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Reports of the Committee on Freedom of Association 401st Report of the Committee on Freedom of Association

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▶ Introduction

1. The Committee on Freedom of Association (CFA), set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva from 9 to 11 March 2023 and 16 March 2023, under the chairmanship of Professor Evance Kalula.
2. The following members participated in the meeting: Mr Gerardo Corres (Argentina), Ms Gloria Gaviria (Colombia), Ms Petra Herzfeld Olsson (Sweden), Mr Akira Isawa (Japan), Ms Anousheh Karvar (France) and Ms Vicki Erenstein Ya Toivo (Namibia); Employers' group Vice-Chairperson Mr Thomas Mackall, and members, Ms Renate Hornung-Draus, Mr Hiroyuki Matsui, Mr Kaizer Moyane and Mr Fernando Yllanes; Workers' group Vice-Chairperson, Ms Amanda Brown and members, Mr Zahoor Awan, Mr Gerardo Martínez, Mr Magnus Norddahl, Mr Jeffrey Vogt and Mr Ayuba Wabba. The members of Argentinean and Colombian nationality were not present during the examination of the cases relating to Argentina (Cases Nos 3225 and 3360) and Colombia (Cases Nos 2761, 3074, 3329 and 3333).

* * *

3. Currently, there are **114** cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined **23** cases on the merits, reaching conclusions in **7** definitive reports, **4** reports in which the Committee requests to be kept informed of developments and interim conclusions in **12** cases; the remaining cases were adjourned for the reasons set out in the following paragraphs. The Committee recalls that it issues "definitive reports" when it determines that the matters do not call for further examination by the Committee beyond its recommendations (which may include follow-up by the government at national level) and the case is effectively closed for the Committee, "interim reports" where it requires further information from the parties to the complaint and "reports in which it requests to be kept informed of developments" in order to examine later the follow-up given to its recommendations.

Examination of cases

4. The Committee appreciates the efforts made by governments to provide their observations on time for their examination at the Committee's meeting. During this session, however, numerous late submissions created operational difficulties for the Committee. Effective cooperation with the Committee's procedures supports the efficiency of the Committee's work and enables it to carry out its examination in the fullest knowledge of the circumstances in question. The Committee therefore urges governments to send information relating to cases in **paragraph 6**, and any additional observations in relation to cases in **paragraph 8**, as soon as possible to enable their treatment in the most effective manner. Communications received after **27 April 2023** will not be taken into account when the Committee examines the case at its next session absent compelling circumstances in the judgment of the Committee.

Serious and urgent cases which the Committee draws to the special attention of the Governing Body

5. The Committee considers it necessary to draw the special attention of the Governing Body to Cases Nos 2254 (Bolivarian Republic of Venezuela), 2609 (Guatemala), 2761 and 3074

(Colombia), 3184 (China), 3185 (Philippines), 3203 and 3263 (Bangladesh) and 3277 (Bolivarian Republic of Venezuela) because of the seriousness and urgency of the matters dealt with therein. The Committee recalls in this regard that, in accordance with paragraph 54 of its Procedures, it considers as serious and urgent cases those involving human life or personal freedom, or new or changing conditions affecting the freedom of action of a trade union movement as a whole, cases arising out of a continuing state of emergency and cases involving the dissolution of an organization.

Urgent appeals: delays in replies

6. As regards Cases Nos 3067 (Democratic Republic of the Congo), 3249 (Haiti), 3269 (Afghanistan), 3275 (Madagascar) and 3428 (Cameroon), the Committee observes that despite the time which has elapsed since the submission of the complaints or the issuance of its recommendations on at least two occasions, it has not received the observations of the Governments. The Committee draws the attention of the Governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases at its next meeting if the observations or information have not been received in due time. The Committee accordingly requests the Governments to transmit or complete their observations or information as a matter of urgency.

Observations requested from governments

7. The Committee is still awaiting observations or information from the Governments concerned in the following cases: 2318 (Cambodia), 2508 (Islamic Republic of Iran), 3413 (Plurinational State of Bolivia) and 3422 (South Africa). If these observations are not received by its next meeting, the Committee will be obliged to issue an urgent appeal in these cases.

Partial information received from governments

8. In Cases Nos 2265 (Switzerland), 3023 (Switzerland), 3141 (Argentina), 3161 (El Salvador), 3178 (Bolivarian Republic of Venezuela), 3192 and 3232 (Argentina), 3242 (Paraguay), 3282 (Colombia), 3300 (Paraguay), 3325 (Argentina), 3335 (Dominican Republic), 3368 (Honduras), 3370 (Pakistan), 3383 (Honduras), 3403 (Guinea), 3417 (Colombia), 3419 (Argentina), 3427 (Togo) and 3429 (Ecuador), the Governments have sent partial information on the allegations made. The Committee requests all these Governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

9. As regards Cases Nos 2177 and 2183 (Japan), 2923 (El Salvador), 3018 (Pakistan), 3027 (Colombia), 3042 and 3062 (Guatemala), 3148 (Ecuador), 3157 (Colombia), 3179 (Guatemala), 3199 (Peru), 3208 (Colombia), 3210 (Algeria), 3213 and 3218 (Colombia), 3228 (Peru), 3233 (Argentina), 3234 (Colombia), 3239 and 3245 (Peru), 3258 (El Salvador), 3271 (Cuba), 3280 (Colombia), 3307 (Paraguay), 3308, 3311 and 3315 (Argentina), 3321 (El Salvador), 3324 (Argentina), 3336 (Colombia), 3342 (Peru), 3349 (El Salvador), 3352 (Costa Rica), 3358 (Argentina), 3359 (Peru), 3363 (Guatemala), 3373 (Peru), 3376 (Sudan), 3380 (El Salvador), 3384 (Honduras), 3388 (Albania), 3390 (Ukraine), 3392 (Peru), 3395 (El Salvador), 3397 (Colombia), 3402 (Peru), 3420 (Uruguay), 3421 (Colombia), 3430 (Republic of Korea), 3432 (United Kingdom of Great Britain and Northern Ireland), 3433 (Republic of Korea), 3434

(Algeria), 3435 (Peru), 3437 (Ecuador) and 3438 (Peru), the Committee has received the Governments' observations and intends to examine the substance of these cases as swiftly as possible.

New cases

10. The Committee adjourned until its next meeting the examination of the following new cases which it has received since its last meeting: Cases Nos 3436 and 3439 (Republic of Korea), 3440 (Peru), 3441 (Bolivarian Republic of Venezuela) and 3442 (Pakistan) since it is awaiting information and observations from the Governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Voluntary conciliation

11. In its March 2021 report (GB.341/INS/12/1), the Committee decided to adopt a similar approach of optional voluntary conciliation for complaints as has been adopted with respect to representations under article 24 of the ILO Constitution. In its June 2022 report, the Committee took due note that the parties in Case No. 3425, the Trade Union Congress of Swaziland (TUCOSWA) and the Government of Eswatini, had agreed to refer the dispute to voluntary conciliation at the national level. This suspended the consideration by the Committee of the complaint for a period of up to six months. The Committee notes that the parties have agreed an extension of such period until end of April 2023. In October 2022, the Committee also took note that the parties in Case No. 3423, the Single Confederation of Workers of Colombia (CUT) and the Colombian Association of Professional Soccer Players (ACOLFUTPRO) as well as the Government, have agreed to refer the dispute to voluntary conciliation at the national level. The parties have been actively engaged since then and the Committee has suspended the consideration of the complaint for a period of up to six months. The Committee recalls that the ILO fully supports the resolution of disputes at national level and is available to assist the parties in this regard.

Article 24 representations

12. The article 24 representation referred to the CFA concerning the Government of France (Case No. 3270) is being finalized by the corresponding tripartite committee. The Committee has received certain information from the following Governments with respect to the article 24 representations that were referred to them: Costa Rica (Case No. 3241), Poland and a more recent article 24 concerning France and intends to examine them as swiftly as possible. The Committee has taken note of the more recent referral of the article 24 representations concerning Argentina and Brazil, and is awaiting the Governments' full replies. The Committee has also taken note that the parties in the article 24 concerning Uruguay, the Association of Locally Employed Functionaries of the Diplomatic Missions and Consular Offices of Uruguay Abroad (ASFUCOUREX) and the Government, have agreed to refer the dispute to voluntary conciliation at the national level. This suspended the consideration by the Committee of the representation for a period of up to six months.

Article 26 complaint

13. Subsequent to the decision of the Governing Body at its 291st Session (November 2004), the Committee also examined at its present meeting the measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry (see accompanying 398th Report). Noting with deep regret the serious retreat on the part of the

Government from its ILO constitutional obligations and its commitment to implement the Commission of Inquiry recommendations 19 years ago, the Committee draws this serious situation to the attention of the Governing Body so that it may consider any further measures to secure compliance therewith.

Transmission of cases to the Committee of Experts

14. The Committee draws the legislative aspects of Cases Nos 3406 (China – Hong Kong Special Administrative Region) and Malaysia (3414), as a result of the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), to the attention of the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

▶ Cases in follow-up

15. The Committee examined **8** cases in paragraphs **16** to **52** concerning the follow-up given to its recommendations and concluded its examination with respect to and therefore closed **7** cases: 2445 (Guatemala), 2710 (Colombia), 2816 and 3026 (Peru), 3162 and 3253 (Costa Rica) and 3297 (Dominican Republic).

Case No. 2710 (Colombia)

16. The Committee last examined this case, which refers to allegations of violent repression of a trade union meeting, banning of a strike, anti-union dismissals and arrests of trade unionists, at its June 2017 session [see 382nd Report, paras 27–29]. On that occasion, the Committee urged the Government to keep it informed of the results of the administrative investigation initiated against the National Union of Workers in the Metal Engineering, Machinery, Metallurgical, Railways Industry and in the Allied Marketing and Transport Sector (SINTRAIME) for damage to rail installations, workshops and doors of the enterprise facility; to keep it informed of the results of the court cases under way to rule on the reinstatement of 30 dismissed workers; and to also keep it informed of the alleged arrests of workers of SINTRAIME after a work stoppage and possible existence of criminal charges against them.
17. In a communication of 7 May 2018, the Government sent its observations regarding the information requested by the Committee. With regard to the administrative investigation initiated against SINTRAIME for damage to rail installations, workshops and doors of the enterprise facility, the Government reports that, by an order of 25 October 2012, the administrative labour investigation was declared to have lapsed and the administrative proceedings were ordered to be closed.
18. With regard to the court cases that were under way to rule on the reinstatement of 30 dismissed workers, the Government indicates that: (i) on 3 July 2015, the court of first instance found that the contracts of 20 workers had been legally and legitimately terminated; (ii) while nine workers withdrew their claims and requested that the court case be closed, other workers appealed the ruling, which was partially revoked by the Supreme Court of Bogota; and (iii) the enterprise filed an application for special judicial review of the ruling of the Supreme Court of Bogota and to date the court has not issued a final decision.
19. With regard to the alleged arrests of workers of SINTRAIME after a work stoppage and possible existence of criminal charges against them, the Government indicates that the enterprise has

confirmed that it has not filed criminal charges against the trade union organization and that, although in 2009 it filed a criminal charge against a former worker for damage to property, this charge had been withdrawn by the enterprise.

20. *The Committee takes due note of the information provided by the Government. While it regrets that it has not received information with respect to the final result of the court cases relating to the 30 dismissed workers, trusting that those cases have been concluded, and as it has not received any information in this regard from the complainants, the Committee considers this case is closed and will not pursue its examination.*

Case No. 3162 (Costa Rica)

21. The Committee examined this case, in which the complainant alleged that, in compliance with a ruling by the Office of the Comptroller General of the Republic, a state-owned bank amended a provision in a collective agreement signed with the Labour Union of the National Bank of Costa Rica (SEBANA), at its meeting of June 2017 (see Report No. 382, paragraphs 275–296). On that occasion, emphasizing the importance of settling differences of interpretation of collective agreements by the mechanisms provided for such purpose in the agreement itself or, in any event, by an impartial mechanism which should be accessible to both parties signatory to the agreement, such as a judicial body, the Committee requested the Government and the complainant to keep it informed of the outcome of the judicial proceedings under examination.
22. In its communications dated 20 July 2018 and 28 July 2022, the Government provides information relating to four judicial proceedings and indicates that two of them (cases Nos 15-00713-0166-LA and 15-008666-1027-CA), instituted by SEBANA in relation to the Bank's action in compliance with the ruling of the Comptroller General of the Republic, had concluded with decisions in favour of the Bank, and that the other two proceedings (cases Nos 15-000780-0166-LA and 15-001477-0166-LA) had not yet been concluded.
23. *The Committee notes the information provided by the Government. Trusting that the two judicial proceedings that remain under examination will be resolved as soon as possible and observing that no information has been received from the complainant in this regard, the Committee considers that this case is closed and will not pursue its examination.*

Case No. 3253 (Costa Rica)

24. The Committee last examined this case concerning alleged anti-union dismissals at its June 2021 session [see 395th Report, paras 30–33]. On that occasion, the Committee once again requested the Government to provide information on the developments in the judicial proceedings concerning the dismissal of trade union leaders which were still pending and expressed the firm hope that these cases would be resolved as soon as possible.
25. By communications dated 29 September 2021, 14 October 2022 and 29 November 2022, the Government transmitted the information provided by the Supreme Court of Justice concerning the six pending cases of dismissal of trade union leaders, indicating the following:
- (i) In relation to the cases of Messrs Rigoberto Cruz Vásquez, José Andrés Chevez Luna and Wagner Cubillo Palacios, the Second Chamber of the Supreme Court of Justice, confirmed the first instance judgement in favour of the said persons on 9 January 2019 and on 29 July 2022 ordered the definitive archiving of the proceedings since there were no pending matters to be dealt with or sums to be settled.
 - (ii) With regard to the case concerning Mr Vladimir Torres Montiel, the proceedings have been closed as the parties reached conciliatory agreements. The case of Mr Carlos José Padilla has been closed at the request of the parties and the corresponding payments

have been made to him. Finally, as regards Ms Graciela Reyes Umaña, in one proceeding the applicant withdrew her application (decision of 15 March 2014). The Government informs that one proceeding is still pending and that it is awaiting further details from the Supreme Court of Justice.

26. *The Committee notes that five of the six pending judicial proceedings have been resolved, with three court decisions in favour of the trade union leaders and two cases in respect of which conciliatory agreements have been reached between the parties and the corresponding payments have been made. With regard to the case of Ms Graciela Reyes Umaña, the Committee takes note, on the one hand, of the withdrawal of the claim in one of the 2014 judicial proceedings and, on the other hand, of the Government's indication that it is still awaiting information from the Supreme Court of Justice regarding another pending judicial proceeding. The Committee also notes that the complainant organizations have not sent any additional information regarding this particular case since the complaint was lodged with the Committee in December 2016. Taking into consideration that five of the six pending cases have been resolved as described above, the Committee trusts that the case of Ms Reyes Umaña will be resolved as soon as possible and taking into account the considerations that the Committee has expressed in its previous conclusions and recommendations in this regard. In view of the foregoing, the Committee considers that this case is closed and will not pursue its examination.*

Case No. 2445 (Guatemala)

27. The Committee last examined this case, which concerns allegations of serious acts of anti-union violence, at its meeting of June 2018 (see 386th Report of the Committee, paragraphs 297–314). On that occasion, the Committee urged the Government, with regard to the investigations into the murder of trade union leader Mr Julio Rolando Raquec Ishen, to continue taking all necessary steps to ensure that all of the perpetrators and instigators of this murder and also the motives for the crime are identified once and for all, and that the guilty parties who are still alive are prosecuted and punished by the courts.
28. The Committee notes the information provided by the Government in its communications of 27 January 2022 and 30 January 2023 concerning the investigations into the homicide of Mr Julio Rolando Raquec Ishen, General Secretary of the Trade Union Federation of Informal Workers, which occurred on 28 November 2004. The Committee notes the Government's indication, first of all, that it appears, from the supporting analysis provided by the International Commission against Impunity in Guatemala and from various interviews with local residents, who withheld their names for fear of possible reprisals, that drunk and drugged individuals with firearms robbed an informal food stall and threatened a woman who refused to hand over her money, provoking a reaction from Mr Julio Raquec Ishen, who then became the target of the assailants, who fatally wounded him. The Government further indicates that: (i) the Public Prosecutor's Office identified two suspects in the incident, Mr Víctor Alfonso Cruz Zacarías and Mr Pedro Luis Gómez Herrera; (ii) it was established that Mr Víctor Alfonso Cruz Zacarías had passed away, for which reason the tribunal was requested to drop the criminal prosecution against him; (iii) although Mr Pedro Luis Gómez Herrera has still not yet been located, the Public Prosecutor's Office has established a line of investigation to pursue in this regard in order to do so (request information from different registries that would allow the whereabouts of Mr Pedro Luis Gómez Herrera to be established, reach out to the Directorate-General for the Control of Arms and Munitions with a view to establishing whether any weapons are registered in his name, ask the Prison System for a record of admissions to the various detention centres for which it is responsible); and (iv) the Prosecutor's Office continues to consider the collaboration of Ms Lidia Mérida Coy, an eyewitness to the events and the

victim's spouse who, despite repeated summonses, a search by human rights investigators and contacts with her family has not been possible to locate, to be important and necessary.

29. Lastly, the Committee notes the Government's request that the investigation into the murder of Mr Raquec Ishen be examined in the context of Case No. 2609, to the extent that the complainant organizations also referred to this investigation in their latest communication of 14 October 2021 in relation to the aforementioned case.
30. *The Committee notes the information provided by the Government, in particular that relating to the ongoing investigations to locate the remaining living suspect in the murder of Mr Raquec Ishen and the victim's wife. Noting with regret that, more than 18 years after the events, the murder of Mr Raquec Ishen remains unpunished, the Committee emphasizes that it is important that investigations into the murders of trade unionists should yield concrete results in order to determine reliably the facts, motives and persons responsible in order to apply the appropriate punishments and to prevent such incidents recurring in the future [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 96]. Noting with concern that certain basic investigative procedures to locate the suspect have not yet been undertaken, the Committee urges the Government to take the necessary steps to ensure that the competent authorities make every effort to locate and bring the person suspected of the crime to trial.*
31. *To the extent that Case No. 2609 deals with numerous homicides of members of the trade union movement and other acts of anti-union violence, the Committee will henceforth examine the follow-up by the competent authorities to the murder of Mr Raquec Ishen in the context of Case No. 2609 and considers the present case closed.*

Case No. 2756 (Mali)

32. The Committee last examined this case, which relates to the Government's refusal to appoint the Trade Union Confederation of Workers of Mali (CSTM) to the Economic, Social and Cultural Council (CESC) and to the national tripartite consultation bodies in general, at its March 2022 meeting [see 397th Report, paras 34–36]. On that occasion, aware of the difficult situation in the country, the Committee expressed the expectation that the Government would take the necessary measures to hold a social conference with one of the objectives being to establish the modalities of professional elections for the determination of the representativeness of trade union organizations. The Committee requested the Government to keep it informed of any new developments on that issue, which has been the subject of its long-standing recommendations.
33. In its communication dated 18 January 2023, the Government indicates that the social conference was held from 17 to 22 October 2022 with 139 recommendations adopted. This includes establishing a national tripartite committee of experts to develop and adopt the Social Stability and Growth Pact (hereinafter "the Pact"), with an action plan for the implementation of the above-mentioned recommendations. The organization of professional elections for the determination of the representativeness of trade union organizations is prioritized in the recommendations and a timeline will be defined in the action plan for such purposes. The Government indicates that the preparatory work will begin in 2023 upon the signing of the Pact and the action plan, scheduled for February 2023. The Government also indicates that it will seek the ILO's guidance in this regard.
34. *The Committee takes due note of the information provided by the Government and welcomes the above-mentioned commitments and developments. The Committee expects that the professional elections for the determination of the representativeness of trade union organizations will be conducted without delay and requests the Government to continue to provide information on any*

developments on this issue, including on the timeline and modalities established for the elections. The Committee expects that the Government will benefit from the ILO's guidance in that respect.

Case No. 2816 (Peru)

35. The Committee last examined this case, which concerns acts of alleged violation of trade union rights by the Office of the National Superintendent of the Tax Administration (SUNAT), at its October 2018 meeting [see 387th Report, paras 48–57]. On that occasion, the Committee requested the Government to inform it of the outcome of the judicial proceeding in which the SUNAT challenged the validity of the arbitral awards issued in the collective bargaining processes with the United Trade Union of SUNAT Employees (SINAUT–SUNAT) for the years 2011–12, 2013 and 2015, and also to provide information on any decision taken by the administrative authority in relation to the alleged misuse of email by trade union leaders Ms María Covarrubias and Mr Jorge Carrillo Vértiz.
36. In its communications of 4 February, 22 July, 3 and 29 November 2019, as well as 7 May 2021, the Government provides information about the judicial proceedings regarding the validity of the aforementioned arbitral awards. The Government indicates that, although the judicial process regarding the 2013 arbitral award was finalized, the judgments issued in relation to the 2011–12 and 2015 arbitral awards were subject to appeals and the judicial processes have not concluded. The Government also reports that on 30 April 2021, the Congress of the Republic approved Law No. 31188 on Collective Bargaining in the State Sector and that it is intended to regulate the exercise of the right to collective bargaining by trade union organizations of state workers, in accordance with article 28 of the Political Constitution and the provisions of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Labour Relations (Public Service) Convention, 1978 (No. 151).
37. The Government also indicates that the SINAUT–SUNAT filed, on behalf of Ms María Covarrubias and Mr Jorge Carrillo Vértiz, an *amparo* [protection of constitutional rights] lawsuit against the SUNAT alleging that the entity had violated the right to freedom of association by denying them the use of email as a means of communication for union purposes and by sanctioning union leaders for using email to disseminate information on union activities. The Government indicates that although in 2016 the Constitutional Court of first instance declared the *amparo* lawsuit well founded, that sentence was overturned in 2018 by the Superior Court of Justice of Lima. The Government annexed a copy of the judgment of the Superior Court of Justice of Lima in which it is indicated that email had been made available as a work tool and not for matters undertaken by the entity's trade union since they were not authorized by an agreement or pact between the parties and that, consequently, the use of email had no impact on the essential content of freedom of association.
38. *The Committee takes note of the information provided by the Government. The Committee trusts that the judicial proceedings relating to the 2011–12 and 2015 arbitration awards concerning collective bargaining within the public service will be resolved without further delay. The Committee also notes with interest the information provided by the Government regarding the enactment in 2021 of Law No. 31188 on Collective Bargaining in the State Sector. The Committee further notes that the Committee of Experts on the Application of Conventions and Recommendations (CEACR), in its comments published in 2023 concerning Conventions Nos 98 and 151, took note of the information provided by the Government according to which, on 20 January 2022, Supreme Decree No. 008-2022-PCM was published approving guidelines for the implementation thereof. The Committee expects that such rules will be implemented in a manner that promotes voluntary and good faith negotiation between the SUNAT and the SINAUT–SUNAT. The Committee refers in greater*

detail to Law No. 31188 and the aforementioned Supreme Decree in the context of Case No. 3026, discussed below.

39. The Committee also takes note of the 2018 judgment of the Superior Court of Justice of Lima, which overturned the judgment that had declared the amparo suit regarding the alleged misuse of email by union leaders to be well founded. The Committee notes that in that judgment the Court concluded that, insofar as the use of the public entity's email had not been authorized by an agreement or pact between the parties, the email had been made available as a work tool and not for matters undertaken by the union. Recalling that workers representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including the use of email [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1600] and that the modalities of use of email for union purposes in the workplace should be a matter for negotiation between the parties, the Committee encourages the parties, within the framework of the new regulations in force referred to in the previous paragraph, to define by mutual agreement the rules applicable in this regard.
40. Based on all the aforementioned elements, the Committee considers that this case is closed and will not pursue its examination.

Case No. 3026 (Peru)

41. The Committee last examined this case, in which the complainant organizations alleged restrictions in legislation and in the practice of collective bargaining in the public sector, at its March 2015 meeting [see 374th Report, paras 627–672]. On that occasion, the Committee made the following recommendations:
- (a) The Committee highlights that the Government is obliged to bring its legislation into conformity with Conventions that it has ratified in respect of the collective bargaining of wages in the public (state, regional and local) sector; the Committee requests the Government to promote collective bargaining in the spheres in which the complainant organizations operate (forensic medicine, agrarian innovation and electricity).
 - (b) The Committee firmly expects that in future the Government will guarantee that, in practice, trade unions participate in the consultations on any issue or proposed legislation affecting the rights of the workers they represent.
 - (c) The Committee requests the Government to provide its observations in reply to the allegations of the CTE-Peru of 17 October and 5 December 2014 calling into question the provisions of the new regulations on the Civil Service Act having an impact on the exercise of trade union rights, the allegations of the FNTPJ of 13 October 2014 concerning the impact of the Civil Service Act on the judicial employees, as well as the allegations of the CATP of 26 December 2014.
 - (d) The Committee regrets that the Government has not requested the technical assistance from the ILO that it announced it would request in 2013 and invites the Government to avail itself of ILO assistance in relation to this case.
42. In their communications dated 26 February 2015, the complainant organizations submitted additional information reaffirming the allegations previously submitted. Likewise, in its communications dated 14 and 19 November 2018, General Confederation of Workers of Peru (CGTP) submitted additional information on behalf of 15 other trade union organizations in relation to the same allegations in the present case. The CGTP added that Legislative Decree No. 1442 on the fiscal management of human resources in the public sector prohibited the possibility of granting pay increases to public sector workers through collective bargaining or through an arbitration process.

43. The Government sent additional information in its communications dated 25 September 2015, 29 November 2016, 5 and 6 April and 6 May 2019, in response to the Committee's recommendations. In these communications, the Government indicated that Legislative Decree No. 1442 on the fiscal management of human resources in the public sector does not refer to collective bargaining in the public sector, does not limit this right, and does not affect the labour rights of workers in the public administration. Moreover, in these communications, the Government also included a draft law on collective bargaining in the State sector aimed at revising the provisions of the Civil Service Law (2013) relating to collective bargaining.
44. In its communications received on 4 and 27 January 2023, the Government requested that the case is closed, without, however, providing new elements as to the follow-up given to the Committee's recommendations.
45. *The Committee takes due note of the various elements provided by the parties. The Committee further notes that, in the framework of another case (Case No. 2816, 401st Report, paras 35–40) the Government had informed the Committee of the adoption of the State Sector Collective Bargaining Act (published on 2 May 2021). The Committee notes that the Act indicates that: (i) bargaining may cover all types of working and employment conditions, including remuneration and other conditions of work with an economic impact; and (ii) it repeals various provisions of the Civil Service Act of 2013 (No. 30057) which completely excluded the determination of wages or matters with economic impact in the public sector through collective bargaining (sections 42, 43 and 44). In this respect, the Committee also notes that the CEACR, in its observations published in 2023 concerning Convention Nos 98 and 151, noted the information provided by the Government, according to which: (i) the Presidential Decree No. 008-2022-PCM was published on 20 January 2022, approving guidance for the implementation of Act No. 31188; (ii) the Act on the budget for the public sector for the 2022 financial year admits the financial increase agreed collectively; and (iii) the Centralized Collective Agreement 2022–2023 was concluded on 3 June 2022, and it included important benefits for all State workers (with the exception of public servants on special careers paths in health and education, who will engage in decentralized sectoral bargaining).*
46. *The Committee notes with satisfaction the above-mentioned legislative reform and the signing of the Centralized Collective Agreement 2022–2023. In light of the above, the Committee trusts that the Government will continue to take the necessary measures to promote collective bargaining in the spheres in which the complainant organizations operate (forensic medicine, agricultural innovation, electricity).*
47. *The Committee firmly expects that in the future the Government will guarantee that, in practice, trade unions participate in the consultations on any issue or proposed legislation affecting the rights of the workers they represent.*
48. *Finally, taking into consideration that the legislative issues raised by the complainant organizations have been and will continue to be examined by the CEACR in relation to the respective Conventions, the Committee considers that this case is closed and will not pursue its examination.*

Case No. 3297 (Dominican Republic)

49. The Committee last examined this case, which refers to anti-union dismissals in an airport sector company, at its October 2018 session (see 387th Report, paras 346–366). On that occasion, the Committee requested the Government to keep it informed of the judicial proceedings in which there would be an examination of the causes that gave rise to the dismissals of the members of the board of directors (Management Committee) of the workers' union of the enterprise (SITRAVIAM) and their alleged anti-union nature, and to send its observations with regard to the accusations against the membership of the Management

Committee of a violation of State security, which had led to the decision of the National Department of Investigations (DNI) to withdraw the access card to the ramp and restricted areas of the airport.

50. In a communication of 2 February 2019, the Government indicates that: (i) on 30 July 2018 it received a communication from the complainant, the National Confederation of Dominican Workers (CNTD), with information on a dialogue process between SITRAVIAM and the airport sector company in the framework of the Tripartite Round Table on Matters relating to International Labour Standards; and (ii) on 14 December 2018, it received a communication from the Employers' Confederation of the Dominican Republic (COPARDOM) reporting that, as a result of the conciliation process with the intervention of the Mediation and Arbitration Directorate of the Ministry of Labour, SITRAVIAM and the airport sector company had settled their differences and reached an agreement. The Government attached a copy of the memorandum of settlement, of 22 November 2018, in which, in addition to agreeing on various trade union demands relating to improvements in working conditions, it indicates that the parties briefly discussed the complaint that the trade union had presented to this Committee. The memorandum of settlement indicates that the trade union recognized that the facts that had led to the submission of this complaint had been resolved through frank and open dialogue, based on which the trade union supported its withdrawal.
51. With respect to the withdrawal of the access card to the ramp and restricted areas of the airport, the Government indicates that the security checkpoints in the restricted areas of airports are in line with international security standards, as a protection and control measure both for aircraft crew and passengers, and hence the restriction applies to all workers working in the airport and therefore cannot be considered an anti-union measure.
52. *The Committee takes due note of the information provided by the Government. While it regrets that the Government had not provided information with respect to the judicial proceedings in which there would be an examination of the causes that gave rise to the dismissals of the members of Management Committee of SITRAVIAM and their alleged anti-union nature, the Committee, notes that, according to the tenth point of the above memorandum of settlement, SITRAVIAM stated that the facts that had provided the basis for the submission of the complaint had been successfully resolved. In the light of the above, the Committee considers that this case closed and will not pursue its examination.*

* * *

Status of cases in follow-up

53. Finally, the Committee requests the Governments and/or complainants concerned to keep it informed of any developments relating to the following 47 cases.

Case No.	Last examination on the merits	Last follow-up examination
2096 (Pakistan)	March 2004	October 2020
2603 (Argentina)	November 2008	November 2012
2715 (Democratic Republic of the Congo)	November 2011	June 2014
2749 (France)	March 2014	-

Case No.	Last examination on the merits	Last follow-up examination
2797 (Democratic Republic of the Congo)	March 2014	-
2807 (Islamic Republic of Iran)	March 2014	June 2019
2871 (El Salvador)	June 2014	June 2015
2889 (Pakistan)	March 2016	October 2020
2925 (Democratic Republic of the Congo)	March 2013	March 2014
3011 (Türkiye)	June 2014	November 2015
3036 (Bolivarian Republic of Venezuela)	November 2014	-
3046 (Argentina)	November 2015	-
3054 (El Salvador)	June 2015	-
3076 (Maldives)	November 2022	-
3078 (Argentina)	March 2018	-
3098 (Türkiye)	June 2016	November 2017
3100 (India)	March 2016	-
3139 (Guatemala)	November 2021	-
3167 (El Salvador)	November 2017	-
3180 (Thailand)	March 2017	March 2021
3182 (Romania)	November 2016	-
3202 (Liberia)	March 2018	-
3243 (Costa Rica)	October 2019	-
3248 (Argentina)	October 2018	-
3251 (Guatemala)	November 2022	-
3257 (Argentina)	October 2018	-
3285 (Plurinational State of Bolivia)	March 2019	-
3288 (Plurinational State of Bolivia)	March 2019	-
3289 (Pakistan)	June 2018	October 2020
3313 (Russian Federation)	November 2021	-
3314 (Zimbabwe)	October 2019	November 2022
3319 (Panama)	March 2022	-
3323 (Romania)	March 2021	-
3326 (Guatemala)	November 2022	-
3331 (Argentina)	November 2021	-
3339 (Zimbabwe)	March 2022	-

Case No.	Last examination on the merits	Last follow-up examination
3364 (Dominican Republic)	March 2022	-
3369 (India)	November 2022	-
3375 (Panama)	June 2022	-
3385 (Bolivarian Republic of Venezuela)	March 2022	-
3386 (Kyrgyzstan)	November 2021	-
3393 (Bahamas)	March 2022	-
3399 (Hungary)	March 2022	-
3404 (Serbia)	November 2022	-
3408 (Luxembourg)	November 2022	-
3412 (Sri Lanka)	June 2022	-
3415 (Belgium)	November 2022	-

54. The Committee hopes that these Governments will quickly provide the information requested.

55. In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 1865 (Republic of Korea), 2086 (Paraguay), 2341 (Guatemala), 2362 and 2434 (Colombia), 2528 (Philippines), 2533 (Peru), 2540 (Guatemala), 2566 (Islamic Republic of Iran), 2583 and 2595 (Colombia), 2637 (Malaysia), 2652 (Philippines), 2656 (Brazil), 2679 (Mexico), 2684 (Ecuador), 2694 (Mexico), 2699 (Uruguay), 2706 (Panama), 2716 (Philippines), 2719 (Colombia), 2723 (Fiji), 2745 (Philippines), 2746 (Costa Rica), 2751 (Panama), 2753 (Djibouti), 2755 (Ecuador), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2793 (Colombia), 2852 (Colombia), 2882 (Bahrain), 2883 (Peru), 2896 (El Salvador), 2902 (Pakistan), 2924 and 2946 (Colombia), 2948 (Guatemala), 2949 (Eswatini), 2952 (Lebanon), 2954 (Colombia), 2976 (Türkiye), 2979 (Argentina), 2980 (El Salvador), 2982 (Peru), 2985 (El Salvador), 2987 (Argentina), 2995 (Colombia), 2998 (Peru), 3006 (Bolivarian Republic of Venezuela), 3010 (Paraguay), 3016 (Bolivarian Republic of Venezuela), 3017 (Chile), 3019 (Paraguay), 3020 (Colombia), 3022 (Thailand), 3024 (Morocco), 3030 (Mali), 3032 (Honduras), 3033 (Peru), 3040 (Guatemala), 3043 (Peru), 3055 (Panama), 3056 (Peru), 3059 (Bolivarian Republic of Venezuela), 3061 (Colombia), 3069 (Peru), 3075 (Argentina), 3095 (Tunisia), 3097 (Colombia), 3102 (Chile), 3103 (Colombia), 3104 (Algeria), 3119 (Philippines), 3131 and 3137 (Colombia), 3146 (Paraguay), 3150 (Colombia), 3164 (Thailand), 3170 (Peru), 3171 (Myanmar), 3172 (Bolivarian Republic of Venezuela), 3183 (Burundi), 3188 (Guatemala), 3191 (Chile), 3194 (El Salvador), 3220 (Argentina), 3236 (Philippines), 3240 (Tunisia), 3267 (Peru), 3272 (Argentina), 3278 (Australia), 3279 (Ecuador), 3283 (Kazakhstan), 3286 (Guatemala), 3287 (Honduras), 3310 (Peru), 3316 (Colombia), 3317 (Panama), 3341 (Ukraine), 3343 (Myanmar), 3347 (Ecuador), 3374 (Bolivarian Republic of Venezuela), 3378 (Ecuador), 3401 (Malaysia), 3407 (Uruguay) and 3410 (Türkiye) which it will examine as swiftly as possible.

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Case No. 3416

Definitive report

Complaint against the Government of Algeria presented by the National Council of Higher Education Teachers of Algeria (CNES)

Allegations: The complainant organization denounces interference in its functioning and also harassment of its members

56. The complaint is contained in a communication from the National Council of Higher Education Teachers of Algeria (CNES) dated 23 November 2021.
57. The Government provided its observations in communications dated 31 January and 12 September 2022.
58. Algeria has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

59. In a communication dated 23 November 2021, the CNES denounces acts of interference by the Government in the functioning of the trade union organization and harassment of its officers and members. The complainant alleges: (i) the manipulation of the justice system; (ii) the infiltration of the CNES by individuals with the aim of taking control of it, with the complicity of the Ministry of Justice; (iii) harassment of members of the CNES by the Ministry of Higher Education and Scientific Research (Ministry of Higher Education), in particular through repeated judicial harassment and disciplinary sanctions; and (iv) the complicity of the Ministry of Labour, Employment and Social Security (Ministry of Labour), which recognizes the faction composed of the infiltrators as representing the CNES.
60. The complainant indicates that individuals belonging to 5 of the 38 existing union branches, with the complicity of political members occupying posts of responsibility in certain universities, organized a pseudo-congress in Constantine on 9 December 2016 in order to elect a new union executive committee. The complainant indicates that this pseudo-congress took place despite the absence of 14 of the 15 members of the union's national executive committee, including the national coordinator, and the absence of 18 of the 21 members of the congress preparatory committee. According to the complainant, most of the individuals in question had just joined the CNES and were not members of either the national council or the national executive committee.
61. The complainant indicates that its national council met on 16 December 2016 to denounce the Constantine pseudo-congress and to fix the date of 12 January 2017 for holding its own congress. Most of the union branches (33 out of 38) took part in the national council of 16 December in the presence of a judicial officer. Moreover, the national council and the 33 union branches published press releases denouncing the Constantine pseudo-congress. The complainant also deplors the fact that on the eve of the congress due to be held on

12 January 2017, it was notified of the refusal of the Ministry of Higher Education to let the union hold the congress on the premises of Université Alger 2 as initially authorized by the head of the university. The CNES was therefore obliged to hold its congress on its cramped premises at Université Alger 3. Furthermore, the complainant denounces the refusal of the Ministry of Labour to register the dossier which it submitted to notify the holding of the congress on 12 January 2017, on the pretext of an internal dispute within the union. Lastly, the complainant provides examples of correspondence received from the Ministry of Higher Education prohibiting it from carrying out its union activities, in particular the organization of national protest actions, until the internal dispute was resolved. However, the CNES indicates that despite the threat of sanctions by the Government, it informed the authorities that it would continue to carry out its activities.

62. The complainant denounces the complaints lodged against its leaders by the organizers of the Constantine pseudo-congress. An initial complaint lodged with the labour court of Bir Mourad Raïs was rejected on the grounds that the plaintiff, Mr Abdelhafid Milat, the national coordinator elected by the Constantine pseudo-congress, was not competent to initiate legal proceedings (decision of 1 April 2018). The complainant claims that it was notified, without having been previously informed of the appeal, of a judicial decision of the Court of Appeal of Algiers of 10 June 2019 overturning the first-instance judgment and invalidating the congress held on 12 January 2017. The complainant indicates that it appealed against this decision but that the appeal was dismissed. The complainant raises questions regarding political interference in this matter. It draws attention to the fact that Mr Milat was appointed as vice-chairperson of the Independent National Election Authority, the body in charge of the presidential elections, which were rejected by the people. The complainant deplores the fact that despite the information that it submitted regarding the representatives of the executive committee elected in January 2017, the Ministry of Labour and the Ministry of Higher Education have since recognized Mr Milat's faction as representing the CNES.
63. Lastly, the complainant reports recurrent acts of harassment against its members since 2016, in particular physical aggression, dismissals and judicial proceedings, some of which have been reported to the International Labour Office by the Confederation of Algerian Unions (CSA), of which the CNES is a founder member. For example, the national coordinator of the CNES was convicted of defamation and slander for denouncing the facts of the present case, and given a suspended sentence of three months' imprisonment and a fine, as well as being required to pay damages of 300,000 Algerian dinars (US\$2,215).
64. The complainant deplores the fact that none of the three authorities to which it had recourse in this matter – namely, the Ministry of Labour, the Ministry of Higher Education and the Ministry of Justice – has taken any action in response to its requests.

B. The Government's reply

65. The Government provided its observations in communications dated 31 January and 12 September 2022. The Government recalls that the CNES is a trade union organization which has been registered since January 1992, in accordance with the provisions of Act No. 90-14 of 2 June 1990 concerning procedures for the exercise of the right to organize. It observes that there has been an internal dispute within the CNES since 2016, resulting in the holding of two congresses, namely: (i) the first congress held in Constantine on 8, 9 and 10 December 2016, the documents for which sent to the Ministry of Labour indicate the election of a new national coordinator, namely Mr Abdelhafid Milat; and (ii) the second congress held on 12 and 13 January 2017 in Algiers, the documents for which sent to the Ministry indicate the election of Mr Azzi Abdelmalek as national coordinator of the union.

66. The Government indicates that, in view of this situation and in accordance with the provisions of Act No. 90-14 of 2 June 1990, in particular section 15 thereof, which prohibits any legal or physical person from interfering in the internal functioning of trade unions, the two parties were invited to the Ministry of Labour to be informed that internal union disputes are a matter for the competent courts, in accordance with the legislation in force. A communication to this effect, dated 1 March 2018, was sent to each of the opposing factions.
67. According to the Government, it was against this background that on 12 October 2017 Mr Milat brought the dispute before the labour division of the Court of Bir Mourad Raïs, lodging an appeal against Mr Abdelmalek Azzi and Mr Abdelmalek Rahmani, and calling for the invalidation of the congress held in Algiers on 12 January 2017. The court ruled, in a judgment of 1 April 2018 (No. 08047/18), that Mr Milat was not competent to act as plaintiff. Availing himself of his right of appeal, Mr Milat lodged an appeal on 24 July 2018 with the Court of Algiers. On 17 December 2018, the labour division of the Court of Algiers handed down an in absentia final ruling (No. 05018/18), further to both parties' failure to appear, overturning the first-instance judgment and deeming the congress held in Algiers on 12 January 2017 to be null and void. On 20 January 2019, Mr Azzi brought a motion in the Court of Algiers to oppose the ruling of 17 December 2018. By a ruling of 10 June 2019 (No. 00478), the Court of Algiers upheld the final ruling of 17 December 2018, overturning the first-instance judgment of the Court of Bir Mourad Raïs and invalidating the congress held on 12 January 2017 in Algiers, with all attendant consequences.
68. The Government indicates that, in view of the above and in light of the court decisions, Mr Milat was recognized as national coordinator of the CNES by the competent courts. The Government recalls that the parties to the internal union dispute availed themselves of their right of appeal vis-à-vis the judicial authorities. It categorically rejects the complainant's allegations that interference occurred.
69. The Government indicates that since the court decisions handed down in this matter, the CNES has consolidated and reinforced its presence and participation in consultation and social dialogue with the Ministry of Higher Education on the various dossiers concerning, in particular, terms of employment and working conditions and training programmes and plans. Moreover, the Government states that the CNES held its 6th Congress on 14 November 2019, further to which Mr Abdelhafid Milat was re-elected as national coordinator.
70. According to the Government, Mr Abdelmalek Azzi has made use of all resources guaranteed by law to assert his rights, and his unfounded allegations are tantamount to defamation, which could result in judicial proceedings being brought by the persons and institutions cited in his communication.
71. In conclusion, the Government requests the Committee to close the case.

C. The Committee's conclusions

72. *The Committee observes that the present case is concerned with allegations of interference by the authorities in the functioning of the CNES and acts of harassment against its members.*
73. *The Committee notes, according to the information provided, the following sequence of events: (i) the CNES is a trade union organization which has been registered since January 1992; (ii) in 2016 the CNES experienced an internal dispute resulting in two congresses being held. The first congress was held in Constantine on 8, 9 and 10 December 2016; the documents relating to it which were sent to the Ministry of Labour, Employment and Social Security (Ministry of Labour) indicate the election of a new national coordinator, namely Mr Abdelhafid Milat. The second congress was held in Algiers*

on 12 and 13 January 2017; the documents relating to it which were sent to the Ministry indicate the election of Mr Abdelmalek Azzi as national coordinator; (iii) in view of the internal dispute, the Ministry of Higher Education and Scientific Research (Ministry of Higher Education), by a letter of 19 February 2017, informed the CNES executive committee headed by Mr Azzi that, further to a communication from the Ministry of Labour dated 16 February 2017, it was requesting the CNES to cease its activities until the dispute was resolved through the available legal channels; (iv) the Ministry of Labour requested the two opposing factions, in a communication of 1 March 2018, to cease their activities until the dispute was resolved through the available legal channels pursuant to the Code of Civil and Administrative Procedure; (v) Mr Milat brought the dispute before the labour division of the Court of Bir Mourad Raïs in October 2017, in the form of an appeal against Mr Abdelmalek Azzi and Mr Abdelmalek Rahmani (former national coordinator of the CNES) and calling for the invalidation of the congress held in Algiers on 12 January 2017. The court ruled, in a judgment of 1 April 2018 (No. 08047/18), that Mr Milat was not competent to act as plaintiff; (vi) Mr Milat appealed in the Court of Algiers against the judgment of 24 July 2018 of the Court of Bir Mourad Raïs. On 17 December 2018, the labour division of the Court of Algiers issued an *in absentia* final ruling (No. 05018/18), further to both parties' failure to appear. The ruling overturns the first-instance judgment and deems the congress held in Algiers on 12 January 2017 to be null and void; (vii) on 20 January 2019, Mr Azzi brought a motion in the Court of Algiers against the ruling of 17 December 2018. By a ruling of 10 June 2019 (No. 00478), the Court of Algiers upheld the final ruling of 17 December 2018 overturning the first-instance judgment of the Court of Bir Mourad Raïs and invalidating the congress held on 12 January 2017 in Algiers, with all attendant consequences; and (viii) further to the court decisions, Mr Milat was recognized as national coordinator of the CNES by the competent authorities, in particular the Ministry of Higher Education and the Ministry of Labour.

74. The Committee observes that, in the present case, the holding of the two congresses of the CNES appears to stem from a dispute within the trade union. As a preliminary point, the Committee is not competent to make recommendations on internal dissensions within a trade union organization, so long as the government does not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organization. Conflicts within a trade union should be resolved by its members, and when two executive committees each proclaim themselves to be the legitimate one, the dispute should be settled by the judicial authority or an independent arbitrator, and not by the administrative authority [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1613, 1611 and 1620].
75. The Committee observes that the members of the executive committee elected by the congress held on 9 December in Constantine are presented by the complainant as having concluded a political agreement with the authorities. The complainant adds that the Constantine congress was organized by 5 out of the 38 branches comprising the trade union, and was held in the absence of 14 of the 15 members of the union's national executive committee, including the national coordinator (Mr Abdelmalek Rahmani), and also in the absence of 18 of the 21 members of the congress preparatory committee. The Committee notes that the CNES national executive committee and the 33 union branches met on 16 December 2016 to denounce the holding of the Constantine congress through press releases and to confirm the date of 12 January 2017 for holding the union's ordinary congress. This meeting of the union council was certified by a judicial officer and the record was sent to the Government. The Committee notes that this latter congress was held in Algiers with the participation of the vast majority of union branches (33 out of 38) and of the members of the national executive committee, including the outgoing national coordinator.
76. The Committee also notes with concern the complainant's allegation that this congress had to be held on its cramped premises at Université Alger 3, following the last-minute refusal by the Ministry

of Higher Education to allow the congress to be held on the premises of Université Alger 2 as initially planned.

77. The Committee notes the Government's reply that the parties to the internal dispute have availed themselves of their right of appeal to the judicial authorities, and further to the court decisions handed down in this matter the Ministry of Higher Education and the Ministry of Labour have recognized the executive committee led by Mr Milat as the mouthpiece of the CNES. The Government states that the CNES has since held its 6th Congress, on 14 November 2019, as a result of which Mr Milat was re-elected as national coordinator.
78. The Committee observes that according to the CNES by-laws (provided by the complainant), the ordinary session of the union congress is held every three years (section 56) and any extraordinary session of the congress must be convened by at least two thirds of the 15 members of the union's national council or further to the resignation of at least two thirds of the members of the national executive committee (section 57). The information at the Committee's disposal does not reveal whether the Constantine congress of 9 December 2016 was convened according to the above-mentioned procedures laid down in the union constitution.
79. The committee notes that the internal conflict within the CNES has been settled by the judiciary which annulled the congress of January 2017 and rendered its effects null and void. It notes that the Court of Algiers, in its ruling of June 6, 2019, relied on the chronology of the congresses to conclude the validity of the congress held on 9 December 2016 in Constantine and thereby invalidating the congress of 12 January 2017 in Algiers. The Court also relied on the absence of judicial recourse against the holding of the Constantine congress on the part of the members of the presumed dissolved office.
80. The Committee observes that it does not have sufficient elements in the Government's reply and the ruling of the Court of Appeal to determine to what extent the question of non-compliance with the CNES by-laws was taken into consideration in order to conclude that the congress held in Constantine was valid and to annul the election of the National Bureau led by Mr Azzi. In this regard, the Committee wishes to recall its constant view that the regulation of procedures and methods for the election of trade union officials is primarily to be governed by the trade unions rules themselves, and that the fundamental idea of Article 3 of Convention No. 87 is that workers and employers may decide for themselves the rules which should govern the administration of their organizations and the elections which are held therein [see **Compilation**, para. 592] and requests the Government to ensure that this is respected.
81. Moreover, the Committee notes that the information provided reveals that the Ministry of Higher Education, on the recommendation of the Ministry of Labour, asked the executive committee led by Mr Azzi to suspend its activities and to have recourse to the judicial authorities to resolve the dispute in progress, pursuant to the Code of Civil and Administrative Procedure. The Committee notes the Government's indication that a similar letter had been sent to the executive committee led by Mr Milat. In this regard, the Committee is of the view that the appeals brought before the judicial authorities should not constitute grounds for paralysing the executive committees which are presumed to have been elected and the activities which they wish to conduct in the interests of their members.
82. The Committee notes the allegations of recurrent acts of harassment against members of the CNES since 2016, in particular physical aggression, dismissals and judicial proceedings. The complainant cites the example of the conviction of Mr Azzi on 26 October 2017 for denouncing the facts related in the present case, and the imposition on him of a suspended sentence of three months' imprisonment for defamation and slander plus a fine, as well as the requirement to pay damages of 300,000 Algerian dinars (US\$2,215) for injury caused. The Committee recalls in general terms that

trade union officers should not be subjected to retaliatory measures for having exercised the rights deriving from the ILO instruments on freedom of association. The Committee trusts that the Government will ensure respect of this freedom of association right.

- 83.** *Furthermore, in the absence of more detailed information from the complainant regarding the nature of the acts of harassment and anti-union discrimination, the Committee will not pursue its examination of these allegations but recalls that it considers that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures, and that this protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see **Compilation**, para. 1117].*

The Committee's recommendations

- 84.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee wishes to recall its constant view that the regulation of procedures and methods for the election of trade union officials is primarily to be governed by the trade unions rules themselves, and that the fundamental idea of Article 3 of Convention No. 87 is that workers and employers may decide for themselves the rules which should govern the administration of their organizations and the elections which are held therein [see **Compilation**, para. 592] and requests the Government to ensure that this is respected.**
 - (b) Recalling that trade union officers should not be subjected to retaliatory measures for having exercised the rights deriving from the ILO instruments on freedom of association, the Committee trusts that the Government will ensure respect of this freedom of association right.**
 - (c) The Committee considers that this case is closed and does not call for further examination.**

Case No. 3431

Interim report

**Complaint against the Government of Angola
presented by
the International Trade Union Confederation (ITUC)**

Allegations: The complainant organization alleges that there have been attempts to marginalize the União Nacional dos Trabalhadores de Angola – Confederação Sindical (UNTA-CS) involving attacks on freedom of expression, government interference in UNTA-CS affairs and threats of deregistration; all in a general climate of increased violence against trade unionists and workers

85. At its 110th Session (June 2022), the International Labour Conference approved the Credentials Committee's proposal – made in accordance with article 32, paragraph 6 of the Conference Standing Orders – to refer to the Committee on Freedom of Association the issues raised by the International Trade Union Confederation (ITUC) in its objection concerning the nomination of the Workers' delegation of Angola.
86. The issues raised by the ITUC are contained in a communication dated 31 May 2022 and a communication dated 5 June 2022 provided in response to a request from the Credentials Committee.
87. The Government provided information on these issues in communications dated 2, 4 and 7 June 2022 and in a communication dated 1 February 2023.
88. Angola 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. Allegations of the complainant organization and examination of the case by the Credentials Committee

89. In its communication dated 31 May 2022, the ITUC lodged a complaint with the Credentials Committee concerning the nomination of the Workers' delegate and adviser of Angola to the 110th Session of the Conference (May–June 2022), and provided further information in this regard dated 5 June 2022. This complaint and the observations provided by the Government in its communications dated 2, 4 and 7 June 2022 were examined by the Credentials Committee, as set out below:
 28. The Committee received an objection presented by the International Trade Union Confederation (ITUC) concerning the nomination of the Workers' delegate and adviser of Angola. The author of the objection challenged the exclusion from the Workers' delegation of the *União Nacional dos Trabalhadores de Angola – Confederação Sindical* (UNTA-CS), the country's most representative workers' organization which had always

been included in the tripartite delegation. The Government had unilaterally decided to replace it with a representative of another trade union, the *Força Sindical – Confederação Sindical* (FS-CS), and refused to pay for the travel and subsistence expenses of the UNTA-CS representative to the Conference. This exclusion came at a time when a UNTA-CS representative had been accused of colluding with foreign forces, after criticizing another government during the last session of the Conference, and in a general context of increased violence against trade unionists and workers. In particular, a social movement led by the *Sindicato Nacional do Médicos de Angola* (SINMEA), an affiliate union of the UNTA-CS, had resulted in threats by the Government of dismissal, suspension of salaries, strike breaking and other forcible actions. In April 2022, the Deputy Secretary-General of the SINMEA had been found dead in suspicious circumstances. In this context, the exclusion of the UNTA-CS, following years of representation, appeared intentional. In addition, the Government had reportedly threatened to deregister the UNTA-CS. Contrary to the Government's statements, the UNTA-CS had not attended any meeting and had not agreed to any rotation system. The ITUC noted that the UNTA-CS was the only worker's organization, out of the three members of the National Committee for the ILO, not accredited in the Workers' delegation which, together with the manifestly unbalanced nature of the delegation, raised concerns as to the exclusion of the UNTA-CS.

29. In three written communications addressed to the Committee in response to its request, the Government indicated that it had nominated the Workers' delegation following a meeting of the National Committee for the ILO. This Committee, created in 1990, was a tripartite body under the purview of the Ministry of Public Administration, Labour and Social Security, composed of the most representative, legally constituted, employers' and workers' organizations. Its current composition had been established by a Ministerial order in February 2022 and included representatives of three trade unions, the UNTA-CS, the CGSILA and the FS-CS. This Committee held a virtual meeting on 31 March 2022 which, contrary to what the ITUC stated, was attended by the Deputy Secretary-General of the UNTA-CS. In addition to providing the minutes of the meeting, the Government informed the Committee that this kind of online meetings are recorded. In that meeting, the composition of the delegation to the Conference was approved and it was unanimously decided that the participation of members of the Committee to the sessions of the Conference would be determined on a rotational basis. The decision took into account that for the past 15 years, Angolan worker participation at the Conference had been ensured exclusively through the UNTA-CS and its sole representative, thus excluding other organizations members of the National Committee for the ILO. This system would henceforth give every member the opportunity to participate, unless for specific reasons continuity of presence at the Conference was necessary. The Government recalled that it had recently ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).
30. On the question of the travel and subsistence expenses, the Government indicated that Ms M. Francisco of the UNTA-CS was not part of the delegation to the Conference but a regular Workers' member of the ILO Governing Body and that the travel and subsistence expenses related to her participation to the Governing Body were to be covered in accordance with Annex IV to the Standing Orders of the Governing Body. Otherwise, the Government had complied with the obligation of payment for every member of the national tripartite delegation to the Conference. The Government expressed its indignation at the accusation relating to the SINMEA, recalled that it had responded to this matter in a letter to the International Labour Standards Department of the Office, and concluded that the matter did not fall within the purview of the Committee.
31. The Government additionally produced a letter, signed by the Secretary-General of the UNTA-CS and addressed to the ITUC, which stated that the UNTA-CS had elected its Deputy Secretary-General as a new member to the National Committee for the ILO during its Vith Congress in August 2021. The letter further stated that the Secretariat of the National Executive Committee of the UNTA-CS had not been instructed to file an objection and

complaint, and that, since the organs of the UNTA-CS did not endorse it, the National Executive Committee would expect its resolution. The ITUC expressed surprise in receiving a letter from one of its own affiliates through the Government, and reported that Ms Francisco, member of the ILO Governing Body and member of the Confederal Council of the UNTA-CS, had no knowledge of the letter presented by the Government. It was thus suspected that the Government was interfering in the affairs of the UNTA-CS.

- 32.** *The Committee notes that the Government uses the mechanism of the National Committee for the ILO to obtain the designation of the Employers' and Workers' delegation to the Conference. The Committee wishes to stress, however, that the existence of a national tripartite body does not absolve the Government from its obligation to undertake full consultations with all the most representative employers' and workers' organizations in the country.*
- 33.** *The Committee notes that, although it addressed several requests for clarification to both the objecting organization and the Government, the information provided is too contradictory to permit the Committee to reach conclusions on the conformity of the nomination of the Angolan Workers' delegation with the requirements of article 3, paragraph 5 of the ILO Constitution. The decisive question before the Credentials Committee – whether the alleged rotation system, whose application purportedly resulted in the exclusion of the UNTA-CS from the delegation to this session of the Conference, was approved by it or not – remains open. It hinges on whether the Deputy Secretary-General of the UNTA-CS attended, in fact, the virtual meeting of the National Committee for the ILO on 31 March 2022 – a crucial fact on which the objecting organization and the Government differ. More generally, the information provided by both parties makes the Committee believe that the situation described by the objecting organization would merit further investigation for which the Committee lacks jurisdiction. The Committee considers that this could best be done by referring the case to the Committee on the Freedom of Association of the Governing Body, it being understood that this does not limit the receivability of objections based on the same facts or allegations that the same or other organizations may submit to the Committee at future sessions of the Conference.*
- 34.** *The Committee unanimously considers that the objection before it raises issues which relate to violations of the principles of freedom of association which have not already been examined by the Committee on the Freedom of Association of the Governing Body. It proposes that the Conference refer the question to that Committee, in accordance with article 32, paragraph 6, of the Conference Standing Orders.*
- ...
- 114.** The Credentials Committee adopts this report unanimously. It submits it to the Conference in order that the Conference may take note of it and adopt the proposals contained in paragraphs 11, 18, 26 and 34.

10 June 2022

B. The Government's further observations

- 90.** In its communication dated 1 February 2023, the Government merely provides evidence that it paid the travel and accommodation expenses of the members of the Employers' and Workers' delegations, without providing any further explanation of the reasons for the absence of UNTA-CS in the Workers' delegation, or regarding the ITUC's other allegations that justified the matter being referred to the Committee.

C. The Committee's conclusions

- 91.** *The Committee notes that the present case was referred to it by the International Labour Conference upon a proposal of the Credentials Committee – made in accordance with article 32, paragraph 6, of the Conference Standing Orders – to refer the issues raised by the ITUC in its objection concerning*

the nomination of the Workers' delegation of Angola to the Committee on Freedom of Association. The Credentials Committee considered that the objection raised issues that went beyond representation at the Conference. The Committee notes that the Credentials Committee indicated that the information provided by the two parties led it to believe that the situation described by the objecting organization merited further investigation that fell outside of its jurisdiction. While recalling that the matter of representation at the International Labour Conference falls within the competence of the Credentials Committee of the Conference, the Committee will proceed with the examination of this case in accordance with article 32, paragraph 6, of the Conference Standing Orders and its mandate to review issues raised by the Credentials Committee.

- 92.** *The Committee notes that the ITUC's allegations make reference to attempts to marginalize UNTA-CS involving attacks on freedom of expression, government interference in UNTA-CS affairs and threats of deregistration; all in a general climate of increased violence against trade unionists and workers.*
- 93.** *The Committee notes the complainant organization's allegation that UNTA-CS is the most representative workers' organization, which justifies the nomination of one of its members as the Workers' delegate to the Conference, but on the occasion of the 110th Session of the Conference (May–June 2022), UNTA-CS was excluded from the Workers' delegation in favour of another organization. The Committee notes the Credentials Committee's indications that the crucial matter before it was whether a rotation system, the application of which would have resulted in the exclusion of UNTA-CS from the Conference delegation, had been approved by UNTA-CS, and that this matter, in view of the contradictory elements brought to its attention, could not be settled. However, the Committee notes that according to the complainant organization the Government decided to replace the UNTA-CS delegate with a representative from another trade union after a UNTA-CS representative was accused of colluding with foreign powers for having criticized another government during the previous session of the Conference. While taking due note of the fact that the question of whether there is a rotation agreement remains open, the Committee wishes to recall that freedom of opinion and expression and, in particular, the right not to be penalized for one's opinions, is an essential corollary of freedom of association, and workers, employers and their organizations should enjoy freedom of opinion and expression in their meetings, publications and in the course of their trade union activities [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 235]. It should also be recalled that any decision concerning the participation of workers' organizations in a tripartite body should be taken in full consultation with all the trade unions whose representativity has been objectively proved [see **Compilation**, para. 1572]. The Committee requests the Government to engage in constructive dialogue with all the parties concerned with a view to determining, together with the parties, objective and transparent criteria for the designation of workers' representatives to the 111th Session of the Conference (June 2023). The Committee requests the Government to provide a detailed report on the discussions held to this end, the persons present and the agreement between the parties, by the next meeting of the Committee (June 2023).*
- 94.** *Regarding the allegations of government interference in the internal affairs of UNTA-CS, the Committee notes that the Credentials Committee observed that the Government had provided a letter from UNTA-CS indicating that the Secretariat of the National Executive Committee of UNTA-CS had not received instructions to lodge a complaint with the Credentials Committee and that the ITUC had expressed astonishment at receiving a letter from one of its affiliates through the Government, especially as a member of the ILO Governing Body, who is also a member of the Confederal Council of UNTA-CS, had not been aware of the letter. The Committee also notes that the ITUC alleges that the Government threatened UNTA-CS with deregistration. While it regrets that the complainant organization has not provided further information on these matters, the Committee considers that*

*employers' and workers' organizations must be allowed to conduct their activities in defence of their interests in a climate that is free from pressure, intimidation, harassment, threats or efforts to discredit them or their leaders. The Committee also wishes to recall that measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association [see **Compilation**, para. 986].*

- 95.** *With regard to the climate of increased violence against trade unionists and workers, the Committee notes the ITUC's allegations that a social movement led by the Sindicato Nacional do Médicos de Angola (SINMEA), a union affiliated to UNTA-CS, had resulted in threats of dismissal, suspension of salaries, strike-breaking and other coercive acts by the Government. The ITUC also reports the death of the deputy Secretary-General of SINMEA in suspicious circumstances. This context leads the ITUC to believe that the exclusion from the Angolan delegation of the UNTA-CS representative was not a coincidence. The Committee notes in this regard that, in its observations provided in response to a request from the Credentials Committee, the Government denied the allegations of harassment and threats of dismissal against SINMEA and said it was outraged by the remarks made by the ITUC in this regard. In the absence of further information from the Government, the Committee would like to recall that a free and independent trade union movement can only develop in a climate free of violence, threats and pressure, and it is for the Government to guarantee that trade union rights can develop normally [see **Compilation**, para. 87]. Regarding the allegations concerning the death of the Deputy Secretary-General of SINMEA, recalling that it is important that all instances of violence against trade union members, whether these be murders, disappearances or threats, are properly investigated [see **Compilation**, para. 102], the Committee requests the Government to indicate whether a judicial investigation has been opened.*
- 96.** *In the context of an alleged climate of increased violence against trade unionists and workers, the Committee requests the Government to take the necessary measures to ensure full respect for freedom of expression, association and the basic civil liberties necessary for the full realization of trade union rights.*

The Committee's recommendations

- 97. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee requests the Government to engage in a constructive dialogue with all the parties concerned with a view to determining, together with the parties, objective and transparent criteria for the nomination of workers' representatives to the 111th Session of the Conference (June 2023). The Committee requests the Government to provide a detailed report on the discussions held to this end, the persons present and the agreement between the parties, by the next meeting of the Committee (June 2023).**
 - (b) The Committee requests the Government to indicate whether a judicial investigation has been opened into the death in suspicious circumstances of the Deputy Secretary-General of SINMEA.**
 - (c) The Committee requests the Government to take the necessary measures to ensure full respect for freedom of expression, association and the basic civil liberties necessary for the full realization of trade union rights.**

Case No. 3225

Definitive report

**Complaint against the Government of Argentina
presented by**

- the Civil, Social, Cultural and Sporting Association of Túpac Amaru
- the Association of State Workers (ATE) and
- the Confederation of Workers of Argentina (CTA Workers)

Allegations: The complainant organizations allege that, in the context of a collective dispute, the constitutional rights of worker members of cooperatives were undermined, and the unlawful detention was ordered of Ms Milagro Sala, head of the Civil, Social, Cultural and Sporting Association of Túpac Amaru

98. The complaint is contained in communications from the Civil, Social, Cultural and Sporting Association of Túpac Amaru, the Association of State Workers (ATE) and the Confederation of Workers of Argentina (CTA Workers) dated 11 April, 16 August and 10 November 2016.
99. The Government provided its observations in the communications dated 8 March and 23 October 2017, and 22 March 2018.
100. Argentina 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

101. In their communications dated 11 April, 16 August and 10 November 2016, the complainant organizations allege that, in the context of a strike and a collective dispute that occurred in Jujuy province in December 2015, the constitutional rights of worker members of cooperatives were undermined, and the unlawful detention was ordered of Ms Milagro Sala, head of the Civil, Social, Cultural and Sporting Association of Túpac Amaru, a civil association affiliated to CTA Workers.
102. Information in the documents annexed to the complaints indicates that Túpac Amaru is a grassroots and indigenous political group founded in the late nineties in the province of Jujuy that aims at revitalizing the most underprivileged sectors of the province through the management of housing, health, employment and education programmes by local cooperatives run by the residents. The documents also indicate that Ms Sala is an indigenous social activist with a strong commitment to human rights, indigenous peoples and the neglected and excluded. She has contributed to rebuilding the civil society of the province by creating decent work and providing free, high-quality education and health services, thus weaving a new social fabric.

- 103.** The complainant organizations indicate that, after taking office as provincial governor on 10 December 2015, Mr Gerardo Morales suspended the payments made to the cooperatives, thus failing to comply with the agreements and commitments for public works entered into by the provincial state and, in response to this situation, the members of the cooperatives decided to peacefully occupy the Belgrano square from 14 December in search of a forum to negotiate with the provincial executive branch. The complainant organizations state that the Túpac Amaru organization sent three communications requesting an audience with the Governor but did not receive a response. They also state that, while the Governor officially remained silent, he communicated via the media that he would not meet with the organization and merely insulted and stigmatized Ms Sala, making groundless accusations of inexistant crimes against her.
- 104.** The complainant organizations state that, on 13 January 2016, the provincial executive branch issued Decree No. 403/G-2016, which launched an alleged regularization of the cooperatives, called the “plan for the regularization and transparency of cooperatives and social benefits”, providing for the re-registration and coercion of individuals and social organizations. The complainant organizations cite various articles of the Decree which, in addition to establishing a plan for regularizing and re-registering cooperatives and social benefits, instructed the Public Prosecutor’s Office to initiate the process of stripping civil associations of their legal status for crimes committed during the occupation of the square and ordered the exclusion from housing plans, benefits and programmes of individuals and organizations that continued to participate in the occupation. The complainant organizations allege that, under the provisions of the Decree, Ms Sala was detained on 16 January 2016 on the charges of “instigating crimes and unrest” in the context of a collective labour dispute with the cooperatives of the organization she represented and the peaceful occupation of the square. The complainant organizations indicate that Ms Sala was detained at the police station until 21 January when she was transferred to a women’s prison.
- 105.** The complainant organizations consider the above-mentioned Decree to be unconstitutional as it infringes on the protection of cooperatives and demonstrates the executive branch’s extortion of individuals and civil associations exercising the right to protest and strike. They also consider that the measures applied by the judiciary of the province of Jujuy, and the public statements made by the provincial Governor (newspaper articles are attached) constitute ideological and political persecution, making the detention of Ms Sala the unlawful detention of a trade union leader in the context of a collective dispute. The complainant organizations understand that the measures taken suppressed the right to peaceful protest of the worker members of the cooperatives and the intervention of the police authorities at the location of the protest restricted a form of protest, in violation of Convention No. 87. The complainant organizations add that, in an opinion issued in 2016, the United Nations Working Group on Arbitrary Detention stated that the deprivation of liberty of Ms Sala was arbitrary and requested the Government to release her immediately.

B. The Government’s reply

- 106.** In its communications dated 8 March and 23 October 2017, and 22 March 2018, the Government indicates that the Túpac Amaru organization is a civil association and not a trade union, established for social, cultural and sports purposes, which is not registered in the registry of trade unions and does not meet the requirements to be considered a trade union and therefore falls outside of the remit of the ILO supervisory system. The Government stresses that it is a neighbourhood grassroots organization that does not have the objective of protecting workers’ rights. The Government also states that the fact that Túpac Amaru is

affiliated to CTA Workers, which is a trade union and accepts the affiliation of social organizations, does not mean that the purpose that the interested parties themselves had in mind upon its establishment can be changed.

- 107.** The Government adds that Ms Sala is not a trade union leader and has not been elected or appointed as such by a trade union organization and that, according to information provided to the Government, Ms Sala ceased to belong to the Túpac Amaru association in April 2015, as shown in the association's file in the legal persons department of the State Prosecutor's Office of the province of Jujuy. The Government also indicates that the complaint does not indicate the scope of Ms Sala's participation in the organization or the defence of the rights of workers and/or cooperative members who were allegedly at the Belgrano square, nor does it indicate whether she participated in the representation of any specific trade union organization. The Government considers that the complaint is essentially flawed since there is an absence of a trade union association of which Ms Sala could be considered a representative or leader.
- 108.** The Government also states that it cannot be concluded from the complaint that there was a collective labour dispute arising from a negotiation between workers and employers and that it is incorrect to speak of a collective dispute as this is a phenomenon originating in the world of work that is referred to a resolution mechanism involving employers and workers in which workers are represented by delegates and/or leaders of a representative trade union organization covering specific personnel and a specific territory. According to the Government, none of these elements is demonstrated in the matters raised in the complaint.
- 109.** The Government indicates that: (i) characterizing the peaceful occupation as a strike undertaken by workers and linked to the right to organize that is protected under Conventions Nos 87 and 98 is clearly unjustified since the circumstances referred to in the complaint do not reflect collective bargaining and a collective labour dispute in the sense protected under the Conventions; (ii) the occupation took place four days after the Governor took office and Decree No. 403/G-2016 aimed to regularize social organizations and cooperatives, therefore the activities carried out during the occupation represented action of a political nature; and (iii) there had been no collective dispute and no union leader is identified who has experienced the deprivation, limitation and/or curtailment of any right or of freedom of association. The above-mentioned Decree indicates that the methods of assistance and state aid that had been implemented until 10 December 2015 had failed because they had been devoid of any type of state control and there were certain organizations that exercised a discretionary and quasi-governmental control over these public funds, so the Decree intended to register and regularize cooperatives and people benefiting from housing programmes, social plans and food and other benefits, in rejection of the violent methods of protest such as occupations, road blocks, and destruction of public and private property, and, among other acts of violence, the forceful action undertaken by the social organizations led by Ms Sala.
- 110.** The Government states that the Governor had no option but to clear the occupation from the square since there was a huge mass of tents and gazebos that covered not only the square but also the main thoroughfares of the city, meaning that it was not only an occupation of a park but an abrupt traffic disruption that particularly affected public passenger transport and had a direct impact on the businesses in the surrounding area, amounting to a siege of the city. The Government adds that the "occupation" began to unfold on the second working day of the Government's administration, with obvious acts of intimidation against the democratically elected Government, before the Government could have issued any administrative act.
- 111.** The Government indicates that: (i) on 11 January 2016, Ms Sala was summoned to a hearing to inform her of the charges brought against her and she undertook to identify herself to the

Personal Records Department, an obligation with which she failed to comply, she also undertook to abstain from any act that could hinder the discovery of the truth and the application of criminal law, which she also failed to do; and (ii) on 16 January, based on her procedural conduct and personal stance taken following the hearing, the judge ordered her detention, which was extended until 28 January when her mandated period of detention ended and a secured bail bond was imposed. Notwithstanding, Ms Sala continued to be held in pretrial detention by court order due to her alleged crimes of unlawful association, defrauding the public administration and extortion.

- 112.** The Government provides information in relation to the status of the various court cases in which Ms Sala is being investigated and for which she has been deprived of her liberty. According to the documentation provided by the Government, these include the following court cases:
- Cases Nos 129.652/16, 131.072/16 and others for unlawful association, defrauding the public administration and extortion. The appeal of Ms Sala’s pretrial detention is before the Supreme Court of Justice, after the Court of Appeals and the Superior Court of Justice of Jujuy rejected the defence’s arguments, upholding the ruling of the supervisory judge.
 - Case No. 140.750/2016 for abuse of authority and defrauding the public administration. The case is currently being investigated and Ms Sala is not being detained in relation to this case.
 - Case No. 2990/12 for concealing an attempted murder. The Appellate and Supervisory Court upheld the prosecution, pretrial detention and committal for oral hearing of the accused persons.
 - Case No. 18487/16 for aggravated grievous bodily harm. The Appellate and Supervisory Court upheld the prosecution and pretrial detention of Ms Sala.
 - Case No. 86.175/14 for threats. Although the case has been sent to trial, Ms Sala is not being detained in relation to this case.
 - Case No. 127785/2015 for instigating crimes and unrest. Although the case is under appeal at the Supreme Court of Justice, Ms Sala is not being detained in relation to this case.
 - Case No. 137.181/16 for defrauding the public administration. The case is being investigated and Ms Sala is being detained with visitation rights.
 - Case No. 129.652/16 for threats. The Public Prosecutor’s Office requested the case be brought to trial, which was approved by the supervisory judge and the defence filed an appeal against this decision.
 - Case No. 169.638/17 for repeated threats. The initial criminal investigation is in progress and evidence is being submitted.
- 113.** The Government stresses that Ms Sala’s right to individual freedom has not been restricted in any way for trade union reasons and that she is being detained as a result of standard judicial proceedings with full guarantees of due process. The Government annexed a copy of a judgment of the Supreme Court of Justice (CSJ/2017/CS1) from 2017, handed down in the case of “Sala, Milagro Amalia Angela and others accused of unlawful association, defrauding the State and extortion”, in which it ordered compliance with the request of the Inter-American Court of Human Rights of 23 November 2017 to immediately adopt the necessary measures to safeguard effectively the life, personal integrity and health of Ms Sala, in particular by replacing her pretrial detention with house arrest and providing her with the medical and psychological care that she required and agreed to.

C. The Committee's conclusions

- 114.** *The Committee notes that the present case concerns the alleged unlawful detention of Ms Milagro Sala, leader of the Túpac Amaru Civil Association, who has been detained since the beginning of 2016, and the alleged undermining of the constitutional rights of worker members of cooperatives. The Committee notes that, according to the complaint and its annexes, Túpac Amaru is a grassroots and indigenous political group founded in the late nineties in the province of Jujuy which aims at revitalizing the most underprivileged sectors of the province through the management of housing, health, employment and education programmes by cooperatives.*
- 115.** *The Committee notes the complainant organizations' allegations that: (i) four days after taking office, the Governor of the province of Jujuy suspended payments to the cooperatives and the cooperatives decided to undertake a peaceful occupation of a public square in search of a forum to negotiate with the provincial executive branch; (ii) not only did the Governor not meet with the cooperatives, but he threatened and stigmatized Ms Sala, making baseless accusations of in-existent crimes against her; (iii) one month later, Decree No. 403/G-2016 was issued, which launched an alleged regularization of cooperatives and social benefits, instructed the Public Prosecutor's Office to initiate the process of withdrawing the legal status of civil associations for crimes committed during the occupation of the square and provided for the exclusion from plans and programmes of those who continued the occupation (the complainant organizations consider that the Decree infringes on the protection of cooperatives and demonstrates the extortion of the executive branch of individuals and civil associations exercising the right to protest and strike); and (iv) three days after the Decree was issued, Ms Sala was detained on the alleged charges of "instigating crimes and unrest", which is evidence of the ideological and political persecution of the leader. The Committee notes that, according to the complainant organizations, in 2016 the United Nations Working Group on Arbitrary Detention concluded that the deprivation of liberty of Ms Sala was arbitrary and requested her immediate release.*
- 116.** *The Committee notes in this respect the Government's indications that: (i) Túpac Amaru is a civil association rather than a trade union, Ms Sala is not a trade union leader, there was no collective dispute arising from a negotiation between workers and employers and the characterization of the peaceful occupation as a strike is unfounded; (ii) according to Decree No. 403/G-2016, certain organizations exercised discretionary and quasi-governmental control over public funds and it was necessary to register and regularize the cooperatives, in rejection of the violent methods of protest such as occupations, road blocks and destruction of public and private property; (iii) Ms Sala was detained by court order owing to her suspected involvement in crimes for which she had been charged in various cases, including unlawful association, defrauding the public administration and extortion in a case that is currently before the Supreme Court of Justice; and (iv) the Supreme Court of Justice ordered compliance with the request of the Inter-American Court of Human Rights to adopt protective measures to safeguard the life, personal integrity and health of Ms Sala, particularly by placing her under house arrest as an alternative to pretrial detention.*
- 117.** *The Committee observes that, from the documentation provided by the complainant organizations and the Government it is apparent that the occupation, in which mainly social organizations and cooperative members participated, was undertaken in protest of the action taken by the new Governor to suspend payments to cooperatives. The Committee takes note of the Resolution adopted by the 110th Conference defining the Social and Solidarity Economy (SSE), which includes cooperatives, and calls on members to ensure that "workers in the SSE benefit from freedom of association and the effective recognition of the right to collective bargaining." The Committee also recalls its previous conclusion that the special situation of workers with regard to cooperatives, in particular as concerns the protection of their labour interests and considers that such workers*

should enjoy the right to join or form trade unions in order to defend those interests [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 399]. However, the Committee notes that in this particular case it does not seem to be apparent from the information and documents provided that the protest action taken by the members of the cooperative arose from a labour dispute or that the measures taken by the regional Governor of Jujuy had repercussions on the exercise of trade union rights. In the light of the foregoing, the Committee will not pursue its examination of the allegations related to the violation of the constitutional rights of the worker members of the cooperatives.

118. With regard to Ms Sala, the Committee notes that, according to publicly available information, she remains under house arrest. It also notes that in a judgment issued on 15 December 2022 the Supreme Court of Justice upheld the Jujuy court's 2019 decision sentencing Ms Sala to 13 years' imprisonment for unlawful association, defrauding the public administration and extortion. According to this decision, the Supreme Court of Justice understood that the sentence had already been reviewed by the Superior Court of Jujuy and the defence had not been able to demonstrate that there had been a violation of a right enshrined in federal law or that it was an arbitrary judgment, which would enable the federal Supreme Court to intervene.
119. The Committee notes that the documentation provided does not show that the court cases for which Ms Sala was sentenced to imprisonment were related to the exercise of trade union activities or to the exercise of activities of another nature that could have affected the exercise of trade union rights insofar as Ms Sala was convicted of the crimes of unlawful association as a leader, defrauding the public administration and extortion. According to the documentation provided, such acts were allegedly carried out in the context of the activity of an organization that presented as characteristic features a high degree of coordination, with a *modus operandi* that involved intimidation and top-down management by the defendant of a political and social organization set up to receive public funds for social purposes and divert them for the benefit of the unlawful association under investigation. The Committee recalls that it has considered that when it appeared from the information available that the persons concerned had been judged by the competent judicial authorities, with the safeguards of normal procedure, and sentenced on account of actions which were not connected with normal trade union activities or which went beyond the scope of such activities, the Committee has considered that the case called for no further examination [see **Compilation**, para. 183]. The Committee therefore considers that this case does not call for further examination and is closed.

The Committee's recommendation

120. In the light of its foregoing conclusions and taking into account that the issues examined in this case do not concern trade union rights, the Committee invites the Governing Body to decide that this case does not require any further examination.

Case No. 3360

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

Complaint against the Government of Argentina presented by the Single Union of stallholders of outlet centres, street markets and shopping precincts of the Republic of Argentina (SUPOFEPR)

Allegations: the complainant, who represents workers in the informal economy, contests a ministerial resolution granting trade union registration to organize only workers in a relationship of dependence. It also alleges that the Ministry is delaying the granting of trade union status and has therefore rejected the application for the approval of a collective labour agreement

121. The complaint is contained in a communication of the Single Union of stallholders of outlets centres, street markets and shopping precincts of the Republic of Argentina (SUPOFEPR) of 7 December 2018. SUPOFEPR sent additional information through communications dated 10 October 2019, 26 March and 29 July 2020, 9 August 2021 and 25 July 2022.
122. The Government sent its observations in communications received on 7 August 2019 and 7 February 2023.
123. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

124. In its communication of 7 December 2018, the complainant indicates that: (i) on 3 August 2017, having met all the requirements under the Act on trade union associations (LAS) No. 23.551, SUPOFEPR applied to the Directorate of Trade Union Associations of the Ministry of Labour, Employment and Social Security for registration as a trade union; (ii) on 8 February 2018, it received notification by the Ministry requesting it to amend certain administrative errors of form and pointing out that there had to be a relationship of dependence between the members and the employers that lease or rent out the stalls to them; and (iii) on 23 February 2018 it responded to this request, stating that article 14 *bis* of the National Constitution grants the right to establish a trade union to all workers and not only to those in a relationship of dependence, and requested the Ministry to take into account the jurisprudence established by the State concerning the recognition and registration of other trade unions that organize workers without a relationship of dependence, such as the Union of Taxi Drivers of the Federal Capital with trade union status No. 460, the National Federation of Taxi Drivers with trade union status No. 1382, the Single Union of Haulage Companies with trade union status

No. 1806, the Union of Newspaper and Magazine Vendors with trade union status No. 27, the Union of Street, Beach and Coastal Vendors of the Mar del Plata Area with trade union registration No. 1270, the Union of Sports Stadium and Train Station Vendors with trade union registration No. 2268 and the Street Vendors Union with trade union status No. 1381.

- 125.** In its communications of 10 October 2019, 26 March and 29 July 2020, 9 August 2021 and 25 July 2022, the complainant indicates that by resolution 534/2019 dated 2 July 2019, the State granted trade union registration to the Single Union of Street Market Workers of the Republic of Argentina (SUTFRA) (formerly known as SUPOFEPRRA), thereby becoming the first trade union organization to organize street market and stallholder workers' activity. The complainant indicates that, according to the text of the resolution in question, only workers in a relationship of dependence in the street market, marketplace and shopping precinct sector were allowed to organize. The complainant considers that this is not logical since the issue relates precisely to activities of the informal economy and it cannot be said that in such informality there are workers in a relationship of dependence. The complainant organization, which claims to represent independent workers – workers in fairs, markets, and shopping precincts – within the informal economy, indicates that according to the master file on the basis of which it was granted trade union registration, it was demonstrated that the sector is economically subordinated. The complainant also indicates that on 13 August 2019 it requested the Ministry, through case No. EX-2019-72262421-APN-DGDMT, to allow non-waged independent workers to organize and that on 2 January 2020 it requested the Ministry, through case No. EX-2020-00228330-APN-DGDMT, to issue a resolution in this regard.
- 126.** The complainant indicates that on 2 January 2020, it also requested the Ministry to grant it trade union status (the complainant attached a copy of the request, which bears a receipt stamp of the Ministry) and alleges that the Ministry has been delaying without logical or legal grounds, in a clearly arbitrary manner, the granting of union status, despite the fact that it is urgently needed by the sector. The complainant indicates that on 16 April 2022 it informed the Ministry of the signing of a collective labour agreement with an employer in the sector and requested its respective approval to confer an erga omnes nature on the agreement. The complainant alleges that the Ministry rejected the application for the approval of the collective labour agreement submitted, arguing that the union did not have trade union status. The complainant attached a copy of a technical report of the Technical Legal Advisory Unit of the Ministry dated 21 June 2022, which indicates that SUTFRA holds only simple trade union registration, and therefore does not have sufficient capacity to negotiate the collective agreement. The report indicates that, in accordance with the Act on collective bargaining No. 14250 and the LAS, it is the organization with trade union status that has bargaining capacity. The complainant indicates that the Ministry does not consider that SUTFRA is a pioneer trade union organization that organizes workers in fairs, markets, and shopping precincts, and that there is no such other organization holding either a trade union status or simple registration.

B. The Government's reply

- 127.** In its communications received on 7 August 2019 and 7 February 2023, the Government indicates that the complainant does not identify in the complaint how the exercise of its freedom of association has been restricted. The Government indicates that the complainant has sent several communications and that in each of them it has used different terms ranging from the relationship of dependence, independent work, informality, micro-entrepreneurship, economic subordination, and interdependent work, choosing and highlighting what suits it best, and making assertions without any basis and without providing any documentation to

support such assertions, which makes it impossible to determine the number of members it claims to have. The Government also understands that this difficulty in understanding who are the workers that it claims to represent entails the risk of endorsing the concealment of real employment relationships that accompany processes of non-compliance with labour law.

- 128.** The Government states that: (i) in its first communication, the complainant refers to the written submission it made before the National Directorate of Trade Union Associations of the Ministry of Labour, Employment and Security, in which it stated that the trade union was made up of mostly self-employed workers with “interdependence” or “economically dependent self-employed work”, due to the large number of informal workers or what is currently called “para-subordinate workers” who, although there is economic dependence on those who benefit from their services, are not registered as workers in a relationship of dependence; (ii) in its second communication the complainant maintains that on 2 July 2019, the former Ministry of Production and Labour, now the Ministry of Labour, Employment and Social Security, issued resolution 534/2019 which granted trade union registration to the Single Union of Street Market Workers of the Republic of Argentina (SUTFRA), as a first-degree trade association to organize workers employed in fairs, shopping precincts and municipal markets, with an area of action in different cities of the country; (iii) subsequently, the complainant indicates having demonstrated a marked economic subordination in which its comrades are immersed and points out that the State must provide them with the solution that will bring them dignity and recognition as independent workers; (iv) in another communication, the complainant indicates that in the master file through which they were granted trade union registration, it was demonstrated that the sector is economically subordinated; and (v) in the context of its inaccuracies, the complainant states that it also brings together independent workers.
- 129.** The Government indicates that it would appear from the foregoing that the complainant claims to represent all workers in the country, citing a series of statistics in which the source of the information is not substantiated and that the lack of precision from the complainant makes it impossible to establish what its personal scope of representation is.
- 130.** The Government indicates that, although the complainant claims to have signed a collective bargaining agreement with employers in the sector and that the Ministry of Labour would have rejected its request for approval on the grounds that it does not have trade union status, the Government has no information other than this claim, nor a reference to the records of the workers it claims to represent. The Government indicates that SUTFRA was granted registration due to the mere registration of 83 members in a relationship of dependence and that, in order to have the power to negotiate collective bargaining agreements, it will have to compare with the organizations in the sector that claim to be the most representative based on objective criteria. The Government indicates that some trade unions have applied to the Ministry of Labour to reserve the rights of each trade union for the opportunity provided for in article 25 of the LAS (application for trade union status), requesting that the comparative representativeness assessment be carried out with SUTFRA. The LAS differentiates between trade union organizations that are simply registered and those that hold trade union status, meaning those recognized by the State as the most representative in their territorial scope. Pursuant to the provisions of article 31(c) of the LAS, trade union organizations with the trade union status are those that have the exclusive right to intervene in collective bargaining. The Government indicates that, according to the records kept by the Ministry, there is no administrative action showing that SUTFRA has submitted itself to the objective comparative assessment to represent workers in collective bargaining. The Government also indicates that, according to the National Directorate of Trade Union Associations of the Ministry of Labour, although SUTFRA has a mandate for the period from October 2019 to October 2023, the trade

union is going through a serious institutional conflict within its executive committee, which is currently in leaderless.

- 131.** The Government states that it has been focusing its efforts on promoting workers' rights as a key element in achieving inclusive and sustainable growth, with particular attention to freedom of association and the effective recognition of the right to collective bargaining as enabling rights, thereby also promoting the transition from the informal to the formal economy. The Government notes that informality is a broad concept and that "the informal economy includes wage and self-employed workers, family workers, and workers who move from one status to the other; it includes workers who are engaged in new flexible work arrangements and who are on the periphery of the core business or at the end of the production chain". The Government indicates that in May 2020 it created the Commission for Disputes, Mediation and Proposals of the Basic Subsistence Economy with the aim of preserving social peace and guaranteeing the right of every person to have the opportunity to earn a living by means that ensure them decent living conditions, and indicates that, among other powers, this Commission prepares reports and proposals that tend to the transition from informality to formality and transparency.
- 132.** The Government also refers to Resolution No. 118/21 of the Ministry of Labour, Employment and Social Security, which establishes that persons working in the popular and basic subsistence economy may join associations and exercise the rights granted to them by the resolution, once the relevant registration has been obtained. The Government indicates that workers in the popular and basic subsistence economy are considered to be, among others, those who work individually or collectively to generate personal and family income, whether they are self-employed, casual, or occasional workers; street vendors; occupants of street stalls, small fairs, and handcraft sales; vehicle attendants; shoeshiners; or work for cooperatives.
- 133.** The Government indicates that the Registry of Associations of Workers' Associations of the Popular Economy and Basic Subsistence has been created within the Ministry of Labour and that the resolution admitting the registration will grant social status so that the association can exercise different rights such as representing its members, individually or collectively, and promoting their participation in all activities that help the transition from informality to formality. The Government indicates that the Ministry of Labour will oversee the administration of the Registry and that the Procedural Regulations of the Registry were approved in 2022.

C. The Committee's conclusions

- 134.** *The Committee notes that in the complaint submitted in 2018, the complainant, which claims to represent informal economy workers, specifically stallholders in outlet centres, street markets and shopping precincts, alleges that the process initiated a year previously to obtain its trade union registration had not been completed and that it had been notified that there had to be a relationship of dependence between the members and the employers that lease or rent out the stalls to them. The Committee notes that, in subsequent communications, the complainant contests the ministerial resolution of 2019 which, while it granted trade union registration, allowed SUTFRA to organize only workers who provide services in a relationship of dependence, which it considers illogical as it represents workers in the informal economy. The Committee notes that the complainant indicates that, although it has asked the Ministry to allow it to organize workers without a relationship of dependence, it has reportedly not received a reply in this regard. The Committee also takes note that the complainant additionally alleges that, despite being a pioneer trade union organization that brings together workers in fairs, markets, and shopping precincts, the Ministry has been delaying*

without any grounds the granting of union status (requested in 2020), and that, given that it does not have union status, its application for the approval of a collective labour agreement was rejected.

135. The Committee notes that, the Government, for its part, points out that: (i) the complainant does not indicate in what way the exercise of its freedom of association has been limited and in the various communications sent it uses terms ranging from relationship of dependence, independent work, informality, micro-entrepreneurship, economic subordination, interdependent work, making unfounded assertions and without accompanying any documentation, with which it is impossible to establish the personal scope of representation of SUTFRA and to determine its number of members; (ii) on 2 July 2019, pursuant to Resolution 534/2019, SUTFRA was granted registration due to the mere registration of "83 members with a relationship of dependence"; (iii) in order to negotiate collective bargaining agreements, SUTFRA must be comparatively assessed with the most representative organizations in the sector based on objective criteria and in this case some unions have already presented themselves to the Ministry and have requested a comparative representativeness assessment with SUTFRA in order to obtain trade union status and there is no record that SUTFRA has presented itself for the assessment; and (iv) SUTFRA is going through a serious institutional conflict within its executive committee, which is currently leaderless. The Committee also notes the Government's indications that it has been taking a series of measures to promote and encourage the transition from informality to formality and to guarantee the rights of informal workers. The Government refers, among other measures, to the establishment of the Commission on Conflicts, Mediation and Uprisings in the Basic Subsistence Economy and the Register of Associations of Workers' Associations in the Popular and Basic Subsistence Economy.
136. The Committee observes that the complainant and the Government concur that, by virtue of the ministerial resolution 534/2019, SUTFRA was registered as a trade union to organize workers in a dependent relationship who provide services in street markets, shopping precincts and municipal markets. The Committee notes, however, that the complainant objects to the fact that it was told there must be a relationship of dependence between the members and the employers renting the stalls and that, although it requested to be allowed to organize workers without a relationship of dependence, it did not receive a reply in this respect. While noting that the Government highlights that the trade union has not provided documentation to establish its personal scope of representation, the Committee observes that the Government has not pronounced itself on the elements that would prevent SUTFRA from being granted the right to affiliate both dependent and independent workers in the sector concerned.
137. The Committee recalls that it requested a government to take the necessary measures to ensure that self-employed workers fully enjoyed freedom of association rights, in particular the right to join organizations of their own choosing and that the free exercise of the right to establish and join unions implies the free determination of the structure and composition of unions, [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 388 and 502]. Further recalling that the criterion for determining the persons covered by the right to organize is not based on the existence of an employment relationship and that workers who do not have employment contracts should have the right to form the organizations of their choosing if they so wish [see **Compilation**, para. 330], the Committee expects the Government to take the necessary measures to ensure that workers in outlets, fairs and shopping precincts, without distinction whatsoever, have the right to establish and join organizations of their own choosing, subject only to the rules of the organizations concerned. The Committee requests the Government to keep it informed in this respect.
138. As regards the trade union status that SUTFRA allegedly requested in 2020, the Committee observes that, from the documentation submitted by the Government, it appears that other trade union organizations appeared before the Ministry and requested that a comparative assessment be made

in order to determine which of them is the most representative in their territorial area. The Committee observes that, while the complainant alleges that there is an unjustified delay in the processing of the application for trade union status, according to the Government, SUTFRA did not submit itself to such an assessment and, consequently, since it does not have trade union status, the approval of the collective agreement would have been denied. Noting that the above seems to indicate a lack of communication between SUTFRA and the competent ministerial authorities, the Committee requests the Government to engage in constructive dialogue with all the parties concerned to resolve the issues concerning freedom of association in the informal economy and to resolve the issues concerning representativeness of SUTFRA as soon as possible. The Committee requests the Government to keep it informed in this respect.

The Committee's recommendations

- 139. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee expects the Government to take the necessary measures to ensure that workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing, subject only to the rules of the organizations concerned. The Committee requests the Government to keep it informed in this respect.**
 - (b) The Committee requests the Government to engage in constructive dialogue with all the parties concerned to resolve the issues concerning freedom of association in the informal sector and to resolve the issues concerning representativeness of SUTFRA as soon as possible. The Committee requests the Government to keep it informed in this respect.**

Case No. 3203

Interim report

**Complaint against the Government of Bangladesh
presented by
the International Trade Union Confederation (ITUC)**

Allegations: The complainant organization denounces the systematic violation of freedom of association rights by the Government, including through repeated acts of anti-union violence and other forms of retaliation, arbitrary denial of registration of the most active and independent trade unions and union-busting by factory management. The complainant organization also denounces the lack of law enforcement and the Government's public hostility towards trade unions

140. The Committee last examined this case (submitted in April 2016) at its March 2022 meeting, when it presented an interim report to the Governing Body [see 397th Report, paras 79–94 approved by the Governing Body at its 344th Session].¹
141. The Government provides its observations in communications dated 1 November 2022 and 9 and 13 February 2023.
142. Bangladesh 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

143. At its March 2022 meeting, the Committee made the following recommendations [see 397th Report, para. 94]:
 - (a) The Committee firmly expects that the case concerning allegations of anti-union dismissals at enterprise (b)² will be concluded without further delay and requests the Government to keep it informed of its outcome.
 - (b) The Committee urges the Government to provide a copy of the court judgement in which it indicates that no evidence was found of police wrongdoing in relation to the ill-treatment and murder of Mr Aminul Islam and to clearly indicate the manner in which the serious allegations of the involvement of the security forces in this incident were fully addressed and investigated in the framework of the concluded judicial proceedings. It also expects the Government to ensure that any allegations of this type will be rapidly and duly investigated through independent mechanisms and trusts that concrete measures will be taken to provide clear instructions to all State officials to effectively ensure prevention of any such acts.
 - (c) The Committee urges the Government once again to clearly indicate whether the specific and serious allegations of threats and violence against trade union leaders and members in a number of enterprises denounced in the complaint, including those allegedly perpetrated by the police, were duly investigated and if so, to indicate the result thereof. The Committee also firmly expects the Government to take the necessary measures to ensure that any allegations of this kind will be promptly investigated by an independent entity.
 - (d) Emphasizing once again the severe implications of prolonged court proceedings on the functioning of trade unions, the Committee firmly expects a decision to be reached without delay in relation to the court proceedings for cancellation of trade union registration of two unions at enterprise (l)³ and requests the Government to provide information on the outcome of the proceedings.
 - (e) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.

B. The Government's reply

144. The Government indicates that the case concerning the allegations of anti-union dismissals at enterprise (b) was concluded on 14 December 2021, when the 2nd Labour Court, Dhaka, acquitted the defendants on the ground that many of the dismissed employees received their service benefits and there is no complaint against their employer or the accused. Regarding

¹ [Link to previous examination.](#)

² Raaj RMG Washing Plant.

³ Grameenphone.

the delay in handling of cases in courts, the Government affirms that as the courts are overburdened, sometimes there is delay in completing the process. However, the judiciary is aware of the matters so that unreasonable delay does not happen. The judiciary is independent in scheduling the hearing of the cases and the Government has complete faith in the independent trial process of the court.

- 145.** The Government further indicates that the Minister for Law, Justice and Parliamentary Affairs (MLJPA) and the Secretary, Ministry of Labour and Employment (MOLE) have been holding a series of meetings at regular intervals to discuss and identify the issues to be addressed and to find out areas of coordination required and have been in close contact with concerned individuals/organizations for expediting the cases. The MOLE regularly sits and monitors the progress of the cases, and if required, engages the staff to expedite the trials. Recently they have conducted two meetings with officers from the MLJPA and the MOLE, the Department of Labour (DOL), the Department of Inspection of Factories and Establishments (DIFE), Central Fund, Labour Welfare Foundation and Minimum Wage Board. Moreover, the MOLE has advertised for three panel lawyers who will be hired shortly and will assist the Ministry to expedite the court cases. Finally, the Government indicates that a CFA Case Monitoring Committee has been formed which has identified cases to be expedited and transmitted to the Secretary, the MOLE and the MLJPA, where necessary direction, guidelines or follow up is required. Henceforth, this will be a continuous process.
- 146.** In relation to the murder and ill treatment of Mr Aminul Islam regarding which serious allegations of involvement of security forces were made, the Government provides a copy of the judgment of the Court of the Special Sessions Judge, Tangail District, dated 8 April 2018, containing a death sentence issued in absentia against one person found guilty of having abducted, tortured and murdered the trade union leader during the night of 4-5 April 2012. The Government also affirms that: it monitors whether the law enforcing agency and the investigating authority are prompt in addressing any serious issue, and adds that if any police officer is found involved in wrongdoing while discharging his duty, he would face departmental proceedings; allegations against members of security forces are dealt with in internal official proceedings; and if any other offence is proved, disciplinary actions are taken.
- 147.** Regarding the Committee's request concerning investigation into specific allegations of threat and violence against trade union leaders and members in several enterprises, some of which were allegedly perpetrated by the police, the Government indicates that any reported case of anti-union discrimination including threats and violence against trade union leaders are duly investigated by the Department of Labour and Employment (DOLE). The Government further reiterates that the investigation activities are done by the proper legal authority which is the police. The police department is solely responsible for investigating any criminal offences under the Code of Criminal Procedure of 1898. If there is a need for further enquiry, an application can be made to the court for enquiry by the Criminal Investigation Department (CID) and the Police Bureau of Investigation (PBI). As per court order, these two bodies can separately complete the enquiry and submit a report to the court directly. Finally, the Government indicates that the police also have mechanisms for enquiring into matters and complaints against police officials where they can be faced with departmental enquiry and punishments, if they are found responsible for negligence or any offence. The Government further reiterates its reference to the amicable settlement of the cases concerning anti-union discrimination in enterprises (d), (e), (f) and (g).
- 148.** Regarding the judicial proceedings concerning the cancellation of registration of two unions at enterprise (l), the Government indicates that the case is sub-judice and it cannot interfere in

ongoing independent judicial proceeding to conclude the case. The Government once again recalls the history of the proceedings, indicating that:

- In the case concerning registration of Grameen Phone Ltd Sramik Kormachari union, registration was first refused on 28 February 2013, but after the union's judicial review application was granted and the administration lost its appeal before the Labour Appellant Tribunal (LAT) on 29 August 2013, the union was finally registered. However, at this stage the company appealed against the issuance of registration and obtained an order from the High Court Division of the Supreme Court to stay the operation of the judgment of the LAT to give registration to the union. The Government indicates that on 14 May 2019, the last time the company prayed for the renewal of the stay order, the High Court Division rejected the application and directed the parties to maintain status quo in respect of the position of the service till judgment is issued.
- In the case concerning registration of Grameen Phone Ltd Sramik Union, registration was first refused on 27 November 2008. The union filed for judicial review and won, the administration appealed and lost on 27 January 2014 and the union was registered. However, at this stage the employer appealed to the High Court and requested the staying of the operation of the registration certificate of the union pending judgment, which was granted. The order of stay was last extended for a period of six months on 23 April 2019 and the case remains pending.
- A new union named Grameen Phone Employees Union (GPEU) was registered on 6 March 2019.

149. The Government further reiterates that considering the seriousness of the case it has taken measures including giving Basic Courses and in-service trainings to the members of the Bangladesh Police, which include human rights, civil liberties and trade union rights and in addition, each police official is also trained on human rights, fundamental rights and constitutional rights during their Foundation Courses. The Government further refers to the road map on the Labour Sector of Bangladesh (2021–2026), which was submitted to the ILO Governing Body in June 2021, and included elements on training and awareness-raising for security staff and the police to prevent violence, harassment, unfair labour practices and anti-union acts; development and regular updating of online databases on training programmes; development of a compendium in Bangla of the legal framework on the use of minimum force and sanctions applicable in case of violation; and continuous training and clear instructions to the Industrial Police and relevant law enforcement forces on the use of minimum force and respect of human and labour rights including trade union rights and civil liberties during labour protests.

C. The Committee's conclusions

- 150.** *The Committee notes that this case, which was first examined in 2017, concerns allegations of systematic violation of freedom of association in particular through acts of violence, anti-union discrimination and other retaliatory acts against union leaders and members in numerous enterprises, arbitrary denial of union registration, union-busting and misuse of available procedures to challenge union registration, and lack of law.*
- 151.** *The Committee recalls that the complainant had alleged that since late April 2014, more than 60 workers at enterprise (b) were dismissed and had affirmed that the retaliation had escalated in March 2014 after a request had been made to management for collective bargaining. In reply to this allegation, the Government had indicated that an investigation had confirmed that the management*

not only deprived workers of trade union rights, but also inhumanely dismissed many of them and therefore a criminal case had been filed at the Labour Court on charges of unfair labour practices in 2014 [382nd Report, paras 153 and 161]. The Committee notes the Government's latest indication concerning the conclusion of this case with a ruling dated 14 December 2021, when the 2nd Labour Court, Dhaka, acquitted the defendants on the ground that many of the dismissed employees received their service benefits and there is no complaint against their employer or the accused. Observing that there does not appear to have been a consideration by the court of the anti-union nature of the dismissals, the Committee recalls in this regard that no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment. Cases concerning anti-union discrimination should be examined rapidly, so that the necessary remedies can be really effective; an excessive delay in processing such cases constitutes a serious attack on the trade union rights of those concerned [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1075 and 1139]. The Committee notes with concern that in this case, where the Government investigation had found that the dismissals had taken place in the context of violation of trade union rights, the defendants were finally acquitted on the grounds that many of the dismissed workers had received their service benefits after extremely lengthy penal proceedings lasting seven years. Noting that several cases of serious anti-union dismissals observed by the Government in this case did not result in any sanction or judicial remedy after lengthy judicial proceedings, the Committee observes the steps taken by the Government as set out in its road map presented to the Governing Body within the framework of the pending article 26 complaint to expedite labour-related cases and clear backlogs through the creation of new Labour Courts, as well as the formation of the CFA Case Monitoring Committee and expects that the Government's steps to bolster the number and resources of the labour courts will ensure in the future that rapid and effective protection against anti-union discrimination, including through penal sanctions, is provided to victims.

152. Regarding the murder and ill treatment of Mr Aminul Islam in 2012, the Committee welcomes the Government transmission of a copy of the judgment, which assists the Committee in carrying out its examination in full knowledge of the facts. It notes that although the prosecution has brought charges against only one person, it does submit to the court that the accused along with other accomplices caused the death of Aminul Islam and that this was a pre-planned murder. The judge himself sums up the position of the prosecution in the following terms: "a close scrutiny of the evidences of the prosecution witnesses clearly indicates that the prosecution made out a case that the accused is the principal assailant who had prior concert and meeting of minds with his other accomplices who had been kept behind the screen to cause the death of the deceased". The Committee further notes that another passage of the judgment provides "the popularity gained by Aminul Islam was the cause of enmity in between him and the Garments Owners Association because he used to look after the interests of the labourers and lastly, he had been the target of the aforesaid vested quarters who got executed their plan by their agent with other accomplices to cause the death of the deceased Aminul Islam". The judge therefore finds "complicity of the accused with the commission of the crime".
153. Regarding the alleged involvement of security forces in the torture and murder of the trade union leader, the Committee notes that according to the judgment, two witnesses including Aminul Islam's wife indicated in their testimony before the court that once in 2010, the National Security Intelligence (NSI) took away Aminul Islam and tortured him; and three witnesses indicated that the accused, who was previously an Export Processing Zone worker, had become an agent and source of the Criminal Investigation Department (CID), the NSI, Bangladesh Export Processing Zone Authority, Industrial Police and other agencies. The Committee further notes in the judgment that the investigating

officers who submitted the charge sheet in this case were members of the Detective Branch (DB) of the police and the CID.

- 154.** *The Committee recalls that the Government had previously indicated that pursuant to the judicial process, which culminated in the conviction of the accused, no proof of involvement of security forces had been found [397th Report, para. 84]. In view of the foregoing, the Committee notes that the judgment of 8 April 2018 does not conclude as to any involvement of security forces beyond noting the testimony of witnesses, however it does expressly find that the accused was only an accomplice in the crime, while there were instigators and other accomplices “who were kept behind the screen”. The Committee further observes that the preliminary investigation of the case and evidence gathering was done by officers of the same agencies that allegedly had the accused at their service.*
- 155.** *The Committee notes that regarding available accountability mechanisms applicable to security forces, the Government only refers to “departmental proceedings” and “disciplinary action”. The Committee observes that these are purely administrative procedures conducted by hierarchical superiors and involve no judicial investigation or oversight nor would they entail the application of any penal sanction. Noting that in reference to traces of torture on the body of Mr Aminul Islam, the judge reached “the irresistible view that the crime indulged by the accused was undoubtedly gruesome, cold-blooded, heinous, atrocious and cruel”, the Committee deplores that no action was taken to undertake an independent judicial investigation into the serious allegations of the involvement of security forces in the abduction, torture and murder of Mr Aminul Islam. It urges the Government to take the necessary measures to ensure that such an investigation is undertaken without further delay with a view to identifying the intellectual authors of this crime in order to ensure that the responsibility for such acts do not go unpunished. The Committee trusts that the CFA Case Monitoring Committee will be able to ensure that necessary steps are taken for full investigation of this matter.*
- 156.** *Regarding investigations conducted into the specific and serious allegations of threats and violence against trade union leaders and members in enterprises (b), (d), ⁴ (e), ⁵ (f), ⁶ (g) ⁷ and (h), ⁸ the Committee notes with deep regret, that the Government has failed once again to provide any specific information. The Committee recalls once again that the exercise of trade union rights is incompatible with violence or threats of any kind and it is for the authorities to investigate without delay and, if necessary, penalize any act of this kind. In the event of assaults on the physical or moral integrity of individuals, the Committee has considered that an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts [see **Compilation**, paras 88 and 105]. Noting the Government’s indication that the competent authority for investigation into such cases is the police, the Committee recalls that some of the allegations concern the perpetration of acts of violence against trade union leaders by the police, and that in such cases, the investigation should be conducted by a body independent from the one accused of abuse. The Committee therefore once again urges the Government to ensure that a thorough and independent inquiry is conducted into each of the allegations referred to above.*
- 157.** *The Committee notes with concern that the cases concerning the cancellation of registration of two unions at enterprise (l) continue to be pending after more than eight years. It notes that in view of*

⁴ Chunji Knit Ltd.

⁵ BEO Apparels Manufacturing Ltd.

⁶ Dress & Dismatic (Pvt.) Ltd.

⁷ Panorama Apparels Ltd.

⁸ Prime Sweaters Ltd.

the enduring stay on their operation, the unions are practically deprived of their right to exist and defend their members' interests since 2013 and 2014, respectively, even though they were lawfully registered after long administrative and judicial battles. The Committee therefore expresses once again its firm expectation that a decision will be reached in these cases without further delay and requests the Government to keep it informed of the status of the cases and their outcome and to provide copies of the judgments once they are delivered.

The Committee's recommendations

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

- (a) Noting that several cases of serious anti-union dismissals observed by the Government in this case did not result in any sanction or judicial remedy after lengthy judicial proceedings, the Committee expects that the Government's steps to bolster the number and resources of the labour courts will ensure in the future that rapid and effective protection against anti-union discrimination, including through penal sanctions, is provided to victims.
- (b) The Committee deplores that no action was taken to conduct an independent judicial investigation into the serious allegations of the involvement of security forces in the abduction, torture and murder of Mr Aminul Islam and urges the Government to take the necessary measures to ensure that such an investigation is undertaken without further delay with a view to identifying the intellectual authors of this crime in order to ensure that the responsibility for such acts do not go unpunished. The Committee trusts that the CFA Case Monitoring Committee will be able to ensure that necessary steps are taken for full investigation of this matter.
- (c) The Committee urges the Government to take the necessary measures to ensure that a thorough and independent inquiry is conducted into the specific and serious allegations of threats and violence against trade union leaders and members in enterprises (b), (d), (e), (f), (g) and (h), with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. It requests the Government to keep it informed of the steps taken in this regard.
- (d) The Committee expresses once again its firm expectation that decisions will be reached in the cases concerning the registration of two unions at enterprise (l) without further delay and requests the Government to keep it informed of the status of the cases and their outcome and to provide copies of the judgments once they are delivered.
- (e) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.

Case No. 3263

Interim report

Complaint against the Government of Bangladesh presented by

- the International Trade Union Confederation (ITUC)
- the IndustriALL Global Union (IndustriALL) and
- UNI Global Union (UNI)

Allegations: The complainant organizations denounce serious violations of freedom of association rights by the Government, including arbitrary arrest and detention of trade union leaders and activists, death threats and physical abuse while in detention, false criminal charges, surveillance, retaliation, intimidation, acts of anti-union discrimination and interference in union activities, as well as excessive use of police force during peaceful protests and the lack of investigation of these allegations

- 159.** The Committee last examined this case (submitted in February 2017) at its October–November 2022 meeting, when it presented an interim report to the Governing Body [see 400th Report, paras 80–109 approved by the Governing Body at its 346th Session].⁹
- 160.** The International Trade Union Confederation (ITUC) provided additional information in a communication dated 23 September 2022.
- 161.** The Government provided its observations in communications dated 1 November 2022 and 9 and 13 February 2023.
- 162.** Bangladesh 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

- 163.** At its October–November 2022 meeting, the Committee made the following recommendations on the matters still pending [see 400th Report, para. 109]:
 - (a) The Committee expects the two remaining cases filed against workers following the 2016 Ashulia strike to be concluded without further delay and requests the Government to keep it informed of the outcome thereof.
 - (b) Emphasizing the need to investigate all serious allegations of ill-treatment of trade unionists even in the absence of a formal complaint filed by the injured party, the Committee once again invites the complainants to provide any further relevant

⁹ [Link to previous examination.](#)

information to the appropriate national authority so that it can proceed to an investigation in full knowledge. The Committee urges the Government to institute, without delay, an independent inquiry into the allegations of ill-treatment of trade unionists arrested and detained in the aftermath of the 2016 Ashulia strike on the basis of information it already has at its disposal, as well as any additional information provided by the complainants, and to keep it informed of the steps taken in this regard, including detailed information on the mechanisms available to conduct such independent investigations as referred to and the necessary steps for triggering their review.

- (c) The Committee urges the Government once again to indicate the measures being taken to investigate the allegedly excessive use of force during the 2018–19 demonstrations resulting in injuries to at least 80 workers and to inform it of any findings in this regard. It also urges the Government to provide information on the outcome of the investigation that the Government previously indicated was being conducted into the killing of 1 worker during these demonstrations. The Committee also requests the Government to keep it informed of the status of the 5 cases pending against workers, in particular to indicate whether they eventually led to criminal charges being filed or whether they were dismissed through a final report.
- (d) The Committee requests the Government to provide its observations on the February 2020 additional allegations of the complainants referring to mass retaliation against workers following the 2018–19 demonstrations (dismissals, public shaming, defamation and blacklisting) and persistent monitoring, surveillance and intimidation of trade unionists. The Committee requests the Government to take the necessary measures to address and prevent all forms of retaliation, intimidation, harassment and surveillance of workers based on trade union membership or legitimate trade union activities.
- (e) Taking note of the Government's engagement in ensuring regular training of police officers and other relevant state actors, the Committee encourages the Government to pursue its efforts in this regard so as to ensure full respect for basic civil liberties, human rights and trade union rights during labour protests, as well as full accountability of those responsible in case of any violations. The Committee further requests the Government to provide details of such trainings, particularly for the police engaged in industrial and export-processing zones. The Committee also requests the Government to provide copies of the curriculum for in-service training of police officers.
- (f) The Committee requests the Government to provide its observations on the alleged involvement of the police in the killing of 6 people and injuries to more than 60 workers during workers' protests in Chittagong, Gazipur and Ashulia since April 2021 and, should this not yet be the case, to ensure that these incidents are expeditiously and properly investigated by an independent mechanism so as to combat impunity and prevent repetition of such acts, and to provide detailed information on the progress made in this regard and on the outcome.
- (g) The Committee requests the Government to remain vigilant towards allegations of all forms of anti-union discrimination, including dismissals and blacklisting of trade unionists, and police interference in union activities, so as to be able to take measures to rapidly and properly address such allegations. The Committee requests the Government to keep it informed of the outcome of the cases pending against trade union leaders and members in factories E, G and H in relation to their participation in trade union activities, as well as of the outcome of the proceedings for anti-union practices in factory C. Finally, the Committee requests the Government to provide its observations on the alleged police interference in a trade union meeting in Chittagong in September 2021.
- (h) In view of the sometimes-contradictory information submitted by the complainants and the Government in relation to the additional allegations from March 2022, the Committee invites the complainants to provide additional information in this regard.

B. Additional information from the complainant

- 164.** In its communication dated 23 September 2022, the ITUC provides additional information, denouncing the lack of Government action to address anti-union discrimination, unfair labour practices and violence against workers. The ITUC alleges that the backlog of labour cases arising from years of delay means that victims suffer without remedy and the violation of workers' rights with impunity persists. The complainant refers to the case of Ms Adeeba Zerine Chowdhury, the Communication Secretary of the Grameenphone Employees Union (GPEU) who was dismissed in 2012 after she and other workers submitted their application to join a trade union. Ms Chowdhury and several GPEU committee members were among almost 200 workers who were dismissed the day after the submission. Ms Chowdhury has informed the complainant that the civil complaint she had filed against the company in relation to this dismissal is still pending in the labour courts after ten years and efforts to resolve the matter through alternative dispute resolution methods have not borne fruit because the company blocks the possibility of dialogue. The complainant adds that the Labour Inspectorate has investigated this violation and properly advised the employer and the affected worker and their representatives. At the same time, no progress has been made regarding the development of a standard operating procedure (SOP) for a conciliation system that will deliver justice to workers for anti-union discrimination.
- 165.** The complainant reiterates its allegations concerning the criminal charges brought by the Bangladesh Industrial Police against the General Secretary of the Bangladesh Garment and Industrial Workers' Federation (BGIWF) and 24 other union members and leaders in relation to incidents in factories G and H ¹⁰ on 6 August 2021 that were reflected in the previous examination of this case [400th Report, para. 88]. The ITUC adds that the management as well filed a criminal case against the workers. The complainant further recalls that five persons were killed, and dozens injured on 17 April 2021 after the police opened fire on a crowd of workers in a Power Plant in Chattogram (Chittagong), who were protesting over unpaid wages, unscheduled cuts in their working hours and for a Ramadan holiday and reduced hours during the religious festival [400th Report, para. 87].
- 166.** The ITUC denounces the lack of improvement in law and practice since the complaint has been filed, stating that the Government must put in place dissuasive sanctions and effective measures to effectively protect workers from anti-union discrimination and retaliation and provide remedy to victims.

C. The Government's reply

- 167.** In its communications, the Government provides replies to the ITUC communications of 4 March and 23 September 2022 as well as observations on the Committee's previous recommendations.

Observations on the Committee's previous recommendations

- 168.** Regarding recommendation (a) concerning the remaining two cases against workers following the 2016 Ashulia strike, the Government indicates that the two cases are still pending, in one case which is against 15 labour leaders, proceedings have been suspended by the concerned court, and in the second case which is against six workers, a charge sheet is submitted before the court and a hearing is fixed for 9 February 2023. The Government indicates that the

¹⁰ Crossline Factory Pvt. Ltd and Crossline Knit Fabrics Ltd.

Secretary of the Ministry of Labour and Employment (MOLE) and the Minister for Law, Justice and Parliamentary Affairs (MLJPA) have enquired into the first case and the two ministries are under way to expedite that case.

- 169.** Regarding the Committee's requests to investigate all serious allegations of ill treatment of trade unionists even in the absence of a formal complaint filed by the injured party (recommendation (b)), the Government affirms that it does not condone any assault on the physical or moral integrity of workers and that the law enforcement personnel are trained in crowd control measures and refrain from committing any excesses or aberrations unless for self-defence or for protection of civilian lives and property. It further adds that any alleged excess by law enforcement personnel is duly investigated through established legal and administrative procedures, resulting in systematic follow-up, and in case of any grave allegations, there have been instances of multiple inquiries by relevant bodies and authorities. The Government further reiterates its general indication that the established investigation mechanisms have inbuilt processes to probe any such allegations in an independent manner and that these mechanisms remain available to receive any further substantiated information on the allegations. In its 9 February 2023 communication, the Government indicates that in Bangladesh the investigation system in criminal cases is fully conducted by different branches of the Police Department; other than the regular police enquiry, application may be made to the court for enquiry by other investigation agencies namely the Criminal Investigation Department (CID) and the Police Bureau of Investigation (PBI). Furthermore, if any police officer is found involved in any offence while discharging their duty, they are subject to departmental proceedings and disciplinary actions are taken. It further refers to a newly formed CFA Case Monitoring Committee which will be enquiring into such matters and will communicate with the Secretary of the MOLE and the MLJPA and will expedite the process.
- 170.** Regarding recommendation (d) where the Committee requested measures to address and prevent all forms of retaliation, intimidation, harassment and surveillance of workers based on union membership or activity, the Government indicates that in collaboration with the Office, the Department of Labour (DOL) will organize a training for 90 Industrial Police personnel and will also provide a Training of Trainers (ToT) on addressing unfair labour practices and anti-union discrimination for police personnel soon. Furthermore, in 2022 Industrial Police has trained 1,370 police personnel on the Labour Law 2006, labour rights, human rights, and other relevant laws to learn how to deal with workers and industry staffs.
- 171.** In relation to recommendation (e), concerning measures to ensure respect for civil liberties and labour and human rights during labour protests and full accountability in case of any violations, the Government refers to awareness-raising for police officials to avoid harassment of persons and indicates that trainings, seminars and workshops on human rights, labour law, fundamental rights, constitutional rights and civil liberties for the Industrial Police are regularly organized as part of their basic and in-service training courses. It further indicates that a total of 4,002, including 3,637 male and 375 female police members were trained in 2022, including in the Bangladesh Labour Act, 2006 (BLA) and other relevant regulations. Details of the ongoing in-service trainings and the curriculum can be consulted at the link [Training - Industrial Police Headquarters](#). Furthermore, the Industrial Police has compiled a Compendium in Bangla of All Labour Rights, Labour Laws and Human Rights, which will be of use shortly. The Government finally reiterates its previous indications concerning the road map of actions on the labour sector developed in cooperation with the Office [400th Report, para. 93].
- 172.** Regarding the status of the remaining cases that were pending against workers in relation to the 2018-19 minimum-wage demonstrations (recommendation (c)), the Government indicates that four cases remain pending. None of the defendants remain in custody and only in one

case, which was filed in October 2018, the charge was framed in court on 30 January 2023. Two other cases filed on 14 January 2019 and one more on 7 December 2018 are pending in courts, but charges are not yet framed. In one case the factory management has committed to withdraw its complaint.

- 173.** Regarding recommendation (g), where the Committee requested to remain vigilant towards allegations of all forms of anti-union discrimination and police interference in union activities, the Government indicates that in collaboration with the Office, a training on the SOP for Unfair Labour Practices and Anti-Union Discrimination for 30 DOL officials was provided from 20–22 August 2022 and the DOL also conducted a day-long workshop on remediation of unfair labour practices and anti-union discrimination for workers' and employers' representatives, DOL, the Department of Inspection for Factories and Establishments (DIFE) and Bangladesh Export Processing Zones Authority (BEPZA) officials, the Industrial Police, and members of labour courts and Labour Appellate Tribunals on 24 January 2023.

Observations on the additional information from the complainant

- 174.** Regarding steps taken to address anti-union discrimination and unfair labour practices, the Government provides the following general indications: (i) according to the Bangladesh Labour Act (BLA), any aggrieved worker has the right to file complaints to the Department of Labour (DOL) for remedial action against management for anti-union activities or unfair labour practices. Every complaint received is addressed in due time; (ii) a SOP on unfair labour practices and anti-union discrimination was adopted on 30 August 2017 and integrated into the BLA in 2018; and (iii) between 2013 and 2022, the DOL received 199 complaints on anti-union discrimination and unfair labour practices. The number of settled complaints is 186, including 173 amicable settlements and 13 cases filed in labour courts. Investigations on the remaining complaints are ongoing. Records of these complaints are available in the database.
- 175.** Regarding the development of a SOP for conciliation of industrial disputes, the Government indicates that several virtual and in-person consultation meetings between the DOL and the ILO took place in 2021 and subsequently a three-day workshop with DOL officials was organized in March 2022. Through the workshop, an initial draft SOP was prepared and sent to the ILO for comments. The Government adds that the draft was supposed to be sent to the Ministry of Labour and Employment (MOLE) on 17 August 2022 to facilitate adoption through tripartite validation.
- 176.** Concerning the incidents in factories G and H, the Government reiterates its account of the events that led to the charging of the General Secretary of the BGIWF and 23 other union members and leaders [400th Report, para. 96] and adds that the case based on the complaint of the Industrial Police sub-inspector was under trial before the Magistrate Court, Gazipur; all accused were on bail and the next hearing date was fixed on 8 March 2023. The Government also refers to a second complaint filed at the police station in relation to this incident by the General Manager of factory H which is under investigation, with a hearing also scheduled on 8 March 2023.
- 177.** Concerning the 17 April 2021 events at the power plant in Banskhali, Chattogram, the Government indicates in its November 2022 communication that there was unexpected labour unrest on 17 April 2021 at the plant construction site. Officers from the DOL, the DIFE and other local administration attempted to handle the situation through talks with the employees and the employer. Afterwards three investigation teams in the district administration, police administration and labour administration were formed to enquire into the matter. The Government indicates that workers were demanding the reduction of working hours from ten

to five hours and the payment of wages within the fifth day of the month. Some workers inflicted damage on the property of the plant and the police tried to handle the situation. The Government confirms the death of seven workers and the injuries of 13 and adds that infrastructures of the establishments were also damaged. Pursuant to the BLA, compensation was awarded to the families and workers affected and the Government also provided aid from the Bangladesh Labour Welfare Foundation. The Government concludes by indicating that the employer pays all the wages, that the competent authorities have improved the monitoring of the plant to prevent unexpected situations and at present the construction of the power plant is running smoothly with harmonious industrial relations. In its communication of 9 February 2023, the Government provides details, indicating that on 14 April 2021, around 300 workers went on strike, making demands regarding working hours during the month of Ramadan and wages. In the following days, the manpower company negotiated with the foreign subcontractor and owner companies, with partial success. On 17 April, the day of the incident, at 6 a.m. police personnel from Gondamara camp were deployed at the power plant/exit gate of Bangla Living (workers' quarters). As of 9 a.m., around 2,000–2,500 workers started a protest inside the power plant. There was agitation and vandalism and attacks against the police with indigenous weapons and brickbats. At one point shots were fired from workers quarters. Six police members were injured by indigenous weapons. In retaliation and to protect lives and state and foreign invested property, the camp police charged gas gun, rubber cartridges and 62 rounds of blank. The Government indicates that in the line of fire five workers and outsiders were seriously injured and sent to the hospital where the duty doctor declared them dead. At this point officers and forces of Banshkhali police stations appeared at the crime scene and ultimately brought the situation under control at 1 p.m.

- 178.** The Government further adds that two cases are under investigation at Banshkhali police station in relation to the 17 April 2021 events at the power station. The first case was filed immediately on the day of the events by the injured sub-inspector from Gondamara police camp against 2,000–2,500 anonymous workers and outsiders. The second case was filed on 18 April 2021 by the chief coordinator of S. Alam Group, one of the owners of the plant, against 1,040–1,050 anonymous workers and outsiders in relation to the looting and damage caused as a result of fire and vandalism at the power plant. The Government affirms that it is evident that the Industrial Police had no role in the incident; however, in case of any complaint or anguish there is provision, other than the regular police enquiry, for enquiry by the CID and the PBI which can conduct separate investigations and report directly to the court upon judicial order. Finally, the Government indicates that the newly formed CFA Case Monitoring Committee will be enquiring matters like this and will communicate with the Secretary of the MOLE and the MLJPA.
- 179.** The Government provides the following updates on the allegations submitted by the ITUC in March 2022 [400th Report, para. 87]:
- Regarding situations in factories A and C,¹¹ the Government reiterates its previous indications [400th Report, para. 94]. It further adds concerning factory C that the elected representative of workers Mr Selim who was dismissed in 2020, filed a case against the employer in the First Labour Court in 2021 which is still ongoing. Three hearings have already taken place and the next hearing is scheduled for 15 March 2023.

¹¹ ROMO Fashion Today Limited and Dhaka Hides and Skins Limited.

- Regarding the situation in enterprise B ¹² (alleged dismissal and blacklisting of a worker, Mr Mohammad Ali, based on union activities) the Government reiterates that the worker concerned has been reinstated and adds that trade union activities have existed at enterprise B since 2017 and Mr Mohammad Ali was co-President of the said union. Through an inspection visit by the Deputy Inspector General of the DIFE on 10 March 2022, it has been confirmed that he was working at the enterprise.
- Regarding the allegation of a police attack against protesting workers of factory D, ¹³ in which Ms Jesmin Begum, a garment worker, was killed and several were injured, the Government indicates that Ms Jesmin Begum had an accident which is by no means associated with the dispersal by the police. The victim's husband filed a case at Ashulia police station. The investigation was concluded with a final report which was accepted by the competent court on 3 July 2022.
- Regarding the allegation that in September 2021 the police stopped a meeting of the Bangladesh Independent Garment Workers' Union Federation (BIGUF) in Chattogram, the Government indicates the Industrial Police did not stop any meeting at the indicated date and place and the leaders of the BIGUF confirm this.
- Regarding the allegation concerning the February 2022 police dispersal of protesting workers in factory E, ¹⁴ injuring at least ten workers, the Government indicates that in the case filed on 2 February 2022 against workers by the senior manager for vandalism at the factory, the charge sheet dated 18 June 2022 has been submitted to the competent court. In its communication of 9 February 2023, the Government adds that the senior manager has submitted an application to the court to withdraw the case.
- Regarding the allegation of the February 2022 police attack against protesting workers at factory F ¹⁵ injuring 20 people, the Government indicates that a case was filed by the company admin officer against 30 workers, which is under investigation by the Gazipur Industrial Police-2. The factory was reopened five days after the incident with the facilitation of local administration and is now running smoothly.

D. The Committee's conclusions

- 180.** *The Committee recalls that this case concerns allegations of serious violations of freedom of association rights by the Government, in particular through the action of police forces in the aftermath of a strike in garment factories in Ashulia in December 2016, including arbitrary arrest and detention of trade union leaders and activists, death threats and physical abuse while in detention, false criminal charges, surveillance of trade unionists, intimidation and interference in union activities. The complainants also alleged excessive use of police force during peaceful protests in December 2018 and January 2019, in April and June 2021, and in February 2022, and criminal cases pending against workers who had participated in the protests. Additional allegations refer to systematic repression of trade union rights, including through anti-union acts by the employers, police violence and criminalization of trade union activities.*

¹² Crystal Ships Limited (Bilash Office).

¹³ Lenny Fashions Ltd and Lenny Apparels Ltd.

¹⁴ Tivoli Apparels Ltd.

¹⁵ Goriyang Fashions Ltd.

181. Concerning the allegedly false criminal charges filed against workers in the aftermath of the 2016 Ashulia strike (recommendation (a)), the Committee notes the Government's indication that the two remaining cases, concern respectively 15 labour leaders and 6 workers and are still pending. The Committee notes with concern that more than six years after the Ashulia events, these cases have not been concluded. Recalling that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike, public meetings or processions and that justice delayed is justice denied [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 156 and 170], the Committee firmly hopes that the two cases will be concluded without further delay and requests the Government to keep it informed of their outcome.
182. Since its very first examination of this case, the Committee has repeatedly requested the Government to institute an independent inquiry into the serious allegations of death threats, physical abuse and beatings of trade unionists arrested in the aftermath of the 2016 Ashulia strike while in custody [384th Report, para. 169(a); 388th Report, para. 204(b); 392nd Report, para. 287(d) and 400th Report, para. 109(b)], and to keep it informed of the steps taken in this regard. The Committee deeply regrets that the Government has once again not provided any specific information indicating that such an inquiry has taken place.
183. Regarding the available investigation mechanisms, the Committee notes the Government's reference to the investigation of criminal cases by different branches of the police. As to accountability mechanisms, the Committee notes that the Government merely refers to departmental proceedings and disciplinary action in case of involvement of police officers in any offence. The Committee notes that section 10 of the Armed Police Battalion Ordinance, 1979, sets out the disciplinary sanctions that can be imposed on police members for misconduct which provides that in the case of superior officers the Government, and in the case of subordinate officers and armed policemen the Inspector General of Police or any officer authorized by him may award disciplinary sanctions. The Committee recalls in this regard that "requiring the victims of police ill-treatment to present a complaint to the police in the circumstances of this case is likely not to create a climate in which workers feel secure to engage and may therefore leave such grave allegations without response" [388th Report, para. 199]. Furthermore, accountability for such serious violations of the right to security and physical and moral integrity of persons cannot be restricted to departmental proceedings and disciplinary sanctions. The Committee notes the Government's indication of the formation of the CFA Case Monitoring Committee, which will be enquiring into such matters and will communicate with the Secretary of the MOLE and the MLJPA and the initiative before the Ministry of Home Affairs to form a dedicated committee to ensure and monitor proper investigation of alleged cases. The Committee firmly hopes that this newly formed body will effectively expedite the resolution of the very serious long-standing issues before it and in particular that it will take the necessary steps to ensure that an independent inquiry into the allegations of ill treatment of trade unionists arrested and detained in the aftermath of the 2016 Ashulia strike is instituted without further delay. It requests the Government to keep it informed of the steps taken in this regard.
184. The Committee notes with regret that the Government has not provided any observations concerning allegations of mass retaliation, criminalization, continued surveillance and intimidation of workers following the 2018-19 demonstrations. It recalls that the complainants alleged that the mass retaliation led to 7,000-12,000 workers losing their jobs and being subjected to public shaming, defamation and blacklisting by factory owners as a means to intimidate workers and undermine organizing in the garment sector and that there was persistent monitoring, surveillance and intimidation of trade unionists by the employers, the Government and third parties working on their behalf. The Committee notes the Government's indications concerning past and future trainings of Industrial Police personnel on unfair labour practices and anti-union discrimination as a means of

addressing and preventing the issues raised. While encouraging the Government to continue providing such trainings to the law enforcement forces with a view to preventing such acts in the future, the Committee recalls that acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities, while not necessarily prejudicing workers in their employment, may discourage them from joining organizations of their own choosing, thereby violating their right to organize and; the Government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedure which should be prompt, impartial and considered as such by the parties concerned [see **Compilation**, paras 1098 and 1138]. Therefore, the Committee once again requests the Government to provide its observations on these allegations and to take the necessary measures to address and prevent all forms of retaliation, intimidation, harassment and surveillance of workers based on trade union membership or legitimate trade union activities.

- 185.** The Committee notes with regret, that while it has provided certain details on cases brought in relation to the 2021 demonstrations and reiterated information previously provided, the Government has not provided any information in reply to its request concerning the measures taken to investigate the allegedly excessive use of force during the 2018–19 minimum-wage protests, resulting in the injuries to at least 80 workers, and the outcome of the investigation that it had previously indicated was being conducted into the killing of one worker during demonstrations.
- 186.** Concerning the allegedly excessive use of force by the police in the workers' protests on 17 April 2021 in a power plant construction site in Banskhali, Chattogram, the Committee notes that on the day of the incident, police personnel from Gondamara camp were deployed in the power plant construction site and at the workers' quarters as of 6 a.m. and the protest started at around 9 a.m. It further notes the Government's indication that there was agitation and vandalism and attacks against the police and that the camp police reacted in self-defence and to protect lives and property and in the confrontation between the police and the protesters six police personnel were wounded by "indigenous weapons", while seven protesters were killed by gunshot, five of them dying on the same day and two more passing away as a result of their injuries two days later. The Committee further notes with concern, that while the Government indicates that the police appeared at the "crime scene" and confirms that 7 workers died and 13 were injured in these protests, it does not refer to any investigation conducted as to the determination of who was responsible for these deaths and injuries, neither to any steps taken to hold those responsible accountable but states that compensation and aid were provided to the workers and families affected. The Committee notes however that two penal cases were immediately opened against more than 2,000 anonymous workers and outsiders, one by the owner of the plant in relation to the looting and the damage inflicted on the installations, and the other by the sub-inspector of the Gondamara police camp who was reportedly injured on the day of the incident. Both cases are still under investigation at the local police station. The Committee notes that the Government categorically rejects any involvement of the Industrial Police in the "incident" but adds that it is possible to go beyond the "regular police enquiry" as there is provision for enquiry by the CID and the PBI. Finally, the Government indicates that the newly formed CFA Case Monitoring Committee will enquire into matters like this.
- 187.** Regarding the alleged police attack on protesting workers on 13 June 2021 in factory D, Dhaka Export Processing Zone, Ashulia, in which Ms Jesmin Begum, a garment worker, was killed and several other workers were injured, the Committee notes the Government's indication that the death of the garment worker was the result of an accident and was by no means associated with the dispersal by the police. The Committee notes that the victim's husband filed a case that was investigated and concluded with a final report which was approved by the competent court on 3 July 2022. The Committee notes that this result contradicts the Government's previous indication that the post-

mortem report mentioned that “the death was due to shock resulting from injuries that were homicidal in nature”. The Committee notes that the Government does not provide any information as to any investigation conducted into the alleged injuries inflicted on several workers in the same protests.

188. Concerning the protests of February 2022 in factories E and F in Gazipur, and the police intervention which allegedly inflicted injuries on at least 30 garment workers, the Committee notes that the Government indicates that a senior manager of factory E filed a case against workers, who were charged and are under trial by the competent court. Similarly, in factory F, a case was filed by the company admin officer against 30 unruly persons, which is under investigation by Gazipur the Industrial Police. The Committee notes that the Government does not refer to any steps taken to conduct an inquiry as to the allegations of excessive use of force by the police.
189. The Committee notes with deep concern that in all the above protests between December 2018 and February 2022 which involved the loss of life of nine protesting workers and physical injury of allegedly 140, only in the case of one death was a police investigation conducted, which was not initiated by the authorities, but concerned a complaint lodged by the victim’s husband. The Committee recalls in this regard that while the principles of freedom of association do not protect abuses consisting of criminal acts while exercising protest action, workers should enjoy the right to peaceful demonstration to defend their occupational interests, and that the authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control, and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of peace. Furthermore, in cases in which the dispersal of public meetings by the police has involved loss of life or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry and to a regular legal procedure being followed to determine the justification for the action taken by the police and to determine responsibilities [see **Compilation**, paras 224, 208, 217 and 104]. The Committee therefore urges the Government to ensure that a thorough and independent investigation is conducted to establish the circumstances of the deaths of seven protesting workers in the power plant construction site in Banskhali, Chattogram on 17 April 2021, and to determine whether the injuries inflicted on 13 other workers in the same protest were the result of disproportionate use of force by the police or were caused otherwise. It further urges the Government to ensure that such investigations are also conducted on the incidents in factories D, E and F, and to keep the Committee informed of the steps taken in this regard and the outcome thereof. The Committee hopes that the CFA Case Monitoring Committee will be able to ensure that necessary steps are taken for full investigation of these incidents, and trusts that the efforts of the Government to request the Ministry of Home Affairs to establish a dedicated investigatory body that will enable important progress on rendering the full facts into these matters and ensure that such situations are not repeated. It also requests the Government to provide information on the status of cases pending against workers of factories E and F and the SS power plant in Banskhali.
190. As regards the status of the remaining five cases that were pending against workers in relation to the 2018–19 minimum-wage protests, the Committee notes the Government’s indication that four cases remain pending in court, among which in only one case has a charge sheet been submitted. It further notes that none of the defendants remain in custody and that in one case the employer has committed to withdrawing its complaint. Noting that all four cases have now been pending for more than four years, the Committee expects that they will soon be concluded and requests the Government to keep it informed of their status.

191. Concerning the provision of training and instructions to police officers and other state officials on civil liberties, human rights and trade union rights, the Committee notes that the Government reiterates its commitment in this regard and welcomes the information provided about the total number of Industrial Police members who received ongoing in-service training in 2022, including on labour rights. It notes however, that the Government does not provide the detailed information requested by the Committee. It therefore requests once again the Government to provide details of such trainings, particularly for the police engaged in industrial and export-processing zones. The Committee also requests the Government to provide copies of the curriculum for in-service training of police officers.
192. Concerning the alleged criminalization of trade union activities in factories G and H, and the status of the case pending against the General Secretary of the BGIWF and 23 other union members and leaders, the Committee notes that the Government reiterates its previous account of the events, indicating that the trade union leader and his associates instigated the workers to violence in the course of the 5 August 2021 protest and indicates that the case based on the complaint of the Industrial Police sub-inspector was under trial before the Magistrate Court, Gazipur; all accused were on bail and the next hearing date was fixed on 26 December 2022. The Government also refers to a second complaint filed at the police station in relation to this incident by the general manager of factory H which is under investigation. Recalling that it has pointed out the danger for the free exercise of trade union rights of sentences imposed on representatives of workers for activities related to the defence of the interests of those they represent [see **Compilation**, para. 154], the Committee expects that the trial of the Secretary General of the BGIWF and the 23 other union leaders and members of factories G and H will be rapid and that the defendants will benefit from all the safeguards of a normal judicial procedure. The Committee requests the Government to keep it informed of the status of the case.
193. The Committee notes the ITUC allegations concerning lack of government action to address anti-union discrimination, unfair labour practices and violence against workers. The ITUC alleges that the backlog of labour cases arising from years of delay means that victims suffer without remedy and the violation of workers' rights with impunity persists. It further notes the complainant's new allegation concerning the case of the anti-union dismissal of the communication secretary of the GPEU and several other GPEU members in 2012, alleging that the civil complaint of the communication secretary of the union against the company in relation to this dismissal remains pending in the labour court after ten years. The Committee notes that the Government does not address this specific allegation but provides general information on the right of aggrieved workers to file complaints to the DOL, as well as information on trainings on unfair labour practices and anti-union discrimination provided to government and judicial officials, Industrial Police and workers' and employers' representatives. The Committee also notes that the case concerning anti-union practices in factory C which was filed in 2021, is still pending in the Labour Court. Noting that according to the Government the DOL has received 199 complaints of anti-union discrimination between 2013 and 2022, the Committee recalls that the Government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned [see **Compilation**, para. 1138]. The Committee once again requests the Government to remain vigilant towards allegations of all forms of anti-union discrimination, including dismissals and blacklisting of trade unionists, and police interference in union activities, so as to be able to take measures to rapidly and properly address such allegations. It invites the Government to provide its observations on the allegation concerning the anti-union dismissal of the communication secretary of the GPEU and the lengthy judicial proceedings concerning her complaint and to provide information on the status of the pending court case concerning anti-union practices in factory C.

- 194.** *The Committee notes that regarding the alleged forced resignation and blacklisting of workers based on union activities in factory A, the Government reiterates its previous indication as to the acquittal of the defendants in January 2021 and to the resolution of the matter by amicable agreement between the parties. In relation to the alleged dismissal and blacklisting of a worker in enterprise B, the Committee notes that the Government indicates that the worker concerned was reinstated and has been the co-President of the union at the enterprise since 2017. Regarding the alleged police interference in a meeting of the BIGUF in Chattogram in September 2021, the Committee notes that the Government categorically rejects that such an interference has taken place. Recalling that it had invited the complainants to provide additional information on these cases where the information submitted by the Government contradicted the allegations [400th Report, para. 109(h)], and noting that no such additional information has been received, the Committee will not pursue its examination of these questions in the framework of the present case.*
- 195.** *As a general matter, the Committee notes that the allegations in this case revolve around an atmosphere of tense labour relations and conflict at a number of enterprises. Noting the Government's reference to work on a SOP for conciliation of industrial disputes, the Committee trusts that this will facilitate the resolution of labour disputes in a timely and effective manner. It requests the Government to keep it informed of the final approval and implementation of the SOP for conciliation of labour disputes.*

The Committee's recommendations

- 196.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following:**
- (a)** **The Committee firmly hopes that the two remaining cases filed against workers in the aftermath of the 2016 Ashulia strike to be concluded without further delay and requests the Government to keep it informed of their outcome.**
 - (b)** **The Committee firmly hopes that the newly formed "CFA Case Monitoring Committee" will effectively expedite the resolution of the longstanding issues before it, and in particular, that this body will take the necessary steps to ensure that an independent inquiry into the allegations of ill-treatment of trade unionists arrested and detained in the aftermath of the 2016 Ashulia strike is instituted without further delay. It requests the Government to keep it informed of the steps taken in this regard.**
 - (c)** **The Committee requests once again the Government to provide its observations on the February 2020 additional allegations of the complainants referring to mass retaliation against workers following the 2018–19 demonstrations (dismissals, public shaming, defamation and blacklisting) and persistent monitoring, surveillance and intimidation of trade unionists. The Committee requests the Government to take the necessary measures to address and prevent all forms of retaliation, intimidation, harassment and surveillance of workers based on trade union membership or legitimate trade union activities.**
 - (d)** **The Committee welcomes the Government's continued commitment and the information provided on the number of trainings of police personnel in 2022 and requests the Government to provide further details of trainings on civil liberties, human rights and trade union rights provided to police officers and other state officials, particularly for the police engaged in industrial and export-processing zones. The Committee also requests the Government to provide copies of the curriculum for in-service training of police officers.**

- (e) The Committee urges the Government to ensure that a thorough and independent investigation is conducted into the circumstances of the deaths of seven protesting workers in the power plant construction site in Banskhali, Chattogram on 17 April 2021, and to determine whether the injuries inflicted on 13 other workers in the same protest were the result of disproportionate use of force by the police or were caused otherwise. It further urges the Government to ensure that such investigations are also conducted on the incidents in factories D, E and F, as well as into the allegations concerning excessive use of force during the 2018-19 minimum-wage protests, and to keep the Committee informed of the steps taken in this regard and the outcome thereof. The Committee also urges once again the Government to provide information on the outcome of the investigation that the Government previously indicated was being conducted into the killing of one worker during the minimum-wage demonstrations. The Committee hopes that the CFA Case Monitoring Committee will be able to ensure that necessary steps are taken for full investigation of these incidents, and trusts that the efforts of the Government to request the Ministry of Home Affairs to establish a dedicated investigatory body will enable important progress on rendering the full facts into these matters and ensuring that such situations are not repeated.
- (f) The Committee requests the Government to keep it informed of the final approval and implementation of the Standard Operative Procedure (SOP) for conciliation of labour disputes.
- (g) The Committee expects that the four cases that remain pending against workers in relation to the 2018-19 minimum-wage protests will soon be concluded and requests the Government to keep it informed of their status. It further requests the Government to provide information on the status of cases pending against workers of factories E and F and the SS power plant in Banskhali.
- (h) The Committee expects that the trial of Secretary-General of the BGIWF and the 23 other union leaders and members of factories G and H will be rapid and that they will benefit from all the safeguards of a normal judicial procedure. It requests the Government to keep it informed of the status of the case.
- (i) The Committee once again requests the Government to remain vigilant towards allegations of all forms of anti-union discrimination, including dismissals and blacklisting of trade unionists, and police interference in union activities, so as to be able to take measures to rapidly and properly address such allegations. It invites the Government to provide its observations on the allegation concerning the anti-union dismissal of the communication secretary of the GPEU and the lengthy judicial proceedings concerning her complaint and to provide information on the status of the pending court case concerning anti-union practices in factory C.
- (j) The Committee draws the attention of the Governing Body to the serious and urgent nature of this case.

Case No. 3424

Interim report

Complaint against the Government of Cambodia presented by

- the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and
- the International Trade Union Confederation (ITUC)

Allegations: The complainant organizations denounces violations of trade union rights by the Government in relation to the arrest and detention of union leaders and activists, anti-union discrimination and union busting

- 197.** The complaint is contained in a communication dated 17 March 2022 submitted by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and its affiliate the Labor Rights Supported Union of Khmer Employees of Naga Hotel (LRSU). Supplemental information was provided via communications dated 28 September, 27 October and 2 December 2022 submitted by the LRSU, the International Trade Union Confederation (ITUC) and the IUF.
- 198.** The Government of Cambodia transmitted its observations in communications dated 2 June 2022 and 20 February 2023.
- 199.** Cambodia 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

- 200.** In their communication dated 17 March 2022, by way of background to the complaint, the complainants recall the observations of the Conference Committee on the Application of Standards and the Committee of Experts on the Application of Conventions and Recommendations on the shortcomings in the national Law on Trade Unions (LTU), particularly rights including the Most Representative Status (MRS) certification and the restrictions on the ability of union members to exercise their rights in the Arbitration Council (hereinafter "AC") and their collective bargaining rights.
- 201.** The complainants, in a series of communications on 17 March, 28 September and 27 October 2022, allege the failure of the Government, in particular the Ministry of Labour and Vocational Training (MLVT), to ensure in law and in practice the right to freedom of association and collective bargaining. The complainants specifically present allegations of several violations such as anti-union dismissals and suspensions against NagaWorld (hereinafter "the enterprise"), a company wholly owned by NagaCorp Ltd (hereinafter "the parent enterprise").
- 202.** The complainants recall that though the LRSU was formed in the year 2000, it failed to secure full union recognition for 21 years despite having 4,400 members out of a total of 8,000 workers employed at the enterprise. Although the LRSU was the only union in existence

in the enterprise, it was denied the MRS certificate, in their view due to unjustifiable administrative burdens placed on it and a lack of transparency and due process. Consequently, according to the complainants, the management of the enterprise refused to engage in collective bargaining with the union. This response by management purportedly followed a pattern of selectively withdrawing recognition of the union and refusing to negotiate in good faith. Shortly after the LRSU demanded the right to represent their members who were targeted for redundancy and to engage in negotiations, the complainants state that the LRSU President, Ms Chhim Sithar, LRSU Vice President, Ms Sokha Chun, and LRSU General Secretary, Sokhorn Chhim were also issued redundancy notices.

- 203.** The complainants allege that acts of anti-union discrimination were carried out by the enterprise in retaliation for the LRSU demands to negotiate or collectively bargain, following similar patterns established in 2009, 2010, 2012, 2019 and 2021. They recall the previous case (Case No. 2783) examined by the Committee wherein the employer refused to comply with a decision of the AC calling for the reinstatement of trade union leaders dismissed in 2009 and 2010, and members in 2012, and further refer to the suspension in 2019 of Chhim Sithar as retaliation for a call to bargain collectively for wages, fully reinstating her only in January 2020 following prolonged strike action and international outcry. In the complainants' view, this demonstrates a long history of trade union rights violations by the enterprise and the failure of the Government to ensure the protection of these rights.
- 204.** In April 2021, the management of the enterprise announced a plan to lay off 1,329 out of the 8,000 workers, 1,100 of whom were LRSU members, including the leadership. The announcement in April was made while the enterprise was voluntarily closed on 2 March 2021 due to COVID-19 and following a boycott from the union due to the refusal by the management to engage with them on these issues. While there was an initial bilateral negotiation between the enterprise and the LRSU in April 2021, there was no resolution. The complainants indicate that financial information had not been provided nor was neutral methodology employed to determine the workers to be laid off. The complainants therefore consider that the decision to make workers redundant was grounded in a decision to eliminate the union.
- 205.** The redundancies were announced when the enterprise reopened in May 2021 and the workers to be laid off received termination notices along with invitations to meetings with the management. The workers refused to attend the meetings, however, since the management did not allow them to have union representation. The complainants state that the non-attendance by such workers at the proposed meetings led to the unilateral claim by the enterprise that the terminations had been agreed upon and consequently, workers were entitled only to a lower lay-off amount than the amount they would otherwise receive for forced termination.
- 206.** As a result, 2,049 out of 3,975 workers signed a complaint dated 1 June 2021 and submitted it to the MLVT on 8 June 2021, citing four violations, namely that: (i) the redundancies were imposed unilaterally by the management without negotiations with the LRSU; (ii) LRSU members were not permitted union representation when summoned on an individual basis for meetings concerning their termination; (iii) LRSU members could not obtain information on the rationale or the criteria applied for their termination including, for example, seniority; and (iv) LRSU officers were added to the redundancy list after insisting on negotiations with the management. Subsequently, a mediation meeting was convened by the MLVT on 23 June 2021 where the complainants stated that the management did not engage in good faith and the MLVT supported them stating that the redundancy was a matter involving individual employees with no role for union or union representation.

- 207.** The MLVT's refusal to recognize the LRSU's right to represent its members in two administrative court hearings rendered the status of the LRSU and its office bearers as union representatives unclear. According to the complainants, this led to diminished benefits for union members who were rendered forcibly redundant, the continued retaliatory loss of jobs by LRSU officers and the overall weakening of union negotiations to protect fundamental rights in the context of the COVID-19 pandemic. Many union members were coerced into signing resignation letters due to their economic hardship and only 373 of the initial 1,329 workers facing termination continue to refuse the redundancy package. The complainants further state that the LRSU requested the MLVT and the enterprise for official recognition in a letter dated 12 July 2021, which was ignored without justification being provided.
- 208.** According to the complainants, this refusal to recognize the LRSU also meant that, in the AC proceedings, the employer was not obliged to recognize the union or to respond to any of the evidence concerning anti-union discrimination in the redundancy process. Without clarity on the representative status of the LRSU in the dispute settlement proceedings, the AC and the enterprise were thus able to ignore the arguments presented by union representatives concerning anti-union discrimination and rights violations in the mass redundancy. The complainants allege collusion between the enterprise and the Government and cite high-level government officials working in the security of the enterprise and that the CEO of the enterprise holds a government position. They indicate that the enterprise blocked the AC from issuing decisions regarding discrimination in choosing who to terminate and the correct compensation based on the claim that the AC had no purview since the issues were pending before the MLVT.
- 209.** In these circumstances, the LRSU conducted a secret ballot between 8 and 12 November 2021 to go on a lawful, peaceful strike to protest the lack of resolution of the demands previously made. The complainants state that the ballot resulted in an affirmative vote with 1,653 LRSU members voting and 97 per cent voting in support of the strike. Consequently, on 22 November 2021, the LRSU submitted its notice of strike titled, "Notice of peaceful strike in front of NagaWorld from December 18, 2021 until a solution is found". The notice listed nine demands made to the enterprise with the Committee for the Settlement of Strikes and Demonstrations, the MLVT and Phnom Penh Municipal Hall (hereinafter "municipal authorities") in copy. The demands included the reinstatement of the 373 workers who refused the redundancy settlements, reinstatement of the three trade union leaders who faced retaliatory inclusion in the redundancy list, wage increases, package recalculations, an end to disguised full-time internships and compliance with previously issued AC awards.
- 210.** The enterprise did not respond to the notice. The MLVT sought meetings with the LRSU on 3 and 14 December, but no resolution was reached. Subsequently on 15 December, LRSU representatives held three online consultations with nearly 2,000 union members who confirmed their intent to continue the strike. The complainants state that the municipal authorities also held a meeting with the LRSU on 17 December 2021, but no representative of the enterprise attended. During this meeting, municipal officials urged the LRSU to halt or delay the strike and to consent to both a bilateral meeting between the union and the municipal officials on 21 December 2021 and a tripartite meeting also including the enterprise on 27 December 2021. The complainants highlight that the terms for the proposed tripartite meeting as stipulated by the municipal officials were that the latter would speak on behalf of the workers and that the LRSU would not be permitted to advocate on behalf of its members.
- 211.** The complainants indicate that while the proposal to halt the strike was tabled before the members of the LRSU for a vote, it was overwhelmingly rejected. Hence, the strike began as originally and lawfully noticed on 18 December 2021.

- 212.** The Phnom Penh court of first instance however issued a provisional injunction on 16 December 2022, prohibiting the proposed strike and declaring striking workers liable for serious misconduct and subject to financial liability, a decision the complainants state was only released to the LRSU on 18 December 2021, after the commencement of the strike. The enterprise published the injunction via a mobile app to the employees, threatening that a continuation of the strike would violate the injunction. A copy of the injunction was then delivered to Chhim Sithar. The complainants inform the Committee that the MLVT subsequently issued a press release undermining the strike action, urging workers to halt the strike and for workers and the public to “avoid being swindled by dishonest characters whose intention was to cause instability in the company and public order”. The MLVT additionally stated, in a manner perceived to be a threat by the strikers, that since the strike risked public safety and security in the context of the COVID-19 pandemic, it would be shut down by municipal officials, while the complainants maintain that the strike was held in compliance with the World Health Organization (WHO) and Ministry of Health guidelines.
- 213.** According to the complainants, further meetings between the LRSU, the enterprise, MLVT and the municipal authorities to resolve the dispute were held on 21, 22 and 27 December 2021, but with no successful resolution.
- 214.** The complainants inform the Committee that: (i) on 31 December, 2021, 100 military officers with riot shields and truncheons arrived on military trucks at and surrounded the LRSU office while more than a dozen police officers, both uniformed and plain-clothed raided it, arresting around 10 workers; (ii) on 1 January 2022, the patrolling by military and police forces around the enterprise continued with approximately 100 security forces on-site; (iii) on 3 January 2022, three of those charged were released by the police after signing contracts, while six remaining detainees along with three new LRSU leaders (nine in total) were charged with incitement to commit a felony under articles 494 and 495 of the Criminal Code, a misdemeanour that is punishable with up to five years imprisonment. One of the nine detained was released on bail while the others remained in detention. The detained workers were made to undergo a 21-day quarantine in prison, much longer than regular detainees, and denied access to lawyers during this period. Appeals by the lawyers against their pretrial detention were dismissed by courts. Eight of the 11 detained workers were released on bail on 14 March 2022, upon the condition that they cease striking and encourage others to refrain as well.
- 215.** The complainants indicate that the strike nevertheless resumed with approximately 400 members of the LRSU assembled between the Parliament and one of the buildings of the enterprise. The area around the second building of the enterprise was blocked by military and police forces who carried shields. Seventeen strikers were arrested, including a pregnant worker who was later released on bail. The 16 remaining strikers remained in police custody at Phnom Penh.
- 216.** According to the complainants, on 4 January 2022, Chhim Sithar arrived at the strike venue and was arrested by plain-clothed officers. Sithar, along with two others (Sok Narith and Sok Kongkea), who were previously charged, were arrested and held at the Phnom Penh Municipal Police Commissariat.
- 217.** According to the complainants, on 5 February 2022, Cambodian authorities prevented several hundred strikers from moving to the strike site and ordered that they board buses to be taken for compulsory COVID-19 tests at a makeshift testing site. Police arrested and detained six LRSU leaders (three men and three women) and issued warrants for four more (women). On 15 February 2022, again using the excuse of COVID-19, government officials instructed striking workers to move from the front of NagaWorld to a location outside of Phnom Penh city – to

Freedom/Democracy Park – the location designated for political actions and not appropriate for industrial disputes. The LRSU suspended the strike for ten days from 5 to 15 February 2022 in compliance with the quarantine mandated by the authorities. However, on 15 February 2022, which was the day the strike was to resume, the municipal authorities issued a notification prohibiting illegal demonstrations by current and former staff of the enterprise except at Freedom Park. On February 21, when the strikers arrived near NagaWorld, the police, supported by NagaWorld security, prevented them from approaching the casino. Authorities then forced all strikers onto a bus and took them to a newly opened quarantine centre on the outskirts of the city where workers were forced to sleep uncovered on the ground. The quarantine centre had no proper sleeping or bathing facilities. Strikers were given a statement to acquiesce to stop participating in the strike. None of the workers were released until they had completed a period of quarantine. From April 2022, the authorities bused workers to the outskirts of the city, allegedly dropping strikers near Phnom Penh Safari.

- 218.** The complainants inform the Committee that a new union was registered on 14 March 2022, the same day as the release on bail of 8 out of the 11 workers who remained detained. The complainants allege that the union was registered faster than is the norm and is a company union which is subordinate to the management, with a leader who is known to be an anti-union employee and has previously refrained from participating in union activities. The complainants further allege that the management of the enterprise invited workers to meetings individually and persuaded them to revoke their membership in the LRSU and to join the new union, a union which, according to the complainants, has not undertaken any activities since its formation.
- 219.** During this time, the complainants point out that the remaining 3 workers out of the 11 detained, were released on bail on 17 March 2022, following an LRSU announcement that there would be no negotiations until the release of all detainees. Subsequently on 18 March 2022, an unsuccessful conciliation meeting was held between the LRSU, the representatives of the MLVT and the enterprise, followed by second and third meetings held on 21 and 23 March respectively. The complainants state that the MLVT requested that the parties resolve the issue of reinstatement of 200 workers and recused itself from participating in the resolution process except to the extent of coordination. The MLVT informed the parties to the dispute, the enterprise and the LRSU, that failed negotiations would allow them the right to legal remedy before the courts.
- 220.** Following the three meetings, the complainants indicate that there were 14 unsuccessful conciliation meetings held in 2022: on 29 March; 6 and 22 April; 11, 18 and 27 May; 8, 22 and 26 June; 6 and 22 July; 18 August; 15 September; and 6 October, respectively, with another meeting scheduled for 27 October 2022. The complainants allege that the management wishes to terminate more workers and has therefore rejected a proposal tabled during conciliation for a worker exchange that allows employees who wish to leave their jobs, to leave with compensation in exchange for reinstating those that want to be reinstated.
- 221.** The complainants indicate that the LRSU held a leadership election in April 2022 with Chhim Sithar being re-elected president along with three new candidates for the other roles. They allege that the union application for registration submitted in early May, along with all the requisite documents, was rejected by the Department of Labour Disputes that operates under the MLVT. This rejection was due to the argument of the enterprise that the elected leaders as well as some of the voters in the election were former employees of the enterprise, which the Department held to contrary to the Labour Law. The LRSU objected via a letter and submitted the registration documents once again, arguing that all the voters were current employees since the dispute concerning their termination was unresolved.

- 222.** The registration was rejected a second time and the MLVT requested the enterprise, citing article 25 of the Trade Union Law (LTU) concerning responsibility for financial assets, to withhold union dues until the new leadership of the LRSU was “registered and legally recognized.” This led to the management of the enterprise informing the LRSU via a letter that it would be withholding union members’ contributions until the latter “acquires new leadership who are duly registered with and recognized by MLVT”. The LRSU countered that the provision does not explicitly stipulate that the employer may withhold union dues.
- 223.** Furthermore, the complainants inform the Committee that Chhimm Sithar received a death threat on 3 April 2022, communicated via text message to a relative of one of the representatives stating that, “if workers do not stop striking after the ILO’s DCM finishes, then on 5 April around 20 people would be arrested, some of whom would be killed”. Subsequently, the LRSU promptly informed the Office of the High Commissioner for Human Rights and other authorities regarding this communication.
- 224.** The complainants also point out that the prolonging of the strike by the enterprise in collusion with the Government significantly and adversely impacts the workforce both financially and emotionally. According to the complainants, 74 workers who decided to return to work beginning June 2022 have been systematically isolated from other employees and forced to undergo training at a centre located outside the enterprise where they are separated and called into individual meetings with the management to be pressured into resigning their LRSU membership. This, according to the complainants, is violative of articles 333 and 279 of the Labour Law, prohibiting employers from sanctioning workers for strike action and from anti-union discrimination.
- 225.** The workers who continued to strike attempted to reach the enterprise by foot on 27 June 2022 but were blocked by authorities who surrounded them without legal basis. In addition, all roads were blocked the following day leading to strikers standing behind barricades to continue their protest. The complainants add that members from other union federations began to increase their presence at the strike site in June in order to show support for the LRSU.
- 226.** The complainants allege that the authorities became more hostile and violent towards the strikers since February 2022, attacking and harassing them, causing injuries such as black eyes, bloody noses, broken bones and in one instance, a miscarriage. The violence decreased for a short period in June 2022 but accelerated once again when the authorities on 11 August 2022, attacked 17 workers resulting in sustained injuries. This was followed by an LRSU statement on 12 August 2022, condemning the violence. The UN Special Rapporteur on the situation of human rights in Cambodia observed the strike on 17 August 2022. This visit allowed strikers to approach the strike venue near the enterprise without any intervention by the authorities and the violence decreased. The complainants also allege that the CEO of the parent enterprise’s hotels, who is the son of the CEO of the parent enterprise, tried to smash the phone of a striker, throwing it to the ground on 30 September 2022.
- 227.** The complainants add that the enterprise has filed a formal complaint against 18 female strikers including Chhim Sithar alleging: breaking and entering; intentionally causing damage with aggravating circumstances; arrest and detention; and unlawful confinement. The complainants indicate that 6 of the 18 workers have been summoned individually to Court between 8 and 18 October and all of them face potential fines and/or imprisonment.
- 228.** In its latest communication, the complainants indicate that Chhim Sithar was arrested on 26 November 2022 on arbitrary grounds of violation of bail conditions regarding international travel although she had previously travelled out of the country on two occasions without giving

rise to judicial or police action. The arrest occurred upon her return to Cambodia from attending the 5th World Congress of the ITUC in Melbourne, Australia. The Government indicated that Chhim Sithar would be held in quarantine for 14 days following her travel while mandatory quarantine for COVID-19 was no longer required in the country. The complainants express concern at her detention in prison and request urgent intervention to secure her immediate, unconditional release along with all essential LRSU properties that were in her possession and seized at the time of the arrest.

- 229.** In conclusion, the complainants allege that ongoing cycles of arrest and imprisonment constitute a serious interference with civil liberties in general and trade union rights in particular both for those directly affected and a much broader number of workers impacted by the chilling effect. MLVT officials were complicit in strike disruption by continually using loudspeakers, playing recorded audio, and convincing the workers on strike to choose receiving compensation package at the MLVT office individually. LRSU's demands are that workers who wish to be reinstated be reinstated, that the company recognize LRSU and bargain with the union in good faith, and that fair compensation be paid to the dismissed workers.

B. The Government's reply

- 230.** The Government indicates that the disputes between the enterprise and its workers stem from the adverse impact of COVID-19 on the tourism, entertainment, and hotel sectors which necessitated the mass lay-off to secure the sustainability of the business and the employment of thousands of other workers. The Government states that the enterprise had no option but to terminate some employees; that the termination was compliant with national law; that the termination did not target LRSU activists or leaders and that such mass lay-off is under the control of the labour authorities. The Government clarifies that a mass lay-off is based either on the reduction in the activities of establishments or a reorganization envisaged by the employer and is not subject to approval by the MLVT, according to article 95 of the Labour Law. The law does not prioritise trade union leaders or members working in those sections affected by the redundancy plan. In the event that not all workers in a section are to be affected by a lay-off, the workers to be laid off would be selected based on criteria including seniority and professional ability.
- 231.** The enterprise informed the LRSU of the redundancy plan affecting 1329 workers in 12 sections. It convened a meeting with workers' representatives for discussion in this regard, which 373 of the abovementioned 1329 workers rejected. Subsequently, a team from the Committee for Settlement of all Strikes and Demonstrations or the Strike/Demonstration Settlement Committee was dispatched to settle the dispute at the enterprise level before the case was brought before the Ministry. On behalf of the Government, the MLVT monitored the case and ensured that the enterprise followed the applicable procedures during the mass lay-off and paid the due compensation mandated by law. The Government states that most of the 1329 workers who were laid off, excluding 373 workers, accepted the severance pay since the calculation of benefits was accurate.
- 232.** As regards the complaint by the LRSU to the MLVT dated 1 June and received on 8 June 2021, the Government indicates that there were five demands made to the enterprise by workers' representatives including that the enterprise: (i) cease its redundancy plan; (ii) stop all acts of intimidation against employees during the proposed individual meetings; (iii) provide severance pay pursuant to labour law for employees terminated at the end of 2020; (iv) continue providing seniority indemnity and payment for all employees; and (v) duly implement

health measures at the workplace in accordance with the WHO and the Ministry of Health guidelines to prevent COVID-19 at the enterprise.

- 233.** Upon receipt of the complaint, the MLVT issued a letter to certify 9 workers, including Chhim Sithar, who were the legal representatives proposed by the affected workers to settle their collective labour dispute. The Government states that the officials in charge commenced the conciliation procedure in accordance with national labour law which allows for the submission of additional information by the disputing parties. The initial conciliation meeting was postponed from 23 June to 30 June 2021 at the request of the parties. Settlement was achieved on one disputing issue (demand 5).
- 234.** The four remaining points of dispute were forwarded to the AC on 2 July 2021. During the proceedings, the disputants selected their respective arbitrators and opted for a non-binding arbitral award which cannot be enforced by law upon an objection being raised by either party to the dispute. The arbitral panel of three arbitrators held two subsequent hearings with the full participation of both disputants. The Government elucidates that the AC is an independent quasi-judicial body which is not subject to the supervision of any institution including the MLVT. Any continuance or suspension of hearings before the AC is exclusively at its discretion without any intervention by the MLVT.
- 235.** Regarding the request to recognize LRSU representatives, the Government indicates that 2,049 workers signed the request (via thumbprint) for the recognition of nine union leaders including Chhim Sithar as workers' representatives of the LRSU. Consequently, the conciliator issued a letter dated 30 June 2021 to recognize the nine union leaders, thereby granting the request. The Government refutes the allegations that the non-recognition of the LRSU as the most representative impeded their right to freedom of association and states that the recognition mechanism allows workers' representatives the right to represent all union members. The Government adds that the right to represent union members stems from the request of the workers to be represented.
- 236.** Further, the Government states that the AC, on 10 September 2021, rendered a non-binding arbitral award . The AC refused to rule on the first two demands made by the LRSU and ruled in favour of the affected workers for the third and fourth demands. The award was challenged by LRSU on 17 September 2021. This was prior to the issuance of the notice of the strike, the objective of which is to implement the award of the AC that was already challenged. It is highlighted that a challenge to a non-binding award by a disputing party pre-empts its enforcement under national Labour Law.
- 237.** Pursuant to this, the MLVT received two complaints from the LRSU on 23 September and 12 November 2021 respectively. The first called for the reinstatement by the enterprise of the 373 workers from the previous dispute in addition to new demands not previously raised during conciliation. The second contained three additional demands.
- 238.** In light of the fact that the previous award (No. 012/21) was rendered unenforceable due to the objection filed by the LRSU, the MLVT advised them to approach the courts for relief. Additionally, the LRSU was informed that new disputing points not previously conciliated must initially be raised as a complaint in accordance with the procedure established by the Labour Law. The Government highlights that the LRSU is yet to approach the courts for a remedy to the dispute already arbitrated by the AC.
- 239.** The Government indicates that the LRSU notified the enterprise of the decision to strike (with the MLVT in copy) without the prior exhaustion of the labour dispute settlement procedures prescribed by law. The notice of strike issued on 22 November 2021 contained four new issues

in addition to the five issues previously raised before the AC. The Labour Law mandates that an issue must first be conciliated by the MLVT and arbitrated by the AC before the right to strike can be exercised regarding that issue. In addition, the right to strike can only be exercised if the AC fails to render a decision in a dispute raised before it within the timeframe prescribed by law and when the non-binding award has been objected to. Considering that the LRSU did not comply with procedures of the dispute settlement mechanism, the Government maintains that they had no right to strike.

- 240.** This was reaffirmed by the Phnom Penh court of first instance in its ruling dated 16 December 2021, which indicated that the collective labour dispute at the enterprise is to be settled by the AC with new points of contention not previously raised before the AC not subject to strike under the Labour Law. The Court declared the proposed strike illegal since the new demands were not raised in a manner compliant with the procedure established by law. The Government states that the terminated workers continued their strike despite the court ruling and demanded the nine points in their notice. This resulted in the arrest of the participants of the illegal strike both for disturbance to public order and security and for not respecting the preventive measures adopted by the Government during the COVID-19 pandemic. The number of strikers arrested total eleven.
- 241.** The Government informs the Committee that the MLVT has been strongly committed to the peaceful settlement of the dispute and hosted five meetings on 18 December 2021. Further, it conciliated the dispute per request in accordance with applicable law on 18 occasions in addition to calling on the 305 remaining workers to settle the dispute.
- 242.** As regards the release of the detained strikers, the MLVT received letters dated 12 March (from 8 strikers) and 15 March 2022 (from a few others) requesting intervention through the provision of legal support to secure their temporary release pending trial. In the letters, the union workers undertook to cooperate with the authorities; adhere to COVID-19 prevention measures and refrain from gathering or protesting in a manner that affects public order, peace, or security. Therefore, the MLVT sent two letters dated 14 March and 15 March 2022 respectively, to the Ministry of Justice (MoJ) requesting the latter for consideration. Following this, the MoJ then requested the Phnom Penh court to consider the temporary release of the detained strikers. Subsequently, the court decided, at its discretion, to release the 11 strikers subject to their being placed under judicial supervision in accordance with the Code on Criminal Procedures of Cambodia.
- 243.** Regarding the rejection of the application for the registration of new LRSU leadership, the Government indicates that the application, received on 9 May 2022, by the Department of Labour Disputes under the MLVT, violated both article 4 of the LTU and article 9 of the LRSU statute since some of the newly elected leaders and voters were former employees of the enterprise at the time of the election. The MLVT issued a letter dated 6 June 2022, in accordance with articles 12 and 16 of the LTU, informing the LRSU of the delay in the registration and requesting the rectification and resubmission of the documents within 30 days. The Government points out that the MLVT is yet to receive the rectified documents from the LRSU.
- 244.** The Government refutes the allegations regarding the lack of independence of the new trade union registered on 14 March 2022. The MLVT is bound by law to ensure the independence of trade unions from employers, and any trade union that is not independent is liable to lose its registration per the LTU. According to the Government, unfounded allegations threaten the solidarity and unity of the workers movement in the country. It therefore requests the complainants to provide evidence to substantiate the allegations in this regard.

- 245.** The Government clarifies that Chhim Sithar was arrested due to a breach of the conditions of her provisional release pending trial. Article 230 of the Code on Criminal Procedures provides that a person under court supervision shall secure the prior permission of the court before undertaking foreign travel. This being a standard term in the court's verdict during provisional release from detention, ignorance is not a justification. The Government informs the Committee that her case is to be heard by the Phnom Penh court of first instance on 21 February 2023.
- 246.** The Government indicates that the MLVT has exhausted all collective labour dispute mechanisms and continues to facilitate the dispute through the existing mechanism of dispute settlement by the Strike/Demonstration Settlement Committee, which is a coordinating system that does not have the power to adjudicate. The disputants have requested and held 23 meetings aimed at arriving at a solution. With regards to the compensation to be provided to the terminated workers, the MLVT has facilitated the calculation in accordance both with the law and the Arbitral Award to ensure accurate benefits for the terminated workers. The enterprise has compromised and implemented the new agreed calculation and started to reimplement seniority indemnity in 2021. Consequently, as of 4 February 2023, seventy per cent of the former workers have agreed to receive the termination benefits offered and have registered with the National Employment Agency of the MLVT. The Ministry undertakes to facilitate negotiations for the 108 remaining disputants.
- 247.** Under these circumstances, the recourse available upon the exhaustion of other remedies, by way of settlement of the labour dispute through labour inspection and the AC, is to approach the courts via article 385 of the Labour Law. As regards the arrests, the Government has indicated to the ILO that this is in the hands of the judicial authorities which are independent in the country. However, the MLVT will do what it can to provide assistance at the request of the individuals, including through inter-ministerial support.
- 248.** According to the Government, the stand-off was not caused by the MLVT but rather by the lack of willingness of the parties to bring the dispute before the appropriate court. Given that the enterprise has now brought the dispute to the court, the Government is awaiting the decision.
- 249.** The Government reaffirms its commitment to promoting, protecting and adhering to all duties and obligations stipulated in the relevant international labour Conventions to which it is a party.

C. The Committee's conclusions

- 250.** *The Committee notes that this case concerns allegations of retaliation, anti-union discrimination and dismissals, and arrest and detention against workers for having participated in strike action, in a context where the legislative framework inadequately ensures the effective recognition of freedom of association. Prior to the initiation of industrial action, the complainants indicate that, while the LRSU was formed in 2000, it has failed to secure full union recognition to date. The complainants assert that despite representing 4,400 workers of a total workforce of 8,000 at the Enterprise, and being the only union in existence, it was denied the most representative status (MRS) certificate, in their view due to unjustifiable administrative burdens and a lack of transparency and due process and this has impeded its capacity to fully defend its members.*
- 251.** *The complainants allege that this situation enabled a context of anti-union discrimination where the leadership of the LRSU in 2009 and 2010, followed by all the activists in 2012, were terminated and the enterprise refused to comply with the AC order to reinstate them. In this regard, the Committee recalls its previous recommendations to the Government from 2011 in respect of the same enterprise that, while being requested to inform of the appeal lodged by the employer against the February*

2010 decision of the AC ordering the reinstatement of four union leaders, which it expected would address the issue of the severance agreements found to be signed under duress, it requested the Government to take the necessary measures to seek their reinstatement without delay and ensure that the union leaders are immediately authorized to carry out their trade union activities in the company pending the conclusion of the appeals procedure.

252. The Committee notes with regret that no further information was provided by the Government on the steps taken to follow up these recommendations and that it is now informed of further allegations of hindrances placed in the way of the LRSU, such as the allegations that Chhim Sithar, the president of LRSU, was suspended in 2019 pending termination as retaliation for a call for the right to bargain collectively for wages and only fully reinstated in January 2020 following prolonged strike action and international outcry.
253. The Committee notes the further allegations of a series of violations of workers' rights and freedom of association in the context of mass forced redundancy at the enterprise including that: (i) these redundancies were imposed unilaterally by management without negotiation with the union, with the exception of an initial bilateral negotiation between the enterprise and the LRSU in April 2021; (ii) LRSU union members were not permitted union representation when summoned on an individual basis for meetings concerning their separation; (iii) LRSU union members could not obtain information about the reasons for their selection for redundancy or the criteria applied; and (iv) three LRSU union officers were added to the redundancy list after demanding that management respect freedom of association and negotiate with them. Subsequently, the MLVT convened a mediation meeting at which the complainants allege that the management did not engage in good faith and the MLVT supported the enterprise stating that the redundancy was a matter involving individual employees with no role for union or union representation.
254. As regards the mass redundancies, the Committee notes the Government's indication that the dispute between the enterprise and its workers stems from the impact of COVID-19 on the tourism and entertainment sector which necessitated the mass lay-off to secure the sustainability of the business and the employment of thousands of other workers. The Government contends that the enterprise had no option but to terminate some employees; that the termination was compliant with national law; that the termination did not target LRSU activists or leaders; and that such mass lay-off is under the control of the labour authorities.
255. On the specific point of mass redundancies, and while observing that it has insufficient information to determine the extent of consultation with the LRSU on the matter, the Committee recalls that it has always stressed the importance of engaging in full and frank consultation with trade unions when elaborating restructuring plans, since they have a fundamental role to play in ensuring that programmes of this nature have the least possible negative impact on workers [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1556].
256. While recalling that the Committee can examine allegations concerning economic rationalization programmes and restructuring processes only in so far as they might have given rise to acts of discrimination or interference against trade unions, the Committee notes the complainants' allegations that the MLVT refusal to recognize the LRSU's right to represent its members in two administrative court hearings rendered its status and that of its office bearers as union representatives unclear and resulted in the weakening of the efforts made by the union to negotiate and defend the fundamental rights and protections in the context of the COVID-19 pandemic. It is further alleged that, in this context, many union members were coerced into resigning from the union due to their economic hardship, with only 373 of the initial 1,329 workers facing termination continuing to refuse the redundancy package. While the matter was taken to the AC, the complainants allege that the LRSU requests to the MLVT for recognition as most representative went

without response, and this and the alleged collusion between the enterprise and the Government, led to the AC's refusal to recognize the union or respond to any evidence regarding anti-union discrimination in the redundancy process.

- 257.** *The Committee notes the efforts which the Government indicates it had taken to conciliate and monitor the matter and the settlement that had been achieved in relation to the demand for the enterprise to duly implement health measures at the workplace in accordance with the WHO and the Ministry of Health guidelines to prevent COVID-19, while the four remaining points were forwarded to the AC, an independent quasi-judicial body, on 2 July 2021. The Government adds that it is strongly committed to the peaceful settlement of the dispute and beyond these efforts, facilitated the calculation of the compensation in accordance with the law and the Arbitral Award to ensure accurate benefits for the terminated workers, leading to the enterprise implementing the new agreed calculation and starting to reimplement seniority indemnity in 2021.*
- 258.** *The Committee observes that these allegations occur in a context where the LRSU has not been granted MRS and has therefore not been recognized for collective bargaining purposes either by the Government or the enterprise and therefore has also not been able to represent its members before the AC. While the Committee has insufficient information to determine the representative status of the LRSU, it must recall that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members [see **Compilation**, para. 1389]. Similarly, the Committee considers that workers should be able to be represented in their grievances, whether collective or individual, by the organization of their own choosing and trusts that the Government will ensure this in the future. The Committee urges the Government to provide detailed information on the current status of the LRSU's request for MRS and, should they meet the legal requirements, to ensure that they are granted MRS without delay. It further requests the Government to provide information on the steps taken to ensure that the LRSU at least has the right to make representations on behalf of its members and to represent them in respect of their individual grievances.*
- 259.** *The Committee notes the complainant's allegation that the lack of resolution of the demands through the process of the AC led the LRSU to submit a strike notice listing nine demands, including the reinstatement of the 373 workers who refused the redundancy settlements, reinstatement of the three trade union leaders who faced retaliatory inclusion in the redundancy list, wage increases, package recalculations, an end to disguised full-time internships and compliance with previously issued AC awards. According to the complainants, MLVT meetings in December did not result in resolution of the matter and the LRSU continued to be sidelined as representative of its members.*
- 260.** *The Committee notes the Government's indication that, in respect of the first dispute, the AC refused to rule on the first two demands made by the LRSU and ruled in favour of the affected workers for the third and fourth demands while the LRSU challenged the award on 17 September 2021. The Government further indicates that it had received two additional complaints from the LRSU on 23 September and 12 November 2021 calling for the reinstatement by the enterprise of the 373 workers from the previous dispute and setting out three additional demands. According to the Government, given that the previous award was rendered unenforceable due to the objection filed by the LRSU, the MLVT had advised the LRSU to approach the courts for relief, something the union is yet to do, while the new disputed points should be first raised for conciliation in accordance with the law. The LRSU went ahead and notified the enterprise of the decision to strike without the prior exhaustion of the labour dispute settlement procedures prescribed by law.*
- 261.** *The Committee notes that it is in this context that both the complainants and the Government indicate that a provisional injunction was issued by the Phnom Penh court of first instance on*

16 December 2022 prohibiting the proposed strike on the grounds that some of the demands had not yet been considered by the AC and declaring striking workers liable for serious misconduct and subject to financial liability.

262. In these circumstances, the complainants allege a continuing series of steps taken by the Government aimed at disrupting the strike and activities of the trade union in severe violation of freedom of association throughout 2022, including: (i) maintaining that there was a risk to public safety and security in the context of the COVID-19 pandemic, forcing strikers into quarantine and busing them far away from the city centre; (ii) issuance of a press release stigmatizing the union action; (iii) sending in military officers with riot shields and truncheons to surround the LRSU office while more than a dozen police officers, both uniformed and plain-clothed, raided it; (iv) arresting a number of workers, detained in isolation and denied access to lawyers for 21 days, and only releasing those who signed a statement agreeing not to strike, (v) charging nine trade unionists, including Chhim Sithar, with incitement to commit a felony under sections 494 and 495 of the Criminal Code; and (vi) the authorities became more hostile and violent towards the strikers between February 2022 and June 2022, attacking and harassing them and causing injuries, with further violence resulting in injury once again on 11 August 2022, which then subsided after the visit of the UN Special Rapporteur on the situation of human rights in Cambodia six days later.
263. The Committee notes with regret that the Government has not replied to the detailed allegations of the complainants in relation to the government, military and police interference in the industrial action. As regards the long period of pretrial detention (two months) of LRSU trade union leaders and members, the Government indicates that: (i) the matter is in the hands of the judicial authorities which are independent in the country; (ii) the MLVT sent two letters in March 2022 to the MoJ requesting the latter for consideration; (iii) the MoJ requested the Phnom Penh court to consider the temporary release of the detained strikers and (iv), the court subsequently decided, at its discretion, to release the 11 strikers subject to their being placed under judicial supervision in accordance with the Code on Criminal Procedures.
264. The Committee recalls that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests. The use of police for strike-breaking purposes is an infringement of trade union rights. The authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order. The intervention of the police should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order. Penal sanctions should not be imposed on any worker for participating in a peaceful strike [see **Compilation**, paras 752, 931, 935, 954]. The Committee notes the Government's reaffirmation of its commitment to promoting, protecting and adhering to all duties and obligations stipulated in the relevant international labour Conventions to which it is a party. The Committee therefore urges the Government to take the necessary steps for an independent investigation into the detailed allegations provided by the complainants in respect of the government, military and police intervention, violence and harassment and to transmit the outcome and ensure that the competent authorities receive adequate instructions so as to avoid any danger of violence in trying to control demonstrations. The Committee further notes that, while the LRSU members had been subsequently released, the charges remained pending against them. Recalling that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike [see **Compilation**, para. 971], the Committee requests the Government to ensure that all charges brought against LRSU leaders and members for participating in a peaceful strike are dropped. It requests the Government to keep it informed of the steps taken in this regard. The Committee further urges the Government to take the necessary measures to

ensure an independent investigation is carried out into the various act of anti-union discrimination and interference alleged by the complainants to have been carried out by the employer since the beginning of the dispute and to keep it informed of the outcome.

265. The Committee further notes the complainants' allegations that the Government refused to register the re-election of LRSU officers in April 2022, including Chhim Sithar as president, on the grounds that the elected leaders as well as some of the voters in the election were former employees of the enterprise, while the dispute over termination remain unresolved. The Committee observes that the Government first affirms that the recognition of nine union leaders, including Chhim Sithar, was granted on 30 June 2021 and refutes allegations that the non-recognition of the LRSU as the most representative would have impeded their right to freedom of association. The Government adds in its later communication that the Department of Labour Disputes rejected the second application of 9 May 2022, as it violated article 4 of the LTU and article 9 of the LRSU statute since some of the newly elected leaders and voters were former employees of the enterprise at the time of the election. While, according to the Government, the MLVT had not received any rectification document following its informing the LRSU on 6 June 2022 of the need to resubmit within 30 days, the Committee notes the complainants' allegations that the LRSU objected in writing and submitted the registration documents once again, arguing that all the voters were current employees since the dispute concerning their termination was unresolved, only to be rejected a second time with the MLVT this time requesting the enterprise to withhold union dues until the new leadership of the LRSU was "registered and legally recognized." The Committee further notes in this context the allegations of recognition of a non-independent union at the enterprise by the Government in March 2022 and efforts by the enterprise to coerce workers to leave the LRSU and join the union while it has been totally inactive since its creation. On this allegation, the Committee notes that the Government confines itself to indicating that it is bound by law to ensure the independence of trade unions from employers, and any trade union that is not independent is liable to lose its registration per the LTU, without providing any further details on the registration of the union.
266. As regards the recognition of the LRSU leaders in this context, the Committee recalls that workers and their organizations should have the right to elect their representatives in full freedom and the latter should have the right to put forward claims on their behalf [see **Compilation**, para. 586]. The Committee further recalls that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided [see **Compilation**, para. 690]. The Committee observes with deep concern that the non-recognition of the LRSU officers and the stoppage of the check-off facility effectively impedes the union's ability to defend its members and could result in the entire eradication of the union. In these circumstances, and bearing in mind the allegations that the status of the voting members has yet to be finalised in light of the ongoing dispute and the long history of non-recognition and termination of LRSU leaders going back to the previous complaint in 2011, the Committee urges the Government to ensure that the April 2022 election of LRSU officers is duly recognized so that they may effectively defend the interests of their members and that the necessary steps are taken to ensure that members' dues are duly transferred to the union. As regards the allegations that the enterprise filed a formal complaint against 18 female strikers including Chhim Sithar, the Committee requests the Government and the complainants to provide detailed information on the nature of the charges and the current status of these cases.
267. Finally, the Committee notes with deep concern the allegations that Chhim Sithar was arrested once again on 26 November 2022 for having purportedly violated her bail conditions regarding international travel, following her return to Cambodia from attending the 5th World Congress of the ITUC in Melbourne, Australia while essential LRSU documents were seized. The Committee observes the Government's affirmation that Chhim Sithar was arrested due to a breach of the conditions of

*her provisional release pending trial which is a standard term in court verdicts during provisional release and that her case is to be heard by the Phnom Penh court of first instance on 21 February 2023. The Committee recalls that penal sanctions should not be imposed on any worker for participating in a peaceful strike and that acts of confiscation and occupation of property of leaders of employers' or workers' organizations are contrary to freedom of association if they are taken as a consequence of their activities as representatives of such organizations [see **Compilation**, paras 954 and 293]. The preventive detention of leaders of workers and employers organizations for activities connected with the exercise of their rights is contrary to the principles of freedom of association and in all event should be limited to very short periods of time intended solely to facilitate the course of a judicial inquiry [see **Compilation**, paras 137 and 140]. Given that the initial charges brought against Chhim Sithar concerned her participation in peaceful industrial action, and deeply concerned at her continued preventive detention over two months, the Committee urges the Government to ensure her immediate and unconditional release and the restitution of any confiscated trade union property.*

- 268.** *Given that the allegations in this case refer to an enterprise, the Committee urges the Government to solicit information from the employers' organization concerned with a view to having at its disposal the organization's views, as well as those of the enterprise concerned on the questions at issue.*

The Committee's recommendations

- 269.** In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee urges the Government to provide detailed information on the current status of the LRSU's request for MRS and, should they meet the legal requirements, to ensure that they are granted MRS without delay. It further requests the Government to provide information on the steps taken to ensure that the LRSU at least has the right to make representations on behalf of its members and represent them in respect of their individual grievances.
 - (b) The Committee urges the Government to take the necessary steps for an independent investigation into the detailed allegations provided by the complainants in respect of government, military and police intervention, violence and harassment in the industrial action carried out by the LRSU and to transmit the outcome and ensure that the competent authorities receive adequate instructions so as to avoid any danger of violence. The Committee further requests the Government to ensure that all charges brought against LRSU leaders and members for participating in a peaceful strike are dropped. It requests to Government to keep it informed of the steps taken in this regard.
 - (c) The Committee urges the Government to take the necessary measures to ensure an independent investigation is carried out into the various acts of anti-union discrimination and interference alleged by the complainants to have been carried out by the employer since the beginning of the dispute and to keep it informed of the outcome.
 - (d) Bearing in mind the allegations that the status of the voting members has yet to be finalised in light of the ongoing dispute and the long history of non-recognition and termination of LRSU leaders going back to the previous complaint in 2011, the Committee urges the Government to ensure that the April 2022 election of LRSU officers is duly recognized so that they may effectively defend the interests of their

- members and that the necessary steps are taken to ensure that members' dues are duly transferred to the union.
- (e) As regards the allegations that the enterprise filed a formal complaint against 18 female strikers, including Chhim Sithar, the Committee requests the Government and the complainants to provide detailed information on the nature of the charges and the current status of these cases.
 - (f) The Committee expresses its deep concern that Chhim Sithar was arrested upon her return from the 5th World Congress of the ITUC and has been retained in preventive detention over two months and, given that the initial charges concerned her participation in peaceful industrial action, urges the Government to ensure her immediate and unconditional release and the restitution of any confiscated trade union property.
 - (g) Given that the allegations in this case refer to an enterprise, the Committee urges the Government to solicit information from the employers' organization concerned with a view to having at its disposal the organization's views, as well as those of the enterprise concerned on the questions at issue.

Case No. 3184

Interim report

Complaint against the Government of China presented by the International Trade Union Confederation (ITUC)

Allegations: Arrest and detention of eight advisers and paralegals who have provided support services to workers and their organizations in handling individual and/or collective labour disputes, as well as police interference in industrial labour disputes

- 270.** The Committee last examined this case (submitted in February 2016) at its March 2022 meeting, when it presented an interim report to the Governing Body [see 397th Report, paras 114–141, approved by the Governing Body at its 344th Session (March 2022)].¹⁶
- 271.** The complainant sent additional observations and new allegations in a communication dated 6 October 2022.
- 272.** The Government forwarded its observations in communications dated 30 September and 11 October 2022.
- 273.** China has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

¹⁶ [Link to previous examination.](#)

A. Previous examination of the case

274. At its March 2022 meeting, the Committee made the following recommendations [see 397th Report, para. 141]:

- (a) The Committee requests the Government to clarify more specifically that Mr Meng's identification documents have been delivered to him, that he is no longer being prosecuted on the charges of "picking quarrels and provoking trouble" and that he is no longer under any measure of supervision by the authorities.
- (b) The Committee urges the Government to transmit without further delay a copy of all relevant judicial decisions in cases of Messrs Meng, Wu Lijie, Zhang Zhiyu, Jian Hui, Wu Guijun, He Yuancheng, Song Jiahui, Yang Zhengjun, Wei Zhili, Ke Chengbing, Mi Jiuping, Liu Penghua, Yu Juncong and Li Zhan.
- (c) The Committee once again requests the Government to provide information on all steps taken to facilitate constructive and inclusive dialogue with the social partners with a view to ensuring complete respect for freedom of association and to ensure the right to peaceful demonstration for workers and employers.
- (d) The Committee once again urges the Government to transmit a copy of the investigation report into the allegations of harsh treatment of the labour activists while in custody which had revealed that Mr Zeng and others were not subject to cruel treatment while in detention.
- (e) The Committee once again urges the Government to carry out an investigation into the allegations of beatings or injuries suffered by workers and their representatives at the shoe factory without further delay and to keep it informed of the outcome.
- (f) The Committee recalls that the right of workers to establish organizations of their own choosing implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party and once again calls upon the Government to ensure this right for all workers.
- (g) The Committee once again urges the Government to take the necessary measures to ensure adequate protection against anti-union discrimination in law and in practice and to provide a copy of the report on the outcome of the investigation to which it had referred and detailed information on the alleged dismissals of Messrs Mi Jiuping, Li Zhan, Song Yiao, Kuang Hengshu, Zhang Baoyan and Chang Zhongge.
- (h) The Committee once again urges the Government to submit a detailed reply on each of the allegations of arrests, detention, ill-treatment and disappearance of labour activists and their supporters, as set out in Appendix I, as well as criminal charges laid against some and sanctions imposed.
- (i) The Committee requests the Government to confirm that Lan Zhiwei, Zhang Zeying and Li Yanzhu (mentioned in Appendix II) have not been arrested, detained or prosecuted for having supported Jasic workers.
- (j) The Committee once again requests the complainant organization to furnish any additional information it may have in relation to the persons referred to in the above recommendations (h) and (i).
- (k) Recalling that such grave allegations as examined in this case figure among the terms set out in paragraph 54 of the special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association, the Committee expects the Government to make additional efforts necessary to submit the remaining information requested without further delay so that the Committee will have available to it all necessary information to examine this case in full knowledge of the facts.
- (l) The Committee invites the Government to accept a direct contacts mission to understand better the situation on the ground and resolve any pending matters.

B. The complainant's additional allegations

- 275.** In its communication dated 6 October 2022, the ITUC indicates at the outset that despite the Committee's repeated requests, the Government of China has failed to provide full information on the arrest, detention and prosecution of workers and labour activists and that its own attempts at collecting this information have been unsuccessful due to the high degree of fear of reprisals or retaliation and intimidation among the concerned workers and activists, who are reluctant to share information or details. The ITUC therefore considers that this case should be deemed serious and urgent and requests the Committee to reiterate its previous invitation to the Government to accept a direct contacts mission to understand better the situation on the ground and resolve any pending matters.
- 276.** According to the ITUC, there is a near complete absence of civic space for independent public advocacy or collective labour actions in China, which is exacerbated by digital surveillance and stringent restrictions on and suppression of civil liberties and freedom of expression – including under the zero-COVID policy applied throughout the country since 2020. The ITUC alleges that methods deployed by the authorities consisting of resorting to public security crimes, forced disappearance, arbitrary detention, surveillance, threats to prosecute labour activists and intimidation of their family members remain the same and refers in this respect, to the arrest of labour activist Mr Wang Jiangbing on 19 September 2021.
- 277.** The ITUC explains that Mr Wang is an independent labour activist advocating for workers' rights in non-profit development and labour organizations in China. In early 2018, he became the director of Guangzhou Tianhe District Peer Volunteer Service Station – a non-profit labour organization that provides support services to workers with occupational diseases, especially pneumoconiosis. Mr Wang has led research on the conditions and needs of workers with pneumoconiosis, organized victimized workers in Guangzhou and Shenzhen municipalities and community-based victim support networks and provided paralegal services to injured and sick workers to make compensation claims. Between 2018 and 2019, Mr Wang regularly organized health and psychological counselling workshops for hundreds of workers and paid visits to patients in occupational disease hospitals to distribute guidebooks on rights, rehabilitation and public services, as well as health management for workers with pneumoconiosis. In 2019, before being forced to quit the Service Station, Mr Wang was frequently visited and questioned by public security officials who demanded details of his work and relations with other domestic and foreign organizations. As of October 2020, due to the anti-COVID-19 measures in place, such as the suspension of hospital visits and the tightened travel restrictions, Mr Wang could only continue to organize workers with pneumoconiosis as an independent labour activist online. On 19 September 2021, Mr Wang and his girlfriend, Ms Huang Xueqin, were taken away by unidentified public security officers at Guangzhou airport at 3 p.m. while their apartment and personal belongings were searched. The public security authorities summoned and interrogated around 40 people who, according to the CCTV footage, had been involved in gatherings at the said apartment. They were asked to provide details on Mr Wang's activist networks, the content of discussions at the gatherings, and to match the names and photos of participants. They were required to unlock their mobile phones and their homes were also searched, with files from their electronic devices being copied by police and public security officers. The ITUC further alleges that on 20 September 2021, police officers went to Mr Wang's hometown in Tianshui City, Gansu Province to threaten his parents against talking about their son's situation. Between 28 and 30 September 2021, Mr Wang's family members went to the police, the public security authorities, and the Guangzhou City Prosecutor's Office to ask about their son's whereabouts. On 30 September 2021, they were questioned by the municipal public security authority, who informed them of Mr Wang's official

arrest without providing information on the charges against him or his whereabouts. They were again threatened against disclosing the details of the case or seeking public assistance. On 21 October 2021, family members and their lawyer went to the Guangzhou Public Security Bureau to request bail and a meeting with Mr Wang, but to no avail. On 5 November 2021, Mr Wang's family received the arrest notice issued by the Guangzhou Public Security Bureau stating that he had been arrested on 27 October 2021 on charges of inciting subversion of state power under article 105 of the PRC Criminal Code, and that he was still being held at Guangzhou Detention Centre No. 1. His lawyer was not allowed to meet with Mr Wang on 19 November 2021 or to obtain a response to his bail application. On 1 April 2022, Mr Wang's lawyer was allowed to meet virtually with his client. According to the lawyer, Mr Wang was held in solitary confinement for five months in an unknown isolated location and was only transferred to Guangzhou Detention Centre No. 1 on notice of arrest in March 2022. He was in poor health and suffered from digestive problems, mental torment, and depression. To date, he has not been allowed to meet with his family. On 21 July 2022, Mr Wang's lawyer was informed during the meeting with Mr Wang in detention that the prosecution had referred the case for further investigation, while, pursuant to article 175 of the Criminal Procedure Law of the PRC, the one-month deadline for such referral had been prescribed. The Prosecutor's Office has yet to make a decision and Mr Wang remains in pre-trial detention.

- 278.** The ITUC indicates that, in May 2022, the UN Working Group on Arbitrary Detention called on the Government to release Mr Wang, to provide compensation for his deprivation of liberty, and to repeal article 105 of the PRC Criminal Code ([A/HRC/WGAD/2022/9](#)). According to the ITUC, the Working Group considered that Wang's case is indicative of the systematic problem of arbitrary detention in China and called on the Government to agree to a visit of the Working Group to the country.

C. The Government's reply

- 279.** In its communications dated 30 September and 11 October 2022, the Government indicates that it has continued to make the utmost effort to collect relevant information in this case.
- 280.** The Government provides the following information on the individual cases:
- On 7 October 2020, the public security organ lifted the measure imposed on Mr Meng Han after the period of obtaining a guarantor pending trial expired; his identity document was not seized.
 - On 27 July 2018, the public security organ summoned Mr Lan Zhiwei and Ms Zhang Zeying, both suspected of committing a crime. Criminal detention measures were imposed upon them the next day. On 27 August 2018, the measure imposed was changed to a measure to obtain a guarantor pending trial, which was lifted upon expiration. Mr Lan Zhiwei and Ms Zhang Zeying are now leading normal lives.
 - On 3 January 2019, the public security organ summoned Li Yuanzhu on suspicion of committing a crime. A measure of criminal detention was imposed upon him on the same day. On 30 January 2019, the measure imposed was changed to a measure to obtain a guarantor pending trial, which was lifted upon the expiration of the period for obtaining a guarantor. Li Yuanzhu is now leading a normal life.
- 281.** The Government recalls that in December 2014, a labour dispute erupted in Lide Shoe Factory in the Panyu District of the city of Guangzhou and indicates in this regard that both the municipal and district level governments have quickly intervened so as to mediate between

the two parties and facilitated the settlement of the dispute. No beating of workers happened, and the public security organ received no reporting of, or dealt with, such cases.

- 282.** The Government further provides information on the four allegedly dismissed employees of the Shenzhen Jasic Technology Co. Ltd, namely Messrs Kuang Hengshu, Zhang Baoyan, Chang Zhongge and Song Yiao. According to the Government, in July 2018, the former employees illegally gathered and forcibly entered the factory and workshop, resulting in the disruption of the normal business and production order of the company. On 28 July 2018, the Shenzhen public security organ imposed criminal detention measures on them *ipso jure* on suspicion of disrupting public order and later substituted it by the measures of obtaining a guarantor pending trial. In August 2019, the public security organ lifted the detention measures on Messrs Kuang, Zhang and Chang after the period for obtaining a guarantor pending trial expired, while in July 2019, it imposed criminal detention measures on Mr Song *ipso jure* on suspicion of disturbing public order. In December 2019, the detention imposed on Mr Song was replaced by a measure to obtain a guarantor pending trial, which was lifted when it expired in December 2020. The Government reiterates information on the role of the Jasic Technology Trade Union and indicates that the trade union effectively plays its institutional role, dedicates its efforts to enhancing capacity-building, and casts a solid foundation to perform its duties and responsibilities. Its main work revolves around the organization of events and meetings in which workers' basic democratic rights and demands are discussed, assessed, and answered. Over the past two years, the Union has received about 280 demands from workers, all of which have received feedback or have been followed-up through coordination.
- 283.** The Government concludes by reiterating that the constitution and the laws of the country fully guarantee the freedom of association to the citizens and provide strong legal safeguards for the workers to join and organize trade unions, but points out that, like in any other nation, Chinese workers and their organizations shall abide by the relevant provisions of national laws, in particular laws and regulations on social governance, in exercising the aforementioned rights under the premise of safeguarding the social and public order and ensuring the legitimate rights of other people and organizations. The Government indicates its willingness to maintain communication with the ILO in this regard.

D. The Committee's conclusions

- 284.** *The Committee recalls that this case concerns allegations of arrest and detention on charges of "gathering a crowd to disturb public order" of advisers and paralegals who have provided support services to workers and their organizations in handling individual and/or collective labour disputes.*
- 285.** *The Committee recalls, in particular, that Mr Meng, one of the advisers, sentenced to imprisonment on the above charges, had allegedly had his identification documents withheld by the authorities following his release from prison. The Committee further recalls that it had previously noted with concern the allegation that Mr Meng was under police surveillance to prevent him from assuming his role as a worker activist. The Committee notes that the Government reiterates its previous indication that on 7 October 2019, the public security organ lifted the measure imposed after the period of obtaining a guarantor pending trial expired. Noting the Government's indication that Mr Meng's identity document was not seized, the Committee once again requests the Government to confirm that Mr Meng is not being prosecuted on charges of "picking quarrels and provoking trouble" and that he is no longer under any measure of supervision by the authorities.*
- 286.** *The Committee recalls that it had previously urged the Government to transmit without further delay a copy of all relevant judicial decisions in the cases of Messrs Meng, Wu Lijie (convicted of the crime of illegal business operation and sentenced to three years' imprisonment and a fine of 30,000 yuan*

renminbi on 13 November 2019), Zhang Zhiyu, Jian Hui, Wu Guijun, He Yuancheng, Song Jiahui (all five were convicted of the crime of assembling crowds to disturb public order and sentenced to various terms of probation on 24 April 2020), Yang Zhengjun, Wei Zhili, Ke Chengbing (all three were tried on 24 April 2020 on suspicion of provocative offences and sentenced to one year and six months of imprisonment with a three-year probation term), Mi Jiuping, Liu Penghua, Yu Juncong and Li Zhan (all four were sentenced, in April 2019, to one year and six months imprisonment with a three-year probation for the crime of assembling crowds to disrupt public order). The Committee notes with deep regret that the Government did not provide copies of the relevant judicial decisions. The Committee recalls that in cases where the complainants alleged that trade union leaders or workers had been arrested for trade union activities, and the governments replies amounted to general denials of the allegation or were simply to the effect that the arrests were made for subversive activities, for reasons of internal security or for common law crimes, the Committee has always followed the rule that the governments concerned should be requested to submit further and as precise information as possible concerning the arrests, particularly in connection with the legal or judicial proceedings instituted as a result thereof and the result of such proceedings, in order to be able to make a proper examination of the allegations. The Committee recalls that in many cases, it has asked the governments concerned to communicate the texts of any judgments that have been delivered together with the grounds adduced therefor [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 178 and 179]. Observing once again the general nature of the accusations against the above labour activists as described by the Government, the Committee once again urges the Government to transmit without further delay copies of the judicial decisions in the cases of Messrs Meng, Wu Lijie, Zhang Zhiyu, Jian Hui, Wu Guijun, He Yuancheng, Song Jiahui, Yang Zhengjun, Wei Zhili, Ke Chengbing, Mi Jiuping, Liu Penghua, Yu Juncong and Li Zhan.

287. Further in this connection, the Committee recalls that it had previously noted the complainant's general allegation that it was not possible for workers and labour activists to participate in a legitimate strike or demonstration without violating the law that prohibits the disturbance of public order; and that it was common for the prosecutor and the court to view industrial action taken by workers as public security violations rather than as the exercise of fundamental rights. The Committee had noted the Government's general observation that the Law on Assemblies, Processions and Demonstrations was a special law that regulated the demonstrations of Chinese citizens enacted to serve two purposes: (1) safeguard citizens' exercise of their right to assembly, procession and demonstration according to law; and (2) maintain social stability and public order. The Committee observed that while some of the specific requirements relating to demonstration would clearly be in conformity with the principles of freedom of association (such as the ban on weapons, controlled cutting tools or explosives and the use of violence), several others appeared quite broad in nature and their implementation could give rise to a violation of freedom of association. In particular, the Committee observed with concern the Government's indication that no citizen shall, in a city other than their place of residence, start, organize or participate in an assembly, a procession or a demonstration of local citizens. Recalling that workers should enjoy the right to peaceful demonstration to defend their occupational interests [see **Compilation**, para. 208], the Committee considered that this geographical restriction placed by legislation on the right to demonstrate is not in conformity with the freedom of peaceful assembly and requested the Government to indicate all steps taken to facilitate constructive and inclusive dialogue with the social partners with a view to ensuring complete respect for freedom of association and to ensure the right to peaceful demonstration for workers and employers. The Committee had further recalled that the right of workers to establish organizations of their own choosing implied, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party and once again calls upon the Government to ensure this

right for all workers. The Committee regrets that once again the Government's reply is limited to the reiteration that the constitution and the laws of the country fully guarantee the freedom of association to its citizens and provide strong legal safeguards for the workers to join in and organize trade unions, but points out that like in any other nation, the Chinese workers and their organizations shall abide by the relevant provisions of national laws, in particular laws and regulations on social governance, in exercising the aforementioned right under the premise of safeguarding the social and public order and ensuring the legitimate rights of other people and organizations. Noting the Government's indication that it is willing to maintain communication with the ILO in this regard, the Committee urges the Government to take all steps, with the technical assistance of the Office, to facilitate constructive and inclusive dialogue with the social partners with a view to ensuring complete respect for freedom of association, including the right of workers to establish organizations of their own choosing, which implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party, and to ensure the right to peaceful demonstration for workers and employers. It requests the Government to indicate all measures taken or envisaged in this respect.

- 288.** *The Committee further recalls that it had requested the Government to transmit a copy of the investigation report into the allegations of harsh treatment of the labour activists while in custody which had revealed that Mr Zeng and others were not subject to cruel treatment while in detention. Noting with regret the absence of any information in this respect, the Committee is obliged to once again urge the Government to transmit a copy of the investigation report to which it had previously referred.*
- 289.** *The Committee recalls that it had previously requested the Government to carry out an investigation into the allegations of beatings or injuries suffered by workers and their representatives at the shoe factory. The Committee notes the Government's indication that in December 2014, a labour dispute erupted at the factory, that both the municipal and district level governments quickly intervened so as to mediate between the two parties, and that they facilitated the settlement of the dispute; no beating of workers happened, and the public security organ received no reporting of, or dealt with, such cases.*
- 290.** *With regard to its previous recommendation regarding the dismissal of workers of the technology company, the Committee notes with regret that the Government provides no information regarding the alleged dismissals of Messrs Mi Jiuping, Li Zhan, Song Yiao, Kuang Hengshu, Zhang Baoyan and Chang Zhongge and that instead, it reiterates the information on measures pending trial imposed on Messrs Li Zhan, Song Yiao, Kuang Hengshu, Zhang Baoyan and Chang Zhongge by the public security body on suspicion of disrupting public order. The Committee recalls that it had previously noted the Government's indication that following investigations it was ascertained that two other workers, Messrs Liu and Yu, were dismissed for fighting with their colleagues and absenteeism, respectively, and that the civil case of Mr Yu's dismissal was suspended due to him being involved in a pending criminal case. The Committee requested the Government to provide a copy of the report on the outcome of the investigation and recalled that adequate protection against all acts of anti-union discrimination in respect of employment, such as dismissal, demotion, transfer or other prejudicial measures is fundamental to the principle of freedom of association (see Report No. 389, June 2019, para. 259). The Committee regrets that the Government provides no information regarding measures taken to ensure adequate protection against anti-union discrimination in law and in practice. In light of the above, the Committee urges the Government to provide information on all measures taken or envisaged to ensure adequate protection against anti-union discrimination in law and in practice, to provide a copy of the report on the outcome of the above-mentioned investigation (cases of Messrs Liu and Yu) and detailed information on the alleged dismissals of Messrs Mi Jiuping, Li Zhan, Song Yiao, Kuang Hengshu, Zhang Baoyan and Chang Zhongge.*

291. *The Committee once again observes with deep regret that no information has been provided by the Government in relation to the whereabouts, charges, judgments, or convictions of any of those individuals mentioned in Appendix I, as previously requested. The Committee finds itself bound to once again urge the Government to submit a detailed reply on each of the allegations of arrests, detention, ill-treatment and disappearance of labour activists and their supporters, as set out in Appendix I, as well as criminal charges laid against some and sanctions imposed. The Committee notes the information provided by the Government regarding Ms Zhang Zeying and Messrs Lan Zhiwei and Li Yuanzhu, the three workers whose names were mentioned in Appendix II (list of individuals detained or disappeared submitted by the ITUC in its communication dated 11 February 2020), and, in particular, of the Government's indication that security measures against them have expired and that they there are leading a normal life. The Committee requests the Government to provide information regarding Mr Wang Ji'ao, mentioned in Appendix II.*
292. *The Committee notes the ITUC allegation of a near complete absence of civic space for independent public advocacy or collective labour actions in China, which is exacerbated by digital surveillance and stringent restrictions on suppression of civil liberties and freedom of expression – including under the zero-COVID policy applied all over the country since 2020. The ITUC alleges that methods deployed by the authorities consisting of resorting to national and public security crimes, forced disappearance, arbitrary detention, surveillance, threats to prosecute labour activists and intimidation of their family members remain the same and refers in this respect, to the arrest of labour activist Mr Wang Jiangbing and Ms Hiang Xueqin on 19 September 2021. The Committee notes that according to the ITUC, Mr Wang Jiangbing, is a labour activist advocating for workers' rights, including in labour organizations. The Committee recalls that it has been examining this case against the background of significant legislative obstacles to the full guarantee of freedom of association in the country [see Report No. 380, para. 233], where in the absence of free and independent workers' organizations, the representation of workers and their organization for furthering and defending their rights and interests is carried out by independent labour advisors. The detention of Mr Wang Jiangbing is therefore being examined in respect of his role as a labour activist, being a necessary form for freely chosen representation in a context where independent trade unions cannot exist.*
293. *The Committee regrets that the Government has provided no observations regarding the arrest of the labour activist. The Committee takes note of Opinion No. 9/2022 concerning Mr Wang Jianbing adopted on 31 March 2022 by the Working Group on Arbitrary Detention of the Human Rights Council at its 93rd session, 30 March–8 April 2022. It notes, in particular, that the Working Group concluded that the detention of Mr Wang Jiangbing was arbitrary and lacked a legal basis; that Mr Wang's arrest and detention resulted from the exercise of the rights and freedoms guaranteed by articles 18 (freedom of thought), 19 (freedom of opinion and expression) and 20 (freedom of peaceful assembly and association) of the Universal Declaration of Human Rights; that Mr Wang's right to legal assistance was denied and his right to a fair trial was violated; and that the arrest and detention was thus arbitrary. The Working Group was "disturbed by the uncontested allegations that Mr Wang continues to be held incommunicado and that all contact with his family has been denied". The Committee notes that in its Disposition:*
- *The Working Group consider[ed] that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr Wang immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the COVID-19 pandemic and the threat that it poses in places of detention, the Working Group call[ed] upon the Government to take urgent action to ensure the immediate unconditional release of Mr Wang.*

- *The Working Group urge[d] the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr Wang and to take appropriate measures against those responsible for the violation of his rights.*
 - *The Working Group request[ed] the Government to bring its laws, particularly article 105(2) of the Criminal Code, into conformity with the recommendations made in [its] opinion and with the commitments made by China under international human rights law.*
- 294.** *In view of the arbitrary nature of Mr Wang's detention for allegedly advocating for workers' rights in an environment where, as previously concluded by the Committee, the exercise of freedom of association is severely restricted in law and in practice, and in view of the absence of any information on the part of the Government, the Committee urges the Government to ensure the immediate release of this labour activist and to provide detailed observations on the ITUC allegations, including on the situation of Ms Hiang Xueqin.*
- 295.** *The Committee notes the complainant's indication that its own attempts at collecting information in this case have been unsuccessful due to the high degree of fear of reprisals or retaliation and intimidation among the concerned workers and activists, who are reluctant to share information or details. The ITUC therefore considers that this case should be deemed as serious and urgent and requests the Committee to reiterate its previous invitation to the Government to accept a direct contacts mission to understand better the situation on the ground and resolve any pending matters.*
- 296.** *The Committee had previously recalled that such grave allegations as examined in this case figure among the terms set out in paragraph 54 of the special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association. The Committee expresses its concern that the facts of this case, under examination since October 2016, indicate a systemic problem which has been seen to have had an impact on workers' freedom of association by virtue of the numerous persons arrested, disappeared, and intimidated for having tried to defend workers' collective interests and for whom the Government has consistently failed to provide the detailed information requested by the Committee, including as to whether charges are still pending against any of the labour activists and on the steps taken to ensure complete respect for freedom of association. In light of the persistent failure by the Government to provide detailed information on the above and to take steps to address the Committee's longstanding recommendations, the Committee finds itself obliged to draw the Governing Body's attention to the serious and urgent nature of this case. The Committee expects the Government to make additional efforts necessary to submit the remaining information requested without further delay so that the Committee will have available to it all necessary information to examine this case in full knowledge of the facts and once again invites the Government to accept a direct contacts mission to understand better the situation on the ground and resolve any pending matters.*

The Committee's recommendations

- 297.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following:**
- (a) **The Committee once again requests the Government to confirm Mr Meng is not being prosecuted on charges of "picking quarrels and provoking trouble" and that he is no longer under any measure of supervision by the authorities.**
 - (b) **The Committee once again urges the Government to transmit without further delay copies of judicial decisions in the cases of Messrs Meng, Wu Lijie, Zhang Zhiyu, Jian Hui, Wu Guijun, He Yuancheng, Song Jiahui, Yang Zhengjun, Wei Zhili, Ke Chengbing, Mi Jiuping, Liu Penghua, Yu Juncong and Li Zhan.**

- (c) **The Committee urges the Government to take all steps, with the technical assistance of the Office, to facilitate constructive and inclusive dialogue with the social partners with a view to ensuring complete respect for freedom of association, including the right of workers to establish organizations of their own choosing, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party, and to ensure the right to peaceful demonstration for workers and employers. It requests the Government to indicate all measures taken or envisaged in this respect.**
- (d) **The Committee once again urges the Government to transmit a copy of the investigation report into the allegations of harsh treatment of the labour activists while in custody which had revealed that Mr Zeng and others were not subject to cruel treatment while in detention.**
- (e) **The Committee urges the Government to provide information on all measures taken or envisaged to ensure adequate protection against anti-union discrimination in law and in practice, to provide a copy of the report on the outcome of the above-mentioned investigation (cases of Messrs Liu and Yu) and detailed information on the alleged dismissals of Messrs Mi Jiuping, Li Zhan, Song Yiao, Kuang Hengshu, Zhang Baoyan and Chang Zhongge.**
- (f) **The Committee once again urges the Government to submit a detailed reply on each of the allegations of arrests, detention, ill-treatment and disappearance of labour activists and their supporters, as set out in Appendix I, as well as criminal charges laid against some and sanctions imposed. The Committee requests the Government to provide information regarding Mr Wang Ji'ao, mentioned in Appendix II.**
- (g) **In view of the arbitrary nature of Mr Wang's detention for allegedly advocating for workers' rights in an environment where, as previously concluded by the Committee, the exercise of freedom of association is severely restricted in law and in practice, and in view of the absence of any information on the part of the Government, the Committee urges the Government to ensure the immediate release of this labour activist and to provide detailed observations on the ITUC allegations, including on the situation of Ms Hiang Xueqin.**
- (h) **The Committee expects the Government to make additional efforts necessary to submit the remaining information requested without further delay so that the Committee will have available to it all necessary information to examine this case in full knowledge of the facts and once again invites the Government to accept a direct contacts mission to understand better the situation on the ground and resolve any pending matters.**
- (i) **The Committee expresses its concern that the facts of this case, under examination since October 2016, indicate a systemic problem which has been seen to have had an impact on workers' freedom of association by virtue of the numerous persons arrested, disappeared, and intimidated for having tried to defend workers' collective interests and for whom the Government has consistently failed to provide the detailed information requested by the Committee, including as to whether charges are still pending against any of the labour activists and on the steps taken to ensure complete respect for freedom of association. In light of the persistent failure by the Government to provide detailed information on the above and to take steps to address the Committee's longstanding recommendations, the Committee finds**

itself obliged to draw the Governing Body's attention to the serious and urgent nature of this case.

Appendix I

List of 31 individuals detained or disappeared in connection with Jasic workers' campaign

1. Mr Mi Jiuping: the technology company worker, detained since July 2018, charged with "gathering a crowd to disrupt social order". He is being held at the Shenzhen Municipal No. 2 Detention Centre. Mi's first two lawyers were forced to withdraw from his case. On 1 October 2018, a request by a new lawyer to meet with Mi was denied on the grounds that Mi's case involved state secrets. Not reachable.
2. Mr Yu Juncong: the technology company worker, detained since July 2018, charged with "gathering a crowd to disrupt social order". He is being held at the Shenzhen Municipal No. 2 Detention Centre. After meeting with Yu on 30 August 2018, Yu's lawyer was pressured to withdraw from the case. Yu's requests for a meeting with his new lawyer have not been accepted after 30 August 2018. Not reachable.
3. Mr Liu Penghua: the technology company worker, detained since July 2018, charged with "gathering a crowd to disrupt social order". He is being held at the Shenzhen Municipal No. 2 Detention Centre. Liu told a lawyer who met with him in September 2018 that he had been beaten. Further requests to meet with his lawyer have been denied. Not reachable.
4. Mr Li Zhan: former technology company worker and worker supporter, detained since July 2018, charged with "gathering a crowd to disrupt social order". He is being held at the Shenzhen Municipal No. 2 Detention Centre. After meeting with Li on 18 September 2018, Li's lawyer was pressured to withdraw from his case. Not reachable.
5. Ms Shen Mengyu: graduate of Sun Yat-sen University. Arrested for supporting Jasic workers. Not reachable.
6. Ms Yue Xin: graduate of Peking University, forcibly disappeared on 24 August 2018. Arrested for supporting Jasic workers. Not reachable.
7. Ms Gu Jiayue: graduate of Peking University, taken from her home on 24 August 2018, charged with "picking quarrels and provoking trouble" and is being held under "residential surveillance at a designated place". Arrested for supporting Jasic workers. Not reachable.
8. Mr Xu Zhongliang: graduate of University of Science and Technology Beijing, detained since 24 August 2018, charged with "picking quarrels and provoking trouble" and is being held under "residential surveillance at a designated place". Arrested for supporting Jasic workers. Not reachable.
9. Mr Zheng Yongming: graduate of Nanjing Agricultural University, detained since 24 August 2018, charged with "picking quarrels and provoking trouble" and is being held under "residential surveillance at a designated place". Arrested for supporting Jasic workers. Not reachable.
10. Mr Shang Kai: editor of a leftist media website Hongse Cankao, taken away by Guangdong police on 24 August 2018 from the office of Hongse Cankao. Still missing.

11. Mr Fu Changguo: staff member of a workers' centre, Dagongzhe, detained since August 2018, charged with "gathering a crowd to disrupt social order". Unable to identify where he was detained since his arrest. Denied access to lawyers and his family.
12. Mr Yang Shaoqiang: graduate of University of Science and Technology Beijing, taken from his home in August 2018, charged with "picking quarrels and provoking trouble". Whereabouts unknown. No further information.
13. Mr Tang Jialiang: postgraduate student at Beijing Institute of Technology, forcibly disappeared since early September 2018. Still missing.
14. Mr Zhang Shengye: graduate of Peking University, taken from campus and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
15. Ms Sun Min: graduate of Peking University, taken away in Guangzhou and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
16. Mr Zong Yang: graduate of Peking University, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
17. Mr Liang Xiaogang: worker supporter, taken away in Shanghai and forcibly disappeared on 9 November 2018.
18. Mr Tang Xiangwei: worker supporter, taken away by police in Wuhan for supporting Jasic workers and forcibly disappeared on 11 November 2018. No further information.
19. Mr Zheng Shiyong: worker supporter, taken away in Wuhan on 11 November 2018. Arrested for inciting subversion of state power. No indictment. Not reachable.
20. Ms Zheng Yiran: graduate of Beijing Language and Culture University, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
21. Mr Lu Daxing: graduate of Nanjing University of Science and Technology, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
22. Ms Li Xiaoxian: graduate of Nanjing University of Chinese Medicine, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
23. Mr He Pengchao: graduate of Peking University, founder of Qingying Dreamworks Social Worker Centre, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for inciting subversion of state power. No indictment. Not reachable.
24. Ms Wang Xiangyi: graduate of Peking University, founder of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
25. Ms Jian Xiaowei: graduate of Renmin University, staff member of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
26. Ms Kang Yanyan: graduate of University of Science and Technology Beijing, staff member of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.

27. Ms Hou Changshan: graduate of Beijing Foreign Studies University, staff member of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
28. Ms Wang Xiaomei: graduate of Nanjing University of Information Science and Technology, staff member of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
29. Ms He Xiumei: supporter of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
30. Ms Zou Liping: local trade union staff member, detained in Shenzhen on 9 November 2018, charged with “picking quarrels and provoking trouble”. Taken away by police. Forcibly disappeared. No further information.
31. Mr Li Ao: local trade union staff member, detained in Shenzhen on 9 November 2018, charged with “picking quarrels and provoking trouble”. Taken away by police. Forcibly disappeared. No further information.

Appendix II

Additional list of individuals detained or disappeared as per the ITUC communication of 11 February 2020

1. Mr Jia Shijie: Peking University student, arrested on 23 September 2018 for supporting Jasic workers. Not reachable.
2. Mr Lan Zhiwei: worker, arrested on 2 January 2019 for supporting Jasic workers. Not reachable.
3. Ms Zhang Zeying: worker, arrested on 2 January 2019 for supporting Jasic workers. Not reachable.
4. Mr Zhan Zhenzhen: Peking University student, arrested on 2 January 2019 for supporting Jasic workers. Not reachable.
5. Mr Li Yuanzhu: worker, arrested on 3 January 2019 for supporting Jasic workers. Not reachable.
6. Mr Feng Junjie: Peking University student, arrested in January 2019 for supporting Jasic workers. Not reachable.
7. Mr Wang Ji’ao: Renmin University canteen worker, arrested on 18 January 2019 for supporting Jasic workers. Not reachable.
8. Ms Li Ziyi: Peking University student, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
9. Mr Ma Shize: Peking University student, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
10. Mr Yan Zihao: Renmin University student, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
11. Mr Li Jiahao: graduate of Peking University, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
12. Mr Huang Yu: graduate of Peking University, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.

13. Ms Sun Jiayan: Peking University student, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
14. Mr Zhang Ziwei: Peking University student, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
15. Ms Chen Ke Xin: Renmin University student, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
16. Mr Wu Jia Wei: graduate of Renmin University, arrested on 16 February 2019 for supporting Jasic workers. Not reachable.

Case No. 3406

Interim report

Complaint against the Government of China – Hong Kong Special Administrative Region

presented by

- the International Trade Union Confederation (ITUC) and
- the International Transport Workers' Federation (ITF)

Allegations: The complainants allege intimidation and harassment of workers in the context of public protests in 2019, a crackdown on civil liberties with the adoption of the National Security Law in 2020, the prohibition of public gatherings under the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation, adopted as part of the anti-COVID-19 measures in 2020 and prosecution of trade union leaders for their participation in demonstrations

298. The Committee last examined this case (submitted in March 2021) at its March 2022 meeting, when it presented an interim report to the Governing Body [see 397th Report, approved by the Governing Body at its 344th Session, paras 142–220].¹⁷
299. The International Trade Union Confederation (ITUC) sent additional observations and new allegations in a communication dated 31 March 2022 .
300. The Government of China transmitted the observations of the Government of the Hong Kong Special Administrative Region, China (HKSAR) in communications dated June and 30 September 2022.
301. China has declared the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), applicable in the territory of the HKSAR with modifications. It has

¹⁷ [Link to previous examination.](#)

declared the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), applicable without modifications.

A. Previous examination of the case

302. At its March 2022 meeting, the Committee made the following recommendations [see 397th Report, para. 220]:

- (a) The Committee once again urges the Government to take all appropriate measures to ensure that Mr Lee Cheuk Yan is not prosecuted and not imprisoned for having exercised legitimate trade union activities and requests the Government to provide information on all measures taken to that end. The Committee further urges the Government to provide detailed information on the remaining charges levelled against Mr Lee and the outcome of all court hearings.
- (b) Noting the Government's indication that the case of Ms Carol Ng and Ms Winnie Yu was adjourned to 27 January 2022, the Committee requests the Government to provide full and detailed information on the outcome of the judicial procedure and to transmit copies of the relevant court judgments. The Committee further requests the Government to provide information on the situation of Mr Cyrus Lau and to indicate whether he is still subject to investigation.
- (c) Noting the complainants' indication that the hearing of the GUHKST leaders was scheduled for 24 October 2021, the Committee requests the Government to provide full and detailed information on the outcome and transmit copies of the relevant court judgments.
- (d) The Committee firmly urges the Government to take all necessary measures to ensure in law and in practice the full enjoyment of trade union rights in a climate free of violence, threats and pressure in the HKSAR.
- (e) The Committee expects the Government to engage with the social partners in respect of any potential new extension of the Regulation on prohibition on group gatherings (Cap. 599G) under the Prevention and Control of Disease Ordinance.

B. The complainants' additional allegations

303. In its communication dated 31 March 2022, the ITUC indicates that the HKSAR arrested and interrogated four former leaders of the Hong Kong Confederation of Trade Unions (HKCTU), namely the former chairperson, Joe Wong; the former vice-chairperson, Leo Tang; the former treasurer, Chung Chung-fai; and the former general secretary, Mr Lee Cheuk Yan, still in prison for his trade union activities.

304. According to the ITUC, the offices of the HKCTU were raided as well as the homes of some of the former leaders of the trade unions in the HKSAR. The ITUC alleges that the arrests and interrogation were linked to an inquiry by the National Security Department of the Hong Kong Police (the police) to obtain information on the operations, activities, finances, and international affiliation of the former HKCTU. The ITUC considers that these arrests and attempts to use the National Security Law (NSL) to retrospectively criminalize legitimate trade union activities, create an atmosphere of fear and intimidation and are indicative of a rapidly deteriorating human and labour rights situation in the HKSAR.

C. The Government's reply

305. By its communications dated June and 30 September 2022, the Government of China transmits the reply of the HKSAR Government to the ITUC new allegations and provides its observations on the Committee's previous recommendations.

- 306.** Regarding the new allegations, the HKSAR Government emphasizes that all actions by the HKSAR law enforcement agencies were taken in strict accordance with the law, prompted by the actions of the individuals or entities concerned, and have nothing to do with their political position, background or profession. The HKSAR Government indicates, in particular, that the police took enforcement action on 31 March 2022 in respect of the HKCTU's failure to provide the Societies Officer with the information required under sections 15 and 16 of the Societies Act Order (SO). The premises concerned were searched on the basis of a judicial warrant. Several people were questioned by the police but none of them were arrested in connection with this matter. The HKSAR Government explains that there are different regulatory regimes in the HKSAR for companies and trade unions. The HKCTU has been registered as a company under the SO and not as a trade union or trade union federation under the Trade Unions Ordinance (TUO). It is up to an organization to choose to be registered under either the SO or the TUO, provided that the relevant legal requirements are met. However, if an organization chooses to be registered under the SO, it must comply with the obligations under the SO, including providing such information as the Societies Officer may reasonably require for the performance of his or her functions, irrespective of whether its operation is of a trade union nature. The HKSAR Government explains that the right of trade unions to affiliate with foreign or international workers', employers' or relevant professional organizations is respected, it does not include foreign political organizations. The HKSAR Government considers in this respect that trade unions should limit the scope of their activities to the professional and trade union fields, and that trade union organizations should not engage in political activities in an abusive manner and go beyond their real functions by promoting essentially political interests. The HKSAR Government disagreed with the ITUC and refutes the allegation that the police "criminalize legitimate trade union activities" or "create an atmosphere of fear or intimidation for the free exercise of labour rights and civil liberties".
- 307.** With regard to the Committee's request to ensure that Mr Lee Cheuk Yan is not prosecuted and not imprisoned for having exercised legitimate trade union activities, the HKSAR Government indicates that he was prosecuted in connection with the unauthorized assemblies that took place on: (i) 18 August 2019 (for which he was sentenced to 12 months of imprisonment); (ii) 31 August 2019 (for which he was sentenced to six months of imprisonment, with two months running consecutively with case (i)); (iii) 1 October 2019 (for which he was sentenced to 18 months of imprisonment, with six months running consecutively with case (i)); and (iv) 4 June 2020 (for which he was sentenced to 14 months of imprisonment, running concurrently with cases (i) to (iii)). In total, Mr Lee was sentenced to 20 months of imprisonment. The HKSAR Government indicates that Ms Lee was also prosecuted for breaching the social distancing measures imposed by law in light of the COVID-19 pandemic on 1 May 2020 (for which he was sentenced to 14 days of imprisonment suspended for 18 months). The HKSAR Government indicates that the above unlawful acts had nothing to do with the activities of trade unions nor with defending labour rights. The Government further indicates that Mr Lee was also charged with "Incitement to Subversion", contrary to articles 22 and 23 of the NSL, and on 14 September 2022, the West Kowloon Magistrates' Courts committed the case to the court of first instance of the High Court for trial (hearing date is yet to be set). Mr Lee is remanded in custody pending trial.
- 308.** The HKSAR Government provides the following information on the judicial proceedings in cases regarding trade union leaders Ms Carol Ng, Ms Winnie Yu, Mr Cyrus Lau and officers of the General Union of Hong Kong Speech Therapists (GUHKST):
- Ms Carol Ng, arrested on 6 January 2021 and charged by the police on 28 February 2021, saw her bail application denied by the court on 20 December 2021. On 1 June 2022, Ms Ng

pleaded guilty before the magistrate, who committed her to the court of first instance for sentencing. Ms Ng is remanded in custody pending sentence. The court of first instance will hold a case management hearing for Ms Ng's case on 3 November 2022.

- Ms Winnie Yu, released on bail on 28 July 2021, was re-arrested on 7 March 2022 for violating the bail conditions. The magistrate revoked Ms Yu's bail on 8 March 2022. On 20 April 2022, the court of first instance refused Ms Yu's second bail application. On 1 June 2022, Ms Yu pleaded not guilty before the magistrate, who committed her to the court of first instance for trial. Ms Yu is remanded in custody pending trial. The court of first instance will hold a case management hearing for Ms Yu's case on 8 November 2022.
- Mr Cyrus Lau was arrested on 6 January 2021. Police bail was granted to him. He was required to report to the police on 16 September 2022. He is not facing any charges at the moment.
- Lai Man Ling, Yeung Yat Yee Melody, Ng Hau Yi Sidney, Chan Yuen Sum Samuel and Fong Tsz Ho of the GUHKST were charged on 23 July 2021 with the "Conspiracy to Print, Publish, Distribute, Display and/or Reproduce Seditious Publication". All five were convicted as charged by the district court on 7 September 2022 and were sentenced to imprisonment for 19 months on 10 September 2022. The HKSAR Government transmits a copy of the relevant court decisions in this case and points out that the court considered that what the defendants had done with children aged as young as four "was in effect a brainwashing exercise with a view to guiding the very young children to accept their views and values, i.e. PRC has no sovereignty over HKSAR which is not part of PRC" and the children were led to believe, among others, that "the only way to protect their home is to resist and to use force if necessary against the authorities". The HKSAR Government indicates that the court further pointed out that "[t]here is also clear evidence that GUHKST was intended to be used as a political platform and that each of these defendants agreed to it. Their intention was manifested in the declaration of political stance made by them before and after their election... GUHKST was clearly set up for political purposes, and [a defendant] had said so in one of the radio interviews..."

309. As regards the Committee's request to take all necessary measures to ensure in law and in practice the full enjoyment of trade union rights in a climate free of violence, threats and pressure in the HKSAR, the HKSAR Government reiterates that freedom of association and the right to organize in the HKSAR are unequivocally guaranteed under the Basic Law. Article 27 of the Basic Law stipulates that HKSAR residents "shall have freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions; and to strike". Article 18 of the Hong Kong Bill of Rights, as set out in the Hong Kong Bill of Rights Ordinance, also guarantees that "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests". Such rights and freedoms should be respected and protected, yet, according to the HKSAR Government, they are not absolute and may be subject to restrictions provided by law necessary for the protection of national security or public order. The HKSAR Government indicates that some rights and freedoms are not absolute, one must observe the law in force while exercising his/her right to peaceful assembly. The exercise of such rights and freedoms is by no means a reason or excuse for committing illegal acts. Similar to other jurisdictions, the HKSAR has put in place statutory regulation over public meetings and processions. The purpose of such regulation is to facilitate the smooth conduct of lawful and peaceful public meetings and processions in an orderly manner on the one hand, and to protect the rights of other members of the public while ensuring public order and public safety on the other. The

police have all along been handling applications for public meetings or processions in strict accordance with the statutory requirements. The police are duty bound to take appropriate actions against illegal acts. Any arrest and prosecution are directed against the criminal acts, and have nothing to do with the political stance, background or occupation of the person(s) concerned. These law enforcement actions in accordance with the law targeting illegal acts should not be regarded as threats of any kind to trade unions and their leaders or members.

- 310.** The HKSAR Government attaches great importance to upholding the right of trade unions to organize activities, and to promote and defend the occupational interests of their members. However, freedom of association and the right to organize are not absolute and may be restricted by law in the interests of national security, public safety, public order and for the protection of the rights and freedoms of others. The HKSAR Government points out that under the TUO, a trade union is any combination the principal objects of which are, under its constitution, the regulation of relations between employees and employers, or between employees and employees, or between employers and employees. There are clear and robust statutory safeguards under the TUO to afford full protection of the rights of employees to form and join trade unions, and the rights of trade unions to formulate and exercise trade union activities. Trade union rights in the HKSAR are strong and intact as ever and have not been jeopardized in any way. The HKSAR Government points out an increase of over 60 per cent in the number of registered trade unions between 31 December 2019 and 31 August 2022, which, in its view, bears testimony to the free exercise of freedoms of association rights in the HKSAR. A registered trade union can become a member of an organization of workers, employers or a relevant professional organization established in a foreign country. Trade unions should ensure that their administration and activities are in compliance with the TUO and their rules, so that the interests of both the trade unions and their members are safeguarded. The primary functions of trade unions are to promote and defend the occupational interests of their members, rather than engaging in activities which are unlawful and inconsistent with the trade unions' objects or rules. The HKSAR Government further points out that organizations engaging in unlawful activities under the guise of trade unions are simply not bona fide trade unions.
- 311.** In this respect, the HKSAR Government indicates that the GUHKST had been blatantly used for purposes inconsistent with its objects or rules since registration. The Registry of Trade Unions (RTU) of the Labour Department followed due process strictly in the investigation and subsequent cancellation of the GUHKST's registration. In issuing its cancellation notice, the RTU specifically drew the GUHKST's attention to its right to appeal under the TUO. The entire process is fair, open and just, with channels for lodging appeals guaranteed. The HKSAR Government further indicates that the Hospital Authority Employees Alliance (HAEA) passed a resolution for dissolution at its general meeting on 24 June 2022 in accordance with its union rules and initiated voluntary dissolution on its own accord. The HAEA enjoyed full autonomy in deciding and proceeding with its dissolution process without any interference from the RTU. The RTU promotes sound trade union management and responsible trade unionism in accordance with the TUO; it has facilitated instead of discouraged the establishment of trade unions. The requirements for applying for registration of a trade union are specified clearly in the TUO, and the RTU is obliged to register all eligible applications. In the event of refusal of any application for registration of a trade union or cancellation of the registration of a trade union, the TUO requires the RTU to inform the applicant/trade union concerned of the ground for refusal or cancellation. The TUO further sets out the channels for appealing against the decisions of the RTU. The registration regime under the TUO is transparent and objective, providing full protection of trade union rights.

- 312.** As regards the NSL, the HKSAR Government re-emphasises that the law was enacted to restore the enjoyment of rights and freedoms that the population was unable to enjoy during the period of serious violence that lasted between June 2019 and early 2020. The HKSAR Government highlights that article 4 of the NSL stipulates that human rights shall be respected and protected in safeguarding national security, while article 5 affirms the adherence to the principle of the rule of law and enforces the law against offences endangering national security. Any measures or enforcement actions taken for safeguarding national security must be in line with the above principles. The HKSAR Government further emphasizes that prompt action must be taken to prevent and suppress acts and activities that endanger national security.
- 313.** As to the Prevention and Control of Disease (Prohibition on Gathering) Regulation (Chapter 599G of the Laws of the HKSAR), the HKSAR Government points out that similar to many overseas jurisdictions, with the emergence of the COVID-19 pandemic, restriction on group gatherings in public places is put in place through legislation. This is one of the measures for social distancing, aiming at reducing the risks of transmission of COVID-19 in the community. No political considerations have ever come into play. Enforcement actions against breaches of social distancing measures are based on evidence and in strict accordance with the law. Such enforcement actions have nothing to do with whether the persons concerned are trade unionists. Persons issued with fixed penalty tickets for contravening the social distancing measures may dispute liability for the offence in accordance with the statutory mechanism. From time to time, the HKSAR Government adjusted the restriction in relation to group gatherings taking account of the latest developments of the pandemic and has taken all reasonably practicable steps to communicate to the public and stakeholders the justifications for the latest measures in a timely and transparent manner. The HKSAR Government considers that under the overarching principles of rule of law and equality before the law, it is a hypocritical argument of politics overriding justice for anyone to advocate privilege for certain groups of people, such as labour representatives, and contend that they are above the law and should be immune to legal sanctions despite violating the law. The HKSAR Government therefore considers that the requests for dropping the charges against certain defendants, who only so happened to be trade unionists, and unconditionally releasing them are unfounded. The HKSAR will continue to handle every case in a fair, just and impartial manner in accordance with the law.
- 314.** The HKSAR Government concludes by indicating that it will continue to progressively improve labour rights and benefits in the light of overall socio-economic development through tripartite consultations, taking into account the interests of employees and the affordability of employers.

D. The Committee's conclusions

- 315.** *The Committee recalls that this case involves the allegations of intimidation and harassment of workers in the context of public protests in 2019, a crackdown on civil liberties with the adoption of the National Security Law in 2020, the prohibition of public gatherings under the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation, adopted as part of the anti-COVID-19 measures in 2020 and prosecution of trade union leaders for their participation in demonstrations.*
- 316.** *The Committee recalls from the previous examination of the case that Mr Lee Cheuk Yan, the General Secretary of the HKCTU and the Chairperson of the Hong Kong Alliance, was sentenced to a total of 20 months' imprisonment under the Public Order Ordinance in connection with organizing and participating in unauthorized but peaceful assemblies in August 2019, an assembly in 2020 for breaching the social distancing measures imposed by law in light of the COVID-19 pandemic. The*

Committee recalled in this respect that freedom of assembly and freedom of opinion and expression were a sine qua non for the exercise of freedom of association [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 205]. It further recalled that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike, public meetings or processions, particularly on the occasion of May Day [see **Compilation**, para. 156] and that the arrest and sentencing of trade unionists to long periods of imprisonment on grounds of the “disturbance of public order”, in view of the general nature of the charges, might make it possible to repress activities of a trade union nature [see **Compilation**, para. 157]. The Committee urged the Government to take all appropriate measures to ensure that Mr Lee was not prosecuted and not imprisoned for having exercised legitimate trade union activities. The Committee notes with concern the Government’s indication that Mr Lee was charged with “Incitement to Subversion” under the NSL and that on 14 September 2022, the West Kowloon Magistrates’ Courts committed the case to the court of first instance of the High Court for trial; that the hearing date was yet to be set and that he remains in custody pending trial. The Committee recalls that it had previously addressed the issue of the NSL and its impact on freedom of association. On that occasion, it expected that the Government would ensure that the NSL did not apply to normal trade union and employer organization interactions and activities, including as regards their relations with international organizations of employers and workers. The Committee requested the Government, in consultation with the social partners, to monitor and provide information on the impact that the NSL has already had and may continue to have on the exercise of freedom of association rights to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) [see 395th Report, June 2021, para. 165]. The Committee firmly requests the Government, in consultation with the social partners, to monitor and provide information on the impact that the National Security Law has already had and may continue to have on the exercise of freedom of association rights, so that this Committee has available to it all necessary information to examine the impact of this legislation in practice. The Committee regrets that no further information has been provided by the Government regarding the charges against Mr Lee, the date of the court hearing or its outcome. With reference to the considerations above, the Committee firmly urges the Government to take all appropriate measures to ensure that Mr Lee is not prosecuted and not imprisoned for having exercised legitimate trade union activities and requests the Government to provide information on all measures taken to that end. The Committee further urges the Government to provide detailed information on the remaining charges levelled against Mr Lee and the outcome of the court hearings.

- 317.** The Committee notes the most recent ITUC allegations of arrest and interrogation of four former leaders of the HKCTU, namely Messrs Joe Wong, Leo Tang, Chung Chung-fai and Lee Cheuk Yan, as well as about the raid of the HKCTU offices and homes of its leaders. The Committee notes the Government’s reply thereon and its indication that while several people were questioned by the police on 31 March 2022 in respect of the HKCTU’s failure to provide the Societies Officer with the information required under sections 15 and 16 of the SO, none of them were arrested. The Committee requests the Government to indicate whether any of the mentioned trade unionists were currently under investigation. Observing that Mr Lee is serving his prison sentence, the Committee requests the Government to indicate whether he is under additional investigation in connection with the requirements of the SO.
- 318.** The Committee further recalls that Ms Carol Ng, ex-chairperson of the HKCTU, Ms Winnie Yu, ex-chairperson of the HAEA, and Mr Cyrus Lau, Chairperson of the Nurses Trade Union, along with other activists, were arrested in January 2021 in connection with political party primary polls held in 2020 and that on 28 February 2021, charges of conspiracy to commit subversion under the NSL were brought against Ms Carol Ng and Ms Winnie Yu and others, while Mr Cyrus Lau was still under investigation. The Committee notes the Government’s indication that on 1 June 2022, Ms Ng pleaded

guilty before the magistrate, who committed her to the court of first instance for sentencing, that Ms Ng remained in custody pending sentence and that the court of first instance was to hold a hearing on 3 November 2022. The Committee further notes that according to the Government, on 1 June 2022, Ms Yu pleaded not guilty before the magistrate, who committed her to the court of first instance for trial, that Ms Yu remained in custody pending trial and that the court of first instance was to hold a hearing on 8 November 2022. Observing with regret that the Government provides no information as to whether the hearing took place and with reference to its previous examination of the case, the Committee once again recalls that the preventive detention of leaders of workers' and employers' organizations for activities connected with the exercise of their rights is contrary to the principles of freedom of association [see **Compilation**, para. 137]. Given the length of the detention awaiting trial and recalling that justice delayed is justice denied [see **Compilation**, para. 170], the Committee requests the Government, should Ms Yu still be held in preventive detention, to take measures to ensure that she is released pending trial. If the hearing took place, the Committee urges the Government to provide information on the outcome of the hearings in the cases of Ms Ng and Ms Yu. It further requests the Government to transmit copies of the relevant court judgments. While noting that the Government's indication that Mr Cyrus Lau was required to report to the police on 16 September 2022 and that he was not facing any charges on the day of the Government's September 2022 communication, the Committee requests the Government to confirm that Mr Cyrus Lau is no longer under investigation.

319. The Committee notes the Government's indication that leaders of the GUHKST – Lai Man Ling, Yeung Yat Yee Melody, Ng Hau Yi Sidney, Chan Yuen Sum Samuel and Fong Tsz Ho – were charged on 23 July 2021 with the "Conspiracy to Print, Publish, Distribute, Display and/or Reproduce Seditious Publication". All five were convicted by the district court on 7 September 2022 and were sentenced to imprisonment for 19 months on 10 September 2022. The Committee recalls that the publications in questions are children's books aimed at explaining to children the 2019 social events in the HKSAR. The Committee notes from the court decisions transmitted by the Government which examined whether these books had a seditious intention. The Committee notes that while the plot of the books is not recorded in the decision, the judge considered "that the publishers of the books clearly refuse[d] to recognize that PRC has resumed exercising sovereignty over HKSAR, nor [did] they recognize the new constitutional order in the Region, and lead the children to think that what the authorities both in PRC and HKSAR have done is wrong and illegitimate". The Committee notes that while the defendants agreed that "the comments made in the books were mere criticism of the Government, or criticism of a political nature, even if some comments [were] vigorously and strongly worded", they argued that they expressed "disapprobation of actions of the Government of HKSAR without exciting or causing public disorders by acts of violence". They further argued that the "offence charge was unconstitutional on the ground that it was inconsistent with their freedom of expression, speech and publication, and/or freedom to engage in literary and artistic creation and other cultural activities guaranteed by the Basic Law and the Hong Kong Bill of Rights Ordinance". The Committee recalls that the remits of courts should be determined by national legislation. The Committee's role is confined to ensuring that any decisions taken are in line with the principles of freedom of association [see **Compilation**, para. 43]. The Committee once again emphasizes in this respect the importance of the principle affirmed in 1970 by the International Labour Conference in its resolution concerning trade union rights and their relation to civil liberties, which recognizes that the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, and that the absence of these civil liberties removes all meaning from the concept of trade union rights [see **Compilation**, para. 68]. The Committee recalls that the resolution "places a special emphasis on the following civil liberties, as defined in the Universal Declaration of Human Rights, which are essential for the normal exercise

of trade union rights: (a) the right to freedom and security of person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; (e) the right to protection of the property of trade union organizations". The Committee once again expresses the firm expectation that the Government will ensure full respect of the above.

- 320.** *The Committee recalls that it had firmly urged the Government to take all necessary measures to ensure in law and in practice the full enjoyment of trade union rights in a climate free of violence, threats and pressure in the HKSAR. While taking due note of the Government's detailed information on the legislative framework, which, in the Governments' view, guarantees freedom of association and the right to organize in the HKSAR, the Committee once again deeply regrets to note that in spite of its request, no consultations appear to have taken place with the social partners on the negative effects that the application of the NSL is alleged to have on freedom of association and trade union rights in practice. The Committee therefore once again firmly urges the Government to take all necessary measures to ensure in law and in practice the full enjoyment of trade union rights in a climate free of violence, threats and pressure in the HKSAR and to provide detailed information on all steps taken to that end. The Committee also firmly urges the Government to provide the CEACR, to which it refers the legislative aspects of this case, with detailed information on any legislative developments.*
- 321.** *Further in this connection, the Committee recalls that it expected the Government to engage with the social partners in respect of any potential new extension of the Regulation on prohibition on group gatherings (Cap. 599G) under the Prevention and Control of Disease Ordinance. While noting the HKSAR Government's indication that from time to time, the Government adjusted the restriction in relation to group gatherings taking into account the latest developments of the pandemic and has taken all reasonably practicable steps to communicate to the public and stakeholders the justifications for the latest measures in a timely and transparent manner, the Committee observes that nothing in the Government's reply would indicate that it had engaged with the social partners in respect of amendments or extension of the Regulation. The Committee reiterates its previous request and expects the Government to provide information on the engagement with the social partners in respect of any potential new extension of the Regulation on prohibition on group gatherings (Cap. 599G) under the Prevention and Control of Disease Ordinance.*

The Committee's recommendations

- 322.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following:**
- (a) The Committee firmly urges the Government to take all appropriate measures to ensure that Mr Lee Cheuk Yan is not prosecuted and not imprisoned for having exercised legitimate trade union activities and requests the Government to provide information on all measures taken to that end. The Committee further urges the Government to provide detailed information on the remaining charges levelled against Mr Lee and the outcome of the court hearings.**
 - (b) With reference to the ITUC's new allegations, the Committee requests the Government to indicate whether Messrs Joe Wong, Leo Tang and Chung Chung-fai are under investigation. Observing that Mr Lee is serving his prison sentence, the Committee requests the Government to indicate whether he is under additional investigation in connection with the requirements of the Societies Act Order**

- (c) **Noting the Government's indication that the respective hearings in cases of Ms Carol Ng and Ms Winnie Yu were scheduled for 3 and 8 November 2022, the Committee urges the Government to provide full and detailed information on the outcome of the judicial procedure and to transmit copies of the relevant court judgments. In the event the hearing in the case of Ms Yu has not yet taken place, the Committee requests the Government, to take measures to ensure that she is released pending trial. The Committee further requests the Government to confirm that Mr Cyrus Lau is no longer under investigation.**
- (d) **The Committee once again firmly urges the Government to take all necessary measures to ensure in law and in practice the full enjoyment of trade union rights in a climate free of violence, threats and pressure in the HKSAR and to provide detailed information on all steps taken to that end. It firmly requests the Government, in consultation with the social partners, to monitor and provide information on the impact that the National Security Law has already had and may continue to have on the exercise of freedom of association rights so that the Committee has available to it all necessary information to examine the impact of this legislation in practice. The Committee also firmly urges the Government to provide the Committee of Experts on the Application of Conventions and Recommendations (CEACR), to which it refers the legislative aspects of this case, with detailed information on any legislative developments.**
- (e) **The Committee reiterates its previous request and expects the Government to provide information on the engagement with the social partners in respect of any potential new extension of the Regulation on prohibition on group gatherings (Cap. 599G) under the Prevention and Control of Disease Ordinance.**

Cases Nos 2761 and 3074

Interim report

Complaint against the Government of Colombia presented by

- the International Trade Union Confederation (ITUC)
- the World Federation of Trade Unions (WFTU)
- the Single Confederation of Workers of Colombia (CUT)
- the General Confederation of Labour (CGT)
- the Confederation of Workers of Colombia (CTC)
- the National Union of Workers in the Food System (SINALTRAINAL)
- the Union of Energy Workers of Colombia (SINTRAELECOL)
- the Union of Cali Municipal Enterprise Workers (SINTRAEMCALI) and
- the Single Trade Union Association of Public Employees in the Colombian Prison System (UTP)

Allegations: The complainant organizations allege acts of violence (murders, attempted murders and death threats) against trade union leaders and members

- 323.** The Committee has examined the substance of Case No. 2761 on six occasions [see 363rd, 367th, 380th, 383rd, 389th and 393rd Reports], most recently at its meeting of March 2021, when it examined Case No. 2761 together with Case No. 3074 and submitted an interim report on both cases to the Governing Body [see 393rd Report, paras 80–123, approved by the Governing Body at its 341st Session].¹⁸
- 324.** The Government sent its observations in communications dated August 2021 and 3 February 2023.
- 325.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

Previously

- 326.** At its meeting in March 2021, the Committee made the following interim recommendations concerning the allegations presented by the complainant organizations [see 393rd Report, para. 123]:

¹⁸ [Link to previous examinations.](#)

- (a) While welcoming the significant efforts made by the public authorities and the growing number of sentences handed down, the Committee, given the scale of the challenges which face the country in dealing with anti-union violence and impunity, urges the Government to further strengthen its efforts to ensure that all acts of anti-union violence, homicides, threats and other acts reported in the country are cleared up and that the perpetrators and instigators are convicted. The Committee particularly hopes that all further steps will be taken and all necessary resources committed in order to ensure that the investigations and criminal proceedings conducted in connection with the acts of anti-union violence reported in this case are made significantly more effective in identifying and punishing the instigators. The Committee requests the Government to provide detailed information in this respect;
- (b) While welcoming the significant efforts made by the public authorities in this regard, and the consultations held with the social partners within the framework of the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights, the Committee urges the Government to continue strengthening its efforts to afford adequate protection to all trade union leaders and members at risk. With a view to increasing the impact of the policies for preventing anti-union violence, the Committee especially requests the Government to continue encouraging, in the framework of the Timely Action Plan and the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights as well as the appropriate tripartite forums, close dialogue between the trade unions and the various competent authorities. The Committee requests the Government to keep it informed in this regard;
- (c) The Committee again requests the Government to inform it of the progress of the ongoing investigations and proceedings concerning the specific events reported in 2014 by the Union of Energy Workers of Colombia (SINTRAELECOL) and the Union of Cali Municipal Enterprise Workers (SINTRAEMCALI);
- (d) The Committee urges the Government to continue making all necessary efforts to ensure that all the homicides and the attempted homicide of UTP leaders and members reported in this case are cleared up and that the perpetrators and instigators are convicted. The Committee also requests the Government, in connection with the incidents reported in this case, to provide detailed information on the progress of the ongoing investigations and on the content of the sentences handed down. The Committee also invites the UTP and the Government to come into contact to complete the identification of Messrs Diego Rodríguez González and Manuel Alfonso;
- (e) The Committee requests the Government to provide the requested information concerning the risk status of Mr Mauricio Paz Jojoa. The Committee also invites the Single Trade Union Association of Public Employees in the Colombian Prison System (UTP) and the Government to come into contact concerning the definitive identification of Ms Cindy Yuliana Rodríguez Layos. The Committee further requests the Government to ascertain that all the threats against UTP members or leaders have resulted in investigations intended to identify and punish the perpetrators;
- (f) The Committee requests the Government to take all necessary steps to ensure protection for Mr Aguilar, President of the Union of Public Officials and Employees in the Government and Municipalities of Colombia (SINTRASERPUVAL) and that the necessary investigations are carried out to identify and punish the perpetrators and instigators of the attack which took place in March 2018. The Committee requests the Government to keep it informed in this regard; and
- (g) The Committee draws the particular attention of the Governing Body to the extreme seriousness and urgency of this case.

B. The Government's reply

General information regarding acts of anti-union violence and the State's response

- 327.** In a communication dated August 2021, the Government emphasizes that much progress has been made with regard to the investigation and convictions for homicides of members of the trade union movement, as demonstrated by the more than 800 sentences given since 2005 and the 70 rulings handed down in 2020. In a communication dated February 2023, the Government states that the trade union movement has suffered various crimes over the years and that, thanks to the bravery of the trade union leaders and to the support from the ILO and its supervisory bodies, public protection and reparation policies now exist. The Government expresses its commitment to strengthen the trade union movement and to ensure that the investigations progress.
- 328.** In this regard, the Government reiterates that the investigation and prosecution of crimes against trade unionists is a priority for the Public Prosecutor's Office, which has had a specific and different strategy for the investigation of these crimes since 2016. The Government adds that, in accordance with the provisions of the 2020–24 strategic guidance "results on the street and in the territories", actions have been strengthened in that regard, as follows: analysis of the crimes that have the greatest impact on trade unionists in the course of their work: homicides, violation of the rights of assembly and association, and threats; definition of the selection of prioritized cases and situations; inter-institutional coordination and coordination with the Ministry of Labour; training to strengthen the investigation of prioritized crimes.
- 329.** The Government also recalls the importance of the Elite Group to expedite and monitor crimes affecting unionized people and freedom of association, established in 2016, which is responsible for carrying out the actions laid out in the aforementioned strategy. The Government recalls that the Elite Group is comprised of: (i) the Specialized Directorate against Human Rights Violations; (ii) the Representative for Territorial Security, for the investigation of priority crimes; (iii) the Directorate for High-level Studies, for designing and holding periodic training programmes for public prosecutors and investigators dealing with these crimes; (iv) the Directorate for Policy and Strategy, for reviewing the statistical trends of priority crimes; and lastly (v) the Directorate of International Affairs. The Government adds that to specifically monitor the criminal proceedings, it has a public prosecutor assigned to the national group of the Representative for Territorial Security, who is responsible for coordinating the work of the public prosecutors trying the cases in the 35 Sectional Directorates, and it also has an official in the Specialized Directorate against Human Rights Violations, who is responsible for monitoring the cases within that jurisdiction.
- 330.** The Government adds that, in 2022, in addition to the training programmes on freedom of association for officials in the Public Prosecutor's Office, the Office also took the following actions with regard to the homicides of trade unionists: coordination within the Public Prosecutor's Office of investigative strategies for the homicides of trade unionists, human rights defenders and intentional homicides; a public prosecutor from the national team has been made available to lead the proceedings for trade unionists' cases; monitoring by the Office of the Deputy Public Prosecutor; and a victimology protocol for serious human rights violations, drawn up in 2022.
- 331.** The Government goes on to make reference to the results of the aforementioned strategy with regard to the homicides of trade unionists, highlighting that: (i) with regard to the events reported between 1 January 2011 and 31 December 2022, the perpetrators have been identified in 44.69 per cent of cases and the criminal proceedings are moving forward;

(ii) during 2022, the Public Prosecutor's Office was informed of 15 homicide cases of trade unionists that are being investigated in the ordinary courts and, to date, progress has been made towards resolution (i.e. the perpetrator has been identified) in the investigation of 53.33 per cent of cases, 1 case is at trial, charges have been made in 3 cases and a judge has issued arrest warrants in 4 cases; and (iii) with regard to the 85 cases of anti-union violence specifically reported in the context of the present case, with reference to the information that has previously been submitted, additional progress has been made in 22 cases (with 8 sentences carried out, 4 cases at trial and 10 cases under investigation).

- 332.** The Government goes on to make reference to the response of the authorities to the cases of threats against members of the trade union movement. It reiterates that strengthening investigative capacities to deal with the crime of threats against human rights defenders is an objective defined within the framework of the Strategy for the Investigation and Prosecution of Crimes against Human Rights Defenders and once again describes the main points of that strategy (see the previous examination of the case, 393rd Report, paras 91–93). The Government adds that: (i) by means of resolution No. 0775 of 2021, the Threats Group has been established within the Specialized Directorate against Human Rights Violations; the Group currently has ten public prosecutors responsible for supporting the Sectional Directorates where threats against the target population of this strategy are being made; (ii) there are 24-hour 7-day hotlines for reporting cases the moment they happen (urgent actions); and (iii) a course has been designed for the judicial police (investigators) all over the country who are responsible for investigating threats. The Government states that trade unionists in the mining and energy sector in Valle del Cauca are particular targets of threats, which is why the Public Prosecutor's Office has developed a strategy in that region and designated a specialist public prosecutor from the National Working Group on Threats to investigate that type of crime as a matter of priority.
- 333.** The Government also provides data on the protection measures afforded to members of the trade union movement by the National Protection Unit (UNP). The Government notes in this regard that 256 people were protected in 2021 (of which 142 with strict protection measures) and, with data available up to 5 November 2022, 252 people received protection in 2022 (of which 143 with strict protection measures). For comparison, 371 members of the trade union movement received protection in 2018 (of which 233 with strict protection measures). The Government notes that the budget of the UNP was 1,645,168,284,600.00 Colombian pesos in 2022 (approximately US\$349 million), compared to 830,363,870,243.00 pesos in 2018.
- 334.** With regard to the Timely Action Plan (PAO) for individual and collective prevention and protection of the rights to life, liberty, integrity and security for human rights defenders, social and community leaders and journalists, the Government reports that it has established the PAO Operating Committee (Decree No. 1138 of 2021) for protection and immediate response to infringements of the rights to life, integrity, liberty and security, and that, in that framework, there are 32 priority municipalities for operations, with proposals to add a further 9 municipalities.
- 335.** The Government adds that, as a result of Decree No. 2078 of 2017, which established the collective protection protocol, there have been collective risk assessments for six "population groups with accredited status as trade union leaders or activists" (four risk assessments have been finalized and two are active). With regard to dialogue with trade union organizations about protection measures, the Government indicates that the Ministry of Labour leads the Technical Secretariat of the Inter-Institutional Committee for the Promotion and Protection of Workers' Human Rights, and that three Committee sessions were held in 2022, the third of which had a focus on gender.

Allegations of anti-union violence made by the Union of Energy Workers of Colombia and the Union of Cali Municipal Enterprise Workers

- 336.** With regard to the wounds suffered in 2014 by Mr Oscar Arturo Orozco, member of the SINTRAELECOL union, the Government: (i) recalls that it had noted that the investigation into the crime of wounding was progressing at the Caldas Sectional Directorate; and (ii) states that, according to the Public Prosecutor's Office, the public prosecutor in the case has issued a decision to close the case.
- 337.** With regard to the threats reported in 2014 by Mr Oscar Lema Vega, the Government states that the investigation was provisionally closed as a result of the inability to identify or establish an active suspect, since, after carrying out various investigations no active suspect who could be charged with the acts had been established.
- 338.** With regard to the facts reported by the Union of Cali Municipal Enterprise Workers (SINTRAEMCALI) which led to the opening of case No. 3074, the Government reiterates that the Public Prosecutor's Office began an investigation into the events leading to the arson against the motor vehicle belonging to Mr José Ernesto Reyes; on the basis of these events it was decided to close the proceedings as no active suspect for the crime could be identified or singled out. The Government emphasizes in this regard that, with cases that are closed as a result of the inability to identify or establish an active suspect, once new information or conducive, pertinent and useful evidence is obtained, the case can be reopened and proceedings resumed.

Murders and death threats in the prison sector

- 339.** The Government reports that the Public Prosecutor's Office is moving forward with 43 investigations relating to homicides and attempted homicide of leaders and members of the Single Trade Union Association of Public Employees in the Colombian Prison System (UTP) reported in the framework of the present case. With regard to these cases the Office has made progress in clearing up 48.84 per cent of cases (21 cases) which is an increase of 4.65 percentage points compared to the previous report. The Government notes specifically that: 9 cases are at the stage of execution of sentences; 4 cases are at trial; 5 cases are at the pre-trial or investigation stage; and 3 cases have been closed.
- 340.** With regard to the identification of Messrs Diego Rodríguez González and Manuel Alfonso, in response to the report from the national president of the UTP, Oscar Robayo Rodríguez, the Government notes that: (i) Mr Diego Rodríguez González, an activist member of the UTP until 5 June 2013, was murdered by terrorist groups outside the law in San Vicente del Caguán, according to information from the national media; and (ii) Mr Manuel Alfonso Julio Maestre, an activist member of the UTP until 24 October 2016 was murdered in a terrorist attack in Granada, Meta, according to information from the national media.
- 341.** With regard to the threats against members of the UTP and the investigations into them, the Government states that the Public Prosecutor's Office carried out a search of the mission systems to identify the investigation records. As a result, 23 files were identified, of which, 7 were active, with investigative work being done by the judicial police. With regard to the specific information requested by the Committee, the Government states that: (i) Mr Mauricio Paz Jojoa is not a beneficiary of the protection programme as his risk status was assessed to be normal; and (ii) according to the information provided by the president of the UTP, Ms Cindy Yuliana Rodríguez Layos works for the National Penitentiary and Prison Institute (INPEC).

SINTRASERPUVAL

342. With regard to the attempt made on the life of Mr Gustavo Adolfo Aguilar, president of SINTRASERPUVAL, on 22 March 2018, the Government reports that: (i) this investigation became inactive following the Public Prosecutor's Office's decision to close the case as a result of the inability to identify or establish an active suspect; and (ii) the UNP states that "... in 2018 as part of the 25 June 2018 risk assessment he was classified as high risk and that in accordance with the administrative act resolution No. 5257 of 4 July 2018 he was afforded protection measures consisting of one (1) communication device and one (1) bullet-proof vest ...", but in fact communicates that, following a search of the organization's database, currently Mr Gustavo Adolfo Aguilar Gutiérrez is not a beneficiary of the prevention and protection programme.

C. The Committee's conclusions

343. *The Committee recalls that Cases Nos 2761 and 3074 relate to numerous allegations of murders of trade union leaders and members and to numerous other acts of anti-union violence.*

General information regarding acts of anti-union violence and the State's response

344. *The Committee notes first of all the Government's statement that much progress has been made with regard to the investigation and convictions for homicides of members of the trade union movement, as demonstrated by the more than 800 sentences given since 2005 and its commitment is to strengthen the trade union movement and to ensure that the investigations progress.*

345. *The Committee takes note of the general information presented by the Government, with regard to the institutional initiatives carried out to clear up the acts of anti-union violence and to punish those responsible. The Committee notes that the Government reiterates that the investigation and prosecution of crimes against unionized people is a priority for the Public Prosecutor's Office, which has had a specific and different strategy for the investigation of these crimes since 2016, which is implemented by the Elite Group to expedite and monitor crimes affecting unionized people and freedom of association. The Committee also notes that the Government states that, in addition to the training programmes on freedom of association for officials in the Public Prosecutor's Office, in 2022 the Office also took the following actions with regard to homicides of trade unionists: coordination within the Public Prosecutor's Office of investigative strategies for the homicides of trade unionists, human rights defenders and intentional homicides; a public prosecutor from the national team has been made available to lead the proceedings for trade unionists' cases; monitoring by the Office of the Deputy Public Prosecutor; and a victimology protocol for serious human rights violations, drawn up in 2022.*

346. *The Committee also takes note of the information provided by the Government on the results of the aforementioned strategy with regard to the homicides of trade unionists, highlighting that: (i), the perpetrators have been identified in 44.69 per cent of homicides reported between 1 January 2011 and 31 December 2022; (ii) during 2022, the perpetrators have been identified in 53.33 per cent of the 15 homicide cases of trade unionists identified by the Public Prosecutor's Office, 1 case is at trial, charges have been made in 3 cases and a judge has issued arrest warrants in 4 cases; and (iii) with regard to the 85 cases of anti-union violence specifically reported in the context of the present case (of which 79 are homicides) additional progress has been made with reference to the information that has previously been submitted in 22 cases (with 8 sentences carried out, 4 cases at trial and 10 cases under investigation).*

347. *The Committee also takes note of the information provided by the Government on the continuation of efforts to improve the effectiveness of investigations intended to identify and punish the*

perpetrators of threats against human rights defenders in general and members of the trade union movement in particular. The Committee notes that the Government indicates in particular that: (i) by means of resolution No. 0775 of 2021, the Threats Group has been established within the Specialized Directorate against Human Rights Violations that currently has ten public prosecutors responsible for supporting the Sectional Directorates where threats against the target population of this strategy are being made; and (ii) the Public Prosecutor's Office has developed a specific strategy and designated a specialist public prosecutor from the National Working Group on Threats to investigate threats against trade unionists in the mining and energy sector in Valle del Cauca as a matter of priority

- 348.** *The Committee takes due note of the information provided by the Government and welcomes in particular the continuation and strengthening of efforts to guarantee that the investigation and resolution of all acts of anti-union violence and the punishment of the perpetrators constitutes a State priority carried out by methods appropriate for the types of crimes in question and through broad inter-institutional coordination. The Committee also takes note of the progress reported in the investigations of the specific acts of anti-union violence reported in the framework of this case and the homicides reported by the Prosecutor General's Office in 2022. At the same time, the Committee again notes the lack of information about the investigation and punishment of the potential instigators of those crimes. The Committee once again emphasizes in this regard that the investigations should focus not only on the individual perpetrator of the crime but also its instigators, with the aim of ensuring that justice is fully done and significantly preventing future acts of violence against trade union members. While welcoming the significant action taken by the competent authorities, the Committee urges the Government to continue strengthening its efforts to ensure that all the acts of anti-union violence, homicides, threats and other acts reported in the country are cleared up and that the perpetrators and instigators are convicted. The Committee particularly hopes that all further steps will be taken and all necessary resources committed in order to ensure that the investigations and criminal procedures relating to the acts of anti-union violence reported in this case are made significantly more effective in identifying and punishing the instigators. The Committee once again requests the Government to provide detailed information in this regard.*
- 349.** *Concerning the steps taken by the public authorities to prevent acts of anti-union violence and protect trade union members at risk, the Committee takes note, first, of the quantitative data provided by the Government, which indicates that: (i) 256 members of the trade union movement were protected in 2021 (of which 142 with strict protection measures) and, with data available up to 5 November 2022, 252 members of the trade union movement received protection in 2022 (of which 143 with strict protection measures); and (ii) the UNP had a budget of 1,645,168,284,600.00 Colombian pesos in 2022 (approximately US\$349 million), compared to 830,363,870,243.00 pesos in 2018. The Committee also notes that the Government states that: (i) in the framework of the Timely Action Plan (PAO) for individual and collective prevention and protection of the rights to life, liberty, integrity and security for human rights defenders, social and community leaders and journalists, the PAO Operating Committee for protection and immediate response to infringements of the rights to life, integrity, liberty and security has been established, and that, in that framework, there are 32 priority municipalities for operations, with proposals to add a further 9 municipalities; (ii) there have been collective risk assessments for six "population groups with accredited status as trade union leaders or activists" (four risk assessments have been finalized and two are active); and (iii) the Ministry of Labour continues to lead the Technical Secretariat of the Inter-Institutional Committee for the Promotion and Protection of Workers' Human Rights, which held three sessions in 2022, one of which had a focus on difficulties faced by working women and gender issues.*
- 350.** *The Committee commends the significant efforts of the competent authorities to protect against anti-union violence. The Committee takes particular note in this regard of the significant increase in the*

*budget of the UNP and the regular consultations held with the social partners in the Inter-Institutional Commission for the Promotion and Protection of Workers' Human Rights. At the same time, the Committee takes note with deep concern of the 15 homicides of trade unionists reported by the Government in 2022, events that indicate the persistence of a serious situation of anti-union violence in the country. The Committee recalls in this regard that freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see **Compilation of decisions of the Freedom of Association Committee**, sixth edition 2018, para. 82]. In these circumstances, the Committee urges the Government to continue strengthening its efforts to afford adequate protection to members of the trade union movement exposed to risk. With a view to ensuring that the policies to prevent anti-union violence achieve greater impact, the Committee particularly urges the Government to: (i) in the framework of the institutional initiatives and forums for the protection of human rights defenders and social leaders, continue to give the necessary attention to the specific situation of members of the trade union movement at risk; and (ii) provide updated information about the measures taken to prevent acts of anti-union violence in the main risk areas at the regional and sectoral level, which the Government brought to the attention of the Committee at its previous examination of the case (see 393rd Report, para. 93). The Committee requests the Government to keep it informed in this regard.*

Allegations of violence presented in 2014 by the Union of Energy Workers of Colombia and the Union of Cali Municipal Enterprise Workers

- 351.** *With regard to the wounds suffered in 2014 by Mr Oscar Arturo Orozco, member of the SINTRAELECOL union, the Committee takes note that the Government: (i) recalls that it had noted that the investigation into the crime of wounding was progressing at the Caldas Sectional Directorate; and (ii) states that, according to the Public Prosecutor's Office, the public prosecutor in the case issued a decision to close the case. With regard to the threats reported in 2014 by Mr Oscar Lema Vega, the Committee notes that the Government states that the investigation was provisionally closed as a result of the inability to identify or establish an active suspect.*
- 352.** *With regard to the facts reported by the Union of Cali Municipal Enterprise Workers (SINTRAEMCALI) the Committee notes that the Government reiterates that the Public Prosecutor's Office began an investigation into the events leading to the arson against the motor vehicle belonging to Mr José Ernesto Reyes; on the basis of these events it was decided to close the proceedings as no active suspect for the crime could be identified or singled out. The Government emphasizes in this regard that, with cases that are closed as a result of the inability to identify or establish an active suspect, once new information or conducive, pertinent and useful evidence is obtained, the case can be reopened and proceedings resumed.*
- 353.** *The Committee notes with regret the lack of identification and punishment for the perpetrators of these serious crimes. The Committee recalls that, in cases of physical or verbal violence against workers' and employers' leaders and their organizations, the Committee has emphasized that the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights [see **Compilation**, para. 108].*
- 354.** *The Committee also requests the Government to keep it informed of any new information that permits the reopening of the aforementioned investigations and to ensure that any new potential risk for members and leaders of the two organizations gives rise to an immediate response from the competent authorities.*

Murders and death threats in the prison sector

- 355.** *In connection with the reported murders of 21 UTP members, including 3 union leaders, between 5 June 2012 and 24 October 2016, and the attempted homicide of another UTP leader on 4 June 2015, the Committee notes the information provided by the Government, according to which: (i) the Public Prosecutor's Office is moving forward with 43 investigations relating to homicides and attempted homicide of leaders and members of the UTP reported in the framework of the present case; and (ii) the Office has made progress in clearing up 48.84 per cent of cases, since 9 cases are at the sentencing stage, 4 cases are at trial, 5 cases are at the pre-trial or investigation stage, and 3 cases have been closed.*
- 356.** *The Committee also notes that the Government submits information provided by the president of the UTP about Messrs Diego Rodríguez González and Manuel Alfonso Julio Maestre, and according to this: (i) Mr Diego Rodríguez González, an activist member of the UTP, was murdered on 5 June 2013 by terrorist groups in San Vicente del Caguán, according to information from the national media; and (ii) Mr Manuel Alfonso Julio Maestre, an activist member of the UTP, was murdered on 24 October 2016 in a terrorist attack in Granada, Meta, according to information from the national media.*
- 357.** *Lastly, the Committee takes note of the information provided by the Government about the investigations into the threats received by several members and leaders of the UTP. The Committee notes in this regard that the Public Prosecutor's Office has identified 23 investigation records, of which 7 investigations are active, with investigative work being done by the judicial police.*
- 358.** *With regard to the specific information requested by the Committee in its previous report about the two people who had requested protection measures, the Committee takes note that the Government states that: (i) Mr Mauricio Paz Jojoa is not a beneficiary of the protection programme as his risk status was assessed to be normal; and (ii) according to the information provided by the president of the UTP, Ms Cindy Yuliana Rodríguez Layos works for the National Penitentiary and Prison Institute (INPEC). The Committee understands this to mean that the trade union has not provided specific information on the potential trade union membership or activity of this person.*
- 359.** *The Committee takes due note of the general and specific information provided by the Government and pays particular attention to the reports of progress in the investigations and court decisions relating to the homicides of members of the UTP and threats reported in the framework of this case. The Committee, however, once again observes that it still has not received the requested information on the motives behind the homicides for which convictions were handed down, or on whether the convicted persons were both instigators and perpetrators of the acts and whether the sentencing process identified any links between the individual murders of UTP members. The Committee therefore urges the Government to continue making all necessary efforts to ensure that all the homicides and the attempted homicide of UTP leaders and members reported in this case are cleared up and that the perpetrators and instigators are convicted. The Committee also once again requests the Government, in relation to the incidents reported in this case, to provide detailed information on the progress of the investigations under way and on the content of the sentences handed down.*

SINTRASERPUVAL

- 360.** *With regard to the allegation of an attempt made on the life of Mr Gustavo Adolfo Aguilar, president of SINTRASERPUVAL, on 22 March 2018, the Committee takes note that, on the basis of information provided by the Public Prosecutor's Office and the UNP, the Government reports that: (i) the investigation of this crime resulted in a decision by the Public Prosecutor's Office to close the case as a result of the inability to identify or establish an active suspect; (ii) the risk assessment of Mr Aguilar in June 2018 classified the situation of the union leader as high risk, which afforded him protection*

measures consisting of one communication device and one bullet-proof vest; and (iii) currently Mr Gustavo Adolfo Aguilar Gutiérrez is no longer a beneficiary of the prevention and protection programme.

- 361.** *The Committee takes note of this information. The Committee notes with regret the lack of identification and punishment for the perpetrators of these serious crimes and once again recalls what it noted in paragraph 31 above. The Committee requests the Government to keep it informed of any new information that enables the reopening of these investigations. Moreover, the Committee hopes that the discontinuation of the protection measures afforded to Mr Aguilar was preceded by another risk assessment. In this regard, the Committee trusts that the Government will ensure that any new potential risk for Mr Aguilar or anybody else in his organization gives rise to an immediate response from the competent authorities.*

The Committee's recommendations

- 362.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee welcomes the significant action taken by the competent authorities to ensure that the fight against anti-union violence constitutes a State priority through broad inter-institutional coordination and takes note of the progress reported in the investigations of the acts of anti-union violence. The Committee urges the Government to continue strengthening its efforts to ensure that all the acts of anti-union violence, homicides, threats and other acts reported in the country are cleared up and that the perpetrators and instigators are convicted. The Committee particularly hopes that all further steps will be taken and all necessary resources committed in order to ensure that the investigations and criminal procedures relating to the acts of anti-union violence reported in this case are made significantly more effective in identifying and punishing the instigators. The Committee once again requests the Government to provide detailed information in this regard.**
 - (b) **The Committee welcomes the significant actions carried out by the competent authorities for the protection of members of the trade union movement exposed to risk and, in particular, the significant increase in the budget of the UNP, as well as the regular consultations held with the social partners within the Inter-institutional Commission for the Promotion and Protection of Workers' Human Rights. The Committee urges the Government to continue strengthening its efforts to afford adequate protection to members of the trade union movement exposed to risk. With a view to ensuring that the policies to prevent anti-union violence achieve greater impact, the Committee particularly urges the Government to: (i) in the framework of the institutional initiatives and forums for the protection of human rights defenders and social leaders, continue to give the necessary attention to the specific situation of members of the trade union movement at risk; and (ii) provide updated information about the measures taken to prevent acts of anti-union violence in the main risk areas at the regional and sectoral level, which the Government brought to the attention of the Committee at its previous examination of the case. The Committee requests the Government to keep it informed in this regard.**
 - (c) **The Committee urges the Government to continue making all necessary efforts to ensure that all the homicides and the attempted homicide of UTP leaders and members reported in this case are cleared up and that the perpetrators and**

instigators are convicted. The Committee also once again requests the Government, in relation to the incidents reported in this case, to provide detailed information on the progress of the investigations under way and on the content of the sentences handed down.

- (d) The Committee requests the Government to keep it informed of any new information that permits the reopening of the investigations into the acts of anti-union violence against leaders of SINTRAELECOL, SINTRAEMCALI and SINTRASERPUVAL reported in this case and to ensure that any new potential risk for members and leaders of those organizations gives rise to an immediate response from the competent authorities.
- (e) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgency of this case.

Case No. 3329

Definitive report

Complaint against the Government of Colombia presented by

- the Confederation of Workers of Colombia (CTC) and
- the Union of Public Employees of the Cúcuta Transport Terminal (SINDEPCENTRAL)

Allegations: The complainant organizations allege that, in the context of a restructuring process, a public transport enterprise carried out a series of discriminatory and anti-union acts

- 363. The complaint is contained in a communication dated 2 April 2018 from the Confederation of Workers of Colombia (CTC) and the Union of Public Employees of the Cúcuta Transport Terminal (SINDEPCENTRAL).
- 364. The Government of Colombia sent its observations on the allegations in two communications dated 31 January 2019 and 19 January 2023.
- 365. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainants' allegations

- 366. In their communication of 2 April 2018, the complainants allege that the Cúcuta Transport Terminal (hereinafter: "the public enterprise") committed acts which violated the right to freedom of association and collective bargaining of workers belonging to the Union of Public Employees of the Cúcuta Transport Terminal (SINDEPCENTRAL), the Union of Public Workers and Employees of the Passenger Road Transport Enterprises and Terminals of Colombia

(SINTRATERCOL) and SINECTEC, including the implementation of administrative restructuring in July 2017 in order to make staffing changes without prior consultation of the trade unions, thereby violating the labour agreements concluded between the public enterprise and SINDEPCENTRAL; as well as the application to lift the trade union immunity of all leaders of the three unions.

- 367.** The complainants assert that such acts by the public enterprise were aimed at dismantling and eliminating SINDEPCENTRAL, SINTRATERCOL and SINECTEC. In particular, the complainants state that these acts resulted in the three unions being dismantled through the abolition of the posts of all the union officers, leaving the unions without leadership. Moreover, the complainants state that the unions were left without the number of members required by law to enable them to exist (at least 25 members), thereby preventing and obstructing the free exercise of trade union activity. The complainants indicate that SINDEPCENTRAL is an enterprise union which was legally constituted on 30 December 2004 and they provide a copy of the certificate of modification of the SINDEPCENTRAL executive committee drawn up by the Labour and Social Security Inspectorate on 27 July 2015, recording that six of the officials whose posts were abolished formed part of the SINDEPCENTRAL executive committee.
- 368.** The complainants also allege that the administrative restructuring carried out by the public enterprise without prior consultation of the unions in July 2017: (i) disregarded the labour agreements concluded between the public enterprise and SINDEPCENTRAL, in particular the collective agreement in force approved by Resolution No. 221 of 25 May 2017, which provides that "... the participation of union delegates in processes that involve staffing changes shall be guaranteed ..."; (ii) selectively abolished the posts of the whole leadership of the three unions with the aim of eliminating those unions; (iii) was contrary to the provisions of the national legislation and international labour standards, including the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Workers' Representatives Recommendation, 1971 (No. 143), concerning the right of association and negotiation and other union freedoms in matters relating to reinstatement, relocation and continuity of the posts of public servants; and (iv) was illegal, since it occurred without any favourable technical opinion from the National Civil Service Department, which regulates administrative career rights and assists public servants who are trade unionists.
- 369.** The complainants maintain that as a result of the elimination of various posts as part of the administrative restructuring, the public enterprise requested the lifting of the union immunity of 21 officers of the SINDEPCENTRAL, SINTRATERCOL and SINECTEC unions. The complainants indicate that the public enterprise established some temporary posts pending the lifting of the immunity of the union leaders. The complainants attach copies of the agreements and resolutions issued by the board of the public enterprise in July 2017, which show that previous staffing levels totalled 74 posts and new staff numbers were reduced to 49 posts plus 21 temporary jobs corresponding to all the public officials who had union immunity and whose posts were automatically abolished from the time that the ruling authorizing union immunity to be lifted was enforced.

B. The Government's reply

- 370.** By a communication dated 31 January 2019, the Government forwards the observations of the public enterprise, as well as its own reply to the complainant organizations' allegations.
- 371.** The public enterprise states, with regard to the administrative restructuring for making staffing changes, that it strictly complied with the regulations governing public service employment and the right to freedom of association, since the Confederation of Public

Servants and Public Services of Colombia (CSPC) supported the process, thereby guaranteeing the right of representation of the public employees who were union members. Furthermore, the public enterprise attaches a copy of the technical report produced in June 2017, which showed that the revenue of the enterprise had been decreasing for a number of years, resulting in “a high degree of economic insolvency”, in particular from 2015 onwards as a result of the border closure which restricted the movement of passengers to and from the Bolivarian Republic of Venezuela, and that the expenditure of the enterprise exceeded its revenue. The technical report also indicated that most of the expenditure (77.2 per cent) related to staff costs, it concluded that staff numbers were unsustainable and needed to be reduced, and it recommended the elimination of 21 administrative auxiliary posts which would not affect the provision of services by the public enterprise; these posts were occupied by the trade union leaders.

- 372.** With respect to the lifting of trade union immunity and the authorization to dismiss the union leaders, the public enterprise provides a status report, which shows that 19 of the workers affected by the administrative restructuring appealed against rulings which allowed union immunity to be lifted. Between 19 and 24 September 2018, the High Court of Cúcuta ruled on this matter and upheld the decisions to lift the immunity of these workers. In addition, according to the above-mentioned report, one of the workers affected resigned from the union during the special hearing for the lifting of immunity and one worker resigned from his post in the public enterprise. Hence, in terminating employment in both these cases, the public enterprise had no need to obtain authorization to lift union immunity.
- 373.** With regard to the termination of employment of the 21 trade union leaders, the public enterprise states that: (i) one official was incorporated in the public enterprise as a result of a vacancy and measures were taken with the National Civil Service Commission (CNCS) to reinstate nine officials in the administrative career branch, of whom one was reinstated in the Government of Norte de Santander and four were reinstated in the Municipal Authority of Cúcuta, while the application for the reinstatement of another four officials is being processed with the CNCS; (ii) five officials opted for compensation and were withdrawn from the public service; and (iii) the employment of four officials with temporary status was terminated further to the abolition of their posts, since they had no career-related rights. The public enterprise provides a list of 19 workers who were terminated by the public enterprise as a result of the administrative restructuring and who were members of the SINDEPCENTRAL, SINTRATERCOL, SINECTEC and FETRALTRANORTE-FENASER unions.
- 374.** The Government’s reply to the complainants’ allegations is set out below. With regard to the process of administrative restructuring of the public enterprise, the Government indicates that: (i) the process was carried out in conformity with the procedure required by law, which includes the issuing of a series of administrative acts and the carrying out of a technical study, which highlighted the need to reduce staffing from 74 to 49 posts in order to adjust to the economic reality of the public enterprise, which was seriously jeopardized by its drop in revenue as a result of the border closure in 2015; (ii) the purpose of the restructuring was to ensure the financial sustainability of the public enterprise and the adequate provision of the services for which it was responsible; and (iii) restructuring is within the power and public functions of the State and can occur for economic reasons, among others, and on occasion can lead to the dissolution of trade unions because of the decrease in their membership, without this constituting a violation of the right of freedom of association if the restructuring process has not been carried out for the purpose of, or as a result of, anti-union activities, as indicated in Constitutional Court ruling No. 793 of 27 July 2001.

- 375.** With regard to the career officials whose posts were abolished as a result of the administrative restructuring, the Government states that they had the possibility of choosing between compensation or reinstatement in identical or equivalent posts. In this regard, the Government indicates that some officials opted for reinstatement, including some who had already been relocated by the CNSC in vacant posts within the Government of Norte de Santander and the Municipal Authority of Cúcuta, while others decided to opt for compensation. With regard to the officials who had temporary status, the Government states that they had no career-related rights and so their employment was terminated when their posts were abolished. In this regard, the Government refers to Constitutional Court ruling No. 1083/12 of 2012 relating to the termination of this category of officials, which states that: "... provisional posts are not equivalent to administrative career posts, and hence the rights deriving from the administrative career are not applicable to the former, since persons who are employed on a provisional basis have not fulfilled all the requirements required by the Constitution and the law to enjoy such benefits ...".
- 376.** Lastly, the Government states that the complainants do not provide conclusive evidence that acts contrary to freedom of association occurred during the administrative restructuring. The Government also indicates that neither the officials affected nor the trade unions provide evidence of having had recourse to the national judicial authorities to challenge, in particular, the allegedly anti-union character of the administrative restructuring. Hence the Government denies that there was any violation of Conventions Nos 87 and 98 by the public enterprise, and also emphasizes that there was no restriction placed on the right of workers to organize, as evidenced by the existence, prior to the administrative restructuring, of three unions in one public enterprise which had 74 officials, as well as the fact that the latter were able to conclude collective agreements with the public enterprise.
- 377.** By a communication of 19 January 2023, the Government provides additional information in relation to the present case. The Government indicates that the public enterprise currently has 47 officials, of whom 27 are SINTRATERCOL members. Moreover, while recognizing the importance of open consultations with the trade unions in the context of restructuring or staff reduction programmes, the Government states that the administrative restructuring process was supported by the CSPC and indicates that it is planned to analyse the possibility of issuing an instrument, in conjunction with the Public Service Administrative Department, reminding public institutions of the need to promote consultations with the unions in cases of administrative restructuring or staff reduction programmes, guaranteeing the rights of all workers.

C. The Committee's conclusions

- 378.** *The Committee observes in the present case that the complainant organizations allege a series of discriminatory and anti-union acts by a public transport enterprise, including the implementation of administrative restructuring in July 2017 without prior consultation of the trade unions, thereby failing to comply with agreements concluded between the public enterprise and SINDEPCENTRAL, as well as the elimination of the posts of all the officers of SINDEPCENTRAL, SINTRATERCOL and SINECTEC, which reportedly brought an end to the existence of these unions. The Committee notes that, for their part, the public enterprise and the Government assert that the CSPC union confederation supported the administrative restructuring process, thereby ensuring the representation of the public employees who were union members. The Committee also notes that both the public enterprise and the Government state that the administrative restructuring was carried out in accordance with the procedure established in the legislation. The Committee further notes that the Government denies the alleged anti-union character of the administrative*

restructuring and points to the existence of a technical report which demonstrated the economic grounds for restructuring and emphasizes that the complainants do not provide details of any judicial proceedings to denounce the anti-union character of the restructuring and of the resulting terminations of employment.

- 379.** *The Committee notes the complainants' allegations concerning the failure of the public enterprise to comply with the collective agreement in force concluded with SINDEPCENTRAL, in that it did not consult the trade unions prior to the implementation of the administrative restructuring. While noting the general indication by the public enterprise and the Government concerning support from the CSPC during the administrative restructuring process, the Committee observes that the collective agreement in force approved by Resolution No. 221 of 25 May 2017 established the requirement to ensure the participation of SINDEPCENTRAL delegates in processes that involved staffing changes. In this regard, the Committee observes that it has not received any information regarding the affiliation of SINDEPCENTRAL to the CSPC or any indication that the union mandated the CSPC to represent it in the restructuring process. In light of the above, the Committee recalls that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1336].*
- 380.** *The Committee also notes the complainants' allegations that the purpose of the administrative restructuring undertaken by the public enterprise was to eliminate SINDEPCENTRAL, SINTRATERCOL and SINECTEC. The complainants assert that the public enterprise called for the lifting of the trade union immunity of 21 officers from the three unions as a result of the abolition of their posts in the restructuring, thereby leaving the three unions without leadership and without the requisite number of members to exist. With regard to the termination of the employment of the union leaders, the Committee notes the indications in the Government's observations that the workers affected by the restructuring had the possibility of opting for reinstatement in identical or equivalent posts or for compensation. In this regard, the Committee observes that six workers had already been reinstated and the reinstatement of another four workers in identical or equivalent posts was under way, while five workers had opted for compensation and five had had their employment terminated because of the abolition of their posts, since they were civil servants with temporary status.*
- 381.** *The Committee recalls that, since its mandate is to examine allegations of violations of trade union rights, it can give its views on restructuring programmes, whether or not they imply redundancies, only in so far as they might have given rise to acts of discrimination or interference against trade unions [see **Compilation**, para. 1553]. The Committee observes in this regard that the details supplied by the complainants, the public enterprise and the Government reveal that: (i) the restructuring affected 25 workers, of whom 21 were union leaders; (ii) according to the technical report supplied by the public enterprise, the latter was facing a difficult financial situation, as its expenditure was greater than its revenue, with staff costs accounting for 77.2 per cent of expenditure in 2016, and the elimination of the 21 auxiliary posts occupied by the union leaders fulfilled the objective of not affecting the provision of services by the public transport enterprise; (iii) the union leaders affected by the restructuring who were career civil servants had the possibility of opting for reinstatement in identical or equivalent posts or for compensation, and the majority of them were reinstated or in the process of being reinstated; (iv) at present, there are 47 civil servants in the public enterprise, of whom 27 are members of SINTRATERCOL.*
- 382.** *With regard to the Government's indication that the complainants have not demonstrated that they challenged the supposed anti-union character of the restructuring vis-à-vis the judicial authorities, the Committee observes that the public enterprise supplies data on the procedures for lifting the immunity of the union leaders affected by the restructuring and that these data show that:*

(i) 19 union officers appealed against the first-instance decisions authorizing the lifting of union immunity; and (ii) in these cases, the authorization of the lifting of immunity was upheld at second instance, though the Committee does not have the text of these rulings.

383. *In light of the above, the Committee notes that although the abolition of posts in the public enterprise, undertaken in a context of economic difficulties, mainly affected union officers, it does not have any information that would enable it to conclude that anti-union discrimination took place. Trusting that the judicial proceedings for lifting union immunity examined this issue exhaustively, the Committee will not pursue its examination of this allegation. Also trusting that the pending proceedings for the reinstatement of the union leaders who are career civil servants will be concluded in the very near future, ensuring that they are assigned to identical or equivalent posts, the Committee considers that this case is closed and does not call for further examination.*

The Committee's recommendations

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

- (a) The Committee trusts that the proceedings for the reinstatement of career civil servants which were pending will be concluded in the very near future, and that their reinstatement in identical or equivalent posts will be guaranteed.**
- (b) The Committee also trust that the Government will ensure compliance with collective agreements in public enterprises.**
- (c) The Committee considers that this case is closed and does not call for further examination.**

Case No. 3333

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

Complaint against the Government of Colombia presented by

the Teachers' Union of the Autonomous University of Colombia Foundation (SINPROFUAC)

Allegations: The complainant alleges anti-union dismissals of members and leaders of a union in the education sector

385. The complaint is contained in a communication dated 29 May 2018 submitted by the Teachers' Union of the Autonomous University of Colombia Foundation (SINPROFUAC).

386. The Government of Colombia sent its observations concerning the allegations in communications dated 29 May and 3 October 2019 and 3 February 2023.

387. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

- 388.** In its communication of 29 May 2018, the complainant alleges that on 4 October 2016, the board of directors of the Autonomous University of Colombia Foundation (hereinafter “the Foundation”) ordered the termination of the contracts of 70 members of SINPROFUAC working as teachers while they were entitled to receive an old-age pension, and that on 6 December 2016, the Foundation dismissed them. The complainant underlines that all of the dismissed teachers were members of SINPROFUAC.
- 389.** The complainant also states that following a judicial proceeding in Labour Court 29 of the Bogotá Circuit, the Foundation dismissed the then president of the executive committee of SINPROFUAC, Mr Felipe Millán Buitrago. The complainant further maintains that a request for the dismissal of Ms Rosalba Torres Rodríguez, who serves as vice-president of SINPROFUAC, remains pending before Labour Court 31 of the Bogotá Circuit and that a request has been made for the dismissal of Mr Rafael Suárez Orjuela, Mr Orlando Bernal Morales and Mr Antonio Villegas Valero, three other union leaders.
- 390.** The complainant alleges that, in dismissing the SINPROFUAC members, the Foundation violated freedom of association as well as the collective agreement between the parties, which contains a provision establishing a procedure for any dismissal. According to the complainant, although this provision establishes as an essential prerequisite that the cause for dismissal must be qualified by the stability committee, none of the dismissed teachers were called before the said committee for such a statement in order to give effect to the dismissals.
- 391.** In this regard, the complainant indicates that the stability committee, the purpose of which is to ensure that the employment contract of every university worker remains in place until such time as the worker decides or until it is terminated for just cause duly proven, established in report No. 220 of 18 February 2015 that the Foundation could not terminate the contracts of its teachers solely because they were pensioners.
- 392.** The complainant states that the Foundation, acting in an arbitrary manner, dissolved the stability committee, since Mr Suárez Orjuela, the leading member of the said committee, was among the 70 SINPROFUAC members who were dismissed, despite having trade union immunity. The complainant indicates, however, that this decision was ultimately revoked and that Mr Suárez Orjuela was reinstated.
- 393.** The complainant emphasizes that while the aforementioned members of SINPROFUAC were dismissed, other teachers who are similarly enjoying an old-age pension continue to work at the university as teachers. It further maintains that on 9 June 2016, the Foundation orchestrated a strategy to reduce SINPROFUAC membership by organizing meetings with workers at which it invited them to leave the union.
- 394.** The complainant indicates that it lodged an action for protection of constitutional rights on behalf of 40 of the dismissed teachers before Municipal Criminal Court 5, and that: (i) on 21 February 2017, a judgment was rendered in its favour ordering his immediate reinstatement; and (ii) the Foundation impugned this ruling before Bogotá DC Criminal Court 18, which revoked it on 4 April 2017.

B. The Government's reply

- 395.** In a communication dated 29 May 2019, the Government submitted the observations of the Foundation, as well as its own response to the complainant's allegations. In its observations, the Foundation confirms the occurrence of the dismissals and requests for dismissal but

asserts that it has always respected the provisions of the law, the collective agreement between the parties and the regulations thereunder, including by going to court to request permission for dismissals when it was necessary to do so, in order to guarantee the rights of workers and its own rights as an employer.

- 396.** The Foundation states that the stability committee is not competent to rule on the decisions taken by its executive board, which has the authority to appoint and dismiss its personnel. It indicates that the contracts were terminated for just legal cause in the light of the provisions of section 62(a)(14) of the Substantive Labour Code, and that receipt of an old-age pension is not a breach of discipline that a worker may or may not have committed.
- 397.** With respect to report No. 220 of 18 February 2015 issued by the stability committee, the Foundation indicates that the said report also recognized that the applicable legislation and jurisprudence granted the employer the authority, without any time constraint, to terminate the employment contract for just cause once the worker had obtained and was enjoying their monthly pension.
- 398.** With regard to Mr Suárez Orjuela, the Foundation maintains that its decision to terminate his employment contract when he enjoyed trade union immunity as a member of the stability committee was due to an error, but that this situation was immediately rectified when it learned of the error. It indicates that on 13 December 2016, a communication was sent to Mr Suárez Orjuela to inform him that he remained attached to the Foundation.
- 399.** Concerning the allegations that it organized meetings in order to invite workers to leave SINPROFUAC and that other teachers also in receipt of old-age pensions were not dismissed, the Foundation maintains that these are subjective assertions by the complainant. It stresses that the dismissal of the teachers was for just and strictly legal cause, and that it did not violate freedom of association or due process.
- 400.** For its part, the Government notes that this case concerns a situation involving the termination of contracts of workers who already have the use and enjoyment of their old-age pension. It indicates that on the basis of section 62(a)(14) of the Substantive Labour Code, section 9(3) of Act No. 797 of 2003 and the applicable jurisprudence, the employer's decision does not constitute a violation of labour law.
- 401.** Concerning the competence of the stability committee to terminate employment contracts, the Government indicates that in the event of a dispute between a trade union and an enterprise, recourse to the courts to resolve such differences is possible.
- 402.** With regard to the requests for permission to dismiss workers with trade union immunity, the Government maintains that the employer's resort to the ordinary labour courts to meet this requirement does not constitute an attempt on its part to harm the trade union.
- 403.** In its communication of 3 October 2019, the Government confirms that Labour Court 29 of the Bogotá Circuit authorized the dismissal of Mr Millán Buitrago in a decision dated 31 March 2017, which was upheld by the High Court of the Judicial District of Bogotá on 8 June 2017.
- 404.** The Government also indicates that in a decision dated 25 May 2018, Labour Court 31 of the Bogotá Circuit authorized the dismissal of Ms Torres Rodríguez. Following an appeal, this ruling was confirmed by the High Court of the Judicial District of Bogotá DC on 1 June 2018.
- 405.** In its communication of 3 February 2023, the Government: (i) states that it aims to protect the fundamental rights of workers; (ii) indicates that it has requested possible further information from the Foundation but has not received a reply to date; and (iii) considers it important,

however, to provide the Committee with copies of the decision of Municipal Criminal Court 5 of 21 February 2017 and the decision of Bogotá DC Criminal Court 18 of 4 April 2017, issued in relation to the action for protection of constitutional rights lodged by SINPROFUAC.

C. The Committee's conclusions

- 406.** *The Committee notes that, in the present case, the complainant alleges that, in dismissing 70 of its members, as well as its president and vice-president, and in requesting the dismissal of a further three of its leaders, who were working as teachers while they were already entitled to receive an old-age pension, a foundation in the education sector violated freedom of association, as well as the collective agreement in force in the Foundation. The Committee further notes that the Foundation and the Government insist that the dismissals were legal, on the basis of the labour legislation and the court decisions issued in this regard.*
- 407.** *The Committee notes that the complainant specifically states that: (i) on 6 December 2016, the Foundation dismissed 70 teachers, all members of SINPROFUAC; (ii) after obtaining judicial authorization, the Foundation dismissed Mr Felipe Millán Buitrago, the then president of the executive committee of SINPROFUAC; (iii) the Foundation sought judicial authorization to dismiss Ms Rosalba Torres Rodríguez, vice-president of SINPROFUAC, and Messrs Rafael Suárez Orjuela, Orlando Bernal Morales and Antonio Villegas Valero, three other leaders of the union; (iv) the Foundation violated the collective agreement between the parties by dismissing the aforementioned workers without respecting the requirement that the stability committee qualify the cause for dismissal; (v) although other teachers also receive an old-age pension while continuing to teach at the University, only teachers affiliated with SINPROFUAC were dismissed; (vi) in June 2016, the Foundation attempted to reduce membership of SINPROFUAC by organizing meetings with workers at which it invited them to leave the union; and (vii) SINPROFUAC, representing 40 of the dismissed teachers, lodged an action for protection of constitutional rights before Municipal Criminal Court 5 and on 21 February 2017 a judgment was rendered in its favour, but the Foundation impugned this decision before Bogotá DC Criminal Court 18, which revoked it.*
- 408.** *The Committee further notes that the Foundation, in its observations submitted by the Government, maintains that: (i) the dismissals and requests for the dismissal of the aforementioned workers were fully compliant with the provisions of the law and of the collective agreement with SINPROFUAC; (ii) the stability committee is not competent to rule on the decisions of its board of directors; (iii) receipt of an old-age pension is not a breach of discipline and, under section 62(a)(14) of the Substantive Labour Code, constitutes just legal cause for the dismissals; and (iv) the allegations that it organized meetings with workers to invite them to leave SINPROFUAC and that it did not dismiss non-unionized teachers receiving an old-age pension are subjective assertions.*
- 409.** *The Committee also notes the Government's indication that: (i) the dismissals did not violate labour legislation; (ii) Labour Court 29 of the Bogotá Circuit authorized the dismissal of Mr Millán Buitrago on 31 March 2017, a decision that was confirmed by the High Court of the Judicial District of Bogotá on 8 June 2017; and (iii) Labour Court 31 of the Bogotá Circuit authorized the dismissal of Ms Torres Rodríguez on 25 May 2018, and the High Court of the Judicial District of Bogotá DC confirmed this decision on 1 June 2018.*
- 410.** *As concerns the competence of the stability committee established by the collective agreement with regard to the retirement of workers entitled to a pension, the Committee notes that various courts have ruled on the matter and found that this committee was competent only in the event of dismissals for breach of discipline.*
- 411.** *With regard to the allegation that the dismissals were made for anti-union reasons since they affected only members of SINPROFUAC, the Committee observes that: (i) the Foundation described*

*as subjective the complainant's assertions that non-unionized teachers receiving an old-age pension were not dismissed, but did not provide any specific information in this respect; (ii) the alleged anti-union character of the retirement of union leaders and members was raised in the action for protection of constitutional rights lodged by SINPROFUAC and in the procedure for the suspension of the trade union immunity of its president; and (iii) the relevant judicial decisions provided both by the complainant and by the Government focused on establishing that receipt of an old-age pension constitutes a legal cause for dismissal recognized by the Substantive Labour Code and were limited to considering that the dismissals in question did not jeopardize the existence of the trade union. While noting that the Committee does not have sufficient elements to pronounce itself on the reasons for the retirements of the leaders and members of SINPROFUAC which are the subject of this case, it recalls that not only dismissal, but also compulsory retirement, when imposed as a result of legitimate trade union activities, would be contrary to the principle that no person should be prejudiced in his or her employment by reason of trade union membership or activities [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1109]. Regretting the lack of information on the employment status of the Foundation's non-unionized teachers entitled to an old-age pension, the Committee requests the Government to: (i) provide information on the outcome of the judicial proceedings to suspend the trade union immunity of the three other SINPROFUAC leaders mentioned in the complaint, indicating whether they have examined whether the reason for their retirement could be related to their trade union activity; and (ii) take the necessary measures to ensure the effective respect of freedom of association in the Foundation.*

The Committee's recommendations

- 412. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee requests the Government to provide information on the outcome of the judicial proceedings to suspend the trade union immunity of Messrs. Suárez Orjuela, Bernal Morales and Villegas Valero, indicating whether these proceedings have examined whether the reason for their retirement could be related to their trade union activity.**
 - (b) The Committee requests the Government to take the necessary measures to ensure the effective respect of freedom of association in the Foundation.**

Case No. 3418

Definitive report

Complaint against the Government of Ecuador presented by

- the National Union of Professional Drivers and Workers of the Ministry of Government (previously the Ministry of the Interior) and
- the Ecuadorian Confederation of Free Trade Unions (CEOSL)

Allegations: The complainant organizations allege the violation of the right to collective bargaining of a public sector union, including failure to respect the applicable deadlines and procedures during the collective bargaining process and the shelving of a collective agreement concluded between the parties following the completion of the bargaining process

- 413.** This complaint is contained in a communication dated 5 January 2022 from the National Union of Professional Drivers and Workers of the Ministry of Government (previously the Ministry of the Interior) and the Ecuadorian Confederation of Free Trade Unions (CEOSL).
- 414.** The Government provided its observations in communications dated 3 January and 3 February 2023.
- 415.** Ecuador 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

- 416.** In their communication of 5 January 2022, the complainant organizations allege that the Government violated the right to freedom of association and collective bargaining of the National Union of Professional Drivers and Workers of the Ministry of Government. The complainant organizations maintain that, as a consequence of certain acts and omissions on the part of the public employer (the Ministry of Government), after the parties had participated in a collective bargaining process and concluded a collective agreement, the collective agreement was shelved for budgetary reasons, leaving the unions without the agreed rights and benefits.
- 417.** The complainant organizations indicate that the charter of the Union of Professional Drivers and Workers, a public sector union, was approved and registered by Ministerial Decree No. MDT-2018-0089 of 10 April 2018. They add that the union is affiliated to the CEOSL and has 217 affiliates throughout the country.
- 418.** The complainant organizations recall that, pursuant to section 221 of the Ecuadorian Labour Code, collective agreements are concluded in the public sector with "a single central committee made up of more than 50 per cent of these workers". On 9 June 2018, the workers' meeting of

union members approved the formation of the Single Central Committee (CCU) of Workers of the Ministry of the Interior and authorized the union's leadership to negotiate the collective agreement.

- 419.** The workers' organizations indicate that, on 10 July 2018, through memorandum No. MDI-CGAF-DATH-2018-0757, the labour inspector of Pichincha was informed that the Ministry of Government and the union had agreed to postpone the first negotiations on the draft collective agreement and that the negotiations "would continue until the first week of August 2018". Subsequently, on 11 July, the CCU presented a draft of the first collective agreement to the Labour Inspectorate, which informed the Ministry of Government of this fact on 13 July 2018.
- 420.** On 29 August 2018, the Mediation Office of the Ministry of Labour took note of the negotiation process of the collective agreement and summoned the parties to a social dialogue meeting on 6 September 2018. In its communication, the Mediation Office informed the parties that "there are deadlines that must be respected in accordance with Ministerial Agreement No. 0184 of 7 November 2013".
- 421.** On 6 September 2018, the Mediation Office once again summoned the parties to a hearing to be held on 20 September 2018, once again noting that the deadlines must be respected. In this context, the complainant organizations point out that, pursuant to section 14 of the above-referenced mentioned ministerial agreement, and in line with section 224 of the Labour Code, the time taken to negotiate a collective agreement cannot exceed 30 days, unless this period is extended by agreement between the parties, which the complainant organizations indicate did not occur.
- 422.** The workers' organizations indicate that the Ministry of Government and the CCU concluded the negotiations in respect of their first collective agreement on 29 March 2019, approving the entire final text of the collective agreement. They highlight that, once the negotiations were completed, pursuant to section 15 of Ministerial Agreement No. MDT-0184-2013, the Ministry of Government had a period of 48 hours (which ended on 2 April 2019) within which to submit the text of the collective agreement, the cost estimate tables and tables of funding sources to the Regional Directorate of Labour and Public Services of Quito. They maintain that this deadline was not respected and that the documents in question were not submitted until 7 June 2019 (more than three months after the deadline). The complainant organizations add that, at this time, the Ministry of Government submitted incomplete information to the Regional Directorate of Labour and Public Services of Quito, submitting only the text of the collective agreement, without the other required documentation.
- 423.** The complainant organizations indicate that, as a result, on 17 June 2019, the Ministry of Labour issued official communication No. MDT-DRTSPQ-2019-6004 requiring the employer (the Ministry of Government) to submit the necessary information and granting the employer an additional period of ten days for this purpose. On 18 July, the CCU requested the Regional Director of the Ministry of Labour in Quito to fine the Ministry of Government in conformity with section 16 of Ministerial Agreement No. MDT-0184-2013 for not having provided the necessary documents within the 48 hours following the approval of the text of the collective agreement.
- 424.** Subsequently, on 2 July 2019, the Ministry of Government requested that the Ministry of Labour grant it an extension of 15 days to provide the required documents. On 4 July the Ministry of Labour granted the Ministry of Government an extension until 25 July 2019, an additional deadline with which the Ministry of Government once again failed to comply.

- 425.** The complainant organizations indicate that, on 24 January 2020, the CCU requested the Regional Director of Labour and Public Services of Quito to continue with the process of signature of the collective agreement, and to require the employer to submit to the Ministry of Labour the information on the cost estimates and the sources of funding for the collective agreement to the Ministry of Labour. Subsequently, on 26 February 2020, the Ministry of Labour conveyed the required documents to the Ministry of Economy and Finance. On 30 September 2020, some seven months after the required information was sent to the Ministry of Economy and Finance, the Under-Secretary of Budget of the Ministry of Economy and Finance announced that the Ministry of Government did not have the necessary funding to cover all of the benefits agreed upon in the collective agreement. On 6 November 2020, the Regional Director of Labour and Public Services of the Ministry of Labour announced that, in response to the memorandum issued by the Ministry of Economy and Finance, the decision had been taken to shelve the draft collective agreement.
- 426.** The complainant organizations highlight that, as a consequence of the acts and omissions of the Ministry of Government, 20 months after the collective bargaining had been completed and the full text of the collective agreement had been approved and concluded, the draft collective agreement was shelved, leaving the workers without the agreed benefits. Subsequently, the union lodged a claim for the violation of their collective bargaining rights in the framework of the exercise of their freedom of association rights. The claim was rejected by the court of first instance on 3 February 2021 and by the appellate court on 17 August 2021.
- 427.** As it considered that the rulings of the court of first instance and the appellate court affected its constitutional rights, the union lodged a special appeal for protection with the Constitutional Court, which is still pending. The complainant organizations indicate that the National Union of Professional Drivers and Workers of the Ministry of Government still has not been able to sign the collective agreement approved by the parties in 2019. They add that, given the adverse consequences directed at the union, it has not presented a new draft collective agreement.
- 428.** Summarizing the acts and omissions of the public bodies that they consider violated the right to collective bargaining, the trade union organizations emphasise that the Ministry of Government did not comply with the procedure established in the Labour Code and in Ministerial Agreement No. MDT-0184-2013, and that it delayed the negotiation of the collective agreement beyond the established deadlines. They also indicate that, after having approved and concluded the full text of the collective agreement, the Ministry of Government did not submit the cost assessment tables and funding sources related to the collective agreement. They add that, at the end of the collective bargaining process, the Ministry of Economy and Finance issued a negative budget report which went against the agreement that the parties had reached 20 months previously. They also indicate that the Regional Directorate of the Ministry of Labour did not follow up on the complainant organizations' request to fine the employer (the Ministry of Government), as provided for in the Ministerial Agreement. The complainant organizations state that, as a result of this decision, the Ministry of Labour shelved the collective agreement, despite there being no legal rule permitting this. The workers' organizations allege that the systematic acts and omissions of the public sector bodies run counter to the principle of good faith bargaining and respect for agreements that are concluded. They add that collective bargaining has not been initiated to rectify the situation, a situation which has left the worker members of these organizations without the salary increases and other benefits agreed upon.

B. The Government's reply

- 429.** In a communication received on 3 January 2023, the Government provided information concerning the actions of the Ministry of Labour and the Ministry of Economy and Finance in relation to the events that are the subject of the complaint. The Government transmitted additional information in a communication received on 3 February 2023.
- 430.** In its communications, the Government denies that the Ministry of Labour has in any way violated freedom of association and the right to collective bargaining, which are guaranteed under the country's Constitution, or the provisions of Convention No. 87, pointing out that the collective bargaining agreement that is the subject of the complaint was only a draft. In this respect, the Government recognizes that the draft collective agreement constituted an expectation of a legitimate right for the workers. It nevertheless points out that, in order for the draft to be stamped and become final and enforceable, it is necessary to dispose of the economic resources necessary to its implementation.
- 431.** The Government considers that the complainant organizations' right to submit a new request for a collective agreement to the Ministry of the Interior and the Ministry of Labour, respectively, have not been undermined and that the workers' organizations can make use of this right when necessary. It adds that the Ministry of Labour makes available to all users the services of the Labour Mediation Office to all users at the national level to reach an agreement in the collective bargaining process, as well as the free advisory services provided by public servants, who can address, within the scope of their competencies, the questions that users might have regarding the processing, negotiation and conclusion of a collective agreement.
- 432.** The Government indicates that the Ministry of Labour, as the lead agency for labour policies, is required to comply with and enforce the law, and that, according to the provisions of section 74(17) of the Organic Code of Planning and Public Finance, and in accordance with section 56 of the Law for the Reform of Public Finances, it falls to the Regional Directorate of Labour and Public Services of Quito to request a favourable opinion regarding the availability of budgetary resources prior to the conclusion of a collective agreement, in order to ensure that there are sufficient resources to cover the cost of the agreed economic benefits.
- 433.** The Government states that the Ministry of Labour makes available to users all the services offered by the Regional Directorate of Labour and Public Services of Quito so that they may negotiate their collective agreements within the established legal parameters. The Government adds that it is imperative that the Regional Directorate not exceed its powers by concluding a collective agreement that does not fulfil the legal requirements, but that both parties may continue negotiating a draft collective agreement with full access to and support of its services. The Government emphasizes that the regulations in force predate the negotiation of the collective agreement that is the subject of the complaint, and that the workers' representatives should have been aware of the requirements for the signature of the agreement, for which a prior favourable opinion is required.
- 434.** In its analysis, the Government indicates that once the collective negotiations and the respective procedures were completed, by means of official communication No. MEF-SP-2020-0741 dated 30 September 2020, the Ministry of Economy and Finance concluded that the Ministry of Government "does not have the necessary funding to cover all the benefits agreed upon in the draft collective agreement". The Government indicates that the Ministry of Economy and Finance noted that "the draft is returned ... for the Ministry of Labour to ... update the name of the draft collective agreement, rectify the number of workers for whom it is being negotiated, since there are currently 131 workers and the draft mentions 153, and, lastly, to revise the date of entry into force of the draft collective agreement".

- 435.** The Government also refers to official communication No. MDT-DRTSPQ-2020-7832 of 6 November 2020, in which the Regional Director of Labour and Public Services of Quito, "... in response to official communication MEF-SP-2020-0471 dated 30 September 2020, issued by the Ministry of Economy and Finance", decided to shelve the file on the collective agreement after notifying the parties, "preserving the rights of the parties ...".
- 436.** In its communication dated 3 February 2023, the Government indicates that, following the decision to shelve the draft collective agreement on 6 November 2020, by means of a mediation agreement partially accepting of the Statement of Demands submitted by the National Union of Professional Drivers and Workers of the Ministry of Government, concluded on 27 August 2021, the parties reached agreement on 12 out of the 29 initial points. The Government states that these 12 points have been complied with in accordance with the labour legislation. The Government adds that the 17 remaining points from the initial Statement of Demands on which an agreement has not been reached are in the submission of evidence phase for subsequent decision by the members of the Conciliation and Arbitration Tribunal of the Ministry of Labour, established by the Minutes of the conciliation hearing held on 7 November 2022.
- 437.** During the evidentiary phase opened by the Conciliation and Arbitration Tribunal, the Ministry of the Government submitted a brief dated 15 November 2022, detailing and supporting the Ministry of Government's legal and budgetary reasons for not reaching an agreement in respect of the union's demands. In this context, the Government points out that the Ministry of Government has complied and continues to comply faithfully with the points agreed, in accordance with the regulations in force, and therefore at no time has it violated the rights of the workers, considering that there are points that have not been agreed upon because they contravene the legislation and exceed the budgetary amounts determined by the legal system in force.

C. The Committee's conclusions

- 438.** *The Committee notes that the present case refers to the shelving by the Ministry of Labour of a collective agreement concluded by a public sector union with the Ministry of Government, following an opinion issued by the Ministry of Economy and Finance concluding that the Ministry of Government did not have the sufficient resources to provide the agreed benefits.*
- 439.** *The Committee notes the complainant organizations' allegations of the violations of the right to collective bargaining, which entail: (i) the failure of the Ministry of Government to comply with the deadlines and procedures established in the Labour Code and in Ministerial Agreement No. MDT-0184-2013, thus delaying the negotiation of the collective agreement; (ii) the failure of the Ministry of Government to submit, after the approval of the collective agreement by the parties, the cost estimate tables and tables of funding sources required by the Regional Directorate of the Ministry of Labour and Public Services of Quito, delaying the process even further; (iii) the failure of the Ministry of Labour to impose fines on the Ministry of Government for not respecting the applicable deadlines; (iv) the issuance by the Ministry of Economy and Finance of an opinion notifying the parties that the Ministry of Government did not have the necessary funding to cover all the benefits agreed upon in the collective agreement, although the negotiation and approval of the collective agreement had been completed 20 months previously; and (v) the subsequent shelving by the Ministry of Labour of the collective agreement concluded by the parties, even though there is no legal provision that provides for this. The Committee notes the complainant organizations' allegation that the systematic acts and omissions of the public sector bodies described above run counter to the principles of negotiating in good faith and respecting the agreements reached.*

440. *The Committee notes that, for its part, the Government states that the Ministry of Labour has at no time violated the right to freedom of association and the right to collective bargaining insofar as: (i) although the agreement reached between the parties led to an expectation of legitimate entitlements on the part of the workers, the collective agreement that was the subject of the complaint was only a draft; (ii) in accordance with the legislation applicable to the public administration, in order for the draft collective agreement to become final and enforceable, a favourable opinion from the Ministry of Economy and Finance was required confirming the availability of economic resources for its implementation; and (iii) in the light of the opinion issued by the Ministry of Economy and Finance, which concluded that the Ministry of Government did not have the necessary resources to comply with the agreed benefits, the decision of the Ministry of Labour to shelve the draft collective bargaining agreement was justified.*
441. *The Committee notes that it is clear from the above-mentioned elements presented by the parties that: (i) the National Union of Professional Drivers and Workers of the Ministry of Government and the Ministry of Government entered into negotiations in July 2018 with a view to signing the first collective agreement in the institution; (ii) the parties agreed on the content of the collective agreement on 29 March 2019 and the related agreement was forwarded by the Ministry of Government to the Ministry of Labour; (iii) after a series of delays in the delivery by the Ministry of Government of various documents required under national legislation, the Ministry of Economy and Finance issued on 30 September 2020 an unfavourable opinion, finding that the Ministry of Government did not have the economic resources to finance the benefits agreed upon by the parties; and (iv) based on the foregoing, the Ministry of Labour shelved the respective file on 6 November 2020.*
442. *The Committee notes that the complainant organizations denounce, on the one hand, the repeated delays allegedly incurred by the Ministry of Government throughout the process, which would demonstrate a lack of good faith in the negotiations and, on the other hand, the shelving of the collective agreement by the Ministry of Labour on the basis of an unfavourable opinion of the Ministry of Economy and Finance following the signature of the agreement by the parties. Lastly, the Committee notes that, while the complainant organizations consider that the agreement reached by the parties in March 2019 led to the signature of a collective agreement, the Government considers that, in the absence of a favourable opinion on the availability of funds to finance the agreed benefits, the agreement only constituted a draft collective agreement.*
443. *With regard to the allegations of non-compliance by the Ministry of Government with the procedures and deadlines provided for by national legislation, especially the late submission of documents to the Ministry of Labour, the Committee notes that: (i) the Government's response does not dispute these allegations; and (ii) as referred to by both parties, 20 months elapsed between the agreement reached by the parties and the shelving of the file by the Ministry of Labour. In this respect, the Committee recalls that the principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1330]. In light of the foregoing, the Committee requests the Government to take active measures to ensure effective compliance with legal deadlines by public institutions involved in collective bargaining processes.*
444. *With respect to the shelving of the file on collective bargaining on the basis of an opinion issued by the Ministry of Economy and Finance following an agreement reached by the parties, the Committee recalls that it has considered it to be acceptable that in the bargaining process the employer side representing the public administration seek the opinion of the Ministry of Finance or an economic and financial body that verifies the financial impact of draft collective agreements. The Committee has also considered that insofar as the income of public enterprises and bodies depends on state*

*budgets, it would not be objectionable – after wide discussion and consultation between the concerned employers’ and employees’ organizations in a system having the confidence of the parties – for wage ceilings to be fixed in state budgetary laws, and neither would it be a matter for criticism that the Ministry of Finance prepare a report prior to the commencement of collective bargaining with a view to ensuring respect of such ceilings [see **Compilation**, paras 1486 and 1491]. Based on the foregoing, and with a view to strengthening the parties’ confidence in collective bargaining mechanisms and reaching a reasonable compromise between the need to preserve the autonomy of the bargaining parties and the duty incumbent on governments to ensure the balance of public accounts, the Committee requests the Government to take the necessary measures, including legislative measures if needed, to ensure that the reports or opinions of the budgetary authorities are issued prior to the conclusion of an agreement between the parties. The Committee refers this legislative aspect of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.*

- 445.** *Lastly, the Committee notes the additional information from the Government according to which: (i) after the agreement was shelved, the union submitted a 29-point list of demands; (ii) following mediation, an agreement was reached on 27 August 2021 on 12 of the 29 points; and (iii) the 17 points pending agreement are at the settlement stage before the Conciliation and Arbitration Tribunal. The Committee takes due note of this information and trusts that the Conciliation and Arbitration Tribunal will take its decision on the pending points as soon as possible. The Committee considers that this case does not require further consideration and is therefore closed.*

The Committee’s recommendations

- 446.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee requests the Government to take active measures to ensure effective compliance with legal deadlines by public institutions involved in collective bargaining processes.**
 - (b) The Committee requests the Government to take the necessary measures, including legislative measures if needed, to ensure that the reports or opinions of the budgetary authorities on the availability of resources in the public administration are issued prior to the conclusion of an agreement between the parties.**
 - (c) The Committee trusts that the Conciliation and Arbitration Tribunal will promptly reach a decision on the points pending between the parties.**
 - (d) The Committee considers that this case does not call for further examination and is therefore closed and refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.**

Case No. 2609

Interim report

**Complaint against the Government of Guatemala
presented by**

- **the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG)**
 - **the Autonomous Popular Trade Union Movement of Guatemala**
 - **Global Unions of Guatemala**
 - **the Trade Union Confederation of Guatemala (CUSG)**
 - **the General Confederation of Workers of Guatemala (CGTG)**
 - **the Trade Union of Workers of Guatemala (UNSITRAGUA) and**
 - **the Movement of Rural Workers of San Marcos (MTC)**
- supported by**
the International Trade Union Confederation (ITUC)

Allegations: The complainant organizations allege numerous murders and acts of violence against trade union members and flaws in the system that result in criminal and labour-related impunity

- 447.** The Committee has already examined the substance of this case on a number of occasions, which was presented for the first time in 2007. The Committee last examined the case at its October 2021 meeting and on that occasion it submitted an interim report to the Governing Body [see 396th Report, approved by the Governing Body at its 343rd Session (October–November 2021), paras 307–348].¹⁹
- 448.** The Government sent its observations in communications dated 6 December 2021, 7 and 17 January, 15 February, 13 May, 5 and 21 July, 4, 11, 18, 19, 22 and 26 August, 14 September, 13, 14 and 16 December 2022, and 3 February 2023.
- 449.** Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

- 450.** At its October 2021 meeting, the Committee made the following recommendations [see 396th Report, para. 348]:
- (a) The Committee expresses once again its deep concern over the seriousness of this case, given the many instances of murder, attempted murder, assaults and death threats and

¹⁹ [Link to previous examinations.](#)

the climate of impunity. The Committee urges the Government to take all necessary measures to prevent the commission of any further acts of anti-union violence.

- (b) The Committee again urges the Government, with the active participation and monitoring by the National Tripartite Committee and its subcommittee on implementation of the road map, to continue to take and intensify all the necessary measures to ensure the effective investigation of all acts of violence against trade union leaders and members, with a view to identifying those responsible and punishing the perpetrators and instigators of such acts, taking the trade union activities of the victims fully into consideration in the investigations, in accordance with Directive No. 01-2015. In this connection, the Committee specifically urges the Government to: (i) take all necessary measures to ensure the continued role of the National Tripartite Committee and its subcommittee on implementation of the road map; (ii) facilitate, with the support of the National Tripartite Committee, the full reactivation of the trade union committees of the Public Prosecutor's Office with the full participation of its trade union representatives; (iii) significantly increase, with the allocation of the necessary human and financial resources, the criminal investigation capacities of the Special Prosecutor's Unit for Crimes against Trade Unionists; (iv) substantially strengthen collaboration between the Special Criminal Investigation Division (DEIC) of the National Civil Police and the above-mentioned special prosecutor's unit; (v) take the necessary measures to ensure the competent authorities devote the attention and resources required for the investigations into the 36 homicides reported by the National Tripartite Committee; and (vi) continue the ongoing dialogue established with the judiciary to ensure, through all appropriate mechanisms, that cases of anti-union violence are promptly examined by the criminal courts. The Committee requests the Government to keep it informed in this respect.
- (c) The Committee requests the Government to provide information on the punishments handed down to the perpetrators of threats and assaults against members of the trade union movement identified by the Ministry of the Interior's unit dealing with threats and attacks against human rights advocates.
- (d) Expressing its deep concern at the new cases of deaths of members of the trade union movement registered with the Public Prosecutor's Office and occurring in 2020 and 2021, the Committee once again urges the Government, with the active participation and monitoring of the National Tripartite Committee and its subcommittee on implementation of the road map, to take the necessary steps to: (i) resume and strengthen the trade union committees and the Ministry of Interior's Special Investigation Unit for the analysis of attacks against human rights advocates; (ii) achieve full and effective coordination between the Ministry of the Interior and the Public Prosecutor's Office in the granting and handling of security measures for members of the trade union movement; and (iii) provide the necessary funds to ensure that all security measures required, especially personal measures, are granted as soon as possible to members of the trade union movement who may be at risk. The Committee requests that the Government keep it informed in this respect, paying particular attention to the situation of members of municipal trade unions who may be at risk.
- (e) The Committee requests the Government to contact and meet with the complainant organizations to facilitate the identification of all cases of anti-union violence they reported in their last communication. The Committee requests the Government, on the basis of the above, to supplement the information provided, indicating the measures taken to investigate the facts denounced and to ensure the protection of members of the trade union movement who may be at risk.
- (f) The Committee once again draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

B. The Government's reply

- 451.** In 18 communications sent between 6 December 2021 and 3 February 2023, the Government provided a range of information and updates regarding investigations into the acts of anti-union violence reported in the present case and on the protection of members of the trade union movement who may be at risk. This information included the meeting records from all the meetings held during that time by the National Tripartite Committee on Labour Relations and Freedom of Association (hereinafter the National Tripartite Committee) and its subcommittee on implementation of the road map in which the aforementioned topics were discussed in a tripartite manner.
- 452.** In those communications, the Government provided information about the institutional initiatives taken to address the phenomenon of anti-union violence. With regard to improving the effectiveness of the investigations aiming to identify and punish the perpetrators of acts of anti-union violence, the Government submits information provided by the Public Prosecutor's Office, much of which was shown to the National Tripartite Committee and its subcommittee on implementation of the road map. This information shows that the budget allocated to the Special Investigation Unit for Crimes against Judicial Officials and Trade Unionists and has increased significantly, from US\$104,140.90 in 2011 to US\$543,960.00 in 2021 and US\$1,288,252.003 in 2022. According to the Government's communication dated 7 January 2022, the Special Investigation Unit has four additional assistant prosecutors, making a team of 26 people in total, as well as two additional vehicles. According to the communication dated 3 January 2023 however, the Special Investigation Unit has a team of 22 officials.
- 453.** According to the information submitted by the Government on 7 January 2022, the Public Prosecutor's Office underlines that it has implemented a comprehensive case management mechanism, with the objective of: (i) dealing with cases strategically and addressing the criminal acts in a comprehensive manner, taking into account the potential involvement of criminal networks; and (ii) reducing delays. With regard to the Special Investigation Unit, the Public Prosecutor's Office highlights the establishment of two investigation groups, one for crimes committed before 2020 and another for more recent crimes. The Public Prosecutor's Office states that this unit structure enables it both to carry out more in-depth investigations of certain older cases (and to achieve results, such as in the case of the homicides of members of the Union of Commercial Workers of Coatepeque) and also to have better responsiveness to more recent cases.
- 454.** In its communications dated 6 December 2021, 7 January 2022 and 3 February 2023, the Government submits information relating to initiatives aimed to make interactions between the Public Prosecutor's Office and the trade union organizations more effective, with regard to the investigations into acts of anti-union violence. In this regard, they note that at the 29 November 2021 meeting of the Trade Union Technical Committee of the Public Prosecutor's Office: (i) several measures to facilitate communication between the trade union movement, the Public Prosecutor's Office and the Ministry of Labour were agreed, by identifying two senior officials of the Public Prosecutor's Office as contact points and determining that Fridays will be the days to deal with requests for information about the investigations from the trade unions; (ii) the Public Prosecutor's Office committed to issuing a number of circulars, including one stating that all offices of the Public Prosecutor's Office shall treat complaints from the trade union sector as urgent matters; and (iii) dates were proposed for five trade union committee meetings in 2022. In that regard, the various Government communications provide accounts of the meetings held between the Public Prosecutor's Office and trade union organizations in

2022, either in the context of the trade union committee or in the framework of the National Tripartite Committee and its subcommittee on implementation of the road map. Lastly, in its communication dated 3 February 2023, the Government submits the record of the meeting held on 20 January 2023 between the Chief Public Prosecutor and the National Tripartite Committee during which the Chief Public Prosecutor suggested that the trade union organizations request recognition as adhering complainants in the criminal proceedings with a view to having greater access to the information in the case files and being able to participate more actively.

- 455.** The Government notes that in the aforementioned meeting on 20 January 2023, the Chief Public Prosecutor, in accordance with what had been agreed with the joint mission of the ILO, the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) that took place in September 2022, reported on the holding of training on the application of General Directive No. 01-2015 for the effective criminal investigation and prosecution of crimes against trade unionists, members of workers' organizations and other labour and trade union activists within the Public Prosecutor's Office. She stated that: (i) the framework of the curriculum had been prepared by the Training Unit of the Public Prosecutor's Office (UNICAP) with support from the ILO and the Office of the United Nations High Commissioner for Human Rights (OHCHR) so that all the country's prosecutorial staff would be fully equipped to implement the directive; and that (ii) training for Regional and District Public Prosecutors had begun on 30 November 2022.
- 456.** The Government also refers in its various communications to the actions taken to provide effective protection for members of the trade union movement who may be at risk and submits in this regard the information provided by the Ministry of the Interior. The Government states in this regard that: (i) the Special Investigation Unit for the analysis of attacks against trade union leaders and members – a forum for the Ministry of the Interior and trade union organizations to exchange information about members of the trade union movement who may be at risk – was reinstated by means of the adoption by the Ministry of the Interior of Ministerial Decision No. 288-2022; (ii) the first meeting of this unit, scheduled to be held at the end of July 2022, could not take place due to the workers' inability to attend; (iii) the budget allocation for the Ministry of the Interior's Protection of Persons and Security Division increased from US\$876,616.00 in 2020 to US\$1,239,120 in 2022; (iv) there is an annual investment of US\$294,038 in the form of one year's salary for the 30 officials assigned to the Risk Analysis Unit; (v) the Protection of Persons and Security Division does not have a separate food budget for police officers assigned to trade union leaders and members, only the payment of their salary and related allowances, to cover their daily expenses; (vi) two trade union leaders currently have personal security measures, with four police officers assigned to this task; (vii) once notification has been received of a potentially risky situation, the Ministry of the Interior's "Protocol for the implementation of immediate and preventive security measures for trade union members, leaders, officers and activists, and labour rights activists, as well as the physical spaces in which they conduct their activities" is triggered. Out of the 46 requests for protection from members of the trade union movement received by the Ministry of the Interior between 1 January and 27 July 2022, 1 case led to the authorization of personal security measures, 39 to perimeter security measures and 6 are pending analysis; (viii) 30 of the 46 requests for protection came from the Public Prosecutor's Office; and (ix) the aforementioned demonstrates the existence of active coordination between the Ministry of the Interior and the Public Prosecutor's Office with regard to risky situations that might affect members of the trade union movement, as underlined by the security measures provided, among others, to Mr Carlos Mancilla, to the family of Ms Cynthia del Carmen Pineda Estrada and to the members of the Union of Commercial Workers of Coatepeque. With regard to the

complaint of threats against members of the Workers' Union of San Carlos of Guatemala University (STUSC), the Government reports in its communication dated 3 February 2023 that, at the request of the subcommittee on implementation of the road map, the Ministry of Labour has submitted information to the National Tripartite Committee about actions taken to provide protection to members of the STUSC.

- 457.** The Government also provides updated information on the investigations and judicial proceedings relating to concrete cases of homicide against trade union leaders and members, as well as overall data on the results obtained by the Public Prosecutor's Office and the courts in that regard. In its communication dated 4 August 2022, the Government reports that, according to data from the Public Prosecutor's Office, 97 cases of homicide of trade union leaders and members were recorded, noting that: (i) to date, 29 rulings have been handed down, of which 22 were guilty verdicts (relating to 19 homicides, with 3 cases giving rise to 2 guilty verdicts each), 6 not guilty and 1 security and correction measure; (ii) 5 cases have a date for public oral hearings; (iii) 1 new case gave rise to the presentation to the judiciary of the Public Prosecutor's Office's final indictment; (iv) 3 cases are in the opening stage of proceedings; (v) criminal proceedings have been dropped in 7 cases as a result of the death of the suspects. The Committee also notes the Government's indication that: (i) in so far as several new cases now have a date for public oral hearings, 5 new rulings are expected between now and the first half of 2023; and (ii) significant investigative and procedural progress has been made with regard to the 6 cases of homicides of trade union leaders and members that happened in 2020.
- 458.** The Government also submits reports from the Public Prosecutor's Office containing specific information about the status of the investigations – and in some cases the legal proceedings – relating to the homicides of the following people: Mr Julio Raquec Ishen, whose murder is the subject of Case No. 2445 before the Committee on Freedom of Association; Mr Pedro Rogelio Morales Gramajo, Mr Bruno Ernesto Figueroa, Mr Alejandro García Felipe, Ms Brenda Marleni Estrada Tambito, Mr José Guadalupe Hernández y Hernández, Mr Héctor David Xoy Ajualip, Mr Manuel de Jesús Ramírez, Mr Juan Fidel Pacheco Coc and Mr Pedro Zamora Álvarez.
- 459.** In its communication of 19 August 2022, the Government reports the homicide, on 8 August 2022, of Mr Hugo Eduardo Gamero González, Labour and Disputes Secretary of the Workers' Union of the Santo Tomás de Castilla National Port Enterprise (SINEPORNAC). The Government submits information provided by the Public Prosecutor's Office about 30 investigations carried out since 9 August 2022, including the interview conducted with the Finance Secretary of SINEPORNAC.
- 460.** In its communications dated 21 July 2022 and 3 February 2023, the Government submits a summary of the information that the Public Prosecutor's Office provided to the National Tripartite Committee and its subcommittee on implementation of the road map with regard to the identification of the motives for several homicides of members of the trade union movement. The Government also submits the records of those meetings, which include the discussions between the Public Prosecutor's Office and the tripartite members of those bodies. In the meetings on 28 February, 10 March, 21 April and 11 May 2022, facts were provided about three murders that had taken place in 2013 and 2017 when the perpetrators were given significant prison sentences: (i) in the case of the murder of Mr William Leonel Retana Carias (Union of Workers in the Municipality of Jalapa), the Public Prosecutor's Office declared that, although the ruling did not make reference to the crime's motive, investigations pointed to a case of extortion by a criminal gang; (ii) in the case of the murder of Mr Manuel de Jesús Ortiz Jiménez, the Public Prosecutor's Office indicated that the court had convicted the instigator of the crime and that a marital break down was the motive; and (iii) in the case of the homicide

of Luis Ovidio Ortiz Cajas, the court had convicted the person responsible for the events, Mr Ortiz Cajas having been the collateral victim of gang rivalry. In her 20 January 2023 meeting with the National Tripartite Committee, the Chief Public Prosecutor addressed in general terms the matter of the motives for the homicides of trade unionists, stating that: (i) the main purpose of the Public Prosecutor's Office is to establish whether the crime was committed as a consequence of the victim's trade union activity and any other potential hypotheses formulated in the course of the investigation; (ii) notwithstanding the foregoing, it was only in the case of the murder of Mr Tomás Francisco Ochoa Salazar, Dispute Secretary of the SITRABREMEN trade union organization, that the investigation by the Special Investigation Unit for Crimes against Judicial Officials and Trade Unionists determined that the homicide was committed for the victim's trade union activity, with that theory included in the respective indictment; (iii) in spite of the ample evidence provided by the Unit that proved the involvement of the Human Resources Chief, as the instigator of the crime as well as an active participant at the time of the crime, the court decided to convict the perpetrator and acquit the instigator of the crime, based on the argument that the members of the executive committee of the union indicated that there had been no threats or intimidation, that they did not have any disputes with the enterprise and that they had successfully negotiated a collective agreement; and (iv) the Public Prosecutor's Office has appealed the acquittal. The record of that meeting also indicates that: (i) the trade union representatives of the National Tripartite Committee were surprised by the tenor of the statements made by the executive committee of the union, since according to them these contradicted what those same people had maintained outside the criminal proceedings; (ii) a debate ensued in the National Tripartite Committee as to the potential pressure that people interviewed in the framework of criminal investigations could receive, from one side or the other, about how to obtain reliable statements and about how the Public Prosecutor's Office identified the trade unionists it interviewed; (iii) there was also a discussion of the need – emphasized by the Chief Public Prosecutor – for trade union organizations to request recognition as adhering complainants in the criminal proceedings to obtain greater access to information, with the trade union representatives stating that several courts had denied them such recognition; (iv) the Chief Public Prosecutor also mentioned that for 48 old homicides in which it had not been possible to identify suspects, the decision had been taken, in accordance with article 327 of the Criminal Code, to shelve those cases as it was materially not possible to successfully establish and identify the participation of any perpetrator; (v) the trade union representatives of the National Tripartite Committee stated that at the time of those homicides, the Public Prosecutor's Office did not give sufficient consideration to the potential anti-union motives of the homicides and requested that the premises of those investigations be reviewed.

- 461.** In communications in August and September 2022, the Government submitted information on the investigations carried out into death threats received by various trade union leaders and members. With regard to Mr Carlos Mancilla, General Secretary of the Unified Trade Union Confederation of Guatemala (CUSG), the Public Prosecutor's Office states that: (i) 39 investigations have been carried out that have connected the threats to a network of common criminals that commits extortion; (ii) recalls that Mr Mancilla has personal security measures. With regard to the complaints of death threats against members and leaders of the SITRAFITOLAY-GFLG-Pepsico trade union organization, the majority of those were shelved for not having identified any evidence of illegal actions; (iii) an inquiry remains ongoing into the complaint of threats against one of the union members and five investigations have been carried out into that; and (iv) recalls that perimeter security measures have been offered to members of that trade union.

C. The Committee's conclusions

462. *The Committee recalls that, in the present case, the complainants report numerous murders and acts of violence against trade union leaders and members, as well as impunity in that regard. While appreciating the detailed observations sent by the Government since the last examination of the case, the Committee continues to deeply deplore the numerous homicides of members of the trade union movement recorded since 2004 for which a judicial decision is still pending. The Committee notes with deep concern the Government's notification of the homicide of Mr Hugo Eduardo Gamero González, Labour and Disputes Secretary of SINEPORNAC. While it takes due note of the actions taken by the competent authorities in that regard, the Committee once again draws the Government's attention to the fact that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and that it is for governments to ensure that this principle is respected [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 84]*
463. *The Committee notes the information provided and updated on a regular basis by the Government with regard to the actions taken to address the phenomenon of anti-union violence. The Committee also takes note of the joint mission of the ILO, IOE and ITUC that took place in September 2022 in the framework of the Governing Body's follow-up of the ILO technical cooperation programme "Strengthening the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards" (see document GB.346/INS/10). The Committee observes that the aforementioned mission agreed a series of priority actions with the National Tripartite Committee to give new impetus to the implementation of the road map on freedom of association adopted by the Government in 2013 and that some of those actions relate to the effective investigation and punishment of acts of anti-union violence and the protection of members of the trade union movement who may be at risk.*

Allegations of murders of members of the trade union movement and other acts of anti-union violence

464. *The Committee takes notes, firstly, of the information provided by the Government relating to the institutional initiatives taken to strengthen the criminal justice response to acts of violence against members of the trade union movement. In this regard, the Committee takes particular note of:*
- *the very significant increase in the budget of the Special Investigation Unit for Crimes against Judicial Officials and Trade Unionists, which went from US\$104,140.90 in 2011 to US\$1,288,252.003 in 2022. The Committee observes however that it does not have specific information about the allocation of the additional funds received by the specialized unit or about the consequences of the doubling of its budget on its capacity for action;*
 - *in accordance with what had been agreed with the joint mission of the ILO, IOE and ITUC, the holding of training within the Public Prosecutor's Office on the application of General Directive No. 01-2015 for the effective criminal investigation and prosecution of crimes against trade unionists, members of workers' organizations and other labour and trade union activists;*
 - *the establishment of two investigation groups within the specialized unit, one for crimes committed before 2020 and another for more recent crimes;*
 - *the confirmation of the active role played by the National Tripartite Committee and its subcommittee on implementation of the road map in the regular monitoring of the criminal justice response to acts of anti-union violence and the strengthening of dialogue between those bodies and the Office of the Public Prosecutor and with the Chief Public Prosecutor.*

465. *The Committee goes on to note the information provided by the Government with regard to the outcomes of the investigations of the homicide cases examined in the present case and the punishment of the perpetrators. The Committee notes that, according to the information provided by the Government, out of a total of 97 homicides: (i) to date, 29 rulings have been handed down, of which 22 were guilty verdicts (relating to 19 homicides, with 3 cases giving rise to 2 guilty verdicts each), 6 not guilty and 1 security and correction measure; (ii) 5 cases have a date for public oral hearings; (iii) 1 new case gave rise to the presentation to the judiciary of the Public Prosecutor's Office's final indictment; (iv) 3 cases are in the opening stage of proceedings; (v) criminal proceedings have been dropped in 7 cases as a result of the death of the suspects. While taking note that 5 cases have a date for public oral hearings between the second half of 2022 and the first half of 2023, the Committee observes that no new guilty verdicts have been recorded since its last examination of the case in October 2021.*
466. *The Committee goes on to note the Chief Public Prosecutor's indication during the National Tripartite Committee meeting on 20 January 2023 that, based on article 327 of the Criminal Code, the investigations into 48 cases of homicide of members of the trade union movement were being shelved as, despite the years that have passed, it has not been possible to identify any clues about the potential perpetrators of those crimes. The Committee also notes that, during the same meeting, the Chief Public prosecutor stated that to date there had only been one homicide case, that of trade union leader Tomás Francisco Ochoa Salazar, in which the Public Prosecutor's Office had established the existence of an anti-union motive and presented it to the courts. The Committee notes that the Chief Public Prosecutor stated in that regard that the criminal court nonetheless decided to acquit the purported instigator of the crime on the basis of statements from members of the trade union committee and that the Public Prosecutor's Office has appealed that decision.*
467. *The Committee takes note of the detailed information provided by the Government about the investigations into several homicide cases, particularly those committed in 2020. The Committee observes however that the Government has not provided specific information on the progress of the investigations concerning the homicide of Mr Ludim Eduardo Ventura Castillo, member and leader of the Union of Education Workers of Guatemala.*
468. *Lastly the Committee takes note of the information provided by the Government about the investigations carried out into the threats received by Mr Carlos Mancilla, General Secretary of the CUSG and by leaders and members of the SITRAFRIOLAY -GFLG-Pepsico trade union. The Committee observes however that it has not received further information about the investigations carried out by the Ministry of the Interior's unit dealing with threats and attacks against human rights advocates that were related to acts of anti-union violence (see 396th Report, para. 338).*
469. *The Committee appreciates the level of detail in the information provided by the Government. The Committee takes due note of the aforementioned institutional initiatives and, in particular, the doubling of the budget allocated to the specialized unit. The Committee also once again welcomes the consolidation of the role played by the National Tripartite Committee and its subcommittee on implementation of the road map in the regular detailed monitoring of actions carried out to shed light on and punish the numerous acts of anti-union violence in the present case. The Committee highlights in particular the importance of the discussions held by the National Tripartite Committee with the Public Prosecutor's Office to identify the motives for the homicides of members of the trade union movement, on the manner of carrying out investigative interviews with members of the trade union movement, and on the role of the trade union organizations in criminal proceedings.*
470. *At the same time, the Committee notes that: (i) the vast majority of the homicides of trade union leaders and members examined in the present case have still not led to a guilty verdict, with no new convictions recorded since the Committee's last examination of the case; (ii) out of the 36 homicides*

identified as having particular significance by the National Tripartite Committee in 2021 (see 396th Report, para. 340), there have still only been 6 convictions, in spite of the length of time since the acts were committed; and (iii) in the majority of the cases that have seen convictions, there is still no information about the motives for the crimes or the potential existence of instigators.

471. In that context, the Committee observes with serious concern the Chief Public Prosecutor's declaration that 48 old homicide cases of members of the trade union movement for which it had been impossible to identify suspects were to be shelved. While it does not have identifying information for those cases or for the specific criteria used, the Committee notes that this decision would include half of the many homicide cases of members of the trade union movement examined in the framework of this case. Although it recognizes the particular difficulty in shedding light on older cases, the Committee stresses the importance that investigations into the murders of trade unionists should yield concrete results in order to reliably determine the facts, the motives and the persons responsible, in order to apply the appropriate punishments and to prevent such incidents recurring in the future [see **Compilation**, para. 96]. The Committee also recalls that in cases of physical or verbal violence against workers' and employers' leaders and their organizations, the Committee has emphasized that the absence of judgements against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights [see **Compilation**, para. 108].
472. In light of the foregoing, the Committee once again urges the Government, with the active participation and monitoring by the National Tripartite Committee and its subcommittee on implementation of the road map, to continue to take and intensify all the necessary measures to ensure the effective investigation of all acts of violence against trade union leaders and members, with a view to identifying those responsible and punishing the perpetrators and instigators of such acts, taking the trade union activities of the victims fully into consideration in the investigations, in accordance with Directive No. 01-2015. In this connection, the Committee specifically urges the Government to: (i) ensure that the doubling of the budget allocated to the specialized unit in 2022 translates into a significant increase in the criminal investigation capacities of the Special Investigation Unit for Crimes against Trade Unionists, enabling the investigations of both the most recent cases of violence and those of older cases to be tackled appropriately; (ii) take the necessary measures to ensure the competent authorities devote the attention and resources required for the investigations into the 36 homicides reported by the National Tripartite Committee; (iii) provide information on the result of the Public Prosecutor's Office's appeal of the acquittal handed down in relation to the murder of Mr Tomás Francisco Ochoa Salazar; (iv) provide information about the investigations carried out by the Ministry of the Interior's unit dealing with threats and attacks against human rights advocates that were related to acts of anti-union violence; (v) continue the ongoing dialogue with the judiciary to ensure, through all appropriate mechanisms, that cases of anti-union violence are promptly examined by the criminal courts, and facilitate the participation of trade union organizations in criminal proceedings relating to crimes affecting their members; and (vi) take all necessary measures to ensure the continued monitoring role of the National Tripartite Committee and its subcommittee on implementation of the road map, taking into account the actions requested by that body in December 2019 (see 396th Report, para. 339). The Committee requests the Government to keep it informed in this respect.

Protection of members of the trade union movement who may be at risk

473. In its previous examinations of this case, in view of the continued frequent acts of anti-union violence, the Committee had urged the Government to take the necessary measures to: (i) reactivate the Ministry of Interior's trade union committee and its Special Investigation Unit for the analysis of attacks against human rights advocates; (ii) achieve full and effective coordination between the

Ministry of the Interior and the Public Prosecutor's Office in the granting and handling of security measures for members of the trade union movement; and (iii) provide the necessary funds to ensure that all necessary security measures, especially personal measures, are granted as soon as possible to members of the trade union movement who may be at risk.

- 474.** *The Committee takes note of the updated information from the Government on the security measures for members of the trade union movement, which indicates that: (i) out of the 46 requests for protection from members of the trade union movement received by the Ministry of the Interior between 1 January and 27 July 2022, 1 case led to the authorization of personal security measures, 39 to perimeter security measures and 6 are pending analysis; (ii) 30 of the 46 requests had come from the Public Prosecutor's Office, which highlighted the coordination between the 2 institutions; (iii) there are currently 2 trade union leaders who have been granted personal security measures; (iv) the total budget allocated to the Protection of Persons and Security Division of the Sub-Directorate General of Operations of the National Civil Police has increased to US\$1,239,120 in the fiscal year 2022, compared to US\$876,600 in 2020; and (v) the Protection of Persons and Security Division does not, however, have a separate food budget for police officers assigned to trade union leaders and members.*
- 475.** *The Committee also takes note of the Government's report that: (i) the Special Investigation Unit for the analysis of attacks against trade union leaders and members – a forum for the Ministry of the Interior and trade union organizations to exchange information about members of the trade union movement who may be at risk – was reinstated by means of the adoption by the Ministry of the Interior of Ministerial Decision No. 288-2022; and (ii) that the first meeting of this unit, scheduled to be held at the end of July 2022, could not take place due to the workers' inability to attend.*
- 476.** *The Committee takes note of this information. The Committee also observes that in the framework of the priority actions adopted during the visit of the joint mission of the ILO, IOE and ITUC, it was agreed to: (i) invite the Ministry of the Interior to attend the National Tripartite Committee at least twice a year to report on the protection measures granted to members of the trade union movement and on other actions to prevent and mitigate acts of anti-union violence, and the outcomes achieved; and (ii) revise the ministerial agreement reactivating the Ministry of the Interior's trade union committee, on the basis of input from the workers, and ensure that it had begun its work effectively.*
- 477.** *The Committee also notes that it has not received information on the reactivation of the Special Investigation Unit for the analysis of attacks against human rights advocates, and on the establishment, proposed by the Chief Public Prosecutor in 2021, of a preventive security committee for trade union leaders and members that would be composed of a representative of the Public Prosecutor's Office, a representative of the Ministry of the Interior and a representative of the Ministry of Labour (see 396th Report, para. 324). In the aforementioned context of frequent acts of anti-union violence, the Committee also observes, as highlighted in its previous examinations of the case, that a very limited number of personal protection measures have been granted to members of the trade union movement who may be at risk compared to the high number of perimeter security measures.*
- 478.** *Recalling once again that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and that it is for governments to ensure that this principle is respected [see **Compilation**, para. 84] and reiterating its deep concern at the murder of a member of the trade union movement in 2022 and at the threats received by, among others, the General Secretary of the CUSG, the Committee once again urges the Government to take the necessary measures to: (i) ensure the effective functioning and strengthening of the Ministry of the Interior's trade union committees and the reactivation of its Special Investigation Unit for the analysis of*

attacks against human rights advocates; (ii) establish regular dialogue between senior officials from the Ministry of the Interior and the National Tripartite Committee and its subcommittee on implementation of the road map; (iii) strengthen and systematize coordination between the Ministry of the Interior and the Public Prosecutor's Office in the granting and handling of security measures for members of the trade union movement; and (iv) provide the necessary funds to ensure that all necessary security measures, especially personal measures, are granted as soon as possible to members of the trade union movement who may be at risk, without them having to incur costs for the upkeep of the officers assigned to protect them. The Committee requests the Government to keep it informed in this respect.

The Committee's recommendations

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

- (a) The Committee expresses once again its deep concern over the seriousness of this case, given the many instances of murder, attempted murder, assaults and death threats and the climate of impunity.
- (b) The Committee once again urges the Government, with the active participation and monitoring by the National Tripartite Committee and its subcommittee on implementation of the road map, to continue to take and intensify all the necessary measures to ensure the effective investigation of all acts of violence against trade union leaders and members, with a view to identifying those responsible and punishing the perpetrators and instigators of such acts, taking the trade union activities of the victims fully into consideration in the investigations, in accordance with Directive No. 01-2015. In this connection, the Committee specifically urges the Government to: (i) ensure that the doubling of the budget allocated to the specialized unit in 2022 translates into a significant increase in the criminal investigation capacities of the Special Investigation Unit for Crimes against Trade Unionists, enabling the investigations of both the most recent cases of violence and those of older cases to be tackled appropriately; (ii) take the necessary measures to ensure the competent authorities devote the attention and resources required for the investigations into the 36 homicides reported by the National Tripartite Committee; (iii) provide information on the result of the Public Prosecutor's Office's appeal of the acquittal handed down in relation to the murder of Mr Tomás Francisco Ochoa Salazar; (iv) provide information about the investigations carried out by the Ministry of the Interior's unit dealing with threats and attacks against human rights advocates that were related to acts of anti-union violence; (v) continue the ongoing dialogue with the judiciary to ensure, through all appropriate mechanisms, that cases of anti-union violence are promptly examined by the criminal courts, and facilitate the participation of trade union organizations in criminal proceedings relating to crimes affecting their members; and (vi) take all necessary measures to ensure the continued monitoring role of the National Tripartite Committee and its subcommittee on implementation of the road map, taking into account the actions requested by that body in December 2019. The Committee requests the Government to keep it informed in this respect.
- (c) Expressing its deep concern at the murder of a member of the trade union movement in 2022 and at the threats received by, among others, the General Secretary of the CUSG, the Committee once again urges the Government to take the necessary measures to: (i) ensure the effective functioning and strengthening of the

Ministry of the Interior's trade union committees and the reactivation of its Special Investigation Unit for the analysis of attacks against human rights advocates; (ii) establish regular dialogue between senior officials from the Ministry of the Interior and the National Tripartite Committee and its subcommittee on implementation of the road map; (iii) strengthen and systematize coordination between the Ministry of the Interior and the Public Prosecutor's Office in the granting and handling of security measures for members of the trade union movement; and (iv) provide the necessary funds to ensure that all necessary security measures, especially personal measures, are granted as soon as possible to members of the trade union movement who may be at risk, without them having to incur costs for the upkeep of the officers assigned to protect them. The Committee requests the Government to keep it informed in this respect.

- (d) The Committee once again draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

Case No. 3366

Definitive report

**Complaint against the Government of Honduras
presented by
the Single Confederation of Workers of Honduras (CUTH)**

Allegations: The complainant organization alleges the refusal by the Secretariat of Internal Affairs, Justice and Decentralization to register the executive board of the National Association of Public Sector Employees

- 480.** The complaint is contained in communications of 9 November 2018 and 23 May 2019 presented by the Single Confederation of Workers of Honduras (CUTH).
- 481.** The Government of Honduras sent its observations in communications of 31 October 2019, 5 October 2022 and 17 February 2023.
- 482.** Honduras 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

- 483.** In its communication of 9 November 2018, the CUTH alleges the interference by officials of the Secretariat of Internal Affairs, Justice and Decentralization (SGJD) in the internal affairs of its affiliate, the National Association of Public Sector Employees (ANDEPH), based on its rejection of an application for registration of the executive board for the 2018–22 period, concealment of notification of this rejection, request to the members of this board to resign from their positions owing to their disagreement with their election and, subsequently, convocation of a congress of ANDEPH members in order to elect a new executive board.

- 484.** The complainant indicates that, on 13 March 2018, ANDEPH held an ordinary national congress of members in which, independently and in accordance with the applicable legislation and its constitutions, the national executive board for the 2018–22 period was elected. The complainant indicates that an application was made for the board's registration to the Directorate for the Regulation, Registration and Monitoring of Public Associations of the SGJD in a written communication of 21 March 2018. A copy of the communication is attached to the complaint, showing that the board was chaired by Rubén Matute Sarmiento, with Fredy Nahúm Gómez as General Secretary. In addition, the complainant indicates that the above-mentioned application for registration was ultimately rejected by the SGJD by resolution No. 1465-2018 of 13 September 2018 and that, as the SGJD concealed notification of that resolution, it only came to light on 5 November 2018, when the deadline for filing the corresponding appeal against the decision had passed.
- 485.** The complainant also indicates that, in private meetings, certain SGJD officials requested the members of the executive board elected on 13 March 2018, in an illegal, arbitrary, abusive and ill-intentioned manner, to resign from their positions after expressing disagreement with their election. In addition, the complainant indicates that on 7 November 2018, a congress of ANDEPH members was held in Comayagua, convened by the SGJD in order to appoint a new executive board, the members of which, it indicates, were close to the incumbent SGJD Secretary of State.
- 486.** In its communication of 23 May 2019, the complainant reiterates the above allegations and adds that the challenge it filed against the appointment of the executive board elected on 7 November 2018 was declared inadmissible, and that it subsequently filed an appeal in that respect.
- 487.** In its above-mentioned communications, the complainant states that the situations described above did not allow ANDEPH to develop its operational plans for ten months and that various actions were taken, and several national and international complaints were filed in this regard. These include a note sent on 29 May 2018 to the Secretary of State of the SGJD by the elected Chairperson of ANDEPH, Mr Matute, and the lodging of a complaint with the Human Rights Commissioner of Honduras dated 12 July 2018, both of which are attached to the complaint. In the complaint it is stated that César Chirinos Andrade, Mario Isaac Zelaya and Joel Villalta Romero had illegitimately requested the SGJD to register another executive board, assuming functions not conferred on them, just as they had done in 2014 with the backing of officials of the SGJD.

B. The Government's reply

- 488.** In its communication of 31 October 2019, the Government provides information on various administrative proceedings that took place in 2018 regarding the applications for registration of the executive board (or board of directors) of ANDEPH, to which the complaint refers.
- 489.** The Government reports that in 2018 various requests were submitted to the SGJD concerning the registration of a new ANDEPH executive board. The Government specifies that:
- on 13 March 2018, the SGJD received an application for the registration of an executive board submitted by German Amador Berrios, who identified himself as the legal representative of ANDEPH; in addition, it received an application for non-registration of any board submitted by Joel Villalta Romero, who identified himself as the attorney of the executive board of ANDEPH;

- on 21 March 2018, the SGJD received two independent applications for the registration of executive boards, one submitted by Carlos Flores Zavala and the other by Cesar Zúñiga Lopez, who identified themselves as legal representatives of ANDEPH; and
 - on another occasion with no date indicated, the SGJD received an objection to an application for registration of the executive board, which was submitted by the lawyer, Heber Misael Cerrato, on behalf of Leobana Ardón Morga, Francisbeth Madrid Aguilar, Jorge Gonzales Padilla, Dennis Reyes Martínez and Walter Munguía Martínez.
- 490.** In this respect, the Government indicates that, by resolution No. 1465-2018 of 13 September 2018, the SGJD decided to: (i) refrain from considering the various applications for registration of the ANDEPH executive boards and their corresponding objections, leaving the channels open for, where appropriate, the parties to come before the competent courts to discuss the dispute that had arisen between them; and (ii) refrain from issuing any statement until the said dispute has come before the courts. The Government states that the parties concerned were notified of the above-mentioned resolution on 21 September 2018 by means of a notice posted on the notice board of the relevant office.
- 491.** The Government explains that the decision contained in resolution No. 1465-2018 was based on the fact that the SGJD is not sufficiently competent to hear disputes arising from the election of an executive board or from the objection to the registration of the board and that, therefore, it could not ascertain the veracity or legality of the election process of each of the executive boards that the different parties requested to register. Thus, the Government states that its resolution was based on sections 8 and 9 of agreement No. 441-2016, which approves the procedure for the registration and recording of information concerning the public associations, under which aggrieved parties are entitled to address the court where they object to the election of a board of directors and to its registration.
- 492.** Furthermore, the Government provides information on the previous election of an executive board of ANDEPH, and on its effective registration. In this respect it indicates that:
- on 1 November, Heber Cerrato Salgado, in his capacity as representative of César Chirinos Orellana, Mario Isaac Zelaya, Fredy Nahúm Gómez and Carlos Reyes Raudales, submitted to the SGJD a request for the convocation of an ordinary congress of ANDEPH members to be held on 7 November 2018 at the Comayagua Bar Association to elect new leaders of the national executive board. Through a communication of 5 November 2018, published in the newspaper “La Prensa”, the SGJD convened ANDEPH members to the congress at the above-mentioned date and place; and
 - on 13 November 2018, the lawyer, Amílcar Umanzor Pineda, submitted an application for the registration of an ANDEPH executive board. By a resolution of 20 December 2018, the SGJD issued the registration of the executive board for a four-year term, chaired by Fredy Nahúm Gómez, with César Chirinos as General Secretary, and the corresponding certificate. In turn, the Directorate for the Regulation, Registration and Monitoring of Public Associations, the competent department of the SGJD, carried out the registration of the ANDEPH executive board.
- 493.** In its communication of 5 October 2022, the Government reports that, despite its request for information in 2022, the incumbent Chairperson of ANDEPH, Edwin Canales, did not provide any information on new developments related to the complaint.
- 494.** Lastly, in its communication of 17 February 2023, the Government indicates that the Directorate for the Regulation, Registration and Monitoring of Public Associations of the SGJD

registered the new executive board of ANDEPH for the period 2022–26 by administrative resolution No. 914-2022 of 7 July 2022.

C. The Committee's conclusions

- 495.** *The Committee notes that the complainant alleges the interference in 2018 by SGJD officials in the internal affairs of its affiliated body, ANDEPH.*
- 496.** *In this regard, the Committee notes that the complainant alleges that: (i) by resolution No. 1465-2018 of 13 September 2018, the SGJD rejected the application of 21 March 2018 requesting the registration of the ANDEPH executive board chaired by Rubén Matute Sarmiento with, as General Secretary, Fredy Nahúm Gómez, who had been elected for 2018–22 at an ordinary national congress of members held on 13 March 2018; (ii) the SGJD concealed the notification of the aforementioned resolution, which only came to light on 5 November 2018, which prevented the corresponding appeal from being filed as the deadline to do so had passed; (iii) in private meetings, certain SGJD officials requested the members of the said executive board to resign from their positions after expressing disagreement with their election; (iv) on 7 November 2018, at a national congress of members convened by the SGJD, a new ANDEPH executive board composed of persons close to a senior SGJD official was elected for 2018–22; (v) the challenge filed against the appointment of this board was declared inadmissible, which led to the subsequent filing of an appeal; and (vi) the situations described above prevented ANDEPH from developing its operational plans, and various actions were taken and several national and international complaints were filed in this respect.*
- 497.** *In addition, the Committee notes the Government's observations according to which: (i) in 2018, the SGJD received applications for the registration of more than one ANDEPH executive board, including the application of 21 March 2018 concerning the registration of the committee chaired by Rubén Matute Sarmiento, to which the complaint refers; additionally, the SGJD also received requests to reject the above applications for registration; (ii) after considering that there was an internal dispute regarding the election and registration of the executive board in question, based on the provisions of agreement No. 441-2016 approving the procedure for the registration and recording of information concerning public associations, the SGJD issued resolution No. 1465-2018 of 13 September 2018, by which it decided to refrain from considering the aforementioned registration applications and requests for their refusal, and also from issuing any statement in this respect until the dispute arising between the parties involved was resolved by the courts of justice; (iii) the aforementioned resolution was notified on 21 September 2018 to the parties concerned by means of a notice posted on the notice board of the relevant office; (iv) subsequently, further to a request submitted on 1 November 2018, the SGJD convened an ordinary congress of ANDEPH members on 7 November 2018 at the Comayagua Bar Association to elect new leaders of the national executive board; (v) acting on a request of 13 November 2018, the SGJD issued, by resolution of 20 December 2018, the registration for a four-year term of an ANDEPH executive board, chaired by Fredy Nahúm Gómez, with César Chirinos as General Secretary, and the corresponding certificate; and (vi) the Directorate for the Regulation, Registration and Monitoring of Public Associations, the competent department of the SGJD, carried out the registration of the board in question.*
- 498.** *The Committee notes that from the above information it is clear that there was an internal dispute within ANDEPH regarding the election of the national executive board for 2018–22, which led to the SGJD, as the competent department, receiving both applications for the registration of various boards for that period, and requests to reject such applications and that, as a result of the foregoing, it decided to refrain from considering them and from issuing statements in this respect until the dispute in question was resolved by the courts of justice, under resolution No. 1465-2018 of 13 September 2018.*

- 499.** *In this respect, the Committee recalls that when internal disputes arise in a trade union organization they should be resolved by the persons concerned (for example, by a vote), by appointing an independent mediator with the agreement of the parties concerned, or by intervention of the judicial authorities and that, specifically, when two executive committees each proclaim themselves to be the legitimate one, the dispute should be settled by the judicial authority or an independent arbitrator, and not by the administrative authority [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1621 and 1620].*
- 500.** *In the light of the foregoing, the Committee is struck by the Government's indication that, two months after the adoption of resolution No. 1465-2018, the SGJD decided to process a new application for registration of an ANDEPH executive board and finally issued its registration for a four-year period by resolution of 20 December 2018. In this respect, the Committee: (i) notes that such registration was, according to information of the complainant, subject to various challenges; and (ii) regrets that it was not informed of these actions, which, it is hoped, have followed their usual course and have been duly resolved. Based on the above, the Committee requests the Government to ensure that, in the absence of a solution identified by the interested parties themselves, the resolution of internal disputes within a trade union organization effectively falls to the judicial authority or an independent mediator agreed by the parties, and not to the administrative authority. Finally, the Committee notes that the mandate of the ANDEPH executive board for 2018–22, to which the complaint refers, has come to an end, and thus the mandate of the corresponding board for the 2022–26 term has entered into force, recognized by administrative resolution No. 914-2022 of 7 July 2022. In these circumstances, the Committee considers that this case is closed and does not call for further examination.*

The Committee's recommendations

- 501.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) The Committee requests the Government to ensure that, in the absence of a solution identified by the interested parties themselves, the resolution of internal disputes within a trade union organization effectively falls to the judicial authority or an independent mediator agreed by the parties, and not to the administrative authority.**
 - (b) The Committee considers that this case is closed and does not call for further examination.**

Case No. 3426

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

**Complaint against the Government of Hungary
presented by
the Forum for the Cooperation of Trade Unions (SZEF)**

Allegations: The complainant organization alleges that Government Decree 27/2021 (I.29) on the declaration of an emergency situation and the entry into force of emergency measures and Government Decree 36/2022 (II.11) on certain emergency rules concerning public education institutions, restrict the right to strike in public education institutions

- 502.** The complaint is contained in communications dated 23 March 2022 and 22 April 2022, submitted by the Forum for the Cooperation of Trade Unions (SZEF), one of the largest trade union confederations in Hungary, bringing together trade unions representing workers in public education, public health and social care, public collections, cultural and art institutions, state and local public administration, the judiciary, public order and public security agencies.
- 503.** The Government of Hungary transmitted its observations on the allegations in communications dated 4 July 2022 and 3 February 2023.
- 504.** Hungary 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

- 505.** In its communications dated 23 March and 22 April 2022, the SZEF alleges that the measures taken by the Government of Hungary pose a serious threat to the exercise of the right to strike. In particular, it alleges that Government Decree 27/2021 (I.29) on the declaration of an emergency situation and the entry into force of emergency measures and Government Decree 36/2022 (II.11) on certain emergency rules concerning public education institutions, are contrary to ILO Convention No. 87 as they restrict the right to strike.
- 506.** The complainant indicates that the joint strike committee of the Democratic Trade Union of Teachers (PDSZ) and the National Teachers' Trade Union (PSZ) announced a strike as of 16 March 2022 for an indefinite period of time to enforce the strike demands and requested the government representative to the conciliation procedure to be appointed on the basis of article 2(2) of Act VII of 1989 on Strikes (Strike Act).
- 507.** Upon the appointment of the Deputy State Secretary of the Ministry of Education and Research, the parties began discussions on the extent and conditions of sufficient minimum services.

- 508.** The complainant alleges that before the consultations could have been concluded and before the next round of negotiations, the Government adopted Government Decree 36/2022 (II.11) on certain emergency rules concerning public education institutions on 11 February 2022, which subsequently entered it into force on 12 February 2022.
- 509.** The complainant notes that according to section 1 of Government Decree 36/2022 (II.11):
- During the period of an emergency situation pursuant to Government Decree 27/2021 (I.29) on the declaration of an emergency situation and the entry into force of emergency measures (hereinafter referred to as “emergency situation”), in order to ensure the continuity of the education and training of children and students within the public education system and the effective implementation of the epidemiological measures, the services specified in paragraphs (2) to (9) shall be provided as sufficient (minimum) services within the meaning of article 4 (2) of Act VII of 1989 on Public Education for children and students affected by the strike and who are in a legal relationship with public education institutions (hereinafter referred to as “public education institution”) within the meaning of article 7(1) of Act CXC of 2011 on National Public Education.
- 510.** The complainant adds that since the conciliation between the parties on the issue of sufficient services did not lead to a result, the trade unions initiated a non-litigation procedure with the court to define the extent of sufficient services and also to initiate the individual constitutionality review of the norm.
- 511.** The complainant notes that by its order No. 22.Mpk.75.042/2022/6, the Metropolitan Administration and Labour Court of Budapest rejected both the request for the definition of the level of sufficient services and the request for the individual constitutionality review. In the reasoning of the order, the Court stated, inter alia, that “in view of the fact that, in the case of the industrial action referred to in the application, Government Decree 36/2022 (II.11) on certain emergency rules concerning public education institutions provides for the extent and conditions of sufficient services, the Court cannot decide on them”.

B. The Government’s reply

- 512.** In its communications of 4 July 2022 and 3 February 2023, the Government provides its observations on the complaint lodged by the SZEF.
- 513.** In its communication of 4 July 2022, the Government provides information on relevant administrative and court proceedings and their respective outcomes. The Government details the relevant sections of the Fundamental Law of Hungary that grants the right to organize and of trade unions’ activities, the right to enter into negotiations and conclude collective agreements and to act jointly in order to protect their interests, which covers the right of workers to discontinue work (Freedoms and Responsibilities article XVII, section 2). According to article XVII, section 2, of the Fundamental Law of Hungary, “Employees, employers and their organizations shall have the right, as provided for by an act, to negotiate with each other and conclude collective agreements, and to take collective action to defend their interests, including the right of workers to discontinue work”.
- 514.** In connection with the Fundamental Law of Hungary, the Government also provides information on the relevant sections of Act CLXXV of 2011 on Freedom of Association, on Non-profit Status, and the Operation and Support of Civil Organizations regulating the right to organize (section 3), the Labour Code (Act I of 2012) regulating the rights of negotiating and collective agreements (sections 270–272) and Act VII of 1989 on Strikes (Strike Act) regulating the right to strike, its prohibition and limitation.

515. With respect to the right to strike, the Government notes that section 4 of the Strike Act provides that:

(1) During the time of the strike, the opposing parties continue further conciliation for the settlement of the debated question, and are obliged to ensure the protection of persons and of property. (2) In the case of employers who perform activities of fundamental public concern – such as, in particular, in the field of mass transportation on public roads and telecommunications, as well as at suppliers of electricity, water, gas and other energy – the right to strike may be exercised in a way so as not to impede the performance of services maintained at a level deemed sufficient. (3) The level of service deemed sufficient and the related requirements may be defined by an act of Parliament. If not governed by an act of Parliament the level of service deemed sufficient and the related requirements shall be agreed upon previously, during the pre-strike negotiations; in this case the strike may be carried out if the parties concluded the agreement, or failing this, if the level of service deemed sufficient and the related requirements had been determined by final decision of the court hearing labour disputes, acting on the request of either of the parties.

516. Concerning the facts of the events, the Government explains that on 1 October 2021, the PDSZ and the PSZ formed a joint strike committee and sent their demands concerning a pay rise for teachers and pedagogical assistants, the decrease of teachers' contact hours and the revision of regulations on the mandatory COVID-19 vaccination policy. In line with section 2(2) of the Strike Act, the Deputy State Secretary responsible for public education was appointed to conduct the negotiations with the strike committee. Negotiations were held on the following dates: 13 October 2021, 3 and 18 November 2021, 1 and 15 December 2021, 12 and 24 January 2022, and 2 March 2022. The Government notes that the strike committee announced a two-hour warning strike for 31 January 2022 and declared a strike from 16 March 2022 in the event of unsuccessful strike negotiation.

517. The Government also notes that on 8 February 2021, a state of emergency was declared in Hungary (Government Decree 27/2021 (I.29), which lasted until 31 May 2022, and Government Decree 181/2022 (V.24) on the lifting of the state of emergency). The Government points out that given the existence of a state of emergency, the declaration of the strike by the strike committee was announced under special legal order.

518. The Government explains that since during the negotiations no agreement was reached on substantive demands of the strike committee, the focus was turned towards the issue of the level of service deemed sufficient. According to section 4 of the Strike Act: "In the case of employers who perform activities of fundamental public concern, the right to strike may be exercised in a way so as not to impede the performance of services maintained at a level deemed sufficient". The Government notes that as the strike committee did not argue that the level of service deemed sufficient in the field of public education should be defined, it was only the extent of these services that needed to be agreed upon. The Government indicates that since the trade unions did not consider education and teaching as part of public education as of fundamental public concern, they did not intend to perform educational and teaching activities during the time of the strike, providing only childcare in certain appointed institutions. The Government's position was that just as the right to strike is a right granted to the unions by the Fundamental Law of Hungary, so is the children's right to development, culture and education. Therefore, education is a service of fundamental public concern and thus, a defined number of classes are necessary to be held beyond providing childcare. The Government adds that the above situation was compounded by the aforementioned state of emergency caused by the COVID-19 pandemic necessitating to ensure that the isolation and health protection measures previously imposed in the public education sector were

maintained during the strike. The Government notes that there was no agreement reached on the level of service deemed sufficient.

- 519.** The Government further notes, that on the basis of paragraph (3) of section 4 of the Strike Act, on 22 December 2021, the strike committee filed a motion to the Court to rule on the level of services deemed sufficient in connection with the two-hour warning strike planned to take place on 31 January 2022. The Government submits that the Court closed the case on 13 January 2022 while at the same time rejecting the motion. On 17 January 2022, the strike committee launched a new procedure to which the Government's side submitted a counterclaim. In this case, on 28 January 2022 in the first instance order, the Court ruled that the proposed strike was legal and accepted the strike committee's standpoint as for the level of services deemed sufficient. The Government, based on paragraph (2) of section 5, appealed the ruling in spite of the call of the strike committee on 28 January 2022 to waive their right to appeal. The Government indicates that on 31 January 2022 the strike committee carried out the planned two-hour warning strike in spite of there not being a court ruling on the level of services deemed sufficient. The appellate court, on 10 February 2022, states that the warning strike of 31 January was illegal due to the lack of previous agreement of the parties and/or court ruling on the level of services deemed sufficient.
- 520.** The Government notes that on 11 February 2022, Government Decree 36/2022 (II.11) on regulations in the state of emergency concerning public education was adopted. The Decree determined the conditions which had to be provided in the public education sector in case of a strike during the period of the effect of Government Decree 27/2021 (I.29) as for the level of services deemed sufficient. These are enumerated as follows: childcare in line with the rules of separation/social distancing, provisions of meals, and participation in prescheduled medical screenings; holding up to 50 per cent of students' classes; holding up to 100 per cent of classes in the relevant subjects for senior students preparing for school-leaving exams; taking care of children with special educational needs and the ones staying in dormitories; and providing childcare in kindergartens.
- 521.** The Government also notes that on 18 February 2022, the strike committee submitted another motion to the Court requesting the determination of the level of services deemed sufficient for the strike to be started on 16 March 2022 in a way that the Court disregard Government Decree 36/2022 (II.11) and accept their proposals on the issue. At the same time, they also asked the Court to initiate a procedure for declaring the above decree unconstitutional at the Constitutional Court. The Government indicates, that on 26 February 2022, Government Decree 36/2022 (II.11) came into effect. On 24 February 2022, the Court rejected the request of the strike committee in the first instance, on 8 March 2022 in the second instance. On 4 March 2022, the strike committee turned straight to the Constitutional Court asking them to declare the decree unconstitutional. To this day there is no decision from the Constitutional Court in this case.
- 522.** The Government also adds, that on 16 March 2022, the strike was carried out, with the stipulations determined by Government Decree 36/2022 (II.11). In some cases, the requirements for the level of services deemed sufficient were not met by the strikers, these incidents were later referred to as "civil disobedience". The Government explains that the term "civil disobedience" is not recognized by the Hungarian legal system. Disregarding the regulations concerning the level of services deemed sufficient and going on strike without any lawful cause is an offence against duties determined by laws concerning employment and appointment to public services.

523. Finally, the Government explains, that on 1 April 2022 – with regard to the upcoming parliamentary elections of 3 April 2022 – the strike committee suspended the strike until Hungary's new government is formed. On 31 May 2022 the state of danger declared in Government Decree 27/2021 (I.29) came to an end, thus all relevant decrees adopted during the period of the state of danger became void, including the impugned Government Decree 36/2022 (II.11).
524. With respect to the complaint submitted by the SZEZ, the Government notes that its position is primarily based on the fact that the complaint had become redundant because the impugned Decree had since then been repealed. According to section 4(2) of Government Decree 36/2022 (III.11), the Decree is to be repealed at the same time as Act I of 2021 on the protection against the COVID-19 pandemic. Section 5/A declares that the very law will be repealed on 1 June 2022. The Government, nonetheless, adds that section 14 of Act V of 2022 on issues regarding the termination of the state of emergency – now in line with paragraph (3) of section 4 of the Law on Strike – re-regulates the issues of the level of services deemed sufficient in the public educational sector, but the SZEZ's complaint had not been directed against this piece of legal regulation. In its communication submitted on 3 February 2023, the Government clarifies that Act V of 2022 entered into force on 1 June 2022 and that its content is identical in its essence to that of Government Decree 36/2022 (III.11) and notes that its position as expressed in its communication dated 4 July 2022 and detailed below – in view of the concordance of the content between Act V of 2022 and Government Decree 36/2022 (III.11) – remain unchanged.
525. The Government in its response describes the relevant ILO Conventions that Hungary ratified (Convention Nos 87 and 98, the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154)). It notes that due to the fact that none of these Conventions include the ensuring of the right to strike, the Government, similarly to the SZEZ will rely exclusively on the ILO's case law in respect of interpreting the right to strike. To do so, the Government recalls the following paragraphs of the **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 837, 827–830, 836, 840, 842, 845–846.
526. Based on the above paragraphs of the **Compilation**, the Government concludes that regulations having been impugned in the SZEZ's complaint are in line with ILO's case law. The Government indicates that according to the ILO's case law, the level of service deemed sufficient should fulfil citizens' needs while preserving the sufficient level of exerting pressure – a principle the regulations in Hungary guarantee. The Government explains that although public education is not considered an essential service – with the exception of provision of meals to school children and the cleaning of schools (paras 840 and 842) – the combined implication of providing childcare for schoolchildren and the state of emergency during the COVID-19 pandemic are such factors that can establish that the right to strike may be restricted or prohibited [see **Compilation**, paras 830(2) and 836] given such factors can constitute unequivocal and direct danger to the life, personal safety or health of part of the population (i.e. children and students). The Government notes that it can be readily accepted that minors between the ages of 14–18 with limited capacities, and those between the ages of 0–14 with no capacities, must be provided with childcare for the sake of their own security.
527. The Government also adds that the purpose of educational facilities is not only to pass on knowledge but to ensure their attendees' safety. According to section 1 of article XVI of the Fundamental Law, "every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development". In this respect the Government also refers to articles 3(1)–(2), 24(1) and 28 of the United Nations Convention on the Rights of the

Child. In line with the above, the Government reports that Government Decree 36/2022 (III.11) provided for the following:

Article 1(2): In those educational facilities that are participating in the strike, the care of children and pupils must be provided as follows: (a) On every workday of the strike from 7 a.m. until 4 p.m., in the case of elementary schools until 5 p.m., in kindergartens until 6 p.m.; (b) In that educational facility where the child/student receiving an education due to his/her legal relationship; (c) With regard to the pandemic environment in a way that every child/student should be grouped together in the same classroom with the ones that they were originally grouped with before the strike and in compliance with the various state of danger regulations, the mixing of children belonging to different classes preferably should be avoided and care should be provided in the same room where they stayed before the strike; (d) In every group or class there should be at least one qualified kindergarten teacher, teacher, special needs teacher, tutor, special education teacher and/or assistant present; (e) During the provision of care the children/pupils should spend at least 1 hour in the morning and 1 hour in the afternoon outside – weather permitting – with regards to the rules on social distancing; and (3) In institutions affected by the strike, the provision of meals should be ensured complying with regulations referring to public catering, health and other professional regulations at the same premises and in the manner prior to the strike.

According to the Government applying these regulations, the right to strike is granted in the field of public education and can serve as a means to apply pressure.

- 528.** The Government also argues that while the ILO's case law does not consider teachers as public servants exercising authority in the name of the State [see *Compilation*, paras 827–829 and 845], it nonetheless provides for limiting the right to strike on grounds that public education is a sector the suspension of which for a longer than the defined period of time might become of essential importance [see *Compilation*, para. 837]. As a consequence of a strike that affects the institutional system of public education, socialization, learning and spiritual growth may become more difficult, in case of a prolonged period even impossible, and this might have a negative impact on the growing-up generation. These long-term impacts – beyond the points listed above – do not only affect childcare, but the whole educational-teaching process. The Government notes that while, according to the ILO's case law (para. 846), such long-term impacts do not justify the prohibition of strikes in public education, a contrario, the limitation of the right to strike to a certain extent is not forbidden in public education either. Government Decree 36/2022 (III.11) did not prohibit the right to strike, only set limitations by defining the level of service deemed sufficient.
- 529.** Referring to Article 1(3) of Convention No. 154, the Government notes that the legally regulated definition of the level of services deemed sufficient by the Hungarian legislation was intended to ensure the fulfilment of the said Article of Convention No. 154. The Government adds that in view of section 4(3) of the Strike Act, since there was no previous agreement between the parties either concerning the substantive demands or the level of services deemed sufficient during the strike situation and that the Court's legally binding ruling had not arrived by the proposed day of the strike, the organizers entered into the 31 January 2022 warning strike knowing their actions may be unlawful. Setting the level of services deemed sufficient in a form of a decree created a clear situation and facilitated conducting collective bargaining, thus providing a context for concentrating on substantive issues.
- 530.** Finally, the Government indicates that the complainant's statement according to which the Government Decrees make the right to strike impossible, is factually contradicted by the statements of the leaders of the unions organizing the strike. The Government notes that the president of the PSZ stated that 27,000 teachers took part in the strike on 31 January 2022, and approximately 20,000 people took part in the strike beginning on 16 March 2022. Therefore,

the Government Decree, as acknowledged by the complainants, did not make it impossible to organize and carry out the strike.

- 531.** Considering the above, the Government asks the Committee to reject the complaint of the SZEF.

C. The Committee's conclusions

Other allegations relative to the case in question and relevant to the complaint

- 532.** *The Committee notes that, in the present case, the complainant alleges that with the adoption of Government Decree 27/2021 (I.29.) on the declaration of an emergency situation and the entry into force of emergency measures and Government Decree 36/2022 (II.11) on certain emergency rules concerning public education institutions, the right to strike in public education institutions has been restricted and as such, the above Government Decrees are contrary to freedom of association and ILO Convention No. 87.*
- 533.** *The Committee notes from the allegations and the information provided by the Government that on 1 October 2021, the PDSZ and the PSZ formed a joint strike committee and sent their demands concerning: (i) a pay rise for teachers and pedagogical assistants; (ii) the decrease of teachers' contact hours; and (iii) the revision of regulations on the mandatory COVID-19 vaccination policy. The Committee further notes the series of negotiations held between the parties (13 October 2021, 3 and 18 November 2021, 1 and 15 December 2021, 12 and 24 January 2022, and 2 March 2022). Given that the negotiations did not yield results, the strike committee announced a two-hour warning strike for 31 January 2022 and a strike for indefinite period of time from 16 March 2022 in the event of unsuccessful strike negotiation.*
- 534.** *The Committee observes that according to the Government, while the parties agreed on the need to establish a minimum service for a strike in public education, they did not reach an agreement on the extent of the minimum service. The Committee notes the Government's position according to which childcare and catering is considered to be an essential service under ILO practice where the right to strike may be excluded or limited; while public education is an activity, the interruption of which for a certain period of time may make it an essential service. The Committee also notes that according to the Government, public education is a service of fundamental public concern and that the socialization, learning and psychological development, which may become more difficult or even impossible for a longer period of time due to a strike, may have a long-term detrimental effect on the generations growing up. As such a defined number of classes are necessary to be held beyond providing childcare and the regulation of the right to strike in the field of public education is justified.*
- 535.** *The Committee observes from the Government's report that on 8 February 2021, a state of emergency was declared in Hungary (Government Decree 27/2021 (I.29)) due to the COVID-19 pandemic. The Committee notes the Government's position that the establishment of a minimum service in public education was, therefore, compounded by the state of emergency necessitating to ensure that the isolation and health protection measures previously imposed in the public education sector would be maintained during the strike.*
- 536.** *The Committee observes that in line with section 4(3) of the Strike Act, the parties initiated the procedure for the establishment of the level of sufficient service. According to section 4(3) of the Strike Act, the level of service deemed sufficient may be defined by an act of Parliament or, if not governed by an act of Parliament, then it shall be agreed upon previously, during the pre-strike negotiations. Should the parties fail to agree on the level of service deemed sufficient, it should be determined by the Court, acting on the request of either of the parties.*

- 537.** *The Committee notes that the strike committee filed a motion with the Court to rule on the level of minimum service in connection with the two-hour warning strike planned on 31 January 2022. The Committee observes that while the court of first instance decided in favour of the strike committee, the Government, despite the strike committee's call to waive its right, appealed the decision. The Committee observes that the strike committee went ahead with the two-hour warning strike on 31 January 2022 which, according to the Government, was subsequently deemed illegal by the Court given the lack of agreement and/or court ruling on the level of minimum services.*
- 538.** *In the chronology of events, the Committee also notes that on 2 February 2022, the strike committee, in an electronic letter, initiated a negotiation with respect to the establishment of the minimum services for the strike announced from 16 March 2022. The Committee notes the complainant's allegation that before the consultations could have been concluded and before the next round of negotiations, the Government, on 11 February 2022, adopted Government Decree 36/2022 (II.11) on certain emergency rules concerning public education institutions defining the services that shall be provided as sufficient services. The Committee understands that, as a result, on 18 February 2022, the strike committee submitted a motion to the Court to (a) define the extent of sufficient services for the strike to be started on 16 March 2022, and (b) initiate a procedure for declaring the Government Decree unconstitutional in the context of an individual constitutionality review of the norm. The Committee notes, however, that on 24 February 2022, the Court of first instance rejected both the request for the definition of the level of sufficient services and the request for the individual constitutionality review of the norm and on 26 February 2022, Government Decree 36/2022 (II.11) came into effect. The Committee notes the complainant's allegations that the Court in its reasoning stated, inter alia, that "in view of the fact that, in the case of the industrial action referred to in the application, Government Decree 36/2022 (II.11) on certain emergency rules concerning public education institutions provides for the extent and conditions of sufficient services, the court cannot decide on them". The Committee further notes that on 8 March 2022, the appeal was rejected in the second instance court and on 4 March 2022, the strike committee submitted its request to the Constitutional Court to declare the decree unconstitutional – with no decision yet rendered.*
- 539.** *The Committee finally notes that while on 16 March 2022, the strike was carried out with the stipulations determined by Government Decree 36/2022 (II.11), on 1 April 2022, in view of the upcoming parliamentary elections – the strike committee suspended the strike until Hungary's new government was formed. On 31 May 2022, the state of emergency declared by Government Decree 27/2021 (I.29) came to an end and Government Decree 36/2022 (II.11) was also repealed.*
- 540.** *The Committee notes the arguments put forward by the Government that: (i) the complaint, directed against Government Decree 36/2022 (II.11), has become redundant given the said Decree was repealed on 1 June 2022; (ii) Government Decree 36/2022 (II.11) with its regulation of the level of service deemed sufficient in the public education sector ensured the citizens' needs with respect to childcare, catering and public education especially in the context of the COVID-19 pandemic and in line with the United Nations Convention on the Rights of the Child (articles 3 (1)-(2), 24 (1) and 28), while at the same time it preserved the sufficient level of exerting pressure for workers through strike, and, in line with relevant ILO principles of application, did not prohibit, but regulated the strike in Hungary in public education by defining the level of sufficient service; (iii) setting the level of sufficient service in a form of a decree created a clear situation and facilitated conducting collective bargaining in public education and the right to strike by avoiding the need for prior consultation and recourse to the courts in the absence of agreement; and (iv) the complainant's allegations with respect to the extent of limitation on the right to strike of teachers in public education are contradicted by the statements of the leaders of the unions organizing the strike and that, according to the Government's communication submitted on 3 February 2023, it has never before been so easy to organize a strike in Hungary.*

541. As regards the Government's argument that Government Decree 36/2022 (II.11) was repealed with the end of the state of emergency, the Committee notes that section 14 of Act V of 2022 on issues regarding the termination of the state of emergency, in line with section 4(3) of the Strike Act, re-regulates the issue of minimum service in the public educational sector with a content identical in its essence to that of Decree 36/2022 (II.11). The Committee duly notes the Government's argument that the complaint does not concern the said law, nonetheless, and in view that section 14 of Act V of 2022 in essence replicates the provisions of Government Decree 36/2022 (II.11) against which the complaint was submitted, the Committee will proceed with the examination of Act V of 2022. Moreover, the Committee observes that, unlike the Government Decree which had a limited period of application, the provisions under section 14 of Act V of 2022 are applicable for an indefinite period of time and are independent of the state of emergency set forth in Government Decrees 180/2022 and 424/2022 (proclaimed on 25 May and 28 October 2022) on the declaration of a state of emergency and on certain emergency rules in view of the armed conflict and humanitarian disaster in Ukraine and in order to avert the consequences thereof in Hungary.
542. As regards the level of minimum service, the Committee recalls that measures should be taken to guarantee that the minimum services avoid danger to public health and safety [see **Compilation**, para. 870]. The Committee notes that the provisions included under Government Decree 36/2022 (II.11) and subsequently section 14 of Act V of 2022, among others, require educational facilities participating in the strike to provide care of the children from 7 a.m. until 4 p.m., or 5 p.m. in case of elementary school and 6 p.m. in case of kindergartens in the educational facility where the child/student is receiving an education; ensure at least one qualified kindergarten teacher, teacher, special needs teacher, tutor, special education teacher and/or assistant is present in every group; guarantee time spent outside with at least one hour in the morning and one hour in the afternoon; ensure prescheduled medical screenings and provisions of meals at the same premises and in the manner prior to the strike. The regulation also requires participating facilities to hold up to 50 per cent of student classes and up to 100 per cent of classes in the relevant subjects for senior students preparing for school-leaving exams.
543. The Committee notes that according to the Government, there is no dispute between the parties whether public education sector should be considered a service where minimum services may be established, but that the disagreement arose with respect to the level of sufficient service. The Committee also notes that according to the Government, Government Decree 36/2022 (II.11) and the subsequent Act V of 2022 do not prohibit or restrict strikes but define the level of sufficient service and by doing so, facilitate the exercise of the right to strike by avoiding the need for prior consultation and recourse to the courts in the absence of agreement.
544. In this respect the Committee first wishes to recall that although the education sector does not constitute an essential service in the strict sense of the term and the possible long-term consequences of strikes in the teaching sector do not justify their prohibition, minimum services may be established in the education sector, in full consultation with the social partners, in cases of strikes of long duration and establishing a minimum service in the education sector is not contrary to the principles of freedom of association. [see **Compilation**, paras 842, 846, 898 and 899]. The Committee further recalls that the determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations. This not only allows a careful exchange of viewpoints on what in a given situation can be considered to be the minimum services that are strictly necessary, but also contributes to guaranteeing that the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact, and to dissipating possible impressions in the trade union organizations that a strike has come to nothing because of overgenerous and unilaterally fixed minimum services [see **Compilation**, para. 881]. In that regard, the Committee observes that the

*unilateral determination by one of the parties of a minimum service, in this case the Government, if negotiation has failed, is not in conformity with the principles of freedom of association. Any disagreement in this respect should be settled by an independent body having the confidence of the parties concerned [see **Compilation**, para. 883].*

- 545.** *While the complainant and the Government have varying views as to the actual impact of the provisions setting a minimum service on the exercise of the right to strike in the education sector, the Committee recalls that the minimum service should be restricted to the operations which are necessary to satisfy the basic needs of the population or the minimum requirements of the service, while ensuring that the scope of the minimum service does not render the strike ineffective [see **Compilation**, para. 874]. While, as stated by the Government, the Committee has considered that the provision of food to pupils of school age and the cleaning of schools may be considered an essential service in which strike action may be restricted or prohibited [see **Compilation**, para. 840], the Committee considers that the requirement of holding 50 per cent of the classes and up to 100 per cent of classes in the relevant subjects for senior students preparing for school-leaving exams would appear to go beyond the notion of a minimum service limited to the operations which are strictly necessary to meet the basic needs of the population and may considerably restrict the right to strike of those in the public education sector.*
- 546.** *The Committee notes from the Government's response that in cases where the requirements for the level of services deemed sufficient were not met by the strikes, the incidents were later referred to as "civil disobedience" and could be considered to be an offence against legal duties concerning employment and appointment to public services. The Committee notes that section 15 of Act V of 2022 allows the employer, within eight days from the breach of duty, to apply detrimental legal consequences pursuant to section 56 of Act I of 2012 on the Labour Code against a public employee or employee employed in a public education institution covered by the National Public Education Act who does not fulfil his/her obligation to work, including possible fines or dismissal. In this regard, the Committee recalls that no one should be penalized for carrying out or attempting to carry out a legitimate strike [see **Compilation**, para. 953].*
- 547.** *Noting with concern the complainant's allegation that Government Decree 36/2022 (II.11) was adopted before the ongoing consultations could have been concluded and before the next round of negotiations could have started; and given that Act V of 2022 replicates the restrictions on the minimum service in the same way as Government Decree 36/2022, the Committee requests the Government to fully consult the workers' and employers' organizations concerned with a view to determining the definition of a minimum service that may be required in the education sector and, if agreement is not possible, for the matter to be brought before an independent body for determination, the results of which to be reflected in Act V of 2022 or other appropriate legislation..*

The Committee's recommendation

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

Noting with concern the complainant's allegation that Government Decree 36/2022 (II.11) was adopted before the ongoing consultations could have been concluded and before the next round of negotiations could have started; and given that Act V of 2022 replicates the restrictions on the minimum service in the same way as Government Decree 36/2022, the Committee requests the Government to fully consult the workers' and employers' organizations concerned with a view to determining the definition of a minimum service that may be required in the education sector and, if agreement is not possible, for the matter to be brought

before an independent body for determination, the results of which to be reflected in Act V of 2022 or other appropriate legislation.

Case No. 3414

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

**Complaint against the Government of Malaysia
presented by
Building and Wood Workers' International (BWI)**

Allegations: The complainant alleges that the recognition of a representative union in a forestry company has been delayed for 12 years because of the employer's abuse of judicial process and exploitation of weaknesses in the legislation

- 549.** The complaint is contained in a communication dated 8 October 2021 from Building and Wood Workers' International (BWI).
- 550.** The Government forwarded its partial observations in communications dated 1 and 30 September 2022, and 3 February 2023.
- 551.** Malaysia has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but not the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

A. The complainant's allegations

- 552.** In its communication dated 8 October 2021, BWI alleges that since 2009, the Malaysian forestry company Sabah Forest Industries (hereinafter "the Company") has steadfastly refused to recognize the Sabah Timber Industry Employees Union (STIEU) despite two secret ballots, held in 2010 and 2018, indicating that the majority of workers wished the STIEU to represent them, and despite two decisions of the Minister of Human Resources (MOHR) according recognition to the union. The complainant indicates that by constantly challenging the process of determination of representativity of the STIEU and the administrative decisions related to them, the Company has hampered for 12 years the legal recognition of the STIEU as the representative of its employees.
- 553.** The complainant also alleges acts of interference on the part of the Company, including by considering the recognition of a defunct in-house union, Sabah Forest Industries Employees Union (SFIEU), which it had previously refused to recognize, with the aim of avoiding recognition of the STIEU; and giving wrong information to migrant workers from Nepal and Indonesia interested in participating in union activities, pretending that engaging in such activities would be in violation of their residence permits.
- 554.** Regarding the consequences of this situation, the complainant alleges that in the absence of a legally recognized union, with which it would have been obliged to negotiate, the Company

had engaged in unilateral changes in terms and conditions of employment affecting the workforce, which included lower wages and worse working conditions including greater hazards. The complainant states that workers had been seriously injured and three had died because of poorly maintained equipment and poor safety protocols. Furthermore, continued lack of recognition also meant that workers were unable to bargain collectively or take industrial action when the Company unilaterally imposed mass lay-offs in late 2017.

Union recognition proceedings (2009–18)

- 555.** The complainant alleges that in 1991, workers formed an enterprise level union, the SFIEU, which the Company never recognized. In 2009, workers dissolved the SFIEU and decided to join the already existing, state-wide union, the STIEU. On 24 October, the STIEU submitted a claim for recognition to the management. On 30 October, the Company declared that it would not recognize the STIEU, on the basis that the union's jurisdiction did not cover forestry-related workers.
- 556.** A secret ballot was carried out by the Industrial Relations Department (IRD) between 30 November and 1 December 2010 as per the agreed employee list – which the Company had attempted to substitute – and the outcome was that 85 per cent of the voters supported the STIEU. The MOHR recognized the STIEU on 26 January 2011. On 1 March, the Company applied to the High Court, requesting the judicial review of the ministerial decision. The High Court dismissed the review application, against which the Company appealed. The High Court granted an order to stay its decision pending appeal. Ultimately, on 27 November 2012 the Court of Appeal ruled in favour of the Company and directed the Minister to review his decision on the scope of membership of the STIEU.
- 557.** In 2013, as the Company had applied for an International Financial Corporation (IFC) loan, which required regular consultation with the workers or workers' representatives, it set up a Joint Consultative Council (JCC), an internal enterprise platform to address employee grievances. The complainant states that recognizing the union would have accomplished the requirement of consultation with workers' representatives and alleges that throughout 2013, the workers contested the formation of the JCC, did not actively engage in it, and instead continued to push for the recognition of the STIEU through the MOHR.
- 558.** On 14 February 2014, the Director-General of Industrial Relations (DGIR) convened a meeting between the Company and the union, which led to the decision dated 10 March 2014, allowing the union to file a new application for recognition. The union filed the new application on 17 March. However, on 2 April the Company once again denied recognition, on the basis that the application did not comply with the law, as it contained workers who were not legally eligible to be union members.
- 559.** According to the complainant in July 2014, the Company was invited to supply a list of employees eligible to be union members. The list was submitted to the DGIR on 22 August. On 12 September, the DGIR wrote to the Company with a view to organizing a secret ballot on 22 September. However, the Company requested that the vote be postponed pending a reply from the Trade Union Department concerning the competence of the STIEU to represent the workers.
- 560.** On 26 September 2014, a hearing concerning the scheduling of the secret ballot was held; during another hearing held on 29 September it was determined that 116 workers fell into a disputed category and needed to be interviewed before a ballot could take place. On 3–4 November, the IRD interviewed workers to ascertain their eligibility. On 17 November, the DGIR wrote to the Company to inform that the STIEU had indeed the competence to represent the Company

workers; and on 8 December, the IRD completed its investigations to determine the electorate of the secret ballot. In a letter dated 15 April 2015, the IRD communicated to the Company its findings on the eligibility of the 116 disputed workers and in another letter dated 16 April it set the secret ballot for 27 April. The Company wrote to the DGIR rejecting the decision; and on 24 April, informed the MOHR of its intent to file for judicial review.

- 561.** The complainant further alleges that on 7 November 2014, amid the process of establishment of the list of workers who could participate in the vote, the Company issued a circular to all employees indicating that it would only support the SFIEU, an in-house union which the workers had dissolved in 2009 and the Company had heretofore refused to recognize. The STIEU rejected this circular.
- 562.** On 14 May 2015, the Company filed its third judicial review before the Sabah Supreme Court to challenge the eligibility of the employees who could vote in the secret ballot. The case was not heard until 2016, and on 13 June 2016, the Court dismissed the Company's case. The Company appealed but the appeal was also dismissed in October 2017. The complainant states that the October 2017 decision should have cleared the last hurdle preventing the holding of the secret ballot, but it was never delivered in writing, which caused further delay, until the new MOHR intervened, and the ballot finally took place on 29 October 2018, even though the Company refused to allow the election to take place on site and only allowed the workers to leave during their lunch break and vote at a school adjacent to the premises. The STIEU was elected as the representative union with over 70 per cent of the vote – 680 of the 933 eligible workers – and the MOHR accorded recognition to the union via a Form F letter dated 21 November 2018.

Bankruptcy, temporary lay-off programme, the sale of the Company and continued recognition proceedings (2017–21)

- 563.** The complainant states that the Company went bankrupt in early 2017, and on 28 June of that year, Grant Thornton Consulting (M) Sdn Bhd (hereinafter, “the Receiver”) was appointed as its receiver and manager. BWI alleges that in November 2017, right after the Court of Appeal had disposed of the Company's last legal claim against the recognition of the STIEU, the Company announced a temporary lay-off programme involving 1,350 employees, to come into force on 1 January 2018. Only around 200 of the approximately 1,600 Company employees were retained and paid full salaries. According to the complainant, the announcement shocked the workers as there had been no prior negotiations with them on this matter.
- 564.** In April 2018, Ballarpur Industries Limited (BILT), of which the Company is a subsidiary (hereinafter “the parent company”), confirmed the sale of the Company to Pelangi Prestasi Sdn Bhd (hereinafter, the “acquirer company”). In April 2018, the Receiver and the acquirer companies reached an agreement on the sale; however, several approvals were needed before the sale could be finalized, including regulatory approvals for the transfer of forestry licences. According to the complainant, following national elections in May 2018, the new Sabah state government announced a review of all timber concession holders, including forest management units. In March 2019, the Sabah government decided not to approve the transfer of forestry licences to the acquirer company and introduced new conditions on future timber licence grants.
- 565.** On 28 February 2019, the Receiver filed a judicial review against the Minister's decision dated 21 November 2018 to accord recognition to the STIEU. The complainant alleges that in a meeting held in the first week of March 2019, the director of the Receiver informed the general secretary of the STIEU that they had filed for the judicial review because it would be difficult to

sell the Company with a union in place. BWI adds that as previously in 2018, the Company/Receiver had obtained a restraining order to shield themselves from any legal action and to guarantee a smoother sale process; the union could not challenge the judicial review in court.

- 566.** The complainant further adds that with the non-approval of the transfer of forestry licences, the conditions for the sale and purchase agreement were not satisfied and the agreement terminated on 1 April 2019. In the same month, the Receiver issued a notice inviting interested parties to submit offers for the Company's assets. In June 2019, the acquirer company brought an injunction application before the Malaysian High Court, to restrain the implementation of the new preconditions on timber licence grants, which the High Court allowed. At the same time, the acquirer company filed a civil suit against the Company and the Receiver. In July 2019, the High Court recommended that the parties explore mediation, taking into account the numerous Company workers who were impacted by the delayed sale. The complainant states that according to the STIEU, the status of the workers has been uncertain ever since the Company went into receivership in 2017, and it was expected that a High Court decision would provide certainty to allow the workers to engage with their employers.
- 567.** On 26 February 2020, the High Court quashed the Ministerial decision to recognize the union. The MOHR appealed against this ruling. However, the proceedings were halted due to the COVID-19 pandemic. The complainant states that the Company and the Receiver have not yet recognized the union.

Legislative issues

- 568.** The complainant alleges that in the present case, the excessive delays by the Government and the abuse of the judicial process by employers has prevented union recognition and adds that the Company was able to game the system because of certain aspects of the Malaysian law which do not comply with international law. In this regard the complainant refers to:
- Section 9(1) of the Industrial Relations Act (IRA) which prohibits managerial, executive, confidential and security employees from being members of a non-executive union and to engage in collective bargaining. BWI alleges that the definition of these terms is left to the discretion of the employers, and therefore they frequently misclassify employees to render them ineligible to form or join a union. The complainant adds that the Government could have amended this provision in the framework of the 2020 revision of the IRA, to prevent employers from defining these terms and thereby frustrating registration efforts but failed to do so.
 - Under section 12 of the Trade Unions Act (TUA), the registration of unions is left to the broad discretion of the Director-General of Trade Unions (DGTU) as section 12(2) of the TUA provides that the DGTU may "refuse to register a trade union... if he is satisfied that there is in existence a trade union representing the workmen in that particular establishment, trade, occupation or industry and it is not in the interest of the workmen concerned that there be another trade union in respect thereof".
 - The complainant states that this provision allows trade union pluralism to be undermined in cases where the DGTU is "satisfied" that a union already exists, and another union would not be in the interest of workers. The satisfaction standard leaves the DGTU with unchecked discretion and workers have no say as to what is in their interest. In conclusion, the complainant states that the 12-year process (which continues) to obtain union recognition is excessive and the Government is in clear violation of the right to freedom of association because of its own administrative delays and for permitting employers to game the system

to delay or prevent union registration, as well as for failing to revise the law to prevent the repetition of these problems.

B. The Government's reply

- 569.** In its communication of 1 September 2022, the Government emphasizes that it is very committed to enhancing workers' rights and protection and indicates that it amended the IRA 1967 in 2019 to extend the protection of workers and employers and to improve the dispute resolution system with a view to making it more effective and efficient. According to the Government, the amendment was made to be in line with international labour standards.
- 570.** Regarding the delay in the recognition process, the Government indicates that in this particular case, the delay is beyond the control of the MOHR, because the Company has the right to exhaust all legal avenues under the domestic law. The Government further refers to several legal actions taken by the Company and the Receiver which delayed the recognition process, namely the application for judicial review against the Ministerial decision to recognize the union, which resulted in the order of the High Court that quashed the recognition decision, as well as the obtention of a restraining order from the High Courts of Sabah and Sarawak, which prohibited further legal action against the Company. The Government further indicates that in order to uphold justice, the MOHR has appealed against the judicial review order. The case is pending before the Court of Appeal and a hearing is scheduled on 28 September 2022.
- 571.** The Government adds that the MOHR has taken measures through the Department of Labour Sabah (DOL) to assist laid off workers. Ten cases were filed in the Sipitang Labour Court and the DOL has conducted several dialogue sessions with the Receiver and the employees. In August 2021, the DOL conducted an online meeting which focused on the issue of payment of salaries of the laid off workers. As a result of these efforts, part of the salary claim was paid. On 17 January 2022, the DOL had a discussion with the Receiver concerning the employees' application of proof of debt to the Insolvency Department of Malaysia, in relation to their action to recover their salary.
- 572.** The Government further indicates that the Bill on amendment of Trade Unions Act 1959 is before the Parliament and the proposed amendments have taken into account the key principles in ILO Convention No. 87, and concludes by the affirmation that it remains committed to facilitate dialogue between the parties in accordance with the procedure provided in the national law.

C. The Committee's conclusions

- 573.** *The Committee notes that this case concerns allegations of the denial of the right to organize and to collective bargaining at a forestry company, as a result of excessive delays in the legal recognition of a union as the bargaining agent. The complainants specifically allege that the excessive administrative and judicial delays have intervened in the context of the employers' relentless judicial and administrative challenges to every step of the verification of the claim of the union that it represents the majority of workers at the enterprise. The Committee further notes that the complainant also raises deficiencies in the Malaysian legislation pertaining to the recognition of unions entitled to negotiate.*

National law on recognition for collective bargaining purposes

- 574.** *While the Committee notes that amendments to the Industrial Relations Act (IRA) governing recognition for collective bargaining purposes were adopted in 2019 (part of which came into force*

as of January 2021), while enforcement of others is subject to the termination of the amendment process of the Trade Union Act (TUA), the Committee observes that up to January 2021, the previous versions of the IRA were applied with regard to the representation claim of the STIEU at the Company and will therefore examine this case in that light.

- 575.** *The Committee notes that pursuant to section 9 of the IRA, the procedure of recognition in absence of the employer's voluntary recognition involves the following steps: the trade union should report the matter to the Director General for Industrial Relations (DGIR – failing this step the recognition claim shall be deemed to be withdrawn (section 9(4)). Pursuant to section 9(4A), the DGIR may make enquiries to ascertain: (a) the "competence" of the trade union; and (b) by way of secret ballot, the percentage of union members who support the trade union seeking recognition. Following these steps, the Minister shall give his decision, and where it is decided that recognition is to be accorded, "such recognition shall be deemed to be accorded by the employer or trade union of employers concerned, as the case may be, from such date as the Director General may specify" (section 4(5) of IRA). The Committee notes in addition the Government's statements to the Committee on the Application of Standards (CAS) in 2016 and 2022 that the decision of the Minister under section 9(5) is appealable by way of judicial review, and the ruling of the court deciding on judicial review is also appealable in the Court of Appeal. Furthermore, until the case is finally decided by courts, the status of recognition cannot be finalized. The initiation of the judicial review process has the effect of staying the administrative decision to accord recognition for the whole duration of the judicial proceedings.*
- 576.** *The Committee further notes that pursuant to section 9(1A), if a dispute arises at any time before or after recognition has been accorded as to whether any of the workers that the union claims to represent are employed in managerial, executive, confidential or security capacities, such dispute may be referred to the DGIR, who may take steps to resolve the matter. If the dispute cannot be resolved through those steps, the DGIR shall issue a decision on the matter that it shall communicate in writing to the parties (section 9(1D)). The Committee notes that this DGIR decision, as well, is subject to appeal by way of judicial review.*

The facts

- 577.** *The Committee notes that according to the presentation of facts in the complaint, which is not disputed by the Government, the STIEU first submitted a claim for recognition to the employer on 24 October 2009, which the Company rejected on the basis that the union's competence was restricted to timber-processing workers and did not extend to forestry-related employees. The IRD carried out a secret ballot by the end of 2010, and as the outcome was 85 per cent of support for the STIEU, the Minister decided to accord recognition to the STIEU by a decision dated 26 January 2011. However, the Company filed for judicial review of this decision on 1 March 2011, which the High Court dismissed, but the Company appealed against this ruling as well, and finally on 27 November 2012, the Court of Appeal ruled in favour of the Company and directed the Minister to review his decision on the scope of membership of the STIEU. The Committee notes that this first part of the recognition proceedings took more than three years, including 15 months in administrative proceedings and 20 months in judicial proceedings.*
- 578.** *The Committee further notes that following facilitation by the DGIR and pursuant to a decision dated 10 March 2014, the union was allowed to submit a new application for recognition, which the Company rejected anew, this time on the ground that the union sought to represent workers who were not legally eligible to be union members. The Committee notes that this referred to "workers employed in managerial, executive, confidential or security capacities" mentioned in section 9(1) of the IRA. There was disagreement on which workers were eligible to vote in the secret ballot that would ascertain the percentage of employees supporting the STIEU. The Company also had once*

again challenged the competence of the STIEU to represent its employees. On 17 November 2014, the DGIR informed the Company that the union had the competence to represent the workers. After protracted administrative investigations for determining which workers were eligible to vote, on 15 April 2015 the IRD communicated its findings on this matter to the Company. Based on those findings, the IRD decided that a secret ballot will be held on 27 April. However, the Company immediately reacted to this decision by informing that it rejects the decision to hold the vote and will file for judicial review, which it did on 14 May 2015, before the Sabah Supreme Court, challenging the administrative decision concerning the list of workers who were eligible to vote. The Court dismissed the Company's application on 13 June 2016. After two further Company appeals, the final judicial decision on this dispute was issued in October 2017 and the case of the Company was definitely dismissed. The Committee notes that this phase of the recognition proceedings lasted three years and seven months, including 14 months in administrative proceedings and 29 months in judicial proceedings.

579. The Committee notes that according to the complainant, the fact that the October 2017 ruling was never delivered in writing was used to prevent the secret ballot from taking place, until the new MOHR intervened, and the ballot was finally held on 29 October 2018. The STIEU was elected as the representative union with over 70 per cent of the vote and on 21 November the Minister accorded recognition to the union. However, on 28 February 2019, the Receiver company once again filed a judicial review against the Minister's decision to recognize the union. The Committee notes that the complainant alleges that the Director of the Receiver company had told the Secretary-General of the STIEU in a private meeting that they had filed the judicial review because it would be difficult to sell the Company with a union in place while the Government provides no information on the grounds on which the Receiver company appealed against the Ministerial decision. The Committee notes that with an order dated 26 February 2020, the High Court quashed the Minister's recognition of the union. This time the MOHR appealed. However, the proceedings were halted due to the COVID-19 pandemic. The Committee notes the Government's indication, that the case was pending before the Court of Appeal and a hearing was scheduled on 28 September 2022. The Committee has not received information on the outcome of this hearing however, it notes that this last phase of the recognition proceedings, has been ongoing since October 2017, including 13 months of administrative proceedings and ongoing judicial proceedings that were initiated on 28 February 2019, and after more than four years remain inconclusive at the date of examination of this case by the Committee.

Recognition criteria

580. The Committee recalls that it has always considered that workers and employers should in practice be able to freely choose which organization will represent them for purposes of collective bargaining. It further recalls that employers, including governmental authorities in the capacity of employers, should recognize for collective bargaining purposes the organizations representative of workers employed by them; that recognition by an employer of the main unions represented in the undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking; and that for a trade union at the branch level to be able to negotiate a collective agreement at the enterprise level, it should be sufficient for the trade union to establish that it is sufficiently representative at the enterprise level. [see **Compilation of Decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1359; 1354, 1355 and 1363].
581. Regarding the determination of trade unions entitled to negotiate, the Committee recalls that systems of collective bargaining with exclusive rights for the most representative trade union and those where it is possible for a number of collective agreements to be concluded by a number of

trade unions within a company are both compatible with the principles of freedom of association. In systems that adopt the first approach, in order to determine whether an organization has the capacity to be the sole signatory to collective agreements, two criteria should be applied: representativeness and independence. The determination of which organizations meet these criteria should be carried out by a body offering every guarantee of independence and objectivity; furthermore, pre-established, precise and objective criteria for the determination of the representativity of workers' and employers' organizations should exist in the legislation and such a determination should not be left to the discretion of governments. Finally, where under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted all the unions in this unit, at least on behalf of their own members [see **Compilation**, paras 1351, 1374, 530 and 1390].

- 582.** *The Committee notes that the employer's challenges to the STIEU's recognition claim were based on two substantive criteria enshrined in section 9 of the IRA, namely section 9(1) prohibiting the representation of workers employed in managerial, executive, confidential and security capacities with other groups of workers; and the rule according to which the union had to be "competent" to represent the workers concerned. Regarding the "competence" issue, the Committee notes that in the present case, the employer rejected the first recognition application of the STIEU in 2009 on the basis that the union was only competent to represent workers in timber processing, and not forestry-related workers like those at the Company, although the complainants indicate that the vote was said to take place in accordance with an agreed employee list. Following the second application of the union in 2014, the Company rechallenged the competence of the union, and once requested the postponement of the secret ballot pending a reply from the Trade Union Department of the MOHR on this question. The Committee notes that on that occasion, the DGIR ultimately decided that the union had competence.*
- 583.** *The Committee recalls that the issue of restrictive definition of the unions' "competence", which was also brought up in two previous cases concerning Malaysia [Case No. 2301, 333rd Report, paras 565–599 and Case No. 2717, 356th Report, paras 803–846], is rooted in sections 2(a) and 26(1A) of the TUA, defining "trade union" as any association or combination of workmen or employers "within any particular establishment, trade, occupation, or industry or within any similar trades, occupations or industries" and providing that "no person shall join, or be a member of, or be accepted or retained as a member by, any trade union if he is not employed or engaged in any establishment, trade, occupation or industry in respect of which the trade union is registered". Section 9 of the IRA left it to the DGIR to ascertain whether the trade union claiming recognition was competent, namely within the trade or industry concerned or similar trades or industries. In both aforementioned cases, the Committee had concluded that these rules infringed the right of workers to establish and join organizations of their own choosing and had urged the Government to amend the legislation in this regard [333rd Report, para. 599(b) and 356th Report, para. 846(c)]. The Committee notes with interest that in the TUA Amendment Act that is currently in the process of adoption, section 2(a) and the corresponding part of section 26(1A) are repealed, and that in section 9 of the revised IRA, the requirement of "competence" is replaced by that of conformity of the scope of membership with the "constitution of the trade union". The Committee notes however that none of these amendments is yet in force and expresses the firm hope that the process of legislative revision will conclude soon, so that workers can effectively exercise their right to establish and join organizations of their own choosing and be represented by them in collective bargaining.*
- 584.** *Regarding section 9(1) prohibiting the representation of workers employed in managerial, executive, confidential and security capacities, the Committee notes that according to the complaint, when the STIEU first applied to obtain recognition, a secret ballot was held "per the agreed employee list". However, two years after the Ministerial decision to recognize the union, the Company finally*

succeeded in obtaining a judicial ruling directing the Minister to review his decision “on the scope of membership of STIEU”. The second time the union applied for recognition, once again the main challenge the employer opposed to it was that the union was seeking to represent workers that were not “eligible to be union members”. The DGIR first informed the Company that a secret ballot will be organized on 22 September 2014, but this vote finally took place on 29 October 2018. The Committee notes that the pending dispute concerning the list of workers eligible to vote delayed the secret ballot for four years. First the IRD determined that 116 workers fell into a disputed category, and then it conducted an investigation into their status. The findings were communicated to the Company and a new date was set for the ballot, but the Company rejected the administrative findings and decision and filed anew for judicial review. The judicial proceedings started in May 2015 and ended in October 2017, with a ruling in favour of the MOHR this time.

- 585.** Recalling that the determination of the most representative organization must be based on objective, pre-established and precise criteria so as to avoid any possibility of bias or abuse [see **Compilation**, para. 540], the Committee observes that the dispute around the application of section 9(1) of the IRA in this case appears to revolve around the different understandings of what is meant by “workers employed in managerial, executive, confidential and security capacities”. In the present case, disagreements on the meaning of these terms entailed excessively long administrative and judicial procedures involving complex legal appraisals and giving rise to a situation of obstruction and long delays in fixing the list of workers eligible to vote in the secret ballot. The Committee also recalls in this regard that in a previous case concerning Malaysia (Case No. 3334) a protracted dispute concerning the qualification of certain posts as supervisor/managerial and the lawfulness of their being represented by the union had arisen and the Committee requested that necessary legislative amendments aimed at ensuring that the definition of managerial and supervisory staff is limited to those persons who genuinely represent the interests of employers, including, for example, those who have the authority to appoint or dismiss, be prepared in consultation with the social partners and adopted without further delay [391st Report, paras 375–384].
- 586.** Furthermore, the Committee notes that sections 5(2)(b) and 5(2)(c) of the IRA, provide that the employer has the right to require “at any time that a person who is or has been appointed or promoted to a managerial, an executive or a security position shall cease to be or not become a member or officer of a trade union catering for workmen other than those in a managerial, an executive or a security position”; as well as to require, “that any workman employed in confidential capacity in matters relating to staff relations shall cease to be or not become a member or officer of a trade union”. The Committee recalls in this regard that legal provisions which permit employers to undermine workers’ organizations through artificial promotions of workers constitute a violation of the principles of freedom of association [see **Compilation**, para. 386].
- 587.** While observing within the framework of Case No. 3334, the Government’s previous indication that finally, on the basis of consultations with the social partners, it had decided to maintain the current provision of the IRA concerning the definition of managerial and supervisory staff, as it seems sufficient in determining the scope of representation of trade unions, the Committee had trusted that the Government would ensure that the legislation concerning union recognition was applied in line with the principle of freedom of association [393rd Report, paras 26 and 29].
- 588.** In view of the foregoing, and recalling that the categories of managerial and supervisory staff should not be defined so broadly as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their present or potential membership, the Committee must once again request the Government to review the legislation, with a view to ensuring that managerial and supervisory staff is limited to those persons who genuinely represent the interests of the employers, including, for example, those who have the authority to appoint or dismiss and that any artificial reclassifications are swiftly addressed.

Duration of recognition proceedings

- 589.** *The Committee notes that the STIEU first submitted its claim for recognition to the employer on 24 October 2009, and that as of the date of examination of this case, the process of legal recognition remains inconclusive.*
- 590.** *The Committee notes that the proceedings of recognition in the present case can be divided into three phases, each containing administrative and judicial proceedings which are summarized in the table below:*

Phase	Period	Administrative proceedings	Judicial proceedings
1	24 Oct. 2009–27 Nov. 2012	15 months (agreement on list of voters + secret ballot + MOHR decision of recognition)	20 months (judicial review + one appeal by the employer)
2	10 Mar. 2014–Oct. 2017	14 months (decision to allow the union to submit a new application for recognition + decision on union competence + investigations and decision on eligible voters + decision to hold secret ballot)	29 months (judicial review + two appeals by the employer)
3	Oct. 2017	13 months (delay in decision to hold secret ballot due to non-delivery of the final judicial decision in writing, decision to hold secret ballot + decision to accord recognition to the union)	Since 28Feb. 2019 (judicial review filed by the employer, High Court order dated 26Feb. 2020, appeal by the MOHR, still pending)

- 591.** *The Committee notes the Government’s indication that in this particular case, the delay is beyond the control of the MOHR, because the Company has the right to exhaust all legal avenues under the domestic law. The Government refers to the legal actions taken by the Company and the Receiver which delayed the recognition process and further indicates that in order to uphold justice, the MOHR has appealed against the judicial review order. The Committee notes that the delays due to judicial proceedings are the longest in the present case, as more than eight years were spent on judicial proceedings, which are still pending. Nevertheless, the total time taken in administrative proceedings at different stages amounts to three years and a half and could therefore have been expedited.*
- 592.** *The Committee notes that in June 2022, the Government indicated before the Committee on the Application of Standards that between 2018 and 2019 the average duration of recognition process in 54 per cent of cases has been between four to nine months, and that the Committee on the Application of Standards requested the Government to ensure that the procedure for trade union recognition is simplified, and that effective protection against undue interference is adopted.*
- 593.** *The Committee notes that the delays in the present case were excessive and that their aggregated effect amounts effectively to a denial of the possibility of the workers concerned and the STIEU to bargain collectively for more than 13 years. The Committee considers that these delays are partly attributable to shortcomings in substantive law, namely the unprecise and vague character of the criteria for recognition, that give rise to disputes between the parties. On the other hand, improvements in procedural rules can also contribute to the simplification and expediting of the recognition process. Recalling that justice delayed, is justice denied [see **Compilation**, para. 170], the Committee considers that although all administrative decisions should be subject to judicial*

review, judicial proceedings should come to conclusion within a reasonable period in order to ensure effective respect of freedom of association. The Committee therefore requests the Government to take the necessary measures, in full consultation with social partners, to review the legal framework governing the procedure for recognition of unions for collective bargaining purposes with a view to simplifying and expediting the administrative and judicial processes. It invites the Government to avail itself of the technical assistance of the Office in this regard should it so desire. The Committee further draws the attention of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) to the legislative aspects of this case. The Committee trusts that, bearing in mind the recent legislative amendments and the need to ensure that the exclusion of managerial and supervisory staff is limited to those persons who genuinely represent the interests of the employers, including, for example, those who have the authority to appoint or dismiss, the union will obtain legal recognition for collective bargaining purposes without further delay.

- 594.** *Regarding the complainant's allegation concerning the broad discretion given to the DGTU pursuant to section 12(2) of the TUA to refuse registration of a trade union if he is satisfied that there is in existence a trade union representing the workers, the Committee notes that the Act on the Amendment of the TUA that is currently in the process of adoption repeals this provision. The Committee expects that the amendment process will soon come to conclusion and with the coming into force of the revised TUA, trade union pluralism will be duly guaranteed.*

The Committee's recommendations

- 595.** In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following:
- (a) The Committee expresses the firm hope that the current process of amendment of the Trade Unions Act will soon come to conclusion, so as to enable all workers to enjoy the right to establish and join organizations of their own choosing and to be represented by them in collective bargaining.
 - (b) The Committee once again requests the Government to review the legislation with a view to ensuring that the definition of managerial and supervisory staff is limited to those persons who genuinely represent the interests of the employers, including, for example, those who have the authority to appoint or dismiss and that any artificial reclassifications are swiftly addressed.
 - (c) The Committee requests the Government to take the necessary measures, in full consultation with the social partners, to review the legal framework governing the procedure for recognition of trade unions for collective bargaining purposes with a view to simplifying and expediting the administrative and judicial processes. The Committee invites the Government to avail itself of the technical assistance of the Office in this regard should it so desire. It further draws the attention of the CEACR to the legislative aspects of this case.
 - (d) The Committee trusts that, bearing in mind the recent legislative amendments and the need to ensure that the exclusion of managerial and supervisory staff is limited to those persons who genuinely represent the interests of the employers, the union will obtain legal recognition for collective bargaining purposes without further delay.

Case No. 3377

Definitive report

**Complaint against the Government of Panama
presented by**

- **the National Confederation of United Independent Unions of Panama (CONUSI)**
- **Panamanian Union of Commercial Aviators (UNPAC)**

Allegations: The complainant organizations object to the imposition of compulsory arbitration in public services that are not essential in the strict sense of the term, like the aviation sector

- 596.** The complaint is contained in a communication from the National Confederation of United Independent Unions of Panama (CONUSI) and the Panamanian Union of Commercial Aviators (UNPAC), dated 31 January 2020.
- 597.** The Government sent its observations in communications dated 22 September 2021 and 19 January 2023.
- 598.** Panama 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

- 599.** In their communication of 31 January 2020, the complainant organizations allege that the Government is not complying with the recommendations of the Committee by not adapting its legislation to eliminate compulsory arbitration in collective bargaining negotiations, which is interfering in and limiting the exercise of the right to strike in violation of Conventions Nos 87 and 98.
- 600.** The complainant organizations indicate that Act No. 45 of 1998 amended section 452 of the Labour Code and introduced a paragraph 3 which establishes that, if a collective dispute arises in a public service enterprise, according to the definition set out in section 486 of the Code, the regional or general labour directorate shall decide to submit the strike to arbitration, after it has begun. The complainant organizations consider that section 452(3) of the Labour Code violates Article 3 of Convention No. 87 as it restricts, limits, inhibits and curtails the right to strike of workers in public services by imposing compulsory arbitration as a dissuasive measure to diminish the rights and interests of trade union organizations. They also state that, although UNPAC filed a claim of unconstitutionality against section 452(3) of the Labour Code on 16 April 2019, it was declared constitutional *res judicata* by a Supreme Court of Justice judgment of 17 October 2019 (a copy of the judgment is attached to the complaint). According to the complainant organizations, this judgment runs counter to the jurisprudence of the Court, which in 2015 indicated that, "international labour conventions that contain regulations

concerning the recognition of human rights that are enjoyed in relation to work must form part of the body of constitutional law”.

- 601.** The complainant organizations state that compulsory arbitration is not being applied in a consensual manner between the parties and cite the example of the National Trade Union of Workers in the Aviation, Logistics, Similar and Related Industries of Panama (SIELAS), a trade union organization to which, according to the complaint, the Ministry of Labour and Workforce Development (MITRADEL) applied compulsory arbitration through Resolution No. 511-DGT-17 in order to lift a strike declaration, a measure that the trade union had taken after failing to reach a satisfactory agreement with Copa Airlines (hereafter referred to as “the airline”) in the negotiation of a collective labour agreement. The complainant organizations allege that the workers of SIELAS were persecuted, intimidated and threatened by MITRADEL authorities and the security forces so that they would decline to declare a strike and thus compulsory arbitration was imposed.
- 602.** The complainant organizations understand that, while the right to strike may be restricted or prohibited in essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, the transport of passengers and goods is not an essential service in the strict sense of the term. The complainant organizations state that, while the transport of passengers and goods is a public service of primary importance in the country for which the requirement of a minimum service in the event of a strike could be justified, the imposition of arbitration as provided for in section 452(3) of the Labour Code could not.

B. The Government’s reply

- 603.** In its communications of 22 September 2021 and 19 January 2023, the Government states that on 30 August 2017, SIELAS filed an application with the general labour directorate for a list of demands to negotiate a new collective agreement with the airline and given that an agreement could not be reached, the union proceeded in accordance with section 490 of the Labour Code to declare an indefinite strike as of 23 November 2017. In response, the general labour directorate decided on the same day, through Resolution No. 511-DGT-17, to submit the strike to arbitration and ordered its immediate suspension and the opening of the various work centres.
- 604.** The Government indicates that, although the complainant organizations submitted an application requesting that section 452(3) of the Labour Code be declared unconstitutional, the Supreme Court of Justice, in its judgment of 17 October 2019, declared the provision in question to be constitutional *res judicata* and ordered that the case be shelved because the Court had previously ruled on the matter.
- 605.** The Government reports that, between 2017 and the present day, SIELAS and the airline have concluded two collective agreements: one was in force from 1 December 2017 until 1 December 2021 and the other was concluded on 1 April 2022 and is in force until 2026. The Government highlights that the priority task of MITRADEL is to pursue industrial peace through respect for fundamental and labour rights, especially in its role as a mediator, which has allowed it to achieve a good understanding between the parties without affecting the decisions that the respective parties might take, since the provisions of the Labour Code are being applied correctly in order to achieve a favourable result that benefits the key actors in the labour relationship.

C. The Committee's conclusions

606. *The Committee observes that in the present case the complainant organizations allege that section 452(3) of the Labour Code restricts, limits, inhibits and curtails the right to strike by imposing compulsory arbitration in public services that are not essential in the strict sense of the term, such as the transport of passengers and goods in general and aviation in particular. The Committee observes that the complainant organizations specifically refer to a MITRADEL resolution that submits to compulsory arbitration the strike called by SIELAS at the end of 2017.*
607. *The Committee notes that the complainant organizations and the Government indicate that in 2019 UNPAC filed a claim of unconstitutionality against section 452(3) of the Labour Code. The Committee observes that, in its judgment, the Supreme Court of Justice indicated that this provision had already been the subject of a legal ruling of the Court in 1999, and therefore declared paragraph 3 of the above-mentioned section to be constitutional res judicata and ordered that the case be shelved. The Committee observes that, in its 2019 judgment, the Court recalled that article 65 of the Political Constitution established the recognition of the right to strike and that the law may subject it to special restrictions in the public services it determines. The Committee notes in this regard that the 1999 and 2019 rulings do not contain a specific review of the list of public services contained in the Labour Code for which the legislation provides for recourse to compulsory arbitration.*
608. *The Committee also observes that the specific example cited by the complainant organizations, that is, the MITRADEL resolution that submitted to compulsory arbitration the strike called by SIELAS at the end of 2017, is a matter that the Committee examined in a previous case on Panama [Case No. 3319, Report No. 397]. On that occasion, the Committee formulated the following conclusions and recommendations:*

596. *Regarding the strike initiated by SIELAS and the decision adopted by MITRADEL ordering compulsory arbitration and the end of the aforementioned strike, the Committee recalls that it has considered that compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 816]. The Committee also considered that in as far as compulsory arbitration prevents strike action, it is contrary to the right of trade unions to organize freely their activities and could only be justified in the public service or in essential services in the strict sense of the term [see **Compilation**, para. 818].*

597. *[...] The Committee recalls that, in its conclusions adopted in other cases relating to the air transport sectors of other countries, it considered that, based on the specific circumstances of each case, the air transport sector as a whole is not an essential public service in the strict sense. The Committee also highlights that it has considered that the establishment of minimum services in the case of strike action should only be possible in: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) public services of fundamental importance [see **Compilation**, para. 866]. In this respect, the Committee also considered that transportation of passengers and commercial goods is not an essential service in the strict sense of the term; however, this is a public service of primary importance where the requirement of a minimum service in the event of a strike can be justified [see **Compilation**, para. 893].*

598. *In light of the above, the Committee requests the Government to take, in consultation with the most representative employers' and workers' organizations, the necessary measures, including legislative measures, to ensure that the rules on compulsory arbitration meet the criteria indicated*

above, in such a way that they do not unduly limit the exercise of the right to strike and collective bargaining in the air transport sector.

- 609.** *The Committee notes that, according to the Government, SIELAS and the airline have concluded two collective agreements (2017–21 and 2022–26). While duly noting this information, the Committee reaffirms the importance and the full applicability of the conclusions and recommendations adopted in relation to Case No. 3319, in particular those related to the need to take measures, including legislative measures, to ensure that the rules on compulsory arbitration do not unduly limit the exercise of the right to strike and collective bargaining in the air transport sector. Taking into account that the Committee will once again examine these matters as part of the follow up given to that case, the Committee considers that the present case is closed and does not call for further examination.*

The Committee's recommendation

- 610.** **In the light of its foregoing conclusions that reiterate the importance and full applicability of the recommendations made in Case No. 3319, which remains a case in follow-up, the Committee invites the Governing Body to decide that this case does not require any further examination.**

Case No. 3322

Definitive report

Complaint against the Government of Peru presented by the Autonomous Confederation of Workers of Peru (CATP)

Allegations: The complainant alleges anti-union practices by an industrial enterprise, including dismissals of trade union members and officials

- 611.** The complaint is contained in communications dated 10 March and 23 July 2018 submitted by the Autonomous Confederation of Workers of Peru (CATP).
- 612.** The Government of Peru sent its observations on the allegations in communications dated 16 and 23 August, 9 October and 21 and 30 November 2018, 22 January, 8 March and 6 May 2019, and 10 August 2022.
- 613.** 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. The complainant's allegations

- 614.** In its communication of 10 March 2018, the complainant alleges anti-union practices, including the dismissal of officials of the Union of Workers of VSI Industrial SAC, by the enterprise VSI Industrial SAC ("the enterprise"), which is engaged in the sanitary ware and faucets trade in the country and is part of the Vainsa SA corporate group ("the corporate group").

- 615.** The complainant states that, after the establishment of the trade union in 2010, the corporate group undertook a corporate reorganization to extricate itself from its commitments to its workers. As a result, the union began organizing activities to protect the rights of its members, which resulted in the signing of seven collective agreements over the years.
- 616.** The complainant indicates that on 27 May 2011, after a 40-day strike that led to the signing of a collective agreement, the enterprise dismissed the union's General Secretary, Mr Daniel Salazar Ayala, its Defense Secretary, Mr Walter Legia Onton, and its Organization Secretary, Mr Robert Chauca Prado, with a view to reducing the trade union action. It maintains that the enterprise called the officials to negotiate their dismissal and reached an agreement with Mr Salazar Ayala and Mr Legia Onton, who resigned in exchange for financial benefits.
- 617.** The complainant informs the Committee that Mr Chauca Prado did not accept the enterprise's proposals and took his case to the 27th Labour Court, which ruled in his favour and set aside his dismissal in a decision dated 18 May 2012, which was confirmed at the second instance by the Third Labour Chamber of Lima on 1 August 2013. The complainant also indicates that the enterprise lodged an application for judicial review, which was dismissed by the Constitutional Law Chamber of the Supreme Court on 12 January 2015.
- 618.** The complainant maintains that the enterprise disregarded the terms of the ruling and moved Mr Chauca Prado to another division whose manufacturing process did not align with his specialization. It indicates that he had to learn new tasks and received a lower wage, and that his wages were frozen whereas others in the same category received wage increases. It states that Mr Chauca Prado sent a letter to the senior management of the enterprise requesting that they comply with the court ruling but they refused, telling him that workers had to respect the employer's rules and that not doing so would be considered serious misconduct.
- 619.** The complainant informs that in 2016, the union elected Mr Chauca Prado as General Secretary and Mr Valerio Torvisco Rojas as Defense Secretary and that, in accordance with the approved work plan, they reported various violations, including acts of anti-union discrimination and violations of the right to bargain collectively, to the National Labour Inspection Authority (SUNAFIL), requesting that it carry out inspections in the enterprise in this regard.
- 620.** The complainant submits that, in response to these initiatives, the enterprise threatened the union officials with dismissal and began giving raises to its non-unionized workers and extending the benefits obtained by the union to those workers. It indicates that the union leaders sent a letter to the Managing Director of the enterprise in which they condemned these financial incentives to encourage its members to leave the union and requested that he take corrective action.
- 621.** According to the complainant, the enterprise continued its anti-union practices by establishing a Committee on the Working Environment so that non-unionized workers would channel all of their complaints and demands to it with the aim of reducing trade union action. The complainant explains that each section or division had to elect a representative to that committee and that union members were not eligible for election.
- 622.** The complainant states that on 19 January 2017, Mr Chauca Prado and Mr Torvisco Rojas requested a labour inspection as a result of the violation of fundamental rights in connection with the establishment of this parallel organization, and that on 31 January 2017, the enterprise dismissed them on the grounds of serious misconduct consisting of verbally insulting their hierarchical superior and having provided false information. It indicates that Mr Chauca Prado and Mr Torvisco Rojas applied to have their dismissals set aside by the First Standing

Specialized Labour Court of South Lima, and that the union has been disbanded and is inactive as a result of these dismissals.

- 623.** In its communication of 23 July 2018, the complainant alleges that the enterprise also dismissed three union members for anti-union reasons. It indicates that: (i) Mr Jorge Silva Nuñez was dismissed on 16 March 2018 for serious misconduct consisting of libel and having provided false information to the enterprise, after a dispute with the enterprise over the results of a medical examination he had undergone after an accident at work; (ii) Mr Williams Sallago Izquierdo was dismissed on 22 June 2018 on the grounds of verbal insults and slander after speaking to a co-worker about pay gaps that existed in the enterprise; and (iii) Mr Lucio Rey Salazar was dismissed on 5 July 2018 for abandonment of work for seven days when he was absent due to injury and had not yet received his medical certificate.
- 624.** The complainant informs the Committee that Mr Silva Nuñez and Mr Sallago Izquierdo have sought reinstatement through the courts, but criticizes the slowness of legal proceedings in the country. It states that the sole purpose of the dismissals was to break the union and that the same does not happen to non-unionized workers, who enjoy the full support of management.

B. The Government's reply

- 625.** By communications dated 16 August and 9 October 2018, the Government transmits the observations of the enterprise concerning the allegations in the present case. The enterprise states that in 2013, it underwent a corporate reorganization as a result of a decision of its owners. It maintains that the reorganization was in strict compliance with the procedures under Peruvian legislation and was not intended to extricate the enterprise from its labour commitments.
- 626.** With regard to the dismissals that took place in 2011, the enterprise maintains that the three union officials committed serious misconduct by unlawfully using the logo, branding and distinguishing signs of the enterprise and that that is unrelated to union activity, which functions smoothly in the enterprise, as evidenced by the collective agreements signed between 2010 and 2018. It states that it complied with the court decisions on the reinstatement of Mr Chauca Prado, in that he was assigned to the same category, with the same remuneration, and was paid his accrued remuneration. In relation to Mr Salazar Ayala and Mr Legia Onton, it states that there was no dispute, as the employment relationship was terminated by mutual agreement.
- 627.** Concerning the establishment of the Committee on the Working Environment, the enterprise asserts that any worker was eligible to stand for election and that the elections were conducted openly. It indicates that the labour inspection in relation to the committee that was initiated by a request from the union to SUNAFIL did not detect any violations on the part of the enterprise.
- 628.** With respect to the dismissals that occurred in 2017, the enterprise states that Mr Chauca Prado and Mr Torvisco Rojas committed serious misconduct (insulting and defaming the employer and officials) that was unrelated to their trade union activity.
- 629.** As to the dismissals of the three union members in 2018, the enterprise states that they resulted from acts of serious misconduct entirely unrelated to their right to freedom of association. It denies that its intention was to destabilize the union and states moreover that Mr Rey Salazar has never been a member of the union.
- 630.** In its communication of 23 August 2018, the Government provides information on the labour inspections conducted by SUNAFIL in the enterprise. It indicates that between 1 January 2014

and 26 July 2018, 69 inspection orders were created, of which 12 resulted in reports of infringements. It specifies that three of these infringements were related to collective labour relations, two to acts of hostility and harassment, and two to acts of discrimination in the workplace.

- 631.** In its communications of 21 November 2018, 22 January, 8 March and 6 May 2019, and 10 August 2022, the Government provides information on the outcomes of the legal proceedings related to the present case. In relation to the appeal lodged by Mr Chauca Prado and Mr Torvisco Rojas after their dismissals in 2017, the Government indicates that the First Standing Specialized Labour Court of South Lima ordered their provisional reinstatement on 7 June 2018, and informs the Committee that the enterprise reinstated Mr Chauca Prado on 27 June 2022.
- 632.** As to the appeals against the dismissals of 2018, the Government informs the Committee that: (i) the Second Specialized Labour Court of South Lima ordered the reinstatement of Mr Silva Nuñez and Mr Sallago Izquierdo in decisions dated 7 May 2019 and 18 October 2019, respectively; and (ii) after an application by the enterprise for a judicial review of the ruling of 18 October 2019 was dismissed, the enterprise complied with Mr Sallago Izquierdo's reinstatement.

C. The Committee's conclusions

- 633.** *The Committee notes that in the present case, the complainant alleges that an enterprise in the sanitary ware and faucets sector committed anti-union acts against a trade union that was established in 2010, including the dismissal of three of its officials on 27 May 2011, the dismissal of two of its officials on 31 January 2017, and the dismissal of three of its members in 2018. It notes that the enterprise states that the dismissals came as a result of acts of serious misconduct and that the Government provides information on the outcomes of labour inspections conducted in the enterprise and the legal proceedings related to the dismissals.*
- 634.** *In relation to the dismissals, the Committee notes that the complainant states that: (i) on 27 May 2011, the enterprise dismissed the then General Secretary of the union, Mr Daniel Salazar Ayala, and two other union officials, Mr Walter Legia Onton and Mr Robert Chauca Prado, to reduce trade union action as a result of a 40-day strike; (ii) the enterprise reached an agreement with Mr Salazar Ayala and Mr Legia Onton that they would resign in exchange for financial benefits; (iii) Mr Chauca Prado challenged his dismissal and, after court rulings in his favour, the enterprise reinstated him in another division at a lower wage; (iv) on 31 January 2017, the enterprise dismissed Mr Chauca Prado, who had been elected General Secretary of the trade union, and Mr Valerio Torvisco Rojas, another union official, after they requested the SUNAFIL to conduct inspections related to violations of labour rights; (v) Mr Chauca Prado and Mr Torvisco Rojas challenged their dismissals before the First Standing Specialized Labour Court of South Lima; (vi) in 2018, the enterprise dismissed three members of the union, Mr Jorge Silva Nuñez, Mr Williams Sallago Izquierdo and Mr Lucio Rey Salazar, for anti-union reasons; and (vii) Mr Silva Nuñez and Mr Sallago Izquierdo lodged appeals in the courts seeking their reinstatement.*
- 635.** *The Committee notes that the enterprise, in its observations provided by the Government, states that: (i) it dismissed the union officials and members because they had committed serious misconduct and not because of their trade union activity or membership; (ii) it complied with the court rulings that overturned Mr Chauca Prado's first dismissal, as he was reinstated in the same category of work with the same remuneration and received his accrued remuneration; (iii) it never intended to destabilize the trade union; and (iv) Mr Rey Salazar has never been a member of said union.*

- 636.** *The Committee also notes that the Government indicates that: (i) between January 2014 and July 2018, the SUNAFIL conducted 69 inspections in the enterprise and issued 12 reports of infringements; (ii) in a decision dated 7 June 2018, the First Standing Specialized Labour Court of South Lima ordered the provisional reinstatement of Mr Chauca Prado and Mr Torvisco Rojas; (iii) on 27 June 2022, the enterprise reinstated Mr Chauca Prado for a second time; (iv) in decisions dated 7 May and 18 October 2019, the Second Specialized Labour Court of South Lima ordered the reinstatement of Mr Silva Nuñez and Mr Sallago Izquierdo, respectively; and (v) the enterprise filed an application for judicial review of the decision of 18 October 2019, the application was dismissed on 3 September 2020, and the enterprise therefore reinstated Mr Sallago Izquierdo. Taking due note of the acts of infringement established by the SUNAFIL, the court rulings related to the dismissals, and the information provided by the Government on the reinstatement of Messrs Chauca Prado and Sallago Izquierdo, the Committee expects that Messrs Torvisco Rojas and Silva Nuñez have also been reinstated and that the competent authorities will continue to ensure that freedom of association is fully respected in the aforementioned enterprise. Moreover, taking into account that several years have elapsed between the decision ordering the reinstatement of Mr Chauca Prado and his actual reinstatement, the Committee expects that orders of reinstatement are respected in a timely manner to provide effective protection against acts of anti-union discrimination.*
- 637.** *Furthermore, the Committee notes that the complainant alleges that: (i) the enterprise established a Committee on the Working Environment to channel all of the non-unionized workers' complaints and demands; and (ii) the union members could not join the committee, whose purpose was to reduce trade union action. The Committee notes that the enterprise states that: (i) all of its workers could be elected to the said committee; and (ii) SUNAFIL conducted an inspection in this regard and did not detect any infringement on the part of the enterprise. Noting the diverging positions of the complainant and the enterprise, the Committee recalls the importance of ensuring that, where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned. The Committee trusts that SUNAFIL took these criteria into account in the inspections it conducted in the enterprise. In the light of the foregoing, the Committee considers that this case does not call for further examination and is closed.*

The Committee's recommendations

- 638.** **In the light of the foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a)** **The Committee expects that Messrs Torvisco Rojas and Silva Nuñez have been reinstated and that the competent authorities will continue to ensure that freedom of association is fully respected in the enterprise. It further expects that orders of reinstatement are respected in a timely manner to provide effective protection against acts of anti-union discrimination.**
 - (b)** **The Committee trusts that, during its inspections in the enterprise, SUNAFIL verified that the existence of elected representatives did not have the effect of undermining the position of the trade union concerned.**
 - (c)** **The Committee considers that this case is closed and does not call for further examination.**

Case No. 3185

Interim report

Complaint against the Government of Philippines presented by

- the National Confederation of Transport Workers' Unions of the Philippines (NCTU)
- the Center of United and Progressive Workers of the Philippines (SENTRO)
- the International Transport Workers' Federation (ITF)
- the Federation of Agricultural Workers Philippines (UMA)
- the National Federation of Sugar Workers – Food and General Trade (NFSW-FGT) and
- the Kilusang Mayo Uno (KMU)

Allegations: The complainant organizations allege a deteriorating labour rights situation in the country, characterized by numerous incidents of extra-judicial killings of trade union leaders and members, attempted assassinations, illegal arrests and detention, red-tagging, harassment, intimidation and threats against unionists, as well as trade union repression and intervention in union affairs. The complainants denounce the Government's failure to adequately investigate these cases and bring the perpetrators to justice, reinforcing the climate of impunity, violence and insecurity with its damaging effect on the exercise of trade union rights

- 639.** The Committee last examined this case (submitted in February 2016) at its November 2021 meeting, when it presented an interim report to the Governing Body [see 396th Report, paras 508–528 approved by the Governing Body at its 343rd Session].²⁰
- 640.** In a communication dated 1 September 2021, the Kilusang Mayo Uno (KMU) joined the case and provided additional information.
- 641.** The Government provided its observations in a communication dated 30 September 2022.
- 642.** The Philippines 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).

²⁰ [Link to previous examination.](#)

A. Previous examination of the case

643. At its November 2021 meeting, the Committee made the following recommendations [see 396th Report, para. 528]:

- (a) Recalling that the murders of Antonio “Dodong” Petalcorin, Emilio Rivera and Kagi Alimudin Lucman took place in 2013 and that the Government has indicated that they were, or continue to be, investigated through the regular processes of criminal investigation and prosecution, the Committee once again expresses its firm expectation that the perpetrators in the mentioned cases will be brought to trial and convicted without further delay. The Committee trusts that the Government will continue to make every effort in this regard and urges the Government to keep it informed of any progress made.
- (b) The Committee urges the Government to provide a detailed reply to the serious allegations of extra-judicial killings, illegal arrests, detention, threats, intimidation, harassment and red-tagging of trade unionists communicated by the ITF, the UMA and the NFSW-FGT and expects the Government to ensure that all of the above allegations will be rapidly investigated and perpetrators of violence against trade unionists identified and brought to justice, irrespective of whether they are private persons or State agents, so as to combat impunity and prevent the repetition of such acts. The Committee trusts that the Government will prioritize investigations into these serious incidents and requests it to keep it informed of the progress made in this regard, including the status of any cases initiated.
- (c) The Committee urges the Government to ensure the immediate release of any detained trade unionists, should their arrest or detention be connected to the legitimate exercise of their trade union rights.
- (d) Finally, emphasizing the Government’s responsibility with regard to investigations into allegations of violence against workers who are organizing or otherwise defending workers’ interests, the Committee expects the Government to do everything in its power to ensure that any past or future allegations of labour-related killings and other forms of violence against trade unionists are rapidly and properly investigated, so as to clarify the circumstances of the incidents, including the presence of any direct or indirect relation to trade union activity, determine responsibilities and punish the perpetrators with a view to preventing the repetition of such acts. The Committee also urges the Government to reinforce its efforts in combating violence against trade unionists by designing and implementing any necessary measures to this effect, including clear guidance and instructions to all State officials and operationalization of national monitoring and investigative mechanisms, so as to prevent recurring incidents of violence against trade union members and leaders and to ensure that they are not indiscriminately linked to insurgency or other paramilitary groups, considering the stigmatizing effect this may have on the exercise of legitimate trade union activities.
- (e) The Committee draws the special attention of the Governing Body to the serious and urgent nature of the matters dealt with in this case.

B. Complainants’ additional allegations

644. On 1 September 2021, the KMU submitted additional information alleging that the Government has openly declared unions affiliated with the KMU, as well as other organizations – the Confederation for Unity, Recognition of Government Employees (COURAGE) and the Alliance of Concerned Teachers (ACT) – as communist-terrorist organizations leading to blatant abuses of workers’ rights with impunity. The complainants point to a drastic increase in incidents of trade union repression and deprivation of workers’ rights to organize since the declaration and enforcement of martial law in the Mindanao region in 2017, as well as a deteriorating labour rights situation in the Southern Tagalog region. In particular, they allege

numerous incidents of extra-judicial killings, attempted assassinations, illegal arrests, detention, threats, harassment and intimidation of trade union leaders, as well as various forms of trade union repression and intervention in trade union affairs between 2017 and 2021. They also denounce the failure of the Government to adequately investigate these cases and bring the perpetrators to justice, reinforcing the climate of impunity, violence and insecurity, with its damaging effect on the exercise of trade union rights.

645. The complainants allege that, alongside “the war on drugs”, trade unionists and workers are also being targeted and killed during raids by state forces, which aim at preventing unionists from exercising their role and at stopping unionism altogether. They allege that the climate of impunity allows for the killing of union leaders and denounce the following concrete incidents of murder and attempted murder:

- On 31 October 2018, Danny Boy Bautista, an active member of the Nagkahiusang Mamumuo sa Suyapa Farm Union (NAMASUFA-NAFLU-KMU) was shot dead in the Compostela public market. The police have not yet informed of the name of the suspect but indicated that his death was highly related to his union involvement.
- In November 2018, Jerry Alicante, another active union member from NAMASUFA was shot but survived the assassination attempt, similarly as another unionist, Victor Ageas, in September 2018.
- In November 2018, unidentified individuals started a fire at the family house of NAMASUFA President Paul John Dizon, but the fire was put out; the next day they came back and fired eight shots before fleeing. In December 2018, the arsonists burned the house of the NAMASUFA President, as well as the union office adjacent to the President’s house and the house of the former President Vicente Barrios.
- In November 2019, Reynaldo Malaborbor, a pioneer convenor of the Pagkakaisa ng Manggagawa sa Timog Katagalugan (PAMANTIK-KMU), a former union member of the Trade Union of the Philippines – February Six Movement and a federation leader of the Trade Unions of the Philippines and Allied Services (TUPAS), was shot four times by an unknown assailant, as he was returning from the Cabuyao city hall where he was negotiating the release of detained striking workers. He was killed on the spot before the assailant fled with another accomplice. Later that day, residents indicated that unknown men had been roving around Malaborbor’s residence.
- On 7 March 2021, nine activists were killed and six arrested in the “bloody killings” or “the Bloody Sunday” raids by the police and the military. Emmanuel “Manny” Asuncion, the provincial coordinator of the Bagong Alyansang Makabayan in Cavite province and workers’ leader in several organizations was brutally murdered at the Workers’ Assistance Center (WAC) in Dasmariñas, Cavite by elements of the police. The units forcibly entered the premises where Asuncion, his wife and another volunteer were sleeping. At gunpoint, they forced the volunteer to the floor and later brought him and Asuncion’s wife outside to tell them that they would conduct a search but could not produce the search warrant. They then heard screams and several gunshots from the building and saw Asuncion’s body loaded into a police vehicle; he sustained six gunshot wounds. The police proceeded with a search of the building and an investigator later told Asuncion’s wife that they did not find any firearms or explosives. On the same day, Melvin Dasigao and Mark Lee “MakMak” Bacasno, members of the San Isidro Kasiglahan Fraternity and Cooperation for Livelihood, Justice and Peace, were assassinated. Unidentified men arrived at the residence of Dasigao in Kasiglahan Village, Rodriguez, Rizal, shouted at the residents and brought his wife and two children outside

when they heard three gunshots and saw Dasigao's body brought outside. In the same village, armed men forced entry into the residence of Bacasno. Police were heard shouting that they found guns and drugs inside and the neighbours heard a gunshot and an explosion. The next day, the families of the two men were denied access to their bodies at the Antipolo Funeral Homes, where the police brought them, as well as the bodies of four others allegedly killed by the police. The complainants claim that the perpetrators of these crimes were the units of the Criminal Investigation and Detection Group (CIDG) of the police, the Special Action Force and an army brigade.

- On 28 March 2021, Dandy Miguel, a national union leader and Vice-Chairperson of PAMANTIK-KMU (a regional chapter of the KMU), National Council Member of the KMU and the President of the Power of United Workers of Fuji Electric Philippines, was assassinated as he was riding back home on his motorcycle after a consultation with union leaders in Calambra, Laguna. Miguel was cornered by two motorcycles, shot multiple times and sustained eight gunshot wounds which led to his death. Miguel was working on the cases of "the Bloody Sunday" incidents at the time of his death, helping families to file complaints before the Commission on Human Rights (CHR) and assisting union leaders to file complaints of threats, harassment and intimidation.
- The complainants also point out that, according to reports from the Centre for Trade Union and Human Rights (CTUHR), as of August 2021, there were 56 cases of extra-judicial killings among working people in the country under the Duterte administration, 17 of which were from agricultural unions and were previously submitted to the Committee in this case by the Federation of Agricultural Workers Philippines (UMA) and the National Federation of Sugar Workers – Food and General Trade (NFSW-FGT).

646. The complainants further claim that the Government weaponizes the law to imprison unionists – they are targeted, under surveillance, threatened and subjected to arbitrary arrest and detention based on false criminal charges, fake evidence and ungrounded or manufactured search warrants and warrants of arrest. According to the complainants, unionists are being criminalized for their trade union activities leading to years of detention on mere allegations of criminal acts they did not commit, constituting a major blow to the trade union movement in the country. Often, they are subjected to hours of interrogation, as well as physical, verbal and psychological abuse and torture. The complainants point to the following concrete incidents of arbitrary arrest and detention of trade unionists based on false charges:

- In February 2018, Marklen Maojo Maga, a trade union activist involved in organizing a strike of public utility jeepney drivers and an organizer of unions within the KMU in Metro Manila and nearby provinces, was arrested for the illegal possession of a gun. His partner, Eleanor De Guzman, a KMU leader, and their son were forced to leave their home for security reasons. Maga was convicted in June 2019 and his case is under appeal.
- Between June and October 2018, false criminal charges led to the illegal arrest and detention of Juan Alexander Reyes, Rowena and Oliver Rosales and Ireneo Atadero, all of whom are members of workers' organizations (KMU, Workers' Association in Quezon City and COURAGE). The arrests were conducted jointly by the CIDG-National Capital Region of the Philippine National Police (CIDG-NCR) and the Intelligence Service of the Armed Forces of the Philippines (ISAFP). The unionists were planted with a handgun or an explosive device and charged either with murder or arson committed in Agusan del Norte, a province which they had never visited. They are not afforded due process, false witnesses and testimonies are used in the charges against them and they are prevented from performing their role as trade union organizers while in detention.

- In March 2019, Eugene Garcia, President of the Union of Workers of Pioneer Float Glass Manufacturing Inc., was arrested for the possession of a gun on the basis of planted evidence after a search warrant was implemented in his residence. Garcia's illegal arrest took place at the time the union was asserting its collective bargaining agreement through a series of dialogues with the new management, which refused to recognize the agreement and the union. He has yet to face trial before the Regional Trial Court.
- In March 2019, around 50 members of the police in ten vehicles arrived at the residence of Ricky Chavez, a board member of the Toyota Motors Philippines Corporation Workers' Association, to serve a search warrant but they could not find him. Before the search, Chavez joined a protest that the union organized to commemorate 18 years since the dismissals of 233 unionists in 2001.
- In October 2019, following simultaneous police raids of offices of people's organizations in Bacolod City, Negros Occidental, 55 people were arrested, including 21 bus drivers and the KMU Negros Island General Secretary Noli Rosales, who was detained on false charges of illegal possession of firearms and explosives, but his case was dismissed in 2021. Anne Krueger, a community journalist and organizer, was also arrested by the CIDG during a raid of the GABRIELA office (A National Alliance of Women) in Bacolod City and although later released on bail, she still faces false charges of illegal possession of firearms and ammunition.
- On 7 September 2020, Ramon Rescovilla, Vice-President of PISTON, a national transport federation of jeepney drivers affiliated with the KMU, was arrested in Daraga City, Albay, by 20 police officers, handcuffed, given a bag with a grenade and a handgun and later brought to the Daraga police station where he was interrogated and punched five times by men he suspected to be state intelligence agents. He was denied medical attention and is now facing false charges of illegal possession of firearms, explosives and murder.
- On 4 December 2020, Jose A. Bernardino, a trade union organizer in the industrial enclaves and of transport workers in the Pampanga province, was forcefully arrested by state operatives and handcuffed while travelling to Angeles City, Pampanga. Bernardino is being charged with rebellion and illegal possession of firearms, ammunition and explosives, even though he was not carrying any of these during his arrest by the police.
- On 10 December 2020, armed men conducted a staged search in the apartment of Romina Astudillo in Quezon City, where she, Mark Ryan Cruz and Jaymie Gregorio were staying. They found a backpack with a grenade and brought the three unionists to the CIDG-NCR in Camp Crame where they were interrogated without counsel. All three are members of the KMU – Astudillo was elected as Deputy Secretary-General and Cruz as Council at-large, while Gregorio organized workers in the port areas and nearby communities in Smokey Mountain in Manila.
- On 10 December 2020, 40 officials from the CIDG-NCR conducted a staged search at the apartment of Joel Demate's daughter and found a grenade, a rifle, a pistol and ammunition. Demate, who is a labour organizer working with the Solidarity of Labor for Rights and Welfare, was brought to the police and is facing multiple charges of illegal possession of firearms and explosives.
- On 10 December 2020, around 30 armed personnel from the Quezon City Police District SWAT and the CIDG Quezon City, some wearing uniforms while others in plain clothes, broke into the residence of Dennise Velasco, an organizer from Defend Jobs Philippines, his wife and her brother. Officials wearing black uniforms instructed the men to lie down with their

hands tied behind their back, while the police and barangay officials conducted a search, in which they supposedly found guns, ammunition and a grenade.

- On 4 March 2021, the police took Arnedo “Nedo” Lagunias, former Secretary of the Honda Cars Workers’ Union-OLALIA-KMU in Biñan City, Laguna, and other residents from his house, conducted a search and supposedly found a handgun and a grenade, vehemently denied by Lagunias, who is now facing charges of illegal possession of firearms and explosives.
- On 4 March 2021, about 50 officials from the CIDG surrounded and broke down the door of the house of Ramir Corcolon in San Pablo City, Laguna and conducted a search, which supposedly led to the finding of a gun, a grenade and an improvised explosive device. Corcolon is the President of the San Pablo City Water District Employees’ Association and the Secretary-General of the Water System Employees’ Response.
- On 7 March 2021 (“Bloody Sunday” arrests), Steve Mendoza, the Executive Vice-President of the labour federation OLALIA-KMU and former union President of the Philsteel Workers’ Union-OLALIA-KMU, and his partner Rafaela Barquilla were awakened by armed men in camouflage destroying their steel gate. Although Mendoza insisted to see the search warrant and asked the men to identify themselves, the men broke into the house, forced Mendoza on the ground at gunpoint, sent his wife and son outside and then ransacked the house. They later declared that they had found a handgun inside and Mendoza was charged with illegal possession of firearms, ammunition and explosives.
- On 7 March 2021 (“Bloody Sunday” arrests), at least 20 armed men in camouflage uniforms forced their entry into the Defend Yulo Farmers Office in Cabuyao, Laguna, where Elizabeth “Mags” Camoral and four others were staying, pointed a gun to her companion, shouted and ransacked the office. They found a handgun supposedly owned by Camoral, who was released on bail but still faces false charges of illegal possession of firearms. Camoral is the former President of the F-Tech Workers’ Union and the provincial coordinator for BAYAN-Laguna.
- On 7 March 2021 (“Bloody Sunday” arrests), armed men forced entry into the house of Eugene Eugenio, a member of F-Tech Workers’ Union province and the President of the Advancement of Rights and Responsibilities of Organized Workers. The men indicated they were looking for a pistol, which they allegedly found.
- On 30 March 2021, around 40 CIDG personnel surrounded the residence of Florentino “Pol” Viuya, Chairperson of the Workers’ Alliance in Region III and the Bagong Alyansang Makabayan in Central Luzon. Viuya insisted that his colleagues and barangay officials should be present during the search but the CIDG officials went around the house and found an open window at the back. After the search was conducted, the police pointed to a hand grenade in plain view on the windowsill of the same open window and arrested Viuya. On the same day, Joseph Canlas, peasant leader of the AMGL-Alliance of Peasants in Central Luzon was arrested and detained for the same false charges using a grenade as fake evidence. Canlas was denied pretrial remedies even though he was sick, contracted COVID-19 in detention and died in the hospital.

647. Furthermore, the complainants point to several instances of violent dispersal of workers’ strikes:

- In June 2017, around 100 fully armed combined elements of the armed forces and the police, together with strike-breakers from the fruit-producing company, violently dispersed striking workers from the Shin Sun Workers’ Union (SSWU), an affiliate of the National Federation

Labor Union (NAFLU-KMU), beat them up and used formalin to prevent the workers from defending the picket line. Following the strike dispersal, 12 workers and their supporters were arrested: Vicente “Boy” Barrios; Eric Noble; Pio Salar; Elisar Lague; Angelito Atamosa; Crispo Atamosa; Gerry Atamosa; Ernesto Calinawan; Carmin Atamosa; Francisco Milallos; Ritiza Milallos and Lanie Rose Millalos.

- In April 2018, following the creation of workers the United Workers of NutriAsia, the condiment-producing enterprise in Marilao, Bulacan attempted to block its registration and dismissed union officers, including Jessie Gemola, the union President. As a result of union busting, illegal dismissals and other forms of unfair labour practices, the union conducted a strike in June 2018, during which armed policemen tried to enter the vicinity of the striking workers. After the regular courts ordered the striking workers to restrain from obstructing the ingress to the company, the Bulacan Provincial Police and private security from the company violently dispersed the protesting workers and arrested 23 of them and their supporters on charges of physical assault: Mercy Macatabas Taborada; Elena Francisco Latoza; Mylene Arellano Baysa; Princess Punzalan Pineda; Ronello Hingpit Espejon; Jaymark M. Bautista; Jhon Paul L. Gonzales; Lloyd M. Salonga; Carmina R. Iletto; Romnick P. Agarpao; Ulysis Uy; Dinnis Datuin; Fernando Miguel B. Collantes; Christian S. Maniquiz; Rudy S. Magalang; Dinalyn V. Beringuel; Emerson C. Batarina; Reychele Sta. Rosa; Jovilou Angcon; Lueuile Bangcat; Ronald Gillego; Francis Estrella and Jessie Villacastin. At the end of July 2018, violence occurred again when the private security from the company and the police dispersed the workers’ picket line, which was situated more than 100 metres away from the company’s main gate, using batons, truncheon and stones, resulting in injuries to more than 40 workers and their supporters and the arrest of 19 workers, 8 of whom were striking workers: Daisy Jane Heda; Robert Sequino; Sedney Villamor; Jerald Verano; Mark Ponce; Dannyboy Conel; Marylle Jons Peligro and Jeovelyn Bornaes.
- In July 2018, a sit-down strike of workers from the Unified Power of Workers in Middleby Philippines Inc., an association of contractual workers in a factory in Biñan City, Laguna, was violently dispersed, causing injuries to five workers and seven workers were brought to the police station.
- In October 2018, the police, the military and the local government unit brought in strike-breakers and non-striking workers to disperse the strike of NAMASUFA workers at Sumifru, a banana-exporting company in Compostela Town. A few days later, seven NAMASUFA members were flagged down by unidentified men, supposedly goons of the company, and beaten. Later on, strike-breakers (hired goons and non-striking workers), escorted by officers of the armed forces and the police, attacked strike camps, tearing down paraphernalia and assaulting striking workers, which led to injuries to 27 workers and damage to union property.
- In June 2019, hundreds of men in black clothing attacked the 200 workers of the Pepmaco Workers’ Union who were sleeping at their picket line, causing serious injuries to several of them and destroying the picket line. In August 2019, after the striking workers held a protest at the gate of the industrial park, the police arbitrarily arrested 25 workers, forced them into a police vehicle and detained 18 of them. The workers were released the following day after a court order referred to the Department of Justice Memo Circulars enjoining prosecutors to first secure clearance from the Department of Labor and Employment (DOLE) before taking cognizance of complaints and filing cases arising out of or related to labour dispute.
- In July 2019, the police and private security guards from a condiment-producing enterprise in Cabuyao, Laguna threw rocks at the 400 striking workers, intimidating them with long

firearms, and used metal bars and truncheons to attack them. As a result, 19 workers were seriously injured and 17 arrested, including three union officers, and charged with malicious mischief, grave coercion and direct assault. They were denied remedies which led to their prolonged detention and were only released in December 2019 after posting bail, while the case against them continues.

- 648.** Finally, the complainants submit that the administration can, through the Anti-Terror Council and based on the Anti-Terrorism Act, arbitrarily proscribe individuals and organizations as terrorists, or simply use the law as a blanket in its terrorist-tagging of legitimate organizations and their leaders. The tagging of the KMU as a terrorist organization is, according to the complainants, a policy declaration and an order to eradicate unions and prevent workers from organizing themselves. Materials posted in public places and published on social media (official police accounts or state-funded fake accounts) label the KMU and its officers as supporters of the New People's Army (NPA) or its legal front, as "terrorists" or members of "communist-terrorist organizations", with the aim of making workers withdraw their membership or dissuading them from joining unions. The complainants claim that this vilification campaign against unionists is directed towards building a pretext for further abuses and violations of human rights and is part of the "whole of nation" national security approach where every segment of the Government is tasked with helping to identify probable insurgents and opponents of the regime, leading to Government instrumentalities conducting inventory of members of progressive organizations and submitting this information to the military to support the counter-insurgency efforts. In practice, this translates into grave threats among union leaders and members, vilification campaigns, anti-union propaganda by the military, fake surrenders, direct intervention of the military in union affairs, including union elections and forced disaffiliation from unions and federations.
- 649.** The complainants allege in this regard that the perpetrators of some of these incidents in the Southern Tagalog region are units from the armed forces in Southern Luzon, headed by the now-retired Lieutenant General Antonio Parlade Jr between 2019 and mid-2021 and that both the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) and the Joint Industrial Peace Coordinating Office (now referred to as the Alliance for Industrial Peace and Program Office (AIPPO)) have been engaged in propaganda and persistent harassment and threats against union leaders, often cascading in waves of house visits by state agents to threaten union leaders to surrender as NPA rebels or to disaffiliate from their unions in exchange for withdrawing any threats of arrest or abduction. They have also been interfering with union affairs, dislodging union officers and dismantling workers' organizations. The complainants point to the following specific incidents:
- Since February 2018, the military conducted house-to-house campaigns and assemblies among NAMASUFA workers and their relatives in Compostela Town, with the aim of convincing KMU members to surrender themselves to the military to clear their names from the list of NPA supporters and sympathizers or to withdraw their membership from KMU unions. The local government in Compostela Town even declared the KMU as a persona non grata.
 - In February 2019, three union leaders from the Musahamat Workers' Labour Union (MWLU), a local affiliate of the NAFLU-KMU in Pantukan, Compostela Valley, namely Esperidion Cabaltera, union President, Richard Genabe, Vice-President and Ronald Rosales, secretary, were abducted from their homes, brought to a military camp, detained overnight without cause, interrogated and coerced to admit they were members of the NPA, resign from the KMU and tell others to do the same. The three unionists denied the allegations but signed

the documents and although they were released the following day, soldiers are closely monitoring them. After their release, 153 union members were forced to sign a form stating that they would resign from the KMU to have their names cleared. Prior to their abduction in February 2019, Cabaltera and Genabe had already been harassed by unidentified armed men suspected to be members of the armed forces. The complainants indicate that the incidents concerning both Cabaltera and Genabe had already been reported to the Committee in Case No. 3119 concerning the Philippines, where the Committee requested the Government to take the necessary measures to ensure the full and swift investigation and resolution of alleged acts of harassment of union leaders and members of KMU-affiliated unions, including the Musahamat union members and activists (see Case No. 3119, 387th Report, October 2018, paragraph 626)

- In July 2019, the president of the Filipinas Palm Oil Plantation Workers Union submitted to the leadership of the NAFLU-KMU a letter declaring its disaffiliation from the Federation, citing red-tagging and harassment of its members by the military as the main reason for disaffiliation.
- In September 2019, during the period of union elections, members of the United Workers of Mindanao Agriculture Inc. spotted posters and flyers around the plantation vilifying the union and its affiliate federation, the NAFLU, using the logo of the NPA.
- Between February and May 2020, PAMANTIK-KMU has documented at least ten union members of the Coca-Cola Plant Employees Union in Santa Rosa who were victims of harassment, intimidation and threats by agents of the NTF-ELCAC, which also led to the abduction of some union members in April 2020 who were later presented as rebel surrenderers.
- In February 2020, the police started intimidating union members from the Nagkakaisang Manggagawa ng Supreme (NMS-NAFLU-KMU), a union at a steel producing company in Bulacan, through continuous factory visits, red-tagging and interference in union activities (meetings and local elections), which resulted in the election of a management union in the latest elections.
- Since April 2020, President of OLALIA-KMU Hermenigildo "Hermie" Marasigan has been in hiding due to threats to his security. In July 2021, his wife reported that around five uniformed men visited their house to help Marasigan clear his name and warned that the intelligence unit would eventually track him down. In August 2021, four military men visited their residence again with the same objective.
- Between May and November 2020, police officers introducing themselves as part of the AIPPO, have been entering and interfering with union activities of the Alcophil Workers' Union-Alliance of Genuine Labor Organizations-KMU. Union President Eliseo Taping has been vilified and red-tagged with proliferation of posters placed in the vicinity of the company factory in Valenzuela, Manila.
- Between December 2020 and March 2021, at least two union officers from the Optodev Workers' Union-NAFLU-KMU were subjected to surveillance, threats and harassment at their residences in Laguna.
- Between November 2020 and September 2021, the NXP Workers' Union-NAFLU-KMU documented 35 union officers and members who had been visited at least once at the factory or at their residences in Cabuyao and Canlubang in Laguna by state agents

introducing themselves as members of the NTF-ELCAC and asked about their offices, union activities and union dues.

- Between February and August 2021, at least 15 leaders and members of the Wyeth Philippines Progressive Workers' Union–Drug and Food Alliance-KMU have been visited at least once by state agents introducing themselves as members of the NTF-ELCAC. Union officer Rico Dimaano and the union President were threatened into signing a board resolution declaring the union's disaffiliation from the KMU.
 - In March 2021, a former KMU staff (name not provided) working on renovations of the house of Eleanor de Guzman, the KMU Human Rights Director, was interrogated by two men from the CIDG who indicated that the unit was conducting regular surveillance of de Guzman's residence and would deploy a team to abduct de Guzman and others.
 - In June 2021, posters tagging the KMU and its chairperson Elmer Labog as terrorist, were seen in the vicinity of the KMU headquarters in Barangay Claro in Quezon City, Laguna and Davao City. Government social media pages and state-funded fake accounts also tag the KMU and its officers as terrorists. In addition, labour centre offices are under surveillance and property is often destroyed, in particular regarding the KMU headquarters in Barangay Claro in Quezon City, Defend Jobs office in Quezon City and OLALIA-KMU office in Laguna.
 - The complainants also refer to the vilification of Lean Porquia, a KMU volunteer, by accusing him of recruiting rebels, as well as more broadly to intimidation of officers and members of workers' unions in TMA Group Phils, F-Tech, PIGLAS Middleby Phils Corp-LIGA, Daiwa Seiko Phils, Sun Logistics Corp, Aichi Forge Phils and workers from OLALIA-KMU.
- 650.** In relation to the above allegations, the complainants indicate that they reported the recent cases of murder and other human rights violations among KMU-affiliated unions to the CHR, the DOLE and the judiciary, but that there is very slow progression of the proceedings to justly evaluate the apparent state-sponsored scheme of silencing organized formations which criticize the administration's anti-worker policies. At the time of submitting these allegations, the complainants indicate that no member of the military or police forces has been sanctioned or penalized for human rights violations; instead, many were promoted or have retired. The KMU, PAMANTIK and families of victims have also engaged the Administrative Order No. 35 mechanism at the Department of Justice to request an investigation into the "Bloody Sunday" incidents and the killing of Dandy Miguel and argue that these killings should not be dismissed merely on the basis of presumption of regularity of police action or on arguments that those arrested fought back or that the killings were not labour-related. Instead, they demand a fair and thorough investigation into all the actions of the police and accountability for the perpetrators. The complainants submit that for arrested and detained unionists, legal defence is a challenge, human rights lawyers are being killed, the law is weaponized and the judicial system is compromised with judges under duress of military coercion and threats of being killed for being independent. The KMU raised these concerns with the Supreme Court Administrator and recommended reforms on the rules of courts and guidelines in the issuance of arrest and search warrants. The Supreme Court issued Administrative Circular No. 13 in July 2021 that requires the use of body cameras during arrests and searches and restricts the power of Metro Manila judges to issue search warrants on venues outside their jurisdiction. The KMU also filed a petition questioning the constitutionality of the Anti-Terror Act of 2020 and a complaint to the National Bureau of Investigation to look into state publications that tag KMU leaders as terrorists.

651. On the basis of the above, the complainants allege that state security forces continue to undermine freedom of association rights and flagrantly violate the law, due process, civil rights and basic human rights of Filipino workers, including through the assimilation of legitimate trade union activities with combat. Even though the DOLE has argued that the killings among workers are not labor-related and that remedies are available for workers' groups in case of violations (such as the Administrative Order 35 mechanism, the Guidelines on the conduct of state officials), the problem lies with the lack of the rule of law, the implementation of guidelines and whether the available mechanisms would prove to be impartial when the agencies involved in the investigation belong to the NTF-ELCAC. The complainants allege that while the Constitution, the laws, the courts and the guidelines are in place, state security forces blatantly disrespect these institutions and the heavily-funded NTF-ELCAC has become the main instrument of human rights abuses in the country, not persecuting armed communists but unarmed civilians and legitimate organizations. The complainants therefore argue that the Government failed to guarantee, uphold and protect workers' fundamental rights to life, liberty, other basic human rights and freedom of association. The fact that killings and other human rights abuses persisted and worsened since the International Labour Conference in 2019 means that the Government has not taken significant measures in curbing these abuses but, on the contrary, enforces policies and bodies that pave way for violations of trade union and human rights. The complainants call on the Government to end the repression and human rights violations against trade unionists and their families.

C. The Government's reply

652. In its communication dated 30 September 2022, the Government indicates that, following the May 2022 presidential elections, Government departments and agencies that are in charge of addressing the Committee's recommendations underwent a number of structural changes. The Government affirms full respect for ILO labour standards, recognizes the long-standing issues elevated to ILO supervisory mechanisms and recalls its intention to objectively address these issues. It adds that it has recently adopted a policy of open dialogue with various labour organizations, including those affiliated with the complainants in this case, in order to obtain more precise information on the numerous complaints of harassment, red-tagging and violence directed at trade union members. Through this process of communication and dialogue, the Government aims at working together with labour organizations to improve the environment for the exercise of trade union rights. These actions complement developments in the judiciary where the Supreme Court issued an administrative order expressly limiting the effect of judicial warrants within the issuing judge's territorial jurisdiction, so as to address the widely criticized practice of Manila and Quezon City judges to issue warrants that could be implemented in areas outside of their jurisdiction.

653. In relation to the cases concerning the murders of Antonio Petalcorin, Emilio Rivera and Kagi Alimudin that were at the origin of this case, the Government indicates that the newly launched e-warrant system aids in tracking suspects who remain at large and that the police now implement the Simultaneous Anti-Criminality Law Enforcement Operations, under which unserved warrants are served on a bi-monthly basis. Accordingly, the Palomo Police Station in Davao City, which has jurisdiction over the Petalcorin and Rivera cases is conducting continuous coordination with other law enforcement units to locate and apprehend the suspects. The case of Alimudin, despite not being classified as a case of extra-judicial killing based on the operational guidelines of the Administrative Order No. 35, remains open for investigation in line with regular criminal investigative procedures but the lack of material witnesses continues to hamper the investigation.

- 654.** Concerning the additional allegations submitted by the complainants in March and June 2021, the Government claims that they pertain to incidents that are distinct from those initially submitted in this case and should not be examined as part of the case. It also affirms that many alleged incidents are at various stages of the investigative, prosecutorial and judicial processes within fully functioning national institutions. In particular, it indicates that the allegations of extra-judicial killings have been raised by the Center for Trade Union and Human Rights and have been under monitoring by regional tripartite monitoring bodies. Out of these cases, five are under police investigation – the cases concerning Leonardo Escala, Alexander Ceballos, Flora Gemola, Ronald Manlanat and Felipe Dacal-Dacal – and three are pending before the courts or are being tried – the cases of reported killings of Ariel Diaz, Julius Broce Barellano and the nine farmers known as “Sagay 9”. The Government states that in the case of Ariel Diaz, based on a report of the Isabela Provincial Police Office from August 2021, a case for murder was filed in court against one identified and several unidentified suspects. According to the police, the motive for the crime was a land dispute and the accused have an arrest warrant pending against them and are being tracked. In the case of Julius Broce Barellano, a criminal case of murder was lodged against the suspects at the local court of San Carlos City, Negros Occidental, who were arrested and are currently detained. Regarding the Sagay farmers, a case of multiple murder was filed against two identified and several unidentified individuals and are pending at the Regional Trial Court Branch 73 in Sagay City, Negros Occidental.
- 655.** Concerning other alleged cases of extra-judicial killings, illegal detention and red-tagging raised by the complainants in March and June 2021, the Government states that it is committed to monitoring these cases but due to the high number of alleged incidents and the time that has elapsed since they occurred, the Government will need reasonable time to secure accurate and relevant information in this regard.
- 656.** With regard to the additional allegations submitted by the complainants in September 2021, the Government states that these refer to two additional incidents of killings, namely that of Dandy Miguel and the Southern Luzon raids tagged as “the Bloody Sunday”. The Government indicates that Dandy Miguel was shot on 28 March 2021 and his case was endorsed to the Department of Justice Inter-Agency Committee (IAC) under Administrative Order No. 35 immediately after the incident, following which the Department Secretary ordered the immediate creation of a Special Investigating Team, to facilitate investigation and case build-up. In April 2022, case conferences were held by the IAC during which the case of Dandy Miguel was extensively discussed and in reports from April and September 2022, the Assistant State Prosecutor and Head of the IAC Secretariat reported that the investigation in the case was ongoing.
- 657.** Concerning “the Bloody Sunday” incident, the Government indicates that it is the aftermath of simultaneous raids carried out by the police and the armed forces in Southern Luzon, which were, according to the spokesperson of the police in Region IV-A, conducted to serve search warrants for loose firearms and illegal possession of explosives. Nine people died – Emmanuel “Manny” Asuncion, Chai Evangelista, Ariel Evangelista, Melvin Dasigao, Mark Bacasno, Abner Esto, Edward Esto, Dumagat Puroy and Randy “Pulong” Dela Cruz. The IAC Secretariat reported in September 2022 that the case was being continuously monitored. The Government indicates, in particular:
- In January 2022, the Department of Justice issued a press statement indicating that the National Bureau of Investigation filed a complaint for murder against 17 officers and personnel associated with the Philippine National Police - Criminal Investigation and Detection Group (PNP-CIDG) in Region IV-A who were involved in the service of search warrants in Nasugbu, Batangas that led to the deaths of Ariel and Chai Evangelista.

- Concerning the death of Emmanuel “Manny” Asuncion, the Special Investigating Team recommended the filing of murder charges against certain law enforcement agents involved in the incident. Thereafter, a complaint against 17 identified policemen was filed with the prosecutor in Dasmariñas City, with Asuncion’s wife as the complainant.
- In September 2022, the Department of Justice confirmed that at least 30 police officers will be indicted for the killings of labour leaders Emmanuel “Manny” Asuncion and Ariel and Chai Evangelista. As for the other victims, the incidents are being investigated by the Special Investigating Team.

D. The Committee’s conclusions

- 658.** *The Committee recalls that the present case concerns allegations of a deteriorating labour rights situation in the country, characterized by numerous incidents of extra-judicial killings of trade union leaders and members, attempted assassinations, illegal arrests and detention, red-tagging, harassment, intimidation and threats against unionists, as well as allegations of trade union repression and interference in union affairs, and the Government’s failure to adequately investigate these cases and bring the perpetrators to justice, reinforcing the climate of impunity, violence and insecurity with its damaging effect on the exercise of trade union rights.*
- 659.** *The Committee notes that a High-Level Tripartite Mission took place in the country from 23 to 26 January 2023, as had been requested by the Conference Committee on the Application of Standards in its June 2019 recommendations on the application of Convention No. 87.*
- 660.** *With regard to the initial allegations and the status of the cases concerning the murders of Antonio “Dodong” Petalcorin, Emilio Rivera and Kagi Alimudin Lucman (recommendation (a)), the Committee recalls that the murders took place in 2013 and that the Government has indicated on several occasions that they were, or continue to be, investigated through the regular processes of criminal investigation and prosecution. While taking due note of the Government’s indication that the three cases continue to be under investigation and that a number of measures have been put in place to facilitate the tracking of suspects who remain at large, including coordination between the relevant law enforcement agencies, the Committee regrets to observe that no real progress appears to have been made in bringing the perpetrators to justice in the three cases. While further acknowledging the challenges of investigating and prosecuting criminal behaviour that occurred almost ten years ago and where suspects remain at large, the Committee must once again express its firm expectation that the perpetrators in the mentioned cases will be brought to trial and convicted without further delay, so as to avoid impunity for these serious crimes. The Committee urges the Government to continue to make every effort in this regard and to keep it informed of any progress made.*
- 661.** *Concerning the additional allegations communicated by the ITF, the UMA and the NFSW-FGT in March and June 2021 (recommendations (b) and (c)), the Committee recalls that these refer to a policy of trade union repression and criminalization which has resulted in practice in serious violations of human and trade union rights, including 18 cases of extra-judicial killings of trade union members and leaders since 2016, illegal arrests, detention and false criminal charges against more than 100 workers, human rights activists and unionists, as well as numerous incidents of intimidation, harassment, red-tagging and threats against trade union members and leaders, most of which were characterized by some degree of involvement of state agents, in particular members of the police, the armed forces or other organizations under their control. The Committee notes the Government’s indication that many of the alleged incidents are at various stages of the investigative, prosecutorial and judicial processes in fully functioning national institutions, including the regional tripartite monitoring bodies. In particular, the Government informs that five cases of alleged killings are under police investigation – the cases concerning Leonardo Escala, Alexander Ceballos, Flora*

Gemola, Ronald Manlanat and Felipe Dacal-Dacal – and three are pending before the courts or trials on charges of murder are ongoing – the cases of Ariel Diaz, Julius Broce Barellano and the nine Sagay farmers. The Committee observes that the Government does not provide any concrete information on the other allegations raised by the complainants, in particular on two additional cases of extra-judicial killings and numerous instances of illegal detention and red-tagging (see 396th Report, October 2021, paragraphs 515–517), but indicates its commitment to monitor these cases, while also emphasizing the challenges it faces (for example high number of incidents, time that has elapsed).

- 662.** *Taking due note of the above developments reported by the Government, the Committee recalls that it has previously expressed deep concern at the gravity of the allegations made, as well as at their repeated and prolonged nature, resulting in a climate of violence and impunity with an extremely damaging effect on the legitimate exercise of trade union rights in the country. In this context and further recalling that the mere absence of a labour dispute or trade union campaign does not necessarily preclude any connection of the crime with the exercise of trade union activities, membership or office [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 92], the Committee firmly expects the ongoing investigations and judicial proceedings to give full consideration to any possible direct or indirect relation that the violent acts may have with trade union activities of the victims. The Committee firmly expects the Government to prioritize investigations into all of the above serious incidents and the perpetrators of violence against trade unionists to be identified and brought to justice, irrespective of whether they are private persons or state agents, so as to combat impunity and prevent the repetition of such acts. The Committee urges the Government to provide updated information on any progress made, including in relation to the alleged extra-judicial killing of Jose Jerry Catalogo and Antonio “Cano” Arellano, for which the Government has not yet provided any details. The Committee also urges the Government to ensure the immediate release of any detained trade unionists, should their arrest or detention be connected to the legitimate exercise of their trade union rights.*
- 663.** *Regarding the additional information provided by the complainants in September 2021, the Committee observes that it concerns allegations of an increase in trade union repression and deprivation of workers’ right to organize since 2017, with a serious impact on the trade union movement in the country. In particular, the Committee observes that the complainants denounce the killing of six unionists – Danny Boy Bautista, Reynaldo Malaborbor, Emmanuel “Manny” Asuncion, Melvin Dasigao, Mark Lee Bacasno and Dandy Miguel – and six other activists, as well as the attempted assassination of four other union leaders and members, during raids conducted by the military and the police between October 2018 and March 2021, which the complainants argue are part of a state policy to prevent workers from organizing and to hinder genuine trade unionism in the country. The Government, for its part, does not address the broader allegations of a state policy of trade union repression but provides updates on the alleged killings of trade unionists and activists. In this regard, the Committee notes the Government’s indication that the killing of Dandy Miguel on 28 March 2021 was endorsed to the IAC under Administrative Order No. 35 immediately after the incident, that a Special Investigating Team was created to facilitate investigation and that the case build-up and investigation are ongoing. The Committee further notes that the Government provides details on “the Bloody Sunday” incident referring to it as simultaneous raids carried out by the police and the armed forces in Southern Luzon, which, according to the police, were conducted to serve search warrants for loose firearms and illegal possession of explosives and during which nine people died – Emmanuel “Manny” Asuncion, Chai Evangelista, Ariel Evangelista, Melvin Dasigao, Mark Bacasno, Abner Esto, Edward Esto, Dumagat Puroy and Randy “Pulong” Dela Cruz. In this respect, the Committee observes the Government’s indication that, following a complaint of the National Bureau of Investigation, at least 30 police officers will be indicted for the killings of labour leaders Emmanuel “Manny” Asuncion and Ariel and Chai Evangelista and that the other incidents are investigated by the Special Investigating Team.*

664. *In light of the latest allegations, the Committee must once again express deep concern at the repeated and serious allegations of killings or attempted killings of trade unionists and must recall that the right to life is a fundamental prerequisite for the exercise of the rights contained in Convention No. 87 [see **Compilation**, para. 81]. While further taking due note of the investigations undertaken and indictments to be filed against a number of state officials, as reported by the Government, the Committee also observes the complainants' concerns that despite having notified the CHR, the DOLE and the judiciary of the above incidents, there is very slow progress in addressing these allegations. In these circumstances, the Committee recalls that the killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and, in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events [see **Compilation**, para. 94]. Furthermore, the mere fact of initiating an investigation does not mark the end of the Government's work; rather, the Government must do all within its power to ensure that such investigations lead to the identification and punishment of the perpetrators. In view of the above, the Committee urges the Government to take the necessary measures to ensure that all alleged instances of killings and attempted killings reported by the complainants in September 2021 are fully investigated by an independent mechanism so as to identify and punish the perpetrators and to report on the progress made in this regard. Observing that no information was provided in relation to the incidents concerning the killing of Danny Boy Bautista and Reynaldo Malaborbor, the Committee urges the Government to provide details on any measures taken to address and investigate these incidents.*
665. *The Committee further observes from the additional information that the complainants allege institutional criminalization of trade union activities, translated in practice by surveillance, threats and arbitrary arrests and detention of trade unionists based on false criminal charges and fake evidence, and denounce a continued policy of vilification and anti-union propaganda by the military, and red-tagging of the KMU and other unions as terrorist organizations, which lead to widespread threats and persistent harassment, raiding of homes and offices, fake surrenders as supporters of the NPA, forced disaffiliation and other forms of intervention in trade union affairs, all of which prevent workers from fully exercising their right to organize. In this regard, the complainants provide details on the circumstances leading to the arrest and detention on false criminal charges of around 76 unionists between February 2018 and March 2021, some of whom were later released on bail but continue to have cases pending against them before the courts, and elaborate on at least 14 other situations in which numerous unionists from various KMU-affiliated organizations active in several enterprises were subjected to different forms of harassment, intervention in union affairs and forced disaffiliation as a result of accusations of being associated with or supporting a terrorist organization. Finally, the Committee notes that the complainants denounce violent suppression of workers' strikes and point to several instances between 2017 and 2019, in which the armed forces, the police and private security personnel resorted to the use of force (assaults, beatings with batons, metal bars and truncheons, throwing of stones and the use of formalin) to disperse striking workers in different sectors, resulting in injuries to numerous workers and the arrest and detention of more than 100 workers and union members, some of whom continue to have cases pending against them.*
666. *Observing the lack of Government information in this regard, the Committee must express deep concern both at the gravity of these additional allegations and at their repeated and prolonged nature, which seem to have extremely damaging effects on the legitimate exercise of trade union rights in the country, as described in detail by the complainants. The Committee also observes with deep concern that, according to the complainants, the direct perpetrators of most of the above incidents are state agents, often in collaboration with private security personnel from the concerned companies, and that the violence and purposeful targeting of trade unionists are allegedly*

conducted in the framework of a state-sponsored scheme to silence legitimate organizations, including trade unions. In these circumstances and given the multitude of serious allegations made, the Committee must recall that the environment of fear induced by threats to the life of trade unionists has inevitable repercussions on the exercise of trade union activities, and the exercise of these activities is possible only in a context of respect for basic human rights and in an atmosphere free of violence, pressure and threats of any kind [see **Compilation**, para. 116]. Concerning the complainants' concerns as to the alleged criminalization of trade union activities and the assimilation of legitimate trade unions with terrorist organizations, the Committee recalls that blanket linkages of trade unions to an insurgency have a stigmatizing effect and often place union leaders and members in a situation of extreme insecurity. Allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities. It is not possible for a stable industrial relations system to function harmoniously in the country as long as trade unionists are subject to arrests and detentions. The criminal prosecution and conviction to imprisonment of trade union leaders by reason of their trade union activities are not conducive to a harmonious and stable industrial relations climate [see **Compilation**, paras 93, 80, 127 and 155]. Furthermore, respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions and any coercion of workers or trade union officers to revoke their union membership would be contrary to these principles. Finally, regarding the allegations of violent dispersal of strikes, the Committee wishes to recall that while workers and their organizations have an obligation to respect the law of the land, the intervention by security forces in strike situations should be limited strictly to the maintenance of public order. The use of police for strike-breaking purposes is an infringement of trade union rights [see **Compilation**, paras 933 and 931].

667. In line with the above, the Committee urges the Government to provide detailed and concrete observations on the serious additional allegations of trade union repression and criminalization of trade union activities reported by the KMU in September 2021. The Committee urges the Government to ensure that all alleged instances of physical violence, arrests, detention, threats and intimidation are rapidly and thoroughly investigated and perpetrators of violence against unionists identified and brought to justice, including when they are state agents, so as to combat impunity and prevent the repetition of such acts. The Committee urges the Government to ensure that any pending criminal charges are dropped and any detained trade unionists immediately released, should their arrest or detention be connected to the legitimate exercise of their trade union rights. The Committee also urges the Government to take the necessary measures to address the alleged coercion of trade unionists to withdraw their union membership, so as to prevent the repetition of such incidents, and to ensure that workers' strikes, as long as they remain peaceful, are not met with disproportionate use of force by the police or the military.
668. Finally, with regard to the climate of violence and insecurity previously alleged in this case (recommendation (d)) and further denounced in the latest information from the complainants, the Committee notes that the Government recognizes the long-standing issues pending before the Committee and indicates its intention to objectively address these. In particular, the Committee takes note of the Government's indication that it has adopted a policy to engage in dialogue with labour organizations, including those affiliated with the complainants in this case, in order to obtain more precise information on the numerous complaints of harassment, red-tagging and violence directed at trade union members, which, according to the Government, aims at improving the environment for the exercise of trade union rights in the country. The Government also indicates that, in order to address the widely criticized practice of some judges to issue warrants that could be implemented outside their jurisdiction, the Supreme Court issued an administrative order expressly limiting the effect of judicial warrants within the issuing judge's territorial jurisdiction. The Committee further observes the information provided by the Government to the Committee of Experts on the Application

of Conventions and Recommendations, indicating that, in its judgment from December 2021, the Supreme Court declared that the Anti-Terrorism Act was not, as a whole, unconstitutional but nullified two of its provisions, including one which allowed for an overly vague interpretation of what constitutes terrorism so that it would no longer include broad references to advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights.

- 669.** *Taking due note of these measures and initiatives, the Committee wishes to recall that a free and independent trade union movement can only develop in a climate free of violence, threats and pressure, and it is for the Government to guarantee that trade union rights can develop normally [see **Compilation**, para. 87]. In line with the above, the Committee urges the Government to do everything in its power, including through direct, genuine and constructive engagement with labour organizations, to adequately address and remedy the extremely serious allegations that trade union violence and repression are conducted in the framework of a state-sponsored scheme to silence legitimate trade unions, allegations which, if found to be true, would seriously hinder the development of a genuine trade union movement in the country. In this respect, the Committee urges the Government to reinforce its efforts in combating violence against trade unionists by designing and implementing any necessary measures to this effect, including clear guidance and instructions to all state officials and full operationalization of national monitoring and investigative mechanisms, so as to prevent recurring incidents of violence against trade union members and leaders and to ensure that they are not indiscriminately linked to insurgency or other paramilitary groups, considering the stigmatizing effect this may have on the exercise of legitimate trade union activities.*
- 670.** *The Committee draws the particular attention of the Governing Body to the extreme seriousness and urgency of this case.*

The Committee's recommendations

- 671.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **Recalling that the murders of Antonio “Dodong” Petalcorin, Emilio Rivera and Kagi Alimudin Lucman took place in 2013 and that the Government has indicated that they were, or continue to be, investigated through the regular processes of criminal investigation and prosecution, the Committee must once again express its firm expectation that the perpetrators in the mentioned cases will be brought to trial and convicted without further delay, so as to avoid impunity for these serious crimes. The Committee urges the Government to continue to make every effort in this regard and to keep it informed of any progress made.**
 - (b) **With regard to the allegations of trade union repression reported by the ITF, the UMA and the NFSW-FGT in March and June 2021 (allegations of extra-judicial killings, illegal arrests, detention, false criminal charges, intimidation, harassment, red-tagging and threats against trade union members and leaders), the Committee firmly expects the ongoing investigations and judicial proceedings to give full consideration to any possible direct or indirect relation that the violent acts may have with trade union activities of the victims. The Committee firmly expects the Government to prioritize investigations into all of the serious incidents and the perpetrators of violence against trade unionists to be identified and brought to justice, irrespective of whether they are private persons or state agents, so as to combat impunity and prevent the repetition of such acts. The Committee urges the Government to provide updated information on any progress made, including in**

- relation to the alleged extra-judicial killing of Jose Jerry Catalogo and Antonio “Cano” Arellano, for which the Government has not yet provided any details.
- (c) The Committee urges the Government to take the necessary measures to ensure that all alleged instances of killings and attempted killings reported by the complainants in September 2021 are fully investigated by an independent mechanism so as to identify and punish the perpetrators and to report on the progress made in this regard. Observing that no information was provided in relation to the incidents concerning the killing of Danny Boy Bautista and Reynaldo Malaborbor, the Committee urges the Government to provide details on any measures taken to address and investigate these incidents.
 - (d) The Committee urges the Government to provide detailed and concrete observations on the serious additional allegations of trade union repression and criminalization of trade union activities reported by the KMU in September 2021. The Committee urges the Government to ensure that all alleged instances of physical violence, arrests, detention, threats and intimidation are rapidly and thoroughly investigated and perpetrators of violence against unionists identified and brought to justice, including when they are state agents, so as to combat impunity and prevent the repetition of such acts.
 - (e) The Committee urges the Government to ensure that any pending criminal charges are dropped and any detained trade unionists immediately released, should their arrest or detention be connected to the legitimate exercise of their trade union rights.
 - (f) The Committee also urges the Government to take the necessary measures to address the alleged coercion of trade unionists to withdraw their union membership, so as to prevent the repetition of such incidents, and to ensure that workers’ strikes, as long as they remain peaceful, are not met with disproportionate use of force by the police or the military.
 - (g) Finally, emphasizing the Government’s responsibility with regard to investigations into allegations of violence against workers who are organizing or otherwise defending workers’ interests, the Committee urges the Government to do everything in its power, including through direct, genuine and constructive engagement with labour organizations, to adequately address and remedy the extremely serious allegations that trade union violence and repression are conducted in the framework of a state-sponsored scheme to silence legitimate trade unions, allegations which, if found to be true, would seriously hinder the development of a genuine trade union movement in the country. In this respect, the Committee urges the Government to reinforce its efforts in combating violence against trade unionists by designing and implementing any necessary measures to this effect, including clear guidance and instructions to all state officials and full operationalization of national monitoring and investigative mechanisms, so as to prevent recurring incidents of violence against trade union members and leaders and to ensure that they are not indiscriminately linked to insurgency or other paramilitary groups, considering the stigmatizing effect this may have on the exercise of legitimate trade union activities.
 - (h) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgency of this case.

Case No. 2254

Interim report

Complaint against the Government of the Bolivarian Republic of Venezuela presented by

- the International Organisation of Employers (IOE) and
- the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS)

Allegations: the marginalization and exclusion of employers' associations in the decision-making process, thereby precluding social dialogue, tripartism and the implementation of consultations in general (particularly in relation to the very important legislation that directly affects employers), thereby failing to comply with the recommendations of the Committee on Freedom of Association itself; acts of violence, discrimination and intimidation against employers' leaders and their organizations; detention of leaders; legislation that conflicts with civil liberties and with the rights of employers' organizations and their members; a violent assault on FEDECAMARAS headquarters, resulting in damage to property and threats against employers; and a bomb attack on FEDECAMARAS headquarters

- 672.** The Committee last examined this case (presented in March 2003) at its June 2021 session and on that occasion presented an interim report to the Governing Body [see 395th Report, paras 369 to 401, approved by the Governing Body at its 343rd Session (June 2021)].²¹
- 673.** The Government sent further observations in a communication of 3 March 2022.
- 674.** The Committee recalls that in its previous examination of the case it noted that various recommendations of the Commission of Inquiry – appointed by the Governing Body in the light of the complaint made under article 26 of the ILO Constitution by various Employers' delegates to the 104th Session of the International Labour Conference against the Bolivarian Republic of Venezuela, and mandated to examine the country's non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) among other Conventions – refer to issues raised in case No. 2254. The Committee observes that the Commission of Inquiry established in its report that, in the light of the gravity of the issues raised, the situation and the progress achieved on its recommendations should be the subject of active supervision by the ILO supervisory bodies concerned. Given the gravity and

²¹ [Link to previous interim report.](#)

persistence of the matters involved in this case, the Committee requested the Government to send its observations in relation to its previous recommendations and in the light of the relevant recommendations of the Commission of Inquiry, so that at its following session it might pursue its examination of the case with full knowledge of the facts. The Committee also observes that, at each of its sessions, the Governing Body discusses the periodic progress report on developments concerning the social dialogue forum set up to give effect to the recommendations of the Commission of Inquiry with respect to the Government of the Bolivarian Republic of Venezuela.

A. Previous examination of the case

675. At its June 2021 session, the Committee made the following recommendations [see 395th Report, para. 401]:

- (a) The Committee once again firmly urges the Government to adopt all measures necessary to end immediately all acts of hostility and intimidation against FEDECAMARAS so that it may exercise its representative activities in full freedom, and to ensure that the necessary foundations for genuine social dialogue in the country are established. The Committee expects to receive information from the Government without delay on specific action taken in this regard.
- (b) The Committee once again urges the Government and all competent authorities to take all necessary measures without delay to ensure that all of the instigators and perpetrators of the attacks examined in the present case are identified and appropriately punished and to ensure that any compensation measures sought by the victims of the attacks are applied. The Committee expects to receive information from the Government without delay on progress made in this regard.
- (c) In relation to the criminal proceedings initiated against certain leaders of a meat processing company and a supermarket chain, the Committee urges the competent authorities to: (i) make every effort to expedite the judicial proceedings that are still under way and (ii) duly and fully take into account the employers' right to freely exercise their representative activities. The Committee requests the Government to keep it informed in this regard.
- (d) The Committee firmly urges the Government to: (i) provide detailed information on the outcomes of the social dialogue forum called for by the Governing Body, which should be organized and implemented in the light of the recommendations of the Commission of Inquiry; (ii) establish the bipartite and tripartite forums that this Committee has been calling for many years and that were called for once again by the Commission of Inquiry; and (iii) to immediately take all measures necessary to create a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations. The Committee expects to receive information from the Government without delay on the specific action taken in this regard.
- (e) Emphasizing once again that the absence of acts of harassment, stigmatization and intimidation and a climate of trust based on respect for employers' and trade union organizations are prerequisites for consultation processes, the Committee firmly urges the Government to immediately take all action necessary to establish an effective mechanism for tripartite consultations in accordance with the present conclusions. The Committee expects to receive information from the Government without delay on the specific action taken in this regard.
- (f) The Committee expresses its deep concern at the lack of progress on the above issues, which were also the subject of recommendations from the Commission of Inquiry. The Committee urges the Government to immediately take all the measures necessary to comply fully with the requirements made of it, in accordance with the process under way before the competent bodies of the Organization.

- (g) The Committee draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

B. The Government's observations

- 676.** In its communication of 3 March 2022, the Government requested that the information sent by it to the Governing Body and the Committee of Experts on the Application of Conventions and Recommendations be brought to the attention of the Committee on Freedom of Association, considering that the case is closely linked to the proceedings of the Committee of Inquiry which examined the non-observance of the Bolivarian Republic of Venezuela of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), among other Conventions, and with a view to maintaining the necessary consistency among proceedings and avoiding a duplication of proceedings on the same case.

C. The Committee's conclusions

- 677.** *The Committee recalls that, in the context of this case, it has been examining since 2004 serious allegations of violations of freedom of association relating notably to: (i) acts of harassment, stigmatization and intimidation against employer leaders and their organizations, including acts of violence against them, and (ii) the marginalization and exclusion by the public authorities of the employers' organization, FEDECAMARAS, in decision-making processes, thus excluding social dialogue, tripartism and, in general, the holding of consultations regarding decision-making in economic and social matters.*
- 678.** *The Committee recalls that it observed with deep concern the Commission of Inquiry's finding and condemnation of a web of mechanisms and practices involving acts of violence, as well as impunity or lack of clarification of such acts; persecution and multiple forms of harassment of employers and trade unionists; practices of favouritism or promotion of parallel organizations and of discrimination against, replacement of and obstacles to the functioning of organizations that are not close to the Government; and the absence of tripartite consultation and exclusion from social dialogue (report of the Commission of Inquiry, para. 494). The Committee once again notes with concern that the above-mentioned ongoing process before the Governing Body reveals that the Government has not, to date, accepted the recommendations of the Commission of Inquiry.*
- 679.** *The Committee observes that other general questions raised in this case are being examined by the Committee of Experts on the Application of Conventions and Recommendations within the framework of the application of Convention No. 87 and as follow-up to the recommendations of the Commission of Inquiry.*

Social dialogue and tripartite consultation

- 680.** *The Committee recalls that in its previous examination of the case, it recalled the conclusions of the 2014 high-level tripartite mission and the conclusions and recommendations of the Commission of Inquiry, and its recommendations in the present case with respect to the allegations concerning social dialogue and tripartite consultation, indicated in paragraph 4 (d) and (e).*
- 681.** *The Committee notes the discussions held at the 344th, 345th and 346th Sessions of the Governing Body (March, June and October–November 2022) and the information provided by the Government in this framework relating to the establishment and monitoring of the social dialogue forum to give effect to the recommendations of the Commission of Inquiry. In particular, the Committee notes that on 7 March 2022, the inaugural session of the social dialogue forum was held, chaired by the Minister of People's Power for the Social Process of Labour (MPPPST), with the participation of other officials of the Ministry and the following employers' and workers' organizations: FEDECAMARAS, the*

Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP), the Venezuelan Federation of Craft, Micro, Small and Medium-sized Business Associations (FEDEINDUSTRIA) the Independent Trade Union Alliance Confederation of Workers (CTASI), the Confederation of Workers of Venezuela (CTV), the National Union of Workers of Venezuela (UNETE), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA); and with ILO technical assistance. During the session, the terms of reference were adopted for the social dialogue forum which include, for discussion, pending issues on the application of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), Convention No. 87 and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The Committee also notes that between 25 and 28 April 2022, the first in-person session of the forum was held, with the technical assistance of the Office, which resulted in the adoption of a plan of action involving a timetable of activities for the implementation of the Conventions mentioned. As follow-up to the forum, bilateral meetings were held with the social partners from 11 to 21 July 2022, including FEDECAMARAS; and from 26 to 29 September 2022, another session of the forum was held, with the technical assistance of the Office, at which the activities carried out as part of the implementation of the plan of action adopted in April were evaluated, and it was agreed to update the plan. The Committee notes that the third in-person session of the social dialogue forum was held on Margarita Island from 30 January to 1 February 2023, with the participation of the MPPPST, FEDECAMARAS, FEDEINDUSTRIA, the CBST-CCP, the CTASI, the CTV and the CGT (report to the Governing Body at its 347th Session, GB.347/INS/13(Rev.1)). At that session, the participants agreed on various measures for the follow-up and updating of the plan of action, including strengthening relations between the National Land Institute (INTI) and FEDECAMARAS through meetings on the cases raised; strengthening actions to ensure the social dialogue process addresses the issues included in the Annex, holding bipartite meetings between the MPPPST and workers' and employers' organizations upon their request; and requesting ILO technical assistance on matters related to the implementation of the plan of action. The Committee notes that the plan of action adopted in the social dialogue forum, and its update, includes in its Annex, among other aspects relating to the above Conventions, the following expected results in connection with the case, as follow-up to the decisions of the Governing Body and relating to the recommendations of the Commission of Inquiry:

- *processing of evidence of presumed stigmatization and discrediting of parties, including the submission to the relevant authorities by the organizations concerned of updated lists with information to identify the cases of evidence relating to the Government, and the holding of bipartite meetings between the Government and employers' and workers' organizations to consider and take relevant measures, and follow up on them;*
- *effective processing of the cases relating to land presented by FEDECAMARAS (related to Convention No. 87);*
- *effective processing of evidence relating to cases of detentions and judicial proceedings or preventive measures, presumed to relate to the exercise of lawful trade union activities;*
- *continuation of consultations on the legislation relating to the world of work.*

682. *In its previous examination of the case, the Committee noted the first contact established between the legislature, through the Special Dialogue Commission, and FEDECAMARAS. The Committee also notes that, in its communication of 31 August 2022 to the Governing Body, the Government indicated that the MPPPST was in the process of reaching agreement with the legislature, at the request of the social partners, on the participation of workers' and employers' organizations in the consultation phase of laws containing special arrangements on working conditions and the bill on workers with disabilities. It also noted the Government's indication that the associations and chambers of the*

production sectors headed by the Presidents of FEDECAMARAS and FEDEINDUSTRIA had been incorporated in the National Council on the Productive Economy at a new meeting of the Council, led by the President of the Republic. The Government indicated that the meeting was intended to devise strategies to strengthen the country's different production sectors. In this respect, the Committee notes that FEDECAMARAS, through a communication of 1 September 2022 to the Governing Body, indicated that on 23 August 2022, the President and other leading FEDECAMARAS officials were invited to the event of the National Council on the Productive Economy which included announcements on taxation and rates of collection and the Government's intention to develop a new diversified economic model which is less dependent on oil.

- 683.** The Committee also notes the communication transmitted by the Government on 8 December 2022 to the Governing Body, following up on the implementation of the recommendations of the Commission of Inquiry, in which the Government indicates that according to the work schedule of the plan of action updated in September 2022, consultation activities with the social partners were planned, such as the adoption of the Regulations under the Constitutional Law of the Workers' Production Councils, on which it was expected to receive comments from employers' and workers' organizations; and lastly the minimum wage consultation for the second half of December 2022. In this respect, the Committee notes that in the plan of action updated in the social dialogue forum in January–February 2023, annexed to the report to the Governing Body at its 347th Session, it was agreed to extend the deadline for the submission of comments on the above Regulations.
- 684.** The Committee also notes that in the above communication, the Government reported that in 2022, within the framework of a broad and inclusive dialogue with all the country's employer sectors and partners, more than 90 round tables have been held with various economic sectors, citing the Exploratory and Trade Mission organized by the Federation of Traders of Colombia, with the participation of the Executive Vice President of the Republic and the institutional support of FEDECAMARAS (25 November 2022). The Government also indicates that an event was held, organized by the Venezuelan Confederation of Industrialists (CONINDUSTRIA), a member organization of FEDECAMARAS concerning the 2023 prospects of the Venezuelan industrial sector, with the participation of over one hundred employer associations, enterprises and chambers of the country.
- 685.** The Committee also notes the information provided by the Government to the Governing Body in its communication of 20 October 2022, relating to the activities to implement the plan of action agreed in Caracas in September 2022: (i) on 11 October 2022, the public consultation was held with the employers' and workers' organizations on the Homeworkers' Act, in which the CBST-CCP, CTASI, CTV, CGT, FEDECAMARAS and FEDEINDUSTRIA participated; on 19 October 2022, a meeting was held with FEDECAMARAS and FEDEINDUSTRIA to make progress in defining requirements and procedures for the national registration of those organizations, and a round table was set up at which the proposals presented by the social partners were discussed; and (iii) on 20 October 2022, a tripartite meeting was held with the organizations affected by the results of the Social Dialogue Forum on the setting up of a round table relating to the application of Convention No. 26.
- 686.** While noting the information provided by the Government, the Committee also notes the communication from FEDECAMARAS to the Governing Body of 1 September 2022, indicating that although meetings were held between the parties in a respectful and cordial atmosphere, the dialogue process is subject to delays and weaknesses, as no structured tripartite consultation body has been set up and the meetings do not comply with the formalities recommended by the Commission of Inquiry and other ILO supervisory bodies (independent chairperson or secretariat, recording of minutes, agreed timetable of meetings, follow-up mechanisms on compliance with agreements).

- 687.** *In the light of the above, the Committee requests the Government to provide detailed information on: (i) the specific results of the social dialogue forum, as follow-up to the recommendations of the Commission of Inquiry; and (ii) the measures taken to generate a climate of trust based on respect for employer and trade union organizations, with a view to promoting stable industrial relations. The Committee expects to receive information from the Government without delay on the specific actions taken in this regard and as follow-up to the plan of action updated in the framework of the social dialogue forum.*
- 688.** *In addition, the Committee once again highlights the importance that the tripartite consultations that have been called for many years should: (i) be held by the executive branch within the scope of its powers; (ii) involve all representative organizations of workers and employers, including FEDECAMARAS, regardless of their relations with the Government; and (iii) be effective and address all of the social and economic decisions likely to affect the interests of workers and employers. Emphasizing once again that the absence of acts of harassment, stigmatization and intimidation and a climate of trust based on respect for employers' and trade union organizations are prerequisites for consultation processes, the Committee firmly urges the Government to immediately take all action necessary to establish the said effective mechanism for tripartite consultations. The Committee expects to receive information from the Government without delay on the specific action taken in this regard.*

Allegations of stigmatization and intimidation by the Bolivarian authorities, groups and organizations directed against FEDECAMARAS, its member organizations, its leaders and affiliated companies

- 689.** *The Committee recalls that it noted with great concern that the Commission of Inquiry expressed deep regret at the persistent and serious harassment of the representative action of FEDECAMARAS and its members and recommended the immediate cessation of all acts of violence, threats, persecution, stigmatization, intimidation or other forms of aggression against persons or organizations in relation to the exercise of legitimate employers' or trade union activities, and the adoption of measures to ensure that such acts do not recur in future (report of the Commission of Inquiry, para. 497(1)(i)).*
- 690.** *The Committee notes that, in two communications addressed to the Governing Body, FEDECAMARAS reports that: (i) it informed the Ministry of Labour of discrediting messages and unfounded accusations against FEDECAMARAS leaders, broadcast in a programme of the State channel on 26 April 2022, in order to ensure that they are properly processed, as set out in the plan of action agreed during the social dialogue forum of April 2022 (communication of 14 May 2022); and (ii) new hateful and intimidating messages (29 and 30 August 2022) directed at the trade union organization from the National Assembly deputy for the state of Yaracuy, against the Presidents of FEDECAMARAS and the National Federation of Stockbreeders of Venezuela, as well as other trade union leaders as part of the restitution process of invaded lands (communication of 1 September 2022). The Committee notes that it has no information on the appropriate processing that should be performed of the allegations made by FEDECAMARAS in the communications dated 14 May and 1 September 2022. The Committee requests the Government to provide information on the follow-up given to the treatment of the allegations of discrediting and intimidation presented by FEDECAMARAS in its communications to the Governing Body of 14 May and 1 September 2022, in accordance with the plan of action agreed in the framework of the social dialogue forum.*
- 691.** *In the light of the findings and recommendations of the Commission of Inquiry, and of the measures taken in the framework of the plan of action adopted and updated in the social dialogue forum, the Committee once again strongly urges the Government to adopt all necessary measures to: (i) end*

immediately and prevent all acts of hostility and intimidation against FEDECAMARAS, so that it may exercise its representative activities in full freedom; (ii) ensure that the necessary foundations for genuine social dialogue in the country are established; and (iii) give effect to the measures set out in the plan of action agreed in a tripartite setting and updated in the social dialogue forum with a view to achieving the expected results defined in the plan of action. The Committee expects to receive information from the Government without delay on the specific action taken in this regard.

Attacks on FEDECAMARAS leaders and on the headquarters of representative organizations

- 692.** *The Committee recalls that, in the present case, it has examined serious episodes of attacks on FEDECAMARAS leaders and on the organization's headquarters, in relation to which it has repeatedly requested that all of those responsible should be identified and punished and that the victims should receive compensation. The Committee recalls that it noted, in its previous examination of the case, the allegation of the abduction of and attack on Ms Albis Muñoz and three further FEDECAMARAS leaders in 2010, examined within the Commission of Inquiry, and that despite the time that had elapsed, several key elements of the offences had still not been clarified and that the corresponding judicial proceedings were still pending a final decision (see report of the Commission of Inquiry, para. 379; and 395th Report of the Committee, paras 382 and 383). Further, the Committee recalls that with respect to the 2017 attack on the ASOGATA headquarters, it noted with concern that the Commission of Inquiry: (i) noted that the attack took place the day after a peaceful protest organized by the association and that (ii) despite more than two years having passed between the events and the report of the Commission of Inquiry, there were still no defendants in the case; and (iii) considered that these elements provide sufficient grounds not to exclude the motive for the attack being related to the association's representative activities (report of the Commission of Inquiry, para. 381 and 395th Report of the Committee, para. 385).*
- 693.** *Noting with great concern that the Government has not provided any new information on these cases since the publication of the report of the Commission of Inquiry, the Committee regrets to once again recall that in relation to cases of physical or verbal violence against workers and employers leaders and their organizations, the absence of judgements against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union activities [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 108]. In line with its previous recommendations and in accordance with the corresponding recommendations of the Commission of Inquiry, the Committee once again urges the Government and all competent authorities to take all necessary measures without delay to ensure that all of the instigators and perpetrators of the aforementioned attacks are identified and appropriately punished and to ensure that any compensation measures sought by the victims of those attacks are applied. The Committee expects to receive information from the Government without delay on progress made in this regard.*

Allegations of detention and trial of employers and leaders of representative organizations in various sectors

- 694.** *The Committee recalls that, in the present case, it has examined serious allegations of the detention and prosecution of employers and leaders of representative organizations in various sectors. The Committee recalls that, in its previous examination of the case, it referred specifically in its conclusions and recommendations to the criminal investigations into the leaders of a meat processing company and a supermarket chain.*

695. *The Committee notes that the Commission of Inquiry examined the aforementioned three cases, along with other allegations concerning similar situations (report of the Commission of Inquiry, para. 318). As regards the criminal investigations into leaders of a supermarket chain, in relation to which the Committee had requested the Government to inform it of the outcome of the Prosecutor's Office's appeal against the judicial decision to close the investigations, the Committee notes that the Commission of Inquiry was informed that a judgement of the Court of Appeal on the matter was still pending. As regards the criminal investigations into the leaders of a meat processing company and a supermarket chain, reported in the context of this case, the Committee deeply regrets that, to date and despite the time that has lapsed, the Government has not provided information on the status of the legal proceedings concerned nor on the measures taken to implement the recommendations related to these allegations. The Committee therefore once again urges the competent authorities to: (i) make every effort to expedite the judicial proceedings that are still under way; and (ii) duly and fully take into account the employers' right to freely exercise their representative activities. The Committee requests the Government to keep it informed in this regard.*
696. *Lastly, while welcoming the holding of the various sessions of the social dialogue forum and the measures agreed under the plan of action adopted and updated both in September 2022 and February 2023, the Committee encourages the Government to, in accordance with the process under way before the competent bodies of the Organization, continue to take all necessary measures without delay to fully comply with the requirements of the Commission of Inquiry.*

The Committee's recommendations

697. **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee requests the Government to provide detailed information on: (i) the specific results of the social dialogue forum, as follow-up to the recommendations of the Commission of Inquiry; (ii) the measures taken to generate a climate of trust based on respect for employer and trade union organizations with a view to promoting stable industrial relations; and (iii) the measures taken to ensure that the processes of dialogue and tripartite consultation comply with the formalities recommended by the Commission of Inquiry and other ILO supervisory bodies. The Committee expects to receive information from the Government without delay on the specific actions taken in this regard and as follow-up to the plan of action updated in the framework of the social dialogue forum.**
 - (b) **Emphasizing once again that the absence of acts of harassment, stigmatization and intimidation and a climate of trust based on respect for employers' and trade union organizations are prerequisites for consultation processes, the Committee firmly urges the Government to immediately take all action necessary to establish the said effective mechanism for tripartite consultations in accordance with the information laid out in the present conclusions. The Committee expects to receive information from the Government without delay on the specific action taken in this regard.**
 - (c) **The Committee requests the Government to provide information on the follow-up given to the treatment of the allegations of discrediting and intimidation presented by FEDECAMARAS in its communications to the Governing Body of 14 May and 1 September 2022 and in accordance with the plan of action agreed in the framework of the social dialogue forum.**
 - (d) **The Committee once again strongly urges the Government to adopt all necessary measures to: (i) end immediately and prevent all acts of hostility and intimidation**

- against FEDECAMARAS, so that it may exercise its representative activities in full freedom; (ii) ensure that the necessary foundations for genuine social dialogue in the country are established; and (iii) give effect to the measures agreed in the plan of action agreed in a tripartite setting and updated in the social dialogue forum with a view to achieving the expected results defined in the plan of action. The Committee expects to receive information from the Government without delay on the specific action taken in this regard.
- (e) The Committee once again urges the Government and all competent authorities to take all necessary measures without delay to ensure that all of the instigators and perpetrators of the attacks examined in this case are identified and appropriately punished and to ensure that any compensation measures sought by the victims of those attacks are applied. The Committee expects to receive information from the Government without delay on progress made in this regard.
 - (f) As regards the criminal investigations into the leaders of a meat processing company and a supermarket chain, the Committee once again urges the competent authorities to: (i) make every effort to expedite the judicial proceedings that are still under way; and (ii) duly and fully take into account the employers' right to freely exercise their representative activities. The Committee once again requests the Government to keep it informed in this regard.
 - (g) The Committee encourages the Government to, in accordance with the process under way before the competent bodies of the Organization, continue to take all necessary measures without delay to fully comply with the requirements of the Commission of Inquiry. The Committee requests the Government to keep it informed of specific measures adopted to comply with the plan of action agreed in the social dialogue forum regarding the implementation of the recommendations of the Commission of Inquiry and the decisions of the Governing Body, and relating to this case.
 - (h) The Committee draws the special attention of the Governing Body to the extremely serious and urgent nature of this case.

Case No. 3277

Interim report

Complaint against the Government of the Bolivarian Republic of Venezuela presented by

- **the National Union of Workers of Venezuela (UNETE),**
- **the Integrated Workers' Union of Ferrominera Orinoco (SINTRAFERROMINERA),**
- **the Confederation of Workers of Venezuela (CTV)**
- **the Independent Trade Union Alliance Confederation of Workers (CTASI) and**
- **National Federation of Labour Unions of Higher Education of Venezuela (FENASOESV)**

Allegations: The complainant organizations denounce the killing of a trade union leader, acts of persecution, intimidation and harassment against trade unionists and trade union leaders, dismissals of union leaders at a steel enterprise in the public sector, and arbitrary detentions of trade union leaders and trade unionists

- 698.** The complaint is contained in a communication of 10 June 2016 presented under article 26 of the ILO Constitution by several delegates to the 105th Session (2016) of the International Labour Conference. The Governing Body decided at its 329th Session (March 2017) that all allegations of the complaint concerning Convention No. 87 should be transmitted to the Committee on Freedom of Association for their examination.
- 699.** The complainant organizations presented additional information in communications dated 15 March 2017, 15 December 2020, 11 January 2021, 1 and 2 February 2021 and 23 September 2022. In addition, the National Union of Workers of Venezuela (UNETE) submitted additional allegations and information in communications dated 14 February 2023. The National Federation of Labour Unions of Higher Education of Venezuela (FENASOESV) submitted further allegations by communication of 15 February 2023.
- 700.** The Government sent its observations in various communications dated 15 September 2016, 9 January 2017 and 25 October 2017.
- 701.** The Bolivarian Republic of Venezuela has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 702.** UNETE denounces the killing of Mr Ramón Jiménez, general secretary of the Construction Union of Barinas State, on 16 April 2015. UNETE also denounces acts of persecution by state security forces against Mr Reynaldo Díaz, general secretary of the Union of Electricians and

Allied Workers of the Capital District and Miranda State. UNETE further denounces acts of persecution and harassment and suspension of the payment of wages of Ms Norma Torres, administration and finance secretary of the Union of Electricians and Allied Workers of Carabobo State.

- 703.** UNETE alleges in its communication of 1 February 2017 the anti-union dismissal of Mr Alejandro Álvarez Aular, general secretary of the Union of Workers of the National Steel Enterprise (SIDERNAC), a union affiliated to UNETE. Specifically, UNETE reports that Mr Álvarez Aular, in the exercise of his trade union functions, denounced to the Labour Inspectorate of Puerto Ordaz on 19 January 2021 various violations of labour rights at a steel enterprise in the public sector in which he worked as plant protection supervisor, with 25 years of service. The complainants indicate that following the denunciation, managerial and supervisory staff of the public enterprise informed Mr Álvarez that “on the instructions of the president of the enterprise ... he could no longer do his usual rounds of the enterprise installations ... involving contact with the workers”. The complainants indicate that doing these rounds of the enterprise installations were part of the trade union functions of Mr Álvarez. Subsequently, the enterprise security staff instructed him to leave the plant, denied him entry and told him that he should not resist as officials from the Directorate-General of Military Counter-Intelligence (DGCIM) were on the enterprise premises and were hoping for some reaction from him so as to be able to arrest him. The complainants indicate that as follow-up Mr Álvarez submitted a new official letter to the Labour Inspectorate of Puerto Ordaz on 21 January 2021 to denounce the above-mentioned events.
- 704.** UNETE indicates that the same measure was applied on the following day to Mr Arjonio Farrera, who was also working at the enterprise and held the post of labour and complaints secretary of SIDERNAC. The complainants denounce the fact that 16 other workers were dismissed by the same public enterprise. The complainants allege that the above-mentioned acts not only violate the national legislation and international conventions relating to freedom of association but are also contrary to the decree published on 31 December 2020 in Official Gazette No. 6.611, protecting public and private workers against dismissal for a further two years. In this regard, UNETE alleges that the general secretary of SIDERNAC followed up on the above-mentioned events with the submission of official letters on 29 January 2021 to: (i) the office of the Director-General of the DGCIM for the Guyana Region, in order to request a meeting with the union’s executive committee to seek an explanation for the visits of DGCIM groups and armed units to the public steel enterprise; and (ii) the Labour Inspectorate of Puerto Ordaz, in order to denounce violations of the above-mentioned decree and other applicable legislation relating to protection against dismissal.
- 705.** By a communication of 23 September 2022, UNETE alleges new acts of persecution and harassment against it, in particular the violent intrusion on 20 September 2022 of four presumed DGCIM officials, one of whom was armed, to prevent the holding of a press conference attended by family members and lawyers of imprisoned workers. In this communication UNETE asked that several appendices sent to various authorities be considered as part of the complaint, namely: (i) a letter sent to the members of the Credentials Committee at the 110th Session of the International Labour Conference (30 May 2022) to object to the delegation nominated by the Government; (ii) a letter to the ILO Director-General (7 June 2022), which includes an account of the background to the social dialogue forum, as well as other events that occurred at the time of the forum; and (iii) a letter sent to the Deputy Minister for the Integrated Labour Inspection and Social Security System regarding consultation on special laws complementing or deriving from the Basic Act on Labour and Workers.

- 706.** UNETE alleges that the Government has been implementing a systematic policy of violations of freedom of association, including anti-union reprisals and violations of collective bargaining. UNETE adds that these allegations have been examined in the context of various complaints to the Committee (in particular Cases Nos 2763, 2027, 2917, 2968, 3006, 3016, 3036, 3059, 3082, 3172 and 3187) and by the Committee of Experts on the Application of Conventions and Recommendations (CEACR).
- 707.** Furthermore, the CTV, on behalf of and representing the Single Union of Petroleum, Chemical and Allied Workers and Employees of the Autonomous Municipalities of Bruzual, Peñalver, Bolívar, Libertad and Sotillo of Anzoátegui State, alleges the arbitrary detention and irregular criminal prosecution of Mr Eudis Felipe Girot, executive director of the United Federation of Petroleum Workers (FUTPV). The CTV alleges that at 7 p.m. on 18 November 2020 DGCIM officials arrested Mr Girot on the basis of an arrest warrant dated 16 November 2020 issued by the Third Special Criminal Court of First Instance for Control Functions, which has competence to deal with crimes related to terrorism. The CTV alleges that Mr Girot was transferred to the headquarters of the DGCIM in Pozuelos in Sotillo Municipality in Anzoátegui State and then to Caracas. The CTV alleges that Mr Girot was charged with the crimes of terrorism, association with organized crime (sections 52 and 37 of the Basic Act against organized crime and funding of terrorism), disclosure of confidential information and conspiracy (sections 134 and 132 of the Penal Code). The CTV adds that, at the corresponding hearing, the court dismissed the charges of disclosure of confidential information and conspiracy but upheld the charges of terrorism and association with organized crime, issuing a precautionary measure of 45 days in custody in Caracas.
- 708.** The CTV maintains that Mr Girot is a recognized trade union leader in the petroleum sector who has led two national protests demanding that benefits established by contract should be honoured and has received support from petroleum workers in other states. The CTV therefore alleges that the deprivation of freedom and criminal prosecution of Mr Girot stem from his complaints concerning workers' conditions of employment in the petroleum industry and the status of his employer. The CTV adds that the crimes with which Mr Girot has been charged are subject to penalties of imprisonment ranging from 6 to 30 years. The CTV points out that the report of the Commission of Inquiry established under article 26 of the ILO Constitution to examine the observance by the Government of the Bolivarian Republic of Venezuela of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), indicates that trade unionists are being persecuted and prosecuted in the country, and the CTV quotes paragraph 45 of the report: "[T]he Commission considers that: (i) the bringing of criminal charges such as terrorism and treason against leaders of professional associations and trade unionists in relation to their trade union activities; [...] and (iv) the continuation of criminal proceedings for years, with the imposition of probationary measures on the leaders, constitute serious violations of the civil liberties inherent to freedom of association and contribute greatly to the repression and hindering of that freedom, and confirm the perception examined earlier in the report that the exercise of trade union activities constitutes a high-risk activity in the country." The CTV also asserts that the independent international fact-finding mission on the Bolivarian Republic of Venezuela, appointed by the United Nations Human Rights Council (September 2020, A/HRC/45/33), highlighted the fact that criminal prosecution by judges and prosecutors without any independence whatsoever, and with the frequent intervention of intelligence agencies, is a common pattern in the Bolivarian Republic of Venezuela. In conclusion, the CTV claims that in the case of Mr Girot a pattern is being repeated, which was also examined by the Commission of Inquiry, of proceedings being held in a court far from the home of the accused,

thereby exposing him to isolation from family and friends and depriving him of assistance, even in the form of food and medicine.

- 709.** SINTRAFERROMINERA, for its part, alleges the arbitrary detention since 17 June 2011 and the prolonged criminal prosecution of Mr Rodney Álvarez for participating in a workers' assembly. SINTRAFERROMINERA alleges that: (i) by the end of 2020, Mr Álvarez had still not been released; (ii) the ILO Director-General, the Committee on Freedom of Association and the Commission of Inquiry are aware of the situation of Mr Álvarez; and (iii) the judicial proceedings were interrupted on several occasions, with the case being transferred to various destinations, resulting in delays to the proceedings. SINTRAFERROMINERA asks the Committee to request the Government to release Mr Álvarez.

B. The Government's reply

- 710.** With regard to the allegations concerning the killing of Mr Ramón Jiménez, general secretary of the Construction Union of Barinas State, the Government indicates that the relevant organizations have stated that the case is under investigation but that it cannot be inferred that his killing is related to his status of trade union leader, and so this is a baseless allegation.
- 711.** With regard to the allegations of persecution by state security forces of Mr Reynaldo Díaz, general secretary of the Union of Electricians and Allied Workers of the Capital District and Miranda State, the Government denies that there has been any persecution. The Government asserts that Mr Díaz has the full use and exercise of his legal and trade union powers and that there is no arrest warrant or investigation against him, and that he even participated in the negotiation of the collective agreement for the electricity sector. Moreover, with regard to similar allegations, including the suspension of the payment of wages, relating to Ms Norma Torres, administration and finance secretary of the Union of Electricians and Allied Workers of Carabobo State, the Government states that it consulted the enterprise which employs Ms Torres and indicates that: (i) Ms Torres did not appear for work for over nine months; (ii) under the collective agreement Ms Torres does not have indefinite union leave; (iii) she has refused to return to her job; and (iv) for the above reasons the payment of her wages has been suspended. The Government adds that an application for authorization of dismissal of Ms Torres is currently with the Inspectorate of the Ministry of Labour and this has nothing to do with her union activities but with her repeated absenteeism. The Government asserts that there has been no harassment or persecution of Ms Torres.
- 712.** With regard to the allegations concerning criminal prosecution and imprisonment of trade unionists and workers for the exercise of their trade union rights, with some of these individuals remaining in prison for an indefinite period or under the obligation to appear at intervals before a criminal judge, the Government indicates that UNETE does not provide precise information. The Government adds that in previous cases before the Committee it has asked the Committee to require the complainants to provide a list of information containing their details and the trade union to which they belong, indicating the union activity for which proceedings are supposedly being conducted against them. Furthermore, with regard to the allegations concerning anti-union reprisals and the violation of the right to collective bargaining and freedom of association, the Government categorically denies the claim regarding the supposed application of judicial measures without duly substantiated grounds. The Government also indicates that: (i) peaceful protest is a constitutional right; (ii) it is the responsibility of the State to protect people, property and institutions against any illicit actions performed by third parties as part of a violent protest; (iii) the action of police and security forces is in accordance with the law; and (iv) the perpetration of illicit acts cannot be claimed to be the exercise of civil, political or labour rights.

- 713.** Lastly, the Government indicates in its communication of 25 October 2017 that, according to its analysis, the case forms part of a series of cases brought before the Committee which are being examined individually. Two of these cases are active (Nos 3016 and 3187), seven are at the follow-up stage (Nos 2763, 2827, 2917, 3006, 3036, 3059 and 3172), and two have been closed (Nos 2968 and 3082).

C. The Committee's conclusions

- 714.** *The Committee notes that the present case was submitted on 10 June 2016 in a complaint made under article 26 of the ILO Constitution by several delegates to the 105th Session (2016) of the International Labour Conference. The Committee notes that the Governing Body decided at its 329th Session (March 2017) that all allegations of the complaint concerning Convention No. 87 should be referred to the Committee for their examination. The Committee observes that in the complaint the complainants denounce violations of public freedoms and civil liberties, dismissals of trade union leaders at a steel enterprise in the public sector, acts of persecution, intimidation and harassment against trade unionists and trade union leaders, and arbitrary detentions of trade union leaders and trade unionists. The Committee observes that, as indicated by UNETE, some of the allegations made have already been examined by the Committee in the context of other cases. Moreover, the Committee observes that the Government has only supplied partial information in response to the allegations in the complaint, generally denying the allegations of persecution, intimidation and harassment as well as the other alleged violations of public freedoms and civil liberties, and further indicating the duplication of allegations in other cases which are active in the Committee, are being followed up or have been closed.*
- 715.** *The Committee notes the general allegations of UNETE that the Government has implemented a systematic policy of violations of freedom of association, also noting that UNETE lists a series of cases submitted to the Committee for examination. With regard to these general allegations, the Committee notes the Government's reply indicating that the allegations were being examined individually by the Committee, with two cases active (Nos 3016 and 3187), seven at the follow-up stage (Nos 2763, 2827, 2917, 3006, 3036, 3059 and 3172), and two closed (Nos 2968 and 3082). In the light of the foregoing, the Committee will not re-examine allegations on which it has already given an opinion.*
- 716.** *The Committee notes that UNETE, in its communication dated 23 September 2022, asks the Committee to consider as part of the complaint several appendices sent to various authorities, namely: (i) a letter sent to the members of the Credentials Committee at the 110th Session of the International Labour Conference (30 May 2022) to object to the delegation nominated by the Government; (ii) a letter to the ILO Director-General (7 June 2022), which includes an account of the background to the social dialogue forum, as well as other events that occurred at the time of the forum; and (iii) a letter sent to the Deputy Minister for the Integrated Labour Inspection and Social Security System regarding consultation on special laws complementing or deriving from the Basic Act on Labour and Workers. In this regard, the Committee observes that UNETE does not specify the allegations which it intends to submit in relation to the above-mentioned appendices, and so it invites this complainant to specify and provide details of its allegations relating to the appendices so that the Committee can undertake the relevant examination.*

Allegations regarding the right to life, personal safety and physical and moral integrity

- 717.** *The Committee notes with deep concern UNETE's allegation concerning the killing on 16 April 2015 of Mr Ramón Jiménez, general secretary of the Construction Union of Barinas State. The Committee notes the information provided by the Government in this regard, indicating in general terms that the relevant organizations have stated that the case is under investigation, that it cannot be inferred*

that his killing is related to his status of trade union leader, and that this is therefore a baseless allegation. The Committee observes that this allegation was examined by the CEACR in its observations concerning the application of Convention No. 87 published in 2015 and 2016. Moreover, the Committee observes that this case was also examined by other ILO supervisory bodies as a result of the complaint made under article 26 of the ILO Constitution by several Employer delegates at the 104th Session of the International Labour Conference against the Bolivarian Republic of Venezuela and the decision of the Governing Body to appoint a Commission of Inquiry to examine this country's non-observance of Convention No. 87, among other Conventions. The Committee notes from the report of the Commission of Inquiry (published in 2019) that the latest information from the Government in this regard indicates that the case was under investigation in relation to the suspected crime of aggravated homicide (paras 215 and 216).

- 718.** While observing that UNETE does not provide further details of the killing of Mr Jiménez, the Committee notes with concern that from the time of the killing of Mr Jiménez in 2015 until the time the Commission of Inquiry carried out its work, the case has apparently not yet been resolved. In this regard, the Committee recalls that the right to life is a fundamental prerequisite for the exercise of the rights contained in Convention No. 87 (ratified by the Bolivarian Republic of Venezuela) [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 81]. The Committee also recalls that the killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events [see **Compilation**, para. 94]. The Committee deeply deplores the killing of Mr Jiménez and urges the Government to take the necessary steps to ensure that the competent authorities: (i) give priority to the investigations under way and make every effort necessary to identify as quickly as possible the perpetrators and instigators of the killing of Mr Jiménez and ensure that the corresponding penalties are imposed on them; and (ii) take full account in the investigations of all relevant elements relating to the trade union activity of Mr Jiménez. The Committee requests the Government to provide information soon on progress made in this respect.

Allegations of violations of civil liberties, such as persecution, intimidation, harassment and arbitrary detentions of trade union leaders and trade unionists

- 719.** The Committee notes the allegations made by UNETE concerning persecution, intimidation and harassment of trade union leaders. With regard to the alleged persecution by state security forces of Mr Reynaldo Díaz, general secretary of the Union of Electricians and Allied Workers of the Capital District and Miranda State, the Committee notes that the Government denies that the alleged events occurred and asserts that Mr Díaz has the full use and exercise of his legal and trade union powers and that there is no arrest warrant or investigation against him. The Committee also notes the allegations of persecution, harassment and suspension of the payment of wages of Ms Norma Torres, administration and finance secretary of the Union of Electricians and Allied Workers of Carabobo State. In this regard, the Committee notes the Government's statement that there has not been any harassment or persecution and that it has forwarded the information provided by the enterprise employing Ms Torres, which indicates that: (i) it denies these allegations; (ii) Ms Torres did not appear for work for over nine months; (iii) Ms Torres does not have indefinite union leave and has refused to return to her job, and so if wages have been deducted, it is because of her absenteeism; and (iv) it applied for an authorization of dismissal to the Inspectorate of the Ministry of Labour; this has nothing to do with the union activities of Ms Torres but with her absenteeism. The Committee observes major divergences between the assertions contained in the complaint and

the Government's reply with respect to the cases of Mr Díaz and Ms Torres. In view of these divergences, the Committee invites UNETE to provide further details regarding the allegation of persecution and harassment of the above-mentioned trade union leaders so that this issue can be examined in full knowledge of the facts and, if this is not possible, to indicate whether there is any obstacle to providing this information; and it requests the Government to send further information regarding the procedure initiated with the Inspectorate of the Ministry of Labour against Ms Torres.

- 720.** *The Committee notes UNETE's allegations regarding persecution and harassment that it faced on 20 September 2022, denouncing the violent intrusion of four presumed officials of the DGCIM, one of them armed, with the intention of preventing a press conference attended by family members and lawyers of imprisoned workers. In this regard, the Committee recalls that freedom of opinion and expression and, in particular, the right not to be penalized for one's opinions, is an essential corollary of freedom of association, and workers, employers and their organizations should enjoy freedom of opinion and expression in their meetings, publications and in the course of their trade union activities [see **Compilation**, para. 235]. The Committee also recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected [see **Compilation**, para. 84]. Observing that the Government has still not responded to this allegation, the Committee requests the Government to provide its observations on this matter as quickly as possible.*
- 721.** *The Committee notes the allegations made by the CTV denouncing the arbitrary detention and irregular criminal prosecution of Mr Eudis Felipe Girot, executive director of the United Federation of Petroleum Workers of Venezuela (FUTPV). The Committee notes that the CTV alleges that: (i) at 7 p.m. on 18 November 2020, DGCIM officials arrested Mr Girot on the basis of an arrest warrant issued by the Third Special Criminal Court of First Instance for Control Functions, which has competence to deal with crimes related to terrorism (16 November 2020); (ii) further to the initial court hearing in Caracas, the court dismissed some of the charges but upheld the charges of terrorism and association with organized crime (sections 52 and 37 of the Basic Act against organized crime and funding of terrorism); (iii) the crimes to which the charges relate are subject to penalties of imprisonment ranging from 6 to 30 years; and (iv) the court issued a precautionary measure of 45 days in custody. The Committee notes the CTV's allegation that the detention is related to Mr Girot's activities as a trade union leader (he has led two national protests demanding that benefits established by contract should be honoured and has received support from petroleum workers in other states). The Committee notes that the Government has not provided its response to this allegation. However, the Committee observes that the CEACR, in its recent comment on the application of Convention No. 87 (published in 2023), noted the information received by the Government regarding the case of Mr Eudis Girot, including the fact that: (i) by means of a court judgment, Mr Girot was acquitted of the crime of disclosure of confidential information (section 134 of the Penal Code) and illicit possession of a firearm (section 111 of the Basic Act concerning disarmament and the control of arms and munitions); (ii) he was convicted of the crime of fomenting hatred (section 235 of the Penal Code) and sentenced to three years' imprisonment and in this regard the non-custodial precautionary measure was maintained; (iii) the proceedings are at the appeals stage and if the judgment is upheld, the competent court will impose alternative formulas for serving the sentence, in accordance with the Basic Code of Criminal Procedure. The Committee notes the CTV's indication that various international organizations have identified patterns with regard to persecution and prosecution of trade unionists in the country. The Committee notes the CTV's allegation that, in the case of Mr Girot, a pattern is being repeated of proceedings being held in a court far from the home of the accused, thereby exposing him to isolation from family and friends and depriving him of assistance, even in the form of food and medicine.*

- 722.** *The Committee duly notes these serious allegations and recalls that the absence of civil liberties removes all meaning from the concept of trade union rights; the rights conferred on workers' and employers' organizations must be based on respect for those civil liberties, such as security of the person and freedom from arbitrary arrest and detention, and that measures designed to deprive trade union leaders and members of their freedom entail a serious risk of interference in trade union activities and, when such measures are taken on trade union grounds, they constitute an infringement of the principles of freedom of association [see **Compilation**, paras 119 and 124]. The Committee observes that, in a similar vein, the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance by the Government of the Bolivarian Republic of Venezuela of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), Convention No. 87 and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), recommended: "(ii) cessation of the use of judicial proceedings and preventive and non-custodial measures, including the subjection of civilians to military jurisdiction, (...); (iii) the immediate release of any employer or trade unionist who is imprisoned in relation to the exercise of the legitimate activities of their organizations ..." (report of the Commission of Inquiry, para. 497(1)(ii) and (iii)). The Committee urges the Government to provide detailed information on the situation of Mr Girot, and urges the Government to ensure that due process is respected in criminal proceedings against him, and to guarantee that he has not been detained in relation to his activities as a trade union leader. The Committee requests the Government to keep it informed of developments in the situation.*
- 723.** *The Committee notes the allegations of SINTRAFERROMINERA in the case of the arbitrary detention and prolonged criminal prosecution of the trade unionist Mr Rodney Álvarez. In this regard, the Committee observes that the case of Mr Álvarez was examined in depth by the above-mentioned Commission of Inquiry (paras 243, 389 and 412–415 of the report of the Commission of Inquiry), which in its report recommended the immediate release of Mr Rodney Álvarez (para. 497(1)(iii)). In follow-up to the Commission of Inquiry, the Committee notes that the CEACR in its most recent observation concerning the application of Convention No. 87 by the Bolivarian Republic of Venezuela (published in 2023) noted the resolution of the criminal case, in view of the fact that the Eleventh Court of First Instance of the Criminal Judicial Circuit of the Metropolitan Area of Caracas handed down its definitive judgment ordering the unrestricted freedom of Mr Álvarez (1 June 2022), and recalled the right to due sanction of, and compensation for, violations of civil liberties, and so it requested the Government to take the necessary measures to ensure fair compensation for the harm caused to Mr Álvarez, including the appropriate financial compensation for injury suffered, in conformity with the Constitution. In the light of the foregoing, trusting that the competent authorities will grant fair compensation to Mr Álvarez, the Committee will not pursue its examination of this allegation.*

Allegations concerning anti-union dismissals

- 724.** *The Committee notes UNETE's allegations concerning the anti-union dismissal of Mr Alejandro Álvarez Aular, general secretary of SIDERNAC. The Committee notes that UNETE reports that on 19 January 2021 Mr Álvarez Aular had denounced violations of labour rights occurring at a steel enterprise in the public sector to the Labour Inspectorate of Puerto Ordaz. Moreover, the Committee notes that UNETE reports that, at the time of the dismissal, officials at the enterprise told him that he would not be able to do his rounds of the enterprise as part of his union activity and that he should not resist since officials from the Directorate-General of Military Counter-Intelligence (DGCIM) were on the enterprise premises, hoping for some reaction from him so as to be able to arrest him. The Committee notes that Mr Álvarez Aular sent an official letter to the Labour Inspectorate denouncing the dismissal that allegedly occurred on 19 January 2021. In this regard, the Committee recalls that in cases of the dismissal of trade unionists on the grounds of their trade union membership or activities, the Committee has requested the government to take the necessary*

*measures to enable trade union leaders and members who had been dismissed due to their legitimate trade union activities to secure reinstatement in their jobs and to ensure the application against the enterprises concerned of the corresponding legal sanctions [see **Compilation**, para. 1167]. The Committee notes that Mr Aular sent a number of official letters to the DGCIM to request a meeting and seek an explanation for the DGCIM presence at the enterprise, and to the Labour Inspectorate with regard to other dismissed workers, alleging violations of the national legislation. In the light of the foregoing and noting with regret the lack of any response from the Government, the Committee requests the Government to ensure that proceedings within the Labour Inspectorate in relation to Mr Álvarez Aular are clarified as soon as possible and that the question is resolved regarding whether anti-union discrimination was committed by the enterprise in the dismissal of the aforementioned union leader and, if so, that appropriate penalties are imposed and compensation measures adopted, including reinstatement in his job. The Committee also requests the Government to provide information on the other proceedings initiated by Mr Aular vis-à-vis the DGCIM and the Labour Inspectorate in relation to other dismissals, so that the Committee can examine these elements in full knowledge of the facts.*

- 725.** *With regard to the allegation concerning the dismissal of Mr Arjonio Farrera, labour and complaints secretary of SIDERNAC, and of 16 other workers at the public-sector steel enterprise, the Committee observes that it does not have further details regarding the anti-union nature of the alleged dismissals. It therefore invites the complainant to send more precise and detailed information in this regard, so that this issue can be examined in the light of all the relevant elements.*
- 726.** *Lastly, the Committee requests the Government to provide its observations as soon as possible on all the allegations to which it has not yet responded. The Committee draws the Governing Body's attention to the serious and urgent nature of this case.*

The Committee's recommendations

- 727.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a)** **The Committee observes that UNETE does not specify the allegations which it intends to submit in relation to the accompanying appendices, which include letters to various institutions and organizations (national and international, including the ILO), and so it invites this complainant to specify and provide details of its allegations relating to the aforementioned appendices so that the Committee can undertake the relevant examination.**
 - (b)** **The Committee deeply deplores the killing of Mr Jiménez and urges the Government to take the necessary steps to ensure that the competent authorities: (i) give priority to the investigations under way and make every effort necessary to identify as quickly as possible the perpetrators and instigators of the killing of Mr Jiménez and ensure that the corresponding penalties are imposed on them; and (ii) take full account in the investigations of all relevant elements relating to the trade union activity of Mr Jiménez. The Committee requests the Government to provide information soon on progress made in this respect.**
 - (c)** **The Committee invites UNETE to provide further details regarding the allegation of persecution and harassment of the above-mentioned trade union leaders so that this issue can be examined in full knowledge of the facts and, if this is not possible, to indicate whether there is any obstacle to providing this information; and it requests the Government to send further information regarding the procedure initiated with the Inspectorate of the Ministry of Labour against Ms Torres.**

- (d) The Committee observes that the Government has still not provided its response to the allegation of violent persecution and harassment of UNETE by four presumed officials of the DGCIM, one of them armed, with the intention of preventing a press conference (20 September 2022). The Committee requests the Government to provide its observations in this respect as soon as possible.
- (e) The Committee urges the Government to provide detailed information on the situation of Mr Girot, and urges the Government to ensure that due process is respected in criminal proceedings against him, and to guarantee that he has not been detained in relation to his activities as a trade union leader. The Committee requests the Government to keep it informed of developments in the situation.
- (f) The Committee requests the Government to ensure that proceedings within the Labour Inspectorate in relation to Mr Álvarez Aular are clarified as soon as possible and that the question is resolved regarding whether anti-union discrimination was committed by the enterprise in the dismissal of the aforementioned union leader and, if so, that appropriate penalties are imposed and compensation measures adopted, including reinstatement in his job. The Committee also requests the Government to provide information on the other proceedings initiated by Mr Aular vis-à-vis the DGCIM and the Labour Inspectorate in relation to other dismissals, so that the Committee can examine these elements in full knowledge of the facts.
- (g) The Committee observes that it does not have further details regarding the anti-union nature of the alleged dismissals of Mr Farrera and 16 other workers at the public-sector steel enterprise, and so it invites the complainant to send more precise and detailed information in this regard, so that this issue can be examined in the light of all the relevant elements.
- (h) The Committee requests the Government to provide its observations as soon as possible on all the allegations to which it has not yet responded.
- (i) The Committee draws the Governing Body's attention to the serious and urgent nature of this case.

Geneva, 16 March 2023

(Signed) Professor Evance Kalula
President

Points for decision:

paragraph 84	paragraph 412
paragraph 97	paragraph 446
paragraph 120	paragraph 479
paragraph 139	paragraph 501
paragraph 158	paragraph 548
paragraph 196	paragraph 595
paragraph 269	paragraph 610
paragraph 297	paragraph 638
paragraph 322	paragraph 671
paragraph 362	paragraph 697
paragraph 384	paragraph 727