

followed by the various stages of negotiation with a view to achieving a settlement whereby the parties reach agreement or the dispute is either settled by a court of arbitration in the case of workers who provide services in essential public services, as in the case in question, or by strike action for workers in other sectors.

The Committee on Freedom of Association may readily ascertain not only that the event in question constituted a precipitous and illegal strike by workers in essential public services, and failed to comply with the regulations laid down in law but, more serious yet, that many of the trade unions which sponsored and promoted this political movement were bound at the time by collective agreements with their employers that had been signed and were in force, cases in point being the Instituto de Seguros Sociales (SINTRAISS), Ecopetrol (USO), Telecom (SINTELECOM), Caja Agraria (SINTRACREDITORIO). Another large group of workers, such as those in the judicial, health and education sectors, were subject to current agreements with the Government establishing their conditions of pay and employment until 31 December 1998.

Under these circumstances, there can be no doubt that, given the nature of the movement's "demands" (opposition to the Government's economic and social policies), the strike bore the hallmarks of a political movement as opposed to a labour movement. Nonetheless, the Government, in deference to its constitutional duty to comply with and ensure compliance with the law, provided an opportunity for the pursuit of a social dialogue on the subject of certain demands submitted the night before the movement began; this led to the acceptance and signature of a bilateral agreement and the adoption of a commitment (unilateral declaration) which ended the dispute, bearing witness to the democratic nature and civic awareness of the Government (the two above-mentioned documents are appended).

During the course of the strike, the trade union leadership was seen to employ two atypical practices of trade union action. First, it initiated a political movement of unspecified duration, as opposed to a labour conflict, which meant that the action could not be recognized as a legal strike and was declared illegal. Second, it was not a peaceful movement and work stoppage but in fact in some cases involved the seizure of the premises of the bodies and enterprises involved by groups of workers who, under the leadership of the trade union officials, barred access to other workers who wished to fulfil their duties, in some cases assaulting them, and also preventing access by service users. This, as might be expected, led to state intervention by the public police force (see video appended) to restore order and protect citizens and, unusually, to protect the right to work of those who were prevented from doing so freely by the violence of certain groups of workers; this intervention was of course conducted in a legal manner in accordance with regulations, without excesses, despite the force of the movement.

Complaint of international and national trade union confederations

International and national trade union confederations report to the ILO that, during the strike, acts of violence were committed against trade union leaders and members: murders, physical aggression and injuries, detentions and death threats.

In connection with these allegations, the Colombian Government wishes to clarify the circumstances surrounding the events in question.

With regard to the alleged murders, investigations have been conducted by the Office of the Procurator-General of the Nation. This body, which is responsible for conducting inquiries, gathering evidence, adopting security measures, deciding on the merits of cases and preferring charges on suspects before judges, has provided us with information on some of the cases reported, namely:

On 20 October 1989, in Santafé de Bogotá, Jorge Luis Ortega García, vice-president of the CUT, was murdered. The investigation was opened on the same day by the national human rights unit of the Procurator's Office, file No. 398. The investigation is currently at the pre-trial stage, and three suspects have been identified and two arrest warrants have been issued.

The national police state, in regard to the case of Jorge Ortega, that "the trade union official rejected the Government's offer of protection through the Ministry of the Interior's Committee of Assessment and Risk which did not comply with his own requirements (he wished to select his own bodyguards); this did not occur because such matters were required to comply with the system of protection that was being provided at that time by DAS. Immediately after the murder of trade union official Jorge Ortega, an SIJIN, DIJIN, CTI inter-institutional group was set up, headed by the Procurator's Office, coordinated specifically by the Immediate Response Unit which established that the deceased had earlier received threatening telephone calls at the porter's lodge of the residential complex where guard duties were carried out by Díaz Bustos who was subsequently captured. The guard was found dead in one of the cells of the model prison; the causes are being investigated by the Procurator's Office".

Ms. Orfa Ligia Meijía was murdered on 7 October in the municipality of Ipiales, in the department of Nariño. Information on this case is awaited from the Procurator's Office. Likewise, information is awaited in connection with the murder on 10 October of Marcos Pérez González, member of SINTRALECOL.

In regard to the murder on 24 October of Ms. Hortensia Alfaro Banderas, vice-president of SIDESC, the Procurator's Office states that the investigation, filed under No. 11353, is at the preliminary stage; it would appear from initial inquiries that the perpetrators of this crime were members of a paramilitary group operating in the area of the department of Cesar.

In regard to the murder on 25 October of Macario Barrera Villota, member of the Huila association of teachers, the Procurator's Office states that according to the case filed under No. 1664, the preliminary investigations have revealed that the victim's death was related to the theft of his taxi (Renault, model 93): "The victim worked both as a night schoolteacher and as taxi driver; he was not known to have any background as a trade union member and much less to have received any threats for engaging in such activity."

In regard to the murder on 26 October of Jairo Cruz, President of the Trade Union of Proaceites Workers, the Aguachica-Cesar branch of Procurator's Office 25 has opened an investigation, filed under No. 6211.

Physical aggression and injuries

In connection with the allegations and information submitted by third level national trade union organizations before the Committee, it may be stated that since no report was made to any security or jurisdictional body regarding the alleged offences, the national Government has obtained no comments or communication in this regard, despite the fact that it has submitted requests for information regarding these incidents to the Office of the Procurator-General of the Nation, the Office of the Attorney-General of the Nation and the national police.

The national police, in report No. 022 of 12 January of this year, states in this regard that "it should be emphasized that the presence of the police in places in which demonstrations or strikes are to take place emanates from a legal duty and not from any desire to hinder the right of freedom of expression; on the contrary, it is a permanent task of the national police to accompany demonstrators and take action only when this becomes

necessary to disperse any outbreak of violence. It should be remembered that when workers demonstrate, they are responsible for at least 50 per cent of security to ensure that no infiltrators are present during the demonstration to incite disorder”.

Detentions

The national Government is not in a position to provide information on all the cases mentioned in the complaint, since some of them were not even recorded by the authorities, or the alleged incidents were not reported or they merely involved questioning or detentions of short duration, which had no further consequences. The national police has provided information only on matters of which it is aware and in connection with the frequently mentioned national strike. In its report No. 022 of 12 January 1999 (page 3, paragraph 3):

Following investigations into detentions which occurred during the national strike in Bogotá, the Judicial Police Branch (SIJIN) of the Metropolitan Police of Santafé de Bogotá states that, following their investigations, they were able to identify a case that was submitted on 22 October 1998 when José Alfredo Patiño Granados and the minor Ramón Gutiérrez Patiño were detained: among other circumstances, they carried explosive material as described in the report of which a photocopy is appended. José Alfredo Patiño was brought before the regional Procurator of the SIJIN of Bogotá and the minor was handed over to the family officer on duty.

The Bacatá police brigade in turn stated that during the strike of government workers of 7 October 1998 to 26 October 1998 two people were detained, who were identified as Carlos Andrés Cristian Sanabria and Gloria Stella Valencia Lobos, for damaging state property, specifically motorcycles 4-4011 and 04-4035; officials of the Office of the People's Advocate instituted a settlement, as described in document No. 059 of 6 January 1999 which is appended.

The following persons were temporarily detained at Engativá station 10: Germán Pérez Bastidas, Pedro Arnulfo Melo Cantor, Edgar Arnulfo Melo Cantor and Javier Fernando Amezcuita, as stated in document No. 011 from the Tisquesusa police department, which is appended.

In the Tequendama police department, specifically station four of San Cristóbal Sur, nine persons were detained under article 207, paragraph 3, of decree No. 1355 of 1970, as stated in the document of 7 January 1999, which is appended.

Adolfo Gaitán Chacón and Elber Yesid Gaitán Chacón were detained at Restrepo station 15 of the police department of Tequendama, when they were discovered scattering nails and thumb tacks at the junction of Carrera 10 and Calle 1, and disturbing the peace; they were subsequently brought before the Immediate Response Unit (URI); the youth Edison Gaitán Chacón was also detained and brought before Juvenile Court No. 2.

Usme station 5, Bosa station 7, stations 18 and 19 of the police department of Tequendama report no public disturbances and no arrests.

In addition, in report No. 0036 of 12 January 1999, the national police states in this connection that “Regarding the arrest of the three persons in question on 8 and 16 October 1998, as detailed on page 4, I wish to state that Orlando Riveros and Sandra Parra Montenegro were arrested for destroying property not belonging to them and for disturbing the peace, and were held in the CAI San Francisco in the Jurisdiction of Ciudad Bolívar on 16 October 1998 and brought before the Immediate Response Unit of Ciudad Bolívar on the same day (16 October 1998), Sandra Parra Montenegro was released, under release order No. 15727, signed by Procurator 286 assigned to the Circuit Criminal Courts. Orlando Riveros was released on 17 October 1998, under an unnumbered release order issued by Procurator 319 assigned to the Municipal Criminal Courts. It should be noted that it was not possible to ascertain the state of health of these persons by reason of the fact that they have been released.

In regard to José Ignacio Reyes (8 October 1998) member of SITTELECOM, his name is not recorded in the list of persons detained in the police stations of the metropolitan area of Santafé de Bogotá.

Death threats

In regard to the death threats against all trade union leaders of the Comando Nacional Unitario (grouping together CUT, CGTD and CTC), the national Government directs attention to the information provided by the national police to the effect that it is providing police protection to the most vulnerable members of the body in question who have requested this service.

- (a) The general inspectorate of the national police, on 27 May 1998, issued order No. 01292 to assist all members of the organization in matters of "support, communication and collaboration with human rights organizations", in keeping with the instructions of the Government contained in presidential directive No. 011 of July 1997.
- (b) In compliance with this provision, back-up was provided to Hernando Hernández who, however, already had a bodyguard with back-up from DAS personnel; following the events of 16 May, he left the country for reasons of safety, and protection was provided for the headquarters of USO in Barrancabermeja and the refinery. Hernando Hernández has appeared sporadically in the country, always accompanied by his DAS bodyguard; the police has been awaiting his return in order to carry out a security study and risk evaluation. This institutional protection and collaboration policy is of a permanent nature and operates simultaneously with the Ministry of the Interior's Committee for Regulation and Assessment of Risk, of which DAS is a member.

On 26 November 1998, in response to the written request of 20 November by the ILO's Director-General, Mr. Michel Hansenne, the Minister of the Interior stated the following regarding the protection offered to a number of trade union officials:

- (1) Héctor Fajardo Abril, Secretary-General of CUT is the subject of a high-level protective security system, consisting of bodyguards, car, bullet-proof vest and cellular beeper provided by the Ministry of the Interior.
- (2) Tarcisio Mora, president of FECODE, receives a high-level security protection system, consisting of escorts, car, bullet-proof vest and cellular beeper provided by the Ministry of the Interior.
- (3) Gabriel Alvis, vice-president of USO, is the subject of a security system provided by ECOPEPETROL.
- (4) Jesús Bernal Amorocho, president of SINTRACREDITARIO, is the subject of a high-level security protection system, consisting of bodyguards, car, bullet-proof vest and cellular beeper provided by the Ministry of the Interior.
- (5) Alexander López has not been the subject of any protection request to this Ministry. The CUT, which represents trade union officials on the Committee of Risk Regulation and Assessment and is responsible for submitting cases to the committee, has not done so. However, we are at present submitting a written request for information on the situation of Alexander López and on the reasons why the CUT has not raised the matter before the Committee.
- (6) Over Dorado. The CUT, which represents trade unionists on the Risk Regulation and Assessment Committee, has not brought this case before the Committee. As in the previous instance, we are currently requesting information regarding Over Dorado.
- (7) Rafael Baldovino, president of SINTELECOM, is the subject of a high-level security protection system. His bodyguards and car are provided by Telecom.

In all the cases, instructions have been issued to the Directorate General of Human Rights of this Ministry to ascertain the situation of those persons mentioned in the document who do not yet have protection, in order to take appropriate measures. "This is the substance of the Minister of the Interior's report. Nelson Berrio, member of USO;

Wilson Borja, member of FENALTRASE and Domingo Tovar, member of CUT are also covered by the DAS security system.”

It should be noted that the Ministry of the Interior’s programme for protecting high-risk individuals, covers a considerable number of union officials, providing them with services which include vehicles, bodyguards, bullet-proof vests and air travel (for bodyguards when they are required to travel outside the city). Some trade union officials have demanded that bodyguards should not be drawn from the state security bodies, preferring persons they have chosen themselves; such individuals have been entered with difficulty on the DAS payroll.

As stated previously, Jorge Luis Ortega García is among the officials who have opted to select their own bodyguards. Specifically, he demanded that his guards should be drawn from persons on the reintegration programme (members of guerrilla forces who have become reintegrated into civilian life). The necessary bureaucratic steps were being taken to meet Ortega García’s requirement when his tragic murder occurred.

In regard to the alleged militarization of some premises of state bodies, we can only repeat our earlier statement that the intervention of the national police (the military do not take part in such activities) occurred in a legal manner in compliance with regulations and was in proportion to the circumstances. Therefore, the allegations of the workers who have submitted this complaint are rejected.

F. Point 6

The Committee requested the Government to keep it informed of the results of the judicial proceedings under way in connection with the dismissal of trade union officials and members of the ALFAGRES SA and TEXTILIA Ltd. companies and of the Ministry of Finance.

1. In the light of the vague nature of the allegations regarding dismissals of unionized employees of the ALFAGRES SA company, the Government was obliged to approach the company in order to ascertain whether it had been notified of labour complaints submitted to the jurisdictional authorities by the above-mentioned dismissed workers. In a communication of 13 January 1999 the company stated that it was unaware “... of current or earlier legal proceedings for anti-union actions; firstly, because they had never been instituted and, secondly, as you may see from our files, the individuals in question have either resigned voluntarily, or been dismissed for just cause or their employment has been terminated by mutual consent ...”. The communication is appended.
2. In regard to the complaint submitted against the TEXTILIA Ltd. company by SINTRATEXTILIA to the administrative labour authority, it should be remembered that the latter acted through the regional directorate of labour and social security of Cundinamarca which in turn, after investigating the allegations, decided on appeal not to penalize the TEXTILIA Ltd. company for acts violating the freedom of trade union association under decision No. 00134 of 27 January 1995.

In a document of 13 October 1993, Arturo Guerrero and Jairo Peña, who were at that time president and secretary of SINTRATEXTILIA, withdrew their complaint by reason of the fact that the same incidents were the subject of criminal proceedings against the company management and that the dismissed workers had filed a suit against the company before the ordinary labour court.

Reinstatement actions were filed before the courts, the current status of which is as follows:

- (a) Labour Court 5 ruled that trade union official Isidoro Tellez should be reinstated; he is currently in the employment of the company.
 - (b) Labour Court 12 has concluded the hearing and a verdict is awaited.
 - (c) Labour Court 14, awaiting judicial examination.
 - (d) Labour Court 16, the anti-union case that is being tried in this court is currently hearing witnesses' evidence.
3. In regard to the Ministry of Finance and Public Credit, concerning the appeal submitted by Ramón Vicente Ebratt Solano, against decision No. 888 of 25 March 1992 by the Ministry of Finance and Public Credit whereby he was declared ineligible to receive compensation under the collective compensated retirement plan, in a technical-administrative capacity, on the grounds that a misuse of authority had occurred since, being a trade union official, the objective of declaring him eligible had not been to ensure optimum public service; hence the administration had violated his trade union status; the Council of State ruled in a decision of 2 May 1996 that the above decision was invalid and ordered the Ministry of Finance and Public Credit to reinstate Ramón Vicente Ebratt Solano in a position of equal or higher rank, with retroactive payment of salary and other benefits between 1 April 1992 when he had been suspended from his job and the date on which he was reinstated. The Ministry of Finance and Public Credit complied with the decision and reinstated Ramón Vicente Ebratt Solano in technical-administrative post 4065-09 in the administrative secretariat of the Ministry, under decision No. 2004 of 3 September 1996, as reported in record No. 256 of 19 September 1996.

New allegations on which the Government has not communicated its observations

In this regard, the national police states the following:

In accordance with Nos. 132 and 133 on employees in the banking sector, this office was informed that a meeting was held on 8 September 1998, in the premises of the National Union of Banking Employees (UNEB), between members of the Metropolitan Police of Santafé de Bogotá and executives of this organization, during which an analysis was made of the collective threat that had been received, and assessed the degree of risk to which the following individuals were exposed: Yuly González Villadiego, Olimpo Cárdenas, Ana Cecilia Escorcía, Segundo Mora, Emidgio Triana, Rafael Peña, Alvaro Pulido, Miguel González, Raúl Malagon, Mauricio Alvarez, Orlando Romero, Alvaro Quintero, Domingo Tovar.

Following the meeting and after assessing the information provided, it was calculated that the level of risk of UNEB members was low, with the exception of Ms. Yuly González Villadiego, whose risk level was considered to be intermediate.

In addition, it is known that CUT trade union officials have received threats and have submitted corresponding complaints to the Ministry of the Interior.

In regard to the protection of SAINTRAEMCALI union officials, the national police has stated that it is taking steps to guarantee their personal protection and enable them to pursue their trade union activities. In its communication of 10 December 1998, the Government states that it has offered protection to trade union leaders, namely Messrs. Hector Fajardo Abril, Tarcicio Mora, Gabriel Alvis and José Bernard Amarcho.

Conclusion

This is our report in response to case No. 1787 that is under consideration by the ILO's Committee on Freedom of Association, and it is hoped that a dispassionate and careful

examination of the report will permit an objective appraisal to be made of our situation and of the efforts that are being made by the Colombian State to guarantee that citizens may exercise basic rights, notwithstanding the raging armed conflict by which we are oppressed.

The most logical conclusion to be drawn from the information contained in this report must be that, despite the unbridled violence that has been unleashed by the enemies of democracy against the immense majority of Colombians, the State is doing all it can to ensure that workers, in particular, may exercise the trade union freedoms that are embodied in ILO Conventions Nos. 87 and 98, in our Constitution and in legislation and standards relating to labour rights.

For the above reasons, we may state without hesitation that the Government of Colombia respects human rights and combats all those who seek to undermine them, since it holds the unswerving belief that this is an essential premise for strengthening democracy and achieving peace.

Final declarations

- (a) The Government of Colombia requests the International Labour Office to transcribe this document *in extenso* in the report to the Governing Body.
- (b) In addition, the Government states its disagreement with the scope given both by the Committee of Experts and by the Committee on Freedom of Association to the text of the Conventions adopted by the Conference, in particular Conventions Nos. 87 and 98. In providing the requisite explanations, the Government specifies that it cannot accept those requirements of the supervisory bodies which have the direct effect of disregarding the political, institutional and legal structure of the State, such as those in which the executive is required to adopt measures that in fact fall within the competence of other bodies of the public administration, the judiciary or the legislature or, graver yet, to adopt measures in regard to cases that have already been examined by national courts or which seek to require the Government to take steps, purportedly of a precautionary nature, which involve treating the labour sector in a different manner to the rest of Colombian society.
- (c) Likewise, the Government states its disagreement with the action of the Committee on Freedom of Association when, in two areas, it disregards two of the basic features of the universal principle of due process (*Universal Declaration of Human Rights*). We refer, firstly, to the inversion of the burden of proof, since it is embodied in law that a person making an accusation must prove it. However, governments are required to disprove all reports submitted to the Committee on Freedom of Association by the complainants, even when such statements are inaccurate and no corresponding evidence is supplied. In that connection, the Government points out that the Committee on Freedom of Association itself has stated that "its function is not to formulate general conclusions ... on the basis of vague general statements, but simply to evaluate specific allegations" [**Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, Annex I, para. 24]. Secondly, the presumption of innocence is disregarded because the State, which is accused in the manner described, is considered guilty until it proves the contrary.
- (d) The Colombian Government insists that sufficient familiarity should be acquired of the Colombian institutional system if any empirical understanding is to be gained of its practical framework, as opposed to speculation based on unfounded preconceptions. No branch of public power in Colombia, in this instance the Government, is prepared to assume functions or powers that are not explicitly provided for in the Constitution and in legislation and which, in addition, do not inform the spirit of our tradition of respect for the democratic institutions of the country.

The Government of Colombia holds the firmest conviction that the spirit of justice and fairness of the Governing Body and of all the sectors represented in it, will lead it to acknowledge the seriousness, validity and soundness of the explanations given in response to the various questions and to take account, with positive acts of understanding, of the difficulties currently experienced by Colombia, and the tireless national endeavours to advance the rule of law, in which it recognizes and concedes the leadership of the International Labour Organization, and to achieve domestic peace which is the desired basis of a fruitful partnership whereby the principles and values that lend dignity to human labour may be fully developed.

For the above reasons, the Government of Colombia considers that, pursuant to the obligations ensuing from its membership of the International Labour Organization, and those ensuing from ratification of ILO Conventions Nos. 87 and 98, the case of Colombia need not be referred to a commission of inquiry.

The Government of Colombia states its total readiness to engage in permanent communication with the Committee of Experts on the Application of Conventions and Recommendations and with the Committee on Freedom of Association.

D. THE COMMITTEE'S CONCLUSIONS

*10. Firstly, the Committee acknowledges the Government's efforts in drawing up its lengthy and detailed report on the numerous, serious allegations contained in this case, the majority of which refer to murders, disappearances, physical aggressions, detentions and death threats against trade union officials and trade union members, and to raids on trade union premises. The Committee deplores that since the last examination of this case by the Committee at its November 1998 meeting, such events have continued to take place, and it is deeply concerned about the violence that continues to be targeted at trade union leaders and members. The Committee must, therefore, recall that the right of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders or members of these organizations, and it is for governments to ensure that this principle is respected [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 47].*

11. With respect to the Government's final declarations, the Committee notes that in formulating its conclusions, the Committee does take into account the political, institutional and legal structures of the State which sometimes leads it to criticize legal provisions or situations that are incompatible with ratified Conventions. Regarding the Government's comments concerning the complainants' allegations not being supported by sufficient evidence, the Committee recalls that the Government is certainly entitled to point out the weaknesses regarding the evidence; the Government, with a view to responding to the allegations, can request the complainant to provide more specific information, setting out at least numbers, dates, places etc. in order to permit a denial or a confirmation of the alleged facts and to facilitate the Government to then provide further relevant details.

12. The Committee notes the Government's statement in the background report to the effect that, for the purpose of following up on the facts mentioned in the numerous allegations relating to the cases before the Committee on Freedom of Association, the Interinstitutional Commission for the Protection and Promotion of Human Rights was established in 1998, composed of the Ministry of Labour and Social Security's Office for the Protection and Promotion of Human Rights, the trade union confederations of the trade unions at greatest risk, human rights NGOs, the Episcopal Conference, the State's supervisory and investigatory bodies, the military forces, together with the Office of the United Nations High Commissioner in Colombia.

13. Nonetheless, the Committee deplores the fact that, despite the extreme gravity of the facts and the considerable time that has elapsed, the investigations undertaken have not yet led to the identification, trial and sentencing of the perpetrators of the large majority of the allegations. In this regard, the Committee emphasizes that "in the event that judicial investigations into the murder and disappearance of trade unionists are rarely successful, the Committee has considered it indispensable that measures be taken to identify, bring to trial and convict the guilty parties and has pointed out that such a situation means that, in practice, the guilty parties enjoy impunity which reinforces the climate of violence and insecurity and thus has an extremely damaging effect on the exercise of trade union rights" [see *Digest*, op. cit., para. 54].

Murders

14. With respect to the outcome of the inquiries into these numerous cases involving the murder of trade union officials and trade union members (see Annexes I and II) (allegations still pending or presented in 1998), the Committee notes that, according to the information provided by the Government and on the basis of subsequent analysis of that information (see Annex III): (a) in the cases concerning the 24 workers of the "Rancho Amelia" banana farm in Turbo, Urabá, belonging to SINTRAINAGRO, and the case of José Isidro Leyton Molina, branch president of the CGTD, the guilty parties were identified, brought to trial and convicted; in the case of Bernardo Orrego Orrego, member of the association of vendors in Medellín Antioquía, the guilty party has been identified and is awaiting sentencing following trial; in the case of Juan Camacho Herrera, member of a trade union in the mining sector, warrants have been issued for the arrest of two individuals connected with the murder; and in the case of José Eduardo Umaña Mendoza, six people have been taken into preventive custody, having been accused of murder; (b) in 54 cases (some of which relate to a number of persons), the investigation that is being undertaken by the corresponding Procurator's Office is at the preliminary stage and in five cases additional information is provided on the facts; however the guilty parties have not been identified and brought to trial in 59 cases; (c) in eight cases, the corresponding Procurator's Office has closed the investigation; (d) in three cases it is not known whether investigations are continuing with a view to identifying and trying the guilty parties; (e) in the cases of Messrs Argiro de Jesús Betancur Espinosa and Alvaro José Taborda Alvarez, according to the Government, the murders were not motivated by trade union activities; (f) Messrs Luis Orlando Camacho Galvis and José Eduardo Umaña Mendoza were not trade union members.

15. In regard to the 59 cases in which the perpetrators of the murders have not been identified (some of which relate to a number of persons), the Committee urges the Government promptly to take the necessary steps so that it may determine as far as possible where responsibility lies, to punish the guilty parties and to prevent any repetition of similar serious events. The Committee urges the Government to keep it informed in this regard. With respect to the eight cases where the investigation was closed by the responsible Procurator's Office, the Committee urges the Government to inform it, at the earliest date, of the reasons for closing the investigations. In regard to the four cases in which it is not known whether the investigations are continuing, the Committee likewise urges the Government to take the necessary steps to identify the guilty parties and bring them to trial. The Committee likewise requests the Government to provide information on the outcome of the criminal proceedings under way against Freddy Mosquera Mosquera, in connection with the murder of Bernardo Orrego Orrego, and of the outcome of the issuing of warrants for the arrest of persons accused of the murders of José Isidoro Leyton Molina and Juan Camacho Herrera.

Disappearances

16. *In regard to the outcome of the investigations into the disappearances of 13 trade union officials and trade union members (see Annexes I and II), the Committee notes from the information provided by the Government and the subsequent analysis of that information (see Annex III): (a) the hostages were released in six cases (Pedro Fernando Acosta Uparela, José Ricardo Sáenz, Emiliano Jiménez, Amadeo Jalave Díaz, Jhony Cubillo and Ulpiano Carvajal); (b) in regard to the cases of Ramón Alberto Osorio Beltrán, Alexander Cardona and Mario Jiménez, the investigation that is being conducted by the corresponding Procurator's Office is at the preliminary stage; (c) in the cases of Rodrigo Rodríguez Sierra, Rami Vaca, Jairo Navarro and Miscal Pinzón Granados, it is not known whether investigations to identify the guilty parties and bring them to trial are still continuing.*

17. *In regard to the latter seven cases, the Committee urges the Government to take the necessary steps to proceed with the investigations without delay, in order, as far as possible, to determine the whereabouts of those missing, to determine where responsibility lies, punish the guilty parties and prevent the repetition of similar deplorable events. The Committee urges the Government to keep it informed as promptly as possible of developments in these cases.*

Death threats

18. *Concerning the outcome of the investigations into 25 cases of death threats against trade union officials and trade union members (see Annexes I and II) (some of which concern a number of persons), the Committee notes that according to the information provided by the Government and the subsequent analysis of that information (see Annex III), police protection is being provided for most (18) of the persons threatened. In this regard, the Committee requests the Government to continue to offer protection to all trade union officials and trade union members in a situation of risk and to continue the investigations with a view to identifying and convicting those guilty of making the threats, and to keep it informed regarding steps taken in this regard.*

Detentions

19. *With respect to the outcome of the investigations into the detention of trade union officials and trade union members (see Annexes I and II), the Committee notes that in accordance with the information provided by the Government and on the basis of the subsequent analysis of that information (see Annex III), the 10 individuals involved are charged with rebellion, terrorism and conspiracy to commit crime, that criminal charges are being brought against them by the Office of the Procurator-General of the Nation, with respect for and observance of due process, protection of the right to defence and in accordance with criminal laws and that César Carrillo was released on 15 May 1998. With regard to the cases of Luis Rodrigo Carreño, Luis David Rodríguez Pérez, Elder Fernández and Gustavo Minorta, the Committee requests the Government to provide without delay information on the outcome of the investigations under way.*

Raids on union headquarters, telephone tapping, surveillance of trade union members (see Annex II)

20. *With respect to the outcome of the investigations into raids on the headquarters of the Single Agricultural Trade Union Federation (FENSUAGRO) and of the executive subcommittee of the CUT-Atlántico, with telephone tapping and acts of violence, the Committee notes that according to the information provided by the Government (see*

Annex III), no information could be obtained on the subject, due to the fact that the event was not reported to the appropriate authorities for investigation. In that regard, the Committee urges the Government to take appropriate measures in order to ensure protection to all trade union officials and trade union members in a situation of risk and likewise to place a watch on their respective trade union headquarters. The Committee requests the Government to keep it informed of action taken in this connection.

Physical aggression and police repression (see Annex II)

21. *With respect to police repression of employees of public enterprises in Cartagena during a peaceful demonstration on 29 July 1995, the Committee notes that according to the information provided by the Government (see Annex III), it was not possible to obtain information on the subject, since the event was not reported to the appropriate authorities for investigation. The Committee requests the Government to carry out an investigation into these allegations and to keep it informed in this respect.*

22. *Concerning the death of Fernando Lombana, member of ASOPEMA, caused by police repression during a demonstration in Santafé de Bogotá on 14 August 1995, the Committee notes that, according to the information provided by the Government (see Annex III), the member of the police, Luis Eduardo Sanabria Cruz, who had been charged with the murder, was found not guilty by the Office of Judge-Advocate 34 of the metropolitan police; this finding is being reviewed by the Supreme Military Court. The Committee requests the Government to inform it as promptly as possible of the decision taken by the Supreme Military Court in this case, and to forward without delay its observations on the allegations regarding the three trade union members who were seriously wounded and the persons arrested while taking part in the demonstration.*

23. *With regard to the five trade union members who were assaulted and injured by the police, the Committee notes the information provided by the Government (see Annex III), to the effect that cases are pending before the military criminal courts of the Directorate-General of the National Police in regard only to Mr. Héctor Ernesto Moreno Castillo and Edgar Méndez Cuéllar. The Committee requests the Government to inform it as promptly as possible of the outcome of these proceedings, and to provide information regarding the assaults against trade unionists César Castando, Luis Alejandro Cruz Bernal and Martha Janeth Leguizuman, who, according to the Government have not submitted complaints.*

Attempted murders (see Annex II)

24. *In regard to the cases concerning trade unionists Edgar Riaño, Dario Lotero, Luis Hernández and Monerge Sánchez, the Committee notes that, according to the information provided by the Government (see Annex III), it was decided on 3 March 1993 to close the disciplinary investigation. In this regard, the Committee asks the Government to provide information on the reasons for that decision. In regard to the cases of Gilberto Correño and César Blanco Moreno, the Committee notes that inquiries are being made, and asks the Government to inform it as soon as possible of the outcome of those inquiries.*

Other allegations of murder, physical aggression, death threats and detention of trade union leaders and members arising out of the national strike of 7 October 1998 (see Annex IV)

25. *In regard to the allegations of murders, physical aggressions, death threats and detentions of trade union officials and trade union members committed following the beginning of a national strike of government workers on 7 October 1998, the Committee*

notes the information provided by the Government concerning the circumstances in which the events took place. Regarding the six cases of murder (see Annex IV), through the inquiries carried out by the Office of the Procurator-General of the Nation the following information was obtained:

- Jorge Luis Ortega García, vice-president of CUT, murdered in the city of Santafé de Bogotá on 20 October 1998 and an investigation was opened on the same day by the National Human Rights Unit of the Procurator's Office; the investigation continues, three suspects have been identified and two arrest warrants have been issued. According to the national police, Ortega García had been offered protection through the Ministry of the Interior's Risk Regulation and Assessment Committee, but the trade union leader had turned down the offer of protection, preferring to appoint his own bodyguards.
- Hortensia Alfaro Banderas, vice-president of SÍDESC, murdered on 24 October 1998 by persons presumed to belong to a paramilitary group operating in the region of the Cesar department, the investigation is at the preliminary stage.
- Jairo Cruz, president of the Trade Union of Proaceites Workers, murdered on 26 October 1998; the investigation is at the preliminary stage.
- Orfa Ligia Mejía, murdered on 7 October 1998 in the municipality of Ipiales, department of Nariño and Marcos Pérez González, member of SINTRAELECOL, murdered on 10 October 1998; information is awaited in connection with both cases on the investigation that is being conducted by the Procurator's Office.
- Macario Barrera Villota, member of the Huila Teachers' Association, murdered on 25 October 1998; the investigation, which is at the preliminary stage, has revealed that the event was probably connected with the theft of his taxi, the deceased working both as a teacher and as a taxi driver; he was not known to have had any history as a trade union member.

26. The Committee deplors the fact that, despite the extreme gravity of the events, with the exception of two arrest warrants issued, the investigations undertaken have not led to the identification, trial or sentencing of the guilty parties in the six cases of murder mentioned above, for which reason it urges the Government to inform the Committee as soon as possible of the specific developments in this connection.

27. With respect to the six cases of allegations of physical aggression and injury (see Annex IV) (some of which involve a number of persons), the Committee notes the information provided by the Government to the effect that it was unable to obtain any information on such allegations, since the events were not reported to the relevant security or jurisdictional bodies. In this regard, the Committee is deeply concerned that, despite the serious physical aggressions and injuries described in the allegations, the Government has not been able to shed any light on the deplorable events and convict the guilty parties. The Committee emphasizes that "in the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts" [see *Digest*, *op. cit.*, para. 53]. The Committee requests the Government to carry out an investigation into the alleged facts and to keep it informed in this respect.

28. In regard to the three cases of detention (see Annex IV), the Committee notes the information provided by the Government to the effect that Orlando Riveros and Sandra Parra Montenegro were detained on 16 October 1998 in connection with the destruction of property not belonging to them and for rioting, and brought before the Ciudad Bolívar Immediate Response Unit. Sandra Parra Montenegro was released on the same day and

Orlando Riveros on the following day (17 October 1998). José Ignacio Reyes does not appear on the list of persons detained in any of the metropolitan police stations of Santafé de Bogotá. The Committee requests the Government to confirm that he has been released.

29. In regard to death threats against the trade union leaders of the “Comando Nacional Unitario” (composed of the CUT, CGTD and CTC), the Committee takes note of the information provided by the Government to the effect that it is providing police protection to members of this confederation who are at greatest risk and who have requested this service. Specifically, the Government states that the Ministry of the Interior’s programme of protection for persons at high risk covers a significant number of trade union officials and provides them with the services of vehicle, bodyguards, bullet-proof vests, air tickets (for their bodyguards when they are required to travel outside the city). Some trade union officials have insisted that bodyguards should not be drawn from the state security bodies and prefer to select their bodyguards themselves. In this regard, the Committee requests the Government to continue to provide protection for trade union officials and trade union members in a situation of risk and to continue investigations to identify and punish those responsible and to inform it of action taken in this regard.

Allegations concerning restrictions on the right to strike

30. With respect to the national strike of government workers, which began on 7 October 1998, the Committee notes the Government’s observations, in particular the information that trade union confederations and a large number of government union organizations called a national strike of government workers of unspecified duration which began on 7 October 1998 and which was of a clearly political nature, not only for the reasons stated for calling this strike, namely to protest against the Government’s economic and social policy, but also because the provisions contained in the Labour Code regarding strikes in essential public services were violated. The Government states that it was not a peaceful movement, since in some cases workers were obliged by force to stop work when the premises were occupied by groups of workers led by their trade union officials, thereby barring access to other workers who wished to carry out their duty, in some cases attacking them and also preventing user access to services. These events led to the intervention of the state police to restore order and to protect citizens, and to protect the right to work of those who wished to do so.

31. With regard to the Government’s statement that it was a clearly political strike in protest against the Government’s economic and social policy, the Committee draws attention to the principle whereby “while purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government’s economic and social policies”. The Committee has stated that “The occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to workers” [see *Digest*, op. cit., paras. 482 and 479].

32. Concerning the Government’s statement that the provisions of the Labour Code regarding a strike in essential public services were not respected, the Committee states that the Committee of Experts has for many years criticized legal provisions which forbid strikes not only in essential services in the strict sense of the term, but also in a wide range of services which are not necessarily essential (new article 450(1)(a) and Decrees Nos. 414 and 437 of 1952; 1543 of 1955; 1593 of 1959; 1167 of 1963; 57 and 534 of 1967).

The Committee also draws attention to the fact that the Committee of Experts has on several occasions criticized article 417, paragraph 1, of the Labour Code which prevents federations and confederations from declaring strikes. In this regard, the Committee requests the Government to take the necessary measures to ensure the enjoyment of the right to strike for workers and their organizations in services which are not essential in the strict sense of the term (that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population) [see *Digest*, op. cit., para. 542], as well as federations and confederations.

33. With respect to the Government's statement that in some cases workers were obliged to stop work by force when premises were occupied by groups of workers, barring access to other workers who wished to work, and in some cases attacking them, the Committee regrets these events and draws attention to the fact that "Taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work; such acts constitute criminal offences in many countries" [see *Digest*, op. cit., para. 586].

Allegations concerning the militarization of enterprises

34. With regard to allegations that some premises of state bodies were militarized, the Committee notes the Government's comments that the intervention of the national police on the premises of TELECOM, ECOPETROL, Caja Agraria, Social Security Institute and several health centres was carried out in compliance with legal requirements and was in proportion to the events, and that no military intervention occurred.

Allegations of violations of the right to bargain collectively, and of anti-union discrimination

35. Concerning the outcome of the appeal submitted by the Andino Bank against the administrative decision imposing a fine on the bank for violation of the provisions of collective agreements, the Committee takes note of the information provided by the Government that, under decisions of 23 September and 2 December 1994, the penalty imposed on the Andino Bank for the above-stated violation was upheld.

36. In regard to the investigation into the alleged anti-union acts committed by the authorities of the Andino, Citibank and Sudameris Banks, the Committee notes that these investigations have not been concluded. As concerns the Anglo Colombiano Bank, the Committee notes the information provided by the Government that the investigation was closed for lack of legal grounds, since the parties repeatedly failed to attend proceedings to clarify the alleged violations. Nonetheless, the Technical Directorate of Labour ordered that the investigation should be reopened. In this regard, in view of the long period that has elapsed since the investigations were opened into the alleged anti-union acts committed by the authorities of the various banks, which have not yet had any concrete outcome, the Committee urges the Government to clarify these events and, if the allegations are substantiated, to ensure that measures are taken to punish those responsible for such acts and to prevent their repetition in the future.

37. In regard to allegations of various acts of trade union persecution against trade union officials, trade union leaders and trade union members of the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and related bodies (ASODEFENSA), the Committee notes the information provided by the Government that, first, in conformity with the Ministry of Labour and Social Security's

resolution No. 00371 of 3 March 1998, ASODEFENSA is enrolled on the trade union register and has legal personality. Moreover, for the purpose of clarifying the events reported, the Ministry of Defence carried out an investigation which led to the issue of Circular No. 9571 by the Ministry addressed to all departments of the Ministry, reminding uniformed and civilian public servants of the obligation to respect the right to freedom of association and ordering them to refrain from taking decisions which obstruct trade union activity. The circular also draws attention to the right of trade union organizations to meet in official premises and requests that trade union communications should be allowed to circulate freely in the Offices of the Ministry of Defence, the Armed Forces and Police. Lastly, the Government states that the trade union rejected this circular because it considered that it did not comply with the requirements laid down during the consultation process, and as a result the authorities of the Ministry of Defence are establishing contacts with the trade union in order to dispel doubts and reach an agreement. In this connection, the Committee requests the Government to keep it informed of the outcome of these negotiations, and expresses its hope that all the outstanding matters will be resolved.

38. In regard to the Committee's request regarding the outcome of ongoing legal proceedings in connection with the dismissal of trade union officials and trade union members in the ALFAGRES S.A. and TEXTILIA Ltd. companies and in the Ministry of Finance, the Committee notes the Government's statement that the ALFAGRES S.A. company has stated that no legal proceedings have been lodged for anti-union acts for the reason that such acts never occurred; as reflected in its files, the persons in question left the company through voluntary resignation, or were terminated for just cause or by mutual agreement. Concerning the trade union official dismissed by the Ministry of Finance, the Committee notes with interest that according to the information provided by the Government, the Council of State resolved in a decision of 2 May 1996 to reinstate Ramón Vicente Ebratt Solano in his post; he has been paid the salary and other benefits that he had ceased receiving since the date of his dismissal for anti-union motives. With respect to the legal proceedings for anti-union dismissals in the TEXTILIA Ltd. company, the Committee notes with interest that Labour Court 5 ordered that the trade union leader Isidoro Tellez should be reinstated and he is now once more employed by the company; however, the Committee observes that the respective courts have not yet handed down a decision in three other cases. In this regard, the Committee requests the Government to keep it informed of the final outcome of these proceedings.

39. Lastly, as regards the new allegations and additional information provided by CIOSL and CLAT in connection with murders, attempted murders and death threats against trade union officials and trade union members, the Committee once more deplors the fact that it must acknowledge that anti-union violence has not declined, but that the allegations communicated during the course of the past four months (November 1998-February 1999) appear to indicate that it has continued. Similarly, the Committee once more recalls that "an impressive amount of violence is targeted against persons holding trade union office or whose physical integrity and personal freedom are attacked solely on account of their trade union activity" [see 311th Report of the Committee on Freedom of Association, para. 282]. The Committee deeply regrets the murders of Oscar Artunduaga Nuñez, of the trade union of the Cali Municipal Enterprise Workers (SINTRAEMCALI), Jesús Orlando Arévalo, health secretary of the Trade Union of Workers of Arauca Public Service Enterprises (SINTRAEMPSEPERA), Moisés Caicedo Estrada, trade union leader of SINTRE PORCE II, Gladys Pulido Monroy, trade unionist in the municipality of Tutasá, Vereda La Capilla, in the department of Boyacá, and Oscar David Blandín, attorney of the Union of Municipal Workers of Bello, and the attacks against and consequent serious injuries suffered by Tarciso Mora, president of the Colombian Federation of Teachers

(FECODE) and Osvaldo Rojas Arévalo, president of the Trade Union of Workers of the Department of Cali. The Committee urges the Government to communicate its observations on all these allegations without delay.

40. Regarding the new allegations of death threats against trade union leaders and trade union members, the Committee notes the Government's information that protection is now being offered to trade union officials Héctor Fajardo Abril, Secretary-General of the CUT, Tarcicio Mora, president of FECODE, Gabriel Alvis, vice-president of USO, Jesús Bernal, president of the National Association of Employees of the Caja Agraria. Likewise, the Government states that it called a meeting on 8 September 1998, at the premises of the National Union of Banking Employees (UNEB), between members of the metropolitan police of Santafé de Bogota and the executives of the organization (Olimpo Cárdenas, Ana Cecilia Escorcía, Segundo Mora, Emidgio Triana, Rafael Peña, Alvaro Pulido, Miguel González, Raúl Malagon, Mauricio Alvarez, Orlando Romero, Alvaro Quintero, Domingo Tovar and Yuly González Villadiego), in order to analyse the collective threats that had been received and to ascertain the level of risk and take necessary action. Concerning the death threats against the officials of SINTRAEMCALI (Alexander López, Alexander Barrios, Harold Viafara, Marcel Castagall, William Lozano, Robinson Emilio Masso, César Martínez, Luis Hernández, Ramiro Perlaza and Luid Enrique Imbaqui), the Committee notes the Government's statement that the national police is taking measures to guarantee their personal protection while conducting their trade union activities. In this connection, the Committee requests the Government to continue to take measures to protect all trade union officials and trade union members in a situation of risk, and to proceed with investigations to identify and punish those responsible and to inform the Committee of the action taken in this regard.

THE COMMITTEE'S RECOMMENDATIONS

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

- (a) The Committee deplores the climate of violence and insecurity which exists in the country and from which the trade union movement is suffering and the fact that despite the extreme gravity of the events and the long period that has elapsed, the investigations undertaken have not yet made it possible to identify, bring to trial and convict those responsible concerning the vast majority of the allegations of murder and other acts of violence. In this regard, the Committee expresses its serious concern and emphasizes that, "in the event that judicial investigations into the murder and disappearance of trade unionists are rarely successful, the Committee has considered it indispensable that measures be taken to identify, bring to trial and convict the guilty parties and has pointed out that such a situation means that, in practice, the guilty parties enjoy impunity which reinforces the climate of violence and insecurity, and thus has an extremely damaging effect on the exercise of trade union rights".
- (b) With respect to the 59 cases in which those responsible for murders have not been identified (see Annex III) (some of which refer to a number of persons), the Committee urges the Government urgently to take the necessary measures to determine where responsibility lies, to bring to trial and to convict the guilty parties and to prevent a repetition of these extremely serious events. The Committee urges the

Government to keep it informed in this regard. Concerning the eight cases in which investigations have been closed by the corresponding Procurator's Office, the Committee urges the Government promptly to inform the Committee of the reasons for closing these investigations. In regard to the three cases in which, according to the Government, it is not known whether the investigations continue, the Committee likewise urges the Government to take the necessary steps to identify and to bring those responsible to trial.

- (c) The Committee likewise asks the Government to inform it of the outcome of the ongoing criminal proceedings against Freddy Mosquera Mosquera in connection with the murder of Bernardo Orrego Orrego, and of the outcome of the issuing of warrants for the arrest of suspects in the murders of José Isidoro Leyton Molina and Juan Camacho Herrera.
- (d) Concerning the cases of the disappearance of Ramón Alberto Osorio Beltrán, Alexander Cardona, Mario Jiménez, Rodrigo Rodríguez Serra, Rami Vaca, Jairo Navarro and Miscal Pinzón Granados, the Committee urges the Government to take the necessary measures promptly to proceed with investigations, in order to determine the whereabouts of those missing, where responsibility lies, to punish those responsible and to prevent any repetition of these deplorable events. The Committee urges the Government to keep it informed as promptly as possible in this connection.
- (e) With respect to the outcome of investigations into the cases of death threats against trade union officials and trade union members, the Committee requests the Government to continue to provide protection for all trade union officials and trade union members in a situation of risk (see Annex III), and to proceed with investigations to identify and punish those responsible for the threats and to inform it of the action taken in this regard.
- (f) Concerning the outcome of investigations into the detention of trade union officials and trade union members, the Committee requests the Government without delay to inform it of the outcome of the investigations under way into the cases of Luis Rodrigo Carreño, Luis David Rodríguez Pérez, Elder Fernández and Gustavo Minorta, as well as those regarding the ten individuals involved in ongoing proceedings (see Annex III).
- (g) Regarding the outcome of investigations into raids on the headquarters of the Single Agricultural Trade Union Federation (FENSUAGRO) and of the executive subcommittee of CUT-Atlántico, the Committee urges the Government to take appropriate measures to provide protection for all trade union officials and trade union members belonging to these organizations and for their respective trade union headquarters. The Committee asks the Government to keep it informed of action taken in this regard.
- (h) With respect to the alleged police repression against employees of the public enterprises of Cartagena during a peaceful demonstration on 29 June 1995, the Committee asks the Government to carry out an investigation into the allegations and to keep it informed concerning this matter.

- (i) **With respect to the five trade union members who are alleged to have been attacked by the police, causing injuries, the Committee requests the Government promptly to inform it of the outcome of the proceedings under way against Héctor Ernesto Moreno Castillo and Edgar Méndez Cuéllar and to forward information on the allegations regarding attacks against the trade union members César Castaño, Luis Alejandro Cruz Bernal and Martha Janeth Laguizamon, who did not lodge complaints.**
- (j) **Concerning the case of Edgar Riaño, Dario Lotero, Luis Hernández and Monerge Sánchez, the Committee requests the Government to inform it of the reason for closing the disciplinary inquiry against them. Regarding the cases of Gilberto Correño and César Blanco Moreno, the Committee requests the Government to inform it as soon as possible of the outcome of the inquiries that are under way.**
- (k) **Regarding the allegations of murders of trade union officials and trade union members committed after the beginning of a national strike of government workers on 7 October 1998 (see Annex IV), the Committee deplores the fact that, despite the extreme gravity of the events, with the exception of the two arrest warrants issued, the investigations carried out have not led to any identification, trial or conviction in the six cases of murder, for which reason it urges the Government to inform it as soon as possible of any concrete results achieved in this regard:**
- **concerning the allegations involving six cases of physical aggression and injuries (see Annex IV) (some of which relate to numerous persons), the Committee requests the Government to carry out an investigation into the allegations and to keep it informed concerning this matter. The Committee also requests the Government to confirm that trade unionist José Ignacio Reyes has been released;**
 - **in regard to the death threats to all trade union officials of the “Comando Nacional Unitario” (composed of the CUT, CGTD and CTC), the Committee requests the Government to continue to provide protection for all trade union officials and trade union members in a situation of risk, and to proceed with investigations to identify and convict the guilty parties and to inform it of action taken in this connection.**
- (l) **Concerning the national strike of government workers (begun on 7 October 1998), the Committee asks the Government to take the necessary measures to ensure that workers and their organizations in services which are not essential in the strict sense of the term (that is, services whose interruption could endanger the life, personal safety or health of the whole or part of the population) enjoy the right to strike as well as federations and confederations.**
- (m) **Regarding the investigations into alleged anti-union acts committed by the authorities of the Andino, Citibank, Sudameris and Anglo Colombiano banks, in view of the long period that has elapsed since these investigations were opened without as yet producing any concrete results, the Committee urges the Government to clarify such events and, should the allegations be substantiated, to ensure that measures are taken to punish those responsible for such acts and to avoid their repetition in the future.**

- (n) *With respect to allegations of various acts of trade union persecution against officials and members of the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and related bodies (ASODEFENSA) the Committee asks the Government to keep it informed of the outcome of the negotiations that are being conducted between the authorities of the Ministry of Defence and the Trade Union Association in order to clarify doubts and reach an agreement, and hopes that all the outstanding issues will be resolved.*
- (o) *Concerning the three cases of anti-union dismissals in the TEXTILIA Ltd. company, which are awaiting sentence in the respective courts, the Committee requests the Government to keep it informed of the final outcome of these proceedings.*
- (p) *Regarding the new allegations and additional information submitted by CIOSL and CLAT regarding murders and attempted murders of and death threats against trade union officials and trade union members, the Committee profoundly regrets the murders of Oscar Artunduaga Nuñez, of the Trade Union of Workers of the Cali Municipal Enterprises (SINTREMCALI), Jesús Orlando Arévalo, health secretary of the trade union of workers of Arauca Public Service Enterprises (SINTREMPSERPA), Mosés Caicedo Estrada, trade union official of SINTRE PORCE II, Gladys Pulido Monroy (trade unionist), Oscar David Blandín González, attorney of the Union of Municipal Workers of Bello, and the attacks against and serious injuries sustained by Tarciso Mora, president of the Colombian Federation of Teachers (FECODE) and Osvaldo Rojas Arévalo, president of the Trade Union of Employees of the Department of Cali. The Committee urges the Government promptly to communicate its observations on all these allegations.*
- (q) *In regard to death threats against trade union officials and trade union members of CUT, FECODE, USO, UNEB, SINTRAEMCALI contained in the new allegations and additional information, the Committee asks the Government to continue to provide protection for all trade union officials and trade union members in a situation of risk, and to proceed with investigations to identify and convict the guilty parties and to inform the Committee of the action taken in this regard.*

Annex I

ALLEGATIONS ON WHICH THE COMMITTEE HAS REQUESTED THE GOVERNMENT FOR INFORMATION ON THE INVESTIGATIONS AND JUDICIAL PROCEEDINGS UNDER WAY

Murders

- (1) Antonio Moreno (12 August 1995).
- (2) Manuel Ballesta (13 August 1995).
- (3) Francisco Mosquera Córdoba (February 1996).
- (4) Carlos Arroyo de Arco (February 1996).
- (5) Francisco Antonio Usuga (22 March 1996).
- (6) Pedro Luis Bermúdez Jaramillo (6 June 1995).
- (7) Armando Humanes Petro (23 May 1996).

- (8) William Gustavo Jaimes Torres (28 August 1995).
- (9) Ernesto Fernández Pezter.
- (10) Jaime Eliacer Ojeda.
- (11) Alfonso Noguera.
- (12) Alvaro Hoyos Pabón (12 December 1995).
- (13) Libardo Antonio Acevedo (7 July 1996).
- (14) Néstor Eduardo Galíndez Rodríguez (4 March 1997).
- (15) Erieleth Barón Daza (3 May 1997).
- (16) Jhon Fredy Arboleda Aguirre.
- (17) William Alonso Suárez Gil.
- (18) Eladio de Jesús Chaverra Rodríguez.
- (19) Luis Carlos Muñoz (7 March 1997).
- (20) Nazareno de Jesús Rivera García (12 March 1997).
- (21) Héctor Gómez (22 March 1997).
- (22) Gilberto Casas Arboleda.
- (23) Norberto Casas Arboleda.
- (24) Alcides de Jesús Palacios Arboleda.
- (25) Argiro de Jesús Betancur Espinosa (11 February 1997).
- (26) Bernardo Orrego Orrego (6 March 1997).
- (27) José Isidoro Leyton (25 March 1997).
- (28) Magaly Peñaranda (27 July 1997).
- (29) David Quintero Uribe (4 August 1997).
- (30) Eduardo Enrique Ramos Montiel (14 July 1997).
- (31) Libardo Cuéllar Navia (23 July 1997).
- (32) Wenceslao Varela Torrecilla (29 July 1997).
- (33) Abraham Figueroa Bolaños (25 July 1997).
- (34) Edgar Camacho Bolaños (25 July 1997).
- (35) Aurelio Arbeláez (4 March 1997).
- (36) Guillermo Asprilla (23 July 1997).
- (37) Félix Avilés Arroyo (1 December 1997).
- (38) Juan Camacho Herrera (25 April 1997).
- (39) Luis Orlando Cama_o Galvis (20 July 1997).
- (40) Hernando Cuadros (1994).
- (41) Freddy Francisco Fuentes Paternina (18 July 1997).
- (42) Néstor Eduardo Galindo (6 March 1997).
- (43) Víctor Julio Garzón (7 March 1997).
- (44) Isidro Segundo Gil Gil (9 December 1996).
- (45) José Silvio Gómez (1 April 1996).
- (46) Enoc Mendoza Riasco (7 April 1997).
- (47) Carlos Arturo Moreno (7 June 1995).
- (48) Luis Orlando Quiceno López (16 July 1997).
- (49) Nazareno de Jesús Rivera (12 March 1997).
- (50) Arnold Enrique Sánchez Maza (13 July 1997).
- (51) Camilo Suárez Ariza (21 July 1997).
- (52) Mauricio Tapias Llerena (21 July 1997).
- (53) Atilio José Vásquez (July 1997).
- (54) Luis Abel Villa León (21 July 1997).
- (55) Odulfo Zambrano López (27 October 1997).
- (56) Alvaro José Taborda Alvarez (8 January 1997).
(Noted in the allegations as a case of disappearance)

Disappearances

- (1) Ramón Osorio (15 April 1997).
- (2) Pedro Acosta Uparela (28 December 1996).
- (3) Rodrigo Rodríguez Sierra (16 February 1995).

Death threats

- (1) Jairo Alfonso Gamboa López.
- (2) Aguirre Restrepo Oscar.
- (3) Arango Alvaro Alberto.
- (4) Barrio Castaño Horacio.
- (5) Cadavid Martha Cecilia.
- (6) Franco Jorge Humberto.
- (7) Giraldo Héctor de Jesús.
- (8) Gutiérrez Jairo Humberto.
- (9) Jaramillo Carlos Hugo.
- (10) Jaramillo Galeano José Luis.
- (11) Ramos Zapata Rangel.
- (12) Restrepo Luis Norberto.
- (13) Jorge Sliecer Marín Trujillo.
- (14) Víctor Ramirez.

Detentions

- (1) Edgar Riaño.
- (2) Marcelino Buitrago.
- (3) Felipe Mendoza.
- (4) Monarje Sánchez.
- (5) Guillermo Cárdenas.
- (6) Rafael Estupiñán.
- (7) Hernán Vallejo.
- (8) Luis Rodrigo Carreño.
- (9) Leonardo Mosquera.
- (10) Fabio Liévano.
- (11) César Carrillo.

Annex II

ALLEGATIONS PENDING OR SUBMITTED DURING 1998 ON WHICH
THE GOVERNMENT HAS NOT YET COMMUNICATED ITS OBSERVATIONS

Murders

- (1) Manuel Francisco Giraldo, member of the Executive Committee of SINTRAINAGRO, on 22 March 1995.
- (2) Twenty-three workers belonging to SINTRAINAGRO, on 29 August 1995.
- (3) Twenty-four workers of the Rancho Amelia banana farm, members of SINTRAINAGRO, on 20 September 1995.
- (4) Alvaro David, member of the workers' committee of the "Los Planes" farm, member of SINTRAINAGRO, on 22 March 1996.

- (5) Sabas Domingo Zocadegui Paredes, trade union official, on 3 June 1997, in the city of Aravca.
- (6) Eduardo Ramos, trade union leader on the "El Chispero" farm, Apartadó, Uraba, Antioquia, on 14 July 1997.
- (7) Arley Escobar, president of the Cali branch of the National Penitentiary and Prison Institute (INPEC), on 18 July 1997.
- (8) José Giraldo, secretary of SINDICONS, murdered in Medellín, on 26 November 1997.
- (9) Elkin Clavijo, leader of the workers' union of the Porce II Hydroelectric Project, murdered in the municipality of Amalfi, Antioquia, on 30 November 1997.
- (10) Alfonso Niño, leader of the union of workers of the Porce II Hydroelectric Project, murdered in the municipality of Amalfi, Antioquia, on 30 November 1997.
- (11) Luis Emilio Puerta, leader of the trade union of workers of the Porce II Hydroelectric Project, on 22 December 1997.
- (12) José Vicente Rincón, member of the Trade Union of Colombian Fertilizer Workers (SINTRAFERCOL), in Barrancabermeja, on 7 January 1998.
- (13) Arcángel Rubio Ramírez Giraldo, member of SINTELECOM, murdered in the municipality of Venecia, Cundinamarca, on 8 January 1998.
- (14) Fabio Humberto Burbano Córdova, president of the Trade Union Association of Employees of the National Penitentiary and Prison Institute, Cali section, murdered in Santander de Quilichao (Cauca), on 12 January 1998.
- (15) Osfanol Torres Cárdenas, member of the Trade Union of Public Enterprise Workers of Medellín, murdered in Medellín, on 31 January 1998.
- (16) Fernando Triana, member of the Executive Sub-committee of the National Federation of Government Employees, Medellín branch, murdered in Medellín, on 21 January, 1998.
- (17) Francisco Hurtado Cabezas, member of the Trade Union Federation of Agricultural Workers of Colombia (FESTRACOL), on 12 February 1998, in the town of Tumaco, department of Nariño.
- (18) Jorge Boada Palencia, leader of the Association of the National Penitentiary Institute (ASOINPEC), Bogotá, on 18 April 1998.
- (19) Dr. José Eduardo Umaña Mendoza, defence attorney for leaders and members of the Workers' Trade Union (USO), murdered in Bogotá on 18 April 1998.
- (20) Jorge Duarte Chávez, member of USO, murdered in Barrancabermeja, 9 May 1998.
- (21) Carlos Rodríguez Márquez, member of USO, murdered in Barranquilla on 10 May 1998.
- (22) Misael Díaz Urzola, member of the Executive Committee of the National Federation of University Professors, murdered in Montería on 26 May 1998.

Disappearances

- (1) Jairo Navarro, trade union member (6 June 1995).
- (2) José Ricardo Sáenz, member of FECODE (24 July 1996).
- (3) Misael Pinzón Granados, trade union member (12 July 1997).
- (4) Emiliano Jiménez, member of USO (27 October 1997).
- (5) Amadeo Jalave Díaz, member of USO (27 October 1997).
- (6) Jhoni Cusillo, union leader of ECOPETROL (27 October 1997).
- (7) Ulpiano Carvajal, union leader of ECOPETROL (27 October 1997).
- (8) Rami Vaca, union leader of ECOPETROL (27 October 1997).
- (9) Alexander Cardona, member of the regional bureau of USO (14 July 1998).
- (10) Mario Jiménez, member of the executive subcommittee of CASOBE (27 July 1998).

Detention of trade union officials and members

- (1) Luis David Rodríguez Pérez, former official of the National Trade Union of Workers of Incora — SINTRADIN.
- (2) Elder Fernández, member of ECOPETROL, in December 1996.
- (3) Gustavo Minorta, member of ECOPETROL, in December 1996.

Raids on union headquarters, telephone tapping, surveillance of trade union members

- (1) A raid on the headquarters of the Single Agricultural Trade Union Federation (FENSUAGRO), and tapping of telephones in the union headquarters and in members' homes and surveillance of the President of the Federation, Luis Carlos Acero, by armed persons.
- (2) On 6 February 1998, at 12.45 p.m., 15 individuals armed with military weapons entered the headquarters of the CUT-Atlántico executive subcommittee premises, located in the centre of Barranquilla, broke into the office and held a revolver to Mrs. Lydis Jaraba, member of the current National Executive Committee and of the CUT-Atlántico executive subcommittee. The individuals in question, who carried no identification or search warrant, searched every office before leaving.

Physical aggression and police repression

- (1) Police repression against workers from the state enterprises in Cartagena during a peaceful demonstration, on 29 June 1995.
- (2) Police repression against workers from the Empresas de Acueductos y Teléfonos and organized peasants from Tolima who were holding a protest meeting on 14 August 1995. The repression resulted in the death of Fernando Lombana, member of the Association of Small and Medium-Size Holdings in Tolima (ASOPEMA), the serious injury of three other persons and several arrests (trade union members belonging to the organizations taking part in the protest).
- (3) The police assaulted, and injured, the following trade union members: Héctor Moreno, Edgar Méndez, César Castaño, Luis Cruz and Janeth Leguizamon, who were taking part in a public information day on 6 January 1997, organized by the National Traffic Police Association (ANDAT).

Attempted murders

- (1) Edgar Riaño, Darío Lotero, Luis Hernández and Monerge Sánchez, trade union members.
- (2) Gilberto Correño, leader of the Workers' Trade Union (USO), 7 December 1996.
- (3) César Blanco Moreno, president of USO executive subcommittee, 11 May 1998.

Death threats

- (1) Bertina Calderón (vice-president of CUT).
- (2) Daniel Rico (president of the Federation of Oil Workers — FEDEPETROL).
- (3) The members of the Executive Committee of the Single Agricultural Trade Union Federation (FENSUAGRO).
- (4) Francisco Ramírez Cuéllar (president of the Trade Union of the Mineralco S.A. Enterprise Workers).
- (5) Pedro Barón (president of the Tolima branch of the Single Confederation of Workers — CUT), by several members of the security forces after taking part in a protest strike on 19 July 1995.

- (6) Members of the Executive Committee of the Union of Titán S.A. Workers, in the municipality of Yumbo, received death threats from a paramilitary group called "Colombia without guerrillas" (COLSINGUE), 26 October 1995 and 17 May 1996.
- (7) Members of the executive board of the South Bolívar Agromining Association (Justo Pastor Quiroz, secretary, Roque León Salgado, treasurer, and Bersaly Hurtado, attorney).
- (8) The national executive committee of the Single Confederation of Workers of Colombia (CUT), Luis Eduardo Garzón, president; Jesús Antonio González Luna, director of the human rights department and Domingo Rafael Tovar Arrieta, director of the organization department.
- (9) Oscar Arturo Orozco, Hernán de Jesús Ortiz, Wilson García Quiceno, Henry Ocampo, Sergio Díaz and Fernando Cardona.
- (10) Jairo Antonio Cardona Mejía, president of the Union of Workers of Municipality of Cartago. Other officials who have been threatened are: Albeiro Forero, Gilberto Tovar, Hernando Montoya, Marino Moreno and Gilberto Nieto Patiño, adviser.
- (11) On 27 March 1998, María Clara Vaquero Sarmiento, president of the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and related bodies (ASODEFENSA).

Annex III

RECENT INFORMATION OF THE GOVERNMENT CONCERNING THE ALLEGATIONS

A. Murders

I. Cases in which the guilty parties have been identified, tried and convicted

- Twenty-four workers of the Rancho Amelia banana farm in Turbo (Urabá), members of SINTRAINAGRO, were murdered on 20 September 1995. Responsibility for this massacre is attributed to the FARC guerrilla group. Inquiries have revealed that the guerrilla group attacked these inhabitants on account of their sympathies for the Esperanza, Paz y Libertad (Hope, Peace and Freedom) movement founded by guerrillas belonging to the Popular Liberation Army (EPL). The former mayor of Apartadó, Nelson Campos Núñez, and two SINTRAINAGRO officials, Gustavo Arcia and Daró Charcí, who were active members of the Communist Party and of the patriotic union, were implicated in the execution of the massacre, for which they have been tried and convicted.
- José Isidoro Leyton Molina (22 March 1997), CGTD branch president, murdered in Ibagué, Tolima. According to information provided by the local Administrative Security Department (DAS) Tolima, José Isidoro Leyton Molina was murdered by two men and one woman who subsequently fled. Two suspects were subsequently captured, one of whom was released for lack of evidence following the judicial inquiry, while the other remains in prison. Warrants have been issued for the arrest of two other individuals on charges of murder, and inquiries are under way with a view to their arrest.
- Bernardo Orrego Orrego, member of the Association of Vendors, Medellín, Antioquia, was killed by the police on 6 March 1997. The report of the national police states that during a police action to remove unlicensed street vendors from the metro viaduct, the

deceased threatened police member Freddy Mosquera Mosquera with a sharp weapon; the policeman responded by using his firearm, causing the death of Bernardo Orrego Orrego. Consequently, the policeman was suspended and criminal proceedings were brought against him on a charge of murder; no verdict has yet been reached.

- Juan Camacho Herrera, member of a trade union in the mining sector, murdered in Río Viejo, Bolívar on 25 April 1997. The investigation is being carried out by the national human rights unit of the Office of the Procurator-General of the Nation. The investigation is currently in the pre-trial stage and warrants have been issued for the arrest of two suspects. The motives of the crime are stated to be “murder for terrorist ends”.
- José Eduardo Umaña Mendoza (six persons area being held in pre-trial detention, charged with murder).

II. Cases in which additional information is available, although the perpetrators have not been identified and brought to trial

- Manuel del Cristo Ballesta, SINTRAINAGRO activist from Chigorodó, Antioquia, murdered 13 August 1995. The murderers are believed to be members of a paramilitary group (in all, 18 persons were shot at point-blank range).
- Camilo Eliécer Suárez Ariza, FENSUAGRO attorney, was murdered in the municipality of Ciénaga on 21 July 1997, apparently by persons believed to belong to a paramilitary group. According to information forwarded by the Magdalena branch of DAS, on 18 July 1997, in the municipality of Ciénaga, Camilo Suárez Ariza and Mauricio Tapias Llerena were kidnapped from the SINTRAINAGRO union headquarters by approximately ten individuals bearing short- and long-range weapons. On 22 July 1997, their bodies were found.
- Mauricio Tapias Llerena, secretary-general of FENSUAGRO, was murdered on 21 July 1997 in the municipality of Ciénaga, apparently by paramilitary groups. Information provided by DAS states that armed men entered the headquarters of the Ciénaga branch of SINTRAINAGRO on 18 July 1997 and beat him until he became unconscious, after which he was taken to a car and tortured. His body was found on 22 July.
- Libardo Cuéllar Navia, member of FECODE, was murdered on 23 July 1997 in the municipality of El Agrado, Huila. According to information forwarded by DAS, it has been ascertained that on the date in question, in the morgue of Barzón hospital, the Procurator’s Office examined the body of Cuéllar Navia who had been attacked by unknown individuals who subsequently stole the motorcycle on which he was riding. The body bore a round wound on the right side of the neck.
- Enoc Mendoza Riasco, member of FECODE, murdered in the municipality of Ciénaga on 4 July 1997. The inquiry carried out by the competent Procurator’s Office has revealed that the murder may have been committed by subversives who engage in crime in the district of San Pedro de la Sierra, in the jurisdiction of the municipality of Ciénaga, with whom the deceased had differences.

III. Cases in which the investigation being conducted by the competent Procurator’s Office is at the preliminary stage and the guilty parties have not been identified and tried

- Antonio Moreno Asprilla, murdered 12 August 1995 by persons presumed to belong to a paramilitary group, in the municipality of Chigorodó.
- Carlos Antonio Arroyo de Arco, member of SINTRAMADARIEN, Urabá, murdered 5 February 1996.

- Francisco Antonio Usuga, member of SINTRAINAGRO, Carepa, Antioquia, believed to have been murdered by popular commando groups on 23 February 1996.
- Pedro Luis Bermúdez Jaramill, head of the farm workers' committee, Carepa, Antioquia, murdered on 6 June 1995.
- William Gustavo Jaimes Torres, president of the National Association of Peasant Users (ANUC) murdered on 28 August 1995.
- Jaime Eliécer Ojeda, president of SINTRAMINOBRAS, Ocaña, Norte de Santander. Murdered by hired assassins on 23 May 1994. He had previously received threats and was on a blacklist together with a further 60 persons.
- Alfonso Noguera Cano, president of SINTRAMUNICIPIO, Ocaña, Norte de Santander, murdered 4 November 1994.
- Alvaro Hoyos Pabón (12 December 1995), member of SINTRATITAN, Yumbo, Valle, had previously received threats and is believed to have been murdered by members of a paramilitary group.
- Néstor Eduardo Galíndez Rodríguez, chairman of the executive subcommittee of ANTHOC, Yumbo, Valle, murdered 3 July 1997.
- Erieleth Barón Daza, murdered 3 May 1997.
- Jhon Freddy Arboleda Aguirre, member of SINTRAGRICOLAS, Maceo, Antioquia, murdered 3 July 1997.
- William Alonso Suárez Gil, member of SINTRAGRICOLAS, Maceo, Antioquia, murdered 3 July 1997.
- Eladio de Jesús Chaverra Rodríguez, member of SINTRAGRICOLAS, Maceo, Antioquia, murdered 3 July 1997.
- Luis Carlos Muñoz, leader of SINTRAMUNICIPIO, Segovia, Antioquia, murdered 3 July 1997.
- Nazareno de Jesús Rivera García, member of SINTRAFRONMINES, Amagá, Antioquia, murdered 3 December 1997.
- Héctor Gómez, murdered in the central park of Remedios, Antioquia, 22 March 1997.
- Gilberto Casas Arboleda, member of SINTRAINAGRO, Apartadó, Urabá, murdered 11 February 1997. The suspects are believed to be members of a paramilitary group.
- Norberto Casas Arboleda, member of SINTRAGRICOLAS, Apartadó, Urabá, murdered 11 February 1997. The suspects are believed to be members of a paramilitary group.
- Alcides de Jesús Palacios Casas, member of SINTRAGRICOLAS, Apartadó, Urabá, murdered 11 February 1997. The suspects are believed to be members of a paramilitary group.
- Eduardo Enrique Ramos Montie, member of SINTRAINAGRO, murdered 14 July 1997 in Apartadó, Urabá.
- Wenceslao Varela Torrecillas, member of SUDEB (FECODE), murdered 29 July 1997 in El Peón, Bolívar.
- Abraham Figueroa Bolaños, member of FECODE, murdered 25 July 1997 in the municipality of Milán, Caquetá. Worked in an indigenous community.
- Edgar Camacho Bolaños, member of ADIH (FECODE), murdered 25 July 1997 in the municipality of Milán, Caquetá. Worked in an indigenous community.
- Félix Antonio Avilés Arroyo, member of ADEMACOR (FECODE), murdered 1 December 1997 in Ciénaga de Oro, Córdoba. His murderers accuse him of being one of those responsible for the terrorist attacks on the premises of Funpazcor and Ganacor.
- Hernando Cuadros Mendoza, president of the Tibú branch of the oil industry Workers' Trade Union (USO), murdered in 1994 in Tibú by persons believed to belong to a paramilitary group.

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- Freddy Francisco Fuentes Paternina, union official of ADEMACOR (FECODE), murdered 18 July 1997 in Montería, Córdoba. The suspects are believed to be members of a paramilitary group.
 - Néstor Eduardo Galindo, president of the ANTHOC executive subcommittee, murdered 6 March 1997 in Yumbo, Valle.
 - Víctor Julio Garzón, secretary-general of FENSUAGRO, murdered 7 March 1997 in Santafé de Bogotá. The perpetrators are believed to be hired assassins.
 - Isidro Segundo Gil Gil, secretary-general of SINTRAINAL, murdered 9 December 1996 at his workplace.
 - José Silvio Gómez, coordinator of SINTRAINAGRO, Carepa, Antioquia, murdered 1 April 1996 by persons believed to belong to a paramilitary group.
 - Luis Orlando Quiceno López, member of SUTIMAC, murdered 16 July 1997 in Fredonia, Antioquia.
 - Nazareno de Jesús Rivera, member of SINTRAFRONTMINES of Amagá, Antioquia, murdered 12 March 1997.
 - Arnol Enrique Sánchez Maza, member of the Córdoba Teachers' Union (FECODE), murdered 13 July 1997 in Montería. According to FECODE and CINEP, he was kidnapped by members of a paramilitary group and held for ten days; his body was subsequently found in the Sinú river.
 - Odulfo Zambrano López, president of the local branch of SINTRAELECOL, murdered 27 October 1997 in Barranquilla by hired assassins.
 - Francisco Mosquera Córdoba, member of SINTRAMADARIEN, Urabá, murdered 5 February 1996.
 - Armando Humanes Petro, member of FECODE, Montería, Córdoba, murdered 23 May 1996.
 - Atilio José Vásquez Suárez, member of FECODE, murdered 28 July 1997 in the municipality of San Juan de Nepomuceno, Bolívar.
 - Sabas Domingo Socadegui Paredes, trade union official murdered on 3 June 1997 in Saravena, Arauca.
 - Eduardo Enrique Ramos Montiel, member of SINTRAINAGRO, murdered in Apartadó, Urabá, "El Chispero" farm on 14 July 1997.
 - Jesús Arley Escobar Posada, president of the local branch of ASEINPEC, murdered by persons believed to be hired assassins in Cali on 18 July 1997.
 - José Raúl Giraldo Hernández, secretary of SINDICONS, murdered in Medellín on 25 November 1997 by persons believed to be members of a paramilitary group.
 - Elkin Clavijo, president of the workers' union of the Porce II Hydroelectric Project, murdered in the municipality of Amalfi, Antioquia on 30 November 1997.
 - Alfonso Niño, treasurer of the union of workers of the Porce II Hydroelectric Project, murdered in the municipality of Amalfi, Antioquia, on 30 November 1997 by persons believed to belong to the National Liberation Army (ELN).
 - Luis Emilio Puerta Orrego, leader of the trade union of workers of the Porce II Hydroelectric Project, murdered on 22 November 1997 by persons believed to belong to the National Liberation Army (ELN).
 - José Vicente Rincón, member of SINTRAFERCOL, murdered in Barrancabermeja on 7 January 1998 by persons believed to belong to a paramilitary group.
 - Arcángel Rubio Ramírez Giraldo, member of SINTELECOM, murdered in the municipality of Venecia, Cundinamarca, on 8 January 1998.
 - Fabio Humberto Burbano Córdoba, president of Cali branch of the trade union association of employees of the National Penitentiary and Prison Institute, murdered in Santander de Quilichao (Cauca) on 12 January 1998 by persons believed to belong to a paramilitary group.

- Osfanol Torres Cárdenas, member of the Trade Union of Public Enterprise Workers of Medellín, murdered in Medellín on 31 January 1998 by persons believed to belong to a paramilitary group.
- Fernando Triana, member of the executive subcommittee of the Medellín branch of the National Federation of Government Workers, murdered in Medellín on 21 January 1998, by persons believed to belong to a paramilitary group.
- Franciso Hurtado Cabezas, member of the Trade Union Federation of Agricultural Workers of Colombia (FESTRACOL), murdered on 12 February 1998, in the town of Tumaco, department of Nariño.
- Jorge Boada Palencia, leader of the Association of the National Penitentiary Institute (ASOINPEC), murdered in Bogotá on 18 April 1998.
- Jorge Duarte Chávez, member of USO, murdered in Barrancabermeja, 9 May 1998.
- Carlos Rodríguez Márquez, member of USO, murdered in Barranquilla on 10 May 1998.
- Misael Díaz Ursola, member of the executive committee of the National Federation of University Workers, murdered in Montería on 26 May 1998.

IV. Cases in which the competent Prosecutor's Office ordered the closure of the investigation

- Ernesto Emilio Fernández Pezter, leader of ADUCESAR, murdered 20 November 1995 in the municipality of Pailitas, César, by persons believed to be hired assassins.
- Libardo Antonio Acevedo, president of FESTRALVA (CTC), Tuluá, Valle, murdered 7 July 1996.
- Magaly Peñaranda, member of SINTRAMUNICIPIO, Ocaña, Santander, murdered 27 July 1997.
- David Quintero Uribe, president of SINTRACUACESAR, Aguachica, Cesar, murdered 7 August 1997.
- Aurelio Arbeláez, member of SINTRAFRONMINES, Segovia, Antioquia, murdered 4 March 1997.
- José Guillermo Asprilla Torres, member of SINTRAINAGRO, Apartadó, murdered 23 July 1997.
- Carlos Arturo Moreno López, head of the farm workers' committee, murdered 7 July 1995 in Apartadó, Urabá, apparently by members of a commando group.
- Luis Abel Villa León, member of SINTRAMINEROS of Antioquia, murdered 21 July 1997 in Amagá, Antioquia.

V. Cases in which it is not known whether an investigation is being carried out

- Manuel Francisco Giraldo, secretary of the SINTRAINAGRO executive subcommittee of Apartadó, Urabá, murdered by members of a paramilitary group on 22 March 1995.
- Twenty-three workers on the "Osaka" farm, Carepa, Urabá, belonging to SINTRAINAGRO, murdered on 29 August 1995. Front V of the FARC guerrilla group has claimed responsibility.
- Alvaro David, member of the workers' committee of the "Los Planes" farm, member of SINTRAINAGRO, murdered on 22 March 1996. The FARC is stated to be responsible for this crime, since the victim was an active member of the "Esperanza, Paz y Libertad" movement.

VI. Cases which according to the Government concern persons who were murdered for non-union motives or who were not union members

- Argiro de Jesús Betancur Espinosa, member of SINTRAGRICOLAS, Apartadó, Urabá, murdered 11 February 1997 by persons believed to belong to a paramilitary group. He was involved in a case brought by the Terrorism Unit of the Procurator's Office for rebellion in which he was charged with "active participation in subversion". Pre-trial proceedings were opened on 5 October 1998.
- Alvaro José Taborda Alvarez, member of ADEMACOR, murdered in Montería, Córdoba, on 8 January 1997. Pre-trial proceedings are being conducted by the corresponding Prosecutor's Office. Inquiries have revealed that Mr. Taborda Alvarez, who had rejoined the Popular Liberation Army (EPL), was taken from his home by persons believed to belong to a paramilitary group, on an accusation of having taken part in dynamite attacks on the Córdoba cattle station. One person is subject to control measures in connection with this crime.
- Luis Orlando Camacho Galvis was murdered in Aguachica, Cesar, on 20 July 1997. The inquiry that is being conducted by the Procurator's Office has revealed that the deceased was the secretary for community development in the town council of Río Viejo, Bolívar, from which it may be deduced that he had no connection with the trade union movement.
- José Eduardo Umaña Mendoza, jurist, murdered in Bogotá on 18 April 1998. The investigation by the Procurator's Office is at the pre-trial stage; six persons are being held in pre-trial detention in this connection. It should be noted that Dr. Umaña Mendoza was not a trade union member but acted as defence attorney for members of USO who were being held on charges that were not related with trade union activity.

B. Disappearances

I. Cases in which the kidnapped persons have been released

- Pedro Fernando Acosta Uparela, member of ADES (FECODE), was kidnapped together with his godson Hugo Hernán on 28 December 1996 from the Las Malvinas farm in the municipality of Galeras. According to information obtained by DAS, it was ascertained that they were kidnapped by a group of armed men who were subsequently identified as belonging to the ELN. On 25 January 1997 Mr. Acosta Uparela was released. Four months later, in May 1997, the minor was returned. Currently, he lives with his family in the municipality of Galeras.
- José Ricardo Sáenz, member of FECODE, was kidnapped on 24 July 1996 by persons believed to belong to a paramilitary group. According to information provided by DAS, he was released in mid-1997 together with another three individuals who had also been held.
- Emiliano Jiménez and Amadeo Jalave Díaz, members of USO, Jhony Cubillo and Ulpiano Carvajal, union leaders of ECOPETROL, were kidnapped on 27 October 1997, in the municipality of Aguachica (Cesar), by subversives belonging to the Camilo Torres Restrepo Front of the ELN. Inquiries by DAS and the National Army have revealed that they were released in the same area three days later (30 October 1997).

II. Cases which are at the preliminary stage of investigation by the Procurator's Office

- Ramón Alberto Osorio Beltrán, education secretary of FENSUAGRO, was kidnapped in Medellín on 15 April 1997. The investigation by the Procurator's Office is at the

preliminary stage. Osorio Beltrán was kidnapped together with his son who subsequently appeared at a police station.

- Alexander Cardona, member of the regional bureau of USO, kidnapped on 14 July 1998.
- Mario Jiménez, member of the executive subcommittee of CASOBE, kidnapped on 27 July 1998.

III. Cases in which it is not known whether an investigation is being conducted to identify the guilty parties and bring them to trial

- Rodrigo Rodríguez Sierra, branch president of SINTRAPROACEITES, Barranquilla, Atlántico, disappeared in the municipality of El Copey on 16 February 1995. The preliminary investigation was carried out by the competent Attorney-General's Office for human rights. The case was closed on 25 February 1997 because the act had not been committed by the person charged.
- Rami Vaca, union leader of ECOPETROL, disappeared on 27 October 1997. The identity of the kidnappers is unknown.
- Jairo Navarro, trade union member of the workers' committee in Carepa, Antioquia, disappeared on 6 June 1995. According to the human rights NGO "Nunca Más", Mr. Navarro was taken by members of a paramilitary group from his workplace on the "La Playa" farm in the banana growing area.
- Misael Pinzón Granados, member of SINTRAINAGRO, kidnapped by persons believed to be members of a paramilitary group in the municipality of Puerto Wilches, Santander, on 7 December 1997. According to information forwarded by DAS, it has been ascertained that a habeas corpus application was made to the court by the wife of the person in question. The case was closed for lack of sufficient evidence to initiate the proceeding requested.

C. Death threats

I. Cases of persons who have been threatened and provided with police protection

- Oscar Aguirre Restrepo, Alberto Arango Alvaro, Horacio Berrio Castaño, Martha Cecilia Cadavid, Franco Jorge Humberto, Giraldo Héctor de Jesús, Gutiérrez Jairo Humberto and José Rangel Ramos Zapata, who belong to the Union of Employees of the Department of Antioquia.
- Carlos Hugo Jaramillo, José Luis Jaramillo Galeano and Luis Norberto Restrepo, union officials of SINTRADEPARTAMENTO, Antioquia.
- Bertina Calderón, vice-president of CUT and other CUT officials.
- The members of the executive committee of the Single Agricultural Trade Union Federation (FENSUAGRO).
- Pedro Barón, president of the Tolima branch of CUT, was threatened by several members of the security forces after taking part in a protest strike on 19 July 1995.
- Members of the executive committee of the Union of Titán S.A. Workers, in the municipality of Yumbo, received death threats from a paramilitary group called "Colombia without guerrillas" (COLSINGUE), 26 October 1995 and 17 May 1996.
- The national executive committee of CUT, Luis Eduardo Garzón, president; Jesús Antonio González Luna, director of the human rights department and Domingo Rafael Tovar Arrieta, director of the organization department.
- Jairo Antonio Cardona Mejía, president of the Union of Workers of the Municipality of Cartago, together with other officials (Albeiro Forero, Gilberto Tovar, Hernando Montoya, Marino Moreno and Gilberto Nieto Patiño).

- Ms. María Clara Vaquero Sarmiento, president of ASODEFENSA, was threatened on 27 March 1998.

II. The National Attorney-General's Office has provided the following information on seven cases of threats

- Jairo Alfonso Gamboa López, secretary of the trade union of the Curtiembres Titán SA companies; according to the inquiries carried out by the metropolitan police of Santiago de Cali and on the basis of a risk analysis of the corresponding threats, it was concluded that written and telephone threats had been received over a period of eight months from a group calling itself Colombia Sin Guerrilla — CONSINGUER (Colombia without Guerrillas). A further conclusion reached by the risk study was that the person receiving the threats did not desire the protection of the police but instead wished the police to help him obtain weapons.
- Jorge Sliccer Marín Trujillo, secretary of SINDICONS, Medellín, received threats on 26 November 1997, supposedly from members of the national police. According to the inquiry conducted by the Attorney-General's Office for the national police, the case was closed on 18 September 1998 for lack of grounds.
- Víctor Ramírez, president of SINTRASON. The investigation, which is being conducted by the Second District Attorney-General's Office of Santafé de Bogotá, is at the preliminary stage.
- Daniel Rico, president of the Federation of Oil Workers — FEDEPETROL. The National Attorney-General's Office states that the authors of the threats are believed to be members of the national police.
- Francisco Ramírez Cuéller, president of the Trade Union of the Mineralco S.A. Enterprise Workers. The National Attorney-General's Office states that the case was closed on 16 December 1993 for lack of evidence.
- Members of the executive committee of the South Bolívar Agromining Association, Justo Pastor Quiroz, secretary; Roque León Salgado, treasurer and Bersaly Hurtado, attorney. No information is held regarding the request submitted to the authorities. However, the case will be studied by the Ministry of the Interior's Risk Committee.
- Oscar Arturo Orozco, Hernán de Jesús Ortiz, Wilson García Quiceno, Henry Ocampo, Sergio Díaz and Fernando Cardona. Nothing is known of the individual requests made by these persons to the authorities. However, the situation will be examined and assessed.

D. Detention of trade union officials and trade union members

The following persons are accused of rebellion, terrorism and conspiracy to commit crime

- Felipe Mendoza, Monerje Sánchez, Guillermo Cárdenas, Hernán Vallejo, Leonardo Mosquera and Fabio Liévano, members of USO-Tibú, north Santander, who were arrested on 12 May 1996 in Casa Fiscal La Picota.
- Edgar Riaño Rojas, member of USO-Neiva, was arrested on 12 June 1996 in Casa Fiscal La Picota.
- Marcelino Buitrago, member of USO-Tibú, north Santander, arrested on 12 August 1996, in Casa Fiscal La Picota. He was accused of rebellion, terrorism and criminal conspiracy.
- Rafael Estupiñán, member of USO-Tibú, north Santander, arrested on 1 December 1996.

- César Carrillo, treasurer of USO-Nacional was arrested on 12 June 1996, on charges of rebellion, terrorism and conspiracy to commit crime. He was released on 15 May 1998.

The investigation continues in the following three cases:

- Luis Rodrigo Carreño. Information is expected during the coming days from the Procurator's Office and other state bodies from which it has been requested.
- Luis David Rodríguez Pérez, former official of the National Union of Workers of Incora — SINTRADIN. No information has been obtained regarding this case, most probably because he was merely taken in for questioning or arrested for a short time. However, inquiries are continuing.
- Elder Fernández and Gustavo Minorta, members of ECOPETROL, arrested in December 1996. It would appear that they were held briefly, but inquiries into the case are continuing.

E. Raids on unions headquarters, telephone tapping, surveillance of trade unionists

- A raid on the headquarters of the Single Agricultural Trade Union Federation (FENSUAGRO), and tapping of telephones in the union headquarters and in members' homes and surveillance of the president of the Federation, Luis Carlos Acero, by armed persons. No information has been discovered in this connection; the situation may never have been reported to the Colombian authorities for subsequent investigation.
- On 6 February 1998, at 12.45 p.m., 15 individuals armed with military weapons entered the headquarters of the CUT-Atlántico executive subcommittee premises, located in the centre of Barranquilla, broke into the office and held a revolver to Ms. Lydis Jaraba, member of the current National Executive Committee and of the CUT-Atlántico executive subcommittee. The individuals in question, who carried no identification or search warrant, searched every office before leaving. The incident was not reported to the Colombian authorities which would have given rise to a corresponding investigation.

F. Physical aggression and police repression

- Police repression against workers of the state enterprises in Cartagena during a peaceful demonstration, on 29 June 1995. The matter was not reported to the Colombian authorities in order to proceed with the corresponding investigation.
- Police repression against workers from the Empresas de Acueductos y Teléfonos and organized peasants from Tolima who were holding a protest meeting on 14 August 1995 in Santafé de Bogotá. The repression resulted in the death of Fernando Lambana, who was a member of the Association of Small and Medium-Size Holdings in Tolima (ASOPEMA), the serious injury of three other persons and several arrests (trade union members belonging to the organizations taking part in the protest). The national police state that police member Luis Eduardo Sanabria Cruz has been charged with the murder of Mr. Fernando Lambana Martínez. The Metropolitan Police Judge Advocate's Office 34 found the accused not guilty on 28 October 1998. The Supreme Military Court is reviewing the case.
- The police assaulted and injured the following trade union members: Héctor Ernesto Moreno Castillo, Edgar Méndez Cuéllar, César Castaño, Luis Alejandro Cruz Bernal and Martha Janeth Leguizamon, who were taking part in a public information day on 6 January 1997, organized by the National Traffic Police Association (ANDAT). The National Police states that cases are pending in the military criminal courts only against Héctor Ernesto Moreno Castillo and Edgar Méndez Cuéllar.

G. Attempted murder

- Edgar Riaño, Darío Lotero, Luis Hernández and Monserge Sánchez, trade union members. According to information provided by the Attorney-General's Office, the Office of the Procurator for the armed forces carried out an investigation. It was decided on 3 March 1993 to close the disciplinary inquiry.
- Gilberto Correño, leader of the Workers' Trade Union (USO), 7 December 1996. The case is under investigation and information will be forwarded as soon as it is received.
- César Blanco Moreno, president of the USO executive subcommittee; the event occurred on 11 May 1998. The case is under investigation and the information will be forwarded.

Annex IV

ALLEGATIONS OF MURDER, PHYSICAL AGGRESSION, DEATH THREATS
AND DETENTION OF TRADE UNION LEADERS AND TRADE UNION
MEMBERS COMMITTED AFTER THE BEGINNING OF THE NATIONAL STRIKE
OF GOVERNMENT WORKERS ON 7 OCTOBER 1998

Murders: (1) Orfa Ligia Mejía, trade unionist, 7 October 1998, in the municipality of Ipiales, department of Nariño; (2) Marcos Pérez González, member of the Trade Union of Electricity Workers of Colombia (SINTRELECOL), 10 October 1998; (3) Jorge Ortega García, vice-president of CUT, 20 October 1998 (hours before he was murdered, Ortega García had submitted new allegations in connection with this complaint); (4) Hortensia Alfaro Banderas, vice-president of SIDESC, 24 October 1998, in the municipality of Manure, department of César; (5) Macario Barrera Villota, member of the Huila Teachers' Association, 25 October 1998, in Neiva, department of Huila; (6) Jairo Cruz, president of the Trade Union of Proaceites Workers, 26 October 1998, in the municipality of San Alberto, department of César.

Physical aggression and injuries: (1) 15 October 1998 in Barrancabermeja, against Virgilio Ochoa, member of SINTRACUAEMPONAL; (2) 15 October 1998 in Barrancabermeja, Ugeniano Sánchez, member of SINTRACUAEMPONAL, shot four times in the head; (3) 16 October 1998, Benito Rueda Villamizar, president of SINTRACUAEMPONAL; (4) Mario Vergara and Heriberto López, trade union officials of SITTELECOM, brutally beaten by members of the police; (5) 13 October 1998, the police violently charged SITTELECOM workers, several of whom were injured; (6) 20 October 1998, in the city of Bogotá, on Carrera 7 between Calle 24 and 27, riot police assaulted workers who were beginning a peaceful march to Plaza Bolívar, and 22 October 1998, the police assaulted demonstrators who had gathered in Plaza Bolívar from all over the country.

Detentions: (1) 8 October 1998, José Ignacio Reyes, member of SINTELECOM; (2) 16 October 1998, in the San Francisco district of Ciudad Bolívar, Orlando Rivero and Sandra Parra.

Death threats: (1) All trade union officials of the Single National Commando (composed of CUT, CGTD and CTC). Lastly, the premises of TELECOM, ECOPETROL, Caja Agraria, ISS (Social Security Institute) and several health centres and other institutions were militarized.

Cases Nos. 1948 and 1955

Interim report

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

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

***Allegations: Declaration of illegality of a strike, acts of anti-union
discrimination and imposition of compulsory arbitration***

42. The complaint in Case No. 1948 was presented by the Single Confederation of Workers of Colombia (CUT) in a communication dated 9 December 1997. The CUT sent additional information in a communication dated 8 January 1998.

43. The complaint in Case No. 1955 was presented by the Trade Union of Workers of the Bogotá Telecommunications Enterprise (Sindicato de Trabajadores de la Empresa de Telecomunicaciones de Santafé de Bogotá) (SINTRATELEFONOS) in a communication dated 2 March 1998.

44. The Government sent its observations on these cases in communications dated 7 October 1998 and 15 January 1999.

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

A. THE COMPLAINANTS' ALLEGATIONS

46. In their communications dated 9 December 1997 and 2 March 1998, respectively, the Single Confederation of Workers of Colombia (CUT) and the Trade Union of Workers of the Bogotá Telecommunications Enterprise (SINTRATELEFONOS) state that as part of a privatization process which began in 1995, the Bogotá Telecommunications Enterprise (ETB) was converted in November 1997 into a 100 per cent joint-stock company and that its sale has been under discussion since the beginning of 1998. The complainants explain that they have always opposed attempts to privatize and sell ETB through every legal means because the workers in the enterprise want their status as "official employees" to be maintained and the State to retain its social function in the telecommunications sector.

47. The complainants allege that after SINTRATELEFONOS had presented the list of demands for collective bargaining on 24 October 1997, on 4 November the employer dismissed 20 union members and three union officers (including two of those who had negotiated the list of demands), all of whom were covered by trade union immunity. This occurred after the Ministry of Labour, by Decisions Nos. 00286 and 00287 of 9 October 1997, had declared work stoppages allegedly held on 27 and 30 May and 5 and 6 June 1997 illegal (despite the fact that the enterprise had not given the labour inspector the list of workers it intended to dismiss once they had been proved to have participated in, acted in, led, provoked or instigated the alleged work stoppages, as provided in Decision No. 1064 of 1959 and Regulatory Decree No. 2164 of 1959, both adopted by the Ministry of Labour).

48. The complainants add that the dismissals constitute an attempt by the district administration and the management of the enterprise to prevent the setting up of a bargaining committee convened for that day to negotiate the demands, this intention being manifested in the unusual act of inviting a Ministry of Labour and Social Security official

as a witness to the possible failure of the trade union bargaining committee to appear. Persons from outside the enterprise who had no knowledge either of the enterprise or of the workers' real problems also came to the bargaining table for the sole purpose of holding up negotiations and preventing concrete agreements from being reached, as evidenced by the record of the completion of the stage of direct settlement of the demands; moreover, the Ministry of Labour was petitioned to convene a compulsory arbitration tribunal. The bargaining process was hindered to the point where the arbitrator appointed by management to the arbitration tribunal convened by the Ministry failed to appear in order to determine the third member of the court together with the trade union's arbitrator, thus further delaying the collective bargaining process. An attempt was also made to have an alleged denunciation of the collective agreement by the management recognized by the workers' bargaining committee for the sole purpose of not negotiating the demands presented by the workers on 24 October 1997. At the same time the management, as part of its policy of spreading uncertainty and fear, extended the deadline within which workers who had not yet availed themselves of the early retirement plan (PAP) for operatives and technicians could sign up for it.

49. The complainants therefore call for the reinstatement of the 23 persons who have been dismissed, payment of their lost wages, and revocation of the Ministry of Labour decisions declaring the alleged work stoppages illegal.

50. The complainants allege further that the system of "faceless justice" had been applied in accusations and investigations brought before internal and external supervisory bodies, such as the Anti-corruption Office (in the case of internal bodies) and the Bogotá Office of the Ombudsman in which about four investigations had been initiated, covering some 800 workers, initially for alleged slight misconduct, which may be converted to extremely serious misconduct, for allegedly failing to put their names down on the list of persons entering the ETB on or around the dates on which the sale or privatization of the ETB was being discussed.

51. The district administration and the enterprise management are also alleged to have indirectly caused criminal charges to be brought against union officers Mr. Víctor Manuel Bautista Ramírez, Social Welfare Secretary, and Ms. Sandra Patricia Cordero Tovar, Information, Press and Propaganda Secretary, who are accused of acts of violence against an official employee, and whose case has been filed under number 588 with Public Prosecutor's Office No. 287. It should be added that Mr. Víctor Manuel Bautista Ramírez has been suspended from his post for 90 days without remuneration or wages, a sanction unilaterally imposed by decision of the management, flouting due process and the presumption of innocence.

52. The complainants allege further that the ETB, pursuing its policy of sowing fear and uncertainty, recently dismissed without just cause Mr. Elías Quintana and Mr. Carlos Socha, who are covered by trade union immunity as a collective dispute is currently under way.

53. In its communications dated 9 December 1997 and 8 January 1998, the CUT alleges that the Ministry of Labour, by decision of 26 September 1997, ordered the cessation of a strike held by 300 workers of the metal engineering enterprise COMESA S.A. and convened an arbitration tribunal. The Trade Union of Workers of COMESA (SINTRACOMESA) lodged an appeal to have the decision overturned, in conformity with provisions of the decision in question; hence the decision was not final but was applied anyway. According to the complainant, although the strike lasted 69 days neither the enterprise nor the Ministry of Labour made any attempt to convene a meeting to bring the sides together. The CUT points out that it is the workers who must decide freely whether

they will continue to exercise the right to strike or choose the arbitration tribunal and therefore requests that the decision of the Ministry of Labour imposing arbitration be revoked.

54. Lastly, the CUT alleges that 28 workers who are members of the industry trade union SINTRAELECOL were dismissed: 14 from the Cundinamarca Power Company, 13 from the EPSA enterprise in Cali and one from the Bogotá Power Company.

B. THE GOVERNMENT'S REPLY

55. In its communication dated 7 October 1998, referring to the collective dispute in the Bogotá Telecommunications Enterprise (ETB), the Government states that section 25 of Decree No. 2351 of 1965 and section 1 of Regulatory Decree No. 1373 of 1966, which concern dismissals during collective labour disputes, provide that "workers who have submitted a list of demands to their employer shall not be dismissed without just cause, duly proven, from the date on which the demands are submitted and during the statutory periods established for direct settlement". It is enough to read this provision to deduce that it is not for the Ministry of Labour and Social Security to comply with it, since it is employers who decide at a certain point in time to hire or fire their staff, and in the event of dismissals considered to be in violation of the above provision, the workers concerned have the option of availing themselves of the ordinary labour jurisdiction.

56. The Government adds that the Ministry of Labour and Social Security is empowered by law to declare work stoppages illegal, since section 451 of the Labour Code provides that the illegality of a collective suspension or stoppage of work shall be declared through administrative channels by the Ministry of Labour. Due process was not violated by the Ministry's adoption of Decisions Nos. 002286 and 002287 of 1997 declaring illegal the work stoppages in the Bogotá Telecommunications Enterprise (ETB), since in these cases the law does not provide for a procedure to be carried out before issuing an administrative decision in response to a petition to declare a strike illegal — it is enough to verify that the stoppage or stoppages in fact occurred. Therefore, the Ministry has not violated article 29 of the Political Constitution, since in declaring work stoppages illegal it is not necessary for the parties to appear before the administrative decision is issued.

57. On the subject of declaring strikes illegal, the Administrative Court of the Council of State ruled as follows in a decision dated 19 June 1997:

Lastly, it should be noted that the legal provisions on the matter do not provide that the trade union must be informed of the petition to declare a stoppage illegal, in which case the constitutional and legal principle of due process could be considered to be violated as suggested in the complaint. In this respect, in a decision of 5 March 1996 in Case No. 3975, this Court ... maintained that the Labour Code does not provide for a procedure to be carried out before declaring a stoppage illegal, in which the trade unions to which the workers involved in the stoppage belong should participate. For such a declaration to be lawful, it suffices for the administration to take note of the fact that one of the cases for which provision is made in section 450 has occurred. What is more, the legislator did not even envisage the possibility of lodging appeals against this decision through government channels, since this was explicitly prohibited, and appeals could be lodged against it only through legal channels before the Council of State, as provided in section 451 of the same Code ...

58. Concerning the allegation that the correct time-limits had not been observed, i.e. that the stoppages were declared illegal months after they had occurred, sections 450 and 451 of the Labour Code do not fix a time-limit for the Ministry of Labour to declare or not to declare a collective work stoppage illegal. Hence the Ministry met all the legal requirements for issuing Decisions Nos. 002286 and 002287 of 9 October 1997.

59. Moreover, Circular No. 019 of 1991 was in fact intended for the labour and social security inspectors and instructs them on how they should draw up reports of verifications of stoppages of work. The same is true of the circulars issued previously on this subject, and these officials comply with it, since if this were not the case the Ministry could not declare the stoppages illegal. Although it is well known that trade unions sometimes do not take part in these verification procedures, either because they are not interested in doing so or because their representatives are not present at the time, the instructions take the position that workers' organizations should always be given an opportunity to participate in these procedures.

60. In its communication dated 15 January 1998, referring to the alleged dismissals in the Bogotá Telephone Company (23 workers, three of whom were members of the SINTRATELEFONOS executive committee), the Cundinamarca Power Company (14), the EPSA enterprise in Cali (13) and the Bogotá Power Company (1), the latter 28 workers being members of the industry union (SINTRAELECOL), the Government states that under section 25 of Decree No. 2351 of 1965, when workers are dismissed during a collective labour dispute, which may be in violation of its provisions, the workers concerned have the option of appealing to the ordinary labour courts which, under section 2 of the Labour Procedural Code, as amended by section 1 of Act No. 362 of 1997, were established to handle legal disputes in general arising directly or indirectly out of the contract of employment and, in particular, to handle cases involving trade union immunity of public employees, official employees and private individuals. Accordingly, workers covered by trade union immunity who are dismissed without the grounds for the dismissal having been legally determined may bring actions for their reinstatement and the consequent payment of the wages they had not received. Section 451 of the Labour Code provides that the illegality of a collective suspension or stoppage of work shall be declared through administrative channels by the Ministry of Labour and Social Security in the cases expressly laid down in the law.

61. In this case, the Ministry of Labour met all the legal requirements for issuing Decisions Nos. 002286 and 002287 of 9 October 1997 declaring the illegality of work stoppages in the Bogotá Telecommunications Enterprise, and the above-mentioned legislation provides expressly that administrative decisions of this kind cannot be appealed through government channels. Accordingly, in Decision No. 000003 of 6 February 1998 the Ministry declared inadmissible the appeal for reversal lodged by the chairperson of the Trade Union of Workers of the Bogotá Telecommunications Enterprise.

62. The Government specifies that the Ministry decision declaring the stoppage illegal may be contested before the jurisdiction of the executive power by filing a complaint with the Council of State, which is the highest instance within the administrative jurisdiction. This legal means of redress enables the persons concerned (trade unions or workers) to have the legality of the administrative decision reviewed, with the possible result that it may be annulled if it is found to be contrary to law. In this case, neither the trade union nor the workers individually availed themselves of this legal means of redress, which must be interpreted as a renunciation of discussion in this area and of the only possibility of preventing the decision from taking effect.

63. Concerning the request for reinstatement with pay of the 23 workers dismissed by the Bogotá Telecommunications Enterprise, the Government points out in its communication of 15 January 1998 that by virtue of the autonomy of the executive, legislative and judiciary branches enshrined in the Political Constitution, the content of agreements reached by municipal councils, such as that of the privatization plan contested by the complainants, is within the exclusive remit of the councils, while the legality of their

labour implications is a matter for the judiciary, which is responsible for determining the legality of such decisions.

64. It may be deduced from sections 405 of the Labour Code and 25 of Legislative Decree No. 2351 of 1995 that if employers decide to dismiss workers and exceed their authority in doing so, the appropriate channel for claiming rights such as reinstatement and payment of wages and benefits which have been suspended is the judiciary, since the ordinary labour jurisdiction was established to settle legal disputes arising directly or indirectly out of the contract of employment and, in particular, those relating to the trade union immunity of official employees, private individuals and public employees. In other words, this is an individual legal dispute which the judges of the Republic have sole and exclusive competence to hear and judge, and they are the ones to whom the persons concerned should have brought their case. Their failure to file a complaint to this effect should be interpreted as a renunciation of the exercise of the legal means afforded them by the institutional framework to obtain the rights which they consider to have been violated. The Ministry of Labour is thus not empowered to order reinstatements or uphold rights such as those claimed by the complainants.

65. Concerning the complainants' petition for revocation of Decisions Nos. 002286 and 002287 of 9 October 1997 issued by the Ministry of Labour, the Government states that under section 451 of the Labour Code, the illegality of a collective suspension or stoppage of work shall be declared through administrative channels by the Ministry of Labour and Social Security in the cases expressly provided for by the law. The decision is to be executed immediately and may only be appealed by bringing an action before the Council of State. In the exercise of this authority, the Ministry of Labour and Social Security issued Decisions Nos. 002286 and 002287 of 1997, having verified that the stoppages had actually occurred, i.e. the legal procedure was carried out. The trade union lodged an appeal for the reversal of this decision and it was declared inadmissible according to national legislation, and therefore Decision No. 000003 of 6 January 1998 was issued. It should be pointed out that the trade union could have brought an action before the executive jurisdiction — the Council of State — to declare the administrative decisions void and it did not do so, thus failing to avail itself of the legal channels which cannot be replaced by the actions of third parties.

66. As regards the alleged terminations of employment under the voluntary and/or early retirement plans, the Government points out that Colombian legislation does not prohibit this, as it does not infringe freedom of contract, since each worker has the opportunity to choose freely whether or not to subscribe to such plans. If there is a defect in the manner in which the workers give their consent, this may be addressed through legal channels.

67. Concerning the criminal charges against Mr. Víctor Manuel Bautista Ramírez and Ms. Patricia Cordero Tovar, the Government states that it has received a written communication dated 6 January 1999 on this matter, which was attached to the reply, from the Anti-corruption Office of the Bogotá Telecommunications Enterprise (ETB) which reads as follows:

... neither this office nor any legal office of the ETB has brought criminal charges against Mr. Víctor Manuel Bautista Ramírez and/or Ms. Patricia Cordero Tovar. It has come to our knowledge that a complaint was brought by the architect Sandra Bibiana Quintero Martínez ETB 31742, against Mr. Bautista Ramírez, alleging that she had been assaulted, resulting in three days' incapacity. The case was investigated by Public Prosecutor's Office 288 for trial by the circuit judges, without any involvement whatsoever on the part of the ETB.

The Government points out that the existing complaint refers to a personal case involving the commission of a common crime and bears no relation to labour matters.

68. Concerning the Trade Union of Workers of the Comesa Metalworking Company — COMESA S.A. — and the alleged violation of the right to strike, in its communication dated 7 October 1998, the Government states that the above-mentioned trade union submitted a list of demands to the COMESA enterprise, and as no agreement was reached at the direct settlement stage, the trade union declared and held a strike starting on 25 July 1997. By the powers vested in it by section 448 of the Labour Code, as amended by section 63(4) of Act No. 50 of 1990, the Ministry, by Decision No. 002183 of 21 September 1997, ordered that a compulsory arbitration tribunal be established in order to resolve the collective labour dispute. An appeal to overturn this decision was lodged, which was upheld by Decision No. 002332 of 16 October 1997. The above-mentioned provision (declared enforceable by ruling No. 115 of 26 September 1991 of the Supreme Court of Justice) empowers the Ministry of Labour, when a strike lasts for more than 60 calendar days, to order that the dispute be referred to an arbitration tribunal. When the Ministry exercises this authority, the workers are obliged to resume work within three working days, beginning on the date on which the decision was published in a widely circulated newspaper and not, as the trade union understood it to be, from the date on which the decision becomes final, since in these cases the decision is to be executed immediately, without prejudice to any appeals which may be lodged against it. This is the case because if the trade union's arguments were to be accepted, the strike would be prolonged to the detriment of the economic situation of the workers and the enterprise, and the immediate effect sought by the legal provisions would be nullified. In this case this authority was exercised bearing in mind that these tribunals provide a valid and effective means of resolving collective labour disputes.

69. In its communication dated 15 January 1998, the Government reiterates that the Trade Union of Workers of COMESA S.A. submitted a list of demands to the enterprise, on which no agreement was reached at the direct settlement stage and, as a result, the trade union declared and held a strike as of 25 July 1997. By the power vested in it by section 448 of the Labour Code, as amended by section 63(4) of Act No. 50 of 1990, once the period laid down in the law had elapsed (60 days) the Ministry of Labour, by Decision No. 002183 of 26 September 1997, ordered the establishment of a compulsory arbitration tribunal as a means of resolving the collective labour dispute. An appeal for the reversal of this decision was lodged, and the decision was upheld by Decision No. 002332 of 16 October 1997. These decisions were based on the fact that when the Ministry exercises the authority conferred on it by the above-mentioned provision, the workers are obliged to resume work within three days, starting from the date on which the decision was published in a widely circulated newspaper (section 46 of the Code of Administrative Litigation) and not from the date on which the decision became final as the complainants have alleged. If this argument were accepted the strike would be prolonged to the detriment of the national economy and the public economic interest, and the immediate effects sought by the legal provision would be nullified. This is also supported by article 55 of the Constitution, which calls for the application of "means of achieving a peaceful solution to collective labour disputes" to prevent them from continuing indefinitely. The Government adds that the trade union had the possibility of filing a complaint before the administrative tribunal to contest the legality of the administrative decision, and did not do so. It is clear from the above that in this case the procedures were carried out in accordance with national legislation and the requirements of international conventions, since the complainants could have availed themselves of legal channels to assert their rights.

C. THE COMMITTEE'S CONCLUSIONS

70. *The Committee observes that the allegations presented by the complainants refer to the dismissal of 20 members and three officers of SINTRATELEFONOS and to the declaration of illegality of work stoppages by the Ministry of Labour pursuant to which these dismissals were ordered, despite the fact that the alleged stoppages had occurred months before; to accusations and investigations by public bodies or the ETB enterprise affecting some 800 workers; to criminal charges brought against trade union officers Mr. Víctor Manuel Bautista Ramírez and Ms. Sandra Patricia Cordero Tovar; to the dismissal of the workers Mr. Elías Quintana and Mr. Carlos Socha during the collective dispute in which SINTRATELEFONOS was involved; to the referral of the collective dispute in the COMESA S.A. enterprise to compulsory arbitration by decision of the authorities when the workers were holding the strike; and to the dismissal of 27 SINTRAELECOL members employed in three enterprises.*

71. *Concerning the collective disputes in the Bogotá Telecommunications Enterprise (ETB), the Committee notes the Government's statements to the effect that: (1) section 451 of the Labour Code provides that the illegality of a collective suspension or stoppage of work shall be declared through administrative channels by the Ministry of Labour and that the administrative decisions declaring the stoppages illegal were issued in accordance with the legislation; (2) an appeal for annulment could have been lodged against these decisions before the Council of State but neither the complainant nor the workers concerned had done so; (3) sections 450 and 451 of the Labour Code do not set a time-limit for the Ministry of Labour to declare a collective suspension or stoppage of work illegal; and (4) the workers covered by trade union immunity who were dismissed without the grounds for dismissal having been legally determined may bring actions for reinstatement and payment of wages due, but they have not availed themselves of these legal channels.*

72. *While it is aware that telephone services are essential services in the strict sense of the term in which the right to strike may be restricted or even prohibited [see *Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, paras. 536 and 544], the Committee notes that the declaration of illegality of the work stoppages in the ETB enterprise was made by the Ministry of Labour, and recalls that "responsibility for declaring a strike illegal should not lie with the Government, but with an independent body which has the confidence of the parties involved" [see *Digest*, op. cit., para. 522].*

73. *In these circumstances, bearing in mind (1) that the declaration of illegality was made months after the work stoppages had occurred; (2) that the stoppages took place in the context of a privatization process which would necessarily have a substantial impact on the workers' situation (including changing their status) and in a highly tense atmosphere in which a new collective agreement was being negotiated; and (3) that according to the complainant — and this was not denied by the Government — attempts had been made during the bargaining process to hold up negotiations and impose compulsory arbitration on the workers, the Committee requests the Government — over and above strict legality — and taking account of the circumstances, to take measures with a view to furthering the reinstatement of the 23 workers who had been dismissed and requests it to take steps to this end.*

74. *Concerning the criminal charges against trade union officers Mr. Víctor Manuel Bautista Ramírez and Ms. Patricia Cordero Tovar, the Committee notes that according to the Government the ETB has not brought criminal charges and that there has only been a complaint lodged by an individual against Mr. Ramírez referring to a personal case*

involving the commission of a common crime bearing no relation to labour issues. The Committee requests the Government to inform it of any ruling handed down with respect to Mr. Bautista Ramírez and any ruling that may eventually be handed down with respect to Ms. Cordero Tovar.

75. As regards the allegations concerning the collective dispute in the COMESA S.A. metalworking enterprise, the Committee notes that according to the Government the decision to convene an arbitration tribunal which put an end to the strike was taken pursuant to section 448 of the Labour Code, which authorizes the Ministry of Labour, in the event of a strike lasting more than 60 calendar days, to order the dispute to be referred to an arbitration tribunal in which case the workers must resume work within three working days; failure to do so, according to the Government, would be detrimental to the economic situation of the workers and the enterprise and to the national economy and the public economic interests; the Government recalls in this connection that article 55 of the Constitution calls for the application of “means of achieving a peaceful solution to collective labour disputes” to prevent them from continuing indefinitely; the Government also states that the trade union concerned did not appeal before the administrative jurisdiction against the decision ordering arbitration. The Committee observes nonetheless that the Government has not denied the complainants’ statement to the effect that neither the enterprise nor the Ministry of Labour called any meetings to bring the sides together. In these circumstances, the Committee draws the Government’s attention to the fact that “Compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population” [see *Digest*, op. cit., para. 515]. The Committee accordingly requests the Government to take steps to amend section 448 of the Labour Code (which has also been requested by the Committee of Experts) in line with the above-mentioned principle.

76. As regards the dismissal of SINTRAELECOL members in the Cundinamarca Power Company (14), the EPSA company in Cali (13) and the Bogotá Power Company (1), the Committee notes that the Government refers in its reply to its statements in connection with the dismissals in the ETB enterprise (examined previously) mentioning the existence of appeals before the judicial authority, without indicating the reasons for the dismissals. The Committee notes further that the Government has not referred specifically to the reasons for the dismissal of the workers Mr. Elías Quintana and Mr. Carlos Socha during the collective dispute in the ETB enterprise. The Committee therefore requests the Government to indicate the concrete facts which prompted the dismissal of all of these workers. Lastly, noting that the Government has not replied to the allegation concerning accusations and investigations by public bodies or the ETB affecting some 800 workers, the Committee requests the Government to send its observations in this respect.

THE COMMITTEE’S RECOMMENDATIONS

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

- (a) The Committee requests the Government to take measures with a view to furthering the reinstatement of the 23 members of SINTRATELEFONOS dismissed by the ETB enterprise and requests it to take steps to this end.

- (b) The Committee requests the Government to inform it of any ruling handed down concerning the criminal charge against trade union officer Mr. Víctor Manuel Bautista Ramírez and of any ruling that may eventually be handed down with respect to trade union officer Ms. Patricia Cordero Tovar.**
- (c) Noting that the declaration of illegality of the work stoppages in the ETB enterprise was made by the Ministry of Labour, the Committee reminds the Government that “responsibility for declaring a strike illegal should not lie with the Government, but with an independent body which has the confidence of the parties involved”. The Committee also requests the Government to take steps to amend section 448 of the Labour Code so that compulsory arbitration will only be possible if requested by both parties or in the case of disputes in essential services in the strict sense of the term or in the public service involving public servants exercising authority in the name of the State.**
- (d) The Committee requests the Government to state the concrete facts prompting the dismissal of SINTRAELECOL members in the Cundinamarca Power Company (14), the EPSA company in Cali (13) and the Bogotá Power Company (1), and the dismissal of ETB employees Mr. Elías Quintana and Mr. Carlos Socha.**
- (e) Lastly, noting that the Government has not replied to the allegation concerning the accusations and investigations by public bodies or the ETB affecting some 800 workers, the Committee requests the Government to send its observations in this respect.**

Case No. 1962

Interim report

*Complaint against the Government of Colombia
presented by
the Single Confederation of Workers (CUT)*

*Allegations: Dismissals connected with restructuring,
in breach of the collective agreement*

78. The complaint is contained in a communication from the Single Confederation of Workers, dated 6 March 1998. This organization submitted additional information by letter of 25 August 1998. The Government responded in its communication of 15 January 1999.

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

A. THE COMPLAINANT'S ALLEGATIONS

80. The Single Confederation of Workers alleges that, on 31 January 1993, the municipal authorities of Neiva (Department of Huila) illegally dismissed 155 public employees of the Public Works Office, on the pretext that the municipal administration had ordered the closure of this office with a view to its abolition. However, the CUT reports that the employer was the Municipality of Neiva and that the relevant legislation (Decree

No. 2127 of 1945) does not provide for termination of employment contracts on grounds of abolition of posts; moreover, the collective agreement states that the municipal administration “has an effective commitment to guarantee the stability of employment of all unionized workers” and that in the event of unjust dismissal “the municipality shall reinstate the worker in the post occupied by him/her and shall accept to pay any remuneration and benefits that the worker has failed to receive”.

81. The CUT adds that, when an appeal was lodged, the judicial authorities recognized that the dismissal was illegal but that “the workers’ reinstatement was not effectively possible”, given the administration’s prerogative to carry out restructuring by virtue of the Political Constitution and in the general interest. At the same time, the Court of Appeal states that the municipal authorities are not exonerated from paying compensation for dismissal but that such compensation was not requested and consequently not granted.

82. The CUT also alleges that, when the dismissed workers appealed to the Supreme Court of Justice, that body threw out their claims, stating that “if the employer, in disregard for the law, closes, in part or in full, the enterprise and such closure results in the termination of an employment contract, it is legally inadmissible to claim reinstatement even if foreseen by law, collective agreement or accord”.

83. Similarly, the CUT alleges that, in various rulings, the judicial authorities disregarded the guarantees of trade union privilege accruing to the 14 leaders of the Public Employees’ Trade Union of the Municipality of Neiva (dismissed without the municipal authorities of Neiva having obtained prior judicial authorization). They also rejected the appeal by ten leaders of the Public Servants and Employees’ Union of the Municipality of Pitalito, who were dismissed on 19 September 1994, without that municipality having awaited a court ruling regarding prior authorization for termination — although the case was already at the appeal stage. There was also denial of the trade union privileges of five leaders of the National Trade Union of Public Servants and Employees of the Institute of Hydrology, Meteorology and Land Development (SINALTRAHIMAT, Neiva section) in the ruling handed down by the High Court of Neiva, Chamber for Civil Labour Affairs (the leaders in question had been dismissed in August 1993 without the prior judicial authorization required by legislation).

B. THE GOVERNMENT’S REPLY

84. In its communication of 1999, the Government states that the dismissal of the 155 employees of the Public Works Office of the Municipality of Neiva, Department of Huila, was the consequence of the municipal administration’s restructuring programme consisting of the above-mentioned Office’s closure which had led to the abolition of the relevant posts. As a result of these dismissals, the Regional Labour Directorate of Huila conducted an administrative inquiry into a breach of the collective agreement signed between the Public Employees’ Trade Union of the Municipality of Neiva and the said municipal authorities; by resolution No. 0008, 15 April 1996, it imposed a fine upon the municipality of five minimum legal wages. The dismissed workers used all administrative channels with a view to legal action against the Municipality of Neiva for breach of the collective agreement which was in force at the time of the disputed decisions and sought forced reinstatement by the municipal authorities of the above-mentioned public servants in accordance with the terms of the collective agreement. After the Municipality of Neiva had been summoned to present its defence, the Labour Tribunal of First Instance, called upon to examine the cases, pronounced the respective judgements. As these were not favourable to the workers’ claims, the dismissed workers lodged appeals with the High Court of Neiva,

Chamber for Civil Labour Affairs, which threw out all of the workers' petitions. The judgement was based on the principle of an administration's prerogative to restructure, as established by the Council of State and in keeping with the Political Constitution.

85. The Government adds that a group of the workers concerned lodged an appeal (extraordinary judicial appeal) with the Supreme Court of Justice (highest regular judicial body); the relevant judgement was published on 29 May 1997, which, in substance, states: "hence, the charges are unsuccessful though it is appropriate to add that the demanded reinstatement presupposes the worker's dismissal and not the body's closure which was what occurred in the present case". This judgement constitutes a final decision and must be accepted and respected by the other branches of public authority.

86. The Government emphasizes that, in the case in question, there were no unjust dismissals but abolition of posts on account of the closure of the Public Works Office of the Municipality of Neiva; this decision is in compliance with the Political Constitution, article 315, No. 4.^o, which authorizes local bodies to restructure and adjust to existing needs — a norm addressed by Decree No. 16, 31 January 1993 — as invoked by the Mayor of Neiva. The aforementioned was accepted to its fullest extent by the High Courts in judgements published by them on 23 May 1996, 28 August 1996, 29 May 1997, 19 July 1997 and 2 December 1997. Nor was there any breach of international labour Conventions ratified by Colombia, given that there is no ILO Convention or Recommendation requiring a member State to maintain obsolete, inefficient bodies which do not deliver the services required of them, on the sole grounds that trade union members work there.

87. Furthermore, the Government indicates that the state authorities of Colombia may not be held liable for alleged damages which it did not create. The persons claiming to have suffered a loss were the Neiva municipal workers, and municipalities are autonomous and fundamental bodies within the political and administrative division of the State. In the light of the various judgements of the High Courts, it was possible to ascertain that acquired rights had not been disregarded. No compensation was awarded to the relevant parties, given that there were no grounds for such; this was established in the above-mentioned judgements which placed an end to judicial examination and became immutable, obliging observance by all other branches of public authority.

88. In connection with the dismissal of the leaders of the Trade Union of Public Servants and Employees of the Municipality of Pitalito, the Government reports that, on 19 September 1994, legal proceedings were initiated before the Pitalito Labour Tribunal. The ruling handed down on 21 April 1995 sentenced the Municipality of Pitalito to reinstatement of the workers with protection in the same conditions of employment and to pay the wages which the workers had failed to receive in connection with their dismissal. The Municipality of Pitalito lodged an appeal against the tribunal's ruling and brought the case before the High Court of Neiva, Chamber for Civil Labour Affairs; the court reversed the ruling of the Pitalito Labour Tribunal and denied the special protection (*amparo*) of trade union privilege.

89. Finally, the Government points out that the municipality is required to accept and respect judicial decisions regarding the issues raised in the present case and that the actions of the various branches of state authority have been in compliance with domestic law and with the requirements of ILO Conventions Nos. 87 and 98.

C. THE COMMITTEE'S CONCLUSIONS

90. *The Committee observes that the present case relates to dismissals of workers or trade union leaders in the Municipality of Neiva, the municipality of Pitalito and the Institute of Hydrology, Meteorology and Land Development (Neiva section).*

91. With regard to the dismissal of 155 public employees (including 14 trade union leaders) in January of 1993, the Committee observes that the complainant emphasizes that the relevant dismissal constitutes a breach of legislation as well as of the collective agreement, and criticizes the criteria applied by the judicial authorities in their decision not to demand the reinstatement of the dismissed workers. The Committee takes note that the Government states that: (1) the dismissals were ordered in connection with the municipal administration's restructuring, consisting of the closure (abolition) of the Public Office in which the dismissed persons had worked; this took place by virtue of a municipal decree in compliance with the Political Constitution of the State; (2) the Regional Labour Directorate of Huila imposed a fine of five monthly minimum legal wages upon the municipality in respect of a breach of the collective agreement; (3) the judicial authorities (Court of Appeal and Supreme Court of Appeal) came out against the demand for reinstatement of the dismissed workers; and (4) no compensation was awarded to the dismissed persons. The Committee concludes that, inasmuch as the restructuring affected all workers employed by the Public Works Office (irrespective of whether they were or were not trade union members or leaders), the issue of anti-trade union discrimination does not, in principle, arise; nevertheless, there remains the question of whether an administrative unit's restructuring, leading to its closure, may be in contradiction with the employment stability of the workers concerned whenever the collective agreement generally establishes the principle of such stability. In this regard, the Committee considers that it can examine allegations concerning economic rationalization programmes and restructuring processes, whether or not they imply redundancies or the transfer of enterprises or services from the public to the private sector, only in so far as they might have given rise to acts of discrimination or interference against trade unions [see *Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, para. 935]. Nevertheless, the Committee has emphasized that it is important that governments consult with trade union organizations to discuss the consequences of restructuring on the employment and working conditions of employees [see *Digest*, op. cit., para. 937].

92. The Committee observes that, according to the Government, the restructuring (abolition) of the Public Works Office was carried out by decree and notes that neither the complainants nor the Government have indicated that consultations between the parties have taken place or that attempts have been made to arrive at an agreement regarding the consequences of the restructuring (in particular with a view to relocating the workers affected, to the extent possible, in another public department). Consequently, the Committee draws the Government's attention to the principle that consultations should be held with trade union organizations on the consequences of restructuring on the employment and working conditions of employees.

93. In order for the Committee to be in a position to come to conclusions on the allegations concerning the non-respect of the collective agreement in the Municipality of Neiva, it requests the Government to transmit all administrative and judicial decisions concerning this collective agreement.

94. With regard to the judgement (criticized by the complainant) rejecting the reinstatement of the leaders of the Public Servants and Employees' Union of the Municipality of Pitalito, who had been dismissed on 19 September 1994, the Committee observes the Government's statement that it is bound to respect judicial decisions. The Committee observes that the District High Court, Chamber for Civil Labour Affairs, handed down a ruling on 30 July 1996 (sent by the complainant), which rejects the claim to reinstatement with the argument that, by that date, the statutory term of office of the relevant trade union leaders as well as the additional period of six months of protection

provided for by legislation had already expired; consequently, they had no longer enjoyed the special protection (*amparo*) of trade union privilege as of 15 March 1994, it being irrelevant that the trade union had still not held new leadership elections by 19 September 1994. In these circumstances and observing that the action in question relates to problems having occurred in 1994 as well as to a relatively complex interpretation of the duration of the protection — as laid down in the relevant legislation — granted to trade union leaders from dismissal, and, given the particular circumstances of the case, the Committee will not pursue its examination of this allegation.

95. Finally, the Committee observes that the Government has submitted no comments regarding the judgement criticized by the complainant and which rejects the reinstatement of the leaders of the National Trade Union of Public Servants and Employees of the Institute of Hydrology, Meteorology and Land Development (Neiva section), who had been dismissed in August 1993 without the prior judicial authorization provided for by legislation. Hence, the Committee urges the Government to respond to this allegation and to communicate the text of the rulings handed down in this regard.

THE COMMITTEE'S RECOMMENDATIONS

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

- (a) Concerning the restructuring which led to the dismissal of 155 public employees (including 14 trade union leaders) from the Municipality of Neiva in January 1993, the Committee recalls the importance it attaches to the principle that governments consult with trade union organizations to discuss the consequences of restructuring on the employment and working conditions of employees.
- (b) In order for the Committee to be in a position to come to conclusions on the allegations concerning the non-respect of the collective agreement in the Municipality of Neiva, it requests the Government to transmit all administrative and judicial decisions concerning this collective agreement.
- (c) The Committee urges the Government to submit its comments in response to the allegations regarding the dismissal of the leaders of the National Trade Union of Public Servants and Employees of the Institute of Hydrology, Meteorology and Land Development and to communicate the text of the rulings handed down in that regard.

Case No. 1964

Interim report

***Complaint against the Government of Colombia
presented by
the Trade Union of Glass and Allied Workers of Colombia
(SINTRAVIDRICOL)***

*Allegations: Anti-union interference and discrimination, acts of intimidation
and non-compliance with the terms of a collective agreement*

97. The complaint is contained in communications of the Trade Union of Glass and Allied Workers of Colombia (SINTRAVIDRICOL) dated 15 April and 14 May 1998. The Government replied in a communication dated 15 January 1999.

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

A. THE COMPLAINANT'S ALLEGATIONS

99. In its communications dated 15 April and 14 May 1998, the Trade Union of Glass and Allied Workers of Colombia (SINTRAVIDRICOL) alleges that its members consist of the workers of three enterprises (Cristalería Peldar S.A., Compañía Nacional de Vidrios S.A. (CONALVIDRIOS) and Vidrio Técnico de Colombia (VITECO)) and that since 1994 the CONALVIDRIOS S.A. enterprise has carried out a series of legal, material and economic attacks against its local executive committees in the cities of Soacha and Buga with the aim of weakening them and turning the union into a minority organization. The other enterprises referred to respect the trade union and engage in dialogue and collective bargaining with it.

100. Specifically, the complainant alleges that the following violations of trade union rights have been committed:

- after hiring a former official of the Ministry of Labour (Regional Director of Labour and Social Security of Cundinamarca) as Human Resources Director on 4 September 1994, the CONALVIDRIOS enterprise embarked on an anti-union policy, failing to recognize the participation of the union in the joint committees (on labour relations, occupational health, sports and catering) established in the collective agreement; the Ministry of Labour was informed accordingly;
- the enterprise has embarked on an anti-union policy of reducing the union's membership, granting those who resign from the union privileges such as loans, promotions and bonuses, which is further aggravated by the fact that some of these, such as leave and housing loans, are statutory benefits for which provision is made in the collective agreement; as a result of this policy, approximately 200 members have resigned from the union; the intention is to turn the trade union into a minority organization, which under Colombian law would result in the loss of substantial guarantees, especially in terms of power to represent the workers vis-à-vis the employer; the Ministry of Labour was informed accordingly;
- the Ministry of Labour issued Decisions Nos. 0072 and 0073 of 18 January 1995 revoking previous administrative decisions registering the executive committees of the trade union. The revocation of these decisions was inappropriate and the representatives of the trade union had not been duly notified of it. Once these administrative decisions had been issued, the CONALVIDRIOS S.A. enterprise proceeded to dismiss six trade union officers, followed by 14 other trade union leaders. The person who instigated these dismissals and the above-mentioned decisions was the enterprise's Human Resources Director (a former official of the Ministry of Labour), who used all the powers vested in him, while the Ministry of Labour failed to deal impartially with the complaints concerning these matters;
- the enterprise stopped granting trade union leave for which provision had been made in the collective agreement;
- when the trade union convenes assemblies, the enterprise invents games, parties, sports and other activities, and members who speak at a meeting are dismissed the next day; members live in constant fear of losing their jobs; human rights are clearly being violated; trade union officers cannot speak to their fellow workers, and if they do they are transferred to another workstation or shift; the authorities and the Colombian judiciary have done nothing about this;

- the enterprise confiscates from the workers bulletins distributed by the trade union, thus infringing freedom of expression; on one occasion when trade union officers came to the entrance of the enterprise in order to distribute the information bulletin, the security guards set the dogs on them, threatening their lives;
- the enterprise brought criminal charges against the chairperson and the secretary of the national executive of the trade union for libel and slander but was unable to prove its accusations. To date, the union has brought over 100 legal actions (lawsuits, ordinary claims and special claims for trade union immunity and a criminal suit, which is currently being investigated by the Public Prosecutor's Office No. 68 of Santafé de Bogotá). According to the complainant, the labour courts and the labour administration authorities have been informed of all these facts, without any appropriate action being taken by the Ministry of Labour.

101. The enterprise also brought criminal charges against seven officers of the Soacha local executive committee of the trade union for alleged procedural fraud, false impersonation and falsifying documents. The trade union brought criminal charges against four managers of the enterprise for trade union persecution (section 272 of the Penal Code).

102. Finally, the complainant attaches a copy of a judgement of the Supreme Court of Justice dated 21 January 1997, in which it is acknowledged that the CONALVIDRIOS S.A. enterprise exerted pressure on the workers in order to obtain their withdrawal from the trade union and ordered the enterprise "to refrain in future from acts aimed at preparing or processing withdrawal of trade union membership or any conduct aimed at obtaining the withdrawal of workers from membership of the enterprise trade union".

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B. THE GOVERNMENT'S REPLY

103. In its communication dated 15 January 1998, the Government states that the complainant had not previously presented a complaint to the Ministry of Labour concerning alleged legal, material and economic attacks on the local executive committees of the complainant trade union in Soacha and Buga with the aim of weakening them and turning the union into a minority organization, and getting them to conclude a collective pact [which is not applicable to all workers but only to the union members], nor concerning the alleged enterprise policy of withdrawal of trade union membership by granting benefits to those who resign, nor concerning the denial of trade union leave, nor with regard to the alleged violations of human rights (manoeuvres by the enterprise to prevent workers from attending assemblies or talking with trade union officers, by dismissing or transferring those who do so to another workstation or shift in some cases), nor concerning failure on the part of the Ministry of Labour to act appropriately. The assertion of the complainants that the Colombian State is involved in these alleged acts, is denied.

104. The Government asks that it be placed on record that the Regional Director of Labour and Social Security of Cundinamarca to whom the complaint refers served in this position from 8 May 1991 to 4 September 1994 and was only afterwards hired by the CONALVIDRIOS S.A. enterprise. While it is true that it would be illegal to hold posts in the Ministry of Labour and in the CONALVIDRIOS enterprise simultaneously, the complaint indicates no proof that this in fact occurred or that the alleged acts occurred during this person's period of office in the Ministry of Labour and Social Security. In any case, the persons concerned could have lodged a complaint concerning his conduct before the bodies responsible for supervising discipline, such as the State Public Prosecutor, and, as a lawyer was involved, before the Supreme Council of the Judicature. It should be pointed out that after retiring from public service the person concerned was legally entitled to join CONALVIDRIOS S.A. or any other enterprise. The Government adds that in a

country founded on the rule of law, such as Colombia, in which citizens have a wide range of judicial means of enforcing their rights, the legality of administrative decisions is supervised by the Council of State, the highest administrative tribunal, before which the complainants must appear upon a claim being lodged by one of the parties to bring an action to declare a decision void and reinstate a right, the purpose of which is to contest the legality of administrative decisions issued by the Government and award compensation for damages. As it was found that proper notification had not been given, the competent authority was unofficially informed of the facts in order to verify the alleged omission by administrative officials in order to sanction them for any breaches of discipline that had occurred. Attention is drawn to the above-mentioned supervision of the legality of such administrative decisions.

105. As regards the alleged dismissals of trade union leaders, the Government states that national labour legislation provides that workers who enjoy trade union immunity may bring an action for reinstatement in their jobs and that in order to do so the persons concerned must lodge a claim before the labour court in due time and provide evidence in support of their claims. Concerning the complainant's assertion that the dismissals were instigated by a former official of the administration and therefore the Ministry of Labour and Social Security allegedly behaved in a biased manner, the Government points out that the Ministry does not carry out any jurisdictional function with regard to the dismissal of workers covered by trade union immunity and therefore the union's tendentious presentation of the facts is not valid, since Colombia is firmly founded on standards which above all observe the guarantees with regard to the principles of legality, mutual respect and the common good, and, as the complainant states, the dismissals carried out by a former state official were ordered solely and exclusively in his capacity as Human Resources Director of the CONALVIDRIOS S.A. enterprise.

106. Concerning the alleged violations of human rights (manoeuvres by the enterprise to prevent workers from attending assemblies or talking with union officers by dismissing or transferring those who do so to another workstation or shift in some cases), the Government states that it has referred this issue to the Inter-Institutional Human Rights Office of the Ministry of Labour in order for it to carry out an investigation and hand down a decision in the matter.

107. The Government further denies the alleged incompetence and complicity of the State of Colombia, since it is the trade union which must bring actions to defend the rights which it considers to have been violated, and it must do so before the public powers (either the ordinary labour courts or the administrative jurisdiction, depending on the case), upon claims being lodged by the parties, who must provide evidence in support of their claims.

108. Lastly, the Government reiterates that the trade union has not availed itself of the different bodies and machinery afforded by the legal system to defend its rights and, in ignoring these channels, has acted rashly in bringing the complaint directly before the Committee on Freedom of Association. It is, therefore, requested that this matter be brought before the Governing Body of the ILO with a view to adopting measures to prevent this type of act from recurring.

C. THE COMMITTEE'S CONCLUSIONS

109. *The Committee observes that in this case the complainant has alleged a long series of acts of anti-union interference and discrimination (including dismissals of trade union officers and members, obstruction of trade union activities, acts of intimidation, pressure to obtain the resignation of trade union members) and non-compliance with the terms of the collective agreement by the CONALVIDRIOS S.A. enterprise.*

110. *Firstly, as regards the Government's statement contained in the last paragraph of its reply, the Committee recalls the rules governing its procedure in this regard as follows:*

Where national legislation provides for appeal procedures before the courts or independent tribunals, and these procedures have not been used for the matters on which the complaint is based, the Committee has considered that it should take this into account when examining the complaint.

Although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures [see Procedures of the Committee on Freedom of Association, paras. 31 and 33].

The Committee requests the Government to take the rules into account in the future.

111. *The Committee notes the Government's statement to the effect that the complainant had not informed the authorities of some of these matters, that the legislation provides for administrative and judicial machinery and procedures in the event of a violation of the legislation, which includes provision for an action for reinstatement of workers who have been dismissed in violation of their trade union immunity. The Government also points out that the fact that a manager in the enterprise had formerly held office in the Ministry of Labour is neither illegal nor objectionable, but that once the complaint had been brought to its attention the competent authority had been informed of the alleged acts. The Government also states that the Inter-Institutional Human Rights Office of the Ministry of Labour will carry out an investigation into the aspect of the complaint concerning human rights.*

112. *The Committee regrets that the Government has not sent specific observations on the different allegations presented by the complainant in April and May 1998, particularly in view of the gravity of the acts referred to in the complaint, and that the Supreme Court of Justice, in a ruling handed down on 21 January 1997, ordered the CONALVIDRIOS S.A. enterprise to refrain from conduct aimed at obtaining the withdrawal of workers from union membership. In these circumstances, the Committee requests the Government to ensure that a detailed investigation is carried out into each of the allegations presented by the complainant and to inform it in this respect without delay.*

THE COMMITTEE'S RECOMMENDATIONS

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

- (a)** *The Committee regrets that the Government has merely sent general information on the allegations presented, despite their gravity, and requests the Government to ensure that a detailed investigation is carried out into each of the allegations presented by the complainant and to inform it in this respect without delay.*
- (b)** *In reply to the Government's statement concerning the exhaustion of internal procedures, the Committee reminds the Government of the rules governing its procedures according to which "Where national legislation provides for appeal procedures before the courts or independent tribunals, and these procedures have not been used for the matters on which the complaint is based, the Committee has considered that it should take this into account when examining the complaint." Moreover, "Although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that, in view of its responsibilities, its*