taken against them.
- (f) As regards the obstacles to the right of assembly, the Committee notes with regret that the Government has not lifted them. It requests the Government to supply its observations on the allegations presented by the Works Union No. 6 of the National Copper Corporation.

ANNEX

List of persons mentioned by the complainants as having been arrested and replies of the Government concerning them

AGUIRRE, Sergio	Officer of the Federation of the Port Undertaking of Chile, banished to Inca de Oro for reasons not connected to trade union activities.
ARCOS, Humberto	Banished. Appeal for protection rejected.
AVENDAÑO, Enrique	Banished. Appeal for protection rejected.
CANCINO, Segundo	Peasants confederation of El Surco; banished to Quemchi; appeal for protection rejected.
CATRIL, Alejo	Textile leader. Released.
COLUMBANO, Renato	Is not a trade union leader. Arrested for terrorist activities. Placed at the disposal of the courts which later found him guilty.
CUETO, Carlos	Treasurer of the Federation of Auxiliary Seamen of Chile. Banished to Toconao for reasons not linked to trade union activities.

DIANTA, Pablo	San Antonio Port. Banished to Caspana for reasons not linked to trade union activities.
FERNANDEZ, Humberto	Trade unionist of Concepción. Released.
FUENTES, Adrian	Trade unionist of Concepción. Released.
GUERRERO, Manuel	President of the Metropolitan sector of the Professional Association of Teachers of Chile. Kidnapped by unidentified individuals on 28 March 1985. Found dead. Judicial investigation under way.
LACAMPRETTE, Marta	Released.
MENESES, Victor	Arica trade union leader. Released.
NUÑEZ, José	Trade unionist of the Metalworkers' Confederation. Released.
OLIVARES, Sergio	President of the National Federation of Unions of Special Crews, Fishermen and Allied Branches. Banished until 18 March 1985 for participating in clandestine political meetings.
OPAZO, Carlos	Banished. Appeal for protection rejected.
ORDENEZ, Luis de la Cruz	San Antonio Port. Banished to Inca de Oro for reasons not linked to trade union activities.
PARADA, José	Officer of Vicariate of Solidarity. Kidnapped by unidentified individuals on 28 March 1985. Found dead. Judicial investigation under way.
PEDRIN, Jorge	Trade unionist of Concepción. Was not arrested.
PEÑA, Luis	Banished. Appeal for protection rejected.
POBLETE, Pablo	Arica trade union leader. Released.
RISCO, Guillermo	Officer of the National Federation of Unions of Special Crews, Fishermen and Allied Branches. Free. Warrant for his arrest not acted on.
RODRIGUEZ, Jorge	Miners' Federation. Released.
SALFATE, Boris	Was not arrested.

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SANCHEZ, Salatiel	Secretary General of the National Confederation of Maritime and Port Workers and Fishermen of Chile. Banished to Toconao for reasons not linked to trade union activities.
SANTIBAÑEZ, Hector	Officer of the National Association of Retired Workers. Was not arrested.
SOTO, Hermán	Released.
VASQUEZ, Ernesto	Arica trade union leader. Was not arrested.
VIDAL, Raúl	Trade unionist of Concepción. Was not arrested.
ZAPATA, Dario	San Antonio Port. Banished to Caspana for reasons not linked to trade union activities.

List of persons mentioned by the complainants as having been arrested and allegations made concerning them, on which the Government has not yet supplied information

ABARZUA, Sergio	Teacher, arrested on 7 November, banished to Porvenir.
AGUILAR, Juan	Taxi Drivers' Union, banished to Quirihue.
ARANCIBIA, Julio	Building Workers' Confederation, arrested, banished to Lumitaqui.
ARANCIBIA, Miguel	Trade union adviser, banished to Palena.
ARANCIBIA, Oscar	Professional Association of Teachers of Chile, arrested on 23 December, banished to Pemuco.
ARAYA, Jorge	Miners' Confederation, banished to Dalcahue.
AREVALO, Vladimir	Teacher, arrested on 21 December, banished to Crucero de Río Bueno.
BUSTAMANTE, Manuel	Leader of the Building Workers' Confederation, arrested and charged.
CASTRO, Ricardo	Teacher, arrested on 23 December, banished to San Nicolás.

CELEDON, Luis	Teacher, arrested on 15 November, banished to Pisagua.
COLOMA, José	Teacher, arrested on 23 December, banished to Ninhue.
DEL RIO, Rolando	Teacher, arrested on 23 December, banished to Trehuaco.
DINAMARCA, Manuel	Former leader of the Unitary Central of Workers, arrested.
DINAMARCA, Neftali	Professional Association of Teachers of Chile, banished to El Salado.
ELOY, Oscar	Teacher, arrested on 23 December, banished to Pemuco.
ESCOBAR, Vladimir	Teacher, arrested on 23 November, banished to Paihuano.
ESTORGIO, José	Leader of the Building Workers' Confederation, arrested and charged.
FAUNDEZ, Luis	Professional Association of Teachers of Chile, arrested on 24 November, banished to Pichasca.
FIGUEROA, José Luis	Leader of the Building Workers' Confederation, arrested and charged.
FUENTES, Adrián	Trade unionist of Concepción, arrested and banished a second time on 11 April 1985.
FUENTESECA, Douglas	Teacher, banished to Catapilco.
GAC, Victor Hugo	Vice-President of the National Trade Union Co-ordinating Body, arrested.
GARCIA, Patricio	Teacher, arrested on 31 March 1985.
GUTIERREZ, Jorge	Teacher, arrested on 23 November, banished to Punitaqui.
GUTIERREZ, Luis	Teacher, arrested on 23 December, banished to El Carmen.
LEAL, René	Teacher, arrested on 23 November, banished to Vicuña.
LILLO, Pedro	Professional Association of Teachers of Chile, banished to Monte Patria.

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LOYOLA, Eduardo	Legal adviser of the National Grouping of Workers, arrested.
MADRID, Eugenio	Secretary of the General Confederation of Land Transport, banished to Chaiten.
MARILEO, Domingo	Leader of the peasant association ADMAPU, banished.
MANRIQUEZ, Víctor	Professional Association of Teachers of Chile, arrested on 15 November, banished to Baquedano.
MIALLAN, Hector	Building Workers' Confederation, banished to Monte Patria.
PIQUIL, Manuel	Leader of the peasant association ADMAPU, banished.
SANTOS, José	President of the peasant association ADMAPU, banished.
SIERRA, de la F. Benjamín	Professional Association of Teachers of Chile, arrested on 23 December, banished to Pemuco.
SOVAL, Sergio	Teacher, arrested on 31 March 1985.
SUAREZ, Antonio	Mining Confederation, banished to Pudelquín.
TAPIA, Lino	Professional Association of Teachers of Chile, arrested on 23 November, banished to San Gregorio.
TRONCOSO, Sergio	President of the Building Workers' Confederation, arrested and charged.
VALENCIA, Guillermo	Mining Confederation, banished to Pudelquín.
VALENZUELA, José	Building Workers' Confederation, banished to Monte Patria.

Geneva, 30 May 1985.

Roberto Ago,
Chairman.

240th REPORT¹

INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 27, 28 and 30 May 1985 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. The Committee had before it various complaints of infringements of trade union rights in Turkey presented by a number of trade union organisations (Cases Nos. 997, 999 and 1029), as well as a representation concerning the non-observance by Turkey of the Right of Association (Agriculture) Convention, 1921 (No. 11), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), made by the General Confederation of Trade Unions of Norway under article 24 of the Constitution of the ILO.

3. At its 228th Session (November 1984) the Governing Body adopted the interim conclusions on Cases Nos. 997, 999 and 1029 submitted to it by the Committee in its 237th Report.

4. Since then, the Government sent its observations in three communications dated 25 April and 13 and 22 May 1985.

5. The General Confederation of Portuguese Workers-National Inter-Union (CGTP-IN), referring to article 24 of the ILO Constitution, presented a representation (Case No. 1303) alleging failure by Portugal to implement a number of international labour Conventions which it had ratified, including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1979 (No. 135). The complainant Confederation sent additional information in support of its representation on 9 August 1984. The Government sent information and observations on the aspects of the representation concerning freedom of association in communications of 10 December 1984 and 15 February 1985.

6. The Confederation of Costa Rican Workers (CTC), the Authentic Confederation of Democratic Workers (CATD), the Unity Confederation of Workers (CUT), the Costa Rican Confederation of

¹ See page 1, footnote 1.

Democratic Workers (CCTD) and the National Confederation of Workers (CNT) presented a representation (Case No. 1304) under article 24 of the ILO Constitution, against the International Monetary Fund and alleging the failure by Costa Rica to implement several international labour Conventions including Conventions Nos. 11, 87, 98 and 135. By letters of 8 October, 22 November and 18 December 1984, the Government sent its observations on the allegations presented by the complainant organisations.

Cases Nos. 997, 999 and 1029

COMPLAINTS PRESENTED BY THE WORLD CONFEDERATION OF LABOUR,
THE WORLD FEDERATION OF TRADE UNIONS, THE INTERNATIONAL
CONFEDERATION OF FREE TRADE UNIONS AND SEVERAL OTHER TRADE
UNION ORGANISATIONS AGAINST THE GOVERNMENT OF TURKEY

REPRESENTATION SUBMITTED BY THE GENERAL CONFEDERATION OF
NORWEGIAN TRADE UNIONS UNDER ARTICLE 24 OF THE CONSTITUTION,
CONCERNING NON-OBSERVANCE OF THE RIGHT OF ASSOCIATION
(AGRICULTURE) CONVENTION, 1921 (NO. 11), AND THE
RIGHT TO ORGANISE AND COLLECTIVE BARGAINING
CONVENTION, 1949 (NO. 98) BY TURKEY

7. The Committee has been examining these cases since February 1981 and has submitted 11 interim reports thereon to the Governing Body, the last one being submitted in November 1984 [see 237th Report of the Committee, approved by the Governing Body at its 228th Session, November 1984].

8. At its February 1985 meeting, the Committee took note of a communication from the Government informing it that the competent authorities were examining in detail the Committee's most recent recommendations and that information and observations would be transmitted as soon as available [see 238th Report of the Committee, para. 7, approved by the Governing Body at its 229th Session, February-March 1985].

9. On 12 February 1985, the World Federation of Trade Unions (WFTU) presented certain additional information in connection with the complaints.

10. The Government sent observations in three communications, dated 25 April, 13 and 22 May 1985.

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

A. Previous examination of the cases

12. When the Committee last examined these cases in November 1984 it expressed its thanks to the Government for the spirit of co-operation it had shown in accepting a third direct-contact mission and for extending all the facilities required to enable the representative of the Director-General to carry out the mission.

13. The Committee recalled that the cases before it concerned questions of both a factual and a legal character. In the first place, questions remained concerning the situation of the leadership of the DISK organisation and the leaders of its affiliated organisations who had been arrested and detained following the military intervention in September 1980 and whose trials had been continuing up to then. In the second place, the Committee had been examining the situation of the DISK which, as an organisation, was suspended by an enactment of the military authorities shortly after the military intervention and the position regarding its assets which had been placed in the hands of trustees appointed by the Labour Court following its suspension. Thirdly, the outstanding issues concerned alleged discrimination against former DISK detainees who, it has been said, had encountered difficulty in obtaining or had failed to obtain employment or be reinstated as a result of their association with DISK. And fourthly, the outstanding issues concerned the legislation relating to trade unions and collective bargaining, strikes and lock-outs, enacted in May 1983 and amended in August of that year, and the problems relating to the practical application of that legislation.

14. From the information appearing in the report of the representative of the Director-General, the Committee was able to note that only five of the originally detained DISK leaders remained in detention as a result of charges or convictions against them that are unrelated to the original charges that were brought against DISK and its leadership. It also noted that several of the trials against DISK-affiliated organisations have been combined with the main trial and came to the conclusion that, as a consequence of this and further probable mergers of trials with the principal one, the final verdict in the whole case may be further delayed. As regards the trial itself, the Committee noted that, although the defence lawyers and witnesses were able to address the court freely, some restrictions continued as regards access by defence lawyers to the five DISK leaders still in detention and access by the accused and their defence lawyers to the mass of documentation and recorded evidence that has accumulated and will continue to be accumulated in connection with all the trials.

15. The Committee also observed that, although released from detention, the leaders of DISK and its affiliates were specifically prevented from engaging in any kind of trade union activity by virtue of section 5 of the transitional provisions of Act No. 2821 concerning trade unions dated 5 May 1983 and, given that this together with the suspension of DISK has denied many thousands of workers the right to

be represented by the trade union of their choice, strongly urged that section 5 of the transitional provisions be repealed without delay.

16. The Committee again drew the attention of the Committee of Experts on the Application of Conventions and Recommendations to instances of anti-union discrimination manifested by employers - in particular ministries and state enterprises - who would not engage or reinstate any former trade union member of DISK. It reminded the Government that Article 1 of Convention No. 98 provides that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment.

17. As regards DISK's accumulated assets, the Committee noted that these were apparently substantially intact in the hands of a newly appointed trustee and that their ultimate disposal would depend on the decisions to be taken by the military court in the trial against DISK and its affiliates. It expressed the hope that, in the expectation that the suspension of DISK will be lifted and that full trade union rights will be restored to it and its leaders who should be able to carry out their activities in full possession of their assets, all necessary measures would be taken to maintain and preserve these assets.

18. As regards the legislative aspects of the cases, the Committee indicated that several provisions of Acts Nos. 2821 (on trade unions) and 2822 (on collective bargaining, strikes and lock-outs) were not in conformity with the principles of freedom of association and hoped that martial law - which continued in 39 provinces - would soon cease to apply. It again drew the attention of the Committee of Experts to this aspect of the cases.

19. In these circumstances, the Committee recommended the Governing Body to approve its interim report and, in particular, the following conclusions:

- (a) The Committee wishes to express its thanks to the Government of Turkey for the spirit of co-operation it has shown in accepting that a further direct contacts mission take place and for extending all the facilities that were required to enable the representative of the Director-General to carry out the mission.
- (b) The Committee notes that martial law is still in force in a substantial number of the 67 provinces in the country and that states of emergency have been declared in some of the areas in which martial law has been lifted. It requests the Government to furnish it with information concerning the effects of such declarations on trade union rights, with particular reference to the role of the labour courts and the rights of collective bargaining.
- (c) Recalling the principle that the existence of martial law is incompatible with the exercise of trade union rights, the Committee hopes that the reasons for the continuing operation of