

membership or legitimate trade union activities and to guarantee that no trade union organization is dissolved or deprived of its legal personality because of its trade union activities. The Committee also urges the Government to reply as a matter of urgency to the allegations on which it has not sent observations.

- The Committee requests the Government to keep it informed of the administrative or judicial decisions handed down on the many allegations to which the Government has referred and which have been placed before these bodies and hopes that these decisions will be issued without delay. The Committee also requests, if it is established that the dismissals were due to legitimate trade union activities that the workers in question be reinstated in their jobs.

B. THE GOVERNMENT'S REPLY

577. In its communication of 21 March 1994 the Government sends the following observations:

- the Workers' Union of the Fábrica Pundù SA: the enterprise has closed and all benefits legally owed to the workers have been paid;
- the Manufacturera Integridad SA, Koram SA, Bocco & Cía. Ltda., Diseños Panamericanos SA and Confecciones Isabel SA in-bond "maquila" enterprises: there are no trade unions at these enterprises, and there have been no procedures initiated for the recognition of trade unions there. The Ministry has organized an awareness campaign for employers at the in-bond "maquila" enterprises and has held a seminar to increase knowledge of their rights and obligations;
- the Sam Agliano and Don San in-bond enterprise has closed;
- the Workers' Union of the El Trapichito farm: there is no record of resignations or dismissals in the documentation concerning this trade union;
- the Workers' Union of the El Naranjo farm: there are no previous records of the allegations;
- the Union of Peasant Workers of the La Patria farm: the parties concluded an agreement which provides for the reinstatement of the dismissed workers;
- the Workers' Union of the Compañía Centroamericana Administradora de Hoteles y Turismo SA (Hotel Ritz Continental): the members of the union's executive committee presented a legal document dissolving the union in 1990, when 22 workers left the union;
- the San Antonio Suchitepequez Municipal Workers' Union: the legal personality of the trade union was recognized in August 1988;
- the Villa Nueva Municipal Workers' Union: the union has not been dissolved.

THE COMMITTEE'S CONCLUSIONS

578. The Committee observes that the allegations pending refer to the murder of a worker during a labour dispute, the dissolution or non-recognition of the legal

personality of several trade unions, obstacles to the establishment of trade union organizations and acts of anti-trade union discrimination.

579. The Committee once again deplores that the Government has not communicated its observations concerning the murder of a worker on 5 August 1989 during a labour dispute between the La Patria farm and the trade union, and requests that a judicial inquiry begin without delay to establish the facts and punish the guilty parties. The Committee requests to be kept informed of the developments in the investigation.

580. As regards the allegations for which the Committee requested the Government to keep it informed of developments in the corresponding judicial proceedings, the Committee notes with interest that the Government mentions that the Union of Peasant Workers of the La Patria farm and the enterprise have reached an agreement which provides for the reinstatement of the dismissed workers. Similarly, the Committee notes that the Villa Nueva Municipal Workers' Union has not been dissolved, contrary to the complainants' allegation. The Committee requests the Government to transmit a copy of the agreement mentioned above and to indicate whether these workers were indeed reinstated in their jobs.

581. As regards the allegations concerning measures taken to obstruct the creation of trade unions at the Manufacturera Integridad SA, Koram SA, Bocco & Cía. Ltda., Diseños Panamericanos SA, Confecciones Isabel SA and Sam Agliano and Don San in-bond "maquila" enterprises, the Committee notes that the Government states that the Sam Agliano and Don San enterprise has closed and that there are no trade unions at the other enterprises, nor have procedures been initiated for the recognition of trade unions there, and that the Ministry has organized an awareness campaign for the employers and has held a seminar on their rights and obligations. The Committee regrets to observe that the Government has not sent observations concerning the allegations of attempts to obstruct the establishment of trade union organizations at the Unión, Bolívar, EGA, la Fé and Morena urban transport companies. In these circumstances, the Committee emphasizes the importance it attaches to the fact that workers and employers should in practice be able to form and join organizations of their own choosing in full freedom [see *Digest of decisions and principles of the Freedom of Association Committee*, 3rd edition, 1985, para. 222], and requests the Government to take the measures necessary to ensure that in practice the workers of the 10 enterprises mentioned by the complainants can form trade unions and freely exercise their trade union rights. The Committee requests the Government to keep it informed of developments in the situation in these enterprises.

582. As regards the legal proceedings concerning the dismissal of several trade union leaders of the executive committee of the Workers' Union of the San Juan de Dios Hospital and the administrative procedures concerning the dismissal of the General-Secretary of the Trade Union of Bakers of Chiquimula, the dismissal of 20 members of the Trade Union of Shipping Workers of Santo Tomás de Castilla and the recognition of the legal personality of the Workers' Union of the Ministry of the Interior, the Committee, as it did during its previous examination of the case, requests the Government to keep it informed of the decisions handed down.

583. As regards the allegations of dismissals at the Fábrica Pundù SA, the Committee notes that according to the Government the enterprise has closed and the question of reinstatement is no longer relevant. As regards the dismissal of all the members of the Workers' Union of the El Trapichito farm and the dismissal of 55 members of the Workers' Union of the El Naranjo farm, the Committee notes that the

Government states that there are no records of these allegations. Regretting that the Government has not provided any information to make it possible to determine whether these dismissals were anti-trade union in nature, the Committee points out to the Government that no one should be subjected to acts of anti-union discrimination for carrying out legitimate trade union activities and draws its attention to the fact that "protection against acts of anti-union discrimination should cover not only hiring and dismissal but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker". [See *Digest*, op. cit., para. 544.] In these circumstances, the Committee requests the Government to conduct an investigation into the alleged anti-union dismissals and, should these dismissals be related to legitimate trade union activities, ensure that the workers concerned are reinstated in their posts. It also requests the Government to keep it informed in this respect.

584. As regards the allegations of requests for the dissolution of the San Antonio Suchitepequez Municipal Workers' Union, the Committee takes notes of the Government's statement that the union's legal personality was recognized in August 1988. Similarly, as regards the requests for the withdrawal of the legal personality of the Workers' Union of the Compañía Centroamericana Administradora de Hoteles y Turismo SA (Hotel Ritz Continental), the Committee takes note of the Government's statement that the unions' executive committee members presented an official document dissolving the union in 1990 after 22 workers had left the union. The Committee requests the complainant organizations to provide details on the reasons why, and circumstances in which, the resignation of workers took place and to provide a copy of the document of dissolution of the trade union.

THE COMMITTEE'S RECOMMENDATIONS

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

- (a) Deploring the murder of a worker on 5 August 1989 during a labour dispute at the La Patria farm, the Committee once again requests that a judicial inquiry begin without delay so as to establish the facts and punish the guilty parties, and requests to be kept informed of the developments in the investigation.
- (b) Noting with interest the Government's statement that the Union of Peasant Workers of the La Patria farm and the enterprise have reached an agreement on the reinstatement of the dismissed workers in their jobs, the Committee requests the Government to transmit a copy of that agreement and to indicate whether these workers were indeed reinstated in their jobs.
- (c) Emphasizing the importance that it attaches to the fact that workers and employers should in practice be able to form and join organizations of their own choosing in full freedom, the Committee requests the Government to take the measures necessary to ensure that in practice the workers of the Manufacturera Integridad SA, Koram SA, Bocco & Cía Ltda., Diseños Panamericanos SA, Confecciones Isabel SA, and Unión, Bolívar, EGA, La Fé and la Morena urban transport companies can form trade unions and freely exercise their trade union rights. The Committee

requests the Government to keep it informed of the developments in the situation in these enterprises.

- (d) The Committee requests the Government to conduct an investigation into the alleged anti-union dismissals at the El Trapichito and El Naranjo farms and, should these dismissals be related to legitimate trade union activities, to ensure that the workers concerned are reinstated in their posts. It requests the Government to keep it informed in this respect.
- (e) The Committee once again requests the Government to keep it informed of the decisions handed down in the legal proceedings concerning the dismissal of several trade union leaders of the Workers' Union of the San Juan de Dios Hospital and in the administrative procedures concerning the dismissal of the Secretary-General of the Trade Union of Bakers of Chiquimula, the dismissal of 20 members of the Trade Union of Shipping Workers of Santo Tomás de Castilla, and the recognition of the legal personality of the Workers' Union of the Ministry of the Interior.
- (f) Noting the Government's statement that the members of the executive committee of the Workers' Union of Hotel Ritz Continental have presented in 1990 an official document dissolving the union after 22 workers had left the union, the Committee requests the complainant organizations to provide details on the reasons why, and the circumstances in which, the resignation of the workers took place and to provide a copy of the document of dissolution of the trade union.

Cases Nos. 1687, 1691 and 1712

Complaint against the Government of Morocco presented by the Moroccan Labour Union (UMT)

586. In its communications dated 8 and 23 December 1992, and 17 April 1993, respectively, the Moroccan Labour Union (UMT) submitted complaints of violations of trade union rights against the Government of Morocco. As regards Case No. 1687, the union sent further information on 23 December 1992. As regards Case No. 1712, in a communication dated 22 April 1993 the International Confederation of Free Trade Unions (ICFTU) associated itself with the complaint presented by the UMT; the latter submitted further allegations on 15 June 1993.

587. The Government submitted its observations on Case No. 1691 in a communication dated 6 February 1994. It submitted its observations on Cases Nos. 1687 and 1712 in a communication of 16 February 1994.

588. Morocco has not ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); it has, however, ratified the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

A. THE COMPLAINANTS' ALLEGATIONS

Case No. 1687

589. In its communication of 8 December 1992, the Moroccan Labour Union (UMT) alleges acts of anti-trade union discrimination by the management of the

Industrial Cleaning Company (SINET), with headquarters in Casablanca, against workers and trade union delegates employed by this enterprise, as well as acts of interference against the UMT enterprise trade union, comprised of 280 of the 320 workers employed by SINET.

590. The complainant organization states that as part of the normal exercise of their mandate, trade union delegates submitted to the director of the enterprise observations concerning wage protection of employees. It explains that the delegates drew attention to serious irregularities at that time: since 1990, management supposedly withheld from wages a contribution for basic social security calculated for a 26-day period, although it only declared 13 days to the National Social Security Fund, and withheld an additional 4.5 per cent for a supplementary retirement benefit, although it paid nothing into the Moroccan Interoccupational Retirement Fund. Moreover, the director reportedly notified authorities of the "results" of elections of staff delegates, although according to the UMT no elections were held, employees were not invited to vote and no slate of candidates was announced.

591. The UMT states that four trade union delegates were arbitrarily dismissed on 2 November 1992 for having protested against the misappropriation of the employees' social security contributions, and against the flagrant misrepresentation of their wishes through the employer's appointment of workers' representatives. The dismissed delegates were Mr. Bouna Houcine, General Secretary of the UMT enterprise trade union, Mr. Mouzoune Hassan, Deputy General Secretary, and Mr. Attor Ahmed and Mr. Lachgar Brahim, trade union delegates.

592. According to the complainant organization, despite a general 24-hour strike on 11 November 1992, and repeated negotiations between the UMT, the UMT local union in Casablanca and city officials, the situation has not changed: the four trade union officials are still unemployed without due cause and trade union contributions continue to be misappropriated while the public authorities do nothing to ensure that trade union rights and social security legislation are respected. Furthermore, the head of the enterprise has taken an aggressive stance towards the workers, with increasing instances of provocation. Since the above-mentioned dismissals, he has allegedly surrounded himself with an entourage of henchmen who terrorize workers both inside and outside the enterprise, and he reportedly insists that he "fears no one" and that "no one will make him reconsider his decisions".

593. In a communication dated 23 December 1992, the UMT enclosed a copy of a letter from the General Secretary of the regional UMT trade union in Casablanca addressed to the Minister of Employment dated 9 December 1992, as well as a letter from the UMT National Secretariat addressed to this same Minister dated 23 December 1992. In both letters, the UMT draws the Minister's attention to the situation at the SINET enterprise, asking him to intervene so that trade union rights will be respected by reinstating the dismissed trade unionists, and to ensure compliance with labour legislation by fully restoring the social rights of workers at this enterprise.

Case No. 1691

594. In its communication of 23 December 1992, the UMT alleges acts of anti-trade union discrimination by the management of the Filarsy company, with headquarters in Casablanca, against trade union delegates and workers employed by this enterprise, as well as acts of interference against the UMT-affiliated enterprise trade union, comprised of 110 workers.

595. The UMT states that on 22 September 1992, the management of Filarsy arbitrarily dismissed seven of the nine members of the UMT trade union executive which had recently been established at the enterprise. Following a series of meetings held in vain with the labour inspectorate and city authorities of Hay Moahammadi-Ain Sebaa (Casablanca) aimed at having the employer rescind these dismissals and recognize trade union rights, workers called a strike on 29 October 1992. The complainant organization states that the strike was continuing as of the date of the complaint.

596. Meanwhile, according to the UMT, management persists in refusing to recognize the trade union executive and to reinstate the dismissed workers, and allegedly has resorted to recruiting strike breakers. Despite protests by the UMT regional union in Casablanca, the public authorities have taken no measures to ensure that trade union rights and the right to strike are respected.

597. The complainant organization states that on 23 December 1992, police under the command of an officer and the district chief (*kaid*) brutally attacked workers at the entrance to the enterprise. They reportedly beat the workers with clubs and truncheons repeatedly and verbally abused them while chasing them into the surrounding areas. While fleeing, one worker was allegedly struck by a car and seriously injured. It was reported that workers also suffered many injuries, including fractures and bruises.

Case No. 1712

598. In its communication of 17 April 1993, the complainant organization alleges violations of trade union rights and of the right to negotiation by the Mansour Ed Dahbi Hotel in Marrakesh.

599. The UMT states that on 15 April 1992, the day after a UMT trade union executive had been established at the hotel, the management of the hotel chain to which the Mansour El Dahbi belongs dismissed every member of this executive without any explanation. The employer has reportedly refused to hold discussions with the trade union, stating that it does not recognize it and does not wish to hear any talk of trade unions in its establishments. The complainant organization states that in the light of the sympathy movement undertaken by employees and the trade union executive, the employer has engaged in a massive intimidation campaign, including 98 suspensions.

600. In view of these measures, the employees of the Mansour Ed Dahbi Hotel have gone on an unlimited strike. Rather than engaging in negotiations in good faith, the employer has reportedly appealed to public authorities and the police, who allegedly attacked strikers violently at the entrance to the hotel on 17 April 1992. During this attack, several workers were arrested (Aboul Hanane Abdeljalil, Abou Nouass Latifa, El Hasnaoui Ahmed, El Korssa Aberahmane, Boukentar Mohammed, Souhal Fatima, Boulal Zohra and Kati Mohammed), and a number of others injured (Sebti Mohammed, Tagmouti Aberahmane, Fellah Ahmed, Baname Aziza, Daiss Hafida (a pregnant woman), Alaoui Daquaq and Manchoub Fatema Zohra). According to the UMT, these events have evoked the sympathy of workers in the hotel sector, and the employees of the Nfis and Toubkal hotels have also reportedly gone on strike.

601. In its communication of 15 June 1993, the UMT alleges violations of trade union rights at the Plastima plastics factory in Casablanca, in addition to police intervention against workers at this enterprise. It states that since 17 May 1993 workers have carried out a daily two-hour strike at the enterprise to express their sympathy with 11 of their colleagues who were arbitrarily dismissed. The complainant organization explains that on 10 May 1993, in violation of the law on employee representation,

management suspended three UMT trade union delegates who were also employee representatives. The UMT adds that in response to the immediate protests of all the workers, management dismissed the three trade union delegates in question as well as eight other workers.

602. On 14 June 1993, management reportedly closed the doors to the factory. The police intervened on the morning of 15 May 1993, in the presence of a superintendent, to forcibly deny workers access to the factory and to allow some 20 strike breakers to enter. According to the complainant organization, the police intervention was accompanied by provocations, threats and assault and battery against the enterprise's trade unionists and leaders of the UMT regional sector who were on the scene.

B. THE GOVERNMENT'S REPLY

Case No. 1687

603. In its communication of 16 February 1994 concerning the allegation according to which management of the Industrial Cleaning Company in Casablanca (SINET) failed to declare the total number of working days to the National Social Security Fund, the Government states that following intervention by the labour inspectorate the employer made the supplementary declaration for the undeclared days for the period between August 1990 and January 1991. As regards the failure to pay contributions owed to the Interoccupational Retirement Fund, according to the Government the employer claims it is a matter of a delay linked to financial hardship, seeing that the company has lost a large number of contracts. The labour inspectorate has obtained an official commitment from the employer to settle this matter as soon as possible. The Government adds that affiliation of employers with the Interoccupational Retirement Fund is optional, representing a supplementary scheme in addition to the compulsory scheme under the National Social Security Fund.

604. As regards the dismissal of certain workers, the Government states that, according to the employer, each year the management of the company, based on service requirements, transfers its workers within its various branches. At the time of the 1992 transfers, the four workers referred to by the complainant organization refused to transfer to their new worksite, which led to their dismissal. Also according to the Government, the labour inspectorate sought to find a satisfactory solution to this problem, though the attempt failed. The employer therefore offered to grant the workers in question a lump-sum compensation so as to settle the dispute; however, the workers reportedly refused this offer, preferring instead to submit their case to a competent court.

605. Finally, the Government states that on 20 September 1992 the company held elections for workers' delegates. After the results of these elections were announced, the delegates exercised their right of legal appeal. The competent court ruled against the appeal presented by the workers in question, noting that it lacked valid grounds.

Case No. 1691

606. In its communication of 6 February 1994, the Government states that the source of the dispute at the Filarsy company is linked to the decision to dismiss seven workers whom management of the enterprise accuses of various instances of professional misconduct, as indicated by the labour inspectorate which intervened to settle the dispute

amicably. Owing to the impossibility of finding a solution that satisfied both parties, the workers submitted their case to a competent court.

607. As regards the allegations that a temporary workforce was used to break the strike, the Government states that inquiries carried out by the labour inspectorate failed to substantiate these allegations, as every worker at the plant during the strike had been hired beforehand and declared to the National Social Security Fund.

608. As regards the allegations concerning police intervention during the strike, according to the Government local authorities intervened to protect the freedom to work, which certain striking workers had interfered with in an attempt to prevent non-striking workers from going to work.

609. The Government also points out that the enterprise held elections for workers' representatives on 30 September 1992, resulting in the election of six representatives and six alternates who were not affiliated to a trade union. According to the Government, this is the reason why the complainant organization lodged an appeal against the elections with the competent court, which ruled that the elections were legal.

Case No. 1712

610. According to the Government in its reply of 16 February 1994, the employer at the Mansour Ed Dahbi Hotel in Marrakesh considers the dismissal of workers to fall within its competence as a disciplinary measure in accordance with current legal provisions. It notes that the workers in question are considered to be ordinary workers without any trade union status or duties, since there was no written statement relative to the establishment of the trade union executive. The inquiry carried out by the labour inspectorate indicated that the trade union executive had no legal status since the legal procedures under the Dahir of 16 July 1957 concerning trade unions had not been followed. According to the Government, the local UMT had not provided to the competent services a list of the members of its executive.

611. As regards the allegation concerning the employer's refusal to hold discussions with the trade union, the Government states that it is entirely groundless, as indicated by the labour inspectorate. In fact, the relationship between the hotel management and workers has been founded on dialogue and consultations. The Government also states that the minutes of the meetings held confirm this fact, and has included a copy of one of the minutes. By way of example, it cites meetings reportedly held by the parties on 21, 28 and 30 April, stating that other meetings were subsequently held under the auspices of the labour inspectorate.

612. As regards allegations concerning the failure to recognize the UMT trade union at the hotel, the Government points out that according to the report filed by the labour inspectorate, the management of the hotel chain in question bases its relationship with its personnel on respect for trade union rights and freedoms while recognizing trade union executives at the various establishments in the *wilayat* of Marrakesh. However, to explain the situation at the Mansour Ed Dahbi Hotel, the Government adds that the hotel management refused to reply to trade union claims owing to exceptional economic conditions, which the Marrakesh trade union local interpreted as a violation of trade union rights and freedoms, and which exacerbated tensions between the two parties.

613. Concerning the allegations relative to the suspension of 98 workers, the Government states that only 27 workers with permanent, official status were dismissed. The others were seasonal workers employed by the hotel under fixed-term contracts. According to the Government, the decision to dismiss them was taken when the workers

refused to respect the decision to transfer 11 workers to the city of Ouarzazate in response to the hotel's needs there. Many colleagues of the workers concerned called a sympathy strike. To ensure the success of the strike, striking workers occupied the entrance to the hotel, which led management to dismiss several other workers whom it accused of having infringed the freedom to work. Also according to the Government, the labour inspectorate attempted conciliation so as to find a satisfactory solution to the dispute. However, no agreement was reached owing to the stubbornness of the parties.

THE COMMITTEE'S CONCLUSIONS

614. The Committee notes with concern that the allegations in the above cases pertain to numerous infringements of the freedom of association in four Moroccan private enterprises: acts of anti-trade union discrimination against trade union delegates and trade unionists; acts of interference by employers and public authorities against UMT trade union executives; and violence by the police and authorities during strikes.

615. The Committee regrets that the Government has not replied to the latest allegations by the complainant organization concerning violations of trade union rights at the Plastima factory in Casablanca (violence by the police in dispersing strikers, arbitrary dismissals, replacement of strikers by strike breakers). It urgently requests the Government to submit its observations concerning these allegations without delay.

616. First of all, the Committee notes that the complainant organization draws attention to a large number of suspensions and dismissals for anti-trade union reasons. On 2 November 1992, four trade union leaders were dismissed at the SINET enterprise in Casablanca because, according to the complainant organization, they had protested against the misappropriation of workers' social security contributions and the employer's falsification of the election of workers' representatives. According to the Government, after having been transferred for reasons of service, these people refused to go to their new work site and were therefore dismissed. The four workers have submitted their case to a competent court.

617. As regards the Filarsy company in Casablanca, the complainant organization alleges that seven of the nine members of the UMT trade union executive that had been established at this enterprise were dismissed. The Government states that the dismissals were the result of various instances of professional misconduct and that this case has been submitted to a competent court.

618. According to the complainant organization, every member of the UMT trade union executive at the Mansour Ed Dahbi Hotel in Marrakesh was dismissed without any explanation once the executive was set up. Furthermore, 98 other workers were suspended for having expressed sympathy with the dismissed employees. The Government states that in the absence of a written statement concerning the establishment of the trade union executive, the workers in question are considered to be ordinary workers with no trade union status or duties. As regards the suspension and dismissal of workers at the enterprise, including members of the trade union executive, the Committee notes the Government's statement according to which these measures were taken owing to the workers' refusal to comply with the decision to transfer 11 workers to the city of Ouarzazate. The Government also states that several other workers were dismissed for having interfered with the freedom to work.

619. The Committee notes with concern the contradictions existing between the complainant organization's statements and those of the Government as regards the above-mentioned dismissals and suspensions, and the Government's denial that these measures were taken for anti-trade union reasons. In view of the large number of people involved and the circumstances in which these measures were taken (creation of a trade union executive, strikes called at the enterprises concerned), the Committee is unable to conclude that these dismissals and suspensions have no connection with the trade union activities of the individuals concerned.

620. The Committee consequently reminds the Government of the fundamental principles according to which all workers should in practice be able to form and join organizations of their own choosing in full freedom, and that no person should be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities. [See *Digest of decisions and principles of the Freedom of Association Committee*, 1985, 3rd edition, paras. 222 and 538.] It requests the Government to hold inquiries so as to determine the actual reasons for the dismissals of Mr. Bouna Houcine, General Secretary of the UMT enterprise trade union and Mr. Mouzoune Hassan, Deputy General Secretary, as well as Mr. Attor Ahmed and Mr. Lachgar Brahim, trade union delegates at the SINET enterprise; the seven members of the UMT trade union executive at the Filarsy enterprise; every member of the UMT trade union executive at the Mansour Ed Dahbi Hotel, in addition to the suspension of 98 workers at the Mansour Ed Dahbi Hotel. If it is proved that these people were dismissed or suspended owing to their trade union activities, they should be reinstated in their job. The Committee requests the Government to provide it with the results of these inquiries as well as of the legal appeals filed by the four trade union delegates and members at the SINET enterprise and the seven workers at the Filarsy enterprise contesting their dismissal.

621. As regards the police interventions during the sympathy strikes by workers at the Filarsy enterprise and the Mansour Ed Dahbi Hotel (when several people were reportedly injured), the Committee takes note of the Government's reply according to which, in the case of Filarsy, local authorities intervened to ensure protection of the freedom to work that had been interfered with by certain strikers who had tried to prevent non-striking workers from going to work. In this sense, the Committee emphasizes that taking part in picketing and firmly but peaceably inciting other workers to keep away from their workplace, cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work, acts that constitute criminal offences in many countries. [See *Digest*, op. cit., para. 435.] The Committee also points out that in cases of strike action the authorities should resort to the use of force only in serious situations where law and order is seriously threatened. [See *Digest*, op. cit., para. 431.] The Committee consequently requests the Government to see that an independent, impartial and in-depth inquiry is carried out to determine the nature of the police actions referred to by the complainant organization, to assess responsibility, and to inform it of the results of this inquiry.

622. Concerning the arrest of strikers by the police on 17 April 1993 during the strike at the Mansour Ed Dahbi Hotel, the Committee notes that the Government has not replied. The Committee recalls that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests. [See *Digest*, op. cit., para. 363.] The Committee is also of the

opinion that authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike. [See *Digest*, op. cit., para. 447.] In the light of the great importance it attaches to these principles, the Committee requests the Government to provide it with information concerning the status of workers arrested at the Mansour Ed Dahbi Hotel — Mr. Aboul Hanane Abdeljalil, Mr. Abou Nouass Latifa, Mr. El Hasnaoui Ahmed, Mr. El Korssa Aberahmane, Mr. Boukentar Mohammed, Mr. Souhal Fatima, Mr. Boulal Zohra, and Mr. Kati Mohammed — indicating whether they have been released and reinstated in their job.

623. As regards the allegations that the Filarsy company utilized strike breakers, the Committee notes the Government's statement that inquiries carried out by the labour inspectorate failed to prove these allegations, in view of the fact that every worker at the establishment during the strike had been hired before the strike and had been declared to the National Social Security Fund.

624. Generally speaking, the Committee regrets that once again in these cases it has been presented with allegations concerning serious infringements of the trade union rights of Moroccan workers and the authorities' refusal to intervene in order to ensure respect for these rights in practice. Recalling that trade union rights can only be exercised in a climate that is free from violence, pressures or threats of any kind against trade unionists, and that it is for governments to ensure that this principle is respected [see *Digest*, op. cit., para. 70], the Committee appeals to the Government to take appropriate measures so that workers will be assured of the free exercise of trade union rights. It urges that the Government will take the necessary steps so that these rights will be recognized and respected in fact as well as in law.

THE COMMITTEE'S RECOMMENDATIONS

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

- (a) The Committee regrets that the Government has not replied to the latest allegations by the complainant organization concerning the violations of trade union rights at the Plastima factory in Casablanca, and urgently requests it to furnish observations without further delay.
- (b) Recalling the fundamental principles according to which all workers should be able to form and join organizations of their own choosing in full freedom, and that no person should be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, the Committee requests the Government to hold inquiries so as to determine the real reasons for the dismissals of Mr. Bouna Houcine, General Secretary of the UMT enterprise trade union and Mr. Mouzoune Hassan, Deputy General Secretary, as well as Mr. Attor Ahmed and Mr. Lachgar Brahim, trade union delegates at the SINET enterprise in Casablanca; the seven members of the UMT trade union executive at the Filarsy enterprise in Casablanca; and every member of the UMT trade union executive at the Mansour Ed Dahbi Hotel in Marrakesh, as well as the suspension of 98 workers at this hotel. If it is proved that these people were dismissed or suspended owing to their trade union activities, they should be reinstated in their jobs. The Committee requests the Government to communicate to it the results of these inquiries, and of the legal

appeals filed by the four trade union delegates and members at the SINET enterprise and the seven workers at the Filarsy enterprise contesting their dismissal.

- (c) Recalling that in the case of strike action the authorities should resort to the use of force only in serious situations where law and order is seriously threatened, the Committee requests the Government to take the measures necessary for an independent, impartial, in-depth inquiry to determine the nature of the police action referred to by the complainant organization, to assess responsibility, and to inform it of the results of this inquiry.
- (d) Recalling that the right to strike is one essential means through which workers and their organizations may promote and defend their economic and social interests and that authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike, the Committee requests the Government to provide it with information concerning the status of workers arrested at the Mansour Ed Dahbi Hotel — Aboul Hanane Abdeljalil, Abou Nouass Latifa, El Hasnaoui Ahmed, El Korssa Aberahmane, Boukentar Mohammed, Souhal Fatima, Boulal Zohra, and Kati Mohammed — indicating whether they have been released and reinstated in their job.
- (e) Recalling that trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists, and that it is for governments to ensure that this principle is respected, the Committee appeals to the Government to take appropriate measures so that workers will be assured of the free exercise of trade union rights. It urges the Government to take the necessary steps so that these rights will be recognized and respected in fact and in law.

Case No. 1649

*Complaint against the Government of Nicaragua
presented by
— the Sandinista Workers' Confederation (CST) and
— the Agricultural Workers' Association (ATC)*

626. The complaint in this case is contained in a joint communication from the Sandinista Workers' Confederation (CST) and the Agricultural Workers' Association (ATC), dated 31 May 1992. Later, in a communication of 4 December 1992, the Agricultural Workers' Association presented new allegations. The Government sent its observations in communications of 21 October and 3 December 1992, 13 July 1993 and 15 February 1994.

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

A. THE COMPLAINANTS' ALLEGATIONS

628. In their communication of 31 May 1992, the Sandinista Workers' Confederation (CST) and the Agricultural Workers' Association (ATC) refer to protests against the consequences of the Government's stabilization plan (unemployment, high

levels of poverty and infant mortality, etc.) and specifically make the following allegations:

- the National Bus Company (ENABUS): when workers carried out a protest to demand that the terms of their employment contract with the Ministry of Construction and Transport be observed, the police attacked them to put down the protest, arresting some and injuring eight (Gerónimo Blandon Leiva, Richard Wellcome, José Corrales, Luis Sánchez Duarte, José Hidalgo, Sergio Rocha, Silvio Jarquin and Guillermo Urbina);
- AERONICA National Airlines: 68 workers were detained as a result of a dispute between workers and the company's management; they were accused of reckless endangerment. All the workers were later released, but the trade union's General Secretary, Luis Torres Paguagua, and three other workers are still facing charges;
- the El Paraíso farm: nine workers were dismissed because they demanded that the collective agreement be observed;
- the Montpellier ranch: 11 members of the trade union were dismissed;
- rural trade unions: the Ministry of Labour's central delegation prohibited the registration of rural trade unions in the private sector unless the following requirement was met; the farm owners should provide a certificate indicating the number of workers in each production unit. The complainants mention 27 trade unions which suffered prejudice because of this measure;
- the La Rondalla ranch: ten trade union leaders and members were dismissed in retaliation for holding protests;
- the El Quetzal ranch: six workers were dismissed because they demanded that the collective agreement be observed;
- the La Luz ranch: 18 workers were dismissed because they demanded that the current collective agreement be observed;
- the Alsacia ranch: the following trade union leaders and trade unionists who campaigned for trade union claims were arrested and are still in prison: Vicente Mendoza Jiménez, Luis Manuel Martínez Mesa, Julio David Tercero Rojas, Raúl Corea, Emilio Ferrufino González Dávila, José Ramón Rayo Rivera, Ramón Suarez, Marcos Suarez, Daniel Espinoza, Miguel Martínez Aguila, Mario José Hernández Silva, Leonardo Silva, Mario Ríos, Emilio Córdoba Ayala, Pedro Silva Ulloa, Pedro Silva Suazo, Rodolfo Hernández, Oscar Danilo Altamirano, Juan Ramón García, Norberto Jirón, Nicolás Díaz and Juan José Ulloa Silva;
- Companic S.A.: as a result of a labour dispute which arose after the workers requested consultation and job security agreements, the Ministry of Labour declared illegal a non-existent strike (under the pretext that seven workers had initially blocked the company's entrance) and, as a consequence, 45 union members and the six members of the union executive were dismissed. An appeal for *amparo* (enforcement of constitutional rights) has been lodged with the Court of Appeals;
- the La Queserita ranch: three trade union leaders (Bayardo Martiney, Víctor Manuel Juárez and Noel Martínez) were dismissed because they demanded that the social benefits owed to four retired workers who are members of the union be paid;
- the El Olocotón ranch: three trade union leaders were dismissed (Danilo Machado, María Luisa Salinas and Bernarda Gonzales);

- the La Cruz ranch: two trade union leaders were dismissed (Augusto Canales and Bertha Areas);
- the Los Millonarios ranch: 204 workers were dismissed, including the union's General Secretary, because a strike was declared illegal;
- the San Carlos ranch: the following workers were beaten and detained: Lino de Jesús Martínez, David Santiago Reyes, Aurelio Ramírez, Héctor Moncada, Antonio Maradiaga, Nicolás Téllez, Santos Apolonio López, Eugenio Velázquez, Mariano Quintero and Bernardo López;
- the La Ofelia ranch: the trade union leaders Secundino Hernández, Cristino Pérez, Hermógenes Juarez, José Pérez, Inés Martínez and Domingo Rivera were beaten and arrested;
- the La Pistola ranch: the trade union leaders Miguel Jiménez, Víctor Gómez and René Gradiz Aguilar were arrested and beaten;
- the La Candelaria ranch: the ranch's owner and his bodyguards attacked the premises of the Mercedes Mayorga Trade Union and confiscated union documents. The Disputes Secretary, Julián Martínez, was later dismissed.

Finally, the complainants allege that Antonio Gutiérrez Rayo, a trade unionist in the tobacco sector, was murdered on 24 April 1992.

629. In its communication of 4 December 1992, the Agricultural Workers' Association (ATC) presented the following allegations:

- eight trade union leaders of the ATC were arrested on 2 June 1992 at the request of an employer;
- the La Colonia farm: five trade union leaders of the ATC were arrested and accused of unlawful occupation of private property. They were later released and their cases were dismissed;
- the Santa Josefina ranch: on 29 June 1992 four ATC trade unionists were arrested, and were later released by a judicial order;
- the El Tuma-La Dalia de Matagalpa region: four ATC trade union leaders were arrested (Jorge González Hernández, Isidoro Aguilar Miranda, Nicolás Aguilar Miranda and Entimo López Salgado) on 4 June 1992, and were accused of unlawful occupation of private property. They are still in detention;
- the Santa Gertrudis ranch: the trade union leader, Omar Antonio Matute Talavera, was arrested and imprisoned;
- the Pantasma region: nine trade unionists were arrested and imprisoned (Iván Silva, Inés Zeledón, Hilario Silva, Paulino Silva, Willam Martínez, Dionisio Silva, Bayardo Barrera, Félix Silva and Julio César Pastora);
- the Santa María de Ostuma ranch: the trade union leader, Sergio Guido, and three union members were arrested;
- the Los Placeres ranch: four trade union leaders were arrested (Ricardo Salas García, Germán Pérez Suarez, Felipe Gómez González and Luis Loaisiga López);
- the Wapinol Cooperative: the trade unionists Félix Castillo Castro and José Dolores Castillo Zeledón were arrested;
- the Las Rosas ranch: two trade union leaders were arrested on 26 November 1992 and were later released;

- the Santa Celia ranch: the Ministry of Labour stated that it was not competent to reinstate six members of the ATC who were dismissed because they demanded that the collective agreement be observed;
- the San Pablo ranch: the trade union leaders Juan Ureña, Tiburcio Vilchez, Albenis Mercado and Dadryl Ostil were arrested on 10 August 1992;
- the El Bálsamo, Imperio, Roma, Holanda and San Miguel farms: 75 workers, including 20 trade union leaders, were dismissed; and
- the residence of the ATC's trade union leader, Mrs. Ramona Castellón, was searched unlawfully.

630. The complainant organizations also present allegations which have already been examined by the Committee in Cases Nos. 1586 and 1719.

B. THE GOVERNMENT'S REPLY

631. In its first reply, the Government states that, as regards the allegations concerning AERONICA National Airlines, after several months of negotiations between the Transport Workers' Federation, the Aerónica Trade Union and the Government, the union broke off negotiations and declared a strike. According to the Government, the union claimed that the enterprise was being sold behind the workers' backs, in violation of consultation agreements which gave them a 25 per cent stake in the airline; the workers occupied the company's facilities and blocked runways with airplanes, causing significant financial losses and endangering the lives of others. The Government reports that the police cleared the aircraft from the runways and arrested several workers involved in the demonstration. They were released after their cases were brought before a court (four were released on bail: Luis Torres Paguagua, Ismael Rueda, Leonardo Sebero Torres and Jacinto Rener Vallejos). Finally, the Government indicates that the Ministry of Labour invited members of the Aerónica Trade Union to participate in negotiations on various occasions, but since they would not attend it was decided to close the enterprise.

632. The Government adds that:

- as regards the alleged dismissal of the ATC's trade union leaders, no complaint has been presented to the Ministry of Labour;
- the General Inspectorate of Labour has no record of any declaration of an illegal strike at the Los Millonarios ranch;
- as regards the case of the Companic S.A. company, the complainants have revoked their complaint to the ILO, as the parties came to an agreement and resolved the dispute; and
- as regards the alleged refusal to register rural trade unions, there is full and complete freedom of association in Nicaragua and the Directorate for Trade Union Associations processes all registration requests that are submitted and provides prompt replies. In the case of the trade unions mentioned by the complainants, they were registered within the legally established time-limits. The Government explains that the Directorate for Trade Union Associations requested the collaboration of the enterprise-level associations to help determine the unionization rate in the country,

and thus inquired as to the number of trade union members and the total number of workers when the association was an enterprise union.

633. In its communication of 3 December 1992, the Government states that:

- as regards the allegations concerning the National Bus Company (ENABUS), a group of workers violently blocked the access roads to the Ministry of Construction and Transport, paralysing transport. The intervention of the police was necessary to restore order. The demonstrators responded by attacking the police;
- as regards the allegations concerning the Montpellier, La Rondalla, El Quetzal, San Carlos, Ofelia and La Pistola ranches, the problems encountered have nothing to do with labour and union questions, and are related to the occupation and ownership of land. These problems result from the return to their rightful owners of previously confiscated and illegally occupied properties. The Government established a reserve of land for the resettlement of the illegal occupants, but they refused to hand over the land they were occupying;
- as regards the El Paraíso ranch, nine workers were temporarily suspended from their jobs, but were reinstated ten days later when the company's economic health was restored;
- as regards the death of José Antonio Gutiérrez Rayo, a commission comprising inter alia representatives of the "Revueltos" leadership (workers) and the Ministry of the Interior reported that on 24 April 1992 the police broke up a barricade located on the Pan-American highway, and that an armed clash later took place in which one policeman and a member of the group of protesters were injured. Mr. Gutiérrez Rayo was fatally injured some 3,000 metres from where the barricade was, and it was later proved that some of the demonstrators were armed. The Government also reports that judicial investigations are under way to determine who is responsible for these acts.

634. In its communication of 13 July 1993, the Government states that:

- the eight trade union leaders of the ATC who were arrested were accused of threatening lives and property, and that they were released following the appropriate investigations;
- the arrest of the workers at the La Colonia farm took place under a court order, as they were accused of unlawfully occupying private property and threatening to kill the property owner;
- the workers at the La Josefina ranch were arrested under a court order, based on the ranch owner's complaint to a criminal court judge of death threats made against her; they were released because of a lack of sufficient proof;
- as regards the arrest of Jorge González Hernández, the trade union leader of the ATC, and others (El Tuma region), neither the Matagalpa provincial delegation nor the police took part in these acts;
- as regards the arrest of the trade union leader Omar Antonio Matute Talavera at the Santa Gertrudis ranch, and the arrest of trade unionists Iván Silva, Inés Zeledón and others in the Pantasma region, neither the national police nor the courts are aware of such acts;

- in the case of the Santa María de Ostuma ranch, the ranch was returned to its owner, as it had been unjustly confiscated by the previous Government; there were no arrests;
- at the Los Placeres ranch there were no arrests;
- Aurelio Traña and Rosalio González of the Las Rosas ranch were arrested as part of an investigation into a killing which took place near the ranch; they were later released;
- there is no information regarding the alleged dismissals at the Santa Celia ranch, but a list of claims has been presented and is now the subject of negotiations;
- as regards the alleged arrest of Pedro Castillo Castro and other members of the Wapinol Cooperative, the reasons and dates of arrest are unknown and it is thus impossible to provide any information.

635. Finally, the Government points out that the previous Government unjustly and arbitrarily confiscated property and that, as part of the national reconciliation process, a special commission of jurists was established for a specific period to hear the cases of people reclaiming their land. Based on the rulings of this commission, the Government returned certain properties to their owners, and this caused unrest among the people illegally occupying these lands. They threatened the owners and damaged their property. In these circumstances, the owners turned to the legal system to ensure that their rights were respected.

THE COMMITTEE'S CONCLUSIONS

636. The Committee notes that the allegations in this case refer to one case of murder, to physical attacks, arrests and break-ins at trade union premises and the residences of trade union leaders and trade unionists, and to anti-union dismissals and other violations of trade union rights at various enterprises.

637. As regards the murder of trade unionist José Antonio Gutiérrez Rayo, the Committee notes that the Government reports that the police broke up a demonstration by workers on the Pan-American highway and that an armed confrontation later took place, injuring a policeman and a member of the group of demonstrators, that the trade unionist in question was fatally injured some 3,000 metres from where the police broke up the demonstration, and that it has been proved that some of the demonstrators were armed. Similarly, the Committee notes that judicial investigations are under way to determine who is responsible for these acts. In these circumstances, the Committee deplors this murder and trusts that the investigations will be concluded quickly and that the guilty parties will be punished. In the meantime, the Committee requests the Government to keep it informed of developments in these investigations.

638. The Committee takes note of the observations presented by the Government concerning the arrest of trade union leaders and trade unionists. Specifically:

- as regards the trade union leaders and trade unionists of the ATC, the Santa Josefina ranch and the Las Rosas ranch who were arrested (eight trade union leaders, four trade unionists and two trade union leaders, respectively), the Government reports that they were arrested by judicial order, as they were accused of committing or participating in criminal offences, but that their release was ordered after the appropriate investigations took place;

- as regards the workers arrested at the La Colonia farm (five trade union leaders who were later released), the Government points out that they were arrested by judicial order, as they were accused of unlawfully occupying private property and threatening to kill the owner.

639. Noting that the workers mentioned in these allegations were arrested by judicial order and were later released because the charges against them were dropped, the Committee should like to draw the attention of the Government to the fact that the arrest by the authorities of trade unionists concerning whom no grounds for conviction were subsequently found is liable to involve restrictions of trade union rights. Governments should take steps to ensure that the authorities concerned have instructions appropriate to eliminate the danger which arrest for trade union activities implies. [See *Digest of decisions and principles of the Freedom of Association Committee*, 3rd edition, 1985, para. 97.]

640. As regards the allegations concerning AERONICA National Airlines (the arrest of 68 workers for taking part in a demonstration on charges of reckless endangerment, and the prosecution of the union's General Secretary, Luis Torres Paguagua, and three other workers), the Committee notes that the Government mentions that the workers occupied the company's facilities and blocked runways with aircraft, causing significant financial losses and endangering the lives of others, and that the police arrested several workers who were involved in the demonstration, and who were later released (four of whom were released on bail: Luis Torres Paguagua, Ismael Rueda, Leonardo Sebero Torres and Jacinto Rener Vallejos). In the light of these statements, and before taking a position, the Committee requests the Government to indicate which charges have been filed against the workers released on bail and to communicate any sentences handed down.

641. As regards the allegations concerning violent acts at the National Bus Company (ENABUS) (physical assault against workers demanding the implementation of an agreement, resulting in the injury and arrest of eight people: Gerónimo Blandón Leiva, Richard Wellcome, José Corrales, Luis Sánchez Duarte, José Hidalgo, Sergio Rocha, Silvio Jarquín and Guillermo Urbina), the Committee notes that, according to the Government, a group of workers forcefully blocked the access roads to the Ministry of Construction and Transport, paralysing traffic, that the intervention of the police was necessary to restore order and that the demonstrators responded by attacking the police. The Committee observes that the Government does not refer to the allegations of physical assault and arrests. In these circumstances, the Committee requests the Government to take measures to establish a judicial investigation so as to establish the facts, determine who is responsible and punish the guilty parties. Similarly, it requests the Government to indicate whether the workers mentioned by the complainants have been released or are still in detention, and whether any charges were brought, and are still pending against them.

642. The Committee also takes note of the Government's observations concerning various allegations of acts of violence:

- as regards the arrest of four trade union leaders of the ATC in the El Tuma-La Dalia de Matagalpa region, the Government states that neither the provincial delegation in Matagalpa nor the police took part in these acts;

- as regards the arrest of a trade union leader at the Santa Gertrudis ranch, and the arrest of nine trade unionists in the Pantasma region, the Government reports that neither the national police nor the courts have any record of such acts;
- as regards the allegations concerning the San Carlos, Ofelia and La Pistol ranches (physical assault and arrest of ten, five and three trade union leaders, respectively), according to the Government these events have nothing to do with labour and trade union questions, and are related to problems of the occupation and ownership of land;
- as regards allegations concerning the Santa María de Ostuma ranch (the arrest of four trade unionists) and the Los Placeres ranch (the arrest of four trade unionists), the Government denies that these arrests took place.

643. Observing that, except in the case of the Santa María de Ostuma and Los Placeres ranches, in which the Government categorically denies the allegations, the Government simply replies that there was no government participation, that it has no knowledge of these acts or that the acts are related to a question of the occupation or ownership of land, the Committee deeply regrets that no details have been provided concerning these allegations and requests the Government to take measures to ensure that the appropriate judicial investigations take place in all cases involving allegations of physical assault or the arrest of trade union leaders and trade unionists, and to provide particulars on the situation of those allegedly detained.

644. As regards the allegation of the arrest of two trade unionists at the Wapinol Cooperative (Pedro Castillo Castro and José Dolores Castillo Zeledón), the Committee takes note that the Government mentions that it is impossible to provide information, as neither the dates nor the reasons for the arrests are specified. The Committee invites the complainant organizations to communicate the information requested by the Government so as to permit the Government to reply to these allegations.

645. The Committee also observes that the Government has not communicated its observations concerning the following allegations: the break-in by the owner of the La Candelaria ranch and his bodyguards into the ranch's trade union premises and the confiscation of documents; the arrest of trade union leaders Juan Ureña, Tiburcio Vilchez, Albenis Mercado and Dadryl Ostil on 10 August 1992 at the San Pablo ranch; the break-in at the residence of the ATC's trade union leader, Ramona Castellón; and the arrest and subsequent imprisonment of 22 workers of the Alsacia ranch. The Committee requests the Government to communicate its observations on these allegations as quickly as possible.

646. In general, as regards all these allegations of murder, physical assaults and arrests of trade union leaders and trade unionists, the Committee deeply deplores the numerous serious acts of violence, and expresses its concern, observing that they have affected a significant number of trade union leaders and trade unionists. The Committee points out that trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists and it is for governments to ensure that this principle is respected. [See *Digest*, op. cit., para. 70.]

647. As regards the numerous allegations of anti-union dismissals, the Committee takes note of the Government's observations. Specifically:

- (1) as regards the alleged dismissal of trade union leaders of the CST, no complaints have been presented to the Ministry of Labour;

- (2) the General Inspectorate of Labour has no record that a strike at the Los Millonarios ranch was declared illegal (the complainants allege the dismissal of 204 workers);
- (3) there is no information on the alleged dismissals at the Santa Celia ranch (six ATC members), but a list of demands has been presented and is now a subject of negotiations;
- (4) as regards the allegations concerning the dismissals at the Montpellier ranch (11 union members), the La Rondalla ranch (16 union members) and the El Quetzal ranch (six union members), these have nothing to do with labour and trade union questions and are related to problems of the occupation and ownership of land.

648. Observing that, as regards the dismissals at the Montpellier, La Rondalla and El Quetzal ranches, the Government simply states that there were problems related to the occupation or ownership of land, and that with regard to the other allegations it simply replies that it is unaware of the acts alleged to have occurred but in no way denies that all these dismissals took place, the Committee requests the Government to communicate to it detailed information concerning all these allegations. Similarly, the Committee reminds the Government in general terms that no one should be subject to anti-trade union discrimination for carrying out legitimate trade union activities and that “protection against acts of anti-union discrimination should cover not only hiring and dismissal but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker”. [See *Digest*, op. cit., para. 544.]

649. The Committee further observes that the Government has not sent information on the dismissals at: (1) the La Luz ranch (18 trade unionists); (2) the La Queserita ranch (three trade union leaders); (3) the El Olocotón ranch (three trade union leaders); (4) the La Cruz ranch (two trade union leaders); (5) the El Bálsamo, Imperio, Roma, Holanda and San Miguel farms (75 workers, including 20 trade union leaders); and (6) the dismissal of the trade union leader Julián Martínez (La Candelaria ranch). In these circumstances, the Committee requests the Government to indicate the specific reasons for these dismissals, so as to permit it to reach conclusions concerning these cases.

650. As regards the allegation concerning the anti-union dismissals at the Companic S.A. company, the Committee notes with interest that the Government states that the workers have retracted their complaint, as the parties reached an agreement and resolved the dispute (the Government encloses with its reply a communication from the company’s workers). Similarly, as regards the allegation concerning the dismissal of nine workers from the El Paraíso ranch, the Committee notes with interest that the Government reports that these workers were temporarily suspended from their jobs but were reinstated ten days later, once the company’s economic health was restored.

651. As regards the allegation to the effect that the Ministry of Labour’s central delegation prohibited the registration of 27 rural trade unions in the private sector unless a requirement was met specifying that the farm owners should provide a certificate indicating the number of workers in each production unit, the Committee notes that the Government denies this allegation, contends that the trade unions mentioned by the complainants were registered in the legally established time-limits, and that in actual fact the unions at the enterprise level were requested to communicate the number of union members and the total number of workers when the union was an enterprise union, so as to establish the unionization rate in the country. The Committee asks the Government to provide the certificate of registration of the 27 unions referred to by the complainant.

THE COMMITTEE'S RECOMMENDATIONS.

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

- (a) Regretting that the Government has not replied to numerous allegations referring to serious acts of violence and various violations of trade union rights, the Committee urges the Government to reply promptly, and in general draws its attention to the fact that trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind.
- (b) Deploring the killing of trade unionist Gutiérrez Rayo, the Committee requests the Government to keep it informed of the development of the judicial investigations under way.
- (c) The Committee requests the Government to inform it of the charges against the workers of AERONICA National Airlines who were released on bail, and to communicate to it any sentences handed down.
- (d) The Committee requests the Government to take measures to ensure that a judicial investigation takes place with the aim of clarifying the events at the National Bus Company (ENABUS), establishing who is responsible and punishing the guilty parties. Similarly, it requests the Government to indicate whether the workers mentioned by the complainants have been released or are still in detention, and whether any charges have been brought and are pending against them.
- (e) The Committee requests the Government to carry out judicial investigations into the alleged acts of violence in the El Tuma-La Dalia de Matagalpa region, the Pantasma region and the Santa Gertrudis, San Carlos, Ofelia and La Pistola ranches.
- (f) The Committee requests the Government to communicate its observations as quickly as possible concerning the allegations of break-ins by the owner of the La Candelaria ranch and his bodyguards at the union's premises and the confiscation by them of documents; the arrest of trade union leaders Juan Ureña, Tiburcio Vilchez, Albenis Mercado and Dadryl Ostil on 10 August 1992 at the San Pablo ranch; the break-in at the residence of the ATC's trade union leader, Ramona Castellón; and the repression and subsequent imprisonment of 22 workers of the Alsacia ranch.
- (g) The Committee requests the Government to communicate its observations concerning the allegations of dismissals at the Los Millonarios, Santa Celia, Montpellier, La Rondalla and El Quetzal ranches.
- (h) The Committee requests the Government to report the reasons for the dismissals at the La Luz ranch (18 trade unionists); the La Queserita ranch (two trade union leaders); the El Olocotón ranch (three trade union leaders); the La Cruz ranch (two trade union leaders); the El Bálsamo, Imperio, Roma, Holanda and San Miguel farms (75 workers, including 20 trade union leaders); and the dismissal of the trade union leader Julián Martínez (La Candelaria ranch).
- (i) The Committee requests the Government to provide information on the allegations concerning the arrests at the "Santa María de Ostuma" and "Los Placeres" farms.

- (j) The Committee invites the complainant organizations to communicate the information requested by the Government concerning the allegations of the arrest of two trade unionists at the Wapinol Cooperative, so as to permit the Government to reply to these allegations.
- (k) The Committee requests the Government to transmit the 27 registration certificates of the rural unions mentioned by the complainants organizations.

Case No. 1719

*Complaint against the Government of Nicaragua
presented by
— the Sandinista Workers' Confederation (CST) and
— the Agricultural Workers' Association (ATC)*

653. The complaint in this case is contained in a joint communication from the Sandinista Workers' Confederation (CST) and the Agricultural Workers' Association (ATC) dated 6 June 1993. The Government sent its observations in communications dated 15 and 22 February 1994.

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

A. THE COMPLAINANTS' ALLEGATIONS

655. In their communication of 6 June 1993, the Sandinista Workers' Confederation (CST) and the Agricultural Workers' Association (ATC), in addition to criticizing the structural adjustment programme introduced in 1991, also point out that the Government's attitude towards workers has been to engage systematically in police repression, the arrest of trade union officials, physical aggression, and the dismissal of trade union officials, while creating a widespread climate of violence.

656. Specifically, the complainants allege the following violations of trade union rights:

- La Candelaria banana plantation (western part of the country): dismissal of 417 workers for having formed a trade union; a court ruling has ordered all dismissed workers reinstated, though this has not been carried out. The Government ordered the arrest of trade union officials, accusing them of the crime of unlawful association for criminal purposes, and has made death threats to workers.
- San Pablo banana plantation (western part of the country): dismissal of seven members of the trade union executive committee and 70 workers; four trade union officials were arrested and trade union members were offered bribes to desist from their trade union activities.
- El Relampago banana plantation (western part of country): dismissal of 60 trade union members.
- Alfonso Angelina banana plantation (western part of country): dismissal of 15 trade unionists, including Mrs. Mercedes Valladares Neyra of the Trade Union's Women's Secretariat.

- El Paraiso ranch (northern part of country): dismissal of Mr. Tránsito Torres Pérez, General Secretary of the trade union.
- La Florida ranch (northern part of country): dismissal of nine trade unionists; Mr. Mercedey Salmerón Arceda, a trade unionist, was murdered; and death threats were made against Mr. Isaiás Jiménez and other trade union officials.
- La Suiza ranch (northern part of country): violent eviction of three trade unionists.
- Murder of the trade union official of the Agricultural Workers' Association, Mr. Félix Humberto Chavarría Olivas, on 10 January 1993.
- Military repression of customs workers: during a strike by customs workers, customs buildings were occupied by the police and army; after this forcible act was declared illegal, 60 trade union officials were arrested. The complainants also allege that attempts have been made to bribe workers to return to their work, and that strike breakers have been hired. On 29 May 1993 the police and army ejected strikers from the customs buildings at Penas Blancas and Guasaule, beating 13 workers and firing at trade union officials. On 10 June 1993 the police fired at strikers at the Penas Blancas customshouse, wounding three workers.
- National Development Bank (BANADES): dismissal of 533 workers in the BANADES National Workers' Union (the dismissals took place in Managua and at branch offices in Siuna, Puerto Cabezas, Bluefields, San Carlos and San Miguelito). A campaign of harassment and repression is being waged against the three main officials of the trade union (Mr. Juan Vásquez, Mr. Pedro Turcios and Mr. Efrén Sánchez), with police persecution of Mr. Juan Vásquez.
- Public administration: a drastic budget cut has been ordered; consequently, social security contributions specified in collective bargaining agreements have been frozen and workers, mainly those affiliated with the National Employees' Union have been dismissed.
- National Union of Education Workers - National Association of Teachers (ANDEN): Mr. Quintana, ANDEN General Secretary, was expelled from the National Council of Education; trade union officials and members of ANDEN were dismissed (a total of 53, whose names are given by the complainants).
- San Antonio sugar mill (western part of country): after a strike was called, on 3 March 1993 the army and police attacked strikers, injuring the following workers: Sergio Silva Gonzales, Francisco Balmaceda, Cruz Medina, Milton Lezama, and Mario Guzmán; Mr. Francisco Picado Meza was killed when the sugar cane field in which he was hiding was set on fire by shots fired from an army helicopter.
- Amerrisque abattoir (Juigalpa area): dismissal of 140 workers belonging to the trade union, including every member of the executive committee; with consent of the Minister of Labour, a court decree ordering the reinstatement of the dismissed workers was ignored.
- Enterprises in the industrial free zone (north-east of Managua), such as Fortex, Velcas Internacional, Neptuno and others: impossibility of signing collective agreements and forming trade unions.
- Penwalt enterprise: as a protest against the serious contamination suffered by workers who handle chemicals, 44 workers went on a hunger strike in front of the

headquarters of the Central American Bank for Economic Integration. On 20 May 1993, the strikers were violently ejected by the police.

B. THE GOVERNMENT'S REPLY

657. In its communications of 15 and 22 February 1994, the Government makes the following observations on the allegations presented by the complainants:

- La Candelaria plantation: in May 1992, the Departmental Labour Inspectorate of the city of Chinandega received 54 letters of dismissal involving the same number of workers, sent by the employer, the La Candelaria plantation, citing as just cause the provisions of article 119, paragraphs 1 and 2 of the Labour Code. After a number of administrative and legal proceedings, the Court of Appeals for the Second Region, Civil and Labour Division, decided to modify the provisions and ordered the reinstatement of the trade union executive committee, as well as payment of their social security contributions; as for the remaining workers, in addition to the payment of their social security contributions, it ordered payment of the compensation provided for in the collective agreement. As things currently stand, the decision is being implemented. The Government also states that investigations undertaken by the Civil Inspectorate for Occupational Affairs determined that on 26 April 1992, workers seized the La Candelaria plantation, committing acts of violence and damaging property. Consequently, charges were filed at the First District Criminal Court of the city of Chinandega for the crime of property damage, illegal association for criminal purposes, jeopardizing personal safety, and aggravated robbery of personal property against Felipe Osejo, Medardo Ríos, Emiliano Hernández, Claudio Blandino, Pablo Castillo, Antonio Hernández, Ramón Solano Silva, Abraham Cerda, Julio Rocha and Angela Zúniga. Evidence of these facts has been presented to the court, which has not yet handed down a verdict.
- San Pablo plantation: the employer did carry out massive dismissals on 28 August 1993, which included members of the trade union executive committee. However, these persons reported to the Departmental Inspectorate of Labour of the city of Chinandega that they had been dismissed on 7 October 1993, and requested that all members of the executive committee of the Ignacio Garcia Vargas trade union as well as all workers who were dismissed, be reinstated. Following various proceedings involving the Labour Inspectorate, the case is presently under appeal.
- El Relampago plantation: the claim is based on the dismissal of 60 workers belonging to the trade union in July 1992. The Second District Court of Civil and Labour Affairs of the city of Chinandega has ordered that 58 workers be reinstated.
- Alfonso Angelina plantation: The Chinandega Departmental Inspectorate denied the request by Mrs. Valladares Neyra, finding it without ground since witnesses testified that she was a temporary worker.
- El Paraiso ranch: although the Government points out that a reply was given to this allegation in connection with Case No. 1649, the allegations in this case are new.
- La Florida ranch: as regards the dismissals, no claim has been submitted to the regional office of the Ministry of Labour. As regards the death of Mr. Salmerón Arceda, the national police inquiry, as well as statements from workers at the ranch,

- make it clear that he was murdered as a result of a personal quarrel with a former retired worker which eventually resulted in the use of firearms. This matter has absolutely nothing to do with labour or trade union affairs, as it was simply a common crime.
- La Suiza ranch: the eviction alleged by the complainants resulted from a claim for return of property filed by Mrs. Concepción Morales de Correa at the district civil court against Esthela Rodríguez, Antonieta Martínez Zamora, Josefa Pérez García, Reyna Barrera García and Bertha Castro. The court granted the request for returning the property, ordering the occupants to return it to its owner, Mrs. Morales. This case concerns problems of land ownership and has absolutely nothing to do with labour or trade union affairs.
 - Murder of trade union official Mr. Felix Humberto Chavarría Olivas: court authorities in Matagalpa have stated that his murder was a common crime stemming from personal problems between businessmen, and that investigations showed no evidence whatsoever that the motives were related to labour or trade union matters.
 - Military repression of customs workers affiliated to the trade union: the customs workers strike was declared illegal for having failed to comply with provisions of sections 224, 222, and 223 of the Labour Code. Strikers committed a series of criminal acts in that they used violence and firearms to seize the customs buildings, blocking free access by their colleagues who were not in agreement with the strike and wanted to exercise their legitimate right to work, and attacked border customshouses, seriously wounding two policemen and one customs worker. In their zeal to pit workers against customs authorities and accentuate their differences, they forged documents, producing a list of dismissals supposedly signed by the Assistant to the General Director of Customs and with the seal of the Ministry of Finance, with the above signature and seal superimposed, a deed classified as a crime by our civil and penal legislation.
 - Massive dismissals at the National Development Bank: no complaints concerning massive dismissals at the National Development Bank (BANADES) were lodged with the Ministry of Labour or the courts. Bank authorities state that on the date referred to by the complainants, BANADES offered its personnel a staff reduction plan due to overstaffing. The plan was completely voluntary and offered an average compensation that was 900 per cent greater than the entitlement under law. Thus expectant mothers were paid for the remaining time of their pregnancy and maternity leave; workers with the most seniority were given two months' pay for every five years of service, in addition to the above compensation. Trade union officials attempted to oppose the reduction plan, but the members would not allow it as 800 voluntary requests had been made despite the fact that BANADES was only asking for 410.
 - Public administration: the Government denies that social security contributions provided for in collective agreements were frozen, pointing out that not only were collective agreements in force on the date of the complaint complied with, but that new agreements have been signed since that time. In accordance with records of the Office of Conciliation of the Ministry of Labour, 57 collective agreements were signed in 1993, of which 27 (47 per cent) were in the private sector and 29 (51 per cent) in the public sector. The trade union confederations that played major roles in negotiating collective agreements were the Sandinista Workers' Confederation

(CTC), the Nicaraguan Workers' Confederation (CTN), the Nicaraguan Independent Workers' Confederation (CTNA), the Unified Trade Union Confederation (CUS), two unions without a confederation, plus various confederations that participated as a group. The CST was party to the greatest number of agreements signed. In addition, as regards allegations concerning the dismissal of other civil servants, including members of trade unions affiliated with the National Employees' Union, the complainants provide no names, worksites or positions; the Government is therefore unable to communicate its observations.

- National Union of Education Workers — National Association of Teachers (ANDEN): (a) expulsion of the ANDEN General Secretary, Mr. Mario Quintana, from the National Education Council, pursuant to a ministerial resolution from the Ministry of Education: ANDEN has filed an appeal with the Supreme Court of Justice, which has not yet ruled on the case; and (b) the arbitrary, unilateral dismissal of the leading ANDEN activists, who were working as teachers and educators: The Government states that two of them were not dismissed and continue to carry out their duties; two have been reinstated; one was dismissed as part of a restructuring plan; two agreed to a retraining plan; two were transferred under restructuring, which they did not accept but have made no appeal to the courts; three were dismissed for having been accomplices to the persons who seized an education office; two were dismissed for having seized the office and kidnapped its chief; one was dismissed for the crime of slander; two who were political appointees were dismissed; and one has died. As regards the following workers, the Government states that the courts have either denied their claims or not yet ruled on them, or else they have been guilty of unethical conduct: Francisco González, Jorge Aguilar Aguilera, Martha Altamirano Vega, Jazmina Novoa Ruíz, Ana Julia Castillo, Laura Bermudez Robleto, Nury Vanegas, Jaime Castilla Vilchez, Marina Liliana Duarte Cruz, Aminta Morales Videa, Ruth Espinoza Ordóñez, Melba Luz Aguilera, Martha Teófila Valladares Martínez, Isaura Chavarría Salgado, Brenda López Calderón, Mirna Blandón Gadea, Martha Rivera Blandón, Socorro Palacios Castro, René Hernández Valle, Denis Martínez Ruíz and Claudia Castillo Lechado. The Government also points out that it has not yet received information concerning the two teachers, Mrs. Felicitas Corrales and Mrs. Ana María Zavala.

658. As regards the allegations concerning the San Antonio sugar mill, the Government states that the events of 3 March 1993 constituted an illegal strike accompanied by acts of violence by a group of workers at the San Antonio sugar mill, and that strikers attacked the national police, wounding one policeman and the striker Sergio David Silva González. A group of approximately 70 strikers subsequently assembled in front of the hospital in order to hinder the treatment of the wounded policeman while confronting the police. Owing to this action, 63 persons were arrested, of whom 14 were eventually released. As the final outcome to the events, the burned body of Francisco Picado was found in the ditch set on fire by the strikers; the cause of death has not yet been determined. Among the injured were Sergio Silva, a trade unionist, and two other unidentified persons. The remaining 49 arrested persons were brought before the First District Criminal Court where they presented a declaration. The national police are considered to have acted in accordance with provisions of section 1 of the Act concerning national police duties as regards legal assistance. Following

negotiations, the 49 trade unionists were released and resumed their normal duties at the San Antonio sugar mill, bringing this incident to a close.

659. As regards the alleged dismissals at the Amerrisque abattoir, the Government points out that on 2 June 1992 management of the abattoir requested that the strike called by officials of the Luis Felipe Acosta trade union be declared illegal. The labour inspector visited the Amerrisque abattoir to investigate the strike; he noted that it had begun on 1 June 1992 for the purpose of obtaining the reinstatement of three dismissed workers, and to obtain titles of ownership and wage increases of up to 50 per cent, and that it was an indefinite strike, meant to last until management of the abattoir accepted the workers' demands.

660. Having determined that 35 of the 93 signatures affixed to the list of demands were false, that six signatures pertained to workers who had retired, five pertained to former workers at the abattoir, and that the number of workers at the enterprise totalled 339, of whom 325 were permanent and 14 temporary, the General Labour Inspectorate issued a resolution declaring the strike called by the Luis Felipe Acosta trade union illegal, considering that the demands were submitted one day after a group of workers had decided to call a strike, in violation of the provisions of sections 302 and following of the Labour Code. This resolution authorized the enterprise to apply section 229, 239 and 240 of the Labour Code, which state that in the event of an illegal strike, employment contracts signed with strikers shall be terminated at no liability to the employer, who shall be exempt from penalties of any nature which may be levied on strikers for their infringements of the law; that whenever a strike is declared illegal, police authorities shall be ordered to use any means at their disposal to ensure that work will continue; and that if the matter concerns public services in private hands, the Executive Branch may assume control for this same purpose. The law also provides that even though the strike may lead to an agreement between parties, any person who may have committed crimes or misdeeds in connection with the strike may be held liable for such acts. Based on this resolution, on 8 June 1992 authorities at the Amerrisque abattoir provided the Departmental Labour Inspectorate of Chontales with a list of persons whose employment contract had been terminated as a result of the strike having been declared illegal.

661. On 9 June 1992 the trade union filed an appeal of the resolution with the General Labour Inspectorate; the appellant party was informed that it should submit a list of its grievances to the General Labour Office within 24 hours. This Office subsequently upheld the resolution by the General Labour Inspectorate *in toto*, considering that both management and the trade union at the Amerrisque abattoir had signed a collective agreement on 6 May 1992; in other words, although less than a month had passed since the signing of the agreement, which was valid for one year, the trade union had called a strike; moreover, 118 of the 208 signatures affixed to the list of demands had been falsified; the provisions of sections 302 and following of the Labour Code had been violated; and the General Inspectorate had acted in accordance with the law. Trade union officials then filed an appeal with the 5th Regional Court of Appeals, which has not yet rendered its decision.

662. As regards the allegations relative to the free zone and the above-mentioned enterprises, the Government has provided information that does not specifically respond to the allegations.

663. Lastly, as regards the allegation concerning the Penwalt enterprise, the Government states that the Ministry of Labour was not a party in this case, owing to the

fact that from the beginning the complainant workers resorted to the judiciary by filing a claim with the Second Labour Court. In a decision of 8 March 1993, this Court ruled that the claims filed by the 44 workers at the enterprise were without ground. These workers then appealed before the same authority in order to have the case reviewed by the 3rd Regional Court of Appeals in Managua, which has not yet rendered its decision.

THE COMMITTEE'S CONCLUSIONS

664. The Committee notes that the allegations concern the murder, arrest and other acts of violence against trade union officials and unionists, anti-trade union dismissals and other infringements of trade union rights at various enterprises.

665. As regards the allegations concerning the murder of trade union officials, the Committee takes note of the Government's statement that an investigation concluded that Mr. Mercedes Salmerón Arceda (La Florida ranch) was murdered by a former worker at the ranch as a result of a personal quarrel, and that a judiciary investigation found that Mr. Felix Humberto Chavarría Olivás (ATC trade union official) was murdered as a result of personal problems among businessmen. In these circumstances, noting that the Government views these events as unrelated to trade union matters and that the complainants have not provided details as regards the anti-trade union nature of these events, the Committee considers that this aspect of the case does not call for further examination.

666. The Committee takes note of the observations submitted by the Government concerning the allegations relative to acts of violence, to wit:

- As regards the violent eviction of three trade unionists at the La Suiza ranch, the Committee takes note that the workers were evicted as the result of a legal claim for return of property filed by the owner of the ranch, which was granted, and that this case is therefore completely unrelated to labour or trade union affairs.
- As regards the alleged orders to arrest two trade union officials at the La Candelaria plantation, the Committee takes note that the workers employed violence in damaging property and occupied the plantation on 26 April 1992, and that the owners of the plantation have filed a claim in criminal court against ten workers, charging them with the crime of property damage, illegal association for criminal purposes, jeopardizing personal safety and robbery, and that the judgement is still pending.

667. In these circumstances, noting that the Government views these alleged events as unrelated to trade union issues or as abuses of trade union rights, the Committee trusts that the judicial investigations will conclude quickly and that the guilty parties will be punished.

668. As regards the allegations concerning the events which took place at the Customshouses, following the declaration of the strike as illegal (physical aggression against 13 customs workers, leading to the injury of three trade unionists at the Penas Blancas customhouse and the arrest of 60 customs trade union officials), the Committee takes note of the Government's statement that the strike had been declared illegal for failure to comply with provisions of the Labour Code, and that strikers committed a series of crimes (attacking border stations with firearms, resulting in the wounding of two policemen and one customs worker; using violence to occupy customs facilities;

blocking the access of workers who wanted to go to work). It also takes note that documents were forged in order to pit workers against customs authorities, namely a list of dismissed workers bearing the forged signature of the assistant to the General Director of Customs. In addition, concerning acts of violence committed at the San Antonio sugar mill, and as a consequence of a confrontation between strikers, the police and army (leading to the murder of Mr. Francisco Picado Meza, and injuries to Mr. Sergio Silva Gonzales, Mr. Francisco Balmaceda, Mr. Cruz Medina, Mr. Milton Lezama and Mr. Mario Guzmán), the Committee notes that such acts of violence were due to the fact that striking workers at the enterprise attacked the police, and that as a consequence of these confrontations four workers and one policeman were injured, while the reasons for the death of Mr. Francisco Picado Meza have not been determined. As regards these allegations, the Committee observes that strikers resorted to violence, committing criminal acts. In these circumstances, the Committee recalls that the principles of trade union freedom do not protect abuses consisting of criminal acts while exercising the right to strike.

669. The Committee also notes that the Government has not communicated its observations concerning the following allegations: the death threats against workers in the trade union at the La Candelaria ranch, and against Mr. Isaías Jiménez and other trade union officials at the La Florida ranch; the harassment and repression of trade union officials Mr. Pedro Turcios, Efrén Sánchez and Juan Vásquez at the National Development Bank, as well as police persecution of Mr. Vásquez; and the violent eviction of 44 workers at the Penwalt enterprise who had gone on a hunger strike at the Central American Bank For Economic Integration (the Government has sent observations concerning the grounds for their claims, but not as regards the violent eviction). The Committee requests the Government to send its observations on these matters as soon as possible. Generally speaking, as regards all these allegations of murder, death threats, physical aggression, police persecution and arrest of trade union officials and unionists, the Committee deeply deplores the numerous acts of violence, and expresses its concern while observing that they have been directed against a large number of trade union officials and unionists. It draws the Government's attention to the fact that trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists, and that it is for governments to ensure that this principle is respected. [See *Digest of decisions and principles of the Freedom of Association Committee*, 1985, 3rd edition, para. 70.]

670. As regards the alleged dismissal of 417 workers for having formed a trade union at the La Candelaria banana plantation, the Committee takes note of the Government's statement that the Court of Appeals has ordered the reinstatement of the trade union executive committee and payment of their social security contributions, and for the remaining dismissed workers the payment of compensation as provided for in the collective agreement, as well as payment of social security contributions. In this sense, the Committee wishes to draw attention to the principle which states that when in practice national legislation allows employers to dismiss employees because of their membership in a trade union or because they engage in trade union activities, provided they pay compensation fixed by law in every case of arbitrary dismissal, there is inadequate protection against acts of anti-trade union discrimination as referred to in Convention No. 98. The Committee therefore requests the Government to take measures to modify the legislation which will ensure adequate protection against acts of anti-trade union discrimination.

671. As regards the dismissal of some 60 unionized workers at the El Relampago plantation, the Committee takes note that the courts have ordered 58 of them to be reinstated.

672. As regards the alleged dismissal of 77 workers at the San Pablo banana plantation, including seven members of the trade union executive committee, the Committee takes note of the Government's statement that the dismissed workers had lodged an appeal against this administrative decision. The Committee once again observes that a very large number of trade union officials and members were dismissed and requests the Government to inform it as to the results of the appeal. The Committee recalls that an excessive delay in processing cases of anti-trade union discrimination is tantamount to a denial of due process.

673. As regards the alleged dismissal of workers in the National Employees' Union, the Committee notes the Government's statement that it cannot communicate its observations in this respect unless the names are provided, as well as the worksites and positions occupied by the persons dismissed. The Committee invites the complainant organizations to provide specific information concerning these allegations.

674. As regards the alleged dismissal of 533 workers of the National Workers' Trade Union at the National Development Bank, the Committee takes note of the Government's statement that the bank offered its staff a totally voluntary staff reduction plan with generous compensation (900 per cent higher than that provided for by law), and that 800 workers signed up for the plan even though only 410 could be accommodated, despite the trade union's opposition to the plan. The Committee, however, reiterates the importance of consulting trade union organizations concerning every staff reduction plan.

675. As regards the allegation concerning which the Fortex, Velcas International, Neptuno and other enterprises in the industrial free zone in the north-east section of the city of Managua offer no opportunity to sign collective agreements and constitute trade unions, the Committee observes that the Government has not specifically replied to these allegations. In these circumstances, the Committee requests the Government to take measures to guarantee the right of workers in the free zones to constitute organizations of their choosing and to engage freely in collective bargaining and to keep the Committee informed in this respect.

676. As regards the alleged dismissal of 53 trade union officials and trade unionists in the Trade Union of Teachers of the National Union of Education Workers — National Association of Teachers (ANDEN), as a result of their trade union activities, the Committee takes note of the Government's statement that two were not dismissed and continue to carry out their duties, two have been reinstated, one was dismissed as part of a restructuring plan, two agreed to a retraining plan, two were transferred owing to restructuring, to which they objected but have made no appeal to the courts, three were dismissed for having conspired with persons who seized an education office, two were dismissed for having seized the office and kidnapped its chief, one was dismissed for slander, two political appointees were dismissed, one has died, and information is still being sought for two others. The Committee requests the Government to inform it as to the specific reasons for the dismissal of the following workers, regarding whom the Government has merely stated that the courts have denied their claims or have not yet ruled on them, or else they have been guilty of unethical conduct: Francisco González, Jorge Aguilar Aguilera, Martha Altamirano Vega, Jazmina Novoa Rufz, Ana Julia Castillo, Laura Bermúdez Robleto, Nury Vanegas, Jaime Castilla Vílchez, Marina

Liliana Duarte Cruz, Aminta Morales Videa, Ruth Espinoza Ordóñez, Melba Luz Aguilera, Martha Teófila Valladares Martínez, Isaura Chavarría Salgado, Brenda López Calderón, Mirna Blandón Gadea, Martha Rivera Blandón, Socorro Palacios Castro, René Hernández Valle, Denis Martínez Ruíz and Claudia Castillo Lechado. The Committee also requests the Government to communicate its observations concerning workers to whom no reference has been made: Felicita Corrales, Ana María Zavala, Idalia Mendoza Sanarruza, Reynaldo Alvarez, Walter Cabrera, Luz Delia Carvajal, Norman García and Miriam Olivas Ardón. The Committee also requests the Government to keep it informed of all legal proceedings currently under way in this connection.

677. The Committee also notes that the Government has not sent sufficient information concerning the following dismissals: (1) at the Alfonso Angelina plantation (15 trade unionists); (2) at the El Paraiso ranch (general secretary of the Tránsito Torres Pérez trade union); and (3) the La Florida ranch (nine trade unionists). In these circumstances, the Committee requests the Government to provide the specific reasons for these dismissals so that it can issue an opinion in this respect.

678. As regards the allegation that 140 unionized workers were dismissed at the Amerisque abattoir, including every member of the executive committee, and that a court decision ordering the reinstatement of the dismissed workers was ignored, the Committee takes note of the Government's statement that following an inquiry, the General Labour Inspectorate confirmed that 46 of the 93 signatures on the list of demands were false, that the total number of workers is 339, that the strike called by the trade union was consequently declared illegal, and that the enterprise was authorized to terminate the contracts signed with the strikers. The Committee also notes that this matter has been submitted to the Court of Appeals. The Committee wishes to draw the Government's attention to the fact that the massive dismissal of strikers poses a serious risk of abuse and undermines freedom of association. Competent authorities should be given appropriate instructions so as to obviate the dangers to freedom of association that such dismissals involve. [See *Digest*, op. cit., para. 442.] The Committee regrets these massive dismissals for having taken part in a strike, and requests the Government to inform it of the decision reached by the Court of Appeals.

679. Generally speaking, as regards the many alleged anti-trade union dismissals in various enterprises and in view of the fact that these dismissals affect a large number of trade union officials and trade unionists, the Committee reminds the Government that no one should be the target of anti-trade union discrimination for having engaged in legitimate trade union activities, and that "protection against acts of anti-union discrimination should cover not only hiring and dismissal but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker". [See *Digest*, op. cit., para. 544.]

680. As regards the allegation that the general secretary of the Trade Union of Teachers of the National Union of Education Workers — National Association of Teachers (ANDEN) was expelled, the Committee notes that an appeal has been filed with the Supreme Court of Justice and that a decision has not yet been rendered. In these circumstances, the Committee requests the Government to keep it informed concerning the decision by the Supreme Court.

681. Lastly, as regards the allegations of a freeze of social security contributions in public administration collective agreements, the Committee observes that the Government denies these allegations, stating that not only have the collective agreements

been complied with, but also that 27 new agreements in the public sector were signed in 1993.

THE COMMITTEE'S RECOMMENDATIONS

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

- (a) Deeply deploring the acts of violence which occurred at the La Suiza ranch and the La Candelaria plantation, and drawing the Government's attention to the fact that trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind, the Committee trusts that the judiciary investigations will conclude quickly and that the guilty parties will be punished.
- (b) The Committee requests the Government to communicate its observations concerning the following allegations as soon as possible: the alleged death threats against unionized workers at the La Candelaria plantation and against Mr. Isaías Jiménez and the other trade union officials at the La Florida ranch; the harassment and repression of trade union officials Pedro Turcios, Efrén Sánchez and Juan Vásquez of the National Development Bank, as well as the police persecution of the latter official; and the violent eviction of 44 workers at the Penwalt enterprise who had gone on a hunger strike at the headquarters of the Central American Bank for Economic Integration.
- (c) The Committee requests the Government to inform it as to the results of the appeals filed by dismissed workers at the San Pablo plantation and the Amerrisque abattoir. The Committee also requests the Government to inform it of the decision handed down by the Supreme Court of Justice concerning the expulsion of the General Secretary of the National Union of Education Workers — National Association of Teachers (ANDEN) from the National Education Council.
- (d) The Committee requests the Government to point out the specific reasons for the dismissals at the Alfonso Angelina plantation, the El Paraiso ranch and the La Florida ranch, so that it can issue an opinion in this respect.
- (e) The Committee requests the Government to take measures to modify legislation which will ensure adequate protection against acts of anti-trade union discrimination.
- (f) The Committee requests the Government to take measures to guarantee the right of workers in the free zones to constitute organizations of their choosing and to engage freely in collective bargaining and to keep the Committee informed in this respect.
- (g) The Committee invites the complainant organizations to provide specific information concerning the alleged dismissals of workers affiliated with the National Employees' Union.

Case No. 1737

*Complaint against the Government of Canada
presented by
the Canadian Association of Smelter and Allied Workers (CASAW)*

683. The Canadian Association of Smelter and Allied Workers (CASAW) presented a complaint against the Government of Canada in communications dated 9 August and 15 October 1993.

684. The federal Government transmitted its observations and information in a communication of 31 March 1994.

685. Canada has ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). It has not ratified the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) or the Collective Bargaining Convention, 1981 (No. 154).

A. THE COMPLAINANT'S ALLEGATIONS

686. In its communication of 9 August 1993, the complainant states, in relation to a labour dispute which took place at Royal Oak Mines Inc. in Yellowknife (Northwest Territories), that the Government has appointed five dispute resolution mechanisms which, at the date of the communication, had all failed. The complainant argues that these delays and the conduct of the courts have helped the employer refuse to bargain. CASAW also complains about the "biased conduct" of the Royal Canadian Mounted Police (RCMP) which it says contravened Conventions Nos. 87 and 98.

687. The complainant submits that the employer has engaged in a deliberate policy of union-busting which began shortly after it purchased the Giant Mine in November 1991. The lockout on 22 May 1992 was part of the company's policy to get rid of CASAW Local 4. These policies are contrary to the Canada Labour Code.

688. It adds that the federal Government and the Government of the Northwest Territories have assisted Royal Oak Mines in a variety of ways in carrying out its union-busting objectives. This assistance includes the provision of police forces which have policed the strike in a one-sided manner; allowing Royal Oak to repeatedly violate safety and environmental laws in order to keep the mine operating; and in permitting endless delays to the processes initiated by the Canadian Labour Relations Board and the special mediators/Industrial Inquiry Commission which were supposed to resolve this dispute.

689. The RCMP have also acted as agents of Royal Oak Mines in the biased manner in which they have policed the labour dispute from the outset. The RCMP investigation of the 18 September 1992 explosion at the Giant Mine has been conducted in a manner that has resulted in the constant harassment of the leadership of CASAW Local 4 and most of the active union members and, in the course of this investigation, the civil rights of union members have been violated.

690. CASAW attaches to the complaint a letter, dated 21 July 1993, from its Local 4, directly involved in the lengthy and bitter labour dispute, which culminated on 18 September 1992 with an underground explosion at the mine, killing nine people. CASAW Local 4 contends that under the guise of investigating the explosion, the RCMP has been playing a major and inappropriate role in the dispute, and submits that many of its members have been brought to the courts on criminal charges which were later

dropped or found to be without basis. Several members against whom charges were dismissed at preliminary hearings faced new charges. Very few charges have been laid by the RCMP against company security guards and strikebreakers who have provoked much of the violence during the strike, and the Crown has been slow to prosecute where charges have been laid. Some CASAW members have been sentenced to jail for unjustly long periods of time.

691. CASAW Local 4 contends that the RCMP helped foster the perception by the Yellowknife community that its members were largely responsible for the violence which erupted during the strike, which added to the frustration of being unable to end the strike, and to the long delays of conciliation, mediation, etc. It highlights some of the events which occurred:

- In June 1992 relations were already bad enough that CASAW asked the RCMP to assign a labour coordinator to the local detachment to ease communication between them; this request was denied on the ground that it was unnecessary.
- On 9 November 1992, CASAW filed a complaint with the RCMP Public Complaints Commission alleging improper involvement in its labour dispute and harassment and intimidation of its members and their families. The Commission has not yet issued a report.
- On 25 May 1993, CASAW wrote to the Labour Minister to complain of improper conduct by the Commanding Officer of the Yellowknife RCMP. The officer had erroneously claimed, in writing, to another union that CASAW was in agreement with the RCMP's investigation of the explosion. CASAW was told by the Labour Minister that the matter would be passed to the Solicitor General of Canada; there has been no further acknowledgement of the issue.
- On 2 June 1993, CASAW wrote to the Solicitor General to request increased protection by the RCMP against strikebreakers who were threatening and assaulting picketers on the picket line. CASAW also continued in this letter some of its complaints against the RCMP, and made the letter public.
- Since the incident outlined in the letter of 25 May, CASAW has ceased to have "liaison" meetings with the RCMP. It renewed its request to have a labour coordinator assigned, and was again refused.
- On 15 June 1993, the RCMP, in what was termed a "dragnet" operation, harassed a large number of CASAW members in their homes, in the presence of their children. This operation, the first of its kind, was ostensibly related to the investigation of the explosion. CASAW believes it was conducted in retaliation and to intimidate it and its members.

692. The complainant attaches to the complaint a series of press clippings from local newspapers reporting some of the events and describing the tense atmosphere which then prevailed.

B. THE GOVERNMENT'S REPLY

693. In its communication of 31 March 1994, the Government replies on the first allegation (failure of the authorities in the bargaining process) that the Labour Department made every effort to assist the parties to settle the dispute. When the parties

were unable to conclude a renewal of their collective agreement in direct negotiations, a conciliation officer was appointed by the Minister on 20 March 1992 to assist them in their negotiations. The parties' collective agreement expired on 31 March 1992. The conciliation officer met with the parties on 7-9 April 1992, and they were successful in concluding a tentative settlement on 18 April 1992. However, that tentative settlement was rejected in a vote by the union membership. The conciliation officer met with the parties again but, when it became clear that negotiations were at an impasse, the officer filed his final report to the Minister. The parties were advised on 15 May 1992 that the Minister would not be appointing a conciliation commissioner in their dispute (such appointments are rarely made). A legal work stoppage commenced on 23 May 1992.

694. On 1 June 1992, the Minister appointed a mediator to meet with both sides and attempt to settle the dispute. Mediation meetings were held on 7-8 June 1992 in Yellowknife but an agreement was not achieved. Further mediation meetings were held on 22-23 July 1992 without success but the mediator remained in contact with both sides and there were indications just before the 18 September 1992 fatal explosion at the mine that the parties might be prepared to resume negotiations. On 24-25 September 1992, the Federal Minister of Labour met with the parties in Edmonton, Alberta, to discuss ways of settling the dispute. The suggestion that the dispute be settled by binding arbitration did not receive unanimous agreement, but there was an indication from the parties that a further mediation effort would be welcome.

695. On 30 September 1992, the Minister of Labour appointed Messrs. Donald R. Munroe, Q.C., and Vincent Ready, two high-profile, experienced labour practitioners from Vancouver, BC, as special mediators. They familiarized themselves with the parties' positions and held joint meetings prior to the release of an interim report with recommendations on 26 November 1992. The union accepted the recommendations which provided a process of arbitration for employees dismissed during the strike, but the company rejected the recommendations on 21 December 1992.

696. On 22 December 1992, the Federal Minister of Labour took the extraordinary step of appointing Messrs. Munroe and Ready as an Industrial Inquiry Commission under the Canada Labour Code, with a mandate to settle the labour dispute or file a report with recommendations if no settlement was forthcoming. The Commissioners held public hearings in late January 1993, and held numerous meetings with the parties over the following months until late August 1993, when it was decided to file a report with recommendations. The Commission suspended proceedings for two or three months in early 1993 while awaiting the outcome of Canada Labour Relations Board (CLRB) proceedings concerning an unsuccessful challenge by a rival union to replace CASAW as bargaining agent for the miners. The Commission's report, which provided a comprehensive process for settlement of the dispute was released to the parties and the public on 16 September 1993. The report was accepted by the union but rejected by the company.

697. The CLRB is an independent, quasi-judicial tribunal established under the Canada Labour Code, consisting of a chairman, five vice-chairmen and eight members appointed by Order-in-council for specified terms. The union requested the CLRB in October 1993 to resume hearings into its complaint, alleging that the company had failed to bargain in good faith. In order to file the complaint, CASAW needed the consent in writing of the Minister of Labour. Consent was requested on 14 April 1993, and after a response from the company was requested, and received, as provided for in the Canada Industrial Relations Regulations, both submissions were considered and

ministerial consent was granted on 14 May 1993. The CLRB scheduled hearing dates beginning in late July 1993, but those dates were postponed *sine die* at the request of the parties.

698. After eight days of public hearings in Yellowknife, the CLRB found on 11 November 1993, that the employer had failed to bargain in good faith, contrary to section 50(a) of the Canada Labour Code. The order of the CLRB provided a process for settlement of the labour dispute which was based upon the recommendations of the Industrial Inquiry Commission. Pursuant to that order, the company made an offer to the union which was accepted by the union membership in a ratification vote on 16 November 1993. Four outstanding collective bargaining issues were decided in an award of 13 December 1993, by mediators/arbitrators appointed by the CLRB. Surface employees returned to work on 1 December 1993, and underground employees returned to work on 21 December 1993. Some 50 employees, who were dismissed during the work stoppage, have the opportunity to have their case reviewed by the mediators/arbitrators, with hearings scheduled to begin in April 1994.

699. On 7 December 1993, Royal Oak Mines Inc. filed an application with the Federal Court of Appeal seeking judicial review in order to overturn the CLRB decision of 11 November 1993. A company motion for a stay of proceedings pending a final decision on its application was rejected by the court on 21 December 1993. The Federal Court of Appeal was scheduled to hear the company's application for judicial review on 23-24 March 1994.

700. This brief history of the labour dispute illustrates that every effort was made by the federal Government to assist the parties to arrive at a resolution of their collective bargaining differences. The complainant's allegation that the federal Government is responsible for the length of time it took to settle this labour dispute is not supported by the facts.

701. On the second issue raised by the complainant (biased conduct of the RCMP) the Government states that the police force has been caught in the middle of the situation from the outset of the dispute, and criticism has been levelled at the RCMP from both the union and the employer.

702. As regards the allegation that the manner in which the murder investigation was conducted amounted to constant harassment of CASAW members, while it is true that CASAW members had to be interviewed on several occasions, this was primarily due to the lack of cooperation extended by the CASAW union as a whole and/or its individual members. Ultimately, one CASAW member has been charged with nine counts of murder, and two other CASAW members have been charged with a number of other serious criminal charges. All three of these persons are being held without bail. An aggressive criminal investigation was necessary in this case and, as these matters are before the courts, it would be inappropriate to comment further at this stage.

703. In addition to these serious criminal charges, a number of other criminal charges have been laid during this 18-month dispute. These charges are for the most part related to assaults, weapons offences and property offences, and involved CASAW members, replacement workers, and some company employees. While individuals from all groups have been charged, the majority of people charged are CASAW members. Approximately 25 CASAW members have already been convicted in criminal court and a number of others are awaiting decisions of the courts.

704. During the last 18 months, either individual union members, or the union itself, has tendered numerous public complaints regarding the conduct of members of the

RCMP. Approximately 50 such allegations have been investigated by the independent RCMP Public Complaints Commission (PCC). While that investigation is complete, their final report is still being prepared. In addition to the matters being examined by the PCC, the RCMP has investigated another 28 public complaints. To date, only one such complaint throughout this very volatile labour dispute has required that discipline be administered to a police officer.

705. The Government also communicates a letter of 18 January 1994, from the Government of the Northwest Territories, dealing with several environment and mining safety issues, which generated some controversy between the parties from May 1992 to October 1993. The Government also attaches several reports and decisions relating to the dispute:

- report of the Special Mediators, 25 November 1992;
- report of the Industrial Inquiry Commission, 13 September 1993;
- decision of the CLRB, 11 November 1993;
- report of the Mediators/Arbitrators, 13 December 1993.

THE COMMITTEE'S CONCLUSIONS

706. The Committee notes that the allegations in this case are related to events surrounding a private sector labour dispute in the Northwest Territories of Canada. The CASAW complains about the long delays incurred throughout the dispute resolution procedures which, it alleges, have helped the employer refuse to bargain; it also criticizes the biased conduct of the Royal Canadian Mounted Police which it says constitutes interference, contrary to Conventions and principles on freedom of association.

707. Concerning the first issue, the Committee notes that the Canada Labour Code establishes an elaborate framework for the settlement of labour disputes, including mediation, conciliation and other third-party intervention with the help of the Department of Labour (now the Department of Human Resources Development).

708. The reports and decisions submitted to the Committee show that that dispute was inordinately protracted and bitter, and that violence erupted on several occasions, with the tragic culminating event which took nine workers' lives. It also appears that the dispute was further complicated and prolonged by several factors, including: the fact that the initial tentative agreement was rejected by the union membership, which meant the emergence of a different union leadership, both in terms of collective bargaining and executive responsibility; the continued operation of the mine despite the legal strike/lockout; the dismissal of some 45 striking employees by reason of their alleged serious misconduct; the general destabilizing impact of the explosion and resulting deaths; and the parallel representational proceedings lodged by a second workers' organization which attempted to be certified as bargaining agent for the workers of Royal Oak Mines.

709. The Committee would in particular quote some extracts from the report of the special mediators, dated 25 November 1992, which illustrate the unusual nature of the dispute and might explain the long delays involved:

The work stoppage was attended by considerable violence. This reached a tragic crescendo on 18 September 1992, when an explosion at the mine killed nine miners. The responsible police

authorities continue to investigate the explosion and resulting deaths as a culpable homicide ... we can say without equivocation that this is *the most* difficult labour dispute that either of us has witnessed (p. 3) ... To that end, [a settlement of the issues] *both parties* must adjust their negotiation behaviour. In the more recent stages of our mandate, the union has acknowledged the earlier tentative agreement as being at least something of a benchmark: indicating that a settlement of the dispute can be found somewhere between the content of the expired collective agreement, on the one hand, and the earlier rejected tentative agreement, on the other. While that amounts to a new position and might therefore be regarded as progress, it falls short of comprising a realistically concrete proposal sufficient to generate real momentum at the bargaining table. But if the union is to be further motivated toward settlement, the employer must likewise be realistic. More particularly, the employer must restrain itself from taking bargaining positions which it surely must know would be unacceptable to virtually any organization of workers. It is one thing to say that circumstances have changed such that the content of the tentative agreement is no longer good enough. It is another to construct unmanageable bargaining gaps (p. 7) ... As a matter of law, the dispute between these parties is essentially private in nature. But as a matter of fact, the public fallout from the dispute has been enormous and, at least in our experience, unprecedented. Both sides owe it to the surrounding community to take a serious and tangible step toward a resolution of this seemingly intractable dispute (p. 8) (emphasis added).

710. The same labour law practitioners were appointed later as an Industrial Inquiry Commission and issued on 13 September 1993 a report and recommendations, which made extensive reference to their previous conclusions, and stated, *inter alia*:

The bargaining logjams between the parties are not easily broken. As we stated in our first report as special mediators, and as we now repeat, *both parties* must adjust their negotiating behaviour. On the one hand, the union must come to the realization that the expired collective agreement and the once-rejected tentative agreement are not the exclusive reference points. Things have changed. And a settlement is not likely to be achieved so long as the union continues to firmly anchor itself to those two documents. On the other hand, drawing once more on our report as special mediators, "... the employer must restrain itself from taking positions which it surely must know would be unacceptable to any organization of workers". Succinctly stated, it is one thing to come forward with a settlement package which is tough and even unpalatable. But it is quite another thing to knowingly adopt an overall bargaining stance making it impossible for the other side to participate in a resolution of the dispute (p. 30) (emphasis added).

711. CASAW Local 4 had also filed a complaint of unfair labour practice against Royal Oak Mines to the Canada Labour Relations Board (CLRB), which determined that the respondent employer had not been bargaining in good faith and had not made every reasonable effort to enter into a collective agreement, as required by section 50(a) of the Code. The Board found, *inter alia*, that the employer had required, as a precondition of bargaining, that there be no independent process for the adjudication of cases of employees discharged for picket line and related activity. The Board found that, in the circumstances, this was an improper condition that amounted to a failure to bargain in good faith. The Board ordered the employer to submit to the union, as an offer, a proposal or a collective agreement, and ordered a back-to-work protocol and a procedure for determining the question of just cause with respect to the dismissed employees. The Board was highly critical of the bargaining postures of both parties.

712. In the meantime, another decision had been issued by the CLRB, denying an application by a second workers' organization, the Giant Mine Employees' Association (GMEA); the CLRB found that the GMEA lacked majority support and was dominated by the employer. Finally, as there remained some unresolved collective bargaining issues, a further third-party intervention was necessary, and a mediation/arbitration decision containing binding recommendations was released on 13 December 1993.

713. In the Committee's opinion all these documents give ample objective reasons explaining the delays in this dispute. In addition, and perhaps more importantly, the excerpts quoted above demonstrate that there were on both sides subjective factors which complicated and delayed it even more. On balance, the evidence adduced shows that, taking into account the unusually difficult circumstances of this dispute, the Government made every effort to help the parties conclude a settlement, through the various procedures established under the Canada Labour Code. It should be pointed out however that, in the last analysis, primary responsibility for the settlement of disputes rests with the parties concerned. The Committee considers that this aspect of the case does not call for further examination.

714. As regards the second issue, namely the allegedly biased police attitude and interventions during the strike/lockout, the Committee refers to the description of events given above and notes that the independent RCMP Public Complaints Commission conducted an investigation on some 50 allegations regarding the conduct of members of the RCMP during the dispute, and that it is preparing its report in this respect. It requests the Government to provide a copy of that report once it is published.

THE COMMITTEE'S RECOMMENDATIONS

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

- (a) The Committee considers that the Government made every effort to help the parties to the dispute conclude a settlement, through the various procedures established under the labour legislation, and that this aspect of the case does not call for further examination.
- (b) The Committee requests the Government to provide a copy of the report of the independent RCMP Public Complaints Commission on the allegations regarding the conduct of members of the RCMP during the dispute, once it is published.

Case No. 1761

*Complaint against the Government of Colombia
presented by
— the Latin American Central of Workers (CLAT) and
— the World Federation of Trade Unions (WFTU)*

716. The complaints are contained in communications from the Latin American Central of Workers dated 1 and 10 September 1993 and 17 February 1994 and in a communication from the World Confederation of Trade Unions (WFTU) of 24 February 1994. The Government sent some observations in a communication dated 28 April 1994.

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

A. THE COMPLAINANTS' ALLEGATIONS

718. In its communications of 1 and 10 November 1993 and 17 February 1994 the Latin American Central of Workers (CLAT) alleges that Rodrigo Rojas Acosta was assassinated on 25 October 1993, at 9.30 in the evening, outside his house in the Luis Rolón district of Barrancabermeja. Two hired assassins killed him at point-blank range. He was 28 years old and an active member of the Revolutionary Independent Workers' Movement (MOIR). He joined the Ecopetrol enterprise as a labourer in 1987 and two years ago was elected member of the executive committee of the petroleum refining branch of the Workers' Trade Union (USO). Mr. Rojas stood for the trade union elections in December 1993.

719. The CLAT adds that Mr. Israel Perea was assassinated on 11 October 1993 at 5.30 in the afternoon, in the municipality of Turbo, a banana region in Urabá (department of Antioquia). He was president of the Association of Port and Field Labourers of Urabá. He was 70 years old and an active member of the Colombian Liberal Party.

720. In its communication of 24 February 1994, the World Federation of Trade Unions alleges:

- the assassination of Reinaldo Maiguel Camelo, member of the executive committee of the SINTRAINAGRO branch in Magdalena, on 14 February 1994 at his home (Ciénaga);
- the arrest of Jorge Luis Ortega García, Rafael Tobar Arrieta, Flavio Trivino, Luis Fernando Orozco, César Martínez, Evelio Guiceno, Héctor Escobar and Germán Roncancio, members of the executive committee of the CUT, on 12 February 1994, by the Public Prosecutor's Office and the 13th Army Brigade, when they were participating in a seminar on economic solidarity and cooperativism on the premises of the retired workers of the National University of Colombia in Mesitas del Colegio;
- the arrest of Alvaro Solano, secretary-general of FEDEPETROL, on 11 February 1994 in Neiva, at the end of the First Forum for the Reversion of the Petroleum Industry;
- the arrest of Freddy Pulecio, a national leader of the Petroleum Workers' Trade Union, on 17 February 1994 in Arauca, as well as the arrest of Pedro Chaparro and Nicodemo Luna, members of the same trade union, and Orlando Patiño, of the Workers' Trade Union (USO) affiliated to FEDEPETROL;
- the expulsion of workers from the headquarters of the Construction Workers' Trade Union (SINDICONS), on 11 February 1994 in Cali; and
- the carrying out of inspection visits by members of the State security to trade union meetings and headquarters, for example the Congress of the National Federation of Construction and Cement Workers, which was held in Bogotá between 9 and 12 February 1994.

B. THE GOVERNMENT'S REPLY

721. In its communication of 28 April 1994, the Government states that the trade union officials Israel Perea and Reinaldo Maiguel Camelo were assassinated and that information has been requested on the present state of the investigations.

722. As regards the alleged arrest of eight trade union officials on 12 February 1994 in Mesitas del Colegio, the Government states that these were members of the National Liberation Army who were attending a guerrilla summit meeting and were found to be in possession of maps of the municipality and plans of two electrical power stations.

723. The Government also states that Mr. Pedro Chaparro was arrested on 30 April 1993 in Barrancabermeja following an order for his capture issued by the regional public prosecutor's office. Mr. Chaparro was subsequently transferred to the Modelo prison in Bogotá.

724. Finally, the Government points out that the trade union official Alvaro Solano was not arrested in Neiva but it was known that he had been transferred to Bogotá. The Government adds that the Administrative Department of Security (DAS) requested to give any information on the arrest.

THE COMMITTEE'S CONCLUSIONS

725. The Committee notes with concern the serious nature of the allegations concerning the assassination of three trade union officials, the arrest of 12 trade union officials and trade unionists, the expulsion of workers from the headquarters of the Construction Workers' Trade Union and the carrying out of inspection visits by members of the State security to trade union meetings and headquarters.

726. In general, the Committee draws to the Government's attention that trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists or members of such organizations and that it is the responsibility of governments to ensure that this principle is respected [see 291st Report, Case No. 1700 (Nicaragua), para. 310]. Furthermore, freedom of association can be exercised only in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see, for example, 233rd Report, Case No. 1233 (El Salvador), para. 682 and 238th Report, Cases Nos. 1199, para. 267; 1262, para. 280 and 239th Report, Cases Nos. 1176, 1195 and 1215, para. 225(c)].

727. More specifically, as regards the allegations concerning attacks on the right to life, the Committee deeply deplores the assassination of the trade union officials Rodrigo Rojas Acosta, Israel Perea and Reinaldo Manguel Camelo and notes that the Government only gives vague information on the existence of inquiries into the last two mentioned murders. The Committee wishes to insist on the need for judicial inquiries to be carried out in all the cases to clarify the facts, determine responsibilities and punish the guilty parties and requests the Government to take the necessary steps to this end and to keep it informed of the outcome of such investigations. The Committee recalls that the absence of judgements against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, which is extremely damaging to the exercise of trade union rights. [See 288th Report Cases Nos. 1273, 1441, 1494 and 1524 (El Salvador), para. 30; 291st Report, Cases Nos. 1273, 1441, 1494 and 1524 (El Salvador), para. 241; and 292nd Report, Cases Nos. 1434 and 1477 (Colombia), para. 255.]

728. As regards the arrest of eight trade union officials on 12 February 1994 in Mesitas del Colegio, the Committee notes that according to the Government, these

persons were members of the National Liberation Army attending a guerrilla summit meeting and were found in possession of maps of the municipality and plans of two electrical power stations. The Committee notes that the Government's version contradicts that of the complainant organizations, which maintain that the officials in question were participating in a seminar on economic solidarity and cooperativism. In these circumstances the Committee requests the Government to indicate whether legal proceedings have been brought against the trade union officials in question and whether they have been released.

729. As regards the other alleged arrests, the Committee notes that the Government has not furnished any observations (in the case of Messrs. Freddy Pulecio, Nicodemo Luna and Orlando Patiño) or has given insufficient information (Messrs. Alvaro Solano and Pedro Chaparro) to enable the Committee to ascertain whether the arrests were due to trade union reasons. The Committee therefore requests the Government to indicate the facts and offences allegedly committed by these officials, whether legal proceedings have been initiated against them and whether they have been released.

730. In general, the Committee emphasizes that the detention of trade unionists and trade union leaders for reasons connected with their activities to defend the interests of workers is contrary to the principles of freedom of association [see 217th Report, Case No. 1508 (Sudan), para. 412(c)].

731. Finally, the Committee requests the Government to send its observations on the other allegations to which it has not replied: (1) the expulsion of workers from the headquarters of the Construction Workers' Trade Union (SINDICONS) on 11 February 1994 in Cali; and (2) the carrying out of inspection visits by members of the State security to trade union meetings and headquarters, for example the Congress of the National Federation of Construction and Cement Workers which was held in Bogotá between 9 and 12 February 1994.

THE COMMITTEE'S RECOMMENDATIONS

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

- (a) Recalling that trade union rights can be exercised only where fundamental human rights, and in particular the right to life and the security of the person are fully respected and guaranteed, the Committee requests the Government to take steps to ensure that judicial inquiries are carried out to clarify the facts, determine responsibilities and punish the authors of the assassination of the trade union officials Rodrigo Rojas Acosta, Israel Perea and Reinaldo Maiguel Camelo, which the Committee deeply deplores and repudiates. The Committee requests the Government to keep it informed in this regard. It also recalls that the absence of judgements against the guilty parties creates in practice, a situation of impunity, which reinforces the climate of violence and insecurity, which is extremely damaging to the exercise of trade union rights.
- (b) As regards the arrest of eight trade union officials on 12 February 1994 in Mesitas del Colegio, the Committee requests the Government to state whether proceedings have been initiated against these trade union officials and whether the latter have been released.

- (c) As regards the other allegations of the arrest of trade union officials (Freddy Pulecio, Nicodemo Luna, Orlando Patiño, Alvaro Solano and Pedro Chaparro), the Committee requests the Government to indicate the facts and offences allegedly committed by these officials, whether proceedings have been initiated against them and whether the officials have been released.
- (d) Finally, the Committee requests the Government to send its observations on the allegations to which it has not replied: (1) the expulsion of workers from the headquarters of the Construction Workers' Trade Union (SINDICONS) on 11 February 1994 in Cali; and (2) the carrying out of inspection visits by members of the State security to trade union meetings and headquarters, for example the Congress of the National Federation of Construction and Cement Workers which was held in Bogotá between 9 and 12 February 1994.

Geneva, 20 June 1994.

Jean-Jacques Oechslin,
Chairman.

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295th and 296th Reports of the Committee on Freedom of Association

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66	XLVI	1963	1 S
67-68	XLVI	1963	2 SI
69-71	XLVI	1963	3 SII
72	XLVII	1964	1 S
73-77	XLVII	1964	3 SII
78	XLVIII	1965	1 S
79-81	XLVIII	1965	2 S
82-84	XLVIII	1965	3 SII
85	XLIX	1966	1 S
86-88	XLIX	1966	2 S
89-92	XLIX	1966	3 SII
93	L	1967	1 S
94-95	L	1967	2 S
96-100	L	1967	3 SII
101	LI	1968	1 S