

B. THE GOVERNMENT'S REPLY

173. In its communications of 19 November 1998 and 4 February 1999, the Government states with regard to the sentences imposed on the trade union officials José Luis Risco Montalván, Huamán Rivera and Herrera Rubiños, and on 30 other trade unionists, following the hampering of the free passage of vehicles and persons as well as damage inflicted on these vehicles (the sentences are annexed to the Government's reply) that the case has been definitively closed because of the statute of limitations on criminal matters. Thus, the previous judicial and penal sentences have been revoked and the workers in question have therefore not been punished.

174. As regards the guarantees requested by the Committee to ensure that the new draft bill to amend the Industrial Relations Act is in full conformity with Conventions Nos. 87 and 98, in particular with regard to collective bargaining, the Government reiterates that it is always concerned to comply with the terms of ILO Conventions Nos. 87 and 98 and to ensure that their principles are respected, and has enacted appropriate legislation to guarantee full compliance with those principles. To that end, the Government indicates that any changes to legislation currently in force will take into account the principles embodied in those Conventions, and that it undertakes to keep the Committee informed of any developments in respect of the status before Congress of the draft bill to amend the Industrial Relations Act.

C. THE COMMITTEE'S CONCLUSIONS

175. The Committee notes the Government's indication that the criminal case relating to trade union officials and members of the Federation of Construction Workers of Peru (FTCCP) has been definitively closed. Furthermore, the Committee notes with interest the willingness of the Government to respect the provisions of Conventions Nos. 87 and 98 in any changes to legislation currently in force, in particular with regard to collective bargaining, and the Government's undertaking to provide information on any developments in respect of the status before Congress of the draft bill to amend the Industrial Relations Act. Under the circumstances the Committee trusts that the draft bill to amend the Industrial Relations Act will be fully in conformity with Conventions Nos. 87 and 98. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the new legislative developments in this case.

THE COMMITTEE'S RECOMMENDATIONS

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

- (a) The Committee trusts that the draft bill to amend the Industrial Relations Act will be fully in conformity with Conventions Nos. 87 and 98.**
- (b) The Committee draws the new legislative developments in this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.**

Case No. 1983

Definitive report

*Complaint against the Government of Portugal
presented by
the State Technical Employees' Union (STE)*

Allegations: Government interference in the collective bargaining process and replacing strikers during a strike

177. The complaint of the State Technical Employees' Union (STE) is contained in communications dated 11 and 21 August 1998. The Government sent its observations in communications dated 15 and 21 January 1999.

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

A. THE COMPLAINANT'S ALLEGATIONS

179. In its communications dated 11 and 21 August 1998, the State Technical Employees' Union (STE) alleges violation of Article 7 of the Labour Relations (Public Service) Convention, 1978 (No. 151), ratified by Portugal. It recalls that this Convention provides that measures shall be taken to promote the full development and utilization of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organizations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters.

180. The complainant trade union emphasizes that Legislative Decree No. 45/A/84 of 3 February 1984 recognizes in section 5(1) the right of public servants to bargain collectively concerning their conditions of employment.

181. It explains that in this case it represents the Trade Union of Pilots of the National Institute of Port Pilotage, which carries out its duties in several maritime ports in this country, and that in this capacity it has endeavoured to negotiate the conditions of work of pilots for 1998 with the National Institute of Port Pilotage. It put forward proposals on which no negotiations took place owing to the employer institute's systematic refusal. The STE attaches with its complaint a chronological summary of the steps it had taken from December 1997 until the adoption of Order No. 395/98 of 11 July 1998 of the Ministry of Equipments, Planning and Territorial Administration. This Order fixes pilots' remuneration without any genuine negotiations with the trade union having taken place, according to the complainant. The Order, a copy of which is also attached, applies retroactively from 1 January 1998 although, according to the STE, the trade union was not consulted on the draft.

182. The STE alleges further that notice was given of nationwide strikes of port and harbour entrance pilots on 22 May, 10 July and 30 July 1998 for an 11-day strike in June, a seven-day strike in July and a 16-day strike in August, with a minimum service being maintained. The aim of the strikes was to demand the right to participate in the revision of the Organic Act respecting the Institute and to protest against the absence of a satisfactory response to proposals to bargain collectively on conditions of employment for 1998. The National Institute of Port Pilotage and the Government allegedly replaced striking pilots in several instances. According to the STE, the intention was to lessen the impact of the strike

and hence impair the workers' rights that are essential to the normal exercise of freedom of association. The STE encloses with its complaint photocopies of documents allegedly proving that striking workers had been replaced between 8 and 25 June 1998.

183. The complainant trade union requests the ILO to urge the National Institute of Port Pilotage and the Government to observe Convention No. 151, Legislative Decree No. 45/A/84 of 3 February on the negotiation of conditions of employment in the public service and Act No. 65/77 of 25 August respecting the right to strike, as well as the Constitution of the Republic of Portugal, which lays down this right and prohibits the replacement of striking workers.

B. THE GOVERNMENT'S REPLY

184. In its communications dated 15 and 21 January 1999, the Government provides the following information concerning the first allegation, according to which Order No. 395/98 of 11 July 1998 of the Ministry of Equipment, Planning and Territorial Administration revising the pay scale of pilots of ports and harbour entrances, applicable retroactively from 1 January 1998, had been published without consultation with the trade union and in violation of Convention No. 151 and Legislative Decree No. 45/A/84.

185. According to the Government, the general regulations governing the Port and Harbour Entrance Pilotage Service was laid down by Legislative Decree No. 166/89 of 19 May. The Government states that in this case the collective bargaining process began in December 1997 between the National Institute of Port Pilotage and the State Technical Employees' Union representing part of the port and harbour entrance pilot workforce of this Institute. It explains that at the time the complainant trade union had presented a proposal to update the staff's conditions of employment for 1998. However, contrary to the provisions of section 7 of Legislative Decree No. 45/A/84, there was not the slightest justification for the trade union's proposal to raise pay. Nonetheless, the National Institute accepted it as a basis for negotiation on 2 February 1998 and convened the trade union to a meeting on 13 February 1998. The meeting did not take place as the trade union had not confirmed its attendance, which it acknowledges.

186. In these circumstances, in order to reach a solution by consensus, on 6 March the Institute sent a counterproposal to the complainant trade union taking account of the Institute's budgetary constraints and the percentages laid down for the revision of wages and other financial benefits in a pay agreement signed between the representatives of the Government and the Federation of Trade Unions of the Public Administration, and even the STE (the complainant in this case) for 1998, dated 8 January 1998. The Government encloses a copy of this agreement, which provides for a 2.75 per cent increase in the pay scale for the general regime, special regimes and special corps. According to the Government, the STE did not respond to the counterproposal and the Institute convened a new meeting for 14 April, which was attended by the trade union this time without, however, an agreement being reached.

187. On 6 May 1998 the Institute therefore informed the trade union of the following decisions:

- the gradual annual improvement of the grade scale cannot begin in 1998 owing to the most recent revision of the pay scale in the previous year and the Institute's budgetary constraints;
- the introduction of a risk allowance will be considered in due course when the Institute has been integrated in the port authorities.

188. The Government specifies that the revision of pay was carried out in accordance with section 53 of Legislative Decree No. 361/78 and section 40 of Annex I, by order of the

Minister of Equipment, Planning and Territorial Administration, based on a constant of the 2.75 rate of increase laid down in the 1998 pay agreement which had been signed by the complainant trade union, among others.

189. Concerning the second allegation, according to which the National Institute of Port Pilotage and the Government had replaced striking pilots in several instances, the Government points out that section 6 of Act No. 65/77 of 26 August 1977 respecting the right to strike prohibits employers from replacing striking workers during a strike by persons who were not employed in the establishment or service concerned at the time the strike was announced, and that they may not hire new workers after that date.

190. According to the Government, what Order No. 238/A/97 of 4 April allows is not the replacement of striking workers, but for certain vessels to manoeuvre without using the pilotage service; this authorization was extended a number of times. Under the Order, the movements and manoeuvres described in the general regulations of the port and harbour entrance pilotage service, approved by Legislative Decree No. 166/89 of 19 May, may be freely executed by captains of the merchant marine with recognized experience, whether or not they have a pilot's licence. These merchant marine captains authorized to manoeuvre vessels in accordance with the terms of the Order are not in any way related to the National Institute of Port Pilotage and are not officials, employees or even collaborators of the Institute. Moreover, vessels manoeuvring without having a pilot on board obviously do not have to pay piloting fees since they do not use the pilotage service.

191. The Government concludes that as regards the first point, the right to bargain collectively was not violated during the revision of port and harbour entrance pilots' pay, since it was in fact preceded by a process of negotiation in which the complainant trade union and the Institute participated without, however, reaching an agreement. In the absence of an agreement, the revision was carried out on the basis of the figures laid down in the pay agreement of 1998 concluded between the Government, the Federation of Trade Unions of the Public Administration and the complainant trade union. Concerning the second point, there was no replacement of striking workers, since Order No. 238/A/97, which was extended, in fact made it optional for vessels to use the pilotage service when entering and leaving port, which is entirely different.

C. THE COMMITTEE'S CONCLUSIONS

192. *This complaint of the State Technical Employees' Union (STE) refers to allegations of government interference in the process of collective bargaining, on the one hand, and replacement of striking workers during several strikes, on the other.*

193. *There are considerable discrepancies between the versions of the complainant trade union and the Government as regards the first allegation. According to the complainant trade union, the Ministry of Equipment, Planning and Territorial Administration, by Order dated 11 July 1998, fixed the remuneration of port and harbour entrance pilots retroactively as of 1 January 1998 without any genuine negotiation with the trade union and without consulting the latter. According to the Government, on the other hand, a 2.75 per cent increase in the pay scales for the general regime, special regimes and special corps was accepted by all of the partners through a written agreement dated 8 January 1998 concerning the updating of wages and other financial benefits for 1998, signed by the Government, the Federation of Trade Unions of the Public Administration and the State Technical Employees' Union (the complainant in this case). As no agreement had been reached in bargaining process concerning port and harbour entrance pilotage, the Government proceeded to update the pay of this special corps by*

order of the Ministry of Equipment, Planning and Territorial Administration, based on the constants fixed by the 1998 pay agreement.

194. *The Committee observes that the complainant trade union had on 8 January 1998 accepted a pay increase of 2.75 per cent for the general regime, special regimes and special corps. In these circumstances, the Committee considers that there has been no violation of freedom of association on this point and that this aspect of the case does not call for further examination.*

195. *Concerning the second allegation, the observations of the complainant trade union and the Government contradict each other. According to the complainant trade union, the employer and the Government replaced striking workers on several occasions during the strikes held by port and harbour entrance pilots, in order to weaken the trade union movement. According to the Government, on the other hand, the right to strike was respected and strikers were not replaced, in accordance with the legislative provisions on the right to strike laid down in section 6 of Act No. 65/77 of 26 August respecting the right to strike, which prohibits employers from replacing striking workers by persons who were not employed in the establishment or service concerned at the time the strike was announced. However, Order No. 238/A/97 of 4 April, which was prolonged several times, made it possible to authorize experienced captains of the merchant navy to enter and leave ports without a pilot. According to the Government, these captains are not related to the employer, i.e. the National Institute of Port Pilotage, neither are they officials, employees or collaborators of the Institute, and moreover they did not pay a pilotage fee to enter the ports.*

196. *The Committee notes that Portuguese legislation contains a specific provision prohibiting employers from hiring workers to replace their own employees on strike. Moreover, in the light of the Government's observations, the Committee notes that the Government only authorized experienced captains to enter and leave ports without using the services of the Pilotage Institute. It is not for the Committee to comment on the appropriateness of such a decision, which did not constitute replacement of the striking workforce of the Pilotage Institute.*

THE COMMITTEE'S RECOMMENDATION

197. *In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that this case does not call for further examination.*

Case No. 1959

Interim report

Complaint against the Government of the United Kingdom (Bermuda) presented by the Fraternal Unions of Bermuda (FUB)

*Allegations: Violations of the rights to organize
and to bargain collectively of managerial staff and
insufficient protection against employer interference*

198. In a communication dated 26 March 1998, the Fraternal Unions of Bermuda (FUB) submitted a complaint of violations of freedom of association against the

Government of the United Kingdom (Bermuda). The Trades Union Congress (TUC) associated itself with this complaint in a communication dated 2 April 1998.

199. The Government of the United Kingdom transmitted the observations of the Government of Bermuda in a communication dated 22 October 1998 and provided additional information in a letter dated 3 March 1999.

200. The United Kingdom 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), both of which have been declared applicable without modification to Bermuda.

A. THE COMPLAINANT'S ALLEGATIONS

201. In its communication dated 26 March 1998, the Fraternal Unions of Bermuda (FUB) alleges that the Government of Bermuda has failed to secure in law and practice the fundamental right to join an independent trade union to middle management employees. The FUB cites in particular the middle management employees of the Bermuda Telephone Company who wish to join the Bermuda Public Services Association (an affiliate of the FUB) but were told by the Company that, pending reorganization, such representation would not be expedient. The FUB also makes reference to the reluctance of the owners of the Southampton Princess Hotel to recognize the Bermuda Industrial Union (BIU — also a FUB affiliate) despite a workforce vote to be represented by the BIU for collective bargaining purposes, and also refers to the Government's refusal to intervene on behalf of these workers' rights. Finally, the FUB notes that the Government also failed to ensure the recognition of the BIU by Hamilton Val Cleaners, despite a vote by the employees.

202. The FUB further expresses its concern over the Trade Union Amendment Bill (apparently passed by the House in March 1998, but not yet signed into law) which the complainant considers represents a thinly veiled attack on trade union organizations and on collective bargaining by permitting non-union agents provocateurs to challenge recognition of a union and making it possible for employers to intimidate or bribe employees into voting for the decertification of a union after it has been recognized. In an explanatory document attached to its complaint, the FUB expresses its concern that the requirement under section 30C(b) that an application for certification as a bargaining agent must include "a statement of the facts upon which the union relies as showing that 35 per cent or more of the workers in that unit wish to have the union as the exclusive bargaining agent" and that the application shall be served on the employer may lend itself to intimidation. Furthermore, the FUB refers to an amendment which provides the opportunity for any employee in the bargaining unit, regardless of whether they are a union member, to decertify the union and notes that unscrupulous or recalcitrant employers could encourage such activity through intimidation or bribes. Finally, the complainant alleges that the new Act disenfranchises any future managers from seeking union recognition and representation, contrary to Conventions Nos. 87 and 98.

B. THE GOVERNMENT'S REPLY

203. In a communication dated 22 October 1998, the United Kingdom Government forwarded the following observations from the Government of Bermuda.

204. The Government of Bermuda first observes that the complaint stems from the alleged failure of the Government to secure in law and practice the fundamental right to join an independent trade union to employees in positions of middle management of the Bermuda Telephone Company.

205. The Government then asserts that the purpose of the Trade Union Amendment Bill 1998 is reflected in the speech of the Minister of Labour, Home Affairs and Public Safety to the Legislative Assembly on 27 February 1998. The Minister referred to the fact that in the past Bermuda's industrial relations have traditionally relied upon a voluntary system in which both parties, the employer and the trade union, agreed to generally accepted set procedures, customs and practices. While this approach has enjoyed success over the years, it has become apparent that some employers have failed to recognize trade unions. Consequently, labour unrest has followed. The amendment Bill provides a legal framework to guarantee the right of workers under the law to choose a particular union to represent them for collective bargaining purposes and for that union to be recognized as such by the employer. The legislation also provides a legal mechanism for derecognition of trade unions where it no longer enjoys the support of the workers. These amendments provide workers with the ability to choose a union to represent their interests and to terminate that arrangement and either be represented by another union or not to be represented at all.

206. According to the Government this amendment in no way impedes the right of employees of any description from organizing to promote their own interests. Moreover, Bermuda's Constitution guarantees the right of association and the freedom of individuals to belong to a trade union.

207. In respect of Convention No. 98, the Government considers that the amendment goes beyond the promotion of voluntary agreements by providing the machinery to force a reluctant employer to negotiate with a union. While the Convention promotes that opportunities be provided for collective bargaining, the legislation in question provides the mechanism to ensure that collective bargaining occurs and in no way violates the letter or spirit of the Convention.

208. The amendment permits certification where a union claims to have 35 per cent of the workers in a proposed bargaining unit. "Bargaining unit" is defined as referring to non-management persons, i.e. persons who are not management persons, the management being a defined term meaning "a person who in the course of his or her employment is responsible for the direction and management of the undertaking or has authority to appoint or dismiss or exercise disciplinary control over workers in the undertaking". The concept of restricting workers in a certified bargaining unit for collective bargaining purposes to non-management persons is not unusual and in fact exists in most countries. Managers are required to train employees, direct their work and correct them when problems arise. In a unionized industry, managers must also represent the interests of the employer in collective bargaining as well as grievances and other day-to-day dealings with labour. It is simply not possible for management to function properly, if managers have a dual loyalty, serving as members of management while at the same time being subject to union rules and regulations.

209. The Government further notes the absence of any reference in the Conventions to compulsory collective bargaining and considers therefore that the definition of "bargaining unit" in respect to persons who may be certified for mandatory collective bargaining purposes cannot possibly violate those Conventions. Middle managers are still free to form organizations to engage in voluntary negotiations with a view to achieving a collective agreement.

210. In summary, the Government of Bermuda considers that the Trade Union Amendment Bill does not conflict with either the letter or the spirit of Conventions Nos. 87 and 98 and, to the contrary, satisfies the rights and principles enshrined in these Conventions. Finally, the Government emphasizes that this Bill represents a major

departure from the existing voluntary approach in the labour legislation and is a major step forward in continuing attempts to safeguard the interests of workers.

211. In a communication dated 3 March 1999, the United Kingdom Government indicates that the Bermuda Government has stated that they have referred the matter of the Trade Union Amendment Act to the tripartite Labour Advisory Council which will give full consideration to all the issues raised by the Fraternal Unions of Bermuda in relation to the proposed legislation. The Act will not come into operation until this tripartite consultation has been completed, and any amendments resulting from this process will be incorporated into the legislation by means of an amending Bill. A full report on the progress of these tripartite consultations will be provided in due course.

C. THE COMMITTEE'S CONCLUSIONS

212. *The Committee notes that the allegations in this case concern the failure of the Government to ensure generally the recognition by certain employers of unions duly chosen by employees, as well as the exclusion of middle management from being represented by certified collective bargaining agents under the Trade Union Amendment Bill. The complainant also refers to the possibility under the Bill for employer interference and intimidation in respect of the certification and decertification process of collective bargaining agents.*

213. *The Committee would first note with interest from the Government's latest communication that the Government of Bermuda has now referred the Trade Union Amendment Act to the tripartite Labour Advisory Council for it to consider fully all the issues raised by the complainant in relation to the proposed legislation. It further notes that the Act is not to come into operation until this tripartite consultation has been completed and any amendments resulting from the tripartite process are to be incorporated in the legislation by means of an amending Bill. It is not clear to the Committee from this latest information whether the Trade Union Amendment Bill has been adopted since the Government's initial reply to the complaint. In any event, the Committee will proceed with its examination of the Bill so as to make known its point of view in respect of the matters raised in the complaint.*

214. *The Committee regrets, however, that the Government has not supplied any information on the allegations concerning the failure of the Government to secure the rights of middle-management employees to join independent trade unions and its refusal to intervene to ensure employer recognition for collective bargaining purposes of the unions duly chosen by the employees in the Bermuda Telephone Company, Southampton Princess Hotel and Hamilton Val Cleaners. It requests the Government to provide further information in this respect so that it may examine these allegations in full knowledge of all the facts.*

215. *The Committee notes that the Government's reply only refers to the question of compulsory recognition of collective bargaining agents and the exclusion of middle management. In this respect, the Committee notes the explanation given by the Government that, until the introduction of this Bill, the labour relations situation in Bermuda functioned according to a voluntary system of recognition for collective bargaining purposes. While such a system had enjoyed some success, some employers failed to recognize trade unions and labour unrest would follow. The Committee notes the Government's indication that the amendment Bill in question was introduced precisely in order to provide a legal framework to guarantee the right of workers to choose a particular union to represent them for collective bargaining purposes and to ensure that such a union would be recognized by the employer.*

216. The Committee notes that the amendments provide for a system of compulsory recognition of an exclusive bargaining agent where more than 50 per cent of the workers in the bargaining unit support the union (section 30F(2)). It further notes that a "bargaining unit" is defined under section 30A(2) as "a group of two or more workers (all being non-management persons) in an undertaking, on behalf of whom collective bargaining may take place" and that "management person" is "a person who in the course of his or her employment in an undertaking has authority to appoint or dismiss or exercise disciplinary control over workers in the undertaking". While it is thus clear that management persons may not be represented by the union certified as the exclusive bargaining agent under these amendments, the Committee notes from both the Government's assertion and the absence of any legislative provision to the contrary that middle managers are still free to form organizations to engage in voluntary negotiations with a view to achieving a collective agreement. In other words, the exclusion of management persons only concerns the newly proposed system of compulsory recognition of collective bargaining agents but does not call into question their rights existing hitherto under the voluntary system, nor their right to organize generally as a worker under the Trade Union Act. Finally, the Committee notes that under section 30F unions recognized prior to the entry into force of the amendment Bill shall be certified as the exclusive bargaining agent in respect of the which the agreement designates that union as the exclusive bargaining agent, whether or not that unit includes management persons.

217. As concerns the complainant's allegation that managerial staff have been deprived of their rights to organize and to bargain collectively through their exclusion from the compulsory recognition system established in the amendment Bill, the Committee must first recall that nothing in Article 4 of Convention No. 98 places a duty on the government to enforce collective bargaining by compulsory means with a given organization [see *Digest of decisions and principles of the Freedom of Association Committee*, 1996, 4th edition, para. 846]. The absence of such a duty, on the other hand, does not mean that, once a system of compulsory recognition is proposed, arbitrary exclusions can be made. As concerns separate representation for management persons more generally, the Committee has already considered that it is not necessarily incompatible with the requirements of Article 2 of Convention No. 87 to deny managerial or supervisory employees the right to belong to the same trade unions as other workers, on condition that two requirements are met: first, that such workers have the right to form their own associations to defend their interest and second, that the categories of such staff are not defined so broadly as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their present or potential membership [see *Digest*, *op. cit.*, para. 231]. It is clear both from the Government's reply and the legislation that managerial staff do, in any event, enjoy the rights to organize and to bargain collectively on behalf of their own occupational interests. As concerns the definition of managerial staff, the Committee considers that limiting such a group to persons who have the authority to appoint or dismiss is sufficiently restrictive to meet the second above-mentioned condition. The Committee must raise, however, some concern over the wording of the definition in respect of the exercise of disciplinary control over workers which, taken by itself, could give rise to an expansive interpretation, excluding large numbers of workers from the negotiating scope of a certified bargaining agent to the eventual detriment both of the interests of the workers concerned and the negotiating power of the CBA. In this respect, the Committee requests the Government to take the necessary measures to ensure that the exclusion of managerial staff from the Trade Union Amendment Bill, in its final form, is not drafted in such a way as to permit a broad exclusion of workers who do not genuinely represent the interests of employers from being represented by a certified collective bargaining agent.

218. *As concerns the remaining complaints in respect of the amendment Bill concerning employer intimidation and interference, the Committee first notes that an application by a worker in a bargaining unit for cancellation of certification must be accompanied by evidence that 35 per cent or more of the workers in that unit no longer support the union and is subsequently subjected to a ballot (section 30P). Furthermore, the Committee notes that section 30I concerning protection of voting in ballot makes it an offence to threaten or intimidate any person in order to induce or compel them to vote or refrain from voting, subject to a fine or imprisonment. Noting the Government's most recent indication that the amendment Bill will not come into force until the position of the FUB has been considered by the Labour Advisory Council, the Committee requests the Government to keep it informed of any amendments which may be made to further protect against any eventual employer intimidation or interference in respect of the procedures for union certification or decertification.*

THE COMMITTEE'S RECOMMENDATIONS

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

- (a)** *As concerns the exclusion of managerial staff from the Trade Union Amendment Bill, the Committee requests the Government to take the necessary measures to ensure that, in its final form, this Bill is not drafted in such a way as to permit a broad exclusion of workers who do not genuinely represent the interests of employers from being represented by a certified collective bargaining agent.*
- (b)** *The Committee requests the Government to provide information in reply to the allegations of Government failure to secure the rights of middle-management employees to join independent trade unions and its refusal to intervene to ensure employer recognition for collective bargaining purposes of the unions duly chosen by the employees of the Bermuda Telephone Company, Southampton Princess Hotel and Hamilton Val Cleaners.*
- (c)** *The Committee requests the Government to keep it informed of any amendments which may be made following the review by the Labour Advisory Council of the Trade Union Amendment Bill to further protect against any eventual employer intimidation or interference in respect of the procedures for union certification or decertification.*

Case No. 1977

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

***Complaint against the Government of Togo
presented by
the Force ouvrière togolaise (FOT)***

***Allegations: Violations of the right to establish organizations
without previous authorization***

220. *On 18 July 1998, the Force ouvrière togolaise (FOT) submitted a complaint of violation of trade union rights against the Government of Togo.*

221. The Government supplied its observations in a communication dated 21 October 1998.

222. Togo 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

223. The *Force ouvrière togolaise* (FOT) states that on 5 April 1995, in accordance with the relevant legislation, its by-laws were filed at the Office of the Attorney-General, with the General Directorate of Labour and Social Legislation and at Lomé City Hall. The FOT recalls that under section 5 of Ordinance No. 16 of 8 May 1974 issuing the Labour Code ("the Labour Code"), a trade union whose by-laws have been duly filed comes into existence in legal terms three months after the date of filing; the FOT maintains that it, therefore, has existed legally since 7 July 1995.

224. The complainant adds that its recognition by the authorities was never in any doubt during its first year of existence; it supports its claims with various items of correspondence and documents which show among other things that between May 1995 and December 1996 it was involved in a number of activities organized by the Government and other organizations for the promotion and defence of human rights.

225. The complainant maintains, however, that the situation changed in 1996; since that time, the organization has been subjected to persecution by the authorities — in particular because of its protests concerning the appointment of Workers' delegates to the 83rd Session of the International Labour Conference in June 1996 — and has no longer been involved in various activities at the national level on the grounds that it has no official confirmation that its by-laws have been filed.

226. Despite writing to the Minister of the Interior and Decentralization in September 1995 in order to obtain the official confirmation provided for in the law, the FOT has still received no reply. The FOT considers that the Government's attitude violates its international obligations with regard to freedom of association.

B. THE GOVERNMENT'S REPLY

227. In its reply, the Government addresses the issues of the legal existence of the complainant, its non-involvement in various activities at national level and the persecution which it claims to have suffered from the authorities.

228. As regards the legal existence of the FOT, the Government maintains that it has no true legal existence owing to the circumstances in which the organization's constituent congress took place. The Government explains that only 12 activists were present at the opening ceremony of the constituent congress and only seven at the closing ceremony. Furthermore, neither the national executive nor the report on which the work of the congress was based were presented to the Minister's representative on that occasion. For these reasons, the Government is surprised that the complainant, which does not carry out any grass-roots activities, should have protested at the appointment of Workers' delegates to the 83rd Session of the International Labour Conference in June 1996.

229. However, in view of the fact that the complainant complies with the provisions of section 5 of the Labour Code, the Government states that the authorities have agreed to collaborate with it. It was on this basis that the different communications which the complainant has used to support its complaint were addressed to it.

230. The Government denies failing to meet its international obligations with regard to freedom of association and maintains that if the complainant considers that it has problems, these are connected, not with its legal existence or failure to obtain an official receipt for its by-laws, but with its well-known inability to organize any activities or training or awareness-raising seminars for its members.

231. As regards the non-involvement of the FOT in various national-level activities since 1995, the Government points out the discrepancies between the complainant's allegation in this respect and the correspondence that took place between May 1995 and December 1996, which was attached to the complaint. The Government states that throughout 1996, which coincided with the period during which the General Secretary of the FOT was removed from the public sphere, the FOT retreated behind a wall of silence which made it difficult to believe that it still existed.

232. Lastly, with regard to the persecution which is said to have been suffered by the complainant and its leaders, the Government considers that this allegation is without foundation and the complainant has provided no evidence to support it.

233. The Government concludes by pointing out that it respects the provisions of the freedom of association Conventions which it has ratified and reaffirms its commitment to complying with them, and states that the General Secretary of the FOT should refrain from blaming the Government for the results of its own failings.

C. THE COMMITTEE'S CONCLUSIONS

234. *The Committee notes that the allegations contained in the complaint refer in particular to the right of workers and employers to establish organizations without previous authorization or interference by the public authorities (Article 2 of Convention No. 87 ratified by Togo).*

235. *The Committee notes that under the relevant provisions of the Togo Labour Code, trade unions can be established freely for purposes of study and defence of the economic, industrial, commercial, agricultural and occupational interests of persons engaged in the same occupation, or in similar or related occupations (see Labour Code, sections 3 and 4).*

236. *As regards the formal requirements which must be observed by trade union organizations at the time of their establishment, section 5 of the Labour Code provides that "under penalty of annulment, the founders of any trade union shall file the union's by-laws and the names of those responsible in one capacity or another for administering or leading the union". The provision states further that "the by-laws shall be filed in quadruplicate at the City Hall or at the headquarters of the administrative district where the union in question is established, and one copy of the by-laws shall be sent to the labour and social legislation inspector and one copy to the Attorney-General". A receipt is to be issued not later than three months thereafter. Once that period has elapsed, the union is considered to have a legal existence (end of section 5).*

237. *The Committee recalls that it has always considered that the formalities prescribed by national regulations concerning the constitution and functioning of workers' and employers' organizations are compatible with the provisions of the freedom of association Conventions provided, of course, that the provisions in question do not impair the guarantees laid down in those Conventions [see *Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, para. 247].*

238. *More specifically, these formalities must not be used by the public authorities in such a way as to hinder the legitimate activities of a duly constituted trade union*

organization; this would amount to authorizing interference by the public authorities in the activities of trade unions and would not be compatible with the principles of freedom of association. In other words, these prescriptions and formalities must not amount in practice to previous authorization, nor constitute an obstacle to the establishment of an organization to the extent that it is tantamount to a prohibition pure and simple [see *Digest*, op. cit., paras. 249 and 259]. Moreover, the Committee notes that, according to the Government, neither the national executive board of the FOT nor the report on which the work of the constituent congress of this organization was based were presented to the Government representative when the congress took place. The Committee recalls that such requirements, in order to be in conformity with the above-mentioned principles of freedom of association, must constitute merely a formality to ensure that those rules are made public.

239. The Committee notes that the complainant appears a priori to have complied with the formal requirements which must be met if an organization is to have any claim to lawful existence under Togolese law. Furthermore, the Committee notes that the complainant is said to have been involved in various activities organized by the Government in 1995 and 1996, including participation in the tripartite negotiations which were held in May 1995 between the Government, the National Employers' Council (*Conseil national du patronat*) and the unions.

240. If the formal requirements laid down for the establishment of a trade union are satisfied, the trade union thus established must be able to carry on its legitimate activities without interference by the public authorities, in particular with regard to the manner in which its meetings are held.

241. In addition, the Committee takes note of the Government's observations concerning the complainant's representativeness. While the Committee does not have the information needed to assess the representativeness of the complainant, it is bound to point out that the right to form trade union organizations freely and the recognition of a given union's representative status according to objective, predetermined and precise criteria are two separate issues; moreover, recognition of the representative status of certain unions for the purpose of granting varying privileges and advantages must not result in the *de facto* prohibition of other trade union organizations which do not meet those criteria, thus depriving workers of their fundamental right to establish or join organizations of their own choosing.

242. Under these circumstances, the Committee requests the Government to take all necessary measures to ensure that lawfully constituted Togolese trade unions, including the complainant, can carry on their trade union activities without previous authorization or interference by the public authorities and that, in accordance with section 5 of the Labour Code, the receipt for the filing of the complainant's by-laws is issued. The Committee requests the Government to keep it informed of any measures taken in this regard.

THE COMMITTEE'S RECOMMENDATION

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

- The Committee requests the Government to take all necessary measures to ensure that lawfully constituted Togolese trade unions, including the complainant, can carry on their trade union activities without previous authorization or interference by the public authorities and that, in accordance with section 5 of the Labour Code, the receipt for the filing

of the complainant's by-laws is issued. The Committee requests the Government to keep it informed of any measures taken in this regard.

Case No. 1981

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

*Complaint against the Government of Turkey
presented by*

*the All Municipalities Public Servants' Trade Union —
Bütün Belediye Memurlari Birliği Sendikası (BEM-BIR-SEN)*

*Allegations: Restrictions on the right to bargain
collectively of public servants*

244. In a communication dated 11 August 1998, the Bütün Belediye Memurlari Birliği Sendikası — All Municipalities Public Servants' Trade Union (BEM-BIR-SEN) presented a complaint of violations of freedom of association against the Government of Turkey. It submitted new allegations in a communication dated 25 September 1998.

245. The Government furnished its observations in communications dated 23 and 26 November 1998.

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

A. THE COMPLAINANT'S ALLEGATIONS

247. In its complaint dated 11 August 1998, BEM-BIR-SEN states that it is active in the local government branch of industry and represents the salaried staff having the status of public servants and contract personnel in local government institutions. It contends that the Government hampered its collective bargaining activities and impeded the implementation of already concluded collective agreements thereby violating Convention No. 98.

248. BEM-BIR-SEN then proceeds to explain the background to its complaint. It indicates that it was established on 10 January 1994 and currently has a membership of 32,000. It is also affiliated with the Confederation of Public Servants' Trade Unions (MEMUR-SEN), an umbrella organization established in 1995. It stresses that the Government is obligated through various domestic and international legal instruments — including ILO Conventions Nos. 87 and 98, the Turkish Constitution and the Public Servants' Act No. 657 — to allow public servants' unions the right to carry out their activities freely in order to defend the interests of their members. However, the Government has in the past made it very difficult for public servants to organize and bargain collectively and has imposed various restrictions on organizations of public servants, including BEM-BIR-SEN. Moreover, the Government continues to violate its domestic and international obligations as illustrated by the decision of the Conference Committee on the Application of Standards in June 1998 to discuss the case of Turkey for its non-observance of Convention No. 98.

249. Despite these serious obstacles, BEM-BIR-SEN points out that there have been some developments concerning the rights of public servants' unions although these are still very limited. BEM-BIR-SEN itself has been able to organize in several municipalities with

whom 26 “Social Balance Agreements” (SBA), have been concluded following collective negotiations. These SBAs which grant economic and social rights to union members are comparable to collective bargaining agreements but are referred to as SBAs in order to overcome obstacles put in the way of public servants’ unions by the Government which still does not grant these organizations an explicit right to bargain collectively.

250. BEM-BIR-SEN contends that a concrete example of the Government’s attitude is reflected in the Ministry of the Interior’s decision to prohibit the implementation of the SBA concluded between the employer (Elaziğ Municipality) and BEM-BIR-SEN and which entered into force on 15 January 1998 (a copy of this SBA is attached to the complaint). Pursuant to investigations carried out by inspectors from the Ministry of the Interior, the latter concluded that payments made to BEM-BIR-SEN members pursuant to the SBA were in violation of domestic legislation and would have to be paid back. BEM-BIR-SEN asserts that in the inspection report the inspectors state that “it is not possible for a municipality to sign a contract with a trade union to make extra payments which are not specified in the Public Servants’ Act No. 657”. The inspectors conclude that since the salaries of public servants are regulated by this law, “public servants cannot obtain extra payments and benefits outside their salaries for their duties ...” and that pursuant to the SBA “... some extra wages were paid unlawfully to the staff of the Bus and Water Administration of the Municipality of Elaziğ” (a copy of the inspection report is attached to the complaint).

251. The report accordingly concludes that the payments made should be given back to the municipality. BEM-BIR-SEN indicates that for the re-collection of these payments, the Ministry of the Interior has forwarded the necessary orders to the employer, and the Elaziğ governorship has been entrusted with the task of implementing this process. Apart from these actions, a penal investigation has been initiated by the Ministry of the Interior against the Mayor of the Elaziğ Municipality for having concluded this collective agreement as an employer. BEM-BIR-SEN asserts that all these practices constitute a violation of the right to bargain collectively.

252. In its subsequent communication dated 25 September 1998, BEM-BIR-SEN alleges that the Ministry of the Interior has once again prevented the implementation of an SBA concluded recently between the employer (Suluova Municipality) and BEM-BIR-SEN pursuant to investigations carried out by inspectors from the Ministry (a copy of the relevant SBA as well as the inspection report is attached to the communication by BEM-BIR-SEN).

B. THE GOVERNMENT’S REPLY

253. In its initial reply of 23 November 1998, the Government states that following Turkey’s ratification of Convention No. 151 concerning the protection of the right to organize and procedures for determining conditions of employment in the public service in 1993, the relevant provisions of the Constitution were amended in 1995 by Act No. 4121 so as to recognize the right to organize and collective bargaining of public servants as a constitutional right. Article 53 of the Constitution, as amended by Act No. 4121, reads as follows:

Workers and employers have the right to conclude collective labour agreements in order to regulate reciprocally their economic and social position and conditions of work.

The procedure to be followed in concluding collective labour agreements shall be regulated by law.

The unions and their higher organizations, which may be established by the public employees mentioned in the first paragraph of article 128 and which do not fall under the scope of the first and second paragraphs of this article and also article 54, may appeal to judicial authorities on behalf of

their members and may negotiate collectively with the administration in line with their objectives. If an agreement is reached as a result of collective negotiations, the text of the agreement shall be drawn up and signed by the parties. Such text shall be presented to the Council of Ministers so that administrative and legislative arrangements can be made. If such a text cannot be concluded by collective negotiations, the agreed and disagreed points shall also be submitted for the consideration of the Council of Ministers by the relevant parties. The regulations for the execution of this article shall be stipulated by law.

More than one collective labour agreement at the same workplace for the same period shall not be concluded and put into effect.

254. The Government explains that in line with the aforementioned constitutional amendment of 1995, the Public Servants' Act No. 657 was also amended in 1997 so as to allow public servants to form and join their unions and higher level organizations in accordance with the principles set forth in the Constitution and pertinent legislation. As the final phase of the endeavours to bring the legislation into conformity with the provisions of the relevant international labour standards, the Government submitted a draft bill concerning public servants' unions to the Grand National Assembly for its enactment. The draft bill has been debated extensively in the Assembly and half of its proposed articles have been approved. However, due to the demands of the opposition parties and some public servants' unions, legislative process is pending for the re-evaluation and revision of some of the remaining articles, hence leaving the public servants' unions without a legal framework in which to conduct negotiations and to conclude agreements with the administration. Nevertheless, to facilitate the functioning of the public servants' unions, the Office of the Prime Minister issued a circular dated 20 November 1997, information on which was given in Turkey's previous report on Convention No. 98 under article 22 of the ILO Constitution.

255. The Government points out that public servants in Turkey organized themselves into unions and confederations even before the constitutional amendment of 1995 as was the case with the establishment of BEM-BIR-SEN (All Municipalities Public Servants' Union trade union affiliated to the Confederation of MEMUR-SEN, which is one of the three confederations of public servants' unions). Given the aforementioned legislative and administrative arrangements and efforts shown to that end, the allegations made against the Government questioning its good faith are misguided.

256. The Government concludes that since negotiations and agreements between the public servants' unions and the administration (including local administrations) involve budgetary, legal and administrative arrangements to be made, procedures for the functioning of such unions and regulations governing their relations with the administration should first be legislated. Although such a legal framework is lacking, the Government does not interfere with the collective agreements reached as was indicated by the existence of 26 agreements between BEM-BIR-SEN and municipalities so long as they do not entail payments not stipulated in annual budgets or in the framework legislation such as the Public Servants' Act No. 657/1965. However, in this case, the collective agreement contains provisions of payments which have no legal basis and no budgetary allocation.

257. In its second communication dated 26 November 1998, the Government refers to the allegation that the Ministry of the Interior prevented the implementation of the Social Balance Agreement (SBA) concluded between the Municipality of Suluova and BEM-BIR-SEN through investigations of the said Ministry's inspectors. The Government contends that BEM-BIR-SEN encloses the original inspection report together with its incorrect and misleading translation. According to the Government, the 59th paragraph of the inspection report recalls that section 146 of the Public Servants' Act No. 657 contains the following provision: "Public servants cannot be remunerated for the duties given by

law, statutes, regulations and their superiors save the rights as provided by this Act. No advantage can be granted.” The report states that, under the provision of this section, the payments listed there above have no legal basis; it adds that, aware of this, the accountant’s office secured at the time of payments written contracts with all the officials who received such payments to the effect that if the payments were considered as personal debts, they would be paid back.

258. In fact, the inspection report does not make any statement on, or question the validity of, the SBA concluded between the Municipality of Suluova and BEM-BIR-SEN. Contrary to its translation as provided by BEM-BIR-SEN, the original text of the 59th paragraph of the report, also provided by the said organization, does not contain the following sentences or any similar statement: “According to the State Public Servants’ Law No. 657, the social and economic payments of the municipalities to their officers are also mentioned and some explanation of their regulation is given. It is not possible for a municipality to sign a contract with a trade union and to make some extra payments”. In addition, it does not order the prevention of the SBA’s implementation.

C. THE COMMITTEE’S CONCLUSIONS

259. *The Committee notes that the allegations in this case concern restrictions on the right of organizations of public servants to bargain collectively through government intervention resulting in the non-implementation of previously concluded collective agreements or “Social Balance Agreements” (SBAs).*

260. *Although the complainant (BEM-BIR-SEN) has concluded SBAs with 26 different municipalities, it alleges that the Government has impeded the implementation of two of these SBAs despite the conclusion of these agreements between BEM-BIR-SEN on the one hand and the Municipalities of Elaziğ and Suluova on the other hand. The Government, for its part, contends that although a legal framework — within which public servants’ unions can conduct negotiations and conclude agreements with the administration — is lacking, it does not interfere with already concluded collective agreements so long as they do not entail payments not stipulated in the Public Servants’ Act No. 657/1965 or in annual budgets.*

261. *The Government points out, however, that with regard to the two cases at hand, the SBAs concerned contain provisions of payments which have no legal basis and no budgetary allocation. The Committee notes therefore the implicit acknowledgement in the Government’s reply that the extra wages paid to the staff of the Bus and Water Administration of the Municipality of Elaziğ as well as to the staff of the Bus Administration of Suluova Municipality have to be paid back to the municipalities concerned, as alleged by BEM-BIR-SEN and as attested to by the respective inspection reports. Moreover, although the Government contests the translation of the contents of the inspection report on the SBA concluded between the Municipality of Suluova and BEM-BIR-SEN, the Committee notes that this is somewhat in contradiction with the Government’s non-refusal of the translation of the first inspection report on the SBA concluded between Elaziğ Municipality and BEM-BIR-SEN, which has the same contents as the second one.*

262. *The Committee is therefore led to understand that one of the reasons why the Government, through the intermediary of inspectors from the Ministry of the Interior, would not allow the two above-mentioned SBAs to be implemented is that the extra wages stipulated therein for the staff of the two municipalities concerned are not provided for by law, namely the Public Servants’ Act No. 657.*

263. In this respect, the Committee is bound to remind the Government that public service workers other than those engaged in the administration of the State should enjoy collective bargaining rights, and priority should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service [see *Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, para. 793]. In view of the fact that the staff of the Elaziğ and Suluova Municipalities — in this case staff of the Bus and Water Administration — cannot be considered as public servants engaged in the administration of the State, legislation should not constitute an obstacle to the collective bargaining rights of the above-mentioned public servants. In these circumstances, the Committee considers that in preventing the implementation of the SBAs freely entered into by BEM-BIR-SEN and the Elaziğ and Suluova Municipalities, respectively, the Government violated the principle of free and voluntary collective bargaining established in Article 4 of Convention No. 98.

264. The Government further states that it has submitted a draft bill concerning public servants' unions to the Grand National Assembly. Half of this draft bill's proposed articles have been approved and when enacted it would provide a legal framework in which public servants' unions may conduct negotiations and conclude agreements. The Government nevertheless indicates that the legislative process is pending due to conflicting demands of the opposition parties and some public servants' unions. In this respect, the Committee also notes the information given by the Government in its reports on Conventions Nos. 98 and 151 under article 22 of the ILO Constitution that although the draft bill concerning public servants' unions was initially submitted to Parliament on 14 March 1994, there has been considerable delay with regard to the adoption of this bill due to the various changes in government that have taken place since 1994. In the light of the above factors, the Committee considers that the possibility cannot be ruled out that the bill concerning the trade union and collective bargaining rights of public servants may not be enacted for a considerable period of time. In the interim, public servants' unions cannot be expected to wait till the enactment of this bill to exercise their right to bargain freely their terms and conditions of employment in the public service, a right which is guaranteed for public service workers who are not engaged in the administration of the State by Article 4 of Convention No. 98, ratified by Turkey in 1952. While the Government also maintains that there was no budgetary allocation to make the extra payments to the public servants concerned, the Committee is of the view that it is the employer's responsibility — in this instance, the Elaziğ and Suluova Municipalities — to make that determination. Since both these employers decided, in their respective SBAs, to grant extra payments to their employees, the Committee considers that the decision by the Government to alter the contents of those SBAs which were freely entered into, and already negotiated by the parties was in violation of the voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners.

265. For all the above-mentioned reasons, the Committee regrets that the Government did not give priority to collective bargaining as a means of determining the employment conditions of the public servants employed in the Elaziğ and Suluova Municipalities; it would request the Government to refrain from having recourse to measures of intervention in the collective bargaining process and its outcome in the future for these categories of workers.

266. Accordingly, the Committee requests the Government to ensure that the employees are not obliged to return the extra payments that were provided for in the SBAs concluded between BEM-BIR-SEN and the Elaziğ and Suluova Municipalities. It requests the Government to keep it informed of developments in this regard.

267. Finally, noting that a penal investigation has been initiated by the Ministry of the Interior against the Mayor of the Municipality of Elaziğ for having concluded the collective agreement as an employer, the Committee would insist that the Mayor not be penalized for having exercised collective bargaining rights under Convention No. 98. It therefore requests the Government to stop forthwith the penal investigation initiated by the Ministry of Interior.

268. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case in relation to the application of Convention No. 98.

THE COMMITTEE'S RECOMMENDATIONS

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

- (a) Regretting that the Government did not give priority to collective bargaining as a means of determining the employment conditions of the public servants employed in the Elaziğ and Suluova Municipalities, the Committee requests the Government to refrain from having recourse to similar measures of intervention in the collective bargaining process and its outcome in the future for these categories of employees.
- (b) The Committee requests the Government to ensure that the employees are not obliged to return the extra payments that were provided for in the Social Balance Agreements (SBAs) concluded between the complainant (BEM-BIR-SEN) and the Elaziğ and Suluova Municipalities and to withdraw the orders made to the employer by the Ministry of the Interior. It requests the Government to keep it informed of developments in this regard.
- (c) The Committee requests the Government to stop forthwith the penal investigation initiated by the Ministry of the Interior against the Mayor of the Municipality of Elaziğ for having concluded the SBA as an employer.
- (d) The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of this case in relation to the application of Convention No. 98.

Case No. 1812

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

*Complaint against the Government of Venezuela
presented by
the International Secretariat of Arts, Communications
and Maintenance Trade Unions/International Federation
of Audiovisual Workers (ISETU/FISTAV)*

*Allegations: Employer interference
in the establishment of a trade union*

270. The Committee examined this case at its meetings in March 1996, July 1997 and March 1998 and submitted the following interim reports to the Governing Body [see 302nd Report, paras. 519-534; 307th Report, paras. 471-479; and 309th Report, paras. 387-

403, approved by the Governing Body at its 265th Session (March 1996), 269th Session (June 1997) and 271st Session (March 1998)].

271. The Government sent new observations in a communication dated 4 November 1998.

272. 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. PREVIOUS EXAMINATION OF THE CASE

273. In the present complaint, the complainant organization previously criticized the registration of a trade union (SINATRINCORACTEL) which had been approved very quickly by the authorities in 1994 despite certain anomalies, and argued that there already existed a trade union at the radio broadcasting company CORAVEN-RCTV, namely, the Occupational Trade Union of Radio, Theatre, Cinema, Television and Allied Workers of the Federal District and State of Miranda (SRTVA), and that the public company in question supported the establishment of the new trade union through various anti-union actions (presence of company representatives at the constituent meeting of the new union, threats of dismissal against workers who did not join the new union, negotiation of a collective agreement with the new union, the old one still in force being cancelled by the company, etc.). According to the complainant, there was no constituent meeting as such and the members of the union executive belonged to the old union [see 309th Report, para. 400].

274. The Government states that: (1) once the new union was established, the meeting to elect the executive board was attended by 319 workers; (2) freedom of association in this case was manifested by trade union pluralism which is protected by law; (3) the new trade union fulfilled all legal criteria; (4) the new union was not registered in record time but rather within the time-limit laid down by legislation; (5) the fact that the new union had leaders from the union committee already in existence is irrelevant; (6) as regards the existence of collective conditions already in force, it is the responsibility of the Directorate of the National Labour Inspection Service to oversee the principle of inviolability of collective agreements; (7) this situation concerns a dispute among members of a union which gave rise to the establishment of a new union [see 309th Report, para. 401]. At the same time, the Government had indicated that the complainant organization (SRTVA) had on 20 July 1996 lodged an appeal (the text of which was attached) before the Supreme Court which had not yet given a ruling. According to the documents supplied by the Government, the appeal lodged by the SRTVA was ruled to be admissible on 5 May 1997 by the Supreme Court of Justice which asked the Minister of Labour to submit a report on the matter.

275. At its meeting in March 1998, the Committee made the following recommendation [see 309th Report, para. 403]:

Noting that the Government's declarations and the allegations are contradictory with regard to the legality of the registration of the new union and that the Government's reply does not deal with the alleged presence of representatives of the enterprise at the constituent meeting for the new union, neither does it deal with the allegation concerning the threat of dismissal against workers who did not join the new union, the Committee requests the Government to send its comments concerning these allegations so that it may examine this complaint in full knowledge of the facts.

B. THE GOVERNMENT'S REPLY

276. In its communication of 4 November 1998, the Government reiterates that registration of the trade union SINATRINCORACTEL was confirmed in accordance

with the requirements of the Organic Labour Law. The allegation made by the complainant, that the decision to register the union SINATRAINCORACTEL was taken with excessive haste in only 15 days, is unfounded, since section 425 of the Organic Labour Law expressly states that the competent administrative authority shall register the proposed trade union organization within a period of 30 days following the application, and it is therefore entirely possible — and indeed plausible — for registration to take place before the expiry of the period specified by the provision in question. If that has occurred in response to an application in accordance with the law, it does not constitute an act of anti-union interference, as the complainant organization claims.

277. The Government adds that the administrative ruling by which agreement was given for registration of the trade union organization in question is an administrative act and, as such, can be contested in the courts by anyone who considers his or her rights to have been infringed by that act.

278. The Government explains that it has deliberately refrained from expressing an opinion regarding the allegation made by the complainant organization concerning the presence of representatives of the enterprise at the constituent meeting of the new union on the grounds that an opinion or pronouncement on the matter would constitute real interference by the administrative labour authorities in a union's internal affairs. Any complaint regarding the presence of representatives of the enterprise at the constituent meeting of the new trade union will have to be made through a challenge to the relevant minutes of the constituent meeting which of necessity must be done through a court of law.

279. The Government indicates that it cannot enter into considerations of the internal constitution of trade union organizations, since these are autonomous legal entities which can establish their own rules of membership, something which is essential to freedom of association.

280. As regards the allegation of the complainant organization concerning the threat to dismiss workers who did not join the new union, this is also a complaint that does not come within the competence of the national executive authority. It should be noted that the allegation relates to a presumed threat which, if it is found to have taken place, could constitute conduct detrimental to freedom of association. Since the threat is a declaration regarding a possible future occurrence, it is for the courts alone to determine whether it constitutes an act of interference by the employer in the establishment of a trade union organization.

281. Lastly, the Government emphasizes that Venezuelan law provides mechanisms which ensure legal protection for freedom of association and avert any impending injury which might be caused by an apparently detrimental act of the kind alleged by the complainant organization, in accordance with legislation in force. This includes the possibility of initiating an action to obtain constitutional protection to prevent implementation of acts of the type referred to.

C. THE COMMITTEE'S CONCLUSIONS

282. *The Committee notes that the Government in its reply neither confirms nor denies the presence of representatives of the company CORAVEN-RCTV at the constituent meeting of the new trade union SINATRAINCORACTEL, nor does it confirm or deny the alleged threat to dismiss workers who did not join the new union. Instead, it confines itself to stating that there are mechanisms and remedies available to the other union (SRTVA). The Committee requests the Government to carry out an investigation into these allegations and to keep it informed as soon as possible of the outcome thereof.*

283. Taking into account the foregoing considerations, and given that the Government in its successive replies has maintained that the present case concerns an internal dispute in a trade union which gave rise to the establishment of another union with a membership of 319 workers, the Committee considers it necessary to have the ruling of the Supreme Court of Justice on this matter. It requests the Government to send it the text of the decision handed down in this regard.

THE COMMITTEE'S RECOMMENDATIONS

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

- (a) The Committee requests the Government to carry out an investigation on the allegations concerning the presence of representatives of the company CORAVEN-RCTV at the constituent meeting of the new trade union SINATRAINCORACTEL, and the alleged threat to dismiss workers who did not join the new union, and to keep it informed as soon as possible of the outcome thereof.
- (b) Considering it necessary to have the ruling of the Supreme Court of Justice on the matter that has given rise to the present complaint, the Committee requests the Government to send it a text of this ruling.

Case No. 1952

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

*Complaint against the Government of Venezuela
presented by
the Trade Union of Professional Fire-Fighters and
Allied Workers of the Federal District and the State of Miranda (SINPROBOM)*

*Allegations: Acts of anti-union discrimination and
intimidation against trade unionists in the fire-fighting service*

285. The Committee examined this case at its meeting in May-June 1998 and presented an interim report to the Governing Body [see 310th Report, paras. 591-608, approved by the Governing Body at its 272nd Session in June 1998].

286. Subsequently, the Trade Union of Professional Fire-Fighters and Allied Workers of the Federal District and the State of Miranda (SINPROBOM) sent new allegations in a communication of 6 October 1998. The Government sent its observations in a communication dated 4 November 1998.

287. 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. PREVIOUS EXAMINATION OF THE CASE

288. In the previous examination of the case, the following allegations presented by the complainant remained pending: (1) the dismissal of several trade union officials of their organization (in the fire-fighting sector), namely Glácido Gutiérrez, Rubén Gutiérrez, Tomás Arencibia and Juan Bautista Medina, and of a significant number of union members,

as well as the transfer of another union official (Ignacio Díaz); and (2) the summoning of Tomás Arencibia and Glácido Gutiérrez to appear before two prefectures under penalty of imprisonment.

289. The Committee, having examined the Government's observations, made the following recommendations [see 310th Report, para. 608]:

- (a) The Committee requests the Government to take all necessary measures to guarantee the maintenance in law and in practice of the right to organize and to bargain collectively of fire-fighters.
- (b) The Committee requests the Government to guarantee the legal status of the complainant organization as a trade union organization.
- (c) The Committee requests the Government to guarantee the reinstatement in their posts of the trade union officials belonging to the complainant organization who were dismissed or transferred, at least until the judicial authority has handed down its decision in this matter.
- (d) The Committee requests the Government to send its observations concerning the alleged arbitrary dismissal of various members of the complainant organization.
- (e) The Committee requests the Government to respond to the allegation that, on 14 and 20 August 1997, the trade union executives Messrs. Tomás Arencibia and Glácido Gutiérrez were summoned to appear before the Prefecture of the Paz Castillo Municipality of the State of Miranda and the Prefecture of the Libertador Municipality of the Federal District under penalty of imprisonment.

B. NEW ALLEGATIONS OF THE COMPLAINANT ORGANIZATION

290. In its communication of 6 October 1998, the Trade Union of Professional Fire-Fighters and Allied Workers of the Federal District and the State of Miranda (SINPROBOM) states that the acts of anti-union discrimination against trade union officials which had been alleged (and which dated back to July 1997) have not been remedied, since as a result of inactivity and procedural delays the Ninth Labour Court of First Instance of the Metropolitan Area of Caracas has given no definitive ruling in the matter (confining itself instead to provisionally suspending the order of the administrative authorities to reinstate the union officials in their posts), although the Supreme Court recently stated in a similar case that the ordinary labour regulations, and therefore also trade union freedoms and guarantees in accordance with the Organic Labour Law, apply to the workers of the Eastern Fire Brigade Association, and despite the fact that the Permanent Commission on Social Affairs of the Chamber of Deputies issued a report in July 1996 in which it correctly interpreted the scope and significance of the decision of the Committee on Freedom of Association in the present case.

291. As regards the dismissals of SINPROBOM members, the proceedings initiated before the Ministry of Labour (reinstatement and payment of salaries) have not been finally settled by the labour inspector, although they have been in progress for more than 15 months; according to legislation, a decision should have been given within 21 working days, and what now exists is a situation of denial of justice.

292. At the same time, the complainant alleges that on 1 October 1998, the Chief of Operations of the Eastern Fire Brigade Association called in police when union officials Tomás Arencibia and Glácido Gutiérrez were present, in order to prevent them from doing their work.

C. THE GOVERNMENT'S REPLY

293. In its communication of 4 November 1998, the Government states that it bears no responsibility for the alleged violations, since they involve the actions of other branches of state authority (the judiciary and the municipal and regional executive authorities) which are autonomous and, under Venezuelan law, not liable to interference from the Government. Nevertheless, the Government confirms that to date, it, through the Ministry of Labour, has recognized the legal status of the trade union SINPROBOM and the trade union rights claimed by it, through the administrative proceedings recognized by the complainant. It is striking that SINPROBOM has persisted in pursuing its claims and sought — successfully — to win recognition of those claims at the administrative level, knowing the constraints imposed by legislation on the actions of the administration. On the other hand, although a number of effective and legally recognized means are available for bringing an action before the courts (for example, action to obtain constitutional protection), the organization in question has confined itself to presenting a complaint of violations of trade union rights to the ILO.

294. With regard to the suspension of the effect of the administrative precautionary measure adopted by the labour inspector, who ordered the reinstatement of the union officials, the Government states that the labour court judge in the case acted on a request from representatives of the Eastern Fire Brigade Association who believed that their rights had been infringed by the labour inspector's decision. Judicial review of the labour inspector's decision is recognized by law, inasmuch as that decision is an administrative act and as such can be overruled by decision of a court. This provides a safeguard against arbitrary or unlawful action by the administrative authority. This safeguard provided by the law cannot automatically give way to provisions which exist to protect freedom of association; both deserve appropriate protection.

295. The Government adds that the suspension of the effects of the labour inspector's administrative decision is a precautionary measure requested by one of the parties and adopted by the judge to avert the risks related to a final ruling finding that the administrative decision was without foundation. It is assumed that in the present case, the judge, acting in an autonomous capacity (in which the national executive may not interfere without encroaching on the competence of a different branch of the public authority), was obliged to assess the legality of the preventive measure before agreeing to it and accordingly suspended the effect of the administrative decision. All this is recognized by law, and, whatever the Government's opinion in the matter, such a judicial ruling must be respected and cannot be contravened on the pretext of ensuring the reinstatement of SINPROBOM executives as ordered by an administrative department of the executive branch. The case will be finally settled by the courts.

296. On the other hand, the Government indicates that, in the face of the alleged arbitrary dismissals of some workers belonging to the union, the workers concerned can make use of various administrative or legal remedies in order to re-establish the legal situation which had been infringed, if they are responding to anti-union discrimination. The Ministry of Labour will be attentive to any petition that might be received and will take action within the limits of its procedures and competence. As regards the alleged delays caused by a number of labour officials with regard to the dismissals of union members, the necessary instructions have been given to clarify the facts and, where necessary, to take appropriate corrective measures.

297. As regards the allegations concerning the summoning of Tomás Arencibia and Glácido Gutiérrez under penalty of imprisonment, the Government states that, in the absence of any detailed information from the complainant concerning the circumstances, it can only

say that the law provides sufficient safeguards to ensure that no citizen can be arbitrarily deprived of his or her liberty. The Government will be attentive to this situation, although no such violation — deprivation of liberty of the officials referred to — has occurred.

D. THE COMMITTEE'S CONCLUSIONS

298. *The Committee notes that the pending allegations refer to: (1) the dismissal of various trade union officials from their organization (in the fire-fighting sector), namely Glácido Gutiérrez, Rubén Gutiérrez, Tomás Arencibia and Juan Bautista Medina, and of a significant number of union members, as well as the transfer of another union official (Ignacio Díaz); (2) the summoning of Tomás Arencibia and Glácido Gutiérrez to appear before the two prefectures under penalty of imprisonment; and (3) the request for the presence of police by officials of the Eastern Fire Brigade Association at a time when SINPROBOM officials were present at the Association's headquarters. The Committee notes the Government's statement to the effect that it has recognized the unions's legal status and the trade union rights to which it lays claim.*

299. *As regards the dismissals and acts of discrimination against officials of the union SINPROBOM, the Committee notes the Government's statement to the effect that the judicial authority is autonomous and the Government therefore cannot interfere in its activities, that the judicial authority in question temporarily suspended the order issued by the administrative authority to reinstate the trade union officials, and that the case will be resolved by the judicial authority. As regards the dismissals of SINPROBOM members, the Committee notes that the Government states that the workers concerned can make use of a number of administrative and legal remedies and that the delays which some labour officials are alleged to have caused have given rise to instructions to clarify the facts and, if necessary, to take corrective measures.*

300. *As regards the Government's statement that the judiciary branch is autonomous and its decisions cannot be interfered with by the executive branch without encroaching upon the mandate of another public authority, the Committee considers that it is certainly important that a judicial authority be able to judge cases concerning dismissals and the question of their illegality. It considers however that it is the responsibility of the Government to ensure the application of international labour Conventions concerning freedom of association which have been freely ratified and which must be respected by all state authorities, including the judicial authorities.*

301. *In the light of this information, and taking into account the fact that the measures taken against trade unionists are based on an interpretation of the law that excludes fire-fighters from the right to organize and collective bargaining [see 310th Report, paras. 596 and 605], the Committee can only repeat its previous conclusions to the effect that the trade union officials who were dismissed or transferred in July 1997 should be reinstated in their former posts [see 310th Report, para. 606], and regret that the judicial authority has still not given a ruling on the matter and has provisionally suspended the administrative decision to reinstate the officials in question. The Committee also regrets that the Ministry of Labour has still not given a decision on the alleged anti-union dismissal of members of SINPROBOM, although these date back to 1997. Under these circumstances, the Committee once again requests the Government, as it did during its previous examination of the case, to take the necessary measures and initiatives to ensure the reinstatement of the union officials of the complainant organization who were dismissed or transferred, and that of the union members who were dismissed, and to keep it informed of any decision or ruling that may be handed down in the matter. The Committee recalls that "cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be*

really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned" [see *Digest of decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, para. 749].

302. Lastly, as regards the allegations concerning the summoning of Tomás Arencibia and Glácido Gutiérrez to appear before a prefecture and the request for a police presence by the Eastern Fire Brigade Association at a time when the union officials in question were present at the Association's headquarters, the Committee notes the Government's statement to the effect that the complainant has not described the precise circumstances in which the two union officials were summoned and that they were not in any case deprived of their liberty. The Committee also notes that the Government has not referred to the presence of police requested by the Eastern Fire Brigade Association when the two officials in question were present at the Association's headquarters. In this regard, the Committee requests the Government to carry out an investigation into these allegations and, if acts of intimidation or anti-union measures are found to have taken place, to take the necessary measures to prevent any recurrence of such practices and punish those responsible.

THE COMMITTEE'S RECOMMENDATIONS

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

- (a) The Committee once again requests the Government to ensure the reinstatement in their posts of the union officials and members of the complainant organization who were dismissed or transferred, and to keep it informed of any decision or ruling that may be handed down in the matter. Taking into account the fact that such measures date back to 1997, the Committee recalls the principle according to which "cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned".
- (b) As regards the allegations concerning the summoning of Tomás Arencibia and Glácido Gutiérrez to appear before a prefecture and the request for a police presence by the Eastern Fire Brigade Association when the union officials in question were at the Association's headquarters, the Committee requests the Government to carry out an investigation into these allegations and, if acts of intimidation or anti-union measures are found to have taken place, to take the necessary measures to prevent any recurrence of such practices and punish those responsible.

Geneva, 17 March 1999.

(Signed) Max Rood,
Chairman.

314th Report of the Committee on Freedom of Association

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 17 March 1999 under the chairmanship of Professor Max Rood.

2. The Committee had before it several complaints of violations of freedom of association in Colombia, presented by a number of trade union organizations (Cases Nos. 1787, 1948, 1955, 1962, 1964 and 1973) as well as 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 International Labour Conference under article 26 of the ILO Constitution.

3. In conformity with the decision adopted by the Governing Body at its 273rd Session (November 1998), the Committee submits, for the Governing Body's approval, a report on the pending cases and on the complaint presented in virtue of article 26 of the Constitution.

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) and*
 - *the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and related bodies (ASODEFENSA)*

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

4. The Committee last examined this case at its November 1998 meeting [see 311th Report, paras. 272-292]. The International Confederation of Free Trade Unions (ICFTU) sent additional information in communications dated 4, 13 and 25 November 1998 and 26 January and 2 and 12 February 1999. The Latin American Central of Workers (CLAT) forwarded new allegations in communications dated 21 and 28 January 1999.

5. The Government sent its observations in communications dated 12 November, 10 and 16 December 1998 and 6, 8 and 15 January 1999.

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, when it dealt with 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 311th Report, para. 292, sections (b), (c), (d), (e), (f) and (g)]:

- The Committee asks the Government to keep it informed of the result of the investigations and judicial proceedings that have been instituted in connection with [a number of] murders, disappearances, death threats and detention involving trade union officials and members. [Annex I contains the list of the trade union leaders and members in question.] ...
- The Committee notes that the Government has not sent its observations on the numerous pending or presented allegations in 1998 in connection with the murders, disappearances, death threats and physical aggression involving trade union officials and members, as well as raids on union premises [see Annex II for the complete list of the allegations on which the Government has not communicated its observations], and urges it to communicate its observations on all the allegations without delay. Moreover, in the light of the prevalence of violence in Colombia against trade unionists, the Committee urges the Government to take immediate measures to provide protection for those trade union officials and members who have received death threats whose names are listed in the annex to this report.
- The Committee urges the Government to keep it informed regarding the results of the appeal lodged by the Banco Andino against the administrative decision which imposed a fine for violation of convention standards, and regarding the inquiry it ordered into the alleged anti-union acts committed by the authorities of the Banco Andino and Citibank. Similarly, the Committee asks the Government to extend the scope of the inquiry to include the Sudameris and Anglo Colombiano banks, which are also mentioned by the complainants, and that if the allegations are substantiated, to punish those responsible for such acts and to prevent any recurrence in the future.
- The Committee asks the Government to communicate without delay its observations on the allegations regarding 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 requests the Government to forward without delay its observations on the allegations submitted by the ICFTU, CLAT, CUT and CGTD in October 1998 concerning the murder, physical assaults, death threats and detention of trade unionists and trade union leaders arising out of the national strike of government workers. Furthermore, the Committee observes that Jorge Ortega García, Vice-President of the CUT, was among the trade union leaders murdered in October 1998, who the day he was murdered had signed a communication presenting new allegations relating to this case. The Committee deeply deplores the murder of Mr. Ortega García and observes that this is the second time that a trade union leader submitting a complaint of violations of trade union rights before the Committee on Freedom of Association is murdered.
- The Committee reiterates its request to the Government to keep it informed on the results of the judicial process under way on the dismissal of trade union officials and members of the ALFAGRES S.A. and TEXTILIA Ltd. companies and of the Ministry of Finance.

B. NEW ALLEGATIONS AND INFORMATION

8. The International Confederation of Free Trade Unions (ICFTU) in its communications of 4, 13 and 25 November 1998 and 26 January and 2 and 12 February 1999, and the Latin American Central of Workers (CLAT) in communications of 21 and 28 January 1999 raise the following allegations:

Murder and attempted murder of trade union officials and members

- On 14 November 1998, Mr. Oscar Artunduaga Núñez, of the Union of Municipal Workers of Cali (SINTRAEMCALI) was murdered in district 20 of Cali. It is stated that Mr. Artunduaga Núñez had been on the list of those who had been threatened, which also included other officials of SINTRAEMCALI: Messrs. Alexander López, Alexander Barrios, Harold Viafara, Marcel Castagall, William Lozano, Robinson Emilio Masso, César Martínez, Luis Hernández, Ramiro Perlaza and Luis Enrique Imbaqui.
- On 14 January 1999, Mr. Jesús Orlando Arévalo, health secretary of the Trade Union of Public Service Enterprise Workers of Arauca (SINTRAEMP SERPA) was murdered during an attack on his home in the capital of the department of Arauca. The murderer fired seven shots which caused the death of the trade union leader who was known for his militant trade unionism.
- On 20 January 1999, Mr. Moisés Caicedo Estrada, trade union leader of SINTRE PORCE II, who had already been subjected to death threats, was murdered in Medellín, Antioquia.
- On 18 December 1998 Ms. Gladys Pulido Monroy (trade unionist) was murdered in the municipality of Tutasá, district of La Capilla, in the department of Boyocá.
- On 22 January 1999, Mr. Tarciso Mora, President of the Colombian Federation of Teachers (FECODE), was attacked in Bogotá, and almost killed as a result. This leader, along with six other leaders of CUT had already been subjected to death threats during a strike which took place in October 1998.
- On 23 January 1999, Mr. Osvaldo Rojas Arévalo, President of the Union of Workers of the Department of Cali, who had already received a number of death threats at his home and at the trade union premises, was attacked near his home in Cali by an armed gunman, and as a result suffered serious physical injuries.
- On 31 January 1999, Mr. Oscar David Blandón González, attorney of the Union of Municipal Workers of Bello, was murdered, probably by las Autodefensas Unidas de Colombia (a paramilitary group).

Death threats

- On 13 October 1998 a note was left at the office of the Bank Employees Union threatening the life of the following trade union leaders of that organization: Messrs. Rafael Tobías Peña, Yuli Gonzáles, Segundo Mora, Alvaro Pulido and Olimpo Cárdenas.
- The following trade union leaders have again been threatened: Hernado Hernández and Gabriel Alvis, President and Vice-President of the Workers' Trade Union (USO), Jesús Baldvino, President of SINTELECOM, and Jesús Bernal, President of SINTRACREDITARIO.
- In a communication of 25 November, the ICFTU demands the protection of the following trade union leaders who have received death threats: Héctor Fajardo Abril, Secretary-General of CUT, Tarcicio Mora, President of FECODE, Gabriel Alvis,

Vice-President of USO, Jesús Bernal, President of the National Association of Employees of the Caja Agraria, Alexander López, President of SINTRAEMCALI, Over Dorado, leader of ADIDA and Rafael Baldobino, President of SINTELECOM.

C. THE GOVERNMENT'S REPLY

9. The Government's communication of 15 January 1999 states generally that the Interinstitutional Commission for the Protection and Promotion of Human Rights was established in 1998, in response to the series of murders, disappearances, death threats and detentions of trade union leaders and members, as listed in the numerous allegations in connection with the cases before the Committee on Freedom of Association. The Commission is composed of representatives of the Office for the Protection and Promotion of Human Rights of the Ministry of Labour and Social Security, the workers' confederations of the trade unions at greatest risk, human rights non-governmental organizations (NGOs), the Episcopal Conference, the State's supervisory and investigatory bodies, the armed forces, together with the Office of the United Nations High Commissioner in Colombia. The Government specifies that such work is conducted in the context of the normal limitations established by criminal law in connection with the conduct of an investigation (pre-trial proceedings) and to the extent permitted by the natural complexity of the violence that has beset the country over the past four decades. Information was requested principally from the Office of the Procurator-General of the Nation, which is the body responsible for carrying out inquiries and gathering evidence regarding possible offences. It also decides whether a criminal proceeding is to be initiated based on the investigation. To begin the proceeding, the Prosecutor charges the suspects before a judge. The Office of the Procurator-General of the Nation is responsible for: (a) taking appropriate control measures in order to guarantee that the suspects are present during the proceedings; (b) providing protection for victims, witnesses and others involved in the proceedings. The Procurator-General of the Nation is required to investigate suspects and to respect their fundamental rights and procedural guarantees. All persons should report to the Procurator-General of the Nation any offences of which they are aware and collaborate with the system of justice as a witness or in reporting a crime. As ascertained by the ILO direct contacts mission in 1996, the Procurator-General of the Nation's Office is a body that is independent of the executive branch, belonging to the judiciary. Therefore, no ministry can give orders to the Procurator-General of the Nation's Office and may merely respectfully request the information it requires, provided that such information is not sub judice. Moreover, with a view to achieving optimal results in gathering information, the cooperation of other bodies was requested, including primarily the Ministry of the Interior, the National Attorney-General's Office and the national police. Consequently, the Government has been able to make some progress in its investigations. With respect to the outcome of investigation and judicial proceedings that had been initiated in connection with the following 84 cases of murder, disappearances, death threats and detentions of trade union officials and members, the Government states as follows:

A. Point 1

(a) Murders

- (1) Antonio Moreno Asprilla (12 August 1995), murdered by persons presumed to belong to a paramilitary group in the municipality of Chigorodó. The case is being dealt with by the Apartadó branch of the Prosecutor's Office, filed as No. 1554, as reported by the Administrative Department of Security (DAS), according to document DAS.OJ.DH. 383 of 6 August 1998.

- (2) Manuel del Cristo Ballesta (13 August 1995), SINTRAINAGRO activist from Chigorodó, Antioquia. The murderers are believed to be members of a paramilitary group (in all, 18 persons were shot at point-blank range).
- (3) Francisco Mosquera Córdoba (5 February 1996), member of SINTRAMADARIEN, Urabá. The investigation, which is being carried out by the Regional Prosecutor's Office with responsibility in Quindó, is at the stage of gathering evidence.
- (4) Carlos Antonio Arroyo de Arco (5 February 1996), member of SINTRAMADARIEN, Urabá. The case has been placed under the responsibility of the Medellín regional department of prosecutors' offices, filed as No. 23050; the investigation is at the preliminary stage.
- (5) Francisco Antonio Usuga (23 February 1996), member of SINTRAINAGRO, Carepa, Antioquia. The murderers are believed to be members of commando groups. The investigation is being conducted by the Chigorodó Prosecutor's Office, filed as No. 1813. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (6) Pedro Luis Bermúdez Jaramillo (6 June 1995), head of the farm workers' committee, Carepa, Antioquia. The investigation is being conducted by the Chigorodó Prosecutor's Office, filed as No. 1406. Two proceedings were transferred to the Carepa regional Prosecutor's Office as the competent authority on 9 June 1998; the suspects are being investigated and the inquiry is at the preliminary stage. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (7) Armando Humanes Petro (23 May 1996), member of FECODE, Montería, Córdoba. The case is being conducted by the Medellín regional department of prosecutors' offices, filed under No. 2283718 and the investigation is at the preliminary stage of gathering evidence.
- (8) William Gustavo Jaimes Torres (28 August 1995), president of the National Association of Peasant Users (ANUC). The Prosecutor's investigation is at the preliminary stage.
- (9) Ernesto Emilio Fernández Pezter (20 November 1995), leader of ADUCESAR, murdered in the municipality of Pailitas, César, by persons believed to be hired assassins. The Chiriguana Prosecutor's Office has closed the case and sent a copy of the file to the Human Rights Unit of the Office of the Attorney-General. Information provided by the DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (10) Jaime Eliécer Ojeda (23 May 1994), president of SINTRAMINOBRAS, Ocaña, Norte de Santander. Murdered by hired assassins. He had previously received threats and was on a black list with a further 60 persons. The Prosecutor's Office states that an investigation has been opened.
- (11) Alfonso Noguera Cano (4 November 1994), president of SINTRAMUNICIPIO, Ocaña, Norte de Santander. The case is being conducted by the regional department of prosecutors' offices of Cúcuta, filed under No. 7970 and the investigation is at the preliminary stage.
- (12) Alvaro Hoyos Pabón (12 December 1995), member of SINTRATITAN, Yumbo, Valle. The murderers are believed to be members of a paramilitary group. The regional Attorney's Office states that the trade unionist had received threats. The case is being conducted by Yumbo branch Prosecutor's Office 114, filed under No. 527 and the investigation is at the preliminary phase.
- (13) Libardo Antonio Acevedo (7 July 1996), president of FESTRALVA (CTC), Tuluá, Valle. The case is being conducted by the Cali regional department of prosecutors' offices, filed under No. 12873. Pursuant to a decision of 11 May 1998, the case has been provisionally closed, in accordance with article 326 of the Code of Criminal Procedure.

- (14) Néstor Eduardo Galíndez Rodríguez (3 July 1997) who occupied the position of chairperson of the executive subcommittee of ANTHOC, Yumbo, Valle. The Prosecutor's investigation is at the preliminary stage.
- (15) Erieleth Barón Daza (3 May 1997). The case is being conducted by Dagua branch Prosecutor's Office 132, filed under No. 090062. The investigation is at the preliminary stage.
- (16) Jhon Freddy Arboleda Aguirre (3 July 1997), member of SINTRAGRICOLAS, Maceo, Antioquia. The case is being conducted by the Medellín regional department of prosecutors' offices, filed under No. 817 and the investigation is at the preliminary stage.
- (17) William Alonso Suárez Gil (3 July 1997), member of SINTRAGRICOLAS, Maceo, Antioquia. The investigation is at the preliminary stage.
- (18) Eladio de Jesús Chaverra Rodríguez (3 July 1997), member of SINTRAGRICOLAS, Maceo, Antioquia. The investigation is at the preliminary stage.
- (19) Luis Carlos Muñoz (3 July 1997), leader of SINTRAMUNICIPIO, Segovia, Antioquia. The investigation is being conducted by the Puerto Berrío Prosecutor's Office, filed under No. 1894. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (20) Nazareno de Jesús Rivera García (3 December 1997), member of SINTRAFRONMINES, Amagá, Antioquia. The Prosecutor's investigation is at the preliminary stage.
- (21) Héctor Gómez (22 March 1997), murdered in the central park of Remedios, Antioquia. The investigation is being conducted by the Segovia branch Prosecutor's Office, filed under No. 2056. Information supplied by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (22) Gilberto Casas Arboleda (11 February 1997), member of SINTRAINAGRO, Apartadó, Urabá. The case is being conducted by the Medellín regional Prosecutor's Office, filed under No. 22858, and the investigation is at the preliminary stage. According to FENSUAGRO, the suspects are believed to be members of a paramilitary group.
- (23) Norberto Casas Arboleda (11 February 1997), member of SINTRAGRICOLAS Antioquia, Apartadó, Urabá. The case is being conducted by the Medellín regional Prosecutor's Office, filed under No. 22858, and the investigation is at the preliminary stage. According to FENSUAGRO, the suspects are believed to be members of a paramilitary group.
- (24) Alcides de Jesús Palacios Casas (11 February 1997), member of SINTRAGRICOLAS, Apartadó, Urabá. The case is before the 4th brigade of the regional Prosecutor's Office, filed under No. 22858, and the investigation is at the preliminary stage. According to FENSUAGRO, the suspects are believed to be members of a paramilitary group.
- (25) Argiro de Jesús Betancur Espinosa (11 February 1997), member of SINTRAGRICOLAS, Apartadó, Urabá. A case was being brought against him by the Terrorism Unit of the Prosecutor's Office for rebellion, filed under No. 27884, 1996. He was accused of "active participation in subversion". The investigation is currently at the pre-trial stage which was opened on 5 October 1998. According to FENSUAGRO, the suspects are believed to be members of a paramilitary group.
- (26) Bernardo Orrego Orrego (6 March 1997), member of the Association of Vendors, Medellín, Antioquia. According to the CUT, the police are believed to be responsible. The national police report No. 022 INSGE-GRUDH of 12 January 1999 states that "with regard to Case No. 64 on page 4 referring to the event which

occurred on 6 May 1997 during which Bernardo Orrego Orrego was killed by the police, it has been established that the event occurred as the result of a police manoeuvre to remove the unlicensed street vendors' barrows from the metro viaduct, which led to acts of violence against the police". The police version states that the victim, who was involved in the action, threatened police officer Mosquera Mosquera Freddy with a knife, thereby forcing him to defend himself with his firearm, with the results recorded in reports. Immediately after the event occurred, Orrego Orrego's companions reacted by engaging in acts of violence which led to the burning of a bus belonging to the Empresa Transportes Medellín company, licence plates VXB-870 and subsequently caused damage to property at the junction of Carrera 51 with Calle 53: Sala X Villanueva, Heladería Monterrey, Carnicería Cruz, etc. Consequently, the police officer was suspended on 29 July 1997, pursuant to decision No. 2240, on the orders of the Directorate General of the National Police. The investigation in connection with the criminal proceedings, filed under No. 751, against the police officer for the murder of Bernardo Orrego Orrego has been closed, pending a decision on the merits of the pre-trial proceedings. It should be noted that the body in question has ordered the examining court to set up a number of commissions with a view to contributing to the pre-trial proceedings and arriving at an appropriate decision on the available evidence. This information was provided by the Chief Judge-Advocate of the Metropolitan Police of the Valle de Aburrá.

- (27) José Isidoro Leyton Molina (22 March 1997), CGTD branch president, murdered in Ibagué, Tolima. According to information provided by the local DAS in Tolima, on 22 March 1997, in the first section of the pedestrian street opposite No. 5 of the Barrio Refugio in Ibagué, José Isidoro Leyton Molina was murdered by two men and one woman who fled on a white motorcycle; his body bore three bullet wounds. The body was examined and removed by duty permanent Procurator's Office 24. Document 2521 of 30 April 1997, addressed to the director of the branch DAS in Tolima by the above-mentioned Procurator's Office, transmits the warrant for the arrest of four individuals on a charge of the murder of José Isidoro Leyton Molina, filed under No. 7311. The judicial police units assigned to this branch subsequently arrested two people on 2 May 1997 in the city of Ibagué and on 4 June 1997 in the city of Santafé de Bogotá, who were later brought before unit 1 of the joint department for life, sexual offences and intra-family violence as the competent authority, as reported by Procurator's Office 24. The department opened pre-trial proceedings under No. 4191, conducted by Procurator's Office 10 (life) and later transferred on 3 June 1997 to the procurator assigned to the regional judges by document No. 4709, filed under No. 1391 of 6 June 1997. Subsequently, on 13 June 1997, the case was forwarded to the regional directorate of the Santafé de Bogotá Procurator's Office, document No. 1363, and was filed under No. 31570 of the terrorism unit of the regional directorate of Procurator's Offices, with a view to settling the legal position of the two individuals arrested by members of DAS. Pursuant to a decision of 17 October 1997, the regional judges of Bogotá ruled that one of the individuals who had been arrested should be released for lack of evidence. The other individual is currently being held in a Bogotá prison. The other two suspects in this crime are evading justice and warrants are still out for their arrest. DAS units are continuing intelligence work to discover their whereabouts. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (28) Magaly Peñaranda (27 July 1997), member of SINTRAMUNICIPIO, Ocaña, Santander. Unit two for economic assets and public administration carried out an

- investigation, recorded under No. 3907, to identify the persons responsible. The investigation has been closed (article 326 of the Code of Criminal Procedure) through decision No. 046 of 1 June 1998. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (29) David Quintero Uribe (7 August 1997), president of SINTRACUACESAR, Aguachica, Cesar. The investigation was carried out by Procurator's Office 15, recorded under No. 4787, inquiries were conducted to identify those responsible; the case has been forwarded for closure to the headquarters of the above-cited Procurator's Office on 5 March 1998. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (30) Eduardo Enrique Ramos Montiel (14 July 1997), member of SINTRAINAGRO, murdered in Apartadó Urabá. The investigation is being carried out by the branch Procurator's Office of Apartadó, recorded under No. 4960. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (31) Libardo Cuéllar Navia (23 July 1997), member of FECODE, murdered in the municipality of El Agrado, Huila. According to information forwarded by the Huila branch of DAS, on 23 July 1997, at approximately 19.00 hours, in the morgue of Barzón hospital, an examination was carried out of the body of Cuéllar Navia, who had been attacked in Balceadero, vía Garzón, El Agrado by unknown individuals who stole the motorcycle on which he had been travelling. The examination was carried out by the branch Procurator's Office 17 with the support of the SIJIN judicial police unit of Garzón, as recorded in certificate No. 044 of 23 July 1997. The body bore a round wound on the right side of the neck. Investigations into the event are being carried out by the above-cited Procurator's Office. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (32) Wenceslao Varela Torrecillas (29 July 1997), member of SUDEB (FECODE), murdered in El Peón, Bolívar. The investigation is being carried out by Mompós branch unit 25, recorded under No. 396 and is at the preliminary stage.
- (33) Abraham Figueroa Bolaños (25 July 1997), member of FECODE, murdered in the municipality of Milán, Caquetá. The investigation, which is being carried out by the Procurator's Office, recorded under No. 2729, is at the preliminary stage. According to the source (FECODE), the victim was working with the indigenous community.
- (34) Edgar Camacho Bolaños (25 July 1997), member of ADIH (FECODE), murdered in the municipality of Milán, Caquetá. According to the source (FECODE), the victim was working with the indigenous community.

The teacher Luis Alberto Lopera Múnera was murdered at the same time as the teachers Abraham Figueroa Bolaños and Edgar Camacho Bolaños. According to information provided by the Caquetá branch of DAS, "on 25 July 1997, at 10.00 hours, in the Aguas Negras indigenous reserve, in the jurisdiction of the municipality of Milán, 20 unidentified individuals entered; their faces were painted and they carried weapons used exclusively by the armed forces. They murdered seven Coreguajes Indians, including the three above-cited teachers". Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.

- (35) Aurelio Arbeláez (4 March 1997), member of SINTRAFRONMINES, Segovia, Antioquia. The investigation was carried out by the unit appointed by the Segovia circuit criminal court, recorded under No. 1909. Under a decision of 8 June 1998, Procurator 75 ordered that the investigation should be suspended and, subsequently, on 17 July 1998, the case was closed. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (36) José Guillermo Asprilla Torres (23 July 1997), member of SINTRAINAGRO, Apartadó. The investigation was carried out by the Apartadó branch Procurator's

- Office, recorded under No. 4969. On 9 June 1998, under article 326 of the Code of Criminal Procedure, the investigation was suspended and the case closed.
- (37) Félix Antonio Avilés Arroyo (1 December 1997), member of ADEMACOR (FECODE), murdered in Ciénaga de Oro, Córdoba. The investigation is being carried out by the Medellín regional Procurator's Office, recorded under No. 24365 and is currently in the pre-trial stage, "the perpetrators of the murder accuse him of being one of those responsible for the terrorist attacks on the premises of Funpazcor and Ganacor".
- (38) Juan Camacho Herrera (25 April 1997), member of a trade union in the mining sector, murdered in Río Viejo, Bolívar. The investigation is being carried out by the national human rights unit of the Office of the Procurator-General of the Nation, recorded under No. 8300. The investigation is currently at the inquiry stage and arrest warrants have been issued for two suspects on the grounds of "terrorism-motivated murder".
- (39) Luis Orlando Camacho Galvis (20 July 1997), murdered in Aguachica, Cesar; no information exists on possible membership of any trade union. The inquiry was opened by the Aguachica branch unit, recorded under No. 4750, with a suspect under investigation, and was forwarded to headquarters for closure on 25 March 1998. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998. According to the Procurator's Office "the victim was secretary for community development in the town council of Río Viejo, Bolívar", from which it may be deduced that he was not connected in any way with the trade union movement.
- (40) Hernando Cuadros Mendoza, president of the Tibú branch of the Oil Industry Workers' Trade Union (USO), murdered in 1994 in Tibú by persons believed to belong to a paramilitary group, according to information provided by the NGO "Nunca Más". The proceedings are being conducted by the Cúcuta Regional Directorate of Procurators' Offices, recorded under No. 9364. The crime has been classified as "terrorism-motivated murder".
- (41) Freddy Francisco Fuentes Paternina (18 July 1997), union official of ADEMACOR (FECODE), murdered in Montería, Córdoba. The case is being handled by the national human rights unit of the Office of the Procurator-General of the Nation, recorded under No. 634, and the investigation is at the preliminary stage. According to the CUT, ENS, FECODE and CINEP, the presumed perpetrators are members of a paramilitary group.
- (42) Néstor Eduardo Galindo (6 March 1997), president of ANTHOC executive subcommittee, murdered in Yumbo, Valle.
- (43) Víctor Julio Garzón (7 March 1997), secretary-general of FENSUAGRO, murdered in Santafé de Bogotá. The investigation is being carried out by the national human rights unit of the Office of the Procurator-General of the Nation, recorded under No. 31508 and is at the preliminary stage. The crime has been classified as "terrorism-motivated murder". According to CUT and CINEP, the perpetrators are paid assassins.
- (44) Isidro Segundo Gil Gil (9 December 1996), secretary-general of SINTRAINAL, murdered at his workplace. The investigation is being carried out by the national human rights unit of the Office of the Procurator-General of the Nation, recorded under No. 164, and is at the preliminary stage.
- (45) José Silvio Gómez (1 April 1996), coordinator of SINTRAINAGRO, Carepa, Antioquia, murdered by persons believed to be members of a paramilitary group. The investigation is being carried out by the Chigorodó branch Procurator's Office, recorded under No. 1850. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.

- (46) Enoc Mendoza Riasco, member of FECODE, was murdered in the municipality of Ciénaga on 4 July 1997. According to information forwarded by the Magdalena branch of DAS, it has been ascertained that the investigation into the murder of Enoc Mendoza Riasco was carried out by the Ciénaga branch of Procurator's Office 6, recorded under No. 091; the suspect was a local teacher. A decision of 19 September 1997 found in favour of the teacher and an order was issued for examination of evidence in order to initiate pre-trial proceedings, which were opened on 18 February 1998 by Ciénaga branch Procurator's Office 20; the technical investigations unit of the local municipality Procurator's Office was assigned to investigate the facts and identify the culprits. In a report of 10 June 1998, the technical unit states that 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. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (47) Carlos Arturo Moreno López (7 July 1995), head of the farm workers' committee, murdered in Apartadó, Urabá, apparently by members of a commando group. The investigation was carried out by the Apartadó branch Procurator's Office, recorded under No. 3710. In November 1997 it was ordered that the case should be provisionally closed, as provided by article 326 of the Code of Criminal Procedure. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998. According to FENSUAGRO and "Nunca Más", the original sources of the information, the murderers are members of a paramilitary group, and the victim had already received death threats from them.
- (48) Luis Orlando Quiceno López (16 July 1997), member of SUTIMAC, murdered in Fredonia, Antioquia. The Santa Bárbara branch unit is responsible for the case, recorded under No. 667 and the investigation is at the preliminary stage. According to the CUT, he was kidnapped on 13 July 1997.
- (49) Nazareno de Jesús Rivera (12 March 1997), member of SINTRAFRONTMINES of Amagá, Antioquia. The investigation conducted by the Procurator's Office is at the preliminary stage.
- (50) Arnol Enrique Sánchez Maza (13 July 1997), member of the Córdoba Teachers' Union (FECODE), murdered in Montería. The case is being conducted by the Montería branch directorate of Procurators' Offices, and the investigation is at the preliminary stage. According to FECODE and CINEP, he was kidnapped by members of a paramilitary group for ten days and his body was found in the Sinú river.
- (51) Camilo Eliécer Suárez Ariza (21 July 1997), attorney of FENSUAGRO, murdered in the municipality of Ciénaga, apparently by persons believed to belong to a paramilitary group. According to information forwarded by the Magdalena branch of DAS, it has been ascertained that on 18 July 1997, in the municipality of Ciénaga, at about 12.50 p.m., Messrs. Suárez Ariza and Tapias Llerena were kidnapped from the SINTRAINAGRO union headquarters, located at the junction of calle 24 and carrera 27, by approximately ten individuals bearing short and long-range weapons. On 22 July 1997, at 10 a.m., their bodies were found in the location known as La vuelta al cura, in the jurisdiction of the municipality of Ciénaga. The CTI, in conjunction with the local Procurator's Office, are responsible for carrying out the subsequent procedures. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (52) Mauricio Tapias Llerena (21 July 1997), secretary general of FENSUAGRO, murdered in the municipality of Ciénaga, apparently by paramilitary groups.

- Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998. According to FENSUAGRO, armed men entered the headquarters of the Ciénaga branch of SINTRAINAGRO, on 18 July 1997; he was beaten until he became unconscious, then he was taken to a car and tortured. His body was found on 22 July.
- (53) Atilio José Vásquez Suárez (28 July 1997), member of FECODE, murdered in the municipality of San Juan de Nepomuceno, Bolívar. It was ascertained that the respective proceedings were conducted by the Barranquilla regional Procurator's Office. The Single Union of Workers of Bolívar (SUDEB) stated in addition that the wife of the aforementioned teacher, Ms. Zoila Iglesias, has joined the relocation plan. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998. The teacher, who worked as director of the San Juan de Nepomuceno school, had been kidnapped (for purposes of extortion) by unknown individuals the previous day.
- (54) Luis Abel Villa León (21 July 1997), member of SINTRAMINEROS of Antioquia, was murdered in Amagá, Antioquia. The investigation was carried out by the Amagá Procurator's Office, recorded under No. 896. On 7 May 1998 it was ordered that the case should be closed, pursuant to article 326 of the Code of Criminal Procedure. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (55) Odulfo Zambrano López (27 October 1997), president of the local branch of SINTRAELECOL, murdered in Barranquilla by hired assassins. The case is being conducted by the Barranquilla Regional Directorate of Procurator's Offices, recorded under No. 9410, and the investigation is at the preliminary stage.
- (b) *Disappearances*
- (1) Ramón Alberto Osorio Beltrán (15 April 1997), education secretary of FENSUAGRO, kidnapped in Medellín. The Procurator's Office states that its investigation, recorded under No. 146283, into this crime against freedom is at the preliminary stage. The source "Nunca Más" states that the presumed culprits are members of a paramilitary group. Osorio Beltrán was kidnapped together with his son who subsequently appeared at a police station.
- (2) Pedro Fernando Acosta Uparela (28 December 1996). Mr. Acosta Uparela, a member of ADES (FECODE) was in fact kidnapped together with his godson Hugo Hernán. According to information communicated by the Sucre branch of DAS: "... it was ascertained that on 28 December 1996, in the Las Malvinas farm in the municipality of Galeras, the teacher Pedro Fernando Acosta Uparela and his minor godson Hugo Hernán Caugil were kidnapped by a group of armed men who were subsequently identified as belonging to the National Liberation Army (ELN). On 25 January 1997 Mr. Acosta Uparela was released in a rural area in the municipality of Galeras, and stated that no money had been demanded and that during the time of his kidnapping he had been moved on two occasions to locations that he could not identify. Four months later, in May 1997, the minor was returned. These facts were reported to the Galeras police and to the Sucre GAULA, who interviewed family members; no information exists regarding any demand made during that time to the family by the kidnappers. Currently, the person in question lives with his family in the municipality of Galeras, and works as a teacher in the local urban school. To date, he has neither received further threats nor been subject to any further kidnap attempts and has received no demands for money". Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998. The Government of Colombia considers it surprising that two years after the kidnapping and subsequent release of the teacher Acosta Uparela, the authors of the report to the ILO should not have taken the trouble to clarify this allegation which is morally damaging to Colombia.

- (3) Rodrigo Rodríguez Sierra (6 February 1995), Barranquilla branch president of SINTRAPROACEITES, Atlántico, disappeared in the municipality of El Copey. The preliminary investigation was carried out by the municipal representatives of the Office of the People's Advocate and the local Procurator's Office. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998. The Office of the Procurator-General of the Nation provided the following information on the case: "Type of offence: disappearance. Date of events: 16 February 1995. Position: president. Organization: SINTRAPROACEITES, Copey. Disciplinary action: file 008-001431/95 conducted by the Procurator's Office responsible for the defence of human rights, the file was closed on 25 February 1997 because the suspect was not guilty".
- (4) Alvaro José Taborda Alvarez (8 January 1997). Member of ADEMACOR murdered in Montería, Córdoba. The case is being conducted by the Procurator's Office, recorded under No. 184. The investigation is at the pre-trial stage. One suspect is subject to control measures in connection with this offence; it has also been stated that Taborda Alvarez was a rehabilitated former member of the Popular Liberation Army (EPL). According to the CINEP, the suspects are believed to be members of a paramilitary group, who "removed him from his home, accusing him of taking part in dynamite attacks on the Córdoba cattle station".

(c) *Death threats*

According to the national police: "in connection with the threats against Oscar Aguirre Restrepo, Arango Alvaro Alberto, Horacio Berrio Castaño, Martha Cecilia Cadavid, Franco Jorge Humberto, Giraldo Héctor de Jesús and Gutiérrez Jairo Humberto, who belonged to the Union of Employees of the Department of Antioquia, the Metropolitan Police of Valle de Aburrá has instituted measures to guarantee their safety, such as the security assessment in connection with José Rangel Ramos Zapata, president of the union, on 23 April 1998; the assessment concluded that the union headquarters, where the union official spends much of his time, should be under continual surveillance".

The Office of the Attorney-General, the Office of the Procurator-General, the Office of the People's Advocate and the Medellín municipal representatives of the People's Advocate are other bodies whose activities concentrate on creating an environment of security and confidence for those concerned. The ninth unit of the Metropolitan Police of Santiago de Cali carried out inquiries in connection with the case filed under No. 52 regarding threats against Mr. Jairo Alfonso Gamboa López. This unit, with headquarters in the municipality of Yumbo, deals with the written and telephone threats that were received by Mr. Gamboa López, secretary of the trade union of the Curtiembres Titán SA companies; in response to these threats, a risk assessment was carried out in the month of October which concluded that threats had been going on over a period of eight months, beginning with a written communication which had been attributed to a group calling itself "Colombia Sin Guerrilla" — CONSINGUER (Colombia without guerrillas). A further conclusion reached by the risk study was that the person receiving the threats did not desire the protection of the police but instead wished the police to help him obtain weapons. The above is recorded in document No. 0002 of 5 January of the Metropolitan Police of Cali.

The Office of the National Attorney-General also provided the following information:

- (1) Jorge Eliécer Martín Trujillo. Type of offence: death threats. Position: secretary. Organization: SINDICONS, Medellín. Accused: members of the national police. Date of occurrence: 26 November 1997. Disciplinary action: file 020-005683/97 conducted by the Office of the Attorney-General responsible for the national police, closed on 18 September 1998 for lack of evidence.

- (2) Víctor Ramírez. Position: president. Organization: SINTRASON. Disciplinary action: file 015-00521 forwarded on 18 January 1996 to the Second District Procurator's Office of Santafé de Bogotá. New number 701/96. Accused: member of the national police. Stage: preliminary inquiry.
- (3) Carlos Hugo Jaramillo, José Luis Jaramillo Galeano and Luis Norberto Restrepo, union officials of SINTRADEPARTAMENTO Antioquia, reported that they had received threats. The Metropolitan Police of Valle de Aburrá states that it took certain measures to guarantee their safety, such as conducting a security assessment for all members of the union leadership. Although the degree of risk was considered to be minimal, it was nonetheless decided that the trade union headquarters, where the officials spent much of their time, would be put under continual surveillance.

(d) *Detentions*

The following cases relate to persons connected with criminal proceedings conducted by the Office of the Procurator-General of the Nation, with respect for and in compliance with due process, protection of the right to defence and in keeping with criminal law, under which, when serious evidence exists, the suspect is required to remain in the state in order to ensure that justice can run its course.

- (1) Edgar Riaño Rojas, member of USO-Neiva, was placed in detention on 12 June 1996 in Casa Fiscal La Picota on charges of rebellion, terrorism and conspiracy to commit crime.
- (2) Marcelino Buitrago, member of USO-Tibú, north Santander, was placed in detention on 12 August 1996, in Casa Fiscal La Picota on charges of rebellion, terrorism and conspiracy to commit crime.
- (3) Felipe Mendoza, member of USO-Tibú, north Santander, was placed in detention on 12 May 1996 in Casa Fiscal La Picota on charges of rebellion, terrorism and conspiracy to commit crime.
- (4) Monerje Sánchez, member of USO-Tibú, north Santander, was placed in detention on 12 May 1996 in Casa Fiscal La Picota on charges of rebellion, terrorism and conspiracy to commit crime.
- (5) Guillermo Cárdenas, member of USO-Tibú, north Santander, was placed in detention on 12 May 1996 in Casa Fiscal La Picota on charges of rebellion, terrorism and conspiracy to commit crime.
- (6) Rafael Estupiñán, member of USO-Tibú, north Santander, was placed in detention on 1 December 1996 in Casa Fiscal La Picota on charges of rebellion, terrorism and conspiracy to commit crime.
- (7) Hernán Vallejo, member of USO-Tibú, north Santander, was placed in detention on 12 May 1996 in Casa Fiscal La Picota on charges of rebellion, terrorism and conspiracy to commit crime.
- (8) Luis Rodrigo Carreño. Information is expected within the next few days from the Procurator's Office and other official bodies from which it has been requested.
- (9) Leonardo Mosquera, member of USO-Tibú, north Santander, was placed in detention on 12 May 1996 in Casa Fiscal La Picota on charges of rebellion, terrorism and conspiracy to commit crime.
- (10) Fabio Liévano, member of USO-Tibú, north Santander, was placed in detention on 12 May 1996 in Casa Fiscal La Picota on charges of rebellion, terrorism and conspiracy to commit crime.
- (11) César Carrillo, treasurer of USO-Nacional, was arrested on 12 June 1996, on charges of rebellion, terrorism and conspiracy to commit crime and released on 15 May 1998.

B. Point 2

The Committee asked the Government to send its observations on allegations in connection with murders, disappearances, death threats and physical aggression involving trade union officials and members, as well as on raids on union premises presented in 1998, and to provide protection to union officials who had received death threats, listed in Annex 2 of the case.

In that connection, after consultation with the Colombian State's monitoring and investigatory bodies, and on the basis of information from sources such as the Office for the Protection and Promotion of Human Rights of the Ministry of Labour and Social Security, and trade union organizations themselves, the Government informs the Committee on Freedom of Association as follows:

(a) *Allegations on which the Government has not communicated its observations*

- (1) Manuel Francisco Giraldo, murdered by members of a paramilitary group on 22 March 1995, according to information from FENSUAGRO. He was secretary of the SINTRAINAGRO executive subcommittee of Apartadó, Urabá.
- (2) Twenty-three workers belonging to SINTRAINAGRO were murdered on 29 August 1995. Responsibility for this massacre which occurred on the "Osaka" farm in Carepa (Urabá), is attributed to the V Front of the Revolutionary Armed Forces of Colombia (FARC), on the orders of "El Manteco", the commander of this guerrilla group.
- (3) Twenty-four workers of the Rancho Amelia banana farm in Turbo (Urabá), members of SINTRAINAGRO, murdered on 20 September 1995. Responsibility for this massacre, which occurred near Apartadó in "Bajo del Oso", is attributed to the same FARC guerrilla group commanded by "El Manteco". Attention should here be drawn to the massacre carried out by the FARC on 23 January 1994 in the "La Chinita" quarter in the municipality of Apartadó, which was stormed and 35 persons brutally murdered, most of them workers belonging to SINTRAINAGRO. The "La Chinita" quarter, which is today inhabited by 5,000 families, was established as a result of the large-scale migration of workers who had been living on the banana farms and who were driven out by the massacres and selective murders carried out in the area both by guerrillas and by paramilitary groups. Inquiries have revealed that a FARC front was directly involved, attacking these inhabitants merely on account of their sympathies for the hope, peace and freedom movement founded by EPL guerrillas. A particular feature of this massacre, which was condemned by the entire country, was that the former mayor of Apartadó, Nelson Campos Núñez and two SINTRAINAGRO officials, Gustavo Arcia and Daró Charci, who were active members of the Communist Party and the patriotic union, were implicated. They were subsequently tried and convicted. It should be noted, in addition, that the FARC list the above-mentioned Campos Núñez, Arcia and Charci among the imprisoned guerrillas who may be exchanged for soldiers and members of the police kidnapped by this subversive group.
- (4) Alvaro David, member of the workers' committee of the "Los Planes" farm, member of SINTRAINAGRO, was murdered on 22 March 1996 (information from the Procurator's Office pending). The FARC are stated to be responsible for this crime, the victim being an active member of the hope, peace and freedom movement.
- (5) Jairo Navarro, trade union member, workers' committee (Carepa, Antioquia), disappeared on 6 June 1995 (no information from the Procurator's Office).

According to the human rights NGO “Nunca Más”, Jairo Navarro was taken by members of the paramilitary group from his workplace on the “La Playa” farm in the banana-growing area. His whereabouts are unknown.

- (6) Sabas Domingo Socadegui Paredes, trade union official murdered on 3 June 1997 in Saravena, Arauca. The investigation is being conducted by the Procurator’s Office 26.
- (7) José Ricardo Sáenz, disappeared 24 July 1996, member of FECODE. According to information provided by the Cundinamarca branch of DAS, it was ascertained through an interview with Pedro Luis Arango Sánchez, president of the district association of teachers, that José Ricardo Sáenz, who is employed in a school in Suba, had previously been held for a period of approximately three months, apparently by a paramilitary group. Subsequently, in mid-1997 he was released together with another three individuals who had also been kidnapped. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998. The case caused alarm throughout the country, since this kidnapping was carried out in line with a widely publicized decision by the paramilitary group commanded by Carlos Castaño that family members of guerrilla commanders would be kidnapped in retaliation for all kidnappings carried out by guerrilla groups.
- (8) Misael Pinzón Granados, member of SINTRAINAGRO, kidnapped by persons believed to belong to a paramilitary group in the municipality of Puerto Wilches, Santander, on 7 December 1997. According to information forwarded by the Santander branch of DAS, it was ascertained that on 17 August 1997 this employee of the Empresa Bucarella S.A. was abducted by a number of individuals who said that they were members of a paramilitary group; his whereabouts are unknown. The municipal court of Puerto Wilches provided the information that a petition of *habeas corpus* was filed by Ms. Rebeca Pérez Poveda, wife of the person in question, in which the facts were recounted. The report was recorded under No. 881, Volume 3: perpetrators unknown, offence yet to be characterized, author of the report unidentified. The report was sent to the Cúcuta regional Procurator’s Office as the competent authority. A petition of *habeas corpus* was subsequently filed, recorded under No. 882, sheet 184, volume 3, petitioner: Rebeca Pérez Poveda; victim: Misael Pinzón Granados; date of the occurrence: 12 July 1997. The case was closed for lack of sufficient grounds to initiate the proceeding requested. Information provided by DAS in document DAS.OJ.DH. 383 of 6 August 1998.
- (9) Eduardo Enrique Ramos Montiel, member of SINTRAINAGRO, murdered in Apartadó, Urabá, “El Chispero” farm on 14 July 1997. The Apartadó branch Procurator’s Office conducted the investigation into the case, recorded under No. 4960, information provided by DAS, document DAS.OJ.DH. 383 of 6 August 1998.
- (10) Jesús Arley Escobar Posada, president of the local branch of ASEINPEC, murdered by persons believed to be hired assassins in Cali on 18 July 1997, according to information provided by CUT. The investigation, which was initiated by the Cali Procurator’s Office, recorded under No. 104995, is at the preliminary stage.
- (11) Emiliano Jiménez, member of USO, disappeared on 27 October 1997. The identity of the culprits is unknown.
- (12) Amadeo Jalave Díaz, member of USO, disappeared on 27 October 1997. The identity of the culprits is unknown.
- (13) Jhony Cubillo, union leader of ECOPETROL, disappeared on 27 October 1997. The identity of the culprits is unknown.
- (14) Ulpiano Carvajal, union leader of ECOPETROL, disappeared on 27 October 1997. The identity of the culprits is unknown.

(15) Rami Vaca, union leader of ECOPETROL, disappeared on 27 October 1997. The identity of the culprits is unknown. In view of the similarities in the preceding five cases of supposed disappearance, which occurred 15 months ago, and which generated no response at the national level, DAS has been requested to provide information on the matter. On 14 January 1999, the director of DAS, Lieutenant Colonel Germán Gustavo Jaramillo Piedrahita, sent the following communication to the Office of the Minister of Labour and Social Security: "in response to your verbal request, may I inform you that on 27 October 1997, 11 officials, four at ECOPETROL and seven at the Tecniequipos services company were presumably kidnapped, in Aguachica (Cesar), by the 'Camilo Torres Restrepo' brigade of the ELN; they were released in the same area on 30 October 1997. Inquiries undertaken at the time revealed that these oil company employees had been held for the purpose of ascertaining the nature of the activities in which they were engaged in the area, in which the subversive group in question was active". The communication had two attachments. The first, national army document No. 000208, dated 27 October 1997, stated that "In the Municipality of Aguachica (Cesar), subversives belonging to the Frente Camilo Torres Restrepo of the ELN, kidnapped the following employees of ECOPETROL: Ulpiano Carvajal, Amadeo Jalave Díaz, Emiliano Jiménez, Jhonny Cobillas; and the following employees of the Tecniequipos services company: Hernán Ramos Rodríguez, Freddy Medina Carvajalino, Gustavo Conde, Hernán Ríos Rodríguez, Eduardo Espinosa, Henry José Silva Gutierrez and Jimmy Bolaños".

A second attachment, a document of the national army dated 30 October 1997, that is, three days after the previous document, states: "in the municipality of Aguachica, Cesar, subversives of the Camilo Torres Restrepo front of the ELN released the following oil workers who had been kidnapped on the previous 27 October; ECOPETROL: Ulpiano Carvajal, Amadeo Jalave Díaz, Emiliano Jiménez, Jhonny Cobillas; and the employees of the Tecniequipos services company: Hernán Ramos Rodríguez, Freddy Medina Carvajalino, Gustavo Conde, Hernán Ríos Rodríguez, Eduardo Espinosa, Henry José Silva Gutierrez and Jimmy Bolaños".

From these two documents, it may be deduced that: (a) the persons in question were kidnapped for a period of three days and spontaneously released by the guerrilla group responsible; (b) on the date on which the report was submitted, none of the workers who had been victims of the kidnapping remained in captivity. Given these facts, the Colombian Government wishes to register before the ILO its surprise at the use made of these events by those who reported it and perpetuated the misconception.

- (16) José Raúl Giraldo Hernández, secretary of SINDICONS, murdered in Medellín on 25 November 1997 by persons believed to belong to a paramilitary group. The investigation by the Procurator's Office is at the pre-trial stage, recorded under No. 160872.
- (17) Elkin Clavijo, president of the workers' union of the Porce II Hydroelectric Project, murdered in the municipality of Amalfi, Antioquia, on 30 November 1997. The investigation by the Procurator's Office is at the preliminary stage and is recorded under No. 25110. Members of the ELN are stated to be responsible for this crime.
- (18) Alfonso Niño, treasurer of the union of workers of the Porce II Hydroelectric Project, murdered in the municipality of Amalfi, Antioquia, on 30 November 1997. Information from the Procurator's Office pending. Members of the ELN are stated to be responsible for this crime.
- (19) Luis Emilio Puerta Orrego, leader of the trade union of workers of the Porce II Hydroelectric Project, murdered on 22 November 1997. The Procurator's Office

- initiated its investigation on 18 December 1997, recorded under No. 162105. Members of the ELN are stated to be responsible for this crime.
- (20) José Vicente Rincón, member of SINTRAFERCOL, murdered in Barrancabermeja on 7 January 1998, information from the Procurator's Office pending. According to information provided from the CUT, the persons believed to be responsible for the crime are members of a paramilitary group.
 - (21) Arcángel Rubio Ramírez Giraldo, member of SINTELECOM, murdered in the municipality of Venecia, Cundinamarca, on 8 January 1998, information from the Procurator's Office pending.
 - (22) Fabio Humberto Burbano Córdoba, president of the trade union association of employees of the national penitentiary and prison institute, Cali section, murdered in Santander de Quilichao (Cauca) on 12 January 1998. According to the CUT, members of a paramilitary group are believed to be responsible. The investigation was initiated on 12 January 1998 by the Popayán branch Directorate of the Procurator's Offices, filed under No. 413.
 - (23) Osfanol Torres Cárdenas, member of the trade union of public enterprise workers of Medellín, murdered in Medellín on 31 January 1998. According to the CUT, members of a paramilitary group are believed to be responsible. The Procurator's Office has opened an investigation, recorded under No. 165069.
 - (24) Fernando Triana, member of the executive subcommittee of the National Federation of Government Workers, Medellín section, murdered in Medellín on 31 January 1998, according to the CUT, members of a paramilitary group are believed to be responsible. The investigation by the Procurator's Office is at the preliminary stage.
 - (25) 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. The Procurator's Office is conducting the corresponding proceedings, recorded under No. 335.
 - (26) Jorge Boada Palencia, leader of the Association of the National Penitentiary Institute (ASOINPEC), murdered in Bogotá on 18 April 1998. The investigation by the Procurator's Office is at the preliminary stage.
 - (27) José Eduardo Umaña Mendoza, lawyer, murdered in Bogotá on 18 April 1998. The investigation by the Procurator's Office, recorded under No. 346, is at the pre-trial stage; six persons are being held in pre-trial detention in this connection. It should be noted that Umaña Mendoza, although not a trade union member, acted as defence attorney for members of USO who were being held on charges of crimes that were not related to trade union activities. This clarification is relevant because it demonstrates that attempts to present his death as a violation of ILO Convention No. 87 are unfounded.
 - (28) Jorge Duarte Chávez, member of USO, murdered in Barrancabermeja on 9 May 1998. The investigation by the Procurator's Office is at the preliminary stage.
 - (29) Carlos Rodríguez Márquez, member of USO, murdered in Barranquilla on 10 May 1998. The investigation by the Procurator's Office is at the preliminary stage.
 - (30) Misael Díaz Ursola, member of the executive committee of the National Federation of University Employees, murdered in Montería on 26 May 1998. The investigation by the Procurator's Office is at the preliminary stage.
 - (31) Alexander Cardona, member of the regional bureau of USO, was kidnapped and disappeared on 14 July 1998. The investigation by the Procurator's Office is at the preliminary stage.
 - (32) Mario Jiménez, member of the executive subcommittee of CASOBE, was kidnapped and disappeared on 27 July 1998. The investigation by the Procurator's Office is at the preliminary stage.

(b) Detention of trade union officials and members

- (1) Luis David Rodríguez Pérez, former official of the National Union of Workers of Incora — SINTRADIN. No information has been obtained regarding this case, suggesting that he was probably merely taken in for questioning or detained for a brief period. However, inquiries are continuing.
- (2) Elder Fernández and Gustavo Minorta, members of ECOPETROL, in December 1996. It would appear that they were held only briefly, but inquiries into the case are continuing.

(c) Raids on union headquarters, telephone tapping, surveillance of trade union members

- (1) A raid on the headquarters of the Single Agricultural Trade Union Federation (FENSUAGRO), and tapping of telephones in the union headquarters and in members' homes and surveillance of the president of the Federation, Luis Carlos Acero, by armed persons. No information has been obtained in this connection; the situation may not have been reported to the Colombian authorities for subsequent investigation.
- (2) On 6 February 1998, at 12.45 pm, 15 individuals armed with military weapons entered the headquarters of the CUT-Atlántico executive subcommittee premises, located in the centre of Barranquilla, broke into the office and held a revolver to Ms. Lydis Jaraba, member of the current National Executive Committee and of the CUT-Atlántico executive subcommittee. The individuals in question, who carried no identification or search warrant, searched every office before leaving. The incident was not reported to the Colombian authorities which would have led to a subsequent inquiry.

(d) Physical aggression and police repression

- (1) Police repression against workers from the state enterprises in Cartagena during a peaceful demonstration, on 29 June 1995. The matter was not reported to the Colombian authorities for subsequent investigation.
- (2) Police repression against workers from the Empresas de Acueductos y Teléfonos and organized peasants from Tolima who were holding a protest meeting on 14 August 1995. The repression resulted in the death of Fernando Lambana, who was a member of the Association of Small and Medium-Sized Holdings in Tolima (ASOPEMA), the serious injury of three other persons and several arrests (trade union members belonging to the organizations taking part in the protest). The national police state the following in connection with the death of Nelson Fernando Lombana Martínez: "The investigation involving the member of the police Luis Eduardo Sanabria Cruz, in connection with the death of Nelson Fernando Lombana as a result of the gunshot wounds received during the demonstration in Santafé de Bogotá on 14 August 1995, recorded under No. 1381, which is being conducted by Judge-Advocate 34 of the Metropolitan Police of Santafé de Bogotá, reached a decision to absolve the suspect on 28 October 1998; the decision is being reviewed by the Supreme Military Court to which the original record of the proceedings was forwarded on 11 November 1998 under document No. 1115. The National Attorney-General's Office looked into the matter and reported the following: Type of offence: murder. Organization: ASOPEMA, Tolima. Disciplinary action: file 020-003954/95 handled by the National Attorney-General's Office responsible for the national police, closed on 9 April 1996 because the accused did not commit the crime.
- (3) The police assaulted, and injured the following trade union members: Héctor Moreno, Edgar Méndez, César Castaño, Luis Cruz and Janeth Leguizamon, who

were taking part in a public information day on 6 January 1997, organized by the National Traffic Police Association (ANDAT).

The national police states that: "... according to the statement of Moreno Clavijo Héctor Ignacio, identification C.C. 11.343.940, member of the National Traffic Police Association (ANDAT), he was wounded in a demonstration on 6 January 1997. A forensic medical report stated that he was incapacitated for five days, as were Luis Alejandro Cruz Bernal, C.C. 79.432.668, Héctor Ernesto Moreno Castillo, C.C. 3.073.236 and Martha Janeth Leguizamon, who submitted complaints of personal injuries to the Paloquemao Immediate Response Unit (URI). It should be noted that an examination of the personnel archives containing the decisions of the Paloquemao URI, for 6 January 1997, revealed that the only reports recorded are those of Moreno Clavijo Héctor Ignacio, under decision No. 9701062003 and of Edgar Méndez Cuéllar, recorded under decision No. 9701062002. This case is being handled by the military criminal courts of the directorate general of the national police".

(e) *Attempted murder*

- (1) Edgar Riaño and other trade union members. The case is recorded as follows by the National Attorney-General's Office: "Type of offence: attempted murder. Disciplinary action: file 022-105877/90 conducted by the Procurator's Office for the armed forces. Accused: members of the national army. Complaint of 10 October 1990. On 9 November 1990 it was appended to the case filed under 022-106184. Under a decision of 3 March 1993 the disciplinary inquiry was closed".
- (2) Gilberto Correño, leader of the Workers' Trade Union (USO), 7 December 1996. The case is under investigation and information will be forwarded as soon as it is received.
- (3) César Blanco Moreno, president of the USO executive subcommittee, 11 May 1998. The case is under investigation and the information will be forwarded.

(f) *Death threats*

- (1) Bertina Calderón, vice-president of CUT has protection, together with other CUT officials.
- (2) Daniel Rico (president of the Federation of Oil Workers — FEDEPETROL). The National Attorney-General's Office describes the case as follows: "Type of offence: death threat. Position: vice-president. Organization: FEDEPETROL. Disciplinary action: file 015-00521 forwarded on 18 January 1996 to the Second District Procurator's Office of Santafé de Bogotá. Accused: members of the national police."
- (3) The members of the executive committee of the Single Agricultural Trade Union Federation (FENSUAGRO). The national police has stated that it provides protection to this organization.
- (4) Francisco Ramírez Cuéllar (president of the Trade Union of the Mineralco S.A. Enterprise Workers). The case is recorded as follows by the National Attorney-General's Office: Type of violation: death threats. Position: president. Organization: Sindicato Mineralco S.A. Disciplinary action: file 009-002528/93 conducted by the Special Investigation Office. The file was closed for lack of grounds on 16 December 1993.
- (5) Pedro Barón (president of the Tolima branch of the Single Confederation of Workers — CUT) was threatened by several members of the security forces after taking part in a protest strike on 19 July 1995. Pedro Barón and other CUT Tolima officials are on the Ministry of the Interior's protection programme. Contact has been established with the regional authorities in order to effect the necessary coordination.

- (6) Members of the executive committee of the Union of Titán S.A. Workers, in the municipality of Yumbo, received death threats from a paramilitary group called "Colombia without guerrillas" (COLSINGUE), 26 October 1995 and 17 May 1996. The national police has established protection measures.
- (7) Members of the executive committee of the South Bolívar Agromining Association, Justo Pastor Quiroz, secretary; Roque León Salgado, treasurer and Bersaly Hurtado, attorney, received threats. No record is held of any request submitted to the authorities. However, the case will be studied by the Ministry of the Interior's Risk Committee.
- (8) The national executive committee of the Single Confederation of Workers of Colombia — CUT, Luis Eduardo Garzón, president; Jesús Antonio González Luna, director of the human rights department and Domingo Rafael Tovar Arrieta, director of the organization department. The persons in question receive protection.
- (9) Oscar Arturo Orozco, Hernán de Jesús Ortiz, Wilson García Quiceno, Henry Ocampo, Sergio Díaz and Fernando Cardona. Nothing is known of the individual requests made by these persons to the authorities. However, the situation will be examined and assessed.
- (10) Jairo Antonio Cardona Mejía, president of the Union of Workers of Municipality of Cartago. Other officials who have been threatened are: Albeiro Forero, Gilberto Tovar, Hernando Montoya, Marino Moreno and Gilberto Nieto Patiño, adviser. These officials have protection.
- (11) On 27 March 1998, 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 is protected under the Ministry of the Interior's protection programme.

C. Point 3

The Committee has requested the Government to keep it informed regarding the results of the appeal lodged by the Banco Andino against the administrative decision of the Ministry of Labour and to extend the scope of the inquiry to include the Citibank, Sudameris and Anglo Colombiano banks.

Regarding the above appeal, the Government investigated the decision to fine the Banco Andino for violation of Convention standards (decision No. 002416 of 8 July 1994). Remedies of reconsideration and appeal were lodged against the decision, which were settled in decisions Nos. 003277 of 23 September 1994 and 004031 of 2 December 1994, upholding the penalty imposed on the aforementioned bank, for violation of Convention standards.

Regarding inquiries into alleged anti-union acts by other banks, the Ministry of Labour and Social Security is conducting a labour administration investigation in connection with the Banco Andino. A simultaneous, independent investigation was conducted by Procurator's Office branch No. 238 of Santafé de Bogotá regarding the offence of imposing constraints and violating the right of freedom of association. On 6 April 1998, the Procurator's Office issued a prohibition decision. The complainant applied for a remedy of reconsideration, which resulted in confirmation of the original decision. The Procurator's arguments justifying this decision included the lack of interest of the complainant, who had failed to carry out the necessary steps to proceed with the remedy. The Ministry of Labour is continuing the investigation of its own motion and the relevant information will be forwarded to the Committee as soon as its findings are published.

In regard to the Citibank and Sudameris bank, an investigation was initiated by the Ministry of Labour and Social Security of its own motion. The results will be communicated at the appropriate time.

Regarding the Anglo Colombiano bank, on 19 May 1997 Inspection Unit 24 of the Inspection and Monitoring Department of the Cundinamarca regional directorate received a complaint filed by the trade union. The subsequent administrative investigation was closed for lack of legal grounds, since the parties repeatedly failed to attend the meetings called to clarify the alleged violations. However, the Technical Labour Department, under its authority to act of its own motion, ordered that the investigation should be reopened.

The Colombian Government is interested in ensuring that provisions to protect workers are complied with, particularly in connection with the right of freedom of association.

D. Point 4

The Committee had asked the Government to communicate its observations on the allegations regarding acts of trade union persecution against the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and related bodies (ASODEFENSA).

The Colombian Government forwarded information to the ILO in this connection on 12 November 1998 and 15 January 1999. For the purpose of providing further information to the Committee on Freedom of Association, the Government hereafter transcribes the document provided by the national police under file No. 022 of 12 January 1998 which, in point No. 5 on pages 4, 5 and 6 states in connection with the matter that: "In regard to the acts of trade union persecution against trade union officials, unionists and members of the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and related bodies (ASODEFENSA), it is excessive to state that inappropriate means are used to bring such measures to bear, such as transferring trade union employees to locations that are distant from their children and families and even going so far as to freeze the wages of trade union officials and grant excessive increases to non-union members", since measures of this nature do not occur in the national police.

Moreover, ASODEFENSA adds that the legal mechanisms of union persecution have recently been strengthened as a result of Law No. 443 approved by the national Government which, under section 37(j), permits the military and police forces to dismiss from their employment a civilian employee who — on the basis of a "secret" report — is found to be "inappropriate". The article and paragraph of the above law provides that: "Civilian career personnel of the Ministry of National Defence, with the exception of its decentralized bodies, after approval by the Staff Committee, may be removed when it is considered, in a confidential intelligence report, that it is undesirable that they should remain in the service for reasons of national security. In such cases, the decision requires no justification." The following requirements must be met in removing an employee for this reason:

- in general, that the person in question should be a civilian career member of staff of the Ministry of National Defence;
- their dismissal has received the prior approval of the Staff Committee;
- this prior approval should be preceded by a confidential intelligence report which considers their continuation in the service to be undesirable;
- the motive cited in the report should be one of national security; and
- no justification to be given for the decision.

If all these requirements are met, the member of staff may be dismissed from his or her post, as provided by law; however, the failure to meet one of these requirements means that the person may not be dismissed. No justification or cause need be given precisely because the employee might jeopardize national security; this area was previously covered by the

Security and National Defence Bill but had not yet been provided for in Colombian law; Chapter VI of the Bill stated that: "It has been considered appropriate to include in this Bill a description of certain types of behaviour which jeopardize national security and defence, such as the destruction of military assets and basic public services, failure to comply with requisition orders, failure to obey orders on civil defence; jurisdiction in such matters is also provided for." Hence it cannot categorically be stated that the new law represents a threat to the freedom to join or to continue to belong to a trade union organization.

The Government also wishes to answer this complaint point by point, in order to demonstrate that the objective of its action has been to protect the right to freedom of association, as it is bound to do by ILO Convention No. 87.

The complaint is based on the following arguments:

1. The Colombian Government has employed various methods against civilian employees in the service of the armed and police forces to prevent the establishment of and hinder the pursuit of independent trade union activities, thereby violating the right of freedom of association. For example, the Director-General of the National Police, General Rosso José Serrano Cadena, has stated that he is opposed to the existence of a police union, thereby causing anxiety to existing members and exerting pressure on other employees who wish to become members. In this connection, the Government states that "ASODEFENSA" as a legal personality is enrolled on the trade union register, under decision No. 00371 of 3 March 1998, which is in strict compliance with ILO Convention No. 87, which was approved by Law No. 26 of 1976. Hence, the right of freedom of association is fully guaranteed. Meanwhile, article 39 of the Colombian Constitution provides that the structure and functioning of trade unions shall be governed by domestic legislation.
2. General Rosso José Serrano Cadena, Brigadier General Jorge Enrique Montero Piraquive and Major Mauricio Estupiñán Chaustre, who are police officials, use various methods to encourage existing members to leave the union and persecute ASODEFENSA officials. These methods include the use of transfers, freezing wages of members of the organization, giving union members unfairly low assessments, which are based on arbitrary, subjective and capricious reports and which are not founded on any sound or objective criteria. A prior condition for determining whether authorization will be granted to engage in union activities is to demand prior information on the activities and programmes planned by the trade union, after which it will be decided whether it is considered appropriate to grant the request for authorization, thereby violating the autonomy and independence of the trade union organization. In regard to the second matter, it should be emphasized that the national police has a clearly defined salary scale which incorporates the different positions and corresponding salaries, in line with the provisions of the Constitution and the various laws applying specifically to it. In Colombia, the state bodies responsible for carrying out monitoring and supervision in connection with alleged violations reported to them against the officials of the national police are: the Office of the Procurator-General of the Nation, the Office of the People's Advocate; both feature in the Constitution and have specific functions for investigating matters such as those described in the complaint in question.
3. The matters described were reported to the Ministry of Defence, but were never resolved. Frequently, trade union officials and their families receive anonymous threats by telephone or in writing, demanding that they withdraw from the union's activities. The Ministry has carried out an investigation into the acts violating the right to freedom of association, resulting in agreement on the following points: the Ministry of Defence would issue a ministerial directive addressed to all the units and

departments of the institution, as well as to related bodies, in which it would specify the following:

- uniformed and civilian public servants are reminded of their obligation to respect the right to freedom of association and are ordered to refrain from taking decisions that hamper trade union activities;
- the heads of the institutions mentioned should be informed of the right of trade union organizations to meet in official premises, after receiving the respective prior permission, which should be requested with three days' notice;
- that the freedom of circulation of trade union communications is authorized within the premises of the Ministry of Defence, National Military and Police Forces; likewise, the posting of such communications on official notice boards; and
- the directive to include the transcription of the text of article 292 and following of the Penal Code and the relevant sections of article 39, paragraphs 6, 10, 11, article 40, paragraphs 6, 13, 19, 21 and 22, article 41, paragraphs 8 and 26 of Law No. 200 of 1995.

It was agreed, in regard to authorization to engage in trade union activities during working hours, that:

- authorization would be given provided such activities were not of a permanent nature and did not affect service, based on the decisions of the Council of State of 17 February 1994, 10 June 1987 and 16 June 1987;
- authorization should be requested with three days' notice and a decision returned within the following two days;
- cumulative authorizations are not permitted.

In fulfilment of this agreement, the Ministry of Defence issued circular No. 9571; however, the trade union considered that it was not acceptable since it was not consistent with agreements reached during the consultation hearing.

An investigation is currently under way to look into the union's objections. A report will be forthcoming once this process has been completed.

4. The next allegation submitted states that Colombian legislation does not grant the right to collective bargaining to civil servants, in violation of Convention No. 98. All persons are entitled to make respectful applications to the authorities, which must be resolved within 15 days, as a general standard, but only decisions for which precedents exist in law can be obtained through this mechanism, in other words, no improvement in labour legislation may be negotiated through such an open "application". ASODEFENSA alleges that it submitted a draft agreement to the President of Colombia, as Head of Government and supreme administrative authority, with a view to improving the deplorable conditions of employment of the civilian employees of the armed and police forces. All applications submitted were rejected by the Government and no legal mechanism exists for recourse to collective bargaining. In this connection, it is stated that Colombian labour legislation provides that unions of public servants may not submit lists of demands or enter into collective agreements, but that the unions of other government workers enjoy all the rights of workers' unions in general, and that their lists of demands will be dealt with in the same way as those of other unions, even when they cannot declare or hold a strike (article 416 of the Labour Code). This legal precept was challenged as being unconstitutional; the Constitutional Court ruled that constitutional provisions prevail over the lesser status standards; it was however specified that strikes are only restricted for essential public services.
5. It is alleged that in October 1998, the three trade union confederations of Colombia (CUT, CGTD and CTC) and a large number of trade unions, called a national strike

of government workers to protest against the economic and social policies of the Government with a view to obtaining a salary increase to maintain the purchasing power of state workers (a list of demands had been submitted in advance). The complainants state that the Government refused to negotiate, and responded with an attitude of provocation and intolerance and, invoking administrative powers, declared the strike to be illegal in several bodies in different sectors. They further allege that the police, acting on the instructions of the Government, violently evicted workers who were peacefully occupying the premises of some of the bodies on strike, and physically assaulted the workers, and that the same occurred during a peaceful protest in Popayán and Pasto on 20 October 1998. With respect to the events in October 1998, the Government states that while the strike had been declared illegal, the Government had reached an agreement with the trade union confederations in question regarding the matters reported by the above-mentioned trade union organization. It should be noted that the holding of a protest cannot be damaging to members and that state bodies must provide a prompt and effective service. This is based on the principle of law whereby the general interest prevails over the individual interest, while in this case the protest became prolonged, thereby causing economic losses to the State and to the users of these services. It was established in the agreement that there would be no reprisals against the trade union bodies that had participated in the protest.

6. Lastly, ASODEFENSA states that the legal mechanisms concerning union persecution have recently been strengthened as a result of the presidential approval of a law (No. 441) of 4 June 1998, which was subsequently approved by Congress; article 37(j) of this law permits the military and police forces to dismiss civilian employees on the basis of a “secret” report. In this connection, the Government states that the Government’s legal power to dismiss civilian career staff of the Ministry of National Defence, with prior approval from the Staff Committee, should not be interpreted as trade union persecution since the objective is to protect national security.

E. Point 5

The Committee asked the Government for information regarding violence against trade unionists in October 1998, reported by the ICFTU, CLAT, CUT and CGDT arising in connection with a strike called by the trade union confederations and a large group of state union organizations to “protest against the economic and social policy of the Government”.

The Government’s views in this regard are as follows:

Characteristics of the national strike of government workers

As reported in the statement of the complainants, they themselves called a national strike of government workers of unspecified duration, beginning on 7 October; the strike was clearly of a political nature, not only for the reason stated for initiating the action, which was “to protest against the economic and social policy of the Government”, but also, as the ILO is aware, because Colombia’s domestic regulations governing strikes lay down a procedure for calling such action and conditions for settling them, which standards were flagrantly violated by those who organized the political movement against the State.

Colombia has drawn up regulations governing the right to strike which has been recognized for its workers since 1919; a procedure has been established (article 433 and following of the Labour Code) which requires that a list of demands should be submitted,