Committee notes that according to the Government this enterprise fully respected the collective agreement in force in the restructuring process, that there was coordination with trade union organizations and that a plan for voluntary withdrawal was established.

280. The Committee points out that since its mandate is to examine allegations of infringements of trade union rights, it can express its opinions on restructuring programmes, which may or may not involve staff reductions, only to the extent that they may have given rise to acts of anti-trade union discrimination or interference. Furthermore, the Committee observes that although the allegations affected a large number of trade unionists whose interests have been prejudiced by the state modernization and restructuring process, these processes were of a global nature and affected not only trade unionists but a large number of workers both in the public and private sectors. Finally, the Committee notes that the complainants have provided no evidence allowing these events to be classified as anti-trade union acts, that no judicial proceedings have been initiated in this respect and that the Government denies that the restructurings had any anti-trade union objective.

281. However, although the Government has emphasized that there was concertation between the COLPUERTOS enterprise and trade union organizations, the Committee cannot say in the case of the Agrarian, Industrial and Mining Credit Fund, and the National Railways, whether there was or was not consultation with the trade union organizations on the restructurings.

282. The Committee notes that this case must be set within the context of macroeconomic rationalization with the subsequent restructuring of public enterprises. In most cases these restructurings have been carried out in the enterprises mentioned by the complainants with significant consequences in terms of employment and working conditions. In the absence of any consultation with the trade union organizations, the Committee emphasizes that it is important that the Government consult with trade union organizations to discuss the consequences of restructuring programmes on employment and working conditions of employees [see in this respect the 286th Report of the Committee, Case No. 1609 (Peru), para. 437].

283. As regards the allegations made in Case No. 1702, in which the complainants allege that a reorganization of the department of Córdoba resulted in the dismissal, without compensation, of seven trade union officials and 200 members of the Union of State Workers, the Committee notes the observations of the Government that the Departmental Assembly of Córdoba promulgated different ordinances for the restructuring of the local administration, resulting in the suppression of several posts and the dismissal of more than 200 persons, not as part of an anti-trade union policy but exclusively as a result of the restructuring plans. In the same way, the Committee notes that as a result of these events the leaders of the trade union organization took the matter to the courts. The Committee notes that although some of the legal rulings in the first instance were in

favour of the workers, these rulings were revoked by the superior court since the plaintiffs failed to establish their status as "official workers"; it also notes that the other workers dismissed were not compensated and have taken judicial action in the labour courts.

284. In these circumstances, since the dismissed workers include seven trade union officials and 200 members and given the lack of further information on the total number of dismissed workers, the Committee cannot determine whether there was an overall restructuring process which affected all employees or only trade unionists. Noting that judicial proceedings are under way in connection with these dismissals, the Committee therefore asks the Government to keep it informed of the final outcome of these proceedings, which will allow it to reach a decision on the allegations in full knowledge of all the facts.

The Committee's recommendations

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

(a) The Committee requests the Government to consult with trade union organizations to discuss the consequences of macroeconomic restructuring programmes on employment and the working conditions of employees.

(b) The Committee requests the Government to keep it informed of the outcome of the judicial proceedings initiated by trade union officials and members of UTRADEC dismissed in the department of Córdoba as a result of a restructuring process.

Case No. 1721

COMPLAINT AGAINST THE GOVERNMENT OF COLOMBIA
PRESENTED BY
THE NATIONAL UNION OF BANKING EMPLOYEES (UNEB)

286. The complaint was submitted in a communication dated 16 June 1993 from the National Union of Banking Employees (UNEB). The Government sent its observations in a letter of November 1993.

287. 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 complainant's allegations

288. In its communication dated 16 June 1993 the UNEB denounces the transfers to other cities of nine Banco Popular employees.

289. The UNEB states that article 6 of the 1980 collective agreement has not been observed inasmuch as it stipulates that: "upon entry into force of the present collective agreement the transfer of an employee between cities may occur only after account has been taken of any impediment the worker may invoke. Whenever a worker is transferred from one city to another he/she will be granted a lump-sum payment, over and above the expenses laid down by law, of a benefit equivalent to one month's salary; this payment does not constitute a part of the worker's salary".

290. Moreover, the complainants state that on 14 April 1993 Colombian state workers held a nationwide day of protest to denounce the prejudicial nature of 62 government decrees issued under the national Constitution, transitional article 20, authorizing the Government to "merge, abolish or restructure bodies of the Executive, public institutions, industrial and commercial enterprises and national mixed-economy companies with the purpose of aligning them with the directives of the present constitutional reform and, in particular, with those relating to the planned redistribution of powers and resources". They maintain that the effect of the government decrees is to make 60,000 state workers virtually redundant, all of which justifiably provoked a protest on their part. On 23 April 1993, pursuant to an alleged abrupt stoppage of service to the public, five workers of the San Diego branch office of the Banco Popular in Bogotá were dismissed. Later, on 30 April, six more workers in Bucaramanga were dismissed following a protest by the trade union at the dismissals in the San Diego office in Bogotá.

B. The Government's reply

291. In its letter of November 1993 the Government states that the alleged transfers of nine Banco Popular employees were carried out to meet service requirements and for bank restructuring purposes and that the workers were notified of this measure and presented their grounds for not complying with the employer's decision. The reasons invoked were examined by the bank in an endeavour to honour the collective agreement. The Government points out that, ultimately, the result of the negotiations was that six workers arrived at an agreement with the bank through arbitration hearings, another negotiated an agreement directly and the remaining two instituted proceedings before a labour tribunal.

292. In respect of the employees dismissed from the San Diego branch office, the Government states that they were cashiers and were

justly dismissed for not serving customers and that no anti-union discrimination was involved. The Government indicates that these workers instituted the relevant legal proceedings. Finally the Government points out that in Bucaramanga there were grounds similar to those invoked in the San Diego office for justifiably dismissing workers and that the latter have also initiated legal action.

C. The Committee's conclusions

293. The Committee notes that the allegations presented relate to the transfer to other cities of nine Banco Popular employees, in violation of the applicable collective agreement, and to dismissals of workers in the San Diego and Bucaramanga branches of the same bank.

294. Referring to the allegation that nine Banco Popular employees were transferred to other cities in violation of the collective agreement, the Committee takes note of the Government's statement (1) that these transfers were carried out to meet service requirements and for bank restructuring purposes; (2) that in accordance with the collective agreement in force the workers were consulted and their reasons for not complying with the employer's decision were heard; and (3) that, in fact, of the nine transferred workers seven arrived at an agreement with the bank, the remaining two filing an appeal. Noting the contradictions between the allegations and the Government's reply as to whether or not the collective agreement was applied, the Committee emphasizes the importance it attaches to the fact that freely concluded collective agreements be fully applied.

295. Referring to the alleged dismissals of five San Diego branch office workers of the Banco Popular in Bogotá and of six workers at the Bucaramanga branch of the same bank owing to protests at the San Diego dismissals, the Committee takes note of the Government's statement that the workers' dismissals were justifiable and that they had all filed appeals (the Government invoked shortcomings in the conduct of duties at the San Diego office - failing to serve the public - but has not indicated the reasons justifying the dismissals at the Bucaramanga office). In these circumstances the Committee cannot exclude the possibility that the dismissals are related to the day of protest held by state employees and feels bound to emphasize the principle that no one should be dismissed or prejudiced by reason of his/her legitimate trade union activities. The Committee requests the Government to keep it informed of the result of the appeals lodged by the dismissed workers.

The Committee's recommendations

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

- While emphasizing that no one should be dismissed or prejudiced by reason of his/her legitimate trade union activities, the Committee requests the Government to keep it informed of the result of the appeals lodged by the 11 Banco Popular workers dismissed at the branches of San Diego in Bogotá and Bucaramanga.

Case No. 1572

COMPLAINT AGAINST THE GOVERNMENT OF THE PHILIPPINES PRESENTED BY THE KILUSANG MAYO UNO (KMU)

297. The Committee already examined this case on two occasions, at its November 1991 and November 1992 meetings when it presented interim reports to the Governing Body [see 279th Report, paras. 563 to 585 and 284th Report, paras. 814 to 836, approved by the Governing Body at its 251st and 254th Sessions, respectively (November 1991 and November 1992)].

298. At its November 1993 meeting [see 291st Report, para. 12], the Committee observed that despite the time which had elapsed since the last examination of the case, it had still not received the observations and information it had requested from the Government. The Committee drew the attention of the Government to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, it could present a report on the substance of this case, even if the Government's observations and information had not been received in due time. Since that urgent appeal, the Committee received only one communication from the Government, which referred to another case already examined by the Committee (Case No. 1529).

299. The Philippines have ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

300. The allegations which remained pending at the November 1992 meeting of the Committee concern numerous acts of anti-union violence: deaths and attempted murders, disappearances, attacks on strike

pickets, illegal arrests on the grounds, according to the complainant organization, of trade union membership or based on false charges relating to activities within outlawed political organizations (the complainant organization had referred to reports submitted in 1991 by various independent national and international organizations corroborating its fears concerning the anti-union bias of Civilian Armed Forces Geographical Units (CAFGUs) and the recourse to arrests without warrant).

301. At that meeting, the Committee formulated the following recommendations [see 284th Report of the Committee, para. 836]:

(a) The Committee expresses its deep concern, observing that according to the information sent by the Government, judicial investigations into the murder and disappearance of trade unionists rarely lead to the identification and conviction of the alleged culprits. In the Committee's opinion, this situation means that, in practice, the guilty parties enjoy impunity, which reinforces the climate of violence and insecurity and thus has an extremely damaging effect on the exercise of trade union rights.

(b) The Committee requests the Government to supply its observations on the most recent allegations of the complainant, and in particular to give detailed particulars on the further six murders and six attempted murders of trade union leaders (murders: José Lascano Jr., Asislo Pana, Alexander Cervantes, the Ricablancas, father and son, Arnold Lardizabal and Rolando Bernardo; attempted murders: José Dimabaya and two others workers at the Cervera enterprise, Romeo Montemayor, Salvador Pantaleon, Walberto Garquio and Wilnor Quibral), on the numerous violent attacks on picket lines, and on the arrests of local trade union leaders listed in five incidents from late 1990 to mid-1991, 16 of whom apparently are still in detention awaiting trial (Geronimo Nicolete and Armando Basco; Arlene Tupas and Alan Rubio; Constantino Lahay-Lahay and Certerio Bulingkit; Ruben Palaganas, Delia Ocon, Marilyn Miranda, Arnulfo Rosete, Jun Asento, Eddie Francisco, Rogelio Padilla, Melanio Andrade, Tony Monsalod and Joel Marpa).

(c) Noting that when disorders have occurred involving loss of human life, the rapid setting up of an independent judicial inquiry is a particularly appropriate method of ascertaining the facts in full, determining responsibilities, punishing those responsible and preventing the repetition of such acts, it urges the Government to do its utmost to collect all available information on the four cases of murders of trade unionists still outstanding from its last examination of this case (Messrs. Rey Olano, "Boy" Lisondra, Lino Arog and Ronelo Ginolos).

(d) With regard to the specific allegations on which information was supplied, the Committee notes that, according to the Government's report, progress is continuing in some criminal proceedings, and asks the Government to continue to supplying information on

developments in the various trials, as well as on developments in the case of the three murdered trade unionists (Messrs. F. Pelaro, R. de la Fuente and A. Marfil) and on inquiries into the death of Mr. R. Magbujos.

(e) The Committee again asks the Government to supply information on progress in the sedition trial under way against Mr. Crispin Beltran, Chairperson of the KMU.

B. The Committee's conclusions

302. In the first place, the Committee deeply deplores the lack of Government cooperation with the Committee's procedures and, in particular, regrets that it has failed to provide the information and replies requested, despite the time which has elapsed since the last examination of this case and despite the fact that it has been invited to do so on several occasions, including by means of an urgent appeal.

303. Under these circumstances, and in accordance with the applicable procedure [see 127th Report of the Committee, para. 17, approved by the Governing Body at its 184th Session], the Committee must present a Report on the substance of the matter without the information which it had hoped to receive from the Government.

304. The Committee first of all reminds the Government that the purpose of the whole procedure established in the ILO for examining allegations of violations of freedom of association is to promote respect for the latter in law and in fact. If this procedure protects governments against unreasonable accusations, governments on their side will recognize the importance for their own good name of formulating for objective examination detailed replies to allegations made against them [see First Report of the Committee, para. 31].

305. The Committee deplores the gravity of the allegations which have been made concerning the murder and disappearance of trade union leaders, attempted murders, and numerous physical assaults against persons and arbitrary arrests.

306. In general terms and in view of the nature of these allegations, the Committee expresses its concern at these actions which constitute a direct infringement of the most fundamental human rights and impair the development of a free and independent trade union movement. It draws the attention of the Government to the fact that a climate of violence, such as that surrounding the murder or disappearance of trade union leaders and members, constitutes a serious obstacle to the exercise of trade union rights and is totally incompatible with the principles of freedom of association; such acts require severe measures to be taken by the authorities [see Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 76]. Under these circumstances, the Committee

urges the Government to take the necessary measures to ensure that all the facts alleged which have not yet been subject to a judicial inquiry are investigated as a matter of urgency and to ensure that the investigations already in progress are concluded as quickly as possible with a view to ascertaining the facts, determining responsibilities, punishing the culprits and preventing the recurrence of such acts in the future.

307. In this context, the Committee recalls that the Government had stated that open judicial inquiries into the murder and disappearance of trade unionists rarely lead to the identification and conviction of the alleged culprits. The Committee can only emphasize once again that in its view, the absence of any rulings against the guilty parties implies a de facto impunity which reinforces the climate of violence and insecurity and thus has an extremely damaging effect on the exercise of trade union rights.

308. Specifically, the Committee asks the Government to ensure that an investigation is carried out as a matter of urgency into the murders of Rey Olano, "Boy" Lisondra, Lino Arog, Ronelo Ginolos, José Lascano Jr., Asislo Pana, Alexander Cervantes, the Ricablancas, father and son, Arnold Lardizabal and Rolando Bernardo, as well as the alleged attempted murders of José Dimabaya and two other workers at the Cervera enterprise, Romeo Montemayor, Salvador Pantaleon, Walberto Garquio and Wilnor Quibral, and to keep it informed of the findings of that inquiry.

309. As regards the numerous violent attacks on strike pickets, 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]. Furthermore, in the view of the Committee, 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; such acts constitute criminal offences in many countries [see Digest, op. cit., para. 435]. Furthermore, the action of strike pickets organized in accordance with the law should not be subject to interference by the public authorities, who should resort to the use of force only in grave situations where law and order are seriously threatened [see Digest, op. cit., paras. 432 and 431 respectively]. The Committee therefore requests the Government to open an impartial and thorough inquiry into the facts of the case to determine the nature and justification of the actions taken by the law enforcement authorities and determine responsibilities, and to keep it informed of the findings of that inquiry.

310. As regards the arrests of local trade union leaders in the course of five incidents which took place between late 1990 and mid-1991, of whom 16 were still in detention and awaiting trial (Geronimo Nicolete and Armando Basco; Arlene Tupas and Alan Rubio; Constantino Lahay-Lahay and Certerio Bulingkit; Ruben Palaganas, Delia

Ocon, Marilyn Miranda, Arnulfo Rosete, Jun Asento, Eddie Francisco, Rogelio Padilla, Melanio Andrade, Tony Monsalod and Joel Marpa), the Committee reminds the Government that the 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 this principle, to which it attaches great importance, the Committee asks the Government to keep it informed of any developments in the situation of all the trade union leaders arrested and state whether they have been released and reinstated in their posts.

311. The Committee again urges the Government to keep it informed of any developments in prosecutions arising from the murder of trade unionists (Messrs. F. Pelaro, R. de la Fuente and A. Marfil), of the findings of the investigation now under way into the death of Mr. R. Magbujos and of any developments in the trial of Mr. C. Beltran, Chairperson of the KMU, who is charged with sedition.

The Committee's recommendations

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

(a) The Committee deplores the gravity of the allegations which have been made concerning the murder and disappearance of trade union leaders, attempted murders, numerous physical assaults on persons and arbitrary arrests, which constitute a direct infringement of basic human rights and impair the development of a free and independent trade union movement. It draws the attention of the Government to the fact that a climate of violence, such as that surrounding the murder or disappearance of trade union leaders and other persons, constitutes a grave obstacle to the exercise of trade union rights and is totally incompatible with the principles of freedom of association.

(b) Emphasizing once again that in its view, the absence of any ruling against the guilty parties implies a de facto impunity which reinforces the climate of violence and insecurity and thus has an extremely damaging effect on the exercise of trade union rights, the Committee requests the Government to ensure that an inquiry is carried out as a matter of urgency into the murders of Rey Olano, "Boy" Lisondra, Lino Arog, Ronelo Ginolos, José Lascano Jr., Asislo Pana, Alexander Cervantes, the Ricablancas, father and son, Arnold Lardizabal and Rolando Bernardo, and into the attempted murders of José Dimabaya and two other workers at the Cervera enterprise, Romeo Montemayor, Salvador Pantaleon, Walberto Garquio and Wilnor Quibral, and to keep it informed of the findings of that inquiry.

(c) Recalling that the action of strike pickets organized in accordance with the law should not be subject to interference by the public authorities, who should not resort to force during strikes except in grave situations where law and order are seriously threatened, the Committee requests the Government to open an impartial and thorough inquiry into the relevant circumstances of the numerous violent attacks which are alleged to have been made against strike pickets, to ascertain the nature and justification of the actions taken by law enforcement agents and determine responsibilities, and to keep it informed of the findings of that inquiry.

(d) Recalling also that the 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 keep it informed of any developments in the situation of all the local trade union leaders arrested during the five incidents which took place between late 1990 and mid-1991, of whom 16 are still said to be in detention and awaiting trial (Geronimo Nicolete and Armando Basco, Arlene Tupas and Alan Rubio, Constantino Lahay-Lahay and Certerio Bulingkit, Ruben Palaganas, Delia Ocon, Marilyn Miranda, Arnulfo Rosete, Jun Asento, Eddie Francisco, Rogelio Padilla, Melanio Andrade, Tony Monsalod and Joel Marpa), by stating whether they have been released and reinstated in their posts.

(e) The Committee again urges the Government to keep it informed of any developments in prosecutions resulting from the murders of trade unionists (Messrs. F. Pelaro, R. de la Fuente and A. Marfil), of the findings of the inquiry currently under way concerning the death of Mr. R. Magbujos and of any developments in the trial of Mr. C. Beltran, Chairperson of the KMU, who has been charged with sedition.

Case No. 1615

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

313. The Committee has already examined this case at its May 1992 meeting, when it presented an interim report to the Governing Body [see 283rd Report of the Committee, paras. 401 to 421, approved by the Governing Body at its 253rd Session (May-June 1992)]. The IFBWW submitted new allegations in a communication of 8 October 1992, and sent additional information in a letter dated 29 January 1993.

314. At its November 1993 meeting [see 291st Report, para. 12], the Committee noted that despite the time which had elapsed since it had last examined the case, it had not received the observations and information it had requested from the Government. The Committee drew the attention of the Government to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, it could present a report on the substance of the case, even if the observations or information requested from the Government had not been received in due time. Since that urgent appeal, the Government sent a partial reply on 3 March 1994.

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

A. Previous examination of the case

316. The allegations which remained pending after the Committee's May 1992 meeting concerned the following questions: the right of temporary workers to join a trade union of their choice, and the specific case of workers dismissed by a private enterprise, the Algon enterprise, which justified these dismissals by reference to Policy Instruction No. 20 of 1977, which required the establishment of a bargaining unit at branch level.

317. At that meeting, the Committee had formulated the following recommendations [see 283rd Report of the Committee, para. 421]:

(a) The Committee recalls that workers without distinction whatsoever, be they employed on a permanent basis or for a fixed term, should have the right to establish and join organizations of their own choosing.

(b) The Committee invites the Government to take measures in order expressly to repeal Policy Instruction No. 20 in its entirety, and to provide it with the relevant text.

(c) The Committee requests the Government to provide the judgement of the Supreme Court in the Algon case as soon as it is issued.

B. The complainant organization's new allegations

318. In its communication of 8 October 1992 the IFBWW states that on 9 September 1992 the Supreme Court dismissed the petition and motion for reconsideration filed by the Algon enterprise trade union against a decision dated 4 October 1989 by the National Labor

Relations Commission (NLRC), which had ruled that a strike to protest Algon's dismissal of some workers (Algon had invoked the provisions of Policy Instruction No. 20 to justify these dismissals) was illegal, because the trade union had not given notice of at least seven days before the strike was conducted, and that the NLRC itself was conducting an investigation into charges of unfair labour practices at the time of the strike. The trade union's appeal before the Supreme Court argued that the strike was in fact legal since the employer's tactics amounted to an unfair labour practice, and that the NLRC decision of 31 December 1989, according to which five of the employees terminated were not project employees, and that their termination was therefore illegal, should apply to all workers who participated in the strike, since the Minister of Labor had declared that Policy Instruction No. 20 was irrelevant and that all workers at projects should have equal rights to participate in trade union activities.

319. The IFBWW states that as a result of this Supreme Court ruling, the trade union and its members will be made to pay damages amounting to 3,232,128.32 pesos, which could result in the confiscation of all of the union's assets, as well as the personal property of trade union officials. According to the complainant organization, the Court's decision is based on Policy Instruction No. 20; this is at odds with a recent government statement to the effect that this Policy Instruction has been superseded by new legislation and is contrary to the provisions of Conventions Nos. 87 and 98. The IFBWW considers that the Court's ruling could cause the potential ruin of the trade unions in the construction industry.

320. In its communication of 29 January 1993 the IFBWW states that on 23 November 1992 the Supreme Court dismissed the trade union's second motion for reconsideration of the 9 September 1992 decision.

C. Partial reply of the Government

321. In its reply of 3 March 1994, the Government reiterates that Policy Instruction No. 20 has long been rendered ineffective and that the Department of Labor and Employment has recently adopted new guidelines to govern the building industry, which include, amongst others, provisions which guarantee the right to organize and to bargain collectively to the workers of this branch.

322. As regards the case of the workers dismissed by the Algon enterprise, the Government indicates that the facts demonstrate that both parties were given their day in court, and adds that the decision of the National Labor Relations Commission (NLRC) was without question based on the law and antecedent facts. The fact that one party considers that decision to be flawed does not necessarily mean that the Government has been undertaking an all-out effort to undermine the rights of workers and trade unions. Indeed, the case was referred to the Supreme Court, which would not have been possible under the

"regime of repression" that the complainant organization would like the Committee to believe.

D. The Committee's conclusions

323. The Committee regrets that in spite of the time elapsed since the case was last examined, and although it was invited on several occasions to provide complete information, including by means of an urgent appeal, the Government communicated only partial information.

324. In these conditions, and according to the applicable procedural rules [see para. 17 of the Committee's 127th Report, approved by the Governing Body at its 184th Session], the Committee is obliged to present a report on the substance of the case even though it has not received all the information requested from the Government.

325. The Committee first of all reminds the Government that the purpose of the whole procedure set up in the ILO for the examination of allegations of violations of freedom of association is to promote respect for trade union rights in law and in fact. If the procedure protects governments against unreasonable accusations, governments on their side should recognize the importance for their own reputation of formulating, so as to allow objective examination, detailed replies to the allegations brought against them. [See the Committee's First Report, para. 31.]

326. The Committee notes with regret that, in spite of the recommendations it had formulated at its May 1992 meeting, it appears that Policy Instruction No. 20 has not been repealed expressly and in its entirety. It also notes that, according to the complainant organization, in September and November 1993 the Supreme Court invoked this Policy Instruction to dismiss the trade union's first and second motions for reconsideration to have the strike declared legal and to have dismissed workers reinstated. The Committee recalls that the strike in question had been called to protest the dismissal of a group of workers who had joined the enterprise trade union to set up a bargaining unit at enterprise level, while Policy Instruction No. 20 stipulated that project workers were not authorized to set up bargaining units at that level.

327. Moreover, it would appear to the Committee that, although the Government reiterated in its last reply that this Policy Instruction is no longer in effect, it did indeed serve as a legal basis to justify the unfair dismissals of workers in the construction sector. In these conditions, the Committee can only recall that workers without distinction whatsoever, be they employed on a permanent basis or for a fixed term, should have the right to establish and join organizations of their own choosing and requests

the Government to take measures to guarantee that the legislation ensures that this principle is respected.

328. The Committee also emphasizes that the right to bargain collectively in full freedom of all wage-earners not covered by the guarantees embodied in the statutory conditions applicable to public officials is a fundamental trade union right and an essential element in freedom of association [see Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, paras. 581 and 583]. In the Committee's opinion, Policy Instruction No. 20 interferes with the freedom of association and the right to collective bargaining of fixed-term project workers, inasmuch as it prevents them from organizing at enterprise level with a view to setting up a bargaining unit, and by authorizing them only to join the recognized trade union in the construction sector allows them only the opportunity to bargain at sectoral level.

329. Noting that, according to the Government, the Department of Labor and Employment has recently adopted new guidelines to govern the building industry, which include provisions guaranteeing the right to organize and to bargain collectively to the workers of this branch (contrary to the Government's statement, a copy of said guidelines was not attached to its reply), the Committee requests the Government once again to take the necessary measures formally to repeal Policy Instruction No. 20. It also request the Government to provide it with the text which repeals this Instruction, and a copy of the new guidelines mentioned above.

330. As regards the specific case of workers dismissed by the Algon enterprise, the Committee regrets that it does not have the text of the judgements handed down by the Supreme Court in this case. Nevertheless, noting that these judgements concern the central issue of whether the strike called by workers was legal, the Committee considers that no strike can be declared illegal unless it is called in violation of restrictions or prohibitions which themselves are consistent with the principles of freedom of association.

331. In this respect, the Committee regrets that the Government only stated that, in its opinion, the decision of the National Labor Relations Commission (NLRC) was without question based on the law and antecedent facts and that the fact that one party considers that decision to be flawed does not necessarily mean that the Government has been undertaking an all-out effort to undermine the rights of workers and trade unions. The Committee therefore requests the Government to undertake an impartial inquiry into the events which took place within the Algon enterprise and, in the event it is proved that the dismissal of temporary workers (which led the enterprise trade union to conduct a strike) was motivated by the efforts of the workers concerned to set up a bargaining unit within the enterprise, that the necessary measures be taken by the competent body to ensure that they are paid appropriate indemnity. It requests the Government to keep it informed in this connection.

The Committee's recommendations

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

(a) The Committee requests the Government to take measures to guarantee that the legislation ensures respect for the principle that workers without distinction whatsoever, be they employed on a permanent basis or for a fixed term, have the right to establish and join organizations of their own choosing.

(b) Emphasizing that the right to bargain collectively in full freedom of all wage-earners not covered by the guarantees embodied in the statutory conditions applicable to public officials is a fundamental trade union right and an essential element in freedom of association, the Committee again urges the Government to take measures in order expressly to repeal Policy Instruction No. 20 in its entirety, and to provide it with the corresponding text, as well as a copy of the new guidelines said to have been adopted by the Department of Labor and Employment to govern the building industry, and which allegedly include provisions guaranteeing the right to organize and bargain collectively to the workers of this branch.

(c) As regards the specific case of workers dismissed by the Algon enterprise, the Committee requests the Government to undertake an impartial inquiry into the events which took place within the enterprise and, in the event that it is proved that the dismissal of temporary workers (which the enterprise trade union protested by conducting a strike) was motivated by the attempt of the workers concerned to set up a bargaining unit within the enterprise, that the necessary measures be taken by the competent body to ensure that they are paid appropriate indemnity. The Committee requests the Government to keep it informed in this connection.

Case No. 1623

COMPLAINT AGAINST THE GOVERNMENT OF BULGARIA PRESENTED BY - THE CONFEDERATION OF INDEPENDENT TRADE UNIONS IN BULGARIA (CITB) AND - THE WORLD CONFEDERATION OF ORGANIZATIONS OF THE TEACHING PROFESSION (WCOTP)

333. The Committee examined this case at its meeting of February 1993 [see 286th Report of the Committee, paras. 474 to 513, approved by the Governing Body at its 255th Session (March 1993)], when it

presented interim conclusions. The Government sent new observations in communications dated 6 October 1993 and 17 January 1994.

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

A. Previous examination of the case

335. At its meeting in February 1993, the Committee examined a complaint by the Confederation of Independent Trade Unions in Bulgaria (CITB) and the World Confederation of Organizations of the Teaching Profession (WCOTP) concerning the issue of the devolution of assets acquired by Bulgarian trade unions after 1944. The complainant organizations had alleged that an Act which came into force on 19 December 1991 and which declared that the assets acquired by the Central Council of Bulgarian Trade Unions after 9 September 1944 must be considered as illegally acquired and thus should be confiscated by the State was contrary to the principles and standards of international law.

336. During this meeting, the Committee made the following recommendations [see 286th Report of the Committee, para. 513]:

(a) The Committee invites the Government and all the trade union organizations concerned to establish, as soon as possible, a formula to settle the question of the assignment of funds covered by the Act of 19 December 1991 so that the Government may recover the assets that correspond to the accomplishment of the social functions which it now exercises and all the trade union organizations are guaranteed on an equal footing the possibility of effectively exercising their activities in a fully independent manner. It requests the Government to provide information on developments and, in particular, on any agreement which may be reached in this respect.

(b) It requests the Government also to restore to CITB the voluntary contributions paid by its members after its establishment in February 1990.

(c) The Committee requests the Government to provide without delay its observations on the allegations concerning the judicial proceedings under way against Mr. Ivan Neikov, Vice-President of the CITB, and on the restrictions on freedom of movement which prevented him from attending the International Labour Conference.

B. The Government's reply

337. In its communication of 6 October 1993, the Government states that it examined the problem of the devolution of trade union assets from the beginning of 1993. Thus following negotiations between the Government and the representative trade union organizations of Bulgaria, it was decided, by common agreement, to redistribute the trade union assets confiscated under the Act of 19 December 1991 between the State and the said trade union organizations.

338. In order to implement this agreement, the Government promulgated Decree No. 54 of 17 March 1993 which amends and supplements Decree No. 3 of 1992 respecting the order of transfer of the assets to the successors of the organizations whose assets were subject to the Act of 1991. As a result of the changes made in 1993, the Council of Ministers ordered the free transfer to the trade union organizations of some of the assets from those confiscated from the former Bulgarian trade unions in order to allow them to fulfil their functions.

339. By a decision of 18 March 1993, prepared by a working group set up under a special ordinance of the Council of Ministers, the Government determined the following distribution principles: 10 per cent of the assets would be transferred to the State, 55 per cent to the CITB and 35 per cent to the Podkrepa Confederation. Furthermore, the decision provided for the free transfer to the trade unions of the buildings in which they have their headquarters.

340. The Government also states that a working group was set up to implement the decision of 18 March 1993. It is chaired by the Ministry of Territorial Development and Construction and includes amongst its members representatives of the Council of Ministers, the Ministry of Finance and two trade unions.

341. The Working Group established rules and procedures for the definition and distribution of the assets. Problems arose during its work, in particular concerning the search for or recuperation of ownership documents. Furthermore, it was only after a considerable period of time (towards mid-July) that the CITB presented the ownership documents required. Furthermore, these contain a number of contradictions with the ownership declared for the purposes of the implementation of the Act of 1991. There has also been a delay in the drafting and preparation of protocol agreements on the distribution between the two trade union organizations of local assets - which must be approved by the regional governors. According to the Government, the Working Group is making every possible effort to speed up all this work.

342. As regards the allegation that Mr. Ivan Neikov was prohibited from leaving Sofia, the Government states that such a measure was not taken and that Mr. Neikov participated in the 79th and 80th Sessions of the International Labour Conference. The Government

adds that the legal restrictions against him have been lifted and that the judicial proceedings against him were annulled at the end of 1992.

343. In its communication of 17 January 1994, the Government states that the Working Group continued its work and Decisions Nos. 403 and 406 of the Council of Ministers contained provisions for the distribution of confiscated assets in the Lovech, Haskovo, Varna and Montana regions. As regards the other regions, a final distribution of trade union assets is currently in progress.

344. At the same time, according to the Government, following an appeal lodged by trade unions not included in the distribution of confiscated assets on the grounds that they had not been regarded as representative, the Supreme Court of Bulgaria in its Ruling No. 444 of 13 December 1993 (a copy of which has been provided by the Government) declared Decree No. 54 of 17 March 1993 of the Council of Ministers (providing for the free transfer to trade union organizations of assets confiscated from the former Bulgarian trade unions to allow them to fulfil their functions) and point 1(A) of the Decision of 18 March 1993 (specifying quotas for the distribution of confiscated assets between the State, the CITB and the Podkrepa Confederation) null and void. The Government states that, with regard to point 1(A) of the Decision of 18 March 1993, it is now for the Government to enact a new law on which the continued work of the Working Group will be based. It also states that it will hold talks with the social partners on further measures to be taken to effect the distribution of trade union assets, and that it will inform the Committee of any developments regarding this.

C. The Committee's conclusions

345. The Committee notes with interest the information provided by the Government that an agreement in principle has been reached between the State and the representative trade union organizations to redistribute the trade union assets confiscated under the Act of 19 December 1991, which had been the subject of the complaint examined by the Committee in February 1993.

346. The Committee also observes that the Government states that several measures have been taken to implement this agreement in principle: (i) the Government has promulgated Decree No. 54 of 17 March 1993 amending Decree No. 3 of 1992 respecting the compulsory transfer of trade union assets to the successors of the organizations covered by the Act of 1991; (ii) the Council of Ministers has ordered the free transfer to the trade union organizations of some of the assets confiscated from the former Bulgarian trade unions in order to enable them to fulfil their functions; (iii) a governmental decision of 18 March 1993, prepared by a Working Party, has established a distribution of assets between the State, the CITB and the Podkrepa Confederation; (iv) a joint government-trade union Working Group has

begun work on the implementation of the governmental decision in question; (v) in Decisions No. 403 and 406 of the Council of Ministers, provision has already been made for the distribution of assets in the Lovech, Haskovo, Varna and Montana regions; (vi) as regards other regions, final distribution of trade union assets is currently in progress.

347. The Committee first of all welcomes the nature and rapidity of the measures which the Government, in consultation with the trade union organizations concerned, has already taken to implement the recommendations which it made in February 1993 and to distribute the trade union assets and funds confiscated by the State under the Act of 19 December 1991 in a manner which is consonant with the functions now fulfilled by the Government and the exercise of their activities by the trade union organizations concerned.

348. The Committee notes, however, that, in a ruling by the Supreme Court of 13 December 1993, Decree No. 54 of 17 March 1993 of the Council of Ministers (providing for the free transfer to trade union organizations of some of the assets confiscated from the former Bulgarian trade unions to allow them to fulfil their functions) and point 1(A) of Decision of 18 March 1993 (specifying quotas for the distribution of confiscated assets between the State, CITB and the Podkrepa Confederation) were declared null and void. It notes also that as regards point 1(A) of the Decision of 18 March 1993, the Government intends to enact a new law on which the continued work of the Working Group will be based and will hold talks with the social partners on further measures to be taken to effect the distribution of trade union assets.

349. Under these circumstances, the Committee requests the Government, in conformity with the recommendation made in the Committee's 286th Report, paragraph 513, and with its own declaration, to make every possible effort as quickly as possible and in keeping with the Supreme Court's ruling, so that a new law be adopted defining the principles for the redistribution of trade union assets confiscated from the former Bulgarian trade unions, with a view to allowing the Working Group to continue its work and ensuring that all the measures already taken and those yet to be taken will in the near future result in a definitive allocation of the assets and funds covered by the law of 1991. It asks the Government to keep it informed of developments in the situation and requests it, in keeping with its stated intention, to provide copies of the specific and final decisions concerning this distribution as soon as they are approved by the Council of Ministers.

350. As regards the voluntary contributions which the members of the CITB have paid in since the establishment of this Confederation in February 1990 and which had also been confiscated under the Act of 1991, the Committee notes that no information was provided by the

Government in this regard. It trusts that the voluntary contributions paid since February 1990 will be included in the share of the confiscated assets which will be transferred to the CITB. It requests the Government to keep it informed of measures taken in this respect.

351. As regards the allegations concerning the judicial proceedings taken against Mr. Ivan Neikov, Vice-President of the CITB and the restrictions on freedom of movement which prevented him from attending the International Labour Conference, the Committee notes the information provided by the Government that it did not prohibit Mr. Ivan Neikov from leaving Sofia, that he had participated in the 79th and 80th Sessions of the International Labour Conference, that the legal restrictions against him have been lifted and that the judicial proceedings against him were annulled at the end of 1992. In the light of this information, the Committee considers that this aspect of the case does not call for further examination.

The Committee's recommendations

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

(a) The Committee requests the Government, as recommended in its 286th Report, paragraph 513, to make every effort as quickly as possible and in keeping with the Supreme Court's ruling, so that a new law is enacted defining the principles for the redistribution of trade union assets confiscated from the former Bulgarian trade unions, with a view to allowing the Working Group to continue its work and ensuring that all the measures already taken and those yet to be taken will in the near future result in a definitive allocation of the assets and funds covered by the law of 1991. It asks the Government to keep it informed of developments in the situation and requests it to provide copies of the specific and final decisions concerning this distribution as soon as they are approved by the Council of Ministers.

(b) As regards the voluntary contributions which members of the CITB have paid in since the establishment of this confederation in February 1990 and which had also been confiscated under the Act of 1991, the Committee notes that no new information was provided by the Government in this regard. It trusts that the voluntary contributions paid since February 1990 will be included in the share of the confiscated assets which will be transferred to the CITB and it requests the Government to keep it informed of measures taken in this respect.

Case No. 1638

COMPLAINT AGAINST THE GOVERNMENT OF MALAWI PRESENTED BY - THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU) AND - THE ORGANIZATION OF AFRICAN TRADE UNION UNITY (OATUU)

353. The Committee already examined this case at its meeting of February 1993 when it presented an interim report to the Governing Body [see 286th Report of the Committee, paras. 591-611, approved by the Governing Body at its 255th Session (March 1993)].

354. At its meeting of November 1993 [see 291st Report, para. 12], the Committee noted that despite the time which had elapsed since its last examination of this case, it had still not received the observations and information requested from the Government. The Committee drew the attention of the Government to the fact that in accordance with the procedural rule established in paragraph 17 of its 127th Report, it could present a report on the substance of the case even if the information and observations from the Government had not been received on time. The Committee has not received any additional reply from the Government on this matter since the time of this urgent request.

355. Malawi has not ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). It has ratified the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

356. The allegations pending from the Committee's meeting of February 1993 are as follows: the arrest of Mr. Chakufwa Chihana, Secretary-General of the Southern African Trade Union Coordination Council (SATUCC) when he returned to Malawi after a trade union meeting in Zambia; the arrest of six SATUCC employees; the ransacking of SATUCC's offices in Lilongwe; the dismissal of Mr. Chihana's wife; the fear of dismissal by other SATUCC employees; the refusal to allow Mr. Chihana to see his lawyer; and threats against members of the detainees' families.

357. At this meeting, the Committee made the following recommendations [see 286th Report of the Committee, para. 611]:

(a) The Committee expresses its deep concern about the seriousness of the allegations and points out that a genuinely free and independent trade union movement can only develop where fundamental human rights are fully respected and guaranteed.

(b) Regretting that Mr. Chihana was detained for more than three months without charges and was not allowed to see the lawyer of his choice, the Committee condemns these events as being in contradiction with basic principles of freedom of association.

(c) The Committee calls for the immediate release of Mr. Chihana.

(d) The Committee requests the Government to explain fully the facts regarding the alleged ransackings of the SATUCC offices, the arrests and detention of six employees, the alleged threats against other employees, and the dismissal of Mr. Chihana's wife from her job.

(e) The Committee trusts that the Government will permit the prompt reopening and unrestricted operation of the SATUCC offices. It asks the Government to inform it of any measures taken in this respect.

B. The Committee's conclusions

358. The Committee regrets that the Government has not provided the requested information despite the time which has lapsed since the last examination of this case and the fact that it was invited to do so on several occasions, including in an urgent appeal.

359. In these circumstances, and in accordance with the applicable rules of procedure [see para. 17 of the 127th Report of the Committee, approved by the Governing Body at its 184th Session], the Committee is obliged to present a report on the substance of this case in the absence of the information which it hoped to receive from the Government.

360. Firstly, the Committee reminds the Government that the purpose of the entire procedure established by the *ILO* for the examination of allegations of violations of freedom of association is to ensure the respect of the latter both in law and in fact. While this procedure protects governments against unreasonable accusations, they must for their part recognize that it is important, for their own reputation, to present, for the purposes of an objective examination, detailed replies to the allegations made against them [see First Report of the Committee, para. 31].

361. Initially the Committee was informed - in particular through communiqués from human rights organizations - of the release of Mr. Chihana on 12 June 1993. It also learnt that in March 1993 the High Court of Malawi had reduced his sentence to nine months' imprisonment. The Committee recalls that the Government had stated that Mr. Chihana, after having been arrested and released on two occasions, was finally sentenced on 14 December 1992 respectively to 18 and 24 months' imprisonment with forced labour for the importation and illegal

possession of subversive publications, the two sentences running concurrently.

362. Although it welcomes the information concerning the release of Mr. Chihana, the Committee draws the Government's attention to the conclusions which it reached at its meeting of February 1993 [see 286th Report, paras. 606-608] and emphasizes the importance which it attaches to the view of the International Labour Conference that the right of assembly, freedom of opinion and expression and, in particular, freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media constitutes civil liberties which are essential for the normal exercise of trade union rights (resolution concerning trade union rights and their relation to civil liberties, adopted at the 54th Session (1970)) [see Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 74]. The Committee urges the Government to ensure that in future trade union officials are not arrested as a result of the exercise of their legitimate trade union activities.

363. As regards the allegations that on 6 April 1992 the security forces ransacked the SATUCC offices in Lilongwe and closed them down, the Committee has pointed out on many occasions that the occupation of trade union premises may constitute a serious interference by the authorities in trade union activities and that a corollary of the inviolability of trade union premises is that the public authorities may not insist on entering premises without a judicial warrant authorizing them to do so [see Digest, op. cit., paras. 202 and 203]. Believing also that the closing down of trade union premises may paralyse trade union activities, the Committee requests the Government to ensure that SATUCC may once again freely use its premises at Lilongwe, without any interference by the authorities. It requests the Government to keep it informed in this respect.

364. As regards the allegations concerning the arrest and imprisonment without any charges being laid on 6 April 1992 of six SATUCC employees (William Chisimba, Yared Mgwira, Florence Lungu, Malitowe, Frank Mkandawire and Loyd Tembo) because of their trade union activities, the Committee emphasizes that a genuinely free and independent trade union movement can only develop where fundamental human rights are fully respected and guaranteed [see Digest, op. cit., para. 68]. It also recalls that the detention of trade union leaders for activities connected with the exercise of their trade union rights is contrary to the principles of freedom of association; furthermore, the arrest of trade union leaders against whom no criminal charges are laid involves restrictions on the exercise of trade union rights [see Digest, op. cit., paras. 87 and 89]. In the light of these principles to which it attaches great importance, the Committee requests the Government to keep it informed of developments in the situation of the above-mentioned persons who were arrested and to state whether they have been released and have been enabled to resume their trade union activities.

365. As regards the alleged threats made against other SATUCC employees and family members of some detainees, the Committee recalls 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; it is for governments to ensure that this principle is respected [see Digest, op. cit., para. 70]. The Committee therefore requests the Government to take all the necessary measures to ensure that this principle is effectively guaranteed in practice.

366. Finally, as regards the allegations concerning the dismissal of Mr. Chihana's wife, the Committee emphasizes the importance which it attaches to the principle that no person should be prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities [see Digest, op. cit., para. 538]. It requests the Government to carry out an inquiry to establish the real reasons for this dismissal and, in the event that it is shown that the person in question was dismissed for trade union activities, for her to be reinstated in her workplace. It requests the Government to keep it informed of the outcome of this inquiry.

The Committee's recommendations

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

(a) Although it welcomes the release of Mr. Chihana on 12 June 1993, the Committee emphasizes the importance which it attaches to the principle that the right of assembly, freedom of opinion and expression and, in particular, freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media constitute civil liberties which are essential for the normal exercise of trade union rights, the Committee urges the Government to ensure that in future trade union officials are no longer arrested as a result of the exercise of their legitimate trade union activities.

(b) Recalling that the occupation of trade union premises may constitute a serious intereference by the authorities in trade union activities and that a corollary of the inviolability of trade union premises is that the public authorities may not insist on entering premises without a judicial warrant authorizing them to do so, the Committee requests the Government to take the necessary measures to ensure that SATUCC may once again freely use its premises at Lilongwe, without any interference by the authorities. It requests the Government to keep it informed in this respect.

(c) Emphasizing that the detention of trade union leaders for activities connected with the exercise of their trade union rights is contrary to the principles of freedom of association

and that the arrest of trade union leaders against whom no criminal charges are laid involves restrictions on the exercise of trade union rights, the Committee requests the Government to keep it informed of developments in the situation of William Chisimba, Yared Mgwira, Florence Lungu, Malitowe, Frank Mkandawire and Loyd Tembo, employees of SATUCC arrested on 6 April 1992, and to state whether they have been released and have been enabled to resume their trade union activities.

(d) The Committee once again recalls 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. It requests the Government to take all the necessary measures to ensure that this principle is effectively guaranteed in practice.

(e) Emphasizing the importance which it attaches to the principle that no person should be prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, the Committee requests the Government to hold an inquiry with a view to establishing the real reasons for the dismissal of Mr. Chihana's wife and, in the event that it is proved that the person in question was dismissed because of her trade union activities, for her to be reinstated in her job. It requests the Government to keep it informed of the outcome of this inquiry.

Case No. 1652

COMPLAINT AGAINST THE GOVERNMENT OF CHINA PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)

368. The Committee examined this case as its meeting of February 1993 [see 286th Report of the Committee, paras. 674-728, approved by the Governing Body at its 255th Session (March 1993)] when it reached interim conclusions.

369. Subsequently, in a communication dated 23 August 1993, the International Confederation of Free Trade Unions (ICFTU) submitted new allegations. The Government provided additional replies in a communication received on 6 October 1993 and in a letter dated 31 January 1994.

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

A. Previous examination of the case

371. At its meeting in February 1993, the Committee examined a complaint made by the International Confederation of Free Trade Unions (ICFTU) concerning the Trade Union Act of 3 April 1992 and acts of pressure - including physical beatings - against independent trade union activists, the sentencing, detention and dismissal of workers and obstacles to the functioning of independent trade unions and, in particular, the Free Trade Union of China which announced its establishment in May 1992.

372. At this meeting, the Committee made the following recommendations [see 286th Report of the Committee, para. 728]:

(a) Taking note that many provisions of the Trade Union Act adopted in April 1992 are contrary to the ILO's fundamental principles concerning the right of workers without distinction whatsoever to form and join organizations of their own choosing without previous authorization and the right of trade unions to establish their constitutions, organize their activities and formulate their programmes, the Committee requests the Government to take the necessary steps to ensure that the provisions in question, mentioned in the conclusions, are modified.

(b) The Committee requests the Government to provide information on legislation and practice in respect of collective labour dispute settlement and to indicate in particular whether the Provisional Regulations of 1987 are still in force.

(c) The Committee asks the Government to supply its observations on the allegations according to which Mr. Han Dongfang has been subjected to pressure, including physical beatings.

(d) The Committee requests the Government to state precisely what concrete acts were committed by Messrs. Tang Yangjuan, Lui Wei and Leng Wambao that they should have been convicted of subversion by the police authorities of Changchun.

(e) Although noting that certain persons mentioned in the complaint have been released, the Committee expresses its serious concern at the severity of the sanctions pronounced by the tribunals against the workers who are members or leaders of workers' autonomous federations; it asks that these cases be re-examined in order to put an end to the detention of these workers mentioned in the annex. It requests the Government to provide it with information on further developments in this respect.

(f) The Committee requests the Government to submit its observations on the allegations concerning the demand by the Communist Party that an in-depth investigation be conducted to track down the Free Trade Union of China.

B. New allegations of the complainant organization

373. In a communication dated 23 August 1993, the ICFTU makes new allegations concerning the situation of Mr. Han Dongfang, an official of the Autonomous Federation of Workers of Beijing. It explains that Mr. Han Dongfang, after being detained without trial for 22 months because of his participation in the 1989 demonstrations on Tiananmen Square and his independent trade union activities, was released in November 1991, when the Government withdrew its charges against him. Because of tuberculosis, which he contracted during his detention, the Chinese authorities authorized him to travel to the United States where he remained from September 1992 to August 1993 to undergo medical treatment.

374. However, the complainant organization states that, after participating in the World Conference on Human Rights in Vienna and the International Labour Conference as a member of the ICFTU delegation, Mr. Han Dongfang was informed of his dismissal by his employer, the Beijing Railway Authority. The ICFTU states that on 13 August 1993 Mr. Han Dongfang returned to China, through the city of Huizhou, from where he wished to go on to Beijing. The following day, public security officials interrogated him in his hotel room in Guangzhou and forced him to leave China. His expulsion from China was against his will and without reason and he was beaten and injured.

375. According to the ICFTU, the only justification for this measure so far was given by the New China News press agency in Hong Kong which has reported that:

> Han Dongfang was released on probation by the authorities in September to allow him to undergo medical treatment. Before his departure he promised not to take any action against the Chinese Constitution or against the national interest. However, once he arrived in the United States, Han Dongfang did not keep his promise. That is why the competent Chinese authority decided, in accordance with the law, to prohibit him from returning to Chinese territory.

376. The ICFTU alleges that this statement is incorrect. First, Mr. Han Dongfang was never released on probation; since the court decided not to uphold the charges against him when he left for the United States, he could not be considered as a prisoner on probation. Secondly, he was never refused permission to return to China; when he was already on Chinese territory he was expelled after being led to the frontier between Hong Kong and China by the security forces.

C. The Government's reply

377. In its reply received on 6 October 1993, the Government states that it has already set out the principles on which its position is based in this case and that it would now like to clarify and explain certain points concerning the conclusions and questions raised by the Committee in its 286th Report.

378. As regards legislation and practice concerning labour dispute settlement, the Government states that the Chinese policy and legislation on this subject have been drawn up in accordance with the reform process and current opening up of the country and in the light of experiments successfully carried out in other countries and advice provided by ILO experts. It explains that labour disputes are dealt with at three levels: by mediation within the enterprise, by arbitration at the local level and by court decisions. Most medium and large enterprise have set up labour dispute mediation committees composed of representatives of the workers, management and the trade union. These committees rule on labour disputes arising in the enterprise and which are submitted on a voluntary basis. Around 90 per cent of labour disputes are settled by these mediation committees.

379. The Government goes on to say that there are at present more than 2,800 local committees (at the level of the counties, towns, districts, large cities and provinces). They are made up of an equal number of representatives of the labour administration, trade unions and enterprises, and are responsible for the arbitration of labour disputes. Around 70 per cent of the arbitration awards issued by the local committees allow the disputes to be settled. When one of the parties to a dispute disagrees with the arbitration award, it may take the case to a people's court and, if it also disagrees with the decision made by this court, to the Intermediary Court which will issue a final and executory decision. The Government states that the labour dispute settlement procedure provides sufficient, effective and fair protection of the rights and interests of enterprises and workers. To illustrate this statement, the Government gives two examples of labour disputes involving in each case a woman worker and an enterprise which were settled in favour of the workers by the Intermediary Courts ruling on appeal. The Government also quotes statistics gathered by the labour dispute arbitration institutions of Beijing which show that around one-third of more than 700 disputes were settled in favour of the management of enterprises, one-third in favour of the workers and one-third after mediation.

380. As regards in particular the penalties contained in the Provisional Regulations of 1987, the Government states that these apply to offences and crimes which are not a matter of freedom of association. Furthermore, it points out that the Provisional Regulations of 1987 on labour dispute settlement in state enterprises was repealed on 1 August 1993 and replaced by the Regulations on the labour dispute settlement in enterprises in the People's Republic of China. As compared with the Provisional Regulations of 1987, the new

Regulations: (i) now apply to all enterprises; (ii) extend arbitration to disputes on the application of state regulations on wages, insurance, welfare, training and the protection of labour; and (iii) establish precise rules on arbitrators and the arbitration system by the courts to improve the sense of responsibility and efficiency of staff in the field. The Government adds that the new Regulations also establish more clearly defined penalties for infringements of the law. Thus section 37 lists a number of acts which are prohibited during the settlement of a labour dispute and for which the arbitration committee may criticize and educate persons having committed these acts, order them to redress the acts and punish them in accordance with the respective provisions of the "Penal Regulations on public safety of the People's Republic of China". The perpetration of a serious crime engages the criminal responsibility of the author. The Government concludes that in the light of all these provisions there is little likelihood of any violation of the principle of freedom of association.

381. As regards the allegations that Mr. Han Dongfang was subjected to acts of pressure, including physical beatings, the Government returns to the housing dispute in which this person was involved. It states that an inquiry which it carried out in 1983 shows that in 1983 Mr. Han Dongfang had concluded an agreement with an enterprise that the two-roomed apartment which he occupied with his family would be transformed into offices and that a four-roomed apartment would be temporarily provided for him until a three-roomed apartment, which was still being constructed, became available. However, on two occasions in 1985 and 1992, Mr. Han Dongfang and his family once again installed themselves in the former two-roomed apartment, despite a new agreement reached with the enterprise in 1987 and the order to evacuate the premises given by the people's court. During a hearing on this case, on 14 May 1992, Mr. Han Dongfang insulted officials and injured one of them with a chair. He also intentionally hit his head against a table and injured his own face with a chair in an attempt to intimidate the court. The officials took steps to defend themselves against the injuries which Mr. Han Dongfang was inflicting on them and to stop his illegal action. The Government concluded that it was necessary for the court to take these measures which were moreover totally legal and that Mr. Han Dongfang alone was responsible for the incident which occurred on 14 May 1992. According to the Government, the allegation that "justice officials hit him with an electric truncheon and beat him unconscious" is totally unfounded.

382. As regards the sentencing on charges of subversion of Messrs. Tang Yangjuan, Liu Wei and Leng Wambao, the Government states that, as it had pointed out earlier, these persons were not sentenced to an "education through labour" system but to punishment ordered by the people's court of the district of Changchun after being found guilty of conspiracy to set up an illegal organization to overthrow the Government. In April 1989, these persons, along with others from the same enterprise, secretly prepared for the establishment of an illegal organization with Mr. Tang as its leader. During the month of May, they instigated innocent workers to go on strike, to obstruct production and to attack the buildings of the municipal government.

During the course of public demonstrations, they called for the overthrow of the Government. On 23 May Messrs. Tang and Lei, as well as other persons, disrupted public order on the central square of Changchun, which resulted in car accidents and the total paralysis of traffic on the square and public disorder. The Government concludes that it was clear, during these events, that Messrs. Tang Yangjuan, Liu Wei and Leng Wambao were not exercising trade union activities or trying to protect the interests of workers but on the contrary were infringing Chinese penal law by endeavouring to set up an illegal organization to overthrow the Government. This was why it was necessary and appropriate for the people's court to impose sanctions on them. Thus, according to the Government it is incorrect to conclude that they were the victims of "a clear infringement of basic human rights".

383. As regards the allegation concerning the request of the Communist Party to carry out an in-depth inquiry to track down the Free Trade Union of China, the Government states that, contrary to the statement of the complainant organization, no trade union organization called the "Free Trade Union of China" was ever set up in May 1992. There has furthermore never existed any directive ordering an inquiry into this organization. The Government states that the claims concerning the Free Trade Union of China and the order to investigate this trade union are only rumours.

384. As regards the severity of the sentences handed down by the courts against workers who were members or officials of autonomous workers' federations, the Government states that it is well known that Chinese courts issue their verdicts in strict conformity with the acts committed and in respect of the law. It adds that three other criminals were released for good conduct. These were Messrs. He Zhaohui, Li Jian and Zhang Xudong.

385. In its communication of 31 January 1994, the Government indicates that the decision of the competent national authority to declare Mr. Han Dongfang's passport as null and void and to forbid him from entering the country is fully legitimate and constitutes by principle a measure to protect the security and interests of the Chinese State. It explains that prior to his departure to the United States, Mr. Han Dongfang undertook not to engage in anti-governmental activities abroad. According to the Government, however, once in the United States, he started to collaborate with anti-Chinese organizations which allegedly financed him. Thus, as leader of an illegal organization - "The Free Trade Union of China" - he allegedly published anti-governmental statements, carried out activities aimed at harming the interests of the State and tried to ruin China's international prestige. The Government quotes some of the anti-governmental statements made by Mr. Han Dongfang during interviews, seminars and the 80th Session of the International Labour Conference. The Government further states that Mr. Han Dongfang, having learnt of a false rumour according to which a work stoppage had taken place in a Chinese factory, contacted members of the Free Trade

Union of China, provided them with funds and incited them to turn the masses against the Government and to create trouble.

386. According to the Government, Mr. Han Dongfang, in carrying out these activities abroad, contravened the provisions of the Constitution, the law governing state security and the law governing the entry and exit of Chinese nationals. The Government also states that during the enforcement of the above-mentioned decision, the contacts which took place between justice officials and Mr. Han Dongfang were of a normal nature and that there was no intention to injure him. It adds that Mr. Han Dongfang could still be authorized to return to his country provided that he fulfills the conditions fixed on 26 August 1993 by the spokesman of the Ministry of Public Security, namely (i) that he acknowledges that his activities abroad were harmful to the interests and prestige of the country and (ii) that he promises never again to carry out such activities against the Government and Chinese laws, and provided that his actions do not diverge from his words after a verification period.

D. The Committee's conclusions

387. The Committee must first of all regret that the Government has not provided information on the measures taken to amend the many provisions of the Trade Union Act of April 1992 which the Committee considers to be contrary to the principles of the ILO respecting freedom of association [see 286th Report, paras. 709-718].

388. As regards the allegations concerning the request by the Communist Party for an in-depth investigation to be carried out to track down the Free Trade Union of China, the Committee also notes that the Government states in its reply of 6 October 1993 that, contrary to what the complainant organization has said, no trade union organization with the name of "Free Trade Union of China" has ever been set up and no directive has been issued ordering an investigation of this trade union. However, in its communication dated 31 January 1994, the Government seems to admit that the said organization exists given that it states that it is an illegal organization. The Committee notes the contradiction between these two statements.

389. In these circumstances, the Committee is obliged to draw once again the attention of the Government to the principles of freedom of association whereby workers without distinction of any kind are entitled to set up without prior authorization organizations of their own choosing and that trade unions should be able to establish their statutes, organize their activities and programmes of action in full freedom. The Committee therefore urges the Government to take the necessary measures as soon as possible to amend the Trade Union Act of 1992 so that it gives full recognition to these rights and to guarantee the respect of these rights in practice. The Committee

requests the Government to keep it informed of any developments in this respect.

390. However, the Committee notes that the Government has provided detailed information on national law and practice concerning the settlement of labour disputes. Although it notes this information, the Committee observes that it concerns essentially individual labour disputes and the manner in which these disputes are settled at the different levels. As regards in particular the settlement of collective labour disputes, the Committee notes that the Provisional Regulations of 1987 were replaced on 1 August 1993 by the Regulations on labour dispute settlement in enterprises in the People's Republic of China which: (i) now apply to all enterprises; (ii) extend arbitration to disputes on the application of state regulations on wages, insurance, welfare, training and the protection of labour; and (iii) establish precise rules on arbitrators and the arbitration system by the courts to improve the sense of responsibility and efficiency of staff in the field.

391. The Committee notes that the 1993 Regulations no longer contain any provisions analogous to those of article 28 of the former Regulations under which a person involved in a labour dispute, and who disrupts the normal process of work or production, shall be sanctioned according to the provisions of the Penal Regulations on public safety of the People's Republic of China. However, the new Regulations are designed in particular to maintain normal production and ordered activities. Sanctions are still applied in the event of interference in the mediation and arbitration procedure by a person involved in a labour dispute as well as obstruction of the public functions of arbitrators (article 37(1)). In these circumstances, it seems clear that the new provisions continue to exclude recourse to strike as a means of defence of occupational interests. The Committee requests the Government to take the necessary measures for workers and organizations to be able to exercise the right to strike when they believe that this is necessary to support their claims.

392. As regards the other allegations pending from the examination of this case in February 1993, the Committee notes that the Government states that Mr. Han Dongfang, a leader of the Autonomous Federation of Workers of Beijing, acted in such a way during hearings on a housing dispute in which he was involved and in particular insulted and injured officials and, according to the Government, hit his head intentionally against a table and injured his face with a chair in an attempt to intimidate the court. It was, therefore, necessary for the people's court to take protective measures. The Committee notes that the Government adds that the allegation that "justice officials hit him with an electric truncheon and beat him unconscious" is totally unfounded.

393. As regards the allegation according to which Mr. Han Dongfang was expelled forcibly from his country, the Committee notes the Government's reply that the decision of the authorities to forbid him from entering the country is fully legitimate and constitutes by

principle a measure to protect the security and interests of the Chinese State given that, contrary to what he promised prior to his departure to the United States, Mr. Han Dongfang engaged in anti-governmental activities abroad, and incited members of the Free Trade Union of China - an illegal organization according to the Government - to turn the masses against the Government and to create trouble.

394. The Committee observes that the Government also justifies the said decision because of the contravention by Mr. Han Dongfang of the provisions of the Constitution, the law governing state security and the law governing the entry and exit of Chinese nationals, and that Mr. Han Dongfang could still be authorized to return to his country provided that he acknowledges that his activities abroad were harmful to the interests and prestige of the country and that he promises never again to carry out such activities against the Government and Chinese laws.

395. While noting this information, the Committee deplores the measures taken against Mr. Han Dongfang. It reminds the Government that the exile of trade unionists, which is in violation of human rights, is particularly grave since it deprives the persons concerned of the possibility of working in their country. It is also a violation of freedom of association since it undermines the trade union organizations by depriving them of their leaders. The Committee also recalls that as regards the exile, banishment or placing under house arrest of trade unionists, the Committee, while recognizing that this procedure may be occasioned by a crisis in a country, has drawn attention to the appropriateness of this procedure being accompanied by all the safeguards necessary to ensure that it shall not be utilized for the purpose of impairing the free exercise of trade union rights. [See Digest of decisions and principles of the Freedom of Association Committee, 1985, 3rd edition, paras. 133 and 134.]

396. Regarding Mr. Han Dongfang's activities abroad which, according to the Government, justified his expulsion from the country, the Committee insists on the importance that it attaches to what was pointed out by the International Labour Conference, namely that the right of assembly, freedom of opinion and expression and, in particular, freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, constitute civil liberties which are essential for the normal exercise of trade union rights (resolution concerning trade union rights and their relation to civil liberties, adopted at the 54th Session (1970) [see Digest, op. cit., para. 74]. The Committee further considers that allowing a trade unionist to return to his country on the condition that he no longer exercises the above-mentioned rights is not compatible with freedom of association principles.

397. In the light of these principles, the Committee urges the Government to cancel the expulsion order against Mr. Han Dongfang and

allow him to return if he wishes and exercise his trade union activities in full freedom. It requests the Government to keep it informed of measures taken in this respect.

398. As regards the sentencing of Messrs. Tang Yangjuan, Liu Wei and Leng Wambao, on charges of subversion, the Committee notes that the Government states that these persons were not sentenced to an "education through labour" system but to punishment ordered by the people's court of the district of Changchun, in particular for having conspired to create an illegal organization to overthrow the Government and instigated innocent workers to go on strike, to obstruct production and attack government buildings in the city.

399. The Committee is of the view that the observations made by the Government do not establish in a sufficiently exact and detailed manner that the heavy sentences against Messrs. Tang Yangjuan, Liu Wei and Leng Wambao were not due to activities of a trade union kind, but only to acts which went beyond their trade union functions and which were either detrimental to public order or of a political kind. The Committee recalls furthermore that it has already examined in cases concerning China allegations on the sentencing of trade unionists to long periods of imprisonment, very often on grounds of disturbance of public order, charges which in view of their general character might make it possible to repress activities of a trade union nature. [See 279th Report, Case No. 1500, para. 635 and 286th Report, Case No. 1652, para. 725.]

400. The Committee notes that the Government refers in its reply to the release for good conduct of Messrs. He Zhaohui, Li Jian and Zhang Xudong. The Committee welcomes their release but regrets that the Government does not give any information on the review of the situation of many other persons who have been imprisoned and in some cases sentenced, as mentioned by the complainant organization. In these circumstances, recalling the danger to the free exercise of trade union rights of measures of detention and sentencing against workers' representatives for activities related to the defence of the interests of their constituents, the Committee once again requests the Government to take the necessary measures for a re-examination of all the cases mentioned by the complainant organization with a view to the release of these persons (see appendix). It requests the Government to keep it informed of any developments in this respect.

The Committee's recommendations

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

(a) Recalling that workers without distinction of any kind must have the right to set up without prior authorization organizations of their own choosing and that trade unions must be able to draw up their statutes, organize their activities and formulate their programmes of action in full freedom, the Committee urges the Government to take the necessary measures as soon as possible to amend the Trade Union Act of April 1992 so that it fully recognizes these rights and to guarantee the respect of these rights in practice. The Committee requests the Government to keep it informed of any developments in this respect.

(b) Noting that the provisions of the new Regulations on labour dispute settlement in enterprises in the People's Republic of China of 1993 seem to continue to exclude recourse to strike as a means of defence of occupational interests, the Committee asks the Government to take the necessary measures to enable workers and their organizations to exercise the right to strike when they believe it necessary to support their claims.

(c) The Committee deplores the expulsion order issued against Mr. Han Dongfang. Reminding the Government that the exile of trade unionists, which is in violation of human rights, is particularly grave since it deprives the persons concerned of the possibility of working in their country and constitutes a violation of freedom of association since it undermines the trade union organizations by depriving them of their leaders, the Committee urges the Government to cancel the expulsion order against Mr. Han Dongfang so that he can return to his country if he wishes and exercise his trade union activities in full freedom and to keep it informed of measures taken in this respect.

(d) Although it welcomes the release for good conduct of Messrs. He Zhaohui, Li Jian and Zhang Xudong, the Committee reminds the Government of the danger to the free exercise of trade union rights of measures of detention and sentencing against workers' representatives for activities related to the defence of the interests of their constituents. It requests it once more to take the necessary measures to ensure that all the cases mentioned by the complainant organization are re-examined and that the persons concerned are released (see appendix). It requests the Government to keep it informed of any developments in this respect.

APPENDIX

Leaders and militants of the Workers' Autonomous Federations (WAF) still detained

Name	Complainant's allegations	Government's reply
WAF of Changsha		
Hu Nianyou	Sentenced to life imprisonment	Sentenced to 10 years' imprisonment for looting
Liu Wei	Sentenced to 2 years of re-education through work, now released	Sentenced to 5 years' imprisonment for crime of subversion against Government
Liu Xingqi	Detained for 6 months, now released	Sentenced to 5 years' imprisonment for theft
Yao Guisheng	Sentenced to 15 years' imprisonment	Sentenced to 15 years' imprisonment for looting
Zhang Jingsheng	Sentenced to 13 years' imprisonment	Sentenced to 13 years' imprisonment for crime of subversion against Government
Zhang Xiong	Sentenced to 5 years' imprisonment	Sentenced to 5 years' imprisonment for looting
Zhou Min	Sentenced to 6 years' imprisonment	Sentenced to 6 years' imprisonment for crime of subversion against Government
WAF of Shaoyang		
Li Wangyang	Sentenced to 13 years' imprisonment	Sentenced to 13 years' imprisonment for crime of subversion against Government

Case No. 1656

COMPLAINT AGAINST THE GOVERNMENT OF PARAGUAY PRESENTED BY THE INTERNATIONAL UNION OF FOOD AND ALLIED WORKERS' ASSOCIATIONS (IUF)

402. The Committee examined this case at its November 1992 meeting [see 284th Report, paras. 1,051 to 1,067, approved by the Governing Body at its 254th Session (November 1992)], when it formulated interim conclusions. Subsequently, given the Government's failure to provide comments on the outstanding allegations, the Committee was obliged on two occasions to postpone the examination of this case. Likewise, at its November 1993 meeting the Committee drew the Government's attention to the fact that, in accordance with the procedure established in paragraph 17 of its 127th Report, approved by the Governing Body at its 184th Session (November 1971), it would present a report on the substance of the case at its next meeting, even if it had not received the information or observations requested [see 291st Report, approved by the Governing Body at its 258th Session (November 1993), para. 12]. The Government sent a communication dated 25 January 1994.

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

A. Previous examination of the case

404. The allegations that remained outstanding after the Committee's November 1993 meeting referred to the dismissal of trade union leaders and trade unionists and to the arrest of trade union leaders. Specifically, the complainants had alleged that the Itá Enramada Hotel Casino enterprise had dismissed four trade union leaders following the establishment of a trade union, and that the trade union leaders of the Industrial Areguá enterprise, Walter Villasboa and Ramón Ortega, had been arrested on charges of sabotage, and subsequently dismissed along with other trade unionists of the enterprise.

405. In the absence of the Government's sufficiently detailed observations on these allegations, the Committee formulated the following recommendations at its November 1992 meeting [see 284th Report, para. 1,067]:

> The Committee asks the Government to keep it informed of the development and outcome of the proceedings before the Labour

Court concerning the dismissal of four officials of the Union of Workers of the Itá Enramada Hotel Casino. The Committee also asks the Government to send its observations on the allegation that the trade union leaders Walter Villasboa and Ramón Ortega were falsely accused of sabotage and had to spend several weeks in prison before being freed, when it proved impossible to substantiate the accusation, and

The Committee asks the Government to keep it informed of developments in and the outcome of the proceedings in the Labour Court of the First Instance concerning the dismissal of trade unionists of the Industrial Areguá enterprise.

B. The Government's communications

406. In its communication of 25 January 1994 the Government reiterates the information it had previously communicated, to the effect that appeals have been filed in both cases.

C. The Committee's conclusions

407. In the first place, the Committee deeply regrets the Government's failure to comply with the Committee's procedure, and specifically regrets that the Government has failed to send the information requested concerning the outstanding allegations; owing to the time that has elapsed since the presentation of the complaints, the Committee has no choice but to examine the case without the Government's relevant observations. The Committee reminds the Government that the purpose of the whole procedure is to promote respect for trade union rights in law and in fact. If the procedure protects governments against unreasonable accusations, governments on their side should recognize the importance of formulating for objective examination detailed replies to the allegations brought against them [see the Committee's First Report, para. 31, approved by the Governing Body in March 1952].

408. As regards the dismissal of four trade union leaders of the Itá Enramada Hotel Casino, allegedly owing to the establishment of a trade union, and the dismissal of trade unionists from the Industrial Areguá enterprise, the Committee notes with regret that the Government merely reiterates its previous reply to the effect that the pertinent appeals are now before the courts. The Committee deplores not having new observations from the Government concerning these dismissals, and once again reminds the Government that no person should be subject to dismissal or other prejudicial measures by reason of legitimate trade union activities, such as the establishment of a trade union, and that pursuant to Article 1 of Convention No. 98, workers should enjoy

adequate protection against acts of anti-union discrimination in respect of their employment. In these conditions, the Committee requests the Government to keep it informed of the proceedings in the labour courts; it considers that the workers concerned should be reinstated in their jobs if it is established that their dismissals were due to legitimate trade union activities.

409. As regards the imprisonment of the leaders of the Industrial Areguá enterprise trade union, Walter Villasboa and Ramón Ortega, allegedly owing to false accusations of sabotage, and given the Government's failure to provide observations, the Committee deeply regrets that these trade union leaders were deprived of their liberty for several weeks, without compelling evidence of their involvement in the crime. Noting that no charges were filed against these trade union leaders, the Committee draws the Government's attention to the fact that the detention of trade union leaders and trade unionists for legitimate trade union activities constitutes a serious violation of the principles of freedom of association.

The Committee's recommendations

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

(a) The Committee deeply regrets that, in spite of its numerous requests, the Government has failed to send additional information on the outstanding allegations, and urges it to keep it informed on the various issues in the present case.

(b) The Committee requests the Government to keep it informed on the progress and outcome of proceedings in labour courts concerning the dismissal of trade union leaders and trade unionists from the Itá Enramada Hotel Casino and the Industrial Areguá enterprise. The Committee requests the Government to take necessary measure to ensure that these workers are reinstated in their jobs if it is established that they had been dismissed by reason of legitimate trade union activities.

(c) In this connection, the Committee requests the Government to ensure compliance with the principle that no person should be subject to dismissal or other prejudicial measures for carrying out legitimate trade union activities such as the establishment of a trade union, and with Article 1 of Convention No. 98, which provides that workers should enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

(d) Lastly, the Committee deplores that trade union leaders Walter Villasboa and Ramón Ortega were deprived of their liberty for several weeks without sufficient evidence of their involvement in the crime they were accused of. The Committee

requests the Government to refrain in the future from imprisoning trade union leaders and trade unionists for legitimate trade union activities, since this constitutes a serious violation of the principles of freedom of association.

Case No. 1688

COMPLAINT AGAINST THE GOVERNMENT OF SUDAN PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)

411. The Committee examined this case at its May 1993 session, when it presented interim conclusions [see 287th Report, paras. 506-519, approved by the Governing Body at its 256th Session (May 1993)].

412. The Government presented a further reply in a communication dated 28 October 1993.

413. Sudan has not ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), but it has ratified the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

414. At its May 1993 session the Committee examined allegations relating to the detention of trade unionists and to acts of violence and torture committed against them by the authorities in so-called "ghost houses". The complainant organization in particular named four trade unionists who had allegedly been severely tortured: Magdi Muhamadani, Salah, Mamoun and Abdalla. The Government did not deny that the first three persons mentioned had been imprisoned for political reasons but it provided no response to the allegations that they had been tortured. The Committee noted that the first three persons in question had been released and had returned to their jobs. The Government indicated that it had no information in respect of Abdalla, the fourth person, but that no one of that name had been tortured.

415. At the same session the Committee presented the following recommendations [see 287th Report, para. 519]:

(a) The Committee deplores the Government's lack of response to the allegations of torture against three unionists and asks the Government to carry out an inquiry into this complaint so that

appropriate measures, including compensation for damages suffered, may be taken.

(b) The Committee deplores the Government's detention of these trade unionists.

(c) The Committee requests the Government to indicate what specific charges were filed against the three trade unionists, Magdi Muhamadani, Salah and Mamoun, or, if no charges were filed, the reasons for their detention. The Committee would also request the Government to indicate whether these detentions were approved by a judge and to indicate where the individuals were imprisoned.

(d) The Committee requests the complainant to provide more detailed information about the identity of the fourth trade unionist, Abdalla, so that the Government might provide a specific response to the allegations.

(e) The Committee considers that the procedure contained in the National Security Act which allows appealing arrest and detention orders to the Revolution Command Council, which is not a judicial body, as well as the provision of the Act extending to three months the delay of provisional detention and those concerning the one month immunity from rearrest, in no way constitute guarantees of due process. The Committee urges the Government to reconsider these legal provisions and guarantee full access to independent legal authorities. The Committee would also request the Government to explain precisely the meaning of a detainee's right to be informed "in good time" of the reasons for arrest.

B. The Government's further reply

416. In its communication of 28 October 1993 the Government states its conviction that the allegations presented by the ICFTU are entirely unfounded and that they merely constitute political provocation designed to undermine Sudan, its political life and choice of civilization. It does however indicate its readiness, in a spirit of cooperation with the ILO, to reply to the allegations. It states that it expects that the ILO will in return treat the allegations in an objective and neutral manner and that it will take account of the fact that the political opposition in Sudan is aiming to paralyze the nation's development process. Since it had found no place for itself in the Sudanese national trade union movement the opposition subsequently turned to foreign trade union organizations which are totally isolated from the reality of life in Sudan and the radical changes taking place there under the Revolution for National Salvation, and which believe the lies and calumny brought before the ILO.

417. The Government reasserts that freedom of association is guaranteed in Sudan for all trade unions and trade unionists and consequently their concerns may be voiced and their problems resolved with the Government through official channels and due legal process. Moreoever the Confederation of Sudanese Workers' Trade Unions is sufficiently powerful and effective to deal with such complaints whenever their true objective is to settle labour disputes and not to whip up political tension.

418. The Government then proceeds to make certain observations relating to the form of the complaint presented by the ICFTU. It points out that the complaint does not give the full names of the doctors detained and allegedly tortured, i.e. their name and that of their father and grandfather for identification purposes, since thousands of persons in Sudan bear the first names Mamoun, Magdi, Salah and Abdalla. The complaint also omits to indicate these doctors' professional address or place of residence; nevertheless the Government has employed all means in its endeavour to identify the doctors so as to question them and respond to the allegations. The complaint fails to state the relationship between the complainant confederation and the complainants or the authors of the complaint (none of the three doctors, according to their personal statements, has presented a complaint to the confederation in question or to any other organization in Sudan or abroad); nor does it indicate the relationship between the ICFTU and the Confederation of Sudanese Workers' Trade Unions. Finally, the complaint was not forwarded through the latter organization, which is a legitimate and legally established body elected by all Sudanese workers and whose task it is to protect its members' rights and safeguard their interests, irrespective of their political allegiance.

419. On the merits of the case the Government indicates that it has been ascertained that the three doctors were not arrested for their trade union activities but for breaking the law, inter alia the National Security Act, the regulations in force under the state of emergency, the Penal Code and the Second Constitutional Decree. The allegations of torture are totally unfounded. Their purpose is to deceive the ILO and foreign trade union organizations and to distort the truth, since the persons allegedly tortured have made categorical denials on that score.

420. The Government then indicates that the Public Prosecutor called upon a legal adviser to hold the necessary inquiry into the allegations presented. The legal adviser met the three doctors - Magdi Muhamadani, Mamoun and Salah - who stated that they were unaware of this complaint and that they had submitted no complaint either directly or through any person, body or trade union organization to any organization in Sudan or abroad. The legal adviser also put the following questions to each one of them: Where and when did the detention take place? What were the grounds for detention, the charges and the sentences? Was any appeal filed against the sentences? Were they granted the right to be assisted by a lawyer? Did security agents or anyone else ill-treat or torture them or subject them to any form

of exaction in the course of their detention, the investigation or the court proceedings? Where were they held in detention?

421. According to the Government, Dr. Mamoun stated that he was arrested on 28 November 1989 for having chaired a meeting of doctors in Khartoum that he had convened on 26 September 1989, and also for having declared a seven-day strike to demand wage increases and improvements in services. Charged with several violations of the Penal Code, the regulations in force under the state of emergency and the Second Constitutional Decree, he was sentenced to death. His lawyer appealed on his behalf. Pursuant to a plea for amnesty presented by the doctors to the Head of State, he was pardoned together with his colleagues who had been sentenced. He also declared that the strike was illegal, that the demands had not been submitted in writing and that prior to the strike the various stages for the settlement of disputes had not been followed. He stated that he had not been tortured and had not undergone any ill-treatment, torture or other form of exaction and that he had been treated normally. From 28 November 1989, the date of his arrest, to 12 December 1990 he had been in a security service building in the centre of Khartoum; the quarters comprised two bedrooms, a living-room, two bathrooms, a W.C., a kitchen and a large hall; Magdi Muhamadani and Salah were also held there. After being sentenced he was transferred to the prison of Kober, and he maintains that the living conditions there were excellent: the penitentiary houses a library and offers various activities, so that one does not have the impression of being a prisoner. The residents join social, health, sports and cultural committees and can choose their own food. When comparing the building where he was detained with the Kober prison he stated that the former was used for brief periods of detention, custody and interrogation whereas the prison had better facilities because it was designed for longer periods. He said that the Minister of the Interior visited him in prison to inquire about his situation and asked him whether he had any complaints of ill-treatment or torture; that the public prosecutors and judges paid him regular visits in his places of detention, asked him if he had problems, invited him to speak perfectly frankly and without fear and informed him that they were there to listen.

422. Dr. Magdi Muhamadani stated that he was arrested on 23 August 1992 and taken into custody in accordance with the state of emergency regulations and that his detention did not constitute any form of anti-trade union action. He said that he was a member of the Democratic Front, that he was questioned but neither charged nor sentenced. He was released on 17 October 1992. He was held in the same security service building as Dr. Salah and was subsequently transferred to the Kober prison where he remained until his release. He was not tortured and was treated normally. Referring to life in the prison, he stated that each room was occupied by four inmates and that three meals, all with tea, were served.

423. Dr. Salah, for his part, stated that he was summoned to appear before the Presidency of the security service on 23 August

1992, the date on which he, like Dr. Magdi Muhamadani, was arrested. He was interrogated but not charged. He was released on 17 October 1992. He was not sentenced and was held in the same security service building in the centre of Khartoum as Dr. Magdi Muhamadani. When asked about the conditions of his detention he replied that there was a kind of daily routine which began for people who so wished with morning prayers and readings from the Koran. At 6 a.m. tea was served. Inmates were permitted to drink tea and converse in the evenings. Later they were authorized to move around inside the building. Each inmate was able to accompany the others in their movements and visit them in their rooms. They were allowed to wash their clothes and perform ablutions without any restrictions. His family was permitted to visit him on two occasions. Three meals and tea were served to them. The food was the same as that encountered in any average Sudanese household. He was well treated, experienced no problem with the officers in charge and underwent no ill-treatment or torture. Referring to the building in which he was detained, he stated that it was one of the buildings in which state officials were housed in the centre of Khartoum, the rooms being well fitted out and the lighting adequate. There was a library, a television set and a refrigerator. Replying to a question relating to his political activities he said that he engaged in no political activities and had no political allegiance; that he had never been a trade unionist, had never stood as a candidate in trade union elections, had never held any position in a trade union, nor taken part in any strikes, whether legal or illegal. His salary continued to be paid to him whilst he was in detention. After his release he returned to his work with no difficulty. When asked about "ghost houses" he smiled and said that he had heard talk of them but had never seen one and did not know what the words stood for.

424. The Government adds in this respect that "ghost houses" do not exist, that this is a term foreign to Sudanese parlance and is used by the political opposition with the purpose of whipping up political tension.

425. The Government states that the complainant organization has never forwarded any information in respect of the person referred to as Abdalla. The relevant Sudanese departments have spared no efforts in an attempt to identify him and have no knowledge of any nurse named Abdalla or otherwise being arrested; similarly the security registers do not indicate the arrest of any nurse. Moreover the three doctors stated that there was no nurse among the detainees. Consequently the Government believes that the allegation is void and not based on fact. The Government reasserts that its security services do not resort to any form of torture since this is prohibited by law. Any officer guilty of torturing a detainee is sanctioned. Torture is an inhumane practice in contradiction with Sudanese civilization, religion, traditions and values. Sudanese history bears no witness to torture or murders.

426. In respect of the National Security Act of 1990 as amended in 1992 the Government points out first of all that certain

unintentional errors in its previous reply should be rectified; it had stated that detention takes place with the approval of a judge for a period of three months, and that any appeal, extension of the period or new arrest are at the discretion of the Revolution Command Council which may extend the period of detention by another period of three months, if it deems it necessary, inter alia for security reasons. The Government declares that in fact decisions to extend a period of custody or to make new arrests are taken exclusively under the supervision of the judicial authorities which enjoy total independence of the executive power and that neither the Revolution Command Council nor any other executive authority exercises any power over them. All decisions taken pursuant to arrest fall within the unchallenged jurisdiction of the judicial authorities. This authority is presided over by a Supreme Court judge, as laid down in the National Security Act, article 40(a). Moreover, the said Act entitles any individual claiming to have suffered injustice, torture or ill-treatment to institute legal proceedings against the security service or any of its members.

427. The Government goes on to state that individuals are taken into custody on the basis of security service information relating to offences committed or about to be committed which are addressed by legislation - whether the state of emergency regulations or the Penal Code; its purpose is to conduct the necessary investigation; whenever the charges are not substantiated the detainee is immediately released.

428. Finally the Government indicates that the term "in good time" was used by mistake in its previous reply; the correct term corresponding to Arabic usage is "at an appropriate time". The detainee's right to be informed within an appropriate period of the grounds for arrest implies that he/she shall be questioned within 72 hours of being taken into custody and must be informed of the grounds for arrest. If this period is insufficient to conclude the inquiry the director may extend the period of interrogation up to a maximum of one month.

429. The Government adds that individuals have free access to the premises of the Public Prosecutor's Office and to those of the judicial authorities to present petitions against the security service and its officials. It points out that none of the three doctors nor the person referred to by the first name Abdalla, who were allegedly tortured, submitted any complaint against a member of the security service in respect of torture or ill-treatment. This in the Government's view is proof of lying and calumny on the part of those submitting the complaint to the ICFTU.

C. The Committee's conclusions

430. Before examining the substance of the present case the Committee wishes to present certain comments on the Government's

statement that the allegations made by the ICFTU are entirely unfounded and are merely political provocation designed to undermine Sudan.

431. The Committee draws the Government's attention to the International Labour Organization's function in the field of freedom of association and the protection of the individual, i.e. to contribute to the effectiveness of the general principle of freedom of association as one of the primary safeguards of peace and social justice. The Organization's function is to secure and promote the right of association of workers and employers. It is not to level charges at, or to condemn, governments. In fulfilling its task the Committee takes the utmost care, through the procedures it has developed over many years, to avoid dealing with matters which do not fall within its specific competence. It has been the Committee's steadfast practice to consider whether or not, in each particular case, a government has ensured within its territory the free exercise of trade union rights [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, paras. 23 and 25].

432. As regards the Government's observations relating to the form of the ICFTU complaint, the Committee must inform the Government that the complaint is perfectly receivable since it has been submitted by an organization having consultative status with the ILO [Digest, op. cit., para. 34].

433. Referring to the substance of the present case the Committee notes that the Government speaks of an inquiry conducted by order of the Public Prosecutor in an endeavour to shed light on the allegations. The Committee notes that the three doctors questioned in the course of this inquiry, Magdi Muhamadani, Salah and Mamoun, stated that they had not submitted any complaint either directly or through any person, body or trade union organization to any organization in Sudan or abroad.

434. In respect of the specific charges brought against these three persons or the grounds for their detention the Committee notes the Government's statement that Dr. Magdi Muhamadani and Dr. Salah were arrested on 23 August 1992 and released on 17 October 1992 and that they were questioned but neither charged nor sentenced. They also appear to have stated that the grounds for their detention were not linked to trade union activities. In respect of Dr. Mamoun the Committee notes the Government's statement that he had called a strike in breach of the law, that he was arrested on 28 November 1989 and accused of several offences under the Penal Code, the state of emergency regulations and the Second Constitutional Decree and was sentenced to death. He was subsequently released after being pardoned.

435. The Committee observes that according to the Government's statement the three persons in question gave detailed descriptions of their living conditions whilst in detention; they declared them to be normal or even excellent and denied having undergone any

ill-treatment. They apparently returned to their jobs without any problem after being released.

436. The Committee can but note that all the extremely serious allegations made by the complainant organization are denied in the Government's declarations. Having regard to the particular circumstances of this case, this complete contradiction may cast serious doubt upon the impartiality and thoroughness of the inquiry conducted by the Sudanese authorities.

437. The Committee notes that the Government does not deny that Mr. Magdi Muhamadani and Mr. Salah were detained without being charged or sentenced. In this respect the Committee draws the Government's attention to the principle that the arrest by the authorities of trade unionists concerning whom no grounds for conviction are 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 [Digest, op. cit., para. 97]. The Committee deplores the fact that these two persons were detained and requests the Government to ensure that custody is limited to 72 hours and resorted to solely in order to facilitate the course of a judicial investigation.

438. In respect of Mr. Mamoun, it appears to the Committee that his arrest, detention and death sentence are indeed linked to the fact that he had called a strike and encouraged doctors to stop work. Whilst noting that Mr. Mamoun was subsequently pardoned by the Head of State and released, the Committee expresses its deep consternation in respect of the death sentence pronounced against him. The Committee urgently requests the Government to take the necessary measures to ensure that trade union leaders and members are not detained and sentenced for performing trade union functions or for engaging in trade union activities to defend the interests of their constituents.

439. Faced with the contradiction between the complaint and the Government's reply to the allegations of torture or other ill-treatment, the Committee can only emphasize once again the importance that should be attached to the principle laid down in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights according to which all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person [Digest, op. cit., para. 86].

440. In respect of Abdalla, the fourth trade unionist named in the allegations, the Committee regrets that the complainant organization did not supply more detailed information on his identity. It notes the Government's statement that the relevant Sudanese departments have spared no efforts in an attempt to identify him but have obtained no information on any nurse named Abdalla or otherwise being arrested; and that the security registers do not indicate the arrest of any nurse.

441. In reference to the National Security Act provisions concerning the procedure for appeals before the Revolution Command Council against decisions to arrest and detain, the Committee notes the Government's rectification of its previous declarations. All decisions taken pursuant to arrest fall within the jurisdiction of the judicial authorities supervised by a supreme court judge in accordance with the National Security Act, article 40(a). Moreover the said Act entitles any individual claiming to have suffered injustice, torture or ill-treatment to institute legal proceedings against the security service or any of its members. The detainee must also be questioned within 72 hours and informed of the grounds for arrest.

442. The Committee takes note of these explanations and of the extracts from the National Security Act supplied by the Government with its reply (see appendix). Firstly, the Committee notes with regret that this Act does not appear to have been applied to Dr. Magdi Muhamadani and Dr. Salah in view of their statements that they were never charged or sentenced. Secondly, the Committee continues to believe that the provisions stipulating that detainees shall be advised within a period which may be extended up to one month of the grounds for their arrest, and those governing: (a) the extension of the period of custody for reasons of national security; and (b) immunity limited to one month, in no way constitute guarantees of due legal process. The Committee reiterates its urgent request to the Government to take the measures necessary to allow this legislation to be amended and, in so doing, to ensure that detained trade unionists, like any other person, enjoy due legal process and are entitled to the proper administration of justice, i.e. in particular, that they are informed of the charges being brought against them, have the necessary time to prepare their defence, hold unhindered communication with the legal counsel of their choice and have a judgement rendered without delay by an impartial and independent judicial authority. It requests the Government to keep it informed of all measures taken in this respect.

The Committee's recommendations

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

(a) The Committee notes with concern that the Government has only partially replied to the specific requests which it formulated previously. The Commmittee cannot but profoundly deplore the fact that Dr. Magdi Muhamadani and Dr. Salah were detained without having been charged or sentenced. It urges the Government to ensure that custody is limited to 72 hours and designed solely to facilitate the course of a judicial investigation.

(b) Whilst noting that Mr. Mamoun was pardoned by the Head of State and released, the Committee expresses its deep consternation in

respect of the death sentence pronounced against him. It urgently requests the Government to take the necessary measures to ensure that trade union leaders and members are not detained and sentenced for performing trade union functions or for engaging in trade union activities to defend the interests of their constituents.

(c) The Committee emphasizes once again the importance that should be attached to the principle laid down in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights according to which all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person.

(d) The Committee reiterates its urgent request to the Government to take the measures necessary to allow the provisions of the National Security Act to be amended and in so doing to ensure that detained trade unionists, like any other person, enjoy due legal process and are entitled to the proper administration of justice, i.e. in particular, that they are informed of the charges being brought against them, have the necessary time to prepare their defence, hold unhindered communication with the counsel of their choice and have a judgement rendered without delay by an impartial and independent judicial authority. It requests the Government to keep it informed of all measures taken in this respect.

APPENDIX

EXTRACTS FROM THE NATIONAL SECURITY ACT AS AMENDED IN 1992

(Extracts supplied by the Government in its reply)

Article 40(a):

- Paragraph 2: The detainee is advised at an appropriate time pursuant to his/her arrest of the grounds for arrest. The precise translation of "dans un délai approprié" is "at an appropriate time" and not "in good time", as indicated in the reply. This means that the detainee must be advised of the grounds for his/her arrest within three days, it being possible to extend this period up to one month.

- Paragraph 5: The detainee may appeal to the judge whenever the rules of this paragraph governing detention are not observed. The judge may pronounce the decision he deems appropriate to resolve the violation.

- Paragraph 7: Any decision regarding the period of custody shall be submitted, together with accompanied by a statement of the grounds, to the judge within three days of the date upon which the decision was taken.

- Paragraph 8: The judge may, after examining the grounds and hearing the detainee or any representation on his/her part, authorize the period of custody to be extended if the judge believes that national security imperatives so require, or, conversely, order the detainee's release.

- Paragraph 9: It is unlawful to take individuals back into custody if they have been released by a judge before expiry of a period of one month or in the absence of the judge's authorization.

Case No. 1697

COMPLAINT AGAINST THE GOVERNMENT OF TURKEY PRESENTED BY THE MINERS INTERNATIONAL FEDERATION (MIF)

444. On 26 January 1993 the Miners International Federation (MIF) presented a complaint of violation of trade union rights against the Government of Turkey. It sent additional information in a communication dated 19 February 1993.

445. The Government sent its observations in communications dated 19 April and 8 October 1993.

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

A. The complainant's allegations

447. In its communication dated 26 January 1993, the Miners International Federation (MIF) alleges that Turkish miners were prohibited from striking in a dispute with Turkish Coal Enterprises and that this dispute has been referred for compulsory arbitration.

448. The complainant organization states that following the breakdown in December 1992 of negotiations between the Mine Workers' Union of Turkey and Turkish Coal Enterprises, the dispute between the parties was referred for compulsory arbitration under sections 29 and 30 of Act No. 2822 of 5 May 1983 respecting collective labour

agreements, strikes and lockouts, which contain a long list of services where strikes are prohibited.

449. The complainant organization recalls that since 1983 ILO bodies have repeatedly urged the Turkish Government to restrict the application of compulsory arbitration established by the legislation to cases where a work stoppage due to a strike would endanger the lives, personal safety or health of the whole or a part of the population. It states that so far no steps have been taken to fulfil these requests. The consequence is that unions are severely hampered in their ability to improve working conditions because they are denied recourse to strike action and are forced into compulsory arbitration.

450. The complainant organization explains that according to section 32 of Act No. 2822, "in disputes concerning the establishments or the activities and services where strikes and lockouts are probibited, any party may apply to the Supreme Board of Arbitration within six working days of receipt of the report referred to in section 23 [...]", which means in practice that disputes are referred to a board where the trade union movement has two representatives out of eight and which is therefore under the control of the Government and employer majority.

451. The complainant organization also refers to the Committee's conclusions in Cases Nos. 997, 999 and 1029 concerning Turkey, and considers that the provisions of existing legislation, as applied to the coalmining industry, constitute an infringement of Article 4 of Convention No. 98.

452. The MIF concludes that in spite of unsatisfactory legislation which restricts their trade union activities, the miners are very determined to secure their rights and obtain significant wage increases. It expresses support for the Mine Workers' Union of Turkey in its insistence that legislation imposing a strike ban in the mining industry be rescinded.

453. In its communication dated 19 February 1993, the complainant organization states further that 21,126 miners work for Turkish Coal Enterprises in production works which feed thermal power stations. This category of workers is affected by the strike ban. The number of remaining miners employed by the Turkish Coal Enterprises who are not affected by prohibitions is 4,161. It specifies that the negotiations referred to began on 2 September 1992 and covered the total number of 25,287 miners. On 12 November 1992 a notice of dispute was issued and a mediation period followed, beginning on 23 November and ending on 13 December. On 30 December 1992 the dispute was referred to the Supreme Board of Arbitration.

454. The complainant organization states further that protest marches were held on 6 January 1993 in different mining regions and that on 7 January the 4,161 miners not affected by the strike ban decided to hold a strike. A new collective agreement was signed on 25 January 1993.

B. The Government's reply

455. In its communication dated 19 April 1993 the Government states that it notes the allegations made by the MIF and points out that it has ratified Convention No. 87.

456. In its reply dated 8 October 1993, the Government explains that the national practice of compulsory arbitration takes its source from article 54 of the Constitution, that it is an impartial procedure in which the parties may participate at any stage and that the awards are binding on the parties. Compulsory arbitration is followed in cases of prohibition or restrictions on strikes in order to protect workers who are thus denied an essential means of defending their occupational interests.

457. The Government states further that it is a procedure which is resorted to in exceptional situations only. Moreover, before referring a dispute to compulsory arbitration it is possible that the dispute can be resolved through the mediation of the Ministry of Labour and Social Security or by a private mediator mutually agreed upon by the parties. In the case at hand, continues the Government, the parties took the latter option and a satisfactory solution was achieved.

458. The Government points out that section 29 of Act No. 2822 was amended by Act No. 3451 of 27 May 1988 so as to narrow the scope of prohibitions on strikes. Thus, the phrase "production, refining or distribution of [...] coal" in paragraph 3 was replaced by the phrase "lignite production feeding thermal power plants". Moreover, a committee recently set up by the Ministry with the task of submitting proposals on labour issues, including that of limiting the strike prohibition, is currently carrying on its studies. Whether the strike prohibition will be lifted from lignite production units feeding thermal power plants will depend on the evaluation to be made after the completion of the studies of the above-mentioned committee and after consultation of the social partners.

C. The Committee's conclusions

459. The Committee notes that the allegations in this case concern the prohibition on strikes imposed by legislation on miners employed in lignite production with feeding thermal power plants, and the referral of labour disputes in these services for compulsory arbitration.

460. The Committee notes that the complainant organization states that following the breakdown in December 1992 of negotiations between the Mine Workers' Union of Turkey and Turkish Coal Enterprises, the dispute was referred for compulsory arbitration under section 32 of

Act No. 2822 of 5 May 1983 respecting collective labour agreements, strikes and lockouts. The Committee notes also that the Government, on the other hand, states that the parties to the dispute decided to refer it to mediation and that a satisfactory solution was thus achieved.

461. While noting the contradiction between these two statements, the Committee observes that sections 22 and 23 of Act No. 2822 of 1983 do in fact provide that the parties may resort to a mediator for purposes of settling a dispute. Under the last paragraph of section 32 of the Act, however, in disputes concerning the establishments or the activities and services where strikes are prohibited, any party may apply to the Supreme Board of Arbitration within six working days of receipt of the report in which the mediator noted that the parties failed to reach an agreement to settle the dispute.

462. The Committee observes that the Government explains that compulsory arbitration is an impartial procedure which is resorted to in exceptional situations and in which the parties may participate at any stage.

463. The Committee recalls, firstly, that it had already considered that the provisions of Turkish legislation respecting the use of binding arbitration to end a strike, apart from cases of work stoppages which result from a strike which threatens to endanger the life, personal safety or health of the whole or a part of the population and in the case of acute national crises, restrict union rights and are not compatible with the principles of freedom of association [see 282nd Report of the Committee, Cases Nos. 997, 999 and 1029, para. 16].

464. Taking into account the recent ratification of Convention No. 87 by Turkey, which it welcomes, the Committee once again points out to the Government that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests [see Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 362]. The Committee also draws the Government's attention to the principle that the right to strike may be restricted or even prohibited in the civil service - civil servants being those who act on behalf of public authorities - or in essential services in the strict sense of the term, i.e services the interruption of which would endanger the lives, personal safety or health of the whole or a part of the population [see Digest, op. cit., para. 394]. However, the principle regarding the prohibition of strikes in essential services might lose its meaning if a strike were declared illegal in one or more undertakings which were not performing an "essential service" in the strict sense of the term [see Digest, op. cit. para. 400]. Morever, the Committee considers that the substitution by legislative means of compulsory arbitration for the right to strike as a means of resolving labour disputes can only be justified in respect of essential services in the strict sense of the term [see Digest, op. cit., para. 387].

465. As regards the present case, the Committee has already stated that it is of the view that the mining sector is not an essential service in which the right of workers to promote and defend their interests by means of strike action may be prohibited [see Digest, op. cit., para. 406]. While aware that a stoppage of the services supplying lignite to thermal power plants may be such as to disturb the normal life of the community, the Committee considers that it would be difficult to maintain that a stoppage of such services would be, by definition, such as to provoke an acute national crisis.

466. The Committee is, however, aware of the difficulties that an interruption in the lignite supply could entail for thermal power plants. It is therefore of the opinion that in a sector such as mining it would be admissible for the parties, if necessary with the participation of the Government, to agree on establishing a minimum service to be maintained in the event of a strike.

467. Taking account of all of these elements, the Committee requests the Government to take the necessary measures to amend Act No. 2822 of 5 May 1983 in order to guarantee workers employed in services which are not essential in the strict sense of the term, including miners, and their organizations, the right to organize their activities and formulate their programmes for the defence of their economic, social and occupational interests, including by recourse to strike action. In this respect, the Committee takes due note of the information supplied by the Government, according to which the possibility of excluding lignite production units feeding thermal power plants from the prohibition on strikes is currently being studied by a committee recently set up with the task of submitting proposals on labour issues. It trusts that, when this matter is being studied, the committee will take account of the principles of freedom of association outlined above. The Committee requests the Government to keep it informed of all measures taken to bring national legislation into conformity with the principles of freedom of association.

The Committee's recommendations

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

(a) Taking into acocunt the principle that the right to strike may be restricted or even prohibited only in the civil service - civil servants being those who act on behalf of public authorities - or in essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or a part of the population, the Committee requests the Government to take the necessary measures to amend Act No. 2822 of 5 May 1983 in order to guarantee workers employed in services which are not essential

in the strict sense of the term, including miners, and their organizations, the right to organize their activities and formulate their programmes for the defence of their economic, social and occupational interests, including by recourse to strike action. The Committee requests the Government to keep it informed of any measures taken in this respect.

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

Case No. 1713

COMPLAINTS AGAINST THE GOVERNMENT OF KENYA PRESENTED BY - THE ORGANIZATION OF AFRICAN TRADE UNION UNITY (OATUU) AND - THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)

469. The Committee already examined the substance of this case at its November 1993 meeting when it presented an interim report to the Governing Body [see 291st Report, paras. 552-557, approved by the Governing Body at its 258th Session (November 1993)].

470. The Government supplied further observations on the case in a communication dated 25 November 1993.

471. Kenya 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. Previous examination of the case

472. The complainants presented allegations of flagrant violations of human and trade union rights against the Government of Kenya. They alleged that the Government had arbitrarily arrested and detained trade union leaders of the Central Organization of Trade Unions of Kenya (COTU-K), including Mr. J.J. Mugalla, General Secretary of COTU-K and member of the Governing Body of the ILO, following a very successful COTU-K rally organized on 1 May 1993. During this rally, COTU-K leaders had criticized the Government for ignoring COTU-K's previous calls, among other things, to improve workers' conditions and to enter into immediate negotiations for a general wage adjustment in order to redress the purchasing power of the workers. Subsequently, there was a series of acts of government interference in COTU-K's internal affairs, namely police occupation of the headquarters of COTU-K on 2 July 1993 in order to prevent COTU-K

from holding its National Executive Council (NEC) meeting; active government support to a minority group from COTU-K in holding an unconstitutional meeting at the Kenyatta International Conference Centre with the participation of three top civil servants at that meeting; the election of officers by the minority group during that meeting to replace the legitimate COTU-K leadership and the registration of this minority group within a matter of hours after the meeting; the occupation of COTU-K offices by the minority group with the support of the police; and the removal of Mr. Mugalla from the position of Secretary-General of the Commercial, Food and Allied Workers' Union at the Government's instigation.

473. Referring to the events that took place from 1 May 1993 onwards, the Government indicated that COTU-K, under Mr. Mugalla, used this occasion to call on the country's workers to go on a general strike from 3 May, unless the Government announced an immediate 100 per cent general wage increase and the sacking of the Vice-President of the Republic of Kenya. The Minister for Labour had already declared this strike to be illegal, since it was public knowledge that it was a political strike that had nothing to do with industrial disputes. This national strike adversely affected the entire Kenyan economy and also led to incidents resulting in the destruction of property, injury to persons and a general crisis in the production sector. As a result, Mr. Mugalla was arrested on 1 May and formally charged in a court of law on 3 May for inciting workers to go on an illegal strike, leading to disobedience of law. He was later released, as were his two close associates who were arrested as well. Seventy-eight other people were also charged on 4 May over strike violence. Moreover, the Government had made it clear, through a press release issued on 2 May, that it was committed to lifting the living standards of workers through a package which was to be negotiated by the social partners. Although the Government had opened its doors for negotiations, COTU-K decided to take the stand it did. Since then, however, the situation had returned to normal, since most workers had defied the COTU-K strike call and gone back on duty.

474. At its November 1993 Session, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

(a) The Committee recalls that the arrest and detention - even if only briefly - of trade union leaders and members for their legitimate trade union activities constitute a violation of the principles of freedom of association. It urges the Government to refrain in future from having recourse to such action.

(b) The Committee draws the Government's attention to the principle that trade union organizations ought to have the possibility of recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies. Thus, the right to strike should not be limited solely to industrial disputes that are likely to be

resolved through the signing of a collective agreement and workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests. However, the Committee recalls that purely political strikes are not covered by freedom of association principles.

(c) The Committee draws the complainants' attention to the principle that workers and their organizations shall respect the law of the land, which should not violate the principles of freedom of association.

(d) The Committee requests the Government to keep it informed of the outcome of the legal proceedings instituted against Mr. Mugalla.

(e) The Committee requests the Government to reply without delay to the remaining allegations of serious acts of government interference in COTU-K's internal affairs.

B. The Government's reply

475. In its communication of 25 November 1993, the Government very strongly refutes the allegations raised by the ICFTU concerning government interference in the internal affairs of the Central Organization of Trade Unions of Kenya (COTU-K). It explains that the events which led to Mr. Mugalla's ouster by COTU-K's Governing Council on 2 July 1993 had originated in the 1993 May Day celebrations in Nairobi. It was on this occasion that Mr. Mugalla unilaterally decided (i.e. without the approval of the Governing Council representing COTU-K's various affiliated unions) to turn the occasion into a political event.

476. Mr. Mugalla's call for an illegal and purely politically motivated strike had the effect of alienating several trade unions, some of whose members had lost their jobs as a result of Mr. Mugalla's illegal strike call. Some of these trade union officials also felt that Mr. Mugalla was misdirecting the labour movement for his own political gains. Therefore, many General Secretaries of unions affiliated to COTU-K became divided on whether Mr. Mugalla should lead them any more. As a matter of fact, Mr. Mugalla's group started the rift by physically throwing out of a meeting at the Ministry of Labour headquarters all the General Secretaries who did not agree with him on the strike issue. This was done in Mr. Mugalla's presence and hence with his approval. The General Secretaries who were thrown out are some of the key members of the group that is opposed to his leadership today.

477. The Government submits more specifically that COTU-K was scheduled to hold its Governing Council meeting at its Solidarity Building on 2 July 1993. The Governing Council is COTU-K's top executive organ, consisting of about 225 national delegates drawn from all its affiliated unions. Mr. Mugalla had also summoned all shopstewards and other non-participants to the same meeting without the knowledge and approval of most of the participating national delegates, thus causing a security problem. The police presence at the venue had no intention of either occupying the premises or preventing the meeting from taking place, but to ensure that law and order was maintained. The decision to change the venue for holding COTU-K's Governing Council meeting was taken by the majority group of those delegates who were opposed to Mr. Mugalla and his group of supporters and who felt that they needed a more secure venue on which to conduct the business of the day. The Government points out that the Kenyatta International Conference Centre is a commercial building and accessible to anyone who wishes to use its facilities. It adds that the Ministry of Labour's attendance at that meeting was lawful because, according to the current COTU-K constitution, the Permanent Secretary or his representative is a member of the Governing Council.

478. The Government states that following brief discussion during the COTU-K Governing Council meeting at the Kenyatta International Conference Centre, a resolution was adopted to discuss the conduct of COTU-K's entire Executive Board, and Mr. Mugalla's calling of a national strike on 3 May 1993 contrary to Rule No. 26 of COTU-K's constitution. During the discussions, the members of COTU-K's Governing Council were unanimous in their condemnation of the then COTU-K office-bearers and all the Executive Board members. A resolution on a vote of no confidence was proposed by a Mr. Isaya Kubai of the Banking, Insurance and Finance Union, to have all the office-bearers and Board members of COTU-K removed from office. This resolution was seconded by a Mr. Owallo of the Petroleum and Oil Workers' Union. It was passed unanimously and thus, immediate elections were held to fill these vacant positions - including that of Mr. Mugalla.

479. The Government indicates that the legality of these elections held on 2 July 1993 was challenged in the High Court of Kenya by Mr. Mugalla and his group, and the Court nullified the same on 10 November 1993. The Government points out, however, that the dispute in court is still continuing, since the group that is still opposed to Mr. Mugalla has gone ahead and filed for a "stay of execution" on the above-mentioned court verdict, pending an appeal. On 23 November 1993, however, the High Court once again refused to grant a "stay of execution" on its earlier order, which had nullified the legality of the elections held on 2 July 1993. The Government adds that the J. Ogendo group which had earlier ousted Mr. Mugalla's group on 2 July 1993, has now filed an appeal case in the Court of Appeal, and that it will provide details once the final verdict is handed down.

480. The Government further points out that on 10 July 1993, the Governing Council of the Kenya Union of Commercial, Food and Allied

Workers decided to replace Mr. Mugalla as their Secretary General. He was replaced by Mr. Daniel Ngirimani as the new Secretary General. The Government stresses that no form of government coercion was exerted in order to have Mr. Mugalla replaced as Secretary General, contrary to the ICFTU's unfounded and unsubstantiated allegations. All these changes were brought about by the on-going leadership rivalry both within COTU-K and the Kenya Union of Commercial, Food and Allied Workers' Union.

481. The Government concludes by submitting that the above information clearly helps to illustrate that it in no way intends to weaken or interfere with the smooth running of the labour movement. On the contrary, the Kenyan Government has always strived over the years to encourage the development of a strong, viable and independent labour movement. Moreover, it maintains its position as earlier stated to the effect that Mr. Mugalla's arrest and his subsequent appearance in court took place purely for inciting workers to take part in an illegal strike and for inciting them to necklace with burning tyres anybody who dared to defy his illegal strike call. Such incitement automatically led to disobedience to law. This case against Mr. Mugalla is still pending in court and full details of the same will be submitted to the ILO once the case is decided upon.

C. The Committee's conclusions

482. As regards the allegation concerning the police occupation of the headquarters of COTU-K on 2 July 1993 in order to prevent COTU-K from holding its Governing Council meeting, the Committee observes that the Government does not deny that the police were present on that day at the venue where COTU-K was to have held this meeting. According to the Government, the police had no intention of preventing the meeting from taking place but that its presence was required in view of the fact that Mr. Mugalla had summoned various other non-participants to this meeting in addition to the 225 members of COTU-K's General Council, thus causing a security problem. In this respect, the Committee would draw the Government's attention to the principle that freedom from government interference in the holding and proceedings of trade union meetings constitutes an essential aspect of trade union rights, and the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof on condition that the exercise of these rights does not disturb public order or cause a serious and imminent threat thereto [see Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 141]. In the Committee's view, while the participation of persons from outside the Governing Council membership might not, in effect, have met with the approval of a number of the Council's national delegates, such a situation is unlikely to create a serious and imminent threat to public order requiring the intervention of the police. The Committee therefore urges the Government to ensure in future the right of trade

unions to hold meetings freely in their own premises without police intervention.

483. Turning to the issue of government support to a minority group from COTU-K in holding an unconstitutional meeting and the election of officers by this minority group to replace the legitimate COTU-K leadership, the Committee notes that the Government's version of these events differs greatly from that of the complainant. In the communications examined by the Committee in November 1993, the complainant maintained that Mr. Mugalla and his group constituted COTU-K's legitimate leadership since out of 219 delegates constituting the total delegates' strength at COTU-K's council meetings, 163 had pledged support in writing to Mr. Mugalla (see 291st Report of the Committee, para. 562). According to the Government, however, Mr. Mugalla had alienated a majority - although it does not specify what this majority is - of the 225 national delegates of COTU-K's Governing Council following his call for an illegal and purely politically motivated strike which, in addition to being contrary to COTU-K's internal rules, also had repercussions on certain members of COTU-K's affiliates. The Government emphasizes that the decision to change the venue for the meeting was taken by the majority of those delegates who adopted unanimously a resolution to have all the office-bearers and Executive Board members of COTU-K, including Mr. Mugalla, removed from office. Similarly, the Government refutes the allegation that Mr. Mugalla was replaced by Mr. D. Ngirimari as Secretary-General of the Commercial, Food and Allied Workers' Union at the Government's instigation. It insists that all the above leadership changes were brought about by an ongoing leadership rivalry both within COTU-K and the Commercial, Food and Allied Workers' Union.

484. In view of the very large contradiction between the complainant's and Government's versions of the above-mentioned events, the Committee will only recall the principle that any control of trade union elections should rest with the judicial authorities [see Digest, op. cit., para. 296]. In this respect, the Committee notes that the legality of the elections held on 2 July 1993 were challenged in the High Court by Mr. Mugalla and his group and that on 10 November 1993 the Court nullified the election results. The Committee further observes that the J. Ogendo group, which is opposed to Mr. Mugalla, filed for a "stay of execution" on the above-mentioned court verdict but that on 23 November 1993 the High Court refused to grant a "stay of execution" on its earlier order. Noting that the J. Ogendo group has now filed an appeal case in the Court of Appeal, the Committee requests the Government to send it a copy of the judgement of the Court of Appeal once it has been handed down.

485. As regards the allegation that the participation of senior civil servants at the COTU-K Governing Council meeting of 2 July 1993 constitutes government interference of a very serious nature in trade union affairs, the Committee notes the Government's reply that the Ministry of Labour's attendance at that meeting was lawful because according to the current COTU-K Constitution, the Permanent Secretary or his representative is a member of the Governing Council. The

Committee would, however, draw the Government's attention to the fact that cases where the public authorities have themselves drafted the constitutions of the central workers' organizations, as would appear to be the situation in Kenya, are in violation of freedom of association principles. The Committee would, moreover, draw the Government's attention to the fact that a provision whereby a representative of the public authorities can attend trade union meetings may influence the deliberations and the decisions taken (especially if this representative is entitled to participate in the proceedings) and hence may constitute an act of interference incompatible with the principle of freedom to hold trade union meetings [see Digest, op. cit., para. 150]. Furthermore, a provision which allows a representative of the Ministry of Labour to be present at trade union elections is incompatible with the right of trade unions to hold free elections [see Digest, op. cit., para. 462]. The Committee therefore requests the Government to ensure in future that representatives of the Ministry of Labour do not participate in trade union meetings or elections.

486. The Committee notes that the case against Mr. Mugalla for inciting workers to take part in an illegal strike leading to disobedience of law is still pending in court. It requests the Government once again to keep it informed of the outcome of the legal proceedings instituted against Mr. Mugalla.

The Committee's recommendations

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

(a) The Committee requests the Government to ensure that the principle that freedom from government interference in the holding and proceedings of trade union meetings, which constitutes an essential aspect of trade union rights, is respected and that the public authorities refrain from any interference which would restrict this right or impede the lawful exercise thereof on condition that the exercise of these rights does not disturb public order or cause a serious and imminent threat thereto. The Committee therefore urges the Government, in particular, to ensure in future the right of trade unions to hold meetings freely in their own premises without police intervention.

(b) Noting that the J. Ogendo group has appealed against the High Court verdicts of 10 and 23 November 1993 which nullified the elections held by COTU-K's Governing Council on 2 July 1993 which removed Mr. Mugalla and his group from office, the Committee requests the Government to send it a copy of the judgement of the Court of Appeal once it has been handed down.

(c) Drawing the Government's attention to the fact that a provision whereby a representative of the public authorities can attend trade union meetings may influence the deliberations and the decisions taken and hence may constitute an act of interference incompatible with the principle of freedom to hold trade union meetings, the Committee requests the Government to refrain from authorizing a representative of the Ministry of Labour to be present at trade union elections, contrary to the principle according to which trade unions have the right to hold free elections.

(d) The Committee requests the Government once again to keep it informed of the outcome of the legal proceedings instituted against Mr. Mugalla.

Case No. 1714

COMPLAINT AGAINST THE GOVERNMENT OF MOROCCO PRESENTED BY THE DEMOCRATIC CONFEDERATION OF LABOUR (CDT)

488. In a communication dated 22 April 1993, the Democratic Confederation of Labour (CDT) presented a complaint against the Government of Morocco alleging violations of trade union rights. In a communication dated 31 May 1993, it lodged new allegations.

489. At its meeting in November 1993 [see 291st Report, para. 12], the Committee observed that despite the time which had elapsed since the presentation of this complaint, it had still not received the Government's observations and information. The Committee drew the Government's attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, it could present a report on the substance of the case even if the information and observations requested from the Government had not been received in due time. Since that urgent appeal, the Committee has received no reply from the Government on this matter.

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

A. The complainant organization's allegations

491. In its communication of 22 April 1993, the Democratic Confederation of Labour (CDT) alleges violations of trade union rights

within the company "Huileries de Meknès", a private company with its head office in Rabat.

492. According to the CDT, this enterprise, which was established in 1960, is enjoying an economic boom and has considerably expanded the number and range of its industrial activities. It employs 1,500 workers.

493. According to the CDT, the management manifests an avowed hatred for the workers' trade union. It is alleged that labour laws have not been applied, work-cards have not been provided, legal minimum wages and seniority bonuses have not been paid, declarations to the social security authorities have not been submitted, the standard work schedule has not been adhered to (8 hours per day, not 14), established status has not been granted to temporary workers, working conditions have not been respected, and that there have been all types of abuse, especially of female workers.

494. It was against this background that the workers established the trade union office of the CDT on 22 October 1992. The management of the enterprise reacted by dismissing the 11 members of the trade union office as well as four other activists. A protest strike was called on 4 November 1992 as well as a "sit-in" in front of the factory from 4 to 12 November. The police then attacked the workers in front of the factory and injured several before making a number of arrests. The local union of the CDT interceded with the authorities, who undertook to resolve the problem on condition that the "sit-in" was moved to the local office of the CDT. This was done, but the authorities did not honour by their commitment. This prompted the workers to resume their sit-in in front of the factory on 22 November 1992. Once again, the police intervened violently and injured a number of workers.

495. The complainant organization states that the management of the factory has done nothing but strain relations even further. For example, it is alleged that it sent strikers a formal notice pointing out that they had abandoned their posts when the strike began on 4 November and ordering them to resume work within 48 hours, failing which they would be deemed to have resigned.

496. On 29 December 1992, also according to the complainant organization, the police again intervened, this time with the help of groups armed with cudgels, knives, iron bars, sticks, daggers, etc., who had been called in by the management. During the course of this operation, 163 workers were injured, including two members of the local union of the CDT, who were also arrested, and 57 workers. Three days later, after statements had been taken, the individuals concerned were released. The complainant organization has appended to its complaint a list of the injured persons and descriptions of their injuries.

497. The CDT states that, at the date of the complaint, the strike had been broken by the management with the help of these armed

bands and with the assistance of the local authorities; more than 500 workers were still expelled, the management was still refusing to reinstate these individuals or to engage in any dialogue, and the authorities have done nothing to enforce trade union rights and bring about the reinstatement of the workers expelled and the opening of a dialogue with the trade union representatives.

498. In its communication of 31 May 1993, the CDT alleges that on 3 May 1993 the President of the Municipal Council of Mehdia-Kenitra arbitrarily dismissed Mr. Kouadi Mohammed, an agent in the training service, because of his membership of the CDT and his participation in the May Day celebrations organized by the CDT. The CDT has provided a copy of that decision.

B. The Committee's conclusions

499. The Committee emphasizes that the absence of a reply from the Government in this case renders the examination of the allegations very difficult. The Committee indeed regrets that, despite the time which has elapsed since the presentation of this complaint, and despite being invited to do so on several occasions, including by means of an urgent appeal, the Government has not formulated its comments and observations on the allegations brought by the complainant organization.

500. Under these circumstances, however, and in accordance with the applicable rule of procedure [see 127th Report of the Committee, para. 17, approved by the Governing Body at its 184th Session], the Committee feels obliged to submit a report on the substance of the case, even without the information which it had hoped to receive from the Government.

501. The Committee first of all reminds the Government that the purpose of the procedures established by the International Labour Organization for examining allegations of violations of freedom of association is to ensure that this freedom is respected in law and in fact. While these procedures protect governments against unreasonable accusations, they must recognize for their part the importance for the protection of their own good name of formulating for objective examination detailed replies to such allegations made against them. [See First Report of the Committee, para. 31.]

502. The Committee observes that the allegations which are the subject of the present case concern violations of freedom of association in the company "Huileries de Meknès". The complainant organization alleges in general terms that the management manifests an avowed hatred for the workers' union which is reflected among other. things in its refusal to apply labour legislation.

503. As regards the dismissal of 11 members of the trade union office of the CDT and four other trade unionists, it would appear that these measures were taken shortly after the establishment within the factory of the union office. The anti-trade union nature of these dismissals may therefore reasonably be assumed. For that reason, the Committee recalls the principles according to which all workers should be able to form and join organizations of their own choosing in full freedom and no person should be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, paras. 222 and 538]; it urges the Government to take measures to establish an impartial inquiry with a view to ascertaining the true reasons for these dismissals and, if it is proven that the individuals concerned were dismissed by reason of their trade union activities, to ensure that they are reinstated in their posts. It requests the Government to keep it informed of the findings of that inquiry.

504. The Committee also observes that, according to the complainant organization, the police and armed individuals on three occasions in November and December 1992 intervened violently to break the protest strikes and "sit-in" organized by the workers. During these interventions, the police allegedly injured a large number of workers and made a number of arrests. The Committee notes that, according to the CDT, the two members of the local union and the 57 workers arrested on 29 December 1992 were released three days later after statements had been taken.

505. The Committee stresses once again that a genuinely free and independent trade union movement can only develop where fundamental human rights are fully respected and guaranteed [see Digest, op. cit., para. 68], and recalls that the authorities should only have recourse to force during strikes when grave situations arise and public order is seriously threatened. The Committee deplores this violence and urges the Government to establish an independent, impartial and thorough inquiry into the relevant circumstances to determine the nature and justification of the police action and to identify those responsible for the violence, and to keep it informed of the findings of that inquiry.

506. As regards the arrests (alleged by the complainant organization) of strikers by the police, the Committee reminds the Government 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.] Furthermore, in the view of the Committee the 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.] The Committee recalls 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;

such acts constitute criminal offences in many countries. [see Digest, op. cit., para. 435.] In the light of these principles to which it attaches great importance, the Committee requests the Government to keep it informed of any developments in the situation of all the workers arrested and in particular to state whether they have been released, whether any charges are still pending against them and, if not, to make efforts to obtain their reinstatement in their posts.

507. As regards the alleged expulsion of more than 500 workers on the grounds of their participation in the protest strikes, the Committee stresses that the use of extremely serious measures, such as the dismissal of workers for having participated in a strike, implies a serious risk of abuse and constitutes a violation of freedom of association. [Digest, op. cit., para. 444.] It calls on the Government to take the necessary measures to ensure that the individuals concerned are reinstated in their posts and to keep it informed of any developments in their situation.

508. Finally, according to the decision of 3 May 1993 given by the President of the Municipal Council of Mehdia, a copy of which has been provided by the complainant organization, the Committee observes that Mr. Kouadi Mohammed was dismissed among other reasons because of his participation in the 1993 May Day march organized by the CDT of which he is a member. The Committee recalls that the right to organize public meetings and processions, particularly on the occasion of May Day, constitutes an important aspect of the CDT's trade union rights [Digest, op. cit., para. 155] and requests the Government to take the measures to ensure that Mr. Kouadi Mohammed is reinstated in his job. It requests the Government to keep it informed on this matter.

509. More generally, the Committee must again draw the Government's attention to the fact that legislation must provide for specific sanctions to deter acts of anti-trade union discrimination and interference perpetrated by employers against workers and workers' organizations, in order to ensure that Articles 1 and 2 of Convention No. 98 are effectively implemented. The Committee also recalls in this context that the Committee of Experts on the Application of Conventions and Recommendations for a number of years has been calling on the Government to adopt specific provisions to ensure that workers are effectively protected against acts of anti-trade union discrimination and workers' organization against acts of interference. [Report III (Part 4A), 1992, p. 275.] The Committee therefore urges the Government to take legislative or other measures without delay to ensure that the Convention is implemented.

The Committee's recommendations

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

(a) The Committee emphasizes that the absence of a reply from the Government in this case makes the examination of the allegations very difficult.

(b) Recalling nevertheless that all workers should be able to establish 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 take measures to establish an impartial inquiry with a view to ascertaining the true reasons for the dismissal of the 11 members of the trade union office of the CDT and of the four other trade unionists and, if it is proven that they were dismissed by reason of their trade union activities, to ensure that they are reinstated in their posts. It requests the Government to keep it informed of the findings of this inquiry.

(c) As regards the violent actions of the police in November and December 1992 during the protest strikes and "sit in" organized by the workers, the Committee recalls that the authorities should only have recourse to force during strikes where grave situations arise and where public order is seriously threatened, and requests the Government to take measures to establish an impartial and thorough inquiry into the relevant circumstances to determine the nature and justification of the police actions and identify those responsible, and to keep it informed of the findings of that inquiry.

(d) As regards the arrests of strikers for which, according to the allegations, the police are responsible, the Committee reminds the Government 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, and that the 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 keep it informed of any developments in the situation of all the workers arrested and in particular to state whether charges are pending against them and, if not, to make efforts to obtain their reinstatement in their posts.

(e) Emphasizing that the use of extremely serious measures, such as dismissal of workers for having participated in a strike, implies a serious risk of abuse and constitutes a violation of freedom of association, the Committee requests the Government to take the necessary measures to ensure that the over 500 workers allegedly expelled as a result of their participation in the protest strikes are reinstated in their posts. It requests the Government to keep it informed of any developments in their situation.

(f) As concerns the dismissal of Mr. Kouadi Mohammed for, among other reasons, his participation in the march of 1 May 1993 organized by the CDT of which he is a member, the Committee requests the

Government to take measures so that he is reinstated in his post and to keep it informed on this matter.

(g) The Committee must again remind the Government that legislation must provide for specific sanctions against acts of anti-union discrimination and interference perpetrated by employers against workers and workers' organizations in order to ensure that Articles 1 and 2 of the Convention No. 98 are effectively implemented. It urges the Government to take legislative or other measures without delay to ensure that the Convention is applied.

Case No. 1722

COMPLAINT AGAINST THE GOVERNMENT OF CANADA (ONTARIO) PRESENTED BY - THE CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS (CAUT) AND - THE CANADIAN LABOUR CONGRESS (CLC)

511. In a communication dated 29 June 1993, the Canadian Association of University Teachers (CAUT) submitted a complaint of violations of freedom of association against the Government of Canada (Ontario). In a communication of 25 October 1993, the Canadian Labour Congress (CLC) expressed its support to the complaint on behalf of its own membership and that of several of its affiliated organizations. The Public Services International (PSI) and the International Confederation of Free Trade Unions (ICFTU) expressed their support to the complaint in communications dated 16 and 25 November 1993, respectively.

512. The federal Government, in a communication of 17 January 1994, transmitted the observations and information from the Government of Ontario, dated 12 January 1994.

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

A. Allegations of the complainant organizations

514. The Canadian Association of University Teachers in its communication of 29 June 1993 and the Canadian Labour Congress in its communication of 25 October 1993 allege that the Government of Ontario violated ILO Conventions Nos. 87, 98 and 151 by enacting the Social

Contract Act, 1993, "An Act to encourage negotiated settlements in the public sector to preserve jobs and services while managing reductions in expenditures and to provide for certain matters related to the Government's expenditure reduction program" (the "Act").

515. ILO Conventions require that public authorities refrain from any interference which would restrict the right of trade unions freely to organize their activities, including free collective bargaining. While the ILO has found that, as part of a wage stabilization policy, a government can place restrictions on the settlement of wage rates, it has held that "any restrictions should be imposed as an exceptional measure and only to the extent that it is necessary without exceeding a reasonable period, and should be accompanied by adequate safeguards to protect workers' living standards". The complainant organizations submit that the Act infringes ILO Conventions in several respects.

516. The Government is freezing wages for an unreasonable period, i.e. three years - and for a longer period if negotiations have not concluded for 1991 and 1992 - without any provision for adequately safeguarding workers' living standards in the event of a rise in the cost of living or other change in economic circumstances, and in the absence of compelling evidence that such a lengthy period of wage control is necessary.

517. The Government is unilaterally reducing workers' wages through a system of unpaid leaves, contrary to its responsibility to protect workers' living standards, and again in the absence of compelling evidence that such an extreme measure is necessary.

518. The Government has also retained ultimate control over the choice of the workers' representatives in negotiations for local agreements, in that Cabinet will have the power to make regulations relating to the authority of a provincial, national or international trade union to enter into an agreement on behalf of bargaining agents, contrary to Article 3 of ILO Convention No. 87.

519. The Act also placed pressure on unions to agree to the Government's programme, by adversely affecting workers whose unions fail to agree to a sectoral framework or a local agreement. In particular, the Government can determine the content of a "sectoral framework" if, in its opinion, either there is "sufficient support" for it or "special circumstances exist", whether or not a trade union agrees to it, contrary to Articles 3 and 4 of ILO Convention No. 87.

520. The sectoral framework specified in the legislation is designated by the Government and agreements are subject to the approval of the Government even when the Government itself is not the employer (e.g. universities, schools, hospitals and nursing homes).

521. Further, when a trade union does not sign a local agreement reflecting the Government's "sectoral framework", the following measures apply: (i) the Government unilaterally institutes the three-year wage freeze, together with a wage reduction through unpaid

leaves; (ii) the expenditure targets set by the Government are not reduced as they otherwise would unless trade unions agree to the Government's sectoral framework and enter local agreements; and (iii) workers do not have access to a job security fund, i.e. an unemployment assistance fund, which would cushion the impact of a lay-off, unless the Government is satisfied that the union has made all reasonable efforts to enter into a local agreement.

522. The Act also violates Article 8(2) of Convention No. 87, which requires that "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention".

B. The Government's reply

523. In its communication of 12 January 1994, the Government generally submits that the Act is consistent with the applicable ILO Conventions and principles, which recognize that governments must be given the flexibility to deal with economic crises. The Committee on Freedom of Association has in the past concluded that economic stabilization measures restricting collective bargaining rights are acceptable provided they are of an exceptional nature, only to the extent that they are necessary, without exceeding a reasonable period and that they are accompanied by adequate safeguards to protect workers' living standards. [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 641.] The Committee of Experts has adopted a similar approach on this issue.

524. Before replying specifically to the allegations, the Government gives extensive explanations and figures, summarized below, on the economic and fiscal background which, it argues, made the adoption of the Act an absolute necessity.

525. The 1990-92 recession hit Ontario particularly hard. It had dramatic effects on jobs, social service expenditures and revenues. It had an especially serious impact on Ontario's debt, which rose from $42 billion to $68 billion during the recession. The recession also had a devastating effect on employment. Ontario accounts for nearly 70 per cent of all jobs lost in Canada during the recession, with manufacturing most affected; permanent plant closures accounted for 65 per cent of major lay-offs in 1992, up from 24 per cent in 1982. The recession also created additional pressures for social service expenditures, in particular social assistance: since 1989, the number of recipients has doubled and expenditures have more than doubled to $6.2 billion.

526. The recession also led to the collapse of provincial tax revenues, which have fallen for two years despite significant tax-raising measures. Revenues declined proportionately more than nominal GDP. Tax revenues for 1991-92 declined by 5.2 per cent; for

1992-93, they fell nearly $1.75 billion short of the forecast in the 1992 Budget. This drop in revenues has sharply increased Ontario's deficit in the past three years, pushing it over $12 billion in 1992-93. If the Government did not take action, the Province's deficit for 1993-94 would rise to almost $17 billion in 1993-94, and the accumulated debt possibly approaching $120 billion by 1996. Public debt interest currently absorbs about 13 cents of every dollar of revenues. In the absence of strong action to cut expenditures and raise revenues, that share could double by 1995-96. The annual cost of servicing the debt could rise from $5 billion now to about $12 billion and become Ontario's largest "program", eclipsing education and hospitals. Excluding sovereign countries, Ontario has become the largest borrower in the world, borrowing on average more than $1 billion a month. The Province spends more on interest costs than it spends on its schools.

527. There are approximately 900,000 persons employed in the public sector, about one in five jobs in the provinces, with a total compensation bill of nearly $43 billion. The cost of Ontario's public sector grew by 61 per cent from 1986 to 1993, whereas the Gross Domestic Product remained at the same level, i.e. $202 billion. Expenditures on health, education and social services account for 71 per cent of provincial government expenditure, over 50 per cent of which represents compensation for public service employees. Since 1980, private sector employment rose by 10 per cent, while public sector jobs increased 47 per cent.

528. Faced with this situation, the Government had no choice but to take action rapidly, which it did in two ways. The 1993-94 Budget included an Expenditure Control Plan with spending cuts of $4.6 billion, $720 million of which were to come from a decrease in the Government's operations and overhead costs, including payroll, and from a streamlining of operations. By the end of 1994, there will be almost 5,000 fewer full-time equivalent positions in the public service, through, wherever possible, normal attrition and voluntary retirements and resignations. These measures, however, were not enough to respond adequately to the debt and deficit problem.

529. In April 1993, the Government initiated negotiations towards a Social Contract with employers and employees in the public sector to complement the Expenditure Control Plan. The Social Contract is a process to achieve basic trade-offs between economic performance measures, such as productivity enhancements and the containment of compensation costs, in return for employment security gains and labour's empowerment in planning processes; its purpose is to preserve public services and public sector jobs while putting them on a secure financial footing. Together, the Expenditure Control Plan and the Social Contract will enable the Government to keep its commitments to create jobs, maintain important services and minimize public sector job impacts, while achieving operating savings that will total $6 billion in 1993-94.

530. To make sure that the above-noted compensation savings were achieved in the fairest way, in April 1993, the Government invited public sector employer and employee representatives and representatives of independent health practitioners to negotiate a Social Contract with the Government. During the negotiations which took place in April, May and June of 1993, the Government tabled a framework agreement that included provisions for: savings through unpaid leaves of absence while protecting public services and accommodating the preference of individual employees; enhanced employment including redeployment, training and adjustment for employees; encouragement of efficiency and productivity savings in the public sector; access to a fund to supplement unemployment insurance benefits or to permit the extension of notice periods or to allow for retraining; and protection for those earning less than $30,000 per year. Despite the progress made in these talks, they ended on 3 June 1993, without an agreement.

531. The Government's last framework offer, presented on 2 June 1993, outlined a fair and balanced way of achieving the $2 billion in social contract savings while protecting jobs and services. It contained many ideas from social contract participants, employee and employer representatives alike. It reflected their shared concern for a humane restructuring of government, for more affordable and efficient government, for greater openness and accountability in government and, above all, for the preservation of public services. That framework has become the foundation for the Social Contract Act, 1993. The Government is committed to saving $2 billion a year for the next three fiscal years through reduced compensation costs. The Act seeks to achieve the savings in the spirit of the Social Contract.

532. The purposes of the Act are: to encourage employers, bargaining agents and employers to achieve savings through agreements at the sectoral and local levels primarily through adjustments in compensation arrangements; to maximize the preservation of public sector jobs and services through improvements in productivity, including the elimination of waste and inefficiency; to reduce expenditures for a three-year period and to provide criteria and mechanisms for achieving the reductions; and to provide for a job security fund.

533. The significant features of the Act are as follows: (a) the Minister responsible for the administration of the Act is authorized to establish expenditure reduction targets for the various sectors and employers in the public sector; (b) a Public Sector Job Security Fund is established; (c) a structure for negotiated settlements to achieve the expenditure reduction targets is established at both the sectoral and local levels for bargaining unit employees; (d) a structure is also provided for plans in respect of non-bargaining unit employees; (e) if there is no agreement or plan, employers will implement expenditure reduction targets through freezes in compensation and, if freezes do not produce the necessary savings, through unpaid leaves to a maximum of 12 days; special provision is made for employees who perform critical functions; (f) those who earn under $30,000 annually

are given protection; pay equity entitlements are also protected; (g) the Province is authorized to reduce its payments to public sector employers and, in cases prescribed by regulation, to require payments for them; the Act applies to independent health professions; (h) the Act applies to members of the Assembly and other office holders, whether elected or appointed.

534. As regards the first specific allegation made by the complainants (freezing of wages for an unreasonable period without adequate safeguards) the Government submits that in passing the Act, it was taking action to protect the living standards of workers by reducing the likelihood of lay-offs and unemployment. Nothing in Convention No. 87 prevents the Government from deciding drastically to reduce funding for public service delivery. Government forecasts were that between 20,000 and 40,000 public sector workers would have lost their employment if a negotiated restructuring outcome was not pursued and supported by legislation. The Act has succeeded based on projections that very few lay-offs will occur. This supports the claim that the living standard of workers has been protected. As of 13 December, only 66 people have applied for access to a $300 million employment security fund provided by the Province.

535. The Act does not necessarily freeze wages. In the vast majority of cases, employers and their unions concluded local agreements under the Act, some of which voluntarily accepted a freeze for a period of between one and three years, while others did not feel the need to agree on any freeze at all. Collective bargaining continues during this period and bargaining outcomes will reflect the terms that the local parties agreed upon. This notwithstanding, considering the Government's current fiscal/deficit crisis, a period of three years freeze is a reasonable approach to balancing the living standards of workers' with the need to return to economic stability.

536. For those employers and unions that failed to reach an agreement, there is a mandatory freeze on compensation and employers are free to require employees to take up to 12 days' unpaid leave per year for a period of three years. Actual reliance on 12 unpaid leave days appears to be less than anticipated. Where employers select this option they are restricted by statute from relying on "other measures at law" (lay-offs) until they have clearly demonstrated they cannot achieve their savings through a compensation freeze and unpaid leave days. Untenable employer claims are subject to compulsory binding third party arbitration/adjudication with a regulatory requirement they provide detailed financial information to support their claims. The Act does not place restrictions on the ability of third party interest arbitrators to award increases in compensation during the period 14 June 1993 to 31 March 1996. This provision applies in cases where a local agreement is concluded or where there is no local agreement. There is no comparable restriction on the right to strike for increases in compensation except where the terms of a local social contract agreement prevail in case of conflict with a local agreement, or where the Act provides for a freeze in compensation if no local agreement is concluded. This is a reasonable restriction on the

collective bargaining process when the Province's fiscal situation is considered.

537. To protect workers' living standards, the Act provides for the protection of employees earning less than $30,000 annually, excluding overtime pay and allows exemption for this only where approved by a sector plan and with the support of a local bargaining agent. The protection is otherwise unaffected for unorganized elements of the workforce.

538. Concerning the second allegation (that the Act reduces wages by up to 5 per cent through a system of unpaid leave), the Government states that the Act provides for opportunities to negotiate solutions that need not require a reduction in workers' wages. While the Act is intended to find most of the initial savings "primarily through compensation", sector plans encourage local parties to find innovative solutions to increase efficiency and productivity levels while protecting workers' standards of living by offsetting the need or pressure for involuntary lay-off. The Act temporarily affects workers' income in cases where local agreements are not concluded. Special attention was given to ensuring that workers received comparable time off whenever income was reduced under these circumstances. As well, pension entitlements are maintained without negative consequences for plan contributors. The Act was an alternative statutory intervention to simply rolling back workers' salaries on a permanent or temporary basis without establishing an environment where negotiated restructuring would offset the shortfall in provincial grant support. Great effort was made to provide a model for negotiating change in the face of the fiscal crisis facing the Province.

539. Contrary to the third allegation (that the Government proposes to retain ultimate control over the choice of the workers' representatives in negotiations for local agreements), the Government states that it assumes no right to override any existing and legally recognized rights of representation by bargaining agents. Subsection 5(3) of the Act precludes the Minister from designating an organization as a bargaining agent under the Act for employees who are represented by a bargaining agent. Subject to this limitation, the Act extended the rights of workers to form associations specifically for the purpose of seeking bargaining rights under the Act. On no occasion did these rights supersede those of an existing bargaining agent. The Act went on to extend to either trade unions or employers the further opportunity to form associations or to enter into agreements on behalf of their affiliates.

540. As regards the fourth allegation (provisions in the Act to exert pressures on unions to agree to the Government's programme "special circumstance" provisions of section 11), the Government submits that the Act provides incentives to conclude local agreements by making lower savings targets available and by providing a $300 million job security fund to help provide retraining for workers who might be laid off as a result of their employer's decision. As

well, where unions can demonstrate they made "all reasonable efforts" to conclude a local agreement but were not successful, they can still gain access to this fund on behalf of their members. Section 11(4) of the Act in no way restricts the abilities of any bargaining agent to manage its own internal affairs; to draw up rules and constitutions; to elect their representatives; to formulate their programmes, etc. The Act was not intended to be applied in this fashion and has not. Where "special circumstances" have been relied upon and a sector plan designated, unions are under no binding obligation to implement the sector plans under a local agreement. It is even possible to conclude a local social contract agreement that does not implement a sector framework plan. The Act does not extend to the Government any authority to dissolve by administrative authority any workers' or employers' organization; it actually extends the right to organize.

541. With respect to the fifth allegation (that the sectoral framework in the Act is designated by the Government and that agreements are subject to the approval of the Government even when the Government itself is not the employer), the Government indicates that nothing in the Act compels a bargaining agent or an employer to implement the terms of any sectoral framework plan into their local social contract agreement or even to have such an agreement. The Government has designated sectoral agreements only after achieving some level of support from participating employers and unions.

542. As regards the allegation that the Act violates Article 8(2) of Convention No. 87, the Government submits that it chose to balance the rights of public service workers to enjoy free collective bargaining, the need to adequately safeguard their living standards and the need to protect vital public services, with the harsh fiscal realities; otherwise public services would have been slashed and jobs lost. The Province did this within a statutory framework that went great distances to maintain workers' rights and living standards, the principle of collective bargaining and the need to adopt a negotiated restructuring model to support the continued delivery of services in an efficient, effective and affordable manner.

543. The Government attaches to its observations a series of documents some of which show that despite the above-noted economic stabilization measures taken by the Province, there is a continuing deterioration of its fiscal situation. As indicated by the Province's September 1993 Quarterly Update, provincial revenues for this fiscal year will be even lower than forecast in the Budget; a revenue shortfall of anywhere from $800 million to $1 billion has led in November 1993 to a downgrading of the Province's credit rating.

544. The Government concludes that it finds any prospect of overriding collective agreements painful and difficult, but this is nothing compared to what the alternative would mean for the Province. In accepting a hierarchy of principles, the Government determined that the right to enjoy free collective bargaining does not supersede the rights of others in society in every case, at all times. However, the economic stabilization measures set forth in the Act are of an

exceptional nature, are only to the extent necessary, do not exceed a reasonable period and such measures are accompanied by adequate safeguards to protect workers' living standards.

C. The Committee's conclusions

545. The Committee notes that the allegations in the present case relate to an intervention in the public sector collective bargaining process in Canada (Ontario) which, according to the complainants, violates Conventions Nos. 87, 98, 151 and 154.

546. The complainants argue that these measures were taken in the absence of compelling evidence of necessity. The Government submits for its part that it had no choice but to intervene in view of the severity of the fiscal and economic crisis facing the Province and that, in so doing, it attempted to balance the interests of all parties. As was already mentioned in a previous decision involving various restrictive provincial laws in Canada, including Ontario [Cases Nos. 1172, 1234, 1247 and 1260, 241st Report, para. 113] it is not for the Committee to express a view on the soundness of economic arguments put forward by the Government to justify its position or on the measures it has adopted; see also the general remarks made in this respect in the report of the study mission undertaken in Canada in 1985 [ibid., paras. 9-13]. On a related issue, the Committee cannot ignore the fact that the present case is far from isolated: several other Canadian jurisdictions, invoking similar reasons, have also enacted legislation dealing with collective bargaining in the public service, which prompted a number of complaints of violation of freedom of association, that were examined recently or are currently pending.

547. As regards economic stabilization measures which limit collective bargaining rights, the Committee recalled recently that when a government "for compelling reasons of national economic interest and as part of its stabilization policy, considers that pay rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards" [Case No. 1616, 284th Report (Canada), para. 635]. The Social Contract Act must therefore be examined in the light of these criteria, to assess whether it went beyond what the Committee has considered to be acceptable limits that might be placed temporarily on free collective bargaining.

548. The general structure of the Act, the main provisions of which are reproduced in Annex I, is as follows:

- article 7: the Minister shall establish expenditure reduction targets for public sectors and employers;

- article 11(1): the Minister may designate as a "sectoral framework" a plan that relates to a given sector, provided it meets certain criteria (sufficient support for the plan, based on negotiation; provisions achieving the expenditure reduction target; no adverse effect on employees earning less than $30,000; provisions to minimize job losses, respecting redeployment and training of employees, and adjustment programmes);

- article 13: bargaining agents may conclude local agreements that implement sectoral frameworks; if such local agreements are concluded, article 7(2)(a) provides that the Minister shall establish lower expenditure reduction targets;

- articles 23 and 24: where there is no agreement or plan, compensation is frozen for three years; if these measures are insufficient to meet the expenditure reduction target, employers may, under article 25, require employees to take unpaid leaves of absence, up to a maximum of 12 days in each of the three following years;

- other provisions in the Act: cover non-bargaining unit plans; protect employees earning less than $30,000; guarantee pay equity entitlements; establish a job security fund; and institute, in some cases, a review procedure before an adjudicator.

549. The Committee notes that the main purpose of the Act is to achieve reductions in public expenditure over a three-year period which, of necessity, entails some interference in the collective bargaining process, unless the government could convince all public sector bargaining agents and employees of the soundness of its action. While the Act encourages bargaining agents to conclude negotiated settlements, i.e. local agreements implementing a sectoral framework (which, in order to be designated as such, must include provisions that will assist public sector employers in achieving the target established by the Minister) expenditure reductions may ultimately be obtained through a freeze of wage rates or, if this is insufficient, through compulsory unpaid leaves of absence or special leaves. Collective bargaining, therefore, cannot be said to be voluntary in that context and the Committee regrets that the Government did not give full priority to collective bargaining and felt compelled to adopt the Act to establish the employment conditions in the public sector.

550. The Committee notes however that the Act embodies a number of features which, to some extent, mitigate its effects and its alleged incompatibility with ILO Conventions. Firstly, the Act protects employees at the lower end of the wage scale, who are likely to be most affected, and guarantees pay equity entitlements which, in practice, benefit mostly women. Secondly, as far as the Committee is aware, the Act is not another piece of legislation immediately following other government interventions in the collective bargaining

process. Thirdly, and although these were not successful, it appears that some consultation and negotiation on a framework agreement took place from April to June 1993. Furthermore, Part VII of the Act establishes under certain conditions a third-party review procedure when no local agreement is concluded.

551. In addition, article 12 of the Act leaves some room for the negotiation of sectoral frameworks by listing a series of subjects that negotiators may consider including in the framework. The Act also attempts to persuade bargaining partners to have regard voluntarily to the major economic and social policy considerations and the general interest invoked by the Government, as article 7(2) provides the incentive of lower expenditure reduction targets where local agreeements implementing the sectoral framework are concluded. Noting that the Government states that agreements were concluded in the vast majority of cases, the Committee requests it to provide additional information in this respect, in particular on the number of such agreements, and on their percentage in relation to the total workforce and sectors.

552. As regards the reasonableness of the period during which the Act will be in effect, the Committee notes that this assessment depends highly on the view taken as to the seriousness of the fiscal and economic situation of the Province, a subject on which the Government and the complainants hold irreconcilable views. Considering, however, that a three-year period of limited collective bargaining constitutes a substantial restriction, the Committee trusts that the legislation will cease producing effects at the latest, at the dates mentioned in the Act, or indeed earlier if the fiscal and economic situation improves. It invites the Government to refrain from taking such measures in the future.

553. As regards the allegation that the Government retained control over the choice of workers' representatives for the negotiation of sectoral agreements, the Committee notes that article 5(1) empowers the Minister to recognize additional bargaining agents, for the purposes of the Act, but is precluded under article 5(3) from designating a bargaining agent for employees who are already represented by a bargaining agent. It therefore considers that this aspect of the case does not call for further examination.

The Committee's recommendations

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

(a) While regretting that the Ontario Government did not give full priority to voluntary collective bargaining as a means of determining the employment conditions of public sector employees, the Committee considers that, taking into account all

circumstances and all the provisions of the impugned legislation, the Social Contract Act did not go beyond acceptable limits that might be placed temporarily on collective bargaining.

(b) Considering, however, that a three-year period of limited collective bargaining constitutes a substantial restriction, the Committee trusts that the legislation will cease producing effects at the latest, at the dates mentioned in the Act, or indeed, earlier if the fiscal and economic situation improves. It invites the Government to refrain from taking such measures in the future.

(c) The Committee requests the Government to provide additional information on the number of local agreements concluded in relation to the total workforce, and to keep it informed of the collective bargaining situation in the public sector.

ANNEX

An Act to encourage negotiated settlements in the public sector to preserve jobs and services while managing reductions in expenditures and to provide for certain matters related to the Government's expenditure reduction program

PART I
GENERAL

...

4. This Act binds the Crown in right of Ontario and all employers, employees and bargaining agents in the public sector.

5. (1) The Minister may recognize as a bargaining agent for the purposes of this Act an organization that in his or her opinion represents employees but that does not have bargaining rights under an Act.

(2) The recognition may be subject to such restrictions as the Minister specifies.

(3) The Minister shall not designate an organization as a bargaining agent under subsection (1) for employees who are represented by a bargaining agent.

(4) A bargaining agent designated under subsection (1) has the right to bargain on behalf of the employees for the purposes of this Act.

6. Nothing in this Act shall be interpreted or applied so as to reduce any right or entitlement under the Human Rights Code or under the Pay Equity Act.

PART II
EXPENDITURE REDUCTION TARGETS

7. (1) The Minister shall establish expenditure reduction targets for sectors and for employers.

(2) If there is a sectoral framework in respect of a sector, the Minister shall establish lower expenditure reduction targets for every employer in the sector who,

(a) enters into a local agreement, not later than August 1, 1993, that implements the sectoral framework;

...

PART III
PUBLIC SECTOR JOB SECURITY FUND

8. (1) A fund to be known in English as the Public Sector Job Security Fund and in French as Fonds de securité d'emploi du secteur public is established.

(2) The purpose of the Fund is to provide, in accordance with this Act and the regulations,

(a) payments to employees who are released from employment by their employers; and

(b) payments to employers for the purpose of extending the employment of employees who will be released from employment by the employers.

...

PART IV
SECTORAL FRAMEWORK

11. (1) The Minister may designate, as a sectoral framework, a plan that relates to a sector.

...

(3) the Minister shall not designate a plan as a sectoral framework unless, in the opinion of the Minister, the plan meets the following criteria:

1. There is sufficient support for the plan, based on negotiations leading to the development of the plan, for the plan to form the basis for local agreements in the sector.

2. The plan includes provisions that will assist employers in the sector in achieving the expenditure reduction target established by the Minister for the sector.

3. The plan will not adversely affect employees in the sector who earn less than $30,000 annually, excluding overtime pay.

4. The plan contains appropriate provisions to minimize job losses in the sector, appropriate provisions respecting the redeployment of employees in the sector who are released from employment or who receive notice that they will be released from employment, and appropriate provisions relating to employee training and adjustment programs.

5. The plan will be fair and equitable in its application to all employees.

(4) Subsection (3) does not apply to a plan if, in the opinion of the Minister, special circumstances apply and it is desirable to designate the plan as a sectoral framework.

...

12. In addition to the provisions referred to in subsection 11(3), persons seeking to negotiate the contents of a sectoral framework may consider including the following provisions in the framework:

1. Provisions relating to organizational restructuring, including early retirement options and labour adjustment programs.

2. Provisions relating to improvements in productivity, including the elimination of waste and inefficiency.

3. Provisions relating to alternate work arrangements.

4. Provisions relating to the binding resolution of disputes.

5. Provisions relating to the sharing of information and decision-making by employers and employee representatives, including the sharing of financial and planning information.

6. Provisions relating to sectoral bargaining.

7. Provisions relating to the establishment of joint committees at the sectoral and local level.

8. Provisions relating to pensions, including the joint trusteeship of pension funds.

9. Any other provisions proposed by a party to the negotiations.

PART V
LOCAL AGREEMENTS WITH BARGAINING AGENTS

13. (1) One or more bargaining agents may, not later than August 1, 1993, enter into a local agreement with an employer.

(2) A provincial, national or international trade union may enter into local agreements on behalf of bargaining agents that are affiliated with the trade union and have authorized the trade union to act on their behalf.

(3) An employer association may enter into local agreements on behalf of employers that are members of the association and have authorized the employer association to act on their behalf.

...

PART VII
WHERE NO AGREEMENT OR PLAN

23. (1) This Part applies to,

(a) those bargaining unit employees in respect of whom there is no local agreement.

...

(2) This Part does not apply to employees who earn less than $30,000 annually, excluding overtime pay.

24. (1) The rate of compensation of an employee is, for the period beginning June 14, 1993 and ending with March 31, 1996, fixed at the rate that was in effect immediately before June 14, 1993.

...

25. (1) If necessary to meet the expenditure reduction target established by the Minister, an employer may require employees to take unpaid leaves of absence to a maximum of twelve days or their equivalent in each of the following periods:

1. June 14, 1993 to March 31, 1994.

2. April 1, 1994 to March 31, 1995.

3. April 1, 1995 to March 31, 1996.

26. (1) If employees perform critical functions as prescribed by regulation and the employer is unable, without impairing those

functions, to meet its expenditure reduction target by utilizing unpaid leaves of absence under section 25, the employer may require those employees to take special leaves.

...

27. (1) If the fixing of compensation under section 24 does not result in an employer achieving its expenditure reduction target, the employer shall,

(a) make all reasonable efforts to achieve its target by utilizing unpaid leaves of absence under section 25 or, if applicable, special leaves under section 26 before taking other actions available to it at law; and

(b) develop a program setting out the manner in which these leaves are to be implemented.

(2) The program shall be developed consistent with the following criteria:

1. Employees described in subsection 23(2) will not be adversely affected.

2. Employees will not be required to take an unpaid leave of absence to the extent that it would result in their annual earnings, excluding overtime pay, being reduced to under $30,000.

3. The program will assist the employer in achieving the expenditure reduction target established by the Minister for the employer.

4. The program will be fair and equitable in its application to all employees.

5. The employer will participate in any redeployment plan that exists under a sectoral framework for the applicable sector or that is established by the Minister under section 50 for the applicable sector.

...

(4) In order to enable employees to evaluate the basis for the program, the employer shall, upon request, make such financial information available to the employees as is prescribed in the regulations.

...

28. (1) A written summary of the program shall be made setting out,

(a) the manner in which the unpaid leaves of absence are to be administered;

(b) whether the employer intends to use special leaves to meet the expenditure reduction targets;

...

(2) The summary of the program shall contain sufficient details so that employees are aware of how they will be affected.

29. (1) The summary of the program and a copy of this Part shall be posted in such a manner that they are likely to come to the attention of the employees affected by the program.

...

(3) An employee or bargaining agent who objects to the program because it fails to meet the criteria set out in section 27 may within ten days of the summary of the program being posted request in writing that the employer amend it.

...

(5) The employer shall, within ten days after the objection period has expired, review the objections and post in the same manner,

(a) a notice of confirmation of the original program; or

(b) a summary of the amended program.

...

30. (1) If following the employer review under subsection 29(5), an employee or a bargaining agent considers that the program or amended program still does not meet the criteria set out in section 27, he, she or it may, within ten days after the posting under subsection 29(5), request a review of the program by the person or body designated in the regulations as an adjudicator for that purpose.

(2) The request shall be in writing and shall specify the grounds for the objection to the program.

31. (1) Subject to the regulations, if any, the adjudicator may establish procedures for carrying out the review.

(2) The adjudicator shall review the program and shall,

(a) confirm the program if it meets the criteria set out in section 27; or

(b) amend the program so that, in the opinion of the adjudicator, it is consistent with the criteria set out in section 27.

...

(5) The decision of the adjudicator is final.

...

V. CASES IN WHICH THE COMMITTEE HAS REACHED INTERIM CONCLUSIONS

Case No. 1595

COMPLAINTS AGAINST THE GOVERNMENT OF GUATEMALA PRESENTED BY
- THE GENERAL CENTRE OF WORKERS OF GUATEMALA (CGTG) AND
- THE WORLD CONFEDERATION OF LABOUR (WCL)

555. The Committee already examined this case at its meeting of November 1992 [see 284th Report, paras. 721-737, approved by the Governing Body at its 254th Session (November 1992)], when it reached interim conclusions.

556. Subsequently, the General Centre of Workers of Guatemala (CGTG) made new allegations in a communication dated 12 April 1993.

557. The Government furnished observations in a communication dated 5 November 1993.

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

A. Previous examination of the case

559. At the previous examination of the case by the Committee there remained pending the allegations concerning the assassination of a worker during a labour dispute, obstacles to the establishment of trade union organizations, the dissolution of trade unions by officials, anti-trade union dismissals and the refusal of several enterprises to negotiate collective agreements [see 284th Report, paras. 726, 735, 736 and 737].

560. Specifically, the complainants had alleged the following infringements of trade union rights [see 284th Report, para. 726]:

- Union of Peasant Workers of La Patria farm: the complainants state that in view of the union's decision to join the CGTG and to take legal action against the undertaking to put a stop to the

mass dismissals, the undertaking with the assistance of the national army, repressed the workers, killing one of them on 5 August 1989. The complainants allege that 40 members of the trade union were dismissed;

- the Guatemala Fiesta Hotel Workers' Union: the complainants allege that the undertaking refuses to negotiate the collective agreement on conditions of employment, since it maintains that there is no trade union, despite the fact that the union has enjoyed trade union status for seven years. Similarly, they allege that all trade union leaders have been dismissed, and state that even though the courts ordered their reinstatement, the undertaking refuses to comply;

- Workers' Union of the Fábrica Pundu SA: the complainants allege that unlawful dismissals have taken place and state that it seems likely that the undertaking will close in the near future which appears like a combined attempt to break up a trade union movement in the "maquila" (in bond) industry, where employers have obstructed the establishment of trade union organizations. In particular, the complainants mention the following undertakings: Sam Agliano and Don San (free trade zone, department of Izabal), Manufacturas Integridad SA, Koram SA, Booco and Cía, Ltda., Diseños Panamericanos SA and Confecciones Isabel SA;

- Workers' Union of the El Trapichito farm: the complainants allege that all members of the union have been dismissed. Similarly, they point out that although the courts have ordered the reinstatement of Julian Aguilar Santana, the undertaking refuses to comply;

- Workers' Union of the El Naranjo farm: the complainants allege that 55 workers, members of the undertaking's trade union, were dismissed when it tried to join the General Centre of Workers of Guatemala;

- the Workers' Union of the Compañía Centroamericana Administradora de Hoteles y Turismo SA, Hotel Ritz Continental: the complainants allege that the undertaking has requested the withdrawal of the union's legal personality and that it has refused to negotiate a collective agreement on conditions of employment;

- Union of Automobile and Allied Drivers of Guatemala: the complainants allege that the urban transport companies Unión, Bolívar, EGA, La Fe and Morena, are trying to prevent the establishment of trade union organizations;

- the San Antonio Suchitepequez Municipal Workers' Union and the Villa Nueva Municipal Workers' Union: the complainants allege that their unions have been dissolved by municipal officials.

561. The Committee had noted that the Government had either not replied to the allegations or had done so incompletely by merely stating essentially that the trade union organizations mentioned in the allegations were free to appeal at the judicial and administrative levels.

562. In these circumstances, the Committee made the following recommendations [see 284th Report, para. 737]:

The Committee requests the Government to instigate a judicial inquiry into the alleged murder of a worker on 5 August 1989 at the La Patria farm, when workers were demanding an end to the mass dismissals, and to keep the Committee informed in this regard;

As regards Case No. 1595, the Committee emphasizes the seriousness of the allegations and requests the Government to send, without delay, detailed information on each of the many allegations presented regarding anti-union dismissals in various enterprises, the refusal to negotiate collective agreements, restrictions on the establishment of trade union organizations and the dissolution of trade unions by public officials.

B. New allegations

563. In its communication of 12 April 1993 the General Central of Workers of Guatemala (CGTG) alleges that although the legal procedures had been initiated several years ago, the Ministry of Labour has still not granted legal personality to the Workers' Union of the Ministry of the Interior, the National Front Trade Union of Street Vendors and the Customs Workers' Trade Union.

564. The CGTG also alleges the dismissal of the Secretary-General of the Trade Union of Bakers of Chiquimula following the lack of action by of the labour inspector, as well as the dismissal of 20 members of the Trade Union of Shipping Workers of Santo Tomás de Castilla in December 1992, who worked in the Santo Tomás de Castilla shipping enterprise (Barrios Izabal Port).

565. Furthermore, the CGTG alleges that the General Inspectorate of Labour did not approve the collective agreement concluded between the Workers' Union of the Autonomous Sports Confederation of Guatemala and this Confederation, alleging that it was not presented within 24 hours of being concluded by the parties. In the same way, the CGTG alleges the dismissal of several officials of the executive committee of the Workers' Union of the San Juan de Dios Hospital and the refusal of the Director of the hospital to reinstate workers dismissed although the Deputy Minister of Labour had accepted their reinstatement.

566. Finally, the CGTC alleges non-compliance with labour legislation by certain enterprises and makes allegations concerning inter-trade union disputes.

C. The Government's reply

567. In its communication of 20 October 1993, the Government states that the partial reform of the Labour Code on 10 November 1992 made some improvements for the workers: workers participating in the establishment of a trade union may not be dismissed once notification has been given to the General Inspectorate of Labour; should such workers be dismissed, they must be reinstated within 24 hours and the employer responsible shall be punished with a fine of 1,000 quetzales in addition to the payment of the outstanding wages; the recognition of a trade union is no longer made by "governmental agreement" but by "ministerial resolution" within a period of 20 days following the presentation of the application. Since July 1993, 25 trade unions have been registered and reference is made in particular to some trade unions in the in-bond industry, which are already set up or being set up (although these are not the same trade unions being established in the in-bond industry to which the complainants referred). In the same way, the reformed Labour Code sets up conciliation and arbitration courts on a permanent basis (they were previously set up only in the event of a dispute).

568. The Government adds that some of the disputes presented to the Committee on Freedom of Association are no longer at the administrative stage but before the courts. This is the case with the trade unions in the following enterprises: La Patria Farm, Manufactureras Integridad SA, Koram SA, Booco and Cía, Ltda., Diseños Panamericanos SA, Confecciones Isabel SA as well as the Trade Union of Municipal Workers of Villa Nueva. In the same way, in the case concerning the Guatemala Fiesta Hotel Workers' Union, mediation by the Ministry of Labour has led to a definitive settlement of the dispute and progress to be made in other cases presented to the Committee on Freedom of Association.

569. Furthermore, the Government refers to the allegations concerning ten trade unions and makes the following observations:

- Trade Union of Workers of Shipping Enterprises: in a resolution dated 16 August 1993, the trade union was asked to reply to some of the observations, although it has not done so to date;

- Trade Union of Bakers: the initial application of this trade union, with headquarters in the department of Chiquimula, was made on 26 November 1992. Some legal problems have arisen although the application is now at the final stage of approval. Measures have been taken to guarantee the job stability of trade union members and in particular officials;

- National Front Trade Union of Street Vendors: legal personality was granted and statutes were approved under a resolution of the Ministry of Labour dated 12 August 1993;

- Customs Workers' Trade Union: some problems arose and it was necessary to process the application in accordance with the standards contained in the reforms to the Labour Code. In a resolution dated 5 August 1993, No. 1146, the Ministry of Labour recognized the legal personality of the trade union and approved its statutes;

- Workers' Union of the Ministry of the Interior: debate has arisen concerning the classification of the 22 secretaries of the departmental offices of the Ministry of the Interior as employees in positions of trust. In an opinion dated 11 October 1993, the Legal Advisor's Office of the General Inspectorate of Labour stated that these workers do have this status because of the functions which they carry out. The trade union may make observations on this opinion;

- Workers' Union of the Autonomous Sports Confederation of Guatemala: the collective agreement on conditions of work was signed in April 1993 and presented to the General Inspectorate of Labour the following June. For this reason this office requested that an updated collective agreement be presented;

- Workers' Union of the San Juan de Dios Hospital: the matter is now before the labour courts which will be responsible for a final solution.

570. Finally, the Government refers to the guidelines contained in the Government plan 1994-95 concerning wage and labour policies, which include the guarantee of freedom of association and the promotion of collective bargaining; the appointment of an additional 31 labour inspectors to monitor the application of labour legislation; the holding of tripartite seminars and the establishment of tripartite committees to resolve or prevent disputes.

C. The Committee's conclusions

571. The Committee observes that the allegations refer to the assassination of a worker during a labour dispute, the non-recognition of the legal personality of several trade unions, the dissolution of trade unions on the order of officials, obstacles to the establishment of trade union organizations, numerous acts of anti-trade union discrimination and restrictions on collective bargaining.

572. The Committee notes with interest the recent reforms of the Labour Code to improve the guarantee of trade union rights and that in August 1993 legal personality was granted to the National Front Trade

Union of Street Vendors and the Customs Workers' Trade Union. The Committee also notes that following the mediation by the Ministry of Labour the labour dispute between the Fiesta Guatemala Hotel and the trade union was finally settled.

573. The Committee also notes that according to the Government the courts have now been seized of the matters contained in the allegations respecting the dismissal of 40 workers who were members of the Union of Peasant Workers of La Patria Farm, measures taken by the in-bond enterprises Manufacturas Integridad S.A., Koram S.A., Booco & Cía. Ltda., Diseños Panamericanos S.A. and Confecciones Isabel S.A., to prevent the establishment of trade unions and the dissolution of the Trade Union of Municipal Workers of Villa Nueva and the dismissal of several officials of the executive committee of the Workers' Trade Union of the San Juan de Dios Hospital, who had not been reinstated in their jobs despite the order issued by the administrative authority. The Committee requests the Government to keep it informed of the outcome of the judicial proceedings initiated in these cases and expresses the hope that the verdicts will be handed down without delay. It also requests, if it is established that the dismissals were motivated by legitimate trade union activities, that the workers in question be reinstated in their jobs.

574. Furthermore, the Committee notes that according to the Government some of the questions raised by the complainants are at the administrative stage for various reasons. Thus the administrative procedure respecting the dismissal of the Secretary-General of the Trade Union of Bakers of Chiquimula is now at the final stage; the Trade Union of Shipping Workers of Santo Tomás de Castilla (Barrios Izabal Port) has not yet transmitted to the Ministry of Labour the additional information requested; and as regards the non-granting of legal personality to the Workers' Trade Union of the Ministry of the Interior, the Ministry of Labour is awaiting the observations of the trade union on the opinion issued by the legal advisers' office of the Labour Inspectorate that its members include 22 government secretaries who have the status of employees of trust. The Committee requests the Government to keep it informed of the administrative decisions in these matters and it hopes that they will be issued without delay.

575. As regards the allegation concerning the non-approval by the General Inspectorate of Labour of the collective agreement concluded between the Autonomous Sports Confederation of Guatemala and the workers' union of this institution, the Committee notes that the Government states that the non-approval was due to the fact that the collective agreement was sent to the administrative authority two months after it had been concluded. In this respect, the Committee notes that collective agreements should not be subject to approval by the administrative authority whose competence in any case should be limited to ensuring respect for minimum legal standards in the respective collective agreements. The Committee therefore requests the Government to guarantee the immediate application of the above-mentioned collective agreement.

576. Finally, the Committee deplores that the Government has not replied to the other allegations, which concern: the assassination of a worker on 5 August 1989 during a labour dispute in the La Patria Farm and the trade union (in its previous examination, the Committee had already requested the holding of a judicial inquiry and to be informed of its outcome, a request which it repeats on this occasion); the existence of illegal dismissals and the imminent closing down of the Fábrica Pundo S.A. to break up the trade union movement; measures taken in the in-bond enterprises San Agliano and Don Sam to prevent the establishment of trade unions; the dismissal of all the members of the Workers' Union of El Trapichito Farm; the dismissal of 55 members of the Workers' Union of El Naranjo Farm; the request for the withdrawal of the legal personality of the Workers' Union of the Compañia Centroamericana Administradora de Hoteles y Turisom, S.A. (Hotel Ritz Continental) by the enterprise and the refusal of the enterprise to negotiate a collective agreement; attempts by the urban transport companies Unión, Bilívar, EGA, La Fe and Morena to prevent the establishment of trade union organizations; and the dissolution of the San Antonio Suchitepequez Municipal Workers' Union and the Villa Nueva Municipal Workers' Union by municipal officials. The Committee urges the Government to send its observations on these allegations as a matter of urgency. The Committee also expresses its concern at the many allegations of anti-trade union discrimination, obstacles to the establishment of trade unions, delays in the granting of legal personality or even the dissolution or attempted dissolution of trade unions by public officials or enterprises.

577. Given the number and nature of the pending allegations, the Committee urges the Government to speed up the processing of complaints by trade unions and to ensure fully and effectively the right of workers to set up organizations of their own choosing to guarantee that no worker is a victim of acts of anti-trade union discrimination, such as dismissal, because of trade union 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's recommendations

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

(a) The Committee once again requests the holding of a judicial inquiry into the death of a worker on 5 August 1989 during a labour dispute between the La Patria Farm and the trade union and to be informed of the outcome.

(b) The Committee expresses its concern at the many allegations of anti-trade union discrimination, obstacles to the establishment of trade unions, delays in the granting of legal personality or even the dissolution of trade unions by officials or enterprises.

(c) The Committee deplores that the Government has not sent observations on a number of the allegations and urges it to speed up the processing of complaints by trade unions and to ensure fully and effectively the right of workers to set up organizations of their own choosing, to guarantee that no worker is the victim of acts of anti-trade union discrimination, such as dismissal, for trade union 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.

(d) 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.

(e) The Committee requests the Government to guarantee the immediate application of the collective agreement concluded between the Autonomous Sports Confederation of Guatemala and the trade union of this institution. The Committee emphasizes that collective agreements should not be subject to approval by the administrative authority, whose competence in any case should be limited to ensuring respect for minimum legal standards in the respective collective agreements.

Case No. 1640

COMPLAINTS AGAINST THE GOVERNMENT OF MOROCCO PRESENTED BY
- THE ORGANIZATION OF AFRICAN TRADE UNION UNITY (OATUU)
- THE WORLD CONFEDERATION OF LABOUR (WCL)
- THE DEMOCRATIC CONFEDERATION OF LABOUR (CDT) AND
- THE GENERAL UNION OF MOROCCAN WORKERS (UGTM)

579. The Committee examined this case at its February 1993 meeting [see 286th Report, paras. 612-646, approved by the Governing Body at its 255th Session (March 1993)], at which it drew up interim conclusions.

580. The World Confederation of Labour (WCL) subsequently communicated additional information in a letter dated 5 April 1993. The Government sent new observations in communications dated 15 July and 6 October 1993.

581. 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. Previous examination of the case

582. At its February 1993 meeting, the Committee examined allegations relating to the arrest and sentencing of two trade union leaders, intimidation and repression by the authorities against trade union organizations during the preparations for the May Day celebration and a series of anti-union measures taken against workers, trade union leaders and their organizations by the Government and the authorities.

583. At that meeting, the Committee formulated the following recommendations [see 286th Report of the Committee, para. 646]:

(a) The Committee emphasizes that the right to express opinions through the press or otherwise is an essential aspect of trade union rights and expresses its deep concern regarding the gravity of the sentences handed down against Mr. Noubir El Amaoui, the General Secretary of the CDT, and Mr. Driss Laghnimi, the regional secretary of the UGTM in Sidi Slimane.

(b) In order that it may have at its disposal all the information necessary on this aspect of the case, the Committee requests the Government to provide without delay detailed information on the charges pressed against Messrs. El Amaoui and Laghnimi and to communicate the text of the verdicts handed down against them, with the reasons therefor. The Committee also requests the Government to communicate the texts of the judgements handed down by the Court of Appeal.

(c) Regarding the irregularities which reportedly took place during the arrest and trial of Messrs. El Amaoui and Laghnimi, the Committee requests the Government to indicate on the basis of which provisions Mr. El Amaoui's arrest was ordered, and to provide its observations concerning the allegations made by the complainants in this regard and also concerning the circumstances of Mr. Driss Laghnimi's arrest.

(d) Noting that the Government has not replied to the allegations concerning measures of intimidation taken

against the organizers of the 1992 May Day demonstrations, the Committee urges the Government to provide the required information without delay.

(e) Regarding the allegations concerning the surrounding and prohibition of access to the CDT's premises on 21 April 1992, the refusal by the authorities to issue to trade union leaders documents acknowledging that their organizations were legally established or renewing such documents, the refusal by state offices and enterprises to carry out judgements handed down in favour of workers, the failure to reinstate civil servants and the violent intervention of the police leading to one death during a demonstration by workers of the Bahia-Baladi enterprise in Rabat, the Committee requests the Government to communicate its observations on these allegations without delay.

B. Additional information sent by a complainant organization

584. In a communication dated 5 April 1993, the World Confederation of Labour (WCL) states that the interview granted by Mr. El Amaoui to the newspaper El País (11 March 1992) contained nothing which exceeded "the admissible limits of controversy".

585. The WCL considers that it is part of the role of trade unions and their leaders to criticize the way economic and social government policy is administered, especially when it is administered to the detriment of most of the population. According to this organization, quite apart from the fact that the concept is entirely subjective and therefore cannot have any legal significance, in his interview Mr. El Amaoui challenged a collective body, the Government, and not a specific person.

586. The WCL also quotes the Committee of Experts on the Application of Conventions and Recommendations, which stated that "the Government has paralyzed most collective bargaining procedures. [The Democratic Confederation of Labour (CDT) and the General Union of Moroccan Workers (UGTM)] refer to the Central Medical Advisory Council which is to be removed by section 364 of the draft Labour Code, the Central Prices and Wages Committee which has not met since 1961, the Central Collective Agreements Council which is no longer provided for in the draft Labour Code, the Conciliation and Arbitration Committees responsible for the settlement of collective disputes, and the Central Council of the Public Service which has not met since 1961." [See Report of the Committee of Experts of 1992, Report III (Part 4A), p. 276.]

C. Additional reply of the Government

587. In a communication dated 15 July 1993, the Government states that Messrs. Noubir El Amaoui and Driss Laghnimi, on the occasion of the national holiday on 9 July 1993, were granted a pardon, by virtue of which they were released before having completed their respective prison sentences.

588. In a letter dated 6 September 1993, the Government states that freedom of opinion and expression are part of the fundamental rights recognized by legislation and in practice for all citizens, irrespective of their political or trade union affiliation. In practical terms, this right is exercised within the limits of the rights of others. Any statement which is contrary to dignity and any contemptuous or insulting statement which does not contain any specific accusation are considered to derogate from these rights. The legislation in force lists the sanctions to be applied in the event of infringement of the rules governing freedom of expression.

589. According to the Government, the acts with which Mr. Noubir El Amaoui was charged are insult and libel under sections 46 and 48 of the Press Act, and the prosecution of this person took place in accordance with the provisions of section 71 of the same Act, which grants the Government the right to demand the institution of proceedings if it has been insulted and libelled. The proceedings against Mr. Noubir El Amaoui were instituted on the basis of a demand presented by the Prime Minister after discussion within a ministerial council, as the law grants the Prime Minister the right to represent the Government in legal proceedings.

590. The criminal investigation department carried out an investigation of the acts with which Mr. Noubir El Amaoui was charged, as part of the assignment entrusted to it by the Public Prosecutor's Office in Rabat, within whose territorial jurisdiction the legal proceedings fall. After examining the documents of the case, the Public Prosecutor's Office concerned concluded that the statements made by the person concerned to the Spanish newspaper contained all of the elements of the offences of insult and libel provided for in sections 46 and 48 of the Press Act. Moreover, according to the Government, while he was being interrogated by the criminal investigation department, the person concerned admitted his responsibility as well as the accusations against him.

591. The Government states that, since the press offences had not yet been subjected to flagrante delicto proceedings, Mr. El Amaoui had remained at liberty. He was sent a summons which met all of the requirements laid down in section 72 of the Press Act, such as the charge, legal description and applicable legislative provisions.

592. At his trial, Mr. Noubir El Amaoui enjoyed adequate guarantees to prepare his defence with the assistance of a substantial number of lawyers. Defence counsels' pleadings took up almost all of

the hearings, in which the lawyers were able to freely take up any issues they chose. The person concerned addressed the court himself at the end of the hearing and launched into a long speech in which he displayed political criticism and personal ideas in full freedom.

593. The trial itself took place in compliance with all of the requirements as to publicity laid down by the law. The lawyers and the public were authorized to attend it in full freedom, except for certain security arrangements intended to maintain order after a group surrounded the premises of the hearing, repeating slogans which cast aspersions on the dignity of the court and of justice, breaking down doors and preventing public servants from entering the courtroom, to the extent that the actions of this group began to jeopardize the safety of the person concerned himself.

594. Once the court had gathered evidence of Mr. Noubir El Amaoui's guilt of the charges against him, it ordered his arrest and imprisonment in accordance with section 400 of the Code of Penal Procedure. On 17 April 1992 it handed down a verdict sentencing him to two years' prison and a fine of 1,000 dirhams, which was upheld by the Appeal Court of Rabat.

595. The Government states further that, in response to a petition for pardon submitted in accordance with the legislation in force, Mr. Noubir El Amaoui was released under the royal pardon which was granted in this case.

596. As regards Mr. Driss Laghnimi, the Government states that the facts of the case date back to 5 May 1992, when workers affiliated to the General Union of Moroccan Workers and the Union of People's Trade Unions attempted to settle a dispute between them regarding the hiring of several workers by a company. A proposal to hire the same number of workers belonging to each of the two trade unions was approved by the workers affiliated to the Union of People's Trade Unions, who then made statements glorifying the national holy places, which displeased Mr. Laghnimi; the latter then uttered disparaging remarks about these places.

597. After he had been heard and the witnesses had testified, Mr. Laghnimi was brought before the Public Prosecutor of the Court of the First Instance of Sidi Slimane, which decided to prosecute him for making disparaging remarks about the holy places, under section 179 of the Criminal Code, and to bring him before the court under arrest, by virtue of Case No. 153/92 involving an offence, with flagrante delicto.

598. According to the Government, at the trial the defence counsel's pleadings were heard and the hearing was presided over by the President of the court in conformity with the law. The court turned down a request of defence counsel to defer judgement and, on 18 May 1992, handed down a verdict sentencing him under the charges brought against him. The verdict was upheld by the Appeal Court of Kénitra on 20 July 1992.

599. Regarding these two cases, the Government notes that the Committee on Freedom of Association has stated in connection with previous cases that the parties should refrain from libel when expressing trade union or political opinions and it affirms that it does not understand why the cases at issue should be exempted from this rule.

600. As regards the allegations concerning the issuance of documents acknowledging the establishment and renewal of trade union branches, the Government states that the allegations contained in the complaint concerning the teaching sector in the areas of Tan Tan and Polman are utterly unfounded. As regards the local branch of the National Teachers' Union in the town of Tan Tan, its founding documents were filed with the local authorities by its general secretary, who received an acknowledgement on 12 April 1992, contrary to what was stated in the above-mentioned complaint. According to the Government, the allegations concerning the Polman area are false, since the attempt to set up a section of the National Teachers' Union in the town of Maysour did not meet legal requirements, as can be seen from the following details:

- the persons who organized the meeting with the intention of setting up a local branch of the trade union do not all exercise the same occupation as required by the legislative provisions in force, as some of them work in the teaching sector while the others work in public works;

- the meeting organized for this purpose on 12 May 1991 had not been announced to the competent authority in accordance with the legislation in force;

- the premises where the meeting took place turned out to be the headquarters of the local executive of the Socialist Union of Popular Forces Party.

601. As regards the initiative to set up a trade union section in the town of Polman, it also failed to comply with legal requirements for the following reasons:

- the room which had been rented to serve as headquarters for the trade union is located inside a private residence in front of which several persons assembled on 10 November 1991, having been called together to set up a trade union section;

- the group which put forward the initiative included persons belonging to the teaching sector, public works, the water company and the forestry sector, not to mention a farm worker who had nothing to do with administration;

- the persons concerned had not announced the meeting in question to the competent bodies.

602. As regards the demonstrations on 1 May 1992, the Government refers to the information it had already sent.

603. Lastly, concerning the information on the observations made by the Committee on Freedom of Association regarding the allegations that means of intimidation has been used against the organizers of these demonstrations, the Government states that it will communciate this information as soon as it receives it from the competent bodies to which it has written to this effect.

D. The Committee's conclusions

604. First of all, the Committee notes the fact that Messrs. Noubir El Amaoui and Driss Laghnimi were granted a pardon on the occasion of the national holiday on 9 July 1993, by virtue of which they were released before having completed their respective prison sentences.

605. As regards the charges brought against these persons, the Committee notes that Mr. El Amaoui was sentenced for libel and slander under sections 46 and 48 of the Press Act for having uttered, according to the information supplied by the Government, statements insulting and libelling the Government in a Spanish newspaper. As regards Mr. Laghnimi, the Committee notes that he was sentenced, under section 179 of the Criminal Code, for uttering disparaging remarks about the holy places, since, again according to the Government, he had made these remarks about said places during a dispute between workers affiliated to the General Union of Moroccan Workers and the Union of People's Trade Unions concerning the hiring of several workers by a company.

606. Notwithstanding the pardon granted to these two persons, the Committee once again deplores the severity of the sentences handed down against them. The Committee recalls once again the fundamental principle that the right to express opinions through the press is an essential aspect of trade union rights. [See Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 172.] While it is true that when expressing their opinions, trade unions and their leaders should not exceed the admissible limits of controversy and should refrain from excessive language, as the Committee has stated before [see 254th Report, Case No. 1400, para. 198], the Committee considers that the freedom of expression which should be enjoyed by trade unions and their leaders should also be guaranteed when they wish to criticize the government's economic and social policy. The Committee requests the Government to supply information on the defamatory nature of the statements made by the General Secretary of the CDT, Mr. El Amaoui.

607. The Committee is of the view that it may be difficult to draw a clear distinction between what is political and what is,

properly speaking, trade union in character; these two notions overlap and it is inevitable, and sometimes usual, for statements uttered by the trade union movement to cover questions having political aspects as well as strictly economic and social questions. [See Digest, op. cit., para. 359.] The Committee draws the Government's attention to the resolution concerning trade union rights and their relation to civil liberties adopted by the International Labour Conference in 1970, defining as rights which are essential to the normal exercise of trade union rights, inter alia, freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. The Committee therefore urges the Government to take all necessary measures to guarantee respect of this principle.

608. As regards the irregularities which allegedly took place during the arrest and trials of Messrs. El Amaoui and Laghnimi, the Committee observes that the Government states that the arraignments and trials took place with respect for the guarantees of the right of defence and publicity. Faced with the contradiction between the statements made by the complainant organizations and the information supplied by the Government, the Committee can only recall the principle that it should be the policy of every government to ensure observance of human rights and especially of the right of all detained or accused persons to receive a fair trial at the earliest possible moment. [See Digest, op. cit., para. 108.]

609. Regarding the authorities' refusal to issue trade unionists with documents acknowledging the establishment and renewal of branches of trade unions, the Committee notes the Government's statement to the effect that the allegations concerning the teaching sector in the Tan Tan and Polman areas are utterly unfounded. According to the Government, a document acknowledging the establishment of the local branch of the National Teachers' Union in the town of Tan Tan was in fact sent to the General Secretary of this trade union; however, when sections of the same trade union were set up in the towns of Maysour and Polman, the prerequisites laid down by the law were not complied with: the founders did not all belong to the same occupation, the founding meetings were not announced to the competent authority and the premises where the meetings took place were not independently owned (the premises in question belong to a political party and to a private individual).

610. In these circumstances, the Committee reminds the Government that while the founders of a trade union must observe formalities concerning publicity or other similar formalities which may be prescribed by law, such requirements must not be equivalent in practice to previous authorization, or constitute such an obstacle that they amount in practice to outright prohibition. [See Digest, op. cit., para. 263.] The Committee therefore urges the Government to ensure that workers are able, without previous authorization, to freely establish organizations of their own choosing, in accordance with the principles of freedom of association and, in particular, that the formalities prescribed by law for the establishment of a trade

union are not applied in such a way as to delay or prevent the setting up of occupational organizations.

611. Concerning the allegations that measures of intimidation were taken against organizers of the demonstrations planned for 1 May 1992, the Committee notes that the Government will send information in this respect as soon as it receives it from the competent bodies. The Committee requests the Government to provide this information without delay.

612. Regarding the other allegations which are still pending in this case, in particular those concerning the surrounding of the CDT's premises and prohibition of access to them on 21 April 1992, the refusal by state offices and enterprises to carry out judgements handed down in favour of workers, the failure to reinstate civil servants and the violent intervention of the police leading to one death during a demonstration by workers at the Bahia-Baladi enterprise in Rabat, the Committee notes with regret that the Government has not sent a reply. The Committee therefore urges the Government to provide the observations requested without delay.

The Committee's recommendations

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

(a) The Committee notes that Mr. Noubir El Amaoui, General Secretary of the CDT, and Mr. Driss Laghnimi, regional secretary of the UGTM in Sidi Slimane, were granted a pardon on the occasion of the national holiday on 9 July 1993, by virtue of which they were released before having completed their respective prison sentences. Nevertheless, the Committee deplores the severity of the sentences handed down against Messrs. Noubir El Amaoui and Driss Laghnimi, and draws the Government's attention to the resolution adopted in 1970 by the International Labour Conference concerning trade union rights and their relation to civil liberties, defining as rights which are essential for the normal exercise of trade union rights, inter alia, freedom of opinion and expression, and in particular the right to hold opinions without interference and the right to seek, receive and impart information and ideas through any media and regardless of frontiers. The Committee urges the Government to take all the necessary measures to guarantee respect of this principle. The Committee requests the Government to supply information on the defamatory nature of the statements made by the General Secretary of the CDT.

(b) The Committee requests the Government to ensure the respect of the principle that it should be the policy of every government to

ensure observance of human rights and especially of the right of all detained or accused persons to receive a fair trial at the earliest possible moment.

(c) The Committee requests the Government to ensure that workers are able, without previous authorization, freely to establish organizations of their own choosing, in accordance with the principles of freedom of association and, in particular, that the formalities prescribed by law for the establishment of a trade union are not applied in such a way as to delay or prevent the setting up of occupational organizations.

(d) The Committee requests the Government to communicate as soon as possible its observations on the allegations concerning measures of intimidation against the organizers of the May Day 1992 demonstrations.

(e) Noting with regret that the Government has still not replied to the allegations concerning the surrounding of the CDT's premises and the prohibition of access to them on 21 April 1992, the refusal by state offices and enterprises to carry out judgements handed down in favour of workers, the failure to reinstate civil servants and the violent intervention of the police leading to one death during a demonstration by workers at the Bahia-Baladi enterprise in Rabat, the Committee urges the Government to supply the observations requested without delay.

Case No. 1646

COMPLAINT AGAINST THE GOVERNMENT OF MOROCCO PRESENTED BY - THE DEMOCRATIC CONFEDERATION OF LABOUR (CDT) AND - THE GENERAL UNION OF WORKERS OF MOROCCO (UGTM)

614. The Committee examined this case at its February 1993 meeting [see 286th Report of the Committee, paras. 647-673, approved by the Governing Body at its 255th Session (March 1993)], when it reached interim conclusions.

615. The Government sent new observations in a communication dated 6 October 1993.

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

A. Previous examination of the case

617. At its February 1993 meeting, the Committee examined allegations concerning measures taken by the management of the Autonomous Urban Transport Company of Casablanca (RATC) and the local authorities during a strike launched by RATC workers on 17 February 1992, for the purpose of obtaining better conditions of employment. These measures included, in particular, the recruitment by the RATC management of more than 300 new employees, the arbitrary transfer and dismissal of strikers, and the imprisonment and trial of Messrs. Nejmi Abdellatif, Kassih Abdelaziz, Touga Ahmed and Maâ Noureddine, militant trade unionists who participated in the strike.

618. At this meeting, the Committee made the following recommendations [see 286th Report of the Committee, para. 673]:

(a) Recalling that the right to strike is one of the essential means available to workers' organizations to promote and defend the economic and social interests of their members, the Committee calls on the Government to refrain from the use of measures in the future which are not in conformity with freedom of association principles.

(b) Recalling that recourse to such measures as the transfer or dismissal of workers because of their participation in a strike is a violation of freedom of association, the Committee asks the Government to indicate whether striking workers were transferred, and if so, for what reasons, and to indicate if the workers dismissed have actually been reinstated in their jobs.

(c) As regards the imprisonment and sentencing of striking trade union militants, Mr. Nejmi Abdellatif, Kassih Abdelaziz, Touga Ahmed and Maâ Noureddine, the Committee, in order to have all the necessary information on this aspect of the case, requests the Government to provide as soon as possible detailed information on the charges brought against these persons and to communicate the text of the sentences issued and the reasons adduced.

(d) The Committee requests the Government to provide information on the judicial proceedings allegedly still under way against two staff members who went on strike.

B. The Government's further reply

619. In its communication of 6 October 1993, the Government states that the right to strike is guaranteed by the Constitution and is publicly exercised in practice. According to the Government, this is demonstrated by the number of strikes launched by workers in many sectors, in establishments where trade union organizations are

represented as well as in establishments where they are not. The exercise of trade union rights is respected in accordance with the principles adopted by the Committee on Freedom of Association.

620. As regards the proceedings brought against several employees of the Autonomous Urban Transport Company of Casablanca (RATC), the Government believes it is necessary to provide more detailed information concerning the inquiries which have been conducted, the validity of the proceedings and the verdicts handed down against these employees.

621. According to the Government, Lotfi Mostapha, an employee of the RATC, complained with the police that he was stopped by three employees of the company as he was getting off an RATC vehicle, that they insulted and threatened him, incited him to participate in the strike and could have injured him, if he had not fled.

622. As part of the inquiry, the police interviewed the driver of the vehicle, who stated that Touga Ahmed, Kassih Abdelaziz and Nejmi Abdellatif approached him, ordering him to stop. They asked him why he continued to work instead of striking as the other unionized workers did, and incited him to stop working and to join them to ensure the success of the strike. Lotfi Mostapha, who was in the vehicle, got out and intervened between the driver and the strikers. He was insulted and threatened with a knife.

623. When summoned by the police to state their case, the defendants said that they had noticed the vehicle during the strike. They tried to keep the driver from working and incited him to participate in the strike with them. When Lotfi Mostapha intervened between them and the driver, they insulted him, threatened him and incited him to strike.

624. Following an examination of the police report by the judicial police on 2 April 1992, charges were brought against the three defendants for obstructing the right to work, in accordance with the provisions of section 288 of the Criminal Code. The Government states that their cases were subject to the procedure reserved for defendants caught in the act under sections 76 (as amended) and 395 of the Code of Criminal Procedure. The defendants were brought under arrest, before a court. When questioned by the prosecutor in the presence of their lawyers they denied the charges brought against them and the statements they had made to the police. Their cases were subsequently referred to a court.

625. As regards the verdicts, the Government states that the court summoned the defendants to several hearings, that they benefited fully from due process of the law, that they were assisted by attorneys and that they were entirely free to raise any defence. Once the case was heard in accordance with the legal procedures and in a public trial, as required by law, and after the defence attorneys had addressed the court, the public prosecutor asked for a conviction based on the statements made to the judicial police. On 12 October

1992 the court of first instance of Casablanca gave Touga Ahmed, Kassih Abdelaziz and Nejmi Abdellatif a one-month suspended sentence and fined them 200 dirhams for obstructing the right to work. The Government emphasizes that the court recognized extenuating circumstances in the light of their social situation and the absence of prior criminal records in giving them a one-month suspended sentence, insofar as the law provides for a minimum sentence of one month's imprisonment for such offences. The Government adds that the defendants appealed against this sentence.

C. The Committee's conclusions

626. The Committee notes that the Government states once again that the right to strike is guaranteed by the Constitution, that workers in numerous sectors often resort to strikes and that the exercise of trade union rights is respected in accordance with the principles adopted by the Committee on Freedom of Association.

627. The Committee none the less observes that in the last few years it has examined a growing number of allegations concerning serious restrictions on the right to strike in Morocco, including physical attacks, arrests, convictions, dismissals or other measures of anti-union discrimination in employment and the repression of demonstrations and strike movements, which are contrary to the principles of freedom of association [see, inter alia, 281st Report, Case No. 1574, para. 219; 286th Report, Case No. 1640, para. 644; 287th Report, Case No. 1589, paras. 154 and 156; Case No. 1643, paras. 193, 195, 196 and 198]. The Committee can only express its concern at this situation and is obliged once again to remind the Government of the importance it attaches to the right to strike as one of the essential means through which workers' organizations may promote and defend the economic and social interests of their members. [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, para. 363.] It again requests the Government to take all measures necessary to ensure that the right to resort to strikes may be exercised without the intervention of the public authorities and with respect for the principles of freedom of association.

628. As regards the imprisonment and trial of the striking trade union militants, Messrs. Nejmi Abdellatif, Kassih Abdelaziz and Touga Ahmed, the Committee takes note of the detailed information provided by the Government concerning the inquiries, judicial proceedings and trials of their cases. It observes that the Government states that the defendants were convicted by the court of first instance of Casablanca and given a one-month suspended sentence and fined 200 dirhams for having obstructed the right to work, and that the court recognized extenuating circumstances in the light of their social situation and absence of prior criminal records. The Committee recalls 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; such acts constitute criminal offences in many countries [Digest, op. cit., para. 435]. Emphasizing the danger for the free exercise of trade union rights of measures of detention and sentencing of workers' representatives for activities performed in the defence of the interests of their members, the Committee urges the Government to take all measures necessary to ensure that this principle is respected and, in any event, to keep it informed of the outcome of the appeal made by Messrs. Nejmi Abdellatif, Kassih Abdelaziz and Touga Ahmed against the verdict of the court of first instance.

629. The Committee further notes with regret that the Government has not provided any information concerning the striking trade union militant, Mr. Maâ Noureddine, who, according to the allegations, was also imprisoned and tried by the authorities on contrived charges. It urgently requests the Government to provide detailed information on the charges brought against him, and to furnish a copy of the text of the verdict issued, along with reasons adduced.

630. As regards the allegations concerning the arbitrary transfer and dismissal of striking workers by the management of the RATC, the Committee notes with regret that the Government has not replied. Recalling that recourse to such measures as the transfer or dismissal of workers because of their participation in a strike is a violation of freedom of association [Digest, op. cit., para. 444], the Committee urgently requests the Government to indicate whether the striking workers were transferred, and if so for what reasons, and if all the workers dismissed have actually been reinstated in their jobs.

631. Similarly, as regards the allegations concerning the judicial proceedings against two striking staff members of the RATC, the Committee urgently requests the Government to send its observations.

The Committee's recommendations

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

(a) The Committee once again requests the Government to take all measures necessary so that the right to resort to strikes may be exercised without the intervention of the public authorities and with respect for the principles of freedom of association.

(b) Emphasizing the danger for the free exercise of trade union rights of measures of detention and sentencing of workers' representatives for activities performed in the defence of the

interests of their members, the Committee urges the Government to take all measures necessary to ensure that this principle is respected, and to keep it informed of the outcome of the appeal made by Messrs. Nejmi Abdellatif, Kassih Abdelaziz and Touga Ahmed against the verdict of the court of first instance.

(c) As regards the striking trade union militant, Mr. Maâ Noureddine, who was reportedly imprisoned and tried by the authorities on the basis of contrived charges, the Committee regrets that the Government has not replied. It urgently requests that it provide detailed information on the charges brought against him and furnish a copy of the text of the verdict issued, along with its reasons adduced.

(d) Recalling once again that recourse to such measures as the transfer or dismissal of workers because of their participation in a strike is a violation of freedom of association, the Committee urgently requests the Government to indicate whether the striking workers were transferred, and if so for what reasons, and if all the workers dismissed have actually been reinstated in their jobs.

(e) Similarly, the Committee requests the Government to send its observations as soon as possible on the allegations concerning the judicial proceedings brought against two striking staff members of the RATC.

Case No. 1651

COMPLAINT AGAINST THE GOVERNMENT OF INDIA PRESENTED BY THE INTERNATIONAL UNION OF FOOD AND ALLIED WORKERS ASSOCIATION (IUF)

633. In a communication dated 1 June 1992, the International Union of Food and Allied Workers' Association (IUF) submitted a complaint of violations of freedom of association against the Government of India. It sent additional information in communications dated 11 June, 11 July and 23 July 1992.

634. The Government supplied its observations on the case in communications dated 1 November 1993 and 10 March 1994.

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

A. The complainant's allegations

636. In its communication of 1 June 1992, the IUF alleges that the Government carried out various acts of interference with the functioning of an international seminar conducted by the IUF in Bombay from 16 to 20 September 1991. During the seminar, a police officer interrogated seminar organizers Bob Ramsay and Ma Wei Pin. He asked what the IUF was, what the seminar was about and who was attending it. He was shown copies of letters sent by the IUF to government ministries requesting assistance in arranging visas, as well as the names of participants in the seminar. In this respect, the IUF provides a copy of the visiting card of the police officer, which he gave to the organizers at the time of his visit to the seminar.

637. In addition, participants from Pakistan were required to report to a police station daily. In one case, this caused them to miss a seminar session. The seminar, which brought together worker representatives from the Unilever company, was also attacked at a Bombay press conference by representatives of Hindustan Lever, India's Unilever subsidiary, who alleged that the seminar was intended to disrupt the normal functioning of Unilever companies in India and Asia and to sabotage India's economic reforms. The IUF encloses a copy of Hindustan Lever's press release as well as a packet of articles from the Bombay press that report on the press conference. The IUF contends that the above actions taken together constitute interference in its legitimate functioning and that of its affiliated unions which sent representatives to the seminar. Article 5 of Convention No. 87 specifically guarantees the right of organizations of workers to conduct international meetings free from interference by governments or employers.

638. In its communication of 11 July 1992, the IUF provides further information on violations of trade union rights at different plants of Hindustan Lever in Bombay and in other cities as follows. In Bombay (Sewri plant, Research Centre, Fine Chemicals and Head Office) union members have been illegally suspended, dismissed or charge-sheeted. Elected union leaders have been isolated from other workers by being forced to work in a separate depot or go-down. The democratically elected union was de-recognized by management in 1989. Moreover, in Garden Reach, Calcutta, 300 contract workers were retrenched in 1988, while struggling for their right to organize. In addition, in Shyamnagar, Calcutta, the union leader S.B. Roy was dismissed in 1988.

639. In Chindwara (state of Madya Pradesh), the democratic union organizing almost all workers was not recognized. Instead, a settlement was signed with a "welfare committee". The same was done in Orai (state of Uttar Pradesh) where in adition the union secretary has been retrenched. In Etah (Uttar Pradesh) union leaders have been retrenched (1980 - M.P. Gupta, General Secretary; 1984 - Pravad, President; 1990 - R. Sharma, General Secretary; Swaveny, Joint

Secretary; and R. Palsingh, active member). The union is now management-controlled.

640. In Ghaziabad, management has not signed an agreement with the democratically elected union committee since 1971. Instead, they signed four agreements with undemocratic committees. The 1991 settlement, with a wage increase, is only operational for workers who sign an individual agreement in which they accept the undemocratic committee and the settlement. In 1975, the chair of the union, Mr. Bidani, was transferred to the Delhi branch despite protests. Later, Mr. Bidani was dismissed and from 1987 management refused to speak with him.

641. In Taloja (Bombay), all contract workers and contractors were changed when the union tried to organize them. Now, contract workers are often changed. In Mangalore (Karnataka state), workers have been suspended illegally and others have been illegally charge-sheeted due to their union activities. Generally, the trade union federation of Hindustan Lever companies is not recognized and separate unions are advised by management not to join the federation. Many federation leaders have been retrenched (Mr. R.L. Gupta - President, Mr. Bidani and Mr. S.B. Roy) and others separated from workers (Mr. B. D'Costa - General Secretary and Mr. F. D'Souza).

642. Finally, the IUF states that during research to compile this information, six places (21 establishments) were visited. In these six places, researchers were followed by police or security personnel from Hindustan Lever. In three places, researchers were called to the local police station and in four cases the researchers were told that they would have to leave. In many cases, workers were told not to meet with the researchers and security was doubled at the factories. In Shyamnagar one researcher was taken in by the police and assaulted in the police van. The police threatened to further assault the researcher or jail him although he was later released without any charges.

643. In its communication of 23 July 1992, the IUF alleges that there have been further violations of trade union rights by Hindustan Lever and that the Government has not taken effective measures to safeguard these rights. It contends that on three different occasions (29 April, 11 May and 22 June 1992), an office-bearer of the Hindustan Lever Research Centre Employees' Union, Mr. A.J. D'Souza, was physically prohibited by company management from leaving his place of work to attend proceedings in the Industrial Tribunal or Labour Commission offices. In addition, on 12 May 1992, Mr. D'Souza was threatened with retaliation by the company's personnel manager if he continued to attend conciliation/adjudication proceedings. The IUF encloses letters from the union to the personnel manager of the Hindustan Lever Research Centre in Bombay, complaining about the above incidents. It submits that these actions of Hindustan Lever are clearly aimed at preventing the union from seeking redress from government machinery for its grievances.

B. The Government's reply

644. In its communication of 1 November 1993, the Government explains in a general manner that its comments are based on information provided by the State Governments of Maharashtra, Uttar Pradesh, Karnataka, Madya Pradesh and West Bengal. This is because the allegations refer to violations at different units of Hindustan Lever Limited at its plants located in these States whose Governments are responsible for enforcing the provisions of the industrial relations laws.

645. Concerning more specifically the alleged interrogation of the seminar organizers and the issue of participants from Pakistan being asked to report to the police station daily causing them to miss a seminar session, the Government states that a report is awaited from the Home Department of the Government of Mahrashtra. On receipt of this information by the federal Government, the Committee will be apprised. The Government contends that the alleged attack on the seminar by representatives of Hindustan Lever Limited at a Bombay press conference cannot be termed as interference by the management. Trade unions, through the medium of a seminar, are free to express their views on the activities of the management. Similarly, management has the freedom to express its apprehensions through the media about the deliberations and conclusions at a seminar organized by trade unions.

646. The Government then refers to the allegations of violations of trade union rights at different plants of Hindustan Lever in Bombay. With respect to the allegation that union members have been illegally suspended, dismissed or illegally charge-sheeted, the Government explains that three of the five employees dismissed/terminated from their services (Mr. Bennet D'Costa, Mr. V.P. Ghuge and Mr. Nand Kumar) were office-bearers of the union. These three had been dismissed after domestic inquiries were held for the charges levelled against them. After conciliation, the industrial dispute regarding Mr. Ghuge's dismissal was referred to the Labour Court, Bombay, by an order of the State Government dated 16 November 1990. This case is sub judice. Mr. D'Costa and Mr. Nand Kumar had made an application for reinstatement under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The court had stayed the dismissal order of Mr. D'Costa who is still working in the factory.

647. Turning to the allegation that elected union leaders have been isolated by the company and are forced to work elsewhere, the Government replies that the Assistant Commissioner of Labour, Bombay, who recently visited the Sewri factory found that the President and Vice-President of the union were working at a go-down which is about 2 kilometres from factory premises. Four union committee members had been transferred to a go-down which is about a kilometre from factory premises. However, the management informed the Assistant Commissioner of Labour that it is a practice to rotate the workmen in different

departments and go-downs and that office-bearers of the union cannot claim exemption from this practice. The Government adds that under the Industrial Disputes Act, the concerned union could have raised an industrial dispute regarding the transfer of office-bearers from the factory to the go-down. However, the union had not taken recourse to this action nor had it filed any complaint in the Labour/Industrial Court.

648. Concerning the issue of de-recognition by management of the democratically elected union in 1989, the Government indicates that under the Code of Discipline in Industry (which it attaches to its observations), the management had given recognition to the Hindustan Lever Employees' Union on 27 March 1972 and to the Hindustan Lever Research Centre Employees' Union on 2 May 1984. According to the management, the Hindustan Lever Employees' Union failed to observe the conditions stipulated by the Code and, therefore, the said union was de-recognized in September 1989. In spite of the de-recognition, the management continues to hold discussions and negotiations with this union. The unions referred to above have made applications in the Industrial Court to be declared as recognized unions and to obtain the status of sole bargaining agents. These applications are pending before the Industrial Court, Bombay.

649. Regarding the retrenchment of 300 contract workers in Calcutta while struggling for their right to organize, the Government indicates that in 1991 the management of Hindustan Lever stopped contract works at their unit located in Garden Reach, Calcutta. As a result, about 300 contract labourers employed by different contractors were rendered jobless. It was alleged by the union that the management had intentionally stopped the contract works on flimsy grounds in order to punish the contract labourers. The dispute which is now pending before the Conciliation Authority could not be taken up for conciliation earlier as a court case between two rival factions of the union was pending before the Calcutta High Court. With respect to the allegation that the union leader Mr. S.B. Roy was dismissed in 1988, the Government replies that this union leader was reportedly a worker employed by a contractor and that he might have lost his job due to stoppage of contract works by the management.

650. As regards the allegation that in Chindwara (Madya Pradesh) the union organizing almost all the workers was not recognized and that a settlement was signed instead with a "welfare committee", the Government indicates that a settlement was signed on 5 October 1990 with the "negotation committee" which was duly elected by the Hindustan Lever Employees' Union in 1989.

651. Concerning the allegation that the union secretary was retrenched in Orai (Uttar Pradesh), the State Government emphasizes that the union secretary, Mr. Krishnan Swarup Shukla, an employee of the Hindustan Lever Limited at Orai, was dismissed from service because of misconduct and inefficiency and not due to trade union activities. Moreover, Mr. Shukla has collected all his dues. As regards the allegation that various union leaders named by the

complainant have been retrenched in Etah (Uttar Pradesh) and that the union is now management-controlled, the State Government points that as from 11 May 1984 the Etah unit of Hindustan Lever Limited is being managed by M/S Lipton India Limited. Prior to this date, there were two cases of termination of service of employees who were office-bearers of the trade union at the Etah unit of Hindustan Lever. Mr. Mathura Prasad, Secretary of the union, and Mr. B.S. Rawat, Joint Secretary of the union, were dismissed from service on 26 February 1980 and 13 August 1983 respectively, both on account of misconduct. The industrial disputes in this regard are pending in the Labour Court, Agra, which is being requested to expedite these two cases. According to the State Government, apart from these two industrial disputes, no other matter has come to its notice and industrial peace prevails at the unit at present.

652. The Government refutes the allegation that in Ghaziabad management has not signed any agreement with the democratically elected union committee since 1971 but instead signed four agreements with undemocratic committees. It explains that the management of the Ghaziabad unit of Hindustan Lever Limited has from time to time signed agreements with a trade union by the name of Hindustan Lever Mazdoor Sabha. On 30 December 1971, an agreement was signed when Mr. R.P. Bidani was the Chairman of the union. On 28 January 1976, the management signed an agreement regarding dearness allowance with 37 workers. On 5 December 1977, 3 November 1979, 8 August 1981 and 19 October 1982, agreements regarding dearness allowance, wages and bonus were signed with the above union. On 3 May 1991, an agreement covering various aspects of working conditions of workers was signed with this union. All these agreements were signed without any coercion or pressure to provide favourable working conditions to the workers. With respect to the allegation that the 1991 settlement with a wage increase is only operational for workers who sign an individual agreement in which they accept the undemocratic committee, the Government argues that since the 1991 agreement was signed by 226 of the 300 workers of the Department of Labour office and since only 12 workers have opposed the agreement and have not availed themselves of its benefits, this agreement can by no stretch of the imagination be termed as "undemocratic".

653. The Government then deals with the issue of the forced transfer of the Chairman of the Union, Mr. R.P. Bidani, as well as of his subsequent dismissal. It explains that on 26 September 1975 Mr. Bidani was transferred from the Hindustan Lever unit located at Ghaziabad to the Delhi Branch Office. Mr. Bidani had raised an industrial dispute before the Labour Court on this matter and the Court declared his transfer as null and void on 30 April 1985. This award was published on 29 June 1985 and Mr. Bidani filed an application regarding the delay in the implementation of the award by the management on 16 June 1986. Against this application and the above award of the Labour Court, the management obtained a stay order from the Allahabad High Court. In the meantime, the Delhi Branch Office of Hindustan Lever Limited terminated the services of Mr. Bidani on 10 August 1984 after holding a domestic inquiry. For

approval of their action, the management moved an application in the Industrial Tribunal, Delhi, under the provisions of the Industrial Disputes Act. In view of the award of the Labour Court, Ghaziabad, dated 30 April 1985, the Industrial Tribunal, Delhi, dismissed the application as it felt that this case was outside its jurisdiction. On this matter, the management has filed a writ petition in the Delhi High Court which is sub judice.

654. As regards the allegation that in Taloja, Bombay, all contract workers and contractors were changed when the union tried to organize them and that now contract workers are often changed, the Government indicates that, according to the management, this issue probably relates to the disruption of activity in 1986 due to a strike by the contract labour engaged by the contractors working on the site of the Hindustan Lever unit of Taloja. In April 1986, the Maharashtra General Kamgar Union (MGKU) had submitted a charter of demands to the contractors regarding revision of wages and services of the contract workers. Later the MGKU had also urged Hindustran Lever to intervene for an early settlement of the matter. Since the matter was entirely between the contractors and the contract workers, the management could not be involved. Still, the factory manager used his good offices to arrange several meetings between the two parties. However, on 24 August 1986 a personal dispute arose between one of the contract workers and his contractor which resulted in the termination of the contract of the contract worker concerned. Because of this action, ten employees of the contractor concerned were not allowed to enter the factory. The other contractors who were working at different sites were forced to suspend their work because of the threats they received from the contract labour. The State Government of Maharashtra is of the opinion that the management was not concerned with the termination of services of the contract labour, since this was a dispute between the contractors and their employees. In the event of termination of the contract, the services of the contract labour automatically get terminated. In these circumstances, it is not correct to assert that the management changed the contractors and the contract workers when the union tried to organize them. Moreover, in 1986, neither any union nor any contract worker had lodged a complaint with the Labour Commissioner/Assistant Labour Commissioner's Office concerning termination of services. The State Government adds that the Assistant Commissioner of Labour who recently visited the factory at Taloja found that contract workers are performing their normal duties and a situation of peaceful industrial relations prevails there.

655. With respect to the issue of workers having been suspended and others having been illegally charge-sheeted due to their union activities in Mangalore, the Government submits that the allegation of violation of trade union rights by the management does not appear to be correct. On 7 December 1991, there was an incident of "gherao" (i.e. a practice whereby workers surround company premises for a few hours or even days so as to physically prevent management personnel from leaving in order to press their claims) of the company manager of Hindustan Lever Limited in Mangalore. This resulted in the suspension

of eight workmen. However, conciliation proceedings were immediately initiated by the officials of the Labour Department and a settlement was signed on 12 December 1991. The suspension orders of the workmen were revoked. In addition, a long-term settlement was also signed between the workmen and the management on 21 September 1992. Now a cordial relationship appears to exist between the two social partners at the unit in Mangalore.

656. The Government then responds to the allegation that the trade union federation of Hindustan Lever companies is not recognized and separate unions are advised by the management not to join the federation and that many federation leaders have been retrenched and others separated from the workers. It states that Hindustan Lever Limited has plants in different parts of the country and gives a description of the company's seven plants and offices in the state of Maharashtra. It explains that employees of these seven establishments have formed the following three unions: (i) Hindustan Lever Employees' Union; (ii) Hindustan Lever Research Centre Employees' Union; and (iii) Hindustan Lever Mazdoor Sabha. All these three unions are affiliated to the Federation of Hindustan Lever Limited and/or its Associated/Allied Companies' Employees' Union. The Government refers to its previous comments with respect to the alleged retrenchment, etc., of federation leaders, Mr. S.B. Roy and Mr. B. D'Costa. Regarding the alleged retrenchments of federation leaders Mr. R.L. Gupta, President, Mr. Patni and Mr. F. D'Souza, the Government requests the IUF to provide details indicating the unit and year of dismissal so as to enable it to provide comments.

657. As regards the allegation that during research to compile this information researchers were harassed and/or followed by police and security personnel from Hindustan Lever, the Government replies that it cannot provide any comments as the allegation is vague and non-specific.

658. The Government provides the following comments regarding the allegation that an office-bearer of the Hindustan Lever Resesarch Centre Employees' Union, Mr. A.J. D'Souza was physically prohibited on three different occasions by company management from leaving his place of work to attend proceedings in the Industrial Tribunal or Labour Commissioner's Office and that he was threatened with retaliatory action by the company's personnel manager if he continued to attend conciliation/adjudication proceedings. First, the Hindustan Lever Research Centre Employees' Union has filed Unfair Labour Practice (ULP) Complaint No. 910 of 1992 in the Industrial Tribunal in connection with the management's action prohibiting Mr. A.J. D'Souza from attending conciliation proceedings. The union has made the following prayer: (i) two representatives of the union may be permitted to attend the court cases which concern the union; (ii) the management should be restrained from taking any disciplinary action against any member of the union merely for the reason that he had remained absent when he was required to attend court cases concerning him. Second, regarding refusal of permission to Mr. A.J. D'Souza for attending conciliation proceedings on 22 June 1992, the State

Government indicates that the Joint Secretary of the union had requested the personnel manager of the company to allow Mr. A.J. D'Souza time off without deduction of wages to enable the latter to attend court case No. 526 of 1989 at the Industrial Court, Bombay. According to the management, however, there were no conciliation proceedings fixed for 22 June 1992 pertaining to the company at the Labour Commissioner's Office nor was there a case in the court. Therefore, the management refused to give time off to Mr. A.J. D'Souza on 22 June 1992. Mr. D'Souza thereafter took half a day's casual leave for his personal work.

659. In its communication of 10 March 1994, the Government states that more details would be required from the complainants concerning the retrenchments of the five union officials in Etah, since no case concerning these officials was brought to the attention of the State Government of Uttar Pradesh.

C. The Committee's conclusions

660. The Committee notes that the allegations in this case concern interference by the authorities and by the management of Hindustan Lever Ltd. in the functioning of an international seminar organized by the IUF in Bombay. These allegations also refer to several acts of anti-union discrimination against trade union officials and interference in trade union activities by the management of Hindustan Lever Ltd. at its different plants in various cities.

661. The Committee, at the outset, regrets in the present case the slow and bureaucratic nature of the procedure concerning the dismissals, some of which took place in 1980 and are still pending before the Labour Court.

662. Furthermore, the Committee expresses its concern over the alleged interrogation of the seminar organizers by a police officer as well as the fact that certain participants were asked to report to the police station daily. The Committee considers these allegations to be all the more serious since it would appear that the IUF had already cleared the necessary formalities with the relevant government ministries in order to hold this seminar and have a certain number of representatives from its affiliated organizations take part in it. In this respect, the Committee draws the Government's attention to the principle that the formalities to which trade unionists and trade union leaders are subject in seeking entry to the territory of a State, or in attending to trade union business there, should be based on objective criteria and be free of anti-union discrimination [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 532]. The Committee requests the Government to keep it informed of the outcome of the report on this matter that is being prepared by the State Government of Maharashtra.

663. The Committee observes that further allegations of interference in relation to this seminar refer to criticism of this seminar by representatives of Hindustan Lever Ltd., India's Unilever subsidiary, through the medium of a press conference. While acknowledging that such criticism might not be conducive to harmonious industrial relations between representatives of Unilever companies and unions in India, the Committee does not believe that such criticism amounts to an act of interference in the functioning of an international seminar. In its view, the full exercise of freedom of association calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publication and in the course of their other activities [see Digest, op. cit., para. 175].

664. As regards the illegal dismissals of union members in the Hindustan Lever plant in Bombay, the Committee notes with concern the allegations concerning anti-union discrimination. The Committee notes that according to the Government three office-bearers of the union (Mr. Bennet D'Costa, Mr. V.P. Ghuge and Mr. Nand Kumar) were dismissed after domestic inquiries were held for the charges levelled against them. The Government, however, does not specify what charges were brought against these three union leaders. In the absence of such information, the Committee would recall that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions [see Digest, op. cit., para. 556]. In this case, the Committee notes that the Labour Court, Bombay, had stayed the dismissal order of Mr. D'Costa who is still working in the factory. The Committee further notes that Mr. Ghuge's case which was referred to the Labour Court, Bombay, is sub judice while Mr. Nand Kumar has made an application for reinstatement before the same Court. The Committee therefore requests the Government to keep it informed of the progress and outcome of the court proceedings in these two cases.

665. As regards the allegation that several union leaders have been retrenched in Orai (Mr. Krishnan Swarup Shukla, Union Secretary) and in Etah (Mr. M.P. Gupta, General Secretary; Mr. Pravad, President; Mr. R. Sharma, General Secretary; Mr. Swaveny, Joint Secretary; and Mr. R. Palsingh, active member), the Committee notes that the Government merely provides information in the case of Mr. Shukla, stating that he was dismissed from service because of misconduct and inefficiency and not due to trade union activities. As regards the allegations concerning the retrenchments of the five union officials in Etah, the Committee notes the Government's statement that more details would be required from the complainant in this respect, since no case concerning these officials was brought to the attention

of the State Government of Uttar Pradesh. The Committee therefore requests the complainant to provide details on the alleged retrenchment of the five union officials in the Etah units of Hindustan Lever Ltd. It further requests the Government to keep it informed of the outcome of the judicial proceedings pending before the Labour Court, Agra, in relation to the dismissal from service of two office-bearers at the Etah Unit of Hindustan Lever, namely Mr. Mathura Prasad, Secretary, and Mr. B.S. Rawat, Joint Secretary dismissed in February 1980 and August 1983 respectively. Finally, it requests the Government to keep it informed of the outcome of the writ petition filed by the management in the Delhi High Court in relation to its dismissal of Mr. R.P. Bidani, Chairman of the union of the Hindustan Lever Unit located at Ghaziabad before his transfer to the Delhi Branch Office.

666. With respect to the allegation that elected union leaders in a Hindustan Lever plant in Bombay have been isolated from other workers by being forced to work in a separate depot or go-down, the Committee observes that the Assistant Commissioner of Labour from Bombay had indeed found that the President and the Vice-President of the union had been transfered to a go-down which was about 2 kilometres from factory premises, while four union committee members had been transferred to a go-down a kilometre away from factory premises. According to the management, it is a practice to rotate workers in different go-downs and that office-bearers of the union cannot claim exemption from this practice. Apart from failing to see the need to transfer six office-bearers away from factory premises at the same time, the Committee considers that such transfers may seriously harm the efficiency of trade union activities [see Digest, op. cit., para. 560]. It therefore requests the Government to ensure that an independent and impartial inquiry is held in order to ascertain whether the transfers of these six office-bearers were based on acts of anti-union discrimination and, if so, to ensure that these office-bearers are transferred back to the factory premises of the Hindustan Lever plant in Bombay. It also requests the Government to ensure in future that employers refrain from having recourse to such measures.

667. Concerning the issue of de-recognition by the management of the democratically elected union in 1989 at Bombay Sewi Plant, the Committee notes that the management admits to having de-recognized the Hindustan Lever Employees' Union in September 1989 because the latter failed to observe the conditions stipulated by the Code of Discipline in Industry. The Committee notes, however, that this unilateral de-recognition by the management is not in line with the Code which stipulates "that no unilateral action should be taken in connection with any industrial matter and that disputes should be settled at the appropriate level" (article II(i)). In addition, if the management continues to hold discussions and negotiations with this union as it says it does, the Committee fails to see why it proceeded with the de-recognition in the first place. Moreover, the Committee also notes with concern that since de-recognition of this union in 1989, there is no indication that the management held negotiations with another

workers' organization or indeed that another representative workers' organization exists. In this connection, the Committee would draw the Government's attention to the fact that direct negotiation between the undertaking and its employees, by-passing representative organizations where these exist, might be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted [Digest, op. cit., para. 608]. The Committee requests the Government to keep it informed of the outcome of the applications before the Industrial Court, Bombay, by the Hindustan Lever Employees' Union and the Hindustan Lever Research Centre Employees' Union to be declared as recognized unions and to obtain the status of sole bargaining agents.

668. Regarding the retrenchment of 300 contract workers in Garden Reach, Calcutta, the Committee notes that according to the complainant, these workers were retrenched in 1988 while struggling for their right to organize while according to the Government these workers were rendered jobless in 1991 when the management of Hindustan Lever stopped contract works at their unit in Garden Reach, Calcutta. In view of the contradiction between these two statements, the Committee is not in a position to ascertain whether these workers were retrenched for reasons of anti-union discrimination or due to economic reasons leading to the complete stoppage of contract works in this unit in Calcutta. The Committee notes, however, that the dispute is now pending before the conciliation authority in Calcutta and requests the Government to keep it informed of its outcome. Similarly, the Committee notes that the complainant states that the union leader S.B. Roy was dismissed in 1988 in Calcutta whereas the Government indicates that he might have lost his job due to stoppage of contract works by the management, as he was a contract labourer. The Committee therefore requests both the complainant and the Government to provide, as soon as possible, information relating to the exact reasons for the retrenchment of the trade union leader Mr. S.B. Roy as well as the reasons as to why the management stopped contract works in the unit in Calcutta in 1988, so that it can examine this aspect of the case in full knowledge of the facts.

669. The Committee notes that the Government refutes the allegations that in Chindwara and Ghaziabad the management signed agreements with undemocratic committees instead of with the committees of democratically elected unions. According to the Government, in Chindwara a settlement was signed in 1990 with a committee which was duly elected by the Hindustan Lever Employees' Union and in Ghaziabad several agreements were signed with the Hindustan Lever Mazdoor Sabha over a period of years, the last one being in 1991 which was signed by 226 of the 300 workers. In view of the contradiction once again between these two statements, the Committee will only recall the principle that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

670. Regarding the allegation that in Taloja, Bombay, all contract workers and contractors were changed when the union tried to organize them, the Committee notes that according to the detailed information provided by the Government, the termination of services of the contract labour occurred initially because of a personal dispute which arose between a contractor and a contract worker which resulted in the termination of the contract of the latter. This dispute then spread to other sites when other contract workers protested against this incident. The Committee, for its part, is not in a position to know whether the services of these contract workers were terminated due to reasons of anti-union discrimination since the complainant merely indicates that all contract workers were changed when the union tried to organize them, without providing further information to back up this allegation. The Committee therefore requests the complainant to provide, as soon as possible, information indicating why the termination of services of the contract workers in Taloja, Bombay, constituted acts of anti-union discrimination.

671. Concerning the allegation that in Mangalore workers were illegally suspended and charge-sheeted due to their union activities, the Committee notes that eight workmen were indeed suspended in December 1991 following an incident of "gherao" of the company manager. In the Committee's view, the practice of "gherao" cannot be considered as a legitimate trade union activity. It notes, moreover, that the suspension orders of these workmen were revoked following conciliation proceedings. It therefore considers that this aspect of the case does not call for further examination.

672. With respect to the allegation that the trade union federation of Hindustan Lever companies is not recognized and separate unions are advised by management not to join the federation, the Committee notes that according to the Government, employees of certain plants and offices have formed three different first-level unions which in turn are affiliated to the Federation of Hindustan Lever Ltd. and/or its Associated/Allied Companies Employees' Union. The Committee notes, however, that these plants and offices are only those which are to be found in the state of Maharashtra whereas Hindustan Lever Ltd. has plants in different parts of the country. In order to enable it to examine this allegation in full knowledge of the facts, the Committee would request the complainant to provide information specifying which first-level unions at which plants are advised by management not to join the trade union federation of Hindustan Lever companies, as well as information on any incidents which demonstrate that management hinders the activities of the federation. Similarly, regarding the alleged retrenchments of federation leaders, Mr. R.L. Gupta, Mr. Patni and Mr. F. D'Souza, the Committee requests the complainant to provide information indicating the Hindustan Lever Unit at which these persons were employed and their respective years of dismissal. The Committee further requests the complainant to provide detailed information relating to the allegation that during research to compile this information, researchers were harassed and/or followed by police and security personnel from Hindustan Lever. It would ask the complainant to indicate in particular the names of the six places

and 21 establishments that were visited as well as the names of the researchers involved and the dates on which these incidents of harassment and intimidation occurred.

673. As regards the allegation that an office-bearer of the Hindustan Lever Research Centre Employees' Union was physically prohibited by company management from leaving his place of work to attend conciliation/adjudication proceedings concerning the union and that he was threatened with retaliatory action if he continued to attend such proceedings, the Committee notes the Government's statement that according to the management, it refused to give time off to the office-bearer to attend conciliation proceedings on 22 June 1992 because no such proceedings were fixed for this date. Even if this were so, the Committee observes that the office-bearer was nevertheless prevented from attending such proceedings on two other occasions and, in addition, threatened with retaliatory action. In this respect, the Committee would draw the Government's attention to the relevant provisions of the Recommendation concerning the protection and facilities to be afforded to workers' representatives in the undertaking (No. 143), which stipulate, amongst other things, that workers' representatives in the undertaking should be afforded the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions in the undertaking (Paragraph 10(1)). The Committee further notes that the union has filed an unfair labour practice complaint before the Industrial Tribunal in connection with the management's actions prohibiting the office-bearer from attending conciliation proceedings. The Committee requests the Government to keep it informed of the progress and outcome of the complaint filed by the union.

The Committee's recommendations

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

(a) The Committee notes with concern that during an international seminar organized by the IUF in Bombay, seminar organizers were interrogated by a police officer and certain participants were asked to report to the police station daily. It requests the Government to ensure that the formalities to which trade unionists and trade union leaders are subject in seeking entry to the territory of a State, or in attending to trade union business there, are based on objective criteria and free of anti-union discrimination. Furthermore, it requests the Government to keep it informed of the outcome of the report that is being prepared on this matter by the State Government of Maharashtra.

(b) Regretting the slow and bureaucratic nature of procedures concerning allegations of anti-union dismissal, the Committee requests the Government to ensure that workers enjoy adequate protection against all acts of anti-union discrimination in respect of their employment. It draws the Government's attention to the danger that justice will be denied as a result of the slowness of the judicial procedures.

(c) In view of the principles enunciated above, the Committee requests the Government to provide information relating to: (i) the progress and the outcome of the proceedings before the Labour Court, Bombay, concerning the dismissal from service of Mr. Ghuge and Mr. Nand Kumar, office-bearers of the Hindustan Lever plant in Bombay; (ii) the progress and the outcome of the judicial proceedings before the Labour Court, Agra, concerning the dismissal from service of Mr. M. Prasad and Mr. B.S. Rawat, office-bearers of the Etah Unit of Hindustan Lever; and (iii) the progress and the outcome of the writ petition filed by the management of the Delhi Branch Office of Hindustan Lever before the Delhi High Court concerning the dismissal of Mr. R.P. Bidani, Chairman of the Ghaziabad Unit of Hindustan Lever, before his transfer to Delhi.

(d) The Committee requests the Government to ensure that an independent and impartial inquiry is held with respect to the forced transfers of trade union officials away from factory premises in order to ascertain whether the transfers of these six office-bearers were based on acts of anti-union discrimination and, if so, to ensure that these office-bearers are transferred back to the factory premises of the Hindustan Lever plant in Bombay. It also requests the Government to ensure in future that employers refrain from having recourse to such measures.

(e) Taking into account the particular circumstances of this case, the Committee requests the Government to ensure that direct negotiation between the undertaking and its employees does not by-pass representative organizations where these exist. The Committee thus requests the Government to keep it informed of the outcome of the applications before the Industrial Court, Bombay, by the Hindustan Lever Employees' Union and the Hindustan Lever Research Centre Employees' Union to be declared as recognized unions and to obtain the status of sole bargaining agents.

(f) The Committee requests the Government to keep it informed of the progress and the outcome of the dispute pending before the conciliation authority in Calcutta concerning the retrenchment of 300 contract workers in the Hindustan Lever Unit in Calcutta. It further requests both the complainant and the Government to provide information relating to the exact reasons for the retrenchment of the trade union leader, Mr. S.B. Roy, as well as the reasons as to why the management stopped contract works in the unit in Calcutta in 1988.

(g) The Committee requests the Government to ensure that the principle that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration is respected.

(h) The Committee requests the complainant to provide, as soon as possible, information: (i) giving details on the alleged retrenchments of the five union officials in the Etah Unit of Hindustan Lever Ltd.; (ii) indicating why the termination of services of the contract workers in Taloja, Bombay, constituted acts of anti-union discrimination; (iii) specifying which first-level unions at Hindustan Lever plants are advised by management not to join the trade union federation of Hindustan Lever companies and describing incidents which demonstrate that the management hinders the activities of the federation; (iv) indicating the Hindustan Lever Unit in which retrenched federation leaders Mr. R.L. Gupta, Mr. Patni and Mr. F. D'Souza were previously employed and their respective year of dismissal; and (v) relating to the allegation that during research to compile information leading to the complaint researchers were harassed and/or followed by police and security personnel from Hindustan Lever, and in particular on the names of the six places and 21 establishments that were visited as well as the names of the researchers involved and the dates on which these incidents of harassment and intimidation allegedly occurred.

(i) The Committee requests the Government to keep it informed of the progress and outcome of the unfair labour practice complaint pending before the Industrial Tribunal, Bombay, which was filed by the Hindustan Lever Research Centre Employees' Union in connection with the management's actions prohibiting an office-bearer from attending conciliation proceedings pertaining to the union.

Case No. 1698

COMPLAINT AGAINST THE GOVERNMENT OF NEW ZEALAND PRESENTED BY THE NEW ZEALAND COUNCIL OF TRADE UNIONS (NZCTU)

675. In a communication dated 8 February 1993, the New Zealand Council of Trade Unions (NZCTU) submitted a complaint of violations of freedom of association against the Government of New Zealand. It sent additional information and supporting evidence relating to its complaint in communications dated 11 March and 21 June 1993. Public Services International (PSI), the International Union of Food and Allied Workers' Associations (IUF), the International Confederation of Free Trade Unions (ICFTU), the International Federation of Commercial,

Clerical, Professional and Technical Employees (FIET) and the International Federation of Building and Woodworkers (IFBWW) associated themselves with this complaint in communications dated 3 and 15 March, 19 April, 5 May and 20 August 1993 respectively.

676. The Government's observations on the case were contained in a communication received on 14 September 1993. It sent additional information in a communication dated 12 October 1993.

677. New Zealand has not ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), or the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

678. At its November 1993 meeting, the Committee decided to postpone its examination of this case to its meeting in March 1994 where it would only take into consideration information received up to November 1993. The Committee was informed that the Office had recently recived other information. It decided to examine this case in conformity with its decision of November 1993.

A. The complainant's allegations

679. In its complaint the NZCTU alleges that the Employment Contracts Act (hereinafter "the Act") which came into effect on 15 May 1991 violates Conventions Nos. 87 and 98 in the collective bargaining process and by its restrictions on the right to strike. The NZCTU acknowledges that prior to the introduction of the Act there was agreement between the Government and the central workers' and employers' organizations that New Zealand's system of bargaining on an occupational basis needed to be changed in view of the more open, rapidly changing economy. However, it was the form of change that was in dispute and the NZCTU opposed the Act on the grounds that it did not provide an adequate legislative framework for the exercise of the right to organize and to bargain collectively.

680. In explaining the background of the legislative reform, the NZCTU points out that the National Party campaigned in the 1990 election on a platform that it would repeal the Labour Relations Act and introduce legislation which brought workers under a system of employment contracts as soon as it came into office. As a result, the Employment Contracts Bill was introduced into Parliament on 19 December 1990. However, the Government was advised by the Department of Labour before the Act came into force that it was not compatible with collective bargaining as envisaged by Convention No. 98. In this respect, the NZCTU quotes certain passages from a report by the Department of 3 April 1991:

> The Employment Contracts Bill stops short, however, of favouring collective over individual contracts. It says that it

is up to the parties to determine in order to best suit their own circumstances. It is neutral on the issue.

The thrust of Article 4 of Convention No. 98 really is that collective bargaining, via voluntary negotiation, should be promoted. The Employment Contracts Bill gives no such encouragement or promotion.

681. The NZCTU states that a select committee which heard submissions on the Bill reported back on 23 April 1991. One hundred and eighty-eight submissions opposed the Bill, 71 supported it. Although the select committee summarized the major grounds for opposition, it took no account of them and made no recommendations on the substantial grounds for opposition to the Bill. The Bill was altered in a technical fashion and came into force on 15 May 1991.

682. The NZCTU enumerates more specifically the violations of Conventions Nos. 87 and 98 in the collective bargaining process under the Act. It states first of all that the Act has greatly reduced the coverage of collective agreements. It provides data in an appendix to its complaint which shows that following the 1989-90 bargaining round, collective agreements covering 721,000 workers were settled. The 1990-91 bargaining round began after the introduction of the Act, although before it came into force; as a result, some employers refused to settle agreements, preferring to wait to bargain under the Act. Thus, the number of workers covered by collective agreements dropped to 610,200 workers. Finally, according to the most recent estimate, the number of workers covered by collective agreements as at 1 October 1992 was 376,000. This data shows that there has been a 45 per cent fall in the number of workers covered by collective agreements since the 1989-90 bargaining round. This not only indicates that the Act does not encourage or promote collective bargaining as envisaged by Convention No. 98 but also that it is obstructive and hostile to collective bargaining.

683. Secondly, the NZCTU contends that collective employment contracts under the Act are not collective agreements as contemplated by the ILO because they do not necessarily result from a process of real collective bargaining involving workers' organizations. Collective employment contracts under the Act can be formed without a representative workers' organization and without a process of collective agreement by workers. For example, 28 per cent of collective employment contracts in the Infometrics database were negotiated without the involvement of workers' organizations. This is contrary to Article 4 of Convention No. 98 which says that collective bargaining is "voluntary negotiation between employers or employers' organizations and workers' organizations with a view to the regulation of terms and conditions of employment by means of collective agreements".

684. The NZCTU refers to specific provisions to describe the bargaining system under the Act. Section 9(a) provides that workers and employers have the right to choose whether they will bargain for

themselves or through employee or employer organizations or through any other group or person. Under the terms of section 9(b), employment contracts may be either individual or collective. Individuals, individual agents or organizations can bargain both types of contract. The only limit on who can be a representative is that the other party can object to a representative who has certain criminal convictions (section 11). The Act contains no provisions on the recognition of workers' (or employers') organizations and no reference to representative workers' (or employers') organizations. Where workers or employers choose to bargain through a representative they must individually authorize that representative (section 12(1)). Where a representative has obtained an authority the other party must recognize that the person so authorized is the representative (section 12(2)). Recognition entitles the representative to access in terms of section 14. It creates no obligation on the employer to negotiate or bargain in good faith with that representative. Finally, section 17 provides that a bargaining agent may become a party to the collective employment contract with the consent of the employer and employee parties. This means that collective employment contracts can be formed without a collective process of representation even where workers have authorized a union.

685. The NZCTU maintains that such contracts are not true collective agreements but simply aggregations of individual agreements. It asserts that there are many examples of employers forming collective employment contracts directly by this method with workers who had authorized a union and had given the authorities required by the Act. It refers in particular to the example of the Adams v. Alliance Textiles Mill case. The Dairy Food and Textile Workers' Union had members at the Redruth Alliance Textiles Mill. The union was in the process of obtaining authorities under the Act to continue negotiations begun before the Act came into force. The manager of the mill circulated a "collective employment contract" individually to workers. Some workers signed it while negotiations were continuing. The manager asked each worker to withdraw his authority to the Dairy Food and Textile Workers' Union before signing his collective employment contract. The NZCTU indicates that there are other similar cases (which it describes in detail later on) which illustrate that employers had negotiated collective contracts in this manner and had bypassed authorized representative unions.

686. The NZCTU further alleges that the process of collective bargaining which has emerged under the Act is contrary to the principle that both employers' and workers' organizations should bargain in good faith and make every effort to come to agreement. A pattern of interference and discrimination during collective bargaining has emerged contrary to Articles 2 and 4 of Convention No. 98 and Articles 2 and 3 of Convention No. 87. The NZCTU maintains that the provisions of the Act on anti-union discrimination have not proved adequate to prevent this interference and analyses the relevant provisions.

687. Sections 6 and 7 forbid contracts and other agreements or arrangements which interfere with freedom to join a union (or not) or contain preferences on the basis of union membership. Section 8 forbids undue influence on workers to join or leave a union or on union representatives to cease to act for members who have authorized them. These provisions do not prevent actions intended to interfere with the relationship between workers and unions which do not relate to joining or leaving a union. This means that employers are free to interfere with or attempt to influence a worker's decision to authorize a union and to discriminate against workers on the basis that they have authorized a union.

688. The NZCTU goes on to describe provisions under which personal grievances are available to workers. Section 28(1) defines the types of discrimination which will give rise to a right to a personal grievance claim. These include discrimination against workers who are involved in the activities of an employees' organization. All these grievances protect workers who are discriminated against in the course of their employment. Section 28(2) further limits the scope of protection against discrimination, restricting grievance rights to workers who have had an active role in the union. This section would not create a remedy for workers who are discriminated against due to their membership or authorization of a union. Section 30 defines duress directed to union membership which gives rise to personal grievance rights. This section applies to agreements which require membership or non-membership, and to undue influence on workers to join or leave workers' organizations and on union representatives to cease to act for workers. Again it provides no protection for interference or discrimination in relation to the authorization relationship. The only protection against interference or influence on a worker's decision to authorize a union to represent him is section 57 which prohibits harsh and oppressive behaviour. According to the NZCTU however, section 57 provides a very limited remedy.

689. The NZCTU contends that some employers acknowledge that the union has been authorized, then bypass it to negotiate directly with the workers. They then move on to actively pressurize their employees to sign the employer's chosen individual or collective employment contracts without their representatives. The NZCTU alleges that this pressure amounts to interference and refers to a certain number of cases where such interference has occurred. The following three are examples of such cases. The Ports of Auckland case involved a harbour company employing workers who were members of the Harbour Workers' and Waterfront Workers' Unions. The company had been restructuring for some years and wished to speed up the process. It therefore sought these changes in a proposed employment contract which substantially altered the methods of payment of members of the workforce. The company approached workers individually and suggested that if the contract was not signed workers were in danger of being made redundant. Workers who signed the contract would receive as much as 40 per cent reduction in earnings but received initial one-off payments of up to 10 per cent of their current earnings. The company

asked workers to withdraw their bargaining authority to the Harbour Workers' Union before signing the company's document. After some individuals had signed these contracts, the union was notified of redundancies (the contracts which the workers remained under had a provision requiring six weeks' notice to the union of potential redundancies). The number of redundancies was equal to those workers who had not signed the company's contract because they had insisted that the company negotiate with their union. The union took a case claiming that the company had interfered with the authorities given by their members by asking them to withdraw these authorities and threatening those who did not sign their document with redundancy. The court refused to hear this argument saying the authority relationship is not a question of employment contracts and therefore is out of the jurisdiction of the Employment Court.

690. Similarly, in the Alliance Textiles case, the employer had approached union members individually and asked them to withdraw the bargaining authorities given to the union and sign non-union contracts which offered bonuses. The employer also paid for workers to go to an outside legal adviser to discuss the union authorities. The Employment Court considered that there was no remedy under the Act for these attempts to influence workers. The Court found that although there was an attempt to influence the workers, it was not an attempt to cause them to leave the union and therefore there was no remedy under the Act. The Court moreover, refused to apply section 57 which prohibits harsh and oppressive behaviour. It emphasized that this section would only apply in cases involving very serious influence, duress or threats. It also suggested that it would be difficult to find that there was harsh and oppressive behaviour where the contract formed was not, in itself, harsh and oppressive.

691. The Richmond case involved Richmond Limited, a meat processing company which had lockouts at three plants. The NZCTU states that since the work is seasonal, the workers were prevented from returning to work after the seasonal layoff in 1991 until they had agreed to the new contract structure. The NZCTU then provides 42 briefs of evidence from workers at these three plants who are members of the New Zealand Meatworkers' Union. These workers state that shortly before resuming work in October 1991, they were told by their respective plant managers and/or foremen that they would have to sign the company's plant level contract. Failure to sign would result in loss of seniority or be considered as an abandonment of their jobs. In previous years they were not required to sign anything, it being understood that they employment was not terminated at the end of each season. They normally received a letter indicating the date at which they had to resume work. Moreover, that year they were required to sign another document rescinding the union as their bargaining agent. Most of them refused to sign this contract since they had previously voted by a large majority for the union to remain as their bargaining agent and to negotiate a company-wide agreement. Most of them had nominated the union as their bargaining agent because in the words of Mr. Peter Baird, worker at the Richmond Oringi Plant: "I nominated the union because that is my only protection from the company.

Negotiating your terms and conditions is a tricky business and I wanted the union doing that work on behalf of myself and everyone else on the plant. There are not many workers on the plant who are able to negotiate their own contracts. That is why the company made people cancel the union as their bargaining agent." Certain workers, like John William Henderson from the Oringi Plant, noted quite a few changes between the company's new contract and the previous agreement, despite the company's assurances that workers would be starting work that season on the same terms and conditions as before. Some workers, like Ivena Joan Martin from the Richmond Pacific Plant, were told that the company would not mind if the workers had union officials from the plant as their individual bargaining agents but that they could not name the New Zealand Meatworkers' Union as their bargaining agent. Some workers, like Peter Haye from the Oringi Plant signed the contract a few weeks later because he "had to get some money". All those who did not sign the contract described the financial and emotional hardship that they suffered during the lockouts at the three plants. Finally, certain workers who signed the contract left the union either because they felt they could not stay in the union after breaching its rules and resolutions or because they felt like Ngai John James August from the Oringi Plant that it "... was a waste paying $5.00 a week union fees if you can't use the union as your bargaining agent".

692. The NZCTU submits that the provisions of the Act on recognizing authorized representatives are contrary to Article 2(2) of Convention No. 98 since they allow recognition of bargaining representatives appointed by or under the domination of employers. In this respect, it refers again to section 9(a) which provides that in negotiating for an employment contract, workers may conduct the negotiations on their own behalf or may choose to be represented by another person, group or organization. It adds that the various surveys all show statistically significant levels of bargaining involving company-based bargaining agents or nominated workers. These may be workers who represent fellow workers, workers appointed by employers, or other agents recommended by the employer. This type of agent cannot in practice, in a great majority of cases, be considered to be acting free of employer influence or dominance. It gives two examples of such employer domination. The Ohope Lodge Limited employment contract was negotiated and written by a bargaining agent appointed by the employer who also represented the workers involved. Secondly, some third-tier managers at the Accident Compensation Corporation (ACC), a state-run corporation, were members of a management staff association which was subsidized by the employer. The employer paid for a bargaining agent to negotiate for the staff association.

693. Moreover, the provisions of the Act on recognizing workers' representatives are a barrier to the right to organize for the purpose of collective bargaining as recognized in Articles 2 and 3 of Convention No. 87. The NZCTU alleges that the need to demonstrate authorization, to the standard required in the Act, is onerous and obstructs unions in the practice of collective bargaining. Authorized

representatives must establish their authority for all those they claim to represent. A union must obtain 100 per cent support in the form of an authority to take any action on behalf of its members. Some employers have gone so far as to require a list of members who have authorized the union, or copies of authorities, each time the union wishes to exercise one of the representation rights. For example, the State Services Commission issued initial bargaining documents requiring unions in the public health service to provide the names of each individual who had authorized them and to update it on any withdrawals of authorities during bargaining. The Southland Hospital Board requested not only a schedule of names but copies of each of the authorities.

694. The NZCTU alleges that collective employment contracts concluded through non-union agencies have limited or excluded trade union rights in violation of Articles 3, 8 and 11 of Convention No. 87. The ability of employers to negotiate collective employment contracts under the Act without the involvement of workers' organizations enables them to exclude union rights from those contracts. This is demonstrated by the Heylen Teesdale Meuli Survey, a survey of labour market adjustment under the Act, which was conducted for the Department of Labour in 1992. This survey contains an analysis of changes in representation rights where new collective employment contracts have been formed. The NZCTU states that in the group of enterprises surveyed: 12 per cent of enterprises have reduced or abolished union rights to access a workplace; 26 per cent have stopped supplying names of members to unions or have limited that supply; 25 per cent have reduced or stopped deducting union fees; and 22 per cent have cut time off for union meetings.

695. According to the NZCTU, the Act interferes in the free choice of the level at which bargaining takes place and has been used illegitimately by the Government to promote enterprise-level bargaining. The restrictions on the right to organize contained in the Act and, in particular, the restrictions on the right to strike for a document covering more than one employer (see paragraph 697), are barriers to the settlement of collective agreements at the industry level. In this connection, the NZCTU mentions the example of the New Zealand Engineers' Union (NZEU). The NZEU planned to negotiate a multi-employer metals industry contract to which end it obtained authorizations. The union was obstructed from negotiating this document centrally with the Employers' Federation or Metals Industry groupings. Industrial action in support of a central negotiation was illegal under the Act and would have left the union liable for losses by employers during the strike. The union was thus forced to negotiate by agreeing on the basic metals contract with a core group of employers in the South Island and including a clause allowing the addition of new employer parties to the document. The union then had to negotiate with individual employers and include them in the document. The union had to repeat this process for the North Island.

696. In addition, the Government has actively interfered in negotiations between state employers and workers to prevent the settlement of agreements at the industry level, issuing instructions to settle enterprise-level documents. For example, the Tertiary Institutes Allied Staff Association (TIASA), the representative union of workers in polytechnics, reached preliminary agreement for a multi-employer collective employment contract with the central body of polytechnic employers, the Association of Polytechnics of New Zealand (APNZ). However, the State Services Commission told the APNZ to delay negotiation until the Cabinet subcommittee on wages approved the agreement because "... a multi-employer collective contract for allied staff creates a highly undesirable precedent". At the meeting of the Cabinet subcommittee, the Minister of Labour said, amongst other things, that "it is the Government's intention and expectation that state-funded organizations will move this year to enterprise agreements" and "failure to achieve enterprise agreements will have implications for future funding decisions". Following this, the Minister wrote to the APNZ suggesting that funding to polytechnics would be altered to fit with the Government's enterprise bargaining objectives. Polytechnic employers issued a notice that they could only negotiate enterprise documents. The NZCTU adds that since the average New Zealand enterprise only employs 7.6 workers, negotiating primarily at the enterprise level is causing extreme organizational difficulties for the union movement in this country.

697. Finally, the NZCTU alleges that the Act broadly restricts the right to strike. Under the terms of section 63, strikes are unlawful if: a collective employment contract is in force; they relate to a personal grievance, a dispute, or issues of freedom of association; they are for a document which will bind more than one employer; they are in an essential industry and prior strike notice is not given. Strikes which do not involve any of the above elements are lawful only if they relate to the negotiation of a collective employment contract (section 64(1)(b)) or if they are justified by a health and safety issue (section 71). Workers who strike unlawfully are not protected against economic torts. This means that unions and their members could be sued for conspiracy to interfere in contractual relations, intimidation, inducement of breach of contract or unlawful interference with trade, business or employment (section 73). These legal actions can be taken by the employer of the striking workers in the case of secondary action or by the company whose products or services were being banned as part of secondary action. This means that there are effective penalities against strikes for multi-employer documents, and strikes in pursuit of general, or social and economic policy issues and secondary industrial action.

698. The NZCTU reiterates its view that the prohibition on multi-employer industrial action restricts the freedom of the parties to choose the level at which they bargain their collective contract. This is reflected in the 90 per cent fall in the number of collective agreements settled at industry or national level since the Act came into force. The fact that an employer can immediately take out an injunction to prevent strikes for multi-employer documents has

prevented industrial action by several unions. To illustrate this point, the NZCTU explains what happened to the Resident Doctors' Association (RDA) which represents junior doctors in public hospitals. Their award, deemed to be a collective employment contract by the Act, expired in 1991. The RDA wished to negotiate a national collective employment contract to replace the expired one. In August 1991, the Area Health Boards refused to negotiate nationally and the RDA issued notices that junior doctors would strike in support of a national collective contract. The Area Health Boards issued an action in the Employment Court for an injunction preventing the strike. The RDA withdrew its notices and called off the strike. This had to be done to avoid the inevitable costs of the court issuing an injunction. Similarly, the NZEU was unable to call for industrial action in support of the metals industry collective contract (see paragraph 695 above) and TIASA was unable to call for strike action in support of its preliminary agreement for a national polytechnic collective contract (see paragraph 696).

B. The Government's reply

699. Before specifically addressing the allegations made by the NZCTU, the Government describes the social, political and industrial relations framework in New Zealand and gives an overview of employment legislation. It states generally that post-war New Zealand had developed a highly protected economy, using measures such as import controls, a closed financial system and subsidies to protect domestic industries and maintain the welfare state. The recent deregulation of the economy had been undertaken in response to a series of international and domestic economic pressures. In conjunction with the deregulation of the economy, some changes were made in the highly regulated industrial relations system to increase the flexibility of the labour market. Traditionally, New Zealand had a conciliation and arbitration system designed to balance the interests of capital and labour and to avoid industrial disruption by providing for compulsory arbitration of disputes which could be activated by either party. Unions were organized on an occupational basis, leading to a pattern of bargaining on an occupational basis also. This system provided minimum wages and conditions for workers in a particular occupation across the economy. As part of the process of deregulation from 1984, compulsory arbitration was abolished that same year and the Government adopted a policy of non-intervention in disputes from 1985.

700. This policy was confirmed in the Labour Relations Act of 1987 by making the parties themselves responsible for negotiations and enforcement. The Act of 1987 maintained the registration of unions, which provided them with the exclusive coverage of workers covered by their membership rules and exclusive rights to negotiate with employers on behalf of those workers and put certain obligations on them in the administration of their affairs. The registration system was intended to encourage unions to be more effective and accountable

in the exercise of their rights. Settlements between unions and employers could be registered as awards or agreements. Awards could (and generally did) include a "subsequent parties" clause which extended "blanket" coverage across all workers covered by the award and their employers. This system meant that employers not present at the negotiations had no say in whether or not they were covered by the award. Workers were represented by unions at the negotiations, but all workers within the work description of the award were covered by it whether or not they belonged to the union. Although some flexibility was achieved under the Labour Relations Act of 1987, there were widely held views that it promoted inappropriate structures and outcomes which were not responsive to the economic pressures resulting from the exposure of New Zealand businesses to international competition. Various groups recognized that further change needed to occur in the labour market. The NZCTU issued a booklet in 1988 seeking a move to industry rather than occupational bargaining. Employer groups argued that the legislation perpetuated occupationally dominated bargaining, that unrealistic wage settlements were undermining business competitiveness and generating unemployment. It was in this environment that the Government introduced the Employment Contracts Act.

701. The Act, which was implemented in May 1991 and which has removed much of the previous regulation, provides an environment of voluntary association and freedom of bargaining in order to enable workers and employers to adopt flexible work practices necessary to a competitive economy. Under the new system the outcomes of bargaining apply only to the parties who have been actively involved in their negotiation. The immediate and most apparent result of the Act is therefore a significant change in the structure of bargaining. The following table provides an indication of the change, as reported by the Heylen Teesdale Meuli survey which was conducted for the Government in 1992. The survey covers private sector enterprises with four or more employees. The table shows the percentage of employees in the 1,437 surveyed enterprises who were covered by the different types of documents in May 1991, just before the Act came into effect, and in August 1992, 15 months later.

	Awards & multi-employer documents	Enterprise agreements	Combined IEC & CEC	IECs
May 1991	59%	13%	-	28%
August 1992	8%	35%	5%	52%

Note: IEC = individual employment contract. CEC = collective employment contract.

The table shows a significant shift from blanket coverage awards and other multi-employer documents to single enterprise agreements and individual employment contracts. The combined figures indicate a fall in coverage of collective bargaining from 72 per cent to 43 per cent. The changed bargaining structure reflects the intent of the Act that bargaining should be conducted at the level that suits the enterprise concerned and that the parties should be able to choose the form of contract they wished to negotiate. The evidence is that many employers and employees are choosing enterprise bargaining.

702. The Government then addresses the specific points raised by the NZCTU. Although the NZCTU acknowledges that prior to the introduction of the Act there was agreement between the social partners that the system of bargaining needed to be changed, the NZCTU has not accepted the legislation as the appropriate way of managing industrial relations. The Government submits that the Act is an appropriate mechanism in the new environment since it gives businesses the freedom they need to adopt flexible work practices in order to compete effectively in international and domestic markets. In particular, it is important that businesses can negotiate at any level, including enterprise level, conducive to achieving the terms and conditions appropriate to the parties themselves. It is for this reason that the system has been changed to one where the parties themselves are directly responsible for bargaining. The Government stresses, however, that both collective and individual bargaining are possible under the Act and that collective employees' organizations, including unions which were previously registered under the Labour Relations Act, may be the authorized representatives of employees if those employees so decide.

703. Turning to the allegation that the select committee hearing the submissions on the Bill took no account of the majority of submissions opposing the Bill, the Government replies that the select committee does not view submissions as a referendum. It considers all submissions and makes its recommendations to Parliament on the merits of the arguments and evidence put forward.

704. Regarding the allegation that the Act has greatly reduced the coverage of collective agreements, the Government indicates that in formal terms the coverage of collective outcomes has declined for a number of reasons. The primary immediate cause is the removal of the ability to negotiate a subsequent parties clause which extended the coverage of the award to all workers under the work description contained in the award. Awards registered under the Labour Relations Act were deemed to be collective contracts as the Employment Contracts Act came into effect. The Act provides that when collective contracts expire, employees become covered by an individual contract based on the applicable collective contract until a new collective contract is negotiated. As the awards expired a substantial number of employees moved on to individual employment contracts automatically.

705. At the same time there has been, according to the Government, an underlying movement over some years towards enterprise

bargaining. When the restrictions were removed by the Act, many more employers and workers took advantage of the new freedom to bargain at enterprise level. Some of these choose to bargain collectively, some individually, in line with the choice offered by the Act. Moreover, to some extent the number of individual contracts is a transitional effect where workers are covered by individual employment contracts when awards or agreements or collective contracts expire. This does not mean that some of these employees will not negotiate new collective contracts in due course. As a result of this transitional effect, the data on bargaining structure tend to exaggerate the incidence of individual bargaining.

706. In addition, the figures used by the NZCTU to show the decline in the coverage of collective bargaining span a two-year period which starts well before the introduction of the Act. Raymond Harbridge of the Industrial Relations Centre of Victoria University of Wellington argues that the 1989-90 bargaining round must be taken as the base year because it was the last "normal" round before the introduction of the Act. Choosing a two-year period to document changes in normal patterns of bargaining is misleading in that it suggests that bargaining behaviour changed as a result of the new legislation in a context that was otherwise stable. However, the difficulties encountered in settling some previous awards and the recognition of this fact by the previous Government were indications that coverage of collective bargaining had already begun to fall before the Act was introduced. In the 1990-91 round, coverage of collective bargaining had already dropped from 721,000 to 610,000, a fall of about 15 per cent. A further 30 per cent fall occurred in the following year, according to Harbridge's figures. It is misleading to claim that the 1989-90 round was "normal" and then to suggest that the entire fall spread over two years was the result of the Act only.

707. Finally, the Government rejects the NZCTU's assertion that the Act is hostile to collective bargaining. The Act which provides for both collective and individual bargaining allows employees to choose whether to be represented by unions or by an individual or a group of employee representatives. In order to ensure proper representation, representatives must establish their authority to represent the employees concerned, and employers must recognize authorized representatives for the purpose of negotiations. Employment Court cases such as Alliance Textiles have established that employees have the right to decide on representation for themselves and to change their minds if they decide to do so, whether or not the decision is made on the basis of information provided or persuasion by the employer. Authorized representatives have a right to enter the workplace at reasonable times to discuss matters related to the negotiations. Collective employment contracts may cover one or more employers and any agreed group of employees working for these employers, thus allowing for negotiation at different levels of bargaining. Moreover, these collective contracts are enforceable. Collective bargaining is protected by section 23 of the Act which provides that the parties may agree in writing to vary a collective contract. The Employment Court has confirmed on a number of occasions

that contracts may not be unilaterally changed by one party. The Government believes therefore that the Act provides for voluntary collective bargaining with adequate safeguards to ensure that the parties have the right to choose their representative and negotiate the bargaining structure.

708. With respect to the NZCTU's argument that collective employment contracts under the Act are not collective agreements as contemplated by the ILO because they do not necessarily result from a process of real collective bargaining involving workers' organizations, the Government explains that under earlier legislation, awards were negotiated by a small group of unions and employer organizations and that unions, not workers, were party to these awards. All rights and the ability to enforce the awards were derived from the unions. Now, however, the Act has formalized the contract system and clarified the existence of contracts, whether individual or collective. In doing so it establishes the responsibility of individual employers and workers for bargaining. Hence it is important that workers should be able to make decisions on representation for themselves. Nevertheless, unions continue to play a leading role in collective bargaining for a large number of employees. In the majority of collective contracts, particularly larger contracts, the authorized representative is a union, formerly registered under the Labour Relations Act. The Heylen Teesdale Meuli data show that 57 per cent of employees under collective contracts in the private sector covering four or more employees were represented by a union.

709. At the same time, significant proportions of smaller collective employment contracts are negotiated by individual representatives or groups of employee representatives. These representatives are chosen by workers and authorized to represent them in bargaining. The exercise of the right to choose other representatives is indicative of the degree of responsibility employees now have for their own bargaining. The Act, for the first time in New Zealand, gives workers the opportunity to be actively involved in collective bargaining. Moreover, while the Government agrees with the NZCTU that 129 of 457 collective contracts (28.2 per cent) in the Infometrics database were negotiated without union involvement, it points out that these contracts covered only 13 per cent of all employees covered by the 457 contracts in the database. Again this shows that unions tend to represent employees in larger contracts. It is further evidence that workers in small workplaces have been and are still poorly represented by unions. These workers are now more directly involved in bargaining than they could have been under the award system.

710. Referring to the example given by the NZCTU of the Adams v. Alliance Textiles case where the manager of the Redruth Alliance Textiles Mill asked workers to withdraw their authority to the Dairy Food and Textile Workers' Union, the Government admits that there have been cases where the employer, having recognized the authorized union representative, has then tried to persuade employees to bargain

directly with the employer. In cases that have been taken to the Employment Court, the Court has generally found that the employer must recognize the employees' authorized representative and must negotiate, if at all, with that representative. However, where the employer has recognized the authorized representative and respects the right of employees to continue to rely on that representative, there is no reason why the employer cannot try to persuade employees to change their minds, reverse the authorization and bargain directly with the employer. The Court has stressed that such persuasion must fall short of undue influence. In this particular case, the Court referred to the fact that the employer asked the workers to withdraw their authority to the union before signing the contract as evidence that the employer had recognized the union's authority to represent the workers. The workers were entitled to change their mind as to representation and the employer ensured that they had done so before signing the contract. The Government adds that this case has been appealed to the Court of Appeal but that the decision has not yet been issued.

711. Regarding the allegation that a pattern of interference and discrimination during collective bargaining has emerged under the Act, the Government stresses that the Act provides a framework in which the parties can choose to bargain collectively and that various provisions restrict the ability of employers to interfere with the decisions of employees in relation to association and representation. The case law which has developed around industrial relations legislation also reinforces the protection available under the statues. In particular, it has been developing in the specific area of what constitutes legitimate bargaining tactics under the new legislation. Generally, the Employment Court has established that the Act gives the parties to negotiation the right to endeavour to persuade and influence each other as to their respective point of view. This may include attempts to persuade employees to change their minds and negotiate directly with the employer after they have authorized a representative. These principles do not mean that employers can "interfere" in the relationship between workers and unions, as alleged by the NZCTU. An attempt to influence workers' decisions to authorize a union to represent them in negotiations does not constitute interference. Similarly, if workers have been persuaded to change their minds and bargain directly with the employer, it does not amount to discrimination to provide them with the benefits of the contract which they have signed. At the same time, no one party can go so far in the attempt to influence the other as to use undue influence or harsh and oppressive behaviour to threaten their freedom of association.

712. As regards the allegation that the process of collective bargaining which has emerged under the Act is contrary to the principle that both employers' and workers' organizations should bargain in good faith, the Government states that although the Act does not have an explicit requirement to bargain in good faith, the provisions for collective bargaining and freedom of association give employers and employees an effective role in bargaining. The Employment Court has rejected the claim that a requirement to bargain

in good faith could be read into New Zealand law. In the Alliance Textiles case, the union referred to Canadian legislation which, as part of its requirement to bargain in good faith, requires that there should be no interference from the employers in the employees' process of entering into negotiations, appointing representatives or negotiating or ratifying settlement proposals. The Court, however, dismissed these requirements in the New Zealand context, stating that the Act does not require the employer to remain strictly neutral when its vital interests are affected.

713. The Government then refers to particular cases on the process of collective bargaining mentioned by the NZCTU. In the Ports of Auckland case (see paragraph 14) the Harbour Workers' Union challenged the validity of redundancy notices issued by the company because it believed that they were being used to pressure the employees into signing the employment contract. The Employment Court found, however, that the potential for redundancy was a real one which might have been avoided by achieving the changes sought in the contract. In the Alliance Textiles case, the employer, despite the authorization of the union as representative by the employees, had approached the employees individually and persuaded many of them to sign the collective employment contract. The union alleged a breach of freedom of association. However, the Court rejected the allegation on the ground that there was no obligation on the employer to stop talking to the employees just because they had authorized an agent to bargain for them. It was legitimate for the employer to try to persuade the employees not to choose a particular representative, and to promote an alternative union, provided that the employer's actions did not amount to undue influence. Finally, in the Richmond case related to allegations of unlawful lockouts at three plants of the Richmond Limited company, the three members of the Employment Court disagreed on the question of whether there was a lockout, since the work is seasonal and the workers were prevented from returning to work until they had signed the new plant-specific employment contract as opposed to a company-wide contract. However, the Chief Judge, who took the view that there was a lockout, found that it did not interfere with freedom of association because the company continued to deal with the union. The company could be seen to be exercising its freedom to negotiate plant-specific employment contracts and the purpose of the lockout was to support this intention. According to the Government, this case reinforces other decisions of the Employment Court to the effect that, while employers should not interfere with the relationship between workers and their union, quite robust tactics, including lockouts and direct approaches to workers, are a legitimate part of the bargaining process. The letters from workers provided by the NZCTU show that the company approached the workers directly. They do not, however, suggest that the company deprived the workers of their right to contact the union or each other and to remain members of the union.

714. With respect to the allegation that the Act allows recognition of bargaining representatives appointed by or under the domination of employers, the Government submits that the Act allows

employees to choose any individual, group or organization to represent them in negotiations for an employment contract. According to the Heylen Teesdale Meuli survey, 28 per cent of employees under collective contracts were represented by someone other than a union. This group was made up of individual representatives (13 per cent), nominated groups of workers (10 per cent) and others (5 per cent). A further 8 per cent of employees had no representation. Variation in representational arrangements is consistent with the intent of the Act that bargaining arrangements should meet the needs of the business and its employees. The Government adds that the NZCTU is seeking to maintain the regulated form of representation traditional in New Zealand which is not practicable in an environment of voluntary freedom of association. In referring to the two examples cited by the NZCTU in which it alleges that the bargaining agent was appointed or paid by the employers, the Government indicates that it has no independent information on these cases. Clearly the freedom of choice available to employees to choose their representative allows the possibility that they may accept representatives offered by the employer. If the employees are not happy with the representative, however, they have the opportunity under the authorization and ratificiation procedures to reject the representative and the proposed settlement.

715. As regards the allegation that the provisions of the Act on recognizing workers' representatives are a barrier to the right to organize for the purpose of collective bargaining, and that the need to demonstrate authorization to the standard required in the Act is onerous and obstructs unions in the practice of collective bargaining, the Government contends that the Act provides for freedom of association so that any group can establish an employees' organization as defined in section 2. Section 12 requires any representative organization, group or individual to establish their authority to represent the employee(s) or employer, and requires the other party to recognize the authority of the representative. The Act does not specify how the authority is to be established, but leaves this up to the parties. Section 16 provides that employees or employers and their representative should agree on a procedure for ratifying a settlement within the three months preceding the negotiations. These provisions provide protection for employees to ensure that they are able to maintain control over the negotiation of their contract. They do not set rules for procedures: it is the responsibility of the employers and employees and their representatives to agree on what the procedures will be. They are substantially less onerous than the detailed provisions for registration of unions and bargaining procedures which applied under the Labour Relations Act.

716. The Government then addresses the NZCTU claim that the State Services Commission required unions in the public health service to meet onerous requirements in order to establish their authority to represent employees in contract negotiations. It points out that the Commission was not party to the negotiations in the public health service and was therefore not in a position to require a particular standard from unions. The 14 area health boards were, as individual

employers, directly responsible for conducting their own negotiations under authority delegated from the Commission for the bargaining round. Advice went from the Commission to area health boards in the form of suggestions on what sort of standard would meet the requirement for establishing authority to act. This advice was based on agreements that had been reached with unions in other parts of the state sector. The suggested approach for employers with medium to large numbers of employees was to require a list of names, an authorization form, a statement that those on the list had signed the form, and agreement that the union would supply on request the actual authorization form from any individual on the list. In practice this approach was adopted by the majority of employers and unions in the sector. The Government admits that the Southland Area Health Board example cited by the NZCTU is one case where an employer required a different process to establish authority to act (requiring copies of authorization forms rather than a list of names and example of authority). This approach was the cause of some debate between the parties, but ultimately did not prove to be a barrier to the negotiating process. The Southland Board was the second of the 14 boards to successfully negotiate a collective employment contract in that round of negotiations.

717. The Government believes that certain specific rights which the NZCTU claims have been reduced as a result of collective employment contracts being concluded through non-union agencies (i.e. the right of access to workplaces, the right to have names of members supplied to unions, deduction of union fees and time off for union meetings) are not a necessary part of the activities of workers' organizations as prescribed by Article 3 of Convention No. 87. Authorized representatives have a legal right under the Act to enter the workplace to discuss matters related to negotiations. The Government adds that this right of access has been clarified by the Employment Tribunal in NZ Nurses Union v. Argyle Hospital Ltd. and reinforced recently by the Employment Court in Service Workers' Union of Aotearoa Inc. v. Southern Pacific Hotel Corporation (NZ) Ltd. and others. Otherwise, the rights mentioned by the NZCTU are negotiable by the parties. Although some of these rights were provided for under the Labour Relations Act, statutory provisions such as these are not appropriate in the voluntary environment of the Act where employees may choose their representation and where employment contracts may be individual or collective.

718. Turning to the allegation that the Act interferes in the free choice of the level at which bargaining takes place and has been used illegitimately by the Government to promote enterprise-level bargaining, the Government asserts that the Act provides a free choice for employers and employees to negotiate the type of contract that will cover them. While the number of contracts covering more than one employer has declined, this decline is partly as a result of the principle of the Act that employment contracts cover only those who have agreed to be covered by them. Moreover, despite the restriction on striking for multi-employer contracts in the Act, collective bargaining can and does occur at an industry level. In this

connection, the Government states that the New Zealand Engineers' Union (NZEU) is a significant participant in multi-employer contracts. According to the NZCTU, the NZEU was unable to call for a strike over the issue of multi-employer bargaining in relation to the Metals Industry collective contract. Nevertheless, the NZEU succeeded in negotiating two Metals Industry contracts, in the North and South Islands, and a number of other multi-employer contracts. Multi-employer contracts covered 17 per cent of its members in May 1992, just one year after the Act came into effect.

719. The Government then contends that the allegation that the Act has been used "illegitimately" by the Government to actively interfere in negotiations between state employers and employees and prevent multi-employer industrial settlements, and the example cited by the NZCTU in support of this claim, display a fundamental misunderstanding of the conduct of industrial relations in the public sector. While both public and private sectors share a common legislative basis for bargaining in the form of the Act, a separate statutory framework has been preserved for the public sector in recognition of the Government's collective interest in the state agencies funded by it and therefore accountable to it. This statutory framework is provided by the State Sector Act, 1988, under which the State Services Commission is responsible for negotiating, in consultation with employers, collective employment contracts in the public, health and education services. While the Commission has largely delegated its bargaining authority in the tertiary sector (universities, polytechnics and colleges of education), tertiary chief executives are required to consult with the Commission before entering into any collective employment contract. Within this statutory framework, the primary institutional means by which the Government manages its employer interests in the pay-fixing process is through the Cabinet Subcommittee on State Wages. The subcommittee provides a forum for the discussion and approval of wage round strategies developed by employers. In the specific case cited by the NZCTU - that of the polytechnics - the principle of enterprise-based bargaining was supported by the employers concerned; at issue was the desired rate of change from old bargaining structures to new and the willingness of the Government to bear the costs arising from a delayed reform process. In the event, employers decided to pursue, rather than delay, enterprise-based bargaining. This decision was taken by the employers concerned and not the Government. While the process by which this decision was arrived at involved discussions between employer representatives and ministers, to characterize this as an illegitimate interference by Government is unjustified. Finally, the Government disputes both the accuracy and completeness of the notes taken by one of the employer representatives at the APNZ meeting with the Cabinet subcommittee, and relied upon by the NZCTU in support of its complaint.

720. As regards the question of organizational difficulties of small unions, the Government indicates that the NZCTU is correct in stating that the average size of enterprises in New Zealand is 7.6 employees. However, although the vast majority of enterprises (90.5

per cent) employ fewer than ten people, 51.9 per cent of employees work in the 1.5 per cent of enterprises which employ 50 or more people, and 71.5 per cent work in enterprises of ten or more. Thus current union strategies to focus on larger enterprises, including chains, can be successful in covering a large number of employees even where they are unable to reach small workplaces. Given the freedom to choose representation, workers in many small enterprises have indicated that they prefer to represent themselves.

721. Regarding the allegation that the Act severely restricts the right to strike, the Government responds that the strike provisions provide for lawful strike action in support of negotiations for a collective contract, if there is no current collective contract relating to the employees participating in the strike. Participation in a lawful strike ensures protection from legal action. The continuity of service of striking employees is protected so that service-related benefits are not lost. Strikes are unlawful in relation to personal grievances and disputes because there are adequate procedures for resolving them through the Employment Tribunal to which all employees have access. In essential industries, strikes for a collective contract are lawful provided an adequate period of notice is given.

722. While the Act restricts the right to strike over the issue of whether a collective employment contract will bind more than one employer, this restriction is intended to protect the freedom of choice of employers as well as employees in the negotiation of bargaining structure. It does not restrict strikes in support of negotiations once a multi-employer structure has been agreed to. Moreover, although the NZCTU claims that the restriction on strikes over the coverage of multi-employer contracts is reflected in the fall in the number of collective agreements settled at industry or national level since the Act came into force, the Government does not believe that the decline in multi-employer contracts can be attributed simply to the strike restriction. The fall is immediately attributable to the removal of the ability to negotiate a subsequent parties clause. The underlying cause is the general trend towards enterprise bargaining. As for the example of the Resident Doctors' Association, the Government believes it has been over-simplified by the NZCTU to the extent that it does not accurately identify the key issues in the dispute. The notice of strike action to area health boards did not state that it was in support of a national collective contract as claimed by the NZCTU. In fact the strike notices were withdrawn in some boards at an early stage because of agreements reached at an enterprise level on issues to be addressed in local negotiations. The dispute was characterized by confusion over whether the union was seeking national or regional contracts. The key issue as portrayed by the union at the time of the strike notice was the need to maintain training programmes, and it was agreement on a process related to this issue that led to the withdrawal of strike notices.

723. Finally, the Government states that strikes in pursuit of general or social and economic policy issues and secondary action are

not specifically designated as lawful or unlawful in the Act. However, only lawful strikes are protected against legal proceedings. The Employment Court decides on a case-by-case basis whether the strikers are liable for damages in any particular case. The Government believes that there are other effective means of expressing opinions on social and policy issues. Freedom of expression and of peaceful assembly are specifically protected under the Bill of Rights Act, and demonstrations are normally conducted peacefully and without interference from the authorities. Moreover, consultation through discussion documents and submissions is a normal process in the development of policy at all levels of government, and the select committee process provides for public input into the legislative process on most legislation.

C. The Committee's conclusions

724. The Committee notes that the allegations in this case concern various violations of freedom of association and collective bargaining principles following the implementation of the Employment Contracts Act in May 1991. The Government maintains that the intent and practice of the Act is consistent with freedom of association. Both parties refer to various supporting documents including surveys, statistics, case law, union and company literature and written testimonies to back up their respective arguments.

725. The complainant submits first of all that a select committee heard submissions on the Bill and that 188 submissions opposed the Bill and 71 supported it. However, the select committee took no account of the majority of submissions opposing the Bill. The Government replies that the select committee does not view submissions as a referendum. However, it also states that consultation through submissions is a normal process in the development of policy at all levels of Government, and the select committee process provides for public input into the legislative process on most legislation. The Committee underlines that the principle of consultation and cooperation between public authorities and employers' and workers' organizations at the industrial and national levels is one to which importance should be attached.

726. The complainant then contends that the Act does not promote collective bargaining since collective employment contracts under the Act do not necessarily result from a process of real collective bargaining involving workers' organizations. The Committee notes that while there are no restrictions on the establishment of an employees' organization which is defined in section 2 as "any group, society, association or other collection of employees, however described and whether incorporated or not, which exists in whole or in part to further the employment interests of the employees belonging to it," the Act contains no express provisions on the recognition of workers' organizations for the purposes of collective bargaining and no

reference to representative workers' organizations. In effect, section 9(a) provides that employees and employers may choose to bargain for themselves or may choose to be represented by any other person, group, or organization, and section 12(1) requires any representative individual, group, or organization to establish their authority to represent the employer(s) or employee(s) concerned in negotiations for an employment contract. The Committee recalls the importance which it attaches to the right of representative organizations to negotiate, whether these organizations are registered or not, and reminds the Government that employers, including governmental authorities in the capacity of employers, should recognize for collective bargaining purposes the organizations representative of the workers employed by them [Digest of decisions and principles of the Freedom of Association Committee, paras. 588 and 617].

727. The complainant further asserts that the fall in the number of workers covered by collective agreements since the 1989-90 bargaining round is further evidence of the preference by the Act for individual over collective bargaining. The Committee notes that the Government does not contest the data provided by the complainant in this respect. However, the Government disputes the fact that the 1989-90 bargaining round must be taken as the base year since, in this event, the 45 per cent decline in the coverage of collective bargaining would span a two-year period which started well before the introduction of the Act. However, even if the 1990-91 bargaining round were to be taken as the base year, the Committee notes that a further 30 per cent fall in the coverage of collective bargaining occurred during this period. The Government attributes this decline to various reasons. First, it states that there has been an underlying movement over some years towards enterprise bargaining, and that when previous restrictions were removed by the Act, many more employers and workers took advantage of the new freedom to bargain at enterprise level. It seems to the Committee that as a result of the new legislation, advantage was taken of the new freedom to bargain at an individual as opposed to collective level, which also resulted in a decline in the coverage of collective bargaining.

728. Another reason for this decline, according to the Government, is that the Act provides that when collective contracts expire, employees become covered by an individual contract until a new collective contract is negotiated. As the awards under previous legislation expired, a substantial number of employees moved on to individual contracts automatically. The Government feels that this is transitional and there is no reason to believe that some of these employees will not negotiate new collective contracts. The Committee, however, notes the Government's assertion that the "Act has formalized the contract system ... and in doing so it establishes the responsibility of individual employers and workers for bargaining", and the Act's emphasis on freedom of choice. The Committee also notes the complainant's argument which is not refuted by the Government that collective employment contracts under the Act can be formed without a process of collective agreement by workers and without a

representative workers' organization even where workers have authorized a union. It notes that in the example of the Adams v. Alliance Textiles Mill case, the manager circulated a "collective employment contract" individually to workers and asked them to withdraw their authority to the union before signing their contracts. The Government admits that in these and other cases where the employer successfully bypassed the authorized union representative, the Employment Court has not found the employer's actions to be at variance with the Act. The Committee requests the Government to provide further information on decisions of the courts and their consequences. The Committee is concerned that the emphasis on individual responsibility for bargaining in the Act and in the ensuing practice can be detrimental to collective bargaining. It draws the Government's attention to the role of workers' organizations in collective bargaining and to the principle that negotiation between employers or their organizations and organizations of workers should be encouraged and promoted.

729. In view of the reasons outlined above, the Committee considers that, taken as a whole, the Act does not encourage and promote collective bargaining. It would therefore request the Government to take the appropriate steps to ensure that legislation encourages and promotes the development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements, in conformity with freedom of association and collective bargaining principles. In so doing, the Committee would suggest that the Government have regard to the relevant provisions of the Promotion of Collective Bargaining Recommendation, 1981 (No. 163), which enumerates various means of promoting collective bargaining, including the recognition of representative employers' and workers' organizations for purposes of collective bargaining (Paragraph 3(a)).

730. As regards the allegation that a pattern of interference and discrimination during collective bargaining has emerged under the Act, the Committee notes that in various cases described to it by both parties, workers were asked to sign collective employment contracts individually and, at the same time, asked to withdraw their authorization of the union as their bargaining agent. The Committee further notes that case-law established that such attempts by the employer to "persuade" workers are perfectly valid since the Act does not require the employer to remain strictly neutral when its vital interests are affected and it asks the Government to provide further information on whether this remains the situation. The Committee considers that employers' attempts to negotiate collective contracts by seeking to persuade employees to withdraw authorizations given to a trade union could unduly influence the choice of workers and undermine the position of the trade union, thus making it more difficult to bargain collectively, which is contrary to the principle that collective bargaining should be promoted.

731. The Committee also observes that, while the Act does afford some protection against interference and discrimination on the basis of union membership, it gives clearly insufficient protection against actions intended to interfere with a worker's decision to authorize a union and to discriminate against a worker on the basis that he or she has authorized a union. However, it is clear to the Committee from the evidence provided by the complainant that, in practice, there may be interference by employers in the internal affairs of employees' organizations through attempts to influence workers' decisions to authorize a union, and discrimination against workers who have authorized their union and refuse to rescind their authorization. In the three Richmond company plants, for instance, workers were approached individually and threatened with loss of seniority and/or employment if they did not withdraw their authority to the union.

732. Thus, the Committee is of the view that protection against interference and discrimination on the basis of membership of a union is insufficient in the New Zealand context, if it is not accompanied by protection against interference and discrimination on the basis of authorization of a union. The Committee notes in this context the evidence provided by the complainant from workers at the three Richmond plants who withdrew their authority to the union as bargaining agent and who crossed the picket lines, following "persuasion" by their employer. All of these workers (as well as those who did not withdraw their authorization) felt that they could not continue as union members either because they had breached union rules - which stated that those who breached union resolutions were subject to expulsion from the union - or because they did not see the point in continuing to pay union dues for a union that was no longer going to bargain for them. The Committee considers that interference and discrimination on the basis of authorization of a union could amount to interference and discrimination on the basis of membership of a union. In this respect, the Committee would recall the principles that no person should be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities [Digest, op. cit., para. 538] and that legislation should lay down explicitly remedies and penalties against acts of interference and of anti-union discrimination by employers in workers' organizations to ensure the effective application of freedom of association principles [Digest, op. cit., paras. 577 and 543]. Noting that the Act does not grant sufficient protection to workers against acts of interference and discrimination in case of authorization of a union, and that the absence of such protection means that protection against interference and discrimination on the basis of trade union membership or activities is ineffective in practice, the Committee would ask the Government to take the necessary steps so that legislation lays down explicitly remedies and penalties against acts of interference and discrimination on the basis of authorization of a union.

733. With respect to the allegation that the Act allows recognition of bargaining representatives appointed by or under the domination of employers, the Committee notes that according to a

survey conducted for the Government in 1992, 28 per cent of employees under collective contracts were represented by someone other than a union, and a further 8 per cent had no representation at all. According to the Government, this variation in representational arrangements is consistent with the intent of the Act that bargaining arrangements should meet the needs of the business and its employees. While noting the Government's argument that the freedom of choice available to employees to choose their representative allows for the possibility that they may accept representatives offered by the employer but that they may reject these representatives if they are not happy with them, the Committee also notes the two examples given by the complainant of bargaining agents appointed or paid for by the employer and who negotiated for the workers at the Ohope Lodge Ltd. company and for the management staff association at the Accident Compensation Corporation. In this respect, the Committee would recall the importance of the independence of the parties in collective bargaining [see Digest, op. cit., para. 581]. The Committee asks the Government to take the necessary steps to ensure that legislation specifically prohibits negotiations being conducted on behalf of employees or their organizations by bargaining representatives appointed by or under the domination of employers or their organizations.

734. Turning to the allegation that the need to demonstrate authorization, to the standard required in the Act, is onerous and obstructs unions in the practice of collective bargaining, the Committee notes that section 12(1) requires any representative organization, group, or individual to establish their authority to represent any employee or employer in negotiations for an employment contract. Although the Act does not specify how this authority is to be established and leaves this up to the parties, the Committee cannot help but observe that in practice, employers can require workers to individually authorize their union should they choose to bargain through it. The Government itself states that, in the public health service, the approach adopted by the majority of employers with medium to large numbers of employees, was to require a list of names, an authorization form, a statement that those on the list had signed the form, and agreement that the union would supply on request the actual authorization form for any individual on the list. The Southland Area Health Board went one step further by requiring copies of authorization forms.

735. The Committee has stated in previous cases that recognition by an employer of the main unions represented in his undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking [Digest, op. cit., para. 618] and that the competent authorities should have the power to proceed to an objective verification of any claim by a union that it represents the majority of the workers in an undertaking. If the union concerned is found to be the majority union, the authorities should take appropriate conciliatory measures to obtain the employer's recognition of that

union for collective bargaining purposes [Digest, op. cit., para. 620]. The Committee notes in the present case that not only does the Act not establish any procedure for the recognition of a representative workers' organization for purposes of collective bargaining, but that it requires that a union establish its authority for all the workers it claims to represent in negotiations for an employment contract. The Committee is of the view that this requirement is excessive and in contradiction with freedom of association principles since it may be applied so as to constitute an impediment to the right of a workers' organization to represent its members. The Committee requests the Government to take the necessary steps to ensure that this possibility is removed.

736. The Committee further notes the complainant's allegation that the ability of employers to negotiate collective employment contracts under the Act without the involvement of workers' organizations enables them to exclude certain union rights from those contracts, namely, the right of access to workplaces, deduction of union fees, the right to have names of members supplied to unions, and time off for union meetings. As regards the right of access, the Committee would generally recall the principle that workers' representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including the right of access to workplaces [Digest, op. cit., para. 143]. The Committee observes in the present case that authorized representatives have a right under section 14 of the Act to enter the workplace to discuss matters related to negotiations. Moreover, the Committee notes that this right of access has been clarified by the Employment Tribunal in NZ Nurses Union v. Argyle Hospital Ltd. This right is not strictly limited to occasions where negotiations are proceeding or about to proceed, but is available to discuss possible future negotiations for any employment contract. This right cannot be frustrated by a trespass notice under the Trespass Act 1980. The Committee therefore considers that the right of access to workplaces is sufficiently guaranteed by the Act and reinforced by case law. As regards the deduction of union fees, the Committee would point out that in previous cases, it has considered that problems related to union security clauses should be resolved at the national level, in conformity with national practice and the industrial relations system in each country [see 284th Report, Case No. 1611 (Venezuela), paras. 338-339 and 290th Report, Case No. 1612 (Venezuela), para. 27]. The Committee would further point out that the right to have names of members supplied to unions and time off for union meetings are matters which are negotiable by the parties.

737. The complainant then alleges that the Act interferes in the free choice of the level at which bargaining takes place through its prohibition on the right to strike for a document covering more than one employer, which constitutes a barrier to the settlement of collective agreements at the industry level. It gives three examples of workers' organizations which it claims were unable to call for industrial action in support of collective contracts at the national or industry level. It further claims that the fact that this

prohibition restricts the freedom of the parties to choose the level at which they bargain is reflected in the 90 per cent fall in the number of collective agreements settled at industry or national level since the Act came into force. The Government, for its part, does not believe that the decline in multi-employer contracts can be attributed simply to the strike restriction. It contends that this decline is immediately attributable to the removal of the ability to negotiate a subsequent parties' clause and that the underlying cause is the general trend towards enterprise bargaining. Moreover, despite the restriction on striking for multi-employer contracts, collective bargaining can and does occur at an industry level. Be that as it may, the Committee considers that section 63(e) which prohibits strikes if they are concerned with the issue of whether a collective employment contract will bind more than one employer is contrary to the principles of freedom of association on the right to strike and that workers and their organizations should be able to call for industrial action in support of multi-employer contracts.

738. As regards the allegation that the Government actively interfered in negotiations between state employers and workers to prevent the settlement of agreements at the industry level, the Committee notes that according to the complainant, the State Services Commission told the central body of polytechnic employers, the Association of Polytechnics of New Zealand (APNZ), to delay negotiations on a preliminary agreement for a multi-employer contract with the Tertiary Institutes Allied Staff Association (TIASA), the representative union of workers in polytechnics, until the Cabinet subcommittee on wages approved the agreement. Following the meeting of the Cabinet subcommittee, the then Minister of Labour wrote to the APNZ suggesting that funding to polytechnics would be altered to fit with the Government's enterprise bargaining objectives, as a result of which polytechnic employers issued a notice that they could only negotiate enterprise documents. The Government, however, insists that the decision to pursue enterprise-based bargaining was taken by the employers concerned and not the Government, and disputes the accuracy of the notes taken by one of the employer representatives at the APNZ meeting with the Cabinet subcommittee. The Committee considers that although the Government gave its opinion to employers in the public sector on how to carry out negotiations with their employees, the decision to pursue enterprise-based bargaining was taken by the employers concerned.

739. As regards the allegation that the Act severely restricts the right to strike, the Committee notes that section 63(f) prohibits strikes in an essential industry if prior strike notice is not given. The Committee further notes that the list of essential services given in the Third Schedule goes beyond the Committee's definition of essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population [Digest, op. cit., para. 394]. However, since this restriction on the right to strike merely requires notice to be given and does not constitute a complete prohibition on the right to strike, and given that the notice

requirements in section 69 are reasonable, the Committee does not consider the restriction in the Act on the right to strike in an essential industry to be incompatible with freedom of association principles.

740. The Committee observes, however, that while strikes in pursuit of general or social and economic policy issues and secondary action are not specifically designated as lawful or unlawful in the Act, only lawful strikes are protected in case of legal proceedings. It would draw the Government's attention to the principle enunciated in this connection by the Committee of Experts on the Application of Conventions and Recommendations, namely that trade union organizations ought to have the possibility of recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies. However, strikes that are purely political in character do not fall within the scope of the principles of freedom of association [General Survey on Freedom of Association and Collective Bargaining, 1983, para. 216]. Accordingly, the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests [Digest, op. cit., para. 388].

The Committee's recommendations

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

(a) The Committee underlines that the principle of consultation and cooperation between public authorities and employers' and workers' organizations at the industrial and national levels is one to which importance should be attached.

(b) Noting that the Act contains no express provisions on the recognition of representative workers' organizations for purposes of collective bargaining, the Committee recalls the importance which it attaches to the right of representative organizations to negotiate, whether these organizations are registered or not, and reminds the Government that employers, including governmental authorities in the capacity of employers, should recognize for collective bargaining purposes the organizations representative of the workers employed by them.

(c) The Committee notes that in cases where the employer successfully bypassed the authorized union representative, the Employment Court has not found the employer's actions to be at variance with the Act. The Committee requests the Government to provide

further information on decisions of the courts and their consequences.

(d) The Committee draws the Government's attention to the role of workers' organizations in collective bargaining and to the principle that negotiation between employers or their organizations and organizations of workers should be encouraged and promoted.

(e) Considering that, taken as a whole, the Employment Contracts Act does not encourage and promote collective bargaining, the Committee requests the Government to take appropriate steps to ensure that legislation encourages and promotes the development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations with a view to the regulation of terms and conditions of employment by means of collective agreements.

(f) The Committee notes that case law has established that attempts by the employer to persuade workers to withdraw their authorization to the union as their bargaining agent are perfectly valid since the Act does not require the employer to remain strictly neutral when its vital interests are affected, and it asks the Government to provide further information on whether this remains the situation. The Committee considers that employer attempts to negotiate collective contracts by seeking to persuade employees to withdraw authorizations given to a union could unduly influence the choice of workers and undermine the position of the union, thus making it more difficult to bargain collectively, which is contrary to the principle that collective bargaining should be promoted.

(g) Noting that the Act does not grant sufficient protection to workers against acts of interference and discrimination by employers in case of authorization of a union and that the absence of such protection means that protection against interference and discrimination on the basis of trade union membership or activities is ineffective in practice, the Committee asks the Government to take the necessary steps so that legislation lays down explicitly remedies and penalties against acts of interference and discrimination on the basis of authorization of a union.

(h) Recalling the importance of the independence of the parties in collective bargaining, the Committee asks the Government to take the necessary measures to ensure that legislation specifically prohibits negotiations being conducted on behalf of employees or their organizations by bargaining representatives appointed by or under the domination of employers or their organizations.

(i) The Committee is of the view that the requirement established by the Act that a union establish its authority for all the workers it claims to represent in negotiations for a collective

employment contract is excessive and in contradiction with freedom of association principles as it may be applied so as to constitute an impediment to the right of a workers' organization to represent its members. The Committee requests the Government to take the necessary steps to ensure that this possibility is removed.

(j) The Committee believes that the right of access to workplaces is sufficiently guaranteed by the Act and reinforced by case-law. It considers that problems related to union security clauses should be resolved at the national level, in conformity with national practice and the industrial relations system in each country. It further considers that the right to have names of members supplied to unions and the right to time off for union meetings are matters that are negotiable by the parties.

(k) The Committee considers that the prohibition in the Act on strikes if they are concerned with the issue of whether a collective employment contract will bind more than one employer is contrary to the principles of freedom of association on the right to strike and that workers and their organizations should be able to call for industrial action in support of multi-employer contracts.

(l) The Committee does not consider the restriction in the Act on the right to strike in an essential industry to be incompatible with freedom of association.

(m) The Committee draws the Government's attention to the principle that trade union organizations ought to have the possibility of recourse to protest strikes in particular where aimed at criticizing a government's economic and social policy. However, strikes that are purely political in character do not fall within the scope of the principles of freedom of association. Accordingly, the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests.

(n) The Committee moreover requests the complainant and the Government to provide any other information which they consider to be relevant to the practical implementation of the Act.

(o) Finally, the Committee notes the enormous complexity of the present case and the need to obtain additional detailed information in order to proceed to a definitive examination of the matter in full knowledge of all the facts. Therefore, it considers that it would be very useful for a representative of the Director-General to undertake a direct contacts mission to the country with a view to obtaining this information from the