

the DAV must apply again to the courts for recognition of its capacity to bargain.

326. The Government also states that, under the terms of the Labour Courts Act, independent associations of workers organised for social or occupational purposes may bring their disputes before the labour courts or be represented by lawyers. It also includes with its reply extracts from the decision of the Federal Labour Court of 14 March 1978 and from the decision of the Federal Constitutional Court of 20 October 1981.

327. At the same time, the DGB sent its observations on this case at the Government's request. It considers that the right to set up organisations for the purpose of defending and promoting the economic and working conditions of every worker in every industry and in every occupation is guaranteed by the Constitution of the Federal Republic of Germany. According to the DGB, the DAV is a workers' association which enjoys the rights enshrined in Articles 2 and 3 of Convention No. 87; that association states that it has existed for 30 years and has 14,000 members throughout the country. No one prohibits it from carrying on its activities independently and from representing the interests of its constituents vis-à-vis their employers, affirms the DGB.

328. Concerning the discrimination alleged to have been suffered by members of the DAV in enterprises where the works councils are held by other trade union organisations, the DGB considers that, even if this were true, it would not prove that the Federal Republic of Germany violated Convention No. 87. The Convention prohibits the public authorities from interfering in matters of freedom of association but it contains no provision on the behaviour to be adopted between workers who are members of rival organisations. The DGB regrets that the DAV merely stated in general terms that its members were defenceless and at the mercy of works councils held by the DGB, and affirms that this allegation is unfounded.

329. The DGB further reiterates the information supplied by the Government concerning the Works Constitution Act, which obliges works councils to ensure that no "person employed in the establishment" is subjected to anti-union discrimination, and which also provides that any infringement in this respect would incur dissolution of the works council or removal of the individual member guilty of such acts.

330. The DGB also reiterates the information supplied by the Government as to the difference between a trade union with the capacity to bargain collectively and a workers' association, and recalls that disputes on this matter are settled by the courts on the basis of objective pre-established criteria, i.e. the ability to put pressure on the opposing party and to resist such pressure from the opposing party by reason of the number of its members or its position of strength in labour relations. However, continues the DGB, as was admitted by the DAV, this association numbers 14,000 members throughout all the industrial and economic sectors of the country,

while the DGB comprises 17 trade unions in the same sectors, with 8 million members. In other words, the representativity of the DAV is particularly weak.

331. The DGB adds that the DAV has never signed any collective agreement, as was pointed out by the Federal Labour Court, but would like to be recognised as a trade union with the capacity to bargain collectively so as to give workers the impression that it is in a position to regulate their working conditions by obtaining the establishment of legal provisions within the German collective agreement system which would override the statutory provisions, and that it does so, which is not the case. Nevertheless, according to the DGB, no one prevents the DAV from submitting complaints to the opposing party or concluding collective agreements, but a workers' association must be in a position to do so itself in full autonomy, and cannot demand that its capacity in this respect, which is not borne out by the facts, be confirmed by a court.

332. The DGB concludes that Conventions Nos. 87 and 98 have not been infringed by the Federal Republic of Germany which, like other member States of the ILO, only grants the capacity to bargain collectively to representative or competent trade unions.

C. The Committee's conclusions

333. The Committee observes that, in the present case, the complainant has opposed a decision of the European Commission on Human Rights of Strasbourg and stated that it was lodging an appeal with the ILO against the said decision. The Committee, not being competent to examine the decisions of other international or regional bodies, considers that this aspect of the complaint is not receivable under the terms of the procedure in force.

334. As regards the substance of the case, the Committee observes that it essentially involves a question of legal recognition of the status of a trade union with the capacity to conclude collective agreements and the negative consequences which the loss of such recognition entails.

335. The Committee has always considered¹ that it is not necessarily incompatible with Article 3 of Convention No. 87 (according to which workers' and employers' organisations have the right to organise their administration and activities and formulate their programmes without interference by the public authorities) to provide for the issuance of a certificate to the most representative trade union recognising it as an exclusive bargaining agent. [See the Committee on Freedom of Association, 67th Report, Case No. 303 (Ghana), paras. 291 and 292.]

336. Nevertheless, the Committee has pointed out on several occasions that where, according to the system in force, the most representative trade union enjoys preferential or exclusive bargaining rights, it is important that this trade union be determined on the basis of objective and pre-established criteria in order to rule out any possibility of partiality or abuse. [See the Committee on Freedom of Association, 92nd Report, Case No. 376 (Belgium), para. 31; 109th Report, Case No. 533 (India), para. 101; 202nd Report, Case No. 949 (Malta), para. 278; and 208th Report, Case No. 981 (Belgium), para. 113.]

337. In the case under consideration, the Committee observes that the labour courts, including the highest court of the Federal Republic of Germany, ruled on the basis of objective and pre-established criteria. The Committee has taken note, in particular, of the decision of the Federal Labour Court of 14 March 1978 stating that the number of members of the DAV and the structure of its organisation are insufficient for it to be recognised as a trade union. The distribution of its members is very dispersed and it holds no key position in any sector. In addition, its administration is inadequate to enable it to carry on negotiations in areas as important as mining and energy. The Committee also observes that, as had been admitted by the DAV, this workers' association only has 14,000 or 15,000 members in all sectors of the economy throughout the country. The DGB, on the other hand, numbers 8 million workers in all sectors throughout the country.

338. In these circumstances, the Committee considers that the non-recognition of the complainant as a trade union with the capacity to conclude collective agreements, ruled by court decision, does not infringe the principles of freedom association, the more so because this federation could apply again to the court for recognition of its capacity to bargain if the situation changed.

339. As regards the negative consequences entailed by the loss of this recognition and, in particular, the prohibition on posting notices, incitements to resign from the DAV on the grounds that this workers' association is no longer a trade union, and the allegations of discrimination against members of the DAV, the Committee points out the importance which it attaches to the fact that the public authorities should guarantee that non-recognition of a worker organisation's capacity to bargain does not result in that trade union forfeiting the other rights which the minority workers' association and its members should enjoy and the Government should protect the activities that even a minority workers' association should be able to carry on in order to further and defend the interests of its constituents in accordance with Convention No. 87.

The Committee's recommendations

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

- (a) The Committee considers that the withdrawal of the status of a trade union with a capacity to conclude collective agreements from the complainant by court decision on the basis of objective and pre-established criteria does not run counter to the principle of freedom of association. The Committee therefore considers that, on this point, there has been no infringement of freedom of association.
- (b) However, the Committee draws the attention of the Government to the fact that the public authorities must ensure that the withdrawal in question does not result in this minority workers' association and its members forfeiting the other rights which they should be able to enjoy in accordance with Convention No. 87.

Case No. 1323

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF
FREE TRADE UNIONS, THE TRADE UNIONS OF THE PHILIPPINES AND
ALLIED SERVICES AND THE KILUSANG MAYO UNO
AGAINST THE GOVERNMENT OF THE PHILIPPINES

341. The International Confederation of Free Trade Unions (ICFTU) presented a complaint of violations of trade union rights against the Government of the Philippines on 7 March 1985. The Trade Unions of the Philippines and Allied Services (TUPAS) also addressed a complaint against the Government in communications dated 13 and 29 May 1985, as did the Kilusang Mayo Uno (KMU) in a communication dated 8 June 1985. The Government sent its observations in communications dated 30 May, 14 June and 26 August 1985.

342. The Philippines have ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); they have not ratified the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

343. In its communication of 7 March 1985, the ICFTU states that it is greatly concerned about restrictions relating to the right to strike, the requirements for the registration of trade unions, the powers of inquiry conferred on the Department of Labour in respect of the financial management of unions and the harassment, arrest and detention of trade unionists in the Philippines. This has been reflected in the observations of the ILO Committee of Experts on the Application of Conventions and Recommendations and by the Committee on Freedom of Association in its conclusions concerning Cases Nos. 1157 and 1192. In particular, the ICFTU alleges an additional infringement of trade union rights by the Government, namely the denial of the right to organise in the public sector. According to the ICFTU, while section 244 of the Labour Code guarantees the right to "self-organisation" to workers in commercial, industrial and agricultural enterprises, the workers in government and local government services, as well as workers in government-owned or controlled corporations - covered by the Civil Service Law and Rules - are excluded from the right to organise in trade unions. This, states the ICFTU, results in a situation where a substantial proportion of Filipino workers are without the protection and means for the furtherance of their interests by trade union organisations.

344. In its communication of 13 May 1985, the TUPAS alleges that recent legislation on strikes and lock-outs - Letter of Instruction No. 1458 promulgated on 1 May 1985, a copy of which is supplied - weakens concerted actions, strikes and picketing by workers, and is in violation of ILO Conventions.

345. In its communication of 29 May 1985, the TUPAS states that, although Letter of Instruction No. 1458 has not at present been implemented, it is contrary to the ILO Conventions on freedom of association for the following reasons: (1) it states that any assumption of jurisdiction by the President or Minister of Labour shall be immediately executory even if such action is under appeal to the Supreme Court; (2) it empowers the Minister of Labour to authorise the employer to hire replacement labour; (3) the police and military may be used for the immediate execution of orders even if the Supreme Court should subsequently declare the action of the Minister void.

346. In its communication of 8 June 1985, the KMU first alleges that the following labour leaders were arrested on 13 August 1982 and remain detained by the military authorities: Romeo Castillo, Cesar Bristol, Danilo Garcia, Herminia Ibarra (all detained at Military Camp Bagong Diwa), Millet Soriano, José Britanico, Simplicio Anino, Lauro Pabit (all detained at Military Camp Crame), Ceferino Pineda, Antonio Cabrera, Renato Yineda, Roberto Ramos and Noel Maglalang (all detained at Military Camp Olivas). According to the KMU, they were charged with offences which they have not committed.

347. Secondly, the KMU alleges that the major labour laws are repressive and violate the ILO Constitution and freedom of association Conventions. For example, freedom of association and the right to collective bargaining are restricted in the following circumstances: (a) government employees, including employees working in quasi-public corporations, are not allowed to organise as labour organisations and are prohibited from declaring a strike or engaging in other concerted activities. Their security of tenure and other terms and conditions of employment are governed by the Philippine Civil Service Laws which are unilaterally imposed by the Government. Prior to martial law in the Philippines, the rights of public employees to organise in quasi-public corporations had been recognised; (b) workers in the following industries are allowed to organise labour unions but are prohibited from declaring a strike or engaging in concerted activities pursuant to section 264(g) of the Labor Code, Legislative Resolution No. 473 and Executive Order No. 815: export-oriented industries, semi-conductor business, public utilities, companies engaged in the generation or distribution of energy, banks and hospitals; (c) the following are not allowed to unionise: private security guards, personnel employed by the employers for the protection and security of their person, properties and the factory, managerial employees, casual, probationary and temporary employees, apprentices, learners and contractual workers.

348. The KMU alleges in this connection that freedom of association is curtailed by the Government by not according to a labour organisation the status of a legitimate labour organisation unless it registers with the Ministry of Labour and Employment. For example, KMU is refused recognition by the Government because it is not a registered labour centre despite clear and unequivocal acceptance by the Filipino workers of its legitimacy. Moreover, undue delays in the handling of union representation cases affects the rights of the workers to form an association. For example, a simple election case can last for more than one year thereby frustrating the free choice of bargaining agents. Related to this are the stringent requirements imposed by the Government for the registration of labour unions (section 234 of the Labour Code) and labour federations and national unions (section 237 of the Labour Code: a labour federation or national union cannot be registered unless the applicant presents proof that ten local unions with collective bargaining agreements are affiliated to the federation).

349. The KMU also refers to section 6 of Presidential Decree No. 1391 by which workers are prohibited from changing their bargaining agent during the life of a collective bargaining contract which is fixed at three years. Consequently, even if the bargaining agent selected no longer enjoys the trust and confidence of the workers, the latter have to wait for three years before the bargaining representative could be changed.

350. The KMU next refers to section 4(f) of Rule III of the Rules Implementing Presidential Decree No. 1391 which reads: "... No person who is not an employee or worker of the company or establishment where

an independently registered union, affiliate, local or chapter of a labour federation or national union operates shall henceforth be elected or appointed as an officer of such union, affiliate, local or chapter." This rule, according to the KMU, prohibits a person not employed by the company from becoming a union officer.

351. According to the KMU, freedom of association is also violated by the Government because it is empowered by law (sections 238, 239 and 240 of the Labour Code) to cancel the registration certificates of labour unions for the following reasons: fraud in connection with the ratification of the union's constitution; failure to submit the founding documents within 30 days from their adoption; fraud during elections or failure to submit election information within 30 days of the election; failure to submit annual returns within 30 days of the close of the financial year; engaging in any activity prohibited by law; entering into collective agreements setting conditions of employment below the minimum legal standards; asking for or accepting special fees from employers or union members; failure to submit membership lists at least once a year.

352. Lastly, the KMU alleges that from January to May 1985 there has been an upsurge in trade union repression, involving the death of at least nine workers while actively representing their unions. This complainant states that on 1 May 1985 the President issued Letter of Instruction No. 1458 which provides for the immediate involvement of the military in picket lines. It claims that the use of fanatic groups, para-military and direct military intervention in strike situations is obvious.

353. The KMU attaches to its communication a voluminous petition containing further details regarding alleged violations of Conventions Nos. 87 and 98 and requesting the ILO to instruct the Government to stay the implementation of Labour Laws Nos. 130 and 227, Executive Order No. 815, Resolution No. 473 and Letter of Instruction No. 1458. In addition to repeating the detailed allegations listed above, the petition refers specifically to undue employer and government interference in the internal activities of unions by requiring a majority of two-thirds votes before concerted action can be authorised and by permitting their representatives to attend and/or supervise union meetings.

354. According to the KMU petition, rather than heed the criticisms of several international bodies, the Government issued Letter of Instruction No. 1458. This legislation was used to put down a strike by 800 employees of the Filipinas Synthetic Fiber Corporation at Santa Rosa, Laguna, with resulting injuries to 70 strikers. While this legislation requires the employer to comply with a return-to-work order, the KMU alleges that some do not immediately reinstate striking employees, e.g. Baxter Travenol, Allied Banking Corporation, Blue Bar Coconut and the Producers Bank. In addition, while the Letter of Instruction requires the payment of back wages to striking employees, the Minister of Labour does not order such repayment.

355. The KMU also attaches to its complaint a copy of a petition it presented on 10 June 1985 to the Supreme Court of the Philippines requesting the issuance of a temporary restraining order against implementation of Letter of Instruction No. 1458 until the Court can decide that it is invalid and unconstitutional.

B. The Government's reply

356. In its communication of 30 May 1985, the Government explains that although both private sector and government employees are guaranteed the right to association, government employees performing governmental functions were in the past the only group not allowed to engage in concerted activities. When the situation emerged where employees of government-owned or controlled corporations engaged in proprietary functions received wages and benefits far higher than their counterparts in the various branches of Government, it was decided to include such employees within the ambit of the Civil Service Act of 1959. As a result of debates on this point during the adoption of the 1973 Constitution, section 1, Article XII-B, was passed, placing these employees under the Civil Service Act and providing that compensation of all government employees shall be standardised by the National Assembly. The Government points out that section 277 of the Labour Code incorporated the constitutional provision in the following terms:

The terms and conditions of employment of all government employees, including employees of all government-owned or controlled corporations shall be governed by the Civil Service Law, rules and regulations. Their salaries shall be standardised by the National Assembly as provided for in the new Constitution. However, there shall be no reduction of existing wages, benefits, and other terms and conditions of employment being enjoyed by them at the time of the adoption of the Code.

357. According to the Government, the phrase "government-owned or controlled corporations" has been interpreted by the Secretary (now Minister) of Justice and the National Labour Relations Commission (NLRC) of the Ministry of Labour and Employment as contemplating only those created by charter or by special laws or decrees. It does not include corporations incorporated or organised under the Corporation Code of the Philippines and motivated wholly for profit and the promotion of private interests. Hence, eventual government takeover through the acquisition of a controlling bloc of shares does not affect existing unions and collective bargaining agreements within the undertaking.

358. The Government stresses that there is no law in the country that restricts the right to organise of government employees. On the contrary, the right to organise is guaranteed by the Constitution.

Thus, in a case filed by the Alliance of Government Workers in 1983, the Supreme Court ruled:

... Our dismissal of this petition should not, by any means, be interpreted to imply that workers in government-owned and controlled corporations, or in state colleges and universities, may not enjoy freedom of association. The workers whom the petitioner purports to represent have the right, which may not be abridged, to form associations or societies for purposes not contrary to law. This is a right they share with all public officers and employees and, in fact, by everybody living in this country. But they may not join associations which impose the obligation to engage in concerted activities in order to get salaries, fringe benefits, and other emoluments higher than or different from that provided by law and regulations.

That government employees can and do form associations of their own choosing to promote and protect their collective interests is evidenced by such organisations as the Philippine Government Employees' Association (PGEA), the Alliance of Government Workers (AGW), the Philippine Public School Teachers' Association (PPSTA), the Labor Arbiters' Association of the Philippines, Inc. (LAAPI), the Philippine Veterans Bank Employees' Union (PVBEU) and various co-operatives and trade organisations in the public sector.

359. Referring to the alleged limitation on the exercise of the right to strike in government-owned and controlled corporations, the Government explains that prior to the promulgation of the 1973 Constitution, employees of such corporations performing proprietary functions could join a union that imposed the duty to strike and other similar concerted actions. In practice, however, labour disputes involving government-owned or controlled corporations were considered imbued with national interest and were often recommended by the then Secretary of Labour to be certified by the President to the Court of Industrial Relations for compulsory arbitration under the legislation then in force. The Government states that the constitutional provision is not absolute in that it refers only to those corporations with special charters. Thus, corporations organised by the Government or those incorporated under the Corporation Act continue to enjoy the right to collective bargaining and concerted activities. Among these corporations are the Philippine Airlines, Petrophil and Hyatt Regency Hotel, in which their employees are not only unionised, but also have existing collective agreements with them.

360. According to the Government, the rights and interests of government workers are protected by Executive Order No. 895 of 1 May 1983. This directive provides for the creation of an Employee-Management Committee in every government-owned or controlled corporation and an Employee-Management Consultative Council in the Civil Service Commission. The Government recognises that the formation of these bodies is crucial in view of the limitations on the right to bargain collectively regarding wages and strike actions. Executive Order No. 895 aims at fostering closer and more harmonious

employer-employee relations in government-owned or controlled corporations. The Committee and the Council are intended to improve the existing framework for the expeditious settlement of grievances and in providing a forum for regular and meaningful dialogue between the parties. "Grievances" as used in Executive Order No. 895, are defined as problems arising from physical working conditions, placement of employees, work distribution, performance appraisal, arbitrary actions, lay-offs and transfers, selection and promotion and other matters that may give rise to employee dissatisfaction. The rules governing operation of the employee-management committees provide that these shall be composed of equal representation of management and workers. The Council, on the other hand, shall be composed of permanent representatives from the Employee-Management Committee which has referred a grievance to the Council and a representative from the ministry and agency to which the corporation involved is attached.

361. The Government admits, however, that despite the administrative and judicial pronouncements regarding the right to self-organisation, some sectors continue to call for clarificatory legislation. In view of this, Parliamentary Bill No. 4962 was filed on 25 February 1985 proposing several amendments to the Labour Code. Among the proposed amendments is a provision which, while still prohibiting strikes in the public sector, recognises the right of this class of employees to bargain collectively with their employers and seeks to extend to them the same rights and privileges enjoyed by private sector employees. A current review is also being undertaken by the Cabinet in line with the Supreme Court decision on the matter.

362. To its communication dated 14 June 1985, the Government attaches a copy of the "Guide-lines to implement Letter of Instruction No. 1458" dated 31 May 1985. The "Guide-lines" include safeguards such as exhaustion of conciliation or mediation before certifying the dispute to the National Labour Relations Commission for compulsory arbitration, the right to peaceful picketing and a restriction on the role of law enforcement authorities in labour disputes.

363. In its letter of 26 August 1985, the Government first observes that many of the issues raised in the present complaint have already been examined by both the Committee on Freedom of Association and the Committee of Experts; it accordingly refers to its past replies on these issues.

364. The Government states that, on 20 August 1985, Millet Soriano, Simplicio Anino, Lauro Pabit and José Britanico were released from detention on bail. They are being tried for conspiracy to commit rebellion or insurrection, illegal possession of explosives and violation of Presidential Decree No. 33. The Government also states that, according to documentation at the Ministry of National Defence, the other militant labour leaders were arrested not for legitimate trade union activity but for subversive and illegal acts; they are charged with illegal possession of firearms and ammunition and incitement to sedition, rebellion or insurrection.

365. As regards the allegations concerning the labour legislation, the Government points to the following recent developments:

- the first meeting, on 20 February 1985, of the Tripartite Discussion Series on Labour and Employment Issues, during which the KMU, TUPAS and other workers' organisations were able to present their recommendations on the subject of arbitration to be included in the Ministry's Study Team review of labour laws, which is expected to hand down its final recommendations very soon;
- a public hearing, on 8 August 1985, on a draft bill (No. 4962) to amend the Labour Code incorporating some of the provisions referred to by the Committee of Experts;
- a National Tripartite Conference, to be held in September 1985, to discuss all possible amendments to labour legislation.

366. More particularly, the Government explains that Letter of Instruction No. 1458 was prompted by the open defiance of both labour and management sectors of lawful orders issued by the Ministry of Labour. Although issued in good faith by the Government, it is being included in the on-going review of labour relations laws in view of the varied reactions from both labour and management.

C. The Committee's conclusions

367. The Committee notes that four of the labour leaders listed by the KMU have been released from detention on bail pending trial on charges unrelated to their trade union functions or activities. Given that the complainant did not attempt to link these arrests to the trade union activities of those concerned and merely referred to "an upsurge of trade union repression involving the death of at least nine workers" without supplying further details, the Committee considers that this aspect of the case does not call for further examination.

368. Voluminous detail was provided by both sides on the alleged legislative violations of Conventions Nos. 87 and 98. The ICFTU and KMU allege that public employees covered by the Civil Service Law and Rules are excluded from the right to organise in trade unions, cannot bargain collectively or strike. The Government explains why civil servants and employees of government-owned or controlled corporations are subject to the same restrictions and points out that the latter (as well as teachers), by virtue of a Supreme Court ruling, may join associations which do not impose the obligation to strike. They can also discuss working conditions and grievances through the Employee/Management Consultative Council. The Government also points out that a distinction has been made whereby employees of those

para-public corporations not set up by special charter continue to enjoy the right to bargain collectively and strike in the same manner as private sector workers.

369. The Committee notes that the Committee of Experts, commenting on the question of the right to organise of public employees, has stated that, since they do have the right to form associations under the Civil Service Law, they are therefore not denied the rights guaranteed by Article 2 of Convention No. 87. Problems, however, arise under Convention No. 98 in that freedom to bargain collectively is restricted for a very broadly defined group of public servants. As has been pointed out to the Government in comments by the Committee of Experts under Convention No. 98 since 1981, Article 4 thereof concerning the encouragement and promotion of collective bargaining applies both to the private sector and to public undertakings and bodies, it being possible under Article 6 to exclude from such application only public servants engaged in the administration of the State, i.e. civil servants employed in various capacities in government ministries and other comparable bodies. The Committee accordingly trusts that the current high-level revision of the labour laws will take this principle into account and requests the Government to keep the Committee of Experts on the Application of Conventions and Recommendations informed of developments as regards permitting public employees in both para-public corporations set up by charter and non-civil-service posts to negotiate their terms and conditions of employment.

370. A related issue is raised by the KMU which refers to various Labour Code restrictions on private-sector unionisation (e.g., it is not available for private security guards, managerial employees, casual, probationary, temporary and contractual workers) and on the right to strike in the private sector (prohibited in export-oriented industries, semi-conductor business, public utilities, banks, hospitals). The Committee recalls that the Committee of Experts, in its 1981 observation concerning the Philippines' application of Convention No. 87, noted the Government's explanation that security staff have para-military status and are required to undergo pre-employment training under the direct supervision of the Philippine Constabulary. At the same time the Committee of Experts noted the restrictive definition of "managerial employee" and did not pursue the matter since such employees were free to form their own organisations for purposes other than for collective bargaining. The Committee observes, as regards casual or probationary workers, that there is no specific provision in the Labour Code (1985 Consolidation) denying apprentices or learners the right to join a union. Moreover, section 244 of the Code specifically recognises the right of "ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers" to form labour organisations. The Committee accordingly considers that this aspect of the case does not call for further examination.

371. The ban on the right to strike in some private sector activities has, however, been criticised by this Committee and the

Committee of Experts in the past. Although the 1985 observation by the Committee of Experts under Convention No. 87 noted that legal strikes had in practice taken place in banks, electric industries and export-processing zones, the Government's attention was again drawn to the principle that strikes can only be restricted or prohibited in respect of the civil service or essential services in the strict sense of the term, i.e. where the interruption of such activities would endanger the life, personal safety or health of the whole or part of the population. The Committee again trusts that the current review of labour legislation will result in amendments being adopted in the light of the foregoing principle to limit the excessive restrictions on the right to strike.

372. As regards the KMU's further criticisms of labour legislation (too detailed regulation of registration of labour unions and federations; three-year limit for changing a bargaining agent; ban on holding union office on a person not belonging to the company involved; wide range of reasons for the cancellation of registration certificates; the two-third vote requirement for strike action), the Committee recalls once again that the ILO supervisory bodies have previously criticised these restrictions and has called for their amendment. The Committee can only reiterate this request, and hopes that these points will be considered during the current review referred to above.

373. Lastly, as regards Letter of Instruction No. 1458 of 1 May 1985, the Committee notes that, according to one complainant, it has not as yet been used and that the Ministry of Labour has issued "Guide-lines" emphasising voluntary settlement of labour disputes before referral to compulsory arbitration and restricting the role of law enforcement authorities. Moreover, the "Guide-lines" provide for the specification of legal sanctions in the event of failure to comply with an arbitration order, such as non-payment of back wages. The Committee attaches great importance to the "Guide-lines" of the Ministry of Labour and emphasises that any hasty decision to refer disputes to compulsory arbitration is not in conformity with these "Guide-lines". It observes that the Government has responded to the varied reactions from labour and management to this Letter of Instruction by including it in the current review of labour relations laws. The Committee requests the Government to keep the Committee of Experts informed of any developments concerning this legislation.

The Committee's recommendations

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

- (a) Given the lack of detail on and substantiation of the alleged arrest of several labour leaders for trade union activities, the

Committee considers that this aspect of the case does not call for further examination.

- (b) As regards the legislative aspects of this case, the Committee recalls the conclusions of the Committee of Experts on the Application of Conventions and Recommendations to the effect that public servants do have the right to form associations under the Civil Service Law, but that the restriction on the right to bargain collectively placed on such public employees goes beyond the exclusion permitted by Article 6 of Convention No. 98.
- (c) In view of the conclusions reached by the Committee of Experts on the alleged restriction of freedom of association for private security guards, managerial employees and casual and probationary employees, the Committee is of the opinion that this aspect of the case does not call for further examination.
- (d) As regards the ban on the right to strike in certain private sector activities, the Committee once again draws the Government's attention to the principle that strikes can only be restricted or prohibited in respect of the civil service or essential services in the strict sense of the term.
- (e) As regards the remaining criticisms in the current labour legislation as well as Letter of Instruction No. 1458, the Committee notes that a high-level review of labour relations legislation is presently under way and that a draft bill is before Parliament incorporating some of the provisions referred to by ILO supervisory bodies. The Committee trusts that this review will take into account all the comments of the supervisory bodies.
- (f) The Committee draws the legislative matters raised in subparagraphs (b), (d) and (e) of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations and hopes that the Government will keep that Committee informed of developments concerning the labour laws as a whole.

Case No. 1324

COMPLAINTS PRESENTED BY THE WORLD CONFEDERATION OF ORGANISATIONS OF THE TEACHING PROFESSION, THE ADMINISTRATIVE AND CLERICAL OFFICERS' ASSOCIATION, AGE, THE AUSTRALIAN COUNCIL OF TRADE UNIONS AND THE AUSTRALIAN PUBLIC SERVICE ASSOCIATION (4TH DIVISION OFFICERS) AGAINST THE GOVERNMENT OF AUSTRALIA/NORTHERN TERRITORY

375. The World Confederation of Organisations of the Teaching Profession (WCOTP) presented a complaint of violations of trade union

rights against the Government of Australia/Northern Territory in communications dated 21 March and 7 May 1985. The Administrative and Clerical Officers' Association, AGE (ACOA), the Australian Council of Trade Unions (ACTU) and the Australian Public Service Association (4th Division Officers) (APSA) sent similar complaints in communications dated, respectively, 23 April and 7 June, 9 May and 11 June 1985. The Government replied in a letter dated 26 August 1985.

376. Australia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); it has not ratified the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

377. In its letters of 21 March and 7 May 1985, the WCOTP alleges that the Government of Australia/Northern Territory has undertaken reprisals - in the form of suppression of the check-off system - against lawful industrial action by its affiliate, the Northern Territory Teachers' Federation (NTTF). The WCOTP explains the background to this action as follows: on 15 August 1984 the NT Government unilaterally decided to alter housing arrangements for teachers and other public servants; one meeting took place on 24 August with the Government but the Housing Minister and Treasurer announced that the NT Government would not move from its new position; on 28 August the NTTF and eight other public employees unions staged a one-day strike to press for negotiations on the issue; since no negotiations ensued the NTTF recommended to its members, on 27 September, a series of bans on extra-curricular activities, designed not to affect the provision of teaching services during school hours; after one school excursion had to be cancelled, the NTTF was informed on 11 October 1984 that payroll deductions would cease unless industrial action stopped the next day; on 12 October the NTTF was told that the cessation would take place with effect as from next pay day i.e. 19 October; on 24 October the bans were lifted since a meeting to commence discussions with the Government had been arranged; on 1 February 1985 the NTTF met the NT Minister of Education who refused to discuss the restoration of the check-off.

378. According to the WCOTP, the rapidity with which government action was taken left no time to work out alternative methods of collection of membership dues. It points out that the NTTF was paying an agreed amount for the service of payroll deductions (over A\$9,000 per annum). It considers that the cancellation of the check-off seriously impairs the conditions in which its affiliate carries on its work, particularly in view of the geographical circumstances of the Northern Territory where a sparse population is served in areas remote from the capital city, Darwin. Since nearly all NTTF members paid their subscriptions in the form of payroll

deductions, the immediate effect of the removal of this system was a drop in membership from 1,860 to 56. The WCOTP explains that, through an alternative service agency, the NTTF has been able to regain membership dues for some 1,300 members but it fears that the NTTF will suffer financially from the withdrawal of payroll deductions and be impaired in its functioning and programmes. Given the employer's continued refusal to negotiate this issue, there is a risk of deterioration in the relationship between the NTTF and the Government.

379. In its communications of 23 April and 7 June 1985, the ACOA explains that its members were also affected by the NT Government's unilateral change in public servant housing arrangements and, along with many other unions, joined in the 24-hour strike of 28 August and later joined in the work bans, which affected overtime, ministerial correspondence etc. The Government withdrew payroll deduction facilities for ACOA and APSA members on 20 September 1985 (after only two days' warning) but not from the other unions. The work bans were lifted on 24 September 1984 but the Government has maintained its refusal to reinstate the check-off. The ACOA states that this has placed severe financial pressure on itself and the other unions involved, particularly because they operate in some of the remotest areas of Australia where it is impossible to collect union subscriptions by any means other than payroll deductions. The ACOA points out that it has 1,341 members in the NT, which reflects a fall of 80 since the withdrawal of the check-off.

380. The ACTU, in its letter of 9 May 1985, supports the complaint of the NTTF because it considers the NT Government's action as a reprisal to lawful industrial action and as a hastily used weapon. Given the serious adverse effect of the withdrawal of the check-off on the financial and organisational ability of the unions involved and the refusal of the employer to discuss its restoration, the ACTU believes that this action is an attempt by the Government to weaken a legally registered workers' organisation.

381. The APSA, in its communication of 11 June 1985, also supports the NTTF's complaint.

B. The Government's reply

382. In its letter of 26 August 1985, the Government explains that the NT Government's decision to withdraw payroll deduction of union dues on 19 October 1984 took place against a background of continuing industrial action by NTTF, ACOA and APSA members in protest over the Government's budgetary decision to alter the housing and accommodation policy and practice as from 1 August 1984. According to the Government, despite a number of meetings in September with the Treasurer and the Public Service Commissioner after which the NT Government announced a change in its original decision in order to

protect public servants on low incomes, the industrial action continued. Payroll deductions were discontinued on 20 September and the ACOA and APSA lifted their bans on 24 September. On the other hand, NTTF members continued their bans on all non-teaching activities, upon which the Education Department decided to cease its payroll deduction facilities as of 12 October (effective 19 October); teachers' industrial action only ceased on 24 October.

383. The Government stresses that the check-off was discontinued only after a period of warning, and did not apply to all NT workers' organisations originally involved in the dispute (i.e. only to the NTTF, ACOA and APSA). It also points out that in August 1979, in another matter, the ACOA had sought an injunction in the High Court of Australia restraining the cessation of payroll deductions on the grounds of breach of contract; the Court had dismissed the claim as evidence from the documents indicated that the facility resulted from the making of an administrative agreement.

C. The Committee's conclusions

384. The Committee notes that the issue in this case concerns the withdrawal of check-off facilities in response to continuing industrial action by public employees' unions. It recalls that it has examined analogous allegations against the Government of Australia in the past. [See 204th Report, Case No. 902, paras. 135 to 147.] In that case, the Committee stated that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organisations, was not conducive to the development of harmonious industrial relations and should therefore be avoided. The Committee considers that the same principle applies to the present case.

385. The Committee also notes the on-going refusal of the NT Government to discuss the possible restoration of the check-off facility with the unions concerned. It expresses the wish that efforts will be made by the parties, on the basis of an agreement, to restore the check-off facility previously available to the unions.

The Committee's recommendations

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

- (a) The Committee draws the Government's attention to the principle - as it has done in an analogous case in the past - that the withdrawal of the check-off facility, which could lead to

financial difficulties for the unions involved, is not conducive to the development of harmonious industrial relations.

- (b) The Committee expresses the wish that efforts will be made by the parties, on the basis of an agreement, to restore the check-off facility previously available to the unions.

CASES IN WHICH THE COMMITTEE REQUESTS TO BE
KEPT INFORMED OF DEVELOPMENTS

Case No. 1189

COMPLAINTS PRESENTED BY THE PUBLIC SERVICES
INTERNATIONAL AND THE ORGANISATION OF AFRICAN
TRADE UNION UNITY AGAINST THE GOVERNMENT OF KENYA

387. The Committee last examined this case at its February 1985 meeting when it presented an interim report to the Governing Body [238th Report, paras. 248 to 260]. Further information was received from the Government in a communication dated 6 September 1985.

388. Kenya has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) or the Labour Relations (Public Service) Convention, 1978, (No. 151); it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

389. When it presented its interim report to the Governing Body in February 1985 the Committee made the following recommendations:

- (a) The Committee draws the attention of the Government to the principle that public servants, like all other workers without distinction whatsoever, have the right to form and join organisations of their own choosing, without previous authorisation, for the promotion and defence of their occupational interests.
- (b) The Committee considers that a welfare association, such as that envisaged by the Government, would not fully afford to the civil servants concerned an adequate means to protect and defend their occupational interests.

- (c) The Committee requests the Government to supply full and detailed information on the measures that have been taken, or are envisaged, to permit the establishment of an organisation through which the workers concerned may pursue their normal trade union activities.
- (d) The Committee requests the Government to transmit information on the question of the assets that were seized on the deregistration of the civil servants' organisation, and on the Government's intention as to the manner in which it is proposed to distribute these assets.

B. Further reply by the Government

390. In a communication dated 6 September 1985, the Government states that the Kenya Civil Servants' Welfare Association has been registered under the Societies Act. It adds that, although the Association has not been allowed to participate in activities of a trade union nature, the gesture entailed in the registration is a good beginning and should be given a chance to operate. Attached to the reply of the Government was an extract from the constitution of the Association containing, inter alia, the objects and membership clauses thereof.

C. The conclusions of the Committee

391. The Committee deeply deplores that the Government has not taken into account the recommendations adopted by the Governing Body at its 229th Session in February 1985, and that its most recent communication does little more than confirm that the situation in respect of which recommendations were made continues to exist.

392. The Committee regrets, in particular, the failure of the Government to supply any information on measures which have been taken or which may be envisaged to permit the establishment of organisations through which the workers in question may pursue their normal trade union activities and it regards as especially regrettable the Government's affirmation that the Kenya Civil Servants' Welfare Association has not been allowed to participate in activities of a trade union nature.

393. In the circumstances, the Committee draws the attention of the Government once again to the importance of the principle that public servants, like all other workers, without distinction, have the right to form and join organisations of their own choosing, without previous authorisation, for the promotion and defence of their occupational interests. It urges the Government to take the steps

necessary to give effect to this principle and thus to restore to the civil servants concerned the rights which they enjoyed prior to the Government's action of 17 February 1983 deregistering the Kenya Civil Servants' Association.

394. The Committee also notes with regret that the Government has failed to respond to the request for information concerning the assets which were seized when the Kenya Civil Servants' Association was deregistered. In this regard, it draws the attention of the Government to the principle that when a trade union is dissolved, its assets should eventually be distributed among its former members or handed over to the organisation which succeeds it; by this is meant the organisation or organisations which pursue the aims for which the dissolved union was established and which pursue them in the same spirit. The Committee expresses disquiet at the absence of any indications that the Government intends to put this principle into effect and calls upon it to do so.

The Committee's recommendations

395. The Committee recommends the Governing Body to approve this report and, in particular, the following conclusions:

- (a) The Committee deeply deplores that the Government has not taken into account the recommendations adopted by the Governing Body at its 229th Session in February 1985. Its most recent communication confirms the situation which gave rise to the complaints.
- (b) The Committee regrets the failure of the Government to supply any information on measures which have been taken or which may be envisaged to permit the establishment of organisations through which the civil servants in question may pursue their normal trade union activities, especially since the Kenya Civil Servants' Welfare Association has not been allowed to participate in activities of a trade union nature.
- (c) The Committee draws the attention of the Government once again to the importance of the principle that public servants, like all other workers, without distinction, have the right to form and join organisations of their own choosing, without previous authorisation, for the promotion and defence of their occupational interests.
- (d) The Committee further notes with regret that the Government has failed to respond to the request of the Governing Body for information concerning the assets which were seized when it was deregistered.

- (e) The Committee draws the attention of the Government to the principle that when a trade union is dissolved, its assets should be distributed among its former members or handed over to the organisation or organisations which succeed it: by this is meant those organisations which pursue the aims for which the dissolved union was established and which pursue them in the same spirit.
- (f) The Committee requests the Government to keep it informed of any action it takes in respect of the above recommendations.

Cases No. 1277 and 1288

COMPLAINTS PRESENTED BY SEVERAL REGIONAL AND INTERNATIONAL TRADE UNION ORGANISATIONS, NAMELY: THE INTER-AMERICAN REGIONAL ORGANISATION OF WORKERS, THE LATIN AMERICAN CONFEDERATION OF WORKERS, THE PERMANENT CONGRESS OF TRADE UNION UNITY OF LATIN AMERICAN WORKERS, THE WORLD FEDERATION OF TRADE UNIONS, THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS, THE WORLD CONFEDERATION OF LABOUR AND BY SEVERAL DOMINICAN TRADE UNION ORGANISATIONS, NAMELY: THE GENERAL WORKERS' FEDERATION, THE NATIONAL CONFEDERATION OF DOMINICAN WORKERS, THE GENERAL UNION OF DOMINICAN WORKERS, THE UNIFIED WORKERS CENTRAL AND THE WORKERS' TRADE UNION AUTONOMOUS FEDERATION AGAINST THE GOVERNMENT OF THE DOMINICAN REPUBLIC

396. The Committee examined these cases at its November 1984 Session and submitted an interim report to the Governing Body [see 236th Report of the Committee, paras. 651-685, approved by the Governing Body at its 228th Session (November 1984)]. Later, the Government transmitted certain observations by a communication dated 28 May 1985.

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

A. Previous examination of the cases

398. These cases concern essentially the serious incidents which occurred during days of protest in April and May 1984 which had been organised by the five Dominican trade union central organisations grouped together under the Trade Union Council against the very large increase in the cost of living following the agreement signed between the Dominican Government and the International Monetary Fund at the end of April 1984.

399. The numbers of dead and injured reported by the complainant organisations differed. According to ORIT and ICFTU, 65 workers had died and 600 had been injured. According to WCL, there had been 37 dead and 157 injured. According to WFTU, more than 100 deaths had been recorded.

400. The Government had stated in particular that on 23, 24 and 25 April 1984 violent public demonstrations had occurred both in the capital and the interior of the country; these had included, in particular, the sacking and burning of public and private property and flagrant acts of aggression against the authorities responsible for keeping the peace. Acting within the limits of the law, the authorities had resisted these attacks which unfortunately resulted in the death and injury of several persons. The Government stated that the action of the armed forces and the police had not been directed against any particular sector, whether trade unions, students or other citizens.

401. When the Committee examined the cases at its November 1984 Session the allegations relating to the deaths and injuries suffered during the aforementioned days of protest were left pending. The Committee formulated in particular the following recommendations:

The Committee expresses its deep concern at the scope and seriousness of the allegations made in these cases and which concern the death and injury of several persons during trade union protest demonstrations against major increases in the cost of living.

As regards the violent deaths and injury of a number of persons, the Committee recalls the importance of carrying out a thorough inquiry to determine responsibilities so as to prevent a repetition of such actions; it requests the Government to inform it of the outcome of such an inquiry.

B. The Government's reply

402. In its communication dated 28 May 1985 the Government states that the complainant trade union central organisations claim to have sponsored the protest movements staged on 23, 24 and 25 April 1984; this is not in accordance with the truth, for the whole country is aware that those movements were not organised by those trade union organisations and that, on the contrary, they showed that they had been taken by surprise in not knowing the origin or leadership of the movements or the forces behind them; consequently, this aspect of the matter is outside the trade union framework.

403. The Government adds that the protest movements in question were in reality a rebellion against the legally established order which the forces of law and order, exercising their statutory powers,

proceeded to repel. As a result of those circumstances, it is impossible to establish guilt, chiefly that of the unknown instigators and ringleaders who took advantage of the discontent prevailing among the masses of the people at that moment, in an endeavour to capitalise on it in favour of their own political interests.

C. The Committee's conclusions

404. The Committee takes note of the information provided by the Government concerning the dead and injured during the protest movements of 23, 24 and 25 April 1984. The Committee notes, in particular, that according to the Government, it is impossible to establish guilt, in particular that of the unknown instigators and ringleaders who took advantage of the discontent prevailing among the masses of the people at that moment, in an endeavour to capitalise on it in favour of their own political interests.

405. In this connection, the Committee, notwithstanding that there may be difficulty in fixing responsibility for the deaths and physical attacks which occurred during the protest movements, wishes to point out that the Government has stated that several deaths and injuries occurred when the authorities responsible for keeping the peace, acting within the limits of the law, resisted flagrant acts of aggression and other criminal acts such as the sacking and burning of property. In these circumstances, the Committee considers that it would be possible to carry out a thorough and impartial inquiry into the nature of the demonstrations and the deaths and physical attacks which occurred, in order to determine responsibilities. The Committee requests the Government to keep it informed of the results of any such inquiry.

The Committee's recommendations

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

- (a) The Committee observes the contradiction between the complainants' and the Government's statements as to the trade union status of the organisers of the protests which took place in April 1984. It points out, however, that the national complainant organisations have stated that they themselves had organised these protests.
- (b) The Committee emphasises the importance it attaches to the Government carrying out a thorough and impartial inquiry into the nature of the demonstrations and the deaths and physical attacks

which occurred during the protest movements in order to determine responsibilities.

- (c) The Committee requests the Government to keep it informed of the results of any such inquiry.

Case No. 1282

COMPLAINT PRESENTED BY THE LOCAL FEDERATION
OF TRADE UNIONS OF CASABLANCA (MOROCCAN
FEDERATION OF LABOUR) AGAINST THE GOVERNMENT
OF MOROCCO

407. The Local Federation of Trade Unions of Casablanca, affiliated to the Moroccan Federation of Labour, submitted a complaint of violations of freedom of association in Morocco in a communication dated 3 April 1984. It sent additional information in support of its complaint in a communication of 9 May 1984. The Government transmitted its observations on the case in a letter of 13 May 1985, which reached the ILO when the Committee was in session.

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

A. The complainant's allegations

409. The allegations of the complainant refer to the dismissal of 20 workers, four of whom were trade union and staff delegates whom the complainant mentions by name, following two strikes in support of workers' claims in January and February 1984, lasting 48 hours and 24 hours respectively, and to the hiring of workers to replace the strikers at the Société marocaine des compteurs Vincent at Mohammedia.

410. According to the complainants, following the presentation of a statement of claims by the workers, the management wished to compel them to work overtime on Saturday and Sunday. When the workers refused because they wished their demands to be met first, the management decreed a reduction in working time and an increase in the pace of production for certain departments. According to the complainant, these contradictory measures showed that the management was willing to resort to all kinds of pressure and diversionary manoeuvres to impede the workers' legitimate action in support of their claims.

411. The trade union leaders then approached the authorities, and meetings were held with the delegate from the Ministry of Labour on 30 January 1984, with the first deputy governor of the town of Mohammedia on 6 February 1984, and with the governor himself on 23 February and 23 April 1984. These approaches were unsuccessful, since the authorities were unable to induce the directors of the Société marocaine des compteurs Vincent to accept the need to reverse their decision on the dismissals and to open negotiations on the workers' demands.

412. The complainant organisation pointed out that the dismissal of trade union delegates was prohibited by Moroccan law and took exception to the recruitment of new workers while the strike was in progress.

B. The Government's reply

413. According to the Government the dispute between Compteurs Vincent and the Local Federation of Trade Unions of Casablanca, affiliated to the Moroccan Federation of Labour, has been settled thanks to the efforts of the Casablanca Labour Inspectorate.

414. Eight of the dismissed workers, including two trade union delegates, have been reinstated in their employment. The remaining workers refused compensation for their dismissal from the undertaking and lodged an appeal with the court on 27 November 1984; however, the management of the undertaking stated that the dispute in question arose from demands by the staff which it was unable to satisfy owing to financial difficulties. The Government states that it will communicate any decision taken by the court on this case.

C. The Committee's conclusions

415. The Committee notes that allegations have once again been made concerning reprisals by an employer against workers involved in a labour dispute. The Committee recalls that it has already had to examine a number of cases of this kind concerning Morocco, and even recently in the Compteurs Vincent undertaking. [See 230th Report, Case No. 1116 (Morocco), paras. 72 and 78 approved by the Governing Body in November 1983.]

416. While noting that the Government has supplied certain information on the measures taken to reinstate the eight workers as a result of the intervention of the labour inspectorate, the Committee observes that, as stated by the Government itself, the other workers dismissed in this case (12 according to the complainants) lodged appeals with the court on 27 November 1984.

417. The Committee recalls that it is often called upon to examine allegations against the Government of Morocco concerning dismissals on anti-union grounds and the hiring of workers to replace strikers. [See in particular 208th Report, Case No. 1017, paras. 392 to 403; 214th Report, Cases Nos. 992 and 1018, paras. 80 to 92; 230th Report, Case No. 1116, paras. 65 to 84; and 239th Report, Case No. 1201, paras. 110 to 123.]

418. The Committee must therefore once again draw the attention of the Government to the need for strengthening protection against acts of anti-union discrimination and must again stress that the current provisions of Moroccan legislation are inadequate. It therefore insists on the need to adopt more specific legal provisions than those that already exist in order to guarantee workers adequate protection, possibly accompanied by penalties against employers in the event of discrimination in respect of employment.

419. The Committee also wishes to point out that the hiring of workers to break a strike in a sector like that of Compteurs Vincent, which cannot be regarded as an essential sector in the strict sense of the term and hence one in which strikes might be forbidden, constitutes a serious violation of freedom of association.

420. In these circumstances the Committee trusts that the Government will keep it informed of the outcome of the appeals lodged by the persons concerned.

The Committee's recommendations

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

- (a) the Committee notes with concern that it is often called upon to examine allegations against the Government of Morocco concerning dismissals on anti-trade union grounds and the hiring of workers to replace the strikers;
- (b) the Committee once again draws the Government's attention to the need to strengthen protection against anti-union discrimination, and requests it to keep the Committee informed of the outcome of the appeals lodged with the courts by the dismissed workers.

CASES IN WHICH THE COMMITTEE HAS REACHED
INTERIM CONCLUSIONS

Case No. 1054

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

422. The Committee has examined this case on several occasions, the most recent being at its February 1985 meeting, when it presented an interim report to the Governing Body [see 238th Report, paras. 205 to 216, approved by the Governing Body at its 229th Session in February-March 1985]. The Government subsequently furnished some observations in a communication dated 30 May 1985, received by the ILO while the Committee was in session.

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

A. Previous examination of the case

424. The complaints still outstanding in this matter relate to the death or injury of several hundred persons during demonstrations in connection with the 24-hour general strike called by the Democratic Confederation of Labour (CDT) on 20 June 1981 and with the closure of the CDT premises.

425. At its session in February-March 1985 the Governing Body approved the following conclusions drawn up by the Committee:

The Committee observes with regret that the Government has not indicated whether a judicial inquiry was made into the many deaths that occurred during the June 1981 demonstrations. It considers that events of such gravity should have led the authorities to take effective measures to elucidate the facts and determine responsibilities. It again requests the Government to indicate whether an inquiry has been carried out and, if so, to communicate the results thereof.

The Committee recalls the importance it attaches to the protection of trade union property. It expresses the hope that the two trade unions affected by the closure of their

headquarters have now fully recovered the use of their premises, and requests the Government to supply information in this regard.

B. The Government's reply

426. In its communication of 30 May 1985, concerning the judicial inquiry into the events of 20 June 1981, the Government states that it has published a communiqué setting out detailed information to the effect that the special courts carried out their duty in accordance with the laws in force in Morocco.

427. According to the Government the rights and safeguards of the defence were respected and sentences were passed according to the criminal nature of the acts committed by the persons charged. The persons implicated in the demonstrations were found guilty and punished. Those whose involvement was not proved were released.

428. Regarding the allegation in connection with the closure of the premises of the Democratic Confederation of Labour, the Government states that it has never ordered the closure of any CDT premises.

429. Furthermore the Government states that it has in general used dialogue and consultation constructively in its relations with the various occupational organisations and that it has initiated high-level contacts with trade union representatives to examine various economic and social questions with them. It also recalls that the CDT is now represented in Parliament and is consequently in a position to raise occupational and trade union issues before the Government, which it can question orally.

430. In conclusion, the Government hopes that it can rely on the perception or sense of fairness of the Committee on Freedom of Association to reinforce its efforts to settle Case No. 1054 once and for all.

C. The Committee's conclusions

431. The Committee expresses regret that the Government has not supplied it with the communiqué referred to in its reply of 30 May 1985 which it states contains detailed information concerning the deaths and injuries that occurred during the demonstrations of 20 June 1981. The Committee requests the Government to communicate this document to it.

432. The Committee had already noted the fact that all the trade union leaders who were involved in this matter were released in November 1983, following a royal pardon, after more than two years'

imprisonment [see 233rd Report, para. 237]. The Committee also noted that the Democratic Confederation of Labour is once more taking part in the political and trade union life of the country and that a number of its representatives have seats in Parliament.

433. The Committee also observes that, according to the Government's reply of 30 May 1985, it had never ordered the closure of any CDT premises.

434. As regards the case as a whole, relating to events that took place in June 1981 and in view of the fact that two years ago the King pardoned the trade union leaders who had been involved in the matter, the Committee notes that the measures taken seem to fit in with the present pattern of a return to a fully normal situation in the trade union movement since the CDT is now represented in Parliament and is consequently in a position to raise occupational matters before the Government, which it can question orally.

435. In these circumstances the Committee trusts that the situation which arose in connection with Case No. 1054, and which involved death and injuries during a strike in pursuit of economic and social demands, will not recur.

436. The Committee wishes to remind the Government that, in ratifying Convention No. 98 - and in particular Article 4 thereof - it committed itself to taking appropriate measures to encourage and promote the full development and utilisation of machinery for voluntary negotiation with a view to regulating conditions of employment.

437. The Committee also reminds the Government of the very great importance it attaches to the possibility of having recourse to strike action as a legitimate means of defending the workers' economic and social interests.

438. The Committee therefore appeals to the Government to engage in a dialogue with all the trade union forces in the country, and in particular with the CDT, so that the Government may henceforth ensure that economic and social problems are resolved through industrial relations machinery which is considered reliable by those concerned.

The Committee's recommendations

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

- (a) It regrets that the Government has not supplied it with the communiqué referred to in its reply of 30 May 1985 containing detailed information concerning the deaths and injuries that

occurred during the demonstration of 20 June 1981. The Committee requests the Government to communicate this document to it.

- (b) The Committee reminds the Government of the very great importance it attaches to the possibility of having recourse to strike action as a legitimate means of defending the workers' economic and social interests and that henceforth economic and social problems may be resolved through industrial relations machinery which is considered reliable by those concerned.
- (c) The Committee appeals to the Government to engage in a dialogue with all the trade union forces in the country, and in particular with the CDT, in order to ensure that a situation which resulted in death and injury during a strike called for essentially economic and social reasons in June 1981, will not recur.

Cases Nos. 1129, 1169, 1185 and 1298

COMPLAINTS PRESENTED BY A NUMBER OF INTERNATIONAL AND
NATIONAL TRADE UNION ORGANISATIONS AGAINST THE
GOVERNMENT OF NICARAGUA

440. The Committee examined Case No. 1129 on two occasions, at its November 1982 and February 1984 meetings, when it presented interim reports to the Governing Body. [See 218th Report, paras. 467-481, and 233rd Report, paras. 236-242 and 317, approved by the Governing Body at its 221st and 225th Sessions in November 1982 and February-March 1984 respectively.] The World Confederation of Labour sent additional information in support of its complaint on 13 April 1984.

441. Case No. 1169 has been examined by the Committee on four occasions: in March 1983, March and June 1984 and March 1985. [See 222nd, 233rd, 234th and 238th Reports of the Committee, approved by the Governing Body.]

442. Case No. 1185 was examined in the Committee's 233rd Report [see paras. 294-307 and 317] approved by the Governing Body at its February-March 1984 session. The Committee also noted certain information communicated by the Government in January 1985 [See 238th Report, para. 9, approved by the Governing Body in February-March 1985].

443. Case No. 1298 was examined in February-March 1985 and was the subject of an interim report approved by the Governing Body. [238th Report, paras. 232-247.]

444. The Government supplied certain information on these cases in communications of January, May and 29 October 1985.

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

Case No. 1129

446. In Case No. 1129, the complainants alleged that as part of a systematic campaign by the Government to destroy the Central of Nicaraguan Workers (CTN), the authorities had physically assaulted members of the CTN working on the state-controlled banana estates and sugar plantations. The official militia were said to have threatened the lives of CTN leaders. In this connection the complainants stated that Luis Mora, President of the Press Workers' Union, and Salvador Sánchez, had allegedly been threatened in this way when they were under detention and that the police had attempted to make Salvador Sánchez sign a statement against the CTN. Moreover, sugar workers belonging to the CTN had allegedly been prevented from entering their workplace and other members of this union had been allegedly arrested solely by reason of their membership and their involvement in union activities.

447. During a direct contacts mission by a representative of the Director-General in December 1983, the leaders of the CTN had stated that the physical attacks by the authorities in state-controlled banana estates and sugar plantations were continuing. The Ministry of Labour considered that the complaints should be more specific, since they did not indicate who made the death threats, or the date, place and circumstances in which the events supposedly took place. According to the Government, the allegations of physical attacks and denial of entry to work centres were equally vague, as they gave no names, places or dates.

448. At its February-March 1984 session, the Governing Body approved the following recommendations of the Committee:

- (a) The Committee requests the Government to take up the suggestion of the Director-General's representative that the Ministry responsible for agrarian reform should obtain further information and be informed of the allegations that members of the CTN have been physically attacked by the authorities on state-controlled banana estates and sugar plantations, and that sugar workers affiliated to the CTN have been prevented from entering their work centres; the Committee also requests the complainant to transmit any further information it may have concerning this matter.
- (b) The Committee requests the Government to call for an investigation of the alleged threats by official militias against the lives of trade union leaders (specifically, Luis

Mora and Salvador Sánchez) and to keep it informed of its findings."

449. Subsequently, in its communication of 13 April 1984, the WCL complained of the arrest of several members of the CTN, whom it mentioned by name, and whose names also appear in Cases Nos. 1169 and 1298 which will be examined in the present working paper, with the exception of Eduardo Alberto Gutiérrez, Eric González González and Miltón Silva Gaitán. Moreover, the WCL alleged that the Ministry of Labour refused to recognise the executive committees of a number of unions in the agricultural estates of Fátima and Las Mojarras at El Jicaral (department of León), of the La Concepción agricultural estate in Matagalpa, and of the Chinandega and Managua service stations, all members of CTN.

450. In its communication of January 1985 the Government explained that prior to the Revolution, one banana workers' union had covered 16 banana plantations in the west of the country, and that following the change of régime this union had freely and voluntarily joined the Sandinista Central of Workers (CST). During 1982 the owner of these plantations had embarked on dealings with the CTN in order to set up a union parallel to the one already existing.

451. According to the Government, the CTN activist in this region was Pablo José Muñoz Bermúdez, one of the murderers of Dr. Pedro Joaquín Chamorro, director and owner of the newspaper La Prensa. This individual used the pseudonym Juan José Ramos López to disguise his true identity. With the support of the owner of the agricultural estates, this CTN activist had coerced workers into leaving the banana workers' union. Serious clashes had taken place between the two groups, and the behaviour of the owner moreover constituted a violation of the labour laws and the provisions of Convention No. 98. Once the true identity of the CTN leader was known, the workers reacted violently and the authorities had been obliged to intervene in order to avoid more serious consequences.

452. Regarding the obstacles encountered by the CTN leaders in the sugar industry, the Government states that this union carried on its activities solely in the Xavier Guerra refinery. In this factory acts of sabotage, such as throwing stones and metal rods into the machinery for the obvious purpose of damaging them, had taken place. Those responsible had been dismissed in accordance with the law. Some of them, moreover, had been subsequently reinstated in their employment.

453. As regards the threats against Mr. Salvador Sánchez, the Government explained that this individual had been working at the Aldo Chavarría hospital, and that with the complicity of a physician in this establishment he had often obtained sick leave for the purpose of devoting all his time to political activities under the trade union cover of the CTN. Moreover, he had stolen medicaments worth several thousand córdobas from the hospital for lucrative purposes. When he had been discovered, he had taken refuge in the Venezuelan Embassy,

alleging political persecution, whereas in reality he had been accused of an offence under the ordinary law. He later went to Costa Rica, where he joined a counter-revolutionary organisation in which he had been placed in charge of a military force with which he had tried to occupy the frontier post at El Espino in October 1983. He had then been captured, judged in accordance with the law of the land, and was now serving his sentence.

454. As for Luis Mora, the Government stated that during his trial it had been proved that, during a trip to Costa Rica, he had been recruited by the ARDE organisation which had given him money and equipment for counter-revolutionary activities. Luis Mora had admitted his crimes during a national television broadcast and had implicated leaders of the CTN. The Government explained that, as this was his first offence, he had been pardoned in August 1984.

455. Finally, the Government said that offences under ordinary law should not be used to damage the image of a government by taking advantage of the cover and the authority afforded by the ILO.

456. The Government repeats its earlier statement in its reply of 27 May 1985, but does not reply to the allegation relating to the refusal of the authorities to register the executive committees of certain trade unions.

Case No. 1169

457. The allegations still pending in Case no. 1169 referred to the arrest of six persons, whose names were listed in Annex I to the Committee's 238th Report, and of 18 other trade union leaders or members whose names figured in Annex II to the same Report. The complainants also alleged that members of the Trade Union of Dockers, Employees and Office Staff of Corinto Docks (SEEOMC), in particular Messrs. Danilo Contreras and René Argeñal, respectively President of the union and Treasurer of its Supervisory Board, had allegedly been obliged to leave the country because they had been harassed by the labour and military authorities.

458. Regarding the alleged arrests of the six persons mentioned in Annex I, the Government replied that these were not trade unionists, nor were they any longer in prison. It did not, however, indicate the concrete facts warranting these arrests.

459. In connection with the imprisonment of the 18 trade union leaders or members whose names were listed in Annex II, the Government stated that it needed additional information in order to be able to reply to these allegations (workplace and present whereabouts, office held and union to which they belonged, place and date of the arrest and the grounds for it).

460. The Committee accordingly requested the complainants to provide further details. It nevertheless pointed out to the

Government that the complainants had already provided a number of elements of information regarding the arrests concerned, in particular their date and place, so that the Committee hoped that the Government would be in a position to reply to these allegations at an early date.

461. Regarding the harassment to which the members of the Trade Union of Dockers, Employees and Office Staff of Corinto Docks, in particular Messrs. Contreras and Argeñal, were said to have been subjected, the Government told the representative of the Director-General during the direct contacts mission of December 1983 that Mr. Contreras had voluntarily left the country after having cashed a cheque on 21 February 1983 for 12,740 córdobas, made out by an undertaking to the order of the SEEOMC. The cheque should have been deposited in the union's account as required by Nicaraguan law, but, with the connivance of a bank employee, Mr. Contreras was able to cash it. As to René Argeñal, he left the country after taking 3,000 córdobas from the SEEOMC's petty cash.

462. At its February 1984 session, the Committee noted this information but requested the Government to send the text of the final decision handed down in the matter of the alleged embezzlement of SEEOMC funds.

463. The Government later said that it would send a copy of the court decision as soon as it had been given.

464. At its February-March 1985 session, the Governing Body adopted the following recommendations of the Committee:

Bearing in mind that the Government has not indicated the precise facts warranting the arrest of six persons (mentioned in Annex I) whose subsequent release it confirms, the Committee wishes to draw the attention of the Government to the principle that measures designed to deprive trade union leaders and members of their freedom constitute a serious risk of interference in union activities and that, when such measures are taken on trade union grounds, they constitute an infringement of the principles of freedom of association. The Committee requests the Government to indicate the concrete acts which gave rise to the arrest of these six persons.

Regarding the imprisonment of 18 trade union leaders and members (mentioned in Annex II), the Committee notes that the Government states that it needs additional information in order to be able to reply (workplace and present whereabouts, office held and union to which they belong, place and date of the arrest and grounds for it). The Committee requests the complainants to provide as many details about these persons as they can obtain in the sense indicated by the Government. The Committee nevertheless wishes to point out to the Government that the complainants have already provided a number of elements of information regarding the arrests concerned, in particular their date and place (see 233rd Report, paras. 255-256) for which

reason the Committee considers that the Government should be in a position to reply to these allegations at an early date.

The Committee notes that the Government will transmit the results of the embezzlement proceedings affecting the trade union organisation SEEOMC as soon as the judgement is handed down.

465. With its reply of 27 May 1985 the Government sends the judicial decision in the embezzlement proceedings affecting the Trade Union of Dockers, Employees and Office Staff of Corinto Docks, handed down by the Court of Appeal of León (criminal division) on 31 January 1984. This decision confirms the sentence of imprisonment by the judge of the court of first instance at Chinandega pronounced in their absence against Messrs. Argeñal and Contreras, former President and Treasurer of the union, for theft from the said union, more precisely for the unlawful appropriation of the sums of 3,000 and 12,740 córdobas respectively, and for having left the country.

466. In this communication the Government also indicates that it is endeavouring to collect information regarding the grounds for the arrest of the six persons mentioned in Annex I to the 238th Report, who have been released, and it repeats its willingness to explain the situation of the 18 other persons mentioned in Annex II to the 238th Report.

467. In a subsequent communication dated 29 October 1985, as regards the six persons mentioned in Annex I, the Government states that Monico Fuentes was detained from 16 October 1982 to 7 January 1983 for having distributed counter-revolutionary tracts supporting what the Government refers to as a mercenary group (FDN), that Nicolás Gonzáles and Santos Ponce were detained from August to December 1982 for having delivered mail for the counter-revolutionary Rafaela Herrera, that Victoriano Ramos Jiménez was detained from 16 October 1982 to December 1983 for having given logistic support to the mercenary group (FDN), that Santos Larios Cornejo and Saturnino López Centeno were detained from 17 October 1982 to December 1983 for having recruited persons for the mercenary group FDN.

468. As regards the 18 other detained trade unionists mentioned in Annex II, the Government states that: (a) Cresencio Carranza Jarquín and Guillermo Salmerón Jiménez were detained from April to December 1983 for having participated in a campaign against the Government; (b) José Angel Altamirano López was arrested in April 1983 for having directed a counter-revolutionary unit and for being found in illegal possession of weapons. He belonged to the mercenary group ARDE and was sentenced to 12 years' imprisonment by the courts; (c) Mercedes Hernández Díaz was arrested in April 1983 for having recruited persons for the mercenary group ARDE and for having provided financial aid for the purchase of arms. She was sentenced to 12 years' imprisonment; (d) Eleázar Marengo was arrested in April 1983 for having participated in several conspiratorial meetings and for having provided financial aid for the purchase of arms. He was sentenced to six years' imprisonment; (e) Reynaldo Blandón, former

Somosa national guardsman, was detained from 27 March to 12 September 1980; (f) Erik Luna was detained from 11 to 17 May 1983 for having known of the activities of counter-revolutionary elements linked to the ARDE; (g) José Angel Peñalosa was also detained from 11 to 17 May 1983 for his logistic support of the mercenary group ARDE; and (h) Fidel López Martínez was detained from December 1982 to January 1983 for separatist propaganda activities. The Government states that it will soon send information on the remaining cases.

Case No. 1185

469. The allegations pending in Case No. 1185 referred to the arrest of Abelino González País on 2 February 1983 in El Pijao district, north of Matagalpa, simply for being a member of the Central of Nicaraguan Workers (CTN); he was allegedly being held without charge at the central command post of Matagalpa.

470. The complainants also alleged persecution, harassment, interrogation and threats by State Security agents against Hermógenes Aguirre Largaespada, an official of the Union of Employees and Manual Workers of Andes and Induquinisa (STAI) affiliated to the CTN, and Larry Lee Shoures, President of this union. The former had been interrogated about the activities of his union on ten occasions and had been pressed to become an informer for the State Security forces. Moreover, on 24 April 1983, a member of the Sandinista People's Army was said to have fired four shots at his house and insulted him and his family. The following day, 20 people went to the homes of Messrs. Aguirre and Larry Lee Shoures, threatening to kill them and to set fire to their houses for being affiliated to the CTN and therefore counter-revolutionaries.

471. At its February 1985 session, the Committee noted, in paragraph 9 of its 238th Report, the Government's statement in its communication of January 1985 that these persons were not detained and its request for further information on them to facilitate inquiries. The Committee recalled that detailed allegations could be found in paragraph 295 of its 233rd Report and requested the Government to send a clear and precise reply on these allegations and on the situation of these trade unionists.

472. In its communication of 27 May 1985, the Government stresses its intention to transmit to the Committee on Freedom of Association at a later date any information which it might obtain on the situation of Messrs. Hermógenes Aguirre Largaespada and Larry Lee Shoures, and on that of Mr. Abelino González País, and again confirms that the names of the persons concerned do not appear in the prison records.

Case No. 1298

473. The allegations pending in the present case referred to the occupation of the headquarters of the Confederation of Trade Union

Unity (CUS) on two occasions, once by a group of 20 persons on 18 August 1984 and a second time after groups of persons had broken in on 25 August 1984.

474. The Government considered that these incidents were the result of divided opinions within the CUS as to whether it should remain within or withdraw from an opposition political group.

475. In the complainants' view, on the other hand, the incidents were caused by the interference of public officials with a view to obtaining the CUS's withdrawal from this opposition movement.

476. The complainants also sent in support of their complaint a statement by a legal adviser to the CUS, sworn before a notary, in which he states that he was subjected to threats and pressure in order to induce him to commit acts that would be instrumental in doing away with the CUS. The person concerned stated that an official of the Ministry of the Interior had ordered him to seek out persons belonging to the CUS to support a group of persons not belonging to this organisation which had occupied its headquarters. He had been forced to go to the CUS on 25 August to support the occupants, and had there met members and non-members of the CUS. A general assembly had then been held at the CUS headquarters and, when the parties failed to reach an agreement, several persons had injured or harangued the true members of the CUS and partially destroyed its office.

477. The complainants also stated that the police had done nothing to stop the attack on the CUS headquarters by certain groups on 25 August.

478. At its February-March 1985 session the Governing Body approved the following recommendations of the Committee:

- (a) With respect to the occupation of the CUS headquarters on two occasions, and in order to be able to pronounce on this matter in full knowledge of the facts, the Committee requests the Government to send specific observations on the complainants' allegations that the occupation of the CUS premises on successive occasions resulted from interference by public officials (in particular, on the link between the State Security forces and the two persons who carried out the first occupation, and the notarised statements of the former legal adviser to the CUS concerning interference by the authorities in the two occupations of the CUS headquarters).
- (b) The Committee requests the Government to reply to the allegation that the police, in spite of being in the vicinity of the CUS headquarters on 25 August 1984 (the day on which the violent events mentioned in the complaint occurred) did nothing to avoid the attack by certain groups, intervening only when everything was over.

- (c) The Committee would point out that the climate of violence which forms the background to some of the allegations can only impede the free exercise of trade union rights.
- (d) The Committee requests the Government to reply to the allegation concerning the arrest of José Agustín Téllez, Secretary-General of the Federation of Peasant Workers in Carazo (FETRACAMCA)."

479. In its communication of 27 May 1985, the Government gives information on the judicial dissolution of the Union of Workers in Agricultural Enterprises of Masaya by court decision of 13 June 1984. It also indicates that two new unions have applied for registration with the directorate of trade union organisations and that the latter is examining the applications. It does not reply to the allegations pending in the present case regarding the occupation of the CUS headquarters and the arrest of the Secretary-General of the Federation of Peasant Workers in Carazo.

The Committee's conclusions

480. In general, the Committee observes that the Government has supplied detailed replies on certain aspects of the present cases, but regrets that it has not replied to all the allegations.

481. Regarding Case No. 1129, the Committee notes the detailed replies furnished by the Government regarding both the difficulties encountered by the officials of unions affiliated to CTN in conducting their union activities in plantations and in the sugar industry, and on the situation of Messrs. Luis Mora and Salvador Sánchez..

482. In connection with the former point, the Committee notes that, according to the Government, the assaults on an official of the CTN were not attributable to the authorities and that the dismissals that had taken place in the only refinery in which the CTN was represented were due to acts of sabotage. The Committee also has to note that, despite the request for additional information on this aspect of the case addressed to them in February 1984, the complainants have supplied no details in support of their allegations.

483. As regards Messrs. Luis Mora and Salvador Sánchez, it would appear from the Government's observations that the former has been pardoned and the latter sentenced for activities unconnected with freedom of association.

484. The Committee nevertheless notes with regret that the Government has still not replied to the most recent allegations of the WCL concerning the imprisonment of Eric González González, Milton Silva Gaitán and Eduardo Alberto Gutiérrez, members of the CTN, and the refusal to register the executive committees of unions on the

agricultural estates of Fátima and Las Mojarras in El Jicaral (department of León), the agricultural estate of La Concepción in Matagalpa and the Chinandega and Managua service stations, despite the fact that, according to the Government's reply on Case No. 1298, two new unions have been registered, of which it gives no further details. The Committee requests the Government to send replies on these various points.

485. With respect to Case No. 1169, the Committee notes the decision of the Court of Appeal of León (criminal division) of 31 January 1984 confirming the sentences of imprisonment pronounced in their absence against Messrs. Contreras and Argeñal, former President and Treasurer of the Supervisory Board of the Trade Union of Dockers, Employees and Office Staff of Corinto Docks, respectively convicted of having unlawfully appropriated the sums of 12,740 and 3,000 córdobas belonging to the union and of having fled the country.

486. As regards the six persons mentioned in Annex I of the 238th Report, the Committee notes the information provided by the Government from which it appears that these persons were arrested in 1982 and released in 1983 for having distributed counter-revolutionary tracts or for having given logistic support to counter-revolutionary activities.

487. As regards the 18 trade unionists mentioned in Annex II of the 238th Report, the Committee notes that the Government supplies information on nine of them from which it appears that three were sentenced to imprisonment for having directed counter-revolutionary activities or for possession or purchase of arms. The six other persons on whom the Government supplies information were released after being detained for counter-revolutionary activities. The Committee requests the Government to supply copies of the judgements handed down against these three persons and to indicate whether the nine other trade unionists mentioned by the complainants, namely Rito Rivas Amador, Iván Blandón, Víctor Ríos, Napoleón Aragón, Juan Ramón Duarte and his brother, Maximino Flores Obando, Anastasio Jiménez Maldonado and Gabriel Jiménez Maldonado are still in prison and, if so, to supply details on the specific reasons for their continued detention.

488. With respect to Case No. 1185 the Committee notes the Government's assurances that the names of Abelino González País, Hermógenes Aguirre Largaespada and Larry Lee Shoures do not appear on the prison records.

489. Nevertheless, bearing in mind that the two last-mentioned persons are alleged to have been subjected to reprisals and violence for having belonged to a trade union affiliated to the CTN, the Committee must firmly recall the importance it attaches to the conduct of trade union activities in full freedom. It therefore urges the Government to make every effort to guarantee a climate favourable to the development of the various peaceful tendencies of the trade union movement in Nicaragua.

490. Regarding Case No. 1298 the Committee notes with regret that the Government has not replied to the allegations still pending.

491. It repeats its earlier request for an explanation of the occupation of the CUS headquarters on 18 August 1984, led by two persons alleged to have links with the State Security forces, as evidenced by the notarised statement of the former legal adviser to the CUS.

492. It also again requests the Government to reply to the allegation that on the occasion of the second occupation of the CUS headquarters on 25 August 1984, the police did nothing to stop the attack and intervened only when everything was over, although they were in the vicinity of the organisation's headquarters.

493. Finally, it again requests the Government to indicate whether José Agustín Téllez, Secretary-General of the Federation of Peasant Workers in Carazo, is in prison and if so, to indicate the grounds for his detention.

The Committee's recommendations

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

Generally speaking, the Committee observes that, during its session in May 1985, the Government supplied detailed replies on certain aspects of the present cases, but regrets that it has not replied to all the allegations. The Committee also deplores that the latest information supplied by the Government concerning the detention of trade unionists was only received by the Committee during its present meeting.

- (a) In Case No. 1129 the Committee notes that Mr. Mora has been pardoned and that Mr. Sánchez has been sentenced for activities unconnected with freedom of association.
- (b) The Committee requests the Government to send its observations on the allegations to which it has not replied regarding the imprisonment of three trade unionists mentioned by the complainants, the names of which are annexed to the present report, and on the refusal to register the executive committees of the agricultural unions of Fátima and Las Mojarras in El Jicaral (department of León) and of La Concepción in Matagalpa, and of the unions of service station workers in Chinandega and Managua.
- (c) In Case No. 1169 the Committee notes that of the 18 trade unionists mentioned by the complainants, six have been released and three have received prison sentences. It requests the

Government to supply copies of the judgements handed down against these three persons and to indicate whether the nine other trade unionists cited in the Annex are still in prison and, if so, to state the reasons for their detention.

- (d) In Case No. 1185 the Committee considers that, bearing in mind the allegations that trade union officials have been subjected to reprisals and violence for having belonged to a union affiliated to the CTN, it must recall the importance which it attaches to the exercise of trade union activities in full freedom. It therefore urges the Government to make efforts to guarantee a climate favourable to the peaceful development of the different tendencies of the trade union movement in Nicaragua.
- (e) In Case No. 1298 the Committee notes with regret that the Government has not replied to the allegations still pending.
- (f) The Committee repeats its earlier request for an explanation of the occupation of the CUS headquarters on 18 August 1984, led by two persons alleged to have links with the State Security forces, as evidenced by the statement made by the former legal adviser to the CUS.
- (g) The Committee again requests the Government to reply to the allegation that, during the second occupation of the CUS headquarters on 25 August 1984, the police did nothing to stop the attack and intervened only when everything was over, although they were in the vicinity of the organisation's headquarters.
- (h) The Committee again requests the Government to indicate whether José Agustín Téllez, Secretary-General of the Federation of Peasant Workers in Carazo, is in prison and if so, to indicate the grounds for his detention.

List of trade union activists and officials alleged
by the complainants to be still in prison

Case No. 1129

Eric González González

Miltón Silva Gaitán

Eduardo Alberto Gutiérrez: CTN official arrested and violently dragged from his home in November 1983

Case No. 1169

Rito Rivas Amador: Arrested at Juigalpa (department of Chontales) in December 1982

Iván Blandón) Arrested at Cascal-Nueva Quinca
(department of)
Victor Ríos) Zelaya) in April 1983
Napoleón Aragón)
Juan Ramón Duarte and)
his brother)

Maximino Flores Obando: Arrested in the department of León in December 1982; sentenced to three years' imprisonment by the Sandinista People's Courts for organisation of the counter-revolution in the region

Anastasio Jiménez Maldonado) No specific indications given by the
Gabriel Jiménez Madonado) complainants

Cases Nos. 1176, 1195, 1215 and 1262

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

495. The Committee examined Cases Nos. 1176, 1195 and 1215 at its November 1984 and May 1985 meetings and on both occasions submitted an interim report to the Governing Body [see 236th Report, paras. 401-525, and 239th Report, paras. 210-225, approved by the Governing Body at its 228th Session (November 1984) and 230th Session (May-June 1985), respectively]. The Committee also examined Case No. 1195 at an earlier meeting [see 230th Report, paras. 689-699, approved by the Governing Body at its 224th Session (November 1983)].

496. At its meeting in February 1985, the Committee examined Case No. 1262 and submitted an interim report to the Governing Body [see 238th Report, paras. 269-281, approved by the Governing Body at its 229th Session (February-March 1985)].

497. Subsequently, the International Confederation of Free Trade Unions (ICFTU) and the World Federation of Trade Unions (WFTU) submitted new allegations in connection with Case No. 1195 in communications dated 13 June and 24 July 1985, respectively. The Autonomous Trade Union Federation of Guatemalteca (FASGUA) presented

further allegations in connection with Case No. 1215 in a communication dated 4 September 1985.

498. The Government sent a certain number of observations in two communications dated 28 August 1985.

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

A. Previous examination of the cases

500. When the Committee examined Cases Nos. 1176, 1195 and 1215 at its meeting in May 1985, it made the following recommendations regarding the allegations still pending [see 239th Report, para. 225]:

- (a) The Committee expresses its deep concern at the serious nature of the situation which is characterised by the detention, kidnapping, assault or assassination of trade union leaders and other persons connected with the trade union movement, all the more so since some of the allegations date from January 1983 and the whereabouts of the abducted persons remain unknown.
- (b) The Committee urges the Government to do its utmost to ensure that the investigations under way - which should be conducted by the judiciary - result in the whereabouts of those who have disappeared being clarified (Julián Revolorio, Raimundo Pérez, Yolanda Urizar, Manuel Francisco Contreras, José Luis Ramos, Luis Estrada, Víctor Ascón, Lucrecia Orellana, Gracida Samayoa and her two children and Antonia Argüeta), the facts being elucidated in full, responsibilities being determined and the guilty parties being punished. The Committee requests the Government to inform it of developments on this point.
- (c) The Committee draws the Government's attention to the principle that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to the inviolability of human life and personal safety, are fully respected and guaranteed.
- (d) The Committee requests the Government to send its observations on the allegations contained in FASGUA's communications of 10 October 1984 (the closing down of operations at the Universal Textiles Factory with a view to destroying the union and the kidnapping of the brother of the trade unionist Valerio Oscal) and 12 February 1985 (assault on, and kidnapping of, Mr. Sergio Vinicio Samayoa Morales), as well as on those contained in the

communications from the ICFTU and ORIT dated 10 May 1985 (abduction of the trade union leader Felicita Floridaalma Lucero).

501. With respect to Case No. 1262, the Committee made the following recommendations concerning the allegations still pending at its meeting in February 1985 [see 238th Report, para. 281]:

- (a) The Committee expresses its deep concern at the serious nature of the allegations which refer, in particular, to many cases of kidnapping and disappearance or attempted kidnapping, as well as the serious physical assault of trade union leaders or trade unionists, and deplores the fact that the Government has not sent detailed information in this respect except as regards one person mentioned by the complainants.
- (b) As regards the attempted kidnapping of the trade union leader Alvaro René Sosa and the physical assault of which he was the victim, the Committee urges the Government to carry out a judicial inquiry with a view to elucidating the facts in full, determining responsibilities and punishing the guilty parties. The Committee requests the Government to supply information on any such inquiry and on its outcome.
- (c) As regards the kidnapping and disappearance or attempted kidnapping of the other trade union leaders or trade unionists mentioned by the complainants (in one case the allegation concerns the kidnapping of the brother of a trade union leader who had escaped various attempts at capture), the Committee urgently requests the Government to carry out the necessary investigations to determine the whereabouts of the persons who have allegedly disappeared and to initiate a judicial inquiry with a view to elucidating the facts in full, determining responsibilities and punishing the guilty parties for the kidnappings or attempted kidnappings. The Committee requests the Government to supply information on any such inquiry and on its outcome.
- (d) In general, the Committee draws to the Government's attention the principle that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed.

B. New allegations

502. In a communication dated 13 June 1985, the ICFTU refers to a mission which it sent from 27 January to 9 February 1985 to Central America, where among other countries it visited Guatemala. According

to information received by the mission, Guatemala is living in a state of insecurity because of the persistent policy of intimidation and terror employed against the population, while the practice of arrest and disappearance has become a standard and systematic instrument of repression from which an alarming number of victims have suffered, especially trade union leaders both in the towns and in the country.

503. The ICFTU adds that the mission drew up a list of cases of arrest and disappearance, assassinations and attacks on trade union leaders and activists; 97 instances of arrest and disappearance and 37 assassinations were cited between 1980 and May 1985. The list of trade union leaders and members who have disappeared or been kidnapped, assassinated or physically attacked appears in an annex to this report. [This list does not include persons already cited in other cases brought before the Committee on Freedom of Association.]

504. In its communication dated 24 July 1985, the WFTU refers to the kidnapping of trade union leader Felicita Floridalma Lucero, an allegation that was previously brought before the Committee in connection with Case No. 1195.

505. In its communication dated 4 September 1985, FASGUA alleges that on 1 September 1985 the body was discovered of Eleazar Esaú Barrera Martínez, an employee of the textile factory Fábrica de Tejidos Imperial who had been kidnapped during mass demonstrations against the increase in prices and in support of wage claims. According to FASGUA, his body was found hanging by the neck from an electric wire and bore signs of torture.

506. FASGUA adds that on the morning of 4 September 1985 nurse Rita Josefina Pineda Aldana was kidnapped by armed men.

507. Finally, FASGUA alleges that on 3 September 1985, 500 members of the National Army supported by 12 artillery trucks and about 20 tanks launched an attack on the University of San Carlos and searched every building, including the headquarters of the University Workers' Union where they caused extensive damage and seized trade union documents.

C. The Government's reply

508. The Government states in its communications dated 28 August 1985 that all the complaints concerning alleged violations of freedom of association communicated to it by the ILO have been passed on to the Ministry of the Interior with instructions to transmit to the Committee on Freedom of Association any information that may come to light as a result of its inquiries.

509. The Government adds that a copy of the statement it received to the effect that Floridalma Lucero y Lucero and Amancio Samuel

Villatoro had disappeared has been communicated to the competent tribunal and that investigations are being conducted to determine their whereabouts. With respect to the disappearance of Julián Revolorio, Raymundo Pérez, Yolanda Urizar Martínez de Aguilar, Manuel Francisco Contreras, José Luis Ramos, Luis Estrada, Victor Ascón, Lucrecia Orellana, Graciela Samayoa and her children, Fermín Solano, Antonio Argüeta and Sergio Venicio Samayoa Morales, the Government states that none of the persons cited are being held in any of the country's detention centres but that inquiries are being made into their whereabouts. The Government indicates that, in the case of investigations of this nature, the judiciary is duly informed by the General Directorate of the National Police through the competent tribunal.

510. The Government states further that it has collaborated closely with the judiciary and the Supreme Court of Justice in the investigations into disappearances and in the habeas corpus proceedings. The Head of State has accordingly set up a committee consisting of representatives of the Ministry of National Defence, the State Prosecutor's Office and the Ministry of the Interior to determine the whereabouts of the persons listed as having disappeared; in its efforts to arrive at the truth, the Committee has conducted an investigation throughout the country, issued the necessary orders to all state security forces and invited the civilian authorities to collaborate. It appears from the investigations that the persons whose names appear on the list submitted by the Mutual Support Group to the committee are not being held in any penal or preventive detention centre in the country.

511. The Government goes on to state that the investigations must be considered as being still under way since, inter alia, it has not yet been possible to obtain the list of Guatemalan citizens who have emigrated to Mexico in order to determine whether some of the persons who have disappeared are listed as official residents of that country. The Government indicates that, at the request of the interested parties and in accordance with the law, the State Prosecutor's Office has initiated penal proceedings with the Court of First Instance and with the Justices of the Peace of the Penal Branch of the Departments of Petén, Quetzaltenango, Zacapa and Guatemala City in connection with alleged kidnappings and has taken part in proceedings already initiated. The Government states that in the course of the investigations conducted in the various departments of the Republic, no allegations were made regarding the existence of detention centres other than the legally constituted penal centres for preventive detention and for the serving of prison sentences.

512. The Government declares that the committee has conducted a thorough official investigation at the national level, employing all possible means at its disposal, and that its report constitutes the most thorough investigation of the problem of "disappeared persons" that the present Government has carried out in its efforts to establish the facts.

513. Finally, with respect to the alleged closing down of operations at the Universal Textiles Factory, the Government states that the General Labour Inspectorate and the General Labour Directorate collaborated fully with the workers who had lodged a petition against its closure. According to the Government, the workers and the undertaking reached an agreement which included the payment of compensation. The only point on which agreement was not reached, despite the efforts of the General Labour Inspectorate, concerned five trade union leaders. Charges were accordingly brought against the undertaking in June 1985 with the competent labour tribunal which has not yet handed down its ruling.

D. The Committee's conclusions

514. The Committee notes the Government's statement that the Head of State has set up a committee consisting of representatives of the Ministry of National Defence, the State Prosecutor's Office and the Ministry of the Interior to determine the whereabouts of the persons listed as having disappeared and that the Committee has conducted a nation-wide investigation with the collaboration of the civilian and military authorities. The Committee also notes that, according to the Government, the persons listed as having disappeared are not being held in any penal or preventive detention centre.

515. The Committee notes that, according to the Government, inquiries have been made into the whereabouts of trade union leaders Felicita Florida Lucero y Lucero, Amancio Samuel Villatorio and Sergio Vinicio Samayoa Morales. The Committee also notes the Government's statement that it has not yet been possible to establish the whereabouts of other kidnapped trade union leaders and members (Julián Revolorio, Raimundo Pérez, Yolanda Urizar, Manuel Francisco Contreras, José Luis Ramos, Luis Estrada, Víctor Ascón, Lucrecia Orellana, Graciela Samayoa and her two children, Fermín Solano and Antonia Argüeta). The Committee regrets that the Government has not supplied any details on the other 31 trade union leaders and members who have disappeared or on the alleged assassination of 13 trade union leaders and members and physical attacks on another union leader. The Committee further recalls that it had requested the Government to conduct a judicial inquiry into the attempted kidnapping and physical attacks on former trade union leader Alvaro René Sosa.

516. In these circumstances, the Committee recalls in general terms that when a climate of violence prevails in a country, this renders the exercise of trade union rights practically impossible and also recalls, as did the International Labour Conference in its 1970 Resolution concerning trade union rights and their relation to civil liberties, that the absence of civil liberties removes all meaning from the concept of trade union rights and that the rights conferred on workers' and employers' organisations must be based on respect for those civil liberties. It expresses its profound concern at the

seriousness of a situation in which a large number of trade union leaders and members have been assassinated or have disappeared, particularly since some of the allegations date back several years and there is no sign of any improvement in the situation or of the facts being elucidated.

517. The Committee urges the Government once again to do its utmost to ensure that the investigations under way result in the establishment of the whereabouts of the trade union leaders and members listed in the annex to this report as having disappeared. The Committee requests the Government to ensure that these investigations cover all the trade unionists listed as having disappeared who have been cited by the complainants and to inform it of the outcome.

518. With respect to the trade union leaders and members who have been assassinated or have suffered serious physical harm, the Committee notes that inquiries are being carried out by the administrative authorities. It urges the Government to carry out judicial inquiries in order to elucidate the facts in full, determine responsibilities and punish the guilty parties. The Committee requests the Government to keep it informed of the outcome.

519. With respect to the alleged closing down of operations at the Universal Textiles Factory in order to destroy the trade union, the Committee observes that the Government does not refer specifically in its statement to the alleged anti-union nature of the closure of the factory. The Committee therefore requests the Government to indicate the grounds for closing down operations at the factory.

520. Lastly, the Committee observes that the Government has not replied to the alleged attack on the headquarters of the San Carlos University Workers' Union by National Army troops, and the serious damage caused and the seizing of trade union documents. The Committee requests the Government to send its observations on the matter.

The Committee's recommendations

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

- (a) The Committee recalls in general terms that when a climate of violence prevails in a country, this renders the exercise of trade union rights practically impossible and also recalls that the absence of civil liberties removes all meaning from the concept of trade union rights, and that the rights conferred on workers' and employers' organisations must be based on respect for those civil liberties.

- (b) The Committee expresses its profound concern at the seriousness of a situation in which a large number of trade union leaders and members have been assassinated or have disappeared, particularly since some of the allegations date back several years and there is no sign of any improvement in the situation or of the facts being elucidated.
- (c) The Committee urges the Government once again to do its utmost to ensure that the investigations under way result in the establishment of the whereabouts of the trade union leaders and members listed in the annex to this report as having disappeared. The Committee requests the Government to ensure that these investigations cover all the trade unionists listed as having disappeared who have been cited by the complainants and to inform it of the outcome.
- (d) With respect to the trade union leaders and members who have been assassinated or have suffered serious physical harm, the Committee notes that inquiries are being carried out by the administrative authorities. It urges the Government to carry out judicial inquiries in order to elucidate the facts in full, determine responsibilities and punish the guilty parties. The Committee requests the Government to keep it informed of the outcome.
- (e) With respect to the alleged closing down of operations at the Universal Textiles Factory in order to destroy the trade union, the Committee requests the Government to indicate the grounds for closing down operations at the factory.
- (f) Lastly, the Committee observes that the Government has not replied to the alleged attack on the headquarters of the San Carlos University Workers' Union by National Army troops, and the serious damage caused and the seizing of trade union documents. The Committee requests the Government to send its observations on the matter.

ANNEX

LIST OF TRADE UNION LEADERS AND MEMBERS
WHO HAVE DISAPPEARED OR BEEN ASSASSINATED

A. Persons listed as having disappeared on whom the Committee has
already requested information from the Government

1. Julián Revolorio¹
2. Raimundo Pérez
3. Yolanda Azcón
4. Manuel Francisco Contreras
5. José Luis Ramos
6. Luis Estrada
7. Víctor Ascón
8. Lucrecia Orellana
9. Graciela Samayoa and her two children
10. Fermín Solano
11. Antonia Argüeta
12. Sergio Vinicio Samayoa Morales
13. Felicita Floridalma Lucero y Lucero
14. Sr. Oscal
15. Cecilio Tejax Coj
16. José Guillermo Bran
17. Miguel Angel Gómez
18. José Luis Vilagrán
19. José Guillermo García

¹ According to the ICFTU, the body of this trade union leader was discovered on 23 September 1983 and bore signs of torture.