the Committee considers that in the present case, abruptly stopping these deductions for a number of months could have caused serious economic damage to the trade unions in this sector. The Committee emphasizes that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 435]. The Committee deeply deplores that the government of the State of Paraná did not adopt transition measures in order to prevent damage to the trade union organizations (for example, by informing the unions of the need to have the express authorization of the members and allowing a certain period for them to submit such authorization). Under these circumstances, the Committee hopes that in future such measures, which could seriously affect the finances of the unions concerned, will not be taken, and requests the Government, as soon as the trade unions present proof of their members' authorization for the deduction of trade union dues, to take the necessary measures to make those deductions and ensure that they are promptly transferred to the trade unions.*

THE COMMITTEE'S RECOMMENDATION

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

Recalling that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations, the Committee requests the Government, as soon as the trade unions concerned present proof of their members' authorization for the deduction of trade union dues, to take the necessary measures to make those deductions and ensure that they are promptly transferred to the trade unions.

Case No. 1943

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Canada (Ontario) presented by
— the Canadian Labour Congress (CLC)
— the Service Employees International Union, Local 204 (SEIU) and
— the Ontario Federation of Labour (OFL)

Allegations: Interference by the authorities in the establishment of labour tribunals and arbitration boards

103. The Committee examined this case at its June and November 1998 sessions and, after each of these sessions, presented an interim report to the Governing Body [see 310th Report, paras. 185-242, adopted by the Governing Body at its 272nd Session (June 1998), and 311th Report, paras. 151-169, adopted by the Governing Body at its 273rd Session (November 1998)].

104. The Government sent further observations in a communication dated 16 March 1999.

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

A. PREVIOUS EXAMINATION OF THE CASE

106. During its previous examination of this case, the Committee made reference, inter alia, to Schedule Q to the *Savings and Restructuring Act, 1996* (Bill 26) and to the *Public Sector Transition Stability Act, 1997* (Bill 136), in particular Schedule A which is the *Public Sector Dispute Resolution Act, 1997*. The complainants maintain that the legislation and the continued absence of an independent body to appoint, and revoke the appointment of, the members of arbitration tribunals and boards competent in labour disputes in Ontario are prejudicial to the independence and integrity of these bodies and, thereby, are in violation of the standards and principles of freedom of association.

107. During its examination in November 1998, the Committee presented the following recommendations [see 311th Report, para. 169]:

(a) The Committee requests the Government to provide further information concerning the arbitration outcomes pursuant to Bill 26 and Bill 136, including whether these outcomes replicate those in sectors entitled to the right to strike. The Committee further requests the Government to forward copies of the relevant arbitration awards. It also repeats its request to the complainants to submit further information in this regard.

(b) Noting the importance of changes in the bargaining structure, including the arbitration process, to the bargaining parties, the Committee urges the Government to ensure in future that consultations in good faith are undertaken regarding any changes to the bargaining structure, in such circumstances that the parties have all the information necessary to make informed proposals and decisions, and the implementation of the legislation ultimately adopted is facilitated.

(c) Concerning the appointment procedure for members of the OLRB, the Committee requests the Government to provide more specific information on the actual consultation process that is undertaken. The Committee also requests the Government to provide specific information on all the cases concerning the removal of OLRB vice-chairpersons and the chairperson raised in the complaint, and to inform it of the basis in law and in practice upon which appointments can be revoked or not renewed. The Committee also urges the Government to make trade unions and employers' organizations an integral part of the process of reviewing the appointment procedure, since it is dealing with an area of particular importance to them.

(d) Concerning the process of choosing arbitrators for appointment where the parties cannot agree on an arbitrator, the Committee notes that this matter is presently the subject of litigation, and requests the Government to forward a copy of the decision of the court in this matter as soon as it is rendered.

(e) Regretting that the Government has not responded to its recommendation to consult fully with the trade unions and employers' organizations to determine how to strive to promote confidence in arbitration, which is essential to harmonious industrial relations, the Committee urges the Government to do so in the near future, and to keep it informed in this regard.

THE GOVERNMENT'S REPLY

108. In its communication dated 16 March 1999, the Government states, with regard to the arbitration conducted under Schedule Q to the *Savings and Restructuring Act, 1996* (Bill 26) and Schedule A to the *Public Sector Transition Stability Act, 1997* (Bill 136), that 110 rulings referring to wage matters were handed down between 30 January 1996 and 31 December 1998 and it supplies copies of these decisions. The Government indicates that

the rulings set wages in certain public services such as hospitals, police and fire services and points out that the average wage increases awarded are approximately 1.08 per cent.

109. With regard to the arbitrator appointment procedure, the Government emphasizes that the Ontario Divisional Court, a court of first instance, was called upon to conduct a judicial review of the policy adopted by the Minister of Labour of Ontario, according to which he/she appoints retired judges to preside the arbitration boards whenever the parties cannot reach an agreement. Previously, the chairpersons of such boards were appointed by senior officials to whom the Minister had delegated his powers. The Court handed down its decision on 17 February 1999, throwing out the application for judicial review and stating that it was not the Court's role to evaluate the advisability of ministerial policy but, on the other hand, to verify whether the Minister had exceeded his/her powers in adopting it. The Government supplies a copy of the Court's decision.

110. With reference to the procedure for appointment of members of the Ontario Labour Relations Board (OLRB), the Government points out that the vice-chairpersons of that body are appointed by the Lieutenant-Governor in Council. In practice, the appointments are made for a period of three years. When vacancies occur and recruitment is being envisaged, the selection of candidates is influenced by the concern to establish a balance between experienced members and others who can contribute new outlooks and expertise. For the purpose of maintaining this balance and ensuring continuity, it is current practice for the Lieutenant-Governor to renew vice-chairperson for a new term of office. Given the OLRB's very sound reputation, several qualified and credible candidates wishing to make a contribution to public life and acquire experience in administrative law are willing to become members. Generally, they submit their applications to the competent public body or directly contact the chairperson of the OLRB. Applications may be submitted without any vacancy having been announced. As a rule, the chairperson conducts a preliminary examination of candidates' files. The Cabinet also submits recommendations in the light of the aforementioned criteria. Potential candidates may be interviewed by a committee set up for that purpose. Subsequently, applications are passed on to the Lieutenant-Governor who makes the appointments. It is clear that, whereas it is within the Lieutenant-Governor's powers to make appointments, the chairperson of the OLRB plays a key role and bears influence throughout the selection process.

111. With regard to the information requested on the basis in law upon which the removal and non-renewal of OLRB vice-chairpersons take place, the Government supplies a copy of the decisions pronounced by two Ontario courts in the *Hewat* case, as well as memoranda it submitted to these bodies. It indicates that these courts conducted a detailed study of the nature of the appointments to quasi-judicial bodies — such as the OLRB — and of the possibilities open to the Government to remove, as it saw fit and before the end of their terms of office, members appointed to these bodies for a fixed period. In the *Hewat* case, the decision to revoke the appointments during the terms of office was annulled by the courts, but the three members concerned were not reinstated in their posts, given that the terms of office of two of the members had expired and that the third post had, in the meantime, been filled. The Government observes that, in this case, the Court did not consider that the OLRB's independence had been impaired and emphasizes that none of the concerned parties lodged an appeal, despite the existence of such an opportunity.

112. Regarding the specific situation associated with the appointment and removal of arbitrators competent in industrial relations, as addressed by the *Professional Standards Act* and the *Occupational Safety and Health Act*, as well as of OLRB members, the Government indicates that the functions of the former have been incorporated into those of the OLRB. The four arbitrators in question have ceased dealing with the matters submitted

to them but the renewal of their terms of office has not been sought. Nevertheless, the arbitrator who acted as chairperson accepted to remain in that post in order to ensure a smooth transition. Moreover, the Government points out that an agreement was achieved with the three vice-chairpersons of the OLRB, whose terms of office had been terminated prematurely, without grounds, on 2 October 1996 (case *Hewat supra*). The term of office of one further vice-chairperson expired on 5 September 1997 and has not been renewed, in accordance with the established procedure.

113. Finally, in relation to consultation and participation of workers' and employers' organizations in the selection of OLRB members, the Government states that a committee for the reform of public agencies was set up in May 1997 and this body is, inter alia, called upon to advise the Government regarding the changes which should be made to improve the workings of such agencies to the satisfaction of all concerned parties. In this context, the committee suggested that the Government review the procedure applying to the appointment of chairpersons and members of regulatory and decision-making agencies, in order to ensure that they met the needs of the relevant sectors. The committee conducted extensive consultations with the concerned groups, i.e. consumers, shareholders or workers' and employers' organizations. It published a document sent to 800 persons; almost 200 groups and individuals took part in round tables, presented written contributions or met with the committee's members. The issue of the appointment, qualifications and training of members of such bodies has been raised and has repeatedly been the subject of fierce debate. The committee has also laid special emphasis on this issue and recommended that certain questions and principles undergo consideration when the appointment procedure is reviewed. The Government adds that in 1998 it ordered a revision of the procedure for the appointment of members of public agencies with a view to the adoption in the first quarter of 1999 of a recommendation emanating from the committee's examination of a new policy.

C. The Committee's conclusions

114. *The Committee recalls that this complaint contains allegations that the legislation applicable to compulsory arbitration in various areas of the public sector and the continued absence of an independent body to appoint the members of tribunals and arbitration boards competent in industrial disputes in Ontario are prejudicial to the independence and integrity of such tribunals and, thereby, violate the standards and principles of freedom of association.*

115. *With regard to the outcomes of arbitration conducted in accordance with Schedule Q of the* ***Savings and Restructuring Act, 1996*** *(Bill 26) and Schedule A of the* ***Public Sector Transition Stability Act, 1997*** *(Bill 136), the Committee takes good note of the copious documentation on this issue forwarded by the Government. However, the Committee regrets that the complainants did not act upon the recommendation that it presented on its previous examination and that they did not supply more relevant information. The Committee observes that several rulings cover, at least in part, the period during which the* ***Social Contract Act, 1993*** *(Bill 48) was in force, i.e. between 14 June 1993 and 31 March 1996. Bill 48 was the subject of a report by the Committee [see 292nd Report, paras. 511-554] and contained restrictions applicable to the public sector, as a consequence of which, inter alia, the arbitrators' powers of decision were limited with regard to wage setting. The Committee therefore considers that the arbitration awards in respect of this period are irrelevant for the purposes of evaluating the consequences of the criteria introduced by Bills 26 and 136 for the outcome of the arbitration conducted under these Bills and, in particular, in respect of whether these*

outcomes replicate those arrived at in sectors where the right to strike is exercised. As regards arbitration covering the period following 31 March 1996, the Committee observes that several arbitration boards state in their decisions that the criteria specified in Bills 26 and 136 are not exclusive and that they may take into consideration all factors that they consider to be relevant. In any event, the criteria listed in Bills 26 and 136 are sufficiently broad to allow them to exercise their competences to the fullest extent. Moreover, the arbitration boards have constantly emphasized that their objective is to endeavour to replicate, to the extent possible, the results of collective bargaining undertaken on a voluntary basis. Therefore, they generally set wages on the basis of a comparative analysis of remuneration awarded by arbitration or obtained through collective bargaining in similar or comparable fields of activity.

116. *With reference to the procedure for the appointment of members of the Ontario Labour Relations Board (OLRB), the Committee notes the relevant information supplied by the Government. It also takes note of the rulings handed down by the Ontario courts of first instance and appeal in the* ***Hewat*** *case; these annulled the premature removal of three members of the OLRB; the Committee also notes the settlement subsequently reached to end the disagreement. The Committee recalls that, in this case, the Ontario Court of Appeal stresses that the OLRB must ensure that the general public views the exercise of this body's quasi judicial functions as being entirely independent of government authorities; the Court of Appeal believes that this is the only way of securing respect for the decisions arrived at. Furthermore, the Committee notes the Government's statement to the effect that it wishes to review the procedure for the appointment of members to various administrative and quasi judicial bodies — including the OLRB. In this regard, the Committee observes that the Government has set up a committee for the reform of public agencies, whose function it is to advise upon the changes that should be made to improve such bodies' workings. In this context, the committee has held extensive consultations with the relevant groups, including workers' and employers' organizations. During such consultations, the issue of the appointment, qualifications and training of members of regulatory or decision-making bodies underwent fierce debate. The Committee recalls that, in the first quarter of 1999, the Government wished to adopt a new policy regarding the appointment of members of public agencies, including the OLRB, in the light of the work conducted by the committee that had been set up. Consequently, the Committee requests the Government to keep it informed of the possible adoption of such a policy and, where appropriate, of its content. In the event of that policy not yet having been implemented, the Committee requests the Government to keep it informed of the measures it intends to take in this respect.*

117. *With regard to the appointment, in the event of a disagreement between the parties, of the chairpersons of arbitration boards by the Minister of Labour from a list of retired judges, the Committee takes note of the decision pronounced by an Ontario court of first instance which, having been called upon to conduct a judicial review, concluded that the Minister had not exceeded his powers and that it was not the court's role to criticize ministerial policy. However, the Committee wishes to stress that the Government should ensure that the person thus appointed should not only be strictly impartial but should also appear to be so if the confidence of both sides is to be gained and maintained [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 549], this being all the more important in the public sector where the Government is itself one of the parties.*

THE COMMITTEE'S RECOMMENDATIONS

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

(a) In the light of the work conducted by the committee for the reform of public agencies set up by the Government and noting that the Government wished, in the first quarter of 1999, to adopt a new policy regarding the appointment of members of public agencies, including the Ontario Labour Relations Board (OLRB), the Committee requests the Government to keep it informed of the possible adoption of that policy and, where appropriate, of its content. In the event of that policy not yet having been implemented, the Committee requests the Government to keep it informed of the measures it intends to take in this regard.

(b) The Committee stresses that the chairpersons of arbitration boards appointed by the Minister of Labour in the event of a disagreement between the parties, should not only be strictly impartial, but should also appear to be so if the confidence of both sides is to be gained and maintained.

Case No. 1999

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Canada (Saskatchewan) presented by the Canadian Labour Congress (CLC)

Allegations: Back-to-work legislation; obstacles to collective bargaining (energy sector)

119. In a communication dated 15 December 1998, the Canadian Labour Congress (CLC) presented a complaint against the Government of Canada (Saskatchewan) for violation of freedom of association. The International Confederation of Free Trade Unions (ICFTU) associated itself with the complaint by letter of 21 December 1998.

120. In response to these allegations the federal Government forwarded the reply of the Government of Saskatchewan by letter of 13 April 1999.

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

A. THE COMPLAINANT'S ALLEGATIONS

122. The complaint relates to the Maintenance of Saskatchewan Power Corporation's Operations Act, 1998 (Bill No. 65), which put an end to an industrial dispute taking place in this Crown Corporation; the text also extended the expired collective agreement, it imposed new wage rates and took away the right to strike or lockout.

The facts of the case

123. The International Brotherhood of Electrical Workers (IBEW), Local 2067, which is affiliated to the Canadian Labour Congress (CLC), represents 1,130 workers at the Saskatchewan Power Corporation (SaskPower). All of these workers are covered by the Trade Union Act which makes explicit provision for their right to organize and bargain collectively.

124. For the purposes of the Trade Union Act, IBEW has been the exclusive bargaining agent for the electrical employees of SaskPower since 9 June 1966.

125. The last collective agreement signed by the trade union and the Crown Corporation covered the period from 1 January 1995 to 31 December 1997. On 3 November 1997, IBEW gave SaskPower timely notice to commence collective bargaining. The parties subsequently met on numerous occasions and tentatively concluded a Memorandum of Agreement in early 1998; however, the SaskPower Board of Directors refused to endorse the Memorandum and, in August 1998, the bargaining process on all of the issues under dispute had to start over again.

126. The complainant alleges that, since the commencement of the second bargaining round, the SaskPower representatives maintained that they were bound by government wage guidelines for public sector bargaining. IBEW proposed that both sides agree to submit the issue of wages to a board of arbitration; neither SaskPower nor the Government agreed to this proposal.

127. The complainant states that negotiations subsequently reached an impasse; on 24 September 1998, IBEW and SaskPower exchanged strike and lockout notices, both effective as of 26 September 1998. Upon issue of the strike notice, the union withdrew all non-emergency overtime, call-out and standby services.

128. The complainant indicates that, on 5 October 1998, the employer put the announced lockout into effect; some 652 IBEW workers were affected. Management employees operated the power stations on a functional basis. Nevertheless, the transmission and distribution side of the company was unaffected.

129. The complainant recalls that, between 10 and 12 October 1998, a major snowstorm hit Saskatchewan. In such exceptional conditions, IBEW agreed to cooperate fully with SaskPower; its members worked extended hours over that weekend and the week following in order to ensure that no resident of Saskatchewan was harmed as a result of power outages during the storm. Although IBEW members expressed their will to return to work at the power plants, SaskPower refused to lift the lockout.

130. The complainant points out that on 15 October 1998, the Government of Saskatchewan gave IBEW a 24-hour deadline to withdraw its strike notice and commit to return to normal operations. Moreover, the Government informed IBEW that it had to agree to the wage increases proposed. IBEW considered this situation unacceptable.

131. It was in these circumstances that the Saskatchewan Legislative Assembly convened on 19 October 1998 and, the same day, passed the Maintenance of Saskatchewan Power Corporation's Operations Act, 1998 (Bill No. 65). This Act came into force immediately. IBEW members were obliged to return to work the following day.

Contents of the Act

132. The complainant emphasizes that Bill No. 65 extends the former collective agreement signed between IBEW and SaskPower for a further period of three years, thus expiring on 31 December 2000. Furthermore, Bill No. 65 makes provision for 2 per cent

annual wage increases over three years and, if the parties reach an agreement, a 1 per cent increase in benefits.

133. Under the terms of section 8 of Bill No. 65, the union is not entitled to declare a strike during the period of extension of the collective agreement. In the event of failure to comply, provision is made for a fine of not more than $2,000 for each day during which the offence continues.

134. The complainant stresses that Bill No. 65 takes away the rights and privileges protected by the Trade Union Act. IBEW was not entitled to bargain collectively; it was also prohibited from taking any action to promote or defend its members' rights or interests. The Government replaced free collective bargaining by unilateral legislative action to impose the terms and conditions of employment of the workers concerned. The complainant asserts that the Government thereby violated the principles of freedom of association and in particular the provisions of Conventions Nos. 87, 98, 151 and 154.

135. The complainant stresses that the back-to-work legislation was adopted following lockout measures affecting more than half of the employees in the bargaining unit. At no time did the union put the safety of the public in jeopardy. Consequently, the complainant submits that, in the case in point, the necessary conditions to justify recourse to legislative measures had not been met; and that the employer alone, and not the workers, was responsible for any alleged hardship.

136. Finally, the complainant stresses that the Government did not take the necessary measures to find a solution to the dispute between the parties; even IBEW's proposal to submit the dispute to a board of arbitration was rejected. The Government preferred to resort to back-to-work legislation with wage increases corresponding to the guidelines set for public sector wage rates.

137. In conclusion, the complainant emphasizes that the Government made no real attempt to settle the dispute through bona fide negotiation but preferred to resort to the unilateral imposition of legislative measures. The complainant states that it is entirely unacceptable to proceed in this way, given the Government's commitment to respect and have recourse to free collective bargaining.

B. The Government's reply

138. The Government begins by acknowledging the importance of free collective bargaining and reiterating its support for this fundamental principle. Furthermore, the Government recalls that this right is enshrined in the Trade Union Act.

139. In addition, the Government indicates that the majority of workers covered by the laws adopted by the provincial Legislative Assembly have the right to strike. However, it recalls that, in the case of workers providing essential services, this right may be restricted, even withdrawn.

140. It was in this context that the Government of Saskatchewan passed Bill No. 65; by taking this step as a last resort, the Government wished to end an industrial dispute which, due to the disruptions of the electrical supply that it would involve during the winter season, had the potential to cause serious hardship to the residents of Saskatchewan; hence, the Government believes that it acted to protect the general public.

141. The Government also recalls the facts behind the complaint: the collective agreement between SaskPower and IBEW expired on 31 December 1997. It states that, between November 1997 and April 1998, when a Memorandum of Agreement was tentatively signed, more than 37 bargaining sessions had been held between the parties.

142. The Government also points out that, on 22 April 1998, the SaskPower Board of Directors informed IBEW that the tentative agreement could not be endorsed because the negotiated wage amounts exceeded the relevant public sector guidelines. The Government indicates that these guidelines were implemented with a view to respecting its commitment to fiscal stabilization and a balanced provincial budget. In the early 1990s, the Government resolved to reduce the large debt that had accumulated during the 1980s and implemented various measures to that end.

143. The Government states that the SaskPower Board of Directors wished to reopen negotiations with a view to complying with the guidelines set for public sector wages. Although IBEW members had voted in favour of strike action, bargaining sessions were held in May and June 1998. Mediators also took part in these meetings, but no agreement was reached.

144. The Government specifies that, in August 1998, IBEW suggested that the wage issue be submitted to arbitration whilst warning that, if arbitration was not agreed to before 26 September, IBEW would commence strike action. In this context, IBEW, on 24 September, announced that it had provided strike notice in the form required by provincial legislation and immediately withdrew all non-emergency overtime, call-out and standby services.

145. The Government adds that, on 30 September 1998, SaskPower tabled a settlement offer which would expire on 15 October. However, IBEW responded that a vote on the offer would not be taken by its members before 26 October. In these circumstances, SaskPower locked out IBEW power station employees on 5 October.

146. The Government also recalls that a snowstorm hit the province on the weekend of 10 October 1998. Though the Government recognizes that union members responded, under these exceptional circumstances, to SaskPower's requests to restore power, the Government states that it was at this point that it realized the high risk to which Saskatchewan residents were being exposed in the event of power outages during the winter period. Given the importance of this service, the provincial Premier appealed to the parties on 15 October 1998 to settle their dispute. Unfortunately, they did not succeed in achieving an agreement.

147. Consequently, the Government was obliged to resort to legislative measures; Bill No. 65 was adopted and brought into force on 19 October 1998. The Government recalls that Bill No. 65 was designed to put an end to all work stoppages including the lockout, to extend the collective agreement for a period of three years and implement the public sector wage guidelines in SaskPower, with provision being made for an annual wage increase of 2 per cent over three years; it also allowed the parties to agree on an additional 1 per cent increase in benefits.

148. The Government emphasizes that the use of back-to-work legislation is an exceptional measure. In the case in point, the Government claims that it was placed in a situation which constituted a threat to the welfare of Saskatchewan residents. The Government intended to provide for safeguards to ensure that the people of Saskatchewan did not suffer disruptions in the electrical service. The Government maintains that it had weighed the interests of labour relations between SaskPower and IBEW, on the one hand, and, on the other, those of the Saskatchewan population at large. The public interest prevailed and ultimately compelled the Government to take action.

149. The Government explains that it passed Bill No. 65 to avert a crisis. At the time of the Bill's adoption, no maintenance was being conducted on the electricity supply infrastructure and the Government feared that other power outages would endanger public

safety and disrupt social and economic operations. It was also evident that the negotiations were at a standstill and that the Government could not risk an escalation in industrial action during the harsh autumn and winter months.

150. The Government supplies some information relating to SaskPower, which reflects its importance as a producer and supplier of electricity for the entire province. More than 1 million residents rely on electrical energy, particularly during the harsh winter months when hours of sunlight are reduced and temperatures frequently fall to –30°C or –40°C. Consequently, electricity is vital to the economic infrastructure of the province, given that it is the main source of energy used in homes, hospitals, schools, institutions and industry. The population is immediately affected by any power failure, particularly in winter, because adequate alternate energy sources do not exist. Therefore, repairs and maintenance of power lines are critical to ensuring an adequate supply of electricity to Saskatchewan residents.

151. The Government submits that Bill No. 65 was the only measure it could resort to after ten months of negotiations which failed to lead to an agreement. Although the Government is disinclined to adopt such legislation, the well-being and safety of the population of Saskatchewan prompted it to do so. Despite the fact that Bill No. 65 extends the former collective agreement for an additional period of three years, the Government considers that this measure is compatible with the principles of freedom of association, which imply that the public authorities may intervene when justified on grounds of social justice and in the public interest. The Government believes that this was so in the present case. Although these measures were imposed in the form of legislation, IBEW members' living standards were maintained by the wage increases envisaged. Bill No. 65 also makes provision for full remuneration of workers who were locked out.

152. Furthermore, the Government explains that it had already advised IBEW that it could not turn to arbitration to settle the industrial dispute. In the Government's assessment, there was a high risk that arbitration would result in the imposition of a wage increase that would not respect the guidelines already set; this would create a precedent which could, subsequently, be invoked by other trade unions.

153. The Government also acknowledges that Bill No. 65 was passed quickly and without consultation. However, it was apparent that the Bill would be controversial and that its speedy passage was critical. The Government believed that the growing risk to the public justified legislation being passed urgently.

154. In conclusion, the Government recalls that the ten months of negotiations held between SaskPower and IBEW had failed to result in an agreement. The Government stresses that it does not generally restrict the trade union rights of workers involved in essential services. However, when industrial disputes involve a threat to public safety, it is the Government's duty to act expeditiously in the general interest.

155. Hence, the Government requests the Committee to consider the extenuating circumstances that prompted the authorities to pass Bill No. 65 and to conclude that the Bill was an exceptional measure, the Government having done all it possibly could to avoid intervention in the free negotiation of the relevant working conditions. The Government emphasizes that Bill No. 65 is limited to what is essential and is designed to ensure that electricity services are maintained as well as the relevant workers' ability to uphold their living standards. Finally, the Government considers that the period of validity of Bill No. 65 is reasonable: as of 31 December 2000, SaskPower and IBEW will be able to resume their free bargaining on a collective agreement.

C. The Committee's conclusions

156. This case relates to the adoption by the Government of the Province of Saskatchewan of the Maintenance of Saskatchewan Power Corporation's Operations Act, 1998 (Bill No. 65), which ordered a return to work in that Corporation; it extended the former collective agreement by a period of three years and determined wage increases. Any strike action or lockout is prohibited during this three-year period.

157. The Committee observes that the complainant and the Government appear to concur in general in their description of the events which resulted in the adoption of Bill No. 65 and which may be summarized as follows.

158. The International Brotherhood of Electrical Workers (IBEW), Local 2067, has, since 1966, been the agent certified to engage in collective bargaining and conclude any agreement with the employer, the Saskatchewan Power Corporation (SaskPower). IBEW and SaskPower signed a collective agreement on 1 January 1995, which expired on 31 December 1997. In November 1997, the parties, in accordance with the appropriate law, entered into the collective bargaining process with a view to concluding a new agreement; moreover, the parties signed a tentative Memorandum of Agreement in early 1998, which was not endorsed by the SaskPower Board of Directors. In justifying its rejection, SaskPower maintained that the negotiated wage increases exceeded the guidelines set by the Government in respect of public sector wages.

159. SaskPower and IBEW resumed talks on all of the issues in the summer of 1998. They agreed that, despite several meetings, the negotiations came to a standstill in September 1998. On 24 September, the parties served strike and lockout notices, both effective 48 hours later. Nevertheless, the trade union immediately withdrew all non-emergency overtime, call-out and standby services.

160. On 5 October 1998, SaskPower locked out IBEW members working at power stations. This resulted in the disruption of certain services — including maintenance of the energy supply infrastructure — which could not be conducted by the power station management employees.

161. All agreed upon the seriousness of the snowstorm that hit the province over the weekend of 10-12 October 1998 and highlighted IBEW members' cooperation in ensuring that provincial residents were not severely affected by the power outages which occurred in these conditions. Although the lockout remained in force, IBEW even reportedly suggested that its members return to work in the power stations; this offer was rejected by SaskPower.

162. Subsequently, the Government considered it necessary to put an end to this industrial dispute and, above all, to protect the public interest and safety.

163. It was in this context that Bill No. 65 was adopted on 19 October 1998; in the Government's own words, it was passed quickly and without consultation.

164. Bill No. 65, section 3, stipulates that any work stoppage caused either by the workers or the employer shall cease immediately. The text extends the period of validity of the collective agreement signed in 1995 up to 31 December 2000 and lays down the wage rates for the employees concerned, i.e. an annual 2 per cent wage increase over three years (6 per cent) and 1 per cent in respect of benefits (section 7). Throughout the period for which the collective agreement has been extended, all strikes and lockouts are prohibited (section 8). Any person contravening the Bill's provisions may be ordered to pay substantial fines (section 9).

165. No one appears to challenge the fact that the service supplied by SaskPower, i.e. the generation and distribution of electricity, the main source of energy available in

the province, is an essential service in the strict sense; its disruption would put the life, personal safety or health of the whole or part of the population in jeopardy. The Committee recalls that, in previous cases, it has already considered electricity services to be an essential service [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 544].*

166. *However, the Committee is bound to recall that, in the case of essential services, interruptions of which may be restricted or prohibited by the public authorities, it is important that, in keeping with the principles of freedom of association, the persons concerned are granted adequate protection to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services [see* ***Digest****, op. cit., para. 546]. This may take the form of adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented [see* ***Digest****, op. cit., para. 547].*

167. *In this instance, the Committee observes that the industrial relations system in the Province of Saskatchewan does not appear to offer such guarantees. The Committee also notes that the relevant trade union suggested resorting to arbitration but that this proposal was declined by the employer. The Government believed that it was only by unilaterally passing legislation that it would be in a position to respect government guidelines regarding public sector wage bargaining.*

168. *The issue of public sector collective bargaining has, on several occasions, attracted the attention of the Committee which stresses that it is aware of the special nature of the process. With reference to the statements of the Committee of Experts on the Application of Conventions and Recommendations, the Committee has emphasized that collective bargaining in the public sector "calls for verification of the available resources in the various public bodies or undertakings, that such resources are dependent on state budgets and that the period of duration of collective agreements in the public sector does not always coincide with the duration of the budgetary laws — a situation which can give rise to difficulties". Thus, in the view of the Committee and of the Committee of Experts on the Application of Conventions and Recommendations, legislative provisions which allow Parliament or the competent budgetary authority to set upper and lower limits for wage negotiations or to establish an overall "budgetary package" within which the parties may negotiate terms and conditions of employment clauses are compatible with the principles of freedom of association [see* ***Digest****, op. cit., para. 899]. However, the Committee stresses that, in this process, workers and their organizations must be fully consulted in designing this overall bargaining framework, which implies in particular that they must have access to all the financial, budgetary and other data enabling them to assess the situation on the basis of the facts.*

169. *The Committee considers that if such conditions had been observed in the present case, i.e. that upper and lower limits or a "budgetary package" had been established in consultation with the workers concerned and their organizations, the hesitation of the Government with regard to arbitration would have been reduced, even to nought. Compliance with such a procedure guaranteeing transparency and prior consultation of the workers concerned and their organizations would have enabled the Government to avoid resorting to hasty legislation which can only prove to be an obstacle in the establishment of sound industrial relations. Thus, the Committee requests the Government to explore this possibility in future, in consultation with the parties concerned, and to keep it informed in this respect.*

170. In any event, the Committee deplores the fact that the Government passed Bill No. 65 so quickly and without holding the appropriate consultations with the parties concerned prior to its adoption and asks the Government to bring that legislation into conformity with freedom of association principles.

THE COMMITTEE'S RECOMMENDATIONS

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

(a) Deploring the fact that the Government passed Bill No. 65 so quickly and without consultation and considering that in the present case if upper and lower limits or a "budgetary package" had been established in consultation with the workers concerned and their organizations, the hesitation of the Government with regard to arbitration would have been reduced, even removed, the Committee requests the Government to explore this possibility in future, in consultation with the parties concerned, and to keep it informed in this respect.

(b) The Committee requests the Government to bring Bill No. 65 into conformity with freedom of association principles.

Case No. 2005

Interim report

Complaint against the Government of the Central African Republic presented by
— the Organization of African Trade Union Unity (OATUU) and
— the National Central African Confederation of Workers (CNTC)

Allegations: Arrest and detention of a trade union official; breaking into trade union premises; violation of the right to strike and the right to collective bargaining

172. The complaint in this case was submitted in a communication from the Organization of African Trade Union Unity (OATUU) dated 12 February 1999 and of the National Central African Confederation of Workers (CNTC) dated 10 May 1999. The Government sent its observations in communications dated 19 March and 3 June 1999. The Trade Union of Central African Workers (USTC) supported the complaint by the OATUU in a communication of 24 June 1999.

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

A. THE COMPLAINANTS' ALLEGATIONS

174. In its communication dated 12 February 1999, the OATUU reports the arrest of Mr. Sony Cole, Secretary-General of the Trade Union of Central African Workers (USTC), by members of the Central African Presidential Guard on 9 January 1999. The OATUU alleges that, after being tortured by the latter, Mr. Cole was detained by the local Bangui police and was not allowed any visits other than from the Central African League for

Human Rights. According to OATUU, Mr. Cole's only crime was to demand payment of the wages of public sector workers, which were several months overdue.

175. In its communication dated 10 May 1999, the CNTC firstly reports the problem of the unpaid wages affecting state employees. According to the CNTC, the public sector service wage backlog is 25 months, while the pension backlog is 18 months.

176. Secondly, the CNTC reports that teachers have held several strikes since 1997 in response to the non-payment of salaries. The Government's response was to use supply teachers to replace permanent teachers. The CNTC also alleges that five teachers who held trade union office were the victims of anti-trade union discrimination. In addition, the CNTC accuses the Government of refusing to negotiate in good faith concerning the wage backlogs and the deadlock in the education system. Finally, it alleges that its premises were broken into on 6 January 1999.

B. The Government's reply

177. In its communication dated 19 March 1999, the Government states that the USTC, and especially its Secretary-General, Mr. Cole, have been pursuing a strategy intended to disturb law and order. In particular, the Government considers the leadership of the USTC to be violating article 6 of the trade union statutes, which lay down the fundamental principle of independence and a non-political stance for the trade union movement. It explains that the Secretary-General of the USTC is co-signatory to a political convention with a number of opposition political parties, and that the USTC put forward trade union candidates at the general elections, using trade union apparatus and funds to finance the campaign. The Government declares that it intends to take appropriate measures if such abuses occur again in order to uphold law and order. Finally, as regards the arrest of Mr. Cole, the Government declares that the reason lies outside his trade union activities and is connected with the move into politics. In its communication dated 3 June 1999, the Government specifies that the case of Mr. Cole is being pursued at the judicial level and that it would be inappropriate to comment before a verdict is reached.

C. The Committee's conclusions

178. *The Committee observes that the allegations in this case refer to the arrest and detention of a trade union official, violation of the right to strike and the right to collective bargaining, and breaking into trade union premises.*

179. *As regards the arrest and detention of the Secretary-General of the USTC, Mr. Sony Cole, the Committee notes that the Government provides no detailed information on these allegations, stating merely that Mr. Cole was arrested for political reasons and for disturbing law and order and not for reasons connected to his trade union activities. The Government specifies that the matter is being pursued at the judicial level. In this connection, the Committee reaffirms that, while persons engaged in trade union activities or holding trade union office cannot claim immunity in respect of the ordinary criminal law, trade union activities should not in themselves be used by the public authorities as a pretext for the arbitrary arrest or detention of trade unionists [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 83].*

180. *Noting that the Government refers to "a strategy intended to disturb law and order" and to the political activities of the USTC to justify the action against Mr. Cole, the Committee emphasizes that arrests on the grounds of "disturbing law and order" could, given the general nature of the charge, make it possible to punish activities of the trade union type. The Committee also reaffirms that, in the interests of the normal development*

of the trade union movement, it would be desirable to have regard to the principles enunciated in the resolution on the independence of the trade union movement adopted by the International Labour Conference at its 35th Session (1952) that the fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers and that, when trade unions, in accordance with national law and practice of their respective countries and at the decision of their members decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social or economic functions irrespective of political changes in the country. The Committee also reaffirms that governments should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the normal functions of a trade union because of its freely established relationship with a political party [see **Digest**, *op. cit., paras. 450 and 451].*

181. *As regards this aspect of the complaint, the USTC communication, supporting the OATUU complaint, indicates that Mr. Cole is now free since he took part in a national extraordinary council of the USTC on 26 April 1999. However, in view of the fact that Mr. Cole was arrested on 9 January 1999 and that legal proceedings are still under way, the Committee reminds the Government that accused trade unionists, like anyone else, should benefit from normal judicial proceedings and have the right to due process, in particular the right to be informed of the charges against them, the right to have adequate time and facilities for the preparation of their defence and to communicate freely with counsel of their own choosing, and the right to a prompt trial by an impartial and independent judicial authority [see* **Digest**, *op. cit., para. 102].*

182. *Additionally, concerning the physical ill-treatment and torture allegedly inflicted on Mr. Cole, the Committee deplores that the Government did not provide a response to these allegations and reaffirms that the Government should give precise instructions to the effect that no detainee should be subjected to ill-treatment and apply effective sanctions where cases of ill-treatment are found. Likewise, the Committee emphasizes the importance which should be attached to the principle laid down in the International Covenant on Civil and Political Rights according to which all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person [see* **Digest**, *op. cit., para. 59]. To this end, the Committee urges the Government to send its observations with regard to the allegations that the Secretary-General of the USTC was tortured and to set up an independent judicial inquiry. Finally, deploring the Government's failure to provide any details concerning the procedures and reasons involved in Mr. Cole's arrest and detention, the Committee urges the Government to send its observations on these aspects of the case and to keep it informed of the development of the judicial case.*

183. *Concerning the CNTC's allegations of violation of the right to strike and the right to collective bargaining and of forced entry into trade union premises, the Committee deplores the Government's failure to provide any information on this. More particularly, regarding the allegations of conscription of workers and anti-trade union discrimination against workers who had exercised their right to strike in response to the non-payment of their wages, the Committee reaffirms that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests. In addition, if a strike is legal, recourse to the use of labour drawn from outside the undertaking to replace the strikers for an indeterminate period entails a risk of*

derogation from the right to strike, which may affect the free exercise of trade union rights [see **Digest**, *op. cit., para. 571]. Finally, the Committee strongly emphasizes that nobody should be subjected to sanctions for having initiated or attempted to initiate a legitimate strike.*

184. Regarding the allegations of the Government's refusal to negotiate in good faith on the matter of the wage backlog, in the absence of details from either the complainant or the Government, the Committee reaffirms the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations and requests the parties to provide detailed information concerning this aspect of the case [see **Digest**, *op. cit., para. 814].*

185. As regards the allegations of breaking into the home of the Secretary-General of the CNTC and the trade union premises, the Committee emphasizes that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and that it is for governments to ensure that this principle is respected. In addition, the Committee reaffirms that the entry by the public authorities into trade union premises without a judicial warrant constitutes a serious and unjustifiable interference in trade union activities [see **Digest**, *op. cit., paras. 47 and 176].*

186. The Committee asks the Government to communicate without delay its observations on the CNTC's allegations so that it may examine these allegations in full knowledge of all the facts.

THE COMMITTEE'S RECOMMENDATIONS

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

(a) Deploring the Government's failure to provide any details concerning the procedures and reasons involved in Mr. Cole's arrest and detention, the Committee urges the Government to send its observations on these aspects of the case and to keep it informed of the development of the judicial case.

(b) Concerning the physical ill-treatment and torture allegedly inflicted on Mr. Cole, the Committee reaffirms that the Government should give precise instructions to the effect that no detainee should be subjected to ill-treatment and apply effective sanctions where cases of ill-treatment are found and urges the Government to set up an independent judicial inquiry and to send its observations concerning these allegations.

(c) Concerning the CNTC's allegations of violation of the right to strike and the right to collective bargaining and of forced entry into trade union premises, the Committee asks the Government to communicate without delay its observations on the CNTC's allegations as a whole.

(d) With respect to the allegations of the Government's refusal to negotiate in good faith on the matter of the wage backlog, the Committee requests the parties to provide detailed information concerning this aspect of the case.

Cases Nos. 1851, 1922 and 2042

Interim report

Complaints against the Government of Djibouti presented by — the International Confederation of Free Trade Unions (ICFTU) — the Djibouti Inter-Trade Union Association of Labour/General Union of Djibouti Workers (UDT/UGTD) — the Organization of African Trade Union Unity (OATUU) — Education International (EI) — the Secondary Teachers' Union (SYNESED) and — the Primary Teachers' Union (SEP)

Allegations: Dismissals, suspensions and removal of trade unionists following strike action; confiscation of trade union archives; obstruction of May Day demonstrations and interference in a trade union general meeting

188. The Committee has already examined Cases Nos. 1851 and 1922 on several occasions, most recently at its November 1998 meeting when it submitted an interim report to the Governing Body [see 311th Report, paras. 462-478, approved by the Governing Body at its 273rd Session in November 1998].

189. Since the last examination of the case, the Inter-Trade Union Association of Labour/General Union of Djibouti Workers (UDT/UGTD) sent additional information and new allegations on 20 February, 5 May and 4 August 1999.

190. With regard to Case No. 2042, the ICFTU sent a communication to the Director-General of the ILO on 20 July 1999, and the OATUU presented a new complaint of violation of freedom of association in a communication dated 26 July 1999.

191. The Government sent certain observations in a communication dated 10 August 1999.

192. Djibouti 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 Cases Nos. 1851 and 1922

193. At its meeting in November 1998, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

[...] the Committee, noting with deep concern that, despite the promises made by the Government to the direct contacts mission, no tangible progress has been made towards the full restoration of freedom of association, [...]

(a) The Committee strongly urges the Government to restore freedom of association in full, and in particular to urgently take the following measures:

- return the UDT trade union archives confiscated on 16 July 1997;
- reinstate in their posts and functions all the trade union leaders and members who were dismissed or suspended, if they so request, especially the senior union leaders of the UDT/UGTD who were dismissed more than three years ago;
- investigate the complaints lodged by Mr. Aref and all the trade unionists concerned;
- undertake consultations with the social partners on the revision of the Labour Code;
- ensure that workers in future can hold public meetings on May Day, given that such meetings constitute an important aspect of trade union rights.

(b) The Committee urges the Government to provide detailed information as a matter of urgency on any concrete measures that it takes to implement the above recommendations [see 311th Report, para. 479].

B. New allegations

194. In an initial communication of 20 February 1999, the UDT/UGTD expresses regret that the Government has ignored the Committee's recommendations regarding Cases Nos. 1851 and 1922, and criticizes the Government for putting pressure on dozens of trade unionists, forcing them and their families to leave the country.

195. In a subsequent communication dated 5 May 1999, the UDT/UGTD claims that workers were forbidden to take part in May Day festivities and that this ban was enforced by units of the national police force. The UDT/UGTD also claims that the Minister of Labour and his colleagues responsible for transport and public works declared that they wanted to break up the UDT/UGTD and bring in new union leaders. The Government allegedly prevented the two central organizations from holding their ordinary general meetings, for several months in one case and for more than a year in the other.

C. Case No. 2042

196. In a communication dated 20 July 1999, the ICFTU records its concern at the fact that the Minister of Employment and National Solidarity on 15 July 1999 unilaterally convened an extraordinary general meeting of the UDT/UGTD. The ICFTU has also supplied with its communication a letter dated 18 July 1999 from the General Secretary of the UDT, a complainant in the case, recalling that the UDT and the UGTD are two mutually independent associations of trade unions and that all the trade unions affiliated to them refused to participate in the proposed extraordinary general meeting. At the end of June 1999, anonymous leaflets calling for a joint general meeting are said to have been distributed, although the UDT had been announcing officially from April 1999 onwards that its ordinary general meeting would be held from 24 to 26 August 1999. The meeting had already been postponed once as a precautionary measure, given the manifestly hostile attitude of the public authorities.

197. However, the Minister of Employment and National Solidarity convened an extraordinary general meeting of the two central organizations on 15 July 1999 with a view to appointing a president and a general secretary of the UDT and of the UGTD, having first issued a list of approved participants. The meeting lasted two hours. None of the trade unions affiliated to the two central organizations actually took part. Only three or four unions participated, not 17 or 20 as the Government claimed; these were unions which had been created for the occasion by the Government and had no connection with the central organizations, whose names and functions they were intending to usurp. The OATUU in its communication of 26 July 1999 presents a complaint of interference by the Government by unilaterally convening the extraordinary general meeting.

198. Lastly, the UDT/UGTD indicates that the Government has cancelled the post box leases of the two central organizations and given orders that their mail should not be delivered to them but forwarded instead to the sham committee of the UDT/UGTD which was appointed by the authorities.

D. The Government's reply

199. In its communication of 10 August 1999, the Government states that, as regards the invitation to trade union members to attend the general meeting of 15 June 1999, the

Minister of Employment and National Solidarity, one month after his appointment, received, on 19 June 1999, a delegation from the unions affiliated to the UDT/UGTD. The delegation stated that the representatives of 20 unions affiliated to the UDT/UGTD which met on 15 June 1999 at the premises of the Djibouti railway workers wanted to hold an extraordinary general meeting on 15 July. The Government has supplied a list of signatories to this request. It adds that the delegation requested the Government's help in organizing the general meeting, and has provided a copy of a letter dated 29 June 1999 requesting leave of absence from work for workers wishing to participate in the meeting. According to the Government, the Minister's intervention was limited to obtaining the use of a conference room in the "Palais du peuple" and a notice to employers to authorize leave to participants, the list of whom had been deposited by the two central organizations.

200. With regard to the status of the former union leaders, the Government explains that these four elected union officials cut themselves off from the grass-roots unions, engaged in systematic obstruction and, contrary to their own statutes, failed to organize triennial elections to their organizations' executive bodies. The last general meetings of the UGTD and the UDT date respectively from 10 March 1994 and 25 April 1995. The former elected officials ignored calls from union members and the public authorities to hold another general meeting.

201. As regards the organization of the extraordinary general meeting, the Government points out that the statutes of the UGTD (section 25) and of the UDT (section 20) provide for the possibility of convening an extraordinary general meeting by a decision of 50 per cent or two-thirds of members of the unions affiliated to these two organizations. The Government adds that 18 of these unions each returned an elected official to serve on the new executive bodies of the two central organizations. On 14 July 1999, according to the Government, once the four members of the old executive committees learned of the forthcoming extraordinary general meeting, they hastily deposited a letter dated 7 July 1999 informing the public authorities of a general meeting to be held from 24 to 26 August 1999 and referring to a letter dated 12 June which was never received.

202. The Government assures the ILO of its full cooperation with the trade unions. It offered to act as mediator in the dispute between the four elected union officials and their employers, and recalls that the four former union members who were dismissed committed serious offences against trade union legislation by abandoning their posts and physically assaulting colleagues. Nevertheless, when the Government agreed to intercede with the employers on condition that the four individuals concerned acknowledged their wrongdoing, a step which the Government claims was recommended by the direct contacts mission, the workers refused to consider the proposal. The Government also emphasizes that the Minister of Labour made every effort to involve the central organizations in the revision of the Labour Code, to organize training seminars on employment legislation for trade unionists and to obtain conference rooms and leave of absence for elected union officials in order to ensure that they could exercise their rights.

E. The Committee's conclusions

203. *The Committee recalls that Cases Nos. 1851 and 1922 gave rise to a direct contacts mission in January 1998 and that a number of positive developments were identified on that occasion. However, the Committee notes with concern that the trade union situation has seriously deteriorated since the mission was undertaken. It notes that, contrary to the previous recommendations to restore freedom of association in full, the Government has not stated whether or not it has restored the trade union archives confiscated from the UDT on 16 July 1997. On the other hand, the Government has*

indicated that, in order to bring about the reinstatement in their posts and functions of the leaders of the UDT/UGTD who were dismissed more than four years ago, it called on them to acknowledge their wrongdoing. Furthermore, according to the complainants, the Government cut the union leaders out of the consultations on the revision of labour legislation and prevented the two central organizations from holding ordinary general meetings, in one case for several months and in the other for more than a year. The Government is also said to have used force to prevent May Day celebrations from taking place, and to have convened unilaterally a trade union general meeting and drawn up the list of authorized participants with the aim, according to the complainants, of usurping their names and functions. Lastly, the Government is said to have ordered that mail deliveries to the former union leaders be stopped and that the mail be forwarded to the new leaders appointed by the authorities.

204. *With regard to the failure to reinstate in their posts and functions the leaders of the UDT/UGTD who were dismissed for starting a strike in September 1995 in protest against the Finance Act, the Committee recalls the legitimate nature of the protest strike of 1995 as a means of defending the economic and professional interests of the workers, and the commitments made by the Government to the direct contacts mission that it would seek the reinstatement of the workers concerned. The Committee recalls that, contrary to what the Government asserts, the recommendation of the direct contacts mission was the reinstatement of the dismissed workers without requiring them to give a declaration of loyalty. The Committee once again strongly urges the Government to ensure that the trade union leaders and members who were dismissed are reinstated in their posts and functions if they so request, and reiterates its previous recommendations concerning the importance which it attaches to the principle that declarations of loyalty or other similar commitments, such as the acknowledgement of wrongdoing demanded in the present case, should not be a precondition of reinstatement of the trade union leaders in question.*

205. *As regards the matter of the extraordinary general meeting convened by the Government on 15 July 1999, the Committee has taken note of the list dated 15 June 1999 of union members who are said to have requested such a meeting and of the persons who actually attended the meeting. It notes that the lists do not include any of the outgoing union leaders. The Committee recalls that in cases of internal disputes between rival leaders within a trade union organization, it is important that supervision of elections should be carried out by independent judicial authorities in order to guarantee the impartiality and objectivity of the proceedings. This did not occur in the present case. Under these circumstances the Committee insists that the workers of Djibouti must be able to elect their trade union representatives freely and democratically. The Committee requests the Government to allow elections to be held in the different affiliated unions and general meetings to be held by the UDT and UGTD under the sole supervision of independent judicial bodies, and to keep it informed in this regard.*

206. *As regards the ban on May Day celebrations in 1999, the Committee is particularly concerned by this new prohibition and once again requests the Government to ensure that in future workers can hold public meetings on May Day, given that such meetings constitute an important aspect of trade union rights.*

THE COMMITTEE'S RECOMMENDATIONS

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

(a) The Committee once again strongly urges the Government to ensure that the trade union leaders and members who were dismissed, in particular the senior union leaders of the UDT/UGTD, are reinstated in their posts and functions if they so request, and reiterates its previous recommendations concerning the importance which it attaches to the principle that declarations of loyalty or other similar commitments, such as the acknowledgement of wrongdoing demanded in the present case, should not be imposed as a condition for reinstatement of the trade unionists in question.

(b) The Committee insists that the workers of Djibouti must be able to elect their trade union representatives freely and democratically, and requests the Government to allow elections to be held in the different affiliated unions and general meetings to be held by the UDT and UGTD under the sole supervision of independent judicial bodies, and to keep it informed in this regard.

(c) The Committee requests the Government to ensure that in future workers can hold public meetings on May Day, given that such meetings constitute an important aspect of trade union rights.

Case No. 1978

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Gabon presented by the Gabonese Confederation of Free Trade Unions (CGSL)

Allegations: Illegal suspension of a trade union's activities, sanctions for striking

208. In its communication dated 27 July 1998, the Gabonese Confederation of Free Trade Unions presented a complaint of infringements of trade union rights against the Government of Gabon.

209. In the absence of a reply from the Government, the Committee had to postpone twice the examination of this case, which concerns particularly serious allegations. At its May-June meeting [see 316th Report, para. 11], the Committee addressed an urgent appeal to the Government, drawing its attention to the fact that, in accordance with the procedural rule laid down in paragraph 17 of its 127th Report approved by the Governing Body, it could at its following session submit a report on the substance of the matter, even if the information awaited by the Government had still not been received. The Government has not furnished any observations to date.

210. Gabon 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

211. In its communication dated 27 July 1999, the CGSL first reports a violation of Convention No. 87 by the SOCOFI enterprise in Libreville on 7 June 1997. The CGSL alleges a categorical refusal on the part of the employer and the provincial Estuary labour inspection to recognize the existence of the CGSL's branch in that enterprise, even though

they had been duly informed of the content of the minutes of the General Assembly and the membership of the executive committee.

212. The CGSL explains that the enterprise's workers then started a general strike in September 1997 on the initiative of the executive committee. Following this strike, the Gabonese Air and Borders Police ordered the repatriation of Mr. Sow Aliou, a member of the executive committee of Guinean nationality, despite the legality of his presence in Gabon. It also reports that all of the members of the trade union committee were dismissed from the enterprise.

213. Secondly, the CGSL reports a violation of Convention No. 87 by the labour inspection of the province of Koula-Moutou on 2 March 1998. It explains that the Koula-Moutou provincial labour inspector suspended the activities of the CGSL branch at the Leroy-Gabon company's "Gongue" forestry works, thus depriving the workers of the right to bargain collectively.

B. The Committee's conclusions

214. *The Committee regrets that, despite the time that has lapsed since the complaint was presented and given the seriousness of the matters alleged, the Government has not replied to any of the complainant's allegations even though it has several times been invited to present comments and observations, including by means of an urgent appeal.*

215. *Under these circumstances, and in accordance with the procedural rule applicable in such cases [see 127th Report of the Committee, para. 17, approved by the Governing Body at its 184th Session], the Committee feels obliged to present a report on the substance of the matter, even though the information it had hoped to receive from the Government is lacking.*

216. *The Committee first of all reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to ensure that this freedom is respected in law and in fact. While these procedures protect governments against unreasonable accusations, governments on their side will recognize the importance of presenting detailed replies to the accusations that may be put forward against them for objective examination [see First Report of the Committee, para. 31].*

217. *The Committee notes that the case under examination concerns allegations of refusal to recognize trade union structures and of sanctions against workers following their exercise of the right to strike. As concerns the allegations respecting the refusal by the SOCOFI enterprise and the Estuary provincial labour inspector to recognize the CGSL branch in that enterprise, the Committee insists that the possibility, in fact and in law, to establish organizations is the first trade union right and the essential prerequisite without which all of the other guarantees of Conventions Nos. 87 and 98 would remain a dead letter. In this respect, the Committee has emphasized on several occasions in the past the importance it attaches to workers and employers having the effective possibility to form and join the organizations of their own choosing in all freedom. This right cannot be said to exist unless such freedom is fully established and respected in law and in fact [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 271 and 274]. In this case, this principle is valid also for the allegation of suspension by the provincial labour manager of Koula-Moutou of the CGSL branch in the Leroy-Gabon company, depriving the workers of the right to bargain collectively. The Committee recalls that employers, including governmental authorities in the capacity of*

employers, should recognize for collective bargaining purposes the organizations representative of the workers employed by them [see ***Digest****, op. cit., para. 821]. In the case in point, and in the absence of precise evidence from the complainant and the total absence of a reply from the Government, the Committee can only deplore the refusal to recognize the CGSL trade union branches at the SOCOFI and Leroy-Gabon enterprises and request the Government to take all necessary measures to guarantee the existence and free functioning of that trade union in the above enterprises. The Committee requests the Government to keep it informed of developments in that respect.*

218. *As concerns the allegations relating to the repatriation of Mr. Sow Aliou and the dismissal of all of the members of the trade union committee at the SOCOFI enterprise following the strike in September 1997, the Committee reaffirms that the right to strike by workers and their organizations has always been recognized as a legitimate means of defending their economic and social interests and that nobody should be penalized for carrying out a legitimate strike. Moreover, when trade unionists or union leaders are dismissed for having exercised the right to strike, the Committee can only conclude that they have been punished for their trade union activities and have been discriminated against [see* ***Digest****, op. cit., paras. 474, 590 and 592]. In the case in point, the Committee considers the dismissal of workers and the expulsion of a trade unionist to his country of origin to be serious acts of discrimination in respect of employment because of participation in lawful union activities, contrary to Convention No. 98. In fact, it appears to the Committee that in this case the trade unionists were dismissed, or expelled in the case of Mr. Sow Aliou, as much for activities connected with the setting up of a trade union as for exercising the right to strike. The Committee therefore requests the Government to take all the measures necessary for the workers in question to be reinstated in their posts without loss of pay. The Committee requests the Government to keep it informed of developments in that respect.*

THE COMMITTEE'S RECOMMENDATIONS

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

(a) Deploring the suppression of the CGSL trade union structures in the SOCOFI and Leroy-Gabon enterprises and the fact that the Government has not replied to these allegations, the Committee requests the Government to take all necessary measures to guarantee the existence and free functioning of that trade union in the above enterprises. The Committee requests the Government to keep it informed of developments in that respect.

(b) Deploring the dismissals of trade unionists and the expulsion of one of their members for activities connected with the setting up of a trade union or for exercising their right to strike, the Committee requests the Government to take all the measures necessary for the workers in question to be reinstated in their posts without loss of pay. The Committee requests the Government to keep it informed of developments in that respect.

Case No. 1773

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Indonesia
presented by
— the International Confederation of Free Trade Unions (ICFTU)
— the World Confederation of Labour (WCL)
— the Serikat Buruh Sejahtera (SBSI) and
— International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)

Allegations: Denial of union recognition, government interference in trade union activities; harassment and detention of trade unionists

220. The Committee examined this case at its meetings in March 1995 [see 297th Report, paras. 484-537, approved by the Governing Body at its 262nd Session (March-April 1995)], March 1996 [see 302nd Report, paras. 447-479, approved by the Governing Body at its 265th Session (March 1996)], November 1996 [see 305th Report, paras. 327-371, approved by the Governing Body at its 267th Session (November 1996)], November 1997 [see 308th Report, paras. 404-450, approved by the Governing Body at its 270th Session (November 1997)], May 1998 [see 310th Report, paras. 432-473, approved by the Governing Body at its 272nd Session (June 1998)] and May 1999 [see 316th Report, paras. 570-617, approved by the Governing Body at its 275th Session (June 1999)], during which it drew up interim conclusions.

221. The Government furnished its observations in a communication dated 26 August 1999.

222. Indonesia ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) in June 1998. It has also ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

223. During the course of its previous examination of this case, the Committee had noted that this case addressed very serious allegations of violations of trade union rights in Indonesia relating to the denial of the workers' right to establish organizations of their own choosing, the persistent interference by government authorities, the military and employers in trade union activities, and restrictions on collective bargaining and strike action. The case had also addressed serious allegations involving the murder, disappearance, arrest and detention of a number of trade union leaders and workers.

224. The Committee had observed, however, that a series of measures had been taken by the Government over the previous year which had contributed to the positive development of the trade union situation in Indonesia. In particular, the Committee had noted that the Government ratified Convention No. 87 in June 1998 and received an ILO direct contacts mission to the country in August 1998, which had the mandate of assisting the Government in ensuring that its labour legislation was brought into full conformity with Conventions Nos. 87 and 98. The Committee had noted further that in line with the recommendations contained in the report of the direct contacts mission, the Government was redrafting its labour legislation in consultation with the social partners and with ILO technical assistance. On a practical level, all SBSI leaders and activists had been released

from prison and the military had been issued instructions at all levels to refrain from intervening in labour disputes. The Committee had taken note of these developments with interest and had considered that they constituted significant progress with regard to freedom of association in Indonesia.

225. At its June 1999 session, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

(a) Noting with interest that a series of measures have been taken by the Indonesian authorities over the past year which constitute significant progress with regard to freedom of association in Indonesia, the Committee trusts that this progress will continue and enable the industrial relations system prevailing in Indonesia to be brought fully in line with freedom of association principles.

(b) The Committee reiterates its request to the Government to institute without delay an independent judicial inquiry into the homicide of Mrs. Marsinah, a labour activist, which occurred over six years ago, so as to identify and punish the guilty parties. It requests the Government to keep it informed of the results thereof.

(c) Deeply regretting that Ms. Dita Sari, leader of Pusat Perjuangan Buruh Indonesia (PPBI), was arrested and detained for her participation in industrial action in the city of Surabaya on 8 July 1996, the Committee strongly urges the Government to ensure that the competent authorities take the appropriate measures for her immediate and unconditional release. The Committee requests the Government to keep it informed in this regard.

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

B. The Government's reply

226. In its communication dated 26 August 1999, the Government first of all indicates that it agrees that there should be an independent judicial inquiry into the homicide of Mrs. Marsinah, a female labour activist who died in East Java Province in May 1993 further to her participation in strike action. The Government considers, however, that to guarantee and maintain the independent nature of such an inquiry, it should be instituted by an independent body and not by the Government itself. It is for this reason that on 25 June 1999, the Government approached the Indonesian National Commission of Human Rights which agreed to institute a judicial inquiry into this case. The inquiry team has visited Surabaya twice and contacted several related officials and institutions. The team has informed the Government that it needs more time to investigate in order to draw up its conclusions and recommendations.

227. Turning to the issue of the detention of Ms. Dita Sari who was imprisoned following strike action, the Government states that Ms. Dita Sari was unconditionally released from prison on 5 July 1999 pursuant to Presidential Decision No. 68 signed on 2 July 1999. The Government further points out that Ms. Dita Sari has been free to carry out her trade union activities without any restrictions. For example, she recently participated in the ILO/Japan National Tripartite Seminar on Globalization and Industrial Relations which took place in Jakarta from 24-26 August 1999.

C. The Committee's conclusions

228. *The Committee notes that the remaining allegations in this case concern the homicide of Mrs. Marsinah, a labour activist, which occurred in May 1993 and the detention of Ms. Dita Sari, also a labour activist, who was imprisoned for having participated in strike action on 8 July 1996.*

229. As regards the alleged homicide of Mrs. Marsinah, the Committee had requested the Government (during its previous examination of this case), to institute without delay an independent judicial inquiry thereon, so as to identify and punish the guilty parties [316th Report, para. 608]. In this respect, the Committee notes that on 25 June 1999 the Government approached the Indonesian National Commission of Human Rights which instituted a judicial inquiry into this case. The Committee further notes the Government's statement that while the inquiry team has made some progress in its investigation into this homicide, it needs more time to complete its work. The Committee regrets that over six years elapsed before a judicial inquiry was instituted into Mrs. Marsinah's homicide. Recalling that the killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events [see ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 51], the Committee trusts that this inquiry will elucidate the circumstances of Mrs. Marsinah's death and will allow to identify and punish the guilty parties. The Committee requests the Government to keep it informed of the results of the judicial inquiry into the homicide of Mrs. Marsinah.*

230. During its previous examination of this case, the Committee had noted with deep regret that Ms. Dita Sari, a trade union leader of an independent labour organization, had been sentenced to four-and-a-half years' imprisonment on 22 April 1997 for having participated in strike action in the city of Surabaya on 8 July 1996. The Committee had emphasized that the detention of trade union leaders for reasons connected with their activities in defence of the interests of workers constituted a serious interference with civil liberties in general and with trade union rights in particular, and it had therefore insisted on the immediate and unconditional release of Ms. Dita Sari [316th Report, para. 609]. The Committee now notes with interest the Government's statement that following the granting of a presidential amnesty, Ms. Dita Sari was unconditionally released from prison on 5 July 1999 and has been carrying out her trade union activities without any restrictions since then.

THE COMMITTEE'S RECOMMENDATIONS

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

(a) The Committee regrets that over six years elapsed before a judicial inquiry was instituted into the homicide of Mrs. Marsinah, a labour activist.

(b) The Committee trusts that this inquiry will elucidate the circumstances of Mrs. Marsinah's death and will allow to identify and punish the guilty parties. The Committee requests the Government to keep it informed of the results of this judicial inquiry.

Case No. 1991

Interim report

Complaint against the Government of Japan
presented by
— the Japanese National Railway Workers' Union (KOKURO) and
— the All National Railway Locomotive Engineers' Union (ZENDORO)

Allegations: Acts of anti-union discrimination

232. In a communication dated 12 October 1998, the Japanese National Railway Workers' Union (KOKURO) presented a complaint of violations of freedom of association against the Government of Japan. The International Transport Workers' Federation (ITF) associated itself with this complaint in a communication dated 12 February 1999. The All National Railway Locomotive Engineers' Union (ZENDORO) also presented a complaint of infringements of trade union rights in a communication dated 8 December 1998. It submitted additional information in a communication dated 6 January 1999 along with supporting documents.

233. The Government supplied its observations in a communication of 22 April 1999. It provided additional information in a communication dated 6 September 1999.

234. Japan 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

235. In its communication dated 12 October 1998, KOKURO asserts that the Government has violated Conventions Nos. 87 and 98 by failing to fulfil its obligations under Article 11 of Convention No. 87 and Article 3 of Convention No. 98, which oblige countries which have ratified these two Conventions to establish appropriate procedures and machinery to protect the right to organize.

236. KOKURO then proceeds to explain the background to its complaint. It indicates that it is a 53-year-old workers' organization, representing more than 30,000 railway workers who were originally the employees of the Japanese National Railways ("JNR"). The Government decided to split and privatize JNR in 1987 and Japan Railway companies (JR companies), which took over the management responsibility of the railway, were expected to assume the employment of JNR workers.

237. KOKURO adds that the Government had enacted the "Japanese National Railways Reform Law" to carry out its privatization plan. The contractual employment status of JNR workers was stipulated in the Reform Law as follows:

(a) The newly established JRs do not succeed the labour contracts signed between JNR and its employees and JRs will recruit workers whom they deem as necessary from JNR employees.

(b) The recruitment procedure by the new companies is as follows:

- The JR Establishing Committee submits requirements of employment to JNR.
- JNR draws up a list of names of JNR employees based on the requirements.
- The Establishment Committee selects employees of the new companies from the list.

238. KOKURO contends that when JNR compiled the list, many of its members were excluded. Because of this, 5,037 members were not employed by the new companies.

On the other hand, almost all the members of the Japan Confederation of Railway Workers' Unions (JRU), one of the JNR unions, were included in the list and hired by the JRs. KOKURO believed that the JR companies' refusal of employment of its members was an act of discrimination against the union and submitted complaints to local labour relations commissions all over the country, asking for relief orders against these unfair labour practices. Responding to the complaints, the local labour relations commissions concluded successively from 1989 onwards that the JR companies' refusal to hire these workers, based on their organizational status, constituted unfair and discriminatory labour practices and ordered these companies to accord the unhired workers "treatment as if they were hired". (KOKURO points out that as of 1998 there were still 1,047 members subject to these relief orders and who remain unemployed as a result of the discrimination.)

239. Dissatisfied with these orders, JR companies brought cases to the Central Labour Relations Commission for re-examination according to section 27(5) of the Trade Union Law. The Central Labour Relations Commission issued 13 relief orders during the period from 1993 to 1996 which, as the local labour relations commissions did, recognized the existence of anti-union discrimination. In summary, all 13 orders instructed JR companies which took over from JNR to "treat the victimized members as if they were hired" in order to restore the position existing prior to the discrimination. JR companies, however, under section 27(6) of the Trade Union Law, brought the cases to the Tokyo District Court seeking cancellation of these orders. They claimed that these orders were unlawful and wrongful on the grounds that the Central Labour Relations Commission misinterpreted the law and acted beyond its authority.

240. The Tokyo District Court on 28 May 1998, after examining the cases for two to five years, cancelled all 13 orders issued by the Central Labour Relations Commission. The court agreed with the JR companies, saying that the orders were unlawful since the Central Labour Relations Commission had acted beyond its authority when it ordered JR companies to "hire" the members based on a misinterpretation of the law regarding "who was the employer".

241. As a result, KOKURO filed an appeal to the Tokyo High Court together with the Central Labour Relations Commission (chaired by a highly respected jurist of international standing). KOKURO fears, however, that the "excessive legalism" of the High Court, like the District Court, will result in the rejection of the conclusions of the specialized Central Labour Relations Commission. KOKURO stresses that this Labour Relations Commission is a tripartite body similar to the ILO structure. It is not only impartial in industrial relations constitutionally but also respected as an impartial body in practice thereby satisfying the requirements of Conventions Nos. 87 and 98, a fact which was recorded in the report of the Fact-finding and Conciliation Commission on Freedom of Association concerning persons Employed in the Public Sector in Japan [ILO *Official Bulletin* (special supplement), Vol. XLIX, No. 1, paras. 388-397].

242. KOKURO continues by emphasizing that Japan's Labour Relations Commission system was invented in order to protect trade unions from the breach of the right to organize and to realize good labour-management relations. To pursue these objectives the Labour Relations Commission has a wide range of discretionary powers, such as issuing relief orders in order to restore the position existing prior to the violation of the right to organize. Although it is possible in Japan's legal system to cancel the relief orders by a court judgement in an administrative suit, relief orders should not be cancelled without careful consideration. However, the Tokyo District Court made the orders invalid based on a formalistic and myopic interpretation of the laws. This shows that Japan's legal system to secure the right to organize is not properly established in the light of ILO Conventions

Nos. 87 and 98. Since the Labour Relations Commission's relief orders against unfair labour practices can be cancelled by the courts, employers' attempts to cancel the orders by legal means could delay the implementation of these orders for a long period of time. In such a situation, trade union membership decreases dramatically when the Supreme Court eventually does approve relief orders. KOKURO has been victimized by this "delaying tactic" and is in a critical situation. Eleven years have already passed since this discriminatory treatment occurred and it is expected to take in excess of ten years before the final settlement is reached as the case will be examined by the High Court and the Supreme Court. Not only have the victimized members gone through a very difficult time, but KOKURO itself has suffered a lot by losing substantial membership in the past years. If the issue of violation of the right to organize reaches no settlement after ten years, this means that there is virtually no such system to protect the right to organize in Japan.

243. In its communication dated 8 December 1998, the All National Railway Locomotive Engineers' Union (ZENDORO) states that it is a trade union organizing former employees of JNR (now JR companies), as well as workers of JR companies and their related enterprises. It was founded in 1975 and its present membership is 1,000. ZENDORO goes on to explain that the Government enacted the JNR Reform Law in November 1986 and decided to divide and privatize JNR. Since 1 April 1987 JNR was divided into the Railway Companies of Hokkaido, East Japan, Central Japan, West Japan, Shikoku and Kyushu, and Japan Freight Railway Company. These successors took over all the assets, facilities and structures necessary for the railway business from the JNR, and are continuing the same business as JNR. ZENDORO claims that when JNR was divided and privatized, ZENDORO members suffered discrimination in hiring by the new companies because of their affiliation to ZENDORO. Secondly, employed ZENDORO members are still subjected to various discriminatory acts in the new companies.

244. As regards the first issue of discrimination at the time of recruitment, ZENDORO alleges that when JNR management drew up a list of JNR employees who would be hired by JR companies, those who belonged to ZENDORO were not put on the list. The establishment committee of each JR company approved the list and decided to employ those on the list. ZENDORO indicates that although the procedure of employment by JR companies is specified in section 23 of JNR Reform Law, in the case of the Nippon Telegraph and Telephone Corporation (present NTT) and the Japan Tobacco Public Corporation (present Japan Tobacco Inc.) which were privatized around the same time as JNR, all the workers of the two corporations were employed by the new companies. The procedure of employees being taken over from JNR by JR companies at the time of privatization of JNR gave room to JNR and JR companies for choosing employees, and actually it was used as a means to exclude members of ZENDORO and KOKURO (Japanese National Railway Workers' Union) from JR companies.

245. ZENDORO explains that in the JNR there were two conflicting forces over the division and privatization policy: pro-division and privatization forces included the Japan Confederation of Railway Workers' Unions (JCRU) and the Japan Railway Industrial Workers' Union (JRIU), comprised of the Locomotive Workers' Union (DORO) and the Railway Workers' Union (TETSURO), etc.; those who were against it were ZENDORO and KOKURO. The JNR authority disliked ZENDORO and KOKURO for their opposition to the policy and openly urged them to change their position (ZENDORO supplies examples of such situations in documents attached to its complaint). In 1986 when the JNR Reform Bill was submitted to the Diet, the JNR authority pressed all trade unions within it to conclude the "labour-management joint declaration" with an aim to force them to support the division and privatization policy and virtually abandon the rights of trade unions.

ZENDORO and KOKURO refused to conclude it. On the other hand, trade unions such as JCRU concluded it at a very early stage. The JNR authority carried out discriminatory acts against the members of ZENDORO and KOKURO on the grounds of their rejection of the declaration. For instance, the JNR authority redeployed 23,000 members of ZENDORO and KOKURO to the "human resources usage centre". This was designed to isolate these union members from other workers, deprive them of railway work and force them to engage in weeding and painting. Furthermore, making the most use of the employment procedure to JR companies based on the JNR Reform Law, the JNR authority persistently threatened the members of ZENDORO and KOKURO to leave their unions by openly saying: "As long as you remain members of these unions, you will not be employed by the new companies." All workers who left ZENDORO got jobs in the new companies. ZENDORO then proceeds to give examples of such specific cases by providing some tables (reproduced below) of the breakdown by union affiliation of workers employed in different locomotive departments under various jurisdictions.

(a) Breakdown by union affiliation of the workers of Otaru Locomotive Department employed by the new companies and their ratio

	Union members	Employed by new companies	Employment ratio (%)
Zendoro	212	53	25
Doro	114	114	100
Tetsuro	2	2	100

Note: As of 16 February 1987.

As of 1 April 1986, Zendoro Otaru branch had 268 members in total. However, by 16 February 1987 their numbers had decreased to 212. During this period, 56 branch members withdrew from Zendoro and 54 of them joined Doro and two others joined Tetsuro. All these 56 members were employed by the new companies.

(b) Breakdown by union affiliation of the workers of Naebo Locomotive Department employed by the new companies as well as their ratio

	Union members	Employed by new companies	Employment ratio (persons) (%)
Zendoro	283	81	28.6
Kokuro	24	5	20.8
Tetsusanro	12	10	83.3
Doro	169	169	100.0
Tetsuro	17	17	100.0

Seventy members withdrew from Zendoro Naebo branch. Sixty-seven of them joined Doro, two joined Testuro and one joined Tetsusanro, and all of them were employed by the new companies.

(c) Breakdown by union affiliation of the workers of Iwamizawa Locomotive Department employed by the new companies and their ratio

	Locomotive Department	Union members	Employed by new companies	Employment ratio (persons) (%)
Zendoro	First LD	160	31	19
	Second LD	27	4	15
Kokuro	First LD	4	1	25
	Second LD	6	0	0
Tetsusanro	First LD	21	19	90
	Second LD	58	34	59
Doro	First LD	105	105	100
	Second LD	41	41	100
Tetsuro	First LD	4	4	100
	Second LD	2	2	100

Iwamizawa Locomotive Department was divided into two sub-departments: the first department and the second department. In the first department, from July to December 1986, 30 members left Zendoro. Twenty-nine of them, except for one member whose employment by a public corporation had ben decided, 25 joined Doro, two joined Tetsuro and one did not join any union. They were all employed by the new companies except for the one who joined Tetsusanro.

In the second department, during the same period, six members withdrew from Zendoro. Three of them, apart from two whose employment by a public corporation had been decided and one who was retiring, two joined Doro and one joined Tetsuro and were all employed by the new companies.

(d) Breakdown by union affiliation of the workers of Takikawa Locomotive Department employed by the new companies and their ratio

	Union members	Employed by new companies	Employment ratio (persons) (%)
Zendoro	80	12	15
Kokuro	0	0	0
Tetsusanro	3	1	33
Doro	56	56	100
Tetsuro	3	3	100
Unorganized	1	0	0

In Takikawa Locomotive Department, 11 members withdrew from Zendoro branch. Nine of them joined Doro and two joined Tetsuro, and all were employed by the new companies.

(e) Breakdown by union affiliation of the workers of Tomakomai Locomotive Department employed by the new companies and their ratio

	Union members	Employed by new companies	Employment ratio (persons) (%)
Zendoro	99	5	5
Doro	58	58	100
Kokuro	10	2	20
Tetsuro	4	4	100
Tetsusanro	3	2	67

Of Zendoro Tomakomai branch members who withdrew from the union between March and December 1986, 13 joined Doro and were all employed by the new companies.

246. The Diet debate also took up the issue of discrimination by the JNR authority against the members of ZENDORO and KOKURO. JNR President Takaya Sugiura, who later held the position of committee member for the establishment of JR companies, said in the Diet discussion: "Those unions rejecting the declaration are not trustworthy." However, when the law was enacted, the Diet passed a supplementary resolution that "required JR companies to see to it that discrimination depending on the difference of trade unions would not occur".

247. In February 1987 the establishment committee of each JR company approved the list of candidate employees, submitted by JNR, and decided to employ them. The result of employment was characterized by big disparities between different trade unions. For example, in Hokkaido area the rate of those who were employed by the JR Hokkaido and JR Freight to all candidates was 75.1 per cent. However, the employment rate of each trade union was as follows: the rate of JCRU was 99.4 per cent; JRIU, 79.1 per cent; KOKURO, 48 per cent; and ZENDORO, 28.1 per cent. Of 1,012 candidates of ZENDORO, only 284 were employed and 728 rejected, which illustrates the discrimination carried out against ZENDORO members.

248. In April 1987 JR companies refused to employ a total of 7,600 members of ZENDORO and KOKURO nationwide and redeployed them to the JNR Settlement Corporation which took over JNR. In April 1990, the JNR Settlement Corporation dismissed 1,047 members of ZENDORO and KOKURO. ZENDORO complained to the Hokkaido local labour relations commission (LLRC) to request a relief order for unfair labour practices by JR Hokkaido and JR Freight.

249. In March 1989 the LLRC handed down a judgement that JR was in a position to bear responsibility for unfair labour practices leading to the rejection of employment of ZENDORO members. It ordered JR Hokkaido and JR Freight to redress the present situation so that rejected union members "can be treated as employed". Dissatisfied with the order, the JR companies brought the case to the Central Labour Relations Commission (CLRC) for re-examination. They did so even by neglecting the LLRC's order which obliged them to take measures to redress their discriminatory practices. In January 1994 the CLRC issued a relief order similar to that of the LLRC, by recognizing the existence of unfair labour practices, namely discriminatory employment and the consequent responsibilities of the JR companies. It instructed them to follow fair procedures in respect of employment and place ZENDORO union members who were also dismissed by the JNR Settlement Corporation to the position which would have been given if they had been employed in the first place. Alleging the order illegal, the JR companies brought the case

to the Tokyo District Court seeking its cancellation in March 1994. The case is pending in court. It is the JR companies' intention to prolong the trial to reach a settlement and dispense themselves from following CLRC orders.

250. The argument of these companies is in short that they assume no responsibility for the practice by JNR management of excluding the union members from the list of names of JNR employees who were to be hired by JR companies, since JNR and JR companies are different legal entities. However, ZENDORO contends that their responsibility is manifestly clear for the following reasons. Firstly, the JR companies entirely succeeded JNR's entire assets, facilities, equipment, and institutional structure necessary for the railway business. Secondly, the then President Sugiura of JNR who worked on the list was posted as a member of the establishment committee of JR companies, which decided which listed workers should be hired by the new companies. Therefore, there is no doubt that the responsibility for the unfair labour practices, namely the exclusion of ZENDORO members from the list, rests with the JR companies.

251. ZENDORO indicates that, as of 1998, the number of KOKURO and ZENDORO members who were not employed by the JR companies because of their union affiliation and who were dismissed by the JNR Settlement Corporation amounts to 1,047. The unions' members have been fully unemployed for over 11 years. They support their families by working part time and with the help of income of their wives who hold part-time and other jobs. ZENDORO itself has also suffered tremendous damage by losing substantial membership through such anti-union discrimination.

252. ZENDORO points out that it has repeatedly called on the Government to adopt administrative measures to ensure that JR companies settle the disputes in accordance with the orders delivered by LLRCs. However, the Government has failed to give effective guidelines to the JR companies. Instead of ensuring that all workers were employed by JR companies, the Government had recourse to means called "a new employment". Its object was to eliminate ZENDORO and KOKURO members in the process of the division and privatization of the JNR. This is illustrated by remarks made by former Prime Minister Yasuhiro Nakasone which appeared in magazines and in public TV stations, who said "we broke up the KOKURO through division and privatization". Thus, the Government not only neglected the unfair labour practices carried out by the JR companies but also itself acted in violation of the relevant ILO Conventions during the period of transition from the JNR to the JR companies. For protection of the workers' right to organize, Article 11 of ILO Convention No. 87 stipulates that "Each Member of the International Labour Organization for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize", and Article 3 of ILO Convention No. 98 states that "Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding Articles".

253. ZENDORO is of the view that the Labour Relations Commission system in Japan constitutes appropriate machinery to redress situations of violations of the right to organize. However, if employers bring a case to court seeking cancellation of the LRC's relief orders and as long as the case is pending, there is no such regulation to bind the employers for having failed to follow the orders. This enables employers to continue breaching the workers' right to organize by prolonging such a trial period. Moreover, the Government has failed to substantially improve the system of protecting the right to organize by revising existing domestic laws. ZENDORO asserts that this is a clear violation of Conventions Nos. 87 and 98.

B. THE GOVERNMENT'S REPLY

254. In its communication dated 22 April 1999, the Government explains that the Japan National Railways (JNR) carried out railway transport operations as a public transportation organization on a nationwide basis, but from fiscal year 1964 it started to lose money on these operations. Despite the execution of plans to reform management across several years, the management of the JNR continued to worsen. Under these circumstances, the Provisional Commission for Administrative Reform stated in its "Third Report (Basic Report) concerning Administrative Reforms" of February 1982 that it was a national emergency to recover the economic health of the JNR and that the JNR should be divided and privatized and a Supervisory Committee for the JNR Reconstruction should be established to promote the reforms. In August 1982, a Cabinet decision was made to implement the necessary measures with maximum attention paid to this Report. In July 1985, the Supervisory Committee reported to the Government its "Opinion on the reform of the JNR" which included the split up of the passenger railway section into six regional companies and their privatization by April 1987. The Government responded to this Opinion by submitting a draft Japan National Railways Reform Act and other related draft Acts to the Japanese Parliament (the Diet) and these drafts went through the Diet in November 1986; they were promulgated and enforced in December of the same year. As a result, the passenger railway sections, the cargo sections, and the research and development sections, etc., of the JNR were succeeded by six passenger corporations starting 1 April 1987 (the "succeeding corporations") and the resolution of the long-term debt of the JNR was to be handled by the Japanese National Railways Settlement Corporation.

255. The Government then indicates that the method for hiring staff for the succeeding corporations with the division and privatization of the JNR was regulated under the Japan National Railways Reform Act. The specific provisions in the Act include the following points: (a) the Minister of Transportation would choose the number of employees to be hired by each succeeding corporation from former JNR staff based on a basic plan; (b) the Establishment Committee of the succeeding corporations would submit the labour conditions and the hiring criteria for becoming employees in each succeeding corporation through the JNR; (c) the JNR would confirm the desire of the employee whether or not he/she wanted to become employed by the succeeding corporations and for each one it would select employees from those who desired to be hired in accordance with hiring criteria and place them on a list and submit it to the Establishment Committee; (d) among the JNR employees on the list, those who received notice that they were hired from the Establishment Committee, and were under the employment of the JNR at the time of the abolishment of the Japan National Railways Act, would be employed as an employee of the succeeding corporation.

256. The Government states that, in April 1987, approximately 200,000 were employed by the succeeding corporations, and approximately 7,600 workers who could not find other means of employment were moved to the Japanese National Railway Settlement Corporation. Based on the "Special Measures Act" concerning JNR employees who did not wish to be re-employed and the Promotion of New Employment for the Employees of Japanese National Railways Settlement Corporation, Japanese National Railways Settlement Corporation took special promotional measures for re-employment such as supplementary hiring to the succeeding corporations, the establishment of opportunities for re-employment by requests to related companies, retraining and education, employment placement free of charge, the payment of various types of incentive bonus, etc. However, when the time limit of the special promotional measures for re-employment expired in April 1990, 1,047 employees were laid off.

257. The Government then goes on to explain that during the split up and privatization of JNR, KOKURO and ZENDORO filed complaints to the appropriate organs against all of the Japan Railways (JR) succeeding corporations for discrimination by the JNR against members of the KOKURO and ZENDORO unions in their listings for hiring by the JR companies; they considered this a form of discrimination. They based their cases on section 7 of the Trade Union Law whereby the JNR and the Establishment Committee should be considered a unified entity in reality and therefore should be handled as thé same employer. Since the actions of the Establishment Committee were to be retained by the succeeding corporations, these litigants took their case for remedy against unfair labour practices by the JR to 18 prefectural labour relations commissions around the nation. From January 1989 onwards, every case of non-hiring was accompanied by a remedial order from each Prefectural Labour Relations Commission (Chiroi) but all the JR corporations denied the allegations and took their case for review by the Central Labour Relations Commission (Churoi). In the Churoi, there were attempted endeavours to resolve the issues through a settlement proposal in May 1992, but this ended in failure and since December 1993, the orders recognizing the unfair labour practices of the JR companies became more prevalent. The backbone of the Churoi orders were as follows: (a) in the event that there were actions qualified as unfair labour practices in the procedures for hiring employees by the JNR, it was interpreted that the responsibilities should revert to the JR corporations; (b) since at least some of the union members were recognized to have faced unfair labour practices, in the case of those who were unwillfully dismissed from employment with the Japanese National Railways Settlement Corporation and who had declared his/her desire to be hired as an employee in the future, the corporation would have to make a fair selection and was ordered to treat them as if they had been employed since 1 April 1987.

258. In January 1994, all the JR corporations objected to the orders of the Churoi and filed appeals in the Tokyo District Court to cancel these orders. In May 1998, the Tokyo District Court decided that the orders of the Churoi should be cancelled. The decision of the Court stated that: (a) even if there were unfair labour practices by the JNR in the selection of candidates for hiring and the listings thereof, the liability for such an act reverts to JNR as the employer based on section 7 of the Trade Union Law and neither the Establishment Committee nor the JR corporations should bear such liabilities; and (b) in the event that the JNR placed hiring conditions excluding members of the KOKURO, with the intent to discriminate against such union members, if the Establishment Committee knew the intent and actions of the JNR and yet permitted this, the Committee would bear the liability of the unfair labour practices. However, in this case also, the orders for remedy should be limited to the redetermination of whether or not the union member was hired not using the normal selection criteria and the Churoi could not order that members be considered as hired employees. In June 1998, the KOKURO and the Churoi appealed to the Tokyo High Court to cancel the decision of the lower court. Concerning the ZENDORO non-hiring case, it is still pending before the Tokyo District Court. Also, other JR-related cases are still being disputed in courts.

259. The Government goes on to give a brief summary of the Labour Relations Commissions System. It states that the Labour Relations Commissions consist of the Central Labour Relations Commission (Churoi) and the Prefectural Labour Relations Commission (Chiroi). The Churoi is one national committee under the jurisdiction of the Minister of Labour and the Chiroi are established in each prefecture as an organ of those regional governments. The labour relations commissions are organized with the same number of representative members from management, labour and neutral parties and the committees are organs which investigate and adjudicate labour disputes. The procedures

for remedy from unfair labour practices begin with filing a complaint from the labour union or the worker to the Labour Relations Commission, which has jurisdiction to that dispute. If the Labour Relations Commission recognizes that there is just reason for the application, it issues a remedial order, and if there is no just reason, it issues a dismissal order. For those who object to the order from the Chiroi, he/she can bring a court appeal to cancel an order or to demand a review, and for those who object to the order from the Churoi, he/she can bring a court appeal to cancel an order by Churoi. The Government considers however the allegation that protection of the right to organize is eroded through the cancellation of the orders of the labour relations commissions by the courts to be without grounds. It points out that article 32 of the Japanese Constitution states that "No person shall be denied the right of access to the courts" and article 76, paragraph 2, stipulates that "no organ or agency of the Executive shall be given final judicial power". These provisions guarantee that all people have equal right of access to independent courts. Therefore, concerning the orders from the labour relations commissions which are executive organs, the guarantee of bringing the dispute to the courts must be recognized, and it is possible that the orders from the labour relations commissions may be overturned. However, this does not mean that necessary and appropriate measures for the protection of the right to organize have not been taken.

260. Furthermore, the Trade Union Law provides for measures to secure the effectiveness of the orders of the labour relations commissions concerning unfair labour practices. In other words, in the event that all or part of an order has been confirmed by the final judgement of the court in an administrative suit, the violators of the final judgement shall be criminally punished (section 28); if the final order of the labour relations commissions is violated, the violators shall be liable to a non-penal fine (section 32). Also, even in cases when the employer files an appeal to cancel an order by the labour relations commissions and the disputes are ongoing, the court can order the employer to follow all or part of the order if there is a complaint from the Labour Relations Commission, until the court decision becomes final (section 27(8), Emergency Orders). If the employer violates the emergency order, he/she shall be liable to a non-penal fine in the same manner as if he/she were violating a final order (section 32). In addition, the Government points out that the new Code of Civil Procedure enacted last year has defined procedures which would speed up the clarification of the disputes and the organization of the evidence, and other allowances have been established to make the concentrated evidence inspection easier. Therefore, a shortening of the time of trial can be expected.

261. The Government then turns to the allegation that it is not effectively guiding the JR corporations, and is neglecting anti-union discrimination. However, the Government contends that it has not neglected the disputes between JR management and labour, but has actively worked towards a solution for them. For instance, directly after the issuance of a Churoi order in January 1994, the Minister of Transportation and the Minister of Labour attempted to solve the disputes between each JR corporation and KOKURO, and in July 1995 the Minister of Transportation proposed the establishment of a negotiating table between the Government, labour and management. Furthermore, in August 1996, the Minister of Labour tried to work with the KOKURO to solve their disputes, but there was a great difference of opinion between the JR management and labour. In any event, the Japan Confederation of Railway Workers' Unions (JCRU), which counts as its membership approximately 40 per cent of JR-related workers, appears to be taking the stance that the non-hiring issue has been solved, and therefore there are conflicting opinions among the unions themselves. The Government adds that in future it will continue its efforts to solve the various issues.

262. Finally, the Government addresses the allegation that the method of hiring employees afresh from JNR to the JR corporations was for the purpose of expelling ZENDORO and KOKURO union members and de facto firing them. However, the reason that the method of hiring afresh was selected with the reform of the Japan National Railways was that, unlike the case of the public corporations which later became JT and NTT, the JNR was under dire financial conditions and it had to resolve to the fastest extent possible the issues of long-term debt and unused assets for JNR reform. In other words, the JNR had to be split up and privatized as a private corporation completely under radically new ideals and start up with a new system. The reason for the method of hiring afresh under the Reform Act was due to the objective that the JNR would be split up and privatized under completely new management ideals and systems which matched each of the regions; this necessitated new decisions for management on the composition of personnel and labour conditions. As such, there was a rational reason to use a method of hiring afresh for the reform of the Japan National Railways, and it was not for the purpose of expelling ZENDORO and KOKURO union members and de facto dismissals.

263. In its subsequent communication dated 6 September 1999, the Government points out that when the orders of the Churoi were cancelled by the Tokyo District Court, the three ruling parties at the time consisting of the Liberal Democratic Party (LDP), the Social Democratic Party (SDP — among the 137 representatives of the KOKURO Convention, approximately 60 per cent are members of the SDP), and the Sakigake Party initiated consultations to settle the dispute quickly in June 1998. In the same month, the responsible policy-maker of the LDP offered KOKURO, through the SDP, settlement conditions including "the decision by KOKURO to accept the Japan National Railways Reform Act".

264. Having received these conditions, KOKURO held its Provisional National Convention on 18 March 1999, and decided that its policy would be to "make clear that it accepts the Japan National Railways Reform Act". Upon this decision, the LDP (the ruling party) released a "LDP secretary-general statement" on 25 May 1999 that "It is necessary in the future for KOKURO, all the JR (Japan Railways) corporations, government agencies, etc., and other relevant parties to consult with each other towards concrete settlement, and the LDP would like to continue its efforts for an early settlement through encouragement of such consultations, etc.". The Liberal Party (the ruling party) also released its own "secretary-general statement" on the same day, stating that "(our party) wants to actively promote consultations between KOKURO, all the JR corporations, and the government agencies, etc., and strive towards a settlement which can be achieved as early as possible". Furthermore, the SDP issued its own "statement" on the same day, stating that "We warmly welcome the LDP secretary-general statement that represents one step forward towards the solution of the problem by the Government and the ruling parties". Also, the secretaries-general of the six major parties of the Upper House of the Japanese Diet (the Liberal Democratic Party, the Liberal Party, the Democratic Party, the Komeito, the Social Democratic Party and the Japanese Communist Party) requested the chief cabinet secretary that he "handle the situation towards early settlement from a humanitarian viewpoint". Amidst such statements by the political parties, the chief cabinet secretary commented in a press conference on the same day that "the LDP, the Liberal Party, the SDP and others have been working hard at consultations, and the Government would like to continue to exert its efforts to solve the various issues while keeping in touch with the ruling parties". In addition, the Minister of Transport issued a comment that "The Ministry of Transport will continue its efforts if there are steps which should be taken to solve the various issues, while making sufficient contacts with the ruling parties". Furthermore, the Minister of Labour

stated that "The Ministry of Labour will make the necessary efforts while making sufficient contacts with the ruling parties and cooperating with the Ministry of Transport". Therefore, in the Government's view there appears to be a new situation evolving towards solution of the dispute through consultations. Moreover, subsequently, the LDP and the SDP have been making efforts towards solution of the issues through consultations demanded by the KOKURO. As for the Government, it will continue to watch the political movements towards a settlement, giving it support and continuing its efforts towards an early settlement.

C. The Committee's conclusions

265. *The Committee notes that this case involves two sets of allegations. The first relates to the fact that following the decision to privatize the Japanese National Railways ("JNR") in 1987, the succeeding corporations known as the Japan Railway Companies ("JR companies") did not hire many of the complainants' (KOKURO and ZENDORO) members solely on account of their trade union membership. Moreover, pursuant to the JR companies' refusal to hire these workers, they were redeployed to the JNR Settlement Corporation which subsequently dismissed a large number of them in 1990. The second set of allegations related to the complainants' contention that although the various local labour relations commissions (LLRCs) and the Central Labour relations (CLRC) recognized the existence of unfair labour practices and accordingly issued relief orders to ensure that the JR companies took measures to redress their discriminatory practices, the companies concerned sought to avoid taking such measures by constantly appealing the relief orders. The complainants thereby conclude that for all intents and purposes, there is no effective protection of the right to organize in the Japanese system as it currently functions.*

266. *The Committee notes that the alleged discrimination at the time of recruitment — and the subsequent loss of jobs — arises within the context of the privatization of the JNR. In this regard, the Committee considers that it can examine allegations concerning economic rationalization programmes and restructuring processes, whether or not they imply redundancies or the transfer of enterprises or services from the public to the private sector, only in so far as they might have given rise to acts of discrimination or interference against trade unions [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 935]. In the concrete case at hand, the complainants allege that 7,600 workers who were refused employment by the JR companies in April 1987 were members of KOKURO and ZENDORO. The Committee notes that the Government does not refute the allegations that these 7,600 workers were refused employment by the JR companies and redeployed to the JNR Settlement Corporation which subsequently, in April 1990, laid off 1,047 employees. In order to make an informed decision in full knowledge of all the facts on the reasons for which these workers were refused employment by the JR companies, the Committee requests the Government to provide additional information in this regard.*

267. *The Committee regrets to note that these 1,047 KOKURO and ZENDORO members are still suffering the consequences of the refusal to employ them since they have been unemployed since then and risk being unemployed for a further period of time since according to the complainants, the judicial proceedings can take several more years. In this regard, the Committee notes the Government's statement that it has made attempts in the past to solve the dispute between the JR companies and the workers concerned and that it will continue to pursue its efforts to resolve the issue of the dismissed KOKURO and ZENDORO members. The Committee would therefore urge the Government to actively*

encourage negotiations between the JR companies and the complainants with a view to rapidly reaching a satisfactory solution for the parties and which would ensure that the workers concerned are fairly compensated. The Committee requests the Government to keep it informed of any progress made in this regard.

268. *Regarding the allegations that the legal system in Japan does not protect the right to organize since relief orders against unfair labour practices which are issued by labour relations commissions can be cancelled by the courts and employers constantly have recourse to the courts in order to delay the implementation of these orders, the Committee notes the Government's contention that this allegation is without any foundation and that in any event, the provisions of the Japanese Constitution guarantee that all people have equal right of access to independent courts. The Committee would make two observations in this regard.*

269. *First of all, the Committee considers that it is certainly important that a judicial authority be able to judge cases concerning dismissals and their illegality. It considers, however, that it is the responsibility of the Government to ensure the application of international labour Conventions concerning freedom of association which have been freely ratified and which must be respected by all state authorities, including the judicial authorities [see 313th Report of the Committee, Case No.1952 (Venezuela), para. 300]. In the situation at hand, the Committee notes that the issue of the dismissals of KOKURO members is pending before the Tokyo High Court and that of the dismissals of ZENDORO members is pending before the Tokyo District Court. The Committee therefore trusts that the decisions handed down will be in line with Convention No. 98. The Committee requests the Government to keep it informed of the outcome of these court proceedings.*

270. *Secondly, the Committee must stress that cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders (or members) dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned [see* **Digest**, *op. cit., para. 749]. In the case at hand, the Committee observes with concern that there has been an excessive delay in the proceedings concerning KOKURO and ZENDORO members which is due in no small measure to the constant appeals made against the relief orders issued by the 18 local labour relations commissions as well as by the Central Labour Relations Commission, thereby suspending the relief orders in question. The Committee's apprehensions are reinforced in this regard by the complainants' assertion that it might well take another ten years before the proceedings are concluded if the case goes to the Supreme Court. The Committee notes, however, the Government's indication that a new Code of Civil Procedure which was enacted last year has defined procedures which would speed up the clarification of disputes and the organization of the evidence, and that other allowances have been established to make the concentrated evidence inspection easier and therefore a shortening of the time of trial can be expected. The Committee requests the Government to provide the relevant extracts from this new Code of Civil Procedure. The Committee expects that the procedures established by the newly enacted Code will be effective and expeditious so as to guarantee that cases concerning anti-union discrimination contrary to Convention No. 98 are examined rapidly in the future with a view to securing really effective remedies. It requests the Government to keep it informed of any developments in this regard.*

THE COMMITTEE'S RECOMMENDATIONS

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

(a) In order to make an informed decision in full knowledge of the facts on the reasons for which the Japan Railway Companies (JR companies) refused to employ a number of KOKURO AND ZENDORO members, the Committee requests the Government to provide additional information in this regard.

(b) The Committee urges the Government to actively encourage negotiations between the Japan Railway Companies and the complainants with a view to rapidly reaching a satisfactory solution for the parties and which would ensure that the workers concerned are fairly compensated; it requests the Government to keep it informed of any progress made in this regard.

(c) Recalling that it is the responsibility of the Government to ensure the application of international labour Conventions concerning freedom of association which have been freely ratified and which must be respected by all state authorities, including the judicial authorities, the Committee trusts that the decisions handed down by the courts concerning the dismissals of KOKURO and ZENDORO members will be in line with Convention No. 98. It requests the Government to keep it informed of the outcome of these court proceedings.

(d) The Committee requests the Government to transmit the relevant extracts of the new Code of Civil Procedure and expects that the procedures established by the newly enacted Code of Civil Procedure will be effective and expeditious so as to guarantee that cases concerning anti-union discrimination, contrary to Convention No. 98, are examined rapidly in the future with a view to securing really effective remedies; it requests the Government to keep it informed of any developments in this regard.

Case No. 2009

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Mauritius presented by the Government Teachers' Union (GTU)

Allegations: Restrictions on time-off facilities for trade union officials

272. The complaint in this case appears in a communication from the Government Teachers' Union (GTU) of 22 February 1999.

273. The Government sent its observations in a communication dated 18 May 1999.

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

A. The complainant's allegations

275. In its communication of 22 February 1999, the GTU alleges that it has been seriously harassed by the Ministry of Education over the last eight years on the issue of time off. The GTU explains that it has existed for 54 years and has always had time-off facilities to cater for its 5,000 members who are teachers in the primary schools. As a matter of practice in the Ministry of Education time-off facilities have always been granted to unions. The Ministry's circular dated 7 June 1989 mentions the granting of these facilities as follows: (a) president, secretary and treasurer as and when required; (b) the other committee members, one day off a week subject to the conditions laid down. The GTU alleges that, when confrontation arose in 1991, the Ministry of Education chose to modify unilaterally its circular on time off and reduced considerably time-off facilities from five to one day for presidents, secretaries and treasurers and from one day to a half day for other committee members. The GTU protested vehemently and, following this protest, the head of the civil service and Secretary of Home Affairs released a circular letter in which it drew the attention of ministries to the provisions of the Industrial Relations Act (IRA) (section 49 and paragraph 96 of its Third Schedule). The circular mentioned that trade union officials were not being granted time-off facilities to attend their union activities. The complainant organization explains that section 96 of the Third Schedule (code of practice) of the IRA states that the facilities needed by workplace representatives will depend on their functions. The nature and extent of these facilities should be agreed between trade unions and management. As a minimum, they should be given: (a) time off from the job to the extent reasonably required for their relations functions, permission not being unreasonably withheld; and (b) maintenance of earnings while carrying out those functions. Following the circular letter of the head of the civil service and the protests formulated by all trade union federations, the Ministry of Education stopped its repressive policy. However, the GTU alleges that the Ministry of Education has systematically refrained from seeking agreement with the union on the issue of providing facilities for workplace representatives with the deliberate intention of having recourse to repressive measures in order to threaten and intimidate trade unions.

276. The GTU explains further that, while the Ministry issued its circulars restricting time-off facilities from the "as when required" basis to one day per week, it did not so far spell out any specific measures against trade union representatives. In fact, in one of its circular letters it mentioned that additional time off could be granted. However, the GTU states that in February 1999, a letter was issued to trade union officials informing them that deductions would be effected from their salaries.

B. The Government's reply

277. In its communication of 18 May 1999, the Government explains firstly that the granting of time-off facilities to office-bearers of unions to attend to trade union matters is governed by the Industrial Relations Act of 1973 and the Personal Management Manual of 1992. The basic principle being that time-off facilities may be granted to trade union officials subject to the exigencies of the service.

278. The Government then explains that the Ministry of Education has known three different ministers and permanent secretaries over the last eight years. All ministers and permanent secretaries have witnessed the abuse being made of time-off facilities by some trade unionists, especially the Government Teachers' Unions (GTU) and had expressed concern over the situation. The Ministry has consistently tried to discourage such abuses

and it tried to resolve the problem in an amiable way. At different points in time during those past ten years or so, the attention of those concerned has been drawn to the need to comply with existing instructions regarding time off. However, the trade unionists have turned a deaf ear to the letters issued by the Ministry.

279. The Government then explains that some 33 trade unions cater for the different categories of staff in the public as well as private schools and also in parastatal organizations attached to the Ministry of Education. The Ministry has always given necessary facilities to all recognized trade unions to enable them to carry out their activities and time-off facilities have been very flexible. The practice since 1979 had been to grant time-off facilities to the president, secretary and treasurer as and when required. However, over the years, it was observed that this practice led to an abuse of time-off facilities by the executive members of some unions. Following reports of abuse of time off, the Ministry decided in 1985 that officers should not leave their place of work unless they made applications in writing in advance for time off and this had been approved by the head of section. This was meant to enable the latter to make arrangements for replacement. The unions protested vehemently against this decision arguing that the IRA stipulates that the "actual nature of the business for which the leave or time off is required is not a matter into which the head of department should normally inquire".

280. Since 1990, the Ministry had been receiving an increasing number of reports of abuse being made of time-off facilities by certain trade union members, including the GTU. It was noted that time off taken by school union members was excessive as compared to other unions. In March 1991, the Government was apprised of the considerable abuse being made by office-bearers of the GTU. For instance, the president of the GTU did not attend his place of work at all in 1990. Moreover, other executive members of the GTU took 128-129 days time off on 140 working days as compared to four to seven days monthly by members of other recognized trade unions. Due to these frequent absences, parents were making representations as this was causing severe disruption of work. A circular dated 11 April 1991 was subsequently issued to all heads of section informing them that the time-off facilities would be as follows: (1) president, secretary and treasurer — one day per week; (2) other office-bearers — a half day per week.

281. A meeting was held between management and the unions concerned (including the GTU) on 20 May 1991 in the light of the written representations made by several trade unions following the issue of the circular dated 11 April 1991. During the course of the meeting, the staff side argued that the new arrangements for time off did not give them adequate time to attend to their trade union matters. They requested that the present conditions governing time off be repealed and that the grant of time off be monitored over a period of five to six months and cases of abuse be controlled. The attention of unions was drawn to the fact that abuse to a large extent of time-off facilities had led the Ministry to review its policy in the best interests of all concerned. In addition, the Ministry had acceded to the requests of union members for posting in Port Louis (the capital) to facilitate their trade union activities. Moreover, it had also always considered urgent requests for the release of officers to attend to trade union matters.

282. The Ministry finally agreed to freeze the new conditions applicable for time off as requested by the staff side until the end of June 1991. In the light of a study of absences due to time off during that period, the Ministry would consider further action. Accordingly, the Ministry issued a second circular dated 7 June informing all concerned that subject to the exigencies of the service, the president, the secretary and the treasurer of recognized trade unions would be granted additional time off provided they gave the reasons and filled in the necessary application forms.

283. The Ministry monitored the attendance of trade unionists concerned. However, no improvement was noticed and abuse of time-off facilities continued as before. The president, secretary and treasurer of the GTU availed themselves of time off on almost all working days without filling in necessary forms. The Ministry, after consultations with the Ministry of Civil Service Affairs, decided that disciplinary action be instituted against the defaulters. The decision to grant one day per week to president, secretary and treasurer and a half day to other office-bearers was maintained but it was agreed that additional requests for time off would be considered provided applications were made in writing. The trade unions protested against the circulars issued by the Ministry of Education.

284. The Government then acknowledges that the head of the civil service issued a circular dated 8 May 1992 drawing attention to the provisions of section 49 of the Industrial Relations Act and paragraph 96 of the Third Schedule (code of practice) and section 5/X/8 of the General Orders Establishment. He stressed that time off facilities were to be granted subject to exigencies of the service. He also stated that there were instances where time-off facilities were not being granted to trade unionists whereas in other cases abuse was being made of time off. He added that both situations were not conducive to smooth industrial relations and should be avoided. He also added that each Ministry should devise its own formula for the granting of time off without jeopardizing efficiency and productivity. On this issue, the Government insists that the head of the civil service did not at any time state that office-bearers of trade unions be given time off all the time or be altogether released from their teaching duties. On the contrary, he advised that abuse should not be made of time off.

285. The Government then insists that the Ministry has held several meetings with the unions. However, the GTU has systematically refused to come to an agreement regarding time off. It asked for delays and a moratorium but continued to take time off on almost all working days. The president of the GTU has not taught for a number of years. He has also refused to replace absent colleagues. The attention of the trade unionists concerned was drawn in writing several times to the abuse of time off and to their failure to fill in application forms for additional time off taken. The Government provides copies of such letters dated 23 June 1992, 18 March 1993, 29 April 1998 and 8 February 1999.

286. The Government then explains that in the earlier days when the Ministry had applied the "as and when required" formula for time off, it had never been the intention to grant time off every day to trade union officials but this was meant to give greater flexibility to enable them to leave their place of work with the necessary permission to attend to their trade union activities. The Ministry had never at any point in time meant this arrangement to be interpreted by trade unionists as being eligible for time off on every working day. As regards the circular dated 7 June 1991, which requested the trade union leaders to fill in an application form in order to obtain time-off facilities in excess of the agreed quantum, the Government states that in accordance with the existing conditions of service governing leave in the Mauritian civil service, any leave which is not an approved leave is considered to be unauthorized leave and is therefore considered to be without pay. Any government employee who proceeds on unauthorized leave for whatever reason is liable to have his salary deducted accordingly. The Ministry had earlier warned the trade unionists concerned that appropriate disciplinary action would be taken in the event they continued to make an abuse of time off.

287. Despite the repeated warnings issued to the trade union officials concerned regarding their unauthorized leave, the latter have paid no attention. The situation gave rise to audit queries in 1993 when the Director of Audit observed that time-off taken by some trade union officials far exceeded time off granted specifying that, in three cases, the

officers were barely attending duty, thus disrupting classes and pupils were left unattended. In his following report in 1994, the Director of Audit again noted that teachers who were office-bearers in their respective trade unions continued to take time-off facilities and were barely attending duty. The attention of those concerned was drawn to the reports but still no improvement was noted in their respective attendance. On 15 May 1995, a meeting under the chairmanship of the permanent secretary was held with trade unions, including the GTU. Their attention was again drawn to the remarks of the Director of Audit and they were requested to improve their attendance.

288. The Government was again informed on 20 June 1995 of the unauthorized time-off facilities being taken. Before initiating disciplinary action, the head of the civil service spoke to all trade unionists on 6 July 1995, drawing their attention to the relevant regulations governing the granting of time off and invited their collaboration. In addition, at the request of the head of the civil service, the supervising officer of each ministry was called upon to discuss with the respective unions recognized by the Ministry. After all efforts to settle the issue through dialogue had failed, the Ministry decided to act in accordance with the existing provisions governing unauthorized leave. Deductions from salary are made for other officers who proceed on unauthorized leave.

289. In conclusion, the Government points out that despite the fact that the attention of GTU officials has been drawn several times over the past few years to the need to comply with standing instructions, they have continued to make an abuse of time off to the extent that some of them have not taught a single day over the past ten years but still expect to obtain their salary at the end of every month. They usually put in an appearance at school on some days and disappear immediately afterwards. They have systematically refused to take charge of a class. Such a situation is causing serious disruption of work in certain schools and representations have been received from parents regarding frequent absences of teachers.

290. Finally, the Government insists that the Ministry of Education has the responsibility to provide education to children, manage schools and all human resources, including teachers. At the same time, it cares for the welfare of teachers as it is perfectly conscious of the need to promote healthy industrial relations. The Ministry recognizes the rights and privileges of trade unions but it is also responsible for the smooth running of schools in general and it has the duty to ensure that discipline and efficiency prevail at all times. It is in this spirit that the Ministry has evolved a policy for time off whereby the trade union officials are given a great amount of flexibility to attend to trade unions matters whilst at the same time they are expected to fulfil their obligations as teachers. As the Ministry's partners in education, members of the trade union referred to are unfortunately not fulfilling their part of the contract and have often neglected the interests of the pupil.

C. The Committee's conclusions

291. The Committee notes that the present allegations refer to conflicts concerning the granting of time-off facilities to office-bearers of unions in order to attend their trade union activities.

292. The Committee observes that the complainant organization refers to a circular from the Ministry of Education of June 1989 which granted time-off facilities to presidents, secretaries and treasurers of unions "as and when required" and one day off a week for other committee members. The GTU alleges that this circular was unilaterally modified by the Ministry in 1991 and thus reduced time off from five to one day a week for presidents, secretaries and treasurers and half a day for others. However, the Committee notes that

the GTU has indicated that following its protest, the Ministry of Education stopped its repressive policy. Furthermore, the GTU stated that the 1991 circular restricting time-off facilities did not spell out any specific measures against trade union representatives and that another circular mentioned that additional time off could be granted. The GTU also pointed out that a recent letter informed trade union officials that deductions would be effected from their salaries. The Committee notes further that while the GTU acknowledges that as a matter of practice in the Ministry of Education, time-off facilities have always been granted to unions, it also accuses the Government of refraining from seeking an agreement with the unions on the issue of providing facilities for workplace representatives.

293. *The Committee notes that the Government does not contradict the complainant organization concerning the fact that a circular letter issued in 1991 reduced time-off facilities. In this regard, the Committee takes note of the Government's explanations according to which the 1991 circular came after several years of abuse by trade union members and particularly GTU members. The Committee observes that after the 1991 circular was issued, meetings were held between management and the unions concerned, following which the Ministry agreed to freeze the new conditions applicable for time off for a determined period of time. The Ministry then issued shortly afterwards another circular which granted additional time off to trade union officers provided they gave reasons and filled in the necessary application forms. The Committee notes that according to the Government, GTU officials never complied with this requirement and the abuses continued.*

294. *The Committee further observes that the abuses described by the Government gave rise to audit queries in 1993 and 1994 which were brought to the attention of the trade union officers concerned. It also notes that the Ministry of Education convened several meetings with the unions in 1995 in order to draw their attention to the regulations governing the granting of time off and invited their collaboration. The Committee notes that, according to the Government, it is after all efforts to settle the issue through dialogue had failed that the Ministry decided to initiate disciplinary action against unauthorized leave.*

295. *Regarding the question of the negotiations between the parties, the Committee observes that while the GTU accuses the Government of systematically refraining from seeking an agreement on the time-off facilities issue, the Government mentions several meetings where it attempted to find a solution and claims that the GTU has asked for delays and a moratorium but has nevertheless continued to take time off on almost all working days. In this regard, the Committee recalls the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations. The Committee regrets that the Government unilaterally decided to change the existing practice of time-off facilities without consulting the trade unions. It also insists that the principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 814 and 816].*

296. *Regarding the issue of the granting of time-off facilities to trade union officers, the Committee has stated in the past that such facilities should be supplied in the undertaking as may be appropriate in order to enable workers' representatives to carry out their functions promptly and efficiently, without loss of pay, but in a manner as not to impair the efficient operation of the undertaking concerned. The Committee also recalls that while workers' representatives may be required to obtain permission from the*

management before taking time off, such permission should not be unreasonably withheld. The Committee also observes that the current system of time-off facilities does not appear to be satisfactory to either of the parties. In this respect, the Committee can only call on the parties to come swiftly to an agreement on all the modalities concerning the granting and the use of time-off facilities, which would take into account the characteristics of the industrial relations system, and for both parties to respect the said agreement. The Committee requests the Government to keep it informed in this regard.

THE COMMITTEE'S RECOMMENDATION

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

Noting the established practice of granting time-off facilities to trade union officers, the Committee calls on the parties to come promptly to an agreement on all the modalities concerning the granting and the use of time-off facilities, which would take into account the characteristics of the industrial relations system, and for both parties to respect the said agreement. The Committee also requests the Government to keep it informed in this regard.

Case No. 1974

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Mexico presented by the World Confederation of Labour (WCL)

Allegations: Dismissals of trade union officials, threats of arrest

298. The complaint is contained in a communication dated 3 July 1998 from the World Confederation of Labour (WCL). The Government sent its observations in a communication of 4 May 1999.

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

A. THE COMPLAINANT'S ALLEGATIONS

300. In its communication of 3 July 1998, the World Confederation of Labour (WCL) states that the Single Trade Union for Employees of the State, Municipal Authorities and Decentralized Industries in Nayarit State (SUTSEM) has been making representations to the authorities in Nayarit State to express its concern at the unjustified dismissals of 23 workers of the Nayarit Cultural and Arts Institute (ICANAY) — which has been closed down — and other labour relations problems. The complainant adds that unionized workers now face all manner of intimidation for having demanded by lawful actions (letters sent to the authorities, a work stoppage) due compliance with labour standards agreed with the Nayarit state authorities. The intimidation takes the form of threats of arbitrary transfer, dismissal or imprisonment, as well as deductions from pay packets and benefits. Specifically, the WCL states that, following a work stoppage which took place on 23 March 1998 in protest against

the dismissals of ICANAY workers, a number of members of the Executive Board of SUTSEM (the complainant has provided the names and functions of the eight union members and officials concerned) received notice of dismissal in April. The WCL claims that a decision to dismiss the workers in question is the responsibility of the courts, but that in this case it was taken by the Prosecutor General of the Republic, and that most of the dismissed workers enjoy union privileges as members of the union's Executive Board. Lastly, the WCL alleges that in late June 1998, as part of an anti-union campaign orchestrated by the Nayarit authorities, the General Secretary of SUTSEM, Mrs. Galicia Agueda, was threatened with arrest without just cause. According to the WCL, this threat was intended to obstruct the union's activities in defending workers in Nayarit and constituted another serious attack on the accepted principles of freedom of association.

B. The Government's reply

301. In its communication of 4 May 1999, the Government states with regard to the alleged unjustified dismissal of 23 workers at the (now closed) Nayarit Cultural and Arts Institute (ICANAY) that on the basis of Decree No. 8033 of 11 October 1997 regarding the law which established ICANAY, it was decided to eliminate superfluous staff at the Institute and relocate staff to the Secretariat of Finance, Education and Culture. Twelve workers refused to accept the transfer and lodged an appeal with the Conciliation and Arbitration Tribunal for State Employees (non-concurrent cases 1/98 and 14/98). The workers eventually withdrew the appeal. Eight of them were dismissed and four were transferred to the Secretariat of Finance, Education and Health.

302. As regards the alleged dismissals of SUTSEM officials and members, the Government states that the union's collective actions are considered illegal and resulted from the intransigence of its leaders. As a result of the illegal stoppage which took place on 23 March 1998, members of the SUTSEM Executive Board were justifiably dismissed, although their union rights and authority to represent workers remained unaffected. The decision to dismiss did not lie with the courts or with the National Prosecutor General but with the Prosecutor General of Nayarit State, who submitted a request to the Conciliation and Arbitration Tribunal for State Employees for the employment of the Executive Board members to be terminated. In accordance with this request, labour ruling 16/98 was duly given but was suspended at the union's request on 6 April 1998, without prejudice to the prerogatives of the state government. The Government also indicates that the SUTSEM Executive Board initiated protection *(amparo)* proceedings in the Second District Court (case 406/98). This led to a ruling of 16 June 1998 which granted protection of the federal courts to workers represented by the union against any decision of the Conciliation and Arbitration Tribunal and ended the suspension of payment of wages to SUTSEM members.

303. Lastly, the Government states that there were no threats of arrest against union officials, who initiated unsuccessful proceedings to block such action. According to the Government, the actions which led to the present complaint were not anti-union or discriminatory acts against SUTSEM members; the respect shown to the union's members was in keeping with established labour relations and contrasted with the intransigent attitude of union officials who disrupted the conciliation talks.

C. The Committee's conclusions

304. *The Committee notes that in the present case the complainant alleges that, following a strike held in March 1998 in protest against the dismissals of workers of the Nayarit Cultural and Arts Institute (ICANAY) and other labour relations problems, a*

number of members of the Executive Board of the Single Trade Union for Employees of the State, Municipal Authorities and Decentralized Industries in Nayarit (SUTSEM) were dismissed in April of the same year (the names and functions of the dismissed union officials are supplied by the complainant). The complainant also alleges that the union official, Mrs. Galicia Agueda, was threatened with arrest without just cause as part of an anti-union campaign instigated by the Nayarit state authorities.

305. *As regards the allegation regarding the dismissal of members of the Executive Board of SUTSEM following a strike in March 1998, the Committee takes note of the Government's statements to the effect that: (i) following an illegal stoppage on 23 March 1998, the members of the SUTSEM Executive Board were justifiably dismissed; (ii) the dismissals were carried out at the request of the Nayarit State Prosecutor General and, through a labour ruling, conveyed to the Conciliation and Arbitration Tribunal for State Employees; and (iii) the Executive Board of SUTSEM initiated protection* (amparo) *proceedings; the protection of the federal courts was granted and the suspension of the payment of wages to SUTSEM members was ended.*

306. *Under these circumstances, noting that, according to information supplied by the Government, the courts ruled in favour of the SUTSEM officials who had been dismissed for their participation in a strike in March 1998, the Committee requests the Government to ensure that the persons in question are reinstated in their posts without loss of pay and requests the Government to keep it informed of any measures taken in this regard.*

307. *As regards the alleged threat of arrest without just cause made against the union official, Mrs. Galicia Agueda, as part of an anti-union campaign instigated by the Nayarit state authorities, the Committee notes that the Government categorically denies that there were any threats of arrest and that, although legal proceedings were initiated against such an eventuality, they were not successful. Under these circumstances, taking into account the fact that the complainant has not provided any more detailed information or evidence in support of these allegations, the Committee will not pursue its examination of this allegation.*

THE COMMITTEE'S RECOMMENDATION

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

The Committee requests the Government to ensure that the union officials belonging to the Executive Board of the Single Trade Union for Employees of the State, Municipal Authorities and Decentralized Industries in Nayarit (SUTSEM) who were dismissed for their participation in a strike in March 1998 are reinstated in their posts without loss of pay and requests the Government to keep it informed of any measures taken in this regard.

Case No. 2020

Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Nicaragua presented by the "Enrique Schmidt Cuadra" Federation of Communications and Postal Workers (FCPW)

Allegations: Dismissals and other anti-union acts; forced entry into union premises and confiscation of property

309. The complaint in the present case is contained in a communication dated 30 March 1999 from the "Enrique Schmidt Cuadra" Federation of Communications and Postal Workers. The Government sent its observations in a communication dated 6 August 1999.

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

A. THE COMPLAINANT'S ALLEGATIONS

311. In its communication of 30 March 1999, the "Enrique Schmidt Cuadra" Federation of Communications and Postal Workers states that on 14 May 1997 it submitted a list of demands to the Ministry of Labour with a view to negotiating a new collective agreement within the Nicaraguan Telecommunications Company (ENITEL). After 16 months of talks, in which two other trade union organizations of the company participated, deadlock was reached by October 1998. The complainant states that on 19 October 1998 it organized a day of protest, which meant convening meetings of workers throughout the country to inform them that talks had reached deadlock, and that when the meetings ended workers were prevented from going back to work. According to the complainant, from this moment onwards there began a campaign of repression and defamation directed against it. Specifically, the complainant alleges the following:

— the dismissal of 367 workers including 58 union officials (according to the complainant, the company took advantage of damage caused by "Hurricane Mitch" to accuse the dismissed workers of causing damage in the company);
— the seizure of union offices in León, Chinandega, Granada and Matagalpa, as well as the confiscation of union documents and other property;
— the use of pressure on workers to force them to leave the union organization;
— the use of pressure in the form of threats of dismissal in order to force workers to relinquish the benefits of the collective agreement and the representation by the complainant.

312. Lastly, the complainant states that there has been no progress in the administrative actions initiated in connection with the allegations and that although five applications have been brought before the courts to secure the reinstatement of the dismissed workers, 312 of the workers affected have been forced on economic grounds to accept the settlements.

B. THE GOVERNMENT'S REPLY

313. In its communication of 6 August 1999, the Government states that on 14 May 1997 the "Enrique Schmidt Cuadra" Federation of Communications and Postal Workers, the National Union of Telecommunications and Postal Workers (SINTRATELCO) and the "Eighth of April" Trade Union submitted a list of demands to the district inspectorate for the construction, transport and telecommunications sector with a view to negotiating a collective agreement with the Nicaraguan Telecommunications Company (ENITEL), following an initial meeting on 30 June 1997. The Government states that by 13 October 1998 only four clauses remained to be negotiated. The Government explains that the Labour Code provides for a period of 23 days for negotiating a collective agreement, but that in practice the period is extended, which leads to the parties becoming aggressive in their demands as talks progress and this creates a climate of distrust. Faced with such a situation, the Ministry of Labour started conciliation proceedings with a view to ending the deadlock. The Government indicates that in the present case, after the parties had been called on to continue talks on 20 October 1998, the workers of the "Enrique Schmidt Cuadra" Federation carried out a stoppage in most sections of ENITEL on 19 October 1998. Following these events, the Ministry of Labour called on the parties to continue talks, which are still in progress. The Government states that during the negotiating sessions a group of workers in positions of trust (more than 470) in ENITEL asked to be excluded from the terms of the collective agreement and requested that no trade union body represent them in the talks. The parties to the talks requested the Ministry of Labour to give a ruling on these requests. A ruling was given and two of the three trade union organizations involved in the talks appealed against it; the appeal did not interrupt the talks, the last session of which took place on 1 June 1999. The Government states that the parties to the talks have been using delaying tactics, and that numerous reasons are given for impeding progress in the talks.

314. As regards the allegations concerning the dismissals of workers following the day of protest in the company ENITEL, the Government states that these occurred following a work stoppage during which members of the "Enrique Schmidt Cuadra" Federation abandoned their posts. This stoppage involved actions aimed at disrupting and hindering the company's technical and administrative operations of providing a public telephone service. These actions were accompanied by acts of violence which resulted in damage being done to company vehicles and disrespect being shown to management and to other company workers. Entrances to company premises in Managua and at various branches throughout the country were blocked, thus preventing non-protesting workers and customers from getting in. The Government adds that the workers broke the company's internal regulations and violated the Labour Code and their own contracts of employment, and that for this reason ENITEL sought the cancellation of the employment contracts of workers who had participated in the day of protest. The Government emphasizes that actions which prevent the State from meeting its obligations to provide the basic services listed in article 105 of the Constitution, including communications services, cannot be tolerated.

315. Lastly, the Government states that as regards the allegations concerning the seizure by paramilitary units of trade union premises in León, Chinandega, Granada and Matagalpa and the confiscation of union documents and property, no complaints concerning such allegations have been received by the administrative authorities.