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1999 price:

Annual subscription: 150 Swiss francs

Price per number: 30 Swiss francs

ISSN 0378-5882 (Series A)

ISSN 0378-5890 (Series B)

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# OFFICIAL BULLETIN

Vol. LXXXII, 1999



Series B, No. 2

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<sup>1</sup> The letter S, followed as appropriate by a roman numeral, indicates a supplement. <sup>2</sup> For communications relating to the 23rd and 27th Reports, see *Official Bulletin*, Vol. XLIII, 1960, No 3.



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# OFFICIAL BULLETIN

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*Vol. LXXXII*

1999

*Series B, No. 2*

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## 316th Report of the Committee on Freedom of Association<sup>1</sup>

### Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 27 and 28 May and 4 June 1999, under the chairmanship of Professor Max Rood.

2. The member of Argentinian nationality was not present during the examination of the case relating to Argentina (Case No. 1939).

\* \* \*

3. It is with great sadness that the Committee learnt of the death of Mr. Alfonso Sánchez Madariaga. Titular Worker member of the Committee on Freedom of Association for over 40 years, Mr. Sánchez Madariaga brought to the Committee his enormous experience as a national and international trade union leader as well as his unshakable belief in the ideals of the International Labour Organization. He had enormous belief in the principles of freedom of association as well as a strong sense of compromise, thereby contributing greatly to the work of the Organization in the domain of freedom of association. The Committee shares the grief felt by his family.

\* \* \*

4. Currently, there are 78 cases before the Committee, in which complaints have been submitted to the governments concerned for observations. At its present meeting, the Committee examined 23 cases on the merits, reaching definitive conclusions in 13 cases and interim conclusions in ten cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

### NEW CASES

5. The Committee adjourned until its next meeting the examination of the following cases: Nos. 2013 (Mexico), 2014 (Uruguay), 2015 (Colombia), 2017 (Guatemala), 2018 (Ukraine), 2019 (Swaziland), 2020 (Nicaragua), 2021 (Guatemala), 2022 (New Zealand), 2023 (Cape Verde), 2024 (Costa Rica), 2025 (Canada/Ontario), 2026 (United States) and

<sup>1</sup> The 316th-317th Reports were examined and approved by the Governing Body at its 275th Session (June 1999).

2027 (Zimbabwe) because it is awaiting information and observations from the governments concerned. All these cases relate to complaints or representations submitted since the last meeting of the Committee.

#### OBSERVATIONS REQUESTED FROM GOVERNMENTS

6. The Committee is still awaiting observations or information from the governments concerned in the following cases: Nos. 1880 (Peru), 1959 (United Kingdom/Bermuda), 1995 (Cameroon), 2006 (Pakistan), 2007 (Bolivia) and 2008 (Guatemala). In Case No. 2006 (Pakistan), the Government stated that it would send its observations shortly.

#### OBSERVATIONS REQUESTED FROM GOVERNMENTS AND/OR COMPLAINANTS

7. In Case No. 1943 (Canada/Ontario) the Committee has still not received the complainant's comments. It requests the complainant to send them without delay, in the absence of which it will proceed to examine the case on the basis of the information actually at its disposal. In Case No. 1963 (Australia), the Committee invited the Government and the complainant to forward any additional information in time for the Committee to examine the case at its next session in November 1999.

#### PARTIAL INFORMATION RECEIVED FROM GOVERNMENTS

8. In Cases Nos. 1835 (Czech Republic), 1953 (Argentina), 1961 (Cuba), 1998 (Bangladesh) and 2001 (Ukraine), the governments have sent partial information on the allegations made. The Committee requests all of these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

#### OBSERVATIONS RECEIVED FROM GOVERNMENTS

9. As regards Cases Nos. 1931 (Panama), 1965 (Panama), 1974 (Mexico), 1976 (Zambia), 1991 (Japan), 1994 (Senegal), 1999 (Canada/Saskatchewan), 2003 (Peru), 2004 (Peru), 2009 (Mauritius), 2012 (Russian Federation) and 2016 (Brazil), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

#### COMPLAINT UNDER ARTICLE 26 OF THE ILO CONSTITUTION

10. At its March 1999 meeting, the Committee examined cases concerning Colombia (Nos. 1787, 1948, 1955, 1962, 1964 and 1973) as well as a complaint on the non-compliance by Colombia of 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), presented by a number of delegates at the 86th Session (1998) of the Conference pursuant to article 26 of the ILO Constitution [see 314th Report, paras. 1-141]. In approving the report, the Governing Body decided to postpone to its November 1999 session its decision as to the establishment of a commission of inquiry and the designation of its members. However, the Committee requests the Government to furnish a detailed report prior to 1 September 1999 so as to enable it to present a new report on the merits of the case to the Governing Body at its November 1999 session.

## URGENT APPEALS

11. As regards Cases Nos. 1851 (Djibouti), 1922 (Djibouti), 1978 (Gabon), 1980 (Luxembourg), 1986 (Venezuela), 1993 (Venezuela) and 2005 (Central African Republic), the Committee observes that, despite the time which has elapsed since the submission of the complaints or the last examination of the cases, it has not received the complete observations of the governments concerned. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their complete observations or information have not been received in due time. The Committee accordingly requests these governments to transmit their observations or information as a matter of urgency.

## MISSIONS

12. The Committee was informed that a mission, led by its Chairperson, Professor Max Rood, accompanied by Mr. Bernard Gernigon, Chief of Freedom of Association Branch, and Ms. Deepa Rishikesh, a legal officer of the said Branch, was carried out in the Republic of Korea from 12 to 17 April 1999; its mandate was to examine, following the February 1998 high-level tripartite mission, the problems in implementing the Committee's recommendations formulated in Case No. 1865. The Committee requests the Government to furnish its observations on pending allegations so as to enable it to examine the case at its next session.

13. In Case No. 2011 (Estonia), the Government requested that a technical mission be carried out in order to find a solution to questions related to freedom of association principles. The Committee notes that appropriate contacts will be established during the Conference so to specify the terms of such a mission.

## WITHDRAWAL OF A COMPLAINT

14. In Case No. 1990 (Mexico), the complainant, the Progressive Trade Union of Free Trade Zones of the Republic of Mexico, stated, in a communication dated 22 April 1999, that it wished to withdraw its complaint. Observing that the complainant itself specified that the withdrawal came after the settlement of the questions raised in the case, the Committee has decided to close the matter.

\* \* \*

## TRANSMISSION OF CASES TO THE COMMITTEE OF EXPERTS

15. The Committee draws the legislative aspects of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Cases Nos. 1773 (Indonesia), 1900 (Canada/Ontario), 1958 (Denmark), 1975 (Canada), 1989 (Bulgaria) and 1996 (Uganda).

\* \* \*

EFFECT GIVEN TO THE RECOMMENDATIONS OF THE COMMITTEE  
AND THE GOVERNING BODY

*Case No. 1867 (Argentina)*

16. At its June 1998 session, the Committee once again requested the Government to take the necessary steps for the reinstatement of the trade union official, Mr. Rojo, in his previous post, and if this is not possible because of the time which has elapsed, to ensure that he is fully compensated [see 313th Report, paras. 12-15]. In its communication dated 12 May 1999, the Government indicates that the recommendation of the Committee in this case has been communicated to the Director-General of Labour of the Province of Salta but that he has not yet replied. *The Committee notes this information and reiterates its previous recommendations and requests the Government to send it a copy of the reply of the provincial authority as soon as it is delivered.*

*Case No. 1862 (Bangladesh)*

17. At its November 1998 meeting when it last examined this case, the Committee requested the Government to keep it informed of the measures taken to: (a) amend the Industrial Relations Ordinance, 1969 (IRO), to remove the requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments in order for a union to be registered; (b) register the union of workers at Saladin Garments Ltd. The Committee had also requested the Government to inform it of the results of inquiries into the trade union situation at the Palmal Knitwear Factory Ltd. and the outcome of the cases filed by several activists and members of the Bangladesh Independent Garment Workers' Union (BIGU) following anti-union reprisals, as well as concerning the employment situation of Ms. Kalpana at the Palmal factory [see 311th Report, paras. 12-16].

18. In a communication dated 7 March 1999, the Government states with regard to the amendment of the IRO requested by the Committee that the employers and trade union leaders (with a few exceptions) are of the opinion that the requirement of 30 per cent of all workers in an establishment for registration of a trade union is in conformity with Conventions Nos. 87 and 98. According to the Government, the welfare of working people is an important issue, while it is not important to increase the number of unions in an establishment. Past and present experience illustrates that the higher the number of unions in an establishment, the more clashes and disputes occur while productivity decreases.

19. *The Committee notes with regret the Government's opposition to any change in this matter and emphasizes once again that for several years now the Committee of Experts on the Application of Conventions and Recommendations has been urging the Government to review sections 7(2) and 10(1)(g) of the IRO to bring them into conformity with the requirements of the Convention (see observation, page 212 of the English text of Report III (Part 1A) of 1999). In this respect, the Committee on Freedom of Association notes that a Government representative to the Conference Committee on the Application of Standards stated in June 1998 that the Government was considering taking measures concerning these provisions. Like the Committee of Experts, the Committee can only urge the Government once again to review the situation, since the figure of 30 per cent in both small and large enterprises is excessive and considerably hinders the establishment of trade union organizations to defend workers' interests.*

20. As regards the application for registration of the union established in the Saladin Garments Ltd. enterprise filed on 9 April 1996, the Government states once again that the Registrar rejected it on the ground that the union failed to fulfil the registration require-

ments. The union appealed to the Labour Court to direct the Registrar to register it, but the case is still pending and no other union has come forward for registration.

21. *The Committee regrets that the registration of this trade union, for which the workers of Saladin Garments Ltd. have been applying for over three years, has still not taken place. It recalls that by ratifying Convention No. 87 the Government undertook to give effect to Article 2 thereof, i.e. to afford workers, without distinction whatsoever, the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. The Committee urges the Government to ensure that the union of workers of the Saladin Garments Ltd. enterprise is registered without delay and to keep it informed in this regard.*

22. Concerning the results of the inquiries into the trade union situation in the Palmal Knitwear Factory Ltd., the Government explains that a union under the name of Palmal Knitwear Factory Ltd. Karmachari union was formed and applied for registration to the Registrar of Trade Unions, who refused it, requesting the union to rectify certain defects, which the union failed to do. The Registrar then refused the application for registration and the union appealed against this decision to the Labour Court. The employer also applied to be a contestant against the union. The Court did not allow the employer to be a contestant, and the latter filed a writ petition in the High Court Division of the Supreme Court, which is still pending. *In this case also, the Committee urges the Government to ensure that the Palmal Knitwear Ltd. Karmachari union is registered without delay, and requests the Government to keep it informed in this regard.*

23. Finally, the Government provides information on the proceedings under way concerning the cases filed by the trade union activists and members of the BIGU who were victims of anti-union reprisals, including Ms. Kalpana of the Palmal factory. *The Committee notes this information and requests the Government to continue supplying additional information on the appeals that are still pending, including that of Ms. Kalpana, and to take all the necessary measures to ensure that the union activists and members who have been dismissed, harassed or blacklisted because of their membership of a trade union in the garment sector obtain redress and are reinstated in their jobs, if they so wish.*

#### Case No. 1957 (Bulgaria)

24. The Committee last examined this case at its November 1998 meeting [see 311th Report, paras. 25-27]. The Committee requested the Government to take steps without delay to ensure that all the property confiscated from the complainant would be returned to it. With respect to the allocation of premises to the National Syndical Federation (GMH), the Committee invited the complainant to request that premises be allocated to it under the terms of the State Property Law, as the Government had suggested.

25. In a communication of 3 December 1998, the complainant states that no constructive proposal to solve this problem has yet emerged and in fact the district administration has intensified the conflict by ordering GMH to report on 9 December 1998 to receive some personal effects and threatening court action. The letter from the District Governor dated 23 November 1998 is attached to the complainant's communication. The complainant states that in the letter the complaint before the ILO is stated to be groundless and unlawful, that the complainant has committed some unlawful self-governing actions, which the complainant denies, and the letter does not address the issue of the return of the movable property, money and documentation of the GMH. The complainant states further that the letter does not address the Government's obligations under the labour legislation or the Committee's recommendations.



26. The Government forwarded its response to the further information provided by the complainant in a communication of 8 April 1999. The Government states that as a result of the legal eviction executed pursuant to Ordinance No. RD15-207 of 11 June 1997, the GMH was deprived of use of the premises in question. The Ordinance was executed on 15 July 1997 with no representative of GMH being present. The refusal of the President of the GMH to receive a copy of the Ordinance was certified in accordance with Bulgarian law. The premises were granted to the Ministry of Trade which obtained them on legal grounds with a due protocol by a commission appointed by the Minister of Trade for this purpose. In view of the absence of a representative of GMH, and in an effort to facilitate the use of the premises, all the office equipment and documentation belonging to GMH was locked and sealed in one of the rooms. The Government asserts that the reason for this action was not to limit GMH's access to the equipment and the documentation, but to ensure their safe-keeping while the new occupants were moving in. The Government states further that keeping this property safe and intact results in the premises not being used fully, thus entailing much unnecessary expense. According to the Government, in an effort to avoid this and as an act of good will, the district authorities sent the letter referred to by the complainant inviting the President of GMH to take away the organization's property on the date set by the present occupier of the premises. The President did not respond to this invitation. The Government states further that in view of this unreasonable lack of cooperation, and not able to react in any other way, the District Governor finalized his legal obligations by putting into force Decision No. 394 of 1 October 1993 of the Council of Ministers revoking the permission for GMH to occupy the property in question.

27. *The Committee notes that according to the letter of 23 November 1998 from the District Governor to the President of the GMH, the Government rejects the complainant's claim for the continued use of the premises, and describes the allegations in the complaint to the Committee as "groundless and unlawful". The Committee must recall the principle that "in a situation in which workers' organizations consider that they do not enjoy the freedoms essential for the performance of their functions, they should be entitled to demand the recognition of these freedoms and such claims should be considered to form part of legitimate trade union activities" [see Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996, para. 28]. The Committee notes the non-conciliatory tenor of the letter generally. In the letter, the complainant is accused of having violated the law as a result of "self-governing actions". The nature of these actions is not specified. While the letter goes on to invite the President of the GMH to a meeting at an appointed time to take back possession of the personal items, it also states that refusing to attend will result in the matter being brought before the courts and the prosecutor's office. The Committee must urge the Government to make constructive efforts, without delay, to ensure that all the property confiscated from the complainant is returned to it. With respect to the allocation of the premises, the Committee again invites the complainant to request such allocation pursuant to the State Property Law, and requests the Government to look favourably upon such a request despite the fact that Decision No. 394 has been put into force. It further requests the Government to keep the Committee informed in this regard.*

*Case No. 1900 (Canada/Ontario)*

28. The Committee last examined this case at its November 1997 and March 1998 meetings where it requested the Government, inter alia, to take the necessary measures to ensure that agricultural and horticultural workers, domestic workers, architects, dentists, land surveyors, lawyers and doctors all enjoyed the protection necessary to establish and

join organizations of their own choosing [see 308th Report, para. 194 and 309th Report, para. 11].

29. In a communication dated 16 March 1999, the Government recalls that the Ontario Court General Division dismissed on 9 December 1997 the application that was made on behalf of the United Food and Commercial Workers International Union (UFCW) for an order striking down the repeal of the *Agricultural Labour Relations Act, 1994*, which had as a result the exclusion of agricultural workers from Ontario's statutory labour relations scheme. This case was brought before the Ontario Court of Appeal; on 26 January 1999 the appeal was dismissed, the Court of Appeal upholding the General Division Court's decision which had previously concluded that the exclusion of agricultural workers from Ontario's statutory labour relations scheme did not violate their freedom of association, or their right to equal protection and equal benefit of the law guaranteed by constitutional provisions. The Committee takes note of this information.

30. The Government otherwise indicates that there is no further development worth mentioning in this case. However, it reiterates its beliefs that there are legitimate reasons for the exclusion of certain workers from the *Labour Relations Act (LRA)* statutory bargaining rights since Canadian labour laws originally enacted with industrial settings in mind are not always suitable for non-industrial workplaces. Moreover, the Government insists on the fact that such excluded categories of workers continue to be free to form voluntary association or unions or to bargain collectively with their employers outside the statutory legal framework. *Noting this information, the Committee reiterates its insistence on the necessity for all workers without distinction whatsoever — and especially for categories of workers traditionally known as more vulnerable — to be able to organize freely, fully exercise all related rights and enjoy the necessary protection elaborated within the purview of freedom of association principles. The Committee draws the legislative aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

#### *Case No. 1945 (Chile)*

31. At its meeting in November 1998, the Committee examined allegations concerning the dismissal of the trade union leaders Mr. Sergio Antonio Cea Valenzuela, Mr. Sergio Silva Pérez and Mr. Jorge Muñoz Llanos of the security transport company Brink's of Chile S.A. The Government sent extensive documentation and details of the various court rulings rejecting these unionists' complaints and indicated that the ruling of the First Labour Tribunal of Valparaíso, rejecting the evidence regarding their status as workers and trade union leaders, was under appeal. The Committee requested the Government to keep it informed of the outcome of the appeal proceedings [see 311th Report, paras. 32, 33 and 34].

32. In a communication dated 2 March 1999, the Government stated that on 28 August 1998, the Valparaíso Court of Appeal rejected the application by Mr. Cea Valenzuela, Mr. Silva Pérez and Mr. Muñoz Llanos and upheld the lower court's ruling. On 4 September 1998, the lawyers acting on behalf of the union leaders applied to the Valparaíso Court of Appeal for clarification, expansion or correction of its ruling of 28 August 1998, with a view to obtaining clarification on certain questionable points and rectifying certain errors which in their view the ruling contained. On 29 September 1998, the Valparaíso Court of Appeal rejected this application. On 16 September 1998, the lawyers acting for the union leaders applied to the Supreme Court, through the Valparaíso Court of Appeal, for a ruling to set aside the ruling of 28 August on the grounds that it was contradictory. On 29 October 1998, the Supreme Court reviewed the application and ruled

it to be inadmissible. On 20 November 1998, the Supreme Court issued an implementation order in respect of the ruling handed down by the Court of Appeal, which thus became an enforceable judgement against which no further appeals could be made.

*33. The Committee takes note of this information and of the contents of the court rulings according to which the persons concerned did not have the status of trade union leaders at the time of their dismissals and consequently did not enjoy special protection.*

*Case No. 1925 (Colombia)*

**34.** At its March 1998 meeting, the Committee formulated the following recommendations concerning the allegations that were still pending [see 309th Report, para. 119]:

- (a) The Committee requests the Government to transmit the decision concerning the fine imposed upon the company Avianca-Sam-Helicol for having applied a status of “not unionized” to the workers and to confirm that this type of anti-union discrimination practice has ceased. It further requests the Government to keep it informed of the investigations into violations of section 140 of the Labour Code and hopes that these investigations will be concluded very soon.
- (b) As regards the dismissal of trade union officers from the union’s subsidiary office at Cundinamarca (Euclides Arandia, José Angel Cupita, Rubén Darío Leal, José Córdoba and Rosalía Delgado), of union officers at the union’s Barranquilla section (Luis Cruz and Gabriel San Juan) and of 16 union members from the operations area at Eldorado Airport in Bogotá, the Committee requests the Government to take all steps forthwith to begin an investigation into the matter and, if it is found that the union officers and members in question were dismissed on grounds of their trade union activities, because of their position as union officers or members, or for anti-union motives, to reinstate them in their posts. The Committee requests the Government to keep it informed of the outcome of this investigation.
- (c) As regards the failure after 15 December 1996 to deduct trade union dues from the wages of 280 union members on behalf of the complainant, and in some cases the illegal withholding by the company of dues that had been deducted, the Committee, noting the absence of any comments by the Government on this allegation, emphasizes that in considering similar allegations, it has previously recalled that non-payment of union dues can result in serious financial difficulties for trade union organizations and requests the Government to ensure that the company guarantees the deduction and transfer of union dues in the manner provided under section 400 of the substantive Labour Code. The Committee requests the Government to keep it informed in this connection.
- (d) As regards the allegations concerning the suspension of a permanent trade union licence granted to the union’s subsidiary office at Cundinamarca in accordance with a collective agreement, and the withdrawal on 7 November 1995 of recognition as SINTRAVA representatives from members of the union’s National Council, the Committee requests the Government to take steps to ensure that an investigation is conducted into the matter and, if the allegations are found to be true, to take any necessary steps to ensure that the relevant terms of the collective agreement are enforced. The Committee requests the Government to keep it informed in this connection.

**35.** In communications of June 1998 and March 1999, the SINTRAVA sent the following additional information:

- (a) As regards the application of a “not unionized” status to the workers, the complainant states that after the Avianca-Sam-Helicol enterprise had been fined by the Government for this type of anti-union practice, the management immediately changed its name to “Extra-legal Benefit Plan”. Like the former status, the plan is applied in a compulsory manner by the enterprise to the workers covered by the collective agreement, by means of handouts (housing credits or loans for family emergencies); workers who do not accept the plan are dismissed, as was the case of Ms. Gloria Carvajal Beltrán, who was dismissed for having refused the benefits under

the plan. As regards the violation of section 140 of the Labour Code (remuneration paid when the worker does not work), the complainant states that the enterprise continues to apply this provision, since the following trade union officers of Avianca have now been subjected to this measure: Carlos Alberto Enríquez, Iván Eduardo Cortés and María Mercedes Sierra (SINTRAVA, Calf section), Melba Florián and Joaquín Herrera (SINTRAVA, Medellín section), Alejandro Angel Ferrer Carvajal, José de los Santos de Avila Cedros and Rubén Jiménez (SINTRAVA, Barranquilla section).

- (b) As regards the dismissal of trade union officers of the union's subsidiary office in Cundinamarca, the complainant states that only trade union officer Euclides Arandia has been reinstated; as regards José Angel Cupita and Rosalía Delgado, faced with the enterprise's refusal to reinstate them, they were obliged to reach an economic agreement; as regards Rubén Darío Leal, Jorge Cordoba, Luis Cruz, Gabriel San Juan and the 16 trade union members from the operations area at Eldorado airport in Bogotá, all of them are awaiting a judicial decision.
- (c) As regards the failure to deduct trade union dues, the SINTRAVA states that the enterprise continues to refuse to deduct them.
- (d) As regards the allegations concerning the suspension of the permanent trade union licence granted to the union's subsidiary office at Cundinamarca in accordance with the collective agreement, the enterprise still refuses to recognize it.
- (e) The complainant points out that the management of Avianca has ignored requests to hold meetings of the commissions provided for by the agreement, launching smear campaigns against the union to persuade the workers that they do not need trade union representatives to solve their problems.
- (f) The SINTRAVA alleges that trade union officers and members continue to be unfairly dismissed, as may be seen from the following dismissals: Marlen Astudillo, Gloria López, Aida Luz Montes, Bernardo Lozano, David Beltrán, Luis Bernardo Díaz, William Rojas and Arcesio Beltrán (unionized workers of the Calf base); Santander Gonzalez, Ismael Ponce and Andres Camargo (trade union officers of the Colombian Association of Helicopter Technicians (ASCOTHEL)); all the officers of the Colombian Association of Aviation Mechanics (ACMA) and SINTRAVA union officer Mr. Amarildo Maldonado.
- (g) Lastly, the complainant alleges that the enterprise does not allow its officers access to the installations of the enterprise in order to carry out their trade union functions.

**36.** In a communication dated 15 January 1999, the Government sent partial information on the follow-up to the Committee's recommendations. As regards the application of a "not unionized" status to the workers, the Government points out that in addition to a fine of 80 times the minimum wage being imposed on the enterprise, as already mentioned, for having violated section 354 of the Substantive Labour Code, in August 1998 copies of the resolutions by which the Ministry of Labour and Social Security imposed sanctions on Avianca were forwarded to the Public Prosecutor's Office of Bogotá in order for it to take appropriate action, since under the Penal Code this type of action may in some cases constitute an offence. The Committee requests the Government to inform it whether any action has been taken by the Public Prosecutor's Office of Bogotá in this respect and to send without delay its observations on the allegations that the management of Avianca is still applying the "not unionized" status under the new name "Extra-legal Benefit Plan" and that Ms. Gloria Carvajal Beltrán was dismissed for having refused the benefits under the plan.

37. As regards the violation of section 140 of the Labour Code (remuneration without work), the Government states that as a result of the inquiry which was carried out, the enterprise was fined 30 times the minimum wage. The Committee takes due note of its reply and requests the Government to send it without delay information concerning the allegations to the effect that the enterprise has applied this provision to Avianca trade union officers Carlos Alberto Enríquez, Iván Eduardo Cortés and María Mercedes Sierra (SINTRAVA, Calí section), Melba Florían and Joaquín Herrera (SINTRAVA, Medellín section), Alejandro Angel Ferrer Carvajal, José de los Santos de Avila Cedros and Rubén Jiménez (SINTRAVA, Barranquilla section).

38. As regards the dismissal of trade union officers of the union's subsidiary office in Cundinamarca and the 16 trade union members from of the operations area at Eldorado airport in Bogotá, the Government points out that it is not for the Ministry of Labour to judge whether such dismissals are legal, but for the labour courts, and that, moreover, the workers affected have already initiated proceedings before the competent labour courts. *In this respect, the Committee regrets that the Government has not carried out an inquiry to determine whether these dismissals were carried out on anti-union grounds. The Committee recalls that "where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention" [see Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996, para. 754].*

39. *The Committee notes with regret that, according to the information provided by the complainant, only the trade union officer Euclides Arandia has been reinstated and that José Angel Cupita and Rosalía Delgado, faced with the enterprise's refusal to reinstate them, were obliged to reach an economic agreement. As regards Rubén Darío Leal, Jorge Cordoba, Luis Cruz, Gabriel San Juan and the 16 trade union members from the operations area at the Eldorado airport in Bogotá, the Committee requests the Government to inform it as soon as possible of the outcome of the proceedings instituted by the trade union officers and members before the labour courts.*

40. As regards the failure to deduct trade union dues for the complainant, the Government states that the inquiry carried out by the Ministry of Labour and Social Security resulted in the enterprise being fined for violation of section 400 of the Substantive Labour Code, which provides for the obligation of the enterprise to deduct trade union dues. *The Committee notes this information and, considering that the complainant states that the enterprise, despite a fine having been imposed, still refuses to make such deductions, requests the Government to take the necessary steps to ensure that Avianca complies with the provisions of section 400 of the Substantive Labour Code and to keep it informed in this connection.*

41. As regards the allegations concerning the suspension of the permanent trade union licence granted to the union's subsidiary office in Cundinamarca under the collective agreement, the Government states that the Ministry of Labour and Social Security has already initiated an inquiry. *In this respect, the Committee requests the Government to inform it as soon as possible of the outcome of this inquiry.*

42. *As regards the new allegations concerning: (a) the enterprise's ignoring requests to convene a meeting of the commissions provided for by the collective agreement; (d) the unfair dismissals of Marlen Astudillo, Gloria López, Aida Luz Montes, Bernardo Lozano, David Beltrán, Luis Bernardo Díaz, William Rojas and Arcesio Beltrán (unionized workers of the Calí base), of Santander Gonzales, Ismael Ponce and Andres Camargo (trade union officers of the Colombian Association of Helicopter Technicians*

(ASCOTHEL)), of all the officers of the Colombian Association of Aviation Mechanics (ACMA) and the SINTRAVA union officer Amarildo Maldonado; and (c) the denial of access by the enterprise to SINTRAVA officers to the installations of the enterprise in order to carry out their trade union functions, the Committee requests the Government to send it information in this connection without delay.

*Case No. 1966 (Costa Rica)*

43. At its meeting of November 1998, the Committee made the following recommendations on the allegations pending [see 311th Report, para. 365]:

- (a) The Committee urges the Government to take new measures to implement without delay the conclusions and recommendations it made at its meeting of November 1996 in Case No. 1879 relating to the enterprise FERTICA SA. It requests the Government to ensure that those dismissed because of their trade union office or membership are reinstated (all the members of the executive board of the workers' association and 265 members have been dismissed) and that the collective agreement is implemented. The Committee requests the Government to keep it informed in this respect.
- (b) The Committee expresses its concern at the slowness, noting that the long delay in deciding proceedings amounts to a denial of justice, and inefficiency of the proceedings on allegations of anti-trade union discrimination in a considerable number of cases and requests the Government to take the measures necessary to ensure the speedy conduct of proceedings.
- (c) The Committee deeply deplores that the enterprise FERTICA SA has once again engaged in anti-union practices and urges the Government to take the measures necessary to ensure that it recognizes the legitimate executive board of the Association of Workers of FERTICA SA (ATFe) and hand over all its members' union dues. Furthermore, recalling that the intervention of an employer to promote the constitution of the executive board of a trade union and interference with its correspondence are acts that constitute a grave violation of the principle of freedom of association, the Committee requests the Government to take measures to ensure that such acts are not repeated in the future and to guarantee the rights of the legitimate executive board.
- (d) Noting that the administrative authorities confirmed in 1998 the extension of the collective agreement in force, the Committee requests the Government to ensure that the enterprise FERTICA SA honours that collective agreement.
- (e) With regard to the allegations concerning: prohibition of entry by ATFe union officials into the premises of the company, and the prohibition from holding demonstrations, meetings and assemblies in the usual places; the dismissals alleged to have occurred in FERTICA SA on grounds of social and economic dispute despite the existence of a judicial order that such dismissals should not take place; promoting of the constitution of the SITRAFER trade union organization in FERTICA SA; the disappearance of the pension that had been established by the collective agreement and which was the property of the workers, the Committee requests the Government to take the measures necessary to conduct detailed investigations without delay into all the allegations and to ensure that the judicial orders stating that dismissals in FERTICA SA should not take place are respected and to keep it informed of the result of those investigations.

44. In its communication of 18 January and 22 March 1999, the Government states that as regards the alleged non-compliance with the Committee's recommendations requesting the reinstatement of trade union officials and members and the implementation of the collective agreement in the FERTICA SA enterprise, as indicated in its previous replies, the Government fulfilled its function as mediator, in particular in several meetings with the parties, and providing a timely response, by means of the conciliation machinery available under the legal system in force, to each of the Committee's recommendations. It has repeatedly urged the parties to comply with those recommendations, without at any

time claiming the authority to impose measures which are the responsibility of the courts of law (the reinstatement of the workers in question who were dismissed because of their trade union office is a matter which is the exclusive competence of the courts). In particular, the Minister of Labour and Social Security, in communication DMTA.MB-210 dated 7 September 1998, invited the general manager of FERTICA and the secretary-general of ATFe to an administrative conciliation meeting, which was held on 21 September 1998, with a view to reaching an agreement on the recommendations concerning the reinstatement of the workers dismissed as well as compliance with the collective agreement. The arguments put forward by the employer against such a course of action included the statement that the dismissals of the trade union officials were made under the provisions of the collective agreement and before the latter was denounced by the ATFe. The Government also refers to a meeting that took place on 18 March 1998 between the parties and the head of labour matters of the Ministry of Labour and Social Security. During the meeting, the enterprise rejected the conciliation initiative undertaken by the ministry to examine issues similar to those examined by the Committee in Case No. 1879 and which are the subject of various judicial proceedings. Moreover, the Ministry of Labour issued an administrative guideline to the competent ministerial bodies requiring them once again to take all the necessary steps to urge the parties in dispute to reach a solution and to try to secure the reinstatement of all the dismissed workers in their workplaces and compliance with the collective agreement.

45. As regards the Committee's recommendations concerning the slowness of justice, the Government states that the Committee's report was transmitted to the President of the Supreme Court of Justice and high-ranking members of the judiciary have been reminded of the ILO principle in the sphere of freedom of association that justice should be both speedy and seen to be done. Furthermore, on 15 May 1998 the present Minister of Labour and Social Security issued circular DMT-063-98 which reminded the competent ministerial authorities of their obligation to apply in a speedy manner, within a period of two months and without prejudice to the rights resulting from the principles of due process and legitimate defence, the applicable procedure in cases of anti-union discrimination. This time limit was established by the Constitutional Court, in decision No. 4298-97 of 23 July 1997. According to this jurisprudence, in cases of suspected trade union persecution and unfair labour practices, the task of the Ministry is to determine whether or not there are grounds for a denunciation to be made to the competent courts by the Director-General of Labour (the latter's decision may be appealed to the Ministry of Labour), with a period of two months being established for the completion of the administrative inquiry. According to the Government, it is the parties in dispute who have been mainly responsible for delaying the proceedings through the use of delaying tactics and procedures facilitated by due process. Moreover, the Government emphasized its unequivocal readiness to address the Committee's concern about the supposed slowness of justice in administrative proceedings on unfair labour practices.

46. Furthermore, the Government states that it deplores all the anti-union practices which infringe the rights of the workers in the FERTICA SA enterprise and it recalls in this respect that the Ministry of Labour and Social Security has confirmed at the administrative level the validity of the collective agreement signed on 15 September 1994 between FERTICA SA and AFTe. This constitutes a clear recognition of the current executive board of this organization, which has been duly registered.

47. As regards the handing over of members' union dues, the Ministry of Labour and Social Security intervened in the matter on 21 September 1998 with a view to ensuring that the employer change its practice regarding the handing over of members' union dues. How-

ever, the employer claimed that since the supposed representation of the ATFe trade union in the person of Marco Antonio Guzmán Rodríguez is being challenged in the ordinary labour court by Messrs. Tomás Alberto Cortés Gómez and Oscar Fernández Salazar, FERTICA SA has transferred the said trade union dues to the Trade Union of Workers of FERTICA, the legal personality of which is recorded in the register of the Ministry of Labour. Moreover, the employer states that the different legal cases related to the matters in hand are still under way. As a result, the Minister of Labour has instructed the competent labour authorities to study and ensure the application of all labour legislation, with a view to establishing a harmonious relationship between the employer and employees, as a guarantee of order and social justice. In this context, direct instructions have been given to these authorities to intervene in the settlement of the dispute with a view to achieving an extrajudicial conciliation between the parties.

48. Furthermore, the Government states that the supposed interference of the employer in the election of the executive board of ATFe and interference with its correspondence are "non-proven facts" contained in the report issued by the Labour Inspectorate on 26 November 1996. At all events, with a view to furthering the abovementioned search for peaceful labour relations, comprehensive and express instructions have been given to the National Directorate of Labour Inspection, in the abovementioned communication, for vigilance to be exercised at all times as regards the protection of the collective rights of workers, non-interference by employers in the election of the executive boards of trade unions and non-interference in trade union correspondence, guaranteeing in this way the exercise of the rights of the members of the executive boards of social organizations.

49. As regards the Committee's request that the Government ensure that the FERTICA SA enterprise honours the collective agreement in force, the Government points out that the Ministry of Labour has recognized at the administrative level the validity of the collective agreement and, in the same terms, the competent ministerial authorities have been applying it in accordance with the law and have received instructions to ensure that, in accordance with the law, the FERTICA SA enterprise complies with and respects the collective agreement. Furthermore, the Government states that pursuant to administrative resolution No. DRT166-99 of 18 March 1999, the Department of Labour has extended the collective agreement in question for a period ending 15 September 2000.

50. As regards the final paragraph of the Committee's recommendations, the Government notes the Committee's observations and the Ministry of Labour and Social Security accordingly undertakes to instruct all its inspectors to exert greater vigilance in the FERTICA SA enterprise with a view to ensuring that there is no obstacle to the constitutional right of assembly of workers and trade union officials and the right to hold peaceful meetings and assemblies with the workers. In this respect it should be noted that in accordance with the national law in force, the mere fact of participating in a strike picket or the open and peaceful incitement to other workers not to take up their workplaces is not considered an illegitimate act and therefore this right is guaranteed in the legal system applicable to workers.

51. Furthermore, as regards the allegation of the promotion of the constitution of the SITRAFER trade union organization by the employer, the Minister of Labour and Social Security has given instructions to the National Directorate of Labour Inspection to undertake the respective inquiry with a view to ascertaining the truthfulness of the allegations. As a result of the above, SITRAFER is an organization which is now properly constituted, as can be seen from the file, and for this reason enjoys all the rights guaranteed by the law in force, without prejudice to the rights of other organizations in similar conditions. The Government undertakes to keep the Committee informed in this respect.



52. As regards the alleged disappearance of the pension fund which is the property of the workers in the FERTICA SA enterprise, the Minister of Labour has instructed the Labour Affairs department and the National Directorate of Labour Inspection to undertake conciliation measures on a coordinated basis or, failing that, the necessary administrative inquiry with a view to establishing the truth of the matter. The Government undertakes to keep the Committee informed in this respect. Finally, the Government reiterates its readiness to comply with all the recommendations made by the Committee on Freedom of Association.

53. *The Committee notes the measures taken by the Government to conciliate and mediate between the FERTICA SA enterprise and the ATFe organization and to try to secure the reinstatement of the workers dismissed from their workplaces and compliance with the collective agreement and notes with interest that the administrative authorities have taken steps to ensure that the enterprise complies with and respects the collective agreement and that pursuant to an administrative decision, this collective agreement has been extended up to 15 September 2000. On the other hand, it regrets that the enterprise, in disregard of the Committee's recommendations, refuses to reinstate the trade union officials and members dismissed. The Committee requests the Government to keep it informed of the outcome of the instructions given to the administrative authorities with a view to finding a solution and achieving the reinstatement of the dismissed persons and expresses the hope that these reinstatements will be made in the very near future.*

54. *The Committee notes with interest that the Constitutional Court, in decision No. 4298-97 of 23 July 1997, fixed a time limit of two months for the holding of administrative inquiries into acts of anti-union persecution and unfair practices. The Committee requests the Government to study the possibility of amending legislation so that once an inquiry concludes that acts of anti-union discrimination have occurred, the effects of such acts shall be declared null and void at least until the judicial authorities have ruled on the matter.*

55. *The Committee notes that the Minister of Labour has given instructions to the administrative authorities to try to resolve the dispute in the FERTICA SA enterprise through extrajudicial conciliation on the matter, including as regards the payment of trade union dues to AFTe (an organization which moreover the Government recognizes, as it does SITRAFER). It also notes that instructions have also been given to ensure non-interference by employers in the executive boards of trade unions and trade union correspondence and that the Government has instructed the labour inspectors to step up their monitoring of the FERTICA SA enterprise to ensure that there is no impediment to the constitutional right of assembly of workers and trade union officials and that they are permitted to hold peaceful assemblies. The Committee also notes the Government's remarks concerning conciliation measures or, failing that, an administrative inquiry into the alleged disappearance of the pension fund which is the property of the workers of the enterprise, set up under the collective agreement. The Committee requests the Government to keep it informed of the outcome of the various aspects of this case, including the new dismissals which occurred as a result of a socio-economic dispute. The Committee also requests the Government to carry out an inquiry into the alleged promotion by the enterprise of an executive board parallel to that of the Association of Workers of FERTICA SA (AFTe) and to keep it informed of the inquiry into the promotion by the enterprise of a new trade union (SITRAFER). The Committee hopes that its recommendations on this case will be applied in the near future.*

*Case No. 1824 (El Salvador)*

56. When it examined this case at its November 1998 session [see 311th Report, paras. 41-44], the Committee noted that the Government had not provided the information requested concerning the following recommendations:

- The Committee requested the Government to take the necessary steps to carry out an independent inquiry to look into the allegations concerning the death of the trade unionist, Ms. Julia Esperanza Quintanilla (according to the complainant, the management of the enterprise refused the trade unionist the possibility of seeking medical assistance), and in the event that these facts are confirmed, to bring appropriate action before the courts in order to determine responsibilities and punish the guilty. The Committee requested the Government to keep it informed in this respect.
- With respect to the alleged arrests (by the security staff in the enterprise) of a member of the trade union executive, of two workers of the Sanobang Wool Apparel El Salvador S.A. enterprise and of Mr. Elisio Castro Pérez, secretary-general of the trade union of the textile factory, Mandarín International, as well as the physical attacks on the trade union official of the same trade union, Ms. Marta Rivas, both events allegedly occurred on 15 May 1995, the Committee requested the Government to take steps to carry out an inquiry into the allegations and, if it is ascertained that the trade unionists in question were unlawfully deprived of their freedom — even for a short period of time — and that Ms. Rivas was physically attacked by the security guards of Mandarín International, to bring appropriate action before the courts so that the guilty should be duly punished. The Committee requested the Government to keep it informed in this respect.
- The Committee requested the Government to carry out as a matter of priority an inquiry concerning the threats made against trade unionists in two enterprises noted in the allegations in the free trade zones and to ensure that effective protection is provided for the workers in these enterprises. The Committee requested the Government to keep it informed in this respect.

57. Furthermore, the Committee requested the Government to keep it informed of the outcome of the judicial proceedings against Mr. Huezo concerning false testimony, sequestration, extortion, death threats, illegal detention, defamation and damages and interest.

58. In communications of 11 December 1998 and 14 April 1999, the Government states as follows: (1) Ms. Julia Esperanza Quintanilla died at 14.00 on 2 March 1995 in the “El Carmen” quarter of the city following a serious attack of gastroenteritis, despite having received medical aid, as confirmed by the death certificate. At the time of her death, this worker was covered by the Salvadorian Institute of Social Security, and the enterprise gave to the mother of the deceased an amount equivalent to 60 days of base salary for the funeral, pursuant to article 313 of the Labour Code; (2) concerning the judicial proceedings instituted against Mr. Huezo, on 20 March 1998 the Second Criminal Judge of San Salvador la Nouvelle accepted a motion of dismissal in favour of Juan José Huezo for the offences of false testimony, sequestration, extortion, threats, illegal detention, defamation and action in damages against Mr. Roberto Orellana Molina, and for defamation and action in damages against José Héctor Bonilla and Romeo Alfonso Calderón Rodríguez respectively, and ordered that Mr. Huezo could remain at liberty. As a result, there are no outstanding charges against Mr. Huezo; (3) according to the representative of the Sanobang Wool Apparel El Salvador S.A. of CV, with respect to the events of 15 May 1995 against the trade unionists, which are attributed to the security personnel of the enterprise, the executive and administrative personnel of the enterprise did not enter until after the events; therefore, no one is in a position to adduce evidence of what actually happened before then. Similarly, the business records contain no details of the relevant facts. The security staff had been provided to the enterprise by the Sontay S.A. of CV company, which since

October 1997 has ceased to provide such services; (4) with respect to the threats made against trade unionists in two enterprises in the free trade zones, the Government refers to the case of Mr. Huevo (examined separately) and of Ms. Vilma Sarahí Molina, first secretary of disputes of the Union of Workers in the Cotton Textile Industry, Synthetics, Manufactured Products and Related Branches. In relation to Ms. Sarahí Molina, the Government adds that the Jatex S.A. of CV enterprise stated that it was impossible to conduct an inquiry four or five years after the events. In addition, the Government annexes to its response a communication of the National Federation of Unions of Salvadorian Workers (FENASTRAS), stating as follows: "Concerning threats with firearms against Ms. Sarahí Molina by members of the Salvadorian national civil police, we have learned from non-official sources that the Deputy Commissioner, Darwin Ernesto Arevalo Magaña, and the Deputy Inspector, Jorge González, have been dismissed from their functions on the ground of abuse of authority in this matter."

*59. The Committee notes the observations forwarded by the Government on all the allegations. It requests the Government to confirm the information provided by FENASTRAS in relation to the threats against trade unionist Ms. Sarahí Molina, in particular concerning the measures taken against the members of the national civil police responsible for the threats.*

*Case No. 1908 (Ethiopia)*

**60.** At its June 1998 meeting [see 310th Report, paras. 18-22], the Committee, deeply regretting that having already requested the Government on two previous occasions to carry out an independent investigation into the attack and occupation of the FCTP enterprises and the physical assault of the FCTP treasurer, Mr. Gurmu the Government had decided not to undertake such an investigation, urged the Government immediately to undertake an independent investigation into these matters. The Committee also urged the Government, in the interest of all parties concerned, to institute an independent judicial inquiry into the allegation of the existence of irregular procedures for the nomination of new leaders of the FCTP and to keep it informed in this regard. Furthermore, the Committee requested the Government to amend the legislation conferring broad power on the Minister to dissolve a confederation, to undertake an independent investigation to verify the allegations made against the former CETU and to determine whether the administrative decision to cancel the organization constituted unjustifiable interference in trade union affairs; if so, to take the necessary measures to ensure the reinstatement of the former CETU executive, and to keep the Committee informed in this regard.

**61.** In a communication of 5 March 1999, the Government states that it has repeatedly informed the Committee that the problems and crisis created within the executive of CETU was overcome after the General Assembly of CETU in 1997 decided to reinstate the confederation. It states further that workers are now more than ever before fully exercising their rights and benefiting from the democratic process under way in the country.

*62. The Committee deeply regrets that the Government in its most recent reply merely repeats views it has expressed previously concerning only one of the issues raised by the Committee, and gives no indication that it intends to make any effort to implement the Committee's recommendations. The Committee must deplore this attitude of the Government in the face of serious allegations of violations of freedom of association. The Committee expresses the firm hope that the Government will reconsider its attitude towards the implementation of the recommendations and asks to be kept informed in this regard.*

*Case No. 1854 (India)*

63. During its last examination of this case in November 1998 the Committee requested the Government to keep it informed of the outcome of the criminal proceedings under way against Messrs. Shravan Giri and Tapan Kumar Chaki who confessed to the murder of Ms. Ahilya Devi and the developments regarding the arrest of Messrs. Kumar Mandal, Narsingh Singh, Bhrigu Nath Gupta and Ratan Ghosh who had been implicated in the murder [see 311th Report, paras. 52-53].

64. In a communication dated 22 February 1999 the Government states that the provincial Government of Bihar, being the appropriate government in this case, has informed it that charge sheets have been submitted against the accused: (i) Shravan Giri and Tapan Kumar Manjhi on 8.1.96; (ii) Dinesh Mandal on 8.4.96; (iii) Munna Punjabi on 25.8.96; (iv) Bhrigunath Gupta and Ratan Ghosh on 14.2.97; (v) Narsing Singh: Supplementary charge sheet on 17.4.98; and cognizance taken on 8.8.98. The Government contends that it is thus clear that the law is taking its course in this criminal case. The Government of Bihar is being requested to make available the latest developments in the case for its onward transmission to the ILO.

65. *The Committee recalls that this case concerns the murder of Mrs. Ahilya Devi, a trade unionist who was allegedly organizing rural workers in the State of Bihar on 23 August 1995, and that the Government had indicated that on the basis of the investigation Ms. Devi was murdered on account of her activities related to smuggling which had led to antagonism with other persons also involved in smuggling. The Committee once again asks the Government to supply copies in an ILO working language of the judgement to be handed down in relation to this murder that occurred in 1995 at an early date.*

*Case No. 1890 (India)*

66. During its last examination of the case in November 1998 the Committee asked the Government to keep it informed of the outcome of the proceedings concerning the dismissal of Mr. Malwankar, President of the Fort Aguada Beach Resort Employees' Union (FABREU) and urged the Government to take the necessary steps to have him reinstated in his post if he so desired. The Committee also requested the Government to take the appropriate steps to ensure that the management inquiries on alleged acts of misconduct of several FABREU members were dropped and to obtain the employers' recognition of FABREU for collective bargaining purposes.

67. In a communication dated 22 February 1999 the Government states that the provincial Government of Goa, which is the appropriate government in this case, was informed that the adjudication proceedings in respect of Charter of Demands are still in progress. As regards the adjudication proceedings in respect of six workmen, the Industrial Tribunal had fixed the date for framing the issues on 1 December 1998. As regards the dispute on termination of services of Shri Laxman Malwankar, it was fixed by the Industrial Tribunal for evidence on preliminary issues on 14 December 1998. The matters are now adjourned to 13 January 1999 and 3 February 1999 respectively. As regards the pendency of the proceedings against other workers, inquiries are still in progress. The Government reiterates that the two basic laws governing industrial relations in India, i.e. the Industrial Dispute Act, 1947, and Trade Unions Act, 1928, are enforceable throughout the territory of India including the Province of Goa but these two laws do not invest the Government with any powers to compel any employer to give recognition to any trade union. However, the Code of Discipline, which is voluntary and not mandatory in nature, governs the

recognition of unions. In this context, the Government supplies extracts from “Recognition of Unions Under the Code of Discipline”. The Government adds that further progress will be communicated to the Committee in due course.

68. *The Committee takes note of this information. It recalls however that this case related to various acts of harassment and anti-union discrimination carried out against the President of FABREU, Mr. Malwankar, from 1992 to 1994 which culminated in the dismissal of this trade union leader in January 1995 and the suspension or transferral of FABREU members in April 1995 following a strike action in the hotel industry which was declared a public utility service and thus referred to the Industrial Tribunal contrary to the principles of freedom of association since the hotel industry is in no way an essential service in which strikes can be prohibited. The Committee also recalls that an agreement was signed in October 1995 with a newly formed organization called Fort Aguada Beach Resort Workers' Association thus de-recognizing FABREU, the management recognizing the association as the sole bargaining agent in the company. The Committee had concluded from the evidence at its disposal that no doubts existed that FABREU was the most representative at the Fort Aguada Beach Resort and had urged the Government to take appropriate conciliatory measures to obtain the employers' recognition of FABREU for collective bargaining purposes [see 307th Report, paras. 366-375]. The Committee cannot but insist on the need to take urgent measures to restore harmonious industrial relations in the Fort Aguada Beach Resort and to keep it informed of any positive developments in this regard.*

*Case No. 1698 (New Zealand)*

69. At its meeting in November 1998 [see 311th Report, paras. 66-68], the Committee recalled that the right to strike was one of the essential means through which workers and their organizations may promote and defend their economic and social interests and therefore once again urged the Government to amend section 63(e) of the Employment Contracts Act (ECA) so as to ensure protection of this right. Furthermore, the Committee noted the Government's indication that it was considering the issues relating to bargaining, particularly as concerns the recognition of the employees' representative and that it would announce its conclusions on these issues shortly. It requested the Government to keep it informed of developments in this regard.

70. In a communication dated 15 February 1999, the Government indicated that its consideration of issues relating to bargaining, particularly recognition of the employees' representative, has led it to the conclusion that the existing requirements under the ECA, as clarified by the case law, are sufficient to support fairness in bargaining and therefore it would not seem necessary to amend the current legislation. As concerns section 63(e), the Government reiterated its position that this section provides a balance between the employees' right to strike and employers' rights not to have to face strike action and incur losses due to the actions of other employers over which they have no control or to be bound into arrangements with competing business. Finally, the Government provided information on recent cases concerning the application of the ECA.

71. *The Committee takes note of this information. As concerns section 63(e) of the ECA [see Digest of principles and decisions of the Freedom of Association Committee, 1994, para. 844], the Committee can only strongly reiterate its previous conclusion in this case that provisions which prohibit strikes, if they are concerned with the issue of whether a collective employment contract will bind more than one employer, are contrary to the principles of freedom of association on the right to strike [see 292nd Report, para. 737]. It*

requests the Government to amend section 63(e) in this respect, and to keep it informed of any measures taken.

*Case No. 1826 (Philippines)*

72. When it last examined this case in November 1997 [see 308th Report, paras. 65-67], the Committee urged the Government to ensure that the elections demanded by the members of the Cebu Mitsumi Employees' Union (CMEU), a local union of the Associated Labor Unions (ALU), itself an affiliate of the Trade Union Congress of the Philippines (TUCP), are held immediately at the Cebu Mitsumi enterprise, especially in view of the fact that the newly established CMEU filed a petition for a certification election in February 1994, which had been signed by almost all the workers at the enterprise [see 302nd Report, paras. 405-408].

73. In a communication dated 25 January 1999, the Government states that on 8 June 1998 the Department of Labor and Employment (DOLE) denied the employer's motion. It adds that on 17 November 1998 a pre-election conference was conducted with the presence of representatives of both parties, which decided that an updated list of qualified voters should be submitted by 20 January 1999 and that another conference was to be held on 28 January to fix the inclusion-exclusion proceedings and the conduct of the certification election.

74. *The Committee notes this information. It recalls that it is not necessarily incompatible with Convention No. 87 to provide for the certification of the most representative union in a given unit as the exclusive bargaining agent for that unit. This is the case, however, only if a number of safeguards are provided. The Committee has pointed out that in several countries in which the procedure of certifying unions as exclusive bargaining agents has been established, it has been regarded as essential that such safeguards should include the following: (a) certification to be made by an independent body; (b) the representative organizations to be chosen by a majority vote of the employees in the unit concerned; (c) the right of an organization which fails to secure a sufficiently large number of votes to ask for a new election after a stipulated period; (d) the right of an organization other than the certificated organizations to demand a new election after a fixed period, often 12 months, has elapsed since the previous election [see Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996, para. 834].*

75. *The Committee deeply regrets that the question of which workers have the right to vote has not yet been resolved after over four years have elapsed since the petition to hold certification elections signed by nearly all the workers at the Cebu Mitsumi enterprise was filed. The Committee accordingly once again urges the Government to ensure that elections are held immediately in the Cebu Mitsumi enterprise and to keep it informed as a matter of urgency of the outcome of the elections.*

*Case No. 1914 (Philippines)*

76. During its last examination of the case in June 1998 [see 310th Report, paras. 557-575] the Committee urged the Government to ensure that the 1,500 or so leaders and members of the Telefunken Semiconductors Employees' Union (TSEU) who were dismissed further to their participation in strike action from 14 to 16 September 1995 were reinstated immediately in their jobs under the same terms and conditions prevailing prior to the strike with compensation for lost wages and benefits, in conformity with the Orders for Reinstatement issued by the Government's Department of Labor and Employment (DOLE). The Committee requested the Government to keep it informed of any developments in this

regard. The Committee also requested the Government to institute without delay an independent judicial inquiry into the acts of violence carried out against TSEU members who were picketing on 20 and 21 October 1995 so as to identify and punish the guilty parties; it requested the Government to keep it informed of the outcome thereof.

77. In a communication dated 25 January 1999 the Government states that on 20 August 1998, the Department received a copy of the Entry of Judgement certifying that the Court's decision on 12 December 1997 had become final and executory on 6 April 1998. In the light of this development, the Secretary issued a Writ of Execution on 26 August 1998 directing the immediate reinstatement of the workers in the company's payroll in the event that actual or physical reinstatement is impossible. The company's continued refusal to reinstate said workers led to its filing of a series of motions aimed at delaying the execution of said Writ, the last of which was a twin opposition filed on 21 October and 9 November 1998. On 2 December 1998, the Secretary of Labor and Employment issued an Order directing the Bureau of Working Conditions (BWC) to compute individual wages of the striking workers reckoned from 27 June 1996 up to the actual date of their reinstatement. A writ of execution shall likewise be issued to satisfy said claims. The Government adds that it will update the Committee on any action taken by the Bureau of Working Conditions relative to the Order and the Court's decision on the company's latest motion in future.

78. As regards the question of instituting an independent judicial inquiry into the acts of violence carried out against the TSEU members who were picketing on 20 and 21 October 1995, the Government reiterated the contents of its communication of 12 March 1998 that the Philippine National Police has clarified the issue and disproved the allegation of the strikers, stressing that their presence during the strike is only consistent with their mandate to enforce the law and secure peace and order in the area. Nevertheless, the Government states that it takes note of the Committee's recommendation.

79. *The Committee takes due note of this information. However, the Committee still notes with regret that four years have elapsed since the first Order for Reinstatement. It therefore asks the Government to guarantee expeditious and effective protection against any act of anti-union discrimination and once again urges the Government to make every effort to ensure that the members and leaders of the Telefunken Semiconductors Employees' Union (TSEU) are effectively reinstated in their jobs under the same terms and conditions prevailing prior to the September 1995 strike and to keep it informed of any developments therein as well as with regard to the results of an independent judicial inquiry carried out into the events of October 1995.*

*Case No. 1852 (United Kingdom)*

80. At its meeting in November 1998, the Committee requested the Government to keep it informed of the outcome of the consultation process and the status of the proposals made in the White Paper on Fairness at Work in so far as they touched upon the matters dealt with in this case. It also requested the Government to provide information on the specific facts of the case, particularly in respect of the measures taken to ensure that the Iron and Steel Trades Confederation (ISTC) is afforded reasonable access to Co-Steel both for contact with its members and with potential members [see 31th Report, paras. 76-77].

81. In a communication dated 30 October 1998, the Trades Union Congress (TUC) transmitted information relating to recent developments at the Co-Steel plant at Sheerness. The TUC alleges that Co-Steel had just announced 18 redundancies and a few days later indicated that it was selling part of the enterprise. The TUC points out that the number of terminations is just less than the number for which notice must be given to the authorities

and for which consultation with employee representatives is required. According to the TUC, 14 of the people affected were active trade union members, 12 of whom were members of the ISTC organizing team in Co-Steel. Immediately after these terminations were announced new contracts of employment and plans to introduce a management-controlled works council were proposed to the remaining workforce. The TUC also refers to the dismissal the previous year of Joe Davey, ISTC convenor, who was found to have been unfairly dismissed and claims that the actions of the management since 1992 have been directed at destroying the ISTC presence in the plant. Furthermore, it was made clear to employees who were made supervisors that they were expected to resign their trade union membership and the company had announced that new contracts would be assistant managers in a move designed to widen the bargaining unit to include real managers and thus to frustrate future attempts to win trade union recognition. Finally, the TUC states that there still has been no inquiry into the anti-union tactics of the company, particularly as concerns its disregard of the overwhelming vote by Co-Steel employees for ISTC representation and for collective bargaining.

**82.** In a communication dated 3 March 1999, the Government, recalling that the focus of the question is one of trade union recognition, informs the Committee that the Employment Relations Bill currently before Parliament contains important provisions to establish a statutory procedure whereby unions can gain recognition. The Government considers that these procedures will defuse the type of dispute which has occurred at Co-Steel and ensure that unions can gain recognition where a majority of the workforce favour it. The Government further indicates that disputes concerning recognition are already being resolved voluntarily by the parties in advance of the new Bill becoming law and suggests that it is open to Allied Steel and Wire, which recently bought the Sheerness plant from Co-Steel, to pursue this kind of voluntary resolution. As concerns the allegations of inadequate protection against anti-union victimization occurring in the plant, the Government recalls that workers can appeal to the employment tribunal seeking redress on the grounds of unfair dismissal. The Government refers in this respect to the appeal made by Joe Davey and the close and detailed consideration by the tribunal which, while finding that he was unfairly dismissed, did not consider the dismissal to be based on grounds of trade union membership. In this case, the company was ordered to pay compensation. The Government enclosed a copy of the tribunal's judgement with its communication. Finally, the Government states that it does not intend to carry out an inquiry into the events at Co-Steel as it does not operate a labour inspectorate system common to most countries, but rather provides employment tribunals to hear cases of alleged infringements of employment rights.

**83.** *The Committee takes note of this information. As concerns the matter of union recognition generally, the Committee requests the Government to keep it informed of developments in respect of the Employment Relations Bill and to transmit a copy of this Bill as soon as it has been adopted. As concerns the allegations of further anti-union victimization at Co-Steel, the Committee recalls the importance it attaches to the principle that such allegations should be inquired into immediately by the competent authority with a view to taking suitable measures to remedy the effects of any anti-union discrimination and regrets the Government's refusal to carry out any such investigation. In particular, the Committee regrets that the Government has not provided any information on the measures taken in respect of its previous recommendation that the Government ensure that the ISTC is afforded reasonable access to Co-Steel both for contact with its members and potential members. Given the apparent lack of progress in resolving the serious difficulties in labour-management relations at this plant, the Committee once again requests the Government to give consideration to establishing an independent investigation into the*



*allegations of anti-union tactics and to indicate the measures taken to ensure that reasonable access to the plant has been afforded to the ISTC. It requests the Government to keep it informed of the measures taken in this regard.*

*Case No. 1912 (United Kingdom/Isle of Man)*

**84.** The Committee last examined this case at its November 1998 meeting [see 311th Report, paras. 78-80]. It had requested the Government, inter alia, to keep it informed of all measures taken or envisaged in order to amend its legislation to ensure protection against dismissal and other prejudicial acts for participating in industrial action.

**85.** In a communication dated 3 March 1999, the Government indicates that it intends to complete a review of industrial relations legislation by the end of 1999. In this regard, the Government states that it has already sought the views of the Isle of Man Trades Council and will be contacting employers' organizations in the near future.

**86.** *The Committee takes note of this information and requests the Government to provide it with further details of this review when it will be available.*

\* \* \*

**87.** Finally, as regards Cases Nos. 1509 (Brazil), 1512/1539 (Guatemala), 1581 (Thailand), 1618 (United Kingdom), 1785 (Poland), 1793 (Nigeria), 1796 (Peru), 1812 (Venezuela), 1813 (Peru), 1834 (Kazakhstan), 1837 (Argentina), 1843 (Sudan), 1849 (Belarus), 1850 (Congo), 1869 (Latvia), 1875 (Costa Rica), 1877 (Morocco), 1883 (Kenya), 1884 (Swaziland), 1886 (Uruguay), 1891 (Romania), 1895 (Venezuela), 1926 (Peru), 1935 (Nigeria), 1937 (Zimbabwe), 1952 (Venezuela), 1956 (Guinea-Bissau), 1967 (Panama), 1969 (Cameroon), 1977 (Togo) and 1981 (Turkey), the Committee requests the governments concerned to keep it informed as soon as possible of any developments relating to these cases. Moreover, the Committee has just received information concerning Cases Nos. 1942 (China/Hong Kong) and 1954 (Côte d'Ivoire) which it will examine at its next meeting.

**Case No. 1939**

**Report in which the Committee requests to be kept informed  
of developments**

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

***— the Latin American Central of Workers (CLAT) and  
— the Central Association of Argentine Workers (CTA)***

***Allegations: Killing, detention, physical assaults and death  
threats against trade unionists and trade union leaders;  
break-ins in trade union premises and trade unionists' homes;  
request to withdraw legal recognition***

**88.** The Committee examined this case at its June 1998 meeting and presented an interim report to the Governing Body [see 310th Report, paras. 107-122, approved by the Governing Body at its 272nd Session (June 1998)].

**89.** The Government sent its observations in communications dated 22 October 1998, 29 April and 6 May 1999.

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

#### A. PREVIOUS EXAMINATION OF THE CASE

91. When previously examining the case, which dealt with allegations of killing, detention, physical assaults and death threats against trade unionists and trade union leaders, as well as break-ins in trade union premises and trade unionists' homes and request to withdraw legal recognition, the Committee made the following recommendations [see 310th Report, para. 122(a) and (b)]:

- With regard to the allegation concerning the killing of Ms. Teresa Rodríguez by police officers during a demonstration organized on 12 April 1997 in Neuquén Province in protest against unemployment, the Committee hopes that the judicial proceedings currently in progress will clarify the facts, apportion responsibility and impose sanctions on the person or persons responsible, and requests the Government to keep it informed of the outcome of these proceedings.
- Concerning the allegations relating to: (1) the attacks on 15 and 24 May 1997 on the ATE premises in Neuquén Province; (2) the break-ins at the homes and subsequent detention by the police on 23 June 1997 of members of the CTA of Cutral-Co (Sandro Botron, Juan Bastías, Cristian Rodríguez, Oscar Chávez, Beatriz Parra, Cristian Valle and Angel Lucero) and the legal proceedings initiated against three of them (Rodríguez, Botron and Parra); (3) the assault on ATE delegate, Mr. Jorge Villalba, on 13 June 1997 in Lanús; (4) the death threat made against Ms. Nélide Curto, a member of the administrative committee of ATE-Lanús, on 23 June 1997; (5) the threat against the ATE delegate at the Arturo Melo Hospital, Ms. Ana María Lugercho, on 26 June 1997; (6) the death threat against the ATE-Lanús delegate, Mr. Daniel Saavedra; (7) the death threat against the general secretary of ATE-San Martín, Mr. Víctor Bordiera; (8) the threat against the deputy general delegate of ATE-General Rodríguez District, Mr. Ricardo Caffieri, on 10 July 1997; (9) the attack on the home of the deputy secretary of ATE (national branch), Mr. Juan González; (10) the attack and looting in July 1997 of the ATE premises in Comodoro Rivadavia and Goya; and (11) the request by the Governor of Neuquén Province to withdraw legal recognition from the state employees and teaching unions (ATE and ATEN), which are affiliated to the CTA, the Committee regrets that the Government has not provided full information on these allegations and urges it to provide its observations as quickly as possible on all the allegations, indicating expressly the status of the complaints before the police or judicial authorities to which the complainants refer. The Committee requests the Government to take the necessary measures to ensure protection for the CTA and ATE and for trade unionists who have been threatened.

#### B. THE GOVERNMENT'S REPLY

92. In its communications of 22 October 1998, 29 April and 6 May 1999, the Government provided the following information in connection with the events which occurred under the jurisdiction of Neuquén Province:

- concerning the complaint that an incendiary bomb was set off in the premises of the Association of State Workers of Cutral-Co, the Government encloses Memorandum No. 2876 (CCO) stating that the police station of the 14th district of Cutral-Co registered the relevant complaint lodged by Miguel Dante Alvarez and acting upon a telephone call, went on the spot to ascertain that there had been a fire in the ATE premises and, having observed the damage (in this case only "damage to glass in the entrance door and damage caused by smoke to the premises"), took all the necessary measures to try and clarify the events, such as carrying out an expert's appraisal of the

premises by competent staff. Any information in this respect will be communicated to the Committee as soon as possible;

- concerning the complaint that “a group of unidentified persons fired shots at the front of the premises” of the ATE Cutral-Co headquarters, the Government encloses Memorandum No. 3177 (CCO) stating that Celso Fabían Quesada lodged the relevant complaint with the 14th police station of Cutral-Co specifically pointing out that “nobody was suspected”. The police took the appropriate measures and initiated preliminary investigations. Any further information on this matter will be communicated to the Committee in the near future;
- the Government points out that, concerning both occurrences, the corresponding judicial proceedings were carried out by the Court of Criminal Investigation and that it was clear that the police authorities had acted promptly and taken the necessary procedures. Similarly, the Government states that the relevant authorities are not sparing any effort to try and cast light immediately on such regrettable occurrences. Any progress made and further information acquired with respect to the events mentioned above will be communicated immediately to the Committee;
- concerning the allegation that on the night of 23 June 1997 a group of about 40 police officers had broken into the homes of members of the Central Association of Argentine Workers (CTA) of Cutral-Co, and other allegations (arrest of persons without informing them of where they were being taken, break-ins during the night rather than the day, break-ins by persons wearing hoods, violence used during the break-ins against members of the detainees’ families, lack of jurisdiction of the police to break into the premises, arrest without any legitimate charge being made by the competent legal authority), the Government encloses a copy of Official Note No. 1222 (DSICCO) giving an account of the events and instances which occurred on 13 June 1997 as a result of the visit of a government group headed by the Vice-Governor of Neuquén Province; copy of Judicial Proceedings No. 3519 (CCO-J); copy of Memorandum No. 3783 (CCO); note drawn up by the head office of the security services of Cutral-Co and officials of the Security Superintendent’s Office of Neuquén registering the documentation received. According to the abovementioned documentation and in the light of the well known events which occurred in June 1997 in Cutral-Co, it may be deduced that: (1) as a result of a serious dispute between the government authorities and workers in the Cutral-Co District in Neuquén Province, a group made up of officials from the highest ranks of government was dispatched to try and find a swift solution to the workers’ claims. On the day in question, it proved impossible, after tough negotiations, to reach a satisfactory solution for the parties, at which point the group decided to leave the building in which the meetings were being held when the building was virtually taken over by demonstrators. As may be ascertained from the documentation submitted “shots were fired from small calibre firearms wielded by the demonstrators” who were gathered outside the building and there was “a massive assault on the municipal building which was practically destroyed”, resulting in injuries to Police Superintendent Oscar Pincheira, Sergeant Miguel Acosta and Officer Patricio Mamani. In view of such regrettable incidents, corresponding legal proceedings were initiated with a view to establishing that offences might have been committed, determining the responsibility and identifying those presumed guilty. In view of the above circumstances, a magistrate was instructed to carry out investigations; in doing so he took measures authorized under law to try and establish the objective truth, which include the break-in and arrest of anyone suspected of having committed an offence; (2) it is clear from the documentation submitted that the break-in of the home and arrest of Sandro Botron

during the day was in full compliance with the orders issued by the competent authority and that the police carrying out these actions were fully competent to carry out these tasks and fulfilled all the necessary legal requirements. Furthermore, attempts were made to avoid calling in the police and they were only called in as a last resort and, to a minimum extent, to ensure compliance with the procedures ordered. In fact, the person injured during the proceedings was Police Superintendent Carlos Salazar and, as the police had taken the precaution of filming the events, a family member of Sandro Botron destroyed the camera. In short, the Government dismisses as totally unfounded the allegations made to the Committee that there were "flaws in the proceedings" liable, in any way, to undermine rights granted to citizens which the Argentine Government guarantees and protects. As regards the allegations concerning break-ins at the homes and arrest of Sandro Botron, Juan Bastías, Cristián Rodríguez, Oscar Chávez, Beatriz Parra, Cristián Valle and Angel Lucero, members of the CTA of Cutral-Co, as well as the allegations concerning the legal proceedings initiated against three of them, the judge responsible for the cases submitted a report to which reference is made above: (1) as regards the events that occurred on 12 and 13 June 1997 he decided to proceed to an inquiry led by a competent judge because of the considerable damage, looting and fire suffered by the municipal building, the destruction of the car of a senior municipal executive officer and gun shots, etc.; (2) these were proceedings engaged in accordance with the Constitution and the law and done pursuant to a written order issued by the competent judge. As regards Ms. Teresa Rodríguez's death which occurred during the events of 12 April 1997 in the Neuquén Province, the judge is still investigating in order to collect the evidence which would allow shedding light on these regrettable events. Also, the police officer Hugo Alberto Rudof will continue to be associated with this case.

93. Lastly, the Government stated that, as regards the events that occurred in Buenos Aires Province and concerning the alleged threat and physical assault against trade unionists of ATE-Lanús and alleged threat against trade unionists of ATE-San Martín, Quilmes, the Buenos Aires Province State Secretary responsible for labour affairs indicated that no administration measure was brought against the perpetrators of these alleged violations of freedom of association principles but that however complaints brought before the inquiring judge and the police are actually being investigated even if they are not supported with sufficient evidence; they are still at the instruction stage, i.e. the collection of evidence.

### C. THE COMMITTEE'S CONCLUSIONS

94. *The Committee notes that the allegations that had remained pending when it examined this case at its June 1998 meeting concerned attacks and break-ins of trade union headquarters, the break-in of trade union members' homes and the subsequent arrest of these members, assaults and death threats against trade unionists, and the request to withdraw legal recognition of two trade unions. Similarly, the Committee notes that during its last examination of the case, it had requested the Government to keep it informed of the outcome of judicial proceedings concerning the killing of Teresa Rodríguez by police officers during a demonstration organized on 12 April 1997 in Neuquén Province.*

95. *With respect to the allegation concerning the attack on the premises of the ATE trade union in Neuquén Province on 15 and 24 May 1997, the Committee notes the Government's statements to the effect that: (1) concerning the complaint that an*

incendiary bomb was set off in the premises of the Association of State Workers of Cutral-Co, the police station of the 14th district of Cutral-Co registered the relevant complaint from Miguel Dante Alvarez and, acting upon a telephone call, went on the spot to ascertain that there had been a fire in the ATE headquarters and, having observed the damage, took all the necessary measures to try and clarify the events, such as carrying out an expert's appraisal of the premises by competent staff; and (2) concerning the complaint that "a group of unidentified persons fired shots at the front of the premises" of the ATE headquarters in Cutral-Co, Celso Fabián Quesada lodged the relevant complaint with the police station of the 14th district of Cutral-Co, specifically pointing out that "nobody was suspected", and that the police took the appropriate measures and initiated preliminary investigations. The Committee also notes that the Government maintains that in both cases it carried out the necessary judicial proceedings and that the relevant authorities are sparing no effort to try and cast light immediately on such regrettable events. The Committee requests the Government to keep it informed of the outcome of the judicial proceedings under way.

96. With respect to the allegation concerning the break-ins into unionists' homes and subsequent detention on 23 June 1997 of members of the Cutral-Co branch of the CTA (Sandro Botron, Juan Bastías, Cristián Rodríguez, Oscar Chávez, Beatriz Parra, Cristián Valle and Angel Lucero) and the legal proceedings initiated against three of them (Rodríguez, Botron and Parra), the Committee notes the Government's statements to the effect that: (1) as a result of a serious dispute between the government authorities and the workers in the district of Cutral-Co, Neuquén Province, a group made up of officials from the highest ranks of government was dispatched with a view to finding a swift solution to the workers' claims and that after serious negotiations it had been impossible to reach a satisfactory solution for the parties, at which point the group decided to leave the building in which the meetings were being held when the building was virtually taken over by demonstrators; according to the Government, shots were fired from small calibre firearms by the demonstrators who were gathered outside the building and that a massive assault on the municipal building almost destroyed it, resulting in injuries to three police officers; as a result of such regrettable instances, legal proceedings had been initiated with a view to establishing that offences might have been committed, determining responsibility and identifying those presumed guilty. A judicial inquiry had been set in motion in accordance with measures authorized by the law in order to try and establish the objective truth, which include the break-in and arrest of anyone who might be suspected of having committed a crime; and (2) the break-in at the homes of trade unionists Sandro Botron, Juan Bastías, Cristián Rodríguez, Oscar Chávez, Beatriz Parra, Cristián Valle and Angel Lucero, members of the CTA, and their subsequent arrest were carried out in compliance with orders issued by the competent authority, during the day, by police officers fully competent to carry out this task and in accordance with all the requirements provided for under the legislation to guarantee rights extended to all citizens. It points out that the procedure was engaged in accordance with the Constitution and the law and done pursuant to a written order issued by the competent judge and attempts were made to avoid calling in the police and that they were only called in as a last resort and, to a minimum extent, to ensure compliance with the procedures ordered. It is stressed that a police officer sustained injuries as a result of this action.

97. In this respect, whilst noting that the Government points out that the break-in to the homes of trade unionists Sandro Botron, Juan Bastías, Cristián Rodríguez, Oscar Chávez, Beatriz Parra, Cristián Valle and Angel Lucero and their subsequent arrest was carried out with a warrant, the Committee requests the Government to keep it informed on

*the situation of the four trade unionists, in particular with respect to the charges brought against them and the length of their detention.*

98. *As regards the killing of Ms. Teresa Rodríguez by police officers during a demonstration held on 12 April 1997 in the Neuquén Province, the Committee notes that according to the Government the judicial authorities are still investigating. The Committee requests the Government to keep it informed of the outcome of these proceedings.*

99. *However, the Committee notes that the Government has not provided information on the investigation concerning allegations which remained pending following its last examination of the case: assault on ATE delegate, Jorge Villalba, on 13 June 1997 in Lanús; the death threat against Ms. Nélide Curto, a member of the administrative committee of ATE-Lanús, on 23 June 1997; the threat made on 26 June 1997 against Ms. Ana María Lugercho, ATE delegate at the Arturo Melo Hospital; the death threat against the ATE-Lanús delegate, Daniel Saavedra; the death threat against Víctor Bordiera, general secretary of ATE-San Martín; the threat against Mr. Ricardo Caffieri, deputy general delegate of ATE-General Rodríguez District, on 10 July 1997. The Committee requests the Government to keep it informed of the outcome of these proceedings.*

100. *As regards the allegations which remain pending and which concern the attack on the home of the deputy secretary of ATE (National Branch), Mr. Juan González, the attack and looting in July 1997 of the ATE premises in Comodoro Rivadavia and Goya and the request by the Governor of Neuquén Province for the withdrawal of legal recognition from the state employees and teaching unions (ATE and ATEN), which are affiliated to the CTA, the Committee regrets that the Government has not sent its observations on these matters. In this respect, recalling the importance it attaches to an independent inquiry, the Committee requests the Government to take steps to ensure that investigations are carried out on all these allegations and to keep it informed on the outcome of these investigations.*

#### THE COMMITTEE'S RECOMMENDATIONS

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

- (a) The Committee requests the Government to keep it informed of the charges brought against the members of the CTA of Cutral-Co, Sandro Botron, Juan Bastías, Cristián Rodríguez, Oscar Chávez, Beatriz Parra, Cristián Valle and Angel Lucero and of the length of their detention.*
- (b) The Committee requests the Government to keep it informed of the outcome of the judicial investigations as regards the allegations on: (1) the assault on ATE delegate Mr. Jorge Villalba, on 13 June 1997 at Lanús; (2) the death threat made against Ms. Nélide Curto, a member of the administrative committee of ATE-Lanús; (3) the threat against the ATE delegate at the Arturo Melo Hospital, Ms. Ana María Lugercho on 26 June 1997; (4) the death threat against the ATE-Lanús delegate, Mr. Daniel Saavedra; (5) the death threat against the general secretary of ATE-San Martín, Mr. Víctor Bordiera; and (6) the threat against the deputy general delegate of ATE-General Rodríguez district, Mr Ricardo Caffieri.*
- (c) As regards the allegations still pending after the last examination of the case and concerning the attack on the home of the deputy secretary of ATE, National Branch, Mr. Juan González, the attack and looting in July*

**1997 of the ATE premises in Comodoro Rivadavia and Goya, and the request by the Governor of Neuquén Province to withdraw legal recognition from the state employees and teaching unions (ATE and ATEN which are affiliated with the CTA), the Committee requests the Government to take the necessary measures to investigate these allegations and to keep it informed of their outcome.**

- (d) The Committee requests the Government to keep it informed of the outcome of the judicial inquiry into the killing of the worker Teresa Rodríguez by police offices during a demonstration organized on 12 April 1997 in Neuquén Province in protest against unemployment.**

**Case No. 1949**

**Report in which the Committee requests to be kept informed  
of developments**

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

***— the Bahrain Workers' Union (BWU) and  
— the World Federation of Trade Unions (WFTU)***

***Allegations: Violation of the right to form trade unions;  
acts of anti-union discrimination***

**102.** The World Federation of Trade Unions (WFTU) and the Bahrain Workers' Union submitted a complaint against the Government of Bahrain in communications dated 7 September and 6 October 1997, and 10 February, 16 March, 27 August and 30 December 1998. The Government sent its observations on 1 April 1998 and 24 February 1999.

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

**A. THE COMPLAINANTS' ALLEGATIONS**

**104.** Generally speaking, the complaint submitted by the complainants concerns the denial of the right to organize in Bahrain, arguing that the Government is against any form of workers' organization, denies trade union rights and prohibits any form of trade union activity.

**105.** *Legislative aspects.* The complainants allege that the Government refuses to apply articles 27 and 28 of the country's Constitution concerning trade union rights and the right to establish and join trade unions. In 1981 the Government adopted two Ministerial Orders (Nos. 9/1981 and 10/1981) which make absolutely no reference to workers' right to organize and prescribe the establishment of joint committees of workers' and employers' representatives as a basic principle. According to the complainants, these Orders confirm the Government's refusal to allow the formation of a trade union for Bahraini workers.

**106.** The complainants add that the Government has also violated trade union rights by repealing the Trade Union Act of 1957 and replacing it by a single provision in the 1976 Labour Code (section 142 of Law No. 23/1976) stipulating that joint committees composed of employers' and workers' representatives may be formed in any establishment for "cooperation in the settlement of disputes, securing improvements to the workers' social

standards, organizing social services, fixing wages, increasing productivity and in any other matters of mutual interest to the two parties”.

**107.** The complainants allege that the effect of this provision is to replace traditional trade unions by joint employer-worker committees.

**108.** The complainants consider that, by amending the labour legislation and setting up joint labour committees, the Government has established a form of workers’ representation that is unacceptable and is thereby denying workers the right to establish their own organizations to represent them on such joint committees. The complainants also criticize the fact that the composition of these committees, which consist of four employers’ and four workers’ representatives, is subject to ministerial authorization and that the minister can reject any workers’ candidate for reasons of national security.

**109.** The Government has also established a General Committee of Bahraini Workers which, according to the complainants, is under its strict control. In support of their allegations, the complainants submit communications showing that the Government requires that a ministerial representative attend and supervise general meetings of the General Committee of Bahraini Workers. The complainants maintain that this Committee does not in any way comply with the principles of freedom of association and has none of the trade union rights defined in international labour Conventions. They argue that, in any case, the very concept of joint representation is illogical if it is designed to take the place of genuine and effective trade union representation.

**110.** Furthermore, the Government allegedly adopted a provision in the 1976 Penal Code (article 132) whereby any citizen who in any capacity whatsoever contacts the representatives of trade unions, organizations, associations or federations is liable to at least three years’ imprisonment or a fine of at least 100 dinars, or both. The complainants state that in August 1997 the Minister of Labour took additional measures against freedom of association by prohibiting the General Committee of Bahraini Workers itself from engaging in any international activity and requiring it to follow ministerial instructions.

**111.** These legislative provisions have allegedly caused grave prejudice to the Bahrain Workers’ Union, which under the law cannot freely organize its activities in the country. The complainants explain that the official announcement of the establishment of the Bahrain Workers’ Union was made on 15 February 1978 following an agreement among Bahrain’s trade unions that was concluded under the supervision of the International Confederation of Arab Trade Unions (ICATU), the Kuwait Workers’ Union and the Yemen Workers’ Union. Its organizational programme was announced and registered with ICATU on 11 April 1984. A few days later the programme was submitted to the Minister of Labour and Social Affairs and published in several local Arabic newspapers. At the same time the organization initiated proceedings requesting the Ministry of Justice to order the Ministry of Labour and Social Affairs to recognize the organization and to cease taking legal action against trade unionists and arresting and deporting them for trade union activities. At the beginning of July 1989 the organization again submitted its constituent documents to the Ministry of Labour so that it could be registered and recognized as a legally constituted trade union organization. The complainants note that the Bahrain Workers’ Union has been affiliated to ICATU and the WFTU since April 1989. The 6,000-member strong Bahrain Workers’ Union is represented outside the country by two union leaders who are also its official delegates to ICATU, Mr. Hamid Ibrahim Awachi and Mr. Mohamed Abdul Jalil Al-Murbati. Because the Government systemically refuses to allow them or the members of their family to enter the country, they conduct their principal activities outside Bahrain. Mr. Awachi allegedly attempted to return to Bahrain in April 1993, when he was arrested and held for a week before being expelled from the country.



112. Regarding Mr. Al-Murbati's situation, the complainants allege that he is the object of anti-union discrimination by the public authorities. They recall that Mr. Al-Murbati, as the unchallenged leader of the trade union movement in Bahrain, participated actively in national trade union activities between 1969 and 1973 and was unanimously elected by the air traffic controllers of Bahrain airport where he worked as a technician. Mr. Al-Murbati is also a member of the regional councils of ICATU and the WFTU. As already noted, Mr. Al-Murbati has been in exile for many years and, contrary to the country's own Constitution which stipulates that nationality is determined by law and can only be lost in the case of high treason or dual nationality, he and the members of his family have been refused Bahraini citizenship. Yet Mr. Al-Murbati is of Bahraini nationality by birth, as his passport (No. 54739) issued in 1967 shows, and has never been convicted of high treason or held another nationality. According to the complainants, therefore, he is fully entitled to Bahraini citizenship and the authorities' refusal to renew his passport when he applied in 1977 is purely arbitrary. The complainants believe that the steps taken against Mr. Al-Murbati are part of a general policy to weaken and if possible wipe out the trade union movement in the country.

#### B. THE GOVERNMENT'S REPLY

113. The Government considers the complainants' allegations to be unfounded and motivated entirely by political considerations. According to the Government, their communications completely disregard the system of labour relations in Bahrain which fully guarantees the protection of workers' rights and permits them to settle their disputes peacefully.

114. Moreover, the allegations of the complainants ignore the real situation of this island State which, with its 600,000 inhabitants, is the fifth most densely populated country in the world. Furthermore, although oil accounts for some 60 per cent of the Government's revenue, Bahrain's policy has been actively to seek diversification in the economy, notably by investing in the financial and tourism sectors. According to the Government, there are good reasons why there are no trade unions in the country: for example, when the Labour Code was adopted, more than 90 per cent of the workers were non-nationals. That being so, it was neither appropriate nor practical to provide for the establishment of trade unions in the strict sense of the term.

115. The Government emphasizes that there are in any case bodies and machineries for representing workers. These bodies protect the rights of those they represent and facilitate an atmosphere of cooperation and consultation between workers, employers and the Government. They can in fact be regarded as trade unions in all but name. This structure has proved to be beneficial for all concerned and has helped to improve productivity and reduce the incidence of costly and disruptive industrial action.

116. According to the Government, the system of Joint Labour-Management Consultative Committee (JCCs) has evolved as the most effective method of promoting open and constructive labour relations. These committees, which currently operate in 19 companies, have eight to ten members, half of which are from management and half from the workers' side. The Government emphasizes that any employee may stand for election as a workers' representative, subject only to the proviso that candidates should demonstrate good conduct. The national trade union body is the General Committee for Bahraini Workers (GCBW), which the Government says is consulted on a range of issues and is a member of several bodies; its members are elected by secret ballot from among JCC workers' representatives. According to the Government, the GCBW is an integral part of

the country's democratic process and plays a major role in defining labour relations. When labour disputes are not settled at this level, the minister conducts an inquiry and engages in mediation. If mediation fails, the parties can submit their dispute to the labour courts.

117. The Government claims that, quite apart from propagating false information about the situation of workers in Bahrain, the complainant is not a bona fide trade union organization and should therefore not be given this status by the Committee on Freedom of Association. Neither the union as such nor its sole officer, Mr. Abdul Jalil Jaffer Al-Murbati, has any legitimate or real interest in labour relations in Bahrain. The Government backs its claim by observing that the Bahrain Workers' Union has its headquarters outside the country, in Damas, Syrian Arab Republic. It has no real link with the country and has no address or premises there. It apparently has no members in Bahrain, no structure, no leadership, no by-laws, and has an altogether artificial existence.

118. The Government adds that Mr. Abdul Jalil Jaffer Al-Murbati left Bahrain voluntarily 25 years ago, when he was being investigated for possession of weapons and explosives and was suspected of belonging to an illegal organization seeking to overthrow the Government by force. It was then that he chose to emigrate to the Syrian Arab Republic where he lives with his family. He allegedly now has Yemeni nationality (passport No. 125522 issued on 21 July 1992). The Government recalls that, under Bahraini law, Mr. Al-Murbati can in any case ask for his original nationality to be restored. The Government states that it has never deprived Mr. Al-Murbati of his original nationality. Finally, it stresses that Mr. Al-Murbati was not elected by his peers and plays no part in any group or body representing Bahraini workers within the national territory.

### C. THE COMMITTEE'S CONCLUSIONS

119. *This case refers, in general, to alleged discrepancies between the national legislation and the principles of freedom of association and, more specifically, to the denial of the right of Bahraini workers to establish and join the organizations of their choice.*

120. *The Committee observes, first of all, that it has already examined similar complaints against the Government of Bahrain in recent years [see, inter alia, Case No. 1043, 211th Report, paras. 572-589, Case No. 1211, 233rd Report, paras. 580-592, and 234th Report, paras. 39-45, and Case No. 1413, 259th Report, paras. 553-563, and 272nd Report, paras. 171-176].*

121. *Preliminary objection. The preliminary objection of the Government, whereby it challenges the competence of the complainant, the Bahrain Workers' Union, to submit a complaint inasmuch as its headquarters are outside the country, has already been examined and ruled on by the Committee [see Case No. 1043, para. 584]. In its previous examination, the Committee noted that, in previous cases examining receivability of complaints emanating from trade union organizations outside the country in question, it had invariably pointed out that, under the procedure governing the submission of complaints relating to violations of freedom of association, such complaints must come either from organizations of workers or employers or from governments, but that it was sometimes suggested that the persons purporting to act on behalf of such an organization were not entitled to do so because the organization has been dissolved or because the individuals lodging the complaint had ceased to be resident in the country concerned. The Committee considered at the time that it would be altogether inconsistent with the purpose for which the procedure for the examination of allegations concerning the infringement of trade union rights had been established for it to admit that the dissolution of an*

organization by governmental action extinguished the right of the organization to invoke the procedure.

122. However, the Committee did recognize that, in such cases, there might be difficult questions concerning the exact authority and knowledge of the facts of the persons claiming to act on behalf of the organization concerned and the reliability of the testimony of persons no longer resident in the country concerned. The Committee therefore stated that it would be prepared to consider such questions on their merits, as necessary, but that it would not regard any complaint as being irreceivable simply because the government in question had, or claimed to have, dissolved the organizations on behalf of which the complaint was made, or because the person or persons making the complaint had taken refuge outside the country concerned. In taking this view it was influenced by the conclusions unanimously approved by the Governing Body in 1937 regarding the island of Mauritius, when considering a representation under article 24 of the Constitution of the Organization, according to which it would exercise its discretion in deciding whether or not a body was to be regarded as an industrial association for the purposes of the Constitution of the Organization and would not consider itself bound by any national definition of the term "industrial association". Accordingly, the Committee considered at the time that the complaint of the Bahrain Workers' Union was receivable. In the absence of any evidence justifying a modification of this view, the Committee considers that, in the case at hand, that decision must be maintained and that the complaint submitted by the Bahrain Workers' Union is receivable.

123. **Legislative aspects.** In previous cases concerning Bahrain the Committee has already examined in detail the provisions referred to in the present complaint, namely Chapter 17 of the Labour Law of 1976 (Law No. 23/1976) and Ministerial Orders 9 and 10 of 1981 [see Case No. 1043, 211th Report, para. 588, and Case No. 1413, 254th Report, para. 489]. In the present case, the complainants allege that, by imposing joint committees at the level of the establishment and an elected body (the General Committee for Bahraini Workers) at the national level, these provisions deny workers the right to establish or join the organizations of their choice. They further maintain that these joint committees are not fully autonomous and independent of the public authorities since they are subject to strict government control. For its part, the Government considers that both the joint committees and the GCBW take into account the system of labour relations in the country and are an excellent means of promoting healthy labour relations.

124. More specifically, Chapter 17 of the 1976 Law (Law No. 23/1976) deals with the establishment of joint committees and councils. Inter alia, the provisions of this chapter stipulate that joint committees composed of worker and employer representatives may be formed in any establishment for "cooperation in the settlement of disputes, securing improvements to the workers' social standards, organizing social services, fixing wages, increasing productivity and in any other matters of mutual interest to the two parties" (section 142). Order No. 9/1981 prescribes the terms under which the employers' and workers' representatives are elected to these joint committees. In fact, the management appoints its own representatives and organizes elections for the worker representatives (articles 2 and 3). To be elected, a worker must "not have been convicted of any crime or offence" and "not have been engaged in any activity" prejudicial to the security, unity or interest of the State (article 4). The Ministry of Labour and Social Affairs is empowered to disallow a candidature if the nominee fails to fulfil any of the requirements of the law.

125. Since these provisions do not appear to have been amended since the last examination conducted by the Committee, it has no alternative but to recall the conclu-

sions it formulated at that time, specifically as regards the right of workers to elect their representatives freely and the genuineness of the representation of workers provided for under the legislation concerned. Regarding the representation of workers by joint committees, the Committee considers that there is a risk that in certain cases the workers' representatives on joint committees may not be freely elected, especially as it is the management itself that organizes their election. Moreover, the Minister of Labour is empowered to disallow any candidature where the worker concerned has been convicted of "any crime" or of having engaged in activities prejudicial to the security of the State. The Committee expresses its concern at the extensive discretionary power accorded to the Minister and wishes to recall that no conviction for an activity which by its nature cannot be prejudicial to the proper exercise of official trade union functions should be allowed to constitute grounds for disqualifying a worker from holding trade union office, and that any legislation prohibiting persons convicted of any crime from exercising these functions is incompatible with the principles of freedom of association.

126. The Committee further regrets that the provisions of Order No. 10 of 1981 concerning the General Committee for Bahraini Workers, on which it commented previously, have not been amended since it last examined them. The Committee must therefore recall that articles 2 and 8 of Order No. 10 requiring that the rules for the conduct of the GCBW's affairs and any amendment to them to be approved by the Ministry of Labour and Social Affairs, as well as article 10 prohibiting the GCBW from investing its funds or acquiring assets without the prior approval of the Ministry and from engaging in political activities, are incompatible with the principles of freedom of association. That being so, the Committee must once again urge the Government to re-examine Orders Nos. 9 and 10 of 1981, adopted in pursuance of Labour Law No. 23 of 1976 and to bring them into line with the principles of freedom of association. The Committee calls on the Government to keep it informed in this respect.

127. The Committee is aware that the situation in which the complainant, the Bahrain Workers' Union, and its leaders, find themselves is due in large part to Bahrain's legislative framework, which makes no reference to trade union organizations and established joint committees in their place. The Committee recalls that the principles of freedom of association require governments to guarantee workers the right to organize freely and to establish and join the organizations of their choice. The Committee observes that workers' organizations established in this way could duly represent workers on the joint committees. In these circumstances and in general terms the Committee urges the Government to take the necessary measures so that the workers' right to organize freely is effectively guaranteed and calls on the Government to bring its legislation into line with the principles of freedom of association. The Committee recalls that the Office's technical assistance is available should it so wish. The Committee calls on the Government to keep it informed in this respect.

128. As to the refusal of the Bahraini authorities to issue a passport to Mr. Al-Murbati, the Committee observes that the statements of the parties concerned on the subject are contradictory; the complainants claim that Mr. Al-Murbati only has Bahraini citizenship, whereas the Government affirms that he holds a Yemeni passport and is therefore not entitled to a passport issued by Bahrain. Although questions of citizenship do not come within its terms of reference, the Committee notes the Government's statement that it has no intention to deprive Mr. Al-Murbati of his Bahraini citizenship and is prepared to consider carefully any request for its restoration.

THE COMMITTEE'S RECOMMENDATIONS

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

- (a) The Committee urges the Government to re-examine Orders Nos. 9 and 10 of 1981, adopted in pursuance of Labour Law No. 23 of 1976, and to bring them into line with the principles of freedom of association. The Committee calls on the Government to keep it informed in this respect.**
- (b) In general terms, the Committee urges the Government to take the necessary measures so that the workers' right to organize freely is effectively guaranteed and calls on the Government to bring its legislation into line with the principles of freedom of association and recalls that the Office's technical assistance is available should it so wish. The Committee calls on the Government to keep it informed in this respect.**

Case No. 1992

Interim report

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

***Allegations: Dismissals following a strike and other anti-union acts***

**130.** The complaint in this case was submitted in a communication from the Single Central Organization of Workers (CUT) dated 31 August 1998. The Government sent its observations in a communication dated 23 February 1999.

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

A. THE COMPLAINANT'S ALLEGATIONS

**132.** In its communication dated 31 August 1998, the Single Central Organization of Workers (CUT) states that the workers of the Brazilian Post and Telegraph Enterprise (ECT) — a federal public enterprise — are represented by more than two dozen workers' unions and one national federation. The complainant indicates that 1 August was fixed as the date for signing the annual renewal of the collective agreement in the enterprise, and that during negotiations relating to the renewal of the collective agreement for the period 1997-98, the enterprise rejected the workers' claims; as a result they decided to take strike action which lasted 21 days. According to the CUT, during the negotiations, and during and following the strike, the Government and the enterprise committed a number of acts of anti-union discrimination. More specifically, the complainant makes the following allegations:

- once the strike was over, a policy of reprisals was unleashed against the workers who had taken part in it. More than 1,500 workers were dismissed, including just over 300 trade union officials and members of internal accident prevention committees;
- despite the end of the work stoppage at the enterprise, the trade union leaders were refused access to the workplace;

- in a number of workplaces, the regional director of the Brazilian Post and Telegraph Enterprise in the State of Rio de Janeiro screened a video containing false information about the trade union and the strike;
- restrictions were placed on trade union leaders being freed from their professional obligations to exercise their trade union activities;
- the enterprise published a Manual of Trade Union Relations, which incites directors to commit various anti-union practices with the aim of discrediting the trade unions and creating a tense atmosphere between the trade unions, the enterprise and the workers; the complainant attaches a copy of the manual and points out the provisions relating to the following issues: (i) contingency plan: “this is a managerial instrument (an administrative tool) which, when used correctly, will harmonize the enterprise’s actions, so as to make provision for and minimize the direct and indirect effects of strike action and its repercussions in the present and the future”; (ii) threats to family members: “involve the family in the enterprise’s communication process — spoken and written, country, spouses —”. According to the complainant, this aims to demonstrate to possible supporters of the strike the inadvisability of participating in it; (iii) exemplary punishment: “discipline must be maintained in the enterprise. It is recommended to act carefully when applying disciplinary measures so that excessive or liberal measures do not prejudice the hierarchy. In short, fairness and firmness in disciplinary measures, when they are necessary. Footnote: Ideally, disciplinary measures should serve as an example”; and (iv) excessive police presence: “confirm with the responsible officials already designated in the regional contingency plan in order to carry out: security measures ...”. The complainant alleges that despite the fact that the enterprise has its own security team, during the September 1997 strike the Military Police’s Riot Squad was present with heavy weaponry.

#### B. THE GOVERNMENT’S REPLY

133. In its communication dated 23 February 1999, the Government states that on 26 June 1997 the Brazilian Post and Telegraph Enterprise (ECT) received a long list of demands from the National Federation of Workers of Post and Telegraph and Similar Enterprises (FENTECT), which included a request for a 21.39 per cent wage rise, an increase of over 5 per cent in real terms. On 28 August 1997 the enterprise in response proposed that the previous agreement be extended and a wage increase in keeping with the country’s economic policy and the labour market, without prejudice to continuing negotiations on this matter. The enterprise subsequently put a new proposal on the negotiating table which granted a 5 per cent increase for staff occupying the positions of letter carrier, sorter, driver, etc., who make up 85 per cent of the enterprise’s staff, meanwhile maintaining an increase of 2 per cent for operating staff. The Government indicates that although negotiations were under way, the trade unions affiliated to FENTECT went on strike without justification and in violation of the negotiation process, a strike that as the CUT itself admitted lasted 21 days. Continuing in the spirit of conciliation, the enterprise received FENTECT on 11 September 1997 and submitted its final proposal which consisted of maintaining the increase in benefits and supplementing them with a voucher for 200 reales for each employee.

134. The Government indicates that the efforts made by the enterprise to bring the negotiations to a successful conclusion were not sufficient for an agreement to be reached. Dissatisfied with the situation and in accordance with the basic rules governing any negotiations, the enterprise had no alternative but to withdraw its proposal and make the resumption of negotiations conditional upon the end of the strike. The enterprise’s position

was entirely in keeping with the most basic democratic principles given that the strike, as well as not being representative of the wishes of the majority of workers, seriously inconvenienced clients and workers who wanted to work, not to mention the financial losses involved or the negative publicity that a strike entails for the postal service.

**135.** The actions of the trade union organizations concerned were contrary to the legislation concerning strikes, in particular as regards the authorization given by assemblies which cannot declare strike action without giving notice, a requirement which is not met by simply communicating the possibility of strike action in lieu of the requirements and procedures stipulated in Act No. 7783/94. The Strike Act provides as follows: "Article 3. If negotiations fail or if it is found to be impossible to have recourse to arbitration, a collective work stoppage is permitted. The corresponding employing body or its employees directly involved will be notified a minimum of 48 hours before the work stoppage. Article 4. The corresponding trade union organization shall convene, in the manner provided in its by-laws, a general assembly which will define the claims of the category and will discuss the collective stoppage of services. Clause 1. The by-laws of the trade union organization should make provision for the formalities relating to calling the assembly and the quorum for deliberating, and concerning commencing and ending the strike."

**136.** Given that this was a strike disapproved of by the enormous majority of workers in the enterprise, the leaders of the trade unions affiliated to the workers' federation, anticipating the fragility of the movement, threatened violent pickets and forced entry into work premises, threats that were confirmed with acts of violence and vandalism in a number of units in the enterprise. In response to this situation the enterprise lodged an application for an injunction. The judicial authorities ordered that the Trade Union of Workers of the Brazilian Post and Telegraph Enterprise and Other Similar Enterprises of Ribeirão Preto and Região should refrain from any and all activities aimed at restricting or preventing the entry or exit of the public and/or officials to and from the premises of the ECT enterprise, in administrative, operational or service roles, ensuring the right of the workers who want to exercise their activities as usual, and also the general public, the freedom to come and go necessary for the movement of postal traffic. The Government states that entirely ignoring the Strike Act and the injunction, the strikers committed acts of violence and vandalism including damage to public property, offences against employees, enterprise management and users, physical assault against employees and violation of public premises.

**137.** In view of the serious misdemeanours committed, the enterprise, basing itself on the applicable legislation, particularly the Strike Act, dismissed 157 striking workers with just cause. In view of its clearly illegal acts, on 23 September 1997 FENTECT found itself obliged to declare the strike over and requested the enterprise to resume negotiations, a request that was quickly complied with. Showing its tolerance and readiness for dialogue, the enterprise increased its offer, including to re-examine within 20 days, following the signature of the collective agreement, the dismissals carried out during the strike; and to give a basket of basic foodstuffs to the employees who participated in the strike if they returned to work and if the agreement was signed by 30 September 1997. The trade union representatives rejected the agreement on 1 October 1997 and in a final attempt to avoid the involvement of the judiciary to settle the matter of the collective dismissal, the enterprise informed FENTECT that it would give it until 17 October 1997 to decide on the matter, receiving by way of reply the summons to further assemblies to establish the timetable for another strike scheduled for the beginning of December 1997. According to the Government, the claim that the ECT enterprise committed acts in violation of international standards ratified by Brazil is false.

138. Regarding the publication of a manual concerning anti-union practices, the Government notes that the manual summarizes a series of guidelines aimed at achieving good relations between employees and employers in the trade union sphere. The Government adds that the manual in question is no longer in use as it has been improved upon and updated by a set of more modern standards.

139. The Government also points out that the video referred to by the CUT shows the aggressiveness of the trade union leaders during the 1997 strike, and that the violence cannot be denied because the perpetrators can be clearly seen on the video.

140. The Government adds that the allegation whereby at the end of the strike the enterprise began a campaign of reprisals against the strikers and that the authorities engaged in a massive dismissal of the strikers is untrue. According to the Government, this is evidenced by a document signed by the members of the national committee for negotiations between the FENTECT and the ECT, consisting of the minutes of the meeting dated 14 November 1997 which includes the following entry as regards the collective labour agreement for 1997-98: the strikers who were absent from their workstations for over 15 days during the September strike shall receive, together with the November basket, the basket of basic foodstuffs to which they would have lost their entitlement under usual circumstances, recovering that entitlement by virtue of the agreement between the parties; and the enterprise undertakes to re-examine the dismissals for just cause that took place during the September 1997 strike within a period 20 days following the signing of the document containing the approval and acceptance of the basis of the collective agreement. As each re-examined dismissal is cancelled, the person concerned will be reinstated. The dismissals that are not rescinded may be re-examined if new facts or unexamined proof appear.

141. The Government declares with respect to the allegation that 1,500 workers were dismissed, including 300 trade union leaders, that the enterprise reviewed the dismissals of all the workers dismissed for just cause, which numbered no more than 157. Of these, 103 were reinstated, leaving the number of dismissed workers at 54. Finally, the Government explains that the dismissals mentioned by the CUT (over 1,500) were contractual rescissions that occurred approximately halfway through 1997, that is, prior to the strike in September 1997.

### C. THE COMMITTEE'S CONCLUSIONS

142. *The Committee observes that the allegations in this case relate to a collective dispute between the Brazilian Post and Telegraph Enterprise and the National Federation of Workers of Post and Telegraph and Similar Enterprises (FENTECT) which led to, during the negotiation of a collective agreement and following the holding of a strike, the massive dismissal of strikers (1,500 workers including, according to the complainant, 300 trade union leaders or representatives). Also, the Committee notes the complainant's allegations that the enterprise in question: (i) screened a video containing false information relating to the trade union and the strike; (ii) is not allowing the trade union leaders access to the workplace and is placing restrictions on freeing trade union leaders from their professional obligations in order to exercise their trade union activities; and (iii) published a manual on labour relations that contained anti-union provisions.*

143. *As regards the massive dismissal of strikers following a strike against the background of negotiating a collective agreement, the Committee notes the Government's statements that: (1) despite the fact that negotiations were under way, the trade unions affiliated to FENTECT began unjustified strike action, violating the negotiation process;*



(2) the enterprise's efforts to achieve a successful outcome to the negotiations did not prove sufficient for an agreement to be reached and, dissatisfied with the situation and in accordance with the basic rules of any negotiations, the enterprise had no alternative but to withdraw its proposal and make the resumption of negotiations conditional on the strike coming to an end; (3) the actions of the trade union organizations concerned were contrary to legislation governing strikes, particularly as regards the authorization given by assemblies that cannot declare strike action without giving legal notice, a requirement which is not met by simply communicating the possibility of strike action in lieu of the requirements and procedures stipulated in Act No. 7783/94; (4) the strikers committed acts of violence and vandalism, including damage to public property, offences against employees, enterprise management and users, physical assault against employees and forced entry into public property; (5) given the serious misdemeanours committed, the enterprise dismissed with just cause 157 striking workers; (6) in the framework of the collective agreement for 1997-98 concluded in November 1997, it was provided that the enterprise would undertake to re-examine the dismissals that occurred during the September 1997 strike within a period of 20 days from the signature of the document containing the approval and acceptance of the basis for the collective agreement; as each re-examined dismissal was cancelled, the person concerned would be reinstated; and the dismissals that were not rescinded could be re-examined if new facts or unexamined proof appeared; (7) the enterprise reviewed the dismissals, of which there were no more than 157, and 103 of these workers were reinstated, leaving the total number of dismissals at 54; and (8) the dismissals mentioned by the CUT (over 1,500) concerned contractual rescissions that occurred approximately halfway through 1997, that is, before the strike of September 1997.

144. The Committee notes that the Government denies that 1,500 dismissals took place, while acknowledging that in the framework of a strike held at the end of September 1997 150 strikers were dismissed and emphasizing that the trade unions that declared the strike did not respect the legal period of notice and that the dismissed workers committed acts of violence and vandalism, including damage to public property, offences against employees, enterprise management and users, physical assault against employees and forced entry into public property.

145. The Committee observes with interest that following the dispute, the parties concluded a collective agreement for 1997-98 in which the enterprise undertook to re-examine the dismissals, having already reinstated 103 workers. This being the case, the Committee requests the Government to inform it about the grounds for the dismissals of the 54 remaining workers.

146. Regarding the allegation concerning the screening of a video containing false information about the trade union and the strike by the enterprise's administration, the Committee notes the Government's declaration that the video shows the aggressiveness of the trade union leaders during the strike held in September 1997 and that the violence cannot be denied because the perpetrators can clearly be seen in the film in question. In this respect, the Committee considers in any case that it would not be in a position to determine whether or not the content of the video is a true representation of reality.

147. With respect to the publication by the ECT enterprise of a manual on labour relations (forwarded by the complainant) aimed at discrediting the trade unions, the Committee observes that the manual contains provisions relating to disciplinary measures for strikers, involvement of family members of possible strikers, preventive measures in respect of security, etc. The Committee notes the Government's declaration that the

manual is no longer in use as it has been replaced by more modern regulations. This being the case, the Committee requests the Government to send it a copy of the new labour relations regulations at the ECT enterprise in order to be able to compare them with the previous regulations.

**148.** With reference to the allegation concerning the placing of restrictions on trade union leaders being freed from their professional obligations to exercise their trade union activities, the Committee observes that the Government has not sent its observations on this matter. The Committee also notes that the collective labour agreement for 1997-98 (the period to which the allegations relate; the Government attaches a copy of the agreement to its reply) made provision in clause 29, subclauses 1, 2 and 3 that a certain number of leaders of the trade unions of the enterprise and of FENTECT should be freed from their professional obligations to carry out their trade union activities. This being the case, the Committee stresses the importance it attaches to adherence to the provisions of collective agreements freely negotiated by the parties. The Committee requests the Government to provide information on compliance with such provisions in practice.

**149.** Lastly, the Committee requests the Government to send its observations concerning the allegation relating to the impossibility, following the September 1997 strike, for the trade union leaders to have access to the workplace.

#### THE COMMITTEE'S RECOMMENDATIONS

**150.** 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 inform it of the grounds for the dismissal of 54 workers following the strike held in September 1997 of the Brazilian Post and Telegraph Enterprise (ECT).
- (b)** The Committee requests the Government to send it a copy of the new labour relations regulations at the Brazilian Post and Telegraph Enterprise (ECT), in order to compare them with the previous regulations.
- (c)** The Committee requests the Government to send its observations concerning the allegation about the impossibility, following the September 1997 strike at the Brazilian Post and Telegraph Enterprise (ECT), for the trade union leaders to have access to the workplace.
- (d)** The Committee requests the Government to provide information on compliance, in practice, with clause 29, subclauses 1, 2, and 3 of the collective agreement applicable to the ECT enterprise, which relates to time off from work for trade union leaders so that they can carry out their trade union activities.