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Report of the Director-General

Fourth supplementary report: Report of the committee set up to examine the representation alleging non-observance by Brazil of the Collective Bargaining Convention, 1981 (No. 154)

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▶ I. Introduction

1. In a communication dated 6 June 2014, the Central Organization of Workers of Brazil (CTB), the General Confederation of Workers of Brazil (CGTB), the Single Confederation of Workers (CUT), Força Sindical (FS), the New Trade Union Centre of Brazilian Workers (NCST), the General Union of Workers (UGT) and the Confederation of Brazilian Trade Unions (CSB) made a representation to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by Brazil of the Collective Bargaining Convention, 1981 (No. 154), and the Labour Inspection Convention, 1947 (No. 81).
2. In their communication of 6 June 2014, the complainant organizations requested the good offices of the ILO to attempt to resolve the issues to which the representation refers before proceeding with it. In a communication dated 9 June 2016, the complainants stated that the mediation undertaken by the ILO had not sufficed to resolve the issues raised, and therefore requested that their representation be submitted to the Governing Body.
3. At its 328th Session (October–November 2016), the Governing Body decided that the representation was not receivable in respect of Convention No. 81 and was receivable in respect of Convention No. 154 and referred it to the Committee on Freedom of Association for examination in accordance with articles 24 and 25 of the Constitution.
4. Brazil ratified Convention No. 154 on 10 July 1992.
5. The following provisions of the ILO Constitution relate to representations:

Article 24

Representations of non-observance of Conventions

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

6. In accordance with the decision of the Governing Body, adopted at its 334th Session (October–November 2018), instructing the Committee on Freedom of Association to examine representations referred to it according to the procedures for the examination of article 24 representations,¹ the Committee established a tripartite subcommittee to examine the representation. At its first meeting (11 November 2020) it was composed of Mr Aurelio Linero (Government member, Panama), Mr Juan Mailhos (Employer member, Uruguay) and

¹ GB.334/INS/5 and GB.332/INS/5(Rev.).

Ms Amanda Brown (Worker member, United Kingdom of Great Britain and Northern Ireland). Following the change of composition of the Committee on Freedom of Association in June 2021, for its subsequent meetings (18 and 22 March 2022) it was composed of Ms Gloria Gaviria (Government member, Colombia), Mr Alberto Echavarría (Employer member, Colombia) and Ms Amanda Brown (Worker member, United Kingdom).

7. In communications dated 15 June 2017 and 31 May 2018, one of the complainant organizations (the CUT) provided additional information.
8. The Brazilian Government sent its observations in response to the representation in communications dated March and November 2018 as well as 16 September and 3 December 2019.
9. The subcommittee held its first meeting on 11 November 2020 and its subsequent working meetings on 18 and 22 March 2022.

► II. Examination of the representation

A. Allegations presented by the complainant organizations

10. The complainant organizations allege that the Brazilian State, especially the judicial authorities and the labour prosecution service, commit acts of interference that are contrary to the promotion of free and voluntary collective bargaining and have a particular impact on the autonomy of trade union organizations.

Cancellation of clauses of collective agreements referring to the payment of assistance contributions by all workers who benefit from a collective agreement

11. Firstly, the complainant organizations allege that, based on the case law of the High Labour Court, in legal proceedings initiated by the labour prosecution service, the courts are declaring clauses of collective agreements that provide for the payment of assistance contributions by unaffiliated workers to trade unions null and void.
12. The complainants defend the legality of the payment of assistance contributions by unaffiliated workers who benefit from a collective agreement in the light of section 513.e) of the Consolidated Labour Laws Act (it is the prerogative of the trade unions to require contributions from all workers of the economic or professional categories and liberal professions that they represent). They state that assistance contributions are also fully compatible with Article 2 of Convention No. 154, which defines the scope of collective bargaining, and specifically its subparagraph (c) referring to regulating relations between employers and their organizations and a workers' organization or workers' organizations.
13. The complainant organizations allege that, on the basis of the case law of the High Labour Court (case law guideline No. 17 and, particularly, standard No. 119), the courts and the labour prosecution service prohibit the collection of assistance contributions for trade unions from unaffiliated workers, even when such contributions are provided for in collective agreements. In this respect, standard No. 119 establishes that clauses of collective agreements that provide for the payment to a trade union by non-unionized workers of a confederation tax, assistance contribution, promotional contribution or suchlike are in contravention of freedom of association. The complainants state that, on the basis of these legal precedents, the labour

prosecution service takes administrative decisions with a view to eliminating such clauses (*ajustamento de conduta*) and initiates legal action to revoke such clauses.

14. The complainant organizations give the example of seven cases in which, due to the involvement of the labour prosecution service and the action of the courts, the application to unaffiliated workers was prohibited of clauses in collective agreements that set assistance contributions applicable to all workers – whether unionized or not – covered by the respective collective agreements. These cases involved the following organizations: (i) Sindicato dos empregados em entidades culturais, recreativas, de assistência social e orientação profissional del Estado de Rio Grande do Sul (SENALBA); (ii) Sindicato dos empregados em empresa de compra, venda, locação, administração de imóveis residenciais e comerciais e mistos de balneário Camboriú (SECOVELAR); (iii) Sindicato dos trabalhadores nas indústrias de fiação e tecelagem de Londrina e região e vestuário de Carlópolis e região (SINFITEC); (iv) Sindicato dos empregados no comércio de Belo Horizonte e Região metropolitana (SECBHRM); (v) Sindicato dos trabalhadores nas empresas de transportes rodoviários e anexos de Santo André, São Bernardo do Campo, São Caetano do Sul, Diadema, Mauá, Ribeirão Pires e Rio Grande da Serra (SINTETRA); (vi) Sindicato dos trabalhadores condutores de veículos, motonetas, motocicletas e similares de Curitiba e região metropolitana (SINTRAMOTOS); and (vii) Sindicato dos empregados nas empresas de refeições coletivas de São José dos Campos e região (SEERCSJC). The organizations add that, given the size of the country, it is impossible to provide comprehensive figures on the total number of decisions taken against trade unions.
15. In addition, with a view to demonstrating the existence of a diversity of opinion among the authorities, the complainant organizations make detailed reference to the case of the Sindicato dos empregados no comércio de Guaíba (SECGUAIBA) as an example of the labour prosecution service's interference into the funding activities of trade union organizations. In this respect, they allege that: (i) in 2012, SECGUAIBA held several hearings with the labour prosecution service in relation to its funding; (ii) with a view to avoiding the labour prosecution service taking legal action to prohibit the collection of assistance contributions from unaffiliated workers, SECGUAIBA decided to accept the alternative presented by the labour prosecution service, which was to include in union activities all workers paying assistance contributions, whether or not they were members of the organization; (iii) however, the case was placed under the responsibility of another prosecutor within the labour prosecution service who was entirely opposed to the collection of assistance contributions from unaffiliated workers; (iv) ignoring the previous examination of the case, the new prosecutor initiated legal action to prohibit the collection of assistance contributions from workers who had benefited from collective bargaining conducted by SECGUAIBA, but who were not members. In contrast to this situation, the complainant organizations refer to the statements of the President of the High Labour Court in favour of permitting the deduction of assistance contributions agreed through collective bargaining and recalling that previous case law guidelines permitted the deduction of assistance contributions from all workers, except those who had submitted a written request not to pay.

Restrictions on the right to strike contrary to the promotion of collective bargaining

16. Secondly, the complainant organizations allege that various categories of decision taken by the authorities (particularly the labour prosecution service and the courts) unduly limiting or failing to protect the exercise of the right to strike run counter to the promotion of collective bargaining enshrined in Convention No. 154:
 - (a) The complainants allege that the use of strike-breakers has become commonplace in Brazil and that requests for protection from trade union organizations are not addressed

by the labour prosecution service or the courts. They assert that state institutions allow the prosecutors of the labour prosecution service to decide whether or not to take action, without due regard for the obligation to promote social dialogue and collective bargaining established under Convention No. 154. By way of example, they refer to the situation of the Sindicato dos empregados em estabelecimento bancários de São Paulo. They state that the numerous requests to the labour prosecution service to determine whether strike-breakers were used were never addressed.

- (b) The complainants also allege that the judicial authorities place excessive limitations on the exercise of the right to strike using injunctions (*decisão liminar*) issuing temporary restraining orders in the guise of possessory actions to protect property, initiated systematically by employers to avoid any kind of picket line, which the complainants consider to be contrary to the promotion of collective bargaining contained in Convention No. 154. The complainant organizations allege that: (i) these temporary restraining orders have become a defensive strategy for employers, who are using a procedure designed to protect property to prevent the formation of picket lines; (ii) the temporary restraining orders are sometimes issued before the strike action begins; (iii) failure to comply with these judicial decisions carries the threat of large fines; and (iv) the decisions do not distinguish between essential and non-essential activities. The complainants refer to specific cases, particularly that of the unions affiliated to the National Confederation of Finance Workers (CONTRAF-CUT).
- (c) The complainants also allege that the law recognizes as essential activities that are not qualified as such by the ILO supervisory bodies – air transport, metropolitan public transport, bank clearing (the processing of credit exchanges in interbank relations) – and that, by wrongly considering all of these activities to be essential in the strict sense of the term, the courts legally requisition at least 90 per cent of the workers concerned. This is particularly prevalent in the air and metropolitan transport sectors. In this regard, the complainants refer to the case of the metropolitan transport sector in São Paulo, as well as the National Union of Aeronautical Workers – both cases involve bargaining and strikes in 2012 in which the High Labour Court issued decisions ordering 90 per cent of workers to return to work.

Limitations placed on the number of union leaders that enjoy security of tenure without regard for any criteria of reasonableness or proportionality, or for the size of the enterprise in question

17. The complainant organizations allege that the State limits the number of union leaders that enjoy security of tenure without regard for any criteria of reasonableness or proportionality, or for the size of the enterprise in question. They indicate that, on the basis of the limits established under section 522 of the Consolidated Labour Laws Act and High Labour Court decision (*súmula*) No. 369, it was decided to restrict to a maximum of seven persons (and seven substitutes) the number of trade union leaders that enjoy security of tenure and are therefore protected against unfair dismissal. They claim that the other union leaders, including the members of the financial board, are deprived of any protection against the frequent anti-union acts committed by employers in Brazil. To exemplify the serious impact of this legal precedent, the complainants refer to the entirely unjustified dismissal of three leaders of a union, who were denied trade union protections on the basis of the High Labour Court's narrow interpretation of the law.

18. The complainants consider this interpretation of the Consolidated Labour Laws Act to be highly problematic as it disregards the significant differences in size between trade unions and their different organizational models. By way of example, they refer to the National Aeronautics Union (SNA), which represents more than 40,000 workers throughout the various states and municipalities. The statutes of this union reasonably provide that the number of leaders shall not exceed 1 per cent of the members and, at the most recent elections, 44 leaders were appointed. On the basis of the High Labour Court's interpretation of the law, the employers' organization in the sector issued a legal summons to the union to oblige it to designate its seven leaders and seven substitutes. In this regard, the complainants stress that if a union had been established in each of the states and the Federal District, rather than an entity that functions at the national level, under this rigid interpretation the number of "tenured" leaders (protected against anti-union dismissal) could amount to 378.

B. The Government's observations

19. In its observations, the Government responds to the various allegations made by the complainant organizations.

Cancellation of clauses of collective agreements referring to the payment of assistance contributions by all workers who benefit from a collective agreement

20. With regard to the allegations related to the payment of assistance contributions, the Government indicates that, since the adoption of Act. No 13.467/2017, this approach has not been followed in the legal system. The Government indicates that trade union dues, which were previously mandatory, are now optional, meaning that the prior and express consent of the worker in the professional category is required, as reflected in the new wording of section 578 of the Consolidated Labour Laws Act. The Government indicates that this legislative change has already been closely examined by the Supreme Court of Brazil, which concluded that the standard fully complied with the Brazilian legal system.
21. As for assistance contributions agreed upon through collective bargaining, the Government indicates that such deductions can only be made with the authorization of the workers concerned. The Government indicates that this is reflected in the amendment to the Consolidated Labour Laws Act introduced by Act No. 13.467/2017, which establishes that a collective agreement may not include provisions that reduce or withdraw the rights of workers to not bear, without their express and prior consent, any charges or wage deductions established by a collective labour agreement (new Chapter XXVI of section 611-B of the Consolidated Labour Laws Act).

Restrictions on the right to strike contrary to the promotion of collective bargaining

22. With regard to the allegations that the use of strike-breakers has become customary in Brazil and that requests for protection by trade union organizations go unheeded by both the labour prosecution service and the courts, the Government indicates that: (i) the labour prosecution service is a highly important institution in the country, especially given the constant number of referrals to the service and public civil actions, which have resulted in multiple convictions, including for anti-union practices; (ii) pursuant to these public civil actions, various banking entities were prohibited from engaging in acts that could lead to the loss of the right to strike – either directly or through managers or third parties; (iii) the right to strike must coexist with the individual freedom of the worker – while strikers can use peaceful means to persuade other workers to join a strike, these means should not prevent access to work, or threaten or cause

damage to property or persons (as recognized in the Strike Act No. 7.783/1989); and (iv) the necessary weighting of values between constitutional rights should be considered on an individual case-by-case basis.

23. Concerning the allegation of the use of “temporary restraining orders” to prevent picketing, the Government reiterates that, although the right to strike is a fundamental right, regulated by Act No. 7.783/1989, rights must coexist harmoniously and strikers cannot prevent access to work or threaten or cause damage to property or persons. In this regard, the Government specifies that, if any of the parties feel that their rights are being hindered, they can draw the attention of the judiciary to the situation, which will assess the facts based on the evidence provided. Thus, there is an a priori need to examine the temporary restraining orders in question, in order to assess whether the limits of the right to strike have been overstepped, thereby hindering the rights of the employer. The Government indicates that this matter was the subject of Supreme Court ruling No. 23, which stated that the labour court was competent to judge the possessory action relating to the exercise of the right to strike.
24. Regarding the allegation of the excessive imposition of minimum services that cover almost all workers engaging in activities that cannot be considered as essential in the strict sense of the term, the Government indicates that section 10 of Act No. 7.783/1989 contains a list of services or activities deemed to be essential: (i) water treatment and supply; production and distribution of electricity, gas and fuel; (ii) medical and hospital care; (iii) distribution and sale of medicines and food; (iv) mortuaries; (v) public transport; (vi) sewage and refuse collection and treatment; (vii) telecommunications; (viii) storage, use and control of radioactive substances and nuclear equipment and materials; (ix) processing of data relating to essential services; (x) air traffic control; (xi) bank clearing; (xii) medical and assessment activities in connection with the general social security and social assistance system; (xiii) medical and assessment activities in connection with categorizing the physical, mental, intellectual or sensory impairment of a person with disabilities, by integrating multi-professional and interdisciplinary teams, with a view to recognizing the rights provided for in the Statute for Persons with Disabilities; and (xiv) other medical and operational services provided by federal medical expert professionals that are essential to meet the urgent needs of the community. The Government indicates that, when a strike occurs in essential services, trade unions, employers and workers are required to guarantee the provision of essential services to meet the needs of the community.

Limitation of the number of union leaders that enjoy security of tenure without regard for any criteria of reasonableness or proportionality, or for the size of the enterprise in question

25. Furthermore, with regard to the alleged limitation of the number of union leaders that enjoy security of tenure without regard for the size of the enterprise in question, the Government indicates that: (i) section 522 of the Consolidated Labour Laws Act, to which the trade union organizations refer, stipulates that a trade union should be managed by an executive board composed of a maximum of seven and a minimum of three members and an audit committee composed of three members, elected by the General Assembly; (ii) the executive board will elect from among its members the president of the trade union; (iii) the audit committee’s mandate is limited to supervising the trade union’s financial management; (iv) section 522 should be read in conjunction with section 543 of the Consolidated Labour Laws Act, which stipulates that the dismissal of an employee or union member is prohibited from the moment that they register as a candidate for a post on the executive board or as a representative of a trade union organization or professional association and up to a year after the end of their

tenure, even if elected as a substitute, unless they commit a serious infringement that has been formally verified in terms of the Consolidated Labour Laws Act.

26. With respect to the High Labour Court's decision No. 369, to which the complainants refer, the Government indicates that: (i) the security of tenure mentioned in section 543 of the Consolidated Labour Laws Act is limited to seven union leaders and an equal number of substitutes; (ii) in the decision, the court clarified what was meant by security of tenure for union leaders and their respective substitutes, limiting their number to seven; (iii) guaranteeing security of tenure for union leaders without setting a maximum number can lead to imbalances; (iv) limitation is justified because the granting of security of tenure restricts the freedom of the employer to freely dismiss employees; (v) the establishment of a fixed number of union leaders is a sound policy to prevent unfair practices in determining the number of union leaders granted temporary security of tenure (as an example, the Government refers to a specific case in which a trade unionist in the banking sector had claimed the protection of a temporary security of tenure, alleging that he was a member of the union's executive board, which had a total of 50 management members – in this case, the judiciary stated that there was a clear and unequivocal abuse of the right because there is no legal basis for allowing the exercise of freedom of association to place, unilaterally and without restriction, such a high legal burden on the employer, when there is no support for such in the Constitution, let alone in ordinary legislation); (vi) the limit on members applies only to the granting of a temporary security of tenure – nothing prevents a trade union from electing the number of union leaders it deems to be appropriate; and (vii) section 522 of the Consolidated Labour Laws Act is fully in force and makes clear that the adoption of Act No. 13.467/2017 (which, when dealing with representation in the workplace also limited the number of representatives to seven) has not modified the Consolidated Labour Laws Act.
27. Lastly, with regard to protection against anti-union practices, the Government states that, although Brazil does not have specific legislation in that connection, the legal system has always been strong enough to deter such practices. The Government indicates that the Consolidated Labour Laws Act itself provides for several situations preventing any action from being taken that would constitute anti-union practices. In particular, section 540 of the Act stipulates that: "Any enterprise or person engaged in an activity or profession, provided that they comply with the Act's legal requirements, has the right to be admitted to the union of their respective professional category". In addition, section 543(6) reinforces the idea of freedom of association, by providing that: "Any enterprise which, by any means, attempts to prevent employees from joining a trade union, forming a professional association or trade union, or exercising their rights as union members, shall be subject to a penalty provided for in section 553, without prejudice to the right to compensation to which employees are entitled". The Government adds that the decisions of the courts are quite insightful in this area, demonstrating that Brazil, through the judiciary, also endeavours to reject anti-union practices. An example of this is Case No. 0 TST-RR-1247-14.2015.5.02.0065, which is being handled by the Fourth Chamber of the High Labour Court, whose text was forwarded by the Government and which concerns the dismissal of a worker after he had tried to call a strike.

► III. The Committee's conclusions

28. *The Committee notes that this representation concerns the following allegations of interference by the authorities, which the complainants consider run counter to the promotion of free and voluntary collective bargaining enshrined in Convention No. 154 and have a particular impact on the*

autonomy of trade unions: (i) cancellation of clauses of collective agreements referring to the payment of assistance contributions by all workers who benefit from a collective agreement; (ii) restrictions on the right to strike that run counter to the promotion of collective bargaining; and (iii) limitations on the number of union leaders that enjoy security of tenure without regard for any criteria of reasonableness or proportionality, or for the size of the enterprise in question. On the other hand, the Committee notes that the Government considers that both the country's legislation and its application in practice are in full compliance with the Convention, and provides responses to each of these groups of allegations, as detailed below.

Cancellation of clauses of collective agreements referring to the payment of assistance contributions by all workers who benefit from a collective agreement

29. *With regard to the allegations that the courts are revoking clauses of collective agreements referring to the payment of assistance contributions by all workers who benefit from a collective agreement, the Committee notes that the Government has not provided responses regarding the specific cases raised by the complainants and instead indicates that, as established under case law guideline No. 119 and reflected in Act No. 13.467/2017, respect for freedom of association demands that the deduction of such assistance contributions requires the authorization of the workers concerned.*
30. *With respect to the representation under examination, which concerns the application of Convention No. 154, the Committee initially notes that for the promotion of collective bargaining enshrined in this Convention trade unions must be able to function normally and, accordingly, access sources of funding. In this regard, Paragraph 2 of the Collective Bargaining Recommendation, 1981 (No. 163), which supplements the Convention, establishes that in so far as necessary, measures adapted to national conditions should be taken to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organizations. On the other hand, Paragraph 1 of the same Recommendation states that the provisions of the Recommendation may be applied by national laws or regulations, collective agreements, arbitration awards or in any other manner consistent with national practice. Likewise, Article 4 of the Convention provides that, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, the provisions of the Convention shall be given effect by national laws or regulations. In this respect, and as can be seen from the information submitted by the parties, the Committee notes that a major legislative reform in the regulation of trade union contributions in the country took place after the representation was presented. Under Act No. 13.467/2017, financial contributions to workers' organizations, which had been mandatory under the law, became optional.*
31. *The Committee notes, on the other hand, that this matter was examined by the Committee on Freedom of Association as part of Case No. 2739 (Brazil) in which the Committee recalled that problems arising out of union security clauses must be resolved at the national level, according to the practice and labour relations system of each country; indicated that when legislation admits trade union security clauses, such as the withholding of trade union dues from the wages of non-members benefiting from the conclusion of a collective agreement, those clauses should only take effect through collective agreements.² Likewise, the Committee recalls that the requirement of written consent for dues check-off would not be contrary to the principles of freedom of association and that the non-collection of union dues by the enterprise from non-unionized workers who have*

² ILO, *Compilation of decisions of the Committee on Freedom of Association*, sixth edition, 2018, para. 700.

*expressly indicated their wish not to pay those dues is compatible with the principles of freedom of association.*³

32. *The Committee observes that neither the above-mentioned reform nor the requirement of voluntary approval are in themselves contrary to the Convention and reiterates that problems arising out of union security clauses must be resolved at the national level, following meaningful consultations with the social partners. The Committee, emphasizing the importance of tripartite consultation and seeking joint solutions on this matter, recalls that, under Article 7 of the Convention, measures taken by public authorities to encourage and promote the development of collective bargaining shall be the subject of prior consultation and, whenever possible, agreement between public authorities and employers' and workers' organizations.*
33. ***While recalling that these issues must be resolved at the national level, in particular through each country's legislation, the Committee encourages the Government to consult the most representative employers' and workers' organizations and the various authorities concerned, with a view to seeking, as far as possible, shared solutions in the light of Article 7 of Convention No. 154.***

Restrictions on the right to strike contrary to the promotion of collective bargaining

34. *With regard to the restrictions on the right to strike, the Committee notes that enjoyment of the right to strike is one of the legitimate mechanisms available to workers' organizations during the collective bargaining process and that, consequently, regulating that right has an impact on the overall balance that is reflected in a national collective bargaining system. In this regard, it may be useful to recall that the promotion measures referred to in Article 5(2) of Convention No. 154 should also aim, as stated in paragraph 5(2)(e), that the bodies and procedures for the settlement of labour disputes be conceived so as to contribute to the promotion of collective bargaining. Likewise, the Committee observes that Article 7 of the Convention provides that the measures taken by public authorities to encourage and promote the development of collective bargaining shall be the subject of prior consultation and, whenever possible, of agreement between public authorities and employers' and workers' organizations. In this regard, issues relating to the regulation of labour dispute settlement bodies and procedures, including the question of actions that may be taken by the parties, should be the subject of consultation.*
35. *Concerning how the issues raised in the representation are dealt with (specific allegations of strike-breakers, temporary restraining orders relating to strike pickets and the excessive imposition of minimum services covering almost all workers engaging in activities that cannot be considered as essential in the strict sense of the term – especially mainland and air transport), the Committee notes that the Government merely provides general information. While the Government affirms that there is a need to assess this weighting of rights on a case-by-case basis, it has not sent the Committee specific replies or observations on the specific allegations and cases raised in the representation. In light of the general nature of the Government's replies, the Committee is unable to assess the specific circumstances of the individual cases, although it wishes to recall that, according to Article 8 of the Convention, measures taken with a view to promoting collective bargaining shall not be so conceived or applied as to hamper the freedom of collective bargaining.*
36. ***Bearing the above in mind, the Committee requests the Government to ensure that the handling of these allegations is included in the tripartite dialogue, in the interests of finding common solutions.***

³ ILO, *Compilation*, sixth edition, 2018, paras 693 and 694.

Limitation of the number of union leaders that enjoy security of tenure without regard for any criteria of reasonableness or proportionality, or for the size of the enterprise in question

37. *With regard to the allegation of the limitation of the number of union leaders that enjoy security of tenure (a maximum of seven post-holders and seven substitutes), the Committee notes that the complainants argue that the rigidity of the criterion may lead to a lack of protection (given an alleged recurrence of anti-union dismissals of non-protected union leaders, with no requirement to provide justification), as well as a lack of regard for proportionality with respect to the trade union's size and organizational structure (establishing this common maximum would harm, in particular, large national-level trade unions). On the other hand, the Committee notes the Government's indication that a lack of limits on the maximum number of union leaders may lead to situations of imbalance and abuse.*
38. *In this regard, the Committee recalls that, in accordance with Convention No. 154, one of the objectives of collective bargaining is to regulate relations between employers or their organizations and a workers' organization or workers' organizations (Article 2(c)); and that the granting of facilities to trade union leaders and their regulation is one of the measures that can encourage and promote collective bargaining, which, as has been pointed out, should be the subject of prior consultation and, whenever possible, of agreement between public authorities and employers' and workers' organizations (Article 7). The Committee also stresses the importance of these facilities for trade union organizations to be able to carry out their work. In this respect, legislation should allow employers and workers to negotiate the number of workers covered by security-of-tenure protection, be that at enterprise or sectoral level.*
39. ***The Committee requests the Government to submit this matter for tripartite consultation and, if possible, for agreement between public authorities and employers' and workers' organizations.***

► IV. The Committee's recommendations

40. **The Committee recommends that the Governing Body:**
- (i) **approve this report;**
 - (ii) **request the Government to take into account, in the context of the application of the Collective Bargaining Convention, 1981 (No. 154), the observations made in paragraphs 28–39 of the Committee's conclusions;**
 - (iii) **invite the Government to provide information in that respect for examination and further monitoring, as appropriate, by the Committee of Experts on the Application of Conventions and Recommendations; and**
 - (iv) **make the report publicly available and declare closed the procedure initiated by the representation.**

Geneva, 22 March 2022

(Signed) Government member: Ms Gloria Gaviria

Employer member: Mr Alberto Echavarría

Worker member: Ms Amanda Brown