

144. The complainant refers also to a series of acts designed to destroy the union:

- the mass dismissal of trade union leaders and members and the Ministry of Labour not acting rapidly to consider their reinstatement;
- intimidation of union members by systematically changing their place and hours of work;
- police intervention on the pretext of protecting the property of the undertaking, in order to intimidate the workers;
- summoning of union leaders Jesús Soto and Raúl Sánchez to appear before the Lima police headquarters to answer complaints allegedly lodged by their employer.

B. The Government's reply

145. The Government states that on 27 July 1984 the Trade Union Registration Division issued Resolution No. 060-84-RES registering the Employees' Union of Esperanza del Peru S.A. - Clinica San Borja; the said union was notified accordingly on the same day. The Government argues that the complaint is, therefore, completely unfounded and the fact that the union has been registered is proof that freedom of association and ILO Convention No. 87 are fully operative in Peru.

146. Regarding the alleged intervention of the police, the Government states that complaints were lodged by the undertaking which has the right to request the collaboration of the police to protect its interests, in view of the special circumstances prevailing in the country at present. The Government states that this does not constitute an infringement of trade union rights.

147. With regard to the remaining allegations (mass dismissal of trade union leaders and members of the complainant organisation, systematic changes in the place and hours of work, etc.), the Government states that no complaints concerning these matters have been brought before the labour administration, as authorised by Supreme Decree No. 006-72-TR which lays down the procedure for complaints of infringements of laws or agreements or calling for a dismissed worker's reinstatement.

C. The Committee's conclusions

148. As regards the alleged delaying tactics engaged in by the undertaking, Esperanza del Peru S.A., with the approval of the Ministry of Labour in order to prevent the union's registration, the Committee observes that the Government does not refer explicitly to the allegation, but states that the union was registered on 27 July 1984 (more than three months after the request was submitted). In these circumstances, the Committee takes note of the information supplied by the Government but regrets that there was a delay in registering the union despite the fact that there were no apparent obstacles justifying the delay.

149. Regarding the alleged mass dismissal and changes in the place and hours of work of union members, the Committee notes that, according to the Government, no complaint has been lodged to this effect despite the fact that specific procedures exist for doing so under the legislation in force. In these circumstances, and considering that the complainant has supplied no further details, such as the name of the persons allegedly affected and the date on which the alleged events took place, the Committee considers that this aspect of the complaint does not call for further examination.

150. As regards the alleged intervention of the police (the dispatch of police to the undertaking and the summoning of two union leaders to Lima police headquarters), the Committee notes the Government's statement that the undertaking is entitled to request police collaboration to protect its interests, in view of the special circumstances presently prevailing in the country. The Committee regrets that neither the complainant nor the Government has provided any further details on the manner in which the alleged events took place and their relevance to the exercise of trade union rights. The Committee, accordingly, considers that it does not have sufficient information at its disposal to reach any conclusion on the subject.

The Committee's recommendations

151. In these circumstances, the Committee recommends the Governing Body to approve the present report and, in particular, the following conclusion:

The Committee notes that the Employees' Union of Esperanza del Peru S.A. was registered on 27 July 1984. Nevertheless, the Committee regrets that there was a delay in its registration (more than three months after the request was submitted) despite the fact that there were no apparent obstacles justifying the delay.

Case No. 1295

COMPLAINT PRESENTED BY THE MONSERRAT ALLIED WORKERS' UNION
AGAINST THE GOVERNMENT OF THE UNITED KINGDOM/MONSERRAT

152. The complaint of the Monserrat Allied Workers' Union (MAWU) is contained in a communication dated 18 July 1984; the complainant supplied additional information in a communication dated 17 August 1984. The Government supplied its observations in a letter dated 4 January 1985.

153. The United Kingdom has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and has declared them applicable without modifications to Montserrat.

A. The complainant's allegations

154. In its communication of 18 July 1984 the MAWU states that, on 25 June 1984, during a strike by water and electricity authority employees over pay increases to be included in a new collective agreement, the Governor declared a state of emergency and, on 29 June 1984, convened a special emergency session of the Legislative Council to pass strike-breaking legislation. The complainant provides a copy of the Bill, the Essential Services Ordinance, the pertinent sections of which read as follows:

Section 2.

- (1) Every person employed in an essential service who wilfully breaks or terminates his contract of service, knowing or having reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others, will be to deprive the public, wholly or to a great extent of that service, shall be guilty of an offence and on summary conviction thereof be liable to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment: provided that where any collective withdrawal of labour from an essential service is contemplated, whether in pursuance of a trade dispute or otherwise, and notice in writing of their intended participation in such withdrawal is given either individually by persons employed in that service or on their behalf by a registered trade union or registered trade union of which such persons are members,

any such person shall not be liable under this subsection unless he breaks or terminates his contract of service before the expiration of the period of twenty-eight days next following delivery of that notice, or otherwise than strictly in accordance with the valid terms of that notice. [...]

- (3) Every person who incites or instigates or in any way encourages, persuades or influences a person employed in an essential service to break or terminate his contract of service, ... shall if breach or termination of contract has taken place:
 - (a) without notice having been given as provided in the proviso to subsection (1) of this section; or
 - (b) such notice having been given, and remaining valid otherwise than on the expiration of that notice not being earlier than twenty-eight days after delivery thereof; be guilty of an offence and shall, on summary conviction thereof, be liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Under section 2(7) "essential services" are listed as including air traffic (including meteorology, telecommunications, security, fire and crash services connected with airports), electricity, fire, medical and health, telecommunications, water and ports. Under section 2(8) the Governor in Council may amend this list of essential services.

155. In addition, the complainant alleges that it was the Government's intention to cripple the general workers' unions by restricting through legislation the categories of workers which any single union could represent.

156. Lastly, the MAWU states that Government's proposals put to the legislature included: breaking the current strike by compelling the workers to return to work on pain of dismissal without compensation; striking workers were to be asked to sign a document saying they would not abide by their own work-to-rule vote on pain of dismissal without compensation; any person found damaging water mains should be shot on sight; workers were to be forced back to work under the supervision of the police and defence forces; the state of emergency would remain in force until electricity and water supplies were back to normal.

157. In its communication of 17 August 1984, the MAWU alleges that on 25 June 1984 the Executive Council invoked section 16 of the Water Authority Ordinance, 1972, to direct all employees of the

authority to return to their normal work by the next day. Section 16 reads as follows:

In the exercise of its powers and the discharge of its functions under this Ordinance, the authority shall conform with any general or special directions given to it by the Governor in Council.

It states that the Essential Services Bill had passed its first reading and may be finalised shortly against strong protest from all workers and the local Council of Churches.

158. In documentation attached to its letters the MAWU challenges the reasons given by the Government for introducing the Bill: it admits that there were water shortages, that some pipes - installed before 1920 - burst under the build-up of pressure in the water system and there were signs of vandalism. It denies, however, that there was a national crisis or violence which might justify such action. In the documentation it is even suggested that other persons having an intimate knowledge of the water system could have been responsible for the damage to water installations. The water authority and electricity authority finally negotiated agreements with their employees and on 29 June 1984 the MAWU ended the strikes; according to the documentation, workers continued to work to rule for some days while a final agreement was reached.

B. The Government's reply

159. In its communication of 4 January 1985 the Government states that the allegations are without foundation as its intention was to pass legislation to introduce safeguards to protect the community in the event of industrial disputes in essential services such as the electricity and water industries. It points out that the Essential Services Bill does not outlaw strike action and was not laid before the legislature until 18 July 1984 when the industrial action had ceased. It states that the Bill still awaits its second and third readings.

160. According to the Government, its proposal to look at the question of restricting the categories of workers represented by any single union was made during an emergency session of the legislature on 28 June 1984 and addressed the problem of one union using its position of representing workers in more than one utility in order to bring pressure to bear on the Government by initiating secondary action. The Government states that nothing has been done to pursue this proposal.

161. With regard to the other points raised by the MAWU the Government states that on 25 June 1984 the Governor declared a state of emergency due to the deterioration of the water system to certain areas, which among other things left one hospital without water and was causing the Chief Medical Officer concern. Another factor which bore on the Governor's declaration was that as quickly as repairs were carried out to the system by the water authority management and volunteers, the pipes were broken or disrupted again during the night.

162. According to the Government, the water workers were informed under the terms of the state of emergency that if they did not return to work on 26 June 1984 the Governor would recruit other labour to carry out essential work to restore water supplies. This was necessary in view of the rapidly increasing risk to public health. It states that at no time were the workers forced back to work and, in any event, the water workers returned to work of their own accord on 26 June 1984. As for the electricity workers, the union agreed to a return to work on 29 June 1984 but stated that the workers would work to rule. The Electricity Services Limited manager decided that in the circumstances a conditional return to work was unacceptable and in the event the workers returned to work and worked normally.

163. As regards the roles of the police and defence forces during the state of emergency and the length of the state of emergency, the Government states that the police force was responsible for the protection of the water and electricity supply systems throughout the emergency. In order to fulfil this responsibility armed officers patrolled the water supply system at night and also guarded the power station. Even though these officers were armed, their weapons were only to be used in self-defence. The volunteer territorial defence force was not mobilised during the state of emergency although they were on a three hour standby. However, nine civilian volunteers who helped repair water pipes for two days were also members of the defence force. Although these men were in civilian clothes and unarmed it might have been assumed that they were involved in their capacity as members of the defence force; this would have been a wrong assumption. The Government states that the Governor felt it necessary to continue the emergency for three days after the return to work in order to ensure that services were getting back to normal. The state of emergency was finally lifted on 3 July 1984.

164. In conclusion the Government considers that, since the allegations concern incidents that took place during a state of emergency and at no time during the dispute were the workers denied the right to strike or to be represented by the MAWU, there has been no breach of any ILO Conventions.

C. The Committee's conclusions

165. This case concerns the introduction of an Essential Services Bill during a strike by water and electricity workers in June 1984, as well as allegations that proposals were made to limit union membership and striking workers were compelled to return to work on pain of dismissal without compensation.

166. The Committee notes that the Government's proposal to discuss limiting secondary action by restricting union membership was not pursued and therefore considers that no purpose would be served in examining this aspect of the case.

167. The Committee would recall that recourse to strike action is a legitimate means available to workers and their organisations for the promotion and protection of their economic and social interests. However, as regards the Essential Services Bill referred to in the complaint, and which, the Committee notes, was introduced in the legislature on 18 July 1984, the Committee observes, first, that the Bill does not ban strikes but imposes a cooling-off period of 28 days. This in itself is not in conflict with the principles of freedom of association in so far as the procedure is not so cumbersome as to render the lawful strike impossible in practice [see General Survey on Freedom of Association and Collective Bargaining of the Committee of Experts on the Application of Conventions and Recommendations, ILC, 1983, Report III (Part 4B), para. 219].

168. As regards the nature of the services to which the Bill applies, the Committee would point out that it has, in the past, considered that strikes can be limited - or even prohibited - in essential services in the strict sense of the term, for example, air traffic control [see 211th Report, Case No. 1074 (USA), para. 365], medical and health [see 199th Report, Case No. 910 (Greece), para. 117] and water [see 234th Report, Case No. 1179 (Dominican Republic), para. 299] that is to say where the interruption of these services would endanger the life, personal safety or health of the whole or part of the population. Restrictions in such services should be offset by adequate, impartial and speedy conciliation and arbitration procedures in which the parties concerned can take part at every stage.

169. In the past, the Committee has expressed the opinion that services such as ports (118th Report, Case No. 589 (India), para. 90) and telecommunications (218th Report, Case No. 1131 (Upper Volta), para. 779) were not essential in the strict sense of the term and accordingly strike restrictions should not apply to them. Given that the Essential Services Bill in the present case lists these latter services as essential and empowers the Governor in Council to amend the list, the Committee would request the Government to consider the possibility of removing the authority of the Governor in Council to amend the list at his discretion and of removing from the Bill those

services that are not strictly essential, having regard to the above definition. The Committee refers this aspect of the case to the Committee of Experts on the Application of Conventions and Recommendations.

170. As regards the role of the police and defence forces during the industrial dispute, the Committee notes the Government's explanation that police officers only were used during the nine-day long emergency to protect water and electricity installations. In this connection, the Committee also notes that the complainant acknowledged that there had been signs of vandalism but challenged that this was attributable to the striking workers. In the past the Committee has recommended the dismissal of allegations concerning intervention by security forces when the facts show that such intervention was limited to the maintenance of public order and did not restrict the legitimate exercise of the right to strike [see 197th Report, Case No. 915 (Spain), para. 473]. In the present case the Committee notes that the information supplied by the complainants is insufficient to show that the role of the police in the present dispute exceeded that of maintaining order and protecting installations.

171. Lastly, and in general, regarding the declaration of a state of emergency during the strike, the Committee has stressed that special measures restricting the free exercise of trade union rights should be limited in time and scope to the immediate period of emergency [see 214th Report, Cases Nos. 997, 999 and 1029 (Turkey), para. 571]. In the present case, the Committee notes that the strike was called off by the water authority workers on 26 June 1984 in accordance with the special direction made under the Water Authority Ordinance and the electricity workers returned to normal work on 29 June 1984, the state of emergency being lifted on 3 July. In view of the fact that the emergency measures were limited to the duration of the dispute, and in view of the nature of the services to which the dispute related, the Committee considers that the allegations that trade union rights were infringed have not been substantiated.

The Committee's recommendations

172. In these circumstances, the Committee recommends the Governing Body to approve this report, and, in particular, the following conclusions:

- (a) The Committee considers that the allegations concerning a proposal to limit secondary strike action and the circumstances surrounding the declaration of a state of emergency during the June 1984 strike by water and electricity workers do not call for further examination.

- (b) The Committee recalls that recourse to strike action is a legitimate means available to workers and their organisations for the promotion and protection of their economic and social interests.
- (c) As regards the introduction of an Essential Services Bill, the Committee requests the Government to consider removing the authority of the Governor in Council to amend the list of essential services at his discretion and to amend the list of essential services contained therein so as to ensure that the strike restrictions apply only to those services which are essential in the strict sense of the term, that is those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.
- (d) The Committee refers the above aspect of the case to the Committee of Experts on the Application of Conventions and Recommendations.

CASES IN WHICH THE COMMITTEE REQUESTS TO BE KEPT
INFORMED OF DEVELOPMENTS

Case No. 1175

COMPLAINT PRESENTED BY THE FEDERATION OF OIL, GAS, STEEL
AND ELECTRICITY WORKERS AGAINST THE GOVERNMENT OF PAKISTAN

173. The Committee examined this case, in the absence of a reply from the Government, at its February 1984 meeting and submitted a report to the Governing Body [see 233rd Report, paras. 161 to 175, adopted by the Governing Body at its 225th Session, February-March 1984]. The Government supplied its observations on the complaint in a communication of 12 November 1984.

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

A. Previous examination of the case

175. The complaint in this case concerned the continuing application of the Pakistan Essential Services (Maintenance) Act, 1952 and the Rules issued thereunder in 1962. According to the

complainant, a Supreme Court interpretation (No. 85/79) of this Act deprived the workers covered by it of the right to appeal to a court or to any other independent and impartial authority in cases of individual grievances concerning acts of anti-union discrimination in respect of their employment. The complainant attached a list of names of alleged victims of anti-union discrimination with a brief history of the circumstances leading to each dismissal, demotion or transfer. The complainant argued that the Essential Services (Maintenance) Act was a piece of legislation which was specifically meant for application in times of national emergency and its application in normal conditions was unjustified in view of the protection afforded to public utilities in the Industrial Relations Ordinance of 1969.

176. The complainant further alleged that all trade union activities had been banned in the following organisations: the Pakistan Television Corporation, the Pakistan Broadcasting Corporation and the Pakistan International Airlines Corporation (PIA) as well as in hospitals and the teaching profession.

177. Lastly, according to the complainant, the existing labour legislation in Pakistan denied the employees of the Water and Power Development Authority (WAPDA), the Railways and the Telecommunication Organisation the right to collective bargaining.

178. In the absence of a reply from the Government, the Governing Body adopted the Committee's recommendations on the following aspects of the case:

- With regard to the allegations of anti-union discrimination, it urged the Government to ensure that all cases of dismissal contained in the complaint would be examined by appropriate review bodies and that reinstatement would be ordered in any cases involving dismissal resulting from the exercise of legitimate trade union activity; it requested the Government to keep it informed of any action taken in this respect.
- As regard the prohibition of trade union activity in certain important public enterprises, laid down in Martial Law Regulation No. 52 of 1981, it considered that such a prohibition constituted a serious violation of freedom of association; it expressed the firm hope that this Regulation would be repealed as soon as possible and requested the Government to transmit information on any measures taken to this effect.
- As regards the allegation that collective bargaining rights were denied to workers in certain other public corporations (water and power, railways, communications), it requested the Government to communicate information on any action taken to ensure that full negotiating rights were enjoyed by the workers in the corporations referred to, in accordance with the Right to

Organise and Collective Bargaining Convention, 1949 (No. 98) ratified by Pakistan.

- The Committee referred the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.

B. The Government's reply

179. In a communication dated 12 November 1984, the Government states that the Pakistan Essential Services (Maintenance) Act, 1952 is not declared applicable to any employment or class of employment unless there is irrefutable evidence that such employment or class of employment is essential for: (a) securing the defence or the security of Pakistan or any part thereof, or (b) the maintenance of such supplies or services as relate to any of the matters with respect to which the Federal Government has power to make laws and are essential to the life of the community.

180. The Government states that being fully aware of the contribution which workers have made and are making to the progress and prosperity of the nation, it would not take any measures which might curtail the freedom of employees and thereby become a party to labour unrest, unnecessary loss in production, as well as criticism at the national and international levels. However, when applying the provisions of the Essential Services (Maintenance) Act, the Government has the larger interests of the country in view and not those of a particular class or section of the population. According to the Government, it is incorrect to say that it resorts to the provisions of the Act just to suppress the liberties of workers and to curb the rights available to them as free citizens of the State which they are otherwise entitled to because of ratification by Pakistan of the ILO Freedom of Association Conventions.

181. Addressing the specific allegations in the complaint, the Government notes that in recent years workers employed in undertakings like PIA, WAPDA and the Telecommunications Organisation have acquired technical skills, know-how and professional calibre of a high order which enable them to obtain jobs at comparatively high wages and better benefits in other countries. According to the Government, if it does not check the movement of these workers, they would seek lucrative opportunities of employment in labour deficit countries, creating a wide gap between demand and supply in the national labour market which would adversely affect the functioning of the installations within the country. For example, the Government cites the situation in WAPDA which is responsible for generating and distributing electricity to the whole country: all power supplies are subject to continuous 24-hour uninterrupted operation by WAPDA men.

The Government states that the question arises as to whether the skill and ability of the workers in WAPDA should become a disqualification for these men to seek better paid jobs outside. The obvious answer would be a "no", but seen from the management as well as national viewpoint as elaborated above, no country and no employer would like to train its workers and then allow them to leave it and recommence training new staff.

182. As regards the alleged lack of appeal procedures in cases of individual grievances, the Government adds that under the Industrial Relations Ordinance, the National Industrial Relations Commission (NIRC) had been vested with the authority to hear the collective as well as individual grievances of the workers. However, recently the Supreme Court decided that the NIRC can no longer hear and decide individual grievances of employees covered by the Pakistan Essential Services (Maintenance) Act, 1952 and this has given rise to legal problems as regards the settlement of individual grievances. The Government states that it is seized of the issue and is actively attempting to find a remedy. It will inform the ILO of any steps taken in this regard.

183. Lastly, the Government refers to the influx of more than 3 million refugees which has given rise to an abnormal situation in the country affecting almost all its institutions whether they be social, political or economic. In these circumstances, the Government has to have recourse to measures which ensure both law and order and the maintenance of services.

C. The Committee's conclusions

184. The Committee takes note of the Government's explanations according to which the continuing application of the Essential Services (Maintenance) Act of 1952 to certain sectors of the economy is necessary because of their essential character, the risk of losing highly trained workers to overseas markets and the abnormal situation created by the influx of refugees. The Committee also notes that the Government is attempting to find a solution to the legal problem as regards settlement of individual grievances under the Act given the recent Supreme Court decision whereby the Industrial Relations Commission has jurisdiction only to hear collective disputes.

185. While the Committee appreciates the problems referred to by the Government, it would first point out that the criterion used both by it and by the Committee of Experts on the Application of Conventions and Recommendations in determining whether any service is essential in the strict sense of the term is whether the service in question is one whose interruption would endanger the life, personal

safety or health of the whole or part of the population [see General Survey on Freedom of Association and Collective Bargaining, ILC, 69th Session, 1983, Report III (Part 4(B)), para. 214]. Under section 5 of the Essential Services (Maintenance) Act and section 3 of the 1962 Rules issued thereunder, workers engaged in any employment to which the Act applies are prohibited from refusing to work and have their wages and other conditions of work regulated by the Chairman of the NIRC. The Government acknowledges that the services referred to by the complainant are covered by the Act, which has effect notwithstanding the Industrial Relations Ordinance No. XXIII of 1969 (section 7(A) of the Essential Services Act). In addition, it should be noted that under section 33 of the Industrial Relations Ordinance, 1969, the following services have been declared public utility services in which no strikes may take place: (1) the generation, production, manufacture or supply of electricity, gas, oil or water to the public; (2) any system of public conservancy or sanitation; (3) hospitals and ambulance service; (4) fire-fighting service; (5) any postal, telegraph and telephone service; (6) railways and airways; (7) ports; and (8) watch and ward staff and security services maintained in any establishment. Moreover, Martial Law Regulation No. 52 of 1981 places a total ban on trade union activity in the Pakistan International Airlines Corporation (section 3) and has effect notwithstanding anything contained in the Essential Services (Maintenance) Act and the Industrial Relations Ordinance (section 1).

186. As regards the restriction placed on employees of the Pakistan International Airlines Corporation, the Committee cannot but repeat the conclusions it reached in its previous examination of this case, namely that such a prohibition constitutes a serious violation of freedom of association. It therefore again expresses the firm hope that Regulation No. 52 will be repealed as soon as possible.

187. As regards the strike ban imposed by section 33 of the Industrial Relations Ordinance, the Committee would endorse the 1983 observation made by the Committee of Experts on the Application of Conventions and Recommendations in the context of Convention No. 87 to the effect that such a restriction should be limited to essential services in the strict sense of the term as defined above. Although the Committee has found in the past [see, respectively, 199th Report, Case No. 910 (Greece), para. 117 and 234th Report, Case No. 1179 (Dominican Republic), para. 299] that the hospital sector and services for the supply of water are essential under this criterion, it has, on the other hand, considered that the petrol and oil industry, ports and transport services are not essential in the strict sense of the term [see General Survey, *idem*, para. 214.] The Committee accordingly again requests the Government to take appropriate steps to ensure that full trade union rights, including the right to negotiate collectively their conditions of employment, are restored to the workers in the industries referred to in the complaint.

188. As for the allegation that the Supreme Court decision No. 85/79 of 1 December 1981 deprives workers in sectors designated under the Essential Services (Maintenance) Act of a forum for their individual grievances in respect of anti-union discrimination, the Committee would point out that section 7 of the Act provides for redress through the normal courts. The Supreme Court drew attention to this in its judgement (pages 11 and 12):

... if the respondents [the NIRC and a dismissed data processing manager of the Karachi Electricity Supply Corporation Limited] felt aggrieved either by their termination of service or dismissal, they should have taken steps to institute the proceedings as provided by section 7 [of the Act]...

In these circumstances and given that the Government is attempting to resolve the legal problems associated with the Supreme Court's decision, the Committee would repeat its appeal to the Government as regards the numerous alleged cases of anti-union discrimination cited by the complainant, namely that it ensure that all cases of dismissal, demotion or transfer are examined by the National Industrial Relations Commission or the courts and that reinstatement is ordered in any cases involving dismissal resulting from the exercise of legitimate trade union activities. It requests the Government to keep it informed of steps taken in this regard.

189. The Committee would again refer the legislative aspects of this Case to the Committee of Experts on the Application of Conventions and Recommendations.

The Committee's recommendations

190. In these circumstances, the Committee recommends the Governing Body to approve this report and, in particular, the following conclusions:

- (a) The Committee considers that the ban on trade union activity in the Pakistan International Airlines Corporation contained in Martial Law Regulation No. 52 of 1981 constitutes a serious violation of freedom of association and again expresses the firm hope that it will be repealed as soon as possible.
- (b) As regards the strike ban imposed by section 33 of the Industrial Relations Ordinance, 1969 on certain public utility services, the Committee recalls that such a restriction should be limited to essential services in the strict sense of the term; it again requests the Government to take appropriate steps to ensure that full trade union rights, including the right to negotiate collectively and the right to strike are restored to the workers

in the industries which are not essential under the criterion set by the Committee and the Committee of Experts on the Application of Conventions and Recommendations.

- (c) The Committee notes that procedures exist under the Essential Services (Maintenance) Act for redress of individual grievances concerning anti-union discrimination and would repeat its appeal to the Government to ensure that all cases of dismissal, demotion or transfer cited by the complainant are examined by the National Industrial Relations Commission or the courts and that reinstatement is ordered in any cases involving dismissal resulting from the exercise of legitimate trade union activities; it requests the Government to keep it informed of steps taken in this regard.
- (d) The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.

Case No. 1212

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF
FREE TRADE UNIONS, THE WORLD FEDERATION OF TRADE UNIONS,
THE WORLD CONFEDERATION OF LABOUR AND VARIOUS OTHER
TRADE UNION ORGANISATIONS AGAINST THE
GOVERNMENT OF CHILE

191. The Committee examined this case at its meetings in November 1983 and February, May and November 1984 and submitted interim conclusions to the Governing Body [See 230th Report of the Committee, paras. 619 to 659, 233rd Report, paras. 520 to 549, and 234th Report, paras. 555 to 570, approved by the Governing Body at its 224th, 225th and 226th Sessions in November 1983, February-March and May-June 1984, respectively; see also 236th Report of the Committee, para. 8.].

192. Following the examination of the case by the Committee in May 1984, new allegations were received from the World Confederation of Labour (dated 10 September 1984) and the National Trade Union Co-ordinating Body with other Chilean organisations (October 1984). The Government sent its comments on the questions still pending in communications of 7 and 26 November 1984 and 4 January 1985.

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

A. Previous examination of the case

194. At its meetings in May and November 1984, when examining the questions which remained pending, the Committee urged the Government to carry out an investigation into the alleged torture of María Rozas, Sergio Troncoso (both trade union leaders) and José Anselmo Navarrete (trade unionist) and requested the Government to keep it informed of the outcome. The Committee also requested the Government to keep it informed of developments with regard to the legal proceedings for the disqualification of union leaders from holding office and the proceedings to revoke the dismissal of union leaders in the undertaking CODELCO-Chile.

B. New allegations

195. In its communication dated 10 September 1984, the World Confederation of Labour (WCL) sent a press communiqué signed by Mr. Rodolfo Seguel (President of the Confederation of Copper Workers) regarding the provocations and threats to which he is said to have been subjected. The events took place when he was in a restaurant and were made by a group of young persons who were apparently encouraged and applauded by the Commander of the Sixth Region and other local authorities who were also present in the restaurant.

196. In its communication of October 1984 the National Trade Union Co-ordinating Body with other Chilean trade union organisations allege that the trade unionists Juan Gasca, Marcelino Carrasco, José Barahona, Pedro Rodríguez and Juan Soto, workers of the undertaking CODELCO-Chile (El Teniente division), whom the undertaking arbitrarily dismissed in June 1983 as a reprisal for their participation in the work stoppage called by the Confederation of Copper Workers on 24 June 1983, have been on hunger strike since 27 September 1984 in order to obtain reinstatement in their jobs. These five trade unionists had gone on another hunger strike in April 1984, which lasted 26 days and which concluded with an agreement to reinstate them in the undertaking; the latter, however, did not keep its side of the bargain.

C. The Government's reply

197. As regards the proceedings for the disqualification of union leaders from holding office and the proceedings to revoke the dismissal of trade union leaders of the undertaking CODELCO-Chile, the Government states that the disqualification proceedings initiated by

the undertaking against Messrs. Rodolfo Seguel, Manuel Rodríguez, Armando Garrido, Eugenio López, Roberto Carvajal, Sergio Barriga, Nelson Rivera, Sabino Pérez, José Escobar and Raúl Montecinos ended with rejections of the undertaking's case by the court. The Government adds that the proceedings for the disqualification of Messrs. Ramiro Vargas, Nicanor Araya, Carlos Ogalde and Freddy Hinojosa from holding trade union office are still pending, as are the proceedings to revoke the dismissal of Rodolfo Seguel and 23 other trade union leaders.

198. As regards the allegations of torture, the Government sends joint observations in respect of Cases Nos. 1183, 1205, 1191 and 1212, stating in particular that it will communicate the results of the proceedings which are still pending [See para. 12 of the introduction, where the Committee examines these allegations].

199. As regards the allegation presented by the World Confederation of Labour, the Government states that this was a mere verbal exchange between private individuals which took place in a restaurant, between Mr. Rodolfo Seguel and another person, a customer, while they were dining at 11 o'clock at night. When Mr. Seguel entered the premises, which were crowded, he was jeered and whistled at by the customers and became involved in a heated argument with one of them who is said to have provoked him. Mr. Seguel then severely took to task the Commander of the Sixth Region because he had not intervened to defend him and had threatened him. The Government remarks that various persons who witnessed the events in the restaurant have stated that the incident was a minor one and did not go beyond a heated argument between private individuals in a restaurant. If there had been a threat against Mr. Seguel's life, he could have brought a case before the penal courts for this offence. The Government states that it has no knowledge that this has been done.

200. As regards the allegation respecting the hunger strike of five former workers of the El Teniente division of the undertaking CODELCO-Chile in order to obtain their reinstatement in the undertaking, the Government states that on 17 June 1983 the El Teniente division of CODELCO legally terminated the contracts of employment of Messrs. Juan Gasca Jelves, José Barahona, Pedro Rodríguez and Juan Soto Yáñez, in conformity with the provisions of clauses 3 and 5 of section 14 and clause 4 of section 15 of Legislative Decree No. 2200 of 1978, i.e. for failure to report for work without a valid reason, serious failure to discharge the obligations implicit in the contract and active participation in the unlawful stoppage of work which occurred in the El Teniente division in June 1983. As regards Mr. Marcelino Carrasco, the division terminated his contract on the basis of clause 4 of section 15 of Legislative Decree No. 2200, namely for having directed or participated actively in the work stoppage that occurred on the date mentioned. The Government adds that the workers just mentioned were notified in due time of the decision taken and that none of them

applied to the courts within the time limit and in conformity with the procedure laid down by Legislative Decree No. 2200. Consequently, in invoking and having recourse to the grounds mentioned in the Legislative Decree, the El Teniente division of CODELCO was acting in strict compliance with the legal standards regulating the termination of a contract of employment, and thus did not proceed arbitrarily but in strict observance of the legal provisions in force. Finally, the Government announces that, thanks to the intervention of the Director of the ILO Office in Chile, the former workers ended their hunger strike on 15 November 1984.

D. The Committee's conclusions

201. As regards the legal proceedings initiated against union leaders to disqualify them from holding office and the proceedings to revoke the dismissal of trade union leaders from the undertaking CODELCO-Chile, the Committee notes that the disqualification proceedings against ten trade union leaders ended with a rejection by the court of the undertaking's case and that the disqualification proceedings against the trade union leaders Ramiro Vargas, Nicanor Araya, Carlos Ogalde and Freddy Hinojosa are still pending. The Committee also notes that the proceedings to revoke the dismissal of 24 union leaders are still pending. The Committee requests the Government to keep it informed of the outcome of all these pending legal proceedings.

202. As regards the allegation relating to the threats and provocations proffered to the trade union leader Rodolfo Seguel in a restaurant, the Committee observes that the versions of the facts supplied by the World Confederation of Labour (WCL) and the Government are contradictory. In these circumstances, given that the alleged facts did not concern trade union activity, the Committee, while noting that no legal action was initiated in this regard, considers that it is inappropriate to pursue its examination of this aspect of the case.

203. Lastly, as regards the allegation relating to the hunger strike of five trade unionists who were dismissed in June 1983 in support of their demand for reinstatement in the undertaking CODELCO-Chile, the Committee notes that, after more than a month and a half of hunger strike, these trade unionists ended their fast on 15 November 1984. In this regard the Committee considers that any measure that might be taken to reinstate these five trade unionists in the undertaking CODELCO-Chile could only contribute positively to the harmonious development of labour relations, all the more so since, according to the complainant's allegations (which the Government has not refuted), the undertaking in question failed to comply with an agreement concluded as the result of an earlier hunger strike, which included the reinstatement of these trade unionists.

The Committee's recommendations

204. In these circumstances the Committee requests the Governing Body to approve the present report and, in particular, the following conclusions:

- (a) As regards the legal proceedings initiated against trade union leaders to disqualify them from holding office, the Committee notes that the court rejected the case of the undertaking CODELCO-Chile in the cases of ten trade union leaders and that disqualification proceedings are still pending against four. The Committee also notes that the proceedings to revoke the dismissal of 24 trade union leaders are still pending. The Committee requests the Government to keep it informed of the outcome of all the pending legal proceedings.
- (b) As regards the allegation relating to the hunger strike of five trade unionists who were dismissed in June 1983 in support of their demand for reinstatement in CODELCO-Chile, the Committee notes that, after more than a month and a half of hunger strike, these trade unionists ended their fast on 15 November 1984. In this regard the Committee considers that any measure that might be taken to reinstate these five trade unionists in the undertaking CODELCO-Chile could only contribute positively to the harmonious development of labour relations, all the more so since, according to the complainant's allegation (which the Government has not refuted), the undertaking in question failed to comply with an agreement concluded as the result of an earlier hunger strike, which included the reinstatement of these trade unionists. The Committee requests the Government to take measures to reinstate these unionists, and to inform it of the action taken.

CASES IN WHICH THE COMMITTEE HAS REACHED INTERIM CONCLUSIONS

Case No. 1054

COMPLAINTS PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE
TRADE UNIONS, THE WORLD CONFEDERATION OF LABOUR, THE WORLD
FEDERATION OF TRADE UNIONS AND OTHER TRADE UNION ORGANISATIONS
AGAINST THE GOVERNMENT OF MOROCCO

205. The Committee has examined this case on several occasions, the most recent being at its February 1984 meeting, when it presented an interim report to the Governing Body. [See 233rd Report, paras.

318 to 337, approved by the Governing Body at its 225th Session (February-March 1984).]

206. Since that time, the Government has submitted its observations in a communication received in the ILO on 18 January 1985.

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

A. Previous examination of the case

208. The complaints related to the death and injuries suffered by several hundred persons during demonstrations surrounding the 24-hour general strike called by the Democratic Confederation of Labour (CDT) on 20 June 1981; the arrest of trade unionists and in particular of national trade union leaders belonging to the CDT; the closure of the CDT premises; and dismissals in various sectors after the strike.

209. At its February-March 1984 Session, the Governing Body approved the following conclusions drawn up by the Committee:

- The Committee noted that all the trade union leaders referred to in the complaints had been released and that the country was preparing for legislative elections in early 1984 with, according to the Government, the full participation of trade unionists; the Committee requested the Government to confirm whether all the trade unionists who had been released had been able to resume their trade union activities.
- The Committee once again noted with profound regret that the Government had supplied no further information on the alleged death of numerous persons during the demonstrations that had taken place on the occasion of the 20 June 1981 general strike. The Committee again urged the Government to state whether a judicial inquiry had been held into the circumstances of these deaths and, if so, to inform it of the outcome of this inquiry.
- As regards the allegations that two trade union headquarters remained closed under the 1981 decrees, the Committee recalled that the right to protection of trade union property was one of those civil liberties which are essential for the normal exercise of trade union rights; it requested the Government to take the necessary measures for the reopening of these premises and to keep it informed of developments in this regard.

- As regards the trade unionists who had participated in the 1981 strike, and who were still refused reinstatement in their jobs, the Committee recalled that when trade unionists and trade union leaders are dismissed for striking there are grounds for concluding that they have been penalised for their legitimate exercise of trade union activities and that they are subject to anti-union discrimination contrary to the principles of freedom of association; the Committee requested the Government to inform it of any measures that might be taken towards their reinstatement.

B. The Government's reply

210. In its reply the Government states that the trade unionists who have been released are carrying on their trade union activities without restriction. It adds that the royal pardon decided with regard to the trade unionists enabled them to exercise their economic and political rights during the communal, municipal and trade union elections that were held in June 1983. Moreover, the General Secretary of the Democratic Confederation of Labour had the opportunity to take part in the work of the 70th Session of the International Labour Conference, and on 14 September 1984 all trade union groups were able to take part in the legislative elections in which all political and social tendencies are represented.

211. As regards the circumstances of the deaths which occurred during the demonstrations organised on the occasion of the general strike called by the CDT on 20 June 1981, the Government is of the opinion that the unfortunate consequences of these events have been adequately commented on at length in the replies previously sent to the Committee. It adds that there is no need to recall the tragic outcome of these demonstrations, since the situation has now become fully normal.

212. As regards the other conclusions of the Committee, the Government states that it has noted them and that measures have been taken to enable trade unions to exercise their trade union rights fully and in complete independence. It points out that the trade unionists who had participated in the demonstrations of 20 June 1981 and who were legally dismissed or suspended have now been reinstated in their jobs and that certain of them are at present sitting in Parliament following the most recent legislative elections.

C. The Committee's conclusions

213. The Committee notes the observations made by the Government in its latest reply. In particular, it notes that the trade unionists released following a royal pardon have been able to resume their trade union activities, and that those who were dismissed following the demonstrations of June 1981 have been reinstated in their jobs.

214. The Committee must, however, observe with regret that, despite its repeated requests, the Government has not indicated whether a judicial inquiry was made into the many deaths of workers that took place on the occasion of the general strike called by the CDT in June 1981. In these circumstances the Committee can only recall that it considers that events of such gravity should have led the authorities to take effective measures to elucidate the facts and determine responsibilities. It, accordingly, again requests the Government to state whether an inquiry has been carried out and, if so, to give information on the outcome.

215. The Committee also notes that the Government has confined itself to stating in general terms that measures have been taken to enable trade unions to exercise their trade union rights freely and in full independence, without stating specifically whether the two trade union offices closed under decrees adopted in 1981, have been reopened. The Committee must, therefore, recall the importance it attaches to the protection of trade union property. It expresses the hope that the two trade unions affected by this measure have now fully recovered the use of their premises, and requests the Government to supply information in this regard.

The Committee's recommendations

216. In these circumstances the Committee recommends the Governing Body to approve the present interim report and, in particular, the following conclusions:

- (a) The Committee notes that the released trade unionists have been able to resume their trade union activities and that those who were dismissed have been reinstated in their jobs.
- (b) The Committee observes with regret that the Government has not indicated whether a judicial inquiry had been made into the many deaths that occurred during the June 1981 demonstrations. It considers that events of such gravity should have led the authorities to take effective measures to elucidate the facts and determine responsibilities. It again requests the Government to

indicate whether an inquiry has been carried out and, if so, to communicate the results thereof.

- (c) The Committee recalls the importance it attaches to the protection of trade union property. It expresses the hope that the two trade unions affected by the closure of their headquarters have now fully recovered the use of their premises, and requests the Government to supply information in this regard.

Case No. 1169

COMPLAINTS PRESENTED BY THE DISPUTES SECRETARY OF THE TRADE UNION OF DOCKERS, EMPLOYEES AND OFFICE STAFF OF CORINTO DOCKS, THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS AND THE WORLD CONFEDERATION OF LABOUR AGAINST THE GOVERNMENT OF NICARAGUA

217. The Committee has examined this case on three occasions [see 222nd Report, paras. 317 to 329, 233rd Report, paras. 214 to 317, and 234th Report, paras. 432 to 444, approved by the Governing Body at its 222nd, 225th and 226th Sessions in March 1983, February-March and May-June 1984 respectively]; on the last occasion it submitted an interim report to the Governing Body. The Government has sent certain information in a communication received in the Office in January 1985.

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

A. Previous examination of the case

219. When the Committee examined the case at its May 1984 meeting it made the following recommendations on the allegations still pending [see 234th Report, paras. 443 and 444]:

The Committee again requests the Government to send its observations on the information given by the Central of Nicaraguan Workers (CTN) to the Director-General's representative on seven trade unionists (Mónico Fuentes, Nicolás González, Santos Ponce Santacruz, Victoriano Ramos, Agustín Canales, Saturnino López Centeno and Santos Larios Cornejo) who, contrary to what the Government maintains, are in prison [see 233rd Report, para. 287]. The Committee also requests the Government to send its observations on the other allegations of arrest to

which it has not replied, involving the following 18 trade union leaders or members: Crescencio Carranza, Guillermo Salmerón Jiménez, Fidel López Martínez, Rito Rivas Amador, José Angel Altamirano, Mercedes Hernández, Reynaldo Blandón, Iván Blandón, Víctor Ríos, Erik Luna, José Angel Peñalosa, Napoleón Aragón, Eleázar Marengo, Juan Ramón Duarte and his brother, Maximino Flores Obando, Anastasio Jiménez Maldonado and Gabriel Jiménez Maldonado.

The Committee again requests the Government to send its observations on the allegation that the Ministry of Labour has been recommending trade union organisations to join the Sandinista Central of Workers (CST) and that copies of by-laws of trade union organisations, on paper bearing the Ministry of Labour letterhead, have been deposited at the headquarters of the CST so that it can register the recently constituted organisations among its members.

The Committee observes that the Government has not replied to the allegation that the leader of the Trade Union of Dockers, Employees and Office Staff of Corinto Docks (SEEOMC), Mr. Alejandro Arnuero, who was to have taken part in a congress of the International Transport Workers' Federation in Brazil, had his passport withdrawn without any valid reason. The Committee requests the Government to send its observations on the matter.

The Committee again requests the Government to send the text of the final decision handed down in the matter of the alleged embezzlement of SEEOMC funds.

The Committee again requests the Government to send its observations on the allegations concerning the searching of the headquarters of the Federation of Workers of Chinandega (FETRACHI) and the use of aggression against its leaders.

The Committee observes that the Government has not replied to the allegations that rural workers of Wasaca affiliated to the CTN have been interrogated and threatened with imprisonment and that Eugenio Membreño and other members of the CTN Executive Committee have been threatened and intimidated in their homes. The Committee requests the Government to send its observations on the matter.

B. The Government's reply

220. The Government states that the Ministry of Labour is the prime guarantor of freedom of association in Nicaragua, which is enshrined in the Fundamental Statute of Rights and Guarantees of Nicaraguan citizens. This being so, it is logical that a policy of impartiality should be maintained towards the activities of trade unions and the various federations or confederations of workers existing in the country. Copies of by-laws or statutes have never been printed on paper bearing the Ministry of Labour letterhead for purposes of discrimination or selective registration. The workers' federations prepare the individual provisions best suited to their own interests within the spirit of the relevant legislation. If the allegation relating to the by-laws had any real foundation, it would be expected that the complainant party would have sent copies of the paper bearing the letterheads as evidence; if it did not do so it was because this allegation is genuinely unfounded and aims at diminishing the prestige of the Nicaraguan Government.

221. The Government also states that it will transmit the results of the embezzlement proceedings against SEEOMC as soon as the judgement is handed down; the passport of Mr. Alejandro Arnuero was not withdrawn, as is shown by the fact that he is at present living in Costa Rica.

222. The Government adds that on 23 September 1982, the State Security Service of the Second Region arrested Messrs. Javier Altamirano and Rosendo Solórzano, both of whom were engaged in acts against public order. The arrest was made at the headquarters of FETRACHI, where the said individuals had managed to conceal themselves after committing the offences mentioned. The Government stresses that their status as trade union leaders does not place them above the law or confer upon them immunity from penal sanctions; nor can the headquarters of a trade union organisation become a place of asylum from pursuit by the law. According to the Government, both these individuals were released after being held for a few days.

223. The Government points out that Messrs. Agustín Canales, Mónico Fuentes, Nicolás González, Santos Ponce, Victoriano Ramos, Saturnino López and Santos Larios Cornejo are neither trade unionists nor are they imprisoned. The first does not appear in the prison records, the second was released in February 1983 and the others in December 1983.

224. As regards the allegation relating to the imprisonment of the remaining 18 trade unionists, the Government states that it needs additional information in order to be able to reply (workplace and present whereabouts, office held and union to which they belong, place and date of the arrest and the grounds for it). In general, the Government affirms that the persons referred to by the complainants

are not trade union leaders, nor are they registered as such with the Ministry of Labour. The Government expresses its concern at the fact that allegedly "persecuted trade union leaders" are often individuals whose links with counter-revolutionary movements and political activities in this connection (in some cases taking the form of armed attacks and crimes against the civilian population) have been fully demonstrated. The Government expresses its concern at the fact that the forces which are leaving no stone unturned to destroy freedom and the recent conquests of the people are attempting to use the authority and prestige of the ILO to slander and denigrate the duly constituted revolutionary authorities.

225. The Government also states that the policy of the armed forces is not to arouse the enmity of peaceful peasants such as those in the Wasaca area (where counter-revolutionary forces are operating). What is happening is that, when a member of the counter-revolutionary forces is captured, the CTN at once alleges that he is a member or leader of its organisation and that he was captured solely because he belonged to that organisation. The local peasants are aware of the atrocious crimes committed by these forces, which are trying to take cover behind the shield of trade unionism. Nor is it correct, continues the Government, that Eugenio Membreno or any other members of the CTN Executive Committee are being threatened or intimidated. In this connection the Government reiterates its concern, expressed earlier, at the true nature of the criminal acts perpetrated by so-called trade union leaders, allegedly persecuted by the Government.

C. The Committee's conclusions

226. The Committee notes that the Government denies that copies of by-laws were printed on paper bearing the Ministry of Labour letterhead and deposited at the headquarters of the Sandinista Central of Workers for the purpose of facilitating the registration of the recently constituted organisations among the Central's members. In support of this statement the Government adduces the fact that the complainants have not sent copies of the paper allegedly bearing the letterhead. The Committee notes that the Government also denies that the passport of the trade union leader, Alejandro Arnuero, was withdrawn and points out that he is at present living in Costa Rica. The Government also denies that Eugenio Membreno or other members of the CTN executive committee are being threatened or intimidated. The Committee also notes that the Government will transmit the results of the embezzlement proceedings against the trade union organisation SEEOMC as soon as the judgement is handed down.

227. As regards the allegations relating to the search of the headquarters of FETRACHI and the alleged attacks on the leaders of this organisation, the Committee notes that, according to the Government's statements, two trade union leaders hid in the headquarters of FETRACHI after engaging in acts against public order (which the Government describes as offences), were arrested there by the state security forces and released a few days afterwards. The Committee notes that the Government has not indicated specifically what the acts against public order alleged to have been engaged in by these leaders consisted of or whether the state security forces had a judicial warrant to enter the premises. In these circumstances the Committee wishes to recall generally the principle that the right of inviolability of union premises also necessarily implies that the public authorities should not enter such premises without having obtained a judicial warrant to do so. [See, for example, 230th Report, Case No. 1200 (Chile), para. 610.]

228. As regards the allegations that rural workers of Wasaca affiliated to the CTN have been interrogated and threatened with imprisonment, the Committee notes that, according to the Government, when a member of the counter-revolutionary forces is captured, the CTN at once alleges that he is a member or a leader of its organisation. Concerning this allegation, the Committee wishes to point out that the complainants did not give the names of the persons who were allegedly interrogated and threatened, nor the period during which these events are alleged to have occurred, and accordingly considers that this aspect of the case calls for no further examination.

229. As regards the alleged imprisonment of trade unionists, the Committee notes that, according to the Government, Messrs. Agustín Canales, Mónico Fuentes, Nicolás González, Santos Ponce, Victoriano Ramos, Saturnino López and Santos Larios Cornejo are neither trade unionists nor in prison; the first does not appear on the prison records, the second was released in February 1983 and the others in December 1983. Since the Government has not indicated the concrete facts warranting the arrest of the six persons whose subsequent release was confirmed, the Committee wishes to draw the Government's attention to the principle that measures designed to deprive trade union leaders and members of their freedom constitute a serious risk of interference in union activities and, when such measures are taken on trade union grounds, they constitute an infringement of the principles of freedom of association. [See 233rd Report, Case No. 1169 (Nicaragua), para. 292.] The Committee requests the Government to indicate the concrete acts which gave rise to the arrest of these persons.

230. Lastly, in connection with the imprisonment of 18 trade union leaders or members (whose names are listed in Annex II), the Committee notes that the Government states that it needs additional information in order to be able to reply (workplace and present whereabouts, office held and union to which they belong, place and

date of the arrest and the grounds for it). The Committee requests the complainants to provide as many details as they can obtain about these persons in the sense indicated by the Government. The Committee nevertheless wishes to point out to the Government that the complainants had already provided a number of elements of information regarding the arrests concerned, in particular their date and place [see 233rd Report, paras. 255 and 256], for which reason the Committee considers that the Government should be in a position to reply to these allegations at an early date.

The Committee's recommendations

231. In these circumstances the Committee recommends the Governing Body to approve the present interim report and, in particular, the following conclusions:

- (a) Regarding the search of the headquarters of FETRACHI, the Committee wishes to recall generally the principle that the right of inviolability of union premises also necessarily implies that the public authorities should not enter such premises without having obtained a judicial warrant to do so.
- (b) Bearing in mind that the Government has not indicated the precise facts warranting the arrest of six persons (mentioned in Annex I) whose subsequent release it confirms, the Committee wishes to draw the attention of the Government to the principle that measures designed to deprive trade union leaders and members of their freedom constitute a serious risk of interference in union activities and that, when such measures are taken on trade union grounds, they constitute an infringement of the principles of freedom of association. The Committee requests the Government to indicate the concrete acts which gave rise to the arrest of these six persons.
- (c) Regarding the imprisonment of 18 trade union leaders and members (mentioned in Annex II), the Committee notes that the Government states that it needs additional information in order to be able to reply (workplace and present whereabouts, office held and union to which they belong, place and date of the arrest and grounds for it). The Committee requests the complainants to provide as many details about these persons as they can obtain in the sense indicated by the Government. The Committee nevertheless wishes to point out to the Government that the complainants have already provided a number of elements of information regarding the arrests concerned, in particular their date and place [see 233rd Report, paras. 255 and 256], for which reason the Committee considers that the Government should be in a position to reply to these allegations at an early date.

- (d) The Committee notes that the Government will transmit the results of the embezzlement proceedings against the trade union organisation SEEOMC as soon as the judgement is handed down.

Annex I

Released persons concerning whom the Committee requests the Government for information on the concrete acts leading to their arrest

Mónico Fuentes
Nicolás González
Santos Ponce Santacruz
Victoriano Ramos
Saturnino López Centeno
Santos Larios Cornejo

Annex II

Allegedly detained trade union leaders or trade unionists

Crescencio Carranza
Guillermo Salmerón Jiménez
Fidel López Martínez
Rito Rivas Amador
José Angel Altamirano
Mercedes Hernández
Reynaldo Blandón
Iván Blandón
Víctor Ríos
Erik Luna
José Angel Peñalosa
Napoleón Aragón
Eleázar Marengo
Juan Ramón Duarte and his brother
Maximino Flores Obando
Anastasio Jiménez Maldonado
Gabriel Jiménez Maldonado

Case No. 1298COMPLAINT PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE
TRADE UNIONS AGAINST THE GOVERNMENT OF NICARAGUA

232. The complaint is contained in a communication from the International Confederation of Free Trade Unions (ICFTU), dated 28 August 1984. The ICFTU later sent additional information in communications dated 28 September, 15 October and 6 November 1984. The Government replied in communications dated 17 September 1984 and January 1985.

233. At the same time the complaint was submitted, several international trade union organisations requested the Director-General of the ILO to intercede with the Government in connection with the issues raised in the complaint. The Director-General immediately intervened in response to this request.

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

A. The complainant's allegations

235. In its communication of 28 August 1984, the ICFTU alleges that on 25 August 1984, the Sandinista police, acting upon instructions from the Minister of the Interior, violently broke into and occupied the headquarters of the Confederation of Trade Union Unity (CUS), during a meeting of the CUS Executive. According to the ICFTU, this occupation resulted in the injury of eight persons and the arrest of a trade unionist, Sara Méndez (Department of León) and of her son.

236. The ICFTU points out that, on 18 August 1984, the CUS headquarters had been broken into late at night by a group of persons travelling in a state-owned vehicle and that they had caused damage to the building and to files. This event occurred when the leading officials of the CUS were attending the ICFTU conference on new approaches to the economic crisis in Central America and the Caribbean, held in Cuernavaca (Mexico).

237. In its communication of 20 September 1984, the ICFTU sent the following additional information:

On 18 August 1984, a group of approximately 20 persons took over the headquarters of our member organisation, the Confederation of Trade Union Unity (CUS); this group was transported in a state-owned "TELCOR" (Telephone and Postal Services) van, of the 53rd Unit, with the number plates MA-KV-206, and was comprised of persons from various towns and places; it was headed by two delegates of the National Congress of the CUS, Mr. Germán Reyes and Mrs. Victoria García. As the group entered the premises, it broke window panes, tore open documents and files, burnt documents of historic value for the trade union movement and ruined furniture and fittings vital for the day-to-day running of the Confederation. Mr. Germán Reyes and Mrs. Victoria García are connected with the government security forces. Furthermore, Germán Reyes is co-ordinator of the Sandinista Defence Committee, of the 12 September Division, in Chinandega; Victoria García is married to a member of the state security forces. Whilst these events were taking place, most of the leaders of the CUS National Executive were fulfilling trade union duties both inside and outside the country. Those persons occupying the premises stated they had come to demand the CUS to withdraw from the Nicaraguan Democratic Co-ordinating Body, CDN (a body grouping together the CUS, the Confederation of Nicaraguan Workers, three political parties and an employers' association), which at present forms part of the democratic opposition to the Government of Nicaragua. After several days of negotiations with the persons occupying the premises (on 25 August 1984), the latter persisted in their attitude and this culminated in an attack by persons not belonging to the CUS on those who were demanding that the premises be handed over. Indeed, the former, whom eyewitnesses identified as belonging to Sandinista groups, had been lying in wait since the early hours of the morning. There was total confusion and, yet again, the CUS premises was broken into, this time by the Sandinista groups; they broke up doors, windows and desks and struck anyone inside the premises at that time, with the result that more than 20 persons were injured and physically assaulted. Since the morning of Saturday, 18 August 1984, these events had been observed by police pickets strategically placed in the vicinity of the CUS. However, whilst the Sandinista groups were carrying out their attack, the police did nothing to prevent it and only intervened when everything was over. When the police intervened, they arrested two persons: Sara Méndez of the Workers' Trade Union of the Department of León and her 15-year old son, whose whereabouts is unknown; furthermore, the CUS headquarters was taken over by the police. The CUS union officials were refused access to the premises. This situation continued for 14 days, during which the CUS offices were exclusively under the control and responsibility of the police and security forces. During this period, the various equipment belonging to the trade union organisation was once again seriously damaged; what is more, all the files were inspected

and some of them destroyed. It was only on Friday, 7 December, at 6.15 p.m., that the Sandinista police handed over the premises of the CUS headquarters to those persons who had occupied it in the first place, i.e. Germán Reyes and Victoria García, rather than to the legal representatives. Hours later, these persons left the headquarters without giving notice. In order to avoid any further plundering and destruction, the lawful representatives of the CUS only entered the abandoned building on the following day, where they have remained up to now.

238. In its communication of 15 October 1984, the ICFTU sent a list containing the names of 25 persons who were injured and beaten on 25 August 1984 by persons belonging to the "turbas divinas" (divine hordes). The ICFTU also encloses a statement from Favio Antonio López Ruiz, sworn before a notary, in which he states that he was subjected to pressure by the authorities, contrary to the interests of the CUS, particularly with respect to the events covered in the present complaint. According to López Ruiz, in May 1984, officials from the Ministry of the Interior forced him to pledge in writing that he would be instrumental in breaking up or doing away with independent organisations like the CUS; if he betrayed the orders received, he would pay with his death. Later, on 22 August 1984, an official from the Ministry of the Interior, Ernesto Zeledón (Martín) proposed that he should seek out persons belonging to the CUS to support those who had stormed the headquarters of this organisation and who did not belong to the CUS. Later, when Ernesto Zeledón learnt that López Ruiz did not agree with the mission entrusted to him, he forced him to go to Managua; he paid his return fare and López Ruiz arrived in the city on 25 August. At the CUS headquarters, members and non-members of the CUS were present; several CUS members had been forced or tricked into attending by Germán Reyes and Victoria García de Castillo. A meeting was being held on that day and, when the parties present failed to reach an agreement, several persons began to attack the true members of the CUS, inflicting injuries on the members and partially destroying the CUS headquarters.

239. Finally, in its communication of 6 November 1984, the ICFTU alleges that on 30 October 1984, José Agustín Téllez, Secretary-General of the Federation of Peasant Workers in Carazo (FETRACAMCA), was arbitrarily arrested. According to the ICFTU, this arrest is part of the campaign carried out by persons belonging to the Sandinista National Liberation Front (FSLN) to destroy or divide the CUS and its member organisations.

B. The Government's reply

240. The Government states that the headquarters of the Confederation of Trade Union Unity (CUS) were occupied by members of the CUS itself (including leading officials) as a protest against certain policies followed by some of the leaders. According to the Government, this was a problem within the CUS itself, caused by divided opinions amongst its members as to whether the CUS should remain within or withdraw from the political opposition grouping known as the Democratic Co-ordinating Body "Ramiro Sacasa". Later, there were various disputes, still amongst the CUS members themselves, which led to disorderly brawls. These differences of opinions finally resulted in the violent occurrences of 25 August 1984. The violence reached such a pitch that those involved brandished steel blades and blunt instruments. A woman brandishing a knife, as well as her son who was carrying a cudgel, were arrested by the police whilst they were attacking several members of the CUS. They were released several hours later. Before these events occurred, the residents in the town, the organisation's rank and file and some of the leading officials had requested the Sandinista police to take over the organisation's equipment for safe keeping, whilst a solution was found to the dispute which had arisen amongst its leaders, as a group of CUS members were threatening to damage the equipment. Once the problem had been resolved, on 7 September 1984, at 6.15 p.m., the second in command of Unit IV of the Sandinista police formally handed over the CUS headquarters to Germán Reyes Monjarrez (disputes secretary) and Victoria García de Castillo (secretary of the national women's movement); the latter signed a document in which they stated that they had taken possession of the said organisation's assets in the state in which they had been handed over to the police and that they were entirely satisfied. Later, both these officials were expelled from the organisation, as they both held opinions which clashed with those of the Secretary-General and the political secretary of the CUS. The Government states that it does not consider that it has infringed Convention No. 87 in any way and that the police were only doing their duty.

241. In the press cuttings sent by the Government, it is mentioned that, on 7 September 1984, the CUS headquarters was handed over to Germán Reyes and Victoria García. Other members of the CUS Executive who had taken part in the negotiations for the return of the premises were not present when they were handed back, apparently because they were involuntarily delayed.

C. The Committee's conclusions

242. The Committee notes that in the present complaint, the complainant alleges that the CUS headquarters were occupied on two occasions. They were first occupied by a group of about 20 persons on 18 August 1984. On the second occasion, they were occupied by the police on 25 August 1984 after groups had first broken in; upon entering, the police arrested a trade unionist (Sara Méndez) and her 15-year old son. The complainant alleged that when certain groups violently broke into the headquarters, 25 persons were injured and there was considerable material damage; it also alleges that both during the first period of occupation and the second period of occupation by the police, the premises suffered material damage and documents were destroyed. The Government replied that, on the first occasion, the premises were occupied by members of the CUS, including members of the Executive, as a protest against certain policies carried out by some of the leaders; it added that, at a later date, there were various disputes amongst CUS members which resulted in disorderly brawls; indeed, before this situation arose, the organisation's rank and file and some members of the Executive had requested the police to take over the CUS assets for safekeeping. The two persons arrested for attacking CUS members with steel blades and blunt instruments were only detained for a few hours. The CUS assets were handed over by the police on 7 September 1984 to two members of the Executive.

243. The Committee notes that the Government considers the alleged occurrences to be a reflection of the problems inside the CUS itself; indeed, there are conflicting opinions within the organisation as to whether it should remain in or withdraw from the political opposition grouping "Coordinadora Democrática Ramiro Sacasa". However, the complainant's version of the facts stresses that they were the outcome of interference by public officials, aimed at bringing about the CUS's withdrawal from the Democratic Co-ordinating Body. The complainant backs up this version by stating that the first group of persons to occupy the CUS were travelling in a state-owned van; furthermore, it was headed by two persons connected with the government state security services, Germán Reyes and Victoria García (though it acknowledges that they were leading officials of the CUS). As further evidence, the complainant also submitted a statement from a former legal adviser to the CUS, sworn before a notary, in which he attests that he was subjected to threats and pressures to carry out actions aimed at eliminating the CUS. In particular, the former legal adviser maintains in the statement: (1) that an official from the Ministry of the Interior proposed that he seek out persons belonging to the CUS to support those who had taken over the headquarters of this organisation, and who did not belong to the CUS; (2) that he was obliged to go to the CUS headquarters on 25 August 1984 (evidently with a view to supporting those occupying the premises), where he encountered members and non-members of the

CUS; (3) that there was a meeting on the same day and, as the parties present failed to reach an agreement, several persons began to attack the true members of the CUS; as a result, injuries were inflicted on the members and the offices of the CUS headquarters were partially destroyed.

244. With respect to the allegation that trade unionists had been beaten and injured on 25 August 1984 at the CUS headquarters, the Committee notes that, according to the complainant, the police had done nothing to avoid the attack by certain groups, in spite of the fact that they were in the vicinity of the CUS headquarters, intervening only when everything was over.

245. In order to be able to make a pronouncement on the allegations in full knowledge of the facts, the Committee requests the Government to send it its specific observations on the complainant's allegations that the CUS had been occupied on successive occasions as a result of interference by public officials and to reply to the allegation that the police, in spite of being in the vicinity of the CUS headquarters on 25 August 1984, did nothing to avoid the attack by certain groups, intervening only when everything was over. However, the Committee would point out that the climate of violence which forms the background to some of the allegations can only impede the free exercise of trade union rights.

246. Finally, the Committee requests the Government to reply to the allegation concerning the arrest of José Agustín Téllez, Secretary-General of FETRACAMCA.

The Committee's recommendations

247. In these circumstances, the Committee recommends the Governing Body to approve this interim report and, in particular, the following conclusions:

- (a) With respect to the occupation of the CUS headquarters on two occasions, and in order to be able to pronounce on this matter in full knowledge of the facts, the Committee requests the Government to send specific observations on the complainant's allegations that the occupation of the CUS premises on successive occasions resulted from interference by public officials (in particular, on the link between the State security forces and the two persons who carried out the first occupation, and the notarised statements of the former legal adviser to the CUS concerning interference by the authorities in the two occupations of the CUS headquarters).

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- (b) The Committee requests the Government to reply to the allegation that the police, in spite of being in the vicinity of the CUS headquarters on 25 August 1984 (the day on which the violent events mentioned in the complaint occurred), did nothing to avoid the attack by certain groups, intervening only when everything was over.
- (c) The Committee would point out that the climate of violence which forms the background to some of the allegations can only impede the free exercise of trade union rights.
- (d) The Committee requests the Government to reply to the allegation concerning the arrest of José Agustín Téllez, Secretary-General of FETRACAMCA.

Case No. 1189

COMPLAINTS PRESENTED BY THE PUBLIC SERVICES INTERNATIONAL
AND THE ORGANISATION OF AFRICAN TRADE UNION UNITY
AGAINST THE GOVERNMENT OF KENYA

248. The Committee examined this case at its November 1983 meeting when it presented an interim report to the Governing Body. [See 230th Report, paras. 679 to 688, adopted by the Governing Body at its 224th Session, November 1983.] At its February 1984 meeting the Committee noted that the Government, in a communication dated 14 February 1984, had transmitted certain information on this case and requested it to send all the information previously requested. [See 233rd Report, para. 12, adopted by the Governing Body at its 225th Session, February-March 1984.] On 20 December 1984 the Government transmitted its further observations on this case.

249. Kenya has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) or the Labour Relations (Public Service) Convention, 1978 (No. 151); it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

250. When it last examined the present complaints, the Committee noted that the issues involved were similar to a previous complaint concerning Kenya [Case No. 984, examined by the Committee in its 208th and 214th Reports], namely the de-registration in July 1980 of the

Union of Kenya Civil Servants and the freeze and seizure of its assets. In the context of the present case, the Committee noted that although a new body to represent the interests of Kenyan civil servants had been registered under the Societies' Act (as the Kenya Civil Servants' Association), this body was de-registered on 17 February 1983, no official reason being given in the Government Gazette notification dated 8 March 1983. The Government stated that there was a favourable prospect for the re-registration of the Association, subject to minor modifications to its constitution.

251. In November 1983 the Governing Body approved the following recommendations of the Committee:

- The Committee considers that the cancellation by the Registrar - in this case the Registrar of Societies - of the registration of an organisation is tantamount to suspension or dissolution of an organisation by administrative action, a measure that is incompatible with the principle that the workers' and employers' organisations shall not be liable to be dissolved by administrative authority;
- The Committee expresses the hope that the efforts mentioned by the Government in its reply on this case will result in the free establishment by the workers concerned as soon as possible of an organisation to represent their interests; it requests the Government to transmit precise information concerning the re-establishment of the organisation of civil servants;
- As regards the question of the assets of the de-registered organisation, the Committee requests the Government to supply information on any measures taken to distribute these assets to a newly created organisation which pursues in the same spirit the aims of the dissolved organisation.

B. The Government's replies

252. In a communication of 14 February 1984 the Government stated that an application had been made to the Registrar of Trade Unions for registration of the Kenya Civil Servants Association. According to the Government, the application was being examined by the Registrar and it would further inform the Committee once the Registrar had completed his examination of the proposed constitution of the Association.

253. In a further letter dated 20 December 1984, the Government states that the President of Kenya has publicly announced that a welfare association for civil servants should be established in the near future and gave authority for this to proceed. The Government

is currently looking into the mechanism to implement this directive and it undertakes to keep the Committee informed of progress in the matter.

C. The Committee's conclusions

254. The Committee would express its regret that, since the de-registration of the Kenya Civil Servants' Association in February 1983 and the various complaints which the Committee has been called upon to examine, the Government has supplied no information to indicate any willingness on its part to permit the re-establishment of an organisation for the promotion and defence of the occupational interests of the civil servants it would represent. Despite previous indications that there were favourable prospects for the re-registration of the Association and a statement to the effect that an application for registration was being examined by the Registrar no positive action has been taken to ensure the functioning of the organisation. The Committee notes that the Government's latest communication states that the President of Kenya has now announced that a welfare association for civil servants is to be established in the near future.

255. In addition, the Committee regrets that the Government has supplied no information on the question of the assets of the de-registered organisation or as regards the eventual distribution of these assets.

256. The Committee has already pointed out that the cancellation by the Registrar of the registration of an organisation is tantamount to suspension or dissolution of an organisation by administrative action and constitutes a measure that is incompatible with the principle that workers' and employers' organisations shall not be liable to be suspended or dissolved by administrative authority.

257. The Committee would point out that the right to form and to join organisations for the promotion and defence of workers' interests without previous authorisation is a fundamental right which should be enjoyed by public servants, like all other workers, without distinction whatsoever. The Committee considers that the type of welfare association that is envisaged would not fully afford to the civil servants concerned an adequate means to protect and defend their occupational interests.

258. In the absence of more detailed information concerning this case the Committee would draw the attention of the Government to the foregoing considerations and request it to supply full and detailed information on the measures that have been taken or are envisaged to permit the establishment of an organisation through which the workers concerned may pursue their normal trade union activities.

259. The Committee also requests the Government to transmit information on the question of the assets that were seized on the de-registration of the organisation and on the Government's intention as to the manner in which it is proposed to distribute these assets.

The Committee's recommendations

260. The Committee recommends the Governing Body to approve this interim report and, in particular, the following conclusions:

- (a) The Committee draws the attention of the Government to the principle that public servants, like all other workers, without distinction whatsoever have the right to form and join organisations of their own choosing, without previous authorisation, for the promotion and defence of their occupational interests;
- (b) The Committee considers that a welfare association, such as that envisaged by the Government, would not fully afford to the civil servants concerned an adequate means to protect and defend their occupational interests;
- (c) The Committee requests the Government to supply full and detailed information on the measures that have been taken, or are envisaged, to permit the establishment of an organisation through which the workers concerned may pursue their normal trade union activities;
- (d) The Committee requests the Government to transmit information on the question of the assets that were seized on the de-registration of the civil servants' organisation, and on the Government's intention as to the manner in which it is proposed to distribute these assets.

Case No. 1199

COMPLAINTS PRESENTED BY THE MINERS' INTERNATIONAL FEDERATION
AND THE NATIONAL FEDERATION OF MINING AND METALLURGICAL
WORKERS OF PERU AGAINST THE GOVERNMENT OF PERU

261. The Committee examined this case at its February 1984 meeting, when it submitted an interim report to the Governing Body. [See 233rd Report, paras. 565 to 579, approved by the Governing Body at its 225th Session (February-March 1984).]

262. Since the Government had not replied to the allegations which remained pending, the Committee addressed an urgent appeal to it at its November 1984 meeting [see 236th Report, para. 11], drawing the Government's attention to the fact that, in conformity with the current procedure, it would present a report at its next meeting on the substance of the case even if the Government's observations had not been received by that date. Since then no reply has been received from the Government.

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

A. Previous examination of the case

264. When the Committee examined the case at its February 1984 meeting, it made the following recommendations regarding the allegations which remained pending [see 233rd Report, para. 579]:

The Committee deeply deplores the death of the miner Gelacio Bernardo Mendoza and the injury of several other workers. Given the contradiction which exists between the version of the Government and that of the complainants concerning the alleged events, it expresses the hope that the judicial proceedings under way will establish responsibilities and punish those found guilty. The Committee asks the Government to inform it of the results of the legal action taken concerning the alleged events.

The Committee asks the Government to send its observations on the dismissal of Exhaltacion Raymunde Valverde and Ceferino Santos Blas.

265. In connection with the two last-mentioned workers, the National Federation of Mining and Metallurgical Workers of Peru claimed that the Santa Luisa Mining Company dismissed them for the part they had taken in a public protest of workers on 24 March 1983 as a result of the aggression suffered by a number of trade union leaders the day before at the hands of two police officers. It was during this protest that the miner Gelacio Bernardo Mendoza was killed and other workers injured [see 233rd Report, paras. 568 and 569].

B. The Committee's conclusions

266. The Committee regrets that the Government has not sent the information requested by it when it examined the case at its February 1984 meeting, the more so since some of the allegations are of an extremely serious nature and since at its November 1984 meeting it had addressed an urgent appeal to the Government requesting it to transmit its observations without delay. [See 236th Report, para. 11.] Given the fact that the Government has not replied since the Committee's February 1984 meeting, the Committee is obliged to present a report to the Governing Body even in the absence of observations on the allegations.

267. In these circumstances the Committee repeats the conclusions which it reached at its February 1984 meeting, and urges the Government to send it the information which it requested on that occasion regarding the death of the miner Gelacio Bernardo Mendoza and the assaults made on other workers. The Committee recalls that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed.

The Committee's recommendations

268. In these circumstances the Committee recommends the Governing Body to approve the present interim report and, in particular, the following conclusions:

- (a) The Committee regrets that the Government has not sent the information requested by it at its February 1984 meeting regarding the allegations which remained pending.
- (b) The Committee urges the Government to inform it of the results of the penal proceedings taken in respect of the death of the miner Gelacio Bernardo Mendoza and the assaults made on other workers of the Santa Luisa Mining Company. The Committee recalls that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed.
- (c) The Committee urges the Government to send its observations on the dismissal of Exhaltacion Raymunde Valverde and Ceferino Santos Blas.

Case No. 1262COMPLAINTS PRESENTED BY THE WORLD FEDERATION OF TRADE
UNIONS, THE NATIONAL COMMITTEE OF TRADE UNION UNITY
OF GUATEMALA AND THE AUTONOMOUS TRADE UNION FEDERATION
OF GUATEMALA AGAINST THE GOVERNMENT OF GUATEMALA

269. The complaints are contained in communications from the World Federation of Trade Unions, the National Committee on Trade Union Unity of Guatemala (CNUS) and the Autonomous Trade Union Federation of Guatemala (FASGUA), dated respectively 6 February, 23 May and 16 October 1984. The WFTU made new allegations in communications dated 14 and 28 February, 19 March and 13 June 1984, the CNUS in a communication dated 6 June 1984 and FASGUA in a communication dated 24 January 1985. The Government furnished some information concerning one aspect of the case in a communication dated 22 March 1984.

270. Given the failure of the Government to reply to the allegations since the receipt of the above-mentioned partial communication dated 22 March 1984, the Committee made an urgent appeal to the Government at its meeting of November 1984 [see 236th Report, paragraph 11], and pointed out that in accordance with the procedural rules in force, it would present a report on the substance of the case at its next meeting even if the Government's observations had not been received at that date. Since then no reply has been received from the Government.

271. Parallel to the presentation of the complaints, various trade union organisations requested the Director-General of the ILO to intervene with the Government on matters similar or identical to those contained in the allegations made in the present case. The Director-General immediately requested the Government to send its observations in this connection.

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

A. The complainants' allegations

273. The complainants allege the kidnapping of the following trade union leaders and trade unionists:

- Cecilio Tejax Coj, Secretary-General of the Workers' Union of the Santa Rosa Estate, Sumatán (Department of Chimaltenango).

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Kidnapped on 6 November 1983, by six armed men, presumably members of the special army groups and police corps, in the inter-city bus terminal of the town of Santa Lucía Cotzumalguapa (Department of Escuintla).

- José Guillermo Bran and Miguel Angel Gómez, respectively Secretary-General and Administrative Secretary of the Workers' Trade Union of the Panteleón Sugar Mill. Kidnapped on 22 November 1983.
- José Luis Villagrán, member of the Executive Committee of the Trade Union of the Tejidos Universales Factory. Kidnapped on 15 January 1984.
- José Guillermo García and Alejandro del Cid Hernández, trade unionists of the Workers' Trade Union of the Mirandilla Sugar Mill. Kidnapped between 29 January and 4 February 1984.
- Amancio Samuel Villatoro, leader of the Workers' Central Trade Union of Guatemala and former Secretary-General of the Trade Union of the Adams Products Factory. Kidnapped on 30 January 1984 in Colonia Primero de Julio, in the vicinity of his residence.
- Misquisidet Miranda, building trade unionist. Kidnapped in the city of Guatemala on 31 January 1984.
- Sergio Manfredo Peltetón, legal adviser of the Workers' Trade Union of the Mirandilla Sugar Mill. Kidnapped in the city of Guatemala on 4 February 1984.
- Sergio Aldana Galván, Secretary-General of the Worker' Union of Prensa Libre. Kidnapped in the city of Guatemala on 11 February 1984.
- Edgar Fernando García, Secretary of the Workers' Trade Union of the Central American Glass Undertaking. Kidnapped on 18 February 1984.
- Alfredo Aguilar Tzoc, leader of the National Central of Workers. Kidnapped and missing since 25 April 1984.
- Alejandro Hernández González, Secretary of the National Federation of Municipal Workers. Kidnapped on 13 May 1984.
- Otto René Estrada, member of the Workers' Trade Union of the University of San Carlos. Kidnapped and missing since 17 May 1984 when four armed men in civilian clothes intercepted him near his house in zone 19 (in the west part of the city of Guatemala).

- Rubén Amilcar Farfán, delegate on the council of representatives of the Workers' Trade Union of the University of San Carlos. Kidnapped and missing since on 18 May 1984, in circumstances similar to those of Otto René Estrada.
- Armando Ramírez Peña, Industrial Relations Secretary of the Trade Union of the Ray-O-Vac Battery Factory. Kidnapped on 23 January 1985 in zone 6 of the city of Guatemala by heavily armed men.

274. Furthermore, the complainants allege the kidnapping of Alvaro René Sosa Ramos, former leader of the Trade Union of the "Diana" Factory and the National Central of Workers, on 13 March 1984. According to the complainants, as he was taken away after being handcuffed, he managed to escape from his captors who opened fire on him with sub-machine guns, hitting him with three bullets. Seriously wounded, he managed to reach the Belgian Embassy from where he was transferred to a hospital in the neighbourhood.

275. Finally, the complainants allege that Valerio Oscar, Financial Secretary of the Union of Workers of the Tejidos Universales Factory is being subjected to a cruel and intimidating experience. Although several unsuccessful attempts have been made to capture him, during the last attempt, when he was absent from his house, armed men captured his brother instead, who has been missing since 14 May 1984.

B. The Government's reply

276. In its communication of 22 March 1984, the Government states that Mr. Alvaro René Sosa Ramos, chased by unidentified persons, entered the residence of the Belgian Ambassador on 13 March 1984 after being hit by gunshot. Under the protection of this diplomatic mission and the police he was taken to a private hospital where a surgical operation was performed. He is now fully recovering and left the hospital on the morning of 22 March and travelled the same day to Canada via Miami on flight PAA 404 with an ordinary Guatemalan passport and visitor's visa. He was taken from the hospital to the airport by the ambassadors of Belgium and Venezuela and an official of the Foreign Office.

C. The Committee's conclusions

277. First, the Committee must deplore the fact that, despite the extremely serious nature of the allegations concerning the kidnapping and disappearance or the attempted kidnapping of 18 trade union leaders or trade unionists (whose whereabouts in most cases are

unknown), as well as serious physical assault against them, the Government has not sent its observations on these allegations except as regards one person mentioned by the complainants. The Committee deplors this attitude all the more so since it had made an urgent appeal to the Government in November 1984 requesting it to transmit its observations as a matter of the greatest urgency. In the circumstances, the Committee is obliged to examine the case even though a complete statement has not been received from the Government.

278. As regards the attempted kidnapping of the trade union leader Alvaro René Sosa, concerning whom the Government has supplied some information, and the serious physical assault of which he was the victim, the Committee notes that, according to the Government, on 13 March 1984 this trade union leader, chased by unidentified persons, entered the residence of the Belgian Ambassador after being hit by gunshot. The Government states that Mr. Sosa then underwent a surgical operation in a hospital and that on 22 March 1984, well on the way to recovery, he took a flight to Canada. The Committee urges the Government to carry out a judicial inquiry with a view to elucidating the facts in full, determining responsibilities and punishing the guilty parties for the attempted kidnapping and serious physical assault of Mr. Sosa. The Committee requests the Government to supply information on any such inquiry into this matter and on its outcome.

279. With regard to the kidnapping and disappearance or attempted kidnapping of the other trade union leaders or trade unionists mentioned by the complainants (one case concerns the kidnapping of the brother of a trade union leader who had escaped various attempts at capture), the Committee expresses its deep concern at the serious nature of the allegations and urges the Government to carry out the necessary investigations to determine the whereabouts of the persons who have disappeared and to initiate a judicial inquiry with a view to elucidating the facts in full, determining responsibilities and punishing the guilty parties for the kidnappings or attempted kidnappings. The Committee requests the Government to supply information on any such inquiry and on its outcome.

280. In general, the Committee draws to the Government's attention the principle that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see, for example, 233rd Report, Case No. 1233 (El Salvador), para. 682].

The Committee's recommendations

281. In these circumstances, the Committee recommends the Governing Body to approve the present interim report and, in particular, the following conclusions:

- (a) The Committee expresses its deep concern at the serious nature of the allegations which refer, in particular, to many cases of kidnapping and disappearance or attempted kidnapping, as well as the serious physical assault of trade union leaders or trade unionists, and deplores the fact that the Government has not sent detailed information in this respect except as regards one person mentioned by the complainants.
- (b) As regards the attempted kidnapping of the trade union leader Alvaro René Sosa and the physical assault of which he was the victim, the Committee urges the Government to carry out a judicial inquiry with a view to elucidating the facts in full, determining responsibilities and punishing the guilty parties. The Committee requests the Government to supply information on any such inquiry and on its outcome.
- (c) As regards the kidnapping and disappearance or attempted kidnapping of the other trade union leaders or trade unionists mentioned by the complainants (in one case the allegation concerns the kidnapping of the brother of a trade union leader who had escaped various attempts at capture), the Committee urgently requests the Government to carry out the necessary investigations to determine the whereabouts of the persons who have allegedly disappeared and to initiate a judicial inquiry with a view to elucidating the facts in full, determining responsibilities and punishing the guilty parties for the kidnappings or attempted kidnappings. The Committee requests the Government to supply information on any such inquiry and on its outcome.
- (d) In general, the Committee draws to the Government's attention the principle that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed.

Case No. 1300

COMPLAINT PRESENTED BY THE WORLD FEDERATION
OF TRADE UNIONS AGAINST THE GOVERNMENT OF COSTA RICA

282. The complaint is contained in a communication from the World Federation of Trade Unions dated 24 August 1984. The Government replied by a letter of 15 November 1984.

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

A. The complainant's allegations

284. The complainant alleges that the Government brutally repressed the strike that was started on 10 July 1984 by over 3,000 workers of the banana plantations belonging to the Banana Company of Costa Rica (most of which are owned by United Brands and the Standard Fruit Company") who were claiming wage increases and the negotiation of a new collective agreement.

285. The complainant states that United Brands and the Standard Fruit Company secured from the Government a declaration that the strike was illegal. On the strength of this, on 24 July 1984 the police took action against the strikers, killing Franklin Guzman and injuring an unspecified number of strikers. After 38 days' strike, the police opened fire, causing the death of strikers Luis Rosales and Jesus Rosales and wounding ten other persons.

B. The Government's reply

286. The Government disputes the allegation that it took repressive action against the Costa Rican trade union movement either before or on the occasion of the strike held by the banana workers in July 1984. Nor is it true to say that the Government granted United Brands and the Standard Fruit Company a declaration that the strike was illegal since such a declaration lies within the sole jurisdiction of the judicial authorities. The Government goes on to say that the illegality of the strike movement in question was declared by decisions of the Labour Court of Golfito (10 July 1984) and of the Labour Court of Osa-Ciudad Cortés (11 July 1984), confirmed by decisions of the Higher Labour Court dated 12 and 17 July 1984

respectively. The Government encloses a copy of the court decisions in question which indicate, as grounds for declaring the strike unlawful, the fact that the union had not started the conciliation and arbitration procedure provided for by law and that the trade unionists had barred the access of workers who wished to enter the plantations. In accordance with the provisions in force, the court authorities ordered the police to "guarantee the continuation of work by all possible means, ensuring the safety of those workers who did not wish to join in the illegal movement but wanted to carry on with their work and providing protection for the assets of the Banana Company of Costa Rica". The Government refers in this connection to section 381 of the Labour Code which provides that "in the event of a legally declared strike or work stoppage, the labour courts shall immediately give orders to the police authorities for the establishments or businesses affected by the dispute to be kept closed and for due protection to be given to people and property. In the event of an illegal strike or work stoppage, the labour courts shall order the police authorities to guarantee the continuation of activities by all means within their power ...".

287. With regard to the strike and its consequences, the Government makes the following statements:

- In July a strike broke out on the banana and palm oil plantations of the Banana Company of Costa Rica, in the area of Coto y Palmar Sur, which unexpectedly took on a violent character.
- From the beginning the strike movement was unusually violent, involving a number of confrontations between the participants and the authorities of the civil guard who were trying to ensure access to the plantations for those workers who wanted to get on with their work.
- It was regrettably in one of these confrontations, on 24 July 1984, that Mr. Franklin Guzman lost his life and on 15 August 1984 Mr. Luis Rosales Villegas, these deaths coming as a complete surprise to the civil guards who were in no way responsible for causing them apart from being obliged to deal with the strikers' violent action.
- In the days preceding the incident, members of the civil guard had been in the area in which the events took place, passing in front of strikers organised into groups of regular size, without there having been any sort of harassment or violence. During these days, the strikers' attitude was one of open dialogue and co-operation.
- On the day of the events which led up to the death of Franklin Guzman an unusual number of strikers had gathered together from early in the day in the place where the event took place - some 200 at the time of the confrontation.

- Only 20 civil guards, compared with a massive number of strikers, took part in the attack. The few civil guards who were attacked exhausted the means at their disposal for dissuading the strikers from continuing, as they had with them only a small number of tear-gas bombs. In the final resort, finding themselves practically surrounded by hostile workers and with several of their companions injured by stones thrown from various parts of the undergrowth, the civil guards used their regulation weapons, shooting into the air to intimidate the strikers and get them to disperse, which is what eventually happened.
- At no time during these disturbances did the officers or privates who were present see any worker fall after being shot. It was only an hour after the confrontation had ended that a bus arrived on the scene carrying Mr. Guzman who was injured but still alive, and who died shortly after entering the Ciudad Neilly hospital to which he was taken by police car.
- The worker who died had been obliged to join the strike movement in the early hours of the morning, when he was practically dragged from his house, despite his wife's protests, to join the strike.
- According to a verbal statement from the doctor at the Ciudad Neilly hospital, who is a specialist in injuries of this kind, the wounded man's death was in fact due to the delay in taking him to the health centre since his life could have been saved by timely medical intervention and he could then have been sent to a hospital with a specialised medical and surgical team in San José.
- In the confrontation Mr. Freddy Bustamante Mata, Mr. José Pérez Pérez, Mr. Lorenzo Muñoz Esquivel and Mr. Eusebio Ruiz Noguera were also injured. Nevertheless in no case were the injuries caused by shots fired by the police.
- With regard to the events of 15 August 1984, which ended with the death of Mr. Luis Rosales Villegas, the facts were as follows: a noisy group of workers were on the Palmar banana plantations Nos. 2 and 4, seeking to bar the way of the civil guard authorities and throwing stones and sticks at them and at some houses, presumably those of the workers who had not joined the strike. In these circumstances and in order to safeguard private property, individuals and themselves, the civil guards after exhausting the possibilities of dialogue and persuasion had no alternative but to use tear gas. As this did not have the desired effect, they resorted to firing shots in the air.
- In all the cases of confrontation the civil guard were undertaking routine duties at the time of the attack and there was no question of any operation prepared with the deliberate intention of repressing the strike movement. The injuries that

occurred were all caused by the confusion arising out of the said confrontation and never as a result of isolated or deliberate action by the civil guard.

288. The Government states that different offices of the judicial authorities (examining magistrates) are dealing with various cases to investigate all the events surrounding the deaths or injury of the strikers and to decide whether criminal liability can be attributed. According to the Government, so far nothing definite is known of the manner or circumstances in which the deaths occurred.

289. The Government concludes by stating that the purposes of the strike movement had ceased to concern economic and social claims and had taken on a purely political character, as can readily be seen by the fact there are even workers who were forced to strike who are taking proceedings against communist leaders and representatives for payment of the wages they lost as a result of the strike movement.

C. The Committee's conclusions

290. The Committee notes that the complainant alleges that, on the basis of a declaration that the strike started on 10 July 1984 by workers of the Banana Company of Costa Rica was illegal, the police intervened on a number of occasions against strikers, causing the death of three strikers and injuring an unspecified number of others. According to the complainant, it was the employers who had secured from the Government the declaration that the strike was illegal.

291. With regard to this declaration of illegality, the Committee notes the Government's statement that such declarations are a matter for the judicial authorities and not for the Government. The Committee observes in this connection that the Government has furnished the text of court decisions declaring the illegality of the strike started by banana workers on 10 July 1984 for failing to meet the legal requirements: in particular because the trade union had not followed the conciliation and arbitration procedure provided for by law and because trade unionists had prevented workers who wished to continue working from having access to their workplaces. The Committee notes that, according to the court decisions referred to and the Labour Code, the workers of the Banana Company of Costa Rica may exercise the right to strike and the arbitration procedure takes place only by agreement between the parties.

292. In this respect the Committee has stated on previous occasions [see, for example, 134th Report, Case No. 702 (Costa Rica), para. 36] that legislation which provides for voluntary conciliation and arbitration in industrial disputes before a strike may be called