



Governing Body

340th Session, Geneva, October–November 2020

Institutional section

Date: 11 November 2020

Original: English

Sixteenth item on the agenda

Presentation of the Committee on Freedom of Association annual report for the year 2019

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). In light of the cancellation of the Committee's March and May 2020 meetings and the corresponding Governing Body Sessions, the Committee has now the honour to present to the Governing Body its third annual report (see annex).
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 third annual report which covers the year 2019.**

▶ Contents

	Page
Addendum: The CFA annual report – 2019	5
I. Background information	5
II. Appreciation of progress on working methods and ongoing reflections Definitive closing of follow-up cases after 18 months without information	5
III. Objective of the annual report	6
IV. CFA subcommittee role.....	6
V. CFA cases and reports terminology	6
VI. Statistical information on the CFA.....	7
VII. Reports examined in 2019 and follow-up action	9
Origin of complaints and nature of allegations.....	9
Serious and urgent cases	12
Urgent appeals	12
Governments’ reply.....	12
Cases of progress	15
Incomplete observations in pending cases.....	16
The CFA and the regular supervisory machinery	16
Technical assistance.....	16

▶ Annex

The CFA annual report – 2019

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 Organisation (Preamble), in the Declaration of Philadelphia and as expressed by the 1970 ILC resolution.
2. The CFA is composed of nine regular members and nine deputies from the Government, Workers' and Employers' groups of the Governing Body, 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. The members of the CFA pursued active and constructive discussions on the Committee's working methods in dedicated sittings both in November 2018 and in March 2019 including further discussions on its mandate and its contribution to the ILO Centenary. The members further reflected, on trends in the use of the CFA procedure, including the high number of complaints from certain countries of Latin America. They also reflected on the links between the Committee and other ILO supervisory mechanisms as well as issues in relation to the handling of Article 24 representations concerning freedom of association.
4. In its discussions, the CFA members also referred to the modernization and streamlining of its procedure and specifically to the Governing Body's agreement to finance an electronic document and information management system for the supervisory bodies. Pending appropriate budgetary allocations for such system, full files of cases that are examined at the Committee's next sessions, are being communicated to the CFA members through more simplistic document management systems.

Definitive closing of follow-up cases after 18 months without information

5. The Committee recalls that in its November 2018 report (GB.334/INS/10), it informed the Governing Body that, from that moment onwards, any follow-up cases that have not received information either from the Government or from the complainant for 18 months (or 18 months from the last examination of the case) will be considered closed. This practice would not be used for serious and urgent cases. The closure of

inactive cases concerning countries that have not ratified the freedom of association Conventions will be decided on a case-by-case basis depending upon the nature of the case. Letters have been sent to governments and complainants indicating this decision and the importance of furnishing follow-up information in relation to the Committee's recommendations. Cases that are closed in this manner will have the following indication on the website: In the absence of information from either the complainant or the Government in the last 18 months since the Committee examined this case, this case has been closed.

III. Objective of the annual report

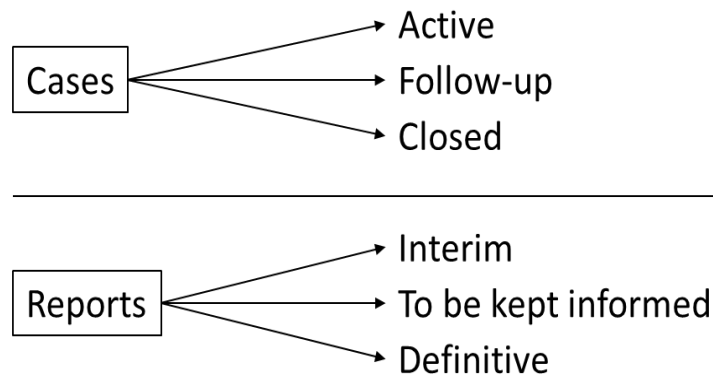
6. This report is intended to provide helpful information on the use of the CFA procedure throughout the year, supported by statistical data and other details with regard to the work undertaken by the CFA, the progress made and the serious and urgent cases examined by the Committee. The report covers the year 2019 (its March, June and October–November 2019 sessions).
7. This annual report aims to show developments over the years in the use of this special procedure and can be compared to the baseline set in its first report in 2017.

IV. CFA subcommittee role

8. 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.

V. CFA cases and reports terminology

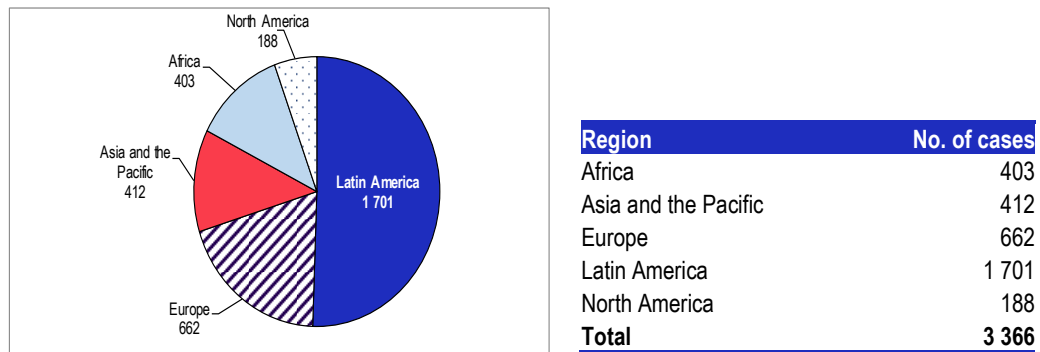
9. The Committee has recognized that there is a need to explain more clearly the terminology used for the status of cases before it and that are used to classify its reports when it examines a case. The explanation of the terms below are set out in greater detail in paragraphs 10, 16 and 17.



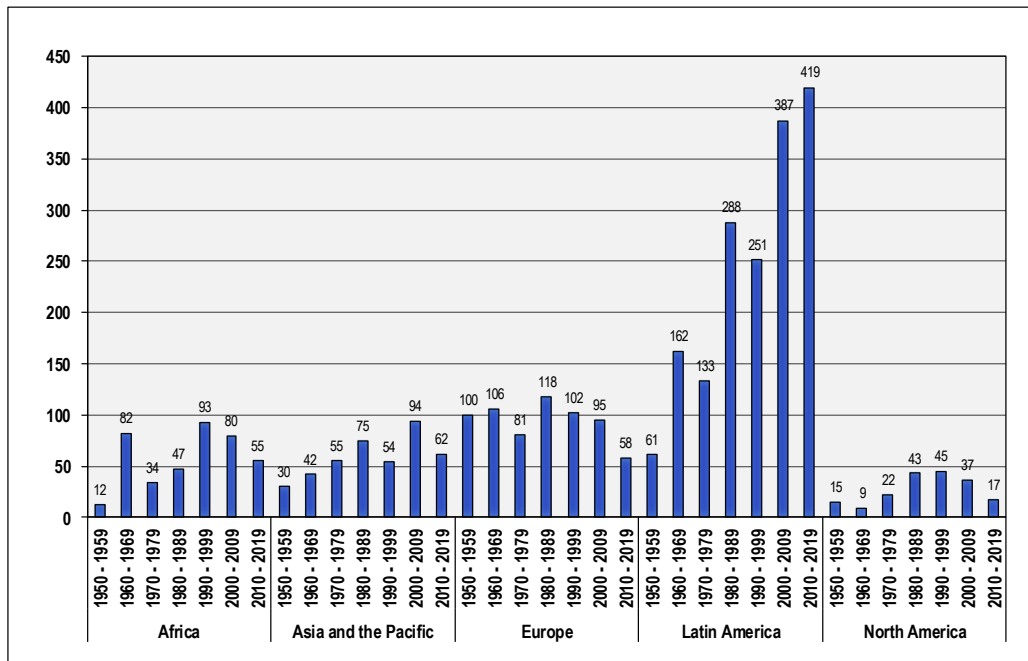
VI. Statistical information on the CFA

10. Currently, there are 144 “active cases” (cases not yet examined or following an interim report) and 207 cases in “follow-up status” (where the Committee requests information on the effect given to its recommendations) before the CFA. 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 decade (figure 5). From this data it may be noted that while there is a trend towards the decrease of the use of this special procedure in Europe, Africa and Asia, there remains an increase in its use in Latin America

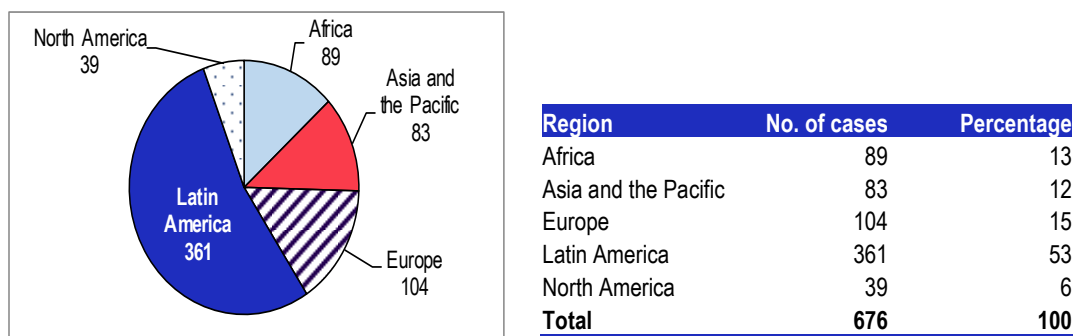
► **Figure 1. Complaints presented before the CFA (1951–2019)**



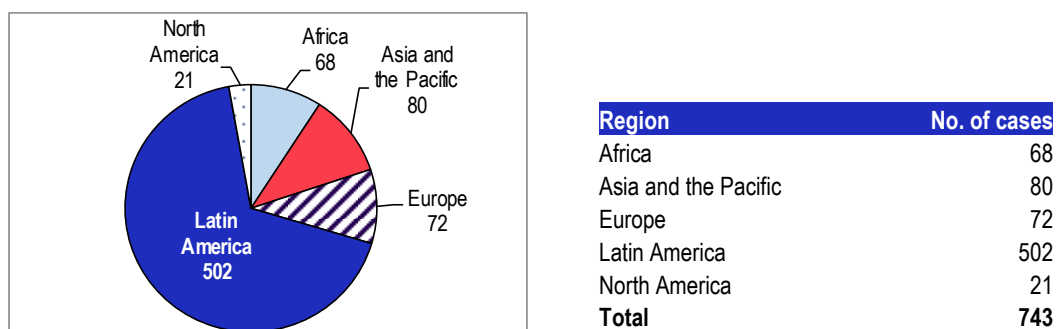
► **Figure 2. Complaints presented before the CFA (1951–2019) by decade, per region**



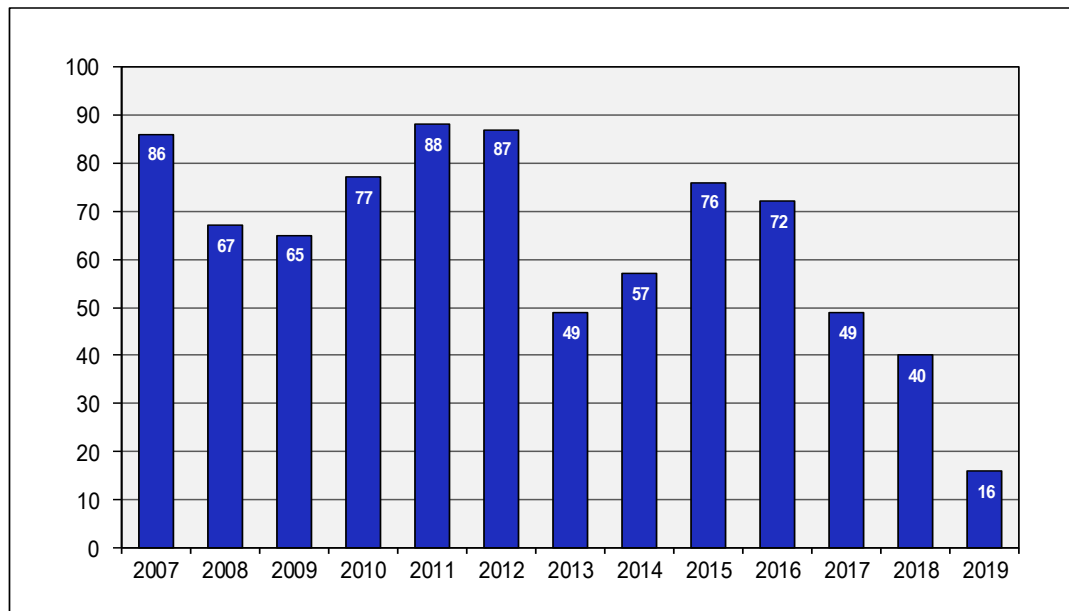
► **Figure 3. Complaints presented before the CFA (1998–2007)**



► **Figure 4. Complaints presented before the CFA (2008–19)**



► **Figure 5. Complaints presented before the CFA per year (2007–19)**

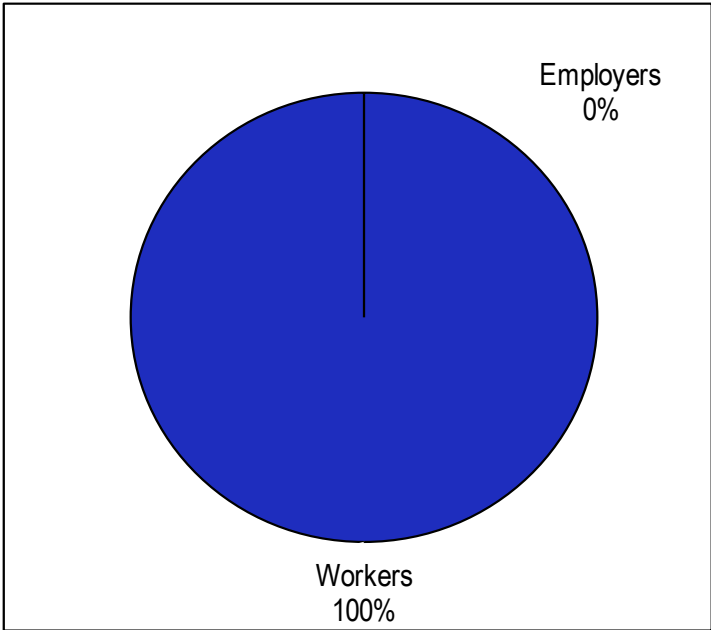


VII. Reports examined in 2019 and follow-up action

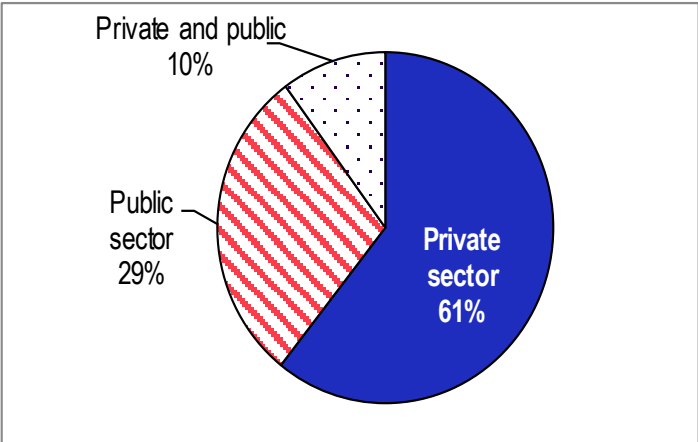
Origin of complaints and nature of allegations

11. In 2019, 90 active cases were examined by the CFA, all of which originated from workers' organizations (figure 6). Among these examined cases, 61 per cent were related to matters concerning the private sector, while 29 per cent were related to the public sector and 10 per cent related to both sectors (figure 7). Threats to trade union rights and civil liberties, the protection against anti-union discrimination and violation of collective bargaining rights were the topics most frequently examined by the CFA in 2019 (figure 8).

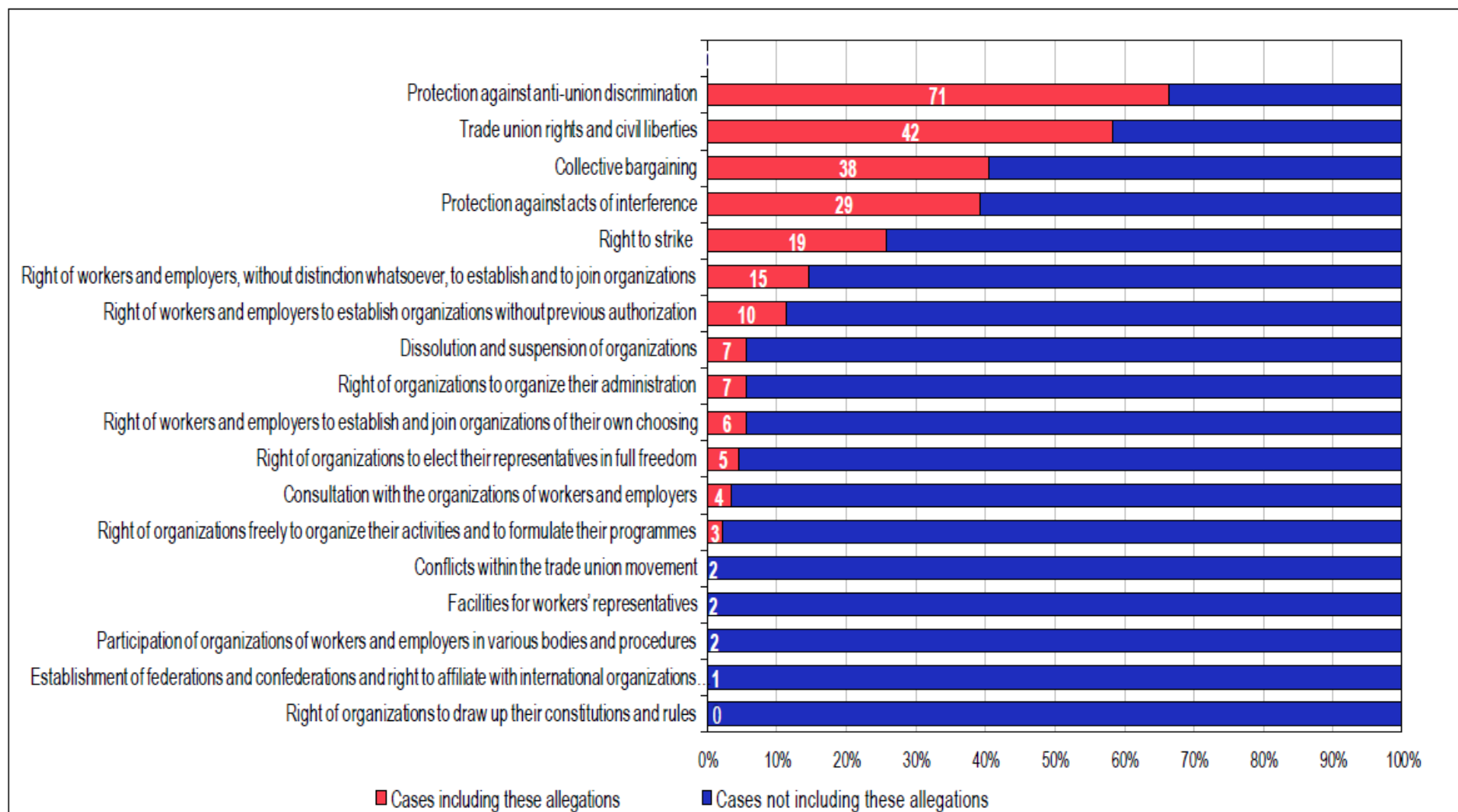
► **Figure 6. Active cases examined in 2019 presented by workers' or employers' organizations**



► **Figure 7. Public sector versus private sector in 2019**



► Figure 8. Cases examined in 2019 concerning type of allegations



12. 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

13. 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 seven of the eight serious and urgent cases pending before it in 2019.

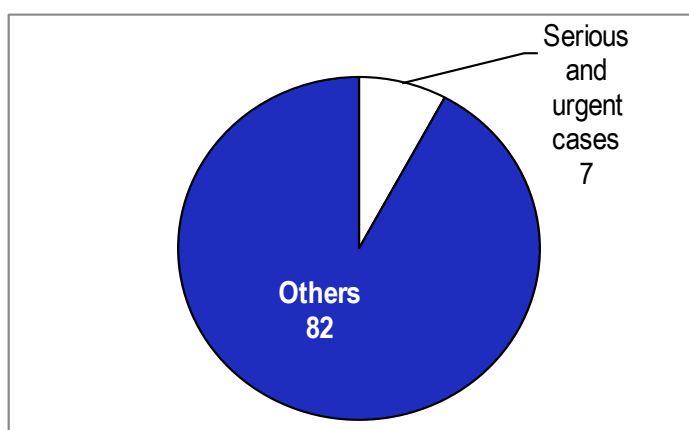
Urgent appeals

14. Following the issuance of urgent appeals (where the Committee was obliged to give notice to governments that it would examine their case at the next session even in the absence of a reply) governments responded with the necessary information in 12 out of the 13 cases concerned thus attesting to the positive impact of this tool coupled with the clear indication in its report of deadlines for governments to send their replies. The Committee urges the governments concerned 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.

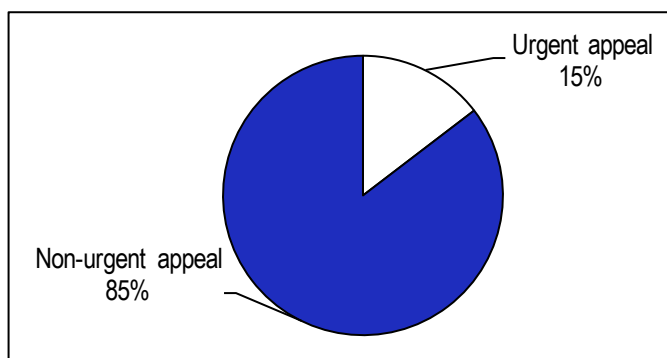
Governments' reply

15. With the aim of obtaining adequate and complete replies from the government, the Committee has had more frequent 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 has had recourse to these measures on several occasions over the last year, meeting with government representatives from 12 countries in 2019.

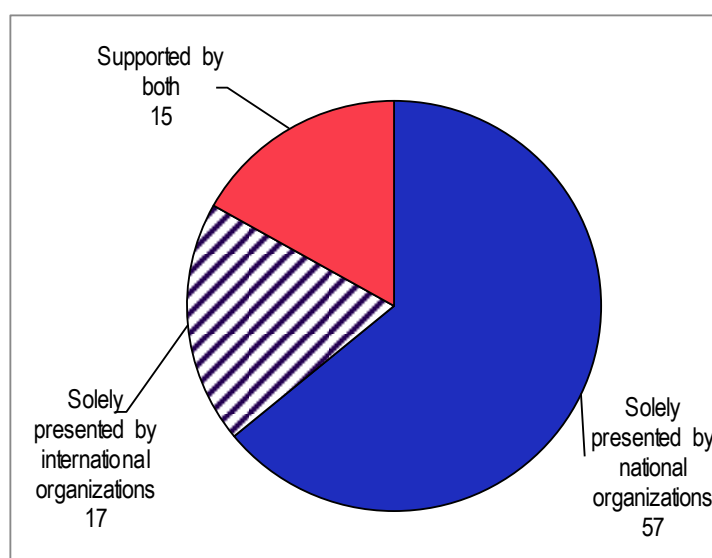
► **Figure 9. Serious and urgent cases treated in 2019**



► **Figure 10. Urgent appeal cases in 2019**



► **Figure 11. Cases examined in 2019 that were supported by international organizations**

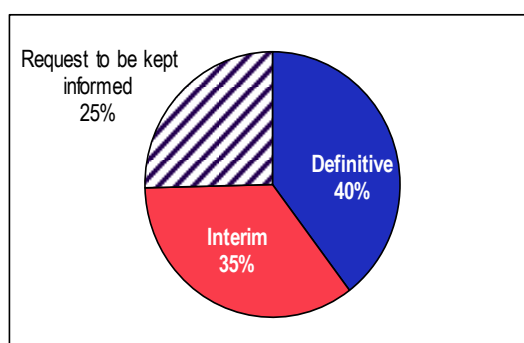


16. **Active cases:** When it first examines a case, the Committee issues “definitive reports” when it considers that the matters do not call for further examination and are effectively closed (while recommendations may be made to the government for action), “interim reports” where it requires further information from the parties to the complaint and reports where it “requests to be kept informed of developments”. In relation to its recommendations in 2019, the CFA examined 63 active cases and took the following decisions:
- 25 cases the Committee issued were treated as “definitive reports” (closed).
 - 22 cases the Committee issued were treated as “interim reports” and
 - For 16 cases, the Committee requested the Government to keep it informed of developments (figure 12).
17. **Follow-up cases:** The Committee also examined 27 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 also be maintained in "follow-up" after the examination of the effect given to the Committee's recommendations. Among the 27 cases in "follow-up status" examined in 2019, the Committee has closed nine cases (6 from Asia and 3 from Europe) while 18 cases remained in "follow-up status" (figure 14). The total number of pending follow-up cases is set out in figure 15.

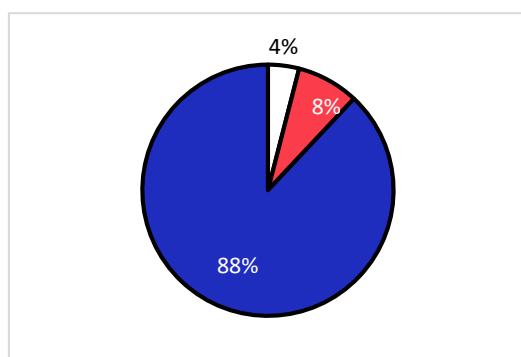
18. **Closed cases:** among the 90 cases examined in total in 2019 (63 active and 27 follow-up), the CFA has been able to close 34 cases (38 per cent). Figure 15 shows the percentage of cases that no longer call for the examination by the Committee ("definitive reports" or "closed cases") either because 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. Given the current circumstances of the pandemic, which has impeded the effective communication of parties to the special complaints procedure, this rule is expected to be applied as from its next meeting in March 2021.

► **Figure 12. Active cases: Type of report in 2019**



Type of report	Number of active cases	Percentage
Definitive	25	40
Interim	22	35
Request to be kept informed	16	25
Total	63	100

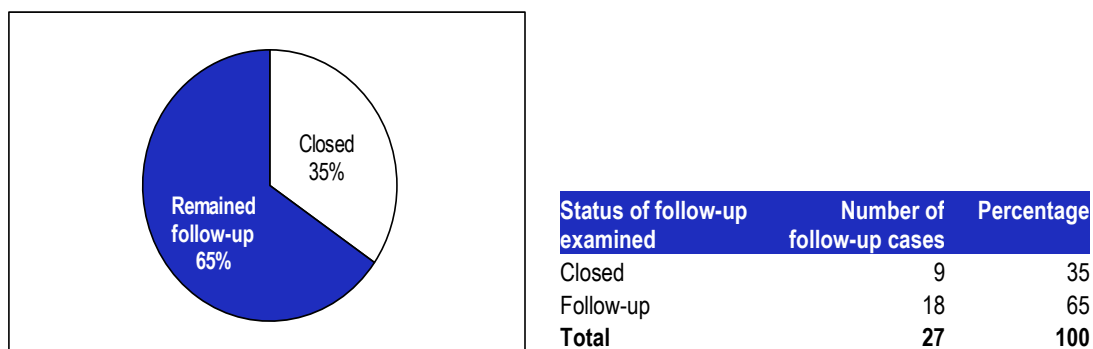
► **Figure 13. Definitive reports by region**



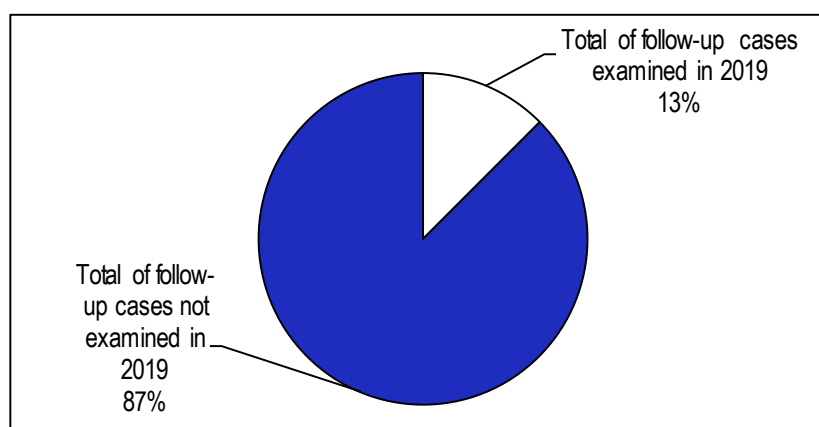
Regions	Definitive reports	Percentage
Africa	1	4
Europe	2	8
Latin America	22	88
Total	25	100

In 2019 the CFA examined 63 active cases and issued a total of 25 definitive reports: 22 from Latin America, 2 from Europe and 1 from Africa.

► **Figure 14. Status of follow-up cases examined in 2019**

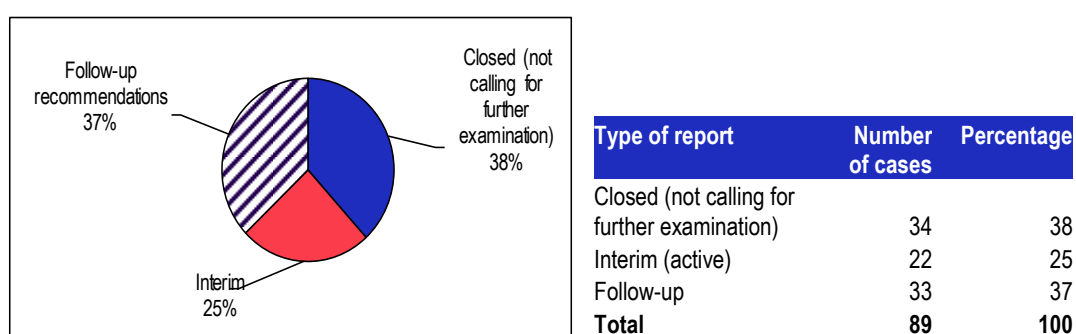


► **Figure 15. Pending follow-up cases in 2019**



Note: In total there are 207 follow-up cases before the CFA. A total of 27 follow-up cases were examined in 2019.

► **Figure 16. Status of reports examined in 2019 (total: active and follow-up cases)**



Cases of progress

19. There has been important progress noted by the Committee with interest or satisfaction during this period. Progress encompassed a variety of measures, including, for example, the granting of legal personality to public sector trade union organizations; the signing of collective agreements, ongoing social dialogue efforts and renewed cooperation between parties; government initiatives to decriminalize labour dispute cases; carrying out of independent inquiries; consultations, capacity-building and awareness-raising activities

on freedom of association; as well as legislative changes to preserve the right of trade union organizations to freely choose their trade union delegates.

Incomplete observations in pending cases

20. Numerous cases pending are still awaiting the governments to provide full replies to the complaints made. The Committee has also requested the complainants to provide specific information in seven of the cases examined in 2019 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

21. Last year, the Committee transmitted the legislative aspects of nine cases to the Committee of Experts on the Application of Conventions and Recommendations. As per its request, 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.

Technical assistance

22. In 2019, the Committee suggested to governments to avail themselves of ILO technical assistance in 11 cases with a view to addressing its conclusions and recommendations. During this period, the Committee noted that two governments have requested and received assistance.