Case No. 1341

COMPLAINTS AGAINST THE GOVERNMENT OF PARAGUAY PRESENTED BY SEVERAL TRADE UNION ORGANISATIONS

351. The Committee has already examined this case on two occasions, most recently at its May 1987 meeting, when it submitted interim conclusions. [See 251st Report, paras. 399-416.] Due to the lack of a reply from the Government to its repeated requests, the Committee at its November 1987 meeting addressed an urgent appeal to it for its observations. The Committee also recalled that, in accordance with the procedural rule set out in paragraph 17 of its 127th Report, it would present a report on the substance of the case at its next meeting even if the Government's observations had not been received in time. [See para. 17 of the 253rd Report.] Subsequently, in a communication dated 23 October 1987, the International Confederation of Free Trade Unions (ICFTU) has presented new allegations. The Government has supplied neither observations nor comments.

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

A. Previous examination of the case

353. The outstanding allegations in this case relate to the detention of trade union activists and leaders who are named by the complainants, to the violent repression of peaceful trade union demonstrations and to various acts of interference with and pressure exerted against trade union organisations and their leaders.

354. In particular the complainants referred to the climate of violence and repression affecting the trade union movement during 1986 and 1987 in the hospitals, press, teaching and agricultural sectors.

355. They referred to the questioning of doctors during a strike which took place on 25 April 1986 at the José Bellasaï Hospital, to the ban on May Day celebrations in 1986, to the subsequent violent repression and to the fact that a large number of persons were injured by the forces of order and taken to hospital, to the attacks perpetrated on 3 May by some 150 militants of the Colorado party who were authorised to enter the hospital premises and who are said to have struck doctors and nurses who were attending the injured, to the destruction of the Ñanduti radio station by the same group on the grounds that this radio supported the workers and their organisations during the trade union demonstrations. The complainants subsequently

stated that the doctors who had been arrested during the strike were released for lack of evidence of their having committed an offence.

356. Furthermore the complainants described the attack by the police on the headquarters of the Federation of Bank Employees (FETRABAN) in April 1986 and again in March 1987, and the detention for a number of days in March 1987 of the General Secretary of the Workers' Inter-Trade Union Movement (MIT), Mr. Victor Baez, during a meeting of his organisation. Mr. Baez was subsequently released.

357. The complainants also alleged that in March 1987 Raquel Aquino, leader of secondary-school students, was arrested for having expressed her solidarity with the trade union movement. In addition, a leader of the MIT was obliged to give up her job as philosophy teacher at the National Ladies' College and was not allowed to protest this.

358. Lastly, the complainants denounced the arrest in 1987 at Ononnondivepa of the rural trade union leaders Marcelino Corazón, Medina and Bernardo Tonales and the General Secretary of the Paraguay Cotton Company Workers' Trade Union (CAPSA) the day before the union's general assembly.

359. In view of the seriousness of the allegations to which the Government had not replied, the Committee, at its May 1987 meeting, expressed its serious concern at the large number of arrests of trade union leaders and members. It deplored the fact that the Government had replied in respect of only a few of the allegations made against it and urged the Government to reply concerning all of the serious allegations presented by the complainant organisations.

360. Since then the Government has supplied no reply to the Committee's requests.

B. New allegations

361. In a communication dated 23 October 1987, the International Confederation of Free Trade Unions stated that on 20 October 1987 the police used violence to prevent the holding of a union meeting of the National Union of Construction Workers, violently charging and injuring a large number of them who were transported urgently to assistance centres.

C. The Committee's conclusions

362. Before examining the substance of this case, the Committee regrets having to draw the Government's attention to the

considerations it set out in its First Report [para. 31], namely that the purpose of the whole procedure that has been instituted is to ensure respect for trade union rights in law and in fact and that the Committee is convinced that while the procedure protects governments against unreasonable accusations, governments on their side should recognise the importance of formulating, so as to allow objective examination, detailed replies to the allegations brought against them.

363. In these circumstances, the Committee once again deplores the fact that the Government has not replied to the serious allegations made by the complainants, some presented as far back as two years ago, and that because of the time which has elapsed, the Committee is obliged to examine the case without being able to take the Government's observations or comments into account.

364. The Committee notes that the allegations in this case relate essentially to the arrest of trade unionists, the ban on May Day celebrations and the occupation of trade union premises to prevent the holding of union meetings.

365. Since the Government has not denied these allegations, the Committee can only conclude that the principles of freedom of association have been seriously infringed in these various incidents.

366. As regards the arrest of trade unionists whose names were supplied by the complainants, the Committee recalls that measures of preventive detention imply serious interference by the Government in trade union activities which can give rise to criticism unless accompanied by adequate judicial safeguards applied within a reasonable period of time. Furthermore the Committee recalls that the arrest by the authorities of trade unionists against whom no charge is made involves restrictions on freedom of association. Consequently the Committee urges the Government to take steps to ensure that the authorities concerned are given appropriate instructions to eliminate the danger which arrest for trade union activities implies. [See 147th Report, Case No. 777 (India), para. 214, and Case No. 753 (Japan), para. 345.]

367. As regards the ban on the celebration of May Day and the acts of violence perpetrated by political groups against workers, including doctors on hospital premises where injured people were being treated, the Committee expresses its very deep concern with regard to such allegations. Since the Government has not refuted them, the Committee must insist on the importance of the principle according to which the right to organise public meetings and processions on the occasion of May Day constitutes an important aspect of trade union rights. [See in particular 204th Report, Case No. 962 (Turkey), para. 253]. Furthermore the Committee strongly condemns the acts of violence said to have been perpetrated on hospital premises against doctors who were treating the injured persons taken there after the confrontations on May Day.

368. As regards the attacks on trade union premises and the arrest of trade union leaders before the holding of union meetings, the Committee notes once again that the Government has not denied these allegations. It recalls that the arrest of trade union leaders with the aim of preventing the holding of a union meeting constitutes a serious violation of the exercise of trade union rights. [See 160th Report, Case No. 849 (Nicaragua), para. 480].

The Committee's recommendations

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

(a) The Committee strongly regrets that the Government has not replied to the repeated requests for information made to it. It expresses its serious concern at the allegations concerning repression of the trade union movement in 1986 and 1987 and, in particular, the arrest of trade union activists and leaders, whose names have been supplied by the complainants, the ban on peaceful trade union demonstrations on May Day which were violently put down, and the interference in the affairs of trade union organisations and pressure brought to bear on them and on union members.

(b) The Committee recalls that a free and independent trade union movement cannot develop in an atmosphere of insecurity and fear.

(c) The Committee urges the Government to take measures to ensure that the authorities concerned are given appropriate instructions to eliminate the danger for trade union activities represented by such measures as the arrest of trade unionists, the banning of trade union demonstrations on May Day and of the holding of trade union meetings.

(d) The Committee requests the Government to take measures to guarantee respect for freedom of association in law and in fact, in accordance with the obligations arising from Conventions Nos. 87 and 98, ratified by Paraguay, and to keep it informed of these measures in particular to state whether judicial inquiries have been undertaken following the repression which took place on hospital premises on 3 May 1986, in order to determine who is responsible and to punish the guilty parties.

Case No. 1396

COMPLAINTS AGAINST THE GOVERNMENT OF HAITI PRESENTED BY
- THE LATIN AMERICAN CENTRAL OF WORKERS,
- THE WORLD FEDERATION OF TRADE UNIONS,
- THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS AND
- THE AUTONOMOUS CONFEDERATION OF HAITIAN WORKERS

370. Complaints of violation of freedom of association have been presented by the following trade union organisations on the following dates: the Latin American Central of Workers (CLAT): 5 November 1986; the World Federation of Trade Unions (WFTU): 29 June 1987; the International Confederation of Free Trade Unions (ICFTU): 3 July 1987; and the Autonomous Confederation of Haitian Workers (CATH): 20 July 1985. The CLAT, the WFTU and the CATH have provided additional information in support of their complaints in communications dated 25 February, 6 July and 14 August 1987, respectively.

371. At its November 1987 meeting, the Committee noted that the observations requested on a number of occasions from the Government had not been received. In these circumstances, the Committee addressed an urgent appeal to the Government to transmit its observations as a matter of urgency and drew its attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, it could present a report at its next meeting on the substance of this case even if the observations requested from the Government have not been received in time. Since then, the ILO has received no reply from the Government.

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

A. The complainants' allegations

373. In its communication of 5 November 1986, the CLAT states that a great many enterprises have decided to inflict reprisals on new trade union organisations. According to the CLAT, they dismissed the officials of each trade union as soon as they had been democratically elected by the workers. The complainant organisation states that about 200 trade union officials of the Haitian confederation affiliated to it, the CATH-CLAT, were dismissed by their enterprises only because they had accepted trade union office. A complaint has been lodged on each of these cases with the Ministry of Labour, which has so far agreed to act as mediator only in the case of those enterprises which are willing to pay the compensation due.

374. The CLAT specifies that many enterprises, including "Mariette Industries", have dismissed hundreds of workers without paying the statutory compensation for dismissal. CLAT missions have visited Haiti on several occasions since the change of government and have requested dialogue with government representatives, which, in the case of the Minister of Labour, never took place.

375. In its communication of 25 February 1987, the CLAT states that the Minister of Labour refused to take part in dialogue by cancelling a meeting with CLAT representatives which, by common consent, was to take place on 24 February 1987. The CLAT alleges that the Ministry of Labour has still not approved legal recognition of the National Federation of Agricultural Workers of Haiti (FENATAPA), which has been pending since the previous year and which was promised by the Minister in November 1986. The complainant organisation also refers to the dismissal of nearly all of its staff, and, in particular, of trade union officials and members by the "Jebsa" and "Performance Footwear" undertakings. In the case of the "Jebsa" enterprise, according to the CLAT, glaring injustices have taken place, and the workers demand that the lock-out be lifted in the enterprise and that the conditions of work and remuneration established by Haitian law be observed. The "Performance Footwear" enterprise, for its part, announced the closure of the premises it occupies, changed its name and took up activities in other premises under the name of another representative. In the CLAT's view, this measure not only runs counter to the legislation, but is aimed at destroying the trade union, which represents 80 per cent of the staff. The enterprise refused to take part in any dialogue, and the Ministry of Labour failed to take appropriate measures to seek solutions. According to the CLAT, these two situations are merely an example of what has become a habitual practice of Haitian employers, in glaring contradiction to the efforts being made to build and consolidate a genuinely democratic regime.

376. In its communication of 29 June 1987, the WFTU alleges that on 23 June the Government dissolved the Autonomous Confederation of Haitian Workers (CATH) and imprisoned three officials of this organisation, including its Secretary-General, Jean-Auguste Mesyeux. The WFTU specifies that these repressive measures followed a general two-day protest organised by the CATH to pressure the Government into improving working and living conditions of workers in the country.

377. Referring to the same case, the ICFTU explains in its communication of 3 July 1987 that, on 22 and 23 June, the CATH called a 48-hour general strike, presenting economic and social claims and demanding observance of the Constitution and civil rights. According to the ICFTU, the army invaded CATH headquarters at dawn on 22 June and carried out a thorough search. The premises were closed and are still occupied by the army. Four trade union officials were arrested and savagely beaten, and the CATH was dissolved by the provisional government junta.

378. The WFTU states in its communication of 6 July 1987 that the three CATH officials arrested are Jean-Auguste Mesyeux, Armand Pierre and Edouard Pierre.

379. The CATH provides further details on this case in its communication of 20 July 1987. It explains that, after the union called a general strike on 22 and 23 June 1987, the military authorities gave the order on 22 June to invade the premises of the Confederation, which they then pillaged, taking away a car, office equipment and US$1,800.

380. The CATH adds that the soldiers violently beat the officials who were in the trade union premises, then, without a warrant, took them away to the Dessalines barracks, where, for 15 days, according to the CATH, they were beaten, tortured and humiliated. In addition, on 23 June, the CATH was dissolved.

381. On 4 July, the lawyers of the CATH intervened with the court since, contrary to the provisions in force, the trade unionists detained had not been brought before a judge. On 6 July, the persons concerned were released on certain conditions.

382. In its communication of 14 August 1987, the CATH specifies that eight persons were arrested on 22 June. They were Jean-Auguste Mesyeux, Armand Pierre, Edouard Pierre, Jean-Baptiste Hatman, Jean-Claude Pierre-Louis, Idly Cameau, Patrice Dacius and Edmer Saint-Eloi. Since their release, these trade union officials and five other union officials have received various threats and have been entered on a government blacklist.

383. The CATH adds that an arson attempt was made on its premises on the night of 29 to 30 July. Lastly, it states that the equipment, vehicle and money taken away during the army attack on its premises have still not been returned.

B. Subsequent developments in the case

384. Subsequently, the ILO has sent telegrams on several occasions to the Government requesting it to transmit its observations and comments on the outstanding allegations in this case. The Government has not to date responded to these requests. However, the Office was informed verbally by a Haitian trade union official passing through Geneva that the administrative dissolution of the CATH had been lifted. It was also informed of the release of several trade unionists whose arrest had been announced by the complainants.

C. The Committee's conclusions

385. Before examining the substance of the case, the Committee regrets that it must draw the Government's attention to the considerations it set out in its First Report (paragraph 31), namely that the purpose of the whole procedure set up is to promote respect for trade union rights in law and in fact; it is convinced that while the procedure protects governments against unreasonable accusations, governments on their side should recognise the importance for their own reputation of formulating, so as to allow objective examination, detailed replies to the allegations brought against them.

386. In these circumstances, the Committee deplores the fact that the Government has not replied to the serious allegations made by the complainants, some of which date back to more than a year ago, and that it is obliged because of the time which has elapsed, to examine the case without being able to take into account any observations or comments from the Government.

387. The Committee points out that the allegations raised in this case mainly deal with anti-trade union reprisals inflicted by employers on workers seeking to conduct legitimate trade union activities, with the arrests of trade union activists and officials - named by the complainants - following a two-day strike in June 1987, with the dissolution by administrative authority of the Autonomous Confederation of Haitian Workers (CATH), with the occupation by violent means of the premises of this trade union confederation, and with the confiscation of the trade union material belonging to it.

388. In the absence of any reply on these allegations by the Government, the Committee can only conclude that there has been a serious infringement of the principles of freedom of association.

389. As concerns the anti-trade union reprisals, including dismissals and the alleged establishment of "blacklists" by employers which are said to have affected hundreds of workers merely because they wanted to set up trade union organisations or carry out legitimate trade union activities within several enterprises in Haiti, the Committee recalls that one of the basic principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination likely to infringe upon freedom of association in their employment. It also recalls that this protection is particularly desirable in the case of trade union officials because, in order to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions [See 211th Report, Case No. 1033 (Jamaica), para. 303 and Case No. 1063 (Costa Rica), para. 616.].

390. The Committee therefore expresses its serious concern as regards this infringement of the principles of freedom of association and, as it has done on numerous occasions in similar cases, draws the

Government's attention to the fact that the establishment of "blacklists" of trade union officials seriously endangers the free exercise of trade union rights, and it is incumbent on the Government to take measures so as to ensure the full respect for these principles.

391. As regards the dissolution by administrative authority of the CATH, the Committee emphasises the importance it attaches to Article 4 of Convention No. 87 ratified by Haiti, according to which workers' and employers' organisations should not be subject to suspension or dissolution by administrative authority. In the Committee's opinion, dissolution by virtue of administrative powers does not ensure the right of defence which normal judicial procedure alone can guarantee and which the Committee considers essential.

392. Consequently, the Committee is of the opinion that dissolution by administrative authority constitutes a serious violation of the rights of workers' organisations contrary to Convention No. 87.

393. The Committee has been informed that the dissolution of the CATH has been lifted. It nevertheless calls upon the Government to ensure that such practices are not repeated in the future.

394. As regards the arrests and imprisonment of the CATH leaders and activists after a general two-day strike on 22 and 23 June 1985, a strike called by the CATH to pressure, according to the complainants, the Government into improving working and living conditions of workers in the country, the Committee recalls that the right to strike is one of the essential means through which workers and their organisations may promote and defend their economic and social interests. In the Committee's opinion, the authorities should not have recourse to measures of imprisonment for the mere fact of organising or participating in a peaceful strike [See 236th Report, Case No. 1213 (Greece), para. 46.].

395. Consequently, the Committee requests the Government to take the necessary measures to ensure that the competent authorities are given appropriate instructions so as to eliminate the danger to trade union activities that such arrests involve [See 147th Report, Case No. 777 (India), para. 214.].

396. As regards the allegations concerning the ill-treatment and other punitive measures taken against the Haitian trade union activists and officials arrested after the above-mentioned general strike, the Committee has stressed in similar cases in the past the importance it attaches to the right of trade unionists, like all other persons, to enjoy the guarantees afforded by due process of law in accordance with the principles enunciated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

397. Consequently, the Committee considers that the Governments should give precise instructions to ensure that no detainee is

subjected to such treatment and apply effective sanctions where cases of ill-treatment are proven.

398. Concerning the allegation that the premises of the CATH were violently occupied and that trade union equipment, including a sum of money, was confiscated, the Committee recalls that the inviolability of trade union premises implies that the public authorities may not enter these premises without a judicial warrant authorising them to do so. Indeed, it is stated in the resolution on trade union rights and their relation to civil liberties adopted by the International Labour Conference at its 54th Session (1970), that the right to adequate protection of trade union property is one of those civil liberties which are essential for the normal exercise of trade union rights.

399. The Committee also considers that measures of this nature involving the occupation of trade union premises and the confiscation of trade union property constitute a serious interference on the part of the Government in trade union activities and, as such, might give rise to criticism, unless they are accompanied by adequate judicial safeguards applied within a reasonable period. The Committee therefore urges the Government to take the measures necessary so that the authorities concerned receive instructions to ensure respect for the law in this regard and to ensure that the union money allegedly taken away during the army attack be returned to the CATH.

The Committee's recommendations

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

(a) The Committee greatly deplores that the Government has not replied to the serious allegations submitted by the complainants in the present case concerning the repression to which the trade union movement in Haiti is being subjected; these allegations refer to hundreds of dismissals on the ground of trade union activities, the establishment of blacklists, the dissolution by administrative authority of the Autonomous Confederation of Haitian Workers (CATH) notwithstanding the fact that it has resumed its activities since the allegation was made, the arrest and detention of trade union officials and activists, the ill-treatment inflicted on these officials when detained and the violent occupation of the trade union premises and the confiscation of material belonging to the CATH.

(b) The Committee requests the Government to ensure that the material and money of the CATH, which were confiscated during the attack on the headquarters of the Confederation, be returned to that Confederation.

(c) The Committee draws the Government's attention to the fact that a free and independent trade union movement cannot develop in a climate of violence and uncertainty.

(d) The Committee urges the Government to take severe measures to eliminate the danger which such reprehensible anti-union practices imply for trade union activities.

(e) The Committee also urges the Government to take the measures necessary to safeguard freedom of association and civil liberties in Haiti, in accordance with the obligations this country undertook in ratifying Conventions Nos. 87 and 98. It asks it in particular to endeavour to bring about the reinstatement of the many workers dismissed for having wanted to conduct legitimate trade union activities, and to indicate whether judicial inquiries have been instigated into the ill-treatment inflicted on the imprisoned trade unionists, the occupation of the CATH premises and the confiscations carried out on the premises in question. The Committee requests the Government to supply information in this connection.

Case No. 1399

COMPLAINT AGAINST THE GOVERNMENT OF SPAIN PRESENTED BY THE INDEPENDENT TRADE UNION CONFEDERATION OF PUBLIC EMPLOYEES

401. The complaint is contained in a letter from the Independent Trade Union Confederation of Public Employees (CSIF) of 16 March 1987. The organisation sent further information in a letter dated 30 April 1987. The Government supplied its observations in communications dated 11 June 1987 and 14 January 1988.

402. Spain has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

403. The CSIF alleges that Royal Decree No. 1311/1986 of 13 June setting standards for the conduct of elections to representative bodies of workers in the undertaking, allows non-established public employees in public administrations to elect their trade union representatives but that public employees do not have this right. The complainant organisation considers that this is discrimination in

favour of the government trade union, the General Union of Workers (UGT) with the aim of setting up a new unified trade union within the Spanish State - which is contrary to Convention No. 151.

404. The CSIF also alleges that the Ministry of Defence has unilaterally decided that civilians working for its agencies should be given the status of military personnel, which means that they cannot exercise their trade union rights in accordance with the provisions of Act No. 11/1985 on freedom of association.

405. Referring to the promulgation of Royal Decree No. 1671 of 1 August 1986 (to approve the regulations issued under Act No. 4 of 8 January 1986 respecting the transfer of accumulated trade union assets), the CSIF states that its applications for the transfer of property were rejected since, as no general trade union elections had taken place in the public administrations, all applications concerning such transfers had been turned down.

406. The CSIF alleges, furthermore, that its representativity, which the Spanish Government itself had recognised on the basis of the electoral results obtained so far, is not recognised in practice by the various ministerial bodies and governments of the autonomous communities. The CSIF gives the following concrete examples:

- Refusal by the Ministry of Health and Consumption to allow the CSIF to be officially represented in negotiations between the National Institute for Health (a body independent of the Ministry) and the trade union confederations, obliging the CSIF to turn to the low courts. Refusal by the same Ministry to allow the CSIF to take part in joint meetings at the level of the provinces in connection with the integration of the university hospitals within the social security health network.

- Refusal by the Government Council of Andalucia to recognise the representativity of the CSIF for the purposes of negotiating matters concerning the public service in Andalucia.

- Refusal by the Office of the President of the Community of Madrid to allow time off for trade union business in accordance with the agreements signed. The CSIF encloses an order from the President's Office of the said Community under which such leave for trade union purposes should be granted to two CSIF representatives for periods of one month and one-and-a-half months respectively.

- Refusal to allow the CSIF to be represented on the State School Board, the organisation being given only one seat out of 50, which obliged it to turn to the courts of law. The CSIF disputes the three orders of the Ministry of Education and Science dated 23 October 1986 appointing representatives to the State School Board from the group of teachers, from the staff of the administration and services of teaching establishments, and from the trade union confederations.

- Refusal by the General Directorate for Traffic to allow the CSIF to take part in negotiations in the traffic sector.

407. Finally, the letter from the CSIF states that it is common practice for obstacles to be placed in the way of its trade union representatives and it quotes the following situations:

- Failure to fulfil agreements concerning time off for trade union purposes and obstructionism vis-à-vis Mr. Jiménez Blázquez, CSIF president in the province of Cantabria. When Mr. Blázquez applied to the Ministry of Education and Science for time off for trade union purposes, he was put on secondment, whereupon the Provincial Director of Education and Science informed him that if he wished to remain on the School Board of his workplace he would have to give up the secondment.

- Obstructionism and persecution of the CSIF representative at the National Institute for Occupational Safety and Health, Mr. Rufino Jiménez Peña, who was transferred after having been elected as a trade union leader and who, since then, is the only employee in the Institute assigned to "minimum duties" (even though the Institute is not overstaffed and new people are constantly being taken on). Nor is Mr. Jiménez Peña given the necessary facilities (a place where he can speak with members in private, his own telephone and a lock-up desk).

- Obstructionism and persecution of the CSIF representative at the Ministry of Education and Science, Mr. Julio Follana Rodríguez, who, having been granted time off for trade union purposes entailing being completely dispensed from work, was ordered to vacate his office.

B. The Government's reply

408. The Government states that the promulgation of Royal Decree No. 1311/1986 in no way involves discrimination, as it merely implements the provisions of the Workers' Statute and the Act on freedom of association as regards the conduct of elections covering non-established employees. The purpose of the Decree is simply to facilitate the holding of such elections both in private enterprise and in the public administration, in the latter case only for the non-established employees; it does not apply to public employees in the public administration, who are governed by their own statutory regulations under the Constitution (Articles 103.3 and 149.1.18). Article 103.3 of the Constitution, on the subject of the public employees' statute, reproduces the reference in Article 28.1 to the special characteristics of the right of public employees to join trade unions. Workers and employees in the public service constitute two quite separate groups and are covered by different laws under the Constitution. As stated by the Constitutional Tribunal in Ruling

No. 98/1985, constitutional order is not undermined by the fact that public employees have "specific representative bodies and their own procedures for consultation and bargaining". In view of the foregoing it would be difficult to combine elections to bodies representing workers in the undertaking, including those employed by the public administration as workers, with elections - which are not in fact trade union elections - to bodies representing public employees. In short, the fact that the two types of election are held separately and the existence of separate representative bodies are no more than evidence of the necessary existence in Spain of separate legal systems for public employees and non-established workers. Furthermore, the constitutional mandate is thereby fully complied with. In this connection the Government mentions the recent promulgation of Act No. 9/1987 of 12 June on representative bodies, determination of conditions of work and participation by personnel in the service of public administrations. This Act, together with the convening of elections to the representative bodies in the public administration, carried out on orders from the Ministry for the Public Administrations dated 23 July 1987, is a good example of the desire of the Spanish authorities faithfully to carry out their mandate under the Constitution in respect of freedom of association. Lastly, as regards the statements in the complaint concerning alleged intentions to set up new trade unions within the Spanish State, these are mere value judgements made by the CSIF with no arguments to back them up.

409. As regards the allegations of discrimination in respect of trade union assets, the Government states that there has been no discrimination whatsoever in the transfer of accumulated trade union assets. These assets accumulated from the "trade union contribution" existing under the former "vertical trade union system" which was not paid over when the State was the employer. Consequently, the CSIF can hardly claim rights to assets that its members did nothing to constitute. Confirmation of the Spanish Government's correct action in this respect can be seen in a decision of the ILO's Committee on Freedom of Association itself, which stated that the criteria used in the distribution of trade union assets were the right ones. This principle of non-discrimination can be seen in section 6 of the Act respecting freedom of association which provides for the temporary transfer of the use of public property by organisations considered to be most representative trade unions, including the unions of public employees that might come within this definition.

410. As regards the alleged refusal by the Ministry of Health and Consumption to allow the CSIF to be officially represented in National Institute for Health negotiations, the Government states that, in a ruling dated 3 June 1987, the National Court dismissed the case brought by the CSIF, which was required to pay the costs, on the grounds that it had not given proof of its representativity in the specific area of the health sector of the Social Security Department. The ruling states that the fact that an organisation is most representative throughout the whole of the public service does not necessarily mean that it is the most representative union in a specific sector of the administration, such as the aforementioned

health sector of the Social Security Department. The CSIF appealed against this ruling but the appeal was deemed admissible on one point only.

411. With regard to the alleged refusal by the Ministry of Health and Consumption to allow the CSIF to take part in discussions on the integration of the university hospitals, the Government repeats that the Confederation was not the most representative union in the health sector of the Social Security Department and that it had not taken part in the previous negotiations. Once again the Confederation appealed to the National Court against the action of the Government. The ruling is not yet known but it should be pointed out that, as can be seen from the above, the substance of the case is the same as in the preceding paragraph.

412. As regards the allegation that the Government Council of Andalucia refused to recognise the representativity of the CSIF, the Government states that an agreement was reached on this point between the Government Council of Andalucia and the CSIF on 30 July 1987, which implies a return to normal of relations between the autonomous administration and the said trade union organisation (the Government has enclosed a photocopy of the said agreement).

413. As regards the alleged refusal by the President's Office of the Community of Madrid to allow two CSIF representatives time off work for trade union purposes, the Government states that although the agreement of 11 June 1985 betwen the State Administration and various trade union confederations does not impose any obligation on the Autonomous Community of Madrid (which, as its name implies, is autonomous as regards the State Administration), the said Autonomous Community does grant time off to public employees working for it and belonging to the CSIF, as is demonstrated by the decision of the Adviser to the President's Office dated 12 November 1986 and the decisions of the Director-General of the Public Service of the Community of Madrid (the Government encloses photocopies of these decisions).

414. As regards the allegation concerning the membership of the State School Board, the Government states that the CSIF has challenged three Ministerial Orders on this issued by the Ministry of Education and Science on 23 October 1986 in accordance with the terms of sections 9.1 and 10.1 of Royal Decree No. 2378/1985 of 11 December regulating the State School Board, which was set up by Act No. 8/1985 of 3 July concerning the right to education. The first of these Orders appoints 12 titular members, and the same number of substitute members, representing groups of teachers in public education and a further eight in private education. In making these appointments, the only requirement the Ministry was obliged to observe, and which it took into account, was that the representatives of the teachers' group had to be nominated by trade union confederations or organisations which, in accordance with the legislation in force, were considered to be most representative (section 9(1)(a) of the above-mentioned Royal Decree). In this respect it should be remembered that the status of

"most representative union" is established in Act No. 11/1985 of 2 August on freedom of association, section 6.2 of which provides that the most representative unions are those which obtain a minimum percentage of votes in elections at the relevant level; in this particular case it is the national level that is involved, given the coverage of the State School Board. As regards the appointment of representatives of the first group of teachers (i.e. in public education), the Ministry of Education and Science was not able to use this criterion directly since trade union elections have not yet been held in the education sector of the public administration. Consequently, it referred to the results of the trade union elections at the national, general (non-public servant) level. These elections clearly show the most representative trade union bodies to be, firstly the Workers' Committees (CC.OO.) and General Union of Workers (UGT), followed by the ELA-STV and "Intersindical Galega". Taking these results into account and wishing to promote the maximum participation and representation of groups on the advisory body, that is the State School Board, the Ministry of Education and Science deemed it advisable to give some representation to other trade union organisations with which it had contacts and held negotiations on various subjects of interest within the teaching sphere of the public service. This is why it also offered a representative seat, in the teachers' group, to each of the following organisations: ANPE, CSIF, UCSTE and FESPE. As regards representatives of the groups of teachers in private education, seats were offered to the trade union organisations which had come out as most representative in this sphere, namely: UGT, USO, FSIE, UTEP (a coalition of the CC.OO. and UCSTE) and FESITE-USO.

415. As regards the second Ministerial Order that was contested, concerning the appointment of members of the State School Board for the group of personnel of the administration and services of teaching establishments, the Government states that it was obliged to grant representation to the trade union groups established both in the sector of administrative staff and in that of service personnel, in both public and private teaching establishments, since the order covers both categories. This double condition and guarantee of representativity was met only by the General Union of Workers (UGT) and the Workers' Committees (CC.OO.) and the Ministry abided by this criterion. It should not be forgotten in this connection that the CSIF, although enjoying some support in the sector of public teaching establishments, does not have the same support as regards the private schools, and moreover, even if it is established in the sector of administrative staff of public teaching establishments, is not so established as regards the service personnel of these same public teaching establishments.

416. As regards the third Ministerial Order, concerning membership of the State School Board representing the trade union confederations group, the Government states that the Ministry of Education and Science, in appointing representatives of this group, considered that the term "trade union confederations" referred to trade union organisations at the national (and global as regards their

trade union activities) level which, consequently, were not restricted to the education sector. This being the case, and in view of the figures of the recent elections in which the General Union of Workers (UGT) and the Workers' Committees (CC.OO.) came out far ahead, the Ministry divided the representative seats between these two organisations on a fair and proportional basis since they were clearly the most representative.

417. Furthermore, the Government states that the General Directorate of Traffic has not denied the CSIF the possibility of setting up trade union sections, holding meetings, collecting contributions and distributing trade union information; it also receives the information put out by this union. Noticeboards have always been available to the Confederation at all times and when it has asked for trade union premises it has obtained them. Thus it should be emphasised that the Confederation has held information meetings on the premises of the above-mentioned Directorate without any particular requirements having to be met as regards authorisation. Finally, it should be pointed out that the General Directorate of Traffic has an internal agreement with the trade union section of the UGT, to which the CC.OO. subseqently adhered, for holding periodical meetings for information and the exchange of viewpoints on subjects of mutual interest and that, although the CSIF expressed its wish to adhere to this agreement, it has at no time indicated which of the members of its trade union sections would attend the meetings. Consequently, since there was no representative on the spot with whom to hold such meetings, the Directorate did not convene the CSIF until it was informed that there was a trade union section in the central traffic services, at which time the two accredited members of the section were invited to the most recent meeting on 1 October 1987. Both members accepted.

418. As regards the claim made by the CSIF that Mr. José Jiménez Blázquez, a teacher at the Santa Clara Secondary School of Santander, who was elected to the school board of this establishment (an eminently educational body), is still an active member of the board, despite having been granted time off for the exercise of trade union activities, which dispenses him from going to work and giving classes, the Government gives the position of the teaching administration. It believes that if Mr. Jiménez Blázquez wished to continue to be a member of the school board and take part in the teachers' meetings he had to forego the time off for trade union activities and take part in the teaching work; this is because if a teacher is chosen by his colleagues to be a member of a representative body of a teaching establishment, it is essential for him to be in constant contact with the whole educational community of the establishment, i.e. the other teachers, the pupils and their parents. Either Mr. Jiménez Blázquez wanted to continue devoting himself to trade union activities, being fully dispensed from going to work, or he chose to resume his teaching work and the rights inherent in his status as an active member of the school board and the teaching staff.

419. As regards the allegations of discrimination against Mr. Rufino Jimeno Peña by the National Institute for Occupational Safety and Health, the Government states that the job changes alleged by him were not based on his having been elected as a trade union leader but on structural reorganisation within the Institute. The list of posts at the National Institute for Occupational Safety and Health, published in the Official Gazette of 14 March 1986, includes 439 "minimum duties" jobs on different scales, including 65 at level 11, like that presently held by Mr. Jimeno. This list was drawn up, in accordance with the regulations, regardless of who would eventually occupy these posts. The latter were filled on the basis of the qualifications of the applicants for each specific job. The "minimum duties" posts consequently have nothing to do with personal situations, as alleged by Mr. Jimeno, but correspond to purely structural and even budgetary criteria. The positions above the "minimum duties" level were established in accordance with the provisions of section 20 of Act No. 30/1984 of 2 August on the reform of the public service. The posts were filled, consequently, in one of two ways: through competitions (in which Mr. Jimeno did not take part) or by free appointment. All the vacancies that were announced in the latter case were published in the Official Gazette. Under this latter system applicants send their curriculum vitae together with documents in support of their application. A committee appointed by the Directorate of the Institute evaluates the applications in the light of the post to be filled, and chooses the applicant who, by virtue of his training, qualifications and professional experience (as demonstrated by work and publications) meets the requirements for the job; in this way some of the employees chosen are members of the CSIF. It must not be forgotten that the National Institute for Occupational Safety and Health, by its very nature, is designed solely to prevent occupational hazards and this multidisciplinary task is undertaken by specialists in such areas as engineering, chemistry, medicine, psychology, agronomy, etc., who co-operate to raise the level of safety and health and improve conditions of work from the health point of view. This work is backed up by other activities of a mainly administrative nature in the area of personnel management and administration. Mr. Jimeno, who has a degree in Philosophy, as can be seen from his personal file, has no experience in the field of preventing occupational hazards or improving conditions of work, nor even as regards personnel management or administration. This makes it easy to understand that if so far he has not reached a senior position within the Institute, this is not because of trade union discrimination, but because there are better qualified specialists to pursue the aims of the National Institute of Occupational Safety and Health. The management of this Institute has, on various occasions, sought to entrust Mr. Jimeno with specific duties but has come up against the difficulty, described by the heads of the relevant sections, of his lack of specific training for working in their departments. On other occasions the duties that might have been entrusted to Mr. Jimeno would have entailed a downgrading since they corresponded to lower-grade employees.

420. As regards the trade union activities of Mr. Jimeno and the CSIF the Government states that for over ten years a furnished office has been available to trade union sections and occupational associations, for their exclusive use, with no limitations whatsoever. Since then the office has been used by trade union representatives and members, including Mr. Jimeno's organisation, without any problems or complaints.

421. It is true that Mr. Jimeno approached the management of the Institute, asking for an office to himself with an outside telephone line, a soundproofed door and his own set of keys. This request had to be turned down by the management, just as it would refuse any similar request from any other employee regardless of which union he belonged to. Lack of space prevents this type of request being granted and the use of outside telephone lines is reserved for posts which, by their nature, makes this essential. Nevertheless, and contrary to what is stated by Mr. Jimeno, he actually enjoyed considerable personal independence. It must be added, lastly, that the CSIF takes part in the work of all the committees within the Institute in question and that it has its own notice-board.

422. As regards the allegation that the Director-General of Personnel and Services of the Ministry of Education and Science impeded the trade union activities of Mr. Julio Follana Rodríguez, by ordering him, although he had been given leave from work to undertake trade union activities, to give up the office he was occupying, the Government states that the Administration's position is that it needed the office for the employee who was to replace Mr. Follana. It should not be forgotten that at the Ministry's main office (34 Alcalá Street) there is a trade union office that may be used by union officials.

C. The Committee's conclusions

423. The Committee notes the explanations provided by the Government concerning the elections to representative bodies in the State Administration, the transfer of accumulated trade union assets, the exclusion of the CSIF from negotiations in the health sphere, leave for trade union activities in the Community of Madrid and the allegations of obstructionism on trade union grounds in respect of Mr. Jiménez Blázquez, Mr. Rufino Jimeno and Mr. Julio Follana.

424. The Committee observes that the questions raised by the complainant organisation as regards the attitude of the Government Council of Andalucia and the General Directorate of Traffic towards the CSIF may be considered to have been resolved by, respectively, the agreement between the CSIF and the Government Council of Andalucia, dated 30 July 1987, and the invitation extended to the CSIF by the General Directorate of Traffic to take part in the meetings for information and exchanges of views in which other confederations participate.

425. As regards the membership of the State School Board on which the CSIF maintains that it was given only one seat out of 50, the Committee notes that the Government in its reply states that in one of the groups making up the State School Board it was not possible to use the criterion of "most representative union" at state level as regards public education since, at the time the Board was established, trade union elections had not yet been held in the education section of the public administration. The Committee has noted that elections of trade union delegates in the public administration were held recently and expresses the hope that the outcome of these elections will be reflected in the membership of the State School Board. Furthermore, the Committee notes that as regards another of the groups making up the Board, i.e. the trade union confederation group, the Ministry of Education and Science, in appointing representatives for this group, has borne in mind the fact that the term "trade union confederations" refers to trade union organisations at the national level. The Committee expresses reservations as regards the application of this criterion in so far as it allows for organisations which are broadly representative at the national level in the sphere of education but which do not operate in all sectors to be excluded from the group of representatives of trade union confederations on the State School Board. The Committee, however, does not have detailed information on the representativity of the CSIF in the teaching sector nor on the outcome of the recent trade union elections in the public administration; consequently it is not in a position to give its opinion on the question of the CSIF's participation in the trade union confederation group of the State School Board. The Committee trusts that in future the views it has expressed will be taken into account if the hypotheses considered arise.

426. Lastly, the Committee requests the Government to reply to the allegation that the Ministry of Defence has unilaterally given the status of military personnel to civilians working for it who, therefore, cannot exercise trade union rights in accordance with Act No. 11/1985 on freedom of association.

The Committee's recommendations

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

(a) The Committee requests the Government to take account in future of the criteria concerning representativity for membership of the trade union confederation group of the State School Board, namely that majority organisations or organisations that are largely representative at the national level in the education sector should not be excluded.

(b) The Committee requests the Government to reply to the allegation that the Ministry of Defence unilaterally granted the status of military personnel to civilians working for it, who are not therefore able to exercise trade union rights in accordance with Act No. 11/1985 on freedom of association.

Case No. 1403

COMPLAINTS AGAINST THE GOVERNMENT OF URUGUAY PRESENTED BY - THE SINGLE NATIONAL TRADE UNION OF WORKERS IN THE CLOTHING INDUSTRY - THE INTER-UNION WORKERS' ASSEMBLY AND - THE NATIONAL WORKERS' CONVENTION

428. The complaint is contained in communications dated 25 March and 14 May 1987 from the Single National Trade Union of Workers in the Clothing and Allied Industries (SUA-VESTIMENTA), the Inter-Union Workers' Assembly and the National Workers' Convention (PIT-CNT). SUA-VESTIMENTA submitted new allegations in communications dated 3 August and 2 September 1987. The World Federation of Trade Unions (WFTU) supported the complaint in a communication dated 9 September 1987. The Government sent certain observations in communications dated 8 and 23 October 1987.

429. In its communications the Government stated that it would be sending the report of a committee of inquiry set up to determine the truth of the allegations brought before the Committee on Freedom of Association. Nevertheless, the Government requested the Committee to examine the aspects of the complaint concerning the right to strike of public officials and state employees contained in the communication from the complainants of 14 May 1987.

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

A. The complainants' allegations

431. The complainant organisations allege that Act No. 13720 of 16 December 1968, which in their opinion is unconstitutional, infringes the right to strike under section 4 by establishing that "in the case of public services, including those administered by private individuals ... the Committee (at present the Ministry of Labour and Social Security) may indicate, after stating the grounds for its decision, ... those essential services which must be maintained in

operation by emergency shifts and whose interruption would determine the unlawful nature of a strike"; the Act goes on to stipulate that "in the case of interruptions in essential services, the public authority may take the necessary steps to maintain these services, including having recourse to the use of the equipment and the hiring of outside workers that are indispensable to maintain the services in operation, on the understanding that the relevant legal sanctions continue to be applicable to the staff concerned". The complainants point out that the provision is so worded that all public services might be considered essential, in so far as the text neither defines the type of activity concerned nor requires any justification for its being deemed to be essential.

432. The complainant organisations add that under Act No. 13720, and contrary to the principles of the ILO, the following have been declared as essential services: services carried out by the Social Security Directorate (Ministerial Resolution of 28.5.86); services carried out by the National Customs Directorate (Ministerial Resolution of 29.5.86); loading and unloading and similar activities (Ministerial Resolution of 25.6.86); and services carried out by the National Fuel, Alcohol and Portland Cement Administration (ANCAP) (Ministerial Resolution of 3.12.86).

433. As regards the declaration of the services carried out by the Social Security Directorate as essential, the complainant organisations deny that these are essential in the strict sense of the term and point out that, apart from the fact that at the time the dispute had reached a point when agreement between the parties seemed highly unlikely, the Ministry of Labour's intention in consulting the PIT-CNT had been to reach consensus on its decision to declare the service essential. As to maintaining the health service in operation, the trade union organisations have their own procedure in the event of a dispute and organise shifts to keep the service going so as not to endanger the population. Similarly, as part of its contingency programme, the trade union organisation had provided for the payment of social security benefits. Furthermore, the Ministerial Resolution states that "the running of essential services requires the functioning of other indispensable support services, and these are therefore likewise essential". Thus, related services are also declared to be essential.

434. The complainant organisations point out that, as regards social security, the Government's note calling for the consultation had already classified certain services as essential in advance. Despite this serious fault on the Government's part, the trade union organisation to which the workers concerned belong agreed to participate in the dialogue (26.5.86). The Government announced publicly that "it would not enter into discussions with unofficial groups of workers" and that "it would not give in to their demands"; it also publicly refused mediation by the Committee on Labour Legislation of the Chamber of Deputies. The fact that the entire staff of the Raigon Holiday Camp, including 26 caretakers, nine administrators and 18 members of the personnel office, were listed as

performing essential services shows clearly how the Government has deliberately misinterpreted and distorted the situation in the social security sector.

435. The complainant organisations further state that, in the case of ANCAP, the staff on the boats servicing oil-tankers decking at the mooring buoy were listed as performing essential services, even though no tanker was due two months; even the painting of the mooring buoy was declared to be an essential service. ANCAP also attempted to oblige staff entering the factory to sign an undertaking not to resort to trade union action; 13 out of the 17 trade union officials were thus denied entry during the dispute. Thirty workers were arrested for having obeyed strike orders. Once the ANCAP dispute had ended, all kinds of discriminatory measures were taken against the strikers, including sanctions, legal proceedings and transfers. The army was called in to fight the strike and defend the Government's position. The complainants enclose copies of three decisions by the ANCAP Board dated 18 December 1986, one penalising officials who took part in the dispute, a second expressing approval of those officials who had not taken part in the dispute, and a third approving the payment of overtime to these officials, and of a decision of 3 December 1986 summoning all the officials who had taken part in the dispute and suspending those who did not come forward.

436. The complainants conclude by stating that Act No. 13720 is an attempt to regulate strikes by administrative orders, in other words to restrict a basic right and an essential public freedom by orders emanating from the public authority - which leaves both the individual citizen and the organisations that are entitled to strike without any defence. The only way to contest administrative orders stipulating the essential nature of services is through the ordinary appeals procedure, but this does not have the effect of suspending the order and is therefore useless as a defence; besides, the time-limits within which the State has to rule on an appeal are very broad, which far from offering any kind of a guarantee is purely and simply a denial of justice.

B. The Government's reply

437. The Government states that section 4 of Act No. 13720 does not empower the Ministry of Labour and Social Security to ban public officials from striking but only to restrict its exercise by determining, if need be, which essential services must be maintained by emergency shifts. In the opinion of this Ministry, its restrictions concern essential services in the strict sense of the term (i.e. whose interruption would endanger the life, personal safety or health of the whole or part of the population), as well as those services which might, by extension, become essential because of the extent of the consequences of their interruption or because of the particular circumstances in each case, in so far as they would

endanger the normal living conditions of the population. The Government develops a number of arguments to show that section 4 of Act No. 13720 is constitutional. It observes that no action of the type provided for in the Constitution has been brought to have section 4 of the Act declared unconstitutional and that the complainants have not made use of the administrative and judicial appeals procedures provided for in Uruguayan legislation against the ministerial decisions imposing a minimum service in the four above-mentioned cases (payment of social security benefits, customs, port loading and unloading services, and fuel and alcohol supplies). The Government states that it agrees with the Committee's criteria with respect to the conditions for organising a minimum service and the participation of workers' organisations in these arrangements. The Government states that each time the Ministry of Labour and Social Security has had to make use of the power conferred upon it by the law to establish a minimum service, it has given orders (though in vain because the complainant organisations consider that it is the prerogative of the workers' organisations themselves to organise minimum services through their own procedures) for the workers' representatives to be convened in order to determine the essential services that have to be maintained by emergency shifts as long as the work stoppages last.

438. With regard to the General Social Security Directorate (now known as the Social Welfare Bank), the Government states that, as an interruption in the payment of pensions and other social security benefits endangers the normal living conditions of a large sector of the population and its subsistence level, the Ministry of Labour and Social Security requested the Director-General of the Social Security Directorate on 19 May 1986 to convene the workers' representatives to determine the services which should be maintained by emergency shifts to safeguard the payment of pensions and other social security benefits and health assistance. As the workers' representatives refused to take part, the Ministry of Labour and Social Security took a decision on 28 May 1986, in accordance with the provisions of section 4 of Act No. 13720, in which it declared the essential public services to be maintained by emergency shifts so as to guarantee the payment of old-age pensions, annuities, unemployment benefits and other cash benefits paid directly to the social security beneficiaries and to provide hospital services and medical care. The emergency shifts which, in view of the trade union organisation's refusal to co-operate, were decided upon unilaterally by the General Social Security Directorate, consisted of only 1,680 officials, a mere 27 per cent of the total staff. Furthermore, only minor disciplinary sanctions were imposed on officials who had refused to participate in the emergency shifts at the Directorate's administrative headquarters.

439. As regards the National Customs Directorate, customs activities are an integral part of the State's financial police force, and as an essential responsibility of the State, can be directly exercised only by the State itself. The National Customs Directorate includes all the customs services throughout the country and its officials belong to a category of civil servants working for an administration with respect to which the Committee has acknowledged

the possibility of a ban on strike action. Nevertheless, when the dispute caused by the National Customs Directorate officials arose, the Ministry of Labour and Social Security, in the beginning, considered it inappropriate to ban the strike and decided to set up a minimum service to guarantee the dispatch of all perishable goods and raw materials, as well as manufactured goods, the lack or shortage of which would endanger the normal living conditions of the population. To this end and in accordance with the general conditions governing the application of section 4 of Act No. 13720, established by the Ministry of Labour and Social Security, the workers' representatives were convened on 28 May 1986 to determine the services to be maintained by emergency shifts. The Association of Customs Officials replied in a note of the same date that it was not its responsibility to define the concept of essential services in this case and that the matter should be determined by the legislative or constitutional bodies concerned. In the face of this refusal, the Ministry of Labour and Social Security made use of the powers conferred upon it by section 4 of Act No. 13720 and stated, in a decision dated 29 May 1986, that "the processing of the usual formalities and documents concerning the import, export and transit of perishable goods, raw materials and manufactured or semi-manufactured goods, the lack or shortage of which might run the risk of causing a collective disaster for the society as a whole or endanger the life, personal safety and health of part or all of the population" must be guaranteed as a minimum service. No sanctions were imposed during this dispute.

440. As regards loading and unloading in ports, the Government points out that these services are provided by private workers registered with the labour exchange and that it is the responsibility of the National Docks Administration (ANSE) to administer and control these lists. The collective dispute which gave rise to the resolution cited in the present complaint and which resulted in the strike of the dockers brought all harbour services to a halt. Nevertheless, the Ministry of Labour and Social Security bore in mind that the Committee on Freedom of Association has stressed on several occasions that in normal circumstances general dock work does not appear to be essential in the strict sense of the term in so far as its interruption would not endanger the life, personal safety or health of the whole or part of the population. However, it realised that, with the extension and duration of the strike, the total stoppage of dock work might bring about a crisis in which the normal living conditions of the population might be endangered. This was particularly the case for the export of perishable goods currently under way, as well as for the import and export of raw materials the lack or shortage of which might run the risk of causing a collective disaster for the society as a whole. In these circumstances, the Ministry of Labour and Social Security considered that it was lawful, in both cases, to set up a minimum service limited exclusively to the operations that were necessary for the normal living conditions of the population not to be endangered. It is for this reason that it convened the workers' organisations to decide upon the minimum services which should be guaranteed by emergency shifts. Given the refusal of the workers' representatives, who made the acceptance of their basic claims a condition for their

participation, the Ministry of Labour and Social Security, by a resolution of 25 June 1986, decided that loading and unloading services and other directly related activities having to do with perishable goods, raw materials and manufactured and semi-manufactured goods the lack or shortage of which might run the risk of causing a collective disaster for all or part of the society and endanger the life, personal safety and health of the whole or part of the population, should be maintained in operation by emergency shifts. In fact, this resolution was not implemented because on the following day, 26 June 1986, the dispute ended and an agreement was signed, with the participation of the Ministry of Labour and Social Security itself, stipulating that no sanctions would be imposed.

441. As regards the services provided by the National Fuel, Alcohol and Portland Cement Administration (ANCAP), the Government states that Uruguay does not produce petroleum and that all its needs are met by importing crude oil which is refined within the country. All means of transport, with the sole exception of a small trolleybus service in the capital, depend upon an adequate supply of fuel. There are no electric railways and Uruguay does not produce any natural gas. Only a very small area of Montevideo has a mains gas system. In the other areas, the population uses propane gas. ANCAP, a state enterprise which plays a key role in the country's economy, holds the legal monopoly for importing and refining crude oil and petroleum by-products. This monopoly also extends to the import of all liquid, semi-liquid and gaseous fuels, whatever their state and composition. As a result, all fuels derived from petroleum used in the country are refined or imported by ANCAP. Private companies in Uruguay only distribute to the public the fuels imported or refined by ANCAP, which is the sole supplier. ANCAP also holds the legal monopoly for the import, manufacture and marketing of alcohols.

442. According to the Government, when the ANCAP officials announced their dispute, the one and only petrol refinery in the country had already been out of operation for several days for technical reasons. This stoppage, which is necessary from time to time, had been planned in advance and the necessary amount of fuel had been stored so that supplies could be maintained during the interruption. Obviously, these supplies were limited by the available storage capacity and were intended to cover the normal duration of the technical operations to be carried out in the refinery. To begin with, the action taken by the officials involved in the dispute took the form of partial work stoppages which were so frequent that they interfered with the maintenance work that was under way in the refinery, which meant that the work in fact took longer. Thereupon, the mere announcement that the strike was to be officially declared brought about an artificial increase in demand that immediately provoked a crisis in the normal supply of fuel to the public. Had the situation continued, there was a danger that stocks might run out, especially since, as already pointed out, even the importation of refined petroleum products could only be carried out by ANCAP. It was therefore obvious, in these circumstances, that the interruption of services would create a crisis that was liable to endanger the normal

living conditions of the population. It should also be stressed that the Ministry of Labour and Social Security had, quite normally and sufficiently in advance, advised the Board of the National Fuel, Alcohol and Portland Cement Administration (ANCAP) to convene the workers' organisation to discuss and draw up an agreement concerning the services to be maintained in the event of a dispute. This was done in September 1986, whereupon the trade union organisation replied that it did not accept the interference of either the Government or the employers in deciding how it was to conduct its defence of the workers' interests and consequently would not discuss with the Board what services should be maintained during a dispute with the management, adding that the matter would be decided in each case at the assemblies of the organisation. As any hope of reaching an agreement on minimum services was thus out of the question, and in view of the announcement of more and more work stoppages by ANCAP officials, the Ministry of Labour and Social Security, making use of the powers conferred upon it by section 4 of Act No. 13720, decided which ANCAP services should be maintained in operation by emergency shifts. The latter affected a total of 557 officials, scarcely 7.78 per cent of the total number of workers. Furthermore, considering the complainant's allegations, it must not be forgotten that the officials assigned to emergency shifts who did not report for work were subjected only to disciplinary sanctions of a purely administrative nature; this took the form of a suspension of their duties, with a corresponding loss of remuneration, but at no time were those involved deprived of their freedom. The arrest of strikers referred to by the complainant occurred because they were intimidating distributors outside the workplace; only the strict minimum of arrests were made and the judicial authorities took immediate action.

C. The Committee's conclusions

443. The Committee notes that in the present case the complainant organisation objects to the declaration of certain services as essential and the ensuing imposition of minimum services by resolutions of the Ministry of Labour issued in 1986 under section 4 of Act No. 13720, in connection with strike action taken by public officials and state employees in the National Social Security Directorate and the National Fuel, Alcohol and Portland Cement Administration and by dockers. In the complainant's view, section 4 of the Act is unconstitutional and empowers the Ministry to decide unilaterally that any public service is essential and therefore subject to minimum service requirements. The Committee notes that the Government argues that section 4 of Act No. 13720 is constitutional and that the establishment of a minimum service under this Act in the sectors concerned was carried out in accordance with principles formulated by the Committee on Freedom of Association. The Government also stresses that the trade union organisations did not make use of the existing legal channels open for them to contest the Act or administrative resolutions.

444. The Committee wishes to point out that it is not within its competence to pronounce on the constitutionality of the Act objected to by the complainant. However, in so far as it is applied in practice, the Committee must examine whether this Act and the administrative measures taken under it are in accordance with the principles of freedom of association. In this respect, the Committee, whilst noting the criteria for the application of the legislation in question that the Ministry of Labour claims to observe, feels bound to express its concern at the wording of section 4 of Act No. 13720. The wording, as pointed out by the complainant organisation, can be applied to any public service which may then be required to provide a minimum service in the case of a strike; this is in open contradiction with the principles of the Committee concerning the nature of the services in which such a restriction is admissible. Consequently, the Committee requests the Government to take the necessary measures so that the establishment of minimum services in the case of strike action is legally possible only in services where the interruption might endanger the life, personal safety or health of the whole or part of the population or in services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population.

445. In the present case, as regards the minimum services established by administrative authority during strikes in the social security, customs, dock work and fuel supply sectors, the Committee wishes to recall the principles which it has repeatedly formulated on the matter and which must be seen as affording a minimum guarantee for the exercise of the right to strike, without prejudice to the possibility of individual national systems providing for a greater degree of protection of the exercise of the right to strike in their legislation and practice.

446. On previous occasions, the Committee has considered it legitimate for a minimum service to be maintained in the event of a strike the extent and duration of which might be such as to result in an acute national crisis endangering the normal living conditions of the population. Similarly, the Committee has pointed out that, to be acceptable, the minimum service should be confined to operations that are strictly necessary to avoid endangering the life, personal safety or health of the whole or part of the population and that, furthermore, the determination of minimum services should involve not only employers and the public authorities but also workers' organisations [see 234th Report, Case No. 1244 (Spain), paras. 153 to 155]. This not only allows a careful exchange of viewpoints on what in a given situation can be considered as minimum services limited to the absolutely essential, but also contributes to guaranteeing that the scope of the minimum services does not result in the strike becoming ineffective in practice because of its limited impact and to dissipating possible impressions in the trade union organisations that a strike has come to nothing because of over-generous and unilaterally fixed minimum services [see 244th Report, Case No. 1342 (Spain), para. 154].

447. In the Committee's opinion, the branches of activity in which the strikes referred to in the present case were declared fulfilled on the whole the requirements of the aforementioned principle concerning the acceptability of establishing minimum services. Nevertheless, upon reading the administrative resolutions impugned by the complainant organisation and taking into account the various aspects of the complaint to which the Government made no specific reply, concerning the actual extent of the minimum services (particularly in the social security sector - in which, for example, the entire staff of the Raigon Holiday Camp were allegedly affected - and in ANCAP where the painting of mooring buoys for oil-tankers was allegedly declared essential), the Committee does not exclude the possibility that excessive minimum services were established, even if this is somewhat attenuated by the fact that the trade union organisations, which considered that Act No. 13720 was unconstitutional and claimed that it was their responsibility to provide the necessary minimum services during the dispute in accordance with their own procedure, did not accept the Ministry of Labour's proposal to take a joint decision on these minimum services. The Committee emphasises that in cases such as this a definitive ruling on whether the level of minimum services was indispensable or not - made in full possession of the facts - can be pronounced only by the judicial authorities, in so far as it depends, in particular, upon a thorough knowledge of the structure and functioning of the enterprises and establishments concerned and of the real impact of the strike action.

448. The Committee expresses the hope that in the future matters relating to minimum services might be resolved through dialogue.

The Committee's recommendations

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

(a) The Committee requests the Government to take steps with a view to amending section 4 of Act No. 13720 in order to bring it into conformity with the above-mentioned principles relating to minimum services.

(b) The Committee expresses the hope that in the future matters relating to minimum services might be resolved through dialogue.

(c) The Committee requests the Government to send as soon as possible the report - which it announced it would send - of the committee of inquiry set up to determine the truth of the other allegations contained in the present complaint.

Case No. 1406

COMPLAINT AGAINST THE GOVERNMENT OF ZAMBIA PRESENTED BY THE ZAMBIA CONGRESS OF TRADE UNIONS

450. In a communication dated 15 May 1987, the Zambia Congress of Trade Unions (ZCTU) presented a complaint of violations of trade union rights against the Government of Zambia. It presented further allegations in communications of 24 September and 19 October 1987. The Government supplied its observations in communications dated 26 October and 9 November 1987 and 5 January 1988.

451. Zambia has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); it has ratified the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

452. The ZCTU, in its communication of 15 May 1987, firstly alleges that the Government has, since a 1983 decision communicated to the complainant in March 1984, banned labour leaders from addressing workers during May Day celebrations without providing substantial reasons. It claims that this constitutes interference in trade union activities contrary to Convention No. 87 and also violates Zambia's constitutional provisions guaranteeing freedom of assembly and association. It explains that, during May Day festivities prior to the ban, labour leaders had occupied a significant place on the platform giving speeches confined to socio-economic subjects. The Government, however, had accused them of using the occasion to insult the country's leadership.

453. According to the ZCTU, in 1986 it proposed a review of the way Labour Day was celebrated, but was informed by the authorities it contacted (the Minister of Labour and the Secretary-General of the ruling United National Independence Party) that it was not for them to meet the Congress or make a decision. Faced with this inaction, the Congress General Council decided in February 1987 that if the status quo were to be maintained, the labour movement would refrain from participating in the May Day celebrations. Both the Party Secretary-General and the President protested this position taken by the Congress; labour leaders were accused in the press of receiving financial assistance for the purpose of fomenting discontent among the people. The President even threatened to invoke his constitutional powers to dissolve the Congress, states the ZCTU.

454. Secondly, the complainant alleges that, in practice, strikers and strike leaders can be dismissed in violation of the protection enshrined in Convention No. 135, ratified by Zambia. The ZCTU points out that such a possibility also infringes the Zambian Industrial Relations Act which guarantees workers the right, at any appropriate time, to take part in union activities including strikes. From newspaper clippings attached to the complaint, it appears that, after a series of allegedly "illegal" strikes in March/April 1987, employers were empowered to fire strikers and to have them reapply for employment.

455. Thirdly, the complainant alleges that the Government has interfered in trade union affairs by authorising the ruling political party to organise training of labour leaders overseas without the knowledge or approval of the ZCTU or its affiliates. It encloses a copy of an administrative circular sent by a district council to all trade unions in its area requesting the names of all trade union leaders so as "to enable the Party to consider labour leaders for courses abroad", as well as a copy of the Congress' objection to this approach. It also supplies a copy of the reply sent on 12 January 1987 by the Secretary-General of the United National Independence Party to the ZCTU in which he states:

> I hope that you are not objecting to the Party selecting candidates to go for courses either internally or abroad if some of these candidates are members of the Trade Union Movement. As you are aware, in the past we have recruited people for Home Guard, National Service or Political Education training without necessarily consulting everyone involved. The same is also true for those who we have selected to go for courses outside the Republic of Zambia. The Party would be the last organisation to undermine a Trade Union Movement. The Party values the existence of the Trade Union greatly. Past history confirms this. I hope that this clears any fears that might have arisen.

456. In this connection the ZCTU stresses its commitment to worker education through the resources and agencies at its disposal. It believes, however, that it is entitled to know the nature of the training for which its members are chosen and, above all, to be consulted whenever the Party proposes to train union leaders abroad or locally.

457. In a telex dated 24 September 1987, the ZCTU complains that upon their return from the 73rd Session of the International Labour Conference in June 1987, the passports of the ZCTU Secretary-General, Mr. N.L. Zimba (deputy Workers' member of the ILO Governing Body), and Chairman, Mr. F.J. Chiluba, were confiscated by the Government without any reasons being given. It requests the return of the passports as a matter of urgency. On 19 October 1987, the Secretary-General of the ZCTU informed the ILO that both his and Mr. Chiluba's trade union activities - particularly overseas visits - were still severely curtailed by the confiscation of their passports. Mr. Zimba feared that, despite the ILO invitation to take part as deputy member in the

238th Session (November 1987) of the Governing Body, he would be prevented from leaving Zambia.

B. The Government's reply

458. In its communication of 26 October 1987, the Government states that the confiscation of the passports of Messrs. Chiluba and Zimba was not done out of malice; there were good reasons why the authorities took the passports when these two persons returned from the International Labour Conference. Foremost, states the Government, it must be appreciated that both persons are Zambian citizens and that the Government has discretionary powers to issue or withdraw passports from its nationals depending on certain circumstances. The Government states that it also reserves the right to handle its citizens in its own way without undue interference. It adds that both men are free to appeal to the authorities for the reissuing of passports to them.

459. On 9 November 1987 the Government responded to an ILO cable of 29 October which reflected the grave concern of participants in the Fourteenth International Conference of Labour Statisticians with regard to the absence of Mr. F.J. Chiluba, who had been named by the Governing Body as a Worker representative for that Conference (which lasted from 28 October to 6 November). The Zambian Government stated that it was unable to give assurance of the participation of Messrs. Chiluba and Zimba in the Fourteenth International Conference of Labour Statisticians and the Governing Body session, respectively. It emphasised that the confiscation of passports from these two persons had nothing to do with their trade union activities but with security; the matter was not negotiable. It stated that the policy of the Republic of Zambia was to make the trade union movement strong and effective, but it had to be recognised that the trade union movement in Zambia was not only made up of Messrs. Chiluba and Zimba. It added that the participation of a Workers' representative from Zambia in the Fourteenth International Conference of Labour Statisticians would have been possible if there had not been insistence that it should be Mr. Chiluba. According to the Government, there were many other trade unionists in Zambia who would have benefited from attendance at the Fourteenth International Conference of Labour Statisticians.

460. In its letter of 5 January 1988, the Government points out that it has not ratified Conventions Nos. 87 and 98, but adds that by its membership of the ILO the Republic of Zambia does respect some principles of freedom of association and the right to organise. It adds that trade unions in Zambia are established by virtue of article 23 of the Constitution and the provisions of the Industrial Relations Act (IRA). Section 4 of the IRA grants an employee the right to take part in the formation of a trade union, to participate in the union's activities and to election or appointment to trade union office. Penalties through court action exist for contravention of this

section. The Government stresses that, in practice, workers in Zambia do enjoy the rights bestowed upon them by section 4 of the IRA. It considers that the allegations made in this complaint are without any basis at all.

461. With regard to Labour Day, the Government explains that it is celebrated on 1 May and has been declared a national public holiday; the day has been set aside to honour all workers, not only wage-earning workers or unionised workers, for their contribution to the development of the country. The organisation of the 1 May celebrations is jointly undertaken by the labour movement, employers' organisations and government representatives. It is, therefore, incorrect to say that the labour movement does not take part in the organisation of the occasion.

462. According to the Government, May Day in Zambia is characterised by march pasts and rallies where awards are given to deserving workers and usually a high-ranking officer officiates at these functions. However, in 1985, the Government banned trade unionists from addressing May Day rallies because experience had shown that the occasion was being used by trade unionists to make highly inflammatory speeches which tended to fan discord and disunity and therefore threatened the security of the nation; even political leaders are not allowed to make speeches, except His Excellency the President who makes a national address on the eve of the May Day celebrations. The Government states that this should not be seen to mean muzzling of the labour movement, as the labour movement has ample opportunity to air its views in many Party and government institutions where it is adequately represented.

463. As regards the alleged violation of Convention No. 135 through the possibility of dismissal of striking workers and their leaders, the Government states that Convention No. 135, ratified by Zambia, does not in any way specifically provide for the right to strike. Zambia, however, does recognise strike action as a weapon by workers in promoting their interests provided that it is done within the provisions of the law. The Government indicates that section 116 of the IRA and trade union constitutions regulate the staging of strikes; a strike ballot has to be conducted prior to the strike and, if this is not followed, the strikers are in breach of their contracts of employment and the employer is within his rights to consider the contracts as having been terminated. The Government adds that section 117 of the IRA prohibits workers in essential services from going on strike on pain of criminal prosecution. It stresses that, to date, not a single worker has been prosecuted. In order to prevent wildcat strikes, the Government is obliged to issue warnings to workers of the repercussions should they stage illegal and unconstitutional strikes. The ZCTU allegation regarding dismissal of strikers is therefore, states the Government, misleading.

464. With regard to the training of labour leaders abroad, the Government points out that it has the responsibility of training its nationals in all aspects of human endeavour through its institutions

or through bilateral arrangements or with other countries or organisations. It is within the Government's right to select the most suitable candidate for whatever course. The intention of the Government in this particular case is to turn out well-qualified trade union leaders. According to the Government, there is no evidence to suggest that the Party and its government has ulterior motives and that the selection for trade union training without the union's involvement is a way of muzzling the labour movement and undermining its independence. The Government in fact desires this independence, since it is government policy to encourage the development of a strong trade union movement. The Government refers to the letter dated 12 January 1987 from the Secretary-General of the Party addressed to the ZCTU as proof that it is not the wish of the Party to undermine the trade union movement.

465. Finally, with regard to the alleged threats by the Head of State to dissolve the ZCTU, the Government points out that the ZCTU is established under the IRA and its objectives are to represent workers' interests and participate in the socio-economic development of the country. It states, however, that if the ZCTU loses direction there is no reason why it should not be corrected. The Government adds that this refers to its leadership.

C. The Committee's conclusions

466. The Committee notes that this case involves four distinct sets of allegations concerning the free exercise of trade union rights by the complainant confederation: (a) a ban since 1985 on labour leaders addressing workers on May Day; (b) the possibility of dismissing striking workers in violation of Convention No. 135; (c) interference by the ruling political party in the training of unionists; and (d) the confiscation by the authorities of the passports of the ZCTU Chairman, Mr. F.J. Chiluba, and Secretary-General, Mr. N.L. Zimba.

467. As regards the participation of labour leaders in May Day celebrations which continues to be banned despite attempts to change the arrangements for 1987, the Committee notes the Government's position according to which trade unionists have abused the occasion and therefore threatened national security. The Committee observes, however, that no evidence has been presented showing excesses in language or of a political content in the past speeches of trade unionists on May Day. The Committee would accordingly draw the Government's attention to the recognised principles of freedom of association that the right to organise and take part in public meetings and processions, particularly on the occasion of May Day, constitutes an important aspect of trade union rights [See 233rd Report, Case No. 1054 (Morocco), para. 333.] and that the full exercise of trade union rights calls for a free flow of information, opinions and ideas which involves workers and their organisations

enjoying freedom of opinion and expression at their meetings and in the course of other trade union activities. [See 217th Report, Case No. 963 (Grenada), para. 538.] It expresses the hope that the Government will take these principles into consideration for the celebrations of May Day 1988.

468. As regards the possibility of dismissing striking workers, the Committee notes from the newspaper clippings supplied by the ZCTU that certain employers were urged to do so during industrial action in the copperbelt in 1987; there were thus proven instances of threats of anti-union action. The Committee would accordingly recall, in general, that the use of extremely serious measures, such as dismissal of workers for having participated in a strike, implies a serious risk of abuse and constitutes a violation of freedom of association. [See, for example, 234th Report, Case No. 1179 (Dominican Republic), para. 297.] However, the Committee notes that in the present case it is not clear whether any actual dismissals took place.

469. The Committee notes the Government's denial that its training policy is a way of muzzling the labour movement, but the Committee is concerned to see from the administrative circular supplied by the complainant that it is the ruling political party which has the final choice as to which labour leaders shall attend courses abroad. The Committee trusts that this broad power vested in the Party does not extend to the choice of unionists to take part in purely union-organised courses wherever held, which, it would point out to the Government, as is clear from the principle of non-interference in the affairs of workers' organisations, should be a matter ultimately in the hands of the workers' organisation or educational institution responsible for the training activities.

470. As regards the confiscation by the authorities of the passports of the Chairman and Secretary-General of the complainant union which prevented their participation in two ILO meetings, the Committee notes that the Government's firm refusal to return these documents appears to be based on two distinct grounds: security reasons (which are not elaborated) and its reference to the correction of the leadership of the ZCTU if the union loses direction. While the Committee has stated that workers and their organisations should respect the law of the land, it has likewise emphasised in cases such as the present one that it is important that no delegate to any organ or Conference of the ILO, and no member of the Governing Body, should in any way be hindered, prevented or deterred from carrying out his functions or from fulfilling his mandate. [See, for example, 61st Report, Case No. 271 (Chile), para. 50; 83rd Report, Case No. 399 (Argentina), para. 301; 217th Report, Case No. 1104 (Bolivia), para. 315.] Apart from the specific protection granted in conformity with article 40 of the Constitution of the ILO to members of the Governing Body so as to enable them to carry out their functions vis-à-vis the Organisation in full independence, the Committee would stress that participation as a trade unionist in meetings organised by the ILO is a fundamental trade union right. It is therefore incumbent on the government of any member State of the ILO to abstain from any measure

which would prevent representatives of a workers' or employers' organisation from exercising their mandate in full freedom and independence. In particular, a government must not withhold the documents necessary for this purpose.

471. The Committee is particularly concerned over the Government's attitude because Messrs. Chiluba and Zimba were both the subject of an earlier complaint against Zambia [See Case No. 1080, 217th Report, paras. 70 to 79, approved by the Governing Body in May 1982.] concerning their arrest under the Preservation of Public Security Act. Although they appealed and were eventually released from detention and the complainant withdrew its complaint, the Committee noted the complainant's statement of trust that the release was final and that the trade union leaders concerned would suffer no repercussions.

472. In the present case the Committee would urge the Government to respect these basic principles of trade union rights which the Government itself recognises as flowing from its membership of the ILO, irrespective of ratification of any specific freedom of association Conventions. The Committee requests it to take the necessary measures for the return of the passports, in particular so that the ZCTU Secretary-General, and deputy Worker member of the ILO Governing Body, Mr. N.L. Zimba, will be able to participate fully in ILO meetings; it requests the Government to inform it of developments in this matter.

The Committee's recommendations

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

(a) The Committee considers that the participation as a trade unionist in meetings organised by the ILO is a fundamental trade union right. It urges the Government to return urgently the passports of the ZCTU Chairman and Secretary-General to them, in particular so as to allow them to participate fully in international trade union and ILO meetings and it requests the Government to inform it of developments in this matter.

(b) The Committee draws the Government's attention to the importance of the participation of trade union leadership - if they so wish - in May Day celebrations and expresses the hope that the Government will take this principle into consideration for the celebration of May Day 1988.

(c) The Committee trusts that the choice of unionists to take part in purely union-organised training courses, wherever held, is left to the workers' organisation or educational institution

responsible for such activities and is not dictated by any political party.

Case No. 1413

COMPLAINT AGAINST THE GOVERNMENT OF BAHRAIN PRESENTED BY THE INTERNATIONAL CONFEDERATION OF ARAB TRADE UNIONS

474. The International Confederation of Arab Trade Unions (ICATU) presented a complaint of violations of trade union rights against the Government of Bahrain, in a communication dated 3 June 1987. The Government supplied its observations on the complaint in a letter dated 6 January 1988.

475. Bahrain has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

476. In its communication of 3 June 1987, the ICATU alleges that the authorities of Bahrain do not allow any form of trade union organisation and the so-called "Workers' Association" in Bahrain is far from being authentic workers' representation because it is only for tripartite representation to the International Labour Organisation.

477. According to the ICATU, the Government also practises repression against workers. It alleges that the authorities have recently launched a massive campaign against workers and trade unionists, many of whom have been imprisoned. The ICATU states that, in addition to violations of trade union rights and freedoms, these authorities constantly violate human rights, deny workers the right to work and put them through interrogation regardless of appeals from international bodies and from their relatives. It requests that appropriate measures be taken for the immediate release of imprisoned workers and trade unionists.

478. The ICATU supplies a large amount of documentation in support of its complaint, including lists of political prisoners. First, it annexes a paper criticising the system of workers' representation created by virtue of sections 142 to 144 of the Bahraini Labour Law and the regulating legislation made thereunder. Workers' representatives from the various joint committees set up in each workplace make up the General Committee of Bahrain Workers whose role is, according to the ICATU, confined to consultation and advice

in labour disputes or where there are production problems. The complainant supplies copies of the Legislative Decrees and Ministerial Orders governing the joint committees (No. 20 of 16.6.1982; Order No. 9 of 18.4.1981, No. 15 of 25.7.1981, Nos. 19 and 20 of 1.11.84) and the General Committee of Bahrain Workers (No. 10 of 8.4.1981), as well as a copy of the statutes of the General Committee of Bahrain Workers.

479. Secondly, the complainant lists the alleged violations of human and trade union rights carried out by the security forces, in particular their "special section": during 1981, the arbitrary arrest of 550 persons and the statutory possibility of continued detention without trial for up to three years; torture - including crushing the head in a vice, beating, burning, electric shocks, deprivation of sleep, attacks by police dogs, use of vinegar and salt on wounds - and ill-treatment - isolation, rape threats - of prisoners; arrests during strikes and demonstrations; censure imposed by the 1979 Act on Printed Publications; the hasty trial (within 24 hours) of detainees under the 1984 Act on Summary Procedure.

480. The ICATU cites the particular example of the arrest, in March 1980, of a group of persons who were tried at the Mahret Maritime Military Base and sentenced to prison terms of four to seven years for belonging to a banned trade union organisation. The organisation was, according to the complainant, the Constitutive Committee of the Federation of Bahrain Workers which had had public contacts with the Minister of Labour in 1979.

481. The ICATU also supplies a list of persons allegedly under arrest since 13 July 1986 which includes the President of the General Committee of Bahrain Workers in the Aluminium Company (ALBA), Mr. Ibrahim Al Kassab.

B. The Government's reply

482. In its letter of 6 January 1988, the Government refutes as untrue and misleading the unsubstantiated allegations made. It considers that they are wholly without foundation in each of the instances cited, particularly concerning alleged acts of infringements of human rights, repression, wrongful imprisonment and denial of the right to work of which no instances have occurred whatsoever.

483. Concerning workers' representation, the Government refers to its approved policy for the further strengthening and progressive development of joint bargaining, due regard being afforded to the need to overcome the existing weak character of employers' and workers' organisations by appropriate training in industrial relations and related subjects. According to the Government, implicit in this policy is the establishment of the existing joint committees of workers at establishment level, and of the General Committee of Bahrain Workers, as accredited freely elected voluntary organisations

representative of workers' interests, the primary purpose of which is the regulation of relations between workers and employers.

484. In this connection, the Government refers to earlier correspondence in 1982 and 1983 relating to cases against Bahrain mentioned in Case No. 1043 and Case No. 1211, in which the Committee on Freedom of Association recommended that the circumstances called for no further examination.

C. The Committee's conclusions

485. As regards the allegations concerning arrests, detentions and torture of workers and trade unionists, the Committee notes that it has had occasion in the past to consider such allegations against the Government of Bahrain [see Case No. 1211, 233rd and 234th Reports of the Committee, paras. 580 to 592 and 39 to 45 respectively, approved by the Governing Body in February and May 1984, respectively]. In that past case, the Committee took note of the Government's general denial of detention and torture and its specific reply concerning the treatment of three named members of the Joint Committee of the Association of Aluminium Workers of Bahrain (ALBA). At that time it recalled that the arrest and detention of trade unionists constitute particularly serious measures which should be accompanied by all appropriate safeguards, in particular judicial ones; while persons engaged in trade union activities, or holding trade union office, cannot claim immunity in respect of ordinary criminal law, trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists. Moreover, the detention or internment of trade unionists, especially trade union leaders, for reasons connected with their activities to defend the interests of workers constitutes a serious violation of civil liberties in general and trade union rights in particular. [See, in this respect, 214th Report of the Committee, Case No. 1097 (Poland), para. 747.]

486. In the present case the Committee observes that, although much of the documentation supplied by the complainant refers to political prisoners and thus falls outside this Committee's scope, details are given on the arrest, since 13 July 1986, of a named workers' representative, Mr. Ibrahim Al Kassab, in the ALBA Aluminium Company [which, given the translation from Arabic, appears to be the same undertaking referred to above in the context of Case No. 1211]. While noting the Government's general denial in the present case of all of ICATU's allegations, the Committee feels bound to draw the Government's attention to the importance it attaches to bringing detainees to trial swiftly in all cases, irrespective of the reasons put forward by governments for prolonging detentions because such detentions may involve serious interference with trade union rights [see, for example, 236th Report, Cases Nos. 1157 and 1192 (Philippines), para. 298].

487. Similarly, as regards the specific allegation of the sentencing of workers to long prison terms for merely belonging to the Federation of Bahrain Workers, a banned trade union organisation, the Committee observes that the Government's reply amounts to a general denial and assertion that part of its official policy is to overcome the "existing weak character of employers' and workers' organisations". The Committee notes that an earlier case against the Government of Bahrain [Case No. 1043, 211th Report, paras. 572 to 590, 218th Report, paras. 482 to 505, and 230th Report, paras. 35 to 43, approved respectively by the Governing Body at its November 1981, 1982 and 1983 Sessions] also involved the sentencing of trade unionists at the El-Mahret Maritime Military Base to which the Government replied with directly contradictory information, as in the case presently before the Committee.

488. The Committee would accordingly adopt the same position as it took in the earlier case when neither party to the complaint submits evidence to substantiate its version of the facts; it limits itself to recalling generally the importance of prompt and fair trial by an independent and impartial judiciary in all cases, including cases in which trade unionists are charged with political or criminal offences which the governments consider to have no relation to their trade union functions. [See, for example, 187th Report, Case No. 892 (Fiji), para. 289; 208th Report, Case No. 940 (Sudan), para. 271.]

489. As regards the legislative aspect of this case, the Committee observes that sections 142 and 143 of the 1976 Labour Law as amended and Ministerial Orders Nos. 9 and 10 of 1981 were thoroughly examined during its consideration of Case No. 1043 referred to above. The Committee's conclusion at the time - while it was silent as to type of workers' representation set up, i.e. joint committees at the undertaking level and an elected central General Committee of Bahrain Workers - was that certain election procedures involved the risk that such workers' representatives might not be elected freely. It also criticised the imposition of arbitration for the settlement of labour disputes which effectively prohibited strike action. It requested the Government to amend the legislation on these various points. These conclusions were endorsed when the Committee examined Case No. 1121 also mentioned above.

490. In the present case, the Committee notes that the complainant centres its allegations on the authenticity of the current workers' representation set up under the legislation in question. This system can be described briefly as the election from workers' members of establishment-level joint committees to the General Committee of Bahrain Workers. This national body is empowered "to raise the productive capacity of the workers, to look after their interests and to improve their national and social situation" (s. 2 of Ministerial Order No. 10 of 1981 and s. 143 of the Labour Law); it also has the special task of "representing the workers of Bahrain before Arab, international and Gulf organisations and congresses in which Bahrain is availed of tripartite representation assured by Government, employers and workers" (s. 5(2) of Order No. 10) and

"representing the wage earners of Bahrain on the Higher Council for Occupational Training and on tripartite councils and commissions on which Government, employers and workers are represented by virtue of the Labour Law for the private sector and the Social Security Code" (s. 5(3) of Order No. 10).

491. Since the complainant in the present case limits itself to criticising the election procedure and role of the General Committee of Bahrain Workers as set out in the legislation, the Committee would repeat - as it did in Case No. 1043 - that a legislative system in which the workers of a country are unable to form trade union organisations of their own choosing is contrary to the principles of freedom of association. The Committee therefore again expresses the firm hope that the legislation in question will be amended so as to establish clearly the right of all workers to form the organisations of their own choosing. It requests the Government to keep it informed of any measures taken in this direction.

The Committee's recommendations

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

(a) Regarding the allegations of arrest and detention without trial of workers and trade unionists, the Committee recalls generally the importance of prompt and fair trial by the judiciary in all cases. It requests the Government to supply information on the situation of Mr. Ibrahim Al Kassab, President of the General Committee of Bahrain Workers in the ALBA Aluminium Company, allegedly arrested since 13 July 1986, and other workers allegedly detained.

(b) As regards the allegation that the Bahraini labour legislation fails to conform with the general principles of freedom of association, the Committee would once again draw the attention of the Government to its previous comments and, in particular, would repeat its firm hope that the legislation will be amended so as to establish clearly the right of all workers to form organisations of their own choosing.

Case No. 1417

COMPLAINT AGAINST THE GOVERNMENT OF BRAZIL PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS

493. The complaint is contained in a communication from the International Confederation of Free Trade Unions (ICFTU) dated 25 June 1987. The ICFTU submitted further allegations in a communcation dated 26 October 1987. The Government sent its observations in a communication dated 25 January 1988.

494. The Government has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

495. The complainant organisation alleges in its communication of 25 June 1987 that, in order to prevent the seafarers from exercising their right to strike, the Government ordered troops of the Brazilian Navy to occupy all ports and to prevent the strikers from leaving their place of work. When the workers of the Petrobras oil refineries called a one-day work stoppage, the Brazilian army and the federal and military police of several States occupied the refineries with combat vehicles. This situation occurred at a time when the workers had lost 60 per cent of their purchasing power as a result of the Government's wage policies.

496. In its communication of 26 October 1987, the complainant alleges that Mauro Pires, leader of the Union of Vehicle Drivers and Allied Workers of San Andrés, was murdered on 4 September 1987; that trade union leader José Barbosa dos Santos was attacked by two individuals who shot at him from a car, though he was unharmed; and that union leader Paulo Pereira received telephone calls threatening his life. A possible explanation of these occurrences is the existence of an armed paramilitary group set up by employers to eliminate the militant members of the Union of Vehicle Drivers and Allied Workers.

B. The Government's reply

497. The Government states in its communication of 25 January 1988 that the activities carried out by petroleum workers and

seafarers have been defined by law as essential services inasmuch as the country depends on them for its supply of fuel and food and that, in the case of seafarers and port workers, their activities are a matter of national security.

498. The Government states in the specific case of the Petrobras Company, where there was an "undeclared" strike in which the workers remained at their posts and paralysed all activities within the enterprise, the army was called in to protect the enterprise's assets (which are public assets given that Petrobras is a semi-public enterprise) and to guarantee employees' access to their place of work. There were however no incidents involving trade union leaders or strikers.

499. As regards the seafarers, the Brazilian Navy was called in to protect port facilities, which are public property, to ensure the flow of supplies to the cities and, again, to guarantee employees' access to their places of work, since separate agreements have been concluded with certain enterprises. Here again, no incidents occurred. The Government points out that the strike was declared illegal by the labour court.

C. The Committee's conclusions

500. The Committee notes that the complainant alleges that strikes which had been called or undertaken in the petroleum sector and in the port and maritime sector were repressed by the military occupation of the plant and facilities concerned.

501. The Government claims that these activities were essential and that the intervention of the army and navy was designed to protect the enterprises' plant and facilities, to ensure the flow of supplies to the cities and to guarantee freedom to work. The Committee notes that the legislation in force, and specifically section 1 of Legislative Decree No. 1632 of 4 August 1978, provides that, in the interests of national security, the essential services in which strikes are prohibited by the Constitution include petroleum services and loading and unloading of supplies.

502. The Committee has stated on numerous occasions [see, for example, 226th Report, Case No. 1166 (Honduras), para. 343] that, as one of the essential means through which workers and their organisations may promote and defend their occupational interests, the right to strike may be denied or subject to major restrictions only in the public service or essential services in the strict sense of the term. It has added that the concept of public servants should be confined to those acting in their capacity as agents of the public authority and that essential services should be interpreted as referring to those whose interruption would endanger the life, personal safety or health of the whole or part of the population;

otherwise, if the legislation defines the public service or essential services too broadly, the principle whereby the right to strike may be limited or prohibited in those sectors would become meaningless. In the present case, the workers in the petroleum enterprises and those involved in loading and unloading are not public officials in the sense set forth above, nor do they perform an essential service in the strict sense of the term [see, for example, Freedom of Association and Collective Bargaining, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), International Labour Conference, 69th Session, 1983, para. 214, and 233rd Report of the Committee, Case No. 1225 (Brazil), para. 668]. In these circumstances, the Committee considers that the prohibition of strike action in the petroleum sector and in the ports (loading and unloading sectors) provided for in Legislative Decree No. 1632 of 4 August 1978 is contrary to the principles of freedom of association.

503. Finally, the Committee observes that the Government has not replied to the allegations contained in the ICFTU's communication of 26 October 1987 concerning, inter alia, the assassination of the trade union leader Mauro Pires.

The Committee's recommendations

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

(a) The Committee requests the Government to take steps for the amendment of the legislation in force, and specifically Legislative Decree No. 1632 of 4 August 1978, so that the list of activities in which strike action is prohibited is confined to essential services in the strict sense of the term (i.e. those whose interruption may endanger the life, personal safety or health of the whole or part of the population).

(b) The Committee requests the Government to reply to the allegations contained in the ICFTU's communication of 26 October 1987 concerning, inter alia, the assassination of the trade union leader Mauro Pires.

Case No. 1425

COMPLAINT AGAINST THE GOVERNMENT OF FIJI PRESENTED BY - THE INTERNATIONAL UNION OF FOOD AND ALLIED WORKERS' ASSOCIATIONS - THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS

505. By a communication dated 1 October 1987, the International Union of Food and Allied Workers' Associations (IUF) presented a complaint of violations of trade union rights against the Government of Fiji. The International Confederation of Free Trade Unions (ICFTU) presented a similar complaint on 14 and 15 October 1987 and supplied fresh allegations in a letter of 8 February 1988. The Government sent its reply in communications dated 19, 28, 29 and 30 October and 10 November 1987; due to the recent transmission of the ICFTU letter of 8 February, the Government has not been able to comment on it.

506. Fiji 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 complainants' allegations

507. In its communication of 1 October 1987, the IUF alleges that Mr. James R. Raman, General Secretary of its affiliate, the National Union of Factory and Commercial Workers of Fiji, has been detained following the 25 September military coup in Fiji.

508. On 14 October 1987, the ICFTU alleges that the General Secretary and Treasurer of its affiliate, the Fiji Trades Union Congress (TUC), Messrs. James Raman and Bob Kumar, were detained by the Fiji security forces for several days. It states that trade union activities have been severely restricted and that the military forces occupied and closed indefinitely the TUC headquarters, as well as the offices of the Fiji Public Service Association Credit Union, the Fiji Bank Employees' Union and the Fiji Teachers' Union. It adds that the premises of the National Union of Factory and Commercial Workers were closed during part of the day of 8 October 1987. According to the ICFTU, the military leader, Mr. Rabuka, declared that his Government would restructure the union movement in Fiji, which the ICFTU sees as a clear interference in the internal affairs of the Fiji trade union movement.

509. On 15 October 1987, the ICFTU alleged that the Fiji Public Service Association premises were also closed and guarded by the military. It states that Mr. James Raman of the TUC was prevented by the authorities at Nadi Airport from leaving the country a few days

earlier to join a Commonwealth Trades Union Congress delegation which was to meet with the Commonwealth Heads of State at their meeting in Vancouver.

510. In its letter of 8 February 1988, the ICFTU states that an ICFTU mission which visited Fiji from 13 to 15 January 1988 reports continuing restrictions on trade union rights particularly, but not exclusively, in the public sector e.g. special permission is required from the Home Affairs Ministry for certain trade unionists who wish to travel abroad, a number of unionists have been suspended from their employment, surveillance of trade unionists and their office premises, police must be notified before unions hold meetings.

B. The Government's reply

511. In a cable dated 19 October 1987, the Government - through the Minister for Employment and Industrial Relations of the Executive Council of the interim Government of Fiji - assures the ILO that the trade union rights in Fiji under existing labour laws are still intact. It points out, however, that these rights will only continue provided that certain trade union leaders refrain from subversive activities likely to jeopardise the economy. The Government states that the trade unionists referred to by the complainants have been released. In addition, talks are being conducted between the President and the General Secretary of the TUC as regards the closure of trade union premises; the Government undertakes to inform the Committee of the outcome of these talks in due course.

512. In a letter dated 28 October 1987, the Government explains that whilst it is true that certain trade union leaders (including Mr. J.R. Raman) were detained immediately following the military coup on 25 September 1987, this measure was necessary in view of the subversive actions by these trade unionists aimed at jeopardising the economy. It repeats that all trade unionists have since been released and trade union rights under existing laws are still intact, "as we all embark on the path of reconciliation and eventual return to normality". It stresses, however, that the trade union movement in Fiji will be expected to co-operate with the Government, and in return it gives the assurance that their rights will continue as normal. According to the Government, it must be appreciated that in these difficult times, increased state intervention in dispute resolution may be expected if trade unions refuse to shoulder their responsibilities to the community and the nation as a whole. It trusts that the foregoing clearly explains the actions it was forced to take, unpalatable as they may be, but necessary under the circumstances.

513. In a cable of 29 October 1987, the Government states that all trade union premises are now functional and all trade union rights, including the right to strike, are still intact as provided

for under the existing Trade Disputes Act. In addition, it gives the assurance that these rights will remain intact as under the present Act in any new Constitution that may be promulgated. According to the Government, under the present circumstances, there is no bar on the holding of normal meetings of boards, committees and conferences of trade unions, provided the nearest police station is informed. This measure is deemed to be temporary only. The assurance is also given that the movement of trade union officials, in pursuance of their normal trade union functions, shall not be restricted.

514. The Government adds that following a series of talks with the Fiji Government, the TUC has expressed satisfaction with regard to trade union rights under the existing laws, and with the Government's assurances that these rights will continue to be protected provided that the trade unions refrain from subversive actions that are likely to destabilise the economy. In return, the Government received a TUC assurance that all its affiliates will be directed not to take any industrial action without pursuing the procedures provided for under the existing Trade Disputes Act. According to the Government, to this end, and following cordial talks, the TUC has agreed to request the Australian Council of Trade Unions (ACTU) to withdraw a proposal to impose a ban on flights to Fiji as from 1 November, and the TUC has also agreed to seek a meeting with the ACTU and New Zealand Federation of Labour (NZFOL) to determine the future of all bans.

515. In its communication of 30 October 1987, the Government states that the Fiji Government and TUC have come to an amicable agreement on all matters and allegations raised in the present case and that all trade union rights under existing laws have been restored to the satisfaction of the TUC. To substantiate this, on 10 November 1987, the Government sent a copy of the Fundamental Freedoms (Amendment) Decree No. 13 which repeals section 14 of the Fundamental Freedoms Decree of 1 October 1987, suspending industrial action by trade unions in the form of strikes, bans, go-slows, protest marches and demonstrations.

C. The Committee's conclusions

516. The Committee notes that this case concerns a series of events occurring immediately after the military coup of 25 September 1987, in particular: the temporary detention of Messrs. James Raman and Bob Kumar, General Secretary and Treasurer respectively of the Fiji Trades Union Congress, the closure for several days of the major trade unions' premises and restriction on the freedom of movement of the TUC General Secretary.

517. The Committee notes that the Government does not deny these incidents, but attempts to explain them as temporary and necessary following the military coup and in view of the subversive actions by these trade unionists aimed at jeopardising the Fijian economy.

518. The Committee observes that while no further mention is made of or details given, on any alleged "subversive actions" by the unionists concerned, the Government emphasises in its most recent communications that there have been cordial talks between the TUC and the Government which have led to a satisfactory accord and exchange of assurances regarding trade union rights in Fiji.

519. The Committee takes note of this agreement, and the fact that all detained unionists have been released, all closed union premises reopened and that freedom of movement is not hampered in any way. It also notes with interest that a certain piece of legislation - not mentioned by the complainants - which had suspended all forms of industrial action was abrogated virtually within a few weeks of its adoption.

520. On the other hand, the Committee must draw the Government's attention to the importance it attaches to the principle that the arrest and detention of trade unionists, even for reasons of internal security, may constitute a serious interference with trade union rights unless attended by appropriate judicial safeguards [see, for example, 233rd Report, Case No. 1211 (Bahrain), para. 589]. In addition, in similar cases the Committee has stated that measures of preventive detention may involve a serious interference with trade union activities which it would seem necessary to justify by the existence of a serious situation or emergency and which would be open to criticism unless accompanied by adequate judicial safeguards applied within a reasonable period [see for example, 222nd Report, Case No. 1135 (Ghana), para. 263]. These safeguards should include the assurance that the detention is for a very short period of time and is not extended beyond the time absolutely necessary, that it is not accompanied by measures of intimidation and that it is not being used for purposes other than those for which it is designed and, in particular, to exclude ill-treatment [see for example, 214th Report, Case No. 1032 (Ecuador), para. 161 and 216th Report, Case No. 1084 (Nicaragua), para. 38].

521. Likewise, with regard to the temporary closure of certain major union premises, the Committee would draw the Government's attention generally to the resolution concerning trade union rights and their relation to civil liberties (adopted by the International Labour Conference at its 54th Session, 1970) which includes the right to protection of trade union property as one of the civil liberties essential for the normal exercise of trade union rights.

522. Finally, the Committee regrets that the General Secretary of the Fiji Trades Union Congress was prevented at the Nadi Airport from joining a Commonwealth Trades Union Congress delegation going to Vancouver, and would recall generally in this connection that the right of national trade unions to send representatives to international trade union congresses is a normal corollary of the right of those national organisations to join international workers' organisations [see, for example, 181st Report, Case No. 880 (Madagascar), para. 114].

The Committee's recommendations

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

(a) The Committee considers that the preventive detention of certain leaders of the Fiji Trades Union Congress, even for a limited period of time after the military coup of 25 September 1987, involved a serious interference with trade union rights.

(b) The Committee also would recall generally that the military Government's temporary closure of certain major trade union premises and its prevention of a trade union leader's travel with an international trade union congress delegation, run counter to the international principles concerning the protection of trade union premises and the freedom of contact with international trade union organisations.

(c) The Committee, while taking note of the agreements reached with the TUC and the assurances given by the Government, wishes to underline that the exercise of trade union rights should not be considered as unlawful because of lack of co-operation of the trade unions with a government and cannot be considered as repayment for, and as a result of, co-operation between the trade union movement and a government, but as an inalienable right of the working people.

(d) The Committee requests the Government to send its observations on the most recent communication from the ICFTU dated 8 February 1988.

Geneva, 19 February 1988.

Roberto Ago,
Chairman.

INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 15, 16 and 19 February 1988 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. The Committee had before it a number of complaints of infringements of freedom of association in Nicaragua presented by various trade union organisations and the International Organisation of Employers and a complaint concerning the observance by Nicaragua of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) made by a number of Employers' delegates to the 73rd (1987) Session of the International Labour Conference under article 26 of the Constitution of the ILO.

3. In conformity with the decision adopted by the Governing Body at its 238th Session (November 1987), the Committee submits, for the Governing Body's approval, a report on the pending cases and the complaint presented in virtue of article 26 of the Constitution of the ILO.