Case No. 1756

Complaints against the Government of Indonesia
presented by
— the Indonesian Prosperity Trade Union (SBSI) and
— the World Confederation of Labour (WCL)

398. The Indonesian Prosperity Trade Union (Serikat Buruh Sejahtera Indonesia, *SBSI*) filed a complaint of violations of freedom of association against the Government of Indonesia in communications dated 21 December 1993 and 13 January 1994. The World Confederation of Labour expressed its support to the complaint in a communication of 11 February 1994.

399. The Government transmitted its observations and comments in communications dated 23 March, 10 and 23 May 1994.

400. Indonesia has ratified the Right to Organize and Collective Bargaining Convention, 1949 (No. 98); it has not ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87).

A. THE COMPLAINANT'S ALLEGATIONS

401. In its communication of 21 December 1993, the complainant organization raises four issues involving various alleged violations of trade union rights, anti-trade union discrimination, and interference by the authorities and military and police forces.

402. Firstly, the SBSI complains that seven of its leaders have been dismissed by a private company, PT. Tambaksari Jalmorejo, in the province of Medan, because they had established an SBSI unit in that enterprise on 2 June 1993. The seven workers concerned are: Mr. Sugiono (Chairman), Mr. Evendi Sibuea (Vice-Chairman I), Mrs. Umiyati (Vice-Chairman II), Mr. Abdul Maha (Secretary), Mrs. Nurhasanah (Vice-Secretary), Mr. Mustafa (Treasurer) and Mrs. Tuginem (Vice-Treasurer). On 9 June 1993, an officer from the Ministry of Manpower visited the company and suggested to Mr. Sugiono that he resigned from the SBSI and establish an *SPSI* unit in the company (SPSI stands for Serikat Pekerja Seluruh Indonesia, or All Indonesia Workers' Union; SPSI is the only trade union recognized by the authorities). Upon refusal from Mr. Sugiono, the officer met the management of the company. The seven persons mentioned above were informed that they were dismissed, in a letter dated 14 June 1993 from the head of personnel, who referred to the establishment of the SBSI unit at the company: "... we regret that this establishment was made without our knowledge. Since this organization was not established in accordance with the effective procedure, we refuse to recognize it. In connection therewith, we hereby decide that your employment is terminated as of 14 June 1993." On that day, all workers of the company held a strike to protest against the dismissals. According to the complainant, the head of the Medan office of the manpower ministry agreed indirectly with the dismissals. In connection with these events, on 17 June 1993, Messrs. Amosi Telaumbanua and Soniman Lafau, respectively Chairman and Vice-Chairman of the SBSI Medan branch were arrested and beaten, over a ten-day period, at the Medan military headquarters. The military accused them of masterminding the strike. The SBSI filed a lawsuit in this respect in the Medan Court.

403. Secondly, the SBSI submits two letters as evidence of interference of the authorities in trade union affairs, and of favouritism towards SPSI. The first letter, dated 11 June 1993, from the Director of Socio-Political Affairs, North Sumatra Province, instructs the heads of the Simalungun and Pematang Siantar districts to ban SBSI members and activists. Referring to the attempt of the SBSI to establish units in the above-mentioned districts, the letter goes on: "In this connection, you are required to take the following measures: 2(a) to see that none of the officials of the local government are involved in that organization; (b) to avoid serving and recognizing the existence of that organization and to settle the matter through a coordination with the related agencies. (3) The measures taken for the settlement of the matter shall conform with the Government's policy of recognizing the workers' union, which is SPSI ...". The second communication, dated 30 June 1993, is a letter from the regional board of the SPSI to its local boards in Simalungun and Pematang Siantar, copying them the letter quoted above, and providing the following instructions: "In this regard, we expect that you take the following steps: (1) to review that letter and to arrange a coordination with the local authorities, in the effort to anticipate the reported establishment of SBSI in your area; (2) as soon as possible, report to the SPSI Regional Board and to the relevant authorities of North Sumatra whether SBSI units have been established and report their activities; (3) to observe the directives contained in the letter of the Directorate of Socio-Political Affairs of North Sumatra in all the steps you take in this regard".

404. Thirdly, the SBSI alleges that the Chief of Police prevented the holding of its first National Congress, planned for 29 July to 2 August 1993, even though all the requirements had been fulfilled. The complainant organization had applied for a permit to hold its Congress in letters of 5, 22 and 26 July. It received the following letter, dated 28 July 1993, from the police authorities, which reads in part as follows: "It is hereby notified that your request is rejected for failure to comply with the requirements in connection therewith, and with the recommendations of the ministries of manpower and home affairs; the planned activities shall therefore be cancelled."

405. Fourthly, the complainant organization submits that the local authorities of Jombang refused to renew the identity card of Mr. Adi Wyono, Chairman of the Jombang branch of SBSI, unless he resigned from SBSI.

406. In its communication of 13 January 1994, the complainant raises new allegations of trade union rights violations, stating that, in two separate instances, a total of 14 workers have been dismissed by reason of their SBSI membership. In Bandar Lumpung, 11 workers belonging to the local SBSI executive were dismissed on 27 December 1993 at the Bumi Waras Company, where the SBSI has 600 members. The dismissed workers are: Ujang Komara (Chairman); Sontris Wibowo (Vice-Chairman); Deliman (Secretary); Asdiana (Vice-Secretary); Sobirin (Treasurer); Hanifah (Vice-Treasurer); Sabirin, Julianto and Ersondy (coordinators); Dodi and Umar (staff). Four of them (Ujang Komara, Sontris Wibowo, Deliman and Sabirin) were also interrogated three times (8 January, from 12.30 to 20.30; 11 January, from 9.00 to 18.00; 12 January from 9.00) and intimidated by police and military forces, so that they would resign from SBSI. Also in Bandar Lumpung, three SBSI leaders were dismissed at the CV Sinar Laut Company on 27 December 1993 because of their membership, namely Messrs. Irwantanto (Chairman) and Nawi (Treasurer), and Ms. Lita (Secretary).

407. In its communication of 11 February 1994, the World Confederation of Labour confirms all the above-mentioned allegations.

B. THE GOVERNMENT'S REPLY

408. In its communication of 23 March 1994, the Government indicates in relation to the dismissals at the Tambaksari Jalmorejo Company that the seven workers in question were dismissed due to the deterioration of relations between the management and these employees. Prior to the dismissals, bipartite talks were held with the workers to discuss the situation; as the workers appeared satisfied with the discussion and accepted the situation, the employer asked the Committee on Labour Disputes Settlement of the Province of Medan the permission to dismiss them. Taking into account that the working relationship was not in harmony any more, the Committee granted the authorization and the decision took effect on 14 June 1993. The seven workers accepted the decision and the company paid them a compensation proportional to their employment in the company.

409. In its communication of 23 May 1994, the Government states, in reply to the second allegation, that the SBSI is not a workers' organization because it does not fulfil the requirements set out in the Indonesian legislation to be recognized as a workers' organization. As regards the banning of the SBSI Congress, the Government states that it never issued a permit for the "so-called National Congress" and that such a permit is necessary according to the law. Concerning the non-renewal of Mr. Adi Wyono's identity card, the Government indicates that it was not possible to issue him that card since he could not produce a letter from his previous place (Riau).

410. As regards the situation in the CV Bumi Waras Company, the Government mentions in its communication of 10 May 1994 that a trade union was established in that enterprise in 1981 and a first collective agreement signed in 1983, which allowed the employer to assign and transfer the workers to various outlets of the factory according to its needs. The employer had noticed in the three previous months a productivity decrease, which it attributed to misconduct by certain workers, who were then given a written warning. As the situation did not improve, in January 1994, the employer offered to 16 workers a transfer to other outlets, with the same pay and benefits; on 4 January, seven of them accepted the offer and the other nine turned it down. The employer requested permission from the Ministry of Manpower to dismiss them, as provided for in Act No. 12/1964 on Termination of employment in private companies. On 7 January, Mr. Ujang Komara organized a strike with various demands. The Ministry of Manpower tried to mediate the dispute and suggested a settlement based on bipartism, without success however. The issue was then brought before the regional office of the Committee on Labour Disputes Settlement, which held meetings on 9, 16, 21, 23 and 28 February. On 9 March, the regional office granted the employer the permission to dismiss the nine workers, on the basis that they had refused to be transferred. The employer was obliged to pay their salary for January 1994 and their annual rest compensation for 1993. Mr. Dodi Tirto has resigned since 17 January and has received full compensation.

411. Concerning the situation in the CV Sinar Laut Company, the Government points out that the dismissal of the three workers had never been reported to the authorities, and provides the following information. Mr. Irwantanto resigned from the company at the beginning of 1994; Ms. Lita never came back to the company since the beginning of 1994 and has apparently returned to her village; according to the information available to the Government and the employer, there is no worker by the

name of Nawi in the company. The Government adds that a trade union has existed in CV Sinar Laut since 1985 and that the first collective agreement was signed in 1987.

THE COMMITTEE'S CONCLUSIONS

412. The Committee notes that the allegations made in this case raise several serious issues of implementation of the principles of freedom of association.

413. As regards the dismissal of seven workers in the Tambaksari Jalmorejo Company, the Committee notes that the evidence adduced, and in particular the letter of 14 June 1993 from the head of personnel advising the workers of their dismissal, demonstrates unequivocally that these workers have been dismissed because they had wanted to establish an SBSI unit in the enterprise. The Committee recalls that one of the most basic principles of freedom of association is that workers and employers have the right to establish organizations *of their own choosing*, and that Convention No. 98 provides that particular protection must be given to workers against dismissal or other prejudice by reason of union membership. The Committee therefore considers that the employees concerned should be reinstated in their posts.

414. In the Committee's opinion, the bipartite talks and the administrative procedure of permission to dismiss, which, according to the Government, led to a settlement in this case, do not guarantee adequate protection to workers against acts of anti-union discrimination, since it appears that the legislation currently in force allows an employer merely to invoke "lack of harmony in the working relationship" to justify the dismissal of workers who only wish to exercise a fundamental right under the principles of freedom of association. As already pointed out: "It would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is accorded by legislation which enables employers in practice — on condition that they pay the compensation prescribed by law for cases of unjustified dismissal — to get rid of any worker, even if the true reason is his trade union membership or activities". [*Digest of decisions and principles of the Freedom of Association Committee*, 3rd edition, 1985, para. 547.] The Committee also refers to the recommendations made in the report of the direct contacts mission which took place in Indonesia in November 1993, which made, inter alia, the following recommendations in this respect:

... Steps should be taken, in law and in fact, to guarantee workers effective protection against acts of anti-union discrimination, and acts of interference by employers, in particular by:

- consolidating and simplifying the existing provisions on the subject;
- adopting provisions to remedy evidentiary difficulties;
- strengthening the penalties provided for violations of anti-union discrimination and interference provisions;
- streamlining and strengthening the enforcement provisions; ...

[Report of the Committee of Experts, ILC, 81st Session, 1994, pp. 268-269]. The Committee also refers to the extensive discussion on this subject in the Conference Committee on the Application of Standards in 1994 (ILC, 81st Session, *Provisional Record* No. 25, pages 98-100). Noting that the Government has stated its will to amend its labour legislation and that, to this end, it has requested and obtained the technical assistance of the Office the Committee urges it to enact promptly, in consultation with all appropriate parties, including the national complainant organization, a legislative

framework providing adequate protection to workers against anti-trade union discrimination, and to ensure that these measures are effectively applied in practice.

415. The Committee further notes that the Government has not provided any reply on the other events in Medan connected with these dismissals, namely the allegations concerning the arrest and beating of two SBSI leaders, Messrs. Amosi Telambanua and Soniman Lafau, and that the complainant organization has filed a lawsuit in this respect. It requests the Government to keep it informed on the situation of the arrested trade unionists as well as the outcome of any inquiry held on the beatings they have been allegedly subjected to.

416. As regards the allegation of interference in trade union affairs and of favouritism towards SPSI, the Committee notes firstly that the Government merely replies that the SBSI is not a workers' organization because it does not fulfil the requirements set out in the Indonesian legislation. The Committee observes in this respect that, while workers' organizations must respect the law of the land, that law shall not be such as to impair, nor be so applied as to impair the principles of freedom of association. This means in particular, as pointed out above, that workers should have the right to establish and join organizations of their own choosing. Secondly, the Committee recalls that discrimination in favour of a given trade union jeopardizes the right of workers to establish and join organizations of their own choosing. [*Digest*, op. cit., para. 252.] It notes that in the letter of 11 June 1993 mentioned above, the head of the Directorate of Socio-Political Affairs quite openly directs the local authorities to prevent the establishment of SBSI units, and to comply with the Government's policy of recognizing only the SPSI. The Committee points out that this letter, which would normally be expected to be an internal matter for authorities, was copied, amongst others, to the chairman of the SPSI regional board; in addition, the letter of 30 June 1993 from the SPSI regional board to its national board, which would normally be expected to be an internal matter between the regional and local trade union executives, was also copied directly to the governor of North Sumatra and to the head of the regional office of the manpower ministry. This demonstrates at the very least a close working relationship between SPSI and the labour and other authorities. Stressing the importance it attaches to the resolution of 1952 concerning the independence of the trade union movement, the Committee urges the Government to refrain from showing favouritism towards, or discriminating against, any given trade union, and requests it to adopt a neutral attitude in its dealings with all workers' and employers' organizations, so that they all be placed on an equal footing.

417. As regards the banning of the first National Congress of SBSI, the Government replies that that organization's request was rejected "for failure to comply with the legal requirements" without indicating however what these requirements are. The Committee observes in this regard that while workers' organizations should, like all other groups and persons, comply with the general provisions relating to public meetings, freedom of assembly for trade union purposes constitute a fundamental aspect of trade union rights. [*Digest*, op. cit., para. 140.] It also recalls that measures taken by the authorities to uphold the law should not in any way result in employers' or workers' organizations being unable to hold their annual congresses [*Digest*, op. cit., para. 144], and that employers' and workers' organizations should have the right to hold their congress without previous authorization and to draw up their agendas in full freedom. [*Digest*, op. cit., para. 145.] The Committee asks the Government to authorize the

holding, without hindrance, of the Congress of the SBSI, and to adopt all required measures and give the necessary instructions so that, in the future, employers' and workers' organizations are not hindered in the preparation, scheduling and holding of congresses and other meetings.

418. Concerning the reasons for the non-issuing of the identity card to Mr. Adi Wyono, Chairman of the SBSI branch in Jombang, the Committee notes that the evidence is contradictory. According to the complainant, the refusal was due to the fact that he was a SBSI member, and the authorities exerted pressure to obtain his resignation, whereas the Government states that the reason was that he could not produce a certain document. The Committee recalls in general that the authorities should not withhold official documents by reason of a person's membership in a workers' or employers' organization, as these documents are sometimes a prerequisite for important activities, for instance obtaining or maintaining employment. This is even more essential where persons hold a position in that organization, inasmuch as the refusal may prevent them from exercising their duties, such as travelling to an official meeting. The Committee therefore requests the Government to take the necessary measures to ensure that, once all the required documents are produced, the new identity card be issued without delay to Mr. Adi Wyono.

419. As regards the dismissals at the CV Bumi Waras in Bandar Lumpung, the Committee notes from the evidence available that a labour dispute, the exact reasons of which are not disclosed, had developed in that company. It also appears that the employer, in accordance with the law and the collective agreement, obtained the permission to dismiss nine workers who had refused a transfer. From the material available, the Committee is not in a position to ascertain definitely whether these workers were dismissed because of their membership in SBSI and their trade union activities, or if the working relationship was terminated in accordance with the legal and contractual provisions then in force.

420. The Committee notes however that the Government did not give any reply to the allegations concerning the interrogation and intimidation of four workers by the police and military forces in relation with these events. The Committee points out that the report of the 1993 direct contacts mission had noted the seriousness of that problem in Indonesia and made specific recommendations in that respect, stating that the Government should take measures "to avoid to the maximum extent the involvement of police and armed forces in labour disputes and, more generally, in labour matters". [1994 Report of the Committee of Experts, p. 269.] The Committee also recalls that the "arrest — even if only briefly — of trade union leaders and trade unionists for exercising legitimate trade union activities constitutes a violation of the principles of freedom of association". [*Digest*, op. cit., para. 88.] The Committee urges the Government to adopt the required measures and give the necessary instructions to prevent a repetition of such incidents in the future.

421. As regards the dismissals at the CV Sinar Laut Company, the Committee notes that the complainant merely indicates that the three persons in question were dismissed because of their SBSI membership, without providing any other particulars or evidence on the circumstances of these dismissals. In view of the information provided by the Government (one resignation, one absentee, one unknown employee), the Committee is unable to conclude whether these dismissals constituted violations of trade union rights,

or if the working relationship was terminated in accordance with the legal and contractual provisions then in force.

422. Beyond the specific events raised in the present case, the Committee feels bound to note that the allegations reveal, from a more general perspective, a situation of trade union monopoly in practice, and of heavy involvement of the police and armed forces in labour matters. It expresses its concern at that situation, particularly in view of the fact that the Committee of Experts has made observations for many years on some of these issues in its annual report; these observations, in turn, have been debated at length in the Conference Committee on the Application of Standards, including at the June 1994 Session of the International Labour Conference. Noting that the Government requested and received assistance from an ILO direct contacts mission, whose report addressed these problems and made specific recommendations with a view to solving them, the Committee trusts that the Government will pursue its cooperation with the ILO in these matters, and will continue to avail itself of its technical assistance with a view, in the near future, to bring its legislation and practice into conformity with the principles of freedom of association.

THE COMMITTEE'S RECOMMENDATIONS

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

(a) The Committee urges the Government to enact promptly in consultation with all appropriate parties, including the complainant organization, a legislative framework providing adequate protection to workers against anti-trade union discrimination, and to take all necessary steps to ensure that these measures are effectively applied in practice. The Committee considers that the workers dismissed for anti-trade union reasons in the Tambaksari Jalmorejo Company should be reinstated in their jobs.

(b) The Committee requests the Government to keep it informed on the situation of the arrested trade unionists, Messrs. Amosi Telambanua and Soniman Lafau, as well as the outcome of any inquiry held on the beatings they have been allegedly subjected to.

(c) The Committee urges the Government to refrain from showing favouritism towards, or discriminating against, any given trade union, and invites it to adopt a neutral attitude in its dealings with all workers' and employers' organizations, so that they all be placed on an equal footing.

(d) The Committee asks the Government to authorize the holding, without hindrance of the Congress of the SBSI and to adopt the required measures and give the necessary instructions so that, in the future, workers' organizations may schedule and hold their congresses and other meetings in full freedom.

(e) The Committee requests the Government to take the necessary measures, once all the required documents are produced, to issue a new identity card to Mr. Adi Wyono.

(f) The Committee urges the Government to adopt the required measures and give the necessary instructions to prevent the arrest and detention of trade union leaders and trade unionists for exercising legitimate trade union activities.

(g) The Committee invites the Government to pursue its cooperation with the ILO in labour matters, and to continue to avail itself of its technical assistance with a view, in the near future, to bring its legislation and practice into conformity with the principles of freedom of association.

(h) The Committee draws the legislative aspects of this case concerning Convention No. 98 to the attention of the Committee of Experts.

Case No. 1763

Complaint against the Government of Norway presented by the Norwegian Union of Social Educators and Social Workers (FO)

424. The Norwegian Union of Social Educators and Social Workers (FO) presented a complaint of violation of trade union rights in Norway in a communication dated 7 March 1994. The Government supplied its observations in a communication dated 30 September 1994.

425. Norway has ratified the Freedom of Association and protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

A. THE COMPLAINANT'S ALLEGATIONS

426. The complaint is related to an alleged violation by the Government of Conventions Nos. 87 and 98 in using compulsory arbitration against a legal strike in connection with the revision of wage agreements in the local government sector in the spring of 1992.

427. FO explains that it is affiliated to the Norwegian Federation of Trade Unions and that its negotiating agent is the Norwegian Federation of Trade Unions' negotiating federation for the local government (hereinafter called LO-K), which is comprised of eight trade unions. The complaint is filed on behalf of three of these which are the constituent parts of FO: Norwegian Union of Social Educators and Child Welfare Workers (NBF), the Norwegian Union of Social Workers (NOSO) and the Norwegian Union of Social Educators (NVF).

428. FO adds that LO-K is one of three negotiating federations for the local government sector with the Confederation of Vocational Unions, Local Government Section (YS-K) and the Federation of Norwegian Professional Associations, Local Government Sector (AF-K). FO goes on to explain that the local government sector (excluding the City of Oslo, which has its own wage agreement, and the teachers who negotiate their wage agreement directly with the central government) is comprised of 265,000 employees. Of these, 139,000 are organized under the umbrella of LO-K. For its part, FO is comprised of professional associations whose members must fulfil educational qualifications such as social educators, social workers and nurses for the mentally subnormal; most of them are found in the child welfare departments, social work and in services for the handicapped, as case officers, in-home visiting and in

institutions. Members are to be found both in administrative and in direct client work. FO indicates that the wage agreement which expired on 30 April 1992 and the agreement that ran up to 30 April 1994 were all signed by its constituent parts.

429. FO then explains in detail the circumstances that led to the labour dispute of 1992 between LO-K and the Norwegian Association of Local Authorities (hereinafter called KS). In the spring of 1992, the negotiations on the new wage agreements were broken off without results for any of the negotiating federations. After the employees' organizations notified withdrawal of labour on the part of their members on 29 April 1992, the National Mediator issued a prohibition against work stoppage and summoned the parties to compulsory mediation. No result was achieved at the expiry of the additional mediation deadline, on 27 May. LO-K then walked out of negotiations and the threatened strike of LO-K's members was then called for the same day. LO-K and KS were summoned to a meeting with the Minister of Local Government and Labour, at which the parties made a brief statement on the situation and declared their willingness to attempt another round of mediation. LO-K asked for a new mediation basis; as this proved not to be possible, the Mediator therefore proposed that the mediation continued with the two other negotiating federations, AF-K and YS-K, with whom a recommended proposal had been arrived at.

430. LO-K's members' strike was then an inevitable consequence of the failure to agree on the revision of the wage agreements with the KS. FO states that the strike was a selective one, the first phase having started on 27 May 1992. LO-K called out about 28,000 members, 745 of whom were from FO. Before the strike came into effect the employers were permitted, on the basis of the strike notice, to apply for dispensations. Few were applied for and most of these were granted, primarily to avoid danger to life and health, but also in fields where the strike could cause major damage in other ways (for example, pollution and power supply). Institutions for and services to the elderly and the sick were exempt from the strike. In services for the handicapped, manning reductions were implemented on the basis of individual assessments, in such a way that life and health were properly safeguarded. There was emergency response preparedness in areas such as child protection and social welfare. LO-K's members were well aware of the authorities' frequent recourse to compulsory arbitration and it was therefore their express policy to conduct the strike in such a way that the authorities would be hindered in employing this weapon.

431. FO reports that after almost three weeks of strike, LO-K and KS were summoned to the Ministry for Local Government and Labour on Monday, 15 June 1992, and the Minister received a statement from both sides. Noting that there was no basis for new mediation, the Minister announced that the Government, in an emergency meeting of the full Cabinet the next day, would put proposals for recourse to compulsory arbitration to end the dispute. The Parliament (Storting) considered the proposal for recourse to compulsory arbitration and, by an Act of 26 June 1992, it was decided that the labour dispute should be settled by the National Pay Tribunal.

432. FO points out that compulsory arbitration in labour disputes in Norway is imposed by a special act of Parliament or by a provisional decree of the Government if the Parliament is not sitting. There is no statute that specifies the criteria enabling the authorities to stop a labour conflict by compulsory arbitration. In this case, FO quotes the Government's following justification for proposing recourse to compulsory arbitration:

The ongoing strike among members of the LO-K means that in Bergen, Drammen, Porsgrunn, Stavanger, Trondheim, Tromsø and Haugesund local government activity (with the exception of the operation of old people's and nursing homes) has been sharply reduced. Municipal offices and kindergartens are closed. Many primary schools have also had to close. The strike has caused problems to all who are dependent on social welfare, only emergency help is being given. The same applied to the child protection services, and rubbish collection and public transport has stopped.

The fact that municipal rubbish collecting has stopped in the above-mentioned urban areas has led to public health problems, including offensive smells. The cessation of collection in conjunction with the heatwave means a major hazard of an increase in the rat population and also increased danger of infectious diseases. The Ministry has received reports of a growing rodent population in several urban neighbourhoods. Tromsø Municipality has stated that improper storage of rubbish is causing an accentuated fire hazard. The municipal fire and rescue service emphasizes that in some places there is an acute fire hazard.

The strike also means that many handicapped children are not receiving the help on which they depend. This in turn means that after almost three weeks of strike and consequent lack of relief, many parents and other carers are very tired. In his report to the Directorate of Public Health dated 15 June, regarding lack of rubbish collection and the situation in the nursing and home care sector, the medical officer of health of Rogoland County concludes that we are quickly approaching the limit of tolerance of the effect of the strike on public health.

The strike of in all 1,777 members of the Norwegian Electricians and Power Station Workers at 43 power stations in 16 counties and at Nord-Trøndelag's county-owned utilities also means that the power stations are shut down and that — unless dispensation is granted — faults that arise in connection with the power supply are not corrected.

...

Several attempts have been made to achieve a solution of the ongoing labour dispute, without success. The situation between the Norwegian Association of Local Authorities and the affected employee organizations appears to be deadlocked. There is reason to believe that the strike may be a long one.

Having considered all the harmful effects, which are becoming more and more comprehensive, and the threatened extension, the Ministry therefore considers it right to propose that the wage dispute between the LO-K and the Norwegian Association of Local Authorities be brought before the National Pay Tribunal for resolution.

433. FO claims that this recourse to compulsory arbitration on the part of the Norwegian Government means that the right to strike may be regarded as illusory; the employers can always rely on the authorities intervening. It adds that it also affects the right to bargaining, which under such circumstances cannot be said to be a real one. FO refers to previous cases concerning complaints presented by other organizations against the Norwegian Government for having resorted to compulsory arbitration. It refers more specifically to Case No. 1099 (complaint by the Norwegian Association of Engineers), Cases Nos. 1255, 1389 and 1576 (complaints by the Federation of Oil Workers' Trade Unions) and Case No. 1448 (complaint by the Norwegian Union of Teachers), stating that the Committee on Freedom of Association has criticized Norwegian authorities' recourse to compulsory arbitration, pointing out that this practice was contrary to freedom of association principles embodied in Conventions Nos. 87 and 98.

434. In this particular case, FO states that there was no real hazard to the population's life or health, pointing out that one hour before the Minister warned of compulsory arbitration, the director of public health had stated that the strike posed no hazard to life and health. The council chairmen in the municipalities affected by the strike said the same.

435. FO concludes by pointing out that, even if it has been promised, no document that would form the basis for a debate on the principles of recourse to the right to strike, compulsory arbitration and the relationship to Conventions Nos. 87 and 98 has yet been presented by the Minister of Local Government and Labour to the Parliament.

B. THE GOVERNMENT'S REPLY

436. In its communication of 30 September 1994, the Government indicates that FO's complaint gives on the whole an adequate description of the development of the conflict, but it adds some supplementary observations. First, it specifies that neither LO-K nor any union forming the negotiating federation, except FO, have asked the Norwegian Confederation of Trade Unions to file a complaint to the ILO.

437. The Government then describes the relationship between ILO standards and Norwegian industrial practice. As a basic principle, the employers' and workers' organizations are responsible for wage settlements and industrial peace. In addition, there is a broad consensus in Norway that the Government has the ultimate responsibility to prevent labour conflicts from causing severe damage to society. In general the Norwegian bargaining system functions well. There are few labour conflicts, as in almost all cases the parties reach agreement. The Government reports that since 1982 ILO has dealt with six complaints against Norway concerning use of compulsory arbitration in labour conflicts, put forward by four different organizations. In the Government's view, the Norwegian system presents great advantages. The right to organize is secured through a variety of organizations. Likewise there is a multiplicity of collective agreements. Norway's Labour Disputes Act of 1927 gives equal rights to all workers' organizations irrespective of size. The Act defines a trade union as "any federation of employees or of employees' associations the object of which is to protect the interest of the employees against their employers". A collective agreement is defined as "an agreement between a trade union and an employer or an employers' association respecting conditions of employment and wages or other matters relating to employment". As a result, any union can demand collective bargaining with the aim of concluding a collective agreement. Whether they succeed is a question of power. To balance out the extreme freedom given to the industrial partners in the bargaining system, the Government points out that it has developed a practice aiming at preventing individual industrial actions from causing severe damage to society.

438. The Norwegian Government strongly emphasizes Norwegian compliance with international obligations. It states that the fundamental legal principles concerning collective bargaining are fully compatible with the ILO Conventions in question. Still, complaints brought before the ILO have shown that some cases have been at variance with the ILO's interpretation of Conventions Nos. 87, 98 and 154.

439. Due to the fact that the ILO has taken a different view on the interpretation of the ILO Conventions in question, the Government indicates, as previously mentioned, that it has started to review possible modifications of the system for resolving labour disputes. The aim is to develop a system which can satisfy both the ILO and Norway's national concerns. The governmental agency, the Labour Law Council, is thus at present preparing a recommendation on the revision of Labour Disputes Act.

440. According to the Government, the 1992 strike by members of LO-K in the government sector sharply reduced the local government activities in the urban municipalities concerned. It caused the closing of municipal offices, kindergartens and primary schools. These close-downs caused problems to all persons who were dependent on social welfare and child protection services. Only emergency help was given. Furthermore the strike led to a full stop in refuse collection and public transport. The cessation of the refuse collection led to public health problems and offensive smells. The full stop in refuse collection combined with a heatwave also caused a major risk due to an increasing rat population and an increased danger of infectious diseases. Reports on improper storage of waste causing an accentuated fire hazard were also received. Furthermore, 43 power stations were hit. Gradually areas around the country would lose their electric power plants as faults arising in connection with the power supply were not corrected unless a dispensation was granted. The consequences of the strike, which lasted for about three weeks (from 27 May to 16 June 1992) thus became gradually more serious. As stated in the Bill, several attempts were made to settle the ongoing conflict, but none of them succeeded. The situation seemed deadlocked, and gave reason to believe the strike would be a long-lasting one. Because of the harmful effects, which already were becoming more and more comprehensive, and the announced escalation of the risk, which rapidly would bring about serious consequences, the Government, after a total evaluation of the situation, claims that it was necessary to propose compulsory arbitration to solve the labour dispute.

441. The Government then comments on FO's allegations. First, it points out that the Bill was put forward after a close evaluation of the total situation based on the effects of the strike which was in force and the announced escalation. The Government also considers that FO underscores that, in the parliamentary debate concerning the Bill, the Minister of Local Government and Labour stated that he would immediately initiate the process leading to a document that would be the basis for a debate on the principles of recourse to the right to strike, compulsory arbitration and the relationship to ILO Conventions, but that no such material has yet reached Parliament. For the Norwegian Government, it is important that the basis for a parliamentary debate on these questions reflects the views of both the Government and the workers' and employers' organizations. The Labour Law Council (which consists of representatives of the authorities, the mediation institution and the two major workers' and employers' organizations, i.e. the Norwegian Federation of Trade Unions and the Confederation of Norwegian Business and Industry) is at present preparing a recommendation on a system for the solution of labour conflicts within the framework of a new Labour Disputes Act. It is preferable that changes in this field have a broad support, and the Labour Law Council always seeks to arrive at its conclusions by consensus. The Government predicts that the conclusions reached by the Labour Law Council are expected to be available before the end of 1994.

442. The Government concludes by reiterating that there is in Norway a broad consensus that it has an ultimate responsibility for preventing strikes from causing serious damage to the society and third parties. The weighing of interests which it is expected to make in this connection is very difficult. Industrial action is a means intended to put pressure on the opposite party, and a country acknowledging the right to industrial action has to endure the inconveniences entailed. The Government trusts that the information and considerations given in this statement demonstrate that the Act

imposing compulsory arbitration on the parties in the labour conflict in the local government sector in 1992 was in compliance with Conventions Nos. 87 and 98.

THE COMMITTEE'S CONCLUSIONS

443. The Committee first notes that the present case concerns restrictions on collective bargaining through the imposition of compulsory arbitration by the Government to put an end to a legal strike lasting three weeks in connection with the revision of wage agreements in the local government sector in the spring of 1992. The Committee also notes that the complaint was brought by three unions merged into FO.

444. The Committee observes that the complainant's and Government's descriptions of the events leading up to the enactment of the Act ordering compulsory arbitration are not contradictory. The parties, however, disagree on the need and justification for such governmental intervention. The Government mainly argues that the strike sharply reduced the local government activities in the urban municipalities concerned: closing of municipal offices, kindergartens and primary schools. Furthermore it alleges that the strike led to a full stop in refuse collection and public transport. In the proposition accompanying the Bill the Government stated that the strike also meant that many handicapped children were not receiving the help on which they depended. Finally the Government concludes that the situation appeared to be deadlocked and that there was reason to believe that the strike would have been a long one.

445. As the complaint is filed by three associations organizing the work of most social educators, social workers and nurses for the mentally subnormal, the Committee endeavours to limit its observations on the consequences of compulsory arbitration imposed *on these groups of professions*. Therefore, the Government's allegations relating to problems and inconveniences entailed by a strike in services such as rubbish collection, public transportation, power supply or municipal services which are not part of the complaint *are not* commented on by the Committee, other unions having apparently accepted the outcome of the compulsory arbitration. The Committee understands on the whole that the Government justifies its legislative intervention by asserting that the services affected by the strike are essential ones. In this context, the Committee wishes to recall that essential services are those services the interruption of which would endanger the life, personal safety or health of all or part of the population. [see *Digest of decisions and principles of the Freedom of Association Committee*, 3rd edition, 1985, paras. 400-410.] The Committee has already considered that teachers do not fall within the definition of essential services [see 221st Report, Case No. 1097, para. 84; 226th Report, Case No. 1164, para. 343; 230th Report, Case No. 1173, para. 577; and 262nd Report, Case No. 1448, para. 116] but has determined that employees engaged in the hospital sectors are engaged in an essential service in the strict sense of the term. [See *Digest*, op cit., para. 409 and 262nd Report, Case No. 1448, para. 116.]

446. In the present case, the Committee notes the desirability to give priority to collective bargaining as a means of regulating the employment conditions of the employees, instead of taking recourse to compulsory arbitration to end the dispute, especially since institutions and services for the elderly and the sick were exempt from the strike. The Committee considers that in this particular case the parties should have

instead agreed on the exact extent of minimum services to be maintained, since FO was open to granting dispensations and was maintaining minimum services in areas such as services for the handicapped, child protection and social welfare. Even if according to the Committee the right to strike could have been limited or even prohibited in medical or ancillary medical services where the strike was in force, the Committee does not consider that this drastic measure was necessary to end the strike in *all* the sectors of activities concerned. Therefore, in these circumstances, the Committee considers that recourse to compulsory arbitration to end the labour dispute in some of the activities affected was incompatible with principles of freedom of association.

447. Furthermore, the Committee notes that it has dealt with many cases concerning compulsory arbitration in Norway: Cases Nos. 1099 [217th Report, paras. 449-470, approved by the Governing Body at its 220th Session, May-June 1982]; 1255 [234th Report, paras. 171-192, approved by the Governing Body at its 242nd Session, February-March 1989]; 1389 [251st Report, paras. 191-214, approved by the Governing Body at its 236th Session, May 1987]; 1448 [262nd Report, paras. 93-123, approved by the Governing Body at its 242nd Session, November 1991]; 1576 [279th Report, paras. 91-118, approved by the Governing Body at its 251st Session, November 1991]; and 1680 [291st Report, approved by the Governing Body at its 258th Session, November 1993]. The Committee therefore considers that the legislative intervention which is the subject of the present complaint is not an isolated case, although the context of previous cases was to some extent different. In view of the fact that the Government has had recourse to compulsory arbitration on several occasions in recent years, the Committee urges the Government, as it did previously, to refrain in future from using such measures in services that are not essential in the strict sense of the term or when minimum services have been duly secured.

448. Finally, the Committee notes with interest the Government's statement that it has started to examine possible modifications to the system for resolving labour disputes and hopes that the conclusions adopted in the present case, as well as in previous cases concerning Norway, will be duly taken into consideration. Noting however that the Government had expressed its intention to proceed with this review some years ago [see 279th Report, Case No. 1576, para. 117 and 291st Report, Case No. 1680, para. 149], the Committee stresses the importance that this review be conducted in consultation with all parties concerned and once again draws the Government's attention to the fact that the advisory services of the International Labour Office are at its disposal, if it so wishes.

THE COMMITTEE'S RECOMMENDATIONS

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

(a) The Committee recommends that in order to avoid recourse to compulsory arbitration, the parties agree on the exact extent of minimum services to be maintained.

(b) The Committee notes the desirability to give priority to collective bargaining as a means of regulating the employment conditions of the employees, instead of taking recourse to compulsory arbitration to end the dispute.

(c) The Committee notes with interest the Government's statement that it has started to examine possible modifications to the system for resolving labour disputes and hopes that the conclusions adopted in the present case, as well as in previous cases concerning Norway, will be duly taken into consideration. Noting however that the Government had expressed its intention to proceed with this review some years ago, the Committee stresses the importance that this review be conducted in consultation with all parties concerned and requests the Government to keep it promptly informed of all the measures taken to this effect.

(d) The Committee once again draws the Government's attention to the fact that the advisory services of the International Labour Office are at its disposal, if it so wishes.

Case No. 1764

Complaint against the Government of Nicaragua
presented by
— the Trade Union of Workers of "El Redentor"
Extra Supermarkets (STSE) and
— the "Carlos Fonseca Amador" Service and Trade Federation (FSC)

450. The complaint is contained in a joint communication from the Trade Union of Workers of "El Redentor" Extra Supermarkets and the "Carlos Fonseca Amador" Service and Trade Federation, dated 11 March 1994. The Government responded in a communication of 27 June 1994.

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

A. THE COMPLAINANTS' ALLEGATIONS

452. The Trade Union of Workers of "El Redentor" Extra Supermarkets and the "Carlos Fonseca Amador" Service and Trade Federation allege in their joint communication of 11 March 1994 that the manager of the Extra Supermarkets company dismissed members of the executive committee of the complainant trade union (Carlos Espinoza and Estrella Baca) without obtaining the necessary "lifting of trade union immunity (authorization) from the Labour Inspectorate, and that the job security of members is being threatened if they continue their membership in the trade union. The complainants add that the manager of this company has filed a request with the judicial authorities for the dissolution of this trade union.

B. THE GOVERNMENT'S REPLY

453. In its communication of 27 June 1994 the Government states that the Ministry of Labour has acted in accordance with the law and in an impartial manner. This is proven, for example, by the fact that the Labour Inspectorate issued a resolution

ordering the reinstatement of the trade union leader Mrs. Estrella Baca, who was mentioned in the allegations.

454. The Government adds that, after this action was taken, the management of Extra Supermarkets appealed to the Ministry of Labour, alleging that the trade union did not meet the requirements of the law. The Directorate for Trade Union Associations issued an order to inspect the enterprise's premises in order to ascertain whether the requirements of the Labour Code and the Regulations on Trade Union Associations were fulfilled. The findings of the inspection are contained in a document of 24 February 1994. The inspection found that, of the 29 workers who initially formed the trade union, only 21 active members remained, as four were dismissed (including Carlos Espinoza), one was transferred to another branch of the enterprise and later dismissed, one was dismissed and did not hold an employment contract or appear on the payroll, and two members of the trade union's executive committee resigned from their trade union posts and withdrew their membership. In accordance with the inspection's findings, the Directorate for Trade Union Associations issued an order on 2 March 1994 in which it stated that, as it had noted that the Trade Union of Workers of Extra Supermarkets did not have the minimum number of members required by law (25 members, according to section 189 of the Labour Code) and that two of the posts on its executive committee were vacant, it gave the members 15 days in which to comply with the requirements of the law.

455. The Government reports that the trade union held a general assembly on 16 March of this year with the aim of discussing reforms to the union's by-laws, the approval of new members and of elections to fill vacant posts. This notwithstanding, on 23 March 1994 the Directorate for Trade Union Associations issued an order in which it denied registration of the new executive committee because it did not meet the requirements established by the Labour Code and the Regulations on Trade Union Associations. Later, on 11 April 1994, the Director for Trade Union Associations received an official communication from the deputy labour judge, in which the judge ordered her to discontinue treatment of this case, as the decision as to whether the dissolution of the Trade Union of Workers of ""El Redentor" Extra Supermarkets was thereafter to be dealt with by the court. The judgement was handed down on 26 April 1994.

456. The judgement of 26 April 1994, which the Government encloses, specifically mentions the following:

That ... this authority (the judge) personally inspected the records of the Directorate for Trade Union Associations of the Ministry of Labour, and found that the Trade Union of Workers of "El Redentor" Extra Supermarkets did not meet the requirements of the Labour Code and the Regulations on Trade Union Associations, that the trade union did not comply with the orders of the Directorate for Trade Union Associations of the Ministry of Labour to fill vacancies on its executive committee, and that the majority of its members, including its general secretary, its secretary of finance and its secretary of women's affairs had resigned, leaving the union leaderless and without members.

That the Trade Union of Workers of "El Redentor" Extra Supermarkets had introduced a reform to its by-laws to convert it to an enterprise trade union, but that people who did not work at the enterprise were accepted as workers during this special meeting, thus meaning that the union did not have the majority required under section 189 of the Labour Code.

Based on these considerations, and the evidence submitted by the plaintiff, this judge can only order the dissolution of the Trade Union of Workers of "El Redentor" Extra Supermarkets, as it has not met the requirements of the law ...

THE COMMITTEE'S CONCLUSIONS

457. The Committee observes that the complainant organizations in this case allege the dismissal of two trade union leaders from the Trade Union of Workers of "El Redentor" Extra Supermarkets (Mr. Carlos Espinoza and Mrs. Estrella Baca); threats against the job security of members who remain in the union; and the introduction of a legal request to dissolve the union, which was submitted by the manager of the Extra Supermarkets company.

458. The Committee takes note of the information provided by the Government, which states that the union was dissolved by a court as it no longer had the legally required minimum number of members (25), the majority of the members of its executive committee had resigned and it was unable to correct this situation at a special assembly subsequently held by it.

459. In this respect, the Committee must highlight that the Government: (1) has not sent observations on the allegations that the union's members have had their jobs threatened; (2) confirms that six members of the union (including Carlos Espinoza) were dismissed, but does not indicate the reasons for their dismissal, although it does specify that it ordered the reinstatement of another trade union leader (Estrella Baca); (3) does not indicate the reasons for which various members of the executive committee withdrew from the trade union. The Committee also notes that it was not asked by the complainant organization to examine whether or not the minimum number of 25 workers to establish an enterprise union was excessive.

460. In these circumstances, the Committee cannot but conclude that the reduction in the number of union members to below the legal minimum of 25 is the consequence of anti-trade union dismissals or threats. Consequently, the Committee requests the Government to conduct an investigation of the real reasons for the dismissals of trade union leaders and members of the Trade Union of Workers of "El Redentor" Extra Supermarkets and of the reasons for the withdrawal of various trade union leaders from their membership in the union, and, should it be concluded that these were anti-trade union dismissals and that the withdrawal from union membership of trade union leaders resulted from pressure or threats from the employer, to impose the penalties provided by the legislation, to reinstate the dismissed workers in their jobs and permit the dissolved trade union to be reconstituted. The Committee requests the Government to keep it informed in this respect.

461. In general, the Committee refers to the fundamental principle that "no person should be dismissed or prejudiced in his employment by reason of his trade union membership or legitimate trade union activities", and to "the importance of forbidding and penalizing in practice all acts of anti-union discrimination in respect of employment". [See 270th Report, Case No. 1460 (Uruguay), para. 63, and 272nd Report, Case No. 1506 (El Salvador), para. 132.]

THE COMMITTEE'S RECOMMENDATIONS

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

(a) The Committee requests the Government to conduct an investigation of the real reasons for the dismissals of trade union leaders and members of the Trade Union of Workers of "El Redentor" Extra Supermarkets, and of the reasons for the withdrawal of various trade union leaders from their membership in the union.

(b) If this investigation concludes that these were anti-trade union dismissals, the Committee requests the Government to impose the penalties provided by the legislation, to reinstate the dismissed workers in their jobs and to permit the trade union (which was dissolved for not having the legal minimum number of members) to be reconstituted.

(c) The Committee requests the Government to keep it informed in this respect.

Case No. 1769

Complaint against the Government of the Russian Federation presented by the Central Committee of Free Trade Unions (CCFTU)

463. The complaint in this case is contained in communications from the Central Committee of Free Trade Unions dated 15 December 1993 and 5 March 1994. Subsequently, the complainant organization furnished additional information in communications dated 10 March and 24 May 1994. The Government sent its observations in communications dated 1 and 30 June 1994.

464. The Russian Federation has ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

A. THE COMPLAINANT'S ALLEGATIONS

465. In its communication of 15 December 1993, the Central Committee of Free Trade Unions alleges government persecution of its members and refers in particular to the arrest of Mr. Klebanov (President of the Central Committee of Free Trade Unions) in October 1993.

466. In its communications of 5 and 10 March 1994, the complainant organization alleges the following acts of anti-union discrimination:

— Region of Volgograd: administrative sanctions based on false accusations against Valeria Pavlovna Tatsenko (co-president of the Federation of Free Trade Unions of Ukraine), Vladimir Borissovitch Anfenoguenov (teacher, member of the Central Committee of Free Trade Unions) and Valentina Nikolaevna Strijneva (headmistress of the secondary school of Lobatchevski). These last two mentioned persons were arrested by the police on 4 March 1994, without any charge being brought against them, and were detained for 48 hours;

- Balachikha-Moscow: Mr. Albert Baboevitch Sournalyan (member of the Central Committee of Free Trade Unions) was sentenced on the false charge of contempt of court to 15 days' detention;
- Moscow: Mr. Edouard Ivanovitch Maslov (legal inspector of the Central Committee of Free Trade Unions) was arrested by the police and subsequently released;
- Moscow: on 19 February 1994 a group of armed police searched the premises of the Central Committee of Free Trade Unions, with the assistance of ten other persons, and assaulted the president of the organization. All this occurred in the presence of three members of the trade union organization. Mr. Klebanov and Mrs. Sevryoukova (secretary of the Central Committee of Free Trade Unions) were held in a preventive detention centre for more than 48 hours. Both were expelled to Ukraine on 22 February 1994, even though the embassy of that country confirmed that neither had Ukrainian nationality (the complaint contains the embassy document stating that these persons do not hold Ukrainian nationality). The courts have not sentenced the trade union officials for any failure to obey the police.

467. In its communication of 24 May 1994, the complainant organization states that after presenting this complaint, persecution against the organization became even greater. The complainant organization points out that on 28 April 1994, its president distributed a document criticizing government policy and that on 30 April the police searched his residence, which is also the headquarters of the organization, without any judicial warrant and forcibly removed Mr. Klebanov and the secretary of the organization. The personal effects of these officials, as well as miscellaneous materials and documents of the organization were thrown out of the building. A large amount of equipment and documentation was damaged. Although recourse was made to the authorities including the President of the Russian Federation, no positive result was achieved. Furthermore, the complainant organization alleges that on 7 May 1994 the president of the organization and the secretary were arrested and a new attempt was made to expel them from Moscow to Ukraine; in order to avoid paralysing the organization's activities, the president returned to Moscow. Finally, the complainant organization states that its president has nowhere to live, that the organization has been deprived of its premises and that it cannot function normally. It also alleges that the trade union's correspondence has been tampered with, including communications from the ILO concerning this complaint.

B. THE GOVERNMENT'S REPLY

468. In its communications of 1 and 30 June 1994, the Government states that Mr. Klebanov was born in Belarus and that he lived in Ukraine until 1988. In 1977 he founded the organization of Free Trade Unions of Russia, of which he is still president. The Government adds that in 1988 he moved into a room in the apartment of Mrs. Elifanova in Moscow, which acts as the central headquarters of the Central Committee of Free Trade Unions, although the organization was never registered with the Ministry of Justice of Russia. The Government also points out that neither Mr. Klebanov nor Mrs. Sevryoukova (allegedly secretary of the organization) had permission to reside in Moscow and that in October 1993 Mr. Klebanov was arrested for residing in Moscow without permission. His appeal to the office of the Attorney-General was rejected on the grounds that the police had acted in accordance with the

law. Mrs. Sevryoukova was also taken to the police in October 1993 for administrative proceedings in connection with her failure to comply with passport regulations established by the legislation in force.

469. The Government states that various administrative sanctions were applied against Mr. Klebanov in 1994 on the basis of Ordinance No. 637-RM of the Intendant of Moscow, respecting the residence in Moscow of citizens with permanent residence outside the Russian Federation. It adds that on 5 January 1994 Mr. Klebanov was ordered to leave Moscow and that on 10 January and on 21 February of the same year he was expelled to his last place of residence in Ukraine. The Government also states that the same measures were taken against Mrs. Sevryoukova. The Government points out that neither complied with this expulsion order and both returned to live at the same address. After the respective administrative inquiries, it was decided that there was no need for intervention by the office of the Attorney-General as regards the above-mentioned municipal order which was in force.

470. The Government adds that the owner of the residence in which the said persons were living had not concluded any lease with them, but allowed them to live there as her guests, although when she asked them to leave the apartment (headquarters of the complainant trade union), they refused to do so. The owner requested assistance from the police in evicting Mr. Klebanov and Mrs. Sevryoukova and on 30 April 1994, in the presence of witnesses, the police evicted them and suggested that they leave Moscow. The Government states that the eye witnesses confirmed that the police behaved correctly, without assaulting Mr. Klebanov or without using force, and that they did not search the apartment or destroy any documentation or material belonging to the trade union organization. The Government also states that the administrative measures taken were not related to the trade union activities of the trade unionists concerned, but were intended to prevent the said persons from committing illegal acts in violation of the legislation in force in the national territory.

471. As regards the alleged deprivation of the right of the Central Committee of Free Trade Unions to use its premises, the Government states that it had been ascertained that this organization shared the said premises, on the basis of an agreement on joint activities, with the Social Centre of the Soviet of Moscow, which means that the premises in question were not made available to the trade union organization by any lease or sublease. Following the cessation of activities by the Soviet of Moscow, and in accordance with a government decree, it was decided to demolish the building in question and to prohibit the renting of its apartments. For this reason the Commission on Real Estate of Moscow refused Mr. Klebanov's application to conclude a lease, and for this reason the office of the Attorney-General did not believe it necessary to intervene in the matter.

472. Finally, the Government points out that as regards Mrs. Strijneva (headmistress of the secondary school of Lobatchevski), she was dismissed in March 1994 for having repeatedly failed to carry out her tasks. As regards Mr. Anfenoguenov, a teacher from the same school, he was sanctioned on different occasions by the school authorities for excessive consumption of alcohol and minor acts of vandalism. The Government also adds that on 15 February 1994, Mr. Anfenoguenov and Mrs. Tatsenko were fined by the police for committing minor acts of vandalism.

THE COMMITTEE'S CONCLUSIONS

473. The Committee notes that the allegations in this case refer to different acts of persecution against trade union officials of the Central Committee of Free Trade Unions. In particular, the complainant organization alleges detentions, expulsions from the territory of the Russian Federation, acts of physical aggression, administrative sanctions and dismissals of its trade union officials, as well as the searching of the premises of the organization, the impossibility for it to use certain trade union premises, the destruction of material and documents belonging to the organization and tampering with its correspondence.

474. As regards the expulsion on two occasions from the territory of the Russian Federation of the trade union official Mr. Klebanov (president of the Central Committee of Free Trade Unions) and the trade unionist Mrs. Sevryoukova (secretary of the Central Committee of Free Trade Unions), the Committee notes that the Government states that: (1) these persons were detained on different occasions and advised to leave the country and that their expulsion was ordered on the basis of a municipal ordinance respecting the residence of persons in the city of Moscow whose previous residence was outside the Russian Federation; (2) the previous place of residence of these persons was in Ukraine; and (3) the administrative measures taken were not related to the trade union activities of the trade unionists concerned, but were designed to prevent them from committing illegal acts contrary to the legislation in force in the territory of the Russian Federation. The Committee notes that the documentation provided by the complainant organization shows that the authorities in Ukraine deny that the trade unionists concerned hold Ukrainian nationality. The Committee draws to the Government's attention that the application of the said Ordinance should not lead to a situation in which trade unionists who in any event exercised their trade union activities in the territory of the Russian Federation are prevented from being near the workers who have elected them as their representatives. It also underlines that the expulsion to their previous place of residence (Ukraine) would mean their transfer to a country of which they are not nationals. In these circumstances, and noting furthermore that the expulsion of the president of the Central Committee of Free Trade Unions, as well as of its secretary, would seriously hamper the activities of the trade union organization, the Committee requests the Government to take the necessary measures to authorize Mr. Klebanov and Mrs. Sevryoukova to reside in the city of Moscow or in any other part of the territory of the Russian Federation they wish, in order to be able to exercise their functions in defending the interests of their members. The Committee asks the Government to keep it informed in this respect.

475. As regards the allegations concerning the searching of the central headquarters of the trade union organization in February and April 1994, the physical assault of the president during this search and the destruction of material and documents, the Committee notes that the Government states that: (1) Mr. Klebanov lived as a guest in an apartment which was also the central headquarters of the organization; (2) in April 1994 the owner of the building asked the trade union official to vacate the apartment and that following his refusal she requested assistance from the police to evict him; and (3) according to witnesses present when the police evicted him, the trade union leader was not assaulted and materials and documentation of the organization were not destroyed.

476. The Committee observes that the versions of the complainant organization and the Government are contradictory. It notes that even if the owner of the building had made such a request, the eviction occurred in a place which was functioning as the premises of a trade union and was carried out by the police without any judicial warrant. Furthermore, the Government does not reply concerning the alleged searching of the trade union premises in February 1994. In these circumstances, and deploring the searches, the Committee reminds the Government of the principle that "any search of trade union premises, or of unionists' homes, without a court order constitutes an extremely serious infringement of freedom of association" [see 286th Report, Cases Nos. 1273, 1441, 1494 and 1524 (El Salvador), para. 342] and that "the entry by police or military forces into trade union premises without a judicial warrant constitutes a serious and unjustifiable interference in trade union activities". [See 284th Report, Case No. 1642 (Peru), para. 987.]

477. As regards the allegation of the impossibility for the trade union organization to use its trade union premises, the Committee notes that the Government states that the organization shared these premises on the basis of an agreement on joint activities with the Social Centre of the Soviet of Moscow, which means that the said premises were not made available to the trade union organization through a lease or sublease, and that following the cessation of activities of the Soviet of Moscow and in accordance with a government decree, an order was issued for the demolition of the building, which prohibited the renting of any of its apartments. The Committee also notes that following an investigation, the office of the Attorney-General decided that it was not necessary to intervene. In these circumstances, and assuming that the demolition order was a general measure which affected not only the complainant organization but all the occupants of the building, the Committee believes that this aspect of the case does not call for further examination.

478. As regards the allegations concerning administrative sanctions against Mrs. Valeria Pavlovna Tatsenko (co-president of the Federation of Free Trade Unions of Ukraine), Vladimir Borissovitch Anfenoguenov (teacher member of the Central Committee of Free Trade Unions) and Valentina Nikolaevna Strijneva (headmistress of the secondary school of Lobatchevski), the Committee notes the Government's statement that Mrs. Strijneva was dismissed for having repeatedly failed to carry out her duties and that different administrative sanctions were applied by the school authorities against Mr. Anfenoguenov for excessive consumption of alcohol and minor acts of vandalism, and that on 15 February 1994 Mr. Anfenoguenov and Mrs. Tatsenko were fined for minor acts of vandalism. The Committee notes that the Government has stressed that there was professional misconduct by the female trade union official who was dismissed (although without specifying the exact nature of the offence) and by the other two trade unionists who were sanctioned. In this connection, taking these measures within the context of different action taken against various members of the Central Committee of Free Trade Unions, the Committee requests the Government to re-examine the dismissal and sanctions in question and in the event that the measures taken are found to be of an anti-trade union nature, to reinstate the trade union official in her workplace and to cancel the administrative sanctions. The Committee asks the Government to keep it informed of developments in this respect.

479. The Committee also regrets that the Government has not sent its observations on the allegations concerning the detention for 48 hours of Mr. Anfenoguenov and

Mrs. Strijneva, without any charges being brought against them, the detention and subsequent release of the trade union official Mr. Edouard Ivanovitch Maslov (legal inspector of the Central Committee of Free Trade Unions) and the 15-day prison sentence against the trade union official Mr. Albert Baboevitch (member of the Central Committee of Free Trade Unions). Although the trade union officials and members in question were detained for short periods of time or have completed their sentence and are now free, the Committee deplores these acts and draws to the Government's attention that "the detention of trade union leaders for activities connected with the exercise of their trade union rights is contrary to the principles of freedom of association" [see *Digest of decisions and principles of the Freedom of Association Committee,* 3rd edition, 1985, para. 88]; this may create an atmosphere of intimidation and fear prejudicial to the exercise of trade union rights. The Committee requests the Government to hold an inquiry to elucidate the reasons for these arrests and detentions and to keep it informed on this matter.

480. Finally, the Committee also regrets that the Government has not sent its observations on the alleged tampering with the correspondence of the organization, including a communication from the ILO concerning this complaint. In this respect, the Committee reminds the Government that the tampering with correspondence is an offence which is incompatible with the free exercise of trade union rights and public freedoms and that the International Labour Conference, in its 1970 resolution on trade union rights and their relation to civil liberties stated that particular attention should be given to the right to the inviolability of correspondence and telephonic conversations. In these circumstances, the Committee requests the Government to take steps for the holding of an inquiry and to keep it informed of developments in this respect.

THE COMMITTEE'S RECOMMENDATIONS

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

(a) Noting that the expulsion of the president of the Central Committee of Free Trade Unions, as well as its secretary, could seriously hamper the activities of the trade union organization, the Committee requests the Government to take measures to authorize Mr. Klebanov and Mrs. Sevryoukova to reside in the city of Moscow or in any other part of the territory of the Russian Federation they wish in order to be able to exercise their functions in defending the interests of their members. The Committee requests the Government to keep it informed of developments in this respect.

(b) The Committee requests the Government to re-examine the dismissal of Mrs. Strijneva, as well as the sanctions taken against Mr. Anfenoguenov and Mrs. Tatsenko and in the event that the measures taken are found to be of an anti-trade union kind, to reinstate the dismissed trade union official in her workplace and to cancel the administrative sanctions. The Committee asks the Government to keep it informed of developments in this respect.

(c) The Committee requests the Government to hold an inquiry to elucidate the reasons for the arrests and detentions of Mr. Anfenoguenov, Mme Strijneva, Mr. Maslov and Mr. Baboevitch and to keep it informed on this matter.

(d) The Committee asks the Government to take steps to carry out an inquiry into the alleged tampering with the complainant organization's correspondence and to keep it informed of the outcome.

Case No. 1771

Complaint against the Government of Pakistan presented by the National Labour Federation of Pakistan (NLF)

482. In a communication dated 26 April 1994, the National Labour Federation of Pakistan (NLF) submitted a complaint of violations of freedom of association against the Government of Pakistan. The NLF supplied additional information concerning the allegations in this case in a communication received on 6 June 1994. The Government sent its observations in a communication dated 24 July 1994.

483. Pakistan has ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

A. THE COMPLAINANT'S ALLEGATIONS

484. In its complaint of 26 April 1994, the NLF alleges that the Government has violated Conventions Nos. 87 and 98 with respect to workers employed by Pakistan Steel, Pakistan Railways and Pakistan International Airlines.

Pakistan Steel

485. On behalf of the Pakistan Steel Labour Union, an affiliate of the NLF, the complainant alleges that two collective agreements signed on 5 November 1988 and 17 October 1990 respectively, as well as a supplementary agreement signed on 26 October 1989, were unilaterally annulled by the new management in 1992. Furthermore, the NLF claims that, at the same time, over 7,000 workers were promoted to the "officers' cadre" so that they would be disqualified from membership in any trade union in the company and thus weaken the trade union movement. As a result, despite applications from the trade unions to hold a vote in order to determine the Collective Bargaining Agent (CBA), the voter list has not yet been finalized and therefore no new collective agreements have been made. The NLF asserts that, for all practical purposes, trade union activities have been banned and the collective bargaining process has been obstructed. Thirty-three trade union officers from eight steel unions who have been agitating for the restoration of union rights have been dismissed (a list of the dismissed officers was attached to the complaint).

486. Additional information supplied by the complainant in a later communication indicates that, given the artificial promotions, the number of officers to workers within the company has reached 12,000 officers to 12,000 workers or a ratio of one to one.

Pakistan Railways

487. As concerns the workers at Pakistan Railways, the complainant has supplied a copy of circular No. E-I/91-ACT/2 issued by the Ministry of Railways dated 18 October 1993 which makes use of section 1(3)(a) of the Industrial Relations Ordinance to exempt railway employees working on Ministry of Defence lines from the provisions of the Ordinance. The circular advises such employees not to take part in any trade union activities and warns them that participation in any such activities will make them liable to all legal and disciplinary actions provided under law and the statutory rules. According to the complainant, the circular covers almost 90 per cent of workers in open line establishments. The complainant further notes that these workers had always enjoyed trade union rights, even during the period of British rule.

Pakistan International Airlines

488. Finally, the complainant indicates that an administrative order was issued on 6 April 1994 by the General Manager of PIA which restricts negotiations to matters pertaining to pay, allowances and perquisites, all other decisions regarding terms and conditions of service to be taken by the Board of Directors. While the complainant organization has indicated that the management has "retreated" on this point, it nevertheless has expressed its concern that further attempts may be made in this regard.

B. THE GOVERNMENT'S REPLY

489. In its communication dated 24 July 1994, the Government recalls that Pakistan Steel is an industrial organization covered by the Industrial Relations Ordinance which sets forth the procedures for settling labour disputes. The Government asserts that the NLF is not a representative body with respect to Pakistan Steel and therefore has no *locus standi*. The Government further indicates that the NLF took the case to the Sindh High Court which dismissed the petition on the grounds that the NLF had no *locus standi*.

490. As concerns the ban on trade union activities for Pakistan Railway employees, the Government points out that the union has filed a writ petition to the Lahore High Court and the matter is therefore *sub judice*.

491. Finally, as concerns Pakistan International Airlines, the Government contends that the administrative order limiting the subject matter for collective bargaining purposes was only intended to ensure the implementation of uniform policy and was misinterpreted by the association and union representatives. The Government also recalls that the order was withdrawn before its implementation in order to remove this misunderstanding.

THE COMMITTEE'S CONCLUSIONS

492. The Committee observes that this complaint concerns allegations of measures taken at the enterprise level and at the national level to impede workers' rights with respect to freedom of association and collective bargaining in violation of freedom of association and collective bargaining principles.

493. As concerns Pakistan Steel, the Committee notes that the allegations concern impediments placed in the way of the collective bargaining process which resulted, in 1992, in the annulment of the current agreements and which have effectively hindered the negotiation of any new agreement. Furthermore, the complainant has provided a list of 33 high-ranking union officers who have recently been dismissed, and also alleges that there have been an exorbitant number of false promotions.

494. The Committee notes the Government's indication that the Industrial Relations Ordinance of 1969 sets forth the relevant procedures for settling disputes and hearing grievances and that the writ petition submitted by the NLF was rejected in the absence of the right of the NLF to go to court. The Committee recalls that Article 4 of Convention No. 98 provides that measures appropriate to national conditions shall be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers and workers with a view to the regulation of terms and conditions of employment by means of collective agreements. The Committee considers that the unilateral annulment of freely concluded collective agreements is contrary to the basic principles of collective bargaining and is likely to have a detrimental effect on the harmonious nature of industrial relations. As the Government has not refuted the allegation that, for all practical purposes, the collective bargaining process has since been obstructed, the Committee would also recall the importance it attaches to the principle according to which "both employers and trade unions should bargain in good faith to come to an agreement and that genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties". [See, for example, 284th Report, Case No. 1619 (United Kingdom), para. 360.]

495. The Committee notes the complainant's indication that a substantial number of trade union leaders have been dismissed. The Government, however, has not provided any information in this respect. The Committee would therefore recall the principles according to which all workers should be able to form and join organizations of their own choosing in full freedom and no person should be prejudiced in his or her employment by reason of his or her trade union membership or legitimate trade union activities. [*Digest of decisions and principles of the Freedom of Association Committee*, 3rd edition, 1985, paras. 222 and 538.] The Committee urges the Government to take measures to establish an impartial inquiry with a view to establishing the true reasons for these dismissals and, if it is proven that the individuals concerned were dismissed by reason of their trade union activities, to ensure that they are reinstated in their posts. It requests the Government to keep it informed of the findings of the inquiry.

496. As concerns the mass promotions disqualifying workers from union membership, the Committee considered a similar question in an earlier case against Pakistan (Case No. 1534). The promotion policies in question in that case had been considered by the Committee to result in unusually high management/worker ratios and to be clearly designed to undermine the membership of workers' trade unions. The Committee concluded that such actions violated the principles of freedom of association. [See 278th Report, para. 470.] In its final conclusions, the Committee had recalled that it was the Government's responsibility to ensure in law and in practice the application of the principles of freedom of association and, in particular, of the Conventions which it has ratified. [See 281st Report, para. 171.] In this respect, both this Committee and the Committee of Experts in its supervision of the application of Convention No. 87 have

urged the Government to take measures with a view to strengthening the application of the protective provisions in the Industrial Relations Ordinance (IRO), 1969, so as to prevent the undermining of workers' organizations through artificial promotions. [ibid., para. 172.]

497. The Committee further notes that a direct contacts mission to Pakistan was undertaken in January 1994. The mission noted that a task force on labour had been established, inter alia, to remove flaws, ambiguities and inadequacies in the labour law. In this regard, the mission pointed out that the present definition of "worker" in the IRO was inadequate as it was easily open to abuse, limiting those who could be members of a trade union. The direct contacts mission recommended that this definition be amended and urged that ILO principles be taken into account in the redrafting. Given the substantial number of promotions at Pakistan Steel noted in the complaint, the Committee once again urges the Government to make the necessary changes to ensure adequate protection of workers against the abusive use of promotions to undermine the trade union movement and requests the Government to keep it informed of the situation of the trade unions at Pakistan Steel. It draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case.

498. The Committee notes from the Government's reply that the circular which excludes all railway employees working on the Ministry of Defence lines from the purview of the Industrial Relations Ordinance which guarantees the basic rights of freedom of association and collective bargaining is *sub judice*. It also notes the complainant's assertion that these lines covered over 90 per cent of workers in open line establishments and that these workers have always enjoyed trade union rights, even when under British rule.

499. The Committee would first recall that Article 2 of Convention No. 87 provides that workers and employers, *without distinction whatsoever*, shall have the right to establish and to join organizations of their own choosing. While Article 9 of the Convention does authorize exceptions to the scope of its provisions for police and armed forces, the Committee would recall that the members of the armed forces who can be excluded should be defined in a restrictive manner. [See 238th Report, Case No. 1279 (Portugal), para. 137.] Furthermore, the Committee of Experts on the Application of Conventions and Recommendations has observed that since this Article of the Convention provides only for exceptions to the general principle, workers should be considered as civilians in case of doubt. [See *General Survey on Freedom of Association and Collective Bargaining*, 1994, ILC, 81st Session, para. 55.] Given that the Government circular would appear to affect almost all railway employees in the country and that these employees have always enjoyed trade union rights in the past and therefore would not appear to be members of the armed forces for the purposes of the Convention, the Committee would draw the Government's attention to the need to ensure, in its legislation as well as in any relevant ministerial circulars, the right for all workers who are not members of the armed forces to organize and to carry out trade union activities. The Government is requested to keep the Committee informed of the Lahore High Court's judgement in this case.

500. Finally, the Committee notes from both the complainant and the Government that the administrative order limiting the subject matter for collective bargaining purposes at Pakistan International Airlines has been revoked. The Committee therefore considers that this point calls for no further examination. As the complainant has, however,

indicated its fear that similar attempts to encroach on trade union rights may be made, the Committee would recall that matters which are primarily or essentially questions relating to conditions of employment should not be regarded as falling outside the scope of collective bargaining conducted in an atmosphere of mutual good faith and trust.

THE COMMITTEE'S RECOMMENDATIONS

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

(a) Recalling the principles according to which all workers should be able to form and join organizations of their own choosing in full freedom and no person should be prejudiced in his or her employment by reason of his or her trade union membership or legitimate trade union activities, the Committee urges the Government to take measures to establish an impartial inquiry with a view to establishing the true reasons for the dismissals of the trade union leaders at Pakistan Steel and, if it is proven that the individuals concerned were dismissed by reason of their trade union activities, to ensure that they are reinstated in their posts. It requests the Government to keep it informed of the findings of the inquiry.

(b) Recalling its previous recommendation to the Government to take measures with a view to strengthening the application of the protective provisions in the Industrial Relations Ordinance, 1969, so as to prevent the undermining of workers' organizations through artificial promotions and noting the recommendation of the direct contacts mission to amend the definition of "worker" in the IRO, the Committee once again urges the Government to take the necessary measures so as to ensure effectively the right to organize for all workers and to keep it informed of the situation of the trade unions at Pakistan Steel.

(c) Recalling that Article 9 of Convention No. 87 only permits exemptions from the application of its provisions for members of the armed forces and the police, the Committee draws the Government's attention to the need to ensure in its legislation and any relevant ministerial circulars the right for all workers and employers, *without any distinction whatsoever*, including railway employees, to establish and to join organizations of their own choosing. The Committee trusts that the judgement of the Lahore High Court will resolve the issue of railway employees and requests the Government to keep it informed in this regard.

(d) The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspects of the case regarding Convention No. 87.

Case No. 1775

Complaint against the Government of Belize
presented by
the Public Service Union of Belize (PSUB)

502. In a communication of 15 May 1994, the Public Service Union of Belize (hereinafter the PSUB) submitted a complaint of infringements of trade union rights against the Government of Belize. It sent additional information relating to its complaint in a communication of 15 June 1994. Public Services International (PSI) associated itself with this complaint in a communication of 2 August 1994.

503. The Government supplied its observations on the case in a communication dated 9 September 1994.

504. Belize has ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

A. THE COMPLAINANT'S ALLEGATIONS

505. In its complaint of 15 May 1994, the PSUB presents allegations of violations by the Government of Conventions Nos. 87 and 98 which are both of a factual and legislative nature. First of all, on 3 July 1992 the Government entered into an agreement to pay salary increases of 10 per cent and 12.5 per cent to senior and junior public officers, respectively, each year over a three-year period commencing 1 April 1992. The Government implemented increases for 1992 and 1993. However, the new government administration which took power on 1 July 1993 announced shortly after the budget presentation of March 1994 that it would only be giving a 5 per cent across-the-board increase and that the balance of the increase would be paid subject to prevailing economic circumstances.

506. The PSUB contends that the Government now maintains that it is unable to pay the balance due to the economy and its fiscal position. After reviewing the current budget content, the PSUB considers that sufficient savings can be made in the current budget to pay for the increases. It further considers that the Government has breached a collective agreement and has made unsustainable campaign promises for which public officers must now pay.

507. In addition, since the announcement of industrial action in April, the Minister of Labour passed into law on 28 April 1994, Statutory Instrument No. 32 of 1994 (copy attached by complainant) extending the essential services departments to Revenue Services (customs, income tax and all revenue collecting departments and agencies of the Government). The PSUB contends that such an extension effectively makes all government departments essential services thereby limiting the right to strike of employees in these departments. In the PSUB's view, many of these departments cannot be classified as essential services.

508. Finally, notwithstanding that the PSUB recognizes the need for restrictions on the right to strike, it considers that the provisions of the Settlement of Disputes (Essential Services) Ordinance are not in conformity with ILO Conventions. More specifically, it

is of the view that the Minister of Labour has too much power in determining the manner and settlement of the dispute including the setting up of a tribunal whose five members are ultimately selected by him, that worker representation in the settlement of disputes is negligible and that the time frame for the settlement of disputes is too long.

B. THE GOVERNMENT'S REPLY

509. In its communication of 9 September 1994, the Government states that the previous People's United Party Government had promised to public officers an across-the-board salary increase of 10 per cent for senior officers and 12.5 per cent for junior officers for three consecutive years to take effect on 1 January 1992. The first and second salary increases took effect as promised in 1992 and 1993.

510. However, in July of 1993 a new Government was installed after the opposition United Democratic Party won the General Elections. After assuming office the new Government announced that, due to the unfavourable state of the economy, salary increases of 10 per cent and 12.5 per cent could not be approved in 1994. However, the Government did assure public officers and the unions that the increases as promised would be granted in the context of a reducing deficit. In any event, an across-the-board salary increase of 5 per cent was granted to public officers in April of 1994.

511. The Government, which has a deficit ceiling of US$50 million is currently running a deficit of US$47 million. It explains that salary increases of 10 per cent and 12.5 per cent would result in additional costs that it could not sustain. The Government further indicates that currently salaries paid by it are over 56 per cent of tax revenue. While the Government is in the process of initiating tax improvement measures, there is no guarantee that the income from taxes will be sufficient to cover the additional costs resulting from additional salary increases. The Government concludes by stating that it is committed to granting to all public officers the remaining salary increases of 5 per cent and 7.5 per cent at a later date.

THE COMMITTEE'S CONCLUSIONS

512. The Committee notes that the allegations in this case which refer to violations of Conventions Nos. 87 and 98 are of a factual and legislative nature.

513. With regard to the complainant's allegation that a collective agreement was breached by the Government because it did not pay the full amount of salary increases already negotiated under this agreement, the Government replies that it could not pay the full salary increase for 1994 in view of the unfavourable state of the economy and especially a very large budget deficit. The Committee has considered that the exercise of financial powers by the public authorities in a manner that prevents compliance with collective agreements already entered into by public bodies is not consistent with the principle of free collective bargaining. [See *Digest of decisions and principles of the Freedom of Association Committee*, 3rd edition, 1985, para. 640.] The Committee, however, has acknowledged that where, for compelling reasons of national economic interest and as part of its stabilization policy, a government considers that it is not possible for wage rates to be fixed freely through collective bargaining, any restrictions

should be imposed as an exceptional measure and only to the extent that is necessary without exceeding a reasonable period, and should be accompanied by adequate safeguards to protect workers' living standards. [See *Digest*, op. cit., para. 641.]

514. As regards the particulars of this case, none of the allegations lead the Committee to believe that restrictions on collective bargaining for public officers occur frequently, and therefore the current restriction can be said to be an exceptional measure. Furthermore, The Committee notes from the arguments of both parties that the Government measure does not cancel the salary increases negotiated for 1994 but only delays their payment to public officers. The Government states that the remaining salary increases of 5 per cent and 7.5 per cent will be paid at a later date although it does not specify exactly when. Moreover, notwithstanding the delay in the payment of the salary increases for 1994 by the Government, the Committee observes that an across-the-board salary increase of 5 per cent was granted to all public officers, thereby protecting to a certain extent their living standards.

515. The Committee accordingly notes that the Government has committed itself to respect the terms of the previously negotiated collective agreement. It requests the Government to keep it informed of when the remaining salary increases of 5 per cent and 7.5 per cent will be paid to all public officers.

516. As regards the allegation that most government departments are defined as essential services by virtue of the Settlement of Disputes (Essential Services) Act thereby limiting the right to strike of employees in those departments, the Committee notes in effect, that the list of essential services set out in the Schedule to the Act (see Annex) as well as the extension of this Act to all Revenue Services go well beyond the Committee's own definition of essential services in the strict sense of the term, or government services where strikes may be prohibited. [See *Digest*, op. cit., paras. 394 and 400-410.] Moreover, the Committee notes that under the terms of section 15 of the Act, a trade union may call a lawful strike after issuing 21 days' notice unless before the end of this period the Minister decides that the dispute should be referred to arbitration. In the Committee's view, this provision allows the Minister to submit any dispute to compulsory arbitration, thereby prohibiting strikes for all practical purposes. The Committee therefore requests the Government to take steps to ensure that its legislation be amended so that the right to strike may be restricted or prohibited only for public servants acting in their capacity as agents of the public authority or in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population; it requests the Government to keep it informed of developments thereof.

517. Finally, the Committee notes that under section 4 of the Act, the Minister has the authority to set up an Essential Services Arbitration Tribunal. It notes that subsection 5(1) allows him to directly appoint three members and that section 6 enables him to select two other members from panels of persons chosen to represent employers and workers respectively, which panels are constituted by the Minister. The Committee considers that the appointment by the Minister of all five members of the Tribunal calls into question the independence and impartiality of such a tribunal as well as the confidence of the concerned parties in such a system. It therefore urges the Government to take steps to ensure that the Act be amended so that it provides for organizations representative of workers and employers, respectively, to select their members of the

Essential Services Arbitration Tribunal, and asks it to keep it informed of developments thereof.

THE COMMITTEE'S RECOMMENDATIONS

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

(a) The Committee notes that the Government has committed itself to respect the terms of the collective agreement and requests the Government to keep it informed as to when the remaining salary increases, negotiated for 1994 in the public service, will be paid to all public officers.

(b) The Committee requests the Government to take steps to ensure that the Settlement of Disputes (Essential Services) Act be amended so that the restrictions on the right to strike contained therein be limited to public servants acting in their capacity as agents of the public authority or to services the interruption of which would endanger the life, personal safety or health of the whole or part of the population; it requests the Government to keep it informed of developments thereof.

(c) The Committee urges the Government to take steps to ensure that the Act be amended so that it provides for organizations representative of workers and employers, respectively, to select their members of the Essential Services Arbitration Tribunal so as to ensure its independence and impartiality, as well as the confidence of the concerned parties, and asks it to keep it informed of developments thereof.

Annex

SERVICES THAT ARE CLASSIFIED AS ESSENTIAL BY VIRTUE OF THE SETTLEMENT OF DISPUTES (ESSENTIAL SERVICES) ACT

Electricity services;

Health services;

Hospital services;

Sanitary services;

Telecommunications services;

Telephone services;

Water services;

Services in which petroleum products are sold, supplied, transported, conveyed, handled, loaded, unloaded or stored;

The national fire service;

Postal services;

Monetary and financial services (banks, treasury, monetary authority);

Airports (civil aviation and airport security services);

Port authority (pilots and security services);

The social security scheme administered by the social security board;

Revenue services (customs, income tax and all revenue-collecting departments and agencies of the Government).

Case No. 1792

Complaint against the Government of Kenya
presented by
— the Public Services International (PSI) and
— the International Confederation of Free Trade Unions (ICFTU)

519. In a communication dated 5 July 1994, the Public Services International (PSI) submitted a complaint of violations of freedom of association against the Government of Kenya. By a communication dated 20 July 1994, the International Confederation of Free Trade Unions (ICFTU) expressed its desire to associate itself with this complaint.

520. The Government sent its observations on the case in a communication dated 28 September 1994.

521. Kenya has not ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) or the Labour Relations (Public Service) Convention, 1978 (No. 151); it has ratified the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) and the Workers' Representatives Convention, 1971 (No. 135).

A. THE COMPLAINANTS' ALLEGATIONS

522. In its communication dated 5 July 1994, the Public Services International (PSI) refers to a previous case concerning trade union rights for civil servants examined by the Committee in its 241st Report (Case No. 1189) and asserts that the recommendations then made were never implemented by the Government and the situation has indeed worsened.

523. The complainant organization alleges that top officials of the Universities' Academic Staff Union were arrested by the police. Furthermore, as concerns the Kenya Medical Practitioners and Dentists Union, the doctors continue to go on strike despite a warning from the Ministry of Health that doctors are considered part of an essential service, thus rendering the strike illegal, and a threat made by the President to hire foreign workers.

524. On 15 June 1994, the Registrar of Trade Unions refused to register the Medical Practitioners and Dentists Union. This decision has been appealed and an application has also been filed in the High Court by officials of the Medical Practitioners and Dentists Union to have the Minister for Health jailed for alleged contempt of court for having allegedly pre-empted the court's finding in the suit to compel the Government to register the union.

525. Freedom of association is provided for in the Constitution and the ruling party supported the revival of the Civil Servants Unions and the University Staff Associations in its 1992 election manifesto. On 1 May 1992, President Moi announced the lifting of the ban on the defunct Union of Kenya Civil Servants and on 8 May appointed a committee to consider the need of establishing a trade union for civil servants. The parliamentary motion on the reinstatement of the union was unanimously passed by the Legislature on 13 October 1993 with the support of the Government.

526. On 28 April 1994, the Government approved the above-mentioned committee's report which recommended the immediate establishment of the Kenya Union of Civil Service Employees. In a press statement signed by the head of the civil service, it was stated that the revived union would secure the assets and liabilities of the defunct Union of Kenya Civil Servants and that the present Kenya Civil Servants' Welfare Association would be de-registered. It was announced that a number of groups within the public service would be exempted from taking part in the union, including Teachers under the Teachers Service Commission and persons responsible for making recommendations or taking decisions on appointments, promotions, terminations and other disciplinary actions affecting other officers. The President directed the Registrar of Trade Unions to oversee the implementation of the exercise with immediate effect.

527. On 3 May 1994, an application was submitted for the registration of the proposed Kenya Union of Civil Service Employees and on 11 May 1994 President Moi revoked his consent for the immediate establishment of the union, stating that he had only allowed for the formation of a Welfare Association.

528. The ICFTU associated itself with this complaint in a communication dated 20 July 1994.

B. THE GOVERNMENT'S REPLY

529. In its communication dated 28 September 1994, the Government first indicated its willingness and good faith to maintain international standards, demonstrated by the 46 Conventions which it has already ratified.

530. As concerns the subject of the complaint, the Government confirmed that some university lecturers and some doctors in the civil service had "boycotted" their jobs after their applications for the registration of their trade unions were refused. The Government indicates that these cases have been referred to the High Court and cannot, therefore, be discussed. It queries why boycott action was resorted to when the matter is still in court. The Government further asserts that those on boycott are not joined together by any trade union or organization and are thus acting individually. They are simply infringing their contracts of employment.

531. The Government recalls that it has not ratified Conventions Nos. 87 and 151, but adds that it has not deliberately gone out to infringe any of the provisions of these Conventions. It affirms, to the contrary, that it has allowed unionization in the local government even in the central government up to 1982 and recalls that the ILO has already been informed of the reasons for this action.

532. The Government affirms that it has strictly followed the pattern of unionization agreed by the tripartite partners as concluded and signed in the Kenya Industrial Relations Charter (1962 as amended in 1980) and adds that the Charter is not in any part in conflict with the Kenyan Constitution or with ILO Conventions Nos. 87, 98 or 151.

533. The Government adds that, for these reasons, it must be allowed to decide for itself what best suits it and to implement the same in its own time. The Government has not closed any doors for unionization and will continue to constantly review every situation and decide appropriately. It will also continue to consult its tripartite partners in the development of trade unions.

534. The Government states that it has given the question of the unionization of civil servants a lot of consideration and continues to do so. If and when the Government decides on this issue, it will be so stated. However, for now, the civil servants have an association which continues to cater for their interests and welfare.

535. In its final comments, the Government stated categorically that it was a democratic country which has not infringed on any trade union rights, any ILO Conventions, its own Constitution or laws. It expressed its assurance of its best intentions of continued improvement of the quality of life of not only the workers, but the whole of its population. The Government concluded, in this respect, that the rights of the workers and employers will continue to be upheld for the betterment of the nation.

THE COMMITTEE'S CONCLUSIONS

536. The Committee notes that this case concerns both the question of the refusal to register two unions, the Universities' Academic Staff Union and the Kenya Medical Practitioners and Dentists Union, and the continuing refusal to register the Kenya Civil Servants' Association, the de-registration of which had been the subject of complaint presented to the Committee over ten years ago. [See, Case No. 1189: 230th Report, paras. 679-688, 238th Report, paras. 248-260 and 241st Report, paras. 387-395.]

537. The Committee notes with regret that the Government has not made observations on the specific allegation made by the complainant that top officials of the Universities' Academic Staff Union (UASU) were arrested by the police. It notes the Government's indication that some university lecturers "boycotted" their jobs after their application for registration was refused and that the case was pending at the High Court. It further notes the Government's assertion that these workers were acting individually in their "boycott" action as no trade union or organization actually joins them together.

538. First, as concerns the existence of a trade union and thus the question of individual or collective action with respect to the UASU, the Committee points out that the right to form and to join organizations for the promotion and defence of workers' interests without previous authorization is a fundamental right which should be enjoyed by all workers without distinction whatsoever, including teachers considered to be part of the public service. The Committee notes that the question of the registration of this union is *sub judice*, and, in this respect, urges the Government to ensure that this principle is respected. It requests the Government to keep it informed of the Court's judgement in this case.

539. As concerns the strike action undertaken by the USAU, the Committee recalls that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interest. [*Digest of decisions and principles of the Freedom of Association Committee*, 3rd edition, 1985, para. 362.] The fact that a strike is called for recognition of a union is, in the Committee's view, a legitimate interest which may be defended by workers and their organizations.

540. With respect to the reported arrests of UASU's top leaders, the Committee recalls the importance which it attaches to the principle according to which the arrest — even if only briefly — of trade union leaders and trade unionists for exercising legitimate trade union activities constitutes a violation of the principles of freedom of association.

[*Digest*, op. cit., para. 88.] The Committee requests the Government to take the necessary measures to ensure that, in the future, trade union leaders and trade unionists will not be arrested for exercising legitimate trade union activities.

541. The Committee understands that the refusal of registration for the Kenya Medical Practitioners and Dentists Union has been brought before the High Court and is presently *sub judice*. The Committee recalls in this respect, as it has for the question of the Universities' Academic Staff Union, that the right to form and to join organizations for the promotion and defence of workers' interests without previous authorization is a fundamental right which should be enjoyed by all workers without distinction whatsoever, including hospital personnel. The Committee urges the Government to ensure respect for this principle and requests the Government to keep it informed of the Court's judgement in this case.

542. As concerns the Kenya Medical Practitioners and Dentists Union, the Committee notes that, according to the complainant, doctors continued to strike despite a warning from the Ministry of Health that the strike was illegal since they are considered to be part of an essential service. The Committee recalls in this regard that it has considered the hospital sector to be an essential service and has acknowledged that the right to strike can be restricted or even prohibited in essential services in so far as a strike there could cause serious hardship to the national community and provided that the limitations are accompanied by certain compensatory guarantees. [See, *Digest*, op. cit., paras. 409 and 393.]

543. Finally, as concerns the Kenya Union of Civil Service Employees, the Committee notes the information provided by the complainant, and not contradicted by the Government, that, after having approved the recommendations made by the government-appointed commission for the immediate establishment of the union, the President revoked his consent for registration, stating that he had only allowed for the formation of a Welfare Association. The Committee recalls in this respect that it had already been called upon to consider the validity of the Kenya Civil Servants' Welfare Association in its examination of Case No. 1189. At that time, the Government had indicated that the Association in question had not been allowed to participate in activities of a trade union nature. The Committee in its conclusions regretted the failure of the Government to supply any information on measures to permit the establishment of organizations through which the workers in question may pursue their normal trade union activities and it regarded as especially regrettable the Government's affirmation that the Kenya Civil Servants' Welfare Association had not been allowed to participate in activities of a trade union nature. [See 241st Report, paras. 390 and 392.]

544. The Committee deeply deplores that the situation of Kenyan civil servants in this respect appears not to have changed in over ten years and that, in that time, the Government has not taken into account its recommendations in Case No. 1189. It must once again recall the importance it attaches to the principle that public servants, like all other workers, without distinction, have the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests. While welcoming the steps which had been taken by the Government to reinstate the defunct union, the Committee notes that the government-appointed committee established to consider this question called specifically for the immediate establishment of the Kenya Union of Civil Service Employees. The Committee wishes to recall in this regard that the right of all workers to form and join

organizations of their own choosing necessarily implies that any legislation ensuring this right should leave to the free choice of the workers the organization to be formed. It urges the Government to take the necessary steps to ensure that workers in the civil service have the right to form and join organizations of their own choosing, without previous authorization, and requests the Government to keep it informed of the steps taken in this regard.

545. The Committee also recalls its previous conclusions concerning the assets of the Kenya Civil Servants' Association which were seized upon its de-registration and urge the Government to ensure that these assets are handed over to the organization which succeeds it in the pursuit of its trade union activities. The Government is requested to keep the Committee informed of the steps taken in this regard.

546. As concerns the exemptions noted by the complainant in the original recommendation of the government-appointed commission with respect to the right to organize for civil servants, the Committee recalls that, as this right should be guaranteed to all workers, without distinction whatsoever, such exemptions should be limited to the police and the armed forces. As concerns persons exercising senior managerial or policy-making responsibilities, the Committee is of the opinion that while these public servants may be barred from joining trade unions which represent other workers, such restrictions should be strictly limited to this category of workers and they should be entitled to establish their own organizations. [See, *General Survey on Freedom of Association and Collective Bargaining*, 1994, ILC, 81st Session, para. 57.]

THE COMMITTEE'S RECOMMENDATIONS

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

(a) The Committee deeply deplores that the Government has not taken into account its recommendations made over ten years ago, adopted by the Governing Body at its 231st Session (November 1985), concerning the establishment of an organization through which workers in the civil service may pursue their normal trade union activities.

(b) Recalling the importance it attaches to the principle that public servants, like all other workers, without distinction, have the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests, the Committee urges the Government to take the necessary steps to ensure the right of civil servants to establish and join organizations of their own choosing and to take the necessary steps to process, according to this principle, the application for registration of the Kenya Union of Civil Service Employees. The Government is requested to keep the Committee informed of the steps taken in this regard.

(c) Recalling its previous conclusions concerning the assets of the Kenya Civil Servants' Association which were seized upon its de-registration, the Committee urges the Government to ensure that these assets are handed over to the organization which succeeds the Civil Servants' Association in the pursuit of its trade union activities. The Government is requested to keep the Committee informed of the steps taken in this regard.

(d) Further recalling the right to organize for all workers, without distinction whatsoever, the Committee trusts that the Government will ensure at an early date respect for this principle and will take the necessary measures to ensure the registration of the Universities' Academic Staff Union and the Kenya Medical Practitioners and Dentists Union. It requests the Government to keep it informed of the Court's judgements in these cases.

(e) As concerns the reported arrests of the top officials of the Universities' Academic Staff Union, the Committee requests the Government to take the necessary measures to ensure that, in the future, trade union leaders and trade unionists are not arrested for exercising legitimate trade union activities and calls for the immediate release of any members of the UASU who are still being detained.

IV. Cases in which the Committee has reached interim conclusions

Case No. 1651

Complaint against the Government of India presented by the International Union of Food and Allied Workers' Association (IUF)

548. The Committee has already examined the substance of this case at its March 1994 Session and presented interim conclusions to the Governing Body. [See 292nd Report, paras. 633-674, approved by the Governing Body at its March 1994 Session.]

549. The Government supplied certain further information on this case in communications dated 2 August and 11 October 1994.

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

A. PREVIOUS EXAMINATION OF THE CASE

551. In its initial complaint, the International Union of Food and Allied Workers' Association (IUF) had raised allegations of interference by the authorities and the management of Hindustan Lever Ltd. in the functioning of an international seminar it had organized, as well as several acts of anti-trade union discrimination and interference in trade union activities.

552. At its March 1994 Session, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

(a) The Committee notes with concern that during an international seminar organized by the IUF in Bombay, seminar organizers were interrogated by a police officer and certain participants were asked to report to the police station daily. It requests the Government to ensure that the formalities to which trade unionists and trade union

leaders are subject in seeking entry to the territory of a State, or in attending to trade union business there, are based on objective criteria and free of anti-union discrimination. Furthermore, it requests the Government to keep it informed of the outcome of the report that is being prepared on this matter by the state government of Maharashtra.

(b) Regretting the slow and bureaucratic nature of procedures concerning allegations of anti-union dismissal, the Committee requests the Government to ensure that workers enjoy adequate protection against all acts of anti-union discrimination in respect of their employment. It draws the Government's attention to the danger that justice will be denied as a result of the slowness of the judicial procedures.

(c) In view of the principles enunciated above, the Committee requests the Government to provide information relating to: (i) the progress and the outcome of the proceedings before the Labour Court, Bombay, concerning the dismissal from service of Mr. Ghuge and Mr. Nand Kumar, office-bearers of the Hindustan Lever plant in Bombay; (ii) the progress and the outcome of the judicial proceedings before the Labour Court, Agra, concerning the dismissal from service of Mr. M. Prasad and Mr. B.S. Rawat, office-bearers of the Etah Unit of Hindustan Lever; and (iii) the progress and the outcome of the writ petition filed by the management of the Delhi Branch Office of Hindustan Lever before the Delhi High Court concerning the dismissal of Mr. R.P. Bidani, Chairman of the Ghaziabad Unit of Hindustan Lever, before his transfer to Delhi.

(d) The Committee requests the Government to ensure that an independent and impartial inquiry is held with respect to the forced transfers of trade union officials away from factory premises in order to ascertain whether the transfers of these six office-bearers were based on acts of anti-union discrimination and, if so, to ensure that these office-bearers are transferred back to the factory premises of the Hindustan Lever plant in Bombay. It also requests the Government to ensure in future that employers refrain from having recourse to such measures.

(e) Taking into account the particular circumstances of this case, the Committee requests the Government to ensure that direct negotiation between the undertaking and its employees does not bypass representative organizations where these exist. The Committee thus requests the Government to keep it informed of the outcome of the applications before the Industrial Court, Bombay, by the Hindustan Lever Employees' Union and the Hindustan Lever Research Centre Employees' Union to be declared as recognized unions and to obtain the status of sole bargaining agents.

(f) The Committee requests the Government to keep it informed of the progress and the outcome of the dispute pending before the conciliation authority in Calcutta concerning the retrenchment of 300 contract workers in the Hindustan Lever Unit in Calcutta. It further requests both the complainant and the Government to provide information relating to the exact reasons for the retrenchment of the trade union leader, Mr. S.B. Roy, as well as the reasons as to why the management stopped contract works in the Unit in Calcutta in 1988.

(g) The Committee requests the Government to ensure that the principle that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration is respected.

(h) The Committee requests the complainant to provide, as soon as possible, information: (i) giving details on the alleged retrenchments of the five union officials in the Etah Unit of Hindustan Lever Ltd.; (ii) indicating why the termination of services of the contract workers in Taloja, Bombay, constituted acts of anti-union discrimination; (iii) specifying which first-level unions at Hindustan Lever plants are advised by management not to join the trade union federation of Hindustan Lever companies and describing incidents which demonstrate that the management hinders the activities of the federation; (iv) indicating the Hindustan Lever Unit in which retrenched federation leaders Mr. R.L. Gupta, Mr. Patni and Mr. F. D'Souza were previously employed and their respective year of dismissal; and (v) relating to the allegation that during research to compile information leading to the complaint researchers were harassed and/or followed by police and security personnel from Hindustan Lever, and in particular on the names of the six places and 21 establishments that were visited as well as the names of the researchers involved and the dates on which these incidents of harassment and intimidation allegedly occurred.

(i) The Committee requests the Government to keep it informed of the progress and outcome of the unfair labour practice complaint pending before the Industrial Tribunal, Bombay, which was filed by the Hindustan Lever Research Centre Employee's Union in connection with the management's actions prohibiting an office-bearer from attending conciliation proceedings pertaining to the union.

B. THE GOVERNMENT'S OBSERVATIONS

553. In its communication of 2 August 1994, the Government provides the following information.

554. As regards the allegations relating to the interference in the IUF seminar in Bombay, the Government states that, according to the authorities of Maharashtra, a Mr. H.H. Daliat (now retired) had been detailed to cover that seminar; however, he did not interrogate any of the organizers. According to the instructions issued by the Government of India and under the provisions of the 1974 India-Pakistan Visa Agreement, every Pakistani national has to report his arrival and departure to a police station within 24 hours; as it had been noticed that some Pakistani nationals who were attending the seminar had not reported their arrival to the Bombay police authorities, they were requested to report their arrival and departure to the police. Upon inquiry, the state government found that none of the seminar participants were required to report to the police station daily. Perhaps, the organizers of the seminar should have taken upon themselves the responsibility of informing the Police Authority about the participation of Pakistani nationals at the seminar, which they had failed to do. As such the action of the state government was in accordance with the instructions in force in the country. Hence, there is no substance in the complaint made by the seminar organizers. The Government submits that the action was free of anti-union discrimination.

555. With respect to the dispute concerning the retrenchment of 300 contract workers in the Calcutta Unit of Hindustan Lever, the Government mentions that, as a result of stoppage of contract labour in Hindustan Lever Ltd., Garden Reach, Calcutta in 1988 about 300 contract labourers were rendered jobless. The Union alleged that the

management had intentionally stopped contract work on unreasonable and unjustified grounds. As there was a dispute between two rival factions of the union, the matter was *sub judice* in the High Court at Calcutta and the Labour Directorate could not arrange conciliation meetings. The dispute has since been resolved by an order of the Calcutta High Court. An understanding was reached in June 1992 between the management and Hindustan Lever Sramik Karmachari Congress to the effect that all monies due to the contract labourers would be cleared by the respective contractors, which they have done now. About 25 workmen employed by the previous contractors have been given employment with the new contractors working at present in Hindustan Lever Ltd. The Government adds that, according to the authorities of West Bengal, the Garden Reach Unit of Hindustan Lever Ltd. has terminated the job contract with nine contractors on 9 January 1988, due to non-availability of work.

556. The Government indicates that, according to the authorities of West Bengal there is no case regarding the retrenchment of Mr. S.B. Roy. However, Hindustan Lever Sramik Karmachari Congress had raised an industrial dispute on 26 February 1990 over the termination of Mr. Basudev Singha Roy, Assistant Secretary of the Union. As the matter could not be settled amicably, it was referred to the Industrial Tribunal. The parties have now filed a compromise petition in terms of which Mr. Basudev Singha Roy was reinstated in his job.

557. In its communication of 11 October 1994, the Government provides the following information with respect to the Committee's third recommendation (c). It states that the writ petition filed by the management of Delhi branch office of Hindustan Lever Ltd. before the Delhi High Court concerning the dismissal of Mr. R.P. Bidani, Chairman of the Ghaziabad Unit of Hindustan Lever, has not been disposed of by the Court as yet. In the case filed by Mr. M. Prasad before the Labour Court, Agra, the matter is *sub judice* as judicial proceedings are still going on. Mr. B.S. Rawat, Joint Secretary to the Hindustan Lever Workers' Union at Etah was dismissed on account of misconduct. The industrial dispute in this regard was settled in favour of Mr. Rawat by the Labour Court, Agra, *vide* its Award dated 15 November 1993. However, the management has filed a petition against this Award in the Allahabad High Court. The High Court has issued an interim order regarding payment of 25 per cent of wages to Mr. B.S. Rawat. The management has paid a sum of Rs.60,349 through a bank draft in favour of Mr. Rawat. The case has not yet been finally disposed of by the Court. The case regarding dismissal from service of Mr. Ghuge and Mr. Nand Kumar, office-bearers of Hindustan Lever plant in Bombay, has not been decided as yet by the Labour Court, Bombay. In this matter, the Government of Maharashtra has stated that as soon as the judgements are delivered they will be communicated for onward transmission to the ILO.

558. As regards the forced transfers of six trade union officials from the factory premises of the Hindustan Lever plant in Bombay, the Government replies that in January 1994 these office-bearers were transferred back to the factory premises and that instructions have been issued to all concerned to ensure that in future employers refrain from taking recourse to such measures.

559. With regard to the Committee's recommendation that the Government ensure that direct negotiations between the undertaking and its employees do not bypass representative organizations where these exist, the Government indicates that the state government of Maharashtra is issuing instructions to the Commissioner of Labour to

ensure that such direct negotiations do not bypass the representative organizations where these exist. The Government adds that the application made by the Hindustan Lever Ltd. Employees' Union and the Hindustan Lever Research Centre Employees' Union to be declared as recognized unions is still pending before the Industrial Court, Bombay, for arguments and that the judicial process is likely to take its course.

THE COMMITTEE'S CONCLUSIONS

560. The Committee takes note of the information provided by the Government as regards the allegations made by the complainant organization concerning the Bombay seminar and observes that they differ in their appreciation of the authorities' actions in the circumstances. The IUF alleges that these amounted to anti-trade union interference, whereas the Government considers that the state authorities were merely applying the existing law in respect of certain Pakistani nationals, namely the 1974 India-Pakistan Visa Agreement. The Committee recalls that, whilst workers and organizations, like other persons and collectivities should respect the law of the land, as provided in Article 8 of Convention No. 87, the right of assembly for trade union purposes constitutes a fundamental aspect of trade union rights. [*Digest of decisions and principles of the Freedom of Association Committee*, 3rd edition, 1985, para. 140.] The Committee suggests that, when two such legitimate and fundamental rights have to be reconciled, restraint should be exercised on both sides with a view to ensuring that, on the one hand, the freedom of assembly of trade unionists be fully respected and, on the other hand, the law of the land compatible with the freedom of association principles be complied with. Trusting that the Government will take all these aspects into consideration in the future, the Committee recalls another related principle: "Participation in the work of international organizations must be based on the principle of the independence of the trade union movement. Within the framework of this principle, full freedom should be given to representatives of trade unions to take part in the work of the international workers' unions to which the organizations they represent are affiliated". [*Digest*, op. cit., para. 535.]

561. As regards the situation in the Garden Reach unit of the company, the Committee notes that, according to the information provided by the Government, the labour dispute was apparently linked in part to a conflict between two rival unions and in part to the termination of a contract with a number of contractors, which had caused the retrenchment of 300 contract labourers. The Committee further observes that the issue has been resolved by an order of the Calcutta High Court, that the contract workers have received the monies owing to them and that 25 of them were rehired by new contractors. The Committee notes that it did not receive the information requested from the complainant on these issues and in particular on the reasons why the management stopped contract work [292nd Report, para. 674(f)] which might have shed light on, and provided evidence supporting the initial allegations. In these circumstances, and without the benefit of both points of view, the Committee may only recall that it is not competent to make recommendations on internal dissensions within the trade unions, as long as the Government does not intervene in a manner inconsistent with the exercise of trade union rights. [*Digest*, op. cit., para. 666.]

562. The Committee notes with interest that the parties signed a memorandum of agreement under which Mr. Basudev Singha Roy was reinstated in his job.

563. As regards Mr. B.S Rawat, Joint Secretary to the Hindustan Lever Workers' Union at Etah, who was dismissed on account of misconduct, the Committee notes that the industrial dispute in this matter was settled in favour of Mr. Rawat by the Agra Labour Court in an Award dated 15 November 1993. The Committee notes, however, that the management filed a petition against this Award in the Allahabad High Court which issued an interim order regarding payment of 25 per cent of wages to Mr. B.S. Rawat. Although the management has paid a certain sum of money to Mr. Rawat, the case has not yet been finally disposed of by the Court. The Committee therefore requests the Government to provide information on the outcome of this case pending before the Allahabad High Court.

564. As regards the forced transfers of six trade union officials from the factory premises of the Hindustan Lever plant in Bombay, the Committee notes from the information provided by the Government that these six office-bearers have been transferred back to the factory premises. Moreover, it notes that the Government has issued instructions to all concerned to ensure that in future employers refrain from taking recourse to such measures. The Committee requests the Government to ensure in future that such instructions are strictly complied with by the concerned parties.

565. Noting the Government's undertaking to provide the other information requested, the Committee reiterates the requests in question and draws once again the Government's attention to the fact that some of the issues raised in this case have been pending for a lengthy period. In this respect, the Committee also draws the Government's attention to the danger that justice will be denied as a result of the slowness of the judicial procedures. It urges the Government to provide said information as soon as possible.

THE COMMITTEE'S RECOMMENDATIONS

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

(a) Noting that the Government already provided detailed information, the Committee nevertheless requests the Government to keep it informed of: (i) the progress and outcome of the proceedings before the Bombay Labour Court, concerning the dismissal from service of Mr. Ghuge and Mr. Nand Kumar, office-bearers of the Hindustan Lever plant in Bombay; (ii) the progress and outcome of the case before the Agra Labour Court, concerning the dismissal from service of Mr. M. Prasad, office-bearer of the Etah Unit of Hindustan Lever; (iii) the outcome of the case pending before the Allahabad High Court concerning the dismissal from service of Mr. B.S. Rawat, Joint Secretary to the Hindustan Lever Workers' Union at the Etah Unit of Hindustan Lever; and (iv) the progress and outcome of the writ petition filed by the management of the Delhi Branch Office of Hindustan Lever before the Delhi High Court concerning the dismissal of Mr. R.P. Bidani, Chairman of the Ghaziabad Unit of Hindustan Lever, before his transfer to Delhi.

(b) Noting that the Government has issued instructions to all concerned to ensure that in future employers refrain from taking recourse to measures of anti-union discrimination, such as the forced transfer of trade union officials, the Committee requests the Government to ensure in future that such instructions are strictly complied with by the concerned parties.

(c) The Committee once again requests the Government to keep it informed of the outcome of the applications filed before the Bombay Industrial Court by the Hindustan Lever Employees' Union and the Hindustan Lever Research Centre Employees' Union to be declared as recognized unions and to obtain the status of sole bargaining agents.

(d) The Committee once again requests the complainant to provide, as soon as possible, information: (i) giving details on the alleged retrenchments of the five union officials in the Etah Unit of Hindustan Lever Ltd.; (ii) indicating why the termination of services of the contract workers in Taloja, Bombay, constituted acts of anti-union discrimination; (iii) specifying which first-level unions at Hindustan Lever plants are advised by management not to join the trade union federation of Hindustan Lever companies and describing incidents which demonstrate that the management hinders the activities of the federation; (iv) indicating the Hindustan Lever Unit in which retrenched federation leaders Mr. R.L. Gupta, Mr. Patni and Mr. F. D'Souza were previously employed and their respective year of dismissal; and (v) relating to the allegation that during research to compile information leading to the complaint researchers were harassed and/or followed by police and security personnel from Hindustan Lever, and in particular on the names of the six places and 21 establishments that were visited as well as the names of the researchers involved and the dates on which these incidents of harassment and intimidation allegedly occurred.

(e) The Committee once again requests the Government to keep it informed of the progress and outcome of the unfair labour practice complaint pending before the Bombay Industrial Tribunal, which was filed by the Hindustan Lever Research Centre Employee's Union in connection with the management's actions prohibiting an office-bearer from attending conciliation proceedings pertaining to the union.

Case No. 1793

Complaint against the Government of Nigeria
presented by
— the International Confederation of Free Trade Unions (ICFTU)
— the Organization of African Trade Union Unity (OATUU) and
— the World Confederation of Labour (WCL)

567. In a communication dated 18 August 1994, the International Confederation of Free Trade Unions (ICFTU) submitted a complaint of violations of freedom of association against the Government of Nigeria. The Organization of African Trade Union Unity (OATUU), and the World Confederation of Labour also presented complaints concerning the same allegations on 19 and 26 August 1994 respectively. Additional information was provided by the ICFTU in a communication dated 16 September 1994.

568. The Government sent its observations on the case in communications dated 19 September and 18 October 1994.

569. Nigeria has ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

A. THE COMPLAINANTS' ALLEGATIONS

570. In its complaint of 18 August 1994, the ICFTU alleges that the military government had announced the removal of the trade union leadership of the Nigerian Labour Congress (NLC), and the oilworkers' unions, the National Union of Petroleum and Natural Gas Workers (NUPENG), the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and their replacement by government-appointed administrators in violation of Convention No. 87. The union offices were sealed off and surrounded by police and all telephone lines were cut, thus rendering all normal trade union activities impossible. The ICFTU contends that these arbitrary actions contravene Article 3 of Convention No. 87.

571. In its communication of 19 August 1994, the OATUU, to which the Nigerian Labour Congress is affiliated, similarly made a complaint concerning the dissolution of the executive councils of the NLC and the oilworkers' unions and added that these three organizations were banished for having undertaken strike action. The World Confederation of Labour also presented a complaint concerning the above allegations.

572. In a further communication dated 16 September 1994, the ICFTU provided additional information with respect to the alleged violations in Nigeria. It recalls that NUPENG and PENGASSAN, both affiliated to the NLC, had gone on strike at the beginning of July 1994 protesting both the situation in the oil industry and the results of the Nigeria elections of June 1993 which were annulled by the military regime. On 6 July 1994, the complainant federation alleges that Frank Kokori, NUPENG General Secretary, was arrested and taken to an unknown destination.

573. At the PENGASSAN Emergency National Executive Council meeting of 8 July 1994, numerous grievances concerning the situation in the oil industry were expressed including: persistent harassment and intimidation of union members by members of the armed forces; the termination of employment at gun-point of union members in Prekla Seismos, Dresser Magcober, United Geophysical and Universal Catering Services Ltd. and the arrest and detention of union branch chairman, Mr. Elregha; the Government's refusal to implement the award by the National Industrial Court (NIC) on the remuneration of workers at the Petroleum Training Institute (PTI Effurun); the inability of Government to live up to its social responsibilities of adequately funding the educational, health and medical institutions in the country and the continued delay in the payment of salaries of teachers, civil servants, the police and the armed forces; and the continuous neglect, intimidation, harassment and destruction of the oil-producing communities by government agents.

574. Among PENGASSAN's demands were the call for Government: to withdraw the ministerial circular of 17 January 1994 entitled "Release of oil industry workers from employment" which empowers employers in the oil industry to terminate the

employment of Nigerian workers and replace them with expatriates; to implement all aspects of the collective agreements binding on the managements of the Nigeria National Petroleum Corporation (NNPC) with other producing, marketing and service companies and with PENGASSAN members; to grant NNPC autonomy to take strategic and tactical investment decisions that will enhance profitability and continuity and permit sound assets replacement and personnel succession policies; to redress all harassment and intimidation of union members by the police and the armed forces, including the termination of union members' in Prakla Seismos and the arrest of the branch chairman, Mr. Elregha.

575. According to the complainant organization, the NLC called a strike on 3 August 1994 in support of the oilworkers' unions strike but called the strike off after the second day in order to negotiate with the authorities.

576. On 17 August, while announcing the dissolution of the executive councils of the NLC, NUPENG and PENGASSAN, the Nigerian Head of State, General Sani Abacha ordered the striking workers to return to work within one week or face dismissal. Reports were later made that the Minister of Labour sacked striking workers on the deadline, 25 August. Following the sealing off of the headquarters of NUPENG, PENGASSAN and the NLC and their being surrounded by the police, several union leaders went into hiding. NUPENG and PENGASSAN issued a joint statement on 18 August reiterating their earlier demands relating to the oil industry and calling for respect for democracy in Nigeria.

577. On 26 August, the unions reported that a number of their members and officials had been arrested including: Mr. F.A. Addo, 3rd Vice-President of PENGASSAN and Port Harcourt Zonal Chairman; Mr. F. Aidelomon, Chairman of the Pipeline and Products Marketing Company branch of PENGASSAN; and Mr. Frank Kokori, General Secretary of NUPENG. According to the complainant federation, although there were witnesses to the arrest, the army denied that Mr. Kokori was being held and offered a reward of US$10,000 for his capture.

578. The complainant also contends that the check-off facilities of NUPENG and PENGASSAN were suspended by the authorities. NUPENG and PENGASSAN then challenged the Government Order dissolving the unions' leadership in the Federal High Court of Nigeria and, on 23 August, the court suspended the Government Order for one week pending the oil unions' appeal which was due to be heard on 31 August and subsequently postponed.

579. On 25 August, the military regime enacted two decrees to legalize the dissolution of the unions' executives at national and state levels. The decrees further provided that the courts were prohibited from hearing any case arising from the dissolution.

580. On 26 August, the General Secretary of PENGASSAN, M.G. Dabibi, reported that all PENGASSAN union offices nationwide had been taken over by armed military and anti-riot police, union officials of NUPENG and PENGASSAN had been arrested and many other union officials and staff went into hiding.

581. A challenge made by the NLC to the Government Order dissolving the unions' executives was reportedly disallowed by the Federal High Court on 6 September on the grounds that the court had no jurisdiction to hear the case. PENGASSAN reported that, at the beginning of September, four branch leaders in state-owned refineries and the fuel

distribution network were under arrest for strike activities. The President of the NLC, Pascal Bayfau, was reported to have been interrogated by the police during the first week of September.

582. The complainant organization reports that NUPENG and PENGASSAN called off the strike on 6 September. On 6 and 7 September, additional decrees were enacted by the Government stripping the courts of the power to challenge the Government's authority.

583. On 7 September, PENGASSAN reported further arrests and detentions of PENGASSAN officials and members. The union's bank account had been frozen and union offices were still occupied by security forces. The union continued to operate underground.

B. THE GOVERNMENT'S REPLY

584. In its communication of 19 September 1994, the Government first declares that Nigeria has a long history of free trade union movement and tripartism and collective bargaining have been the cornerstones of Nigeria's industrial relations practice. According to the Government, Nigerian trade unions have enjoyed freedom of association and there has been and still is a good rapport between the unions and the Government.

585. With respect to the specific allegations, the Government indicates that the Nigerian Government did not deliberately set out to arrest and detain trade union leaders. Those arrested committed criminal offences and being trade unionists did not empower them to commit any offence. The Government asserts that Mr. Frank Kokori, the General Secretary of NUPENG, was never arrested and adds that his so-called detention was given undue publicity in both the national and international media which orchestrated the arrest and did not apologize to their readers when they found out that they had misinformed them when they realized that Mr. Kokori faked his arrest.

586. The Government further asserts that, on 4 July 1994, the National Executive of NUPENG called the workers in the oil industry out on strike without following the procedure laid down by the law. In spite of the illegality of their action, the Ministry of Labour and Productivity immediately invited the Executive for a meeting and, when they did not turn up, it referred the issues to the Industrial Arbitration Panel (IAP). The Executive did not appear at the IAP in accordance with the Trade Disputes Act despite the summons served on them, which is in itself unlawful conduct. Later, the union sent a memorandum in which they made a number of demands on the Government. Discussion was held during which, according to the Government, all the economic issues were resolved. Two issues which the Government could not resolve, however, related to the demand for unconditional release of Chief M.K.O. Abiola and to install him as President of Nigeria in place of the present Head of State.

587. The Government states that, for seven weeks, under the active support of external bodies and the politically ambitious leadership of their executive, NUPENG engaged in the mass destruction of oil equipment, refineries, pipelines and personal properties of the majority of those who opposed the strike which has now brought the economic life of the country to a standstill. With the resulting shortage of fuel, transport was brought to a halt and even fresh foods were destroyed because there were no means

to convey them to the market. Despite the daily announcements in the media concerning the effect of this illegal strike on the life of the people and the pressures placed on Kokori and his executives by the suffering masses, they did not listen. Instead Kokori disappeared to give the impression he had been arrested.

588. The Government states that all efforts made by it to locate Kokori to discuss with him and the unions were unsuccessful, particularly when the unions did not know, as they claimed, where Kokori was. Furthermore, Kokori conceded that he and his men were aware that the strike was illegal and that political issues were outside the union's competence vis-à-vis their constitution and the trade union laws. The Government asserts that the union relegated to the background the welfare of the workers and, by its illegal action, brought more suffering than good to bear on the workers.

589. The Government then refers to ILO principles of freedom of association with respect to the right to strike and claims that they are compatible with the Nigerian Trade Disputes (Essential Services) Act (No. 23) of 1976 which provides in section 2(1) that:

> Any employer or official of an association of employers or any official of a trade union or any person, not being an official of a trade union, who in any way performs or assumes a leadership role in any such trade union or faction thereof and (a) who is or has been engaged in acts calculated to disrupt the smooth running of any essential service; or (b) has, where applicable, wilfully failed to comply with the procedure specified in the Trade Disputes Act in relation to the reporting and settlement of trade disputes, shall be guilty of an offence under this Act.

590. The Government has indicated that it has not acted outside these provisions. While section 1 of the Trade Disputes Act gives the Head of State the power to proscribe any union that breaches the law, the unions in question were not proscribed. Their recalcitrant executives were dissolved which the Government reiterates is a recognized and lawful function of the Government. The Government also refers to Rule 30(b) of the Constitution of the PENGASSAN union which provides: "The Association can also be dissolved by the order of the Federal Government or on the Orders of a Court which is competent to do so" (subject to the usual court process of appeal, etc.).

591. The Government indicates that, in accordance with ILO principles, rather than invoking these provisions and proscribing or dissolving the unions, it opted for negotiations and exhausted all avenues for amicable resolution of the disputes. When these failed, the Government dissolved the leadership and not the entire body.

592. The Government concludes by asserting that Nigeria holds the values of the International Labour Organization in high esteem and will not do anything to purposely undermine those values. It expresses its commitment to the principles of freedom of association and indicates that it will take all the necessary steps to sustain that freedom within the limits of the labour laws of the land while recalling that the unions should take cognizance of Article 8 of Convention No. 87.

593. In its communication dated 18 October 1994, the Government reiterates in slightly greater detail its previous arguments concerning the political nature of the strike, its illegality due to the violation of existing procedures and the fact that it took place in an essential service as determined by Nigerian law, and the wanton destruction of property carried out by NUPENG during the strike.

594. The Government further states that the strike was not of a national character and there was no consensus for calling the strike. The northern and eastern zones and the NNPC sector did not participate in the strike. Finally, the Government adds that

there was no serious industrial dispute with the employers since the economic demands were quickly apprehended and addressed.

595. The Government emphasizes the importance of the economic and financial losses incurred to the nation by the strike action in the oil sector which is the mainstay of the economy. In order to arrest the creeping collapse of the Nigerian economy, and after numerous efforts to negotiate, it was left with no option but to dissolve the executives of the NLC and the two oil unions while the unions' bodies were left intact to thrive and function.

596. The Government further states that it was not true that any member of these unions was detained either during or after the crisis and that Chief Kokori himself asserted that he went into hiding.

597. The Government indicates that a memo was received on 8 October 1994 from 15 industrial unions, acting on behalf of the 41 industrial unions affiliated to the NLC, in which some demands were made, in particular the holding of an extraordinary conference of the Congress to elect new officials. The unions' representatives were met by the Government and the issues raised were discussed with a view to drawing up a programme which would include the audit of the accounts of the NLC which had not been audited since 1988. The Government asserts that as soon as the accounts are audited, arrangements will be made for elections. Part of the programme includes setting up three committees of union members, namely, the Constitution Review Committee and the Conference and Election Committees. Any member of the old leadership of the NLC is eligible to contest provided that he is not facing criminal charges (e.g. burning down oil installations, personal property, etc.). Any union leader who organized a strike action is not regarded as a criminal and is free to contest an election. Finally, the Government reiterates that it has so far not detained any trade union leader.

THE COMMITTEE'S CONCLUSIONS

598. The Committee notes with concern that the allegations in the present case concern the dissolution of the trade union executives of three trade unions (the NLC, NUPENG and PENGASSAN) and their replacement with government-appointed administrators, as well as reported arrests of certain officials and members of NUPENG and PENGASSAN, in violation of Convention No. 87 and the principles of freedom of association.

599. As concerns the dissolution of the executive councils of the NLC, NUPENG and PENGASSAN, the Committee takes note of the Nigerian Labour Congress (Dissolution of National Executive) Decree No. 9 and the NUPENG and PENGASSAN (Dissolution of Executive Councils) Decree No. 10, both of 18 August 1994. The Committee notes that, according to these decrees and the information provided by the Government, these unions were dissolved for having persistently threatened to call for nation-wide strike actions over political matters and for having used union funds to carry out such strikes contrary to clear provisions and objects contained in their constitutions and enabling laws. The Committee also notes the contention in the Government's reply and in the preambles to these decrees that these strikes have been calculated to sabotage a vital and essential sector of the economy and have resulted in untold hardship to law-abiding citizens and in incalculable damage to the economy contrary to the provisions

of the Trade Disputes (Essential Services) Act. The Committee further notes that section 2(1) and (2) of these Decrees provide for the appointment by the Minister of Employment, Labour and Productivity of an Administrator and Secretary to run the affairs of these unions until such a time as the appropriate authority may direct otherwise, their functions and powers to be specified by the Minister.

600. While noting the Government's indication that it did not actually dissolve the unions, but only their executive councils, the Committee must point out that the removal of trade union leaders from office is a serious infringement of the free exercise of trade union rights and draws the Government's attention to the desirability of refraining from any governmental interference in the performance by trade union leaders of trade union functions to which they have been freely elected by the members of the trade unions. [See *Digest of decisions and principles of the Freedom of Association Committee,* 3rd edition, 1985, para. 476.]

601. Furthermore, the Committee notes that section 3 of Decrees Nos. 9 and 10 provide that no suit or any other proceedings whatsoever shall lie at the instance of any person aggrieved in respect of any act committed by any person in compliance with these Decrees and that any question as to whether these Decrees are in contravention of Chapter IV of the Constitution concerning fundamental rights shall not be inquired into by any court of law. In this regard, the Committee recalls that it is essential that measures for the dismissal, suspension or disqualification of trade union officials as a penalty provided by law should not become applicable except on the basis of a sentence pronounced by the competent judicial authority. The prohibition of trade union activities in the case of trade union leaders is a particularly serious action and should be decided by the courts in order to ensure all rights of defence. [See, *Digest,* op. cit., paras. 480 and 481.]

602. The Committee notes the indication in the Government's reply that its actions were taken in view of the fact that the strike was called over political matters and, as indicated in the Decrees, was calculated to sabotage a vital and essential sector of the economy. It also notes, however, that, according to the complainants, the strike in question was undertaken in protest both of the situation in the oil industry and of the results of the June 1993 election. Furthermore, the Committee notes that, according to the additional information provided by the ICFTU, among PENGASSAN's demands at the time of the strike were the withdrawal of a circular permitting the termination of employment of Nigerian workers in the oil industry, the implementation of collective agreements, the autonomy of the NNPC in strategic and tactical investment decisions and the redress of harassment and intimidation by members of the police and the armed forces against union members.

603. As concerns the political nature of the strike, while the Committee has always held that strikes of a purely political nature do not fall within the scope of the principles of freedom of association, in this case, it would appear that a substantial part of the claims of the NLC, PENGASSAN and NUPENG were of a social and economic nature, in particular as concerns the situation in the oil industry. The Committee therefore draws the Government's attention to the principle that organizations responsible for defending workers' socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standards of