agreements, strikes and lockouts, which contain a long list of services where strikes are prohibited.

449. The complainant organization recalls that since 1983 ILO bodies have repeatedly urged the Turkish Government to restrict the application of compulsory arbitration established by the legislation to cases where a work stoppage due to a strike would endanger the lives, personal safety or health of the whole or a part of the population. It states that so far no steps have been taken to fulfil these requests. The consequence is that unions are severely hampered in their ability to improve working conditions because they are denied recourse to strike action and are forced into compulsory arbitration.

450. The complainant organization explains that according to section 32 of Act No. 2822, "in disputes concerning the establishments or the activities and services where strikes and lockouts are probibited, any party may apply to the Supreme Board of Arbitration within six working days of receipt of the report referred to in section 23 [...]", which means in practice that disputes are referred to a board where the trade union movement has two representatives out of eight and which is therefore under the control of the Government and employer majority.

451. The complainant organization also refers to the Committee's conclusions in Cases Nos. 997, 999 and 1029 concerning Turkey, and considers that the provisions of existing legislation, as applied to the coalmining industry, constitute an infringement of Article 4 of Convention No. 98.

452. The MIF concludes that in spite of unsatisfactory legislation which restricts their trade union activities, the miners are very determined to secure their rights and obtain significant wage increases. It expresses support for the Mine Workers' Union of Turkey in its insistence that legislation imposing a strike ban in the mining industry be rescinded.

453. In its communication dated 19 February 1993, the complainant organization states further that 21,126 miners work for Turkish Coal Enterprises in production works which feed thermal power stations. This category of workers is affected by the strike ban. The number of remaining miners employed by the Turkish Coal Enterprises who are not affected by prohibitions is 4,161. It specifies that the negotiations referred to began on 2 September 1992 and covered the total number of 25,287 miners. On 12 November 1992 a notice of dispute was issued and a mediation period followed, beginning on 23 November and ending on 13 December. On 30 December 1992 the dispute was referred to the Supreme Board of Arbitration.

454. The complainant organization states further that protest marches were held on 6 January 1993 in different mining regions and that on 7 January the 4,161 miners not affected by the strike ban decided to hold a strike. A new collective agreement was signed on 25 January 1993.

B. The Government's reply

455. In its communication dated 19 April 1993 the Government states that it notes the allegations made by the MIF and points out that it has ratified Convention No. 87.

456. In its reply dated 8 October 1993, the Government explains that the national practice of compulsory arbitration takes its source from article 54 of the Constitution, that it is an impartial procedure in which the parties may participate at any stage and that the awards are binding on the parties. Compulsory arbitration is followed in cases of prohibition or restrictions on strikes in order to protect workers who are thus denied an essential means of defending their occupational interests.

457. The Government states further that it is a procedure which is resorted to in exceptional situations only. Moreover, before referring a dispute to compulsory arbitration it is possible that the dispute can be resolved through the mediation of the Ministry of Labour and Social Security or by a private mediator mutually agreed upon by the parties. In the case at hand, continues the Government, the parties took the latter option and a satisfactory solution was achieved.

458. The Government points out that section 29 of Act No. 2822 was amended by Act No. 3451 of 27 May 1988 so as to narrow the scope of prohibitions on strikes. Thus, the phrase "production, refining or distribution of [...] coal" in paragraph 3 was replaced by the phrase "lignite production feeding thermal power plants". Moreover, a committee recently set up by the Ministry with the task of submitting proposals on labour issues, including that of limiting the strike prohibition, is currently carrying on its studies. Whether the strike prohibition will be lifted from lignite production units feeding thermal power plants will depend on the evaluation to be made after the completion of the studies of the above-mentioned committee and after consultation of the social partners.

C. The Committee's conclusions

459. The Committee notes that the allegations in this case concern the prohibition on strikes imposed by legislation on miners employed in lignite production with feeding thermal power plants, and the referral of labour disputes in these services for compulsory arbitration.

460. The Committee notes that the complainant organization states that following the breakdown in December 1992 of negotiations between the Mine Workers' Union of Turkey and Turkish Coal Enterprises, the dispute was referred for compulsory arbitration under section 32 of

Act No. 2822 of 5 May 1983 respecting collective labour agreements, strikes and lockouts. The Committee notes also that the Government, on the other hand, states that the parties to the dispute decided to refer it to mediation and that a satisfactory solution was thus achieved.

461. While noting the contradiction between these two statements, the Committee observes that sections 22 and 23 of Act No. 2822 of 1983 do in fact provide that the parties may resort to a mediator for purposes of settling a dispute. Under the last paragraph of section 32 of the Act, however, in disputes concerning the establishments or the activities and services where strikes are prohibited, any party may apply to the Supreme Board of Arbitration within six working days of receipt of the report in which the mediator noted that the parties failed to reach an agreement to settle the dispute.

462. The Committee observes that the Government explains that compulsory arbitration is an impartial procedure which is resorted to in exceptional situations and in which the parties may participate at any stage.

463. The Committee recalls, firstly, that it had already considered that the provisions of Turkish legislation respecting the use of binding arbitration to end a strike, apart from cases of work stoppages which result from a strike which threatens to endanger the life, personal safety or health of the whole or a part of the population and in the case of acute national crises, restrict union rights and are not compatible with the principles of freedom of association [see 282nd Report of the Committee, Cases Nos. 997, 999 and 1029, para. 16].

464. Taking into account the recent ratification of Convention No. 87 by Turkey, which it welcomes, the Committee once again points out to the Government that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests [see Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 362]. The Committee also draws the Government's attention to the principle that the right to strike may be restricted or even prohibited in the civil service - civil servants being those who act on behalf of public authorities - or in essential services in the strict sense of the term, i.e services the interruption of which would endanger the lives, personal safety or health of the whole or a part of the population [see Digest, op. cit., para. 394]. However, the principle regarding the prohibition of strikes in essential services might lose its meaning if a strike were declared illegal in one or more undertakings which were not performing an "essential service" in the strict sense of the term [see Digest, op. cit. para. 400]. Morever, the Committee considers that the substitution by legislative means of compulsory arbitration for the right to strike as a means of resolving labour disputes can only be justified in respect of essential services in the strict sense of the term [see Digest, op. cit., para. 387].

465. As regards the present case, the Committee has already stated that it is of the view that the mining sector is not an essential service in which the right of workers to promote and defend their interests by means of strike action may be prohibited [see Digest, op. cit., para. 406]. While aware that a stoppage of the services supplying lignite to thermal power plants may be such as to disturb the normal life of the community, the Committee considers that it would be difficult to maintain that a stoppage of such services would be, by definition, such as to provoke an acute national crisis.

466. The Committee is, however, aware of the difficulties that an interruption in the lignite supply could entail for thermal power plants. It is therefore of the opinion that in a sector such as mining it would be admissible for the parties, if necessary with the participation of the Government, to agree on establishing a minimum service to be maintained in the event of a strike.

467. Taking account of all of these elements, the Committee requests the Government to take the necessary measures to amend Act No. 2822 of 5 May 1983 in order to guarantee workers employed in services which are not essential in the strict sense of the term, including miners, and their organizations, the right to organize their activities and formulate their programmes for the defence of their economic, social and occupational interests, including by recourse to strike action. In this respect, the Committee takes due note of the information supplied by the Government, according to which the possibility of excluding lignite production units feeding thermal power plants from the prohibition on strikes is currently being studied by a committee recently set up with the task of submitting proposals on labour issues. It trusts that, when this matter is being studied, the committee will take account of the principles of freedom of association outlined above. The Committee requests the Government to keep it informed of all measures taken to bring national legislation into conformity with the principles of freedom of association.

The Committee's recommendations

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

(a) Taking into acocunt the principle that the right to strike may be restricted or even prohibited only in the civil service - civil servants being those who act on behalf of public authorities - or in essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or a part of the population, the Committee requests the Government to take the necessary measures to amend Act No. 2822 of 5 May 1983 in order to guarantee workers employed in services which are not essential

in the strict sense of the term, including miners, and their organizations, the right to organize their activities and formulate their programmes for the defence of their economic, social and occupational interests, including by recourse to strike action. The Committee requests the Government to keep it informed of any measures taken in this respect.

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

Case No. 1713

COMPLAINTS AGAINST THE GOVERNMENT OF KENYA PRESENTED BY - THE ORGANIZATION OF AFRICAN TRADE UNION UNITY (OATUU) AND - THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)

469. The Committee already examined the substance of this case at its November 1993 meeting when it presented an interim report to the Governing Body [see 291st Report, paras. 552-557, approved by the Governing Body at its 258th Session (November 1993)].

470. The Government supplied further observations on the case in a communication dated 25 November 1993.

471. Kenya has not ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). It has, however, ratified the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

472. The complainants presented allegations of flagrant violations of human and trade union rights against the Government of Kenya. They alleged that the Government had arbitrarily arrested and detained trade union leaders of the Central Organization of Trade Unions of Kenya (COTU-K), including Mr. J.J. Mugalla, General Secretary of COTU-K and member of the Governing Body of the ILO, following a very successful COTU-K rally organized on 1 May 1993. During this rally, COTU-K leaders had criticized the Government for ignoring COTU-K's previous calls, among other things, to improve workers' conditions and to enter into immediate negotiations for a general wage adjustment in order to redress the purchasing power of the workers. Subsequently, there was a series of acts of government interference in COTU-K's internal affairs, namely police occupation of the headquarters of COTU-K on 2 July 1993 in order to prevent COTU-K

from holding its National Executive Council (NEC) meeting; active government support to a minority group from COTU-K in holding an unconstitutional meeting at the Kenyatta International Conference Centre with the participation of three top civil servants at that meeting; the election of officers by the minority group during that meeting to replace the legitimate COTU-K leadership and the registration of this minority group within a matter of hours after the meeting; the occupation of COTU-K offices by the minority group with the support of the police; and the removal of Mr. Mugalla from the position of Secretary-General of the Commercial, Food and Allied Workers' Union at the Government's instigation.

473. Referring to the events that took place from 1 May 1993 onwards, the Government indicated that COTU-K, under Mr. Mugalla, used this occasion to call on the country's workers to go on a general strike from 3 May, unless the Government announced an immediate 100 per cent general wage increase and the sacking of the Vice-President of the Republic of Kenya. The Minister for Labour had already declared this strike to be illegal, since it was public knowledge that it was a political strike that had nothing to do with industrial disputes. This national strike adversely affected the entire Kenyan economy and also led to incidents resulting in the destruction of property, injury to persons and a general crisis in the production sector. As a result, Mr. Mugalla was arrested on 1 May and formally charged in a court of law on 3 May for inciting workers to go on an illegal strike, leading to disobedience of law. He was later released, as were his two close associates who were arrested as well. Seventy-eight other people were also charged on 4 May over strike violence. Moreover, the Government had made it clear, through a press release issued on 2 May, that it was committed to lifting the living standards of workers through a package which was to be negotiated by the social partners. Although the Government had opened its doors for negotiations, COTU-K decided to take the stand it did. Since then, however, the situation had returned to normal, since most workers had defied the COTU-K strike call and gone back on duty.

474. At its November 1993 Session, in the light of the Committee's interim conclusions, the Governing Body approved the following recommendations:

(a) The Committee recalls that the arrest and detention - even if only briefly - of trade union leaders and members for their legitimate trade union activities constitute a violation of the principles of freedom of association. It urges the Government to refrain in future from having recourse to such action.

(b) The Committee draws the Government's attention to the principle that trade union organizations ought to have the possibility of recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies. Thus, the right to strike should not be limited solely to industrial disputes that are likely to be

resolved through the signing of a collective agreement and workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests. However, the Committee recalls that purely political strikes are not covered by freedom of association principles.

(c) The Committee draws the complainants' attention to the principle that workers and their organizations shall respect the law of the land, which should not violate the principles of freedom of association.

(d) The Committee requests the Government to keep it informed of the outcome of the legal proceedings instituted against Mr. Mugalla.

(e) The Committee requests the Government to reply without delay to the remaining allegations of serious acts of government interference in COTU-K's internal affairs.

B. The Government's reply

475. In its communication of 25 November 1993, the Government very strongly refutes the allegations raised by the ICFTU concerning government interference in the internal affairs of the Central Organization of Trade Unions of Kenya (COTU-K). It explains that the events which led to Mr. Mugalla's ouster by COTU-K's Governing Council on 2 July 1993 had originated in the 1993 May Day celebrations in Nairobi. It was on this occasion that Mr. Mugalla unilaterally decided (i.e. without the approval of the Governing Council representing COTU-K's various affiliated unions) to turn the occasion into a political event.

476. Mr. Mugalla's call for an illegal and purely politically motivated strike had the effect of alienating several trade unions, some of whose members had lost their jobs as a result of Mr. Mugalla's illegal strike call. Some of these trade union officials also felt that Mr. Mugalla was misdirecting the labour movement for his own political gains. Therefore, many General Secretaries of unions affiliated to COTU-K became divided on whether Mr. Mugalla should lead them any more. As a matter of fact, Mr. Mugalla's group started the rift by physically throwing out of a meeting at the Ministry of Labour headquarters all the General Secretaries who did not agree with him on the strike issue. This was done in Mr. Mugalla's presence and hence with his approval. The General Secretaries who were thrown out are some of the key members of the group that is opposed to his leadership today.

477. The Government submits more specifically that COTU-K was scheduled to hold its Governing Council meeting at its Solidarity Building on 2 July 1993. The Governing Council is COTU-K's top executive organ, consisting of about 225 national delegates drawn from all its affiliated unions. Mr. Mugalla had also summoned all shopstewards and other non-participants to the same meeting without the knowledge and approval of most of the participating national delegates, thus causing a security problem. The police presence at the venue had no intention of either occupying the premises or preventing the meeting from taking place, but to ensure that law and order was maintained. The decision to change the venue for holding COTU-K's Governing Council meeting was taken by the majority group of those delegates who were opposed to Mr. Mugalla and his group of supporters and who felt that they needed a more secure venue on which to conduct the business of the day. The Government points out that the Kenyatta International Conference Centre is a commercial building and accessible to anyone who wishes to use its facilities. It adds that the Ministry of Labour's attendance at that meeting was lawful because, according to the current COTU-K constitution, the Permanent Secretary or his representative is a member of the Governing Council.

478. The Government states that following brief discussion during the COTU-K Governing Council meeting at the Kenyatta International Conference Centre, a resolution was adopted to discuss the conduct of COTU-K's entire Executive Board, and Mr. Mugalla's calling of a national strike on 3 May 1993 contrary to Rule No. 26 of COTU-K's constitution. During the discussions, the members of COTU-K's Governing Council were unanimous in their condemnation of the then COTU-K office-bearers and all the Executive Board members. A resolution on a vote of no confidence was proposed by a Mr. Isaya Kubai of the Banking, Insurance and Finance Union, to have all the office-bearers and Board members of COTU-K removed from office. This resolution was seconded by a Mr. Owallo of the Petroleum and Oil Workers' Union. It was passed unanimously and thus, immediate elections were held to fill these vacant positions - including that of Mr. Mugalla.

479. The Government indicates that the legality of these elections held on 2 July 1993 was challenged in the High Court of Kenya by Mr. Mugalla and his group, and the Court nullified the same on 10 November 1993. The Government points out, however, that the dispute in court is still continuing, since the group that is still opposed to Mr. Mugalla has gone ahead and filed for a "stay of execution" on the above-mentioned court verdict, pending an appeal. On 23 November 1993, however, the High Court once again refused to grant a "stay of execution" on its earlier order, which had nullified the legality of the elections held on 2 July 1993. The Government adds that the J. Ogendo group which had earlier ousted Mr. Mugalla's group on 2 July 1993, has now filed an appeal case in the Court of Appeal, and that it will provide details once the final verdict is handed down.

480. The Government further points out that on 10 July 1993, the Governing Council of the Kenya Union of Commercial, Food and Allied

Workers decided to replace Mr. Mugalla as their Secretary General. He was replaced by Mr. Daniel Ngirimani as the new Secretary General. The Government stresses that no form of government coercion was exerted in order to have Mr. Mugalla replaced as Secretary General, contrary to the ICFTU's unfounded and unsubstantiated allegations. All these changes were brought about by the on-going leadership rivalry both within COTU-K and the Kenya Union of Commercial, Food and Allied Workers' Union.

481. The Government concludes by submitting that the above information clearly helps to illustrate that it in no way intends to weaken or interfere with the smooth running of the labour movement. On the contrary, the Kenyan Government has always strived over the years to encourage the development of a strong, viable and independent labour movement. Moreover, it maintains its position as earlier stated to the effect that Mr. Mugalla's arrest and his subsequent appearance in court took place purely for inciting workers to take part in an illegal strike and for inciting them to necklace with burning tyres anybody who dared to defy his illegal strike call. Such incitement automatically led to disobedience to law. This case against Mr. Mugalla is still pending in court and full details of the same will be submitted to the ILO once the case is decided upon.

C. The Committee's conclusions

482. As regards the allegation concerning the police occupation of the headquarters of COTU-K on 2 July 1993 in order to prevent COTU-K from holding its Governing Council meeting, the Committee observes that the Government does not deny that the police were present on that day at the venue where COTU-K was to have held this meeting. According to the Government, the police had no intention of preventing the meeting from taking place but that its presence was required in view of the fact that Mr. Mugalla had summoned various other non-participants to this meeting in addition to the 225 members of COTU-K's General Council, thus causing a security problem. In this respect, the Committee would draw the Government's attention to the principle that freedom from government interference in the holding and proceedings of trade union meetings constitutes an essential aspect of trade union rights, and the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof on condition that the exercise of these rights does not disturb public order or cause a serious and imminent threat thereto [see Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 141]. In the Committee's view, while the participation of persons from outside the Governing Council membership might not, in effect, have met with the approval of a number of the Council's national delegates, such a situation is unlikely to create a serious and imminent threat to public order requiring the intervention of the police. The Committee therefore urges the Government to ensure in future the right of trade

unions to hold meetings freely in their own premises without police intervention.

483. Turning to the issue of government support to a minority group from COTU-K in holding an unconstitutional meeting and the election of officers by this minority group to replace the legitimate COTU-K leadership, the Committee notes that the Government's version of these events differs greatly from that of the complainant. In the communications examined by the Committee in November 1993, the complainant maintained that Mr. Mugalla and his group constituted COTU-K's legitimate leadership since out of 219 delegates constituting the total delegates' strength at COTU-K's council meetings, 163 had pledged support in writing to Mr. Mugalla (see 291st Report of the Committee, para. 562). According to the Government, however, Mr. Mugalla had alienated a majority - although it does not specify what this majority is - of the 225 national delegates of COTU-K's Governing Council following his call for an illegal and purely politically motivated strike which, in addition to being contrary to COTU-K's internal rules, also had repercussions on certain members of COTU-K's affiliates. The Government emphasizes that the decision to change the venue for the meeting was taken by the majority of those delegates who adopted unanimously a resolution to have all the office-bearers and Executive Board members of COTU-K, including Mr. Mugalla, removed from office. Similarly, the Government refutes the allegation that Mr. Mugalla was replaced by Mr. D. Ngirimari as Secretary-General of the Commercial, Food and Allied Workers' Union at the Government's instigation. It insists that all the above leadership changes were brought about by an ongoing leadership rivalry both within COTU-K and the Commercial, Food and Allied Workers' Union.

484. In view of the very large contradiction between the complainant's and Government's versions of the above-mentioned events, the Committee will only recall the principle that any control of trade union elections should rest with the judicial authorities [see Digest, op. cit., para. 296]. In this respect, the Committee notes that the legality of the elections held on 2 July 1993 were challenged in the High Court by Mr. Mugalla and his group and that on 10 November 1993 the Court nullified the election results. The Committee further observes that the J. Ogendo group, which is opposed to Mr. Mugalla, filed for a "stay of execution" on the above-mentioned court verdict but that on 23 November 1993 the High Court refused to grant a "stay of execution" on its earlier order. Noting that the J. Ogendo group has now filed an appeal case in the Court of Appeal, the Committee requests the Government to send it a copy of the judgement of the Court of Appeal once it has been handed down.

485. As regards the allegation that the participation of senior civil servants at the COTU-K Governing Council meeting of 2 July 1993 constitutes government interference of a very serious nature in trade union affairs, the Committee notes the Government's reply that the Ministry of Labour's attendance at that meeting was lawful because according to the current COTU-K Constitution, the Permanent Secretary or his representative is a member of the Governing Council. The

Committee would, however, draw the Government's attention to the fact that cases where the public authorities have themselves drafted the constitutions of the central workers' organizations, as would appear to be the situation in Kenya, are in violation of freedom of association principles. The Committee would, moreover, draw the Government's attention to the fact that a provision whereby a representative of the public authorities can attend trade union meetings may influence the deliberations and the decisions taken (especially if this representative is entitled to participate in the proceedings) and hence may constitute an act of interference incompatible with the principle of freedom to hold trade union meetings [see Digest, op. cit., para. 150]. Furthermore, a provision which allows a representative of the Ministry of Labour to be present at trade union elections is incompatible with the right of trade unions to hold free elections [see Digest, op. cit., para. 462]. The Committee therefore requests the Government to ensure in future that representatives of the Ministry of Labour do not participate in trade union meetings or elections.

486. The Committee notes that the case against Mr. Mugalla for inciting workers to take part in an illegal strike leading to disobedience of law is still pending in court. It requests the Government once again to keep it informed of the outcome of the legal proceedings instituted against Mr. Mugalla.

The Committee's recommendations

487. 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 ensure that the principle that freedom from government interference in the holding and proceedings of trade union meetings, which constitutes an essential aspect of trade union rights, is respected and that the public authorities refrain from any interference which would restrict this right or impede the lawful exercise thereof on condition that the exercise of these rights does not disturb public order or cause a serious and imminent threat thereto. The Committee therefore urges the Government, in particular, to ensure in future the right of trade unions to hold meetings freely in their own premises without police intervention.

(b) Noting that the J. Ogendo group has appealed against the High Court verdicts of 10 and 23 November 1993 which nullified the elections held by COTU-K's Governing Council on 2 July 1993 which removed Mr. Mugalla and his group from office, the Committee requests the Government to send it a copy of the judgement of the Court of Appeal once it has been handed down.

(c) Drawing the Government's attention to the fact that a provision whereby a representative of the public authorities can attend trade union meetings may influence the deliberations and the decisions taken and hence may constitute an act of interference incompatible with the principle of freedom to hold trade union meetings, the Committee requests the Government to refrain from authorizing a representative of the Ministry of Labour to be present at trade union elections, contrary to the principle according to which trade unions have the right to hold free elections.

(d) The Committee requests the Government once again to keep it informed of the outcome of the legal proceedings instituted against Mr. Mugalla.

Case No. 1714

COMPLAINT AGAINST THE GOVERNMENT OF MOROCCO PRESENTED BY THE DEMOCRATIC CONFEDERATION OF LABOUR (CDT)

488. In a communication dated 22 April 1993, the Democratic Confederation of Labour (CDT) presented a complaint against the Government of Morocco alleging violations of trade union rights. In a communication dated 31 May 1993, it lodged new allegations.

489. At its meeting in November 1993 [see 291st Report, para. 12], the Committee observed that despite the time which had elapsed since the presentation of this complaint, it had still not received the Government's observations and information. The Committee drew the Government's attention to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, it could present a report on the substance of the case even if the information and observations requested from the Government had not been received in due time. Since that urgent appeal, the Committee has received no reply from the Government on this matter.

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

A. The complainant organization's allegations

491. In its communication of 22 April 1993, the Democratic Confederation of Labour (CDT) alleges violations of trade union rights

within the company "Huileries de Meknès", a private company with its head office in Rabat.

492. According to the CDT, this enterprise, which was established in 1960, is enjoying an economic boom and has considerably expanded the number and range of its industrial activities. It employs 1,500 workers.

493. According to the CDT, the management manifests an avowed hatred for the workers' trade union. It is alleged that labour laws have not been applied, work-cards have not been provided, legal minimum wages and seniority bonuses have not been paid, declarations to the social security authorities have not been submitted, the standard work schedule has not been adhered to (8 hours per day, not 14), established status has not been granted to temporary workers, working conditions have not been respected, and that there have been all types of abuse, especially of female workers.

494. It was against this background that the workers established the trade union office of the CDT on 22 October 1992. The management of the enterprise reacted by dismissing the 11 members of the trade union office as well as four other activists. A protest strike was called on 4 November 1992 as well as a "sit-in" in front of the factory from 4 to 12 November. The police then attacked the workers in front of the factory and injured several before making a number of arrests. The local union of the CDT interceded with the authorities, who undertook to resolve the problem on condition that the "sit-in" was moved to the local office of the CDT. This was done, but the authorities did not honour by their commitment. This prompted the workers to resume their sit-in in front of the factory on 22 November 1992. Once again, the police intervened violently and injured a number of workers.

495. The complainant organization states that the management of the factory has done nothing but strain relations even further. For example, it is alleged that it sent strikers a formal notice pointing out that they had abandoned their posts when the strike began on 4 November and ordering them to resume work within 48 hours, failing which they would be deemed to have resigned.

496. On 29 December 1992, also according to the complainant organization, the police again intervened, this time with the help of groups armed with cudgels, knives, iron bars, sticks, daggers, etc., who had been called in by the management. During the course of this operation, 163 workers were injured, including two members of the local union of the CDT, who were also arrested, and 57 workers. Three days later, after statements had been taken, the individuals concerned were released. The complainant organization has appended to its complaint a list of the injured persons and descriptions of their injuries.

497. The CDT states that, at the date of the complaint, the strike had been broken by the management with the help of these armed

bands and with the assistance of the local authorities; more than 500 workers were still expelled, the management was still refusing to reinstate these individuals or to engage in any dialogue, and the authorities have done nothing to enforce trade union rights and bring about the reinstatement of the workers expelled and the opening of a dialogue with the trade union representatives.

498. In its communication of 31 May 1993, the CDT alleges that on 3 May 1993 the President of the Municipal Council of Mehdia-Kenitra arbitrarily dismissed Mr. Kouadi Mohammed, an agent in the training service, because of his membership of the CDT and his participation in the May Day celebrations organized by the CDT. The CDT has provided a copy of that decision.

B. The Committee's conclusions

499. The Committee emphasizes that the absence of a reply from the Government in this case renders the examination of the allegations very difficult. The Committee indeed regrets that, despite the time which has elapsed since the presentation of this complaint, and despite being invited to do so on several occasions, including by means of an urgent appeal, the Government has not formulated its comments and observations on the allegations brought by the complainant organization.

500. Under these circumstances, however, and in accordance with the applicable rule of procedure [see 127th Report of the Committee, para. 17, approved by the Governing Body at its 184th Session], the Committee feels obliged to submit a report on the substance of the case, even without the information which it had hoped to receive from the Government.

501. The Committee first of all reminds the Government that the purpose of the procedures established by the International Labour Organization for examining allegations of violations of freedom of association is to ensure that this freedom is respected in law and in fact. While these procedures protect governments against unreasonable accusations, they must recognize for their part the importance for the protection of their own good name of formulating for objective examination detailed replies to such allegations made against them. [See First Report of the Committee, para. 31.]

502. The Committee observes that the allegations which are the subject of the present case concern violations of freedom of association in the company "Huileries de Meknès". The complainant organization alleges in general terms that the management manifests an avowed hatred for the workers' union which is reflected among other. things in its refusal to apply labour legislation.

503. As regards the dismissal of 11 members of the trade union office of the CDT and four other trade unionists, it would appear that these measures were taken shortly after the establishment within the factory of the union office. The anti-trade union nature of these dismissals may therefore reasonably be assumed. For that reason, the Committee recalls 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 employment by reason of his 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]; it urges the Government to take measures to establish an impartial inquiry with a view to ascertaining 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 that inquiry.

504. The Committee also observes that, according to the complainant organization, the police and armed individuals on three occasions in November and December 1992 intervened violently to break the protest strikes and "sit-in" organized by the workers. During these interventions, the police allegedly injured a large number of workers and made a number of arrests. The Committee notes that, according to the CDT, the two members of the local union and the 57 workers arrested on 29 December 1992 were released three days later after statements had been taken.

505. The Committee stresses once again that a genuinely free and independent trade union movement can only develop where fundamental human rights are fully respected and guaranteed [see Digest, op. cit., para. 68], and recalls that the authorities should only have recourse to force during strikes when grave situations arise and public order is seriously threatened. The Committee deplores this violence and urges the Government to establish an independent, impartial and thorough inquiry into the relevant circumstances to determine the nature and justification of the police action and to identify those responsible for the violence, and to keep it informed of the findings of that inquiry.

506. As regards the arrests (alleged by the complainant organization) of strikers by the police, the Committee reminds the Government that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests. [see Digest, op. cit., para. 363.] Furthermore, in the view of the Committee the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike. [see Digest, op. cit., para. 447.] The Committee recalls that taking part in picketing, and firmly but peaceably inciting other workers to keep away from their workplace, cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work;

such acts constitute criminal offences in many countries. [see Digest, op. cit., para. 435.] In the light of these principles to which it attaches great importance, the Committee requests the Government to keep it informed of any developments in the situation of all the workers arrested and in particular to state whether they have been released, whether any charges are still pending against them and, if not, to make efforts to obtain their reinstatement in their posts.

507. As regards the alleged expulsion of more than 500 workers on the grounds of their participation in the protest strikes, the Committee stresses that the use of extremely serious measures, such as the dismissal of workers for having participated in a strike, implies a serious risk of abuse and constitutes a violation of freedom of association. [Digest, op. cit., para. 444.] It calls on the Government to take the necessary measures to ensure that the individuals concerned are reinstated in their posts and to keep it informed of any developments in their situation.

508. Finally, according to the decision of 3 May 1993 given by the President of the Municipal Council of Mehdia, a copy of which has been provided by the complainant organization, the Committee observes that Mr. Kouadi Mohammed was dismissed among other reasons because of his participation in the 1993 May Day march organized by the CDT of which he is a member. The Committee recalls that the right to organize public meetings and processions, particularly on the occasion of May Day, constitutes an important aspect of the CDT's trade union rights [Digest, op. cit., para. 155] and requests the Government to take the measures to ensure that Mr. Kouadi Mohammed is reinstated in his job. It requests the Government to keep it informed on this matter.

509. More generally, the Committee must again draw the Government's attention to the fact that legislation must provide for specific sanctions to deter acts of anti-trade union discrimination and interference perpetrated by employers against workers and workers' organizations, in order to ensure that Articles 1 and 2 of Convention No. 98 are effectively implemented. The Committee also recalls in this context that the Committee of Experts on the Application of Conventions and Recommendations for a number of years has been calling on the Government to adopt specific provisions to ensure that workers are effectively protected against acts of anti-trade union discrimination and workers' organization against acts of interference. [Report III (Part 4A), 1992, p. 275.] The Committee therefore urges the Government to take legislative or other measures without delay to ensure that the Convention is implemented.

The Committee's recommendations

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

(a) The Committee emphasizes that the absence of a reply from the Government in this case makes the examination of the allegations very difficult.

(b) Recalling nevertheless that all workers should be able to establish and join organizations of their own choosing in full freedom and that no person should be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, the Committee requests the Government to take measures to establish an impartial inquiry with a view to ascertaining the true reasons for the dismissal of the 11 members of the trade union office of the CDT and of the four other trade unionists and, if it is proven that they 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 this inquiry.

(c) As regards the violent actions of the police in November and December 1992 during the protest strikes and "sit in" organized by the workers, the Committee recalls that the authorities should only have recourse to force during strikes where grave situations arise and where public order is seriously threatened, and requests the Government to take measures to establish an impartial and thorough inquiry into the relevant circumstances to determine the nature and justification of the police actions and identify those responsible, and to keep it informed of the findings of that inquiry.

(d) As regards the arrests of strikers for which, according to the allegations, the police are responsible, the Committee reminds the Government that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests, and that the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike. The Committee requests the Government to keep it informed of any developments in the situation of all the workers arrested and in particular to state whether charges are pending against them and, if not, to make efforts to obtain their reinstatement in their posts.

(e) Emphasizing that the use of extremely serious measures, such as dismissal of workers for having participated in a strike, implies a serious risk of abuse and constitutes a violation of freedom of association, the Committee requests the Government to take the necessary measures to ensure that the over 500 workers allegedly expelled as a result of their participation in the protest strikes are reinstated in their posts. It requests the Government to keep it informed of any developments in their situation.

(f) As concerns the dismissal of Mr. Kouadi Mohammed for, among other reasons, his participation in the march of 1 May 1993 organized by the CDT of which he is a member, the Committee requests the

Government to take measures so that he is reinstated in his post and to keep it informed on this matter.

(g) The Committee must again remind the Government that legislation must provide for specific sanctions against acts of anti-union discrimination and interference perpetrated by employers against workers and workers' organizations in order to ensure that Articles 1 and 2 of the Convention No. 98 are effectively implemented. It urges the Government to take legislative or other measures without delay to ensure that the Convention is applied.

Case No. 1722

COMPLAINT AGAINST THE GOVERNMENT OF CANADA (ONTARIO) PRESENTED BY - THE CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS (CAUT) AND - THE CANADIAN LABOUR CONGRESS (CLC)

511. In a communication dated 29 June 1993, the Canadian Association of University Teachers (CAUT) submitted a complaint of violations of freedom of association against the Government of Canada (Ontario). In a communication of 25 October 1993, the Canadian Labour Congress (CLC) expressed its support to the complaint on behalf of its own membership and that of several of its affiliated organizations. The Public Services International (PSI) and the International Confederation of Free Trade Unions (ICFTU) expressed their support to the complaint in communications dated 16 and 25 November 1993, respectively.

512. The federal Government, in a communication of 17 January 1994, transmitted the observations and information from the Government of Ontario, dated 12 January 1994.

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

A. Allegations of the complainant organizations

514. The Canadian Association of University Teachers in its communication of 29 June 1993 and the Canadian Labour Congress in its communication of 25 October 1993 allege that the Government of Ontario violated ILO Conventions Nos. 87, 98 and 151 by enacting the Social

Contract Act, 1993, "An Act to encourage negotiated settlements in the public sector to preserve jobs and services while managing reductions in expenditures and to provide for certain matters related to the Government's expenditure reduction program" (the "Act").

515. ILO Conventions require that public authorities refrain from any interference which would restrict the right of trade unions freely to organize their activities, including free collective bargaining. While the ILO has found that, as part of a wage stabilization policy, a government can place restrictions on the settlement of wage rates, it has held that "any restrictions should be imposed as an exceptional measure and only to the extent that it is necessary without exceeding a reasonable period, and should be accompanied by adequate safeguards to protect workers' living standards". The complainant organizations submit that the Act infringes ILO Conventions in several respects.

516. The Government is freezing wages for an unreasonable period, i.e. three years - and for a longer period if negotiations have not concluded for 1991 and 1992 - without any provision for adequately safeguarding workers' living standards in the event of a rise in the cost of living or other change in economic circumstances, and in the absence of compelling evidence that such a lengthy period of wage control is necessary.

517. The Government is unilaterally reducing workers' wages through a system of unpaid leaves, contrary to its responsibility to protect workers' living standards, and again in the absence of compelling evidence that such an extreme measure is necessary.

518. The Government has also retained ultimate control over the choice of the workers' representatives in negotiations for local agreements, in that Cabinet will have the power to make regulations relating to the authority of a provincial, national or international trade union to enter into an agreement on behalf of bargaining agents, contrary to Article 3 of ILO Convention No. 87.

519. The Act also placed pressure on unions to agree to the Government's programme, by adversely affecting workers whose unions fail to agree to a sectoral framework or a local agreement. In particular, the Government can determine the content of a "sectoral framework" if, in its opinion, either there is "sufficient support" for it or "special circumstances exist", whether or not a trade union agrees to it, contrary to Articles 3 and 4 of ILO Convention No. 87.

520. The sectoral framework specified in the legislation is designated by the Government and agreements are subject to the approval of the Government even when the Government itself is not the employer (e.g. universities, schools, hospitals and nursing homes).

521. Further, when a trade union does not sign a local agreement reflecting the Government's "sectoral framework", the following measures apply: (i) the Government unilaterally institutes the three-year wage freeze, together with a wage reduction through unpaid

leaves; (ii) the expenditure targets set by the Government are not reduced as they otherwise would unless trade unions agree to the Government's sectoral framework and enter local agreements; and (iii) workers do not have access to a job security fund, i.e. an unemployment assistance fund, which would cushion the impact of a lay-off, unless the Government is satisfied that the union has made all reasonable efforts to enter into a local agreement.

522. The Act also violates Article 8(2) of Convention No. 87, which requires that "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention".

B. The Government's reply

523. In its communication of 12 January 1994, the Government generally submits that the Act is consistent with the applicable ILO Conventions and principles, which recognize that governments must be given the flexibility to deal with economic crises. The Committee on Freedom of Association has in the past concluded that economic stabilization measures restricting collective bargaining rights are acceptable provided they are of an exceptional nature, only to the extent that they are necessary, without exceeding a reasonable period and that they are accompanied by adequate safeguards to protect workers' living standards. [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 641.] The Committee of Experts has adopted a similar approach on this issue.

524. Before replying specifically to the allegations, the Government gives extensive explanations and figures, summarized below, on the economic and fiscal background which, it argues, made the adoption of the Act an absolute necessity.

525. The 1990-92 recession hit Ontario particularly hard. It had dramatic effects on jobs, social service expenditures and revenues. It had an especially serious impact on Ontario's debt, which rose from $42 billion to $68 billion during the recession. The recession also had a devastating effect on employment. Ontario accounts for nearly 70 per cent of all jobs lost in Canada during the recession, with manufacturing most affected; permanent plant closures accounted for 65 per cent of major lay-offs in 1992, up from 24 per cent in 1982. The recession also created additional pressures for social service expenditures, in particular social assistance: since 1989, the number of recipients has doubled and expenditures have more than doubled to $6.2 billion.

526. The recession also led to the collapse of provincial tax revenues, which have fallen for two years despite significant tax-raising measures. Revenues declined proportionately more than nominal GDP. Tax revenues for 1991-92 declined by 5.2 per cent; for

1992-93, they fell nearly $1.75 billion short of the forecast in the 1992 Budget. This drop in revenues has sharply increased Ontario's deficit in the past three years, pushing it over $12 billion in 1992-93. If the Government did not take action, the Province's deficit for 1993-94 would rise to almost $17 billion in 1993-94, and the accumulated debt possibly approaching $120 billion by 1996. Public debt interest currently absorbs about 13 cents of every dollar of revenues. In the absence of strong action to cut expenditures and raise revenues, that share could double by 1995-96. The annual cost of servicing the debt could rise from $5 billion now to about $12 billion and become Ontario's largest "program", eclipsing education and hospitals. Excluding sovereign countries, Ontario has become the largest borrower in the world, borrowing on average more than $1 billion a month. The Province spends more on interest costs than it spends on its schools.

527. There are approximately 900,000 persons employed in the public sector, about one in five jobs in the provinces, with a total compensation bill of nearly $43 billion. The cost of Ontario's public sector grew by 61 per cent from 1986 to 1993, whereas the Gross Domestic Product remained at the same level, i.e. $202 billion. Expenditures on health, education and social services account for 71 per cent of provincial government expenditure, over 50 per cent of which represents compensation for public service employees. Since 1980, private sector employment rose by 10 per cent, while public sector jobs increased 47 per cent.

528. Faced with this situation, the Government had no choice but to take action rapidly, which it did in two ways. The 1993-94 Budget included an Expenditure Control Plan with spending cuts of $4.6 billion, $720 million of which were to come from a decrease in the Government's operations and overhead costs, including payroll, and from a streamlining of operations. By the end of 1994, there will be almost 5,000 fewer full-time equivalent positions in the public service, through, wherever possible, normal attrition and voluntary retirements and resignations. These measures, however, were not enough to respond adequately to the debt and deficit problem.

529. In April 1993, the Government initiated negotiations towards a Social Contract with employers and employees in the public sector to complement the Expenditure Control Plan. The Social Contract is a process to achieve basic trade-offs between economic performance measures, such as productivity enhancements and the containment of compensation costs, in return for employment security gains and labour's empowerment in planning processes; its purpose is to preserve public services and public sector jobs while putting them on a secure financial footing. Together, the Expenditure Control Plan and the Social Contract will enable the Government to keep its commitments to create jobs, maintain important services and minimize public sector job impacts, while achieving operating savings that will total $6 billion in 1993-94.

530. To make sure that the above-noted compensation savings were achieved in the fairest way, in April 1993, the Government invited public sector employer and employee representatives and representatives of independent health practitioners to negotiate a Social Contract with the Government. During the negotiations which took place in April, May and June of 1993, the Government tabled a framework agreement that included provisions for: savings through unpaid leaves of absence while protecting public services and accommodating the preference of individual employees; enhanced employment including redeployment, training and adjustment for employees; encouragement of efficiency and productivity savings in the public sector; access to a fund to supplement unemployment insurance benefits or to permit the extension of notice periods or to allow for retraining; and protection for those earning less than $30,000 per year. Despite the progress made in these talks, they ended on 3 June 1993, without an agreement.

531. The Government's last framework offer, presented on 2 June 1993, outlined a fair and balanced way of achieving the $2 billion in social contract savings while protecting jobs and services. It contained many ideas from social contract participants, employee and employer representatives alike. It reflected their shared concern for a humane restructuring of government, for more affordable and efficient government, for greater openness and accountability in government and, above all, for the preservation of public services. That framework has become the foundation for the Social Contract Act, 1993. The Government is committed to saving $2 billion a year for the next three fiscal years through reduced compensation costs. The Act seeks to achieve the savings in the spirit of the Social Contract.

532. The purposes of the Act are: to encourage employers, bargaining agents and employers to achieve savings through agreements at the sectoral and local levels primarily through adjustments in compensation arrangements; to maximize the preservation of public sector jobs and services through improvements in productivity, including the elimination of waste and inefficiency; to reduce expenditures for a three-year period and to provide criteria and mechanisms for achieving the reductions; and to provide for a job security fund.

533. The significant features of the Act are as follows: (a) the Minister responsible for the administration of the Act is authorized to establish expenditure reduction targets for the various sectors and employers in the public sector; (b) a Public Sector Job Security Fund is established; (c) a structure for negotiated settlements to achieve the expenditure reduction targets is established at both the sectoral and local levels for bargaining unit employees; (d) a structure is also provided for plans in respect of non-bargaining unit employees; (e) if there is no agreement or plan, employers will implement expenditure reduction targets through freezes in compensation and, if freezes do not produce the necessary savings, through unpaid leaves to a maximum of 12 days; special provision is made for employees who perform critical functions; (f) those who earn under $30,000 annually

are given protection; pay equity entitlements are also protected; (g) the Province is authorized to reduce its payments to public sector employers and, in cases prescribed by regulation, to require payments for them; the Act applies to independent health professions; (h) the Act applies to members of the Assembly and other office holders, whether elected or appointed.

534. As regards the first specific allegation made by the complainants (freezing of wages for an unreasonable period without adequate safeguards) the Government submits that in passing the Act, it was taking action to protect the living standards of workers by reducing the likelihood of lay-offs and unemployment. Nothing in Convention No. 87 prevents the Government from deciding drastically to reduce funding for public service delivery. Government forecasts were that between 20,000 and 40,000 public sector workers would have lost their employment if a negotiated restructuring outcome was not pursued and supported by legislation. The Act has succeeded based on projections that very few lay-offs will occur. This supports the claim that the living standard of workers has been protected. As of 13 December, only 66 people have applied for access to a $300 million employment security fund provided by the Province.

535. The Act does not necessarily freeze wages. In the vast majority of cases, employers and their unions concluded local agreements under the Act, some of which voluntarily accepted a freeze for a period of between one and three years, while others did not feel the need to agree on any freeze at all. Collective bargaining continues during this period and bargaining outcomes will reflect the terms that the local parties agreed upon. This notwithstanding, considering the Government's current fiscal/deficit crisis, a period of three years freeze is a reasonable approach to balancing the living standards of workers' with the need to return to economic stability.

536. For those employers and unions that failed to reach an agreement, there is a mandatory freeze on compensation and employers are free to require employees to take up to 12 days' unpaid leave per year for a period of three years. Actual reliance on 12 unpaid leave days appears to be less than anticipated. Where employers select this option they are restricted by statute from relying on "other measures at law" (lay-offs) until they have clearly demonstrated they cannot achieve their savings through a compensation freeze and unpaid leave days. Untenable employer claims are subject to compulsory binding third party arbitration/adjudication with a regulatory requirement they provide detailed financial information to support their claims. The Act does not place restrictions on the ability of third party interest arbitrators to award increases in compensation during the period 14 June 1993 to 31 March 1996. This provision applies in cases where a local agreement is concluded or where there is no local agreement. There is no comparable restriction on the right to strike for increases in compensation except where the terms of a local social contract agreement prevail in case of conflict with a local agreement, or where the Act provides for a freeze in compensation if no local agreement is concluded. This is a reasonable restriction on the

collective bargaining process when the Province's fiscal situation is considered.

537. To protect workers' living standards, the Act provides for the protection of employees earning less than $30,000 annually, excluding overtime pay and allows exemption for this only where approved by a sector plan and with the support of a local bargaining agent. The protection is otherwise unaffected for unorganized elements of the workforce.

538. Concerning the second allegation (that the Act reduces wages by up to 5 per cent through a system of unpaid leave), the Government states that the Act provides for opportunities to negotiate solutions that need not require a reduction in workers' wages. While the Act is intended to find most of the initial savings "primarily through compensation", sector plans encourage local parties to find innovative solutions to increase efficiency and productivity levels while protecting workers' standards of living by offsetting the need or pressure for involuntary lay-off. The Act temporarily affects workers' income in cases where local agreements are not concluded. Special attention was given to ensuring that workers received comparable time off whenever income was reduced under these circumstances. As well, pension entitlements are maintained without negative consequences for plan contributors. The Act was an alternative statutory intervention to simply rolling back workers' salaries on a permanent or temporary basis without establishing an environment where negotiated restructuring would offset the shortfall in provincial grant support. Great effort was made to provide a model for negotiating change in the face of the fiscal crisis facing the Province.

539. Contrary to the third allegation (that the Government proposes to retain ultimate control over the choice of the workers' representatives in negotiations for local agreements), the Government states that it assumes no right to override any existing and legally recognized rights of representation by bargaining agents. Subsection 5(3) of the Act precludes the Minister from designating an organization as a bargaining agent under the Act for employees who are represented by a bargaining agent. Subject to this limitation, the Act extended the rights of workers to form associations specifically for the purpose of seeking bargaining rights under the Act. On no occasion did these rights supersede those of an existing bargaining agent. The Act went on to extend to either trade unions or employers the further opportunity to form associations or to enter into agreements on behalf of their affiliates.

540. As regards the fourth allegation (provisions in the Act to exert pressures on unions to agree to the Government's programme "special circumstance" provisions of section 11), the Government submits that the Act provides incentives to conclude local agreements by making lower savings targets available and by providing a $300 million job security fund to help provide retraining for workers who might be laid off as a result of their employer's decision. As

well, where unions can demonstrate they made "all reasonable efforts" to conclude a local agreement but were not successful, they can still gain access to this fund on behalf of their members. Section 11(4) of the Act in no way restricts the abilities of any bargaining agent to manage its own internal affairs; to draw up rules and constitutions; to elect their representatives; to formulate their programmes, etc. The Act was not intended to be applied in this fashion and has not. Where "special circumstances" have been relied upon and a sector plan designated, unions are under no binding obligation to implement the sector plans under a local agreement. It is even possible to conclude a local social contract agreement that does not implement a sector framework plan. The Act does not extend to the Government any authority to dissolve by administrative authority any workers' or employers' organization; it actually extends the right to organize.

541. With respect to the fifth allegation (that the sectoral framework in the Act is designated by the Government and that agreements are subject to the approval of the Government even when the Government itself is not the employer), the Government indicates that nothing in the Act compels a bargaining agent or an employer to implement the terms of any sectoral framework plan into their local social contract agreement or even to have such an agreement. The Government has designated sectoral agreements only after achieving some level of support from participating employers and unions.

542. As regards the allegation that the Act violates Article 8(2) of Convention No. 87, the Government submits that it chose to balance the rights of public service workers to enjoy free collective bargaining, the need to adequately safeguard their living standards and the need to protect vital public services, with the harsh fiscal realities; otherwise public services would have been slashed and jobs lost. The Province did this within a statutory framework that went great distances to maintain workers' rights and living standards, the principle of collective bargaining and the need to adopt a negotiated restructuring model to support the continued delivery of services in an efficient, effective and affordable manner.

543. The Government attaches to its observations a series of documents some of which show that despite the above-noted economic stabilization measures taken by the Province, there is a continuing deterioration of its fiscal situation. As indicated by the Province's September 1993 Quarterly Update, provincial revenues for this fiscal year will be even lower than forecast in the Budget; a revenue shortfall of anywhere from $800 million to $1 billion has led in November 1993 to a downgrading of the Province's credit rating.

544. The Government concludes that it finds any prospect of overriding collective agreements painful and difficult, but this is nothing compared to what the alternative would mean for the Province. In accepting a hierarchy of principles, the Government determined that the right to enjoy free collective bargaining does not supersede the rights of others in society in every case, at all times. However, the economic stabilization measures set forth in the Act are of an

exceptional nature, are only to the extent necessary, do not exceed a reasonable period and such measures are accompanied by adequate safeguards to protect workers' living standards.

C. The Committee's conclusions

545. The Committee notes that the allegations in the present case relate to an intervention in the public sector collective bargaining process in Canada (Ontario) which, according to the complainants, violates Conventions Nos. 87, 98, 151 and 154.

546. The complainants argue that these measures were taken in the absence of compelling evidence of necessity. The Government submits for its part that it had no choice but to intervene in view of the severity of the fiscal and economic crisis facing the Province and that, in so doing, it attempted to balance the interests of all parties. As was already mentioned in a previous decision involving various restrictive provincial laws in Canada, including Ontario [Cases Nos. 1172, 1234, 1247 and 1260, 241st Report, para. 113] it is not for the Committee to express a view on the soundness of economic arguments put forward by the Government to justify its position or on the measures it has adopted; see also the general remarks made in this respect in the report of the study mission undertaken in Canada in 1985 [ibid., paras. 9-13]. On a related issue, the Committee cannot ignore the fact that the present case is far from isolated: several other Canadian jurisdictions, invoking similar reasons, have also enacted legislation dealing with collective bargaining in the public service, which prompted a number of complaints of violation of freedom of association, that were examined recently or are currently pending.

547. As regards economic stabilization measures which limit collective bargaining rights, the Committee recalled recently that when a government "for compelling reasons of national economic interest and as part of its stabilization policy, considers that pay rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards" [Case No. 1616, 284th Report (Canada), para. 635]. The Social Contract Act must therefore be examined in the light of these criteria, to assess whether it went beyond what the Committee has considered to be acceptable limits that might be placed temporarily on free collective bargaining.

548. The general structure of the Act, the main provisions of which are reproduced in Annex I, is as follows:

- article 7: the Minister shall establish expenditure reduction targets for public sectors and employers;

- article 11(1): the Minister may designate as a "sectoral framework" a plan that relates to a given sector, provided it meets certain criteria (sufficient support for the plan, based on negotiation; provisions achieving the expenditure reduction target; no adverse effect on employees earning less than $30,000; provisions to minimize job losses, respecting redeployment and training of employees, and adjustment programmes);

- article 13: bargaining agents may conclude local agreements that implement sectoral frameworks; if such local agreements are concluded, article 7(2)(a) provides that the Minister shall establish lower expenditure reduction targets;

- articles 23 and 24: where there is no agreement or plan, compensation is frozen for three years; if these measures are insufficient to meet the expenditure reduction target, employers may, under article 25, require employees to take unpaid leaves of absence, up to a maximum of 12 days in each of the three following years;

- other provisions in the Act: cover non-bargaining unit plans; protect employees earning less than $30,000; guarantee pay equity entitlements; establish a job security fund; and institute, in some cases, a review procedure before an adjudicator.

549. The Committee notes that the main purpose of the Act is to achieve reductions in public expenditure over a three-year period which, of necessity, entails some interference in the collective bargaining process, unless the government could convince all public sector bargaining agents and employees of the soundness of its action. While the Act encourages bargaining agents to conclude negotiated settlements, i.e. local agreements implementing a sectoral framework (which, in order to be designated as such, must include provisions that will assist public sector employers in achieving the target established by the Minister) expenditure reductions may ultimately be obtained through a freeze of wage rates or, if this is insufficient, through compulsory unpaid leaves of absence or special leaves. Collective bargaining, therefore, cannot be said to be voluntary in that context and the Committee regrets that the Government did not give full priority to collective bargaining and felt compelled to adopt the Act to establish the employment conditions in the public sector.

550. The Committee notes however that the Act embodies a number of features which, to some extent, mitigate its effects and its alleged incompatibility with ILO Conventions. Firstly, the Act protects employees at the lower end of the wage scale, who are likely to be most affected, and guarantees pay equity entitlements which, in practice, benefit mostly women. Secondly, as far as the Committee is aware, the Act is not another piece of legislation immediately following other government interventions in the collective bargaining

process. Thirdly, and although these were not successful, it appears that some consultation and negotiation on a framework agreement took place from April to June 1993. Furthermore, Part VII of the Act establishes under certain conditions a third-party review procedure when no local agreement is concluded.

551. In addition, article 12 of the Act leaves some room for the negotiation of sectoral frameworks by listing a series of subjects that negotiators may consider including in the framework. The Act also attempts to persuade bargaining partners to have regard voluntarily to the major economic and social policy considerations and the general interest invoked by the Government, as article 7(2) provides the incentive of lower expenditure reduction targets where local agreeements implementing the sectoral framework are concluded. Noting that the Government states that agreements were concluded in the vast majority of cases, the Committee requests it to provide additional information in this respect, in particular on the number of such agreements, and on their percentage in relation to the total workforce and sectors.

552. As regards the reasonableness of the period during which the Act will be in effect, the Committee notes that this assessment depends highly on the view taken as to the seriousness of the fiscal and economic situation of the Province, a subject on which the Government and the complainants hold irreconcilable views. Considering, however, that a three-year period of limited collective bargaining constitutes a substantial restriction, the Committee trusts that the legislation will cease producing effects at the latest, at the dates mentioned in the Act, or indeed earlier if the fiscal and economic situation improves. It invites the Government to refrain from taking such measures in the future.

553. As regards the allegation that the Government retained control over the choice of workers' representatives for the negotiation of sectoral agreements, the Committee notes that article 5(1) empowers the Minister to recognize additional bargaining agents, for the purposes of the Act, but is precluded under article 5(3) from designating a bargaining agent for employees who are already represented by a bargaining agent. It therefore considers that this aspect of the case does not call for further examination.

The Committee's recommendations

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

(a) While regretting that the Ontario Government did not give full priority to voluntary collective bargaining as a means of determining the employment conditions of public sector employees, the Committee considers that, taking into account all

circumstances and all the provisions of the impugned legislation, the Social Contract Act did not go beyond acceptable limits that might be placed temporarily on collective bargaining.

(b) Considering, however, that a three-year period of limited collective bargaining constitutes a substantial restriction, the Committee trusts that the legislation will cease producing effects at the latest, at the dates mentioned in the Act, or indeed, earlier if the fiscal and economic situation improves. It invites the Government to refrain from taking such measures in the future.

(c) The Committee requests the Government to provide additional information on the number of local agreements concluded in relation to the total workforce, and to keep it informed of the collective bargaining situation in the public sector.

ANNEX

An Act to encourage negotiated settlements in the public sector to preserve jobs and services while managing reductions in expenditures and to provide for certain matters related to the Government's expenditure reduction program

PART I
GENERAL

...

4. This Act binds the Crown in right of Ontario and all employers, employees and bargaining agents in the public sector.

5. (1) The Minister may recognize as a bargaining agent for the purposes of this Act an organization that in his or her opinion represents employees but that does not have bargaining rights under an Act.

(2) The recognition may be subject to such restrictions as the Minister specifies.

(3) The Minister shall not designate an organization as a bargaining agent under subsection (1) for employees who are represented by a bargaining agent.

(4) A bargaining agent designated under subsection (1) has the right to bargain on behalf of the employees for the purposes of this Act.

6. Nothing in this Act shall be interpreted or applied so as to reduce any right or entitlement under the Human Rights Code or under the Pay Equity Act.

PART II
EXPENDITURE REDUCTION TARGETS

7. (1) The Minister shall establish expenditure reduction targets for sectors and for employers.

(2) If there is a sectoral framework in respect of a sector, the Minister shall establish lower expenditure reduction targets for every employer in the sector who,

(a) enters into a local agreement, not later than August 1, 1993, that implements the sectoral framework;

...

PART III
PUBLIC SECTOR JOB SECURITY FUND

8. (1) A fund to be known in English as the Public Sector Job Security Fund and in French as Fonds de securité d'emploi du secteur public is established.

(2) The purpose of the Fund is to provide, in accordance with this Act and the regulations,

(a) payments to employees who are released from employment by their employers; and

(b) payments to employers for the purpose of extending the employment of employees who will be released from employment by the employers.

...

PART IV
SECTORAL FRAMEWORK

11. (1) The Minister may designate, as a sectoral framework, a plan that relates to a sector.

...

(3) the Minister shall not designate a plan as a sectoral framework unless, in the opinion of the Minister, the plan meets the following criteria:

1. There is sufficient support for the plan, based on negotiations leading to the development of the plan, for the plan to form the basis for local agreements in the sector.

2. The plan includes provisions that will assist employers in the sector in achieving the expenditure reduction target established by the Minister for the sector.

3. The plan will not adversely affect employees in the sector who earn less than $30,000 annually, excluding overtime pay.

4. The plan contains appropriate provisions to minimize job losses in the sector, appropriate provisions respecting the redeployment of employees in the sector who are released from employment or who receive notice that they will be released from employment, and appropriate provisions relating to employee training and adjustment programs.

5. The plan will be fair and equitable in its application to all employees.

(4) Subsection (3) does not apply to a plan if, in the opinion of the Minister, special circumstances apply and it is desirable to designate the plan as a sectoral framework.

...

12. In addition to the provisions referred to in subsection 11(3), persons seeking to negotiate the contents of a sectoral framework may consider including the following provisions in the framework:

1. Provisions relating to organizational restructuring, including early retirement options and labour adjustment programs.

2. Provisions relating to improvements in productivity, including the elimination of waste and inefficiency.

3. Provisions relating to alternate work arrangements.

4. Provisions relating to the binding resolution of disputes.

5. Provisions relating to the sharing of information and decision-making by employers and employee representatives, including the sharing of financial and planning information.

6. Provisions relating to sectoral bargaining.

7. Provisions relating to the establishment of joint committees at the sectoral and local level.

8. Provisions relating to pensions, including the joint trusteeship of pension funds.

9. Any other provisions proposed by a party to the negotiations.

PART V
LOCAL AGREEMENTS WITH BARGAINING AGENTS

13. (1) One or more bargaining agents may, not later than August 1, 1993, enter into a local agreement with an employer.

(2) A provincial, national or international trade union may enter into local agreements on behalf of bargaining agents that are affiliated with the trade union and have authorized the trade union to act on their behalf.

(3) An employer association may enter into local agreements on behalf of employers that are members of the association and have authorized the employer association to act on their behalf.

...

PART VII
WHERE NO AGREEMENT OR PLAN

23. (1) This Part applies to,

(a) those bargaining unit employees in respect of whom there is no local agreement.

...

(2) This Part does not apply to employees who earn less than $30,000 annually, excluding overtime pay.

24. (1) The rate of compensation of an employee is, for the period beginning June 14, 1993 and ending with March 31, 1996, fixed at the rate that was in effect immediately before June 14, 1993.

...

25. (1) If necessary to meet the expenditure reduction target established by the Minister, an employer may require employees to take unpaid leaves of absence to a maximum of twelve days or their equivalent in each of the following periods:

1. June 14, 1993 to March 31, 1994.

2. April 1, 1994 to March 31, 1995.

3. April 1, 1995 to March 31, 1996.

26. (1) If employees perform critical functions as prescribed by regulation and the employer is unable, without impairing those

functions, to meet its expenditure reduction target by utilizing unpaid leaves of absence under section 25, the employer may require those employees to take special leaves.

...

27. (1) If the fixing of compensation under section 24 does not result in an employer achieving its expenditure reduction target, the employer shall,

(a) make all reasonable efforts to achieve its target by utilizing unpaid leaves of absence under section 25 or, if applicable, special leaves under section 26 before taking other actions available to it at law; and

(b) develop a program setting out the manner in which these leaves are to be implemented.

(2) The program shall be developed consistent with the following criteria:

1. Employees described in subsection 23(2) will not be adversely affected.

2. Employees will not be required to take an unpaid leave of absence to the extent that it would result in their annual earnings, excluding overtime pay, being reduced to under $30,000.

3. The program will assist the employer in achieving the expenditure reduction target established by the Minister for the employer.

4. The program will be fair and equitable in its application to all employees.

5. The employer will participate in any redeployment plan that exists under a sectoral framework for the applicable sector or that is established by the Minister under section 50 for the applicable sector.

...

(4) In order to enable employees to evaluate the basis for the program, the employer shall, upon request, make such financial information available to the employees as is prescribed in the regulations.

...

28. (1) A written summary of the program shall be made setting out,

(a) the manner in which the unpaid leaves of absence are to be administered;

(b) whether the employer intends to use special leaves to meet the expenditure reduction targets;

...

(2) The summary of the program shall contain sufficient details so that employees are aware of how they will be affected.

29. (1) The summary of the program and a copy of this Part shall be posted in such a manner that they are likely to come to the attention of the employees affected by the program.

...

(3) An employee or bargaining agent who objects to the program because it fails to meet the criteria set out in section 27 may within ten days of the summary of the program being posted request in writing that the employer amend it.

...

(5) The employer shall, within ten days after the objection period has expired, review the objections and post in the same manner,

(a) a notice of confirmation of the original program; or

(b) a summary of the amended program.

...

30. (1) If following the employer review under subsection 29(5), an employee or a bargaining agent considers that the program or amended program still does not meet the criteria set out in section 27, he, she or it may, within ten days after the posting under subsection 29(5), request a review of the program by the person or body designated in the regulations as an adjudicator for that purpose.

(2) The request shall be in writing and shall specify the grounds for the objection to the program.

31. (1) Subject to the regulations, if any, the adjudicator may establish procedures for carrying out the review.

(2) The adjudicator shall review the program and shall,

(a) confirm the program if it meets the criteria set out in section 27; or

(b) amend the program so that, in the opinion of the adjudicator, it is consistent with the criteria set out in section 27.

...

(5) The decision of the adjudicator is final.

...

V. CASES IN WHICH THE COMMITTEE HAS REACHED INTERIM CONCLUSIONS

Case No. 1595

COMPLAINTS AGAINST THE GOVERNMENT OF GUATEMALA PRESENTED BY
- THE GENERAL CENTRE OF WORKERS OF GUATEMALA (CGTG) AND
- THE WORLD CONFEDERATION OF LABOUR (WCL)

555. The Committee already examined this case at its meeting of November 1992 [see 284th Report, paras. 721-737, approved by the Governing Body at its 254th Session (November 1992)], when it reached interim conclusions.

556. Subsequently, the General Centre of Workers of Guatemala (CGTG) made new allegations in a communication dated 12 April 1993.

557. The Government furnished observations in a communication dated 5 November 1993.

558. Guatemala 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. Previous examination of the case

559. At the previous examination of the case by the Committee there remained pending the allegations concerning the assassination of a worker during a labour dispute, obstacles to the establishment of trade union organizations, the dissolution of trade unions by officials, anti-trade union dismissals and the refusal of several enterprises to negotiate collective agreements [see 284th Report, paras. 726, 735, 736 and 737].

560. Specifically, the complainants had alleged the following infringements of trade union rights [see 284th Report, para. 726]:

- Union of Peasant Workers of La Patria farm: the complainants state that in view of the union's decision to join the CGTG and to take legal action against the undertaking to put a stop to the

mass dismissals, the undertaking with the assistance of the national army, repressed the workers, killing one of them on 5 August 1989. The complainants allege that 40 members of the trade union were dismissed;

- the Guatemala Fiesta Hotel Workers' Union: the complainants allege that the undertaking refuses to negotiate the collective agreement on conditions of employment, since it maintains that there is no trade union, despite the fact that the union has enjoyed trade union status for seven years. Similarly, they allege that all trade union leaders have been dismissed, and state that even though the courts ordered their reinstatement, the undertaking refuses to comply;

- Workers' Union of the Fábrica Pundu SA: the complainants allege that unlawful dismissals have taken place and state that it seems likely that the undertaking will close in the near future which appears like a combined attempt to break up a trade union movement in the "maquila" (in bond) industry, where employers have obstructed the establishment of trade union organizations. In particular, the complainants mention the following undertakings: Sam Agliano and Don San (free trade zone, department of Izabal), Manufacturas Integridad SA, Koram SA, Booco and Cía, Ltda., Diseños Panamericanos SA and Confecciones Isabel SA;

- Workers' Union of the El Trapichito farm: the complainants allege that all members of the union have been dismissed. Similarly, they point out that although the courts have ordered the reinstatement of Julian Aguilar Santana, the undertaking refuses to comply;

- Workers' Union of the El Naranjo farm: the complainants allege that 55 workers, members of the undertaking's trade union, were dismissed when it tried to join the General Centre of Workers of Guatemala;

- the Workers' Union of the Compañía Centroamericana Administradora de Hoteles y Turismo SA, Hotel Ritz Continental: the complainants allege that the undertaking has requested the withdrawal of the union's legal personality and that it has refused to negotiate a collective agreement on conditions of employment;

- Union of Automobile and Allied Drivers of Guatemala: the complainants allege that the urban transport companies Unión, Bolívar, EGA, La Fe and Morena, are trying to prevent the establishment of trade union organizations;

- the San Antonio Suchitepequez Municipal Workers' Union and the Villa Nueva Municipal Workers' Union: the complainants allege that their unions have been dissolved by municipal officials.

561. The Committee had noted that the Government had either not replied to the allegations or had done so incompletely by merely stating essentially that the trade union organizations mentioned in the allegations were free to appeal at the judicial and administrative levels.

562. In these circumstances, the Committee made the following recommendations [see 284th Report, para. 737]:

The Committee requests the Government to instigate a judicial inquiry into the alleged murder of a worker on 5 August 1989 at the La Patria farm, when workers were demanding an end to the mass dismissals, and to keep the Committee informed in this regard;

As regards Case No. 1595, the Committee emphasizes the seriousness of the allegations and requests the Government to send, without delay, detailed information on each of the many allegations presented regarding anti-union dismissals in various enterprises, the refusal to negotiate collective agreements, restrictions on the establishment of trade union organizations and the dissolution of trade unions by public officials.

B. New allegations

563. In its communication of 12 April 1993 the General Central of Workers of Guatemala (CGTG) alleges that although the legal procedures had been initiated several years ago, the Ministry of Labour has still not granted legal personality to the Workers' Union of the Ministry of the Interior, the National Front Trade Union of Street Vendors and the Customs Workers' Trade Union.

564. The CGTG also alleges the dismissal of the Secretary-General of the Trade Union of Bakers of Chiquimula following the lack of action by of the labour inspector, as well as the dismissal of 20 members of the Trade Union of Shipping Workers of Santo Tomás de Castilla in December 1992, who worked in the Santo Tomás de Castilla shipping enterprise (Barrios Izabal Port).

565. Furthermore, the CGTG alleges that the General Inspectorate of Labour did not approve the collective agreement concluded between the Workers' Union of the Autonomous Sports Confederation of Guatemala and this Confederation, alleging that it was not presented within 24 hours of being concluded by the parties. In the same way, the CGTG alleges the dismissal of several officials of the executive committee of the Workers' Union of the San Juan de Dios Hospital and the refusal of the Director of the hospital to reinstate workers dismissed although the Deputy Minister of Labour had accepted their reinstatement.

566. Finally, the CGTC alleges non-compliance with labour legislation by certain enterprises and makes allegations concerning inter-trade union disputes.

C. The Government's reply

567. In its communication of 20 October 1993, the Government states that the partial reform of the Labour Code on 10 November 1992 made some improvements for the workers: workers participating in the establishment of a trade union may not be dismissed once notification has been given to the General Inspectorate of Labour; should such workers be dismissed, they must be reinstated within 24 hours and the employer responsible shall be punished with a fine of 1,000 quetzales in addition to the payment of the outstanding wages; the recognition of a trade union is no longer made by "governmental agreement" but by "ministerial resolution" within a period of 20 days following the presentation of the application. Since July 1993, 25 trade unions have been registered and reference is made in particular to some trade unions in the in-bond industry, which are already set up or being set up (although these are not the same trade unions being established in the in-bond industry to which the complainants referred). In the same way, the reformed Labour Code sets up conciliation and arbitration courts on a permanent basis (they were previously set up only in the event of a dispute).

568. The Government adds that some of the disputes presented to the Committee on Freedom of Association are no longer at the administrative stage but before the courts. This is the case with the trade unions in the following enterprises: La Patria Farm, Manufactureras Integridad SA, Koram SA, Booco and Cía, Ltda., Diseños Panamericanos SA, Confecciones Isabel SA as well as the Trade Union of Municipal Workers of Villa Nueva. In the same way, in the case concerning the Guatemala Fiesta Hotel Workers' Union, mediation by the Ministry of Labour has led to a definitive settlement of the dispute and progress to be made in other cases presented to the Committee on Freedom of Association.

569. Furthermore, the Government refers to the allegations concerning ten trade unions and makes the following observations:

- Trade Union of Workers of Shipping Enterprises: in a resolution dated 16 August 1993, the trade union was asked to reply to some of the observations, although it has not done so to date;

- Trade Union of Bakers: the initial application of this trade union, with headquarters in the department of Chiquimula, was made on 26 November 1992. Some legal problems have arisen although the application is now at the final stage of approval. Measures have been taken to guarantee the job stability of trade union members and in particular officials;

- National Front Trade Union of Street Vendors: legal personality was granted and statutes were approved under a resolution of the Ministry of Labour dated 12 August 1993;

- Customs Workers' Trade Union: some problems arose and it was necessary to process the application in accordance with the standards contained in the reforms to the Labour Code. In a resolution dated 5 August 1993, No. 1146, the Ministry of Labour recognized the legal personality of the trade union and approved its statutes;

- Workers' Union of the Ministry of the Interior: debate has arisen concerning the classification of the 22 secretaries of the departmental offices of the Ministry of the Interior as employees in positions of trust. In an opinion dated 11 October 1993, the Legal Advisor's Office of the General Inspectorate of Labour stated that these workers do have this status because of the functions which they carry out. The trade union may make observations on this opinion;

- Workers' Union of the Autonomous Sports Confederation of Guatemala: the collective agreement on conditions of work was signed in April 1993 and presented to the General Inspectorate of Labour the following June. For this reason this office requested that an updated collective agreement be presented;

- Workers' Union of the San Juan de Dios Hospital: the matter is now before the labour courts which will be responsible for a final solution.

570. Finally, the Government refers to the guidelines contained in the Government plan 1994-95 concerning wage and labour policies, which include the guarantee of freedom of association and the promotion of collective bargaining; the appointment of an additional 31 labour inspectors to monitor the application of labour legislation; the holding of tripartite seminars and the establishment of tripartite committees to resolve or prevent disputes.

C. The Committee's conclusions

571. The Committee observes that the allegations refer to the assassination of a worker during a labour dispute, the non-recognition of the legal personality of several trade unions, the dissolution of trade unions on the order of officials, obstacles to the establishment of trade union organizations, numerous acts of anti-trade union discrimination and restrictions on collective bargaining.

572. The Committee notes with interest the recent reforms of the Labour Code to improve the guarantee of trade union rights and that in August 1993 legal personality was granted to the National Front Trade

Union of Street Vendors and the Customs Workers' Trade Union. The Committee also notes that following the mediation by the Ministry of Labour the labour dispute between the Fiesta Guatemala Hotel and the trade union was finally settled.

573. The Committee also notes that according to the Government the courts have now been seized of the matters contained in the allegations respecting the dismissal of 40 workers who were members of the Union of Peasant Workers of La Patria Farm, measures taken by the in-bond enterprises Manufacturas Integridad S.A., Koram S.A., Booco & Cía. Ltda., Diseños Panamericanos S.A. and Confecciones Isabel S.A., to prevent the establishment of trade unions and the dissolution of the Trade Union of Municipal Workers of Villa Nueva and the dismissal of several officials of the executive committee of the Workers' Trade Union of the San Juan de Dios Hospital, who had not been reinstated in their jobs despite the order issued by the administrative authority. The Committee requests the Government to keep it informed of the outcome of the judicial proceedings initiated in these cases and expresses the hope that the verdicts will be handed down without delay. It also requests, if it is established that the dismissals were motivated by legitimate trade union activities, that the workers in question be reinstated in their jobs.

574. Furthermore, the Committee notes that according to the Government some of the questions raised by the complainants are at the administrative stage for various reasons. Thus the administrative procedure respecting the dismissal of the Secretary-General of the Trade Union of Bakers of Chiquimula is now at the final stage; the Trade Union of Shipping Workers of Santo Tomás de Castilla (Barrios Izabal Port) has not yet transmitted to the Ministry of Labour the additional information requested; and as regards the non-granting of legal personality to the Workers' Trade Union of the Ministry of the Interior, the Ministry of Labour is awaiting the observations of the trade union on the opinion issued by the legal advisers' office of the Labour Inspectorate that its members include 22 government secretaries who have the status of employees of trust. The Committee requests the Government to keep it informed of the administrative decisions in these matters and it hopes that they will be issued without delay.

575. As regards the allegation concerning the non-approval by the General Inspectorate of Labour of the collective agreement concluded between the Autonomous Sports Confederation of Guatemala and the workers' union of this institution, the Committee notes that the Government states that the non-approval was due to the fact that the collective agreement was sent to the administrative authority two months after it had been concluded. In this respect, the Committee notes that collective agreements should not be subject to approval by the administrative authority whose competence in any case should be limited to ensuring respect for minimum legal standards in the respective collective agreements. The Committee therefore requests the Government to guarantee the immediate application of the above-mentioned collective agreement.

576. Finally, the Committee deplores that the Government has not replied to the other allegations, which concern: the assassination of a worker on 5 August 1989 during a labour dispute in the La Patria Farm and the trade union (in its previous examination, the Committee had already requested the holding of a judicial inquiry and to be informed of its outcome, a request which it repeats on this occasion); the existence of illegal dismissals and the imminent closing down of the Fábrica Pundo S.A. to break up the trade union movement; measures taken in the in-bond enterprises San Agliano and Don Sam to prevent the establishment of trade unions; the dismissal of all the members of the Workers' Union of El Trapichito Farm; the dismissal of 55 members of the Workers' Union of El Naranjo Farm; the request for the withdrawal of the legal personality of the Workers' Union of the Compañia Centroamericana Administradora de Hoteles y Turisom, S.A. (Hotel Ritz Continental) by the enterprise and the refusal of the enterprise to negotiate a collective agreement; attempts by the urban transport companies Unión, Bilívar, EGA, La Fe and Morena to prevent the establishment of trade union organizations; and the dissolution of the San Antonio Suchitepequez Municipal Workers' Union and the Villa Nueva Municipal Workers' Union by municipal officials. The Committee urges the Government to send its observations on these allegations as a matter of urgency. The Committee also expresses its concern at the many allegations of anti-trade union discrimination, obstacles to the establishment of trade unions, delays in the granting of legal personality or even the dissolution or attempted dissolution of trade unions by public officials or enterprises.

577. Given the number and nature of the pending allegations, the Committee urges the Government to speed up the processing of complaints by trade unions and to ensure fully and effectively the right of workers to set up organizations of their own choosing to guarantee that no worker is a victim of acts of anti-trade union discrimination, such as dismissal, because of trade union membership or legitimate trade union activities, and to guarantee that no trade union organization is dissolved or deprived of its legal personality because of its trade union activities.

The Committee's recommendations

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

(a) The Committee once again requests the holding of a judicial inquiry into the death of a worker on 5 August 1989 during a labour dispute between the La Patria Farm and the trade union and to be informed of the outcome.

(b) The Committee expresses its concern at the many allegations of anti-trade union discrimination, obstacles to the establishment of trade unions, delays in the granting of legal personality or even the dissolution of trade unions by officials or enterprises.

(c) The Committee deplores that the Government has not sent observations on a number of the allegations and urges it to speed up the processing of complaints by trade unions and to ensure fully and effectively the right of workers to set up organizations of their own choosing, to guarantee that no worker is the victim of acts of anti-trade union discrimination, such as dismissal, for trade union membership or legitimate trade union activities and to guarantee that no trade union organization is dissolved or deprived of its legal personality because of its trade union activities. The Committee also urges the Government to reply as a matter of urgency to the allegations on which it has not sent observations.

(d) The Committee requests the Government to keep it informed of the administrative or judicial decisions handed down on the many allegations to which the Government has referred and which have been placed before these bodies and hopes that these decisions will be issued without delay. The Committee also requests, if it is established that the dismissals were due to legitimate trade union activities, that the workers in question be reinstated in their jobs.

(e) The Committee requests the Government to guarantee the immediate application of the collective agreement concluded between the Autonomous Sports Confederation of Guatemala and the trade union of this institution. The Committee emphasizes that collective agreements should not be subject to approval by the administrative authority, whose competence in any case should be limited to ensuring respect for minimum legal standards in the respective collective agreements.

Case No. 1640

COMPLAINTS AGAINST THE GOVERNMENT OF MOROCCO PRESENTED BY
- THE ORGANIZATION OF AFRICAN TRADE UNION UNITY (OATUU)
- THE WORLD CONFEDERATION OF LABOUR (WCL)
- THE DEMOCRATIC CONFEDERATION OF LABOUR (CDT) AND
- THE GENERAL UNION OF MOROCCAN WORKERS (UGTM)

579. The Committee examined this case at its February 1993 meeting [see 286th Report, paras. 612-646, approved by the Governing Body at its 255th Session (March 1993)], at which it drew up interim conclusions.

580. The World Confederation of Labour (WCL) subsequently communicated additional information in a letter dated 5 April 1993. The Government sent new observations in communications dated 15 July and 6 October 1993.

581. Morocco has not ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). It has, however, ratified the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

582. At its February 1993 meeting, the Committee examined allegations relating to the arrest and sentencing of two trade union leaders, intimidation and repression by the authorities against trade union organizations during the preparations for the May Day celebration and a series of anti-union measures taken against workers, trade union leaders and their organizations by the Government and the authorities.

583. At that meeting, the Committee formulated the following recommendations [see 286th Report of the Committee, para. 646]:

(a) The Committee emphasizes that the right to express opinions through the press or otherwise is an essential aspect of trade union rights and expresses its deep concern regarding the gravity of the sentences handed down against Mr. Noubir El Amaoui, the General Secretary of the CDT, and Mr. Driss Laghnimi, the regional secretary of the UGTM in Sidi Slimane.

(b) In order that it may have at its disposal all the information necessary on this aspect of the case, the Committee requests the Government to provide without delay detailed information on the charges pressed against Messrs. El Amaoui and Laghnimi and to communicate the text of the verdicts handed down against them, with the reasons therefor. The Committee also requests the Government to communicate the texts of the judgements handed down by the Court of Appeal.

(c) Regarding the irregularities which reportedly took place during the arrest and trial of Messrs. El Amaoui and Laghnimi, the Committee requests the Government to indicate on the basis of which provisions Mr. El Amaoui's arrest was ordered, and to provide its observations concerning the allegations made by the complainants in this regard and also concerning the circumstances of Mr. Driss Laghnimi's arrest.

(d) Noting that the Government has not replied to the allegations concerning measures of intimidation taken

against the organizers of the 1992 May Day demonstrations, the Committee urges the Government to provide the required information without delay.

(e) Regarding the allegations concerning the surrounding and prohibition of access to the CDT's premises on 21 April 1992, the refusal by the authorities to issue to trade union leaders documents acknowledging that their organizations were legally established or renewing such documents, the refusal by state offices and enterprises to carry out judgements handed down in favour of workers, the failure to reinstate civil servants and the violent intervention of the police leading to one death during a demonstration by workers of the Bahia-Baladi enterprise in Rabat, the Committee requests the Government to communicate its observations on these allegations without delay.

B. Additional information sent by a complainant organization

584. In a communication dated 5 April 1993, the World Confederation of Labour (WCL) states that the interview granted by Mr. El Amaoui to the newspaper El País (11 March 1992) contained nothing which exceeded "the admissible limits of controversy".

585. The WCL considers that it is part of the role of trade unions and their leaders to criticize the way economic and social government policy is administered, especially when it is administered to the detriment of most of the population. According to this organization, quite apart from the fact that the concept is entirely subjective and therefore cannot have any legal significance, in his interview Mr. El Amaoui challenged a collective body, the Government, and not a specific person.

586. The WCL also quotes the Committee of Experts on the Application of Conventions and Recommendations, which stated that "the Government has paralyzed most collective bargaining procedures. [The Democratic Confederation of Labour (CDT) and the General Union of Moroccan Workers (UGTM)] refer to the Central Medical Advisory Council which is to be removed by section 364 of the draft Labour Code, the Central Prices and Wages Committee which has not met since 1961, the Central Collective Agreements Council which is no longer provided for in the draft Labour Code, the Conciliation and Arbitration Committees responsible for the settlement of collective disputes, and the Central Council of the Public Service which has not met since 1961." [See Report of the Committee of Experts of 1992, Report III (Part 4A), p. 276.]

C. Additional reply of the Government

587. In a communication dated 15 July 1993, the Government states that Messrs. Noubir El Amaoui and Driss Laghnimi, on the occasion of the national holiday on 9 July 1993, were granted a pardon, by virtue of which they were released before having completed their respective prison sentences.

588. In a letter dated 6 September 1993, the Government states that freedom of opinion and expression are part of the fundamental rights recognized by legislation and in practice for all citizens, irrespective of their political or trade union affiliation. In practical terms, this right is exercised within the limits of the rights of others. Any statement which is contrary to dignity and any contemptuous or insulting statement which does not contain any specific accusation are considered to derogate from these rights. The legislation in force lists the sanctions to be applied in the event of infringement of the rules governing freedom of expression.

589. According to the Government, the acts with which Mr. Noubir El Amaoui was charged are insult and libel under sections 46 and 48 of the Press Act, and the prosecution of this person took place in accordance with the provisions of section 71 of the same Act, which grants the Government the right to demand the institution of proceedings if it has been insulted and libelled. The proceedings against Mr. Noubir El Amaoui were instituted on the basis of a demand presented by the Prime Minister after discussion within a ministerial council, as the law grants the Prime Minister the right to represent the Government in legal proceedings.

590. The criminal investigation department carried out an investigation of the acts with which Mr. Noubir El Amaoui was charged, as part of the assignment entrusted to it by the Public Prosecutor's Office in Rabat, within whose territorial jurisdiction the legal proceedings fall. After examining the documents of the case, the Public Prosecutor's Office concerned concluded that the statements made by the person concerned to the Spanish newspaper contained all of the elements of the offences of insult and libel provided for in sections 46 and 48 of the Press Act. Moreover, according to the Government, while he was being interrogated by the criminal investigation department, the person concerned admitted his responsibility as well as the accusations against him.

591. The Government states that, since the press offences had not yet been subjected to flagrante delicto proceedings, Mr. El Amaoui had remained at liberty. He was sent a summons which met all of the requirements laid down in section 72 of the Press Act, such as the charge, legal description and applicable legislative provisions.

592. At his trial, Mr. Noubir El Amaoui enjoyed adequate guarantees to prepare his defence with the assistance of a substantial number of lawyers. Defence counsels' pleadings took up almost all of

the hearings, in which the lawyers were able to freely take up any issues they chose. The person concerned addressed the court himself at the end of the hearing and launched into a long speech in which he displayed political criticism and personal ideas in full freedom.

593. The trial itself took place in compliance with all of the requirements as to publicity laid down by the law. The lawyers and the public were authorized to attend it in full freedom, except for certain security arrangements intended to maintain order after a group surrounded the premises of the hearing, repeating slogans which cast aspersions on the dignity of the court and of justice, breaking down doors and preventing public servants from entering the courtroom, to the extent that the actions of this group began to jeopardize the safety of the person concerned himself.

594. Once the court had gathered evidence of Mr. Noubir El Amaoui's guilt of the charges against him, it ordered his arrest and imprisonment in accordance with section 400 of the Code of Penal Procedure. On 17 April 1992 it handed down a verdict sentencing him to two years' prison and a fine of 1,000 dirhams, which was upheld by the Appeal Court of Rabat.

595. The Government states further that, in response to a petition for pardon submitted in accordance with the legislation in force, Mr. Noubir El Amaoui was released under the royal pardon which was granted in this case.

596. As regards Mr. Driss Laghnimi, the Government states that the facts of the case date back to 5 May 1992, when workers affiliated to the General Union of Moroccan Workers and the Union of People's Trade Unions attempted to settle a dispute between them regarding the hiring of several workers by a company. A proposal to hire the same number of workers belonging to each of the two trade unions was approved by the workers affiliated to the Union of People's Trade Unions, who then made statements glorifying the national holy places, which displeased Mr. Laghnimi; the latter then uttered disparaging remarks about these places.

597. After he had been heard and the witnesses had testified, Mr. Laghnimi was brought before the Public Prosecutor of the Court of the First Instance of Sidi Slimane, which decided to prosecute him for making disparaging remarks about the holy places, under section 179 of the Criminal Code, and to bring him before the court under arrest, by virtue of Case No. 153/92 involving an offence, with flagrante delicto.

598. According to the Government, at the trial the defence counsel's pleadings were heard and the hearing was presided over by the President of the court in conformity with the law. The court turned down a request of defence counsel to defer judgement and, on 18 May 1992, handed down a verdict sentencing him under the charges brought against him. The verdict was upheld by the Appeal Court of Kénitra on 20 July 1992.

599. Regarding these two cases, the Government notes that the Committee on Freedom of Association has stated in connection with previous cases that the parties should refrain from libel when expressing trade union or political opinions and it affirms that it does not understand why the cases at issue should be exempted from this rule.

600. As regards the allegations concerning the issuance of documents acknowledging the establishment and renewal of trade union branches, the Government states that the allegations contained in the complaint concerning the teaching sector in the areas of Tan Tan and Polman are utterly unfounded. As regards the local branch of the National Teachers' Union in the town of Tan Tan, its founding documents were filed with the local authorities by its general secretary, who received an acknowledgement on 12 April 1992, contrary to what was stated in the above-mentioned complaint. According to the Government, the allegations concerning the Polman area are false, since the attempt to set up a section of the National Teachers' Union in the town of Maysour did not meet legal requirements, as can be seen from the following details:

- the persons who organized the meeting with the intention of setting up a local branch of the trade union do not all exercise the same occupation as required by the legislative provisions in force, as some of them work in the teaching sector while the others work in public works;

- the meeting organized for this purpose on 12 May 1991 had not been announced to the competent authority in accordance with the legislation in force;

- the premises where the meeting took place turned out to be the headquarters of the local executive of the Socialist Union of Popular Forces Party.

601. As regards the initiative to set up a trade union section in the town of Polman, it also failed to comply with legal requirements for the following reasons:

- the room which had been rented to serve as headquarters for the trade union is located inside a private residence in front of which several persons assembled on 10 November 1991, having been called together to set up a trade union section;

- the group which put forward the initiative included persons belonging to the teaching sector, public works, the water company and the forestry sector, not to mention a farm worker who had nothing to do with administration;

- the persons concerned had not announced the meeting in question to the competent bodies.

602. As regards the demonstrations on 1 May 1992, the Government refers to the information it had already sent.

603. Lastly, concerning the information on the observations made by the Committee on Freedom of Association regarding the allegations that means of intimidation has been used against the organizers of these demonstrations, the Government states that it will communciate this information as soon as it receives it from the competent bodies to which it has written to this effect.

D. The Committee's conclusions

604. First of all, the Committee notes the fact that Messrs. Noubir El Amaoui and Driss Laghnimi were granted a pardon on the occasion of the national holiday on 9 July 1993, by virtue of which they were released before having completed their respective prison sentences.

605. As regards the charges brought against these persons, the Committee notes that Mr. El Amaoui was sentenced for libel and slander under sections 46 and 48 of the Press Act for having uttered, according to the information supplied by the Government, statements insulting and libelling the Government in a Spanish newspaper. As regards Mr. Laghnimi, the Committee notes that he was sentenced, under section 179 of the Criminal Code, for uttering disparaging remarks about the holy places, since, again according to the Government, he had made these remarks about said places during a dispute between workers affiliated to the General Union of Moroccan Workers and the Union of People's Trade Unions concerning the hiring of several workers by a company.

606. Notwithstanding the pardon granted to these two persons, the Committee once again deplores the severity of the sentences handed down against them. The Committee recalls once again the fundamental principle that the right to express opinions through the press is an essential aspect of trade union rights. [See Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 172.] While it is true that when expressing their opinions, trade unions and their leaders should not exceed the admissible limits of controversy and should refrain from excessive language, as the Committee has stated before [see 254th Report, Case No. 1400, para. 198], the Committee considers that the freedom of expression which should be enjoyed by trade unions and their leaders should also be guaranteed when they wish to criticize the government's economic and social policy. The Committee requests the Government to supply information on the defamatory nature of the statements made by the General Secretary of the CDT, Mr. El Amaoui.

607. The Committee is of the view that it may be difficult to draw a clear distinction between what is political and what is,

properly speaking, trade union in character; these two notions overlap and it is inevitable, and sometimes usual, for statements uttered by the trade union movement to cover questions having political aspects as well as strictly economic and social questions. [See Digest, op. cit., para. 359.] The Committee draws the Government's attention to the resolution concerning trade union rights and their relation to civil liberties adopted by the International Labour Conference in 1970, defining as rights which are essential to the normal exercise of trade union rights, inter alia, freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. The Committee therefore urges the Government to take all necessary measures to guarantee respect of this principle.

608. As regards the irregularities which allegedly took place during the arrest and trials of Messrs. El Amaoui and Laghnimi, the Committee observes that the Government states that the arraignments and trials took place with respect for the guarantees of the right of defence and publicity. Faced with the contradiction between the statements made by the complainant organizations and the information supplied by the Government, the Committee can only recall the principle that it should be the policy of every government to ensure observance of human rights and especially of the right of all detained or accused persons to receive a fair trial at the earliest possible moment. [See Digest, op. cit., para. 108.]

609. Regarding the authorities' refusal to issue trade unionists with documents acknowledging the establishment and renewal of branches of trade unions, the Committee notes the Government's statement to the effect that the allegations concerning the teaching sector in the Tan Tan and Polman areas are utterly unfounded. According to the Government, a document acknowledging the establishment of the local branch of the National Teachers' Union in the town of Tan Tan was in fact sent to the General Secretary of this trade union; however, when sections of the same trade union were set up in the towns of Maysour and Polman, the prerequisites laid down by the law were not complied with: the founders did not all belong to the same occupation, the founding meetings were not announced to the competent authority and the premises where the meetings took place were not independently owned (the premises in question belong to a political party and to a private individual).

610. In these circumstances, the Committee reminds the Government that while the founders of a trade union must observe formalities concerning publicity or other similar formalities which may be prescribed by law, such requirements must not be equivalent in practice to previous authorization, or constitute such an obstacle that they amount in practice to outright prohibition. [See Digest, op. cit., para. 263.] The Committee therefore urges the Government to ensure that workers are able, without previous authorization, to freely establish organizations of their own choosing, in accordance with the principles of freedom of association and, in particular, that the formalities prescribed by law for the establishment of a trade

union are not applied in such a way as to delay or prevent the setting up of occupational organizations.

611. Concerning the allegations that measures of intimidation were taken against organizers of the demonstrations planned for 1 May 1992, the Committee notes that the Government will send information in this respect as soon as it receives it from the competent bodies. The Committee requests the Government to provide this information without delay.

612. Regarding the other allegations which are still pending in this case, in particular those concerning the surrounding of the CDT's premises and prohibition of access to them on 21 April 1992, the refusal by state offices and enterprises to carry out judgements handed down in favour of workers, the failure to reinstate civil servants and the violent intervention of the police leading to one death during a demonstration by workers at the Bahia-Baladi enterprise in Rabat, the Committee notes with regret that the Government has not sent a reply. The Committee therefore urges the Government to provide the observations requested without delay.

The Committee's recommendations

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

(a) The Committee notes that Mr. Noubir El Amaoui, General Secretary of the CDT, and Mr. Driss Laghnimi, regional secretary of the UGTM in Sidi Slimane, were granted a pardon on the occasion of the national holiday on 9 July 1993, by virtue of which they were released before having completed their respective prison sentences. Nevertheless, the Committee deplores the severity of the sentences handed down against Messrs. Noubir El Amaoui and Driss Laghnimi, and draws the Government's attention to the resolution adopted in 1970 by the International Labour Conference concerning trade union rights and their relation to civil liberties, defining as rights which are essential for the normal exercise of trade union rights, inter alia, freedom of opinion and expression, and in particular the right to hold opinions without interference and the right to seek, receive and impart information and ideas through any media and regardless of frontiers. The Committee urges the Government to take all the necessary measures to guarantee respect of this principle. The Committee requests the Government to supply information on the defamatory nature of the statements made by the General Secretary of the CDT.

(b) The Committee requests the Government to ensure the respect of the principle that it should be the policy of every government to