## C. The Committee's conclusions

45. The workers' organisations' allegations still pending concern the ransacking of trade union premises and the arrest of trade unionists.

46. As regards the first point, the Committee observes that, according to the Government, it was because of internal dissension within the Central of Nicaraguan Workers (CTN) and at the request of one of the parties that the police intervened in order to protect persons and property. While noting these explanations, the Committee must recall the importance which it attaches to the protection of trade union property, which was also emphasised by the International Labour Conference in the resolution concerning trade union rights and their relation to civil liberties, adopted in 1970, where it had pointed out that the right to adequate protection of trade union property is one of the civil liberties which is essential for the normal exercise of trade union rights. The Committee would also draw the Government's attention to the fact that, even if police intervention in trade union premises may be justified in particularly serious circumstances, such intervention should in no case entail the ransacking of premises and archives of an organisation.

47. As regards the arrest of trade unionists, the Committee notes the information supplied by the Government, according to which there is no trace of two of these persons ever having been arrested, and that a third was released after having completed the prison term to which he had been sentenced for causing bodily harm. The Committee requests the Government to supply information on the situation of two persons concerning whom it has not yet replied, Mr. Eric González and Eugenio Membreño.

48. As regards the complaint lodged by several Employers' delegates under article 26 of the Constitution, the Committee recalls that this complaint contains allegations concerning non-observance of Convention No. 87, based in particular on the 21 complaints examined by the Committee, suspension of certain constitutional liberties, non-recognition in the national Constitution of the employers' right to organise, non-observance of Convention No. 98, based on the absence of free collective bargaining, and non-observance of Convention No. 144, based on the absence of consultations with COSEP by the Government.

49. In its reply, the Government refers to the lifting of the national state of emergency. The Committee notes with interest that all of the constitutional rights which had been suspended have thus been restored, in particular in areas relating to the activities of employers' and workers' organisations. The Committee also notes that a partial amnesty has been declared for persons convicted of crimes against public order and security, and that negotiations are under way with a view to declaring a general amnesty.

50. The Committee observes, however, that the Government has confined itself to supplying general information on the restoration of the rights which had been suspended, without supplying specific information on the resumption of the activities of employers' and workers' organisations in practice. The Committee therefore requests the Government to supply specific and detailed information on this point, in particular as regards the dissemination of trade union and occupational information, the exercise of employers' and workers' organisations' right to assemble, the registration of such organisations and the exercise of the right to strike.

51. As regards the allegations relating to the application of Convention No. 98, the Committee notes that the Committee of Experts emphasised in its report, adopted at its March 1988 Session, that Decree No. 530 referred to in the complaint lodged under article 26 of the Constitution, has been in force for more than seven years and that it makes collective agreements subject to the approval of the Ministry of Labour for reasons of economic policy, so that employers' and workers' organisations are not able to fix wages freely. Like the Committee of Experts, the Committee considers that this situation is not in conformity with Article 4 of Convention No. 98 respecting the promotion and development of machinery for voluntary collective negotiation. It therefore requests the Government to take the necessary measures to correct this infringement of the Convention and to supply information on the measures which it intends to adopt for this purpose.

52. As regards the application of Convention No. 144, the Government does not supply any new information on consultation of COSEP on matters relating to international labour standards, although it stated in its reply submitted to the Committee's February 1988 meeting that it was willing to consult it in due course. The Committee therefore requests the Government to supply information on any consultations which it has undertaken or which it intends to undertake with COSEP.

53. In the light of the foregoing considerations, the Committee must note that the Government has not supplied all the necessary information to enable it to reach a decision in full knowledge of all the facts concerning the situation of employers' and workers' organisations in Nicaragua.

54. In the light of the information before it, the Committee examined what effect should be given to the complaint lodged under article 26 of the Constitution of the ILO. First, the Committee considered the possibility of adjourning the adoption of its recommendation to the Governing Body until its meeting in November 1988. Secondly, the Committee examined the possibility of recommending to the Governing Body at its present session the establishment of a Commission of Inquiry. Thirdly, the Committee considered the possibility of recommending the Governing Body to ask the Government to invite a study mission entrusted to examine on the spot the factual and legal questions pending before the Committee

since 1981. Having received after its discussions a letter from the Government dated 23 May 1988 which proposes the setting up of a study mission, along the lines which the Committee itself had envisaged, the Committee recommends the Governing Body to agree to this proposal. The Committee will thus be in a position at its November 1988 meeting to give a final reply to the question put at the beginning of this paragraph.

## The Committee's recommendations

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

(a) The Committee reminds the Government that the right to adequate protection of trade union property is one of the civil liberties which is essential to the exercise of trade union rights, and requests it to take the necessary measures to ensure that such protection is effectively provided.

(b) The Committee requests the Government to supply information on the arrest and current situation of the trade unionists Eric González and Eugenio Membreño.

(c) The Committee, while noting with interest that the rights suspended by the state of emergency have been restored, requests the Government to supply specific and detailed information on the resumption of activities by employers' and workers' organisations in practice, particularly as regards the dissemination of trade union and occupational information, exercise of the right of assembly, registration of these organisations and exercise of the right to strike.

(d) Noting that Decree No. 530 is not in conformity with Article 4 of Convention No. 98 respecting the promotion and development of voluntary collective negotiation, the Committee requests the Government to take the necessary measures to correct this situation and to supply information on the measures which it intends to adopt in this connection.

(e) The Committee requests the Government to supply information on any consultations which it has undertaken or intends to undertake with COSEP on matters relating to international labour standards.

(f) Having received after its discussions a letter from the Government dated 23 May 1988 which proposes the setting up of a study mission, along the lines which the Committee itself had envisaged, the Committee recommends the Governing Body to agree to this proposal. The Committee will thus be in a position at

its November 1988 meeting to give a final reply to the question of what effect should be given to the complaint lodged under article 26 of the ILO Constitution.

Geneva, 24 May 1988.

Roberto Ago,
Chairman.

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1989 price:
Annual subscription: 95 Swiss francs
Price per number: 20 Swiss francs

ISSN 0378-5882 (Series A)
ISSN 0378-5890 (Series B)

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Printed by the International Labour Office, Geneva, Switzerland

# OFFICIAL BULLETIN

*Vol. LXXI, 1988* — *Series B, No. 3*

## Reports of the Committee on Freedom of Association (259th, 260th and 261st Reports)

259TH REPORT

260TH REPORT

Earlier reports of the Committee on Freedom of Association have been published as follows:

| Report | Publication | | |
|---|---|---|---|
| | Reports of the International Labour Organisation to the United Nations (Geneva, ILO) | | |
| 1-3 | Sixth Report (1952), Appendix V | | |
| 4-6 | Seventh Report (1953), Appendix V | | |
| 7-12 | Eighth Report (1954), Appendix II | | |
| | Official Bulletin | | |
| | Volume | Year | Number[1] |
| 13-14 | XXXVII | 1954 | 4 |
| 15-16 | XXXVIII | 1955 | 1 |
| 17-18 | XXXIX | 1956 | 1 |
| 19-24[2] | XXXIX | 1956 | 4 |
| 25-26 | XL | 1957 | 2 |
| 27-28[2] | XLI | 1958 | 3 |
| 29-45 | XLIII | 1960 | 3 |
| 46-57 | XLIV | 1961 | 3 |
| 58 | XLV | 1962 | 1 S |
| 59-60 | XLV | 1962 | 2 SI |
| 61-65 | XLV | 1962 | 3 SII |
| 66 | XLVI | 1963 | 1 S |
| 67-68 | XLVI | 1963 | 2 SI |
| 69-71 | XLVI | 1963 | 3 SII |
| 72 | XLVII | 1964 | 1 S |
| 73-77 | XLVII | 1964 | 3 SII |
| 78 | XLVIII | 1965 | 1 S |
| 79-81 | XLVIII | 1965 | 2 S |
| 82-84 | XLVIII | 1965 | 3 SII |
| 85 | XLIX | 1966 | 1 S |
| 86-88 | XLIX | 1966 | 2 S |
| 89-92 | XLIX | 1966 | 3 SII |
| 93 | L | 1967 | 1 S |
| 94-95 | L | 1967 | 2 S |
| 96-100 | L | 1967 | 3 SII |

[1] The letter S, followed as appropriate by a roman numeral, indicates a supplement.

[2] For communications relating to the 23rd and 27th Reports see Official Bulletin, Vol. XLIII, 1960, No. 3.

| Report | Publication | | |
|---|---|---|---|
| | Volume | Year | Number |
| 101 | LI | 1968 | 1 S |
| 102-103 | LI | 1968 | 2 S |
| 104-106 | LI | 1968 | 4 S |
| 107-108 | LII | 1969 | 1 S |
| 109-110 | LII | 1969 | 2 S |
| 111-112 | LII | 1969 | 4 S |
| 113-116 | LIII | 1970 | 2 S |
| 117-119 | LIII | 1970 | 4 S |
| 120-122 | LIV | 1971 | 2 S |
| 123-125 | LIV | 1971 | 4 S |
| 126-133 | LV | 1972 | S |
| 134-138 | LVI | 1973 | S |
| 139-145 | LVII | 1974 | S |
| 146-148 | LVIII | 1975 | Series B, Nos. 1-2 |
| 149-152 | LVIII | 1975 | " No. 3 |
| 153-155 | LIX | 1976 | " No. 1 |
| 156-157 | LIX | 1976 | " No. 2 |
| 158-159 | LIX | 1976 | " No. 3 |
| 160-163 | LX | 1977 | " No. 1 |
| 164-167 | LX | 1977 | " No. 2 |
| 168-171 | LX | 1977 | " No. 3 |
| 172-176 | LXI | 1978 | " No. 1 |
| 177-186 | LXI | 1978 | " No. 2 |
| 187-189 | LXI | 1978 | " No. 3 |
| 190-193 | LXII | 1979 | " No. 1 |
| 194-196 | LXII | 1979 | " No. 2 |
| 197-198 | LXII | 1979 | " No. 3 |
| 199-201 | LXIII | 1980 | " No. 1 |
| 202-203 | LXIII | 1980 | " No. 2 |
| 204-206 | LXIII | 1980 | " No. 3 |
| 207 | LXIV | 1981 | " No. 1 |
| 208-210 | LXIV | 1981 | " No. 2 |
| 211-213 | LXIV | 1981 | " No. 3 |
| 214-216 | LXV | 1982 | " No. 1 |
| 217 | LXV | 1982 | " No. 2 |
| 218-221 | LXV | 1982 | " No. 3 |
| 222-225 | LXVI | 1983 | " No. 1 |
| 226-229 | LXVI | 1983 | " No. 2 |
| 230-232 | LXVI | 1983 | " No. 3 |
| 233 | LXVII | 1984 | " No. 1 |
| 234-235 | LXVII | 1984 | " No. 2 |
| 236-237 | LXVII | 1984 | " No. 3 |
| 238 | LXVIII | 1985 | " No. 1 |
| 239-240 | LXVIII | 1985 | " No. 2 |
| 241-242 | LXVIII | 1985 | " No. 3 |
| 243 | LXIX | 1986 | " No. 1 |

| Report | Publication | | |
|---|---|---|---|
| | Volume | Year | Number |
| 244-245 | LXIX | 1986 | Series B, No. 2 |
| 246-247 | LXIX | 1986 | " No. 3 |
| 248-250 | LXX | 1987 | " No. 1 |
| 251-252 | LXX | 1987 | " No. 2 |
| 253 | LXX | 1987 | " No. 3 |
| 254-255 | LXXI | 1988 | " No. 1 |
| 256-258 | LXXI | 1988 | " No. 2 |

INTERNATIONAL LABOUR OFFICE

# OFFICIAL BULLETIN

*Vol. LXXI* *1988* *Series B, No. 3*

## Reports of the Committee on Freedom of Association (259th, 260th and 261st Reports)

### 259TH REPORT[1]

### I. 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 3, 4, 7 and 10 November 1988 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. The member of the Committee of New Zealand nationality was not present during the examination of the case relating to New Zealand (Case No. 1385).

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3. The Committee is currently seized of 74[2] cases in which the complaints have been submitted to the governments concerned for observations. At its present meeting it examined 33 cases in substance, reaching definitive conclusions in 17 cases and interim

[1] The 259th, 260th and 261st Reports were examined and approved by the Governing Body at its 241st Session (November 1988).

[2] This includes the cases relating to Turkey (Cases Nos. 997, 999 and 1029) and Nicaragua (Cases Nos. 1129, 1298, 1344, 1442 and 1454) which are examined in the 260th and 261st reports, respectively.

conclusions in 16 cases; the remaining cases were adjourned for the various reasons set out in the following paragraphs.

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New cases

4. The Committee adjourned until its next meeting the cases relating to Venezuela (Case No. 1453), Argentina (Cases Nos. 1455 and 1456), Iceland (Case No. 1458), Uruguay (Case No. 1460), Brazil (Case No. 1461), Liberia (Case No. 1463), Honduras (Case No. 1464), Spain (Cases Nos. 1466, 1472 and 1474), Denmark (Case No. 1470), India (Case No. 1471), Morocco (Case No. 1473), Panama (Cases Nos. 1475 and 1476) and Colombia (Case No. 1477) concerning which it is awaiting information or observations from the governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Subsequent adjournments

5. The Committee is still awaiting observations or information from the governments or complainants concerned in the cases relating to El Salvador (Case No. 1168), Czechoslovakia (Case No. 1402), Paraguay (Cases Nos. 1435, 1440 and 1446), Canada (Cases Nos. 1438 and 1451), the United Kingdom (Case No. 1439) and St. Lucia (Case No. 1447). As for Case No. 1412 (Venezuela), the Government has stated that the judicial proceedings are continuing. Likewise, for Case No. 1468 (India) the Government has indicated that it has requested information from the State Government where the incidents alleged in this case occurred and will not fail to transmit the comments as soon as they are received. The Committee again adjourned these cases and requests the Governments of these countries to transmit the information or observations requested.

6. As regards Case No. 1406 (Zambia), Case No. 1419 (Panama), Case No. 1428 (India), Case No. 1445 (Peru), Case No. 1448 (Norway), Case No. 1467 (the United States) and Case No. 1469 (Netherlands), the Committee has received the Governments' observations and intends to examine these cases in substance at its next meeting.

7. As regards Case No. 1396 (Haiti), the Chairman of the Committee met the Haitian Government delegation on 17 June 1988 at the International Labour Conference. During that meeting, it was decided that the direct contacts mission mandated to study the measures adopted to implement the recommendations of the Commission of Inquiry on the employment of Haitian workers on the sugar plantations in the Dominican Republic, would also discuss with the Haitian Government the issues related to the case pending before the Committee. This mission took place in Haiti from 15 to 19 October 1988. The Committee intends to examine this case at its next session on the basis of information

gathered by the mission and any information addressed by the Government to the Committee before February 1989.

8. The Committee examined Case No. 1425 (Fiji) at its February 1988 meeting, at which time it presented an interim report [see 254th Report, paras. 505-523] requesting the Government to send its observations on the allegations set out in a communication from the International Confederation of Free Trade Unions (ICFTU) dated 8 February 1988. A subsequent communication from the ICFTU dated 19 February 1988 was also forwarded to the Government for comment. The Government wrote to the ILO on 27 September 1988 reiterating its earlier view "that all trade union rights under existing law have been fully restored"; attached to this letter was a copy of the recently promulgated Protection of Fundamental Rights and Freedoms Decree 1988. The Government's letter does not, however, address the specific allegations set out in the communications from the ICFTU dated 8 and 19 February 1988. The Committee again requests the Government to send its observations on these allegations.

9. As regards Case No. 1462 (Burkina Faso) concerning alleged government interference in trade union activities, the Government sent its observations in a communication dated 13 September 1988. Subsequently, the complainant sent a communication dated 15 September 1988 containing additional information, which was communicated to the Government for its observations. The Committee accordingly adjourns its examination of this case and awaits receipt of the Government's further observations.

## URGENT APPEALS

10. As regards Cases Nos. 1417 (Brazil), 1421 (Denmark) and 1444 (Philippines), the Committee observes that, despite the time which had elapsed since the presentation of these complaints, the Governments have not transmitted the observations or information which had been requested from them. The Committee draws the attention of these Governments to the fact that, in accordance with the procedural rules set out in paragraph 17 of the Committee's 127th Report approved by the Governing Body, it will present a report at its next meeting on the substance of these cases even if the observations requested from the Government have not been received in time. The Committee accordingly requests the Governments to transmit their observations as a matter of urgency.

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11. The Committee draws the legislative aspects of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Cases Nos. 997, 999 and 1029

(Turkey), 1341 (Paraguay), 1431 (Indonesia), 1434 and 1465 (Colombia), 1443 (Denmark), 1450 (Peru) and 1459 (Guatemala).

## Effect given to the recommendations of the Committee and of the Governing Body

12. As regards Cases Nos. 988 and 1003 (Sri Lanka) further information had been requested from the Government on the final outcome of the High Court proceedings against five trade unionists (which have been pending before various jurisdictions since the unionists were arrested in 1980). In a communication dated 23 May 1988 the Government states that the High Court hearings continued on 12 November 1987, 31 March and 6 May 1988 and a further hearing is scheduled for 5 September 1988. The Government undertakes to communicate further information when the case is heard. The Committee takes note of this information and trusts that the court proceedings will soon be completed.

13. As regards Case No. 1016 (El Salvador), the Committee had requested the Government to indicate whether the verdict convicting Messrs. José Dimas Valle and Santiago Gómez González of the murder of the Salvadorian trade unionist Rodolfo Viera and of the two United States trade unionists Mark Pearlman and Mike Hammer was final and confirmed. In a communication dated 1 June 1988 the Government states that the culprits were sentenced by the Fifth Criminal Court of San Salvador to 30 years' imprisonment each and that the verdict of guilty was definitive. However, it points out that under the Amnesty Act of October 1987, in the interests of national reconciliation both the convicted parties benefited from the amnesty and were released on 19 December 1987. The Committee, while taking note of this information, draws the attention of the Government of El Salvador to the principle that a climate of violence such as that surrounding the murder of trade unionists constitutes a serious obstacle to the exercise of trade union rights and that such acts require severe measures to be taken by the authorities.

14. As regards Case No. 1261 (United Kingdom) concerning the right to organise of workers at the General Communications Headquarters (GCHQ) [see 234th Report, paras. 343-371 (May 1984) and 253rd Report, para. 22], the three complainants in the case - the Trades Union Congress (TUC) on 4 October 1988 supported by the International Confederation of Free Trade Unions on 5 October 1988, and the Public Services International on 10 October 1988 - have expressed their concern at a government announcement of 29 September 1988 directed at the remaining 18 trade unionists working at GCHQ. According to the complainants, the workers have been warned that they must renounce their union membership by 14 October 1988 or be dismissed with compensation. The ILO immediately informed the Government of these organisations' concern. Subsequently, in communications of 19 October 1988, the ICFTU and TUC state that four union members employed at GCHQ

have received immediate dismissal notices. The Office requested the Government to send its observations on this matter and, in a letter of 27 October 1988, the Government did so. It states that its action to implement the government decision of 25 January 1984 - which gave rise to the presentation of Case No. 1261 - has been proceeding since that date and the overwhelming majority of staff at GCHQ have accepted the new conditions of service requiring them not to join or remain in membership of a national trade union or to transfer to posts where membership could be retained. Nearly all the remainder have either transferred voluntarily to suitable posts elsewhere in the civil service where they could retain their union membership, or have opted for voluntary departure with the generous compensation which normally applies in cases of redundancy. As indicated in the announcement of 29 September 1988, only 18 members of a national trade union remained at GCHQ at that date, and the announcement set out the steps which the Government is taking in respect of these. The Government maintains that, since the original announcement of 25 January 1984, every opportunity has been extended to the small group of staff who retained their membership of a national trade union to acccept the terms and conditions of employment for GCHQ staff introduced on 25 January 1984 or to transfer to other employment in the civil service. However, the Government now takes the view that its decision of 25 January 1984 must be fully implemented. The terms of that decision were fully recorded in the documentation which the Committee had before it when it reached its original conclusions and recommendations in Case No. 1261 and the Government's view is that the matters referred to in the complainants' letters of October 1988 raise no new issues for consideration. The Government invites the Committee to conclude accordingly. The Committee regrets that it must recall once again that the ILO supervisory bodies found that the unilateral action taken by the Government to deprive a category of public service workers of their right to belong to a trade union was not in conformity with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by the United Kingdom. The Committee hopes that the Government will reconsider the matter in the light of the above considerations.

15. As regards Case No. 1282 (Morocco), the Committee had requested the Government to inform it of the decision of the Court of Appeal concerning the appeals lodged by the workers and the employer in the Moroccan company Vincent Computers in Mohammedia against the decision handed down by the Court of First Instance in the matter of the dismissal of striking workers in January and February 1984. In a communication dated 30 May 1988, the Government states that the Court of Appeal has stayed its decision on this issue since it is awaiting further information. The Committee regrets the delays in the administration of justice in this case and again requests the Government to indicate whether the dismissed workers have been reinstated in their jobs.

16. As regards Case No. 1340 (Morocco), at its February 1988 meeting the Committee took note of the information provided by the Government in a communication dated 18 November 1987 [see 254th

Report, para. 22], according to which the Appeals Court of Rabat had confirmed the sentences handed down by the Court of First Instance against various miner trade unionists dismissed after a strike in the Al Hamman mine. In a subsequent communication dated 30 May 1988, the Government specifies that the dismissals were based on serious misconduct (common law crimes) and were not linked to the simple fact of having organised or participated in a peaceful strike, that is, acts punishable under the law including attacks on public order, unauthorised demonstrations and obstructing the exercise of the right to work. As regards the possible reintegration of the dismissed workers, the Government points out that the administrative authorities have not been empowered to reconsider a decision handed down by the judicial authorities. The Committee takes note of this information.

17. As regards Case No. 1343 (Colombia), the Committee had requested the Government to keep it informed of developments in the trial and investigations under way concerning a certain number of dead or disappeared trade unionists. In communications dated 19 July and 14 October 1988, the Government states that proceedings are continuing in the various cases concerning the deaths of Rubén Darío Castaño, Dionisio Hernán Calderón, Javier Sanabria Murcia, Jorge Leonel Roldán Posada, Pedro Antonio Contreras Salcedo, Hernando Jate Bonilla and Miguel Angel Puerta. It also supplies information on the efforts made to investigate the disappearances of Oliverio Hernández Leal, Ignacio Soto Bedoya and José Aldemar Cardona, José Diomedes Cedeño and Héctor Perdomo Soto. The Committee takes note of this information and requests the Government to continue supplying information on developments in the various outstanding matters.

18. As regards Case No. 1354 (Greece), which the Committee examined most recently at its February 1986 meeting, the outstanding issue related to the alleged government interference in trade union activities. In a communication dated 10 June 1988, 47 trade union organisations in dispute with the General Confederation of Labour of Greece (CGTG) presented new allegations concerning government interference in the trade union activities of the CGTG. These allegations were transmitted to the Government, and the Committee requests it to supply its observations on this matter.

19. As regards Case No. 1369 (Honduras), the Committee had requested the Government to keep it informed of developments in the trial concerning the death of the trade union leader, Cristóbal Pérez Díaz. In communications dated 17 May and 1 September 1988, the Government transmits a statement from the judge of the 3rd Criminal Court explaining that inquiries to clarify the death of this unionist are at the indictment stage. The Committee takes note of this information and draws the Government's attention to the length of time which has elapsed since the incident occurred (10 May 1986). It urges the Government to try to accelerate the handling of this matter and to inform the Committee thereon.

20. As regards Case No. 1376 (Colombia), the Committee had requested the Government to keep it informed of developments in the

trials concerning the death or disappearances of unionists which were under way. In communications dated 24 August and 14 October 1988, the Government states that the proceedings concerning the murder of Fernando Bahomán Molina, Luis Francisco Guzmán Rincón, Bernardino García Silva and Jaime de Jesús Blandón are continuing before the competent courts. It also supplies information on inquiries concerning the disappearance of Gentil Plaza and Gildardo Ortiz, which are continuing. The Government adds that it will inform the Committee of the outcome of the appeal lodged in the trial against the dismissal of Gerardo Guerrero Ibagué as soon as it is known. The Committee takes note of this information.

21. As regards Case No. 1398 (Honduras), the Committee took note of the information supplied by the Government in April 1988 and requested it to indicate how many dismissed workers would be able to be reinstated by the new owners of the "El Mochito" mine. In communications dated 17 May and 1 September 1988, the Government states that, to date, no union has been established in the new mining enterprise called "American Pacific Honduras Inc." since the workers have not decided on one. It adds that this is the case despite the effective application of the provisions which protect workers against acts of anti-union discrimination. The Government states that the new company has given contracts to 689 workers, 613 of which are permanent, 76 temporary and 223 were transferred to the "Rosario Resources Corporation". The Committee takes note of this information with interest.

22. As regards Case No. 1408 (Venezuela) which the Committee examined at its May 1988 meeting, it requested the Government to take the necessary measures to speed up the consideration of the question of the granting of legal personality to the Independent Union of Employees of the Central Bank of Venezuela and to keep it informed of the action taken in this regard. In a communication dated 5 October 1988, the Government repeats the information already supplied previously to the effect that, given their status as civil servants, the employees of the Central Bank should request registration as a trade union from the Central Personnel Office and not from the Ministry of Labour. The Government indicates that the delay in the granting of legal personality is due to the appeals made against the decision of the Ministry of Labour to the Administrative Disputes Authority where proceedings are following their normal course. The Committee sees no reason to modify the conclusions and recommendations it had adopted in this case.

23. As regards Case No. 1415 (Australia), the Committee examined this matter at its meeting in February 1988 [254th Report, paras. 253-287] and requested the Government to keep it informed of any changes to the facilities accorded to the complainant consequent upon the outcome of its fresh application for industrial coverage of the customs officers involved in the complaint. At its May 1988 meeting [256th Report, para. 23] the Committee noted that on 6 April 1988 the Deputy Industrial Registrar had disallowed the complainant's most recent attempt to vary its eligibility rule because of technical

defects in the application. In a communication dated 31 October 1988 the Government advises that the complainant had recently sought a variation of an award to which it was party in respect of certain workers whom it believed were covered by its existing eligibility rule. The Committee takes note of this further information and asks the Government to keep it informed as to the position in relation to the complainant's attempts to vary its eligibility rule, and to the practical consequences of the decision of the Deputy Industrial Registrar dated 6 April 1988.

24. The Committee examined Case No. 1437 (United States), at its meeting in May 1988 [see 256th Report, paras. 214-237] and requested the Government to keep it informed of developments in the unfair labour practices charges lodged before the National Labour Relations Board (NLRB) against the multinational enterprise BASF, based at Geismar, Louisiana. In a communication of 15 September 1988, the Government forwards copies of NLRB correspondence which state that (i) certain aspects of the charges were dismissed by the Regional Director and this dismissal has been appealed against; and (ii) since the issue of subcontracting is very complex and the case is extremely important for the parties and the public, this aspect has been referred to the Division of Advice and both sides have been given opportunities to make additional presentations. Notwithstanding these factors, it continues, the NLRB expects to reach a decision in the very near future and will inform the ILO thereon. The Committee takes note of this information and hopes that there will be a rapid conclusion of this matter.

25. Finally, as regards Cases Nos. 1157, 1192 and 1353 (Philippines), 1195, 1215 and 1262 (Guatemala), 1189 (Kenya), 1258 (El Salvador), 1279 (Portugal), 1346 (India), 1380 (Malaysia) and 1388 (Morocco), the Committee again requests these Governments to keep it informed of developments in these various matters. The Committee hopes that these Governments will communicate the information requested at an early date.

## II. CASE WHICH DOES NOT CALL FOR FURTHER EXAMINATION

### Case No. 1452

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

26. The International Confederation of Free Trade Unions (ICFTU) presented allegations of violations of trade union rights against the Government of Ecuador in a communication dated 3 June 1988. The Government sent its observations on 13 and 18 July 1988.

27. Ecuador 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 complainant's allegations

28. In its communication of 3 June 1988, the ICFTU alleges that its affiliate the Ecuadorian Confederation of Free Trade Unions (CEOSL), together with other union organisations united in the Front of Trade Union Unity (Frente Unidad Sindical or FUT), called a general strike on Wednesday 1 June 1988 to complain of the Government's failure to reply to petitions relating particularly to recuperating the deteriorating purchasing power of Ecuadorian workers and the lack of dialogue between the Government and the trade union movement.

29. According to the ICFTU, the Government decreed a state of emergency on the day of the strike and violently put down the strikers; there were many arrests. Mr. José Chavez, President of CEOSL and a member of the ICFTU's executive committee, was detained with particular violence by the police and later suffered harassment in prison. He was released at 8 a.m. on 2 June 1988.

## B. The Government's reply

30. In its communication of 13 July 1988, the Government states that in May 1988 threats of a general transport strike started to be called by the transport unions' leaders based on calls for increases in fares (the tariff in force for urban transport was at the time equivalent to less than 3 Swiss centimes). At the time the National Congress was discussing the increase of the minimum legal wages for workers who benefited from annual increases to protect wage earners from the effects of increases in the cost of living. The Government was firmly against authorising any increase in transport rates unless the awaited wage increase was agreed on.

31. In these circumstances, states the Government, the FUT announced a "national stoppage" for 1 June 1988 opposing the increases in transport tariffs (which had already been frozen by the Government) and demanding a general increase in wages. According to the Government, the stoppage was pointless since the Congress was discussing this very issue and was shortly to adopt a resolution on it. The transport workers threatened to disrupt the country and made vile statements showing a lack of respect for the legitimate authorities. It supplies press clippings in support of this.

32. According to the Government, the FUT rejected all dialogue. Its various strike calls of the past years have been contrary to law

and order and have been linked to offences of sedition, rebellion and resistance to the lawfully elected authority; on more than one occasion they have involved acts of vandalism and violence. Since 1979 when a constitutional regime was restored to power in Ecuador after a prolonged period of dictatorship, there have been 12 such mob attacks. They can thus be described as acts deliberately aimed at destabilising the lawful regime. The Government states that since the work stoppage of 13 May 1980 these uprisings called by the FUT have followed a regular rhythm.

33. The Government accordingly does not see these mass attacks as "strikes" which are fully protected by the Constitution and laws. It refers to comments it made in an earlier case concerning a nation-wide strike called in March 1987 by the CEOSL in protest against the excessive increase in fuel prices and transport costs. [See 254th Report, Case No. 1400, paras. 189 to 199, approved by the Governing Body in February-March 1988.] These comments explain that in Ecuadorian labour law a strike means "a collective suspension of work by employees acting in combination" and that a strike is authorised "if a dispute arises between an employer and his employees" and this is submitted to the conciliation and arbitration tribunal. It may only be declared in the following cases: "(1) if the employer, after being notified of the employees' demands, fails to reply within the statutory time or gives a negative reply; (2) if the employer, after being notified, dismisses or gives notice of dismissal to one or more employees, or gives notice of the termination of an agreement ...", except "in the case of the dismissal of an employee who has committed an act of violence against the property of the undertaking or factory or against the person of the employer or his agent; (3) if no conciliation and arbitration tribunal is appointed within the time specified in section 466 or if, having been appointed, the tribunal for any reason does not meet within three days of its appointment, on condition in either case that the failure is not the fault of the members designated by the employees; (4) if conciliation proves impossible or no award is issued within the time allowed by section 473". The Government stresses that the protection of strike action is so wide in Ecuador that strikers are authorised to remain in the concerned workplaces (unique in world labour legislation) under police protection against the entry of agitators and strike breakers; strikers are entitled to receive remuneration and solidarity strikes are authorised.

34. The Government reiterates the detailed reply it gave in Case No. 1400 stressing that the March 1987 uprising involved obstruction of the free movement of vehicles and pedestrians; destruction of public property such as garden benches and traffic signs; burning of tyres; stoning of police and citizens; burning of private homes; storming of the Hotel Colón Internacional and other establishments in Quito with incendiary bombs; burning and hanging of hundreds of dogs as macabre symbolism. The Government states that, in view of this earlier violence and faced with the complaints of the general public tired of these repeated events, it was obliged to take cautious measures to preserve the public peace. It declared a state of

emergency, mobilised the military in the streets and suspended the constitutional guarantees, all done in accordance with the law in an effort to avoid anarchy, which is an essential aspect of the role of government.

35. Given the state of emergency, states the Government, the sedition of 1 June 1988 indeed resulted in less violence than the earlier uprisings. The armed forces acted with prudence and did not get involved in clashes. Since they were unaware of the FUT's call, the genuine workers continued working in most undertakings. In general, there was no vandalism apart from isolated cases. One of the union leaders of the transport workers suffered injuries when explosives blew up during the FUT sedition. Moreover, despite the presence of the army in the streets, vehicles and passers-by were attacked and public property destroyed. The Government cites the editorial of the newspaper "El Comercio" the day after the event describing the FUT strike as inopportune and unnecessary. According to the Government, national public opinion calls for discipline and efficiency so that Ecuador can be saved, rather than so-called "freedom of association" which has no self-control and which is destroying the nation's society.

36. The Government supplies a further press clipping from "El Comercio" showing that the agitation during the "tariffs war" was not limited to the 1 June 1988 riotous mobbing, but continued throughout that month into July. Groups of agitators attacked public transport vehicles, with the violence escalating to such an extent that one driver was forced to repel attacks with his firearm.

37. According to the Government, in connection with the events of 1 June 1988, Mr. José Chavez was arrested for disorderly behaviour in a public place with a group of 40 rioters; he insulted and assaulted the superintendent in charge of the police patrol who warned the persons present of the risk of prison. They were judged on the same day by the General Police Commander and sentenced to two days' detention under section 606(9) of the Penal Code. The Government supplies a copy of the Commander's decision. Immediately on being informed of these detentions and once the events were over, the authorities ordered the release of all persons detained during the disorders so that no one completed the full sentence which their offences merited. Copies of the release orders, dated 2 June 1988, are supplied. Mr. Chavez was thus free as of 2 June and there are therefore no persons imprisoned in Ecuador due to the events of 1 June 1988.

38. According to the Government, the ICFTU's complaint is baseless and should be rejected.

## C. The Committee's conclusions

39. The Committee notes that the complainant's allegations concern the arrest of the President of the Ecuadorian Confederation of Free Trade Union Organisations (CEOSL), Mr. José Chavez, after calling a general strike on 1 June 1988 to protest against the Government's failure to reply to petitions relating to occupational demands, in particular the deteriorating purchasing power of Ecuadorian workers.

40. The Committee notes the Government's explanations concerning the special circumstances which gave rise to what is described as the "tariffs war" and that the Government raises the political aspect of the repeated work stoppages called by the trade union confederations united in the Front of Trade Union Unity, as well as the unlawful character of the strike.

41. It observes that the allegations and replies are similar to the facts put forward in Case No. 1400 against the Government of Ecuador, examined most recently in February-March 1988. It accordingly refers the Government to its earlier conclusions, and in particular regrets that in the course of the strike, despite the state of emergency and police and army presence in the streets, some violent and disorderly incidents occurred.

42. As regards the arrest of Mr. Chavez, as a result of disorderly behaviour during the events of 1 June 1988, the Committee notes that he was charged and sentenced under section 606(9) of the Penal Code for promoting public meetings without the appropriate police authorisation, and was released after 24 hours along with 40 other individuals.

## The Committee's recommendation

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

> The Committee notes that José Chavez, President of the CEOSL, was released on 2 June 1988 after 24 hours' detention for infringement of section 606(9) of the Ecuadorian Penal Code concerning public meetings without the appropriate police authorisation. It accordingly considers that the matter does not call for further examination.

## III. CASES IN WHICH THE COMMITTEE HAS REACHED DEFINITIVE CONCLUSIONS

### 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 - NATIONAL WORKERS' CONVENTION

44. At its meeting in February 1988 the Committee examined an aspect of this case concerning the exercise of the right to strike and the imposition of minimum services and presented an interim report to the Governing Body [see 254th Report, paragraphs 428 to 449, approved by the Governing Body at its 239th Session (February-March 1988)].

45. The remaining allegations are contained in communications from the Single National Trade Union of Workers in the Clothing Industry (SUA-VESTIMENTA) dated 25 March, 21 April, 3 August and 2 and 9 September 1987 and in a communication from the Inter-Union Workers' Assembly and the National Workers' Convention (PIT-CNT) dated 14 May 1987. The World Federation of Trade Unions, in a communication dated 9 September 1987, and the PIT-CNT supported SUA-VESTIMENTA'S complaint. The Government replied in communications dated 8 October 1987 and 5 June and 10 October 1988.

46. 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

47. The Single National Trade Union of Workers in the Clothing Industry (SUA-VESTIMENTA) makes a series of allegations concerning infringements of freedom of association by the Chamber of Employers in the Clothing Industry (CIV) during a long labour dispute which has been growing more acute since 1986. Although it recognises the democratic character of the Government and points out that civil and political freedoms are recognised in the country and that as a consequence the principles of freedom of association are respected, SUA-VESTIMENTA states that the competent authorities have not taken effective measures to prevent, in the manner prescribed in Articles 3 and 5 of Convention No. 98, the very serious infringements of trade union rights which have occurred. Given the intransigence and anti-trade union attitude of employers in negotiations in the wage councils of June 1986 (which

fix minimum wages) the Executive Power decreed a 17 per cent wage increase with the support of the employers and which was rejected by SUA-VESTIMENTA on the basis of the percentage of the increase and the failure to respect the legal provision contained in section 9 of Act No. 10449 which prescribes that wages should be fixed by categories of workers in such a way that they are remunerated in accordance with the degree of specialisation required for their job. In the same way the use of homeworkers and small-scale clothing workshops results in over-exploitation which is compounded by the practice of employers of placing their trade union staff on unemployment insurance or dismissing workers on the pretext that there is a shortage of work when jobs are in fact being carried out in the above-mentioned workshops. In an attempt to pressure the CIV into respecting the legislation, work stoppages were organised within workplaces extending throughout the working day. The CIV responded by:

- establishing blacklists which make it impossible for trade union leaders and militant members to obtain stable employment. This is the case of Ramón Cáceres, Secretary-General of SUA-VESTIMENTA, Harlem Olivera, Deputy Secretary-General, the union leader Hugo Bergalta (a victim of slander by the employers who accused him of discriminatory attitude based on race) and of 50 per cent of the trade union leadership (the complainant organisation includes in an annex a list of those persons appearing on the blacklists);

- dismissing or placing on unemployment insurance during the July 1986 dispute or as a result of it more than half of the 60 members of the national directorate of SUA-VESTIMENTA. Hundreds of workers were suspended and 46 were dismissed for having participated actively in the trade union measures on the pretext of alleged acts of misconduct committed during the strikes (SUA-VESTIMENTA encloses the list of persons dismissed);

- assigning uniformed police to more than ten factories; when the public clerks recruited by the employers interviewed workers to see whether they were going to join the strike, those who answered affirmatively were prevented from entering;

- locking in more than six undertakings those workers who were peacefully occupying factories without any measures being taken by the public authorities;

- using fixed-term recruitment as a means of anti-trade union discrimination and preventing workers from joining the trade union;

- misusing the unemployment insurance scheme as a means of discharging unionised workers and subsequently recruiting other workers or giving out work to small and often clandestine workshops;

- carrying out a preliminary investigation of workers seeking employment in the clothing industry by means of agencies or

undertakings which interviewed persons close to the applicants concerning their participation in strikes, their political tendencies, etc. This occurs in several undertakings in the sector and, in particular, in Milton S.A. and OROLON S.A.;

- the establishment of collective agreements between undertakings and workers behind the backs of the trade union organisation (in the Milton S.A. undertaking a collective agreement was established which grants greater wage benefits to workers on the condition that they do not participate in the central wage negotiations carried out by the trade union).

SUA-VESTIMENTA then illustrates these allegations by referring to anti-trade union acts which have occurred in the following undertakings: Milton, CIMPEX, EVERFIT, EL MAGO, RELOS, RODOY, ROMINA, SIDEX, CUBACAN, MOISES FELD, PAUL SHARK, FARGO, BERNALESA, RINSY, DYMAC, PRAKER, DAKAR and MANTEL.

48. In its communication of 14 May 1987, the Inter-Union Workers' Assembly and the National Workers' Convention (PIT-CNT) point out that the return to democracy in the country has led to a recognition of trade union organisations which play a proper role in the life of the country. They allege, however, that the provision contained in Article 3 of Convention No. 98 that "machinery appropriate to national conditions shall be established ... for the purpose of ensuring respect for the right to organise" has not been respected. In Uruguay it is possible to keep active trade unionists out of employment by dismissing them since all the employer has to do is to dismiss the worker (without giving reasons) and pay the corresponding compensation. This situation, which is known to and ignored by the Ministry of Labour, is giving rise to a growing number of blatant acts of anti-trade union persecution. Decree No. 93/68 dated 3 February 1968 establishes regulations to prohibit and impose sanctions on anti-trade union discrimination, but does so in a purely formal manner since it fixes very low fines (up to 25 or 50 times the daily wage) and the imposition of the fine is a matter for the discretion of the administrative authority. It is not adequate machinery in the sense used in Convention No. 98 but rather one which facilitates discrimination. The Chamber of Deputies has approved a bill on the subject which does not satisfy the aspirations of the trade union movement since it results in excessive interference in the internal life of the trade union organisations by imposing voting systems in the election of trade union officials. In addition to the clothing industry, trade union rights are also violated in the leather industry; the PIT-CNT makes the following allegations:

- the dismissal of several dozen workers most of whom were works' council delegates and several members of the trade union executive. These events have been denounced to the Ministry of Labour without any solution being found or any stop being put to repression by the employers. In the AZADIAN undertaking an active trade unionist was dismissed for having gone to the Ministry of Labour and Social Security to make a formal

denunciation concerning trade union repression by an employer. In the EXXON and SAN LUIS undertakings workers have been dismissed for having demanded the implementation of specific standards issued by the competent authority in this branch of activity. In practice, in both the leather and the clothing industries, trade union activity has become a secret or clandestine activity because the simple knowledge by the undertaking that a worker is a trade unionist results in his immediate dismissal or other kinds of discrimination;

- in several undertakings workers are required to sign a form stating that they have never been a member of the leather industry trade union and that they will not become a member in the future. These documents must be signed before the worker joins the undertaking;

- the unlawful and abusive use of the unemployment insurance scheme. Thus in undertakings such as OROCUER, because of an alleged shortage of work, all the members of the works' council were placed on unemployment benefits at a time when work was being sent out to small workshops. The purpose of placing certain workers - all leaders of the works' council - on unemployment insurance is to damage the trade union organisation and make it impossible for militant leaders to establish contact with workers in the factory. In the same way, in the MILENI undertaking, all the workers were placed on unemployment benefits and then the same workers were offered work in another undertaking which refused to grant them the more advantageous conditions which they had acquired in the undertaking which had placed them on unemployment benefits. In this case all the workers were accepted in the undertaking with the express exception of all the members of the works' council who remained on unemployment benefits awaiting the notification of their dismissal.

49. In a communication dated 28 July 1987, which was supported by the World Federation of Trade Unions, SUA-VESTIMENTA alleges that during the wage council negotiations of June 1987, employers continued to refuse to apply different wage rates based on wage categories despite the fact that the Executive Power had adopted, in principle, a positive attitude by accepting the workers proposal to establish a preliminary categorisation which would update the text of a 1968 arbitration award (the term "precategorisation" is used because rates are based on minimum wages). The trade union proposal was included on an open agenda proposing a 100 per cent increase in the holiday wage, a 100 per cent increase in the Christmas bonus, the reinstatement of dismissed workers and workers who had been excluded from the industry and the establishment of crèches. The employers rejected the workers' proposal and tried to recuperate some of the benefits which the workers had already achieved such as 75 per cent of the holiday wage and the entire Christmas bonus. After two months' negotiation the Executive Power said that it was ready to vote with SUA-VESTIMENTA a higher percentage of wage increase than that offered by the employers; the vote of the Executive Power referred only to the wage percentage

and "precategorisation" but excluded the vacation wage, the Christmas bonus and other wage demands. SUA-VESTIMENTA decided not to reject the percentage proposed by the Executive Power (17 and 18 per cent) but said that it was not enough. The CIV voted against the wage increase. In the same way SUA-VESTIMENTA refers to a series of acts of anti-trade union discrimination (blacklists, dismissals by the following undertakings: EVERFIT, DIRPLAIN (DALLAS), DEGANIA, ANTEX and EL MAGO).

## B. The Government's reply

50. In its communication of 8 October 1987 the Government expresses its basic agreement with the complainant organisations that the most important point to be stressed is the recognition that "the return to democracy in the country has led to a recognition of trade union organisations which play a proper role in the life of the country" and that "civil and political freedoms are recognised in the country and that as a consequence the principles of freedom of association are respected".

51. A detailed examination of the complainants' allegations shows that the complaint is motivated by facts which have been allegedly committed by employers in the clothing and leather sectors and that the Government has played no part in the acts which have been committed.

52. Since the complainant organisations make a generic charge concerning the failure to observe the provisions of Articles 3 and 5 of Convention No. 98, a review must be made of measures taken for the full restoration of trade union rights. As the complainants point out, Uruguay has enjoyed a prestigious tradition in the respect and promotion of trade union freedoms. However it must be pointed out that this tradition has developed on the basis of a set of minimum standards comprising only article 57 of the Constitution, which dates from 1934 and the International Labour Conventions Nos. 87 and 98 ratified by Act No. 12030 of 27 November 1953 and the application of which, consonant with the monist conception, is predominant if not unanimous in law and jurisprudence in the form of directly applicable principles. Indeed, as the ILO itself has pointed out on more than one occasion, Uruguay was and is still today a unique case as regards the abstention of the State in standard-setting. This abstentionist policy, which has been defended and championed by the most prestigious national doctrine, has its raison d'être in the trade union resistance to all standard-setting by the State based on the ideological origins of the movement and encouraged by the precocious development of a modern society which reaped the benefit of periods of prosperity and well-being, and which enabled a labour relations system to be developed which was respectful of trade union rights. In this context, the only State measure of a general nature to guarantee the free exercise of these trade union rights was Decree No. 93/968 of 3 February 1968 to

facilitate the application of international standards in force and the sanctions established by national legislation which were regulated collectively and which expressly prohibited anti-trade union practices. This quasi abstentionist system which as regards the coming into force of Conventions Nos. 87 and 98 lasted almost 20 years (November 1953 to June 1973), has not been the subject of substantial observations by the Governing Body of the ILO.

53. The Government adds that shortly after the establishment of the democratic Government, Act No. 15738 dated 13 March 1985 marked an innovation in national practice when the so-called "Acts" Nos. 15137 (on occupational associations), 15328 and 15385 (collective agreements), 15530 (strikes), 15587 (trade union rights) and the so-called "Basic Act" No. 3 (strikes by public officials) - which had been brought into force by the de facto regime (1973-85) - were "cancelled" and not simply repealed. This presupposed that there would be a restoration of the legal system which had been in force before 1973 regarding trade union rights based exclusively on the Constitution (article 57) and International Labour Conventions Nos. 87 and 98, as regulated by Decree No. 93/968. As a result, the trade union system which operates at present in Uruguay is characterised by State abstentionism and collective autonomy, principles which have been systematically defended by the trade union movement and the most characteristic labour doctrine which has been radically opposed to standard-setting by the State in this sphere. Under this system, trade unions are set up autonomously without any kind of State intervention, with their legal personality being recognised de facto, and which by the simple fact of existing and without any need for obligatory registration may exercise any kind of trade union activity. In the same way freedom of association is fully guaranteed in accordance with the provisions of Convention No. 87, in particular as regards the positive and negative aspects of trade union freedom, the freedom to establish trade unions, internal autonomy, the freedom to associate at the international level and the freedom of an organisation to dissolve itself both in the private sector and as regards public officials.

54. However, it is obvious - as the ILO itself has pointed out - that although the state legislative abstention has proved particularly beneficial to trade union freedom, it does entail deficiencies resulting from the lack of standards making express provision for adequate and effective machinery for the special protection of trade union officials and activists against dismissal and other acts of union discrimination. This lack of standards expressly guaranteeing effective methods of protection, to which attention could be drawn before the break-up of the country's institutions only at one's own risk, posed a danger after the re-establishment of trade union freedoms which, although not of a generalised nature, became a source of concern to the Government.

55. Thus, after 12 years of trade union paralysis, it was feasible to assume that the reconstruction of workers' organisations might be resisted by some employers since it constituted a virtually unknown practice especially in the most recently developed sectors of

activity. This was particularly true when the lack of experience in the subject coincided in many cases with that of a new generation of trade union officials who had entered the sphere of trade union action in the anomalous circumstances of resistance and clandestine conflict with the regime in force. The Government was conscious of this risk from the beginning and considered that for the moment, given the traditional inadequacy of internal positive law, the labour courts would have to play a fundamental role in a State of law such as that existing in Uruguay. Indeed, the lack of express standards has not prevented the free evolution of national jurisprudence as regards the protection of basic rights and freedoms with the introduction, under section 332 of the Constitution, of jurisprudence which provides adequate means of protection against acts of trade union discrimination in so far as it has been established. In this connection particular importance is to be attached to the jurisprudential adoption of the concept of protection (amparo), judicial orders not to innovate and the rulings which have been made for the reinstatement of workers and the establishment of coercive sanctions for the failure to implement such rulings. Meanwhile, the Supreme Court itself accepts the monist conception which advocates the incorporation ipso jure within the internal juridical system of the standards contained in International Labour Conventions following their ratification. Decree No. 93/968 expressly precludes the acts of trade union discrimination enumerated in Convention No. 98. Thus, it must be concluded that the foundation has been laid for at least the effective provision of the measures of protection enumerated in Paragraphs (c), (d) and (e) of Recommendation No. 143.

56. Notwithstanding the above, the Government adds that it is important to emphasise that the autonomous tradition of the Uruguyan trade union movement, which as a result of its classist self-definition embodies a certain degree of mistrust vis-à-vis the State, has often led it to avoid taking cases to court even in disputes of law and to prefer in most cases recourse to strikes. Aware too that the habitual slowness of the legal machinery only encourages the reticence of workers to resolve conflicts by recourse to such procedures, the Executive Power on 28 March 1985 submitted to Parliament a bill which sought, by means of the establishment of summary oral proceedings in labour matters to facilitate the defence of workers.

57. The Government points out that even if in the final analysis the courts are responsible for the effective remedy of infringements of trade union rights, for its part the Ministry of Labour and Social Security has exercised at the administrative level its supervisory powers in this respect in accordance with the provisions of Decree No. 93/968. To this end, when denunciations are made concerning infringements of trade union rights, an inquiry is carried out to ascertain the truth of the allegations. If trade union persecution is established, a resolution is issued stating that there has been a violation of trade union rights and workers are reinstated when the infringement is one of dismissal; fines are applied if the resolution is not obeyed. It should be borne in mind in this connection that, although section 9 of Decree No. 93/968 prescribes that infractions

shall be punished with fines, the amount of which will depend on the number of workers affected, the General Inspectorate of Labour and Social Security has interpreted it in the sense that when anti-union measures are designed to prevent the growth and development of trade union activity, it must be considered that all the workers are in the end affected even though the measures may be specifically directed against one or more workers. Thus the size of the nominal fines has been increased.

58. In the final analysis, it must be said that the most effective protection of trade union rights is provided by legislation. In this connection the Government draws the attention of the Committee to the fact that a bill on trade union protection has been submitted to Parliament and has already been approved by the Chamber of Deputies. It is designed to fill once and for all the traditional lack of legislation in this field. While it is not appropriate here to go into its contents in detail, the Government intends that the measures should improve compliance with the obligations resulting from the ratification of Convention No. 98. In fact, the provisions are based on the statements of the Committee and will ensure the effective implementation of Articles 1 and 2 of Convention No. 98 by means of the explicit establishment of remedies and sanctions against acts of interference by employers with regard to workers. Thus, provision is made for rapid procedures and severe sanctions in the event of trade union discrimination as defined in detail in Recommendation No. 143. In this connection mention should also be made in the allegation of the PIT-CNT that this bill "does not satisfy the aspirations of the trade union movement since it results in excessive interference in the internal life of the trade union organisation by imposing voting systems in the election of trade union officials". As regards this categorical affirmation, it should be pointed out that it refers to the final paragraph of section 6 which stipulates that the supplementary guarantees to be provided to trade union officials are reserved to those who are elected by secret, obligatory and direct vote, without any further restrictions. In addition to the fact that this concept does not impose voting systems but simply explains the granting of additional guarantees to a specific voting system, the Government believes that the bill conforms to the statements of the Committee by accepting provisions which make it mandatory for workers' organisations to elect their leaders by means of a specific voting system as long as such a system guarantees the right to free election, for example by a secret vote. Thus even though the complainant organisations are demanding the approval of a bill respecting trade union rights, their inconsiderate and continued rejection of the most minimum standard-setting by the State respecting their organisation, even in conditions which are completely in accordance with Convention No. 87, makes such a task difficult. The Government asks the Committee to decide whether the provisions of the proposed bill conform or not to ILO standards.

59. As regards the events which occurred in the clothing and leather industry, the Government points out that both sectors, which reflect the growth in exports of non-traditional products, have

developed basically over the last 15 years, when trade union activity was for the most part prohibited by the de facto regime. Furthermore, these two branches of activity are characterised by their complex and dissimilar composition. In the clothing industry in particular use is still made of home work, family-scale workshops and medium-size establishments which supply most of the domestic market, whereas production from export factories floods the domestic market out of season. Following the re-establishment of freedom of association from 1 March 1985, it was clear from the beginning that both sectors were experiencing serious difficulties in the creation of a fluid labour relations system. In 1985 confrontation did not go beyond the undertaking level, with the emergence of a number of disputes; although they were settled by arbitration through the Ministry of Labour and Social Security, they nevertheless left a trail of intransigence. A general labour dispute broke out during the wage bargaining of June 1986, although in fact it was limited to the larger undertakings. During this dispute confrontation became unusually harsh when allegations were made on both sides. The employers accused the trade union officials and activists of an abusive use of the right to strike by recourse to go-slow techniques and working to rule, a deliberate reduction in productivity, the occupation of workplaces on the pretext of holding assemblies or stoppages as well as by acts of intimidation and the introduction of electricity cuts. The workers' organisations accused the employers of acts of indiscriminate interference through restrictions on trade union activities, suspensions and the dismissal of trade union officials and activists.

60. In this context, the Ministry of Labour and Social Security, faced with a shortage of material means to carry out its task in the sphere of labour administration, dedicated all its efforts to mediation. It proposed the conclusion of a long-term agreement which, in addition to regulating working conditions, would establish the bases of a labour relations system. Although after many days of negotiation an agreement was reached which put an end to the dispute, it did not prove possible to include the regulation of labour relations.

61. At the end of the dispute, the workers' organisation alleged reprisals which essentially concerned the acts of persecution and discredit which are the subject of the complaint. In this respect it should be pointed out first that, as noted above, although there is no legislation which makes express provision for adequate and effective machinery to give special protection to trade union officials and activists, this deficiency is not absolute since case law has given rise to principles (by means of protection orders - amparo in Spanish, orders not to innovate, the reinstatement of workers and the provision of sanctions for non-compliance) which enable the courts to make effective at least the protective measures contained in Paragraphs (c), (d) and (e) of Recommendation No. 143. Thus, although the judiciary is responsible for remedying infringements of trade union rights, and although it enjoys full independence in this respect, the Committee's attention is drawn to the fact that the Government has no information, at least in most cases, that the victims of the alleged acts have initiated legal proceedings.

62. The Committee's attention is also drawn to the difficulties which arise in practice in determining the trade union status of workers whose rights have allegedly been prejudiced. Indeed, given the absolute autonomy enjoyed by workers as regards the organisation of their trade unions which, by the simple fact of their existence, are authorised to carry out any kind of activity without the need for obligatory registration and the refusal of the trade union movement to carry out a voluntary registration of its officials, it has been necessary to investigate in each case whether in fact the worker holds the position of a trade union official. In most cases there is a lack of conclusive evidence to establish such a status. These difficulties, which are accentuated when it is a matter of deciding at the undertaking level about suspensions or dismissals, are compounded by others which inevitably appear when efforts are made to establish the real intentions of the employer who cites as a cause for such measures either gross misconduct or lack of work, a normal circumstance in export sectors which produce merchandise on a cyclical production basis.

63. As regards the presence of policemen in the establishments on strike, it should be pointed out that this occurred only in cases where workers had occupied premises and the employer asked the Ministry of the Interior to evacuate the premises in accordance with the provisions of Decree No. 512/966. It should also be pointed out that these evacuations were in all cases of a peaceful nature.

64. Although it is admitted by the complainant organisations, it should also be emphasised that in cases in which it has been shown that recourse has been had to fixed-term recruitment, the Ministry of Labour and Social Security has clearly established the illicit nature of this form of recruitment and has come out in favour of employment stability, as can be seen from the documentation provided by the complainants.

65. Likewise, the Ministry of Labour and Social Security has pointed out that although the individual agreements concluded by employers with a large number of workers may well be considered valid as regards the greater benefits which are provided for each of the signatory workers, such agreements are not valid as collective agreements and thus do not exclude workers who sign them from the working conditions established by collective bargaining.

66. As regards the cases in which the workers' organisation denounced the existence of clandestine workshops to which production from the establishments in dispute was transferred, the relevant inspections were carried out on more than 30 occasions without it being possible to establish the alleged clandestine character of these establishments, although on several occasions other infringements were recorded and duly punished.

67. Finally, the Government would like to inform the Committee that discussions with the presidents of the Chambers of Industry and Clothing, the PIT-CNT and the workers' organisations concerned have

been initiated with a view to reaching an agreement by consensus on the establishment of an appropriate labour relations system.

68. The Government points out that, notwithstanding the above, the Ministry of Labour and Social Security has decided to appoint a committee of inquiry to determine the truth of the allegations made to the Committee concerning anti-trade union practices in the clothing and leather industries. The committee will comprise persons of recognised expertise and independence. The committee, the establishment of which has been communicated to the complainant organisations, will be assisted by the National Directorate of Labour and Social Security and will be required to issue within a period of 90 days a report on all those cases which have not been the subject of a judicial inquiry. Once the committee's report is issued the Government will inform the Committee on its conclusions and, where applicable, the measures adopted as a result.

69. In a communication of 5 June 1988, the Government sends the texts of the conclusions of the above-mentioned committee of inquiry (see Annex I of the present report) and of a resolution of the Ministry of Labour and Social Security to implement the recommendations of the committee (see Annex II of the present report), in particular concerning the establishment of a permanent arbitration committee in the clothing and leather industries. In the same way, in its communication of 10 October 1988, in reply to the request by the Office dated 23 June 1988 for information and comments from the committee of inquiry, set up by the resolution dated 14 October 1987 to examine the various specific allegations made in the present case, the Government points out that the said committee has reported. According to the Government, the committee established its conclusions on the basis of the results of an examination of the documents available in the National Directorate of Labour (Division of Labour Relations), on court proceedings following disputes in the clothing industry, as well as on inspections carried out at its request by the General Inspectorate of Labour and Social Security and, in particular, information obtained from the parties on an individual and collective basis, during the six months of work it required to fulfil its mandate. The conclusions of the above-mentioned committee of inquiry were accepted as substantially correct by the parties as can be seen from the document dated 12 September 1988, to which reference is made below, in which both the representatives of the Chamber of Employers in the Clothing Industry and the representatives of the Single National Trade Union of Workers in the Clothing Industry and the PIT-CNT agreed "that the situation in the clothing industry has been one of gradual deterioration which has made it impossible to engage in flexible dialogue which is an indispensible means of collective bargaining" and confirmed "their firm intention to correct such a situation on the basis of mutual respect and consideration". The Government goes on to say that the Ministry of Labour and Social Security lacks the powers to order the reinstatement of workers who may have been suspended or dismissed in violation of their trade union rights and that, in Uruguay, the remedy of such violations is the responsibility of the jurisdictional bodies. The Government states

that it has no information that the injured parties in the present case have filed judicial proceedings to obtain such redress. Furthermore, the Government points out that the arbitration committee established by a resolution dated 3 June 1988 has been making relentless efforts to reverse the blatant decline in labour relations in the clothing industry and has even obtained the formal agreement of the parties to negotiate the establishment of "a collective agreement to establish minimum rules of conduct by the parties on the basis of points which include the recognition and representativity of the parties, the obligation to negotiate in good faith, the abstention from unfair practices, the fixing of time limits and places for discussions and co-ordination in the negotiation levels". The Government encloses a photocopy of the document signed on 12 September 1988 at the headquarters of the Ministry by the members of the Arbitration Committee for the Clothing Industry, representatives of the Chamber of Employers in the Clothing Industry, SUA-VESTIMENTA and PIT-CNT. The collective agreement which was then concluded by the arbitration committee appointed by this Ministry incorporates the conclusions and suggestions of the study carried out by the mission appointed by the ILO in 1986 and without doubt constitutes a step forward in national practice.

## C. The Committee's conclusions

70. The Committee observes that in the present case the complainant organisations have alleged in general the absence of effective measures by the authorities to prevent, as provided for by Article 3 of Convention No. 98, the very serious violations of trade union rights which have occurred in the clothing industry since 1986. More specifically, they allege the intransigence and anti-trade union attitude of the Chamber of Employers in the Clothing Industry in negotiations in the wage councils and the subsequent occurence of numerous acts of discrimination against trade union officials and members, as detailed by the complainant organisations. The PIT-CNT has made similar allegations of anti-trade union discrimination of the clothing industry.

71. As regards the application of Article 3 of Convention No. 98 ("machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding articles"), the Committee notes that according to the complainant organisations all an employer has to do to remove active trade unionists from workplaces is to dismiss them "without giving reasons" and pay the corresponding compensation. In the same way, according to the trade union organisations, the fines established by Decree No. 93/68 in the event of discrimination are so low that it is not possible to speak of "adequate machinery" as used in Convention No. 98, in addition to the fact that the decision to impose a sanction is a matter of discretion for the administration. The Committee also notes that the complainant organisations point out

that the bill respecting trade union rights approved by the Chamber of Deputies does not meet the aspirations of the trade union movement which believes that the imposition of voting systems governing the election of trade union officials presupposes interference in the internal life of trade union organisations.

72. The Committee observes that in its reply to these allegations the Government insists on a series of points: the existence of minimum standards regarding trade union freedom as a result of the special tradition of collective autonomy in Uruguay and the resistance of the trade union movement to any State regulation; the prohibition of the anti-trade union practices enumerated in Convention No. 98 by the provisions of Decree No. 93/68 which empowers the Ministry of Labour to impose fines when such practices are corroborated; and the fundamental role to be played by the courts as a result of the above-mentioned autonomous tradition. In this respect the Government emphasises the jurisprudential adoption of the concept of protection (amparo in Spanish), the judicial orders to refrain from innovations and, in particular, the reinstatement of workers and the provision for sanctions in cases of non-compliance. The courts are thus empowered to give effect at least to the protective measures enumerated in (c), (d) and (e) of Recommendation No. 143. However, the Government also draws attention to the customary slowness of the legal process (which it hopes to alleviate by a bill respecting summary oral proceedings in labour disputes) and the widespread mistrust of the State as a result of the tradition of independence which has led the Uruguayan trade union movement, in most cases, to avoid recourse to the courts.

73. The Committee observes that both the complainant organisations and the Government agree that there is a lack of adequate and effective machinery for providing special protection to trade union officials and activists against dismissal and other acts of anti-trade union discrimination. The Committee observes, however, that the bill respecting trade union rights, approved by the Chamber of Deputies, which in the view of the Government conforms to the recommendations of the Committee, does not meet the aspirations of the trade union movement for the above-mentioned reasons.

74. The Committee observes that the proposed bill respecting trade union rights is opposed by the complainant organisations because of the final paragraph of section 6 which stipulates:

> The following persons shall enjoy additional guarantees (inter alia, prior authorisation by the labour authorities regarding dismissals, transfers or downgrading in working conditions) within the limits established by sections 12 and 13:
>
> (a) members of the executive committees of trade unions, federations, confederations or trade union organisations;
>
> (b) substitute members of the executive committees when acting as full members;

(c) staff delegates on joint or tripartite committees when proposed by the trade union organisation or elected by all the staff;

(d) members of internal committees, works councils or similar bodies;

(e) applicants for executive posts in the trade union, staff delegates, internal committees, works councils or similar bodies.

The election of the persons mentioned above shall be by secret, obligatory and direct vote.

The Committee would like to point out that in accordance of Article 3 of Convention No. 87, workers' organisations "shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom ... . The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof". There is thus no doubt that within the meaning of the Convention, the regulation of procedures and methods for the election of trade union officials is primarily to be governed by the trade union's rules themselves. Indeed the fundamental idea of Article 3 of Convention No. 87 is that workers and employers may decide for themselves the rules which should govern the administration of their organisations and the elections which are held therein [see 191st Report, Case No. 763, para. 29]. That being said, the Committee has considered acceptable legislation which is designed to promote democratic principles within trade union organisations. Certainly secret and direct voting is one of the democratic methods, and in this respect there would be no objection from the point of view of the principles of freedom of association for legislation to contain provisions in this respect. On the other hand, this is not the case as regards obligatory voting [see 191st Report, Case No. 763, paras. 28 and 29]. In the same way, the Committee has pointed out, for example, that legislation imposing penalties on workers who do not participate in elections is not in harmony with the provisions of Convention No. 87 [see 191st Report, Case No. 763, para. 29]. Thus, the Committee asks the Government, in the event that the bill respecting trade union rights should be adopted, to take the necessary measures with a view to suppressing the requirement respecting obligatory voting in the elections of trade union officials as a condition for entitlement to the special trade union protection. However, the Committee would like to point out that this does not in any way mean that the Committee is giving its support to the said bill - or is rejecting it - in as far as the trade union organisations have made reservations in this respect. The level of protection for the exercise of trade union rights which results from the provisions and principles of Conventions Nos. 87 and 98 constitutes a minimum standard which may be complemented and it is desirable that other supplementary guarantees should be added resulting from the constitutional and legal system of any given country, its traditions as regards labour relations, trade union action or bargaining between the parties. At all events, and bearing in mind

the numerous allegations of anti-union discrimination in the clothing and leather industry, the Committee emphasises the need to establish adequate, impartial and rapid procedures to ensure respect of the right to organise which avoids any kind of anti-trade union discrimination.

75. As regards the specific cases of anti-trade union discrimination in the clothing and leather industries mentioned in the complaints, the Committee observes that the complainant organisations have alleged the existence of blacklists which make it impossible for trade union leaders and militants to obtain stable employment; the dismissal or placing on unemployment benefits of a large number of officials as a result of the dispute; the dismissal or suspension of hundreds of workers who had actively participated in the trade union actions; the presence of police in plants; the locking of workers inside plants occupied peacefully by workers; the anti-union use of fixed-term recruitment and of the unemployment benefit scheme; the carrying out of pre-employment inquiries into workers who apply for work in the clothing undertakings; the signing of collective agreements behind the back of the trade union organisation; the subjecting of contracts to non-union membership.

76. Firstly, the Committee notes that the Government has not referred specifically to each of the allegations but rather has limited itself to making general statements and references to the committee of inquiry set up by the Ministry of Labour following the filing of the complaints before the Committee on Freedom of Association. The Committee takes note of the explanations of the Government in this respect.

77. The Comittee notes that the committee of inquiry set up by the Ministry of Labour has established the following facts:

- the refusal of undertakings to engage in discussions with trade union officials, preferring direct negotiation with the workers;

- the absence in all cases of a criterion which may be said to be objective in the selection of workers to be dismissed or to be placed on benefits. Those involved generally include a high percentage of trade union delegates or unionised workers;

- preventive suspension as a preliminary step towards dismissal is carried out after trade union stoppages or measures;

- a frequent number of dismissals before the end of the unemployment insurance period. This hastiness suggests in some cases that there is an intention to end the contract of certain workers, generally trade union officials;

- although this cannot be considered a completely objective element, the lack of opportunities available to dismissed trade union leaders to find employment in other undertakings involved in the same activity is suggestive;

- the use of overtime even when there are workers available who are on unemployment benefits, although this does not conclusively show that there is any discriminatory attitude since there can be a significant reduction in production during a specific period when workers are placed on unemployment benefits, and during this period circumstances may arise which justify the use of overtime without there being any need to re-engage workers who are on unemployment insurance benefits;

- the presence of policemen on the premises of certain undertakings in situations which do not conform strictly to the conditions established by Decree No. 512/966. The presence of such officials is usually requested by the undertakings which allege that the measure is to protect workers from being harassed by other workers following their refusal to participate in work stoppages. Unionised workers interpret these measures as a form of intimidation.

78. The Committee notes the Government's statement that it has no information, at least as regards most of the cases, that those persons who were the victims of the alleged acts have filed legal proceedings. It also notes that the Government reiterates the powers which have been granted to the courts to ensure effective implementation of the protection measures prescribed by Paragraphs (c), (d) and (e) of Recommendation No. 143 (recourse procedure open to workers' representatives in the event of unjustifiable termination, provision of effective remedies including reinstatement with payment of unpaid wages and the obligation of the employer to prove that the action was justified).

79. The Committee also notes that, according to the Government, there are practical difficulties in verifying the trade union official status of trade union official workers who claim to have been affected and in determining the intentions of employers who, on their side, allege misconduct or lack of work. The Committee also takes note of the Government's statements concerning the presence of police in the establishments on strike and on the peaceful character of the evacuations, the attitude of the Ministry regarding instances where fixed-term contracts have been used and its explanations on the agreements signed by the employer with a large number of individual workers.

80. The Committee notes that it appears from the conclusions of the committee of inquiry set up by the Ministry of Labour to examine the allegations made to the Committee on Freedom of Association that there have been acts of anti-trade union discrimination and anti-union measures and practices contrary to collective bargaining in the clothing and leather industries. In the circumstances, although it regrets that in most cases the trade union organisations and the persons concerned have not made use of the legal methods of redress, the Committee emphasises, on the basis of the observations of the above-mentioned committee of inquiry, the need to remedy the acts and

anti-trade union practices which have been carried out since 1986, contrary to the provisions of Convention No. 98.

81. Finally, as regards the alleged intransigence of the Chamber of Employers in the Clothing Industry in the negotiations in 1986 and 1987, the Committee regrets that there was a lack of flexibility. The Committee notes that in the conclusions of the committee of inquiry set up by the Ministry of Labour, attention is drawn to the need to promote methods of negotiation and dialogue between the parties. It observes in this respect that a tripartite arbitration commission has been set up which would become a permanent negotiation body and that the parties have been invited to adopt, in a spirit of responsibility, a commitment to engage in dialogue, to resolve differences of opinion and to establish communication on a permanent basis. In this respect, the Committee notes with interest that at the request of the arbitration commission a formal agreement has been concluded between the parties to negotiate a collective agreement which will determine the relations between the parties, in particular as regards the obligation to negotiate in good faith and to refrain from unfair labour practices. The Committee expresses the hope that the activities of the arbitration commission and the application of the future collective agreement will make it possible to achieve the set objectives and results. The Committee would generally recall the principle that although the question as to whether one of the parties adopts a conciliatory or intransigent attitude to the claims of the other is a matter for negotiation, both employers and unions should bargain in good faith making every effort to arrive at an agreement. [See, for example, 139th Report, Case No. 725, para. 279 and 236th Report, Case No. 1275, para. 457, Case No. 1206, para. 493 and Case No. 1291, para. 695.]

## The Committee's recommendations

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

(a) The Committee requests the Government, in the event that the proposed bill on trade union rights should be approved, to take the necessary measures with a view to suppressing the requirement of obligatory voting in the elections of trade union officials as a condition of entitlement to the special trade union protection; the Committee emphasises the need to establish adequate, impartial and rapid procedures to ensure respect of the right to organise which avoids any kind of anti-union discrimination.

(b) On the basis of the conclusions reached by the committee of inquiry set up by the Ministry of Labour, the Committee emphasises the need to remedy the anti-union acts and practices which have been occurring since 1986, contrary to the provisions of Convention No. 98, and notes with interest that the tripartite arbitration commission set up to facilitate dialogue, negotiation

and the self-regulation of conflicts in the clothing and leather industries has reached an agreement between the parties to negotiate a collective agreement to regulate relations, in particular as regards collective bargaining. The Committee expresses the hope that this will lead in future to negotiations carried out in good faith in which both the employers and the trade unions will be able, in a climate of mutual confidence, to make the necessary efforts to reach periodic collective agreements.

## ANNEX I

### Conclusions of the committee set up by ministerial resolution dated 14 October 1987 to examine the complaints made by workers in the clothing industry

### I. Introduction

During its investigations, the committee examined public and private documentation which the parties presented to it or which it procured itself. In addition, it met with representatives of the workers' organisations, officials of the Ministry of Labour and Social Security and with the administrator of the Chamber of Employers in the Clothing Industry.

Further to the conclusions reached by this committee as regards the concrete complaints lodged, we consider it necessary to point out that it is clear from the investigations carried out that there has been an absolute deterioration in labour relations in the clothing industry.

Our country - as noted by a recent ILO mission (see Report on labour relations in Uruguay, first edition) - is characterised by a system of labour relations with a high level of conflictuality and independence of both employers' and workers' organisations. However, in this conflictual framework bipartite and tripartite negotiations, promoted by this very Ministry, have constituted a method of permanent regulation of disputes. That is why we can say that at present, in our country, there is a system of labour relations in which disputes are regulated by the parties themselves (self-regulation) having, at times, state intervention together with the social partners.

The committee has noted with concern that this characteristic of the system has not been strong in the clothing industry where, when faced with a high level of disputes, the methods of self-regulation by the parties have been weak and ineffectual. The committee observed that the opportunities for dialogue made available to the parties through the sessions of the wages councils or ad hoc meetings encouraged by this very Ministry only resulted in strengthening the distance separating the parties.

The more important risk, not only for the clothing sector but for the national system as a whole, is that a dispute in the clothing industry becomes a "chronic dispute", where instead of seeking solutions through consensus, one party or the other - according to the circumstances prevailing - imposes a decision through its greatest strength.

It is well known that our labour relations system has evolved without practically any normative framework. It is a system - in modern terms - involving "self-regulation": to try to resolve disputes in the clothing industry through coercive measures by the State would mean a departure from this type of system which has been supported especially by the workers.

Nevertheless, we consider that in view of the gravity of the facts, neither the State, nor the occupational organisations can remain inactive when faced with the deepening and worsening of the dispute. We wish to emphasise the need to promote bargaining instruments and dialogue to bring the parties closer together.

It is necessary that the workers and employers of the clothing industry understand that our labour relations system involves not only "disputes", but also a "disputes culture" (see ILO Report, op. cit., p. 29).

## II. Established facts

In this context, the committee has noted the following facts:

1. There is no advance or spontaneous bargaining between undertakings and unions. There is sporadic dialogue in the Ministry of Labour and Social Security, but even there only in cases of a very general nature and where inflexible positions are assumed beforehand.

2. It occurs frequently that certain undertakings do not respect the first summonses or attend the meetings in the Ministry of Labour, and if they do so, they send persons who are not representative and who limit themselves to taking note of the suggestions and to requesting time extensions.

3. The undertakings refuse to engage in dialogue with trade union leaders, preferring direct negotiation with the workers.

4. It has been noted that there is not in all cases a criterion which could be described as objective in the manner of choosing which workers are to be dismissed or put on unemployment benefits. Among those chosen there is generally a high percentage of trade union delegates or unionised workers.

5. Preventive suspensions as a prelimary step towards dismissal are carried out after trade union stoppages or measures.

6. Frequently, a number of dismissals take place before the end of the unemployment insurance period. This hastiness suggests in some cases that there is an intention to end the contract of certain workers, generally trade union officials.

7. Although this cannot be considered a completely objective element, the lack of opportunities available to dismissed trade union leaders to find employment in other undertakings involved in the same activity is suggestive.

8. Overtime is used even when there are workers available who are on unemployment benefits - although this does not conclusively show that there is any discriminatory attitude since there can be a significant reduction in production during a specific period when workers are placed on benefits and during this period circumstances may arise which justify the use of overtime without there being any need to re-engage those workers on benefits.

9. The presence of policemen on the premises of certain undertakings in situations which do not conform strictly to the conditions established by Decree No. 512/966. The presence of such officials is usually requested by the undertakings which allege that the measure is to protect workers from being harassed by other workers following their refusal to participate in work stoppages. Unionised workers interpret these measures as a form of intimidation.

10. Workers hold meeting during working hours without the permission of the undertaking.

11. The workers use atypical forms of strikes, such as intermitant strikes and work-to-rule.

## III. Certain final considerations

The present situation appears to have originated in the excessive resentment and tendency to confrontation between the parties which has made harmonious relations impossible.

The deteriorating situation might also be due to the lack of interlocutors better disposed to bargaining.

An example of this lack of ability to negotiate is the attitude of one representative of the Chamber of Employers in the Clothing Industry who told this committee that the employers have taken the decision not to engage in dialogue with any trade union leader who, in their opinion, has made discriminatory statements on the basis of the race of some employers.

This shows the ardour of the parties towards what they consider to be the defence of their interests.

Be that as it may, we must exhort the PIT-CNT and the Chambers of Employers to bring the parties closer together in accordance with the usual lines of our industrial relations system noted by the ILO.

We think that the time is right for the establishment of an arbitration commission which would become a permanent negotiation body and we invite the parties to assume a responsible attitude towards dialogue, to self-regulation of disputes, and to establish communication on a permanent basis, as occurs in the other occupational sectors of our nation.

Yours faithfully,

Juan Raso Delgue Santiago Pérez del Castillo
Hernán Navascués

Montevideo, 12 April 1988.

## ANNEX II

### Resolution of the Ministry of Labour and Social Security

Montevideo, 3 June 1988.

IN VIEW OF: the report made by the committee set up by the resolution of 14 October 1987 to examine the complaints made by workers in the clothing industry;

GIVEN THAT: (I) this committee, in its conclusions, advised that the PIT-CNT and the Chambers of Employers be exhorted to bring the parties closer together in accordance with the usual lines of our labour relations system; and (II) that this committee considered the time right for the creation of an arbitration commission which would become a permanent negotiating body and invited the parties to assume a responsible attitude towards dialogue, to self-regulation of disputes, and to establish communication on a permanent basis, as occurs in the other occupational sectors of our nation;

CONSIDERING: that provisions should be made to implement that committee's recommendations,

The Minister of Labour and Social Security

RESOLVES

1. To summon the representatives of the PIT-CNT, of the Single National Trade Union of Workers in the Clothing Industry (SUA-VESTIMENTA) of the Chamber of Commerce of Uruguay and of the

Chamber of Employers in the Clothing Industry so as to inform them of the report of the committee set up by the resolution of 14 October 1987, and to exhort them to work towards reconciliation in accordance with the usual lines of our industrial relations system.

2. To set up an arbitration commission, to be made up of Dr. Hernán Navascués representing this Ministry, Mr. Carlos Rafaeli, representing the Chamber of Commerce of Uruguay and Mr. Thelman Borges, representing PIT-CNT, so as to act as a permanent negotiating body for the clothing industry.

3. To inform the National Labour Directorate of the creation of the commission referred to in the previous paragraph.

4. To transmit a copy of the present resolution to the General Inspectorate of Labour and Social Security.

5. To transmit to the Committee on Freedom of Association of the Governing Body of the ILO a copy of the report of the committee set up by the resolution of 14 October 1987, as well as of this resolution.

## Case No. 1410

## COMPLAINT AGAINST THE GOVERNMENT OF LIBERIA PRESENTED BY THE NATIONAL SEAMEN, PORTS AND GENERAL WORKERS' UNION OF LIBERIA

83. In a communication dated 10 June 1987 the National Seamen, Ports and General Workers' Union of Liberia (NSP&GWU) presented a complaint of violations of trade union rights against the Government of Liberia. The Government sent its observations on the case in a communication dated 4 May 1988 and received in the ILO on 19 July 1988.

84. Liberia has ratified both 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 complainant's allegations

85. In its letter of 10 June 1987 signed by Mr. T.P. Mooney, Vice-President for Administration, the NSP&GWU alleges interference by the Labour Ministry authorities in its internal affairs, namely in the outcome of the election of its president.

86. The complainant states that, in accordance with its by-laws and constitution, the union's general convention was held on 29 August 1986. The Director of Trade Union Affairs of the Ministry of Labour supervised the convention in accordance with the Labour Practices Law of Liberia. Recognition and other relevant documents were then handed over to the legitimate leadership of the union. Indeed, from copies of letters appended to the complaint, it appears that, on 1 September 1986, the union's president elect submitted to the Labour Ministry authorities the documents required for recognition (list of names of elected officers and minutes of the meeting). On 11 September, the Minister in turn informed the President of Liberia that the results of the union's election clearly showed that the union members did not want a certain Mr. G.T. Tarbah as president (who received zero votes) and preferred Mr. N. Gibson (who received all the votes of the 30 delegates attending the convention). The Minister pointed out that under the legislation in force, any candidate to the election proceedings may file with the Ministry of Labour written objections to the conduct of the election within 24 hours after receiving the tally of votes; any person or organisation not a party to the election proceedings may file written objections to the conduct of the election within five calendar days after the tally of votes has been received by the parties to the election. In addition, he indicated that if no objections is filed within the allowed time, or after all objections have been finally determined, the Ministry of Labour shall certify the party receiving the valid votes of the majority of members voting in the election, said certification being final and conclusive and not subject to further objections. Since the Ministry of Labour had not received any written objections from any party, the Minister stated that Mr. N. Gibson was recognised as the legitimate president of the union, in keeping with the decision of its members.

87. The complainant states that it therefore came as a surprise when, on 13 October 1986, the President of Liberia replied to the Minister of Labour, noting with concern that, while an NSP&GWU complaint to the President's Office was still being investigated by his legal adviser, a handful of union members had been able to hold an election. The President's reply, a copy of which is supplied by the complainant, states that, on the basis of the report resulting from this investigation and the agreement of merger between the two factions that were before the Liberian Supreme Court, the legitimate president of the NSP&GWU is Mr. G. Tarbah. The President directed the Minister to recognise Mr. G. Tarbah as the union's president and the Minister, by letter of 20 October, accordingly did so.

88. The complainant points out that the original recognition of Mr. N. Gibson's presidency has still not been revoked. Lastly, it provides a copy of a Supreme Court Certificate, dated 19 December 1984 and signed by the Acting Clerk of Court, to the effect that George T. Tarbah had been convicted of theft of property and was sentenced on that date to three years' imprisonment with hard labour.