

"Welga ng Bayan" (National Protest). These were, however, merely personal opinions and not officially sanctioned. No ban was ever imposed against the KMU, nor were its members arrested for mere membership of that organisation. Some KMU officials were invited by the police to shed light on the violent acts committed during the course of the nationwide strike, while some were charged with sedition for their seditious acts and utterances.

574. The Government notes that the complaint also mentions high oil prices, low salaries and the Government's insistence on repaying its loans with the World Bank and the International Monetary Fund, concerning which it adds that the President announced on 19 July 1991 a reduction in oil prices, and on 8 January an increase in the minimum wage (following a November 1990 wage increase). Regarding the KMU's emphasis on the support of its strike by the people, the Government welcomes people's participation in governance, which has always been part of the present administration's policies and is enshrined in the Constitution. The Government cannot understand, however, the KMU's insistence that there were crackdowns on militant labour groups, "as if militancy is the monopoly of the KMU". It states that militancy is inherent in the labour movement, and yet it is only the KMU which seems to suffer from paranoia against the Government. Despite the KMU's claims of a government witch-hunt against it, the Government states that no leader or member of the KMU has been arrested or charged with the offence of being a member or officer of that organisation. Its registration is neither required nor withheld by the authorities, and it is free to do anything within the parameters of legality.

575. On the issue of the threatened strike ban, the Government points out that, since the presentation of this complaint in January 1991, no such ban was ever implemented. In fact, it points out that another nationwide strike took place in the period between the filing of the complaint and the writing of the Government's reply. The KMU's apprehensions are thus clearly without basis: the bill granting extra powers to the President, the curfews, the identification system also were never implemented, except for the curfew which an overzealous local official imposed for two nights in his locality and failed to enforce anyway. The Government denies the complainant's allegation of a total war policy against it evidenced by specific incidents of trade union violence and states that it has never adopted a policy of psychological operations, restrictive labour laws or militarisation.

576. On the contrary, the cornerstone of government policy has been improving the quality of life and protecting basic rights and freedoms, and the Constitution itself is replete with provisions on social, human and political rights. According to the Government, if the KMU sees all the Government's measures - such as progressive increase in the minimum wage and amendment of labour laws in consultation with the workers' and employers' organisations - as a total war policy, it can only allow the KMU its own point of view.

577. Regarding the specific allegations of anti-union violence, the Government states that concerned agencies will be investigating them and that legal processes are available for those who wish to file the appropriate complaints. The Government states that the Committee may well find these processes insufficient, but under present economic limitations the "administration of justice, in whatever state it is, is the one we have at the moment".

C. The Committee's conclusions

578. The Committee notes that this case arises from threats made by the authorities following a four-day nationwide strike starting on 24 October 1990 and also concerns a series of specifically described allegedly anti-union acts, including the warrantless arrest of the KMU Chairperson and 67 other persons during a strike, a threatened suspension of strikes, legislative restrictions on public meetings and the murder of 11 named officials and members of the complainant union.

579. The Committee notes that the KMU believes that the authorities have singled it out for harassment and isolation using the press in a psychological campaign against it. The Government, however, forcefully denies any such intention. The Committee appreciates the Government's observation that the threats (of being declared illegal, of a ban on strikes) feared by the KMU did not materialise, but would point out that this is the fourth complaint lodged by the KMU labour federation against the Government of the Philippines since the assumption of office of President Aquino and that most of the allegations in the various complaints have been upheld [see Case No. 1353, concluded in the Committee's 246th Report, November 1986; current Case No. 1444, examined most recently in the Committee's 277th Report, February-March 1991 and elsewhere in the present report; and Case No. 1529, also examined and closed in the 277th Report. See also Case No. 1426, presented by the International Union of Food and Allied Workers' Associations (IUF) which concerned affiliated members also belonging to the KMU and which was closed in the 278th Report, May-June 1991].

580. Turning to the specific allegations in the present case, the Committee notes the Government's reply that the threat to "ban" the KMU was merely a personal opinion expressed by some government and military officials and was not officially sanctioned. While noting that the threat was never carried out, the Committee would nevertheless observe that such pronouncements cannot but fuel situations of uncertainty and fear, particularly when widely diffused by the press. This Committee has stated on several occasions [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 70] that trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists and it is for governments to ensure that this principle is respected. It trusts that appropriate

steps have been taken so that high-ranking members of the Government and the military avoid making public statements that challenge the principles of freedom of association.

581. The Committee also notes that the draft legislation empowering the President, inter alia, to restrict industrial action was not presented to Parliament and recalls in this connection that strike action is one of the essential means through which workers and their organisations may promote and defend their economic and social interests [Digest, para. 363]. If governments argue that a restriction on this right is needed in times of emergency, the Committee is of the view that measures suspending the right to strike should be limited in time and scope to the period of emergency [Digest, para. 391].

582. Regarding the specific incidents of anti-union harassment by the authorities against KMU leaders and members, the Committee notes with concern the arrest without warrant of KMU Chairperson, Mr. Crispin Beltran, on 30 October 1990 who was later charged with incitement to sedition, illegal assembly, arson and certain other offences which had been dropped many years before. The Committee already examined a challenge to arrests without warrants in its 277th Report in the context of Case No. 1444 [see paras. 313 and 332, approved by the Governing Body in February-March 1991], during which it noted that the Philippines Supreme Court had upheld the practice in that it was restricted to cases of subversion. However, the Committee recalled the importance attached to trade unionism being exercised in a climate free from insecurity and fear, where certain basic guarantees of due process should always be respected in the case of detained unionists. Moreover, the Committee is of the opinion that if a government has sufficient grounds for believing that persons arrested have been involved in subversive activity, those persons should be rapidly tried before the courts with all the safeguards of a normal judicial procedure [Digest, para. 114]. In the present case it notes that Mr. Beltran has been released on bail and has been able to file counter-petitions in his defence. It requests the Government to inform it of progress in the proceedings against this trade union leader concerning whom its reply - to the effect that the concerned agencies will be investigating the matters - is disturbingly brief.

583. As regards the alleged restriction on peaceful public assembly by virtue of the Public Assembly Act, 1985, the Committee notes the KMU's description of police and military breakups of rallies on 16 November and in early December 1990, as well as the authorities' refusal to grant the KMU's request to hold a public rally in November 1990. It also notes that the Philippines Commission on Human Rights has, in examining a KMU complaint to that body, stated that the "no-permit/no-rally" policy violates the Philippines constitutional right to assemble peacefully. This Committee would point out that, although the right to hold trade union meetings is an essential aspect of trade union rights, the organisations concerned must observe the general provisions relating to public meetings which are applicable to all; this principle is contained in Article 8 of Convention No. 87 which provides that workers and their organisations, like other

persons or organised collectivities, shall respect the law of the land [Digest, para. 158]. However, the Committee has also recognised that permission to hold public meetings and demonstrations - which is an important trade union right - should not be arbitrarily refused [Digest, para. 157]. Not having been supplied with a copy of the Public Assembly Act, the Committee asks the Government to send the text of the Act so that it can evaluate whether the requirements therein are reasonable limits applicable to all. It notes, in the meantime, from the refusal of the Manila City Hall reported by the complainant, that the ground for refusal given in that particular case appeared to be a wish to avoid violent disturbances such as had recently occurred at mass public rallies. In one past case the Committee had observed that trade unions must conform to the general provisions applicable to all public meetings and must respect the reasonable limits which may be fixed by the authorities to avoid disturbances in public places [Digest, para. 159]; it therefore considers on the basis of the information before it that this aspect of the case does not call for further examination.

584. Lastly, regarding the deaths of 11 named KMU officials and members, the Committee regrets that the Government merely states that the concerned agencies will be investigating these incidents and that complaint procedures exist at the national level for redress. It recalls that this type of allegation is extremely common in complaints against the Government of the Philippines, but should be investigated diligently by the national authorities given the fact that deaths are involved, often allegedly at the hands of armed groups which the present Government has vowed to disband and control. The Committee notes, moreover, that in certain shootings listed in the present case, eye-witnesses have been able to give the names of suspects. It accordingly asks the Government to supply as a matter of urgency specific information on any police, judicial or Philippines Commission on Human Rights inquiries into the murders of the following unionists, the details of which appear in the allegations of the complainant: Ferdinand Pelaro, Reynaldo de la Fuente and Aguinaldo Marfil; Rey Olano, treasurer of the Associated Democratic Labour Union (ADLO-KMU); Perlito "Boy" Lisondra, an organiser for Transport Mindanao for Solidarity, Independence and Nationalism/TRANSMISSION-KMU, Apolonio Alecanio and Ike Hernandez; Roger Magbujos, president of KMU local union of Bavaria Woodcraft Exports Inc. at Laguna, Southern Tagalog; Oscar Lazaro, president of Pasang Masda, a jeepney drivers' organisation; Lino Arog, union president at STANFILCO banana plantation; Ronelo Gionolos, activist of a National Federation of Labour-KMU affiliate.

The Committee's recommendations

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

- (a) Noting that trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists and that it is for governments to ensure that this principle is respected, the Committee trusts that appropriate steps have been taken so that high-ranking members of the Government and the military avoid making public statements that challenge the principles of freedom of association.
- (b) The Committee recalls that strike action is one of the essential means through which workers and their organisations may promote and defend their economic and social interests and if governments argue that a restriction on this right is needed in times of emergency, the Committee is of the view that measures suspending the right to strike should be limited in time and scope to the period of emergency.
- (c) Noting with concern that KMU Chairperson, Mr. Crispin Beltran, was arrested on 30 October 1990 without a warrant, then charged with many offences including sedition and is presently released on bail, it requests the Government to inform it of progress in the proceedings against this trade union leader.
- (d) The Committee considers that the allegation concerning restrictions on peaceful public assembly by virtue of the Public Assembly Act, 1985, does not call for further examination.
- (e) The Committee asks the Government to supply as a matter of urgency specific information on any police, judicial or Philippines Commission on Human Rights inquiries into the murders of the following 11 unionists: Ferdinand Pelaro, Reynaldo de la Fuente and Aguinaldo Marfil; Rey Olano; Perlito "Boy" Lisondra, Apolonio Alecanio and Ike Hernandez; Roger Magbujos; Oscar Lazaro; Lino Arog; and Ronelo Gionolos.

Case No. 1500

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

586. The Committee has examined this case on three previous occasions, at its November 1989, February 1990 and November 1990 meetings. [See 268th Report, paras. 668 to 701, 270th Report, paras. 287 to 334, and 275th Report, paras. 323 to 363, approved by the Governing Body at its 244th, 245th and 248th Sessions, respectively.]

587. Since the Committee last examined this case, the Government has sent observations in communications of 20 May and 18 October 1991,

and the ICFTU has sent additional information in a communication of 14 June 1991.

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

A. Previous examination of the case

589. The allegations presented by the ICFTU in June 1989 stemmed from the measures taken by the authorities against the Workers' Autonomous Federations (WAFs), organisations created in several Chinese provinces, their leaders and workers; the banning of the functioning of these organisations; the death of a number of leaders following an attack by the army; the sentencing to death and execution of workers; and arrests. In support of its allegations the ICFTU had supplied a long list of workers said to have been arrested or executed, which the Committee annexed to its May and November 1990 reports.

590. In its replies, the Government had emphasised the illegal character of the WAFs, in that they had not observed the registration procedure prescribed by the legislation. In this connection, the Committee stressed that it was not its intention to consider as inconsistent with the principles of freedom of association all registration procedures, which in fact exist in many countries. Nevertheless, while it is true that the founders of a trade union ought to respect the formalities set out in the legislation, these formalities should not be such as to jeopardise the freedom to organise. In the present case, the Government itself, in its reply of January 1990, had stated that one of the fundamental principles of the Chinese Constitution was the leading role of the Communist Party and that the registration of organisations engaging in reactionary conduct should be cancelled and the organisations banned. In the light of these factors, the Committee considered that the registration procedure prescribed by Chinese legislation was more than a mere formality and, in practice, amounted to a kind of prior authorisation by the authorities, which was contrary to the principles of freedom of association. On this point, the Committee referred to the opinion expressed by the Committee of Experts on the Application of Conventions and Recommendations in its General Survey on Freedom of Association and Collective Bargaining, 1983 [see para. 115], according to which the administrative authorities should not be able to refuse registration of an organisation simply because they consider that the organisation could exceed normal union activities or that it might not be able to exercise its functions. Such a system would be tantamount to subjecting the compulsory registration of trade unions to the previous authorisation of the administrative authorities.

591. In view of the requirements laid down for the registration of trade union organisations, the Committee understood that the WAFs

were unable to apply for registration, for under the Chinese legislation such an application was bound to be rejected, as implied by the Government itself in its communication of January 1990 which stated that "the fact of setting up the WAF itself violated Notice No. 136 issued by the Beijing Municipal Government". The Committee recalled that it had examined the provisions of the statutes of the Beijing WAF, the text of which had been supplied by the ICFTU, and the nature of its grievances, and that, on that basis, it considered that these were in keeping with the normal activities of a workers' organisation promoting and defending the interests of its members. None of the elements contained in the Government's latest reply persuaded the Committee to change its opinion on this point. In addition, the Committee noted that, according to the information supplied by the Government itself, the WAFs were set up in numerous Chinese provinces and they could not therefore be considered as a spontaneous "small group". Accordingly, it reiterated that the right of workers to establish organisations of their own choosing implies, in particular, the effective possibility of setting up, in a climate of complete security, organisations independent both of any existing organisations and of any political party. Consequently, the Committee once again requested the Government to take the necessary measures to ensure that the workers' right to establish organisations of their own choosing and these organisations' rights to function freely are guaranteed both in law and in practice.

592. As regards the factual aspects of the case, the Committee noted that the Government had provided information concerning some of the persons said by the ICFTU to have been executed or arrested. These particulars, however, concerned only 91 persons out of the 130 or so expressly mentioned by name by the complainant organisation.

593. According to the information provided by the Government, some of the workers (24) mentioned by the complainant as being in custody had not been arrested and their cases had not come before the judicial authorities. Thirty others who had not committed any offences or who had committed only minor offences or who had shown "remorse" had their penalties remitted or had been released after a period of re-education. Lastly, the Government communicated information on 37 persons sentenced by the courts, including nine sentenced to death and six to life imprisonment, for offences of arson, looting, sabotage of transport, murder and, more generally, breaches of the public peace.

594. While noting that, for the first time, the Government had given substantial information about a large number of persons referred to by name in the complaint, the Committee expressed its profound concern at the extreme severity of the sentences handed down against workers whose actions - according to the complainant - occurred in the context of participating in the establishment of independent organisations. The Committee emphasised that, in a situation in which workers' organisations consider that they do not enjoy the freedoms essential for the performance of their functions, they would be justified in claiming the recognition of these freedoms and that such

claims ought to be regarded as consistent with legitimate trade union action.

595. The Committee was particularly disturbed to note the nine death sentences reported by the Government. The Government did not state whether the persons sentenced to death had been executed or not (it mentioned only a two-year stay of execution in the case of one of the workers, Luan Jikui). If these sentences had not yet been carried out, the Committee urged the Government to stay the executions and to reconsider the cases of these persons. The Committee requested the Government to supply information in this respect.

596. As regards the sentences of imprisonment, the Committee gathered from the Government's reply that these sentences had already been upheld on appeal, which implied that these decisions were pronounced with a rapidity that threw serious doubt on the respect of the normal judicial guarantees in the proceedings. In view of all these factors and of the severity of the convictions, the Committee also requested the Government to reconsider these cases and to keep it informed of any action taken on this request.

597. The Committee observed moreover that the Government had not provided any information on a number of persons said by the ICFTU to have been executed or arrested. The Committee requested the Government to provide particulars of these cases (reasons for arrest, proceedings instituted, if any, and present situation of the persons concerned).

598. Nor had the Government reacted to the Committee's request, made at its previous session, for information on the conviction of workers from Changchun, seven of whom had been sent to re-education-through-labour camps. The Committee therefore reiterated its request to the Government to supply precise information about the reasons, nature and objectives of the re-education-through-labour measures to which some trade unionists had been subjected.

599. The Committee noted furthermore that, while the Government had provided some information about two leaders of the Beijing WAF - Hang Dongfang and Liu Qiang - it had not stated whether these persons had been convicted, nor had it answered the allegations concerning the ill-treatment which they were said to have suffered. The Committee asked the Government for its observations on this.

600. So far as the events in Tiananmen Square were concerned, the Committee noted that the complainant organisation's allegations and the Government's reply were totally contradictory. According to the ICFTU, on the one hand, many of the WAF's representatives were reportedly killed when the army took the Square by assault in the night from 3 to 4 June 1989. The Government, on the other hand, contended that nobody died when the Square was cleared. In view of these totally conflicting statements, the Committee was unable, from the information at its disposal, to draw any conclusions on this aspect of the case. Accordingly, it asked the complainant

organisation to provide details of the identity of the persons said to have been killed on that occasion.

601. At its November 1990 Session, the Governing Body approved the following recommendations:

- (a) The Committee re-emphasises that the right of workers to establish organisations of their own choosing implies, in particular, the effective possibility of forming, in a climate of complete security, organisations independent both of existing organisations and of any political party. It requests the Government to take the measures necessary to ensure that this right and the rights of these organisations to function freely are guaranteed both in law and in practice.
- (b) The Committee expresses its deep concern at the extreme severity of the sentences handed down against workers.
- (c) Being particularly disturbed about the nine death sentences reported by the Government, the Committee urges the Government to stay these executions - if the sentences have not yet been carried out - and to reconsider the cases of the persons concerned. The Committee asks the Government for information in this respect.
- (d) The Committee further requests the Government to reconsider the cases in which workers have been sentenced to imprisonment and to keep it informed of any action taken on this request.
- (e) The Committee requests the Government to supply information on the persons mentioned in the Annex hereto, concerning whom it has not yet given a reply (reasons for arrest, proceedings instituted, if any, and present situation of the persons concerned).
- (f) The Committee repeats its request that the Government provide full details on the specific events which led to the conviction of the workers of Changchun, seven of whom have been sent to re-education-through-labour camps. It also again requests the Government to provide information on the reasons, nature and objectives of the re-education-through-labour measures to which some trade unionists are subjected.
- (g) The Committee asks the Government to supply its observations on the allegations of ill-treatment which two leaders of the Beijing WAF - Hang Dongfang and Liu Qiang - are said to have suffered, and asks for information on the present circumstances of these persons.
- (h) Having regard to the total contradiction between the complainant organisation's allegations and the Government's reply concerning the events surrounding the clearing of Tiananmen Square, the Committee requests the ICFTU to provide details of the identity of the persons said to have been killed on that occasion.

B. The Government's reply

602. In its communication of 20 May 1991 the Government recalls that it has made every effort to settle this case reasonably within the framework of the ILO Constitution. Nevertheless, the Committee on Freedom of Association has continued to interfere in the internal affairs of China and has groundlessly accused the Chinese Government. The Government deeply regrets this, but supplies some supplementary information to clarify the facts again. It hopes that these comments could be taken seriously into account so that this case may be closed as soon as possible.

603. The Government has already elaborated on the illegal character of the WAFs in its earlier replies. It regrets that the Committee has failed to give serious consideration to the facts submitted by the Government, but reached conclusions which are contrary to reality. The creation of the illegal organisation WAF coincided with the advent of political chaos in China in 1989; subsequently, the organisation faded away owing to its direct involvement in violent activities against the Government. The WAF seriously violated criminal law because its aim was to overthrow the legitimate Government by unlawful violent means. Hence the illegal character of the WAF is not something decided arbitrarily, but is the result of its own conduct. In the Government's opinion, to state that the WAF is a legal organisation by accepting its claim that it is "striving for workers' rights", while overlooking or deliberately ignoring its undeniable illegal objectives and its many criminal activities, is not only irresponsible, but also suggests the existence of ulterior motives. In particular, a large number of persons mentioned by the ICFTU did not even participate in the WAF. They were merely a handful of criminals who exploited a riot to engage in violence, looting and theft. It is difficult to understand how an important international organisation and an influential international trade union can insist repeatedly that these persons are trade union activists.

604. In its previous reply the Government had stated that no WAF or similar organisation had been created in Changchun. The seven persons sent to labour education camps in June 1989 were those who had engaged in illegal activities during the period of turmoil. They had committed such crimes as disturbing the peace, blocking traffic, hindering public affairs, destroying public property and extorting money under the pretence that they were public security agents. These persons did not belong to any organisation and were not engaged in any trade union activity. Thus, to call these persons "trade union activists" is inconsistent with the facts.

605. Under the State's relevant administrative regulations, the education-through-labour programme is aimed at persons over 16 years of age who live in large and medium-sized cities, who are not subject to criminal sanctions or who are spared these sanctions, but disturb the peace and refuse to mend their ways in spite of repeated warnings, or who commit petty crimes (mainly theft, fraud, indecent behaviour,

fighting, etc.). The objective of education-through-labour is to educate, to bring about a change in and to redeem persons who have committed such crimes. This education plays a role in the maintenance of social order and prevents crimes by educating those who are about to commit offences, in an effort to discourage the pursuit of illegal activities and crime. Education-through-labour is an effective measure, suited to the situation in China, pertinent to its social needs and beneficial in maintaining social stability.

606. Several times the Government has described the principles on the basis of which it has taken measures against WAF members and other criminals. In the light of the facts and in accordance with the law, this policy aims at applying sanctions against a handful of criminals who have committed serious offences and to re-educate those who have been found guilty of lesser crimes. It has been shown that the majority of persons who participated in the riots and disturbances were released by the judicial authorities without investigation into their criminal responsibility. Only a small minority of criminals was punished in accordance with the law.

607. In addition, the Government provides information on the following persons: Li Weidong, Ho Lili, of Beijing; Zhou Shao Wu, of Shanghai; Yang Yongmin of the province of Jiangsu; Zhu Huiming, Li Huling, of Nangjing; An Baojin, Liu Congshu, of the province of Shaanxi, were released following their re-education or absolved of criminal responsibility by the courts. In Beijing, Tian Bomin was sentenced to five years' imprisonment for larceny and fraud; Guo Yaxiong to three years' imprisonment for disrupting traffic. In Shanghai, Zhang Qiwang, Wang Hong, Weng Zhengmin were sentenced, respectively, to prison terms of three years, one-and-a-half years and three years for disturbing the peace, and Cai Chaojung to four years' imprisonment for disrupting traffic. In Nangjing, Rui Tonghu was sentenced to three years' imprisonment for disturbing the peace. In the province of Jiangsu, Du Weng was sentenced to three years' imprisonment for disturbing the public order. In the province of Shaanxi, Li Guiren was sentenced to three years' imprisonment for disturbing the peace. In the province of Shandong, Lui Yubin and Che Honglian were sentenced, respectively, to three years' and two years' imprisonment for disrupting traffic. In Changsha, He Zhaohui, Li Jian, Lui Xingqi, Yang Xiong and Zhang Xudong were sentenced, respectively, to four years', three years', three years', four years' and four years' imprisonment for disturbing the peace. Hang Dongfang of Beijing was released on bail pending his trial. There are absolutely no grounds for alleging that he was mistreated. Chen Yinshan, Zhao Endong, Zheng Chuanli, Zhu Wenli, Dian Hanwu, Jiao Zhijin, Shao Lianchen, Hao Jinguang and Yan Qingzhong were never brought to court. The information concerning Quian Yunin, Xiao Bin, Lu Zhongshu, Gao Jingtang, Zhu Guanghua and Li Xiaohu was furnished by the Government in 1990.

C. Additional information furnished by the ICFTU

608. In its communication of 14 June 1991, concerning the status of the WAFs, the ICFTU states that the scanty information furnished by the Government is inaccurate. In particular, the ICFTU states that the Government's claim that the WAF in Beijing never requested its registration is completely unfounded. In a sworn statement, Mr. Zhao Hongligang, a member of the WAF, stated that five representatives of this organisation went to the Government to apply for the organisation's registration, but the various departments kept refusing the application under various pretexts. Finally, the application was turned down on the ground that "it was a time of stringency".

609. The ICFTU considers that the WAF's statutes as well as its activities flagrantly contradict the Government's claims that the WAF was a small group of criminals. The ICFTU emphasises that the Beijing WAF publicly announced all its activities from a radio station set up in Tiananmen Square, and that at no time did any of its leaders incite the crowd to violence. There were two appeals for a general strike, one on 20 May which was later adjourned, and the other on 3 June when it was learned that the People's Liberation Army had begun to use violence against unarmed civilians. Even in these dramatic circumstances, Hang Dongfang, a leader of the WAF, appealed for calm and non-violence.

610. As regards the events of 3 and 4 June 1989 and the violent deaths which ensued, the ICFTU considers that the Government's statement, according to which there were no fatalities during the evacuation of Tiananmen Square, refers only to a very brief period, namely the daybreak of 4 June, during which a number of students and civilians retreated peacefully from the Monument of the People's Heroes, after their leaders had negotiated an agreement with the army officers. However, such was not the case for the rest of the Square and other parts of Beijing. The reports of human rights organisations, supported by eyewitness accounts and photographs, show that there were at least 1,000 victims, while a source based in Hong Kong estimated that the victims may have numbered as many as 8,000.

611. The ICFTU is not in a position to identify the leaders and members of the WAF who were killed for two reasons. Firstly, a number of human rights organisations consider that the fact of revealing the identity of these persons would endanger their relatives and expose them to reprisals; and secondly, the army's brutal intervention prevented members of the WAF who survived from identifying their colleagues who had been killed. In this connection the ICFTU cites the testimony of witnesses. It considers undisputable the fact that many persons were killed, most of them by gunfire, bayonets or crushed by military armed vehicles. These facts were confirmed by foreign press crews and photographs provide graphic evidence.

612. As regards judicial procedures, the ICFTU emphasises that many sources, including official publications of the People's Republic

of China and the statements of government officials, establish, beyond the shadow of a doubt, that the political and judiciary authorities disregarded the rules of due legal process. It adds that, according to Asia Watch, workers represented roughly 66 per cent of those arrested during these events. The ICFTU considers that the Government failed to comply with legal provisions concerning arrest and investigation, that workers were tortured in order to obtain evidence, that their right to defence was violated and that the sentences pronounced against them were not the result of standard judicial proceedings, but were determined in advance by the political authorities, and notably the Communist Party. In this connection the ICFTU refers to a statement made by the President of the Supreme People's Court, according to which the courts are expected to exercise their power under the leadership of the Party.

613. The ICFTU also mentions studies by legal experts and other statements to the effect that the rights to defence were not respected and that prisoners were subjected to violence. In particular, according to Asia Watch, a number of persons were convicted by the public security organs (the police) without the benefit of any court appearance or hearing. Persons may be sentenced without a trial to as much as three years of so-called "labour re-education", a euphemism for forced labour during a period of arbitrary detention. Another example of administrative detention without trial is the widespread practice according to which the police, acting on its own authority and without judicial control, holds suspects for months at a time in conditions similar to or worse than those of common criminals.

614. According to the ICFTU, China does not respect the principle according to which the accused is presumed innocent until proven guilty. A common inscription found on the walls of police stations in China reads: "Lenience to those who confess, severity to those who resist." In fact, according to the ICFTU, the main feature of the judicial process in China is contained in the principle known as "verdict first, trial second". Even when given access to legal counsel, a defendant has no reason to expect that the lawyer will be able to defend him normally. Furthermore, some reports suggest that "political" cases - including those against independent labour activists - are routinely allocated to lawyers who are senior members of the Communist Party. Likewise, the right of appeal is often denied in practice because it is considered a "counter-productive gesture" by justice officials. The ICFTU emphasises that the sentences handed down immediately after the 1989 events were often rendered during trials held at public rallies, and death sentences carried out within days of the initial arrest (for example, four days in Shanghai). One of the men charged with having set fire to a train in Shanghai was said to be mentally retarded. The television broadcast of the trial showed that he appeared not to understand what was going on. He was nevertheless sentenced to death and executed. According to the ICFTU, all of these elements cast profound doubts on the Government's contention that the trials were conducted and judgements handed down in strict conformity with the procedure prescribed by the law.

615. The ICFTU considers that the evidence used in these proceedings was mostly obtained by torture. In this connection the organisation cites a report of Amnesty International which describes the methods of torture used in China, as well as a report of the State Prosecutor to the National People's Congress in April 1991, which stated that investigations covering the previous year had uncovered 472 cases of confessions extracted by torture, more than 3,500 cases of unlawful detention and 461 cases of false charges.

616. The ICFTU considers that much of the information furnished by the Government on the situation of persons mentioned in the complaint is inaccurate. According to the Government, 24 of these persons were not arrested. The ICFTU supplies additional information on 19 of them (see Annex). All were arrested and many of them were condemned. Most of this information was published by the Chinese press itself. The ICFTU also furnishes information on 74 persons, in particular on almost all of those arrested with respect to whom the Government has failed to provide a reply (see Annex). According to the ICFTU, these lists represent only a fraction of the independent trade union activists who have been arrested. Human rights organisations have identified over 1,000 persons who were arrested following the events of May-June 1989, most of whom are workers.

617. The ICFTU also states that a number of trade union activists arrested since 1989 have been sent to forced labour camps. The ICFTU expresses its utmost concern over the fact that, according to Asia Watch, certain persons mentioned in the complaint are being detained in these conditions (for example, Rui Tonghu, Zhu Huining and Li Huling, members of the Nanjing WAF, held in the province of Jiangsu). Still according to the Asia Watch report, it is a common practice for the prisoners in these labour camps to be held indefinitely as workers, even after they have completed their sentences. This policy is commonly applied to "unrepentant" prisoners, including political prisoners.

618. In conclusion, citing declarations and statements published in China itself, the ICFTU considers that the repression primarily targeted workers, and among them, independent trade union activists. The ICFTU requests the Committee to bring pressure to bear against the Government to obtain the immediate and unconditional release of workers and trade union activists or, failing that, to obtain correct and full information on their whereabouts, their legal situation and the respect of their rights. Lastly, the ICFTU would welcome the Government's authorisation for an independent and unhindered verification of all information furnished; such a gesture would show that the Government wishes to abide by internationally recognised standards on human rights and trade union rights.

D. Additional reply of the Government

619. In its communication of 18 October 1991, the Government firstly expresses its deep regret concerning the new communication of the ICFTU which, according to it, constitutes a new interference in the internal affairs of China under the pretext of freedom of association. The Government considers that these new allegations contain false information. However, since it sincerely wishes to cooperate with the ILO and to throw additional light on this matter, the Government provides its comments.

620. As regards the registration request by the Beijing WAF, the Government indicates that the Ministry of Labour made an inquiry with the various departments concerned but that there is absolutely no record of a registration request by this so-called organisation. In any event, according to the Government, its creation was in itself an unlawful act during the period of turmoil and after the proclamation of martial law.

621. Concerning the death sentences, the Government indicates that the persons in question have been executed, according to the law. These persons who had committed serious crimes, murders and arson, have been duly punished, which was necessary to preserve social order and the interest of the people.

622. As regards the events on Tiananmen Square, the Government mentions that the Beijing municipality made a thorough and responsible inquiry. The mayor of Beijing, Mr. Chen Xitong, has presented the official report at a plenary session of the People's National Assembly. The Government stresses three elements in this respect: (1) during the evacuation of Tiananmen Square at daybreak on 4 June 1989, nobody died since the evacuation was done in an orderly way; any other subjective assertion could not be true; (2) during the struggle against the rebellion, no leader of the Beijing WAF died; they are all alive today; (3) it is ludicrous to assert that the WAF did not participate in the rebellion: it had publicly stated that it wanted to overthrow the Government, it had organised actions to surround the seat of the Government, it had rallied thousands of persons to attack the police headquarters and the Ministry of Public Security, it had participated in conspiracies with a view to undermining the state of siege and blocking military vehicles. According to the Government, these few facts are sufficient to establish that the WAF is in fact an illegal organisation set on provoking turmoil and rebellion, and that it is absolutely not a legal trade union organisation. However, only those members of the WAF which had really violated the criminal law have been judged by the courts; the other workers which had been led into the events have not been committed to trial.

623. As regards the allegations concerning the procedure, which it qualifies as being slanderous, the Government indicates that under the Act on criminal procedure, all accused have the right to be

defended and to have a legal counsel appointed by the court if they have not already chosen one. The Government mentions that the tribunals of all jurisdictions have strictly complied with these provisions during the trials of the criminals who had taken part in the rebellion, thus giving them the possibility fully to exercise their right to defence. For instance, during the examination of the case of Hang Dongfang, one of the main leaders of the Beijing WAF, the People's Court of Appeal of Beijing listened carefully to the defence of the accused and the pleadings of his lawyer, compared them with the information collected and concluded that while he had participated in the rebellion, he had not committed serious infractions. Therefore he was released.

624. Quoting the relevant provision of the Act on criminal procedure, the Government indicates that the right of appeal exists in Chinese legal procedure, and that this right has been strictly enforced during the trials. The Government gives examples of cases where this procedure has been applied and where sentences have been reduced, and even cancelled, by the appellate jurisdiction; for instance, the Court of Appeal found Lu Zhongshu not guilty, and reduced the death sentence previously imposed on Wang Lianxi to life imprisonment.

625. According to the Government, the courts now have almost completed the trials of the persons involved in the rebellion who had violated the law. The legal procedure has been duly applied, according to the facts and the law, within the policy linking punishment and clemency. The objective is to "save" all those who can be "saved". Therefore, each case has been examined in a thoroughly responsible fashion: on the one hand, it is important to expose all criminal deeds; on the other hand, the Government attaches importance to a patient education process, which allows sufficient time so that the persons in question may realise their past mistakes. All those who had committed minor crimes have now benefited from various clemency measures after a period of education. Proceedings have been launched only against a small number of criminals who had committed serious violations of the criminal law.

626. In addition, the Government provides information on the new persons from the Beijing area, mentioned in the last communication sent by the ICFTU. The following persons have been declared innocent of all criminal liability and released: Liu Qiang, main leader of the Beijing WAF; Zhu Liani; Zhou Yongun; Li Jinjin, legal adviser of the WAF; Quian Yunin, questioned by police around the end of May 1989, but not arrested. The following persons were found guilty and sentenced: Li Bing, seven years' imprisonment for serious crimes of participation in rebellion and destruction of military vehicles; Liu Zihou, eight years' imprisonment for serious crimes of participation in rebellion, arson and street-blocking; Zhong Zhenhai, eight years' imprisonment for hijacking. Wang Hang Wu has been sentenced to death in view of the seriousness of his crimes of participation in rebellion and setting fire to military vehicles; he had been executed on 22 June 1989. He Qunyin has not been identified.

627. The Government indicates that certain persons allegedly arrested were never prosecuted. Following the new communication of the ICFTU, the Government made further inquiries which confirmed previous conclusions. According to the Government, the ICFTU's attitude is not responsible. The persons in question have probably been questioned by police but were not arrested.

628. The Government concludes by reiterating that China is a country where human rights are respected. However, the judgement of individuals in accordance with Chinese judicial procedure is an internal matter. The Government cannot tolerate any foreign interference in these matters, under the pretext of human rights protection.

629. The Government later transmitted to the ILO the report of inquiry of the Beijing municipality, entitled "Report on Putting Down Anti-Government Riot". The report concludes that 1,280 military vehicles, police and other buses have been destroyed, burned or otherwise damaged. More than 6,000 soldiers, policemen and public security agents have been injured, and several dozen were killed. According to the report, these heavy losses are convincing evidence of the moderation and tolerance of the troops during the events. According to the information gathered during the inquiry, more than 3,000 civilians were injured, and more than 200, including 36 students, were killed during the riot. Some of them were hit by vehicles, others were run over or hit by stray bullets. Others were injured or killed by hooligans who had stolen weapons. Among the civilians injured or killed were rioters, persons hit by accident as well as doctors or other persons who were doing their work. However, nobody died during the orderly evacuation of Tiananmen Square, described in detail in the report.

E. The Committee's conclusions

630. Before examining the substance of the case, the Committee regrets once again that the Government persists in declaring that the Committee is interfering in the internal affairs of China by examining this case. The Committee reiterates that once a State becomes a Member of the ILO, it has to accept the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, especially those relating to freedom of association. As a result, allegations concerning violations of trade union rights cannot be considered as an internal matter of the State concerned and the Committee has to examine receivable complaints which are submitted to it. This is the situation in the present case.

631. The Committee has taken note of the replies provided by the Government to the requests made in its previous report. It is pleased to note that the Government provided information on all the persons mentioned in the ICFTU's first communication as having been arrested

or sentenced. The Government also provided a reply concerning some of the new names mentioned in the latest communication of the ICFTU.

632. As regards the registration request made by the Beijing WAF, the Government underlines once again the illegal nature of that organisation and mentions that, contrary to the ICFTU's allegations, there is absolutely no record of a registration request lodged by the WAF within the relevant departments. Therefore, the statements made by the complainant and the Government on this point are totally contradictory. However, the Committee considers that whether or not the WAF filed a registration request has limited relevance. In fact, the Government itself states that the WAF was considered as an illegal organisation and thus could not be registered. As the Committee pointed out in its previous report, the registration procedure established in Chinese law goes far beyond a mere formality and constitutes in practice a form of previous authorisation by the authorities, which is contrary to the freedom of association principles. The Committee further recalls once again that it concluded, after examining the by-laws of the Beijing WAF and the nature of its claims, that the latter were normal activities of a workers' organisation promoting and defending the interests of its members. The Committee can only reiterate this view and request the Government once more to take the necessary measures so that the right of workers to establish organisations of their own choosing and the right of free functioning of these organisations be recognised in the legislation and guaranteed in practice.

633. The Committee deeply deplores once again that workers were sentenced to death and observes with consternation that these persons have been executed. It can only express its deep reprobation of these executions, especially since the trials which resulted in the said verdicts - at least those on which the Committee received detailed information - had been held with undue haste. For instance, in the cases of the three workers in Shanghai, the death sentences were executed two weeks after the events; in the meantime, the case had been heard twice, once by the lower tribunal and another time by the appellate jurisdiction.

634. As regards the detentions, the Committee has noted the information provided by the Government about the persons listed by the ICFTU in its various communications. The Committee welcomes the positive step constituted by the release of certain persons who were detained and in particular, of the two main leaders of the Beijing WAF, Hang Dongfang and Liu Qiang. The Committee further notes the Government's statement that certain persons who had been arrested according to the ICFTU, had in fact only been questioned by the police and are not listed amongst the persons who have been detained.

635. However, the Committee is bound to note that most of the information transmitted by the Government shows that the persons newly mentioned in the last communications have been sentenced to long terms of imprisonment, very often for "disrupting public order", which brings to 56 the number of persons who, says the Government, have been

sentenced by the courts. Of these 56 persons, nine were sentenced to death and six to life imprisonment. The Committee must once again express its deep concern at the high number and harshness of sentences handed down by the courts. It recalls that it had requested the Government to reconsider these cases and to keep it informed of any measure taken in this connection. The Government has not given any indication about its intentions concerning amnesty or clemency measures; the Committee must therefore insist once again so that, more than two years after the events, measures be urgently taken to release the persons detained. The Committee requests the Government to keep it informed of any development in this respect.

636. In its new communication, the ICFTU gave a list of leaders of the WAFs, or of workers who have allegedly been arrested. The Government has provided replies concerning most of the persons from the Beijing area. It has not, however, sent any information about the persons mentioned in the list attached to the present report. The Committee requests the Government rapidly to provide information on these persons (reasons for arrest; proceedings taken against them, if any; present situation of the persons concerned).

637. As regards the situation of workers subjected to re-education-through-labour measures, the Committee has noted the Government's explanation that said measures apply to persons "who are not liable to criminal sanctions or who have served their sentence". Thus, it appears from that reply that the workers concerned have been placed in this situation without any court judgement and, apparently, even in cases where they were not liable to any sanction. The Committee therefore considers that this constitutes a form of administrative detention, which even allows in certain cases to keep in jail persons who have served their sentence. This is a blatant violation of basic human rights, the respect of which is essential for the exercise of trade union rights, as pointed out by the International Labour Conference in 1970. The Committee thus considers that the Government should pay attention to this issue on a priority basis, so that the persons who are detained without judgement be released. The Committee requests the Government to provide information on the measures it considers taking in this respect.

638. The ICFTU had presented allegations of ill-treatment against two leaders of the Beijing WAF. The Government only indicates in its reply that this assertion is groundless. The Committee considers that the authorities should make inquiries on allegations of ill-treatment so that measures be taken, if necessary, with a view to ascertain responsibilities, punish the guilty parties and prevent the reoccurrence of such acts.

639. Concerning the deaths of workers which allegedly occurred on Tiananmen Square following the intervention of the army, the Committee notes that the Beijing municipality held an inquiry. According to the Report of Inquiry, nobody died during the evacuation of the Square. Indeed, this statement apparently is not challenged by the ICFTU, which alleges that it applies to a very brief period, namely 4 June at

daybreak. The Report concludes, however, that both civilians and members of the army and police were killed or injured at other places and other times during the events. According to the official figures, 6,000 peace-keeping officials have been injured and several dozens killed; the civilian casualties amount to 3,000 persons injured and more than 200 killed. The Committee can only deplore the high number of casualties, and deeply regrets that all necessary measures have apparently not been taken to avoid these tragic events. No matter how confused the situation might have been during that period, the number of victims indicates that the guarantees to ensure respect for human rights as regards safety of individuals, were severely jeopardized.

640. As regards the allegations on legal proceedings contained in the new communication of the ICFTU, the Committee has taken note of the relevant provisions in the Act on criminal procedure, mentioned by the Government in its reply, which provide that the accused have the right to be defended and to file an appeal. The Committee further notes that the Government mentioned certain instances where the sentences have been reduced by the appellate court. However, the Committee cannot but note that the sentences have apparently been issued so expeditiously that this casts a serious doubt on the respect for normal judicial guarantees during these proceedings. The Committee wishes to recall in this regard that the safeguards of normal judicial procedure should not only be embodied in the law, but also applied in practice. The Committee considers that these considerations are an additional reason compelling the Government to take the necessary measures, with a view to re-examining the situation of the workers who have been condemned and to releasing them.

The Committee's recommendations

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

- (a) The Committee deeply deplores once again that workers were sentenced to death and expresses its consternation at the execution of these workers.
- (b) The Committee deplores the high number of casualties which occurred during the events of June 1989 and deeply regrets that all necessary measures were apparently not taken to avoid these tragic events.
- (c) While welcoming the positive step constituted by the release of certain persons, including Messrs. Hang Dongfang and Liu Qiang, leaders of the Beijing WAF, the Committee expresses its serious concern at the number and harshness of sentences handed down by the courts, in view of the doubts remaining as to the respect of

due process. The Committee insists with the Government that, more than two years after the events, measures should be taken urgently to release the detained workers; it requests the Government to keep it informed of any development in this respect.

- (d) The Committee requests the Government urgently to provide information on the persons listed in the Annex to the present report (reasons for arrest; proceedings instituted, if any; present situation of the persons concerned).
- (e) As regards the workers subjected to re-education-through-labour measures, the Committee requests the Government to examine this issue on a priority basis, so that the persons detained without judgement be released. It requests the Government to provide information on the measures it intends to take in that respect.
- (f) The Committee requests once again the Government to take the necessary measures so that the right of workers to establish organisations of their own choosing and the right of free functioning of these organisations be recognised in the legislation and guaranteed in practice.

ANNEX

New persons mentioned by the ICFTU as having been arrested

BEIJING

HE Qunyin, member of the Beijing WAF, arrested on 14 June 1989 in Xi'an. Accused of having attacked soliders and of having participated in the demonstration of 30 May; not identified by the Government.

YOU Dianqui, member of the Beijing WAF, arrested on 14 June 1989 in Xi'an. Accused of having attacked soldiers and of having participated in the demonstration of 30 May.

SHANGHAI

WANG Wang)
)
 CHEN Jinliang)
)
 LI Yi)
)
 LI Zhibo)
)
 MA Zhiqianq) Leaders of the Shanghai WAF, arrested and
) accused on various charges: secret meetings,
 SUN Xishen) calls to strike, calls to overthrow the
) Government, etc.
 WANG Bomei)
)
 YANG Jian)
)
 DAI Jenping)
)
 ZHANG Hongfu)
)
 YAN Tinggui, accused of having promoted a strike.
 ZHANG Renfu) Sentenced to five years' imprisonment for
) sabotaging public transport vehicles.
 ZHENG Liang)

LIAONING

SONG Tianli, arrested on 13 June 1989 in Dalian.

XIAO Bin, arrested on 10 June 1989; sentenced by the Dalian court to ten years' imprisonment on 13 July 1989.

SHAANXI (Xi'an)

ZHAO Demin)
)
 REN Xiying)
) Accused of having supported demonstrations,
 XU Ying) blocked traffic and built barricades.
)
 BAO Hongjian)
)
 CHANG Ximin)

SHANDONG

ZHANG Xinchao, arrested on 15 June 1989 in Jinan, leader of the Jinan WAF.

CHANGSHA

WANG Changhuai, leader of the Changsha WAF, sentenced on 7 December 1989 to three years' imprisonment and stripped of his political rights for one year.

ZHANG Jingsheng, sentenced to 13 years' imprisonment.

ZHOU Yong, arrested around 16 June 1989.

LU Zhaixing, arrested around 16 June 1989.

Cases Nos. 1512 and 1539

COMPLAINTS AGAINST THE GOVERNMENT OF GUATEMALA

PRESENTED BY

- THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU) AND
- THE WORLD CONFEDERATION OF ORGANISATIONS OF THE TEACHING PROFESSION (WCOTP)

642. The Committee has already examined Case No. 1512 presented by the International Confederation of Free Trade Unions (ICFTU) on three occasions, and submitted interim reports. [See 222nd Report, paras. 527-561, 275th Report, paras. 364-400 and the 278th Report, paras. 382-399, approved by the Governing Body at its May-June, November 1990, and May-June 1991 Sessions, respectively.] Since then, the Government has sent comments, observations and information on this case in a communication dated 17 September 1991.

643. The Committee examined Case No. 1539, presented by the World Confederation of Organisations of the Teaching Profession (WCOTP) and submitted an interim report. [See 278th Report, paras. 400-421.] Since then, the Government has sent comments, observations and information on this case in a communication dated 17 September 1991.

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

A. Previous examination of the case

Case No. 1512

645. In the present case, the allegations of the International Confederation of Free Trade Unions (ICFTU) related mainly to death threats, abductions, forced disappearances, torture and violent death of trade unionists, as well as acts of repression by the authorities against strike movements. They also cited the refusal of the Government to recognise trade union leaders or to take steps to protect trade unionists against anti-union discrimination on the part of the employers.

646. When it examined this case at its May-June meeting 1991, the Committee made the following recommendations on the pending allegations [see 278th Report, para. 399]:

- (a) The Committee notes with deep regret that the Government has not replied to its previous recommendation concerning the serious infringements of human rights mentioned in this case and that it did not provide any information on the extremely serious allegations made by the complainant confederation.
- (b) The Committee urges the Government, once again, to set up independent judicial inquiries into the alleged murder of José Orlando Pantaleón, a member of the Workers' Union of the Central Bottling Enterprise (STECSA) (Coca-Cola), who, it was alleged, was abducted from his home at 10 a.m. and whose body, riddled with bullets and disfigured by torture, was found at 4 p.m. on 2 July 1989; the murder of nine peasants in Alta Verapaz, on 22 August 1989; the death of the leader of striking teachers, Carlos Humberto Rivera, abducted on 9 September 1989 by individuals travelling in a vehicle similar to those used by the army and found dead on the following day; the murder of Estanislao García y García, an activist in the Independent Agricultural Union, on 17 September 1989; the murder of José León Segura de la Cruz, the General Secretary of the Workers' Union of the National Electricity Institute, shot down on 27 September 1989 by two unidentified individuals while leaving his home for work; and the death of peasants in San Marcos (department of El Progreso) on 13 and 14 September 1989, and of peasants in the department of Quetzaltenango. The Committee asks the Government once again to inform it of the outcome of these inquiries.
- (c) As regards the authority's slowness in granting legal personality to unions, the Committee urges the Government - following its assurances to accelerate proceedings for the registration of trade unions - to guarantee workers the right to establish organisations without previous authorisation and to workers' organisations the right to draw up their statutes and internal

regulations without the public authorities interfering to restrict this right.

Case No. 1539

647. The World Confederation of Organisations of the Teaching Profession (WCOTF) presented a series of allegations of violations of teachers' trade union rights in Guatemala. The allegations concerned acts of intimidation, violent deaths, death threats, abductions, repression and limitations on the right to strike which have tended to hinder the normal exercise of trade union activities.

648. At its May-June 1991 meeting, the Committee made the following recommendations [see 278th Report, para. 421]:

- (a) The Committee deplores the fact that the Government has sent no reply concerning the complaint presented by the World Confederation of Organisations of the Teaching Profession in June 1990, in spite of repeated requests that it do so.
- (b) As regards the murder and disappearance of teachers belonging to the Guatemalan Education Workers' Trade Union (STEG) (October 1989, 6 December 1989) and the murder of five students who participated in the strike called by the teachers' trade union, the Committee deeply deplores these murders and requests the Government to state, as soon as possible, whether inquiries have been opened into these events, and, if so, to indicate the outcome of the same; likewise, it requests the complainant organisation to provide detailed information on the identity of the victims and the circumstances surrounding these murders and disappearances.
- (c) Concerning threats to the lives of, and other serious forms of intimidation against STEG trade union leaders, including the trade union's General Secretary, Mr. Werner Miranda Calderón, by unknown armed persons in vehicles without registration plates, and the particularly serious incident in which a member of the trade union was allegedly abducted by members of the secret police and subjected to inhumane treatment, the Committee deplores this type of practice, and urges the Government to adopt suitable measures as soon as possible to prevent any kind of threat of psychological or physical intimidation against trade union leaders and members affected by these serious events. Likewise, it requests the Government to state whether inquiries have been opened into these serious allegations, and if so to indicate the outcome of the same.
- (d) As regards the arrest of trade unionist teachers who participated in the May-August 1989 strike, the Committee draws the Government's attention to the principle according to which the right of workers and their organisations to strike constitutes one of the essential means available to them to promote and

defend their occupational interests. It requests the Government to indicate whether the trade unionists who were arrested have been released and whether judicial proceedings have been instituted against them.

- (e) As regards the anti-union discrimination inflicted on the strikers (such as the dismissal of teachers and the financial sanctions imposed on them), the Committee requests the Government to supply its observations on these allegations and, in particular, to indicate whether the dismissed teachers have been reinstated.
- (f) The Committee requests the Government to send it a copy of the Act on National Education adopted on 9 January 1991.

B. New observations of the Government

Case No. 1512

649. In a communication of 17 September 1991, the Government states that the allegations could not be attributed to the present Government which came to power on 15 January 1991. As regards the general climate in Guatemala, the Government explains that the civil war which has been going on for the last few years gives rise to violence and crime which affect not only members and leaders of trade unions, but also politicians, public officials, members of the police force, leaders of peoples' organisations, workers, peasants and the population at large. The Government states that it is making every effort to quell the widespread violence, and notes that considerable progress has been made, thanks to three particular measures: setting up of a "Tranquilidad Inmediata Poblacional (TIP)" neighbourhood security system, reactivating the civilian protection system (SIPROCI) and opening dialogue with the guerilla movement, the Guatemalan Revolutionary Union (URNG).

650. The Government also points out that persons who have suffered in this climate of violence, members of their families and trade union organisations only rarely lodge detailed complaints which, it believes, leads to a considerable delay in judicial proceedings, the main problem being a lack of evidence which could further inquiries.

651. The Government explains, nevertheless, that a panel of jurists has been set up with a view to investigating cases pending before the Committee. The panel's findings are as follows:

- (a) As regards the alleged murder, on 2 July 1989, of José Orlando Pantaleón, a trade unionist of the Central Bottling Enterprise (STECSA) (Coca Cola), the Government states that the penal court and the government procurator's office have begun an examination of the case. A series of measures have been taken aimed at

shedding light on the facts of the case. On 14 February 1991, the widow of the deceased appeared before the procurator of human rights laying blame for the killing on Mr. Rolando Alay who is currently at the Pavón rehabilitation centre, charged with murder. The competent courts will decide the guilt or innocence of the accused.

- (b) As regards the alleged murder of the teachers' strike leader, Carlos Humberto Rivera, the Government points out that proceedings have begun before the criminal chamber of the magistrates' court and that the Public Prosecutor's Office competent in human rights matters is also making inquiries. On 17 September 1991, the trial was at the preparatory inquiry stage due to a lack of evidence making it possible to identify the guilty party.
- (c) As regards the alleged murder of Estanislao García y García, an activist of the Independent Agricultural Union, the Government points out that the day after his disappearance, the justice of the peace of Cuyotenango, in the department of Suchitepéque, gave the order for a body to be removed and which, subsequently, it has not been possible to identify. According to the Government, it should be noted that no complaint relating to the abduction or murder of Mr. García y García has ever been lodged before the courts or the office of the Public Prosecutor for human rights by members of the family of the missing person, by members of his union or any other party.
- (d) The Second Court of First Instance of the Department of Chiquimula, and the Public Prosecutor's Office competent in human rights matters are looking into the case of the alleged murder of the General Secretary of the Workers' Union of the National Electricity Institute (STINDE), José León Segura de la Cruz. The subdepartment of the Public Prosecutor's Office is also actively involved and on 17 September 1991 named several persons who are allegedly responsible for the crime. If these persons fail to come forward for trial, steps will be taken to ensure their immediate imprisonment. The trial is going through the statutory phases of inquiry into crimes committed against Mr. Segura de la Cruz.
- (e) As regards the alleged murder of nine peasants in the Department of Alta Verapaz on 22 August 1989, the Government reports to the Committee that there are two different versions of events. According to the first version, an armed confrontation took place between a subversive group and civil self-defence patrols (PACs). In the second version, the confrontation supposedly took place, by mistake, between these patrols and members of the army. At first, the case was dealt with by the Second Court of First Instance in the department of Alta Verapaz which, on 21 August 1989, ordered a summary inquiry to be carried out. The court then declared that it no longer had any grounds for continuing the investigation. The nature of the offence made it impossible for the case to be cleared up and the members of the

patrol who survived the confrontation stated that they did not recognise the persons who led the attack. The case was then dealt with by the military court of the same jurisdiction which was also unable to further the inquiry. On 17 September 1991, the court took steps to order the suspension of the trial on grounds of having exhausted all channels of inquiry.

- (f) The Court of First Instance of the Department of El Progreso and the Public Prosecutor's Office competent in human rights matters are looking into the alleged murder of peasants from this department. A person has been charged and the trial is under way.
- (g) As regards the other allegations, particularly that of the murder of peasants at San Marcos and Quetzaltenango, the Public Prosecutor's Office competent in human rights matters and the Public Prosecutor's Office are taking all possible steps to elucidate the case. Given that the complaints are rather vague, a more in-depth inquiry is difficult.

Case No. 1539

652. In the same communication of 17 September 1991, the Government provided comments on the recommendations arrived at by the Committee at the May-June 1991 meeting.

653. Firstly, the Government stresses that some of the allegations are of a rather general nature; the Government agrees with the Committee that the complainants must provide detailed information regarding the identity of the victims of the aforementioned allegations.

654. As regards the alleged detention of certain teacher trade unionists, the Government states that the persons in question were detained on grounds of offences which are "public order offences" under Guatemalan legislation, and not because of their participation in the teachers' strike. They have been freed and no coercion has been used against them.

655. The present Government declares that it did not dismiss any teachers on 17 September 1991, denies that there is a problem between itself and teachers, and points out that it has taken no economic measures against them. The wages withheld by the previous Government have been refunded.

656. The Government also sends a copy of the new Act on national education.

C. The Committee's conclusions

657. The Committee notes that the Government has provided some of the information requested and that, on 15 January 1991, a new government came to power in Guatemala, resolved to dispel the climate of violence which prevails there. The Committee notes with interest the measures taken by the present Government to limit violence and crime stemming from the civil war and which affect not only trade union members and leaders, but also politicians, public officials, members of the public authority, leaders of peoples' organisations, workers, peasants and the population at large. However, faced with allegations of trade union rights violations by one government, the Committee recalls that the successive governments of a same State cannot, for the mere reason that a change has occurred, escape the responsibility which could flow from events that occurred under former governments. In any event, the new government is responsible for any continuing consequences which these events may have. Where a change of regime has taken place in a country, the new government should take all necessary steps to remedy any continuing effects which the events on which a complaint is based may have had since its accession to power, even though those events took place under its predecessor. In this context, the Committee notes with interest that the Government has set up a panel of jurists to investigate the allegations made by the ICFTU.

658. The Committee notes that certain allegations pending in the present cases concern the murder of activists of different Guatemalan trade unions. Included in these allegations is that relating to the murder of the leader of the teachers' strike, Carlos Humberto Rivera, who was supposedly arrested on 9 September 1989 in front of his home by individuals driving a vehicle resembling those used by the army, and whose lifeless body was found the following day with three other bodies of student leaders bearing marks of torture; the murder of Mr. José Orlando Pantaleón a member of the Workers' Union of the Central Bottling Enterprise (STECSA) (Coca-Cola) who was allegedly abducted at 10 a.m. as he left his home and whose body was found at 4 p.m. the same day, disfigured by torture and riddled with five bullet holes; the murder of nine peasants from Alta Verapaz on 22 August 1989; the murder of an activist of the Independent Agricultural Union, Estanislao García y García on 17 September 1989; the murder of José León Segura de la Cruz, who was murdered at about 5 a.m. in the Department of Chiquimula, shot by two unidentified persons as he was leaving home to go to work; the death of peasants at San Marcos and in the Department of El Progreso on 13 and 14 September 1989 and that of peasants from the Department of Quetzaltenango; the murder and disappearance in October 1989 and on 6 December 1989 of teachers belonging to the STEG and the murder of five students who had joined the teachers' strike.

659. The Committee notes that proceedings have begun in civilian, criminal or military courts in the cases of José Orlando Pantaleón, Carlos Humberto Rivera, José León Segura de la Cruz and the peasants

from Alta Verapaz. With regard to the murders of José Orlando Pantaleón and José León Segura de la Cruz, persons have been charged and the courts will decide on their guilt or innocence. With regard to the cases of Carlos Humberto Rivera and the peasants from Alta Verapaz, the Committee notes that the trials under way will be suspended due to a lack of evidence helping to identify the guilty parties. The Committee also notes, with regard to the case of Estanislao García y García that it has been impossible to identify the body discovered at the site of his disappearance due to its advanced state of decomposition, and that no complaint has been brought before a court or the Public Prosecutor's Office responsible for human rights. With regard to the alleged assassinations of peasants in the Department of El Progreso and the Department of Quetzaltenango, and of teachers and five students in October and December 1989, the Committee notes that the vagueness of the allegations means that the competent authorities are unable to carry out inquiries. The Committee recalls that when disorders have occurred involving loss of human life or serious injury, the setting up of an independent judicial inquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such actions [see Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 78].

660. With regard to pending allegations relating to death threats and other forms of intimidation against trade union activists, the Committee emphasises that trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists; it is for governments to ensure that this principle is respected [Digest, para. 70]. The Committee notes with regret the failure of the Government to provide any information as regards the allegations of threats and other forms of intimidation against STEG leaders, in particular its General Secretary, Mr. Werner Miranda Calderón, and against another trade union member who was allegedly abducted and tortured. It repeats that in the event of an assault, whether physical or moral, against a person, an independent judicial inquiry should be instituted without delay so as to elucidate the facts, determine responsibility, punish the guilty parties and prevent the repetition of such actions. The Committee requests the Government to provide information on whether an inquiry is under way and, if possible, the outcome of the same.

661. One of the allegations pending concerns the detention of teachers belonging to trade unions which took part in the May-August 1989 teachers' strike. The Committee notes that there is a contradiction between the WCOTP's allegation and the explanations provided by the Government, according to which the trade unionists in question were detained for acts described by law as public order offences. The Committee has always recognised the right of workers and their organisations to use strike action as a legitimate means of defending their economic and social interests and calls on the Government to respect this principle.

662. As regards allegations relating to anti-union discrimination against strikers, such as the detention of teachers and economic sanctions, the Committee notes that the present Government has not dismissed teachers, has not taken economic sanctions against them and that, in general, there are no problems between the Government and teachers. However, the Committee stresses the link of continuity between successive governments and requests the present Government to indicate whether the teachers dismissed by the previous Government have been reinstated.

663. The Committee, having taken note of the copy of the Act on national education adopted on 9 January 1991, requests the complainant organisation to provide its comments on the aspects of this Act concerning the present case, and on its practical application.

The Committee's recommendations

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

- (a) The Committee, faced with allegations relating to violations of trade union rights by a given government, recalls that the successive governments of a same State cannot, for the mere reason that a change has occurred, escape the responsibility which could flow from events that occurred under a former government. In any event, the new government is responsible for any continuing consequences which these events may have.
- (b) As regards the murders of José Orlando Pantaleón, José León Segura de la Cruz and Carlos Humberto Rivera the Committee notes that proceedings have been initiated to establish the facts surrounding these cases and requests the Government to provide information on their outcome.
- (c) As regards the murders of the peasants from Alta Verapaz, the Committee regrets that the Military Court had ordered the suspension of the trial for lack of evidence.
- (d) As regards the alleged murders of Estanislao García y García, peasants from the Departments of El Progreso and Quetzaltenango, striking teachers in October 1989, and five students in December 1989, the Committee notes that, according to information provided by the Government, the vagueness of the complaints filed means that the competent authorities are unable to carry out their inquiries.
- (e) As regards the allegations of death threats and other serious forms of intimidation against STEG leaders, in particular against the General Secretary, Mr. Werner Miranda Calderón, and another

member of the trade union who was allegedly abducted and subjected to inhumane treatment by members of the secret police, the Committee notes that the Government has failed to send any reply. The Committee invites the Government to adopt suitable measures as soon as possible so as to prevent any kind of threat of physical intimidation against trade union leaders and trade union members. Likewise, it requests the Government to state whether investigations have been opened into these serious allegations and, if so, to indicate their outcome.

- (f) As regards the detention of trade unionist teachers who participated in the May-August 1989 strike, the Committee notes that, according to information provided by the Government, these teachers were detained for acts described by law as public order offences, and trusts the Government will renounce taking measures of detention in cases of the organisation of or participation in peaceful strikes.
- (g) As regards the allegations of anti-union discrimination against strikers, such as the dismissal of teachers and economic sanctions, the Committee requests the Government to indicate whether the dismissed teachers have been reinstated.
- (h) The Committee, having taken note of the copy of the new Act on national education adopted on 9 January 1991, requests the complainant organisation to provide comments on the aspects of this Act concerning the present case and on its practical application.

Case No. 1551

COMPLAINT AGAINST THE GOVERNMENT OF ARGENTINA
PRESENTED BY
THE COORDINATING COUNCIL OF SUPERVISORY STAFF ORGANISATIONS (CEGJRA)

665. The complaint is contained in a communication from the Coordinating Council of Supervisory Staff Organisations dated 20 September 1990. This organisation sent in further information in a letter dated 16 November 1990. The Government furnished its observations in a letter dated 18 September 1991.

666. Argentina 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

667. In its letters of 20 September and 16 November 1990, the Coordinating Council of Supervisory Staff Organisations alleges that the Government has not met its obligations vis-à-vis the Coordinating Council that it entered into following the ILO's direct contacts mission in Buenos Aires in March 1990 in connection with Cases Nos. 1456 and 1496 (in which the Coordinating Council was also a complainant) and which had been examined by the Committee at its meeting in May 1990. Following the Government's undertakings at that time, the Coordinating Council had dropped the complaints when the Ministry of Labour set up a special commission with the aim of "analysing the questions which gave rise to the complaints ... and proposing solutions ...".

668. Case No. 1456 referred to Act No. 23551 of 14 April 1988 on trade union associations and to Decree No. 467/88 issuing regulations under that Act which, according to the complainant, contain provisions that are in violation of Conventions Nos. 87 and 98, such as sections 28 of the Act and 21 of the Decree (number of dues-paying members required for an association that has not been granted recognition to take the place of an association covering the same area which has already been granted recognition), section 29 (prerequisites for an enterprise-level union to obtain recognition), section 30 of the Act (conditions for the granting of recognition to unions covering a particular occupation, profession or category), and the sections of the Act that grant exclusive rights to recognised organisations (representation of collective interests, collective bargaining, administration of social welfare activities, deductions from pay (check-off) of trade union dues, tax exemption and trade union immunity for their representatives, etc.). In case No. 1496 the complainant organisation had presented allegations concerning the enforcement of the Act in practice, denouncing the excessive delays and red tape in the processing of union registration and the granting of recognition, or refusal to do so, the failure to approve union by-laws "adapted" to the new Act on trade union associations, etc. [see 274th Report, Annex, para. 3].

669. The complainant adds that the "special commission" set up to study the above-mentioned issues has served only to enable the complaints of recognised organisations to be heard but not to resolve these complaints. Fourteen applications for recognition and 15 for union registration (some dating back five years) are still pending; in addition union leaders have been dismissed from organisations of supervisory and managerial staff in the public sector, such as HIPASAM, and in the private sector such as those of the Association of Supervisory and Managerial Staff of the Argentine Paper and Chemical Industry (which is in the process of acquiring recognition), Messrs. Botta, Deminotti, Albertini and Santillán.

670. The complainant alleges further that section 67 of Decree No. 1757/90 restricts collective bargaining by suspending the clauses

in collective agreements which establish conditions of work that distort productivity or prevent or impede the normal exercise of managerial and administrative authority in state enterprises and companies, mixed economy companies or those in which the State has the major share and in any other entity in which the State is in the position of employer and the staff are at present governed by collective labour agreements. Among these clauses are those "... which include managerial or supervisory staff within the scope of collective labour agreements" (section 67(e) of the Decree). The exclusion, which for the time being is provisional and in line with the procedure established in the Decree in question, will be subject to negotiation by the joint committees on the relevant agreements, the Government's aim being to secure the definitive exclusion of this category of workers from the scope of collective agreements.

B. The Government's reply

671. In its letter of 18 September 1991, the Government states that the position of the complainant conflicts with what can be seen in the complaint, since it has adopted an extreme position - as seen from its unilateral breaking off of discussions on 5 June 1990, when it abandoned the participative process for discussing the issues referred to in the complaint before the "special commission" set up on 15 March 1990 (as a result of the direct contacts mission in March 1990), and from its idea that the administration should resolve the issues outstanding without settling the differences with the other sectors involved, thus distancing itself from procedural standards in respect of due process and the right of defence of all parties involved.

672. The Government states that the the complainant's allegation concerning the refusal of the Ministry to register the organisations of supervisory and managerial staff and to grant them the recognition for which they have applied, is inaccurate. Although pressure of work on the administrative authority and in particular on the National Directorate of Trade Union Associations may cause delays in dealing with applications submitted to it, such delays affect all trade union associations dealing with this body and not only those of supervisory staff. Ministry of Labour records show that 54 trade union associations of supervisory staff have been registered and that recognition has been granted to 74 associations of this kind. In addition a number of other applications have already been processed by the above-mentioned Directorate and referred to the higher authority with the recommendation that the applications be granted.

673. Furthermore there are many cases of associations of supervisory staff that have not responded to the observations made in respect of their proposed rules, and other cases of associations which, having adapted their rules, have failed to submit copies of

them, all of which have prevented the relevant proceedings from coming to fruition.

674. The Government adds that at the present time it is involved in a broad review of labour legislation in order to bring it into line with the changes that are taking place in the basic relations of the country's social and economic structure, which is being brought up to date. The standards to be revised include Act No. 23551 which is to be not only modernised but also brought fully into line with the principles of freedom of association contained in international labour standards. To this end the Government recently requested the International Labour Organisation to cooperate with the Ministry in drafting the reforms that will be submitted to Congress. This resulted in an ILO expert mission visiting the country in August 1991. The experts not only met the senior authorities of the Ministry but also members of the labour legislation committees of Congress and the President, Dr. Carlos Saul Menem. On all these occasions the authorities, and in particular the President, confirmed their intention of carrying out a complete overhaul of the legal system governing the institutional life of trade union associations. The expert mission undertook to continue cooperating on the draft reforms that would eventually be submitted to Congress. Under the new system it is planned to abolish any limitations on the setting up of new trade union associations, whatever their level or form of representation, so that they will be able to obtain recognition; craft and works unions and occupational associations will be able to register and to acquire recognition and all obstacles to the free exercise of trade union rights by such associations will be removed. To achieve this, and as stated by the President on the occasion of his meeting with the ILO experts, sections 29 and 30 of Act No. 23551 are to be substantially amended. This will pave the way to the creation of a modern and efficient legal instrument which, drafted with the cooperation of the ILO and of the national sectors concerned, will be able to avoid the criticism to which the present text is subject; in addition trade union associations will enjoy the fullest facilities in respect of their constitution and freedom of operation.

675. As regards Decree No. 1757/90 which suspends clauses in collective labour agreements covering associations represented by the complainant organisation, the Government states that this provision does not apply solely to agreements covering supervisory staff, but that it is general in scope and applies to personnel of all kinds, including employees in state undertakings and bodies, whatever their position. But it should also be mentioned that this legislation was adopted because of the serious economic crisis which has prevailed in Argentina for a long time (partly as a result of the deficit caused, *inter alia*, by the oversized public sector) and which justifies an anti-inflation stabilisation policy. Furthermore, the Decree in question also aimed at administrative reorganisation since it was tantamount to a call for the renewal of collective labour agreements on which there had been no negotiations in recent years - despite Act No. 14250 - and which were consequently completely out of date. As a result of these circumstances Decree No. 1757/90, until such time as

new agreements had been worked out to replace those in force, gave the parties involved the possibility of provisionally suspending the clauses in collective agreements that dealt with productivity; failing agreement between the parties, the Ministry of Labour could decide on the period during which the said clauses were to be suspended. It should be pointed out that the system in question does not cancel out the procedure laid down in Act No. 14250 but, on the contrary, promotes its application, as established in section 64 of Decree No. 1757/90. In addition, the suspension of clauses in collective agreements, as already stated, is merely provisional, and should end with the conclusion of a new collective agreement. Apart from this, the system for which Decree No. 1757/90 makes provision not only imposes no restrictions on the freedom to bargain of the sectors representing supervisory staff, but aims particularly at promoting this freedom, like that of the blue-collar unions. Furthermore it must be stated that the complaint has now become pointless since a number of associations of supervisory staff have been convened to renegotiate their collective labour agreements with the relevant authority. Negotiations on the joint agreements are now in full swing and many of them having already been terminated with the signing of new texts which have all been duly approved (the Government has supplied a list of cases).

C. The Committee's conclusions

676. As regards the alleged statutory limitations on the trade union rights of associations of supervisory staff and the delays in dealing with union registration and recognition, the Committee notes with satisfaction the Government's decision, communicated to an ILO expert mission which visited Argentina in August 1991, to draw up as shortly as possible, with ILO cooperation, draft amendments for submission to Congress so as to bring the legislation on trade union associations fully into line with the principles of freedom of association established in international labour standards. The Committee observes that the new system in respect of trade union associations that is proposed deals with the problem which concerns associations of supervisory staff (abolition of any limitation on the forming of new trade union associations, whatever their level or form of representation, and their possibility to obtain recognition; facilities for registering and obtaining recognition for craft and works unions and occupational associations, sections 29 and 30 of Act No. 23551 being amended accordingly). The Committee requests the Government to inform it of the reforms that are under way and trusts that in the near future it will be able to note major progress on these matters and that, in the more immediate future, the Government will take measures to remedy the delays which it has admitted in dealing with applications for union registration or the granting of recognition.

677. As regards the alleged limitations on collective bargaining resulting from Decree No. 1757/90, the Committee notes the Government's observations and reiterates the principles that it formulated when examining Cases Nos. 1560 and 1567, examined elsewhere in this report, concerning the restrictions on collective bargaining in circumstances of economic emergency.

678. Lastly, the Committee observes that the Government has not answered the allegations concerning the dismissal of union leaders of associations of supervisory staff and requests it to furnish its observations thereon.

The Committee's recommendations

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

- (a) The Committee notes with satisfaction the Government's decision, communicated to an ILO expert mission which visited Argentina in August 1991, to draw up as soon as possible, with ILO cooperation, draft amendments for submission to Congress so as to bring the legislation on trade union associations fully into line with the principles of freedom of association laid down in international labour standards. The Committee observes that the new system in respect of trade union associations that is proposed deals with the problem which concerns associations of supervisory staff. The Committee requests the Government to inform it of the reforms under way and trusts that in the near future it will be able to note major progress on the matters raised in the complaint and that, in the more immediate future, the Government will take measures to accelerate the processing of applications for union registration or the granting of recognition to trade union associations.
- (b) As regards the alleged limitations on collective bargaining resulting from Decree No. 1757/90, the Committee reiterates the principles that it formulated when examining Cases Nos. 1560 and 1567, examined elsewhere in this report, concerning the limitations on collective bargaining in circumstances of economic emergency.
- (c) Lastly, the Committee requests the Government to send its observations on the allegations concerning the dismissal of trade union leaders of associations of supervisory staff.

Cases Nos. 1560 and 1567COMPLAINTS AGAINST THE GOVERNMENT OF ARGENTINA
PRESENTED BY

- THE ASSOCIATION OF MANAGEMENT STAFF OF ARGENTINE RAILWAYS
AND GENERAL PORTS' ADMINISTRATION (APDFA)
- THE CONFEDERATION OF EDUCATION WORKERS OF THE
ARGENTINE REPUBLIC (CTERA)
 - THE ASSOCIATION OF STATE WORKERS (ATE)
 - THE WORLD CONFEDERATION OF LABOUR (WCL) AND
 - THE ARGENTINE ASSOCIATION OF AIRLINE CREW (AAA)

680. The allegations presented in this case against the Government of Argentina are contained in communications from the Association of Management Staff of Argentine Railways and the General Ports' Administration (APDFA) of 7 November 1990 and January 1991; in communications from the Confederation of Education Workers of the Argentine Republic (CTERA) of 19 November 1990 and 22 January 1991; in a letter from the Association of State Workers (ATE) of 5 December 1990; in communications from the World Confederation of Labour (WCL) of 15 January and 15 February 1991 and in communications from the Argentine Association of Airline Crew (AAA) of 14 December 1990 and 19 February 1991. The Government replied in a communication dated 20 August 1991.

681. Argentina 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

682. In its communication dated 7 November 1990, the APDFA alleges that Decree No. 1757/90 of 5 July 1990 (sections 56, 57, 59, 60, 65, 67, 68, 69 and 70) is undermining its right to undertake free negotiations with regard to the pay and working conditions of its members, thus violating the terms of Conventions Nos. 98 and 154.

683. The APDFA points out that in September 1989, Act No. 23697 was promulgated, known as the Act respecting the Economic Emergency, and that section 1 thereof mentions a situation of collective danger arising out of the serious economic and social circumstances facing the nation. Section 44 of the Act authorises the Executive to review work regulations for staff in the public service or elsewhere, with a view to eliminating factors which could jeopardise efficiency and productivity. The same provision lays down that among other measures, summoning and/or creating collective bargaining machinery ... made it possible for joint agreements to be reached to carry out the provisions in this article. Thus, the possibility of unilateral

decisions on the part of the Executive is reduced, since it is expressly stated that any possible "review" of the collective agreements must be done through a joint agreement. This is also laid down in section 45 of the Act.

684. The complainant emphasises that Decree No. 1757/90 continues the theme of the need to eliminate factors which may jeopardise efficiency and labour productivity in public enterprises, although the Decree emphasises that these very objectives must be met within the existing legal framework, keeping collective bargaining as a suitable instrument for governing the activity of workers. However, in spite of this affirmation, the Decree maintains that with a view to making the negotiating process easier, it has been deemed necessary to waive those clauses which conflict with the objectives of efficiency and productivity, until new agreements are reached.

685. Furthermore, in Chapter III of the Decree (wages policy) employers' representatives on negotiating committees are deprived of any degree of flexibility with regard to wage agreements with trade union organisations. Wages have to fall in line with pay increases unilaterally decreed by the Executive for the public administration. So, indirectly, it is the Executive which determines remuneration for the sector of workers covered by collective agreements, thus precluding any negotiation except when an agreement is reached on granting wages below the "ceiling" (sections 56 to 59 of the Decree).

686. The complainants go on to state that in Chapter IV (collective labour agreements) negotiations to renew the agreements may begin without delay (section 64), which is quite acceptable. On the other hand, there are grounds for complaint in that there is an attempt to impose a fixed time-limit in which the collective agreement must be concluded. Otherwise, if an agreement is not reached, the national Executive will take steps to ensure that the terms laid down in section 44 of Act No. 23697 are met.

687. According to the APDFA, section 67 of Decree No. 1757/90 contains the most blatant violation of the right of trade unions to engage in collective bargaining since, under the pretext of a "short-term necessity", clauses of the collective agreement are being openly waived when they supposedly "disrupt productivity", hinder or interfere with "an enterprise's managerial and administrative capacity".

688. The complainant's communication concludes that the State is acting as both judge and jury in the following way: (a) the Government draws up its economic plan and determines adjustment policy; (b) government-appointed managers of public enterprises determine which clauses of the collective agreement conflict with "efficiency and productivity"; (c) the trade union involved has five days in which to draw up pertinent "comments". A failure to do this is seen as "consent"; (d) the Ministry of Labour and Social Security - an administrative department of the State itself - makes the final decision on waiving the terms of the collective agreement in

question. In conclusion, the State determines economic policy; the State, as employer, puts forward amendments to collective agreements; and the State as administrative authority makes a decision on the possible "comments" drawn up by the trade union concerned.

689. In a further communication of January 1991, the APDFA refers to the practical application of Decree No. 1757/90 with regard to certain collective agreements and in particular to collective agreement No. 433/75, clause 3 of which, listing the occupational categories represented within the Argentine Railways company, has been suspended. The suspension was requested by the Acting President of the Technical Advisory Committee on Public Sector Wage Policy. The APDFA contested the request within the statutory five-day limit, but lost its case; it was ruled that clause 3 of the collective agreement should be suspended until new collective labour agreements had been approved.

690. The APDFA's members are divided up according to categories. It represents the management and professional staff of Argentine Railways, of the General Port Administration and of the Institute of Social Services for Railway Staff. The application of Decree No. 1757/90 to collective agreement No. 433/75 violates the principle of freedom of association, because in view of the APDFA being a trade union representing staff in different categories, and clause 3 specifying in the collective agreement which occupational categories the trade union represents at the level of collective bargaining, a suspension of this clause means that the representative function of the trade union is eroded.

691. In its communication dated 19 November 1990, the CTERA states that, on 25 August 1989, its organisation requested the Ministry of Labour and Social Security to join it in elaborating a collective agreement for the sector, to provide a framework for arriving at agreements on wages, conditions and terms of work, how to reduce risks, and social and occupational benefits.

692. The CTERA, when it formed part of a national preparatory committee along with provincial educational authorities, requested the Ministry of Labour and Social Security to develop the legal instruments for the formal constitution and functioning of a National Agreement for Education Workers. The Ministry of Labour's reply, through a legal ruling against the request, argued that a special Act would need to be passed in Congress in order to set up a collective agreement for the education sector.

693. The complainant adds that despite this ruling made by the Ministry of Labour itself, it has put obstacles in the way of the Bill on Collective Agreements for the Education Workers of the Argentine Republic and neglected to bring it before the Congress, thus barring its implementation, against the advice of the Ministry of Labour itself, in accordance with the judgements made by the General Directorate of Labour Relations.

694. The complainant adds, moreover, that the Bill on Collective Agreements for Education Workers was drawn up by a committee, the composition of which was based on resolution No. 55 of 24 January 1990 of the Ministry of Education, including representatives of the Ministry, representatives of all the educational authorities of the Republic, public officials from the Ministry of Economy, representatives of the public services and of the CTERA under the presidency of an official from the Ministry of Labour, who reported that the committee in question had been dissolved, without a resolution having been passed to this effect. Thus, argues the complainant, it can be concluded that the fundamental principles, including the ideal of concertation, which led to the creation of the committee, have been put to one side, thus leaving education workers deeply dissatisfied.

695. The CTERA sent another communication dated 22 January 1991 in which it fully endorses the complaint presented in the preceding communication.

696. The ATE, in a communication dated 5 December 1990, also criticises Decree No. 1757/90 (sections 56, 57, 59, 60, 65, 67, 68, 69 and 70) which unashamedly violates the right of the organisation to negotiate freely the wages and employment conditions of its members. The complainant points out that the Government, far from attempting to "encourage and promote the full development and utilisation of machinery for voluntary negotiation ... of collective agreements" as stipulated in Article 4 of Convention No. 98, is ignoring the will of the social actors and is illegally and arbitrarily disregarding the workers' hard-earned social victories. There is a return to the old ways of authoritarian governments, although the Government is using more subtle methods, autocratically setting wage levels, thus depriving parties of any opportunity to undertake free negotiations.

697. The WCL, in a communication dated 15 January 1991, supports the complaint presented by the ATE and maintains that Decree No. 1757/90 violates Conventions Nos. 98 and 154. Although it admits that the state reform aimed at increased rationality and efficiency is a common goal, there are ways, methods and safeguards which cannot and should not disregard the basic rights of workers and their organisations. If they are indeed disregarded, arbitrary acts run the risk of leading to inequality and aggravating social problems, including mass dismissals (even of trade union delegates), and of making the socio-economic situation even more difficult, possibly leading to instability and further acts of an arbitrary nature.

698. In a further communication dated 15 February 1991, the WCL provides information on the dismissal of trade union delegates who worked in the state sector. They are: Mr. Juan Carlos Piccini, Trustee (delegado normalizador, Institute of Social Works) whose mandate has expired, Mr. José Alverto Ibáñez, trade union secretary, Carlos Alberto Leonardi, press secretary and José Alberto Duarte, first secretary (National Register of Persons), Mr. Roberto Angel Pardo, press secretary (Public Work, Social Section), Mr. Héctor

Ricardo Piñeiro, Trustee (delegado normalizador), and Enrique Muzzio, Trustee (delegado normalizador, National Institute of Cinematography), Mr. Patricio Prassolo, general secretary, Eduardo Silva, trade union secretary and Favio Bruno, organisation secretary (Secretariat of Culture - Cervantes Theatre) and Mrs. Sandra Solari, organisation secretary (Under-Secretariat of Industry and Commerce). In its conclusion, the WCL describes these dismissals as attacks on trade union rights and requests the reinstatement of the delegates.

699. The AAA in communications dated 14 December 1990 and 19 February 1991 reiterates and fully supports the comments made with regard to the terms of Decree No. 1757/90 and its practical application in collective bargaining in the public sector.

B. The Government's reply

700. In a communication dated 20 August 1991, the Government refers to Decree No. 1757 and ruling No. 9/90 suspending the application of certain clauses of the collective agreements covering airline crew and points out that the grounds for the complaints presented by this sector no longer exist, since both the AAA and the Association of Airline Pilots (APLA - which is not a complainant in these cases) have concluded new collective agreements with their employer, Argentine Airlines SA (the former state-owned airline, Aerolíneas) which have already been approved by the Ministry of Labour.

701. The Government explains the factual and legal reasons which led to Decree No. 1757/90 and points out that the Argentine Republic has, for some time, been experiencing a major economic crisis due to the enormous fiscal deficit which has been caused in part by the enormity of the public sector and by subsidies to state public enterprises. Against this background, Decree No. 1757/90 was passed on 5 July 1990 according to which, for a short-term period, and until new collective agreements are elaborated, the clauses of the collective agreements in force affecting productivity and efficiency will not be implemented. The state economic emergency was declared by means of Act No. 23696, considering the emergency as a force majeure which could be applied to existing contracts concluded in the public sector.

702. It was up to the Ministry of Labour to make a decision on the temporary period during which the clauses of the collective agreement suggested by the enterprise - in this particular case Argentine Airlines - were to be suspended. Consequently, ruling No. 9/90 was passed according to which some clauses of the collective agreement were suspended "for a temporary period". In this way, the suspension of the clauses of the collective agreement in question resulting from the decision is no more than the application of justifiable measures aimed at surviving the economic emergency.

703. With this in mind, continues the Government, it is important to highlight that the procedure provided for in Act No. 14250 on collective bargaining is not being waived at all and is in fact being fully exercised, in accordance with section 64 of Decree No. 1757/90. The suspension is merely for a short period, until a new agreement is concluded, and is fully justified in the light of anti-inflationary and stabilisation policies.

704. On the other hand, the Government points out that the Supreme Court of Justice in the judgement "SOENGAS, Hector Ricardo and others v. Argentine Railways" of 7 August 1990, has once again shown that, in situations of social or economic emergency, authority to regulate an individual's rights can be more forcefully wielded than in periods of calm and normality. It adds that the case could not have been resolved without a prior examination of the different clauses making up a collective agreement, such as those laying down employment conditions, responsibilities and the fixing of wage scales, which could have been rendered worthless as a consequence of high inflation or in the face of widespread crisis, and which, for this reason, have a bearing on economic order.

705. The Government repeats that new collective agreements have now been signed between the airlines company and the complainant trade union organisation, and so the ruling and the application of Decree No. 1757/90, a product of the aforementioned economic crisis, were not enforced for very long in practice.

706. Finally, the Government points out that, in the Argentine Republic, the division of powers existing in democratic systems is in force; judicial review of governmental actions or of the constitutionality of Acts and decrees is fully exercised when natural or juridical persons believe that their rights have been violated, thus leaving the final decision in the hands of the courts.

C. The Committee's conclusions

707. The Committee observes that the allegations presented in this case relate to the promulgation of Decree No. 1757/90 which was based on the need to eliminate factors which may have a negative effect on efficiency and labour productivity in the public sector, in the framework of Act No. 23696 on the economic emergency. Similarly, the allegations relate to restrictions or "ceilings" imposed by the Executive, on awarding pay increases by means of collective agreements. They also refer to the imposition of a fixed time period in which agreement must be reached once negotiations have begun and the measures the Executive may take to ensure efficiency and productivity in the event of an agreement not being reached. Reference is also made to section 67 of Decree No. 1757/90 under which clauses of the agreements may be waived if they disrupt productivity, hinder or interfere with the administration of the enterprise, as in the case of

clause 3 of collective agreement No. 433/75 which listed certain occupational categories represented by the APDFA before the Argentine Railways company, eroding the trade union's representative function.

708. Other allegations presented in this case refer to certain administrative and legislative obstacles preventing the conclusion of a national collective agreement for the education sector for which a multipartite committee had been created to draw up legislation to uphold the national agreement. The committee was allegedly dissolved unilaterally by the representative of the Ministry of Labour, without a resolution having been passed to this end, thus precluding a collective agreement for the sector. Furthermore, the Committee observes that other allegations relate to the dismissal of trade union delegates from among state employees, by virtue of the policy of rationalisation and efficiency. Their names are: Juan Carlos Piccini, José Alberto Ibáñez, Carlos Alberto Leonardi, José Alberto Duarte, Roberto Angel Pardo, Héctor Ricardo Piñeiro, Enrique Muzzio, Patricio Prassolo, Eduardo Silva, Favio Bruno and Sandra Solari.

709. The Committee takes note of the information provided by the Government, particularly with regard to the economic crisis facing the country due, in part, to the size of the public sector and also to subsidies to state enterprises, which led to the promulgation of Decree No. 1757. The Decree was aimed at reaching a level of efficiency and productivity which would allow the State to rationalise its operations and overcome the economic crisis facing it. It was purely a short-term measure to enable new collective agreements to be concluded in the public sector.

710. The Committee notes furthermore that, by virtue of section 67 of Decree No. 1757/90, the State may waive certain clauses of collective agreements in force which affect productivity and efficiency, considering the state of emergency in the economy as a force majeure which may be applied to contracts in force in the public sector and which should remain in force until the conclusion of new collective agreements. It also notes that the Government states that Decree No. 1757/90, due to its short-term nature and its specific goals, does not override the machinery provided for in legislation normally governing collective bargaining but, on the contrary, allows it to function, in accordance with section 64 of the same Decree.

711. On the other hand, the Committee notes that the Government emphasises that the final decision on the application of this Decree rests with the judiciary and that any person thus affected has recourse to legal processes.

712. With regard to the measures taken by the Government with a view to rationalising the public sector in the framework of the state of economic emergency decreed by Act No. 23696, the Committee draws the Government's attention to the principle that the exercise of prerogatives belonging to the public authority, with regard to financial matters, in such a way as to obstruct or amend the implementation or content of collective agreements previously

negotiated by public bodies is incompatible with the principles of the freedom of collective bargaining. [See for example 234th Report, Case No. 1173 (Canada/British Columbia), para. 87.] However, the Committee notes that Decree No. 1757/90 states that the objectives of efficiency and labour productivity in public enterprises should be met within the legal framework in force, maintaining collective bargaining as the ideal means to govern labour activity, and that the suspension of certain clauses of collective agreements which have already been agreed, and which conflict with the aforementioned objectives, are of a temporary nature, that is to say, they last until the negotiation of a new collective agreement, but that negotiations must bring them into line with the Government's wage policy for the public administration (sections 56-59 of the Decree).

713. In these circumstances, the Committee wishes to stress that even though voluntary collective bargaining is a key aspect of trade union rights, it has accepted that in certain circumstances for compelling reasons governments might decide that the economic situation in the country called for stabilising measures and that during the application of such measures it would not be possible for wage rates to be fixed freely through the process of collective bargaining. [See 106th Report, Case No. 541 (Argentina), para. 16 and 110th Report, Case No. 561 (Uruguay), para. 225.]

714. In this respect, the Committee, as well as the Committee of Experts and the Application of Conventions and Recommendations, have insisted that if within the context of a stabilisation policy a government may consider for compelling reasons that wage rates cannot be fixed freely by collective bargaining (in this case without exceeding certain "ceilings"), such a restriction should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period and that it should be accompanied by adequate safeguards to protect workers' living standard. This principle is all the more important because successive restrictions may lead to a prolonged suspension of wage negotiations, which goes against the principle of encouraging voluntary collective negotiation. [General Survey on Freedom of Association and Collective Bargaining, 1983, para. 315 and 233rd Report of the Committee, Cases Nos. 1183 and 1205 (Chile), para. 482.]

715. With regard to the specific allegations on the suspension of clause 3 of collective agreement No. 433/75 which listed categories represented by the APDFA within the Argentine Railways company; and to the alleged administrative and legislative obstacles preventing the conclusion of a national collective agreement for the education sector, the dissolution of the multipartite committee set up to draft legislation to this end, and also with regard to the dismissals of representatives of public sector staff mentioned in the preceding paragraph, the Committee observes that the Government has not made any reply and requests that its comments be sent as soon as possible so that the Committee may be in a position to take a decision.

The Committee's recommendations

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

- (a) The Committee, having observed the particular circumstances of the economic emergency facing the country and which have led to the restrictions on collective bargaining contained in Decree No. 1757/90, draws the Government's attention to the principle that has always been upheld according to which in cases of economic emergencies, such restrictions should only be applied for compelling reasons as an exceptional measure, only to the extent necessary, without exceeding a reasonable period and should be accompanied by adequate safeguards to protect workers' living standard.
- (b) The Committee requests the Government to send its comments on the allegations relating to the suspension of clause 3 of collective agreement No. 433/75; on the administrative and legislative obstacles preventing the conclusion of a national collective agreement for the education sector and on the dismissal of representatives of public sector staff.

Case No. 1594

COMPLAINT AGAINST THE GOVERNMENT OF COTE D'IVOIRE
PRESENTED BY
THE WORLD CONFEDERATION OF LABOUR (WCL)

717. The World Confederation of Labour (WCL) submitted a complaint of violation of trade union rights against the Government of Côte d'Ivoire in communications dated 22 February and 17 July 1991. The Government sent its reply in a letter dated 25 September 1991.

718. The Côte d'Ivoire 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

719. In its communications of 22 February and 17 July 1991, the WCL alleges that the Government is holding up the recognition of the trade union federation "Dignité" and has engaged in various measures

of intimidation and anti-trade union discrimination against trade union officials belonging to this organisation.

720. The WCL explains that, since 1962, there has only been one trade union organisation in Côte d'Ivoire, whose executive has been won over to the government side and does not seem very concerned over the worsening working and living conditions of workers; indeed, the latter feel the need for a better defence of their occupational, social and economic interests. This dissatisfaction resulted in the emergence of a new trade union federation named "Dignité", affiliated to the World Confederation of Labour, which groups a large number of trade unions in various sectors of activity. Several months ago, "Dignité" made known its constitution and deposited its rules with the authorities concerned. In accordance with the legislation in force, its recognition should have been published in the Official Gazette after a time-limit of three months. However, until now, there have been no further developments. This delay clearly constitutes an attempt to restrict the development and activities of "Dignité" as a trade union organisation.

721. Furthermore, the complainant maintains that workers belonging to "Dignité" are subject to intimidation and arbitrary measures and that attempts are made to impede the activities of its officials to prevent them from fulfilling their functions and benefiting fully from their trade union rights for the defence of workers' interests. In other words, freedom of association and protection of the right to organise are not respected.

722. Austerity policies, combined with a drop in raw material prices, have resulted in serious cuts in social budgets and study grants, in cuts in wages and staff in the public service - but also in the private sector - and in injustices which have sparked off legitimate protests. On 2 August 1990, a mass demonstration was held to protest against wage cuts, the arrest of trade unionists belonging to SYNARES and SYNACASSCI and some of their wives, and against arbitrary measures.

723. During this demonstration, 29 members of "Dignité" were arrested and detained for 12 days - including three primary-school teachers whose monthly salary was suspended. These teachers were: Gouali Gnonka, Zouzoua Kalou Prosper and N'cho Aké (national secretary-general of the trade union of primary teachers belonging to "Dignité"). These three teachers were not called before the disciplinary council of the public service; this implies that they were subjected to disciplinary measures of the first degree. In this case, there was failure to comply with the provisions of the General Statutes of the Public Service for - amongst other things - the following reasons: those concerned were not asked for an explanation of their conduct; and their pay was suspended by 100 per cent instead of 50 per cent. Furthermore, these three trade union officials received a letter telling them that they were to be posted to outlying areas for the school year - which is not normal during a school year and is tantamount to a new disciplinary measure.

724. Subsequently, Gouali Gnonka and Zouzoua Kalou Prosper received all the arrears due on their monthly salary; but N'cho Aké did not benefit from the same measure although there is no doubt as to his professional competence. He has not received his salary since April 1990. Furthermore, a proposal was made to him that his salary would be restored if he resigned from the trade union "Dignité" - a proposal that he refused.

725. These arbitrary measures against these three teachers were taken with a view, among others, to discouraging workers from claiming their lawful rights as regards wages and from taking part in any public protest demonstrations in the future. The WCL considers that such an attitude infringes the right to bargain collectively and freedom of expression and is contrary to the proper conduct of a true democracy and a modern State. It maintains that the action taken by the Government constitutes a violation of Conventions Nos. 87 and 98 and requests that the necessary steps should be taken by the authorities of Côte d'Ivoire to ensure that:

- "Dignité" is officially recognised and that the authorities do not hamper either its running or activities, in accordance with ILO Conventions Nos. 87 and 98;
- the arrears in salary due to N'cho Aké are paid;
- the arbitrary decision to send three teachers, Gouali Gnonka, Zouzoua Kalou and N'cho Aké to the interior of the country is annulled.

B. The Government's reply

726. In its communication of 25 September 1991, the Government maintains that public officials are guaranteed the right to organise under section 13 of Act No. 64-488 of 21 December 1964 setting up the general regulations of the public service. Their occupational trade unions are regulated by labour legislation. Section 4(1) of the Labour Code stipulates: "Persons carrying on the same trade, similar crafts or allied trades associated in the preparation of specific products, or the same profession, shall be free to form a trade union. Every worker or employer shall be free to join a trade union selected by him within his own trade or profession." Freedom of association and the protection of the right to organise, as provided for by Convention No. 87 of the International Labour Organisation, are fully exercised in Côte d'Ivoire. At present, there are 42 trade unions of public servants and allied branches and 108 workers' trade unions in the private sector.

727. As regards the setting up and recognition of the trade union federation "Dignité", the Government quotes the provisions of section 5 of the Labour Code: "The founders of any occupational trade union

shall register the rules and the names of those who, in whatever capacity, are trusted with its administration or management ... This registration shall take place at the city council or the headquarters of the administrative district in which the trade union is situated, and a copy of the rules shall be addressed to the labour inspector and the public prosecutor of the jurisdiction". The Labour Code of the Côte d'Ivoire therefore provides neither for a procedure of official recognition for occupational trade unions, nor a subsequent publication of this recognition in the Official Gazette.

728. The rules of a group named "Federation of Free Trade Unions of Côte d'Ivoire" (FSLCI) - "Dignité" - were deposited on 25 April 1990 at the Abidjan city council by Mahan Gahie Basile, secretary of this trade union. Upon examining these rules, the administrative authority pointed out that the name "Federation of Free Trade Unions of Côte d'Ivoire" did not comply with the requirements laid down in section 24 of the Labour Code which stipulates that occupational trade unions established in accordance with the law may join together in associations. However, the rules of "Dignité" do not mention the various basic trade unions making up this federation. Consequently, the name "Federation" is not in accordance with the principle laid down in section 24 of the Labour Code which covers associations of trade unions. However, Mahan Gahie Basile has been requested for more specific details on the matter.

729. The pay of Gouali Gnonka, Zouzoua Kalou Prosper and N'cho Aké was suspended on the grounds that they had not turned up for work when courses resumed on 2 April 1990, after schools had been closed by the Government because of the social upheavals during the months of February and March 1990. Gouali Gnonka and Zouzoua Kalou Prosper later turned up for work and reported to their new posts after having replied to a request for an explanation of their behaviour; their pay was then restored.

730. N'cho Aké, who turned up much later, asked for a period of reflection before replying to the request for an explanation of his behaviour and before joining his new post. Since then, he has not appeared before the authorities of the ministry employing him. His pay remains suspended because he has abandoned his post. His case was referred to the disciplinary council on account of this behaviour, in accordance with the General Regulations of the Public Service; however, N'cho Aké, in a letter dated 24 July 1991, refused to appear before the council. As a public servant, N'cho Aké may not elude the provisions of the General Regulations of the Public Service and disciplinary regulations which apply to all public servants - irrespective of the trade union to which they belong. He was therefore judged in his absence.

731. Furthermore, inquiries carried out at the ministry employing N'cho Aké did not reveal any evidence whatsoever to support his allegation that he had been called to hear a proposal that his pay would be restored if he resigned from the trade union "Dignité". The complainant must provide evidence of such a serious allegation.

732. In summing up, the Government maintains that the allegations of infringement of trade union rights in Côte d'Ivoire and of intimidation and arbitrary measures taken against workers belonging to "Dignité" are completely unfounded. The Labour Code constitutes the legal basis for the setting up of "associations of trade unions" and no provision in the Code requires the administrative authority to recognise explicitly a trade union by publishing this recognition in the Official Gazette. Disciplinary measures taken against some officials were in accordance with the General Regulations of the Public Service, which apply to all public servants in the Côte d'Ivoire; they in no way constituted discriminatory measures taken against members of a particular trade union group.

C. The Committee's conclusions

733. The complaint concerns measures of repression allegedly taken by the authorities in Côte d'Ivoire against the founders and other members of a trade union federation - called "Dignité" - that was set up outside the only trade union confederation in the country. The allegations concern the authorities' failure to recognise this federation. They also concern measures of anti-trade union discrimination against teachers belonging to the trade union (transfer to the interior of the country, failure to pay arrears of salary).

734. The WCL complains against the refusal of the Government to recognise officially the central organisation "Dignité", and against the arrest on 2 August 1990 of 29 trade union members who demonstrated against cuts in pay caused by the Government's economic austerity measures. It acknowledged that these persons had been freed after 12 days but explained that three teachers, amongst the persons arrested, had had their salaries suspended and were then transferred to posts to the interior of the country during the school year. Subsequently, two teachers received their back pay but the third has not received his salary since April 1990. For its part, the Government maintains that freedom of association is respected in Côte d'Ivoire and that public servants have the right to organise under the legislation. It acknowledges that the rules of an association called "Federation of Free Trade Unions in Côte d'Ivoire" (FSLCI), "Dignité", were deposited on 25 April 1990 at Abidjan city hall; but it explains that this federation does not fulfil the requirements laid down in the Labour Code as the rules of the federation do not mention the various basic trade unions belonging to it. The Government also points out that the two teachers who returned to work received their back pay and that the third, who has not yet resumed work, is facing disciplinary measures in accordance with the general regulations of the public service - irrespective of his trade union membership. The Government strongly denies the allegation that the person concerned had been approached and promised that his salary would be restored if he resigned from the trade union "Dignité".