



# Governing Body

347th Session, Geneva, 13–23 March 2023

Institutional Section

INS

Seventeenth item on the agenda

## Presentation of the Committee on Freedom of Association annual report for the year 2022

### Addendum

1. This annual report emanates from the March 2017 Workers' and Employers' groups' Joint Statement which stated that: "On the basis of a proper 'clarification of the role and mandate of the CFA ... vis-à-vis regular standards supervision' (Joint Statement of 2015), every year the Chairperson of the CFA could present to the CAS a report of activities, after the report of the Chairperson of the CEACR. This information would be important for the CAS to show the complementarity of the committees and could limit double procedures about the same cases."
2. The Committee recalls that its first annual report was taken note of by the Governing Body in June 2018 (see GB.333/INS/6/3). The Committee has now the honour to present to the Governing Body its sixth annual report (see appendix).
3. The Committee also draws the Governing Body's attention to the decision taken in relation to the Standards Initiative (GB.335/INS/5) as regards the presentation of this report to the Conference Committee on the Application of Standards (CAS).

### ▶ Draft decision

4. **The Committee invites the Governing Body to take note of its sixth annual report which covers the year 2022.**

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### The CFA annual report – 2022

#### I. Background information

1. The Committee on Freedom of Association (CFA) is a tripartite body set up in 1951 by the Governing Body of the ILO. The CFA examines alleged infringements of the principles of freedom of association and the effective recognition of the right to collective bargaining enshrined in the Constitution of the International Labour Organization (Preamble), in the Declaration of Philadelphia and as expressed by the 1970 ILC resolution.
2. The CFA is composed of six members from each of the groups of the Governing Body (Government, Workers and Employers), and has an independent Chairperson. The CFA meets three times a year and examines complaints lodged against governments whether or not the government has ratified any of the relevant ILO freedom of association Conventions. The conclusions issued by the CFA in specific cases are intended to guide the governments and national authorities for discussion and the action to be taken to follow up on its recommendations in the field of freedom of association and the effective recognition of the right to collective bargaining. The object of the CFA complaint procedure is not to blame or punish anyone, but rather to engage in a constructive tripartite dialogue to promote respect for freedom of association in law and practice. When doing so, the CFA is cognizant of different national realities and legal systems.

#### II. Appreciation of progress on working methods and ongoing reflections

3. A full review of the notable decisions taken by the CFA members in relation to their working methods over recent years has been reflected in the introduction of its March 2021 report. The CFA members keep their working methods under regular review and have pursued active and constructive discussions in this regard in dedicated sittings of its meetings in March and October 2022.

#### III. Objective of the annual report

4. This report is intended to provide helpful information on the use of the CFA procedure throughout the year, supported by statistical data and other details with regard to the work undertaken by the CFA, the progress made and the serious and urgent cases examined by the Committee. The report covers the year 2022.
5. The annual reports aim to show developments over the years in the use of this special procedure and can be compared to the baseline set in the CFA's first annual report for 2017.

#### IV. CFA subcommittee role

6. Since May 2016, the CFA operates on the basis of the preparatory work undertaken by the subcommittee. The CFA subcommittee, whose proposals are placed before the Committee for final decision, has thus appreciably strengthened the Committee's governance role with respect to several aspects of its work: (a) criteria for merging cases; (b) the identification of priority cases for examination and cases that may be merged; (c) the setting of the agenda of the next

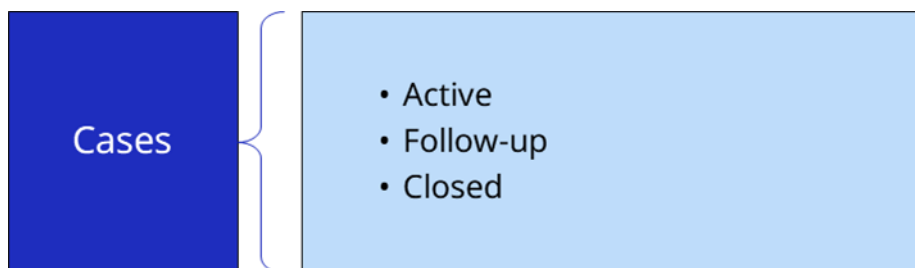
Committee meeting, ensuring rapid examination of serious and urgent cases and relative regional balance; (d) a dynamic follow-up review of the effect given to its recommendations; and (e) an improved presentation of the introduction to the Committee’s report to communicate more clearly and effectively its expectations to constituents. Following on the recent decisions taken to further develop its procedures and practices, the sub-committee has reviewed a certain number of complaints in light of the criteria developed to assist in filtering out complaints for which it considered that the committee would not be in a position to provide pertinent recommendations under its mandate (see 393rd Report, para. 17) and noted for the year 2022.

## V. CFA cases and reports terminology

- The Committee has recognized that there is a need to explain more clearly the terminology used for the status of cases before it and that are used to classify its reports when it examines a case. The explanation of the terms below are set out in greater detail in paragraphs 8, 14 and 15.

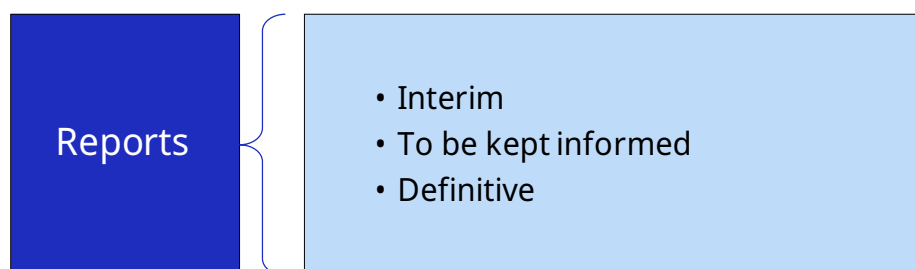
### Classification of cases

**Active cases** are cases that have not yet been examined by the Committee or cases that have been previously examined and for which the Committee issued an interim report. **Follow-up cases** are cases that have been examined by the Committee and in which the parties were requested to provide information on the effect given to the Committee’s recommendations. **Closed cases** are cases for which the Committee issued a definitive report either in full examination or when reviewing the follow-up to its recommendations and considered that the case does not call for further examination.



### Classification of reports

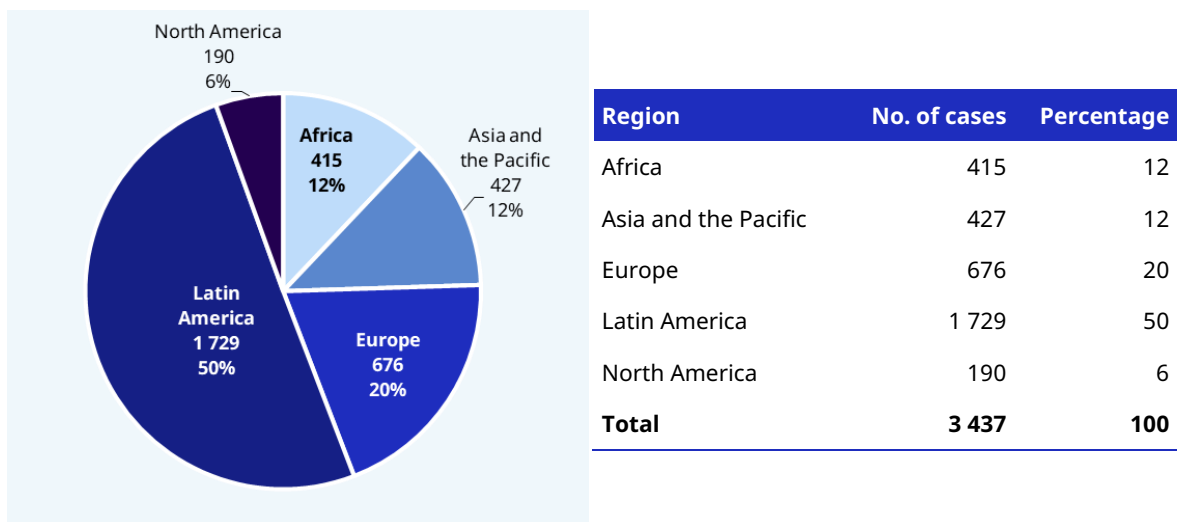
**Interim reports** are issued where the Committee requires further information from the parties to the complaint. **Definitive reports** are issued when the Committee considers that the matters do not call for its further examination and these cases are effectively closed (while recommendations may be made to the government for action). Finally, the Committee issues reports in which it requests the governments and/or the complainants **to keep the Committee informed of developments** to examine later the follow-up given to its recommendations.



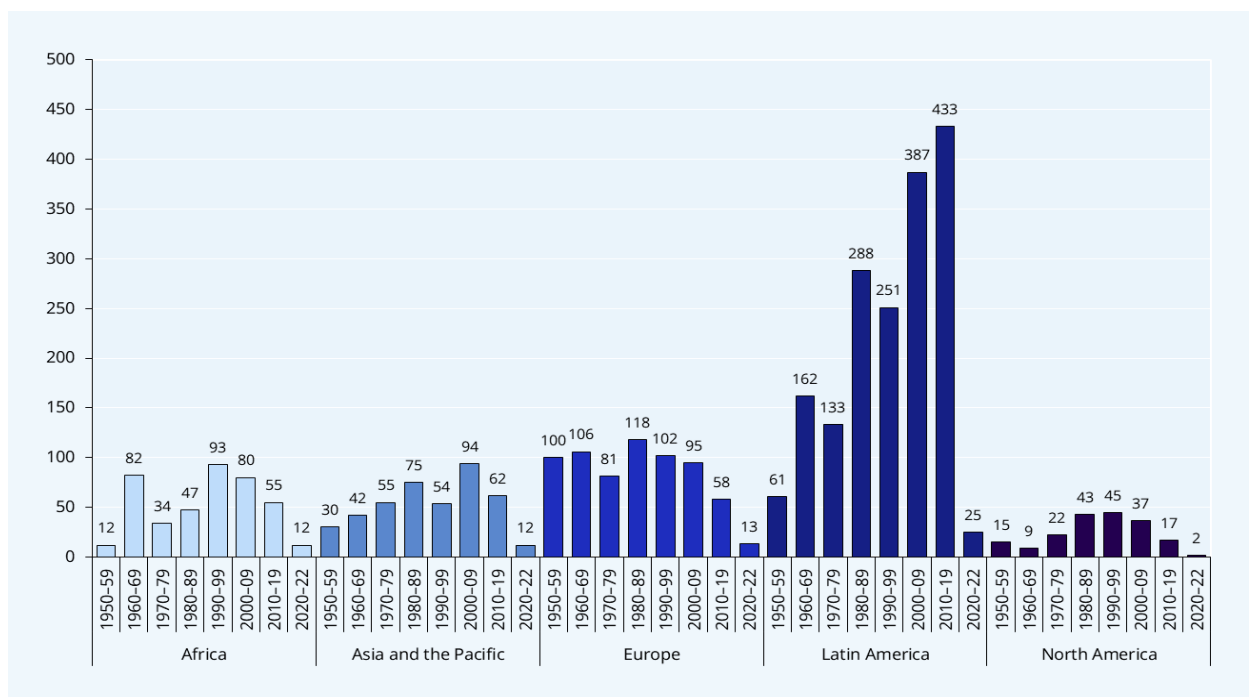
## VI. Statistical information on the CFA

8. Currently, there are **114** “active cases” (cases not yet examined or following an interim report), **166** cases in “follow-up status” (where the Committee requests information on the effect given to its recommendations) before the CFA. **Ten** cases were closed due to the absence of information from either the complainant or the Government in the last 18 months since the Committee examined the cases. The charts below provide data on the complaints submitted to the CFA since its creation and per region (figure 1), as well as by decade (figure 2). Charts on the complaints presented in the last two decades and per region are also presented (figures 3 and 4). The last chart focuses on the complaints presented before the CFA per year, over the last 15 years (figure 5). From this data it may be noted that there has globally been a decrease in the use of this special procedure.

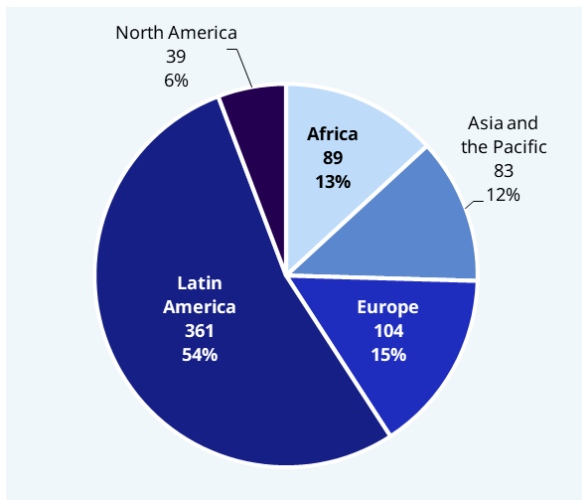
► **Figure 1. Complaints presented before the CFA (1951–2022)**



► **Figure 2. Complaints presented before the CFA (1951–2022) by decade, per region**

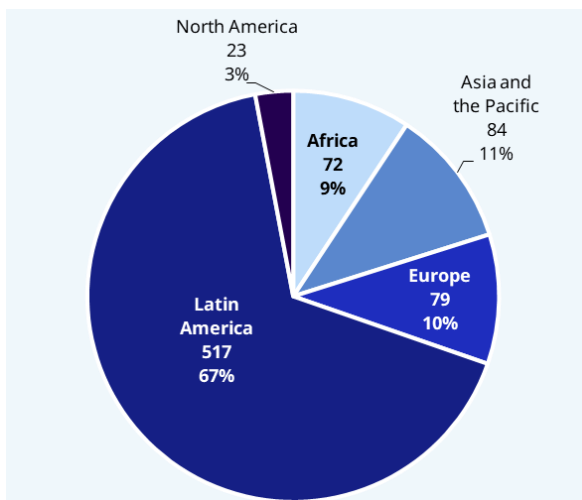


► **Figure 3. Complaints presented before the CFA (1998–2007)**



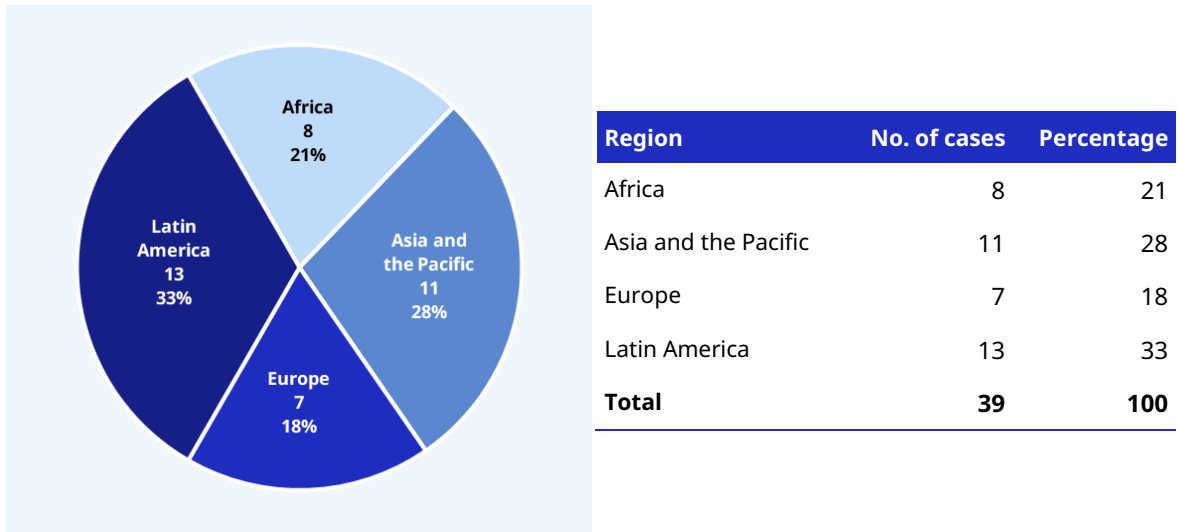
Region	No. of cases	Percentage
Africa	89	13
Asia and the Pacific	83	12
Europe	104	15
Latin America	361	53
North America	39	6
<b>Total</b>	<b>676</b>	<b>100</b>

► **Figure 4. Complaints presented before the CFA (2008–20)**

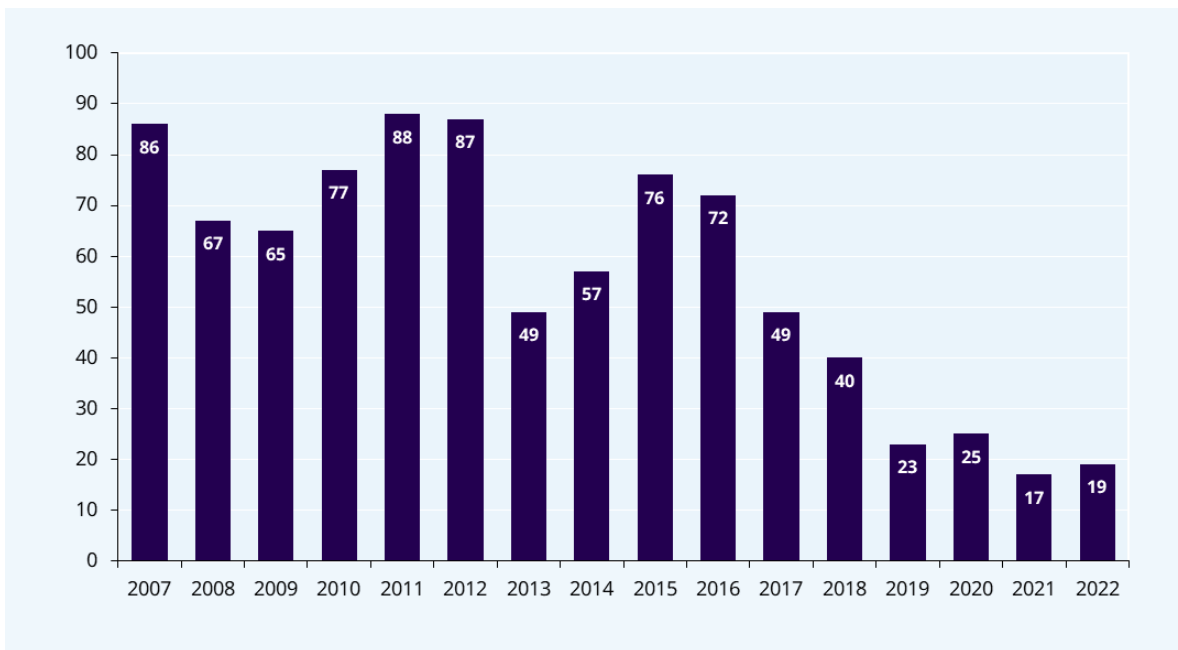


Region	No. of cases	Percentage
Africa	72	9
Asia and the Pacific	84	11
Europe	79	10
Latin America	517	67
North America	23	3
<b>Total</b>	<b>775</b>	<b>100</b>

► **Complaints presented before the CFA (2021–22)**<sup>1</sup>



► **Figure 5. Complaints presented before the CFA per year (2007–22)**



## VII. Reports examined in 2022 and follow-up action

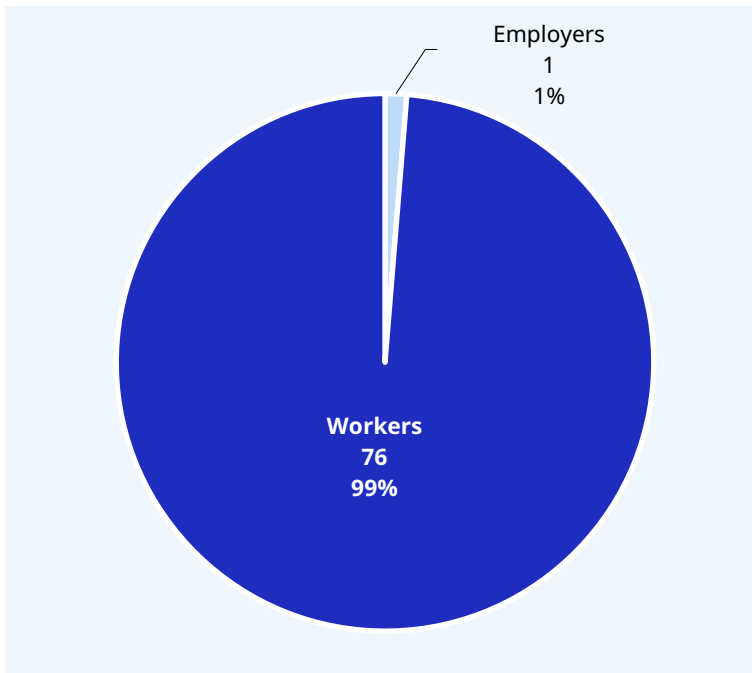
### Origin of complaints and nature of allegations

- In 2022, **59** active cases were examined by the CFA, most of which originated from workers’ organizations (figure 6). Among these examined cases, **44** per cent were related to matters concerning the private sector, while **35** per cent were related to the public sector and **21** per cent related to both sectors (figure 7). Threats to trade union rights and civil liberties, protection against anti-union discrimination, the violation of collective bargaining rights and

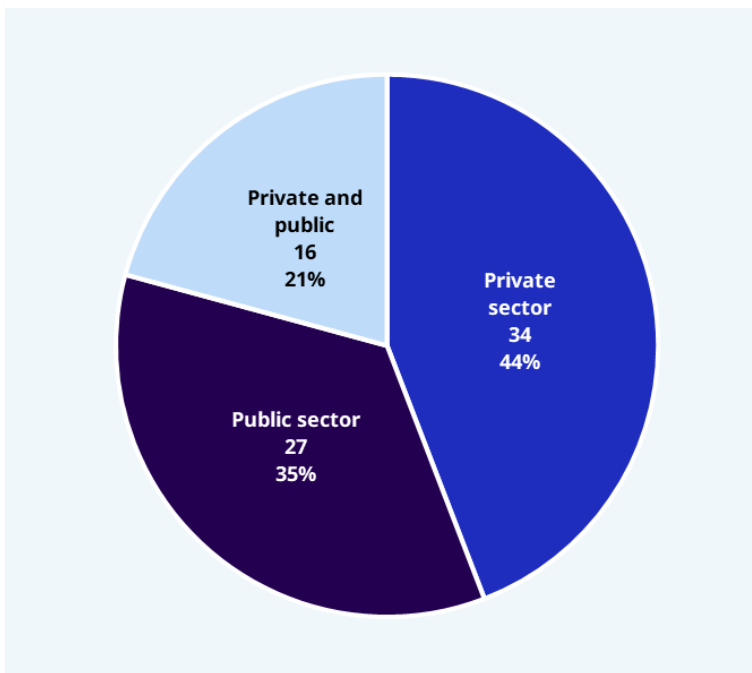
<sup>1</sup> Periodic analysis of each decade refers in this instance to only two years.

protection against acts of interference were the topics most frequently examined by the CFA in 2022 (figure 8).

► **Figure 6. Active cases examined in 2022 presented by workers' or employers' organizations**

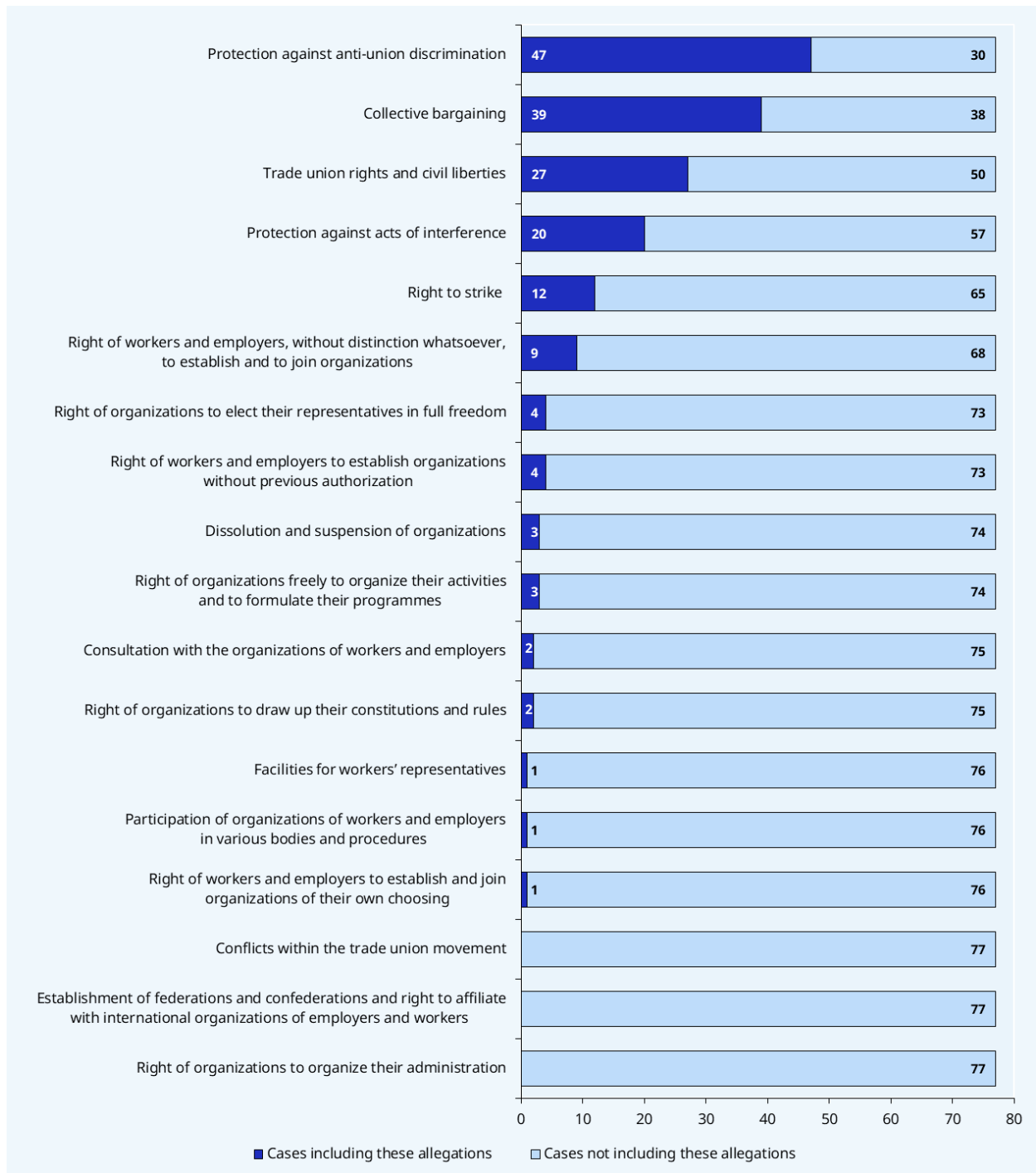


► **Figure 7. Public sector versus private sector in 2022**





► **Figure 8. Cases examined in 2022 concerning type of allegations**



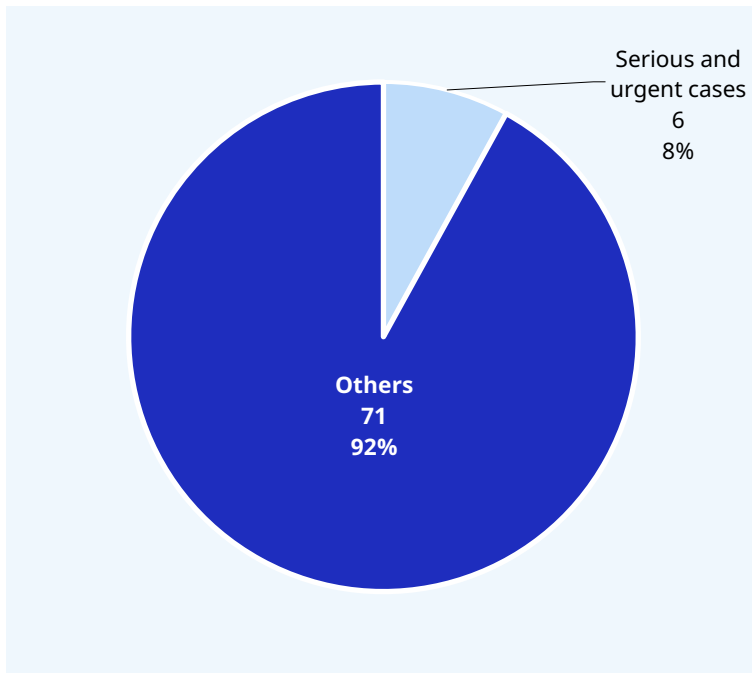
10. The percentage of the Committee’s work dedicated to serious and urgent cases, the number of urgent appeals necessary to alert government attention to the need to rapidly provide the requested information and the percentage of cases treated which have garnered international support for their consideration can be seen in figures 9, 10 and 11.

**Serious and urgent cases**

11. The prioritization of serious and urgent cases – cases which involve matters of human life or personal freedom, new or changing conditions affecting the freedom of action of a trade union

movement/employers' organization as a whole, cases arising out of a continuing state of emergency and cases involving the dissolution of an organization – has shown to be effective as the Committee was able to examine **six** serious and urgent cases pending before it in 2022.

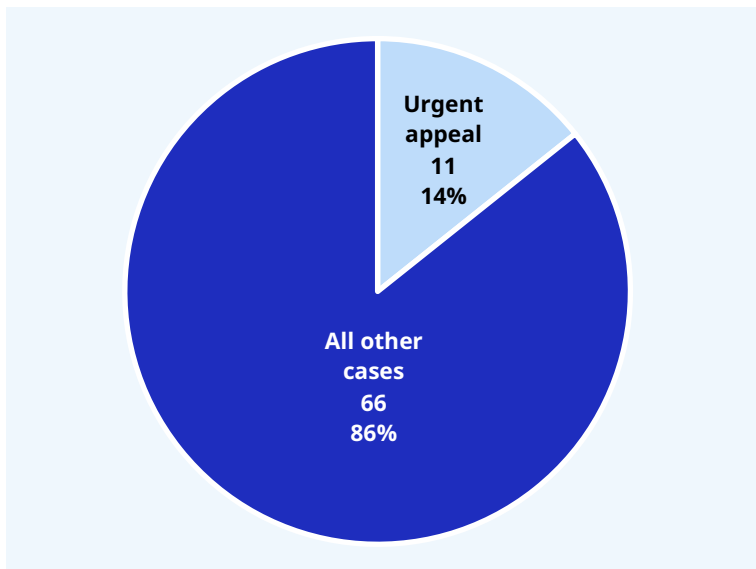
► **Figure 9. Serious and urgent cases treated in 2022**



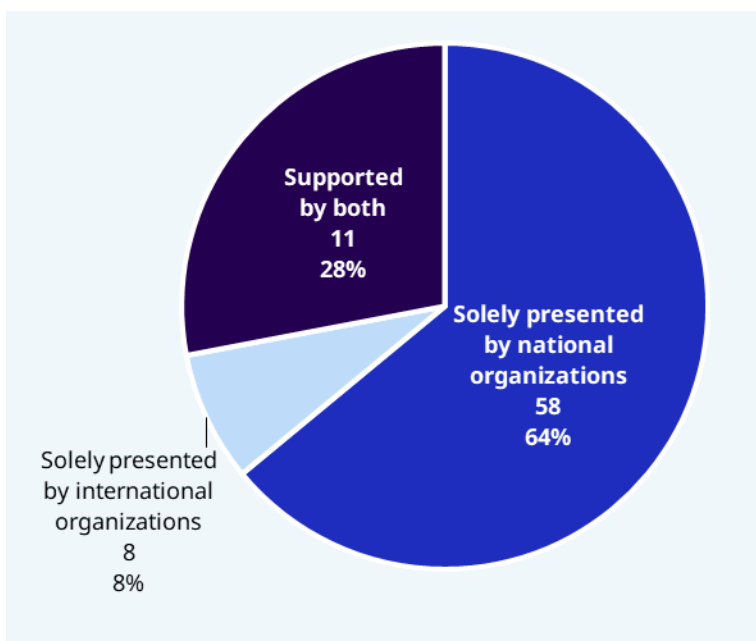
### Urgent appeals

12. Cases under urgent appeal are those where the Committee is obliged to give notice to a government that it would examine their case at the next session even in the absence of a reply. In 2022, following the issuance of 11 urgent appeals, the governments concerned responded with the necessary information in 4 cases. The Committee urges all governments to continue to fully cooperate with its procedures and encourages them to proactively engage with the Office should they have any queries as to the expectations from the Committee's procedure. It asks the Office to continue the collaboration with its field offices to facilitate the exchange of information.

► Figure 10. Urgent appeal cases in 2022



► Figure 11. Cases examined in 2022 that were supported by international organizations



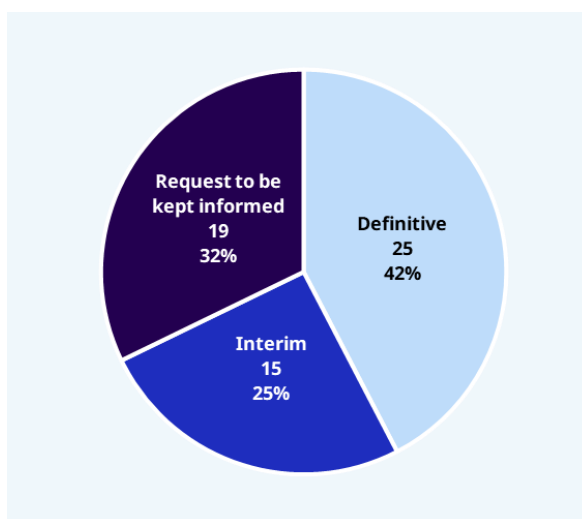
### Governments' reply

13. With the aim of obtaining adequate and complete replies from the government, the Committee may have recourse to its procedures (paragraphs 60–62 and 69), which provide for more direct dialogue with governments either through its chairperson or a group of its members or by inviting governments to come before it so as to obtain more complete information on the matters at hand. The Committee Chairperson met with government representatives from **six** countries in 2022.

14. **Active cases:** When it first examines a case, the Committee issues “definitive reports” when it considers that the matters do not call for further examination and are effectively closed (while recommendations may be made to the government for action), “interim reports” where it requires further information from the parties to the complaint and reports where it “requests to be kept informed of developments”. In relation to its recommendations in 2022, the CFA examined **59** active cases and took the following decisions:

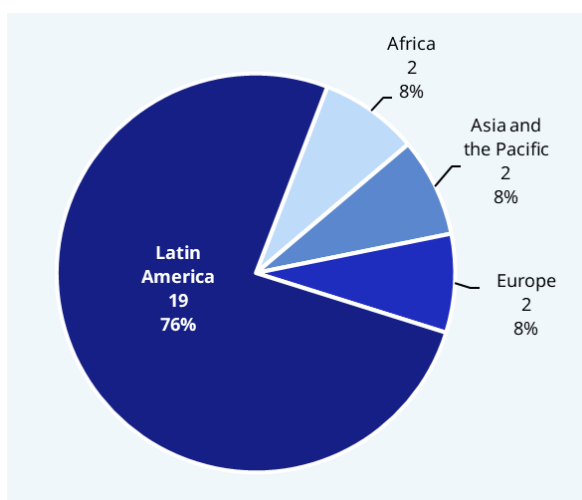
- **25** cases the Committee issued were treated as “definitive reports” (closed).
- **15** cases the Committee issued were treated as “interim reports”.
- For **19** cases, the Committee requested the Government to keep it informed of developments (figure 12).

► **Figure 12. Active cases: type of report in 2022**



Type of report	No. of active cases	Percentage
Definitive	25	42
Interim	15	25
Request to be kept informed	19	32
<b>Total</b>	<b>59</b>	<b>100</b>

► **Figure 13. Definitive reports by region in 2022**



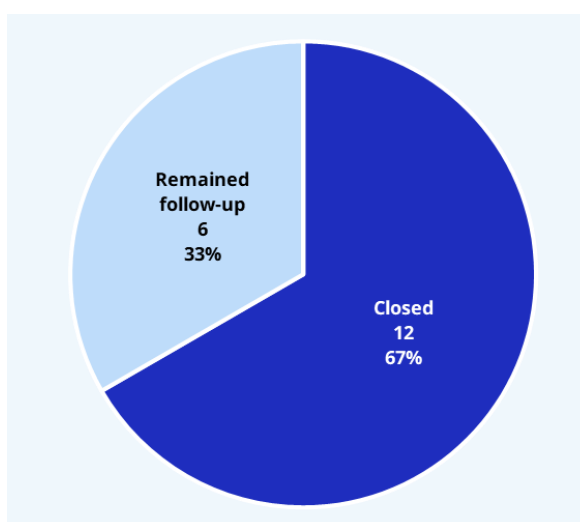
Region	Definitive reports	Percentage
Africa	2	8
Asia and the Pacific	2	8
Europe	2	8
Latin America	19	76
<b>Total</b>	<b>25</b>	<b>100</b>

Note: In 2022, the CFA examined **59** active cases and issued a total of **25** definitive reports: **2** from Africa; **2** from Asia and the Pacific; **2** from Europe; and **19** from Latin America.

15. **Follow-up cases:** The Committee also examined **18** cases concerning the effect given to its recommendations in “follow-up status” (already examined in the past). Follow-up cases are

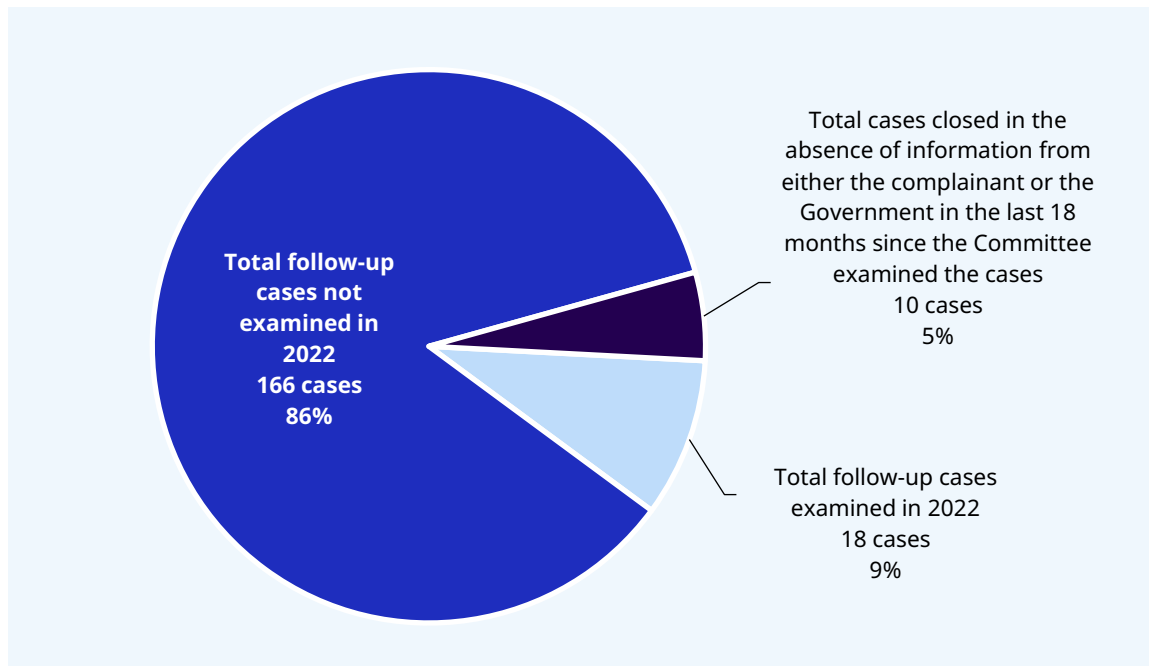
subsequently “closed” when the matters have been resolved or the Committee considers that they do not call for further examination or where the case has been inactive for 18 months. Additionally, the Committee may close cases as regards its own follow-up, while referring remaining legislative aspects to the Committee of Experts on the Application of Conventions and Recommendations. The closure of a follow-up case is explicitly mentioned in the beginning of the section which reviews the follow-up given to the Committee’s recommendations. Follow-up cases may be maintained in “follow-up” after the examination of the effect given to the Committee’s recommendations where further information is requested. Among the **18** cases in “follow-up status” examined in 2022, the Committee has closed **12** cases (**2** from Africa, **2** from Europe, **2** from North America and **6** from Latin America) while **6** cases remained in “follow-up status” (figure 14). The total number of pending follow-up cases is set out in figure 15.

► **Figure 14. Status of follow-up cases examined in 2022**



Status of follow-up examined	No. of follow-up cases	Percentage
Closed	12	67
Remained follow-up	6	33
<b>Total</b>	<b>18</b>	<b>100</b>

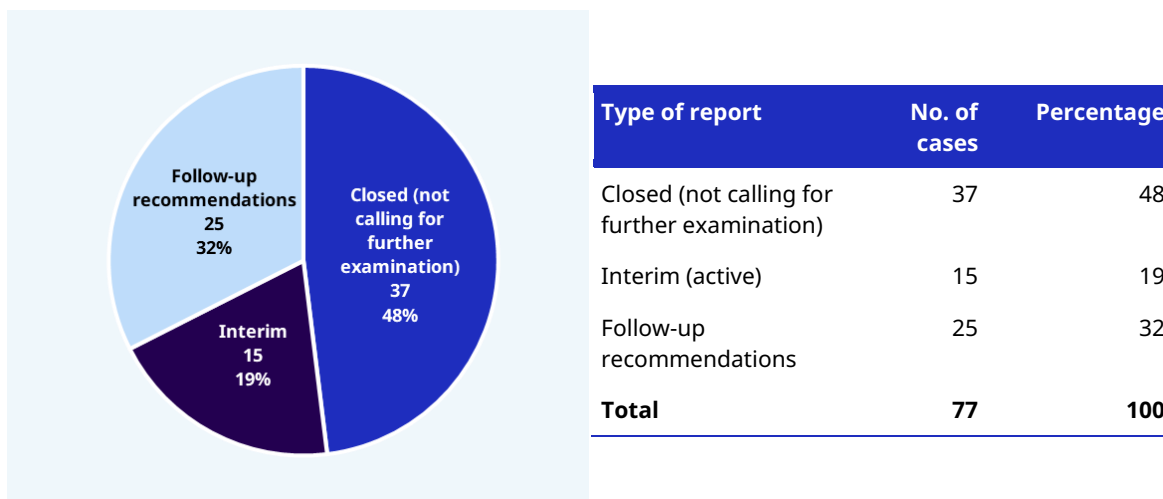
► **Figure 15. Pending follow-up cases in 2022**



Note: In total, there are **166** follow-up cases before the CFA. A total of **18** follow-up cases were examined in 2022. In total, there are **10** cases closed in the absence of information from either the complainant or the government in the last 18 months since the Committee examined the cases. This rule was applied for the first time at its 393rd Report (March 2021).

16. **Closed cases:** Among the **77** cases examined in total in 2022 (**59** active and **18** follow-up), the CFA has been able to close **37** cases (**48** per cent). Figure 15 shows the percentage of cases that no longer call for the examination by the Committee (“definitive reports” or “closed cases”) either because the matters can be effectively handled at national level, because resolution has been achieved by the parties, because the governments have provided information demonstrating the effective follow-up of the Committee’s recommendations or quite simply because the Committee has found no violation of freedom of association principles. Follow-up cases may also be closed when no information is provided by either the government or the complainant in a period of 18 months since the Committee’s decision to that effect in November 2018, or subsequently, since its last examination of the case in question. This rule was applied for the first time in the Committee’s 393rd Report (March 2021).

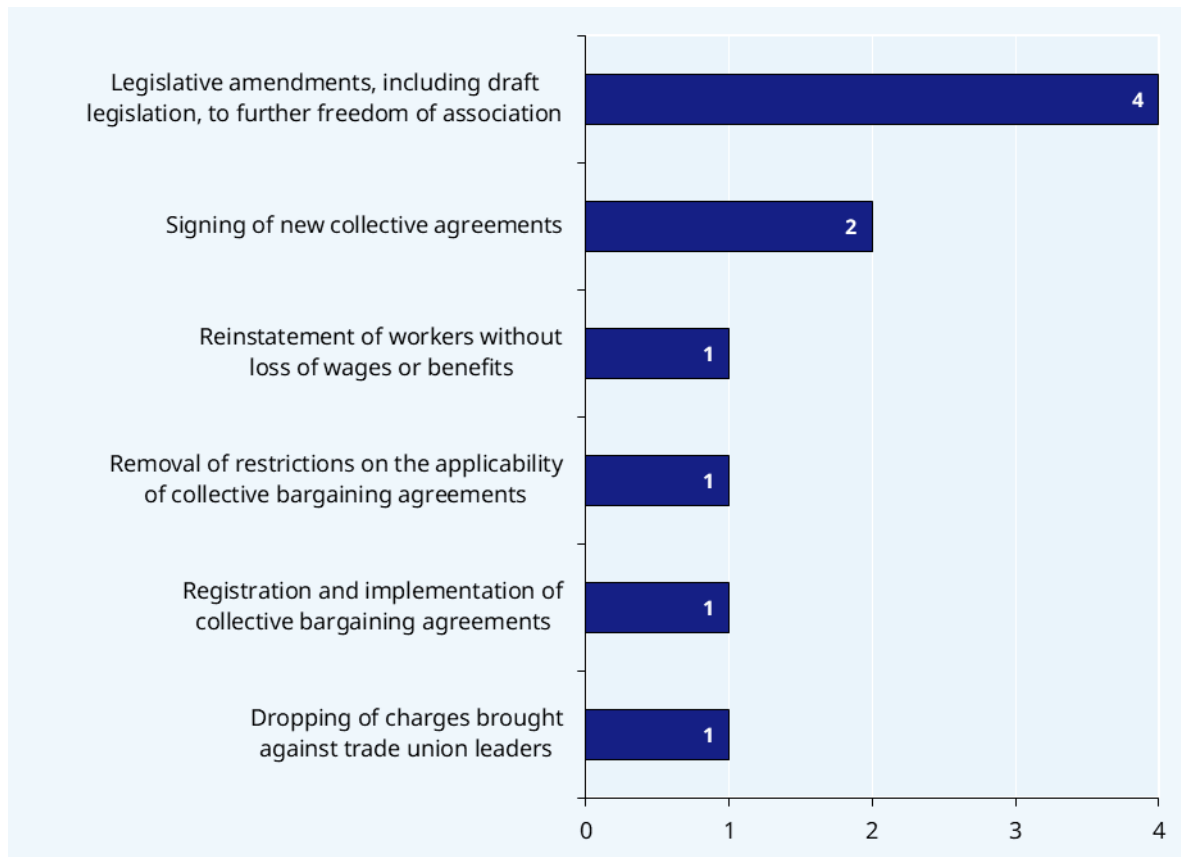
► **Figure 16. Status of reports examined in 2022** (total: active and follow-up cases)



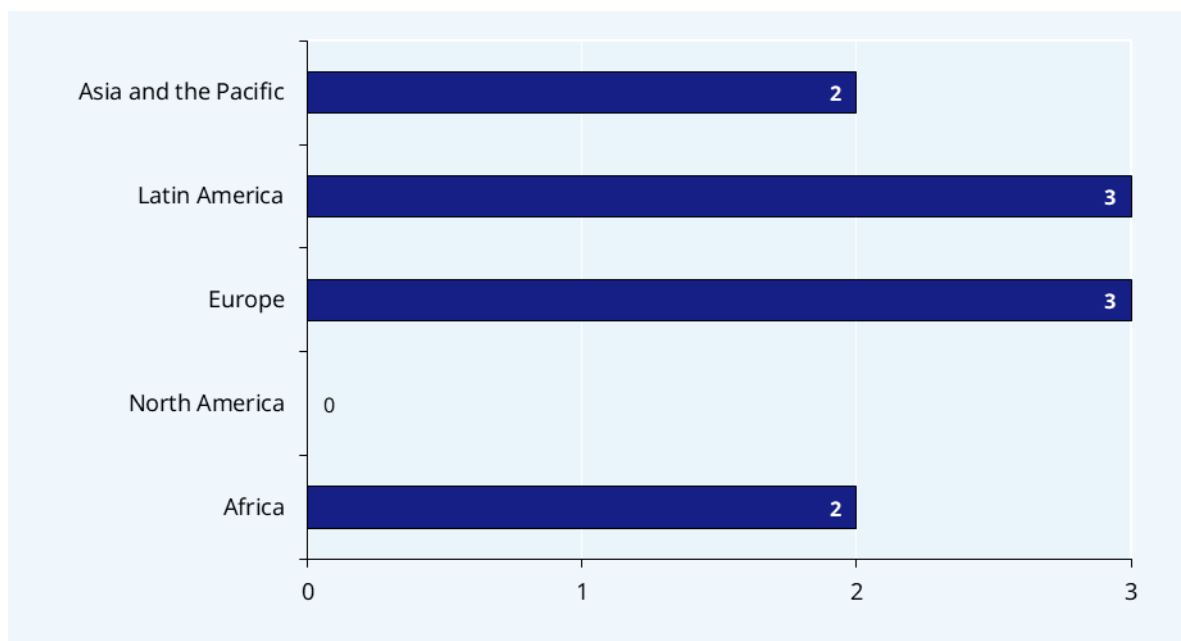
### Cases of progress

- There has been important progress noted by the Committee with interest or satisfaction during this period as well as positive developments that have been welcomed by the Committee in the various cases examined. The progress noted has encompassed a variety of measures, including, for example, legislative amendments to further freedom of association, the reinstatement of workers without loss of wages or benefits, the dropping of charges brought against trade union leaders, the registration and implementation of collective bargaining agreements, the signing of new collective agreements, the removal of restrictions on the applicability of collective bargaining agreements, the preparation of draft legislation that would allow for union pluralism as well as the commitment taken by governments to revise existing legislation to further freedom of association in consultation with the representative workers' and employers' organizations.

► **Figure 17. Cases of progress**



► **Figure 18. Cases of progress by region for 2022**



**Incomplete observations in pending cases**

18. Numerous cases pending are still awaiting governments to provide full replies to the complaints made. The Committee has also requested the complainants to provide specific



information in **nine** of the cases examined in 2022 and reminds complainants that effective examination and follow-up to its recommendations is also dependent on their timely provision of the information requested.

### The CFA and the regular supervisory machinery

19. Last year, the Committee transmitted the legislative aspects of **nine** cases to the Committee of Experts on the Application of Conventions and Recommendations. The Committee takes note of the table which the Committee of Experts inserted in the introduction to its report referencing the comments where follow-up has been given to cases referred to it.

### Voluntary conciliation

20. In its March 2021 Report, the Committee informed the Governing Body that it had decided to adopt a similar approach of optional voluntary conciliation for complaints as that used for representations under article 24 of the ILO Constitution. Since then, upon acknowledging a complaint and transmitting it to the government, an additional paragraph has been included pointing to the possibility of optional voluntary conciliation which, if agreed to by both parties, would lead to a temporary suspension of the examination of the complaint for a period of six months. In addition to this possibility of voluntary conciliation, for many years, the ILO has been promoting national tripartite mechanisms for the prevention and settlement of disputes relating to international labour standards, and particularly concerning freedom of association and collective bargaining, at the request of governments against which complaints have been made. The ILO supervisory bodies have noted with interest the use of such mechanisms in a number of countries and observed that in many instances they have been instrumental in preventing and resolving disputes relating to freedom of association and have also given rise to the conclusion of collective agreements. 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 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. This suspended the consideration by the Committee of the complaint for a period of up to six months. The Committee has recalled that the ILO fully supports the resolution of disputes at national level and is available to assist the parties in this regard.

### Missions

21. As described in its special procedures (paragraph 67) and with a view to facilitating the dialogue with the governments concerned and to identifying solutions to the issues raised, the Committee may propose on-the-spot missions, and governments may invite such missions, at various stages of the examination of the complaints submitted to it. These missions, carried out by representatives appointed by the Director-General, may take the form of: a **preliminary contacts mission** aimed at transmitting to the competent authorities in the country the concern to which the events described in the complaint have given rise, explaining to these authorities the principles of freedom of association involved and encouraging the authorities to communicate as soon as possible a detailed reply to the complaint; a **technical assistance mission** aimed at facilitating understanding of the action requested and supporting means for the implementation of its recommendations; or a **direct contacts mission** aimed at seeking

solutions to difficulties encountered, either during the examination of a case or at the stage of the action to be taken on the recommendations of the Governing Body and facilitating a full appraisal of the situation by the Committee. Based on the particular circumstances of the case, the Committee, where it considers this to be appropriate, may also propose the governments concerned to receive a ***high-level tripartite mission*** composed of tripartite members of the Committee. The Committee has proposed **three** missions during the period covered by the report.

### Technical assistance

22. In 2022, the Committee suggested to governments to avail themselves of ILO technical assistance in **nine** cases with a view to addressing its conclusions and recommendations.