hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other." In this regard, the Committee has previously emphasized that the Recommendation in question stresses the role of workers' organizations as one of the parties in collective bargaining. Direct negotiation between an undertaking and its employees, bypassing representative organizations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted. [See ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 786.] The Committee therefore considers that the Government should see to it that activities which naturally pertain to trade unions are carried out by trade union organizations that are independent of employers, and in particular that workers' collectives do not encroach on the normal functions of trade unions, particularly with regard to strikes and collective bargaining.*

513. *With respect to the notice of strike action given by the complainant after a request had been made, according to the complainant, for conciliation proceedings to be started, the Committee has taken note of the two court rulings supplied with the complaint that the planned strike was illegal. The Committee notes that the Odessa Regional Court considered that the available dispute settlement procedures had not been exhausted and that no attempt at conciliation had been made. The court ruled that the port provided a continuous service and that, in accordance with section 18 of the Transport Act which prohibits strike action in such cases, the strike notice should be declared illegal.*

514. *In cases concerning violations of the right to strike, the Committee has always recognized the right to strike of workers and their organizations as a legitimate means of defending their economic and social interests. It has also considered that the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations. [See* ***Digest****, op. cit., paras. 474 and 498.] The Committee has also emphasized that while the right to strike may be restricted or prohibited in essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, provided that the workers are given appropriate guarantees, port activities generally do not constitute essential services in the strict sense of the term, although they are an important public service in which a minimum service could be required in case of a strike. [See* ***Digest****, op. cit., paras. 526, 545 and 564.] The Committee, therefore, requests the Government to amend section 18 of the Transport Act to ensure that it cannot be construed as prohibiting strikes in ports.*

515. *As regards the allegation that threats were made against the leaders of the complainant union and against the union itself (seizure of financial records, closure of bank accounts, pressure, infringements of freedom of movement and an attempt to abduct the President of the NPRP), the Committee notes the Government's general statements to the effect that the Office of the State Prosecutor has been ordered to conduct an inquiry. The Committee is bound to express its concern at the nature of the allegations in question which, if true, would constitute grave violations of freedom of association. The Committee requests the Government to ensure that the inquiry is conducted with diligence and to keep it informed of the findings.*

THE COMMITTEE'S RECOMMENDATIONS

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

(a) With regard to the allegations that pressure was brought to bear on members of the complainant union by their employer, the Ilyichevsk Maritime Commercial Port, to leave the union, the Committee, recalling that proof of such inducement by an employer to leave a union can be very difficult when workers fear losing their jobs, requests the Government to order a new inquiry by an independent body enjoying the trust of both parties, with a view to establishing the circumstances of the resignations from the union and assessing the reliability of the allegations; if it is found that pressure was brought to bear on the workers to leave the union, the Committee requests the Government to ensure that this does not recur and to keep it informed of the outcome of the inquiry.

(b) As regards the allegation concerning the use of the employer's own funds to set up a young workers' association, the Committee requests the Government to ensure that the functions carried out by the association in question do not encroach on the normal activities of a trade union organization.

(c) As regards the allegations concerning the workforce meeting, the Committee requests the Government to ensure that activities which naturally pertain to a trade union are carried out by independent trade union organizations, and in particular that workers' collectives do not encroach on the normal functions of trade unions, particularly in matters relating to strikes and collective bargaining.

(d) As regards the court rulings that the strike planned for 7 September 1998 was illegal, the Committee, emphasizing that the ports do not constitute essential services in which strikes might be prohibited, although they are important public services in which a minimum service might be required in the event of a strike, requests the Government to amend section 18 of the Transport Act in order to ensure that it cannot be construed as allowing the prohibition of strikes in ports.

(e) The Committee expresses its concern at the serious nature of the allegations concerning physical and legal threats against the President of the complainant union and against the union itself (seizure of financial records, closure of bank accounts, pressure on workers, infringements of freedom of movement, an attempt to abduct the President of the NPRP), and requests the Government to ensure that the inquiry which the State Prosecutor's Office has been ordered to conduct is carried out with diligence, and to keep it informed in this regard.

Case No. 2038

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

Complaint against the Government of Ukraine presented by the Free Trade Union's Federation of Ukraine (FTUFU)

Allegations: Adoption of legislation contrary to freedom of association

517. The complaint of the Free Trade Union's Federation of Ukraine is contained in communications dated 26 February and 2 July 1999. The Government sent its observations in a communication dated 30 July 1999.

518. Ukraine 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

519. The Free Trade Union's Federation of Ukraine states firstly that it is opposed to certain provisions, in particular articles 11 and 16 of the Act on "Trade Unions, their Rights and Safeguard of their Activities", which was recently adopted by the Supreme Rada of Ukraine. The complainant also explains that under the veto procedure, the President of Ukraine gave back the law for revision but did not request in his observations that the content of articles 11 and 16 be modified. Therefore, although the abovementioned Act is still being discussed by the Supreme Rada of Ukraine, the complainant maintains its position concerning the need to amend articles 11 and 16 of the Act.

520. More specifically, the Free Trade Union's Federation of Ukraine alleges that article 11 of the Act on "Trade Unions, their Rights and Safeguard of their Activities" violates Article 2 of Convention No. 87. Article 11 provides that "[...] trade unions shall have the district status if they have their organizational links in the majority of administrative territorial units of the same district and in the cities of Kiev and Sevastopol; [...] or they comprise the majority of trade union members of the same vocation or occupation working in the district and in the cities of Kiev and Sevastopol. The All-Ukrainian status of trade unions shall be determined on the basis of one of the following principles: (1) the existence of organizational trade union links in the majority of those administrative territorial units of Ukraine; (2) the existence of organizational trade union links in the majority of those administrative territorial units of Ukraine where the enterprises, institutions and organizations of a certain industry are located and which unite at least one-third of the trade union members of the industry; (3) the association in a trade union of the majority of trade union members of a certain vocation working in Ukraine.

521. The complainant alleges that the provisions of article 11, by stipulating the conditions for providing trade unions with local, regional and All-Ukrainian status — according to which in order to provide a trade union with regional and All-Ukrainian status it should unite more than half of the workers of the appropriate industry or should have its organizational units in the majority of administrative territories of Ukraine — are violating the constitutional principle of the equality of all trade unions. According to the complainant, this article creates unequal conditions for the trade unions of Ukraine since only the state-supported trade unions comprising the Federation of Trade Unions of Ukraine would meet such requirements.

522. Another point raised by the complainant concerns the provisions of article 16 of the abovementioned law. This article provides that "the legalization of the trade unions and their associations shall be compulsory and shall be carried out by the way of their registration, [...] the application for registration shall be considered within one month from the date of the receipt of the documents. During this period of time, the legalizing body shall carry out the verification of the correspondence of the status with the provisions of article 11 of the present law, introduce the organization into the register of the association of citizens and issue a certificate". According to the complainant, this article entails that a trade union is considered to be established only after its registration by the appropriate state bodies. This violates the Constitution of Ukraine and it would lead to state interference in the process of creating a trade union and would bring the end of the independent trade union movement in Ukraine.

523. In addition, the complainant finds unacceptable part 2 of the final provisions of the Act which provides that "trade unions and their associations which have already acted in the territory of Ukraine shall be obliged within six months from the entry into force of the present law to be legalized in accordance with this law without paying any registration fee". This would entail the automatic dissolution of all trade unions which do not comply with the provisions of articles 11 and 16 of the new law.

B. The Government's reply

524. The Government states firstly that the allegation according to which article 11 of the law on "Trade Unions, their Rights and Safeguard of their Activities" violates the principles of equality, independence and democracy in the establishment of free development of trade unions is without foundation. The Government explains that article 2 of the Act states that the purpose of setting up trade unions is to represent, implement and defend citizens' labour and socio-economic rights and interests. Under the Act, a union's right and powers to defend its members' interests does not depend on its status. As regards the status of trade unions, the Government insists that this is established, in Ukraine as in many other countries, in order to determine the representation of a union at the national, regional and branch levels for the purpose of consultations, collective bargaining, participation in tripartite bodies, etc.

525. Concerning article 16 of the Act, under which unions must obtain legal recognition through registration, the Government explains that legal recognition means official recognition of trade unions once they have been established and therefore cannot be regarded as an "authorization".

526. Finally, the Government points out that the Act was drafted in direct consultation with union representatives. In particular, the Supreme Council's Social Policy and Labour Affairs Committee set up a consultative commission whose members included representatives of all the national trade unions. According to the Government, the final versions of articles 11 and 16 were proposed by trade union representatives. The Government acknowledges that a number of provisions in the Act are indeed not consistent with the Constitution and the national legislation of Ukraine but it is precisely for that reason that the President has referred the Act back to the Supreme Council for a further reading.

C. The Committee's conclusions

527. The Committee notes that this case relates to allegations concerning the adoption of a legislation on trade unions contrary to the principles of freedom of association. More specifically, the Committee takes note of the provisions of sections 11

and 16 of the Act on "Trade Unions, their Rights and Safeguard of their Activities" which are the main issues of the complaint.

528. *With regard to section 11 of the Act, the Committee notes that in order for a trade union to obtain district or All-Ukrainian status, it should unite more than half of the workers of the same vocation or occupation or should have its organizational units in the majority of administrative territorial units of the same district or in the majority of administrative territorial units of Ukraine. It also notes that article 16 provides for the compulsory registration of a union which will be carried out by a legalizing body who will verify the correspondence of the status of the union in accordance with the requirements of section 11. The Committee further notes that according to the final provisions of the Act, the existing trade unions will have six months from the date of entry into force of the Act to regularize their situation by registering themselves, otherwise their activities will become illegal.*

529. *Concerning section 11 of the Act, the Committee recalls that requirements regarding territorial competence and number of union members should be left for trade unions to determine in their own by-laws. In fact, any legislative provisions that go beyond formal requirements may hinder the establishment and development of organizations and constitute interference contrary to Article 3(2) of the Convention [see General Survey on freedom of association and collective bargaining, 1994, para. 111].*

530. *Concerning section 16 of the Act, the Committee recalls that national legislation providing that an organization must deposit its rules is compatible with Article 2 of the Convention if it is merely a formality to ensure that those rules are made public. However, problems may arise when the competent authorities are obliged by law to request the founders of organizations to incorporate in their constitution certain provisions which are not in accord with the principles of freedom of association. Furthermore, the Committee recalls that Article 7 of Convention No. 87 provides that "The acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 thereof". A legislation is thus compatible with the terms of the Convention if it automatically confers legal personality on the organization in question at the time of establishment, be it without formalities being observed, when the by-laws are deposited, or following a registration procedure or other formalities which are compatible with the Convention. However, in the present case, it appears that the provisions of sections 11 and 16 of the Act, which confer a certain status to a union if it unites more than half of the workers of the same vocation or occupation and then has to be registered in accordance with the status it has been granted, are not compatible with the provisions of Convention No. 87. The Committee recalls that the principle of freedom of association would often remain a dead letter if workers and employers were required to obtain any kind of previous authorization to enable them to establish an organization. This does not mean that the founders of an organization are freed from the duty of observing formalities concerning publicity or other similar formalities which may be prescribed by law. For instance, the requirement that a trade union shall have a registered office is a normal requirement in a large number of countries. However, these requirements must not be such as to be equivalent in practice to previous authorization. Even in cases where registration is optional but where such registration confers on the organization the basic rights enabling it to further and defend the interests of its members, the fact that the authority competent to effect registration has discretionary power to refuse this formality is not very different from cases in which previous authorization is required [see* ***Digest of decisions and principles of the Freedom***

of Association Committee, 4th edition, 1996, paras. 244 and 253; see also General Survey on freedom of association and collective bargaining, 1994, paras. 70 and 76].

531. Concerning the final provisions of the Act which grant six months to existing unions to regularize themselves through registration, the Committee is of the view that such provisions are not in themselves problematic. However, in this case, considering the requirements of sections 11 and 16 which are not compatible with the principles of freedom of association, these final provisions become unacceptable since they would amount to an administrative dissolution for unions which do not comply with them.

532. Finally, the Committee notes that the Government acknowledges that certain provisions of the Act are not consistent with the Constitution as well as national legislation. The Committee is of the view that in this context, new consultations with all trade unions, including the complainant organization, should take place in order to eliminate the shortcomings of the Act and it therefore requests the Government to take all necessary measures to bring sections 11 and 16 of the Act on "Trade Unions, their Rights and Safeguard of their Activities" into full conformity with the provisions of Convention No. 87. The Committee requests the Government to keep it informed in this regard.

THE COMMITTEE'S RECOMMENDATIONS

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

(a) Considering that sections 11 and 16 of the Act on "Trade Unions, their Rights and Safeguard of their Activities" are in violation of Convention No. 87 and that new consultations with all trade unions, including the complainant organization, should take place in order to eliminate the shortcomings of the said Act, the Committee requests the Government to take all necessary measures to bring sections 11 and 16 of the Act into full conformity with the provisions of that Convention and to keep it informed in this regard.

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

Case No. 1986

Interim report

Complaint against the Government of Venezuela
presented by
the Single Union of Workers of FUNDARTE (SINTRAFUNDARTE)

Allegations: Dismissals and other anti-union acts and failure to deduct trade union dues

534. The complaint in the present case involves a communication from the Single Union of Workers of FUNDARTE (SINTRAFUNDARTE) dated 1 October 1998. The Government sent its observations in communications dated 4 November 1998 and 12 October 1999.

535. Venezuela 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

536. In its communication dated 1 October 1998, the Single Union of Workers of FUNDARTE (SINTRAFUNDARTE) states that the Federal District Foundation for Culture and the Arts (FUNDARTE) is a Venezuelan State foundation dependent on the mayor's office of the Autonomous "Liberating" Municipality of the Federal District and that the municipal authority is competent to define the mandate of FUNDARTE. In Venezuela, workers of state foundations are covered by the sphere of application of the general labour legislation, meaning basically the Organic Labour Act.

537. The complainant reports that on 8 September 1997, a group of workers representing the absolute majority of FUNDARTE's staff presented to the Federal District Labour Inspectorate a request for SINTRAFUNDARTE to be entered into the trade union's register. It adds that the workers' group took the initiative in founding a union organization as a rebuff to the accords reached in the new collective agreement between the employer and the trade union representing the industry, of which they were members at that time; the complainant reports that the workers had rejected the employer's wage increase proposal unanimously and publicly at two general assemblies of members, but that the executive committee of the industry trade union had nevertheless accepted the proposed increase and decided to sign the collective agreement, flouting the democratic decision of its members and leading to mass resignations of membership.

538. The complainant reports that on 28 October 1997, the Federal District Labour Inspectorate entered the Single Union of Workers of FUNDARTE (SINTRAFUNDARTE) into the register and that from this date the FUNDARTE management began a policy of anti-union discrimination against the workers belonging to that new union, especially against the members of the executive committee, and likewise a policy of favouritism towards the industry trade union which retained membership among a minority of FUNDARTE's workers. Specifically, the complainant alleges that:

— On 29 October 1997, FUNDARTE dismissed, in an arbitrary and unconstitutional manner, 30 workers belonging to SINTRAFUNDARTE in possession of trade union immunity. According to the complainant, this was a clear retaliation against workers who had decided to exercise their right freely to establish the organizations they considered appropriate. The complainant reports that proceedings relating to trade union rights are handled and decided by labour inspectors, who have to judge whether the reason for dismissal was just; those proceedings are governed by the Organic Labour Act, which requires them to be rapid, simple, free from formality, free of charge and accessible, yet in practice these proceedings do not ensure "adequate protection" against acts of anti-union discrimination in respect of the workers' employment. In this connection, the complainant reports that: (1) the union officials in question lodged with the administrative authorities in November 1997 a petition for re-employment and payment of wages due and that only on 19 May 1998 was an administrative ruling issued declaring the invalidity of the dismissals and ordering re-employment and payment of the wages due to the affected union officials; the legal timescale for the decision was one month, but there was a large delay; and (2) FUNDARTE challenged the decision before Work and Labour Stability Tribunal No. 9 of Caracas Metropolitan Area, asked for the labour inspector's order on re-employment and wage payment to be declared void and at the same time asked for

the order's effects to be suspended provisionally as a preventive measure until such time as the Tribunal took a definitive decision on the validity of the challenge. The Tribunal decreed the suspension of the labour inspection decision until it reached a decision on the substance of the matter; this could take one or two years because of the delays in the Venezuelan judicial system, leaving the affected workers without the protection provided for under Article 1 of Convention No. 98.

— In February 1998, FUNDARTE dismissed, in an openly anti-union manner, another 11 workers belonging to SINTRAFUNDARTE; while they did not possess trade union immunity, three months had passed since the establishment of the new union.

— In February 1998, FUNDARTE unilaterally altered the payment procedures for all members of the executive committee of SINTRAFUNDARTE, deciding to discontinue payment by banker's cheque, the usual method in the organization, and to make payment by direct deposit into the workers' personal bank accounts, leading to extra operations and delays in salary payment. Subsequently, on 27 February 1998, FUNDARTE went on to reduce unilaterally the wages of all of the SINTRAFUNDARTE managing committee members.

— Finally, on 23 March 1998, FUNDARTE transferred to a different post in a different region Mr. Iván Polanco, secretary-general of SINTRAFUNDARTE, who as such enjoyed trade union immunity. The complainant explains that the official in question was transferred to an office without sanitation, located in a very dangerous area where all workers' lives were at risk because of the high rates of violence and the lack of police presence.

539. The complainant reports, in connection with the last claims (alteration of wage payment procedures, wage reductions and transfer of the secretary-general), that the members of the executive committee lodged actions with the Federal District Labour Inspectorate in March and April 1998. It adds that although these proceedings should under the legislation take a maximum of approximately one month (21 working days), no decision has been reached to date.

540. According to the complainant, the dismissals by the employer from 29 October 1997 to the present have affected only members of SINTRAFUNDARTE and are aimed at reducing the number of its members in order that it does not represent the majority of the workers and in order to benefit the industry trade union which signed the new collective agreement against its members' democratic decision. The complainant adds that the policy of favouritism pursued by FUNDARTE is also evidenced by the following:

— The employer has arbitrarily refused to fulfil its legal duty to deduct trade union dues from SINTRAFUNDARTE members' pay and forward them to its executive committee under article 132 of the Organic Labour Act, yet it has proceeded to deduct and forward dues for the industry trade union.

— The employer refuses to meet the SINTRAFUNDARTE executive committee in order to discuss the factors and decisions affecting its members and hear the union's complaints, but it continues to meet with the industry trade union and recognizes that union as representing also the members of SINTRAFUNDARTE.

— The employer prevents the SINTRAFUNDARTE executive committee from distributing written union communications to its members and the other workers, but does permit the other union freely to carry out such union tasks.

— The employer has threatened to dismiss, transfer or worsen the working conditions of workers meeting with or holding discussions with the members of the executive committee of SINTRAFUNDARTE.

541. The complainant declares that all of the allegations demonstrate on the part of FUNDARTE a clear policy of trade union favouritism against SINTRAFUNDARTE, implying a violation of ILO Convention No. 87.

B. The Government's reply

542. In its communication of 4 November 1998, the Government declares that the complainant's accusation is centred around presumed acts of anti-union discrimination committed by the Foundation for Culture and the Arts (FUNDARTE), an administrative body dependent on the mayor's office of the Autonomous Liberating Municipality of the Federal District (municipal executive authority). The Government explains that the actions described in the report can in some way be imputed to the Government of Venezuela, since it is clear that, however those actions may be judged, they are the result of measures by the municipal executive under the autonomy recognized by legislation; however, the Government of Venezuela (the national executive) has exercised all of the measures legally granted it under its mandate to protect the complainant's freedom of association.

543. In respect of the claim concerning a six-month delay by the Federal District Labour Inspectorate in deciding the petition "for re-employment and payment of wages due" lodged by a group of FUNDARTE workers, the Government reports that the petition for re-employment (or reinstatement in the previous post) is one of the mechanisms enshrined in Venezuelan labour legislation and guarantees the legitimate exercise of freedom of association through appropriate administrative proceedings substantiated and decided by a labour inspector. The subject of the petition for re-employment is expressly covered by section 454 of the Organic Labour Act, specifically for workers protected by trade union immunity who are subjected to dismissal, transfer or worsening of working conditions without the legally established authorization procedure having first been followed. It delimits the individual applicability of the standard in relation to those workers who are inalienable under the trade union immunity recognized by Venezuelan legislation in order to guarantee them full exercise of trade union activities.

544. Thus, the protection of freedom of association enshrined in Venezuelan legislation is twofold, with an administrative and a judicial aspect. The first requires the direct participation of the public executive authorities through the Ministry of Labour as the organ of the national executive which represents labour administration. That administrative protection consists of verifying certain procedures provided for in the Organic Labour Act, such as: (a) the procedure for assessment of infringement (authorization to dismiss); and (b) the procedure for re-employment or reinstatement in the previous post. Both procedures are substantiated and decided by a labour inspector. The final procedure under the administrative protection measures is the ultimate expression of the labour administration organs' penal function, expressly recognized in the Organic Labour Act: "section 443 — Employers may not: [...] Violation of these rules will be punished in the manner provided for by this law"; section 637: "An employer who violates the legal guarantees protecting freedom of association shall be subject to a fine of not less than [...]"; section 639: "An employer who fails to comply with the order to re-employ definitively and securely a worker with trade union immunity [...] shall be subject to a fine of not less than [...]"; section 645: "If the sanctions by fine as established in this Article cannot be applied, the violators shall be arrested and held for one day for each quarter of a minimum salary up to a limit of 30 days". The powers of the labour administration extend as far as this.

545. The second, judicial, element of protection is outside the control and direction of the administrative organs and rather part of the strictly judicial realm, managed by a different public authority.

546. The Government states that one of the typical defence and protection mechanisms provided by the current labour standards can be seen in use in this case guaranteeing administrative protection. Specifically, a re-employment procedure was established, showing that the procedure enshrined in the legislation was applied and implemented effectively in order to protect through the administrative authorities the right to conduct trade union activity. Even the complainant admits this. The events, far from demonstrating a destructive attitude or violation on the part of the Government of Venezuela, show rather that the appropriate administrative procedures were applied to this case of workers invested with trade union immunity suffering infringement of their rights in the very course of exercising trade union activities. The sense of the administrative official's decision on the occasion of considering and proceeding with the petition submitted for re-employment or reinstatement in the previous post in no way relates to the objective of the procedure established in law; however, the effectiveness of this procedure lies not in a declaration that the claim is well founded, but in a verification of each and every one of the acts giving rise to it (and in any case the decision of the labour inspector was in this case favourable to the members of the complainant organization).

547. Thus, the protection and assurance of "adequate protection"referred to by the complainant are provided not by a declaration that the claim by the author of the petition "for re-employment or reinstatement in the previous post" is well founded, unless Venezuelan legislation recognizes — as it does — such a guarantee, expressly providing for the party which considers its trade union rights to have been infringed to have recourse to a labour administration organ in order properly to apply the re-employment procedure.

548. Consequently, in accordance with the Organic Labour Act, once the re-employment procedure had been verified, an administrative act was issued in which the labour official declared the petition well founded and ordered the reinstatement of the plaintiffs to their posts and the payment of the wages due. Given all of this, it does not appear that there has been a violation by the Government of Venezuela of the workers' trade union rights.

549. The Government states that the labour inspector's six-month delay in reaching a decision on the re-employment petition, claimed by the complainant to be a violation of Article 1 of ILO Convention No. 98, is, far from being such a violation, symptomatic of the real time for administrative proceedings in Venezuela; this situation is not in itself justifiable, but can be viewed with a certain tolerance in the light of its cause, which is related to structural problems of the Venezuelan public administration which there would be no sense in discussing in more detail. However, it is important to emphasize that the Labour Inspectorate before which the re-employment petition was brought was that of the Federal District, which, in view of its location and the territory it covers, receives the highest number of petitions. Nevertheless, without claiming this to be an excuse or still less a licence for such practices in future, it is an unfortunate fact of life which realistically means that six months is not in itself an excessive or strange delay. If the Venezuelan Organic Labour Act provides for a period within which the administrative body should provide a decision, this shows the legislator's intention that it should be provided as rapidly as possible; however, in this case, the high numbers of cases being submitted on a daily basis to the competent labour official make it impossible to fulfil this. In any case, beyond the stipulation of a period within which the petition should be considered, there is an ultimate obligation to process and decide the matter, which was fulfilled in this case.

550. Concerning the complainant's claim that the labour inspector's administrative decision that the re-employment petition was well founded and the consequent order that the reinstatement of the workers in their posts were challenged by the employer before a

court and that its effects were suspended provisionally as a preventive measure, the Government wishes to emphasize that administrative protection is not the only aspect of the system for protection of freedom of association in Venezuela. The second aspect, judicial protection, is enshrined in section 456 of the Organic Labour Act and, with relevance to the case under examination, reads as follows: "The inspector shall reach a decision on the re-employment petition within eight working days of its submission. The decision is not subject to appeal, save that the parties retain the right of recourse to the relevant courts". Thus, the official's decision may be challenged in court.

551. In relation to this, it should be mentioned that the administrative decision by the labour inspector on the re-employment petition is an administrative act of a specific nature in that it is addressed to a particular person. The contents of that administrative decision issued by the Federal District labour inspector declaring well founded the petition for re-employment and payment of wages due draws by nature on the principles of administrative activity, which correspond to the limits and the discretion that belong to the administration. Thus, when FUNDARTE's legal representatives brought a legal appeal for annulment, they were making use of the resources which the law places at everyone's disposal for defence against actions by the public administration. The appeal process could not fail to take account of the labour administration's reasons in seeking to give effective protection to freedom of association. A labour inspector's actions in this respect could fail to be in accordance with the law and thus the affected party has every right to appeal against them.

552. It is necessary also to examine the issue of the lodging of an appeal against an administrative act together with a request for the act's effects to be suspended provisionally as a preventive measure. This is a precautionary measure requested by one of the parties which by nature is a precautionary arrangement adopted by the judge in view of the risk or danger that the sentence might be overturned. It is clear that in the case in point, the judge, before granting the preventive measure as requested, naturally assessed its propriety and verified the real existence of the impending risk. In the present case, the suspension of the effects of the administrative act declaring the re-employment petition well founded was an autonomous decision made by the judge at the party's request and is also a means of defence and upholding of a right, though by the legal rather than the administrative route. The information supplied by the complainant would seem to indicate something strange about the measure taken by the judge, yet this precautionary measure is a typical means of protection and defence in the legal realm and is recognized in Venezuelan legal standards. Consequently, it is considered that both the re-employment petition and the challenge to the administrative act which resolved the petition are appropriate measures provided for under Venezuelan legislation and demonstrate the protection of freedom of association by the Venezuelan State.

553. The Government concludes by declaring that it considers unfounded and inadmissible the supposed violations of workers' trade union rights alleged by the complainant.

554. As concerns the dismissal of 31 members of SINTRAFUNDARTE, the Government states in its communication of 12 October 1999 that the legal adviser of FUNDARTE (an institution falling within the Autonomous "Liberating" Municipality of the Federal District) indicates that these dismissals did not occur because of union membership but rather were the result of decisions taken by the Directors' Council and Executive Committee of FUNDARTE on the basis of Decree No. 20 of 10 June 1996 concerning the process of restructuring the dependent entities of the municipality, approved by the city council of Caracas. The Government adds that out of the 31 employees dismissed by FUNDARTE, 15 had voluntarily indicated that they wanted to receive their

social benefits in accordance with the administrative decision of 19 May 1998 issued by the Labour Inspectorate of the Federal District. This means that the Government is now awaiting the tribunal decision concerning the reintegration and the payment of lost wages for the 16 workers who have decided to pursue their claims in court.

555. As concerns the matter of whether the conditions for payment of wages to the executive committee of SINTRAFUNDARTE were changed and whether their salaries were cut, the Government indicates that, according to the legal adviser of FUNDARTE, no such changes were made and the concerned persons had received a remuneration in conformity with the post which they occupied in the Foundation, just as everyone else in the institution.

556. As concerns the secretary-general of SINTRAFUNDARTE, the Government indicates that he had indeed been transferred for reasons of service, from one administration to another, within the principal headquarters of FUNDARTE, Bldg. Tajamar, Pent House, Central Park, which according to the FUNDARTE legal adviser in no way worsened his working conditions.

557. Finally, with respect to trade union dues, the Government states that they are no longer withheld from pay given that the administration of the internal affairs of FUNDARTE, through its personnel department, had not received any notification concerning the percentage which should be withheld, nor did it receive the necessary signed authorization from the members of SINTRAFUNDARTE in order to carry out the check-off referred to, but at no moment, as indicated by FUNDARTE, had the employer refused to discuss with the executive committee of the union.

C. The Committee's conclusions

558. *The Committee notes that in the present case the complainant alleges that following its registration by the Labour Inspectorate, its members suffered a campaign of anti-union discrimination by the management of the Federal District Foundation for Culture and the Arts (FUNDARTE). Specifically, the complainant alleges: (1) dismissal of 41 union members — 30 in October 1997 who had trade union immunity, and 11 in February 1998 — and delays on the part of the administrative authority in resolving both a petition for the reinstatement of the 30 workers with trade union immunity and a subsequent suspension of the said reinstatement ordered by the administrative authority as a consequence of legal action by the employer; (2) alteration of payment procedures and reduction of the wages of the members of the SINTRAFUNDARTE executive committee, the transfer of the SINTRAFUNDARTE secretary-general, and delays in the administrative processes launched as a result of those acts of anti-union discrimination; (3) failure to deduct trade union dues from SINTRAFUNDARTE members' pay; (4) refusal on the part of the employer to hold discussions with the SINTRAFUNDARTE executive committee within the context of favouritism towards another trade union, obstructing of written communications between the executive committee and the workers and threats of reprisals against workers communicating with the members of the executive committee.*

559. *In respect of the allegation concerning the dismissal in October 1997 of 30 union members enjoying trade union immunity and the subsequent suspension of the reintegration ordered by the administrative headquarters as a result of the judicial action undertaken by the employer, the Committee notes that the Government refers to 31 dismissals (while the complainant only refers to 30 dismissals) and indicates that: (1) the dismissals were not due to trade union affiliation but rather to the decisions made by the Directors' Council and Executive Board of FUNDARTE on the basis of Decree*

No. 20 of 10 June 1996 concerning the process of restructuring of the dependent municipal entities; (2) 15 of the dismissed workers voluntarily decided to receive the social benefits in agreement with the administrative decision issued by the Labour Inspectorate of the Federal District dated 19 May 1998; (3) the decision of the judicial authorities concerning the reintegration of and the payment of lost wages to the 16 workers who pursued their claims is being awaited; and (4) the judicial appeal against the administrative decision requested as a preventive measure the suspension of the effects of the decision and the decision taken was an autonomous one made by the judge at the party's request and is also a means of safeguarding and defending rights. In this respect, the Committee observes that while the Government indicates that the institution has stated that the alleged dismissals did not occur as a result of the union affiliation of the workers in question but rather in application of a 1996 Decree concerning a process of restructuring, it also notes that these dismissals occurred one day after the registration of the complainant organization and that the administrative authority had ordered the reinstatement of the 30 dismissed trade unionists. In the circumstances, observing that the judicial authority provisionally suspended, until a decision was reached on the substance of the matter, the decision on reinstatement of the dismissed trade unionists and payment of their outstanding salaries, and taking into account the time that had passed since the dismissals (which took place in October 1997), the Committee deplores the delay in the handling of this case and requests the Government to take steps to ensure the reinstatement in their posts of the 30 workers with trade union immunity, without loss of pay, at least until the judicial authorities have made a definitive pronouncement on the subject. The Committee requests the Government to keep it informed of developments in that respect.

560. *With respect to the allegation concerning delays on the part of the administrative authority in resolving the petition for the reinstatement of the 30 dismissed workers with trade union immunity (the case allegedly took six months), the Committee notes the Government's declaration that: (1) on implementation of the procedure provided for under the Organic Labour Act for protection by the administrative authorities of the right to conduct trade union activities, the administrative authority ordered the reinstatement of the dismissed workers and payment of the wages due; and (2) the six-month delay by the labour inspector in reaching a decision on the reinstatement petition was "symptomatic of the real time of administrative proceedings in Venezuela, not in itself justifiable, but related to the structural problems of the Venezuelan public administration".*

561. *In this connection, the Committee observes that the Organic Labour Act provides in the case of dismissal of workers protected by trade union immunity for a procedure which should last no longer than 19 days (sections 454, 455 and 456 of the Act). In the circumstances, the Committee requests the Government to take the necessary steps to ensure that any action brought before the administrative authorities relating to workers with trade union immunity is resolved in the period enshrined in the legislation.*

562. *In respect of the allegations concerning the changes to the conditions of payment (by cheque and not as done traditionally by means of deposit in the bank account) and the cut in wages of the members of the executive committee of SINTRAFUNDARTE, the Committee notes the Government's indication that, according to FUNDARTE, no such changes were made and the workers in question received a remuneration in accordance with the post they occupied in the Foundation. The Committee observes the complainant's indication that it petitioned the Labour Inspectorate of the Federal District on this matter in March 1998 and that no decision has yet been rendered. In these circumstances, the Committee expresses the hope that the administrative*

authorities will render a decision in this respect in the very near future and requests the Government to keep it informed of the results of this petition.

563. *As concerns the allegation of the transfer of the secretary-general of SINTRAFUNDARTE (Iván Polanco), the Committee notes the Government's confirmation that his transfer occurred for service reasons, which according to FUNDARTE did not result in a worsening of his working conditions. The Committee notes the complainant's indication that it petitioned the Labour Inspectorate of the Federal District on this matter in April 1998 and that no decision has yet been rendered. In these circumstances, the Committee expresses the hope that the administrative authorities will render a decision in this respect in the very near future and requests the Government to keep it informed of the results of this petition.*

564. *As concerns the allegation of the absence of check-off of trade union dues of SINTRAFUNDARTE members, the Committee notes the Government's statement that the dues were not withheld because the administration for internal affairs of FUNDARTE had not yet received any notification concerning the percentage to be withheld, nor had it received the necessary signed authorization from SINTRAFUNDARTE members. In this respect, the Committee requests the Government to ensure that FUNDARTE proceeds with the withholding of the amount corresponding to the trade union dues and transfers it to SINTRAFUNDARTE as soon as it receives the required information in respect of the amount to be withheld, as well as the authorization of its members.*

565. *Concerning the alleged refusal of the employer (FUNDARTE) to discuss with the SINTRAFUNDARTE executive committee within the context of favouritism to another trade union, the Committee notes the Government's indication that, according to FUNDARTE, at no moment did FUNDARTE refuse to discuss with the executive committee. In these circumstances, and noting the contradiction between the complainant's and FUNDARTE's versions, the Committee requests the Government to carry out its own investigation into the matter and to keep the Committee informed in this regard.*

566. *Finally, the Committee urges the Government immediately to communicate its observations concerning the following allegations: (1) the dismissal of 11 SINTRAFUNDARTE members in February 1998; (2) the obstructing of written communications between the SINTRAFUNDARTE executive committee and the workers; and (3) the threats of reprisals against workers communicating with the members of the executive committee.*

THE COMMITTEE'S RECOMMENDATIONS

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

(a) In respect of the allegations concerning the dismissal in October 1997 of 30 unionists protected by trade union immunity and the subsequent suspension of their reintegration ordered by the administrative headquarters as a result of the judicial action taken by the employer, the Committee deplores the delay in the handling of this case and requests the Government to take steps to ensure the reinstatement in their posts of these 30 workers without loss of pay at least until the judicial authorities have made a definitive pronouncement on the subject. The Committee requests the Government to keep it informed of developments in that respect.

(b) *The Committee requests the Government to take the necessary steps to ensure that any action brought before the administrative authorities relating to workers with trade union immunity is resolved in the period enshrined in the legislation (sections 454, 455 and 456 of the Organic Labour Act).*

(c) *In respect of the allegations concerning the changes to the conditions of payment (by cheque and not as done traditionally by means of deposit in the bank account) and the cut in wages of the members of the executive committee of SINTRAFUNDARTE, the Committee expresses the hope that the petition made by the complainant to the administrative authorities in this respect will be resolved in the very near future and requests the Government to keep it informed of the results of this petition.*

(d) *As concerns the allegations of the transfer of the secretary-general of SINTRAFUNDARTE (Iván Polanco), the Committee expresses the hope that the petition made by the complainant before the administrative authorities in this respect will be resolved in the very near future and requests the Government to keep it informed of the results of this petition.*

(e) *As concerns the allegation of the absence of check-off of trade union dues of SINTRAFUNDARTE members, the Committee requests the Government to ensure that FUNDARTE proceeds with the withholding of the amount corresponding to the trade union dues and transfers it to SINTRAFUNDARTE as soon as it receives the required information in respect of the amount to withhold as well as the authorization of its members.*

(f) *The Committee requests the Government to carry out an investigation into the allegations concerning the refusal of FUNDARTE to discuss with the executive board of SINTRAFUNDARTE within the context of favouritism towards another trade union and to keep the Committee informed in this regard.*

(g) *The Committee urges the Government immediately to communicate its observations concerning the following allegations: (1) the dismissal of 11 SINTRAFUNDARTE members in February 1998; (2) the obstructing of written communications between the executive committee of SINTRAFUNDARTE and the workers; and (3) the threats of reprisals against workers communicating with the members of the executive committee of SINTRAFUNDARTE.*

Case No. 1993

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

Complaint against the Government of Venezuela presented by the Trade Union of Public Employees of the Venezuelan Scientific Research Institute (SEPIVIC)

Allegations: Obstruction of collective bargaining procedure for public servants; refusal to negotiate certain clauses; delay in ruling on administrative appeals

568. The complaint in this case is contained in a communication from the Trade Union of Public Employees of the Venezuelan Scientific Research Institute (SEPIVIC) dated 27 October 1998.

569. The Government sent its observations in a communication dated 19 October 1999.

570. Venezuela 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

571. In its communication dated 27 October 1998, the Trade Union of Public Employees of the Venezuelan Scientific Research Institute (SEPIVIC) states that on 28 October 1997 it initiated the application procedure for the negotiation of a collective agreement, with the aim of regulating the conditions of employment of public servants employed in the Venezuelan Scientific Research Institute (IVIC). The application process proved to be extremely complicated and slow, given that once the draft collective agreement has been submitted to the Directorate of the National Inspectorate and Collective Labour Affairs, it has to be transmitted to the Office of the Public Prosecutor of the Republic, which in turn sends it to the Central Coordination and Planning Bureau of the Office of the President of the Republic (CORDIPLAN), which then sends a request for information to the public agency directly involved in bargaining, in this case the IVIC. The bargaining procedure is governed by Decree No. 1599, which sets forth partial regulations under the Organic Labour Act for the negotiation of collective agreements of officials or employees in the national public administration, and was published in *Official Gazette* No. 34743, dated 26 June 1991. The phase described above lasted a total of nine months from the date on which the collective agreement was submitted to the date of the first meeting between the trade union organization, the agency involved and the Public Prosecutor's Office.

572. The complainant adds that following this lengthy waiting period, the IVIC, the Public Prosecutor's Office and the trade union held their first meeting in the collective bargaining procedure on 23 July 1998, at which the IVIC stated its refusal to initiate collective bargaining, alleging that CORDIPLAN had produced a technical/financial report which indicated that this agency did not have sufficient budgetary resources for 1998 to deal with or cover fully or in part the aspirations set forth in the draft collective agreement. Moreover, as regards the financial commitments that would be made under the collective agreement, it pointed out that this would require the prior approval of the President of the

Republic, through the Council of Ministers, in accordance with section 527 of the Organic Labour Act. Lastly, it stated that its refusal to negotiate was in conformity with section 2 of the abovementioned Decree No. 1599, i.e. the technical and financial requirements laid down by the Executive for collective bargaining. At the same meeting, the Public Prosecutor of the Republic unilaterally imposed the requirement that:

the parties may negotiate the clauses of the draft agreement that do not deal with financial aspects, as it will be for the Executive to lay down the directives in this area. Final approval of the clauses that have been negotiated will be subject to the submission of a financial study by the IVIC quantifying the benefits granted, which will be revised by CORDIPLAN, which will give its approval if it considers it to be within the technical and financial limits laid down by the Executive, failing which it will order the relevant adjustments to be made. All of the above is in conformity with section 15 of the partial regulations made under the Organic Labour Act mentioned above.

573. The complainant points out that the arguments put forward by both the IVIC and the Public Prosecutor of the Republic, in the case of the IVIC, led to the obstruction of the exercise of the right to collective bargaining and, in the case of the Public Prosecutor, subjected the content of bargaining to previously and unilaterally decided parameters, and to control or powers of veto that infringed the voluntary and free nature of bargaining, which means that the validity and effect of agreements were made conditional on prior approval by the Government. Faced with the above, the complainant denounced the fact that the conduct of the government authorities violated and infringed ILO Conventions Nos. 87 and 98. The initial position of the IVIC and the complainant led to a dispute which should have been settled by the Ministry of Labour. On 30 September 1998 the Directorate of the National Inspectorate and Collective Labour Affairs issued Administrative Decision No. 021, pursuant to its competence to settle the dispute that had arisen between the parties with respect to whether or not to continue collective bargaining. This decision only takes into account the arguments put forward by the IVIC and the other official bodies involved (the Public Prosecutor and CORDIPLAN), ignoring the allegations and defence put forward by the trade union, including that relating to the violation of international labour standards. The decision is based on the conclusions drawn by a report previously carried out by CORDIPLAN, citing the IVIC's insufficient budgetary resources; it states that the report is in conformity with the guidelines and directives issued by the Executive for negotiating conditions of employment with public servants; and it infers in advance that the commitments laid down in the collective agreement would exceed the IVIC's financial capacity. This is based on sections 2, 10 and 15 of Decree No. 1599; it also declares that it is unlawful or impossible to pursue the collective bargaining process for which the application had been made nearly a year earlier. In other words, the Ministry of Labour ordered that the collective bargaining process be terminated.

574. The complainant alleges that the free and voluntary nature of collective bargaining, as well as the obligation to encourage and promote the exercise of this fundamental right, have been infringed as follows: (1) the Public Prosecutor's Office, as director of the bargaining process and Attorney-General of the Republic, imposed the condition at the first stage of the bargaining process that financial clauses would be excluded from the discussions and any resulting agreements at the outset. It points out that it will be the Executive which will unilaterally determine the aspects of the agreement on this subject. It also points out that the clauses agreed on will be subject to financial studies carried out by the IVIC and final approval will be given by CORDIPLAN, which will be able to make any adjustments it sees fit to make in order for the agreement to be effective and valid. This initial position on the part of the Public Prosecutor's Office constitutes an imposition, since to oppose it would initially mean paralysing the bargaining process, since it is not possible to conclude any agreement or sign any minutes in the bargaining process

that have not been drafted by the Public Prosecutor's Office; (2) the IVIC, as the agency directly involved, cites financial and budgetary reasons in order to refuse a priori to negotiate conditions of employment. In disregard of good faith, the IVIC requests that the bargaining process be declared inadmissible and that the Ministry of Labour terminate it, thus preventing the continuation of the bargaining effort, the application for which has lasted nearly a year. According to the complainant, the position taken by this official body presupposes that the collective agreement in any case includes clauses with a financial impact, overlooking the fact that the parties to bargaining may agree voluntarily and freely to postpone discussion of these clauses and focus initially on discussing and approving other contractual provisions relating to relations between the parties (union clauses), occupational safety and health, or others with a social content that do not involve any expense or that have only a slight or very limited impact on the budget; and (3) the Ministry of Labour, through the Directorate of the National Inspectorate and Collective Labour Affairs, when settling the dispute between the parties, upheld the IVIC's claim and ordered that the bargaining process be terminated, on the basis of a study previously carried out by CORDIPLAN citing alleged insufficient budgetary resources. Along the same lines, it considers that to continue bargaining would violate the directives and technical and financial requirements issued by the Executive, which were allegedly included in the report drawn up by CORDIPLAN. According to the complainant, the position taken by the Directorate of the National Inspectorate and Collective Labour Affairs constitutes a violation of the obligation to encourage and promote the exercise of the right to collective bargaining and also violates this right, since its decision has led to the termination of the process for which application had been made in 1997.

575. Lastly, the complainant states that the Executive, through the partial regulations governing the negotiation of collective agreements of officials or employees in the national public administration, carried out a series of acts of intervention with regard to the matters that are or have been the subject of collective bargaining, including the requirements and budgetary commitments undertaken in the course of bargaining. Under these provisions, the effect of agreements concluded by the parties in the process of collective bargaining shall be subject to or conditional on prior approval by the Public Prosecutor's Office and CORDIPLAN. Firstly, provision is made for control over the substance or content itself of the clauses of agreements by the Public Prosecutor in his capacity as moderator and director of the bargaining process. Pursuant to this, the agreements concluded by the parties have no validity, since their definitive form is shaped by the Prosecutor's declaration of conformity which must be imperatively recorded in each of the minutes drawn up in the process. Secondly, once the "definitive agreement" has been reached by the parties and the power of control mentioned above has been exercised, the Public Prosecutor submits the collective agreement to CORDIPLAN. This agency has the task of carrying out budgetary or financial control within a 30-day time limit starting from the date on which the agreements were received. This control takes the form of a binding or mandatory report containing a financial assessment of the agreements, a determination of the cost involved, the differences between the terms of the agreement and existing conditions of employment, and a conclusion to the effect that the terms of the agreement do not exceed the technical and financial requirements and limits previously fixed by the Government. According to the complainant, the control exercised by CORDIPLAN, in addition to constituting an obstacle to the bargaining process, implies a clear power of prior approval of collective agreements, since the effect of an agreement is conditional upon the issuance and notification of a report on the conformity of the agreements with the directives and policies formulated by the Government as part of its economic and social programme.

576. Lastly, the complainant indicates that, in the case of collective agreements of public employees or officials, in addition to the procedures and powers of control granted to the Public Prosecutor's Office and CORDIPLAN, the Council of Ministers may, under section 527 of the Organic Labour Act, intervene in turn by approving or withholding approval from the scope of agreements with a financial impact if they commit public funds for more than two periods or years, which means in practice that all collective agreements have to be submitted to this body of the Executive, since under the labour legislation agreements shall be valid for not more than three and not less than two years.

577. In a communication dated 27 April 1999, the complainant provides a summary of the administrative steps taken since 1994 with a view to negotiating a collective agreement and of the obstacles it has encountered along the way, culminating in the administrative decision of September 1998 referred to in the communication containing the complaint, which ordered the termination of the bargaining process between the trade union and the IVIC. Lastly, the complainant states that it has lodged an administrative appeal against this decision but that no decision has been handed down by the administrative authority six months after this action was initiated.

B. The Government's reply

578. In its communication of 19 October 1999, the Government indicates that, under section 519 of the Organic Labour Act, Venezuelan labour jurisprudence provides the possibility for the parties concerned in the collective bargaining process to put forward, at one single and specific moment — the first meeting officially convoked by the labour officer — the allegations and defence which it considers appropriate to propose to exclude itself from negotiating the given draft collective agreement. It is for the labour inspector to decide on the merits of these arguments. The creation and recognition of this distinct route relates to whether it is a question of collective contracts in public sector enterprises or whether they are in the private sector. Far from signifying a discrimination or a violation of the voluntary character and free negotiation of collective agreements, it is rather a matter of guaranteeing and procuring the conclusion and subsequent signing of the collective agreement by the State in a conscious and responsible manner. Any other approach would certainly amount to a disrespect for, and even an impairment of the rights of workers wishing to establish their working conditions, or even to modify existing agreements, through a legal instrument of a contractual nature (collective agreements), where prior verification of draft collective agreements is necessary and should be done by the Central Coordination and Planning Bureau of the Office of the President (now the Minister of Planning and Development) in order to determine the technical and financial resources within the National Executive for ensuring this agreement, before the definitive signing.

579. In respect of the allegation concerning Administrative Decision No. 021 of 30 September 1998 issued by the Directorate of the National Inspectorate and Collective Labour Affairs, the Government indicates that this request had been dealt with in the correct channels in accordance with Venezuelan jurisprudence; it concerns an administrative act and as such may be handled either administratively or through the courts and in either case the requirements of the Act are fulfilled. The Government adds that Venezuelan jurisprudence effectively provides under section 519 of the Organic Labour Act for the possibility of verifying any eventual opposition to the commencement of discussions on a draft collective agreement. In the present case, it follows from what was expressed by the complainant that the employer's representation (IVIC) opposed in a timely fashion the initiation of discussions concerning the draft presented by the SEPIVIC union.

580. The Government indicates that, at the same time — the first conciliation meeting — the Public Prosecutor urged the parties to the discussion and negotiation of the draft collective agreement to leave aside the discussions concerning any clauses of an economic nature; these would be finally approved by the Central Coordination and Planning Bureau of the Office of the President (now the Minister of Planning and Development). This declaration, according to the complainant, signifies submitting the contents of the negotiations to previously and unilaterally determined parameters, thus conditioning the validity and force of the agreements which had been arrived at by the parties. According to the Government, Venezuelan jurisprudence in force at the time of the negotiation of the draft of the collective agreement in question provides for a distinct treatment of proposals to establish working conditions for officials or employees in the National Public Administration.

581. The Government indicates that Presidential Instruction No. 6 on Collective Bargaining in the Public Sector recognizes the impossibility for the employer representation to sign a negotiated contract given their lack of knowledge of the economic and technical report of the Central Coordination and Planning Bureau of the Office of the President, as well as for not having pointed out that the new economic agreement should not exceed the limits provided by the National Executive (section 7). The Partial Regulations of the Organic Labour Act (Decree No. 1599) for its part provides that in the case where the Central Coordination and Planning Bureau of the Office of the President determines that the proposed agreement exceeds the technical and financial limits set forth by the Executive, it should be returned to the parties so that they might make the necessary adjustments.

582. The Government points out that the declaration of the Public Prosecutor according to which the parties should be able to discuss the presented draft with the exception of those clauses with economic consequences which should be approved by the Central Coordination and Planning Bureau of the Office of the President is logical; such a declaration does not signify a violation of the free and voluntary nature of negotiations but rather signals out the difference in the procedure for finalizing collective agreements in the public sector. The case being examined concerns an autonomous institution which given its special nature remains governed by the principles of budgetary controls which need to be established by the National Executive. This would be a different case if it were a question of a private enterprise which had the status of employer where the finalization of collective agreements solely and exclusively depends upon the employer's own situation, without the need to submit the approximate cost of a draft agreement for the approval of any entity; that would be a decision which could be determined in its own internal sphere of the private economic unit and thus would not be subject to principles of budgetary availability.

583. The Government indicates that the new legal provision (the Regulations of the Organic Labour Act of January 1999) sets forth in Title III, Chapter III, Third Section, sections 182-192, provides for one single procedure for collective bargaining, with certain peculiarities for, on the one hand, the National Public Centralized Administration which are the same for the autonomous institutions, foundations, associations and state enterprises and, on the other, the collective agreements which devolve from state governments and municipalities. It shall be noted that in both cases it is essential to take into account the technical and financial criteria, in the first case set by the President and the Council of Ministers and, in the second case, set by the Governor and Mayor. It shall also be pointed out that, in section 188:

The state employer entity cannot sign the collective agreement until the report has been issued by the Central Coordination and Planning Bureau of the Office of the President of the Republic,

wherein it can be noted that the agreement proposed does not exceed the technical and financial limits set out by the National Executive.

Thus, all drafts of collective bargaining in the public sector will be covered by such regulations wherein fulfilment of respect for the abovementioned technical report is compulsory in order to be able to sign a new collective agreement. Nevertheless, section 266 provides that the collective bargaining process under way in the public sector at the time of the entry into force of these regulations will be covered by the Partial Regulations of the Organic Labour Act for Negotiating Collective Agreements of Officials and Employees in the National Public Administration or the abovementioned Presidential Instruction No. 6.

584. In respect of the allegation concerning the non-fulfilment by the Government of the obligation to promote and encourage the exercise of free and voluntary collective bargaining "by ordering through the Directorate of the National Inspectorate and Collective Labour Affairs and by means of Administrative Order No. 021, the termination of the collective bargaining process" and that the administrative authority in pronouncing itself with respect to this order simply limited itself to considering the arguments put forward by the enterprise and by the other bodies concerned (Public Prosecutor and CORDIPLAN), the Government states that, in conformity with section 519 of the Organic Labour Act, the labour inspector shall decide upon the arguments and allegations put forth by the employer representation for exclusion from discussing the proposed draft, by means of an administrative act (in the present case by Administrative Order), and any of the parties which considers that its rights have been violated by the decision taken by the labour official may, in accordance with the Act, appeal this decision.

585. The Government points out that it would have hoped that the complainant would have put the legal machinery into motion in order to assure the balance between the subjects concerned in the negotiation process, in particular through an appeal of this administrative decision.

C. The Committee's conclusions

586. *The Committee observes that in this case the complainant alleges obstruction of the procedure for the negotiation of a collective agreement with the Venezuelan Scientific Research Institute (IVIC). Specifically, the Trade Union of Public Employees of the Venezuelan Scientific Research Institute (SEPIVIC) alleges the following: (1) the lengthy and complicated procedure of collective bargaining for public servants and the submission to different bodies of definitive collective agreements already concluded, with the possibility that they may be amended, with the signing of the collective agreement being prohibited until then and the need for final approval by authorities other than the employer; (2) the lack of good faith on the part of IVIC in refusing to negotiate clauses of a collective agreement that do not have a financial impact; (3) failure of the Directorate of the National Inspectorate and Collective Labour Affairs to take account of the arguments put forward by the complainant in its decision of September 1998 (Administrative Decision No. 021) to settle the dispute between the SEPIVIC and the IVIC, ordering termination of the bargaining process; and (4) the delay in handing down a decision on the appeal lodged by the SEPIVIC against an administrative decision ordering termination of the bargaining process between the trade union and the IVIC.*

587. *As regards the alleged slow and complicated procedure governing collective bargaining of public servants and submission to different bodies of definitive collective agreements already concluded, with the possibility that they may be amended, it being prohibited until then to sign the collective agreement, and the need for final approval by*

authorities other than the employer, the Committee observes that sections 8 to 17 of the partial regulations issued under the Organic Labour Act for the negotiation of collective agreements of officials or employees of the national public administration (Decree No. 1599 of 1991) which applies in this case provide as follows:

Section 8. A trade union or occupational organization intending to conclude a collective agreement with a body of the national public administration shall submit the draft agreement to the National Labour Inspector, who shall require and verify compliance with the requirements laid down in section 516 of the Organic Labour Act.

Section 9. Once the draft collective agreement has been accepted, the National Labour Inspector shall forward a copy of it to the Public Prosecutor of the Republic and the body concerned.

Section 10. The Public Prosecutor of the Republic shall request the public body to submit a comparative financial study drawn up in accordance with the standards laid down by the Central Coordination and Planning Bureau of the Office of the President of the Republic showing the costs involved in the current agreement or conditions of employment and in the proposed agreement and indicating the number of persons who are to participate in negotiations, who shall have extensive powers so that they may in no case allege that they have an insufficient mandate.

Section 11. The Public Prosecutor of the Republic shall notify the organization concerned of receipt of the draft agreement and shall request it to appoint a committee to represent it in discussions, membership of which shall not exceed seven persons.

Section 12. Discussions of collective agreements shall take place at the office of the Public Prosecutor of the Republic. Only in exceptional cases where due justification is provided may the Public Prosecutor authorize them in another location, provided that he, or a representative appointed for the purpose by him, shall be present.

Section 13. The Public Prosecutor of the Republic or his representative shall set the times of discussions.

Section 14. It shall be understood in any case that partial and final agreements reached by the representatives of the parties and of the Public Prosecutor shall be submitted to the latter for approval and this shall be recorded in the minutes of the discussions.

Section 15. Once the parties have reached a definitive agreement, the Public Prosecutor of the Republic shall send the approved text to the Central Coordination and Planning Bureau of the Office of the President of the Republic so that the latter may, within 30 working days following the date of receipt, carry out a financial study of the agreement and determine the cost involved in it and the difference with respect to current agreements or conditions of employment and shall verify that the commitment that has been negotiated does not exceed the technical and financial limits laid down by the Executive. The agreement cannot be signed until this report has been submitted.

Sole paragraph. Where the report of the Central Coordination and Planning Bureau of the Office of the President of the Republic determines that the commitment exceeds the technical and financial limits laid down by the Executive, it shall determine the adjustments necessary and return the text of the agreement to the Office of the Public Prosecutor of the Republic, so that the latter may notify the parties so that they may make the necessary adjustments within 30 working days following the observations of the planning office and submit the revised and adjusted text of the agreement to the Central Coordination and Planning Bureau of the Office of the President of the Republic for approval.

Section 16. The collective agreement shall be deposited with the General Sectoral Directorate of Labour of the Ministry of Labour, which shall send a copy to the Central Personnel Office.

Section 17. Failure to comply either with the technical and financial instructions laid down by the Executive or with the present provisions by the persons involved in negotiation on behalf of the national public administration shall entail their liability in accordance with the law.

588. *The Committee observes that this procedure which applies, may be followed by a further administrative procedure before the Council of Ministers, since the second paragraph of section 527 of the Organic Labour Act provides that: "Collective agreements*

involving payments in budgetary periods beyond the one in progress must be approved by the Council of Ministers" (according to the complainant all collective agreements must be submitted to this body, since the legislation provides that they shall be valid for not more than three and not less than two years).

589. *In this context, the Committee notes that the administrative procedure for negotiating a collective agreement in the public administration (covered by the partial regulations of 1991 under the Organic Labour Act for negotiating collective agreements for officials or employees of the national public administration) may be extremely lengthy — in this case the complainant alleges that nine months elapsed before the parties were able to begin negotiating — and that the definitive agreement reached between the parties must be approved by one or two bodies, depending on the case (the Public Prosecutor of the Republic and possibly also the Council of Ministers).*

590. *While the Committee is aware of the particular problems arising in collective bargaining in the public administration (for example, remuneration and other conditions of employment of public servants which involve a financial cost need to be reflected in public budgets subject to approval by bodies that are not always the employers of the public employees and whose decisions need to take account of the economic situation of the country and the public interest), it recalls that when examining allegations on this subject it has considered that, in so far as the income of public enterprises and bodies depends on state budgets, it would not be objectionable — after wide discussion and consultation between the concerned employers' and employees' organizations in a system having the confidence of the parties — for wage ceilings to be fixed in state budgetary laws [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, para. 896]. Moreover, the Committee has considered that it is acceptable that in the bargaining process the employer side representing the public administration seek the opinion of the Ministry of Finances or an economic and financial body that verifies the financial impact of draft collective agreements [see 306th Report of the Committee, Case No. 1878 (Peru), para. 537], provided that "trade union organizations and the employers and their associations were consulted and could express their points of view to the authority responsible for assessing the financial consequences of draft collective agreements" [see* ***Digest****, op. cit., para. 897].*

591. *Nevertheless, the Committee notes the Government's indication that the new Regulations under the Organic Labour Act of 20 January 1999 (issued after the presentation of this complaint) regulate collective bargaining in the public sector. In these circumstances, the Committee invites the complainant to formulate its comments in this respect.*

592. *As regards the allegation concerning the IVIC's lack of good faith in refusing to negotiate certain clauses of a collective agreement from the moment that the Public Prosecutor of the Republic excluded the clauses with an economic impact, the Committee regrets to note that the Government has not communicated its observations on this matter. In this regard the Committee recalls that "it is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties" [see* ***Digest****, op. cit., para. 815]. In these circumstances, the Committee requests the Government to endeavour to promote the negotiation of a collective agreement between the Trade Union of Public Employees of the Venezuelan Scientific Research Institute (SEPIVIC) and the Venezuelan Scientific Research Institute (IVIC) and to keep it informed in this regard.*

593. *As regards the allegation concerning the failure of the Directorate of the National Inspectorate and Collective Labour Affairs to take account of the arguments put*

forward by the SEPIVIC in its decision of September 1998 ordering termination of the bargaining process (Administrative Decision No. 021), the Committee notes the Government's statement that, in conformity with the Organic Labour Act, any of the parties which considers that its rights have been violated by the administrative decision may make an appeal. The Committee observes that the complainant indicates that it has appealed this administrative decision and that it emphasizes the delay in issuing a ruling on the appeal lodged by the SEPIVIC against the abovementioned decision. In this respect, the Committee deplores the time that has elapsed without a decision being issued on the matter and trusts that the authorities will hand down a ruling on the appeal in the very near future. The Committee requests the Government to keep it informed of the final decision taken by the administrative authorities in this respect.

594. Lastly, the Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case.

THE COMMITTEE'S RECOMMENDATIONS

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

(a) The Committee invites the complainant to furnish comments in respect of the new Regulations under the Organic Labour Act of 20 January 1999 which regulate collective bargaining in the public sector.

(b) The Committee requests the Government to endeavour to promote the negotiation of a collective agreement between the Trade Union of Public Employees of the Venezuelan Scientific Research Institute (SEPIVIC) and the Venezuelan Scientific Research Institute (IVIC) and to keep it informed in this regard.

(c) As regards the allegation concerning the delay in issuing a ruling on the appeal lodged by the SEPIVIC against the administrative decision of September 1998 ordering termination of the bargaining process between the trade union and the IVIC, the Committee deplores the time that has elapsed without a decision being issued by the authorities and trusts that a ruling will be handed down on this appeal in the very near future. The Committee requests the Government to keep it informed of the final decision of the administrative authorities in this respect.

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

Case No. 1976

Interim report

Complaint against the Government of Zambia presented by the Zambia Congress of Trade Unions (ZCTU)

Allegations: Wage freeze in the public service; failure by local authorities to pay wages

596. In a communication dated 17 July 1998, the Congress of Trade Unions (ZCTU) presented a complaint of violations of freedom of association against the Government of Zambia.

597. The Government furnished its observations in a communication of May 1999.

598. Zambia 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

599. In its complaint dated 17 July 1998, the ZCTU asserts that the Government imposed a wage freeze on all workers in the Zambian public service and in government-aided institutions for the whole of 1998. In addition, there was a failure by local authorities to pay salaries/wages to workers for periods ranging from two to 19 months.

600. More specifically, the ZCTU alleges that in late November 1997, the Government, through the Ministry of Labour and Social Security, announced that there would be a wage freeze for all workers in the public service and all workers in all government-aided institutions for the whole of 1998. The wage freeze was imposed without consulting the workers involved through their trade unions or the ZCTU. A meeting of the Tripartite Consultative Labour Council was held in September 1997 during which no mention was made about the impending wage freeze. The ZCTU points out that efforts by the trade unions to engage the Government in effective dialogue on the matter have failed as the Government has refused to meet and discuss the matter with the ZCTU. The ZCTU explains that the wage freeze has affected all workers in the public service and in all government-aided institutions like hospitals, universities, etc. The total number of affected workers who have suffered untold hardships is well over 150,000 and this translates into more than 600,000 persons when families and dependants of workers are taken into account. The ZCTU contends that the imposition by the Government of the wage freeze is a violation of ILO Conventions Nos. 98, 144 and 151, all of which have been ratified by Zambia.

601. The ZCTU then asserts that since 1992, the Government has failed to pay workers in most local authorities for periods varying between two and 19 months causing the workers, their families and dependants to become destitutes and beggars. Those workers who have tried to protest against this state of affairs have been disciplined including being dismissed from employment. The situation is chaotic and deplorable. According to the ZCTU, close to 10,000 workers are victims of this government failure. When families and other dependants are included, close to 100,000 people are affected by the Government's actions.

602. The ZCTU concludes by stressing that this violation of international labour standards and trade union rights is continuing unabated and without a solution in sight. Many meetings have been held with government authorities including the Ministry of Labour and Social Security without any positive results.

B. The Government's reply

603. In its reply of May 1999, the Government refers to the ZCTU's allegations that its efforts and those of its affiliates operating in the public service to engage the Government in effective dialogue on the matter were unsuccessful and that the imposition of a wage freeze was a violation of ILO Conventions Nos. 98, 144 and 151, all ratified by Zambia.

604. First of all, the Government points out that it is committed to promoting collective bargaining in all sectors of the economy. This commitment is illustrated through the enactment of the Industrial and Labour Relations Act in 1993 as amended by Act No. 30 of 1997, in particular parts VII and VIII thereof designed to promote collective bargaining. The Government explains that the action taken to install a wage freeze was not a negation of the principle of collective bargaining. The action was a temporary measure to facilitate the implementation of the public service reform programme. The Government has embarked on a public service reform programme with the objective of achieving efficiency and cost effectiveness in the delivery of quality service to the people of Zambia by creating a small, well-remunerated and motivated public service.

605. According to the Government, one of the important components of the reform programme is the restructuring of the public service with a view to facilitating the realization of the above objective. The programme focuses, among others, on (a) reduction of the number of employees in the public service from 136,000 to 80,000 civil servants and from 28,000 to 13,500 classified employees, through staff recruitment freeze, redundancies and voluntary separation; (b) restructuring of ministries, provinces and other government institutions; (c) implementing an effective establishment and pay control system; (d) a wage freeze for all public service staff during the period 1 January 1998 to 31 December 1998; and (e) an increase in the wages and salaries of the remaining public service workers to levels comparable to those in the private sector.

606. The Government stresses that the Civil Servants' Union of Zambia and the National Union of Public Service Workers which cater for public service employees are intimately involved in the implementation of the reform programme and were fully informed of the need to restrain wages in 1998 as part of the reform programme. The Government further stresses that, in spite of the wage freeze, collective bargaining in the public service continued. The two trade unions undertook bargaining with the Government. The negotiations were however deadlocked and the matter proceeded to conciliation and ultimately to the Industrial Relations Court in terms of the dispute settlement procedures. As a measure of good faith and sincerity on the part of the Government, in September 1998 the Government announced that the wage freeze would come to a close at the end of December 1998 and invited trade unions operating in the public service to immediately commence negotiations on wages and salaries for implementation in 1999. The Government does not therefore view its action as a negation of collective bargaining.

607. As regards the alleged violation of Convention No. 98, the Government points out that it has put in place legal provisions in the Industrial and Labour Relations Act designed to promote trade unionism and collective bargaining with a view to regulate terms

and conditions of employment by means of collective agreements. These measures are provided in sections 5, 63, 65, 69 and 70-73 of the Act. It should be noted from section 69 of the Act that the onus to commence negotiations for the purpose of concluding a collective agreement is placed on the bargaining unit comprising the management of an undertaking and the trade union representing the employees thereof. In this particular case, the Government and the Civil Servants' Union of Zambia/National Union of Public Service Workers commenced negotiations but an agreement was not reached because the Government was not in a position to make any monetary concessions on certain terms and conditions of employment for the reasons previously advanced. The resulting dispute is currently in the Industrial Relations Court.

608. With regard to the alleged violation of Convention No. 144 concerning tripartite consultations, the Government asserts that it is committed to the promotion of tripartite consultation in the field of labour and employment. In this regard provisions exist in part X of the Industrial and Labour Relations Act, as amended by Act No. 30 of 1997, establishing the Tripartite Consultative Labour Council. Since the establishment of the council, the ZCTU has participated in the council meetings effectively. However, it is the view of the Government that there is a distinction between tripartite consultations and collective bargaining. Whereas tripartite consultations result in a consensus of approach and application of policy issues on labour and employment, collective bargaining on the other hand produces binding agreements on the parties concerned who are usually two. According to the Government therefore, negotiable matters on terms and conditions of employment cannot be subjected to tripartite consultations as these are best resolved by parties to the negotiation process and, in the event of disagreement, the national procedures for the settlement of disputes are invoked. This is actually what happened in the situation at hand.

609. Regarding the allegation that there was an infringement of Convention No. 151, the Government emphasizes that public service workers like all other workers in the private and parastatal undertakings enjoy freedom of association, the right to organize and collective bargaining. This is illustrated by the Civil Servants' Union of Zambia and the National Union of Public Service Workers declaring a dispute with the Government of Zambia over failure to agree on terms and conditions of employment. This dispute then proceeded to conciliation and thereafter to arbitration in the Industrial Relations Court whose decision is awaited. Furthermore, and in the Government's view, a disagreement in the process of negotiations cannot be defined as a negation of the provisions of this Convention. It would have been a reasonable allegation had the Government deliberately and without any justified reason refused to meet the public service workers' organizations, but in this case meetings and negotiations were held which resulted in a deadlock. The allegation therefore is not justified given the facts and circumstances of the issue at hand.

610. Finally, turning to the allegation that the Government failed to pay workers in most local authorities for periods ranging between two and 19 months, and that when these workers complained, they were threatened with dismissal, the Government points out that workers in the local authorities are not employed by the Government of the Republic of Zambia. They are employed by individual district local councils. Local councils manage their own operations including recruiting workers, taking disciplinary action and paying wages and salaries without interference from the Government. Therefore, the responsibility of payment of wages and salaries is on each individual local council and not the Government. The Government concludes by pointing out that the Zambia United Local Authorities Workers' Union has taken some of these local councils to courts of law in an effort to secure payment of outstanding salaries quickly.

C. THE COMMITTEE'S CONCLUSIONS

611. *The Committee notes that the allegations in this case concern the imposition of a wage freeze in the public service prior to which no consultations were held with the unions concerned, as well as the failure to pay wages to workers in certain local authorities.*

612. *The complainant (ZCTU) contends that the wage freeze was imposed for the whole of 1998 without consulting the workers involved through their trade unions or the ZCTU. The Government maintains that it is committed to the promotion of tripartite consultations in the field of labour and employment and that the ZCTU has participated fully in the meetings of the Tripartite Consultative Labour Council since its establishment. The Committee notes nevertheless that the Government does not refute the ZCTU's allegation that no mention was made about the impending wage freeze during a meeting of the Tripartite Consultative Labour Council held in September 1997. The Committee further observes the Government's statement that the Civil Servants' Union of Zambia and the National Union of Public Service Workers were fully informed of the need to restrain wages in 1998 as part of the public service reform programme. In the Committee's view, this would appear to somewhat confirm the ZCTU's assertion that in late November 1997, the Government, through the Ministry of Labour and Social Security, announced that there would be a wage freeze for all workers in the public service and in government-aided institutions for the whole of 1998 without consulting the workers involved through their trade unions or the ZCTU. Moreover, although the Government indicates that it had commenced negotiations with the public service unions but that these negotiations were deadlocked and the matter proceeded to conciliation and ultimately to the Industrial Relations Court in terms of the dispute settlement procedures, the Committee notes that these negotiations were initiated — while the wage freeze was ongoing in 1998 — to settle the terms and conditions of employment of public service workers for 1999.*

613. *In these circumstances, the Committee is bound to conclude that no negotiations or consultations were in effect held between the Government and the trade unions concerned prior to the Government's decision to impose a wage freeze for all workers in the public service and in government-aided institutions for 1998. In this respect, the Committee would stress that, where a government seeks to alter bargaining structures in which it acts actually or indirectly as employer, it is particularly important to follow an adequate consultation process, whereby all objectives perceived as being in the overall national interest can be discussed by all parties concerned, in keeping with the principles established in the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113). Such consultations imply, in particular, that they be undertaken in good faith and that both partners have all the information necessary to make an informed decision [see* ***Digest of decisions and principles of the Freedom of Association Committee****, 4th edition, 1996, paras. 856 and 941]. The Committee expects that in future the Government will follow an adequate consultation procedure when it seeks to alter bargaining structures in which it acts actually or indirectly as employer.*

614. *With regard to the compatibility of the wage restraint measure itself with collective bargaining principles, the Committee has acknowledged that where, for compelling reasons of national economic interest and as part of its stabilization policy, a government considers that it is not possible for wage rates to be fixed freely through collective bargaining, any restrictions should be imposed as a exceptional measure and only to the extent that is necessary without exceeding a reasonable period, and should be accompanied by adequate safeguards to protect workers' living standards. [****Digest****, op.*

cit., para. 883.] The Committee of Experts has adopted a similar approach on this issue [General Survey on freedom of association and collective bargaining, 1994, para. 260].

615. *As regards the particulars of this case, the Committee notes that the wage freeze was one of several measures which, according to the Government, it had taken to facilitate the implementation of a public service reform programme. The Committee further notes that the wage freeze was imposed for a 12-month period pursuant to which collective bargaining resumed in the public service, even if negotiations were subsequently deadlocked and the resulting dispute proceeded to conciliation and ultimately to the Industrial Relations Court in terms of the dispute settlement procedures provided for in the Industrial and Labour Relations Act. Hence, in the Committee's view, the wage freeze appears to be an exceptional measure which was temporary in nature. However, the Committee notes that this wage freeze was not accompanied by adequate safeguards to protect workers' living standards, especially those with a low income. In effect, the ZCTU alleges that a sizeable number of persons have suffered untold hardships as a result of this wage freeze. The Government does not contest this argument but points out that this measure, amongst others, was necessary in the context of the public service reform programme.*

616. *In view of the foregoing, the Committee regrets that the Government did not give priority to collective bargaining as a means of determining the employment conditions of its public servants, but rather that it felt compelled to unilaterally, without consulting the trade unions concerned, freeze public service wages. The Committee notes, however, that the wage restraint measure was limited to a 12-month period, and that free collective bargaining resumed thereafter. The Committee trusts that the Government will refrain from taking such measures in the future. Furthermore, in the absence of adequate information from the Government on compelling reasons for adopting this wage freeze, the Committee requests it to provide information in this regard.*

617. *With regard to the allegation that the Government failed to pay workers in most local authorities for periods ranging from two to 19 months, the Committee would recall that its mandate consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions [see* ***Digest****, op. cit., para. 6]. In the concrete case at hand, inasmuch as all the workers employed by the local authorities concerned were not paid their wages, the Committee considers that the issue before it, serious as it may be, does not pertain to the freedom of association Conventions but rather the Protection of Wages Convention, 1949 (No. 95), ratified by Zambia in 1979. The Committee therefore concludes that this aspect of the case does not call for further examination.*

THE COMMITTEE'S RECOMMENDATIONS

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

(a) The Committee expects that in future the Government will follow an adequate consultation process when it seeks to alter bargaining structures in which it acts actually or indirectly as employer.

(b) The Committee regrets that the Government did not give priority to collective bargaining as a means of determining the employment conditions of its public servants, but rather that it felt compelled to unilaterally, without consulting the trade unions concerned and without ensuring adequate safeguards to protect workers' standards of living,

freeze all wages in the public service for a year. The Committee trusts that the Government will refrain from taking such measures in the future.

(c) The Committee requests the Government to provide information on compelling reasons for adopting the wage freeze.

Geneva, 12 November 1999.

(Signed) Max Rood,
Chairperson.

319th Report

I. Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 4, 5 and 12 November 1999, under the chairmanship of Professor Max Rood.

PENDING CASES

2. The Committee had before it several complaints concerning the violation of freedom of association in Colombia, presented by a number of trade union organizations (Cases Nos. 1787, 1948, 1955, 1962, 1973, 2015, 2046 and 2051) — the last three of these having been presented since the last examination of cases on their merits concerning Colombia by the Committee in March 1999 — and a complaint concerning the non-observance by Colombia of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), made by several Workers' delegates to the 86th Session (1998) of the Conference under article 26 of the ILO Constitution. At its meeting of March 1999, the Committee had already examined Cases Nos. 1787, 1948, 1955, 1962, 1964 and 1973 [see 314th Report, paras. 1-128], drawing interim conclusions.

3. In conformity with the decision adopted by the Governing Body at its 273rd Session (November 1998) and at its 274th Session (March 1999), the Committee submits for the Governing Body's approval a report on the pending cases (with the exception of Case No. 2046 for which it has just received a partial reply from the Government and Case No. 2051 in respect of which it has not yet received the Government's reply) and on the complaint presented under article 26 of the ILO Constitution.

EFFECT GIVEN TO THE RECOMMENDATIONS OF THE COMMITTEE AND THE GOVERNING BODY

4. In Case No. 1925 which was the subject of a definitive report of the Committee [see 309th Report, paras. 106-119], the Government indicates, in a communication dated 27 September 1999, that it accepts that the information furnished by the company Avianca be considered as part of the Government's reply. Furthermore, the complainant, the National Union of Employees of Avianca (SINTRAVA), recently transmitted further information to the Committee. The Committee requests the Government to furnish its observations on this most recent communication of the complainant. It will examine the whole case in the framework of the follow-up given to its recommendations when it will have all the elements of the case at its disposal.

II. Cases examined by the Committee on Freedom of Association

Case No. 1787

Interim report

Complaints against the Government of Colombia presented by
— the International Confederation of Free Trade Unions (ICFTU)
— the Latin American Central of Workers (CLAT)
— the World Federation of Trade Unions (WFTU)
— the Single Confederation of Workers of Colombia (CUT)
— the General Confederation of Democratic Workers (CGTD)
— the Confederation of Workers of Colombia (CTC) and
— the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA)

Allegations: Murder and other acts of violence against trade union officials and members and anti-union dismissals

5. The Committee last examined this case at its March 1999 meeting [see 314th Report, paras. 4-41]. The International Confederation of Free Trade Unions (ICFTU) sent new allegations in communications dated 28 April, 29 July, 9 and 11 August and 3 September 1999. The Single Confederation of Workers of Colombia (CUT) sent new allegations in communications dated 27 April, 10 June, 27 July and 31 August 1999. The World Federation of Trade Unions (WFTU) sent additional information on 9 June 1999. The World Confederation of Labour sent communications dated 17 February and 2 March 1999 in support of the earlier communications by CLAT. The Single Confederation of Workers of Colombia (CUT), the General Confederation of Democratic Workers (CGTD) and the Confederation of Workers of Colombia (CTC) sent a joint communication dated 9 April 1999. The Government sent its observations in communications dated 4 and 23 March, 2 June, 12 August and 23 September 1999. At its meeting for the adoption of its report, the Committee was informed that a communication from the Government was received in the ILO on 11 November 1999. In conformity with its usual practice, the Committee did not take this communication into consideration at its present meeting as it was received too late.

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

A. Previous examination of the case

7. During the previous examination of the case, the Committee dealt with the pending allegations concerning the murder of and other acts of violence against trade union officials and members, as well as anti-union dismissals. The Committee made the following recommendations [see 314th Report, para. 41]:

— With respect to the 59 cases in which those responsible for murders have not been identified (some of which refer to a number of persons), the Committee urges the Government urgently to take the necessary measures to determine where responsibility lies, to bring to trial and to convict the guilty parties and to prevent a repetition of these extremely serious events. The Committee urges the Government to keep it informed in this regard. Concerning the eight cases in

which investigations have been closed by the corresponding Procurator's Office, the Committee urges the Government promptly to inform the Committee of the reasons for closing these investigations. In regard to the three cases in which, according to the Government, it is not known whether the investigations continue, the Committee likewise urges the Government to take the necessary steps to identify and to bring those responsible to trial.

The 59 cases of murder are as follows: Manuel del Cristo Ballesta, murdered on 13 August 1995. The murderers are believed to be members of a paramilitary group (in all, 18 persons were shot at point-blank range); Camilio Eliécer Suárez Ariza, attorney of FENSUAGRO, murdered on 21 July 1997 in the municipality of Ciénaga, by persons believed to belong to a paramilitary group. According to information gathered by DAS, on 18 July 1997, in the municipality of Ciénaga, Messrs. Suárez Ariza and Tapias Llerena were kidnapped from the SINTRAINAGRO union headquarters by approximately ten individuals bearing short and long-range weapons. On 22 July 1997, their bodies were found; Mauricio Tapias Llerena, Secretary-General of FENSUAGRO, murdered in the municipality of Ciénaga on 21 July 1997, apparently by paramilitary groups. According to information provided by DAS, armed men entered the headquarters of the Ciénaga branch of SINTRAINAGRO on 18 July 1997; he was beaten until he became unconscious and then taken to a car and tortured. His body was found on 22 July; Libardo Cuéllar Navia, member of FECODE, murdered in the municipality of El Agrado, Huila, on 23 July 1997. According to information gathered by DAS, it is possible to establish that on 23 July 1997, in the morgue of Barzón hospital, an examination was carried out of the body of Cuéllar Navia, who had been attacked by unknown individuals who stole the motorcycle on which he had been travelling. The body bore a round wound on the right side of the neck; Enoc Mendoza Riasco, member of FECODE, murdered in the municipality of Ciénaga on 4 July 1997. According to the investigation carried out by the competent Procurator's Office, the possible suspects are subversives who engage in crime in the district of San Pedro de la Sierra, in the jurisdiction of the municipality of Ciénaga, with whom the victim had differences; Antonio Moreno Asprilla, murdered on 12 August 1995 by persons presumed to belong to a paramilitary group in the municipality of Chigorodó; Carlos Antonio Arroya de Arco, member of SINTRAMADARIEN, Urabá, murdered on 5 February 1996; Francisco Antonio Usuga, member of SINTRAINAGRO, Carepa, Antioquia, murdered by persons presumed to belong to commando groups on 23 February 1996; Pedro Luis Bermúdez Jaramillo, head of the farm workers' committee, Carepa, Antioquia, murdered on 6 June 1995; William Gustavo Jaimes Torres, president of the National Association of Peasant Users (ANUC), murdered on 28 August 1995; Jaime Eliécer Ojeda, president of SINTRAMINOBRAS in Ocaña, Norte de Santander, murdered by hired assassins on 23 May 1994. He had previously received threats and was on a blacklist with a further 60 persons; Alfonso Noguera Cano, president of SINTRAMUNICIPIO in Ocaña, Norte de Santander, murdered on 4 November 1994; Alvaro Hoyos Pabón, member of SINTRATITAN, Yumbo, Valle, who had received threats, murdered by persons presumed to belong to a paramilitary group on 12 December 1995; Néstor Eduardo Galíndez Rodríguez, chairperson of the executive subcommittee, ANTHOC, Yumbo, Valle, murdered on 3 July 1997; Erieleth Barón Daza, murdered on 3 May 1997; Jhon Freddy Arboleda Aguirre, member of SINTRAGRICOLAS, Maceo, Antioquia, murdered on 3 July 1997; William Alonso Suárez Gil, member of SINTRAGRICOLAS, Maceo, Antioquia, murdered on 3 July 1997; Eladio de Jesús Chaverra Rodríguez, member of SINTRAGRICOLAS, Maceo, Antioquia, murdered on 3 July 1997; Luis Carlos Muñoz, official of SINTRAMUNICIPIO, Segovia, Antioquia, murdered on 3 July 1997; Héctor Gómez, murdered in the central park of Remedios, Antioquia, on 22 March 1997; Gilberto Casas Arboleda, member of SINTRAINAGRO, Apartadó, Urabá, murdered on 11 February 1997. The suspects are believed to belong to a paramilitary group; Norberto Casas Arboleda, member of SINTRAGRICOLAS, Apartadó, Urabá, murdered on 11 February 1997. The suspects are believed to belong to a paramilitary group; Alcides de Jesús Palacios Casas, member of SINTRAINAGRO, Apartadó, Urabá, murdered on 11 February 1997. The suspects are believed to belong to a paramilitary group; Eduardo Enrique Ramos Montie, member of SINTRAINAGRO, murdered in Apartadó, Urabá on 14 July 1997; Wenceslao Varela Torrecillas, member of SUDEB (FECODE), murdered in El Peón, Bolívar, on 29 July 1997;

Abraham Figueroa Bolaños, member of FECODE, murdered in the municipality of Milán, Caquetá, on 25 July 1997. The victim worked with the indigenous community; Edgar Camacho Bolaños, member of FECODE, murdered in the municipality of Milán, Caquetá, on 25 July 1997. The victim worked with the indigenous community; Félix Antonio Avilés Arroyo, member of ADEMACOR (FECODE), murdered in Ciénaga de Oro, Córdova, on 1 December 1997. The perpetrators of the murder accuse him of being one of those responsible for the terrorist attacks on the premises of Funpazcor and Ganacor; Hernando Cuadros Mendoza, president of the Tibú branch of the Oil Industry Workers' Trade Union, murdered in 1994 in Tibú by persons believed to belong to a paramilitary group; Freddy Francisco Fuentes Paternina, union official of ADEMACOR (FECODE), murdered in Montería, Córdova, on 18 July 1997 by persons believed to belong to a paramilitary group; Néstor Eduardo Galindo, president of ANTHOC executive subcommittee, murdered in Yumbo, Valle, on 6 March 1997; Víctor Julio Garzón, Secretary-General of FENSUAGRO, murdered in Santafé de Bogotá on 7 March 1997, by hired assassins; Isidro Segundo Gil, Secretary-General of SINTRAINAL, murdered at his workplace on 9 December 1996; José Silvio Gómez, coordinator of SINTRAINAGRO, Carepa, Antioquia, murdered on 1 April 1996 by persons believed to belong to a paramilitary group; Luis Orlando Quiceno López, member of SUTIMAC, murdered in Fredonia, Antioquia, on 16 July 1997; Nazareno de Jesús Rivera, member of SINTRAFRONTMINES, Amagá, Antioquia, murdered on 12 March 1997; Arnol Enrique Sánchez Maza, member of the Córdova Teachers' Union (FECODE), murdered in Montería on 13 July 1997. According to FECODE and CINEP, he was kidnapped by members of a paramilitary group for ten days and his body was subsequently found in the Sinú river; Odulfo Zambrano López, president of the local branch of SINTRAELECOL, murdered in Barranquilla by hired assassins on 27 October 1997; Francisco Mosquera Córdoba, member of SINTRAMADARIEN, Urabá, murdered on 5 February 1996; Armando Humanes Petro, member of FECODE, Montería, Córdoba, murdered on 23 May 1996; Atilio José Vásquez Suárez, member of FECODE, murdered in the municipality of San Juan de Nepomuceno, Bolívar, on 28 July 1997; Sabas Domingo Socadegui Paredes, trade union official, murdered on 3 June 1997 in Saravena, Arauca; Eduardo Enrique Ramos Montiel, member of SINTRAINAGRO, murdered in Apartadó, Urabá, at "El Chispero" farm on 14 July 1997; Jesús Arley Escobar Posada, president of the local branch of ASEINPEC, murdered in Cali on 18 July 1997 by individuals believed to be hired assassins; José Raúl Giraldo Hernández, Secretary of SINDICONS, murdered in Medellín on 25 November 1997 by individuals believed to be members of a paramilitary group of Elkin Clavijo, president of the Workers' Union of the Porce II Hydroelectric Project, murdered in the municipality of Amalfi, Antioquia, on 30 November 1997; Alfonso Niño, treasurer of the Workers' Union of the Porce II Hydroelectric Project, murdered in the municipality of Amalfi, Antioquia, on 30 November 1997 by persons believed to be members of the ELN; Luis Emilio Puerta Orrego, leader of the Workers' Union of the Porce II Hydroelectric Project, murdered on 22 November 1997 by persons believed to be members of the ELN; José Vicente Rincón, member of SINTRAFERCOL, murdered in Barrancabermeja on 7 January 1998 by persons believed to belong to a paramilitary group; Arcángel Rubio Ramírez Giraldo, member of SITTELECOM, murdered in the municipality of Venecia, Cundinamarca, on 8 January 1998; Fabio Humberto Burbano Córdoba, president of the Trade Union Association of Employees of the National Penitentiary and Prison Institute, Cali branch, murdered in Santander de Quilichao, Cauca, on 12 January 1998 by persons believed to belong to a paramilitary group; Osfanol Torres Cárdenas, member of the Trade Union of Public Enterprise Workers of Medellín, murdered in Medellín on 31 January 1998 by persons believed to belong to a paramilitary group; Fernando Triana, member of the executive subcommittee of the National Federation of Government Workers, Medellín branch, murdered in Medellín on 21 January 1998 by persons believed to belong to a paramilitary group; Francisco Hurtado Cabezas, member of the Trade Union Federation of Agricultural Workers of Colombia (FESTRACOL), murdered on 12 February 1998 in the town of Tumaco, department of Nariño; Jorge Boada Palencia, official of the Association of the National Penitentiary Institute (ASOINPEC), murdered in Bogotá on 18 April 1998; Jorge Duarte Chávez, member of the Oil Industry Workers' Trade Union (USO),

murdered in Barrancabermeja on 9 May 1998; Carlos Rodríguez Márquez, member of the USO, murdered in Barranquilla on 10 May 1998; Misael Díaz Ursola, member of the executive committee of the National Federation of University Workers, murdered in Montería on 26 May 1998; Argiro de Jesús Betancur Espinosa, member of SINTRAGRICOLAS, Apartadó, Urabá, murdered on 11 February 1997 by persons believed to belong to a paramilitary group. He was involved in a case for rebellion brought by the terrorism unit of the Procurator's Office and was accused of "active participation in subversion". The investigation has been at the preliminary stage since 5 October 1998; Alvaro José Taborda Alvarez, member of ADEMACOR, murdered in Montería, Córdova, on 8 January 1997. This case is being handled by the corresponding Procurator's Office and is at the preliminary stage. According to the investigations carried out, Mr. Taborda Alvarez, who had re-enlisted in the Popular Liberation Army (EPL), was taken from his home by individuals believed to belong to a paramilitary group and accused of having participated in dynamite attacks on the Córdova cattle station. There are reasonable grounds for linking one particular suspect to this crime; Luis Orlando Camacho Galvis was murdered in Aguachica, César on 20 July 1997. There is no information on possible trade union membership. According to the investigation by the Procurator's Office, the deceased was secretary of community development in the town council of Río Viejo, Bolívar, from which it may be deduced that he had no connection with the trade union movement; José Eduardo Umaña Mendoza, lawyer, murdered in Bogotá on 18 April 1998. The investigation by the Procurator's Office is at the preliminary stage, with six suspects in pre-trial detention. It should be noted that Dr. Umaña Mendoza was not a trade union member although he acted as defence attorney for members of the USO who were detained on charges unconnected with trade union activities; Juan Camacho Herrera, member of a mining trade union, murdered in Río Viejo, Bolívar, on 25 April 1997. This case is being handled by the national human rights unit of the Office of the Procurator-General of the Nation. The investigation is currently at the preliminary stage and two suspects have been identified and arrest warrants issued on the basis of "murder for terrorist ends".

The cases in which the investigation was closed by the corresponding Procurator's Office are as follows: Ernesto Emilio Fernández Pezter, leader of ADUCESAR, murdered on 20 November 1995 in the municipality of Pailitas, César, by persons believed to be hired assassins; Libardo Antonio Acevedo, president of FESTRALVA (CTC), Tuluá, Valle, murdered on 7 July 1996; Magaly Peñaranda, member of SINTRAMUNICIPIO, Ocaña, Santander, murdered on 27 July 1997; David Quintero Uribe, president of SINTRACUACESAR, Aguachica, César, murdered on 7 August 1997; Aurelio Arbeláez, member of SINTRAFRONMINES, Segovia, Antioquia, murdered on 4 March 1997; José Guillermo Asprilla Torres, member of SINTRAINAGRO, Apartadó, murdered on 23 July 1997; Carlos Arturo Moreno López, leader of the farm workers' committee, murdered on 7 July 1995 in Apartadó, Urabá, apparently by members of commando groups; and Luis Abel Villa León, member of SINTRAMINEROS, Antioquia, murdered in Amagá, Antioqiuia on 21 July 1997.

The three cases for which the Government does not know if the investigations are continuing are the following: Manuel Francisco Giraldo, secretary of the executive subcommittee of SINTRAINAGRO, Apartadó, Urabá, murdered by members of a paramilitary group on 22 March 1995; 23 workers at "Osaka" farm, Carepa, Urabá, members of SINTRAINAGRO, murdered on 29 August 1995. Front V of the Revolutionary Armed Forces of Colombia (FARC) has claimed responsibility; Alvaro David, member of the workers' committee of the "Los Planes" farm, member of SINTRAINAGRO, murdered on 22 March 1996. The FARC are stated to be responsible for this crime, the victim being an active member of the "Hope, Peace and Freedom" movement.

— The Committee also requests the Government to inform it of the outcome of the criminal proceedings against Mr. Freddy Mosquera Mosquera, charged with the murder of Mr. Bernardo Orrego Orrego, and the outcome of the issuing of arrest warrants for the suspects in the murders of Messrs. José Isidoro Leyton Molina and Juan Camacho Herrera.

— Concerning the cases of disappearance (Messrs. Ramón Alberto Osorio Beltrán, Alexander Cardona, Mario Jiménez, Rodrigo Rodríguez Sierra, Rami Vaca, Jairo Navarro and Miseal

Pinzón Granados), the Committee urges the Government to take the necessary measures promptly to proceed with the investigations, in order to determine the whereabouts of those missing, where responsibility lies, to punish those responsible and prevent any repetition of these deplorable events. The Committee urges the Government to keep it informed as promptly as possible in this connection.

— With respect to the outcome of the investigations into the cases of death threats against trade union officials and trade union members, the Committee requests the Government to continue to provide protection to all of the trade union officials and trade union members in a situation of risk (Oscar Aguirre Restrepo, Alberto Arango Alvaro, Horacio Berrio Castaño, Martha Cecilia Cadavid, Franco Jorge Humberto, Giraldo Héctor de Jesús, Humberto Gutiérrez Jairo and José Rangel Ramos Zapata, members of the Union of Employees of the Department of Antioquia; Carlos Hugo Jaramillo, José Luis Jaramillo Galeano and Luis Norberto Restrepo, union officials of SINTRADEPARTAMENTO, Antioquia; Bertina Calderón, vice-president of the CUT, and other union officials; the members of the executive committee of FENSUAGRO; Pedro Barón, president of the Tolima branch of the CUT, threatened by several members of the security forces after having participated in a protest strike on 19 July 1995; members of the executive committee of the Union of the Titán S.A. Workers, Yumbo municipality, who received death threats from a paramilitary group named "Colombia Sin Guerrilla" — COLSINGUER (Colombia without guerrillas) on 26 October 1995 and 17 May 1996; the National Executive Committee of CUT, Messrs. Luis Eduardo Garzón (president), Jesús Antonio González Luna (director of the human rights department) and Domingo Rafael Tovar Arrieta (director of the organization department); Jairo Antonio Cardona Mejía, president of the Union of Workers of the Municipality of Cartago and other officials (Albeiro Forero, Gilberto Tovar, Hernando Montoya, Marino Moreno and Gilberto Nieto Patiño); Ms. María Clara Vaquero Sarmiento, president of the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and related bodies, who received threats on 27 March 1998), to proceed with the investigations with a view to identifying and punishing those responsible for the threats and to inform it of the action taken in this regard.

— Concerning the outcome of the investigations into the detention of trade union officials and trade union members, the Committee requests the Government without delay to inform it of the outcome of the investigations under way into the cases of Messrs. Luis Rodrigo Carreño, Luis David Rodríguez Pérez, Elder Fernández and Gustavo Minorta, as well as those regarding the ten individuals involved in ongoing proceedings (Felipe Mendoza, Monerje Sánchez, Guillermo Cárdenas, Hernán Vallejo Leonardo Mosquera and Fabio Liévano, members of USO-Tibú, Norte de Santander, were arrested on 12 May 1996 in Casa Fiscal La Picota; Edgar Riaño Rojas, member of USO-NEIVA, was arrested on 12 June 1996 in Casa Fiscal La Picota; and Marcelino Buitrago, member of USO-Tibú, Norte de Santander, was arrested on 12 August 1996 in Casa Fiscal La Picota. He was accused of rebellion, terrorism and criminal conspiracy; Rafael Estupiñan, member of USO-Tibú, Norte de Santander, was arrested on 1 December 1996; César Carrillo, treasurer of USO-Nacional, was arrested on 12 June 1996. He was charged with rebellion, terrorism and criminal conspiracy but was released on 15 May 1998).

— With respect to the outcome of the investigations into raids on the headquarters of the Single Agricultural Trade Union Federation (FENSUAGRO) and of the executive subcommittee of the CUT-Atlántico, the Committee urges the Government to take appropriate measures to provide protection to all trade union officials and trade union members of these organizations and for their respective trade union headquarters. The Committee asks the Government to keep it informed of action taken in this regard.

— With respect to the alleged police repression of employees of the public enterprises in Cartagena during a peaceful demonstration on 29 June 1995, the Committee asks the Government to carry out an investigation into the allegations and to keep it informed concerning this matter.

— With respect to the five trade union members who were allegedly attacked and injured by the police, the Committee requests the Government promptly to inform it of the outcome of the proceedings under way against Mr. Héctor Ernesto Moreno Castillo and Mr. Edgar Méndez Cuéllar, and to forward information on the allegations regarding attacks against trade unionists

César Castaño, Luis Alejandro Cruz Bernal and Martha Janeth Laguizamon, who did not lodge complaints.

— With regard to the cases concerning Edgar Riaño, Darío Lotero, Luis Hernández and Monerge Sánchez, the Committee requests the Government to inform it of the reasons for closing the disciplinary inquiry against them. Regarding the cases of Gilberto Correño and César Blanco Moreno, the Committee requests the Government to inform it as soon as possible of the outcome of the inquiries.

— Regarding the allegations of murders of six trade union officials and trade union members (Orfa Ligia Mejía, Marcos Pérez Gonzales, Jorge Ortega García, Hortensia Alfaro Banderas, Macario Herrera Villota and Jairo Cruz) committed following the beginning of a national strike of government workers on 7 October 1998, the Committee deplores the fact that, despite the extreme gravity of the events, with the exception of two arrest warrants issued, the investigations carried out have not led to the identification, trial or conviction of the guilty parties, for which reason it urges the Government to inform the Committee as soon as possible of any concrete results achieved in this regard.

— With respect to the six cases of physical aggression and injury ((1) on 15 October 1998 in Barrancabermeja, against Virgilio Ochoa, member of SINTRACUAEMPONAL; (2) on 15 October 1998 in Barrancabermeja, against Ugeniano Sánchez, member of SINTRACUAEMPONAL, shot four times in the head; (3) on 16 October 1998 against Benito Rueda Villamizar, president of SINTRACUAEMPONAL; (4) against Mario Vergara and Heberto López, trade union officials of SITTELECOM, brutally beaten by the police; (5) on 13 October 1998, the police violently charged SITTELECOM workers, several of whom were injured; (6) on 20 October 1998, in the city of Bogotá, on Carrera 7 between Calle 24 and Calle 27, riot police assaulted workers who were beginning a peaceful march to Plaza Bolívar, and on 22 October 1998, the police assaulted demonstrators who had gathered in Plaza Bolívar from all over the country), the Committee requests the Government to carry out an investigation into the allegations and to keep it informed in this respect. The Committee also requests the Government to confirm that the trade unionist José Ignacio Reyes has been released.

— In regard to the death threats to all trade union officials of the "Comando Nacional Unitario" (composed of CUT, CGTD and CTC), the Committee requests the Government to continue to provide protection for all trade union officials and trade union members in a situation of risk, and to proceed with investigations to identify and convict the guilty parties and to inform it of action taken in this connection.

— Regarding the investigations into the alleged anti-union acts committed by the authorities of the Andino, Citibank, Sudameris and Anglo Colombiano Banks, in view of the long period that has elapsed since the investigations were opened, without as yet producing any concrete results, the Committee urges the Government to clarify these events and, should the allegations be substantiated, to ensure that measures are taken to punish those responsible for such acts and to avoid their repetition in the future.

— With respect to the allegations of various acts of trade union persecution against officials and members of the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA), the Committee asks the Government to keep it informed of the outcome of the negotiations that are being conducted between the Ministry of Defence and the trade union in order to clarify doubts and reach an agreement, and hopes that all the outstanding issues will be resolved.

— Concerning the three cases of anti-union dismissals in the TEXTILIA Ltd. company, which are awaiting sentence in the respective courts, the Committee requests the Government to keep it informed of the final outcome of these proceedings.

— Regarding the new allegations and additional information submitted by ICFTU and CLAT in connection with murders, attempted murders of and death threats against trade union officials and members, the Committee profoundly regrets the murders of Oscar Artunduaga Nuñez, of the Trade Union of Workers of the Cali Municipal Enterprises (SINTRAEMCALI), Jesús Orlando Arévalo, health secretary of the Trade Union of Workers of Arauca Public Service

Enterprises (SINTRAEMPSERPA), Moisés Caicedo Estrada, trade union official of SINTRE PORCE II, Gladys Pulido Monroy, trade unionist, and Oscar David Blandón González, attorney of the Union of Municipal Workers of Bello, and the attacks against and consequent serious injuries sustained by Terciso Mora, president of the Colombian Federation of Teachers (FECODE) and Osvaldo Rojas Arévalo, president of the Trade Union of Employees of the Department of Cali. The Committee urges the Government promptly to communicate its observations on all these allegations.

— In regard to death threats against trade union officials and members of CUT, FECODE, USO, UNEB and SINTRAEMCAL contained in the new allegations and additional information, the Committee asks the Government to continue to provide protection for all trade union officials and members in a situation of risk, to proceed with investigations to identify and convict the guilty parties and to inform the Committee of the action taken in this regard.

B. New allegations and additional information

General situation

8. The trade union confederations of Colombia (CUT, CGTD and CTC), in a communication of 9 April 1999, declare that the situation as regards human rights violations has worsened in recent months. In support of their claim, they allege the following:

— government circles are discussing the launch of a new labour reform which would, according to government and industry declarations, make labour relations still more flexible, allowing contracts on an hourly, daily and weekly basis. Attempts are being made to include in this reform the introduction of a wage of 20 per cent less than the legal minimum for workers taken on after the approval of the reform. This would allow workers to be hired without any kind of social, legal or other benefits;

— it should be noted that the reform has been prepared unilaterally, without giving the workers the opportunity to express their point of view, suggest alternatives to each of its points;

— the official sector is undergoing a labour massacre, with mass dismissals both in the central administration and in regional (district and municipal) authorities, leading to the destruction of trade union organizations;

— this anti-trade union policy is exacerbated by delays in payment of wages and social benefits to workers, including extreme cases of delays in wage payment of up to 12 months.

9. Finally, the trade union confederations state that there is no peace process in Colombia and that contacts for initiating dialogue between the Government and the guerrillas can be achieved only with considerable difficulty.

Specific allegations

10. Specifically, the International Confederation of Free Trade Unions (ICFTU) in communications of 28 April, 29 July and 9 and 11 August 1999, the Single Confederation of Workers of Colombia (CUT) in communications of 27 April, 10 June and 27 July 1999 and the World Federation of Trade Unions (WFTU), in a communication of 9 June 1999, present new allegations.

Murders of trade union officials and trade union members

11. The following murders are reported:

— On 12 February 1999, in San Diego, César Administrative District, the teachers Luis Peroza and Numael Vergel were murdered after having been kidnapped and tortured

by unidentified armed groups. They were members of the César Association of Teachers (ADUCESAR).

— On 15 February 1999, Gilberto Tovar Escudero, official of the Workers' Union of Cartago Municipality, Valle administrative district, was murdered.

— On 22 March, after having disappeared on 19 March, the trade union official Albeiro de Jesús Arce Velazquez was found dead in the river Cauca close to La Virginia municipality, Risaralda.

— Ricaurte Pérez Rengifo was kidnapped on 20 February in Medellín from the school where he taught and was found dead on 25 February on the outskirts of the city.

— The teacher Antonio Cerón Olarte del Hulla was murdered.

— Alejandrino Melchor, Gildardo Tapasco and Julio Alfonso Podeva, of the Caldas Teachers' Association, were murdered on 6 April 1999.

— Manuel Salvador Avila Ruiz, president of SINTRAINAGRO Puero Wilches branch, member of the FENSUAGRO national committee and attorney of the Single Confederation of Workers (CUT) of Barrancabermeja, was kidnapped on 22 April at 8 p.m. by persons believed to belong to a paramilitary group as he returned to Barrancabermeja after taking part in trade union activities in the city of Bucaramanga. He was found dead on 23 April 1999 in La Gómez, Sabana de Torres, Santander administrative district. He had been threatened on several occasions and for that reason he had sought, more than eight months earlier, protection from the Ministry of the Interior through FENSUAGRO, affiliated to CUT, but no measures had been taken by the Ministry in response.

— Victor Mieles Ospina and Rosa Ramírez were murdered on 23 July 1999 in César administrative department.

Attempted murders

12. The following attempted murders are reported:

— On 5 April 1999, at 11 p.m. in Barranquilla, an attempt was made to murder three members of the national executive council of the Workers' Union of the Social Security Institute: Fernando Morales, now leader of CUT, Alberto Pardo and Esaú Moreno. The attempt took place as they were returning from a work meeting; they were attacked with firearms, causing serious injuries to Esaú Moreno, who had to be hospitalized.

— Jesús Antonio González Luna, director of the human rights department of the Single Confederation of Workers (CUT), with his wife, children and accompanying bodyguards, was attacked on 1 August 1999 in the city of Cali. This caused the death of Giovanny Rodríguez Loaiza, a bodyguard in the service of the Administrative Security Department (DAS). The complainants state that this new attack on the leadership of the Colombian trade union movement, which remains the main civil target of the protagonists of the internal conflict, demonstrates the impossibility of the just, legitimate and democratic demands of the workers being established in a normal climate of calm and peace in a democratic society.

— On 31 August, the day of the national strike, Domingo Tovar Arrieta, director of the administrative department of CUT, suffered an attempt on his life as he entered the premises of the Colombian Federation of Teachers (FECODE), in which he also occupies office as secretary for human rights. The attack was acknowledged by Nestor Humberto Martínez, Minister for the Interior. Carlos Bultrago, Mr. Tovar's bodyguard, was injured in the attack.

Death threats

13. The following cases of death threats are reported:

— Pablo Emilio Calvo, Vice-Chairperson of the Workers' Union of Cartago Municipality, was threatened by death in a pamphlet.

— The leadership of the Antioquia Municipal Workers' Union receives constant death threats, especially Rangel Ramos Zapata, the president of the union, whom the ICFTU/ORIT has attempted to move to a different place of residence but has not been able to obtain the relevant authorization from the Governor.

— Threats were made to individuals linked to the work of the trade union movement, including the Colombian Lawyers' Commission and the José Alvear Attorneys' Collective.

— José Anibal Quiroga, Vice-Chairperson of the national committee of the Brinks company, received death threats in telephone calls urging him to abandon his trade union activities. His father also received threats.

— Trade union leaders participating in the Single National Command calling the national strike on 31 August 1999 received death threats from extreme right paramilitary groups.

Disappearances

14. The following disappearances were reported:

— Justiniano Herrera Escobar, working for the municipality of Antioquia, who formerly worked for Shellmar of Colombia, disappeared on 30 January 1999.

Detentions

— During the national strike on 31 August 1999, a large number of people were detained (277 persons according to the information sent by the ICFTU and 300 according to the information provided by CUT) and the whereabouts of many of them are unknown.

Unlawful detention

— Horacio Quintero and Osvaldo Blanco Ayala, workers, were detained in Tibú on 31 May 1999 by members of a self-defence group, who interrogated them to elicit whether they belonged to the Workers' Trade Union (USO). The workers declared that they only held membership. After receiving death threats, they were released.

Persecutions

— Oscar Amaury Ardila Guevara, trade union official of the CUT and Angel María Alvarez, official of the ANUC-UR, were reported to the military authorities, the former for membership of a subversive organization. The latter was harassed by DAS agents and forced to move to a different location within the country.

Anti-union acts

15. The ICFTU was informed by its associate, the International Graphical Federation, which in turn was informed by FENALGRAP, its Colombian member, of the continued and flagrant violations of trade union rights targeted at the trade union officials and workers of the Brinks company in Colombia. These violations consist of a unilateral decision to increase from 40 to 48 hours the working week in violation of the provisions of the company's internal labour rules; violation of the collective agreement in respect of promotions, transfers, staff contracts, memoranda and disciplinary action, etc. The use of

coercive methods was also reported, such as pressure through visits to workers' homes by social workers, who examined inside the houses and stated that those workers who did not agree to the increased working week would lose certain rights contained in the collective agreement, or their jobs; the refusal on the part of the executive committees to accept the increased hours angered the management of the company, and immediately after these events telephone calls were made insulting the union leaders and threatening them with death. Insulting calls were received by John Walter, the union chairperson, Alex Romero, the treasurer, and Rafael Romero, a member of the executive committee. Additionally, workers were watched and photographed from cars.

THE GOVERNMENT'S REPLY

16. In its communication dated 12 August 1999, the Government draws attention to the fact that certain of the recommendations of the Committee on Freedom of Association relating specifically to the present case are linked directly to the phenomenon of violence from which Colombia is suffering and that no change in the Committee's position has been noted even though the Government has sent a detailed report on the violence in Colombia, presenting many of the State's actions to counteract the phenomenon and that of impunity. It adds that it would be very grateful to the Committee on Freedom of Association if, when producing conclusions and recommendations on the present case, it would take into account and consider at length the information submitted by the Government of Colombia in January 1999, which definitively and specifically presents the Colombian State's concern to counteract the phenomena of violence and impunity.

General situation

17. The Government, in response to the trade union confederations' claim that there is no peace process in Colombia, reiterates that there is a process in active existence, headed by the President of Colombia, Dr. Andrés Pastrana Arango, directed towards a political solution to the conflict with the majority of the guerrilla groups operating in Colombia. It insists that failure to be aware of this process on the part of the trade union leaders is not compatible with the real situation in Colombia, and that the attempt to diminish its importance is futile and harmful. It considers that careful and thorough study of the real situation in Colombia makes it possible to deduce that the indiscriminate violence gripping the country is not directed specifically against trade union bodies, but that it is striking all social sectors indiscriminately. The sorry statistics of the tragic violence show similar numbers of victims in enterprises, among the peasantry, ordinary citizens, religious communities, and, most particularly, among civil servants and judges, who pay, often with their blood, for their resistance and their energetic and heroic vocation to consolidate the rule of law in Colombian society. This is the result of the situation of generalized violence originating in multiple, diverse and to a degree opposing sources of aggression towards Colombian society: subversion, organized crime motivated by drugs trafficking, paramilitary activities and common criminality. Hence, the Government maintains that only the restoration of political peace through the elimination of the major source of violence can provide a solid and workable base for effective exercise of the basic rights and thus permanent respect for trade union rights.

18. It adds that the national and international communities have unanimously recognized the significance of the process itself and have applauded and supported the courage with which the national Government is advancing it. The Government details the mechanisms and measures aimed at curbing the activities of the self-styled "self-defence forces" and the guerrilla forces and putting a stop to impunity.

I. Combating the self-defence forces

19. The Government reports that the national policy against the self-defence forces is a state policy. It revolves around two complementary axes, the first of which aims to combat their actions directly and effectively and the second, a deterrent, aims to remove the factors which influence the emergence and development of such groups. The policies directed against the self-defence forces include:

(a) The Coordination Centre for Combating the Self-Defence Forces: a centre has been established to coordinate management of intelligence from the military (the Army, the Navy and the Air Force), the National Police, the Office of the Procurator-General, the Office of the Attorney-General, the Ministry of the Interior and the DAS. The role of the Coordination Centre is to identify the self-defence forces in terms of location and to collaborate in designing the appropriate military plan of action, to be carried out by the operative and tactical units responsible for the region. The Centre has a database and statistical and geographical analysis capacities in addition to the necessary logistical and administrative capacities. It possesses a central committee for coordination, monitoring and control under the chairmanship of a politician of the highest level.

(b) Support of the work of the Office of the Procurator-General: greater support has been provided to that institution, and particularly to its Human Rights Unit, through the allocation of funds and accompanying staff for the investigation of cases involving members of self-defence forces. A complementary anti-self defence group combat force has been established in the form of an operative support group under the Office of the Procurator-General which is responsible for carrying out arrests under warrant and is composed of specialist personnel from the military, the National Police and the DAS.

(c) An early-warning system for high-risk areas in order to prevent massacres.

(d) Humanitarian agreements: the Government considers it important, in order to alleviate the suffering of the population, to retain the possibility of signing agreements of a humanitarian nature with the self-defence forces, since these, together with the guerrilla forces, are the main violators of international humanitarian law.

Progress in combating the self-defence forces

20. According to the report of the High Commissioner for Peace, the following results have been registered:

— 370 detainees;
— 82 detentions of persons connected with the police;
— 298 security measures;
— 225 arrest warrants;
— 82 anticipatory and coercive judgements;
— 209 indictments.

II. The peace process with FARC-EP

21. The Government reports the following significant developments in this process:

— the appointment by the President of Colombia of a High Commissioner for Peace;
— the clearing, in 1998, of more than 42,000 square kilometres of land as a zone of détente for the holding of talks between the Government and the guerrillas;

— a meeting on 7 January in one of the demilitarized municipalities (San Vicente del Cagúan) between the President of Colombia and representatives of the Revolutionary Armed Forces of Colombia (FARC) in order to begin preliminary dialogue. This occasion was attended and celebrated by many representatives of the international community. This was the formal beginning of the process, with the start of dialogue which continued until 6 May, when the Joint Agenda for Change towards a New Colombia was agreed. Among the 12 topics agreed in the Common Agenda, the Government emphasizes the following:

  - protection of human rights as the responsibility of the State:
    - — fundamental rights;
    - — economic, social, cultural and environmental rights;
    - — international treaties on human rights;
  - agreement on international humanitarian law:
    - — removal of children from armed conflict;
    - — anti-personnel mines;
    - — respect of the civil population;
    - — observance of international standards;
  - military forces:
    - — defence of sovereignty;
    - — protection of human rights;
    - — combating of self-defence forces;
    - — international treaties;

— a meeting on 28 April, at a location in the "détente zone", of the guerrilla commander Manuel Marulanda and other representatives of FARC-EP, the High Commissioner for Peace and representatives of political parties and movements (the Liberal Party, the Conservative Party, the Communist Party and Sí Colombia) and Congress (the Leaders of the Senate and of the Chamber of Representatives);

— a meeting in Caquetania on 2 May between the Head of State, Dr. Andrés Pastrana Arango, and the FARC commander, Manuel Marulanda, to decide on beginning the negotiation stage;

— an agreement to appoint a thematic multisector committee which would, drawing on the topics of the Common Agenda, present proposals to the members of the negotiating team. The President invited the country's trade union leaders to appoint a worker spokesperson to the thematic committee, but the invitation was not accepted in principle. The Government hopes that the trade union movement will reconsider its position, since it believes worker participation in the work of the committee to be very important. The Government states that the inclusion in the Common Agenda of subjects connected with human rights and international humanitarian rights is the result and the confirmation of the Government's insistence that a peace process which is not signed with the fundamental aim of bringing about respect and full exercise of human rights cannot be successful or sustainable. It affirms that the fundamental right to life, the other human rights and international humanitarian law must be respected in full as the essential foundation for the building of a democratic society and an enduring and stable peace.

III. The peace process with the National Liberation Army (ELN)

22. The Government has also reached agreements with the National Liberation Army. This was the purpose of Resolution No. 83 of 9 October 1998, which declared the peace process open and recognized the political nature of that organization.

A peace process amidst the difficulties

23. In its communication of 23 September 1999, the Government sends observations in order to provide additional information on the peace process and the difficulties which it is encountering, as well as on new elements in state policy concerning the installation of peace in Colombia.

24. Since the Government has been unable to persuade the guerrilla groups to agree to a ceasefire or truce in order to begin and develop the negotiations for peace, as mentioned in the report of 30 July, there was no other option but to agree to the peace process while the conflict continues.

25. It was of course anticipated that on the establishment of the Common Agenda, the guerrillas (FARC) would give some demonstration of their desire for peace, but instead, adopting the tactic of a show of strength with the aim of improving their bargaining position, they are redoubling their aggression against small cities in various regions, leaving death and destruction in their wake. They targeted police stations and banks and ended up destroying private homes and murdering hundreds of civilians. The horrific images shown by the media show scenes of destruction identical to those left by an earthquake. In some settlements, where the guerrillas were confronted by the Colombian military, the insurgents suffered hundreds of losses, including child guerrillas who were taking part in the fighting.

26. The ELN, for its part, is also developing its own strategy, consisting of mass civilian kidnappings, which are believed to be for political purposes in order to improve its bargaining power. These mass kidnappings cause shock and dismay among the national and international communities, particularly the hijacking of the Avianca aeroplane with dozens of passengers and the kidnapping of over 100 people in a Catholic church in Cali, a city of 2 million inhabitants. All of the victims were taken to ELN bases in the Colombian forests. One of the people kidnapped from the aeroplane died in captivity and another victim, from the church, was killed because he resisted being kidnapped.

27. The response of the Office of the United Nations High Commissioner for Human Rights was as follows:

Office of the United Nations High Commissioner for Human Rights

Office in Colombia

Press release of the Office in Colombia of the United Nations High Commissioner for Human Rights on the death of the engineer Carlos González, held hostage by the ELN.

The Office, in its time, spoke out strongly concerning the recent mass hostage-taking by the National Liberation Army (ELN), particularly as regards the passengers of the Avianca Fokker flight on 12 April and the parishioners of La María church in the south of Cali on 30 May last year.

On this day, the Office wishes to express its sorrow at the sad death of Dr. Carlos González and its condolences to his family and friends.

Likewise, it wishes to state that this event is clear proof of the physical and psychological vulnerability of the victims of these repugnant acts and that the consequences remain entirely the responsibility of those who commit them. Moreover, the situation is aggravated in the present case by the fact that the ELN has not been permitted access to humanitarian organizations in order that the hostages may receive the necessary care and have their condition and medical needs assessed.

The Office once more condemns this inhumane practice waged against the unarmed civilian population unconnected with the armed conflict, and strongly urges the National Liberation Army to proceed without delay to free all of the hostages held by it in order to respect basic humanitarian principles and observe the most rigorous respect for the unarmed civilian population.

Santafé de Bogotá, 10 June 1999.

28. Certain of the released hostages carried messages to the Government, which were of a political nature and laid down conditions for the peace process. The most serious and unacceptable factor, however, is that payment of enormous ransoms was demanded for the release of the remaining hostages, which forced the Government to suspend all dialogue with the ELN.

29. The Office of the United Nations High Commissioner for Human Rights once again expressed its concern:

Office of the United Nations High Commissioner for Human Rights

Office in Colombia

The Office of the United Nations High Commissioner for Human Rights reiterates its condemnation of the recent kidnappings in Colombia.

The High Commissioner for Human Rights, Mary Robinson, today renews her condemnation of the recent series of kidnappings of civilians by armed groups in Colombia as a "clear violation of human rights and international humanitarian law and a threat to the peace process in the country".

Mrs. Robinson, who visited Colombia last October, said that the frightening situation was becoming even more alarming through the reports that the kidnappers, including most recently the National Liberation Army (ELN), had been demanding ransoms. The High Commissioner said that "this gave rise to a legitimate concern that the kidnappings were motivated not only by political reasons and were a flagrant violation of international humanitarian law".

Mrs. Robinson called for the immediate release of all civilians held by the armed groups and urged strict observance of international humanitarian law. She expressed a hope that serious negotiations — now in danger partly because of the kidnappings — would be renewed for the sake of a political solution to the conflict in Colombia.

The High Commissioner said that this was "the only way to achieve lasting progress in human rights which would lead to sustainable economic development".

Geneva, 23 June 1999.

Kidnappings in Colombia

30. The latest report of the Presidential Programme for Defence of Personal Freedom, which gives a statistical analysis of the phenomenon of kidnapping over the past four years, notes an alarming increase: where 947 economically motivated kidnappings were reported in 1996, 1,100 cases were reported by 31 July this year, over a period of only seven months. Between 1 January 1996 and 6 September 1999, a total of 6,957 people were kidnapped; 1,854 remain in captivity. An average of eight people are kidnapped per day. To our shame, Colombia registers 45 per cent of all kidnappings in the world.

31. Of the insurgent groups, it is FARC that has kidnapped the most people: 224 civilians and 488 military and police personnel, a total of 712. The ELN holds 280 persons in captivity. The self-defence forces have kidnapped 42 people. Nobody is spared from this crime, not even the Colombian hierarchy of the Catholic Church. At present, the bishop of Tibú (a town in the north of the country), Monsignor José de Jésus Quintero, is being held by the Popular Liberation Army (EPL).

32. Various workers are being held by the guerrillas, including two Spanish citizens working in Colombia. The trade union confederations published the following public statement on this in *El Tiempo*, the country's main newspaper:

Freedom for José Luis and Marcos, Spanish workers

As is known throughout the country, the Spanish citizens Marcos Gallego Jiménez, aged 52, and José Luis Alarcón, aged 35, were taken into captivity on 18 February in Cerro Matecaña, near Supía (Caldas). They had been working with other staff at the Colombian TEDELCA company. All of them are labourers, fitters and installers.

At the time of the kidnapping, the group to which José Luis and Marcos belonged was installing a communications mast in the rural area of Supía, contributing in this way to the development of the region and offering its inhabitants the possibility of better conditions and quality of life.

The two Spanish citizens had been working there for three years and are well known for their team spirit and for good relations with their Colombian workmates.

As has been said, José Luis and Marcos are workers and have nothing except their small wages, which means that their families in Spain are from a modest background and have limited financial resources. The kidnapping of these two workers has caused great distress to their families and, in Spain as in Colombia, the kidnappings have caused shock and incomprehension throughout the social and trade union movements as well as in the general public, and nobody can understand how it can be that two people are kidnapped when all they have is the wage from their work.

The Spanish General Union of Workers (UGT), Trade Union Confederation of Workers' Commissions (CCOO) and Workers' Union (USO) and the Colombian Single Confederation of Workers (CUT), General Confederation of Democratic Workers (CGTD) and Confederation of Workers of Colombia (CTC) cannot understand the reasons for these detentions, nor still less the reasons why José Luis and Marcos are being kept in captivity.

Thus, in our capacity as representatives of the workers of both Spain and Colombia, we demand the immediate release of the kidnapped workers.

Neither the situation of violence in the country, nor, still less, the violence being created by the process of dialogue between the Government and the FARC (seemingly the group which is holding the two Spanish workers) justify holding civilians who are not involved in the armed conflict. On the contrary, desiring that the peace process may achieve success, we believe that what is needed are acts of peace which demonstrate the political will of the parties in the matter. We consider that demanding the freeing of the two workers is an act of peace and solidarity with the detained men and their families.

Single Confederation of Workers of Colombia (CUT)

Luis Eduardo Garzón, President

Héctor Fajardo Abril, Secretary-General

General Confederation of Democratic Workers (CGTD)

The self-defence forces against the civilian population

33. As if the above were not enough, the self-defence forces (United Self-Defence Forces of Colombia — AUC) have developed their criminal activities in various regions of the country with alleged guerrilla presence or influence and murdered dozens of poor settlers and peasants, forcing hundreds of survivors to flee their homes. Likewise, the self-defence forces have extended their crime wave to the big cities, carrying out selective murders and making death threats against individuals and social groups.

34. Nothing seems to escape their fatal touch, even certain Colombian public universities which are now infiltrated by their criminal activities and, what is worse, their intimidatory pamphlets come from university insiders (AUC sympathizers or militants who apparently have access to the registers of students, teachers and administrative staff). They justify their criminal activities by alleging the presence of guerrillas or their sympathizers in the universities.

35. In view of this serious situation, the national Government is, in concert with the local and university authorities, adopting measures to guarantee the protection of the university community and a return to normal academic life, including the abolition of the self-defence units inside the universities and punishment of the guilty persons.

36. On this subject, we must express our indignation at the recent murders of: Hernán Henao, lecturer, and Gustavo Marulanda, student leader, of the University of Antioquia; Darío Betancurt, lecturer at the National Pedagogical University, and Jesús Antonio Bejarano, lecturer at the National University. Mr. Bejarano was murdered on the 15th of this month as he was entering the Faculty of Economics to give a class. He was Adviser on Peace in the Government of César Gaviria from 1990 to 1994 and President of the Business Association and the Farmers' Union of Colombia (SAC). In this case there is also speculation that the FARC, which had declared him a "military objective", was responsible for his death.

37. On 13 August, Jaimé Garzón, a national figure involved in television and radio as a journalist and comedian, who was conducting humanitarian work for victims of guerrilla kidnapping and for the peace process, was murdered. In principle, the self-defence forces are blamed for this crime. The national Government is offering large rewards to persons providing information on the murders of Garzón and Bejarano.

38. In addition, the self-defence forces are distributing intimidatory leaflets in small towns which they consider to have a guerrilla presence. For the purposes of illustration, we reproduce the leaflets distributed in Yumbo (an industrial town 12 kilometres from Cali):

To the people of Yumbo

The guerrilla cells had disappeared, but now we see the return of the person who had created terror by teaching terrorism to his pupils and now he is appointed Mayor of our municipality. We see that chaos has been created once more.

As the lifeblood of our municipality, we, traders, industrialists and decent people of this region do not want Yumbo to harbour any more subversives, who have brought such harm to the country.

We intend to publicize the names of certain individuals who are sponsoring the reformation of terrorist groups in order to sow darkness and anarchy in the peaceful town of Yumbo.

Fernando Ortega (Councillor M19), Councillor; Javier Bendon (defence attorney for political prisoners); Jaime Sánchez (trade unionist), teacher in the municipality; Diego Borrero (amnestied trade unionist); Juan Carlos Dorado (trade unionist); Olmedo Fernández (trade unionist and member of the UP); Omar Muñoz (member of the political leadership, "Jaime Bateman"), official; Herbeney Velasco (member of the political leadership, "Jaime Bateman"), community leader; Ferney Lozano (official); Alexander Ochoa (member of "Jaime Bateman"); Luciano Cabrera (collaborator, trainer of left-wing leaders), community leader; Abelardo Tello (collaborator, trainer of left-wing leaders), community leader; Armando Mejía López (collaborator, trainer of left-wing leaders).

We warn our town to expect another list; the above-named individuals have 20 days to leave the town, otherwise they may be sure that they will pay with their lives for all the harm they have done.

No more violence!

Freedom to the Avianca aeroplane hostages!

Freedom to the hostages of La María church of Cali!

To the people of Yumbo

Today we present to all the people of Yumbo, decent people and soon to be people of peace, a new list of the terrorist subversives who, with their words of "reconciliation with correction", mask a truth full of kidnappings and terror throughout the nation; they are the following:

Alba Bolívar (trade unionist and "Jaime Bateman" sympathizer)

Edgar Rincón (member of the political leadership, "Jaime Bateman"), official

Claudia Leal (collaborator, trainer of left-wing leaders), official

Rosario López (member of the political leadership, "Jaime Bateman"), municipal contractor

Omar Pabon (traditionally subversive local leader), offficial

Laura García (collaborator and "Jaime Bateman" sympathizer)

Abraham Rubio ("Jaime Bateman" member), official

Marcos Zambrano (guerrilla go-between in the Cauca), municipal engineering contractor

We are fulfilling our patriotic duty to return peace to the country region by region.

We give the evil bandits twenty days in order to get out of our village like those in the previous list, otherwise they may be sure that they will pay with their lives.

No more violence!

Freedom to the Avianca aeroplane hostages!

Freedom to the hostages of La María church of Cali!

Live, free and in peace.

39. By way of a glossary: "M19" (19 April Movement) is a guerrilla organization whose members abandoned their arms and returned to civilian life in 1990. The Mayor of Yumbo was the head of the movement. "Jaime Bateman" is an M19 splinter group which took up arms once more under the name of the leader of M19, killed in an air accident. "UP" (Patriotic Union) is a political organization created on the proposal of FARC in 1985 during the truce in order to negotiate with the Government of the time. The majority of its members are Communist Party militants.

40. Likewise, in connection with the organization and implementation of the national strikes of 31 August and 1 September 1999, the organizers received on the eve an intimidatory leaflet from the self-defence forces and publicized it as follows:

Urgent action

The leadership of the national strike brings to the attention of public opinion, the civil authorities, the state law enforcement bodies and the national and international human rights organizations the following information:

Today, 30 August 1999, at 2.45 a.m. on the eve of the national civic strike, we received a threat in a communication signed by the United Self-Defence Forces of Colombia (AUC), sent by fax to the offices of FECODE and of the Single Confederation of Workers (CUT).

The wording of the threat was the following:

To the management of the worker and trade union confederations of Colombia:

Subject: warning.

The guerrilla drug terrorists have with your help been carrying out dynamite attacks against unarmed civilians throughout the country; ten people were injured by the bomb in Montería.

We will reply with dynamite against you to every bomb which the guerrillas use against civilians on your orders.

You are taking the initiative [...] we are protesting.

We always respect your labour demands when they are made within the Constitution and the law.

United Self-Defence Forces of Colombia

41. It should be noted that, before this national strike was announced, the national Government called upon the leaders to channel their demands through the mechanisms for social dialogue and collaboration, but found no desire for dialogue on the part of the organizers, who declared that the step was irreversible, but that it would be developed in a peaceful manner. The Government then instructed the police to act with restraint, but to be firm if there was any violence, in fulfilment of its legal obligation to protect the life, honour and property of the citizens. Unfortunately, the protest exceeded the organizers' estimates

and there were provocative and violent acts, especially in the outer suburbs of the large cities and mainly in Santa fé de Bogotá, including stone-throwing, barricading of streets and looting of commercial premises and trucks. Sadly, a 10 year-old girl was killed during the rioting when she was hit by a shot fired by a trader attempting to stop the looting.

42. Once the strike was over, the national Government agreed with the organizers to hold 12 thematic negotiating sessions on the items in the list of demands. It is envisaged that negotiations will be concluded at the beginning of October.

43. Among the "reasons and objectives of the strike", we would like to emphasize the statement in favour of the peace process, which coincides with the Government's position and is worded as follows:

The workers give their definitive support to the development and consolidation of a true peace process based on social justice. We reiterate our position of striving for a political solution to the armed conflict and the rejection of all forms of violence, kidnappings, massacres, forced disappearances, attacks and killings, pleading for the warring parties to respect the civilian population and observe the standards laid down by international humanitarian law.

Colombia's response

44. One important fact which deserves attention is the Colombian people's response to all of the kidnappers and people of violence: dignified demonstrations in all of the cities, numerous discussion forums and awareness campaigns are part of day-to-day life in Colombia.

45. The people's response has met with many demonstrations of solidarity on the part of the international community.

The Government reiterates its desire for peace

46. Despite the wave of violence unleashed by the guerrilla groups and self-defence forces, the national Government insists on the need to begin, as soon as possible, negotiation on the Common Agenda agreed and signed in conjunction with FARC on 6 May 1999. It has even dropped its demand that FARC submit to a verification commission in the zone of détente in order to prevent it continuing to murder and subject to violence the civilian population of the region. FARC denies that it agreed to this as a condition for the beginning and development of the peace process. In addition, it is now demanding that the start of negotiations should be preceded by the passing of a law on continuous exchange of soldiers and politicians held by it for guerrilla fighters in state prisons.

47. Despite all of this, the national Government reiterates its desire to find a political solution to the armed conflict in order to put a stop to the killing by Colombians of their brother Colombians and to put all of the State's efforts into economic growth with equality, that is to say with social justice. These are not mere empty words: the super-project entitled "Plan Colombia" is made up of the development plan "Change to Build Peace" together with programmes for social investment and for the administrative spending needed for national development.

48. The Plan Colombia involves prioritized, focused activities for regions where violence has reached a critical level and is associated with factors such as forced displacement and the cultivation of illegal crops. It is recognized that there is a need here to develop a state policy and not simply a government policy in order to ensure continuity over time, and not to be dependent on the situation surrounding the armed conflict and the negotiations, but to rise above these in a way that allows progress in the structuring of conditions more conducive to peace.

49. It begins by recognizing that violence in Colombia is deeply rooted in economic and political exclusion and in the exercise of democracy with inequality and poverty; and that it is also spurred on by the cultivation of illegal crops. Investment, both private and public, should contribute to the creation of conditions for the construction of peace and the reinforcement of democracy, the present weakness of which is demonstrated by the various types of violence. The policy of investment and an adequate institutional framework should thus make it possible to meet the present and future requirements of the peace-building process and not simply solve the problem of guerrilla confrontation of the State.

50. The violence and armed conflict have a general impact on the entire country, but their consequences are more serious in certain areas (mainly affecting a separate section of the population) where the objective factors of the conflict are interrelated. The lack of real opportunities for large sections of the population to make progress and the unequal geographical provision of human and social capital are subjective factors directly related to poor social cohesion, diminished institutional legitimacy, lack of respect for the appointed authorities and lack of state presence.

51. The Plan Colombia was designed by the Government as the focal point for the different strands of the peace policy according to the type of conflict and the particular characteristics of the areas in which the conflict is to be found. It is based around five action areas: production, infrastructure, humanitarian issues, institutions and the environment. In addition, the Plan will be expanded by activities and investments in two areas: firstly, sectoral strategies through priority short, medium and long-term measures to promote development in the agricultural sector, strengthen civil society, develop the infrastructure and once more make justice institutionalized and the country safe.

52. The Plan Colombia will be financed and implemented using effective, new and participatory mechanisms, with investments totalling 7.5 billion dollars over the next three years. The State will provide 4 billion dollars for the Plan, with the remainder being provided by international cooperation and the private sector.

Progress in state control and administration of justice

53. The national Government has made the Vice-President, Dr. Gustavo Bell Lemus, in his capacity as High Councillor for Human Rights, responsible for coordinating the many efforts and the tasks carried out by various state agencies in order to guarantee, protect and defend basic rights. A broad coordination effort is making progress towards formulating a state policy on human rights and international humanitarian law, ensuring that all the institutions involved observe unity in criteria and breadth in commitments. It is intended that the policy would be integrated with efforts on the part of civil society.

54. The Office of the High Councillor for Human Rights established the Observatory on Human Rights and International Humanitarian Law, which issued the following information:

Of the persons charged or investigated by the Human Rights Unit of the Office of the Procurator-General with crimes involving violations of human rights and of international humanitarian law, the majority were members of the self-defence forces, followed by members of the military and by the guerrillas. In December of last year, 474 of those charged belonged to self-defence groups, 243 were members of the military, 98 were members of the guerrilla forces, 30 were private individuals and 14 were members of the DAS. Arrest warrants were in place for 35 per cent of those charged, 30 per cent were in custody and the remainder were the responsibility of another authority or were free.

The National Office of the Attorney-General reported that torture was the violation giving rise to the largest number of complaints and new cases in 1998. In connection with the 606 complaints handled by the Delegated Attorney's Office for Human Rights, 319 preventive measures were taken