



Governing Body

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Institutional Section

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Reports of the Committee on Freedom of Association

407th 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 30 to 31 May and 6 June 2024, under the chairmanship of Professor Evance Kalula.
2. The following members participated in the meeting: Mr Gerardo Corres (Argentina) (virtually), Mr Juan Nicolás Escandón Henao (Colombia) (virtually), 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 Juan Mailhos (virtually), Mr Kaizer Moyane and Mr Fernando Yllanes (virtually); 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 Colombian and Pakistani nationality were not present during the examination of the cases relating to Colombia (Cases Nos 2761, 3074 and 3234) and Pakistan (Case No. 3442).

* * *

3. Currently, there are **93** cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined **17** cases on the merits, reaching conclusions in **6** definitive reports, **2** reports in which the Committee requests to be kept informed of developments and interim conclusions in **9** 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. 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 7**, and any additional observations in relation to cases in **paragraphs 9 and 10**, as soon as possible to enable their treatment in the most effective manner. Communications received after **10 September 2024** will not be taken into account for cases examined at its next session in the absence of 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 2508 (Islamic Republic of Iran), 2609 (Guatemala), 2761 and 3074 (Colombia), 2923 (El Salvador), 3269 (Afghanistan) and 3405 (Myanmar) 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 those cases 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.

Cases examined by the Committee in the absence of a government reply

6. The Committee deeply regrets that it was obliged to examine the following case without a response from the Government: 3269 (Afghanistan).

Urgent appeals: Delays in replies

7. As regards Cases Nos 3067 (Democratic Republic of Congo), 3249 (Haiti), 3395 (El Salvador), 3403 (Guinea), 3448 (Guinea-Bissau) and 3451 (Bolivarian Republic of Venezuela) the Committee observes that despite the time that 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 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

8. The Committee is still awaiting observations or information from the Governments concerned in the following cases: 3203 (Bangladesh), 3406 (China – Hong Kong Special Administrative Region), 3441 (Bolivarian Republic of Venezuela), and 3455 (United Kingdom of Great Britain and Northern Ireland). 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

9. In Cases Nos 2265 (Switzerland), 2318 (Cambodia), 3023 (Switzerland), 3184 (China), 3242 (Paraguay), 3325 (Argentina), 3383 (Honduras), 3419 (Argentina), 3423 (Colombia), 3424 (Cambodia), 3425 (Eswatini), 3434 (Algeria), 3450 (Norway), and 3453 and 3454 (Mexico), 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

10. As regards Cases Nos 2177 and 2183 (Japan), 2254 (Bolivarian Republic of Venezuela), 3062 (Guatemala), 3157 (Colombia), 3179 (Guatemala), 3185 (Philippines), 3210 (Algeria), 3213 and 3218 (Colombia), 3233 (Argentina), 3239 (Peru), 3258 (El Salvador), 3263 (Bangladesh), 3271 (Cuba), 3277 (Bolivarian Republic of Venezuela), 3280 and 3282 (Colombia), 3308, 3311 and 3315 (Argentina), 3321 (El Salvador), 3324 (Argentina), 3336 (Colombia), 3337 (Jordan), 3349 (El Salvador), 3352 (Costa Rica), 3358 (Argentina), 3380 (El Salvador), 3384 (Honduras), 3402 (Peru), 3413 (Plurinational State of Bolivia), 3421 (Colombia), 3435 (Peru), 3436 (Republic of Korea), 3438 and 3440 (Peru), 3449 (Mexico), 3452 (Argentina) and 3456 (Panama) the Committee has

received the Governments' observations and intends to examine the substance of these cases as swiftly as possible.

Withdrawal of complaints

11. The Committee takes note of a communication from the Service Employees International Union and the American Federation of Labor and Congress of Industrial Organizations dated 24 April 2024 requesting the withdrawal of their complaint in Case No. 3446 (United States of America). The Committee therefore considers that this case is closed.

New cases

12. The Committee adjourned until its next meeting the examination of the following new cases which it has received since its last meeting: Cases Nos 3457 and 3458 (Republic of Korea), 3459 (Honduras), 3460 (Egypt), 3462 (Mexico), 3463 (Argentina), 3464 (Peru), 3465 (Serbia), 3467 (Zimbabwe) and 3468 (Saudi Arabia) since it is awaiting information and observations from the Governments concerned. These cases relate to complaints submitted since the last meeting of the Committee.

Admissibility of complaints

13. In accordance with the decision taken in its March 2021 report (GB.341/INS/12/1), the Committee has decided, based on its criteria for filtering out complaints for which it considered it would not be in a position to provide pertinent recommendations under its mandate (including the time elapsed since the alleged matters occurred; the treatment and follow-up of the matter at national level (i.e. ongoing consideration by independent bodies); insufficient evidence or support of the freedom of association violation alleged and its consideration at international level or absence of a link to freedom of association or collective bargaining), that it was not in a position to provide pertinent recommendations under its mandate with respect to 2 complaints received between March and May 2024 and therefore decided not to examine them.

Voluntary conciliation

14. 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. The Committee takes note that the parties in Case No. 3461 (Guatemala), the Confederation of University Workers of the Americas (CONTUA) and the Government agreed to refer the dispute to voluntary conciliation at the national level. This suspends the consideration by the Committee of the complaint for a period of up to six months. The Committee also takes note that the parties in Case No. 3466 (Chile), the Federation of National Congress Associations (FEDACON), the National Association of Fiscal Employees (ANEF) and the Single Central Organization of Workers of Chile (CUT), and the Government agreed to refer the dispute to voluntary conciliation at the national level. This suspends the consideration by the Committee 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

15. The Committee has received certain information from the following Governments with respect to the article 24 representations that were referred to them: Brazil, Costa Rica (Case No. 3241), and Uruguay, and intends to examine them as swiftly as possible. The Committee has also taken note of the more recent referrals of the article 24 representations concerning Argentina, Serbia and Sudan and is awaiting the Governments' full replies. The Committee also recalls that the parties in three article 24 representations concerning Chile have agreed to refer the dispute to voluntary conciliation at the national level. This has suspended the consideration by the Committee of the three representations for a period of up to six months. The Committee further draws the Governing Body's attention to the report presented by its committee appointed according to the Standing Orders under article 24 of the Constitution to examine a representation against the Government of France for non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), (GB.351/INS/11/5).

Article 26 complaint

16. The Committee is awaiting the observations of the Government of Belarus in respect of its recommendations relating to the measures taken to implement the recommendations of the Commission of Inquiry.

Transmission of cases to the Committee of Experts

17. The Committee draws the legislative aspects of Case No. 3228 (Peru) as a result of the ratification of 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), to the attention of the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

► Cases in follow-up

18. The Committee examined **5** cases in paragraphs **19** to **52** concerning the follow-up given to its recommendations and concluded its examination with respect to and therefore closed **4** cases: Cases Nos 2540 (Guatemala), 3016 (Bolivarian Republic of Venezuela), 3019 (Paraguay) and 3033 (Peru).

Case No. 2540 Guatemala

19. The Committee last examined this case, which concerns allegations of serious acts of anti-union violence against leaders of the Union of Workers of the Port Enterprise Quetzal (STEPQ) at its March 2011 meeting (see 359th Report of the Committee, paragraphs 59–62). On that occasion, the Committee requested the Government to: (i) keep it informed of the outcome of the special appeal against the acquittal of a possible suspect for the murder of the trade union official Mr Pedro Zamora; (ii) ensure that all necessary measures were taken to identify and impose severe punishments on those responsible for the referred murder; and (iii) provide information on the steps taken to protect the members of the STEPQ's executive committee.
20. The Committee notes that the Government has since provided, both in the context of the present case and in the context of Case No. 2609, which covers the examination of numerous

homicides of members of the trade union movement and other acts of anti-union violence in Guatemala, information on the penal procedures concerning the 2007 murder of Pedro Zamora, Secretary of the Executive Committee of STEPQ, indicating in particular that the cassation and *amparo* appeals filed against the above-mentioned acquittal had been denied [see Case No. 2609, 368th Report, June 2013, para. 443].

21. The Committee notes that the Government, in communications dated 21 April 2023 and 26 April 2024, provides updated information on the progress of the investigations and criminal proceedings relating to the above-mentioned murder. The Government states in particular that: (i) after the mentioned confirmation of the acquittal, the case was referred to the Special Cases Prosecutor's Office for further investigations; (ii) as a result of these investigations, a new arrest warrant was issued against another person; (iii) the case is being prosecuted in the First Criminal Court of First Instance, High Risk Proceedings Group A of the department of Guatemala; and (iv) a series of actions are being taken to capture the alleged murderer of Mr Zamora, and the INTERPOL Red Notice is active for his apprehension at the international level. The Committee also notes the Government's request that the examination of this case be continued in the context of Case No. 2609.
22. *The Committee takes note of the information provided by the Government. Recalling that it is important that investigations into the murders of trade unionists should yield concrete results in order to determine reliably the facts, the motives and the persons responsible, in order to apply the appropriate punishments and to prevent such incidents recurring in the future [Compilation of decisions of the Committee on Freedom of Association, sixth edition, 2018, para. 96], the Committee expresses the firm hope that the arrest warrant against the alleged perpetrator of the murder of Pedro Zamora will be executed as soon as possible and urges the Government to take all the necessary measures in this regard. Observing with deep concern that, in the context of Case No. 2609, the murder in 2020 of another leader from the same organization has been reported (see Case No. 2609, 396th Report, paragraph 312), the Committee also reiterates the importance of ensuring that all trade union leaders and members at risk receive effective protection by the competent institutions without delay. Insofar as the murder of Mr Zamora is also being examined under Case No. 2609, the Committee requests the Government to keep it informed of the progress made in the capture and prosecution of the perpetrator of this crime as well as of measures taken to ensure the security of members of the port sector trade union movement under Case No. 2609 and considers this case closed.*

Case No. 3019 (Paraguay)

23. The Committee last examined this case, which concerns various allegations of barriers to the creation of trade unions, dismissals of trade union leaders and members, anti-union discrimination, obstacles to collective bargaining and deficiencies in the sanctioning procedures of the labour inspectorate, at its meeting in March 2017 [see 381st Report, paras 516–548]. On that occasion, in addition to referring the follow-up of its recommendations of a legislative nature to the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the Committee requested the Government to: (i) to keep it informed of tripartite discussions held in the Tripartite Advisory Council or in any other setting in relation to the use of employers' powers to contest the registration of unions; and (ii) to indicate whether Mr Leoncio Brítez, Mr Gustavo Adolfo Jara Aquino and Mr Teodoro Enciso remained in detention, specifying the status of the criminal case lodged against them, and to forward a copy of the court rulings once they have been issued.
24. The Committee notes the observations provided by the Government in its communication dated 17 April 2019.

25. Regarding the holding of tripartite discussions on the use of employers' powers to contest the registration of unions, the Government indicates that, in 2019, on the occasion of the first meeting of the Tripartite Advisory Council, the social partners expressed their commitment to work together and to pursue an agenda that includes freedom of association, among other issues.
26. With regard to the detention of the three aforementioned trade unionists and the status of the criminal case lodged against them, the Government indicates that in 2012 a request was filed for the application of a conditional suspension of proceedings in favour of these trade unionists, which was granted by the competent court in 2013.
27. *The Committee notes that the Government indicates that, in 2019, the Tripartite Advisory Council undertook to pursue an inclusive agenda on freedom of association, without providing information on tripartite discussions held specifically in relation to the allegations that employers are relying on legal provisions to contest the final registration of unions. Observing that the CEACR has examined the functioning of the registration of trade unions in practice in the context of the supervision of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee requests the Government to provide the CEACR with information on the use of employers' legal powers to contest the registration of unions, including information on tripartite discussions held in this respect in the Tripartite Advisory Council or in other forums.*
28. *With regard to the detention of three trade unionists and the criminal case lodged against them, the Committee notes that the Government indicates that in 2013 a conditional suspension of criminal proceedings was granted in favour of these trade unionists. The Committee notes that article 25(6) of the Code of Criminal Procedure establishes that this procedural figure grounds the extinction of the criminal action.*
29. *On the basis of the foregoing and having received no information from the complainant organization since 2016, the Committee considers that this case is closed and does not call for further examination.*

Case No. 3033 (Peru)

30. The Committee last examined this case, which concerns allegations relating to the dismissal of trade union leaders of the Single Trade Union of Workers of Casa Grande and Allied Enterprises (SUTCGA) and other anti-union acts by a sugar company, at its March 2014 meeting [see 371st Report, paras 744–765]. On that occasion, the Committee requested the Government to keep it informed of the outcome of the trial concerning the dismissal of six leaders of the complainant union.
31. By communications of 15 May and 19 August 2014, 28 August, 9 October and 3 December 2018 and 22 January 2024, the Government informs that: (i) the dismissal annulment proceedings initiated in 2013 concluded with respect to four trade union leaders because three of them conciliated with the sugar company and the judicial proceedings concerning the fourth leader were brought to an end, given that the facts on which the proceedings were based had disappeared; (ii) through a second instance judgment of 2018, the dismissal of the other two union leaders (Mr Saucedo Castillo and Mr Rubio Oliva) were declared null and void, and their reinstatement was ordered, which was complied with by the sugar company; and (iii) in 2023, the cassation appeal filed by the sugar company against this judgment was declared unfounded.

32. By means of a communication dated 21 December 2016, the Trade Union Confederation of Peruvian Workers (CSP) submitted additional allegations concerning obstructions to the exercise of trade union rights by members and leaders of the SUTCGA.
33. The CSP alleges that, as a result of various claims by the SUTCGA, the sugar company: (i) generated a conflict between the union leaders of this organization by having a group of workers related to it attempt to accredit a management committee of the union for the 2015–17 period before the administrative labour authority (AAT) to the detriment of another previously registered and led by the two aforementioned union leaders; (ii) delayed the discussion of the list of claims for the same period; (iii) coerced the negotiating committee and the leaders of the SUTCGA to sign an unfair list of claims and to end the strike carried out in March 2016 through the filing of criminal charges and complaints as well as threats; and (iv) in retaliation for their participation in the strike, dismissed the two union leaders mentioned above and other unionized workers and announced the reduction of holidays and the deduction of social benefits for absences during the strike. The CSP indicates that it has denounced to the labour inspectorate both the anti-union acts described above and the illegal withholding of cheques for union dues by the sugar company.
34. The CSP also alleges that, illegally and biased towards the sugar company, the AAT: (i) declared the 2016 strike unjustified after a document submitted by the SUTCGA (the affidavit of a union leader) was subtracted; and (ii) delayed the resolution of the proceedings initiated by the SUTCGA in relation to the 2015–17 list of claims and the 2016 strike.
35. With regard to the allegations of anti-union acts, the Government provides information according to which: (i) there is a conflict between two leadership groups of the SUTCGA claiming representativeness and legitimacy vis-à-vis the sugar company and the AAT, which led to the interruption of collective bargaining 2015–17; (ii) after several conciliation meetings promoted by the AAT in a framework of respect for freedom of association and good faith bargaining, in June 2016 the sugar company and the SUTCGA, under the representation of the two union leaders mentioned above, signed the collective agreement 2015–17; (iii) also in the context of meetings convened by the AAT, in April and June 2016 the SUTCGA and the sugar company concluded agreements that addressed both the issue of dismissal and harassment of workers who took part in the March 2016 strike and the granting of loans to compensate for the discounts for absenteeism during the strike; (iv) in August 2016, the SUTCGA denounced to the labour inspectorate the existence of acts of hostility against the workers who took part in the 2016 strike; (v) in August and September 2016, the AAT was informed that the two union leaders mentioned above had been removed from their positions and that, up to that point, they had been provisionally reinstated by the sugar company in compliance with a precautionary measure; and (vi) in 2018, an ex officio inspection procedure was initiated with respect to the sugar company in order to verify the commission of the anti-union acts alleged by the CSP, which concluded without finding any legal breaches of freedom of association.
36. In relation to the questioning of the AAT's actions, the Government states that: (i) this authority has at all times safeguarded the principles and rights provided for in the rules governing administrative procedure and collective labour relations; (ii) the 2016 strike was declared first inadmissible and then illegal because of inconsistencies, in particular with regard to the number of attendees at the assembly at which the strike was decided; (iii) the competent provincial public prosecutor's office declared that it was inadmissible to open an investigation for offences against the public administration against the AAT official who was in charge of the proceedings initiated by the SUTCGA; and (iv) the existence of an internal trade union conflict and the resolution of the various appeals lodged by the parties concerned had an impact on the duration of the aforementioned proceedings.

37. *The Committee takes due note of the information provided by the Government and of the information available on the website of the Peruvian judiciary concerning the outcome of the dismissal annulment proceedings initiated in 2013 by leaders of the SUTCGA against the sugar company. The Committee notes that two of the trade union leaders were definitively reinstated by the company on 20 December 2018 and that the proceedings were terminated early (without a ruling on the merits) in respect of the others following, in particular, the signing of several conciliation agreements.*
38. *The Committee also takes note of the additional allegations made by the CSP concerning various anti-union acts allegedly carried out by the sugar company to the detriment of the SUTCGA in the context of collective bargaining 2015–17 and a strike in 2016. Such acts allegedly include the creation of an internal trade union conflict, the intentional delay of the collective bargaining process, the withholding of union dues, company coercion to conclude the negotiations and put an end to the strike, as well as reprisals against the striking workers by reducing their remuneration (holidays and social benefits) and the dismissal of several trade unionists, including the two trade union leaders mentioned in the previous paragraph. The Committee notes that the CSP also questions the delay and lack of impartiality of the AAT in handling and resolving the proceedings initiated by the SUTCGA in connection with the collective bargaining and strike referred to above.*
39. *The Committee notes that in its observations, the Government refers to the existence of a trade union conflict within the SUTCGA and to the fact that this conflict is said to have led to the temporary interruption of collective bargaining 2015–17 and, together with other elements, to the duration of the proceedings initiated by the SUTCGA before the AAT. The Committee notes the Government's indication that, following various meetings promoted by the AAT in a framework of respect for freedom of association and good faith bargaining, in June 2016, the SUTCGA (represented by the two trade union leaders mentioned above) and the sugar company signed the collective agreement 2015–17 and concluded other agreements addressing the problem of wage deductions and dismissals of workers who went on strike in March 2016. The Committee also notes that the Government indicates that, following an ex officio inspection in 2018, the labour inspectorate did not detect the violations of freedom of association alleged by the CSP.*
40. *Having taken due note of the elements provided by the parties, the Committee, on the one hand, recalls that the two trade union leaders – to whose dismissal the CSP refers – were definitively reinstated in 2018 by the sugar company and, on the other hand, notes that the remaining allegations of the CSP have already been addressed in agreements concluded between the SUTGCA and the said company and through actions by the national authorities.*
41. *With regard to the declaration of illegality by the AAT of the strike carried out in 2016 by the SUTGCA, the Committee wishes to emphasize that, as recalled in its previous examination of the case, the responsibility for declaring a strike illegal should not lie with the government, but with an independent body which has the confidence of the parties [**Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 907]. The Committee therefore once again requests the Government to take steps to amend the legislation to take account of this criterion.*
42. *On the basis of the above and having received no information from the complainant organizations since 2016, the Committee considers the present case closed and will not pursue its examination.*

Case No. 3420 (Uruguay)

43. *The Committee last examined this case at its June 2023 session [see 403rd Report, paras 598–653]. On that occasion, the Committee requested the Government to: (a) ensure a reasonable balance between the obligation of political neutrality of public teachers in the*

educational field established by the Constitution of Uruguay and the right of teacher organizations to express their opinions on economic and social policy issues that may affect its members and to be able to disseminate them in the workplace bearing in mind the need not to impair the education of the children, and to take any necessary actions in this regard. The Committee also requested the Government to keep it informed of the outcome of the invalidation proceedings brought in the Court for Administrative Disputes (TCA) relating to banners on the schools' facades, and also of the status of the other complaint filed by National Federation of Secondary School Teachers (FENAPES) with the National Human Rights Institution (INDDHH); (b) to keep it informed, together with the complainants, of the status of the criminal complaint filed against the teacher and union leader Mr Marcel Slamovitz and other FENAPES leaders, and to provide information on the action taken by the National Public Education Administration (ANEP), the Transparency and Public Ethics Board, and the Public Prosecutor's Office, to which the parliamentary commission referred the activities in question; and (c) while requesting the Government to keep it informed of any decision issued by the TCA and of any developments in the above-mentioned tripartite negotiations mentioned by the Government in relation to the Association of Secondary Education Non-Teaching Staff (ATES), the Committee expressed the firm hope that in future, in line with Uruguay's tradition of social dialogue and its recognized commitment to collective bargaining, it is precisely through dialogue and bipartite collective bargaining that issues relating to trade union leave taken by secondary education teachers will be addressed and reviewed, if deemed necessary, in a climate of confidence, respect and good faith.

44. The Committee takes note of the additional information sent by FENAPES in its communications of 18 September and 19 December 2023 in which the complainant organization alleges the Government's failure to comply with the Committee's recommendations and the persistence of a policy of anti-union repression. The Committee also takes note of the observations submitted by the Government in its communication of 20 December 2023.
45. In relation to the status of the actions undertaken in relation to alleged restrictions to the freedom of expression of FENAPES, the Government informs that, due to a matter of a formal nature, the TCA was inhibited from ruling on the merits of the annulment action presented by the ANEP against the INDDHH resolution that recommended repealing the most controversial articles of the 2020 resolution by which the ANEP had demanded that FENAPES remove the posters related to a legislative referendum from the facade of different high schools. *The Committee takes due note of this information and notes that the parties concerned in the present complaint have not submitted information on other judicial or administrative proceedings initiated at the national level in relation to the situation referred to. Noting the absence of information in this respect, the Committee again requests the Government to keep it informed of the status of the complaint lodged by FENAPES with the INDDHH, inter alia, the prohibition of trade union meetings inside the school.*
46. On the other hand, FENAPES alleges that the Government is disregarding the Committee's recommendation (a) requesting it to take any necessary actions to ensure a reasonable balance between the political neutrality of public teachers and the freedom of expression of teachers' organizations. In this regard, FENAPES states that: (i) the summary proceedings that culminated in the punishment of unionized teachers for having taken and then disseminated photographs inside a high school to express their opposition to a constitutional reform project have not been re-examined in the light of the aforementioned reasonable balance; and (ii) in 2023, the Central Board of Directors of the ANEP issued a legal report questioning the Committee's request referred to above as well as other aspects of its examination of the case.

For its part, the Government refers that this legal report responded to a request from FENAPES, rules out any intention on the part of the report or ANEP to breach or disregard the Committee's recommendations and points out that, in its view, the aforementioned reasonable balance is achieved through dialogue and compliance with the constitutional, legal and regulatory norms inherent to the public function, as well as the principles governing public education. *The Committee takes due note of the elements submitted by FENAPES and the Government and their divergent positions. Recalling the tradition of social dialogue that characterizes Uruguay and noting that, according to the information available on the Government's website, in 2022 ANEP had concluded collective agreements with FENAPES and other trade union organizations, the Committee invites the Government to promote dialogue between FENAPES and ANEP with respect to the subjects addressed in recommendation (a) as mentioned above. The Committee requests the Government to keep it informed in this respect.*

47. With regard to recommendation (b) concerning the actions carried out following the investigation by a parliamentary committee on the use of trade union leave in the period 2015–19 by certain members of FENAPES, this organization points out that: (i) the Parliament filed a criminal complaint for the alleged existence of irregularities, omissions and unlawfulness in the use of the referred leaves ; and (ii) based on the conclusions of the investigation, the General Directorate of Secondary Education (DGES), a decentralized body of ANEP, ordered, through resolution No. 4251 of 2023, to carry out a new investigation into the possible irregular use of the aforementioned licenses by other FENAPES leaders, which could include Mr Mario Bango and Mr Raúl May.
48. With regard to the status of the criminal complaints under way concerning the alleged irregular use of trade union leave, FENAPES and the Government inform that both the above-mentioned complaint by Parliament and the complaint filed by ANEP against the teacher and leader Mr Marcel Slamovitz, for having submitted allegedly false documents for the use of trade union leave, are currently being investigated by the Office of the Public Prosecutor for the 15th shift. *The Committee takes due note of the information provided by FENAPES and the Government and requests them to keep it informed of the developments and outcome of the two ongoing criminal complaints concerning the use of trade union leave by certain FENAPES leaders in the period 2015–19, as well as of the new administrative investigation into the possible irregular use of such leave by other FENAPES members.*
49. With regard to recommendation (c) concerning the alleged modification by resolution No. 4141 of 2021 of the Directorate-General for External Security (DGSE) on the conditions for the use of trade union leave by the leaders of the ATES and the collective bargaining that would address this situation, the Government indicates that: (i) this resolution has lost its validity due to the passage of time; (ii) there was a refusal (by administrative silence) of the request submitted by FENAPES to revoke the aforementioned resolution; (iii) this refusal became final as it was not challenged before the CCA; (iv) no other claims have arisen with respect to the aforementioned resolution; and (v) collective bargaining with the ATES has continued normally. *The Committee takes due note of the information provided by the Government. The Committee expresses once again the firm hope that, if deemed necessary, the issues relating to union leave for secondary school teachers can be addressed and reviewed in the future through dialogue and bipartite collective bargaining.*

Case No. 3016 (Bolivarian Republic of Venezuela)

50. The Committee last examined this case, concerning non-compliance with clauses of several collective agreements and anti-union practices in nationalized public cement companies, as well as dismissals and persecution of trade union activists and leaders in these companies, at

its March 2018 meeting [see 384th Report, paras 548–564]. On that occasion, the Committee made the following recommendations:

- (a) The Committee urges the Government to provide more detailed information concerning recommendations (a), (b), (d) and (g) of its previous examination of the case, regarding the promotion of collective bargaining, tripartite dialogue and respect for collective agreements in the cement industry. Furthermore, it invites the Government to address all outstanding matters relating to these issues by setting up a dialogue round table with the interested organizations, and requests the Government to keep it informed in this regard, as well as of the number and coverage of agreements concluded in the enterprises concerned.
- (b) The Committee once again invites the complainant organizations to provide any detailed information at their disposal and requests the Government, on the basis of that information, to state whether Mr Alexander Santos and Mr Manuel Rodríguez did actually file judicial proceedings and to provide information on the outcome of such proceedings, and to provide a copy of the court decision ruling partially in favour of Mr Ulice Rodríguez.

51. In a communication dated 30 October 2018, the Government provides information in relation to the Committee's recommendation (a) concerning the promotion of collective bargaining, tripartite dialogue and respect for collective agreements in the cement sector. The Government indicates that the right to collective bargaining is enshrined in the Constitution of the Republic and in the Organic Law on Labour, Workers and Women Workers (LOTTT) and reiterates that collective bargaining is promoted and guaranteed in the cement sector and in all sectors as well as in the company Venezolana de Cementos S.A.C.A., concerning the case in question. The Government reiterates that it guarantees and ensures compliance with collective bargaining agreements in all sectors, with workers having legal mechanisms at their disposal to enforce the constitutional guarantee of collective bargaining and having the possibility of going to the labour inspectorates for the purpose of lodging complaints, prior negotiations, petitions and working groups at the request of a party or ex officio for the purpose of ensuring compliance with collective bargaining agreements. The Government indicates that in the above-mentioned enterprise, working tables are being developed with the participation of all trade union organizations. The Government also indicates that it gives priority to inclusive social dialogue through which it tries to find a solution to the labour disputes and problems raised by the workers. The Government refers once again to the dialogue held at the labour inspectorate of the state of Lara, Pio Tamayo. Finally, the Government once again highlights the lack of information requested on several occasions from the complainants, as well as the lack of impetus given by the complainants in relation to the complaint, and requests that the case be closed.

52. *The Committee takes note of the information provided by the Government. The Committee regrets to note that, despite having urged the Government to provide more detailed information in relation to the recommendations made, the information provided by the Government in 2018 essentially reiterates elements of a general nature that had already been considered by the Committee in the past. The Committee also notes that, despite having again invited the complainant organizations to provide certain information with a view to examining the follow-up given to recommendation (b) concerning the alleged dismissal of trade unionists and the status of the legal proceedings initiated in this respect, the Committee has not received any information from them. The Committee recalls that the latest information provided by the complainant organizations in this case dates from 2014. The Committee also notes that, at the last session of the social dialogue forum held in February 2024 following 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 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), among other*

Conventions, the country's tripartite constituents agreed to continue to take steps to deepen and strengthen social dialogue in the country. In the light of the foregoing, the Committee reiterates its invitation to the Government to address any outstanding issues relating to the promotion of collective bargaining and respect for collective agreements in the cement sector in the framework of round tables with the organizations concerned, and considers 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 **45** 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
2756 (Mali)	March 2011	March 2023
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
3018 (Pakistan)	June 2023	–
3042 (Guatemala)	March 2024	–
3046 (Argentina)	November 2015	–
3054 (El Salvador)	June 2015	–
3078 (Argentina)	March 2018	–
3098 (Türkiye)	June 2016	November 2017
3100 (India)	March 2016	–
3104 (Algeria)	March 2017	November 2023
3167 (El Salvador)	November 2017	–
3178 (Bolivarian Republic of Venezuela)	March 2024	–
3180 (Thailand)	March 2017	March 2021
3182 (Romania)	November 2016	–
3192 (Argentina)	November 2023	–

Case No.	Last examination on the merits	Last follow-up examination
3202 (Liberia)	March 2018	–
3232 (Argentina)	November 2023	–
3248 (Argentina)	October 2018	–
3251 (Guatemala)	November 2022	–
3257 (Argentina)	October 2018	–
3275 (Madagascar)	June 2023	–
3289 (Pakistan)	June 2018	October 2020
3313 (Russian Federation)	November 2021	–
3326 (Guatemala)	November 2022	–
3339 (Zimbabwe)	March 2022	–
3360 (Argentina)	March 2023	–
3363 (Guatemala)	June 2023	–
3364 (Dominican Republic)	March 2022	–
3368 (Honduras)	November 2023	–
3369 (India)	November 2022	–
3370 (Pakistan)	November 2023	–
3376 (Sudan)	June 2023	–
3426 (Hungary)	March 2023	–
3427 (Togo)	November 2023	–
3430 (Republic of Korea)	June 2023	–
3433 (Republic of Korea)	November 2023	–
3439 (Republic of Korea)	March 2024	–

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), 2362 and 2434 (Colombia), 2528 (Philippines), 2566 (Islamic Republic of Iran), 2583 and 2595 (Colombia), 2637 (Malaysia), 2652 (Philippines), 2656 (Brazil), 2684 (Ecuador), 2694 (Mexico), 2699 (Uruguay), 2706 (Panama), 2716 (Philippines), 2719 (Colombia), 2723 (Fiji), 2745 (Philippines), 2749 (France), 2751 (Panama), 2753 (Djibouti), 2755 (Ecuador), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2852 (Colombia), 2882 (Bahrain), 2896 (El Salvador), 2902 (Pakistan), 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), 3020 (Colombia), 3022 (Thailand), 3024 (Morocco), 3027 (Colombia), 3030 (Mali), 3032 (Honduras), 3036 (Bolivarian Republic of Venezuela), 3040 (Guatemala), 3043 and 3056 (Peru), 3059 (Bolivarian Republic of Venezuela), 3061 (Colombia), 3069 (Peru), 3075 (Argentina), 3076 (Maldives), 3095 (Tunisia), 3097

(Colombia), 3102 (Chile), 3103 (Colombia), 3119 (Philippines), 3131 and 3137 (Colombia), 3139 (Guatemala), 3150 (Colombia), 3164 (Thailand), 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), 3285 (Plurinational State of Bolivia), 3286 (Guatemala), 3287 (Honduras), 3288 (Plurinational State of Bolivia), 3316 (Colombia), 3317 (Panama), 3323 (Romania), 3333 (Colombia), 3341 (Ukraine), 3342 (Peru), 3343 (Myanmar), 3347 (Ecuador), 3359 (Peru), 3374 (Bolivarian Republic of Venezuela), 3375 (Panama), 3378 (Ecuador), 3385 (Bolivarian Republic of Venezuela), 3386 (Kyrgyzstan), 3397 (Colombia), 3401 (Malaysia), 3404 (Serbia), 3407 (Uruguay), 3408 (Luxembourg), 3410 (Türkiye), 3412 (Sri Lanka), 3414 (Malaysia), 3415 (Belgium) and 3437 (Ecuador) which it will examine as swiftly as possible.

Closure of follow-up cases

56. In its November 2018 report (GB.334/INS/10), the Committee informed the Governing Body that, from that moment onwards, any cases in which it was examining the follow-up given to its recommendations, for which no information has been received either from the government or from the complainant for 18 months since the last examination of the case would be considered closed. At its current session, the Committee applied this rule to the following cases: Nos 3314 (Zimbabwe) and 3399 (Hungary).

Case No.3269

Interim report

Complaint against the Government of Afghanistan presented by

- the National Union of Afghanistan Workers and Employees (NUAWE)
- supported by
- the International Trade Union Confederation (ITUC)

Allegations: The complainant organization denounces violations of trade union rights by the Government, in particular the issuance of a unilateral decision on confiscation of trade union premises and property without a court order

57. The Committee last examined this case (submitted in March 2017) at its June 2023 meeting, when it presented an interim report to the Governing Body [see 403rd Report, paras 54–69, approved by the Governing Body at its 348th Session (June 2023)].¹
58. At its meeting in March 2023 [see 401st Report, para. 6], the Committee made an urgent appeal to the de facto authorities indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body (1971), it could present a

¹ [Link to previous examination.](#)

report on the substance of the case, even if the requested information or observations had not been received in due time. To date, the de facto authorities have not [sent](#) any information. The complainant organization provided update information in a communication received on 15 April 2024.

59. Afghanistan has not ratified 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).

A. Previous examination of the case

60. At its June 2023 meeting, the Committee made the following recommendations [see 403rd Report, para. 69]:

- (a) The Committee firmly urges the de facto authorities to ensure that the matters first giving rise to this complaint, in particular as regards the confiscation of the complainant's properties, are addressed without delay. It expects a rapid decision of the Courts concerning the legal claim of the National Union of Afghanistan Workers and Employees (NUAWE) in this regard and requests the de facto authorities to provide detailed information on the status of the court proceedings and indicate any steps taken to comply with the final decision once it is made.
- (b) The Committee urges the de facto authorities to provide detailed observations on the allegations concerning the freezing of the union's bank accounts without judicial authorization, the failure to renew the union's licence rendering its operations illegal, as well as the serious allegations contained in the International Trade Union Confederation (ITUC) communication of May 2022 on threats against trade unionists forcing their exile and the confiscation, in March 2022, of the NUAWE's properties and documents, including in the provinces.
- (c) The Committee urges the de facto authorities to clarify whether the 2016 decree can indeed lead to administrative intervention in or control over trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the de facto authorities to amend the 2016 decree to ensure that this is not possible.
- (d) In light of the current circumstances in the country, the Committee requests the de facto authorities to take all necessary measures to ensure that all workers' and employers' organizations may carry out their legitimate trade union activities in a climate that is free from violence, pressure and threats of any kind.
- (e) The Committee expects the de facto authorities to commit to ensuring that the exiled NUAWE leadership, including Mr Qaderi, can return to the country to carry out trade union activities in an environment free of violence, pressure or threats.
- (f) The Committee recalls that the technical assistance of the Office is available in order to pursue recommendations (a) to (d).
- (g) The Committee draws the Governing Body's attention to the serious and urgent nature of this case.

B. Additional information from the complainant

61. In a communication received on 15 April 2024, the complainant informs that representatives of NUAWE visited the leader of the de facto authorities in Kandahar with proposals to address the issues, to no avail. Other meetings took place at the level of the de facto authorities responsible for justice and labour in Kabul, without result. In relation to the union properties, the complainant denounces the fact that all its monthly financial income through its properties is collected by the de facto authorities. All the union properties remain under the control of the

de facto authorities. And regrettably, none of the recommendations of the Committee were implemented.

C. The Committee's conclusions

62. *The Committee regrets that the de facto authorities have still not provided a response to its recommendations, even though they have been requested several times to do so, including through an urgent appeal.*
63. *Under these circumstances and in accordance with the applicable procedural rule [see 127th Report, approved by the Governing Body at its 184th Session (1971), para. 17], the Committee is obliged to present a new report on the substance of the case without being able to take account of the information that it hoped to receive.*
64. *Once again, the Committee reminds the de facto authorities that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of association is to ensure respect for trade union rights in law and in practice. The Committee is confident that, while this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, 1952, para. 31]. The Committee urges the de facto authorities to be more cooperative in the future.*
65. *The Committee recalls that this case concerns allegations of confiscation by the authorities of legitimately acquired trade union premises and property without a court order, including attempts at violent takeover and occupation of the National Union of Afghanistan Workers and Employees (NUAWE) offices by the police and the armed forces, as well as the freezing of the union's bank accounts, failure to renew its licence and the hindering of freedom of expression and press.*
66. *The Committee notes the communication of 15 April 2024 whereby NUAWE informs that some union representatives met with the de facto authorities in Kandahar and Kabul on several occasions to propose to address the issues raised in the present complaint, including on the issue of the union properties, without any result. More generally, the NUAWE denounces the fact that none of the recommendations made by the Committee were implemented.*
67. *The Committee recalls that it previously noted with concern the absence of any final ruling by the Courts concerning the legal action presented by the union to claim certain properties. The Committee also expected the report on the holding of the congress of the union in accordance with the ruling of March 2019 of the Appellate Court of Kabul in relation to its leadership. In this context, the Committee also noted that a number of representatives of the NUAWE, including the signatory of the complaint, Mr Qaderi, have since fled the country and are in exile.*
68. *While it is mindful of the complexity of the national situation, the Committee must recall that the development of free and independent organizations and negotiation with all those involved in social dialogue is indispensable to enable a government to confront its social and economic problems and resolve them in the best interests of the workers, including female workers and the nation [see 403rd report, para. 63]. It is once again bound to call upon all responsible authorities to provide information on the steps taken to address its previous conclusions, the general nature of which it recalls below.*
69. *The Committee firmly urges the de facto authorities to ensure that the matters first giving rise to this complaint, in particular as regards the confiscation of the union's properties, are addressed without delay. In this regard, it expects a rapid decision of the Courts concerning the legal claim of the NUAWE and requests the de facto authorities to provide detailed information on the status of the court proceedings and indicate any steps taken to comply with the final decision once it is made.*

70. *The Committee previously recalled that the International Trade Union Confederation (ITUC) which associated itself with the complaint in April 2018, denounced: (i) attempts at violent takeover and occupation of the NUAWE offices by the police and the armed forces; (ii) the freezing of the union's bank accounts without judicial authorization; (iii) the failure to renew the union's licence; and (iv) the failure to engage with the union and the hindering of freedom of expression and press. The Committee noted with concern the allegations of the ITUC in May 2022 that, since the new authorities took power in August 2021, trade union leaders are under direct threat and therefore forced into exile. Some NUAWE leaders, including Mr Qaderi, were relocated abroad, as others led the team in the country. The Committee also noted the indication that despite an official request from the union, the authorities refused to re-open the union's office and to renew its registration. It noted with grave concern the allegation that the authorities have seized the trade union properties in the provinces, confiscating materials and documents and expelling its staff. Therefore, the Committee requested the de facto authorities to provide detailed observations on the allegations of the ITUC contained in its communication of May 2022 on threats against unionists forcing their exile, the refusal to renew the union's registration and the confiscation of the union's properties and documents, including in the provinces. The Committee also requests the de facto authorities to provide its observations on the latest communication of the NUAWE dated April 2024 indicating that none of the Committee's previous recommendations were implemented.*
71. *The Committee recalled that its previous conclusions also concerned the text of the 2016 decree which, in addition to ordering the seizure of the complainant's premises and their transfer under state ownership, gave mandate to the Ministry of Justice to review, in light of the applicable laws, the continuation of the activities of the NUAWE and two other trade unions, and proceed accordingly. The Committee urged the de facto authorities to clarify whether the 2016 decree can indeed lead to administrative intervention in, or control over, trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the de facto authorities to amend the 2016 decree to ensure that this is not possible.*
72. *In light of the current circumstances in the country, the Committee requests the de facto authorities to take all necessary measures to ensure that all workers' and employers' organizations may carry out their legitimate trade union activities in a climate that is free from violence, pressure and threats of any kind.*
73. *Recalling the importance attached to social dialogue in the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), the Committee once again recalls that the technical assistance and support of the Office is available in this regard with a view to the effective implementation of its recommendations.*

The Committee's recommendations

74. **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee firmly urges the de facto authorities to ensure that the matters first giving rise to this complaint, in particular as regards the confiscation of the complainant's properties, are addressed without delay. It expects a rapid decision of the Courts concerning the legal claim of the National Union of Afghanistan Workers and Employees (NUAWE) in this regard and requests the de facto authorities to provide detailed information on the status of the court proceedings and indicate any steps taken to comply with the final decision once it is made.**

- (b) The Committee urges the de facto authorities to provide detailed observations on the allegations concerning the freezing of the union's bank accounts without judicial authorization, the failure to renew the union's licence rendering its operations illegal, as well as the serious allegations contained in the International Trade Union Confederation (ITUC) communication of May 2022 on threats against trade unionists forcing their exile and the confiscation, in March 2022, of the NUAWE's properties and documents, including in the provinces. The Committee also requests the de facto authorities to provide its observations on the latest communication of the NUAWE, dated April 2024, indicating that none of the Committee's previous recommendations were implemented.
- (c) The Committee urges the de facto authorities to clarify whether the 2016 decree can indeed lead to administrative intervention in or control over trade union affairs and whether, in particular, administrative suspension or dissolution of a trade union could be a possible consequence of the review undertaken and, if so, invites the de facto authorities to amend the 2016 decree to ensure that this is not possible.
- (d) In light of the current circumstances in the country, the Committee requests the de facto authorities to take all necessary measures to ensure that all workers' and employers' organizations may carry out their legitimate trade union activities in a climate that is free from violence, pressure and threats of any kind.
- (e) Recalling the importance attached to social dialogue in the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), the Committee once again recalls that the technical assistance and support of the Office is available in this regard with a view to the effective implementation of recommendations (a) to (d).
- (f) The Committee draws the Governing Body's attention to the serious and urgent nature of this case.

Case No. 3388

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

Complaint against the Government of Albania
presented by
the Trade Union of United Mineworkers of Bulqiza (*Sindikata e Minatoreve te Bashkuar te Bulqizes*) (SMBB)

Allegations: The complainant alleges acts of anti-union interference and discrimination, including dismissals, and the violation of the right to collective bargaining by a company in the mining sector, as well as acts of intimidation and the detention of trade unionists and labour activists by the police during a strike

75. The Committee last examined this case (submitted by the Trade Union of United Mineworkers of Bulqiza (SMBB) in July 2020) at its June 2023 meeting and presented an interim report to the Governing Body on that occasion [see 403rd Report, paras 70–97 approved by the Governing Body at its 348th Session].²
76. The Government provided its observations in a communication dated 29 April 2024.
77. Albania 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

78. When it last examined the case, in June 2023, the Committee made the following recommendations [see 403rd Report, para. 97]:
 - (a) The Committee requests the Government to keep it informed of the outcome of the appeal presented by the SMBB against the decision of 26 October 2020 of the CPD and of any resulting measures of redress or sanctions. In light of the information provided by the complainant that it has also challenged these dismissals before the ordinary courts, the Committee requests the complainant to provide updated information on the status of these cases and copies of any judicial decisions rendered.
 - (b) The Committee requests the Government to carry out an independent investigation into the allegations that trade unionists were temporarily detained, questioned and intimidated by the police and that labour activists were beaten up and imprisoned during a strike organized by the SMBB, and to provide detailed information on the outcome.
 - (c) The Committee requests the Government to conduct without delay an independent inquiry into the allegations of anti-union interference by the enterprise³ and to ensure

² [Link to previous examination.](#)

³ AlbChrome Ltd.

that corrective measures and sufficiently dissuasive sanctions are imposed against any act of interference identified. The Committee requests the Government to keep it informed of any developments in this respect.

- (d) Noting from the information provided by the parties that the judicial authorities appear to be the appropriate channel for challenging the most representative status of the FSPISH, the Committee requests the Government and the complainant to inform it of any judicial procedures undertaken in this regard and their outcome. The Committee expects that the question of the representativeness status of the SMBB and the FSPISH at the enterprise will be clarified without delay either through judicial procedures or other means and requests the Government to provide detailed information in this regard and to furnish precise and updated information on the representative nature of the two organizations.
- (e) The Committee requests the Government to take the necessary measures to ensure that the representatives of the SMBB have access to the workplace of its members in the performance of their duties. The Committee requests the Government to keep it informed in this regard.

B. The Government's reply

- 79. In a communication dated 29 April 2024, the Government provides the following information in reply to the Committee's recommendations.
- 80. Regarding recommendation (a), the Government indicates that Mr Elton Debreshi and Mr Ali Gjeta, two of the dismissed SMBB leaders, challenged the 26 October 2020 decision by the Commissioner for Protection against Discrimination (CPD), before the Administrative Court of First Instance of Tirana. The Government reports that the Administrative Court of First Instance of Tirana decided, on 18 March 2021, to dismiss their claims. The Government adds that the company also contested the CPD's decision, before the same Court, which decided on 19 May 2021, to "repeal points 2 and 3 of the CPD's decision". The Government specifies that the four dismissed SMBB leaders (namely Mr Elton Debreshi, Mr Beqir Durici, Mr Behar Gjimi, and Mr Ali Gjeta) as well as the CPD and the "State Bar" appealed the above-mentioned administrative decisions. The Government indicates that the appeals are currently under review before the Administrative Court of Appeal of Tirana.
- 81. In response to recommendation (b), the Government provides information communicated by the General Directorate of the State Police, regarding the police intervention during the strike organized by the SMBB. The General Directorate of the State Police indicates that the police intervened after the enterprise complained about protesters obstructing the access to the Bulqiza mine, thereby preventing essential personnel from entering, which could result in the destruction of the company's investment. The General Directorate of the State Police indicates that, as the protesters refused to comply with the police requests to cease the blockade, they escorted a total of seven protesters to the Bulqiza police station, where they were charged with "organizing and participating in illegal gathering and protests" under article 262 of the Criminal Code. The General Directorate of the State Police asserts that the police followed the "Rules on the treatment of citizens who are escorted in the police premises" and that the protesters were prosecuted "in a free state" and released after having completed procedural documents, including a form in which none of them alleged any mistreatment.
- 82. Regarding recommendation (c), the Government provides information communicated by the State Labour and Social Services Inspectorate (hereinafter the "Inspectorate"). The Inspectorate recalls that it investigated each complaint raised by the SMBB and did not find any violations of trade union rights. The Inspectorate further recalls that it found that the dismissals of the SMBB leaders were not discriminatory and highlights that the Administrative

Court of First Instance of Tirana reached the same conclusion. The Inspectorate adds that, while Mr Elton Debreshi claimed in 2021 that explosives were planted in his car due to his trade union activities, the Court of First Instance of Dibër found in decision No. 33-2023-80 that the attack was staged by Mr Debreshi and his brother, in an attempt to seek political asylum in Germany or France.

83. In response to recommendation (d), the Government provides information communicated by the enterprise. The enterprise reiterates that, on 10 May 2018, it concluded a collective agreement with the Trade Union Federation of Industrial Workers of Albania (FSPISH), which is currently in force, and will remain so until 30 April 2025. The company asserts that, at the time of signing, the FSPISH was the most representative trade union in the enterprise and that, currently, 70 per cent of its employees are members of the FSPISH.
84. Regarding recommendation (e) the Government indicates that inspections conducted by the Inspectorate in December 2021 at the company revealed no evidence of the SMBB still being active. The Inspectorate further reports that it was unable to contact Mr Elton Debreshi who, according to its information, has left the country. The Inspectorate adds that, out of the 612 workers employed by the enterprise, 514 are members of the FSPISH, and that the members have regularly paid their membership fees.

C. The Committee's conclusions

85. *The Committee recalls that this case concerns allegations of acts of anti-union interference and discrimination, including the dismissal of four SMBB leaders (namely Mr Elton Debreshi, Mr Beqir Durici, Mr Behar Gjimi, and Mr Ali Gjeta) by a company in the mining sector, as well as alleged acts of intimidation and the detention of trade unionists by the police during a strike organized by the SMBB, and the violation of SMBB's right to collective bargaining both by the Government and the company.*
86. *With regard to recommendation (a), the Committee recalls that, in a decision of 26 October 2020, the CPD concluded that two of the four SMBB leaders had been dismissed for anti-union reasons. The Committee previously took note of the SMBB's indications that: (i) the SMBB will appeal that decision with a view to seeking justice for the four leaders; and that (ii) it had also challenged the four dismissals before ordinary courts. The Committee understands from the information provided by the Government that further to appeals filed respectively by the company and by SMBB leaders, the Administrative Court of First Instance of Tirana decided in March and May 2021 to: (i) overturn the CPD's determination that Mr Beqir Durici and Mr Behar Gjimi had been dismissed due to their trade union affiliation; and (ii) confirm the CPD's decision to reject the claims of Mr Elton Debreshi and Mr Ali Gjeta. The Committee further notes the Government's statement that the dismissed SMBB leaders, the CPD and the State Bar have appealed these decisions before the Administrative Court of Appeal of Tirana, which is yet to render a decision. The Committee thus requests the Government to keep it informed of the outcome of the appeals filed against the decisions of the Administrative Court of First Instance of Tirana relating to the decision of 26 October 2020 of the CPD, and to provide copies of the decisions rendered. In light of the information previously provided by the complainant that it has also challenged the dismissals of the SMBB leaders before the ordinary courts, the Committee once again requests the complainant, and the Government to provide updated information on the status of these cases and copies of any judicial decisions rendered.*
87. *Regarding recommendation (b), the Committee recalls that it previously took note of the complainant's allegations that, during a strike organized in 2019 by the SMBB, trade unionists were temporarily detained, questioned, and intimidated by the police, and labour activists were beaten up and imprisoned while participating in it. The Committee notes the Government's indication that*

the General Directorate of the State Police investigated the police intervention during the strike and found no evidence of protesters being deprived of their freedom or mistreated. The Government has not, however, provided any information as to the efforts made to establish an independent investigation into the complainant's allegations. The Committee therefore once again requests the Government to indicate the steps taken to carry out an independent investigation into the allegations that trade unionists were temporarily detained, questioned and intimidated by the police and that labour activists were beaten up and imprisoned during a strike organized by the SMBB, and to provide detailed information on the outcome.

88. With regard to recommendation (c) the Committee recalls that it previously took note of the complainant's allegations that: (i) the enterprise and the FSPISH have colluded to undermine the SMBB; (ii) workers were threatened with dismissal if they joined or continued to be members of the SMBB; (iii) when the SMBB became the majority union, its members were pressured by their managers to resign their membership and join the FSPISH; and (iv) the enterprise refused to apply the check-off system to the members of the SMBB. The Committee notes that the Government reiterates that the Inspectorate received complaints from the SMBB and did not find any violations of trade union rights. The Committee notes, however, that the Government has not provided information as to the efforts made to establish an independent investigation into the alleged acts of anti-union interference in this case. The Committee considers that the role of the Government in relation to acts of anti-union discrimination and interference is not confined to mediation and conciliation but also includes, where appropriate, investigation and enforcement in order to ensure effective protection against acts of anti-union discrimination and interference and, in particular, ensure that such acts are identified and remedied, that guilty parties are punished and that such acts do not reoccur in the future [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1161]. Observing the contradictory nature of the Government's reply and the complainant's allegations and further noting that the CPD and the State Bar have also appealed the Court of First Instance decision that overturned the finding of discrimination against some union leaders, the Committee considers that an independent investigation into the allegations of anti-union interference by the enterprise would be especially helpful for determining the facts and thus once again requests the Government to take steps in this regard.
89. Regarding recommendations (d) and (e), the Committee recalls that it previously took note of the claimant's allegations that: (i) the enterprise and the state authorities refuse to recognize the SMBB for collective bargaining purposes, even though the SMBB is the most representative trade union at the enterprise, not the FSPISH; and (ii) the Inspectorate informed the SMBB that the enterprise was entitled to refuse to allow the SMBB's representatives access to its premises, as only the representatives of trade unions which had signed a collective agreement could meet their members in the workplace. In that regard, the Committee recalls that, for the right to organize to be meaningful, the relevant workers' organizations should be able to further and defend the interests of their members, by enjoying such facilities as may be necessary for the proper exercise of their functions as workers' representatives, including access to the workplace of trade union members [see **Compilation**, para. 1594]. The Committee notes the information provided by the Government regarding the representativity of the FSPISH, as well as the Government's indication that, in the framework of inspections conducted in December 2021, the Inspectorate found no evidence of the SMBB being still active at the enterprise. While regretting that an independent investigation early on into these allegations might have provided a full picture of the situation at the enterprise so as to enable redress if necessary, the Committee notes that neither the Government nor the complainant have provided information on any judicial procedures undertaken to challenge the most representative nature of the FSPISH. In light of the Government's indication that the SMBB no longer

appears to be active, the Committee requests the complainant to provide updated information in that regard, failing which the Committee will not pursue further its examination of this matter.

The Committee's recommendations

- 90. 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 keep it informed of the outcome of the appeals filed against the decisions of the Administrative Court of First Instance of Tirana relating to the decision of 26 October 2020 of the Commissioner for Protection against Discrimination (CPD), and to provide copies of the decisions rendered.**
 - (b) In light of the information previously provided by the complainant that it has also challenged the dismissals of the Trade Union of United Mineworkers of Bulqiza (SMBB) leaders before the ordinary courts, the Committee once again requests the complainant and the Government to provide updated information on the status of these cases and copies of any judicial decisions rendered.**
 - (c) The Committee once again requests the Government to indicate the steps taken to carry out an independent investigation into the allegations that trade unionists were temporarily detained, questioned and intimidated by the police and that labour activists were beaten up and imprisoned during a strike organized by the SMBB, and to provide detailed information on the outcome.**
 - (d) The Committee once again requests the Government to indicate the steps taken to carry out an independent investigation into the allegations of anti-union interference by the enterprise.**
 - (e) In light of the Government's indication that the SMBB no longer appears to be active, the Committee requests the complainant to provide updated information in that regard, failing which the Committee will not pursue further its examination of this matter.**

Case No. 3431

Definitive report

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

Allegations: The complainant organization alleges the attempted marginalization of the National Union of Workers of Angola – Trade Union Confederation (UNTA-CS), with attacks on freedom of expression, government interference in UNTA-CS affairs and threats of deregistration, in a general climate of increased violence against trade unionists and workers

91. The Committee last examined the substance of this case at its March 2023 meeting, when it presented an interim report to the Governing Body [see 401st Report, paras 85–97, approved by the Governing Body at its 347th Session (March 2023) ⁴].
92. The Government sent its observations in communications received by the Office on 13 and 20 March 2024.
93. 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. Previous examination of the case

94. In its previous examination of the case, in March 2023, the Committee made the following recommendations [see 401st Report, para. 97]:
 - (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.

⁴ [Link to previous examination.](#)

B. The Government's reply

95. In its communication received on 13 March 2024, the Government states that, at the ordinary meeting of the National Committee for the ILO held on 11 April 2023, it was decided that all of the most representative organizations of employers and workers in Angola, namely the Chamber of Commerce and Industry of Angola (CCIA), the Industrial Association of Angola (AIA), the Federation of Women Entrepreneurs of Angola (FMEA), the National Union of Workers of Angola-Trade Union Confederation (UNTA-CS), the General Confederation of Independent and Free Trade Unions of Angola (CGSILA) and the Força Sindical Angolana (FSA), would participate in the 111th Session (June 2023) of the Conference. It was also decided that the Employers' and Workers' delegates would be from organizations affiliated to the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC), respectively. The Government's communication refers to the minutes of that meeting (No. 1/2023), received on 20 March 2024, which make reference to an agreement on a rotation among members of the National Committee for the ILO.
96. The Government further states that: (i) on 17 April 2023, a bipartite meeting was held between the Government, represented by the Minister of Public Administration, Labour and Social Security, the General Secretary of the UNTA-CS and Ms Maria Francisco, a member of the Governing Body of the ILO, at which they agreed to improve the dialogue between the parties and to review the criteria for nominating Workers' representatives to the International Labour Conference; and (ii) on 9 May 2023, a tripartite meeting was held between the Executive Secretary of the CCIA, the member of the Governing Body of the ILO as a representative of the UNTA-CS, and a representative of the Ministry of Public Administration, Labour and Social Security, to consider the present case.
97. As to the circumstances of the death of the Deputy Secretary-General of the National Union of Doctors of Angola (SINMEA), the Government states that the autopsy performed in Luanda on 19 April 2022 found that the cause of death was an acute myocardial infarction, ruling out any other unnatural cause. Four forensic physicians, two doctors from the leadership of SINMEA and a member of the deceased's family took part in the examination of the body.

C. The Committee's conclusions

98. *The Committee recalls that the present case was referred to it in 2022 by the International Labour Conference upon a proposal by the Credentials Committee – made under article 32, paragraph 6, of the Standing Orders of the Conference – 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. The Credentials Committee had considered that the objection raised issues that went beyond the question of representation at the Conference and that the situation described by the objecting organization merited further investigation for which the Committee lacked jurisdiction.*
99. *The Committee recalls that the allegations made by the ITUC concern the attempted marginalization of the UNTA-CS and that, in this connection, the Government is alleged to have deliberately excluded the UNTA-CS from the Workers' delegation to the 110th Session (May-June 2022) of the Conference in disregard of its status as the most representative organization, in a general climate of increased violence against trade unionists and workers.*
100. *The Committee notes the information provided by the Government, according to which: (i) on 17 April 2023, a bipartite meeting was held between the Government, represented by the Minister of Public Administration, Labour and Social Security, the General Secretary of the UNTA-CS and*

Ms Maria Francisco, a member of the Governing Body of the ILO, during which they agreed to improve dialogue between the parties and to review the criteria for nominating Workers' representatives to the International Labour Conference; and (ii) on 9 May 2023, a tripartite meeting was held between the Executive Secretary of the CCIA, the member of the Governing Body of the ILO as a representative of the UNTA-CS, and a representative of the Ministry of Public Administration, Labour and Social Security, to consider the present case.

- 101.** *With regard to the determination with the parties concerned of objective and transparent criteria for the nomination of Workers' representatives to the 111th Session (June 2023) of the Conference (recommendation (a)), the Committee regrets that the information concerning the composition of the Workers' delegation to the 111th Session (June 2023) of the Conference was not sent by the Government in a timely manner and was not received until March 2024, that is to say well after the session of the Conference for which the information was requested. The Committee also notes that neither has the Government provided the detailed report as requested on the criteria selected for nominating Workers' representatives and that some of the information is, moreover, unclear. Indeed, the Committee notes that the Government, in its communication received on 13 March 2024, states that, in the context of the ordinary meeting of the National Committee for the ILO on 11 April 2023, it was decided, as regards the composition of the Workers' delegation, that representatives of the UNTA-CS, the CGSILA and the FSA would participate in the 111th Session of the Conference and that the Workers' delegate would come from an organization affiliated to the ITUC, whereas the minutes of that meeting refer to a rotation agreement reached between the members of the aforementioned National Committee, without mentioning the issue of international affiliation and that, furthermore, the minutes were not approved by all the representative workers' organizations.*
- 102.** *The Committee nevertheless notes that, according to the final list of delegations represented at the 111th Session (June 2023) of the Conference, the Workers' delegate was from the UNTA-CS, the delegation also included representatives of the FSA and the CGSILA, no objection was raised with the Credentials Committee at that session and no further information has been provided to it in connection with this case. In these circumstances, the Committee trusts that the nomination of the Workers' delegation in 2023 was made and will continue to be made in agreement with the most representative workers' organizations and on the basis of objective and transparent criteria, and decides that it will not continue its examination of this matter.*
- 103.** *With regard to the suspicious circumstances of the death of the Deputy Secretary-General of SINMEA (recommendation (b)), the Committee takes note of the information concerning the results of the autopsy performed in Luanda on 19 April 2022, in the presence of four forensic physicians, two doctors from the leadership of SINMEA and a member of the deceased's family. In the absence of any additional information from the complainant organization, the Committee will not continue its examination of this matter either.*
- 104.** *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

- 105.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
 - (a)** **The Committee trusts that the nomination of the Workers' delegation in 2023 was made and will continue to be made in agreement with the most representative workers' organizations and on the basis of objective and transparent criteria.**

- (b) **The Committee considers that this case does not call for further examination and is closed.**

Case 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

- 106.** The Committee has examined the substance of Case No. 2761 on seven occasions [see 363rd, 367th, 380th, 383rd, 389th, 393rd and 401st Reports], most recently at its meeting of March 2023, when it examined Case No. 2761 together with Case No. 3074 and submitted an interim report on both cases to the Governing Body [see 401st Report, paras 323–362, approved by the Governing Body at its 347th Session].⁵
- 107.** The Government sent its observations in communications dated September 2023 and April 2024.
- 108.** 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. Previous examination of the case

- 109.** At its meeting in March 2023, the Committee made the following interim recommendations concerning the allegations presented by the complainant organizations [see 401st Report, para. 362]:

⁵ [Link to previous examinations.](#)

- (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 SINTRAECOL, 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.

B. The Government's reply

110. In its communications of September 2023 and April 2024, the Government indicates that Act No. 2272 of 4 November 2022, amending and extending Act No. 418 of 1997 on "total peace", and Act No. 2294 of 2023, issuing the "Colombia, World Life Power" National Development Plan 2022–26, have been adopted. The Government states that the National Development Plan seeks to establish total peace and guarantee the rights of victims amid the ongoing armed conflict. The Government adds that the main elements of the Act on total peace are being developed, which will allow dialogues to be initiated with all the high-impact organized crime and armed structures that wish to submit to justice, with a view to dismantling them and reducing the levels of violence to ensure the fundamental rights of all citizens.

- 111.** The Government then refers to the collective reparation of the trade union movement under Act No. 1448 of 2011 (known as the Victims and Land Restitution Act). It states that this process entails recognition of the harm suffered by the trade union movement and its members during the armed conflict, as well as the obligation of the State to make full reparations and prevent the reoccurrence of acts of victimization. The Government indicates that the trade union movement is registered for collective reparation under resolution No. 2023-31247 of 24 March 2023. On 14 August 2023, the process of collective reparation of the trade union movement officially began, and on 14 September, the President of the Republic and the Minister of Labour publicly paid homage to the 3,323 trade unionists murdered between 1971 and 2023, to the 449 victims of homicide attempts, to the 254 victims of enforced disappearances, to the 7,884 who have received death threats and to the 1,987 workers and leaders who have been displaced. The Government states that reparations will be made through both symbolic actions (visibility by the Government of the collective struggles to defend workers) and material actions (support to stop stigmatization, increase membership, end the anti-union culture in the business sector and eliminate violence).
- 112.** In its two communications, the Government refers to the information provided by the Public Prosecutor's Office on the progress made in the investigations of homicides and other acts of anti-union violence. In the communication dated September 2023, it indicates that, between 1 January 2020 and the sending of the communication, 45 homicides were reported to the Public Prosecutor's Office. The Public Prosecutor's Office states that the implementation of its investigative strategies has led to progress in the elucidation of 53.33 per cent (24 cases) of homicides under investigation in the ordinary courts, with the following results: (i) sentences are being served in 4 cases; (ii) 6 cases are at trial; (iii) 7 cases are at the indictment stage; (iv) 6 cases are under investigation with arrest warrants issued by a judge; and (v) 1 case has been closed due to the death of the accused.
- 113.** The data from the Public Prosecutor's Office sent by the Government in its communication of April 2024 refer, first, to the homicides of members of the trade union movement reported between 1 January 2011 and 31 December 2023, indicating that in 52.36 per cent of the cases, the perpetrator has been identified and that the corresponding criminal proceedings are in progress. The Public Prosecutor's Office also indicates that in 2023 it was informed of eight homicides of trade unionists, which are being investigated in the ordinary courts, and that, to date, the perpetrators have been identified in half the cases, one case is at trial, charges have been laid in two cases and a judge has issued an arrest warrant in one case. Lastly, the Government adds that it has asked the Public Prosecutor's Office for more information on the progress made in the identification of the instigators of the homicides of members of the trade union movement and that it is awaiting information from the Office.
- 114.** The Government then reiterates that the investigation and prosecution of crimes against trade unionists is a priority for the Public Prosecutor's Office and that, as it has stated on previous occasions [see, in particular, the previous examination of the case, 401st Report, para. 328], the Office has had a specific and different strategy for the investigation of these crimes since 2016, led by the Offices of the Public Prosecutor and the Deputy Public Prosecutor. The Government recalls that this strategy, which duly takes into account the main risk areas at the regional and sectoral level, is based on the following four points: (i) 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; (ii) definition of the selection of prioritized cases and situations; (iii) inter-institutional coordination with the Ministry of Labour; and (iv) training to strengthen the investigation of prioritized crimes. The Government adds that the Public Prosecutor's Office, through the Directorate for High-level Studies, offers specific

training courses for prosecutors and investigators of cases so that they can develop tools enabling them to understand aspects related to criminal law, as well as those related to freedom of association and assembly.

115. With regard to threats against members of the trade union movement, the Government once again describes the main points of this strategy [see the last two examinations of this case, 393rd Report, paras 91–93, and 401st Report, para. 332]. The Government reiterates that the National Working Group on Threats against human rights defenders and other specific populations, attached to the Specialized Directorate against Human Rights Violations, established in 2021, has a prosecutor for threats against trade unionists. The Government adds that: (i) particularly in relation to the cases of the Colombian Teachers' Federation (FECODE), the specialized office of the National Working Group on Threats has been implementing a comprehensive strategy with the active participation of the judicial police and the National Protection Unit (UNP); (ii) Directive No. 0008 of 2023, updating the guidelines on the investigation and prosecution of crimes against human rights defenders, was issued; and (iii) in January 2024, the guide on investigating threats against human rights defenders and specific populations was issued.
116. The Government also provides data on the protection measures provided to members of the trade union movement by the UNP through the Prevention and Protection Programme. The Government indicates that between 1 September 2020 and 14 May 2023, the UNP dealt with the following number of requests: 1,100 in 2020, 726 in 2021, 1,196 in 2022 and 493 in 2023, for a total of 3,515. The UNP conducted 1,823 individual risk assessments that were classified as high (935), extreme (7) and ordinary (881).
117. The Government then includes the information provided by the Public Prosecutor's Office on the acts of anti-union violence against the leaders and members of the Single Trade Union Association of Public Employees in the Colombian Prison System (UTP) reported under Case No. 3074. The Public Prosecutor's Office begins by stating that with respect to the 43 investigations conducted into the homicides and attempted homicide of UTP members, proceedings have progressed in 51.16 per cent of cases (22 cases). As to these 22 cases, the Public Prosecutor's Office specifies that sentences are being served in 11 cases, 3 cases are at trial, 4 cases are under investigation and 4 cases have been closed due to the death of the accused. In relation to the alleged threats against UTP members, the Public Prosecutor's Office indicates that: (i) 23 investigations have been conducted, 1 of which is still active with investigative work being carried out by the judicial police; and (ii) the Office of the Deputy Public Prosecutor is in regular contact with the national president of the UTP in order to continue monitoring the incidents reported by its members and to ensure that in these cases all existing tools in the administration of justice are used to ensure the full application of due diligence.
118. Regarding the discontinuation of the protection measures for Mr Gustavo Adolfo Aguilar Gutiérrez, President of the Union of Public Officials and Employees in the Government and Municipalities of Colombia (SINTRASERPUVAL), the Government indicates that, according to the information provided by the UNP, Mr Aguilar Gutiérrez has been reluctant to have the UNP reassess his risk status, which prevents it from being able to establish the real risk to which he is exposed. The Government adds that urgent responses to imminent situations of risk to trade union leaders is a state priority. Lastly, the Government notes that the criminal investigation into the events of 22 March 2018 reported by Mr Aguilar Gutiérrez was closed due to a decision to shelve the case because it was impossible to find or establish a perpetrator. The Government reiterates that in cases that are shelved for this reason, the prosecutors in charge of the case may reopen the proceedings should they obtain new information or evidence that warrants the continuation of the investigation.

C. The Committee's conclusions

119. *The Committee recalls that Cases Nos 2761 and 3074 relate to the alleged murder of numerous leaders and members of the trade union movement and to many other acts of anti-union violence. The Committee recalls that in its previous examination of the case, it welcomed 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 took note of the progress reported in the investigations of the acts of anti-union violence.*
120. *The Committee, while referring to its previous examination of the State's strategy to combat anti-union violence [see 401st Report, para. 330], takes note of the information provided by the Government on the ongoing, strengthened and updated actions taken in this regard. As to specific measures to further improve the effectiveness of investigations into acts of anti-union violence, the Committee notes that the Government refers to: (i) the issuance of Directive No. 0008 of 2023 "updating the guidelines on the investigation and prosecution of crimes against human rights defenders"; (ii) the issuance in January 2024 of the guide on investigating threats against human rights defenders and specific populations; and (iii) particularly in relation to the threats against FECODE, the implementation of a comprehensive strategy by the specialized office of the National Working Group on Threats with the active participation of the judicial police and the UNP.*
121. *The Committee also takes note of the information provided by the Government on the results achieved with respect to investigating, solving and punishing the homicides of trade unionists, noting that: (i) in 52.33 per cent of the homicides of members of the trade union movement reported between 2011 and 2023, the perpetrators have been identified and the relevant criminal proceedings are in progress; (ii) as to the 45 homicides of members of the trade union movement that were reported between 2020 and 2023 and are being investigated in the ordinary courts, there is a progress rate of 53.33 per cent (24 cases) with the following results: sentences are being served in 4 cases, 6 cases are at trial, 7 cases are at the indictment stage, 6 cases are under investigation with arrest warrants issued by a judge and 1 case has been closed due to death of the accused; and (iii) of the 8 homicides of trade unionists that were brought to the attention of the Public Prosecutor's Office in 2023 and are being investigated in the ordinary courts, to date, the perpetrators have been identified in half the cases, 1 case is at trial, charges have been laid in 2 cases and a judge has issued an arrest warrant in 1 case.*
122. *In addition to the criminal response to acts of anti-union violence, the Committee takes note of the information provided by the Government on the general policy of total peace that it is promoting to put an end to violence in the country, as well as the actions taken in recognition of the trade union movement as a collective victim of the violence that has affected the country and the corresponding reparation measures that are being adopted in this regard.*
123. *The Committee takes due note of these various elements and welcomes the efforts made and the results achieved in the criminal justice response to the homicides of members of the trade union movement. The Committee notes that, since its last examination of the case, the percentage of homicides of members of the trade union movement reported since 1 January 2011 in which the perpetrators have been identified has, based on the information provided by the Government, risen from 44.69 per cent to 52.36 per cent. The Committee also takes due note of the crucial work that the UNP continues to carry out to provide adequate protection to members of the trade union movement exposed to risk. In this regard, the Committee takes note of the information sent in 2023 by the Government to the Committee of Experts on the Application of Conventions and Recommendations indicating that the UNP protects roughly 300 trade union members per month through the provision of communication devices, bullet-proof vests, emergency buttons, bodyguards, conventional vehicles and armoured vehicles.*

- 124.** *At the same time, the Committee notes with deep concern that anti-union violence persists in the country, with eight new homicides referred to the courts in 2023. The Committee also notes that, despite the efforts made and the progress achieved by the criminal justice system, a significant proportion of the homicides of members of the trade union movement committed since 2011 remain unsolved and the perpetrators have not been convicted. While noting the Government's indications that it will send the information provided by the Public Prosecutor's Office in this regard, the Committee once again notes the absence of data on the identification and conviction of instigators of acts of anti-union violence. 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.*
- 125.** *In the light of the above, while welcoming the significant actions taken in this regard and in accordance with the policy of recognition and collective reparation for the harm suffered by the trade union movement and its members, the Committee requests the Government to continue intensifying inter-institutional efforts to, on the one hand, solve and punish all cases of anti-union violence and, on the other hand, effectively protect members of the trade union movement exposed to risk. The Committee specifically requests the Government to: (i) provide detailed information on the identification and punishment of instigators of acts of anti-union violence and the specific efforts made in this regard; 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 examinations of the case [see 393rd Report, para. 93].*
- 126.** *With regard to the acts of anti-union violence against UTP leaders and members reported in Case No. 3074, the Committee takes note of the information from the Public Prosecutor's Office provided by the Government, according to which: (i) proceedings have progressed in 51.16 per cent of cases (22 cases) with respect to the 43 investigations conducted into the homicides and attempted homicide of UTP members, with sentences being served in 11 cases, 3 cases at trial, 4 cases under investigation and 4 cases closed due to the death of the accused; (ii) 23 investigations have been conducted into the alleged threats against UTP members, 1 of which is still active with investigative work being carried out by the judicial police; and (iii) the Office of the Deputy Public Prosecutor is in regular contact with the national president of the UTP in order to continue monitoring the incidents reported by its members.*
- 127.** *The Committee takes due note of this information, particularly the fact that two more convictions have been handed down in connection with the homicides of UTP members examined in this case since the Committee last examined it. While noting that the Government states that it will send the text of these sentences, the Committee 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. While welcoming the results achieved to date, the Committee requests 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 solved and that the perpetrators and instigators are convicted, and to provide detailed information on the progress of the investigations under way and on the content of the sentences handed down.*

The Committee's recommendations

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

- (a) While welcoming the significant actions taken in this regard and in accordance with the policy of recognition and collective reparation for the harm suffered by the trade union movement and its members, the Committee requests the Government to continue intensifying inter-institutional efforts to, on the one hand, solve and punish all cases of homicide and anti-union violence and, on the other hand, effectively protect members of the trade union movement exposed to risk. The Committee specifically requests the Government to:
 - (i) provide detailed information on the identification and punishment of instigators of acts of anti-union violence, the motives of such acts and the efforts made in this regard; 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 examinations of the case.
- (b) While welcoming the results achieved to date, the Committee requests 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 solved and that the perpetrators and instigators are convicted, and to provide detailed information on the progress of the investigations under way and on the content of the sentences handed down.
- (c) The Committee draws the special attention of the Governing Body to the seriousness and urgency of this case.

Case No. 3234

Definitive report

Complaint against the Government of Colombia presented by

- the General Confederation of Labour (CGT)
- the Union of Workers Engaged in the Construction and Maintenance of Public Works in the Municipalities of Santander (SINTRAOBRAS) and
- the Union of Workers of the Municipality of Bucaramanga (SINTRAMUNICIPIO)

Allegations: The complainant organizations allege the non-observance of collective labour agreements by the National Apprenticeship Service and the Office of the Mayor of Bucaramanga

- 129.** The complaint is contained in five communications dated 27 May and 7 June 2016, 24 May and 30 October 2018, and 12 June 2019, submitted by the General Confederation of Labour (CGT), the Union of Workers Engaged in the Construction and Maintenance of Public Works in the Municipalities of Santander (SINTRAOBRAS) and the Union of Workers of the Municipality of Bucaramanga (SINTRAMUNICIPIO).

- 130. The Government of Colombia sent its observations on the allegations in eight communications dated 13 July 2017, 23 October and 12 December 2018, 30 May 2019, 29 May 2023, as well as 17, 23 and 25 April 2024.
- 131. 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

- 132. In their communication of 27 May 2016, the complainant organizations allege the non-observance of certain provisions of a collective labour agreement between the National Apprenticeship Service (SENA) and the Union of Official Workers of the SENA (SINTRASENA), specifically concerning housing credits, location allowances and retirement pensions. According to the complainant organizations: (i) the SENA violated sections 35, 36, 37, 38 and 39 of the agreement, relating to the national housing fund, as well as section 82, which contains a most favourable clause in respect of the location allowance for official workers; and (ii) although section 109 of the collective agreement contains provisions on pensions, Legislative Act No. 01 of 22 July 2005 established that rules on pensions contained in collective labour agreements would cease to be in force as of 31 July 2010.
- 133. In their communications dated 7 June 2016 and 24 May and 30 October 2018, the complainant organizations allege that the Office of the Mayor of Bucaramanga (hereinafter "the Office of the Mayor") violated the collective labour agreement concluded on 18 December 2015 with SINTRA OBRAS and SINTRA MUNICIPIO, which provides in its first clause that, as of 1 January 2016, the Office of the Mayor "may dismiss official workers in its employ only when there is proven just cause". They claim that the Mayor: (i) by Decrees Nos 055 and 056 of 2 May 2016, reclassified certain positions occupied by members and officials of the aforementioned trade unions, abolishing 27 official worker positions (those of chauffeur of official vehicles and security guard) and creating 27 public employee positions (those of driver and general services assistant); and (ii) by Decision No. 0270 of 3 May 2016, reassigned to these temporary jobs, without solution of continuity, the 27 affected workers.
- 134. The complainant organizations state that these administrative acts constitute a clear violation of the right to freedom of association. They claim that the Mayor unilaterally and arbitrarily took an unlawful decision to disregard the scope and content of the contracts that had been entered into with the 27 official workers. According to the complainant organizations, this restructuring of jobs: (i) rendered unionization ineffective; (ii) deprived some SINTRA MUNICIPIO officials of their permanent union leave, as public employees are not entitled to take such leave; and (iii) incurred countless legal fees for the affected unions seeking to defend their officials and members.
- 135. The complainant organizations state that 13 workers filed applications for the simple nullification of Decrees Nos 055 and 056. They further report that, on 25 July 2016, a criminal complaint was filed in relation to the change in status of the 27 official workers who were reclassified as public employees, leading to criminal proceedings being brought against the Mayor of Bucaramanga and two of his advisers for violation of the rights of assembly and association.
- 136. The complainant organizations further state that four of the affected workers instituted individual proceedings against the Municipality of Bucaramanga. They report that: (i) Ms Rubiela Jiménez Marín, deputy secretary of the board of directors of SINTRA OBRAS, and

Ms Noyolis Jiménez Siderol, secretary of the board of directors of SINTRAOBRAS, instituted special procedures for reinstatement based on their trade union immunity, which were dismissed after lengthy legal proceedings; and (ii) Mr Yeins Alexis Virviescas Vargas and Mr Juan Guillermo Herrera Larrota, who are members of SINTRAOBRAS, instituted proceedings for nullification and for the reinstatement of their rights against the modification of the nature of their contracts.

137. Furthermore, the complainant organizations state that, although the municipal authorities granted to SINTRAMUNICIPIO more than forty years ago part of the plot of land occupied by the Camacho Carreño school, which is where the union's headquarters are located, those authorities have refused to honour this agreement since the Ministry of National Education selected Bucaramanga for the construction with national resources of a large new school on this land.
138. The complainant organizations also report that, on 28 February 2018, in the framework of a visit to Bucaramanga of the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT), representatives of SINTRAOBRAS and SINTRAMUNICIPIO met with representatives of the municipal authorities, but no solution was reached.

B. The Government's reply

139. In its communication of 13 July 2017, the Government states, in response to the allegations concerning SINTRASENA, that: (i) there is no evidence of the alleged violation of the sections of the collective agreement relating to the national housing fund; (ii) according to the court decisions handed down in the context of the complaints filed by workers against the SENA, the SENA is not violating section 82 with regard to the location allowance; and (iii) under Legislative Act No. 01 of 22 July 2005, it is not possible to establish, maintain or extend in any way the duration of pension benefits under collective agreements that do not comply with the rules established in that Act.
140. In its communication of 23 October 2018, the Government states that, on 16 October 2018, the present case was discussed in the context of the CETCOIT, leading to an agreement between the SENA and SINTRASENA on the national housing fund and the location allowance. In its communication of 30 May 2019, the Government states that a meeting was held on 28 May 2019 to follow up on the agreement reached in the CETCOIT at which the parties confirmed that the commitments undertaken on the subject of housing had been met and that those relating to the location allowance were under implementation with a view to defining the increase of the allowance. In a communication dated 25 April 2024, the Government indicates that: (i) according to the SINTRASENA, the commitments regarding the location allowance have not yet been fulfilled, and (ii) it will request a new follow-up meeting within CETCOIT.
141. In its communications of 12 December 2018, 29 May 2023, and 17, 23 and 25 April 2024, the Government replies to the allegations concerning SINTRAOBRAS and SINTRAMUNICIPIO, and provides the observations of the Office of the Mayor in this respect. The Office of the Mayor maintains that the allegations against it have no bearing on the right to organize and that the Committee is not competent to examine matters such as general working conditions, social security and dismissals that may result from programmes to promote structural adjustment and flexibility, which do not relate to freedom of association.
142. The Office of the Mayor states that, in a report prepared by the Municipal Auditor's Office in September 2009, it was found that some public servants with official worker status were in fact performing the duties of public employees, as, according to the applicable legislation and existing jurisprudence, public servants are public employees and official worker status is

reserved only for those who are engaged in the construction or maintenance of public works. It states that, in a subsequent technical, legal and financial analysis, the administrative secretariat found that the contractual terms and conditions of the positions of chauffeur of official vehicles and security guard did not in fact correspond with their legal status.

143. The Mayor's Office explains that, based on the findings of the aforementioned analysis, it issued: (i) Decree No. 055 of 2016, reclassifying the positions of chauffeur of official vehicles and security guard, removing them from the category of official workers and creating the positions of driver and general services assistant; (ii) Decree No. 056 of 2016, defining the duties of the positions that had been created; and (iii) Decision No. 0270 of 2016, which reassigned without solution of continuity all the workers who had previously occupied the positions of chauffeur of official vehicles or security guard to the positions of driver or general services assistant. The Office of the Mayor states that the workers concerned were at no point dismissed from the municipal administration and they continued to be paid. However, since they had not passed a competitive examination, the only option available was the status of public employees engaged on a temporary basis.
144. The Office of the Mayor states that, under articles 313 and 315 of the Constitution, the Mayor is competent to abolish and create positions within the municipal staff. It also refers to section 11 of Act No. 11 of 1986 and section 292 of Decree-Law No. 1333 of 1986, which provide that municipal employees, with the exception of workers engaged in the construction and maintenance of public works, are public employees. Accordingly, the Office of the Mayor considers that classifying workers as public employees or official workers is not within the bargaining remit of the parties and therefore cannot be done by collective agreement.
145. Regarding the legal proceedings seeking the nullification of Decree No. 055 of 2016, the Office of the Mayor reports that: (i) an application filed by Mr Jorge Alberto Vera Villamizar and other workers was rejected in the first instance in a decision handed down on 28 November 2017 by the Eleventh Oral Administrative Court of the Bucaramanga Circuit, and in the second instance by the Administrative Court of Santander through a decision of 26 September 2019; and (ii) the Council of State upheld these decisions in a decision issued on 27 February 2020 in the context of an application for the protection of constitutional rights (tutela).
146. The Office of the Mayor also provides information on the individual proceedings filed by the SINTRAOBRAS officials. With regard to Ms Jiménez Marín, it states that: (i) the individual concerned instituted a special trade union immunity procedure with the Third Labour Court of the Bucaramanga Circuit, which accepted part of her claim in a decision of 8 September 2016; (ii) following appeals filed by the parties, the High Court of Bucaramanga acquitted the Municipality of Bucaramanga in a decision of 31 January 2017; and (iii) Ms Jiménez Marín filed an application for tutela, which was rejected by the Supreme Court of Justice in a decision of 11 May 2017. With regard to Ms Jiménez Siderol, the Office of the Mayor states that: (i) the individual concerned instituted a special trade union immunity procedure before the Fifth Labour Court of the Bucaramanga Circuit, which accepted part of her claim in a decision of 8 November 2016; (ii) following appeals filed by the parties, the High Court of Bucaramanga acquitted the Municipality of Bucaramanga in a decision of 31 January 2017; and (iii) Ms Jiménez Siderol filed an application for tutela, which was rejected by the Supreme Court of Justice in a decision of 4 May 2017.
147. With regard to the individual proceedings filed by the members of SINTRAOBRAS, the Office of the Mayor states that Mr Virviescas Vargas: (i) filed proceedings against the Municipality of Bucaramanga before the Administrative Court of Santander, which rejected his claim in a decision of 23 February 2022; and (ii) filed an appeal that is currently before the Council of

State. Furthermore, the Office of the Mayor states that Mr Herrera Larrota: (i) filed proceedings against the Municipality of Bucaramanga before the Second Administrative Court of the Bucaramanga Circuit, which rejected his claim in a decision of 13 December 2018; and (ii) filed an appeal that is currently before the Administrative Court of Santander.

148. The Government, for its part, points out that, in the aforementioned decision of the Eleventh Oral Administrative Court of the Bucaramanga Circuit on the lawfulness of Decree No. 055 of 2016, the Court found that the decree in question did not violate the trade union rights of the complainants, as it served to bring an irregular situation concerning 27 workers into conformity with the law and the reclassification carried out was based on a technical analysis as required by this type of procedure. The Government considers that this reclassification was necessary and that there is no evidence that it was done for purposes of trade union persecution, pointing out that there are currently 14 trade unions coexisting in the Office of the Mayor. The Government also reports that in a judgment dated 24 April 2023, the Seventh Municipal Criminal Trial Court issued a judgment of acquittal in favour of the Mayor of Bucaramanga and his advisors in relation to the criminal action filed against them, a judgment confirmed in second instance on 18 April 2024, a decision which, in turn, was subject to an appeal for reconsideration.
149. With regard to the SINTRAMUNICIPIO headquarters, the Government states that this question arose because an infrastructure project was going to be carried out to completely remodel the main premises of the Camacho Carreño school. It states that, after receiving an administrative complaint against the Municipality of Bucaramanga, the Ministry of Labour conducted an investigation into the alleged violation of labour regulations in relation to the granting of a plot of land for the construction of the SINTRAMUNICIPIO headquarters and, in a decision of 19 October 2019, found no evidence to suggest that the agreements entered into by the parties in 1970 and 1977 were legally binding, and it therefore closed the complaint. The Government states that the parties did not appeal against this decision.

C. The Committee's conclusions

150. *The Committee notes that, in the present case, concerning the alleged violation of the right to bargain collectively in the public sector, the complainant organizations claim that certain sections of the collective agreement between the SENA and SINTRASENA have been violated, and that the Office of the Mayor of Bucaramanga has not complied with: (i) the collective agreement signed with SINTRAOBAS and SINTRAMUNICIPIO, by changing the legal status of certain positions; and (ii) the agreement reached with SINTRAMUNICIPIO concerning the granting of a plot of land on which the headquarters of that trade union are located. The Committee notes that the Government, for its part: (i) informs of an agreement reached in October 2018 between the SENA and SINTRASENA before the CETCOIT; and (ii) states that the change in legal status of a number of positions by the Office of the Mayor of Bucaramanga was not carried out for anti-union purposes but was necessary to ensure compliance with the law, and provides information on the status of the administrative and legal proceedings initiated in this respect.*
151. *With regard to SINTRASENA, the Committee notes that, according to the complainant organizations: (i) the SENA has violated sections 35, 36, 37, 38 and 39 (on the national housing fund), as well as section 82 (on the location allowance) of the collective agreement concluded by the parties; and (ii) Legislative Act No. 01 of 22 July 2005 violates section 109 of the collective agreement by establishing that the rules on pensions contained in collective agreements would cease to be in force as of 31 July 2010. The Committee also notes that the Government states that: (i) regarding the national housing fund and the location allowance, the parties reached an agreement before the CETCOIT on 16 October 2018; (ii) at a follow-up meeting on 28 May 2019, the parties confirmed that*

the commitments undertaken on the subject of housing had been met and that those relating to the location allowance were under implementation; (iii) as stated by SINTRASENA in April 2024, the commitments related to the location allowance have not yet been fulfilled, reason for which the Government will request a new follow-up meeting within the CETCOIT; and (iv) on the issue of pensions, it has not been possible since 31 July 2010 to establish, maintain or extend pension benefits under collective agreements that do not comply with the rules set out in Legislative Act No. 01 of 22 July 2005.

- 152.** *The Committee notes with interest the agreement concluded between the SENA and SINTRASENA before the CETCOIT regarding housing and the location allowance, while observing that SINTRASENA considers that the part of the agreement on the location allowance has not yet been fulfilled. Taking due note that the Government will request a new follow-up meeting of the CETCOIT, the Committee trusts that the Government will ensure, with the participation of the CETCOIT, that all elements of the agreement reached between the parties are respected.*
- 153.** *With regard to the impact of Legislative Act No. 01 of 22 July 2005 on the pensions provided for under collective agreements, the Committee refers to the conclusions and recommendations it adopted in respect of Case No. 2434 and to the follow-up of the legislative aspects of this case by the Committee of Experts on the Application of Conventions and Recommendations in the context of the application of Conventions Nos 98 and 154.*
- 154.** *With regard to the allegations concerning the collective agreement signed between the Office of the Mayor of Bucaramanga, SINTRAOBAS and SINTRAMUNICIPIO, the Committee notes that the complainant organizations state that: (i) the collective agreement concluded in December 2015 between the aforementioned trade unions and the Office of the Mayor provides that, as from 1 January 2016, official workers may be dismissed only when there is proven just cause; (ii) the Mayor violated the aforementioned agreement by issuing Decrees Nos 055 and 056 of 2 May 2016, as well as Decision No. 0270 of 3 May 2016, under which 27 official worker positions (chauffeurs and security guards) occupied by members and officials of SINTRAOBAS and SINTRAMUNICIPIO were abolished, and 27 temporary public employee positions were created, to which the affected workers were reassigned; (iii) this restructuring rendered unionization ineffective, deprived some SINTRAMUNICIPIO officials of their permanent union leave and incurred countless legal fees for the aforementioned unions; (iv) applications were filed for the simple nullification of Decrees Nos 055 and 056; (v) criminal proceedings were brought against the Mayor and two of his advisers for violation of the rights of assembly and association; (vi) the special procedures for reinstatement based on trade union immunity, which were instituted by Ms Rubiela Jiménez Marín and Ms Noyolis Jiménez Siderol, SINTRAOBAS officials, were dismissed after lengthy legal proceedings; and (vii) Mr Yeins Alexis Virviescas Vargas and Mr Juan Guillermo Herrera Larrota, who are members of SINTRAOBAS, instituted individual proceedings for nullification and for the reinstatement of their rights.*
- 155.** *The Committee also notes that the Office of the Mayor, in its observations provided by the Government, maintains that: (i) matters such as general working conditions, social security and dismissals resulting from programmes to promote structural adjustment and flexibility are not related to freedom of association, and therefore the Committee is not competent to examine them; (ii) according to the country's legislation, public servants are public employees, with the sole exception of those engaged in the construction or maintenance of public works, who are official workers; (iii) Decrees Nos 055 and 056 and Decision No. 0270 were issued on the basis of a report prepared by the Municipal Auditor's Office in 2009, which found that some official workers were in fact performing the duties of public employees, and on the basis of a technical, legal and financial analysis prepared by the administrative secretariat of the Office of the Mayor; (iv) the affected workers were not dismissed, but as they had not passed any competitive examination, the only*

option available to them was the status of public employees engaged on a temporary basis; (v) an application for the nullification of Decree No. 055 filed by some affected workers was rejected by the Eleventh Oral Administrative Court of the Bucaramanga Circuit on 28 November 2017, a decision that was upheld by the Administrative Court of Santander on 26 September 2019 and by the Council of State on 27 February 2020; (vi) in a decision handed down on 23 February 2022, the Administrative Court of Santander rejected the individual proceedings filed by Mr Virviescas Vargas, who filed an appeal that is before the Council of State; and (vii) in a decision of 13 December 2018, the Second Administrative Court of the Bucaramanga Circuit rejected the individual proceedings filed by Mr Herrera Larrota, who filed an appeal that is pending before the Administrative Court of Santander.

156. The Committee notes that the Government, for its part: (i) points out that the decision of the Eleventh Oral Administrative Court of the Bucaramanga Circuit, which upheld the lawfulness of Decree No. 055, established that the complainants' trade union rights had not been violated, as the decree brought an irregular situation into conformity with the law and the reclassification was carried out based on the required technical analysis; (ii) maintains that the reclassification was necessary and does not appear to have been carried out for the purpose of trade union persecution, as there are 14 trade unions in the Office of the Mayor; and (iii) reports that on 24 April 2023, the Seventh Municipal Criminal Trial Court issued a judgment of acquittal in favour of the Mayor of Bucaramanga and his advisors in relation to the criminal action filed against them, a judgment confirmed in second instance on 18 April 2024, a decision which, in turn, was the subject of an appeal for reconsideration.
157. Noting that the Office of the Mayor questions its competence to examine the reclassification of the 27 positions in question, the Committee emphasizes that, while it is not competent to decide whether public servants occupying certain positions should be classified as official workers or public employees, it is nevertheless responsible for ensuring that the principles of freedom of association and collective bargaining are respected in the public sector, and it is therefore from this perspective alone that it is examining the reclassification process in question.
158. The Committee notes the divergent versions provided by the complainant organizations and the Office of the Mayor on the reasons behind the change in the legal status of the 27 official worker positions that were reclassified as public employee positions (under the Colombian legal system, official workers are bound by an employment contract while public employees are statutorily bound; furthermore, permanent public employee positions are awarded through a public competition). The Committee notes that, while the complainant organizations state that this restructuring was carried out in order to circumvent an agreement that had been reached through collective bargaining, the Office of the Mayor maintains that it was only intended to correct an irregular situation. Based on the elements provided by the parties, the Committee notes that: (i) Decree No. 055 of May 2016, under which 27 official worker positions were reclassified as public employee positions, served to implement the recommendations made by the Municipal Auditor's Office in 2009 and its lawfulness was confirmed by the country's administrative dispute courts at different levels; (ii) as a consequence of the aforementioned reclassification, 27 unionized workers who were employed by the Mayor's Office under contracts without limit of time became temporary public employees because they had not passed a competitive examination; (iii) the aforementioned decree was adopted a few months after the negotiation and entry into force of a collective agreement, the first clause of which was intended to increase the employment stability of official workers in the Office of the Mayor; and (iv) there is no indication that the subject of the decree in question was presented for consultations with the trade union organizations.
159. The Committee observes that it is apparent from the above that, while the reclassification carried out under Decree No. 055 had the effect of correcting an irregularity and did not expressly violate

*the first clause of the collective agreement concluded between SINTRAOBRAS, SINTRAMUNICIPIO and the Office of the Mayor, it did have the effect of undermining the job security of the workers concerned, all of whom are union members and officials, when the objective of that clause, which had been recently negotiated by the parties, was, on the contrary, to strengthen the employment stability of the public servants in the Office of the Mayor. The Committee recalls the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1327] and recalls that it has stressed the importance of consulting with trade unions when elaborating restructuring programmes, since they have a fundamental role to play in ensuring that programmes of this nature have the least possible effect on workers [see **Compilation**, para. 1557]. The Committee expects that the above-mentioned elements will be duly taken into account in the future.*

- 160.** *With regard to the allegations concerning the SINTRAMUNICIPIO headquarters, the Committee notes that the complainant organizations state that: (i) more than 40 years ago, the Municipality of Bucaramanga granted SINTRAMUNICIPIO a plot of land, on which its trade union headquarters is located; and (ii) the Municipality refuses to continue to honour this agreement in order to allow the construction of a new school on these premises. The Committee also notes that the Government: (i) confirms that the question of the headquarters arose because an infrastructure project was to be carried out; and (ii) after receiving an administrative complaint, the Ministry of Labour conducted an investigation into the granting of the plot of land and, in a decision of 19 October 2019, found no evidence to suggest that the agreements entered into by the parties in 1970 and 1977 were legally binding.*
- 161.** *While taking due note of the decision issued by the Ministry of Labour, the Committee recalls that it has underlined the need to strike a balance between two elements: (i) facilities in the undertaking should be such as to enable trade unions to carry out their functions promptly and efficiently and (ii) the granting of such facilities should not impair the efficient operation of the undertaking [see **Compilation**, para. 1580]. In view of the above, the Committee expects the Government to facilitate the dialogue between the Office of the Mayor and SINTRAMUNICIPIO with a view to ensuring that the settlement of the above-mentioned dispute guarantees both the performance of the activities for which the Office of the Mayor is responsible and the proper functioning of the trade union.*

The Committee's recommendations

- 162.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee trusts that the Government will ensure, with the participation of the CETCOIT, that all elements of the agreement reached between the SENA and the SINTRASENA will be respected.**
 - (b) **The Committee expects that the elements mentioned in the conclusions concerning the obligation to negotiate in good faith and the importance of consulting with trade unions when elaborating restructuring programmes will be duly taken into account in the future.**
 - (c) **The Committee expects the Government to facilitate the dialogue between the Office of the Mayor and SINTRAMUNICIPIO with a view to ensuring that the dispute over the trade union's headquarters is settled in a way that guarantees both the performance of the activities of the Office of the Mayor and the proper functioning of the trade union.**

- (d) **The Committee considers that this case does not call for further examination and is closed.**

Case No. 2923

Interim report

Complaint against the Government of El Salvador presented by

- the Union of Municipal Workers of Santa Ana (SITRAMSA) and
- the Autonomous Confederation of Salvadorian Workers (CATS)

Allegations: Murder of a trade union leader

- 163.** The Committee last examined this case at its June 2023 meeting, when it presented an interim report to the Governing Body [see 403rd Report, paras 218–228, approved by the Governing Body at its 348th Session (June 2023)].⁶
- 164.** The Government of El Salvador sent its observations in a communication dated 6 March 2024.

A. Previous examination of the case

- 165.** At its June 2023 meeting, the Committee made the following recommendations [see 403rd Report, para. 228]:
- (a) The Committee, deploring the absence of tangible progress towards the resolution of the case more than 13 years since the murder, firmly urges the Government and all the competent authorities to make, in a coordinated manner and as a matter of urgency and priority, all the necessary efforts to expedite and conclude the investigations under way in order to identify and punish as soon as possible both the instigators and the perpetrators of the murder of Mr Victoriano Abel Vega, while ensuring the protection of all witnesses who could be instrumental in the resolution of the case. In particular, the Committee urges the Government to take all appropriate measures so that the competent authorities are provided with the required human and financial resources and that they ensure that when conducting the investigations, special attention is paid to exchanging appropriate information with the complainant organizations in the present case with a view to clarifying whether this crime is of an anti-union nature. Firmly expecting that tangible progress will be made in this regard, the Committee requests the Government to keep it informed of any progress in the investigation and criminal proceedings.
 - (b) The Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.

B. The Government's reply

- 166.** In its communication of 6 March 2024, the Government indicates that the Ministry of Labour and Social Welfare has been asking the Public Prosecutor of the Republic to reopen the case related to the murder of Mr Victoriano Abel Vega, a trade union leader, since 2019. The Government indicates that it has been continuously monitoring progress in the investigation.

⁶ [Link to previous examinations.](#)

In this regard, the Government indicates that, according to the information provided by the Public Prosecutor of the Republic, the case is ongoing and various investigative procedures have been carried out, which have made it possible to draw possible conclusions. The Government adds, however, that since this is a homicide case, the findings of the investigation are of limited access to the parties, in accordance with the provisions of section 76 of the Code of Criminal Procedure. The Government concludes that it will inform the Committee as soon as it has the findings of the investigation.

C. The Committee's conclusions

167. *The Committee recalls that it has considered this serious case on numerous occasions, which refers to the murder, on 16 January 2010, of Mr Victoriano Abel Vega, general secretary of the Union of Municipal Workers of Santa Ana (SITRAMSA), who, according to the complainant organizations, had already received death threats for his union activities.*
168. *The Committee notes the Government's indication that the Ministry of Labour and Social Welfare has been asking the Public Prosecutor of the Republic to reopen the file since 2019 in order to shed light on the circumstances surrounding the murder of Mr Victoriano Abel Vega. The Committee recalls that, according to the information provided by the Public Prosecutor of the Republic in October 2021 that was previously conveyed by the Government, the Specialized Prosecutorial Unit for Extortion and Organized Crime reopened the investigation into the suspects for aggravated homicide against Mr Victoriano Abel Vega and that directives have been issued to the Central Investigation Division of the National Civil Police of El Salvador to interview possible informants concerning the homicide and prepare the corresponding reports. In this regard, the Committee notes that the Government reports that the case is still under way and that, although various investigative procedures have been carried out, the findings of these procedures are of limited access to the parties, according to the provisions of the Code of Criminal Procedure.*
169. *While noting that this case is still under way more than 14 years since the murder, the Committee once again deplores that no tangible progress has yet been made in identifying and punishing the perpetrators of this serious crime. The Committee is therefore bound to recall, once again, that it is important that all instances of violence against trade union members, whether these be murders, disappearances or threats, are properly investigated. 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 [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 102].*
170. *In the light of the above and noting with concern that in another case involving the murder of a leader of a union from another municipality, a situation of impunity also persists (see Case No. 3395, 404th Report of the Committee on Freedom of Association, paras 337–349), the Committee once again firmly urges the Government and all the competent authorities to make, in a coordinated manner and as a matter of urgency and priority, all the necessary efforts to expedite and conclude the investigations under way in order to identify and punish as soon as possible both the instigators and the perpetrators of the murder of Mr Victoriano Abel Vega, while ensuring the protection of all witnesses who could be instrumental in the resolution of the case. In this regard, the Committee once again urges the Government to take all appropriate measures so that the competent authorities are provided with the required human and financial resources and that they ensure that when conducting the investigations, special attention is paid to exchanging appropriate information with the complainant organizations in the present case with a view to clarifying whether this crime is of an anti-union nature. The Committee requests the Government to provide specific information on the concrete measures taken in this respect. Firmly expecting to receive information that shows that*

tangible progress has been made, the Committee is bound to reiterate its request to the Government to keep it informed of any progress in the investigation and criminal proceedings.

The Committee's recommendations

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

- (a) The Committee, deploring the absence of information on tangible progress towards the resolution of the case more than 14 years since the murder, firmly urges the Government and all the competent authorities to make, in a coordinated manner and as a matter of urgency and priority, all the necessary efforts to expedite and conclude the investigations under way in order to identify and punish as soon as possible both the instigators and the perpetrators of the murder of Mr Victoriano Abel Vega, while ensuring the protection of all witnesses who could be instrumental in the resolution of the case. In this regard, the Committee once again urges the Government to take all appropriate measures so that the competent authorities are provided with the required human and financial resources and that they ensure that when conducting the investigations, special attention is paid to exchanging appropriate information with the complainant organizations in the present case with a view to clarifying whether this crime is of an anti-union nature. The Committee requests the Government to provide specific information on the concrete measures taken in this respect.
- (b) Firmly expecting to receive information that shows that tangible progress has been made, the Committee is bound to reiterate its request to the Government to keep it informed of any progress in the investigation and criminal proceedings.
- (c) The Committee once again draws the Governing Body's attention to the serious and urgent nature of this case.

Case No. 3445

Interim report

Complaint against the Government of El Salvador presented by the National Confederation of Salvadoran Workers (CNTS)

Allegations: The complainant organization alleges the dismissal of members and leaders of the Trade Union of Workers of the Legislative Assembly (SITRAL) without due process

172. The complaint is contained in a communication from the National Confederation of Salvadoran Workers (CNTS) dated 29 March 2023. The CNTS sent additional information in a communication dated 26 May 2023.

173. The Government sent its observations in a communication dated 7 March 2024.

- 174.** El Salvador 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 Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

- 175.** In its communication dated 29 March 2023, the CNTS alleges that “on 1 May 2021, Legislative Assembly workers affiliated with the Trade Union of Workers of the Legislative Assembly (SITRAL) were suddenly dismissed without due process”. The CNTS indicates that SITRAL is a union of public servants that was established in 2010 and that in the light of events, the union had attempted to urgently meet with the President and Board of Directors of the country's Legislative Assembly to find a solution and even requested a meeting with the President of the Republic, but they had not responded to requests to address the case of the dismissed workers.
- 176.** The CNTS alleges that the National Assembly dismissed not only members but also the following leaders of SITRAL:
- (i) Mr Luis Ernesto Rodríguez Segovia, Social Assistance Secretary of SITRAL, who worked as a Legislative Assembly driver for the Office of the Department of Santa Ana, was dismissed on 20 July 2021, without just cause or due process.
 - (ii) Ms Claudia Isabel Romero Ramos, International and National Relations Secretary of SITRAL, was dismissed on 17 September 2021. It is alleged that when she arrived at work, her supervisor called her immediately and told her that she was fired.
 - (iii) Ms Blanca del Carmen Sosa Hernández, Disputes First Secretary of SITRAL, was dismissed on 21 September 2021. It is alleged that on her way to work, she was approached by a member of the national police who told her to leave because she had been fired and had no right to be there.
 - (iv) Ms Ingryd Adriana Escobar Campos, Disputes Second Secretary of SITRAL, was dismissed on 28 October 2021. It is alleged that she was asked to report to Human Resources and that when she asked whether the General Secretary of SITRAL could accompany her, the request was refused by six members of the Legislative Assembly's institutional security. As a result, she decided to go to the office of the Head of Human Resources by herself, whereupon she was told that she was fired. The complainant has enclosed a copy of the letter that was sent to her by the Head of Human Resources, informing her that by means of Decision No. 1113 of 3 May 2021 of the Office of the President of the Legislative Assembly, it had been decided to remove her from her post, cancelling her appointment and terminating her employment with the Legislative Assembly. The complainant has also enclosed a copy of this Decision of the Office of the President, which, inter alia, indicates that a technical study had been conducted and found that there were too many staff in various units of the Legislature and that certain jobs gravely affected the State's finances and were unnecessary; the Legislative Assembly thus considered it appropriate to terminate employment while respecting labour rights related to severance pay.
 - (v) Mr Ismael Soriano Gómez, Disputes First Secretary of SITRAL, was dismissed on 29 July 2022. It is alleged that Human Resources at the Legislative Assembly called him and told him that he was fired. The complainant has enclosed a copy of the letter that was sent to him by the Head of Human Resources, informing him that by means of Decision No. 1794 of 15 July 2022 of the Office of the President of the Legislative Assembly, it had been decided to remove him from his post, cancelling his appointment and terminating his

employment with the Legislative Assembly. The complainant has also enclosed a copy of this Decision of the Office of the President, the contents of which are identical to the Decision regarding Ms Escobar Campos.

- (vi) Ms Sara Beatriz Alfaro Ramírez, Women's Secretary, was dismissed on 4 November 2022. It is alleged that she was summoned to Human Resources at the Legislative Assembly, where she was told that she was fired. The complainant has enclosed a copy of the letter that was sent to her by the Head of Human Resources, informing her that by means of Decision No. 1955 of 17 October 2022 of the Office of the President of the Legislative Assembly, it had been decided to remove her from her post, cancelling her appointment and terminating her employment with the Legislative Assembly. The complainant has also enclosed a copy of this Decision of the Office of the President, the contents of which are identical to the Decisions regarding Mr Soriano Gómez and Ms Escobar Campos.
- 177.** The complainant alleges that these individuals were dismissed from the Legislative Assembly because they were union leaders and that they were not effectively protected against prejudicial acts. The complainant encloses several documents showing that appeals concerning the dismissal of Mr Luis Ernesto Rodríguez Segovia (filed on 15 October 2021), Mr Ismael Soriano Gómez (filed on 30 August 2022) and Ms Claudia Isabel Romero Ramos were filed before the Administrative Dispute Chamber.
- 178.** In a communication dated 26 May 2023, the complainant indicates that the judicial proceedings regarding the appeals for dismissal without cause filed by Ms Sara Beatriz Alfaro Ramírez, Ms Ingryd Adriana Escobar Campo, Ms Claudia Isabel Romero Ramos and Mr Ismael Soriano Gómez before the Civil Service Tribunal are still under way and that judgments have not been handed down.

B. The Government's reply

- 179.** In its communication of 7 March 2024, the Government indicates that the Labour Code does not apply in this case and that, as section 32(j) of the Civil Service Act states that "direct or indirect discrimination against public servants on the basis of unionization and retaliation against them on this basis" are prohibited vis-à-vis officials and municipal or public employees, section 6 of the Act provides for the establishment of "the Civil Service Commissions and the Civil Service Tribunal ... as the competent bodies for the enforcement of this Act".
- 180.** The Government indicates that although, in this context, the Ministry of Labour and Social Welfare may intervene at the request of the one of the parties involved and provide mediation services, since 2021, the Directorate-General of Labour has received only two documents from the relevant trade union organizations: the first was sent in 2021 by Mr Luis Ortega, General Secretary of SITRAL at the time, requesting unscheduled inspections, and the second was sent in January 2022, in which Mr Roberto Gómez shared with the Directorate-General of Labour a request for permission for representatives of SITRAL to attend the ILO International Labour Conference addressed to the President of the Legislative Assembly.
- 181.** The Government emphasizes that the Ministry of Labour and Social Welfare has not received a request for mediation from any of the parties and that the Government remains committed to freedom of association, respect for human rights and social justice, and will therefore follow up on the case and make the necessary enquiries into its status in the Civil Service Commissions and the Civil Service Tribunal referred to in the Act.

C. The Committee's conclusions

182. *The Committee notes that the present case concerns the alleged dismissal of members and leaders of SITRAL, which was established in 2010. The Committee notes that the complainant alleges that: (i) on 1 May 2021, the Legislatively Assembly suddenly dismissed members of SITRAL without following due process; and (ii) six leaders of SITRAL, Mr Luis Ernesto Rodríguez Segovia, Ms Claudia Isabel Romero Ramos, Ms Blanca del Carmen Sosa Hernández, Ms Ingryd Adriana Escobar Campos, Mr Ismael Soriano Gómez and Ms Sara Beatriz Alfare Ramírez were dismissed for being union leaders, between July 2021 and November 2022, without due process.*
183. *With regard to the alleged dismissal of members of SITRAL, the Committee notes that, although the complainant indicates that the union tried to meet with various authorities to find a solution to the matter and the authorities did not respond to its requests, the complainant does not indicate exactly how many members have allegedly been dismissed or provide any other information. The Committee notes that while it has enclosed two documents from the Office of the Ombudsperson for Human Rights from May and June 2021, indicating, inter alia, that the President of the Legislative Assembly had announced the dismissal of more than 1,000 workers, it does not provide any more information that would allow the Committee to examine the allegations in question. The Committee requests the complainant to provide further details on the possible anti-union nature of the alleged dismissal of members of SITRAL and to indicate the outcome of any judicial or administrative actions filed in this regard. In the absence of such information, the Committee will not proceed with the examination of these allegations.*
184. *As to the alleged dismissal of six union leaders, the Committee notes that, according to the complainant, these individuals were dismissed because they were union leaders and were not effectively protected against prejudicial acts. The Committee notes that, according to the enclosed documents, three of the six leaders received a letter from the Head of Human Resources, informing them that Office of the President of the Legislative Assembly had decided to remove them from their posts, cancelling their appointments and terminating their employment with the Legislative Assembly. The Committee notes that the text of the Decisions of the Office of the President regarding the three leaders is identical and indicates that: (i) there were too many staff in the Legislative Assembly, which affected its finances, and some jobs were deemed unnecessary; (ii) there is a severance pay scheme within the secondary legal system for the termination of employment of public servants in the civil service; and (iii) the budget was able to cover the cost of severance pay. The Committee notes that the enclosed Decisions of the Office of the President do not mention that the workers were union leaders.*
185. *The Committee also notes that, according to the complainant, five of the six leaders filed appeals for dismissal without cause before the Civil Service Tribunal and that the proceedings have not concluded (the submitted documentation only shows the date on which two of the five appeals were filed).*
186. *The Committee notes the Government's indication in this regard that: (i) the Civil Service Act prohibits any discrimination against public servants on the basis of unionization and retaliation against them on this basis and that the competent bodies are the Civil Service Commissions and the Civil Service Tribunal; (ii) the Ministry of Labour and Social Welfare may intervene only at the request of one of the parties involved and provide mediation services, but in this case, it has not received a mediation request from any of the parties; and (iii) the Government will follow up on the case and make the necessary enquiries through the Civil Service Commissions and the Civil Service Tribunal.*
187. *The Committee regrets that, to date, the Government has not been able to make such enquiries and requests it to gather information as soon as possible on the allegations of the present case from the competent civil service institutions and to transmit this information as soon as possible. The*

*Committee requests the Government to keep it informed in this regard. Noting that the dismissals reported in the present case date back to 2021 and 2022 and the relevant actions before the Civil Service Tribunal appear not to have been resolved yet, the Committee recalls that no person should be prejudiced in employment by reason of legitimate trade union activities and cases of anti-union discrimination should be dealt with promptly and effectively by the competent institutions [see **Compilation of decisions of the Committee on Freedom of Association, sixth edition, 2018, para. 1077**]. In the light of the above, the Committee firmly expects that the Civil Service Tribunal will rule without delay on the validity of the dismissals of the union leaders and that it will take due account of the criteria set out above for protection against anti-union discrimination. The Committee requests the Government to keep it informed in this regard.*

The Committee's recommendations

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

- (a) The Committee requests the complainant to provide further details on the possible anti-union nature of the alleged dismissal of members of the Trade Union of Workers of the Legislative Assembly (SITRAL) in May 2021 and to indicate the outcome of any judicial or administrative actions filed in this regard. In the absence of such information, the Committee will not proceed with the examination of these allegations.**
- (b) The Committee requests the Government to gather information as soon as possible on the allegations in the present case from the competent civil service institutions and to transmit this information as soon as possible. The Committee requests the Government to keep it informed in this regard.**
- (c) The Committee firmly expects that the Civil Service Tribunal will rule without delay on the validity of the dismissals of the leaders of SITRAL and that it will take due account of the criteria set out in the conclusions of the present case for protection against anti-union discrimination. The Committee requests the Government to keep it informed in this regard.**

Case No. 3148

Interim report

Complaint against the Government of Ecuador presented by

- The Trade Union Association of Banana Plantation, Agricultural and Rural Workers (ASTAC) and
- the Trade Union Association of the fruit company Compañía Frutas Selectas SA (FRUTSESA)

Allegations: The complainants denounce, firstly, the refusal to register a trade union of banana plantation workers comprising workers from various companies in the sector and, secondly, anti-union action to prevent the setting up of a company union in that sector

- 189.** The Committee last examined this case (submitted in May 2015) at its October 2019 meeting, when it presented an interim report to the Governing Body [see 391st Report, approved by the Governing Body at its 337th Session (October 2019), paras 225–252].⁷
- 190.** The Trade Union Association of Banana Plantation, Agricultural and Rural Workers (ASTAC) sent additional allegations in communications dated 31 October 2019, 5 January 2020, 18 and 30 May 2021, 17 March 2022 and 15 March 2023.
- 191.** The Government sent its replies in communications dated 4 February and 30 April 2020, 25 February 2022, 30 August 2023, 10 January and 15 April 2024.
- 192.** Ecuador 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 Rural Workers' Organisations Convention, 1975 (No. 141).

A. Previous examination of the case

- 193.** In its previous examination of the case in October 2019, the Committee made the following recommendations [see 391st Report, para. 252]:
- (a) The Committee once again requests the Government to take the necessary measures to ensure that ASTAC is registered as a trade union organization if the organization so requests it again and to ensure that, in the meantime, the necessary guarantees and protections are provided to its members.
 - (b) In connection with the complaints filed by ASTAC on 8 November 2017, and 8 November and 28 March 2018 concerning blacklisting and anti-union acts, the Committee requests the Government to conduct the respective inquiries, to provide a copy of the findings of the inquiries and, if it is confirmed that anti-union acts were committed, to take measures with sufficient dissuasive effect to penalize those responsible.

⁷ [Link to previous examinations.](#)

- (c) As to the allegations concerning anti-union acts perpetrated against the leaders and members of the 7 February Association of Banana Plantation Workers and ASTAC, the Committee urges the Government to meet with representatives of both complainant organizations to examine the allegations of anti-union discrimination in the banana sector outlined in the complaint.
- (d) The Committee urges the Government to communicate without delay specific information on the alleged death threats against the general secretary of the 7 February Association of Banana Plantation Workers, Mr Luis Ochoa, and to keep it informed in this respect.
- (e) The Committee urges the Government to ensure that the complaint filed by the secretary general of ASTAC, Mr Jorge Washington Acosta Orellana, on 7 March 2018, is investigated, that the Government takes any action necessary to prevent any repetition of those acts in the future and to ensure his safety, and that it keeps the Committee informed in this respect.
- (f) As to the alleged anti-union effects of the three ministerial agreements issued by the Ministry of Labour (MDT-2017-0029, MDT-2018-0096 and MDT-2018-0074), the Committee invites the Government to examine, together with the organizations of employers and workers concerned, the impact of the reform on the exercise of freedom of association. The Committee requests the Government to keep it informed in this respect.

B. Additional information from the complainant

- 194.** In its communication of 5 January 2020, the complainant alleges that: (i) the application submitted by ASTAC on 11 January 2019 to register the trade union of workers at the CALAJUSA company (hereafter the trade union of company 1) was rejected by the Deputy Minister of Labour and Employment on 8 April 2019; (ii) the application from the trade union of workers at the Agricultural Company Banana Plantations of Ecuador (hereafter the trade union of company 2) to register its new leaders, submitted on 14 August 2018 to the Regional Labour Directorate, received no response; and (iii) contrary to what is stated by the Government, there is a lack of dialogue from the Ministry of Labour, which led ASTAC to appeal to the Office of the President of the Republic, which then referred the matter to the Ministry of Labour, as a result of which the Minister of Labour assigned the Undersecretary of Labour to deal with them, although only one 30-minute meeting has been held.
- 195.** On the other hand, the complainant reiterates its previous complaint that the Ministry of Labour's issuance of three ministerial agreements between April 2017 and May 2018 relating to contractual arrangements applicable to workers in the banana sector constitutes a serious deterioration in freedom of association, the right to collective bargaining and the right to fair remuneration and a minimum wage. ASTAC alleges that those agreements were issued with the argument that banana production in Ecuador revolves around the popular, solidarity economy, with specific periods for planting and harvesting that adjust to statutory working hours, when in reality, banana production is a continual and intensive agro-industrial activity, in which the majority of cultivated land, where the majority of workers are employed and there are the worst labour conditions, is held by a small number of large and medium-sized producers.
- 196.** The complainant also alleges reprisals against two workers from the ORODETI company (hereafter company 3) for requests relating to breastfeeding entitlements, which led to a reduction in working hours for ASTAC member Ms Maritza Mendoza and the blacklisting and dismissal of her husband. In addition, the complainant alleges that the contracting of Mr Juan Mora as a service-provider by the company COBONAFIN (hereafter company 4), was done with a view to evading labour costs and that the use of this contractual arrangement restricts his right to freedom of association.

- 197.** In its communications of 18 May 2021, the complainant reports that the Chamber of Admissions Tribunal of the Constitutional Court had decided to accept the request for an extraordinary protection order submitted on 22 June 2020 jointly with the Office of the Ombudsperson (as part of case No. 12-21-EP) in which it reported, among other things, the obstruction of the establishment of a branch-level trade union in the banana sector.
- 198.** In its communication of 31 May 2021, the complainant reports that, in a ruling dated 25 May 2021, the Tribunal of the Criminal Chamber of the Pichincha Provincial Court of Justice instructed the Ministry of Labour to: (i) register ASTAC as a trade union; (ii) regulate the exercise of the right to freedom of association by branch of activity; (iii) refrain from restricting or limiting the rights relating to freedom of association of other organizations applying for registration by branch of activity, under the same conditions and circumstances as those examined in this case; and (iv) directly and immediately observe and implement, in its actions and decisions, ILO Conventions Nos 87, 98, 141 and the Plantations Convention, 1958 (No. 110).
- 199.** In its communication of 17 March 2022, the complainant alleges that: (i) although the Government of Ecuador registered ASTAC as a banana sector trade union on 11 January 2022 as a result of that ruling, the Government designated that decision as unique such that it would not lead to the registration of other branch-level trade unions nor to a legislative change; (ii) the Government, through the Ministry of Labour, submitted an extraordinary protection order with a view to striking down the aforementioned ruling, which would not only put ASTAC at risk, but would also deny the right of all workers who wanted to organize themselves in a branch-level trade union; and (iii) the lack of standards that recognize industry trade unions represents a continued violation of the right to freedom of association and weakens ASTAC in a practical sense, as it seriously inhibits its ability to negotiate necessary improvements in working conditions in the banana sector.
- 200.** On the other hand, the complainant alleges, with regard to the death threats against Mr Jorge Washington Acosta Orellana which were the subject of a complaint to the Public Prosecutor's Office on 23 February 2018, that they have not been investigated, as urged by the Committee on Freedom of Association, in fact quite the contrary: (i) he has been the subject of numerous complaints, including the spreading of false information to create economic panic, invasion of privacy and tax fraud, in retaliation for his efforts to secure the registration of the ASTAC union; and (ii) the American Bar Association Center for Human Rights, which supervised the proceedings in the tax fraud case, concluded that there was cause for concern that officials could be using the criminal proceedings against Mr Jorge Washington Acosta Orellana to intimidate and silence him, in violation of his right to a fair trial, as well as his right to freedom of association and expression.
- 201.** In its communication of 15 March 2023, the complainant alleges that: (i) five months after the registration of ASTAC, on 27 June 2022, the organization's extraordinary general assembly was held, during which it was decided to admit 47 workers to the organization; (ii) the registration application for the leadership of ASTAC, which had been submitted on 28 October 2022, was denied through official letter No. MDT-VTE-2022-0948-O which stated that the formal registration requirements had not been complied with, when in fact it was the Ministry of Labour itself that had neglected to issue a regulation permitting the regulation of the exercise of freedom of association for branch-level trade unions; (iii) consequently, an appeal was submitted for violation of the right to freedom of association and the right to organize of the workers in question without prior authorization; (iv) although, as a trade union, ASTAC is recognized by the State, its legal representation remained restricted, which meant that its current elected leadership was being prevented from exercising its function; and (v) the struggle for freedom of association and the right to organize at the branch level in Ecuador

rests on just two organizations – ASTAC and the Ecuadorian Digital Platform Workers’ Front (FRENAPP), which are being denied registration for branch-level unions and the full exercise of their trade union rights, in clear non-compliance with the ruling achieved by ASTAC.

C. The Government’s reply

- 202.** In its communication of 4 February 2020, in connection with the complaints filed by ASTAC on 8 November 2017, and 8 November and 28 March 2018 concerning blacklisting and anti-union acts for which the Committee had requested the Government to conduct the respective inquiries, the Government states that: (i) the Ministry of Labour guarantees the right to freedom of association by means of labour inspections, addressing complaints from workers who claim to have been victims of anti-union acts and the application of sanctions; and (ii) the Standard for the Eradication of Labour Discrimination (Ministerial Decision No. MDT-2017-0082) provides for the imposition of fines from 3 to 20 times the statutory minimum wage for acts of discrimination, such as blacklisting.
- 203.** As to the allegations concerning anti-union acts perpetrated against the leaders and members of the 7 February Association of Banana Plantation Workers and ASTAC, and the Committee’s request for it to meet with representatives of those organizations to examine the allegations, the Government states that it had made ongoing dialogue a policy of State, and on that basis it was prepared to hold the necessary meetings to bring resolution to the reported acts of union discrimination.
- 204.** With regard to the report of alleged death threats against ASTAC’s general coordinator, Mr Jorge Washington Acosta Orellana, and the complaint alleging intimidation against the general secretary of the 7 February Association of Banana Plantation Workers for the fruit company Compañía Frutas Selectas SA (FRUTSESA), Mr Luis Ochoa, the Government states that the Ministry of Labour has requested information from the Attorney General’s Office on whether such complaints have been made, as well as on the status of the investigative process.
- 205.** As to the anti-union effects of the three ministerial agreements issued by the Ministry of Labour between April 2017 and May 2018 (No. MDT-2017-0029 governing labour relations specifically in the agriculture, livestock and agro-industrial sector; No. MDT-2018-0096 establishing a special employment contract for part-time activities in the agriculture sector; and No. MDT-2018-0074 establishing a special employment contract for part-time activities in the banana sector), the Government states that, within the framework of the ongoing dialogue between workers and employers, held within the National Labour and Wage Council, an amendment will be proposed to those agreements in order to comply with the Committee’s recommendation and to strengthen and adapt those provisions to the needs of the workers.
- 206.** With regard to ASTAC’s allegations of obstructions to unionization in the banana sector, the Government states that there are 30 trade unions of banana company workers in the country, which disproved the complainant’s allegation that unionization in the sector was not possible in Ecuador.
- 207.** In its communication of 30 April 2020, with regard to the registration of the leadership of the union of company 2 and the allegation from ASTAC that this delay was due to the interest in providing proof of non-compliance with the organization’s statutes by not electing new leaders, the Government reports that, after the complaints had complied with the Ministry’s observations, the organization’s leadership was registered for a period of two years, from 18 July 2018 until 18 July 2020.

- 208.** In response to ASTAC's allegation that the Ministry had not demonstrated a willingness to hold dialogue with its representatives, the Government states that, via the Ministry of Labour, it has committed to provide the appropriate and legal attention to petitioners, as long as they comply with the requirements and procedures legally established in the various existing bodies of standards. The Government states that Mr Jorge Washington Acosta Orellana has not submitted any other application for the granting of legal status for ASTAC, nor has he requested to meet with the Ministry, noting furthermore that the aforementioned Undersecretary of Labour left the post in January 2019, but that neither the previous nor the current administration had received any meeting request. The Government adds that, since one is required, Ministry officials will await such a request, as it does with all the other meeting requests it receives every day from labour and social organizations around the country.
- 209.** With regard to ASTAC's questioning of the current contractual arrangements in the banana sector, the Government states that the Ministry of Labour, having noted the informal manner of labour relations in the banana sector resulting from the lack of a contractual arrangement that could adapt to the needs and realities of that work, drew up a contractual arrangement that would respond to the cyclical requirements of banana production.
- 210.** With regard to the allegations of reprisals against two workers reported by ASTAC, the Government states that the Ministry of Labour will carry out inspections to guarantee compliance with the workers' rights and will request information from both company 3, in order to obtain a response to the arguments submitted by the complainants, and from company 4, with regard to the aforementioned contractual relationship, considering that the provision of services is a legally established form of contract governed by the Civil Code, and that information will be communicated to the Office as soon as possible.
- 211.** In its communication of 30 August 2023, the Government states the following: (i) on 17 June 2021, the Ministry of Labour and the State Attorney General's Office filed an extraordinary protection order (No. 1760-21-EP), which is still being reviewed by the Constitutional Court of Ecuador, against the 25 May 2021 ruling that had instructed the Ministry of Labour to register ASTAC as a branch-level union and that would regulate the registration of trade unions by branch of activity; (ii) on 10 January 2022, in compliance with the ruling issued on 25 May 2021, the Deputy Minister of Labour and Employment, by means of official letter No. MDT-VTE-2022-0035-O, registered the nomination of 31 founding members of ASTAC and, by means of ministerial agreement No. MDT-2022-001 of 11 January 2022, approved its statute and granted it legal status; and iii) by means of official letter No. MDT-VTE-2022-0948-O of 17 November 2022, the Deputy Minister of Labour and Employment denied the registration of the ASTAC leadership because persons outside the organization had participated in the election process.
- 212.** In its communications of 10 January and 15 April 2024, the Government reports that, by means of official letter No. MDT-VTE-2023-1017-O of 18 December 2023, the Deputy Minister of Labour and Employment informed the representative of ASTAC that the Executive Board of ASTAC had been registered for a period of two years, from 18 November 2023 until 18 November 2025.

D. The Committee's conclusions

- 213.** *The Committee recalls that, in this case, the complainants allege, firstly, that the Government is obstructing the registration of a trade union of banana plantation workers comprising workers from various companies in the sector and, secondly, anti-union action to prevent the setting up of company unions in that sector.*
- 214.** *The Committee recalls that, in its previous examinations of the case, it had requested the Government to take the necessary measure to ensure the registration of ASTAC as a trade union. The*

Committee notes that both ASTAC and the Government report that: (i) in a ruling dated 25 May 2021, the Tribunal of the Criminal Chamber of the Pichincha Provincial Court of Justice instructed the Ministry of Labour to register ASTAC as a trade union, to regulate the exercise of the right to freedom of association by branch of activity, and to refrain from restricting or limiting the rights relating to freedom of association of other organizations applying for registration by branch of activity; (ii) as a result of this, the Ministry proceeded to register ASTAC on 11 January 2022; (iii) however, the Government stated that this ruling would not lead to the registration of other branch-level unions or to a legislative change; and (iv) the Ministry of Labour contested that ruling before the Constitutional Court. The Committee also notes that ASTAC maintains that the lack of standards that recognize industry trade unions represents a continued violation of the right to freedom of association and weakens its capacity for action in a practical sense, as it seriously inhibits its ability to negotiate improvements in working conditions in the banana sector.

215. The Committee notes with interest the registration of ASTAC as a trade union as a result of the ruling handed down by the Pichincha Provincial Court. At the same time, the Committee regrets to observe that the country's legislation still does not permit the establishment of primary-level trade unions composed of workers from different enterprises and that the Ministry of Labour contested the aforementioned ruling before the Constitutional Court. In this regard, the Committee once again recalls 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, para. 502] and that workers should be free to decide whether they prefer to establish, at the primary level, a works union or another form of basic organization, such as an industrial or craft union [see **Compilation**, para. 504]. The Committee also recalls that, in its previous examinations of the case, it had observed with concern that many agricultural workers in Ecuador not only found it impossible to set up company unions owing to the minimum membership requirement, which conflicts with the structure of a sector where most production units are small, but that they were also seeing their efforts to overcome that obstacle by grouping together in sectoral organizations being frustrated. In view of the above, the Committee trusts that the process of contesting the legal decision that ordered the registration of ASTAC will be resolved as soon as possible in accordance with the criteria expressed above. The Committee requests the Government to keep it informed of the corresponding Constitutional Court decision. Recalling that it had referred the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the Committee urges that national legislation will recognize as soon as possible the right of workers to establish primary-level trade unions composed of workers from different enterprises.
216. The Committee also notes that ASTAC alleges that the registration application for its leadership submitted on 28 October 2022 was denied by the Ministry of Labour in violation of the freedom of association. In this regard, the Committee notes that the Government reports that the registration of the ASTAC leadership, initially denied due to the participation of persons outside the organization in the election process, was finally authorized on 18 November 2023 for a period of two years. Taking into account that the leadership of ASTAC was registered, the Committee will not pursue the examination of this aspect of the case.
217. In addition, the Committee notes ASTAC's allegation that the Ministry of Labour denied the request to register the trade union of company 1. The Committee observes that the Government has not sent its observations about this allegation but that, at the same time, the complainant has not provided details about it. The Committee therefore requests both the Government and the complainant to provide information about the alleged refusal to register the trade union of company 1.
218. With regard to the allegations of blacklisting and the commission of anti-union acts, including allegations of numerous anti-union dismissals in various companies in the sector about which the

Committee had requested the Government to conduct inquiries, the Committee notes that the Government states that: (i) the Ministry of Labour guarantees the right to freedom of association by means of labour inspections, addressing complaints from workers who claim to have been victims of anti-union acts and the application of sanctions; and (ii) the Standard for the Eradication of Labour Discrimination provides for the imposition of fines from 3 to 20 times the statutory minimum wage for acts of discrimination, such as blacklisting. The Committee nonetheless observes that the Government has not provided specific information about the investigations carried out or inspections specifically aiming to shed light on the aforementioned allegations. In this regard, the Committee recalls that all practices involving the blacklisting of trade union officials or members constitute a serious threat to the free exercise of trade union rights and, in general, governments should take stringent measures to combat such practices [see **Compilation**, para. 1121].

219. In addition, the Committee notes the new allegations communicated by the complainant about reprisals against its members in two companies in the sector. In this regard, the Committee notes that the Government reports that the Ministry of Labour will carry out inspections to guarantee compliance with the aforementioned workers' rights and will request information from the respective companies about these allegations, which will be communicated to the Office as soon as possible. In light of the above, the Committee requests the Government to provide specific information without delay about the actions taken to shed light on the various allegations of blacklisting and other anti-union acts made in the context of this case. Also recalling that ASTAC had filed legal action and criminal complaints on 8 November 2017, and 8 November and 28 March 2018 in relation to several of the aforementioned allegations, the Committee requests the Government to provide information about the resolution of these. Lastly, in light of its previous recommendations and taking note of the Government's stated readiness in this regard, the Committee once again urges the Government to meet with the complainants in order to help resolve the allegations of anti-union discrimination in the banana sector outlined in this case.
220. With regard to the allegations of death threats and intimidation that led to the filing of criminal complaints by Mr Luis Ochoa, general secretary of the 7 February Association of Banana Plantation Workers and Mr Jorge Washington Acosta Orellana, ASTAC's general coordinator, the Committee notes that the Government merely indicates that it has requested information from the Attorney General's Office on whether such complaints have been made, as well as on the status of the investigative process. Recalling 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 [see **Compilation**, para. 88], the Committee once again urges the Government to communicate without delay specific information about the actions taken by the competent authorities to shed light on the alleged death threats made against Mr Luis Ochoa and Mr Jorge Washington Acosta Orellana and to keep it informed on the situation of the criminal complaints filed in this regard.
221. Lastly, as to the alleged anti-union effects of the three ministerial agreements issued by the Ministry of Labour (Nos MDT-2017-0029, MDT-2018-0096 and MDT-2018-0074) relating to contractual arrangements applicable to workers in the banana sector, the Committee recalls that, in its previous examination of the case, it had invited the Government to examine, together with the organizations of employers and workers concerned, the impact of the reforms on the exercise of freedom of association. The Committee notes that: (i) in a 2020 communication, the Government indicated that, within the framework of the ongoing dialogue between workers and employers, held within the National Labour and Wage Council, an amendment would be proposed to the aforementioned ministerial agreements in order to comply with the Committee's recommendation and to strengthen and adapt those provisions to the needs of the workers; and (ii) it has not received any subsequent information from the Government on the matter. On the basis of the foregoing, the Committee

requests the Government to examine, together with the organizations of employers and workers concerned, the impact of ministerial agreements Nos MDT-2017-0029, MDT-2018-0096 and MDT-2018-0074 on the exercise of trade union activity.

The Committee's recommendations

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

- (a) The Committee trusts that the process of contesting the legal decision that ordered the registration of the Trade Union Association of Banana Plantation, Agricultural and Rural Workers (ASTAC) will be resolved as soon as possible in accordance with the criteria expressed in this case. The Committee requests the Government to keep it informed of the corresponding Constitutional Court decision. Recalling that it had referred the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations, the Committee urges that national legislation will recognize as soon as possible the right of workers to establish primary-level trade unions composed of workers from different enterprises.
- (b) The Committee requests both the Government and the complainant to provide information about the alleged refusal to register the trade union of workers at the CALAJUSA company (company 1).
- (c) The Committee requests the Government to provide specific information without delay about the actions taken to shed light on the various allegations of blacklisting and other anti-union acts made in the context of this case.
- (d) Recalling that ASTAC had filed legal action and criminal complaints on 8 November 2017, and 8 November and 28 March 2018 in relation to several of the aforementioned allegations, the Committee requests the Government to provide information about the resolution of these.
- (e) In light of its previous recommendations and taking note of the Government's stated readiness in this regard, the Committee once again urges the Government to meet with the complainants in order to help resolve the allegations of anti-union discrimination in the banana sector outlined in this case.
- (f) The Committee once again urges the Government to communicate without delay specific information about the actions taken by the competent authorities to shed light on the alleged death threats made against Mr Luis Ochoa and Mr Jorge Washington Acosta Orellana and to keep it informed on the situation of the criminal complaints filed in this regard.
- (g) The Committee requests the Government to examine, together with the organizations of employers and workers concerned, the impact of ministerial agreements Nos MDT-2017-0029, MDT-2018-0096 and MDT-2018-0074 on the exercise of trade union activity.

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
- the 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

- 223.** 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 March 2023 meeting and on that occasion it submitted an interim report to the Governing Body [see 401st Report, paras 447 to 479] ⁸.
- 224.** The Government of Guatemala sent its observations in five communications dated 27 April, 7 and 12 September, and 21 December 2023, and 16 April 2024.
- 225.** 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

- 226.** At its March 2023 meeting, the Committee made the following recommendations [see 401st Report, para. 479]:
- (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

⁸ [Link to previous examination.](#)

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.

B. The Government's reply

- 227.** In five communications sent between 27 April 2023 and 16 April 2024, the Government responds to the Committee's recommendations, providing in particular information and updates regarding investigations into the acts of anti-union violence reported in the present case and the protection of members of the trade union movement who may be at risk.
- 228.** In response to the deep concern expressed by the Committee over the seriousness of the case (recommendation (a)), the Government reports that it has allocated funds in a timely manner to address the overall security situation, in respect of both prevention and the state apparatus responsible for the administration of justice, which imposes heavy penalties for the commission of criminal and punishable offences. It reports that, according to data from the

Public Prosecutor's Office, 99 cases of homicide of trade union leaders and members were recorded, indicating that: (i) to date, 38 rulings have been handed down, of which 27 were guilty verdicts, 10 not guilty, and 1 a security and correction measure; (ii) of these rulings, 15 related to the perpetrator of the homicide, 3 to the instigator and 11 to both of these; (iii) 14 of the 99 victims mentioned were not members of the trade union movement; (iv) 48 cases have been shelved on the grounds that it was materially not possible to identify the perpetrators of the homicide, in accordance with section 327 of the Code of Criminal Procedure (although the possibility remains of reopening the cases); (v) arrest warrants have been issued in 7 cases; (vi) 8 cases are at the investigation stage; and (vii) proceedings are at an intermediate stage in 2 cases.

229. With regard to the adoption and intensification of measures to ensure the effective investigation of acts of violence against trade union leaders and members (recommendation (b)), the Government indicates that the Public Prosecutor's Office conducts an immediate, independent, exhaustive, effective and impartial investigation into any act or threat of violence reported, meticulously evaluating the trade union activity of the victims, among other matters, to support a strong and timely prosecution case with robust evidence. It also indicates that, while the Public Prosecutor's Office only had 64 municipal prosecutor's offices in 2017, it now has a presence in the country's 340 municipalities. The Government indicates that since 2017 the Public Prosecutor's Office has managed to reduce the time taken to investigate and obtain guilty verdicts in cases of homicides of trade union leaders and members to an average of one year and nine months.
230. Regarding the Special Investigation Unit for Crimes against Judicial Officials and Trade Unionists, the Government indicates that between 2022 and 2024, its annual budget went from US\$1,288,252 to \$1,654,150, which allowed for better technology and a more skilled team. Since the Special Investigation Unit was established, its budget has multiplied by 15 and its staff has increased from 8 workers in 2011 to 23 workers in 2023. Consequently, investigations have been faster and more accurate, and there have been a greater number of guilty verdicts handed down in comparison to not guilty verdicts. In addition, the Government states that the commitment by the Public Prosecutor's Office to investigate acts of anti-union violence is also demonstrated by the appointment, by the Section Prosecution Office, of a special prosecutor to investigate the murder of Ms Doris Liseth Aldana Calderón, representative of the Women's Committee of the Izabal Banana Workers' Union (SITRABI), on 4 October 2023.
231. With regard to the homicides reported by the National Tripartite Committee, the Government explains that 35, and not 36, cases were identified as having particular significance during the meeting of that Committee on 7 February 2020 (due to the homicide of Mr Marco Tulio Ramírez Portela being counted twice). The Government reports that among those cases there are: (i) 7 cases with guilty verdicts; (ii) 4 cases where the criminal proceedings have been dropped; (iii) 4 cases where arrest warrants have been issued; (iv) 18 cases that have been shelved in accordance with the above-mentioned section 327 of the Code of Criminal Procedure; and (v) 2 cases that are under investigation by the Special Prosecutor's Office against Impunity.
232. Regarding 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, Dispute Secretary of the SITRABREMEN trade union organization, the Government explains that the Public Prosecutor's Office did not appeal the ruling, as the elements on the basis of which it could be appealed were the same as those that had initially been ruled out by the court, and it did not wish to risk altering the status of the previously obtained guilty verdict (25 years of prison without parole for the perpetrators identified) contained in the same judicial file against the perpetrators of the murder.

- 233.** With respect to the investigations carried out by the Ministry of the Interior's unit dealing with threats and attacks against human rights advocates in respect of acts of anti-union violence, the Government states that, when a request for the adoption of security measures is received, it is determined in conjunction with the Public Prosecutor's Office whether the case has been reported and what the status of the investigation into it is, as part of inter-institutional coordination on complaints received and related to threats against trade union leaders and members. The Government reports that, between 1 June 2022 and 15 January 2023, the Ministry of the Interior received 97 individual or collective risk analysis requests (58 of which were from the Public Prosecutor's Office) and granted 128 perimeter protection measures, while two trade union leaders continue to receive personal security measures, the first since 2017 and the second since 2019. The Government reports that, of the 58 complaints received by the Public Prosecutor's Office, 11 alleged threats (of which 8 were rejected and 3 are under investigation), 25 alleged acts of coercion and were rejected, and 2 referred to the offence of defamation and were rejected.
- 234.** With regard to continuing the ongoing dialogue with the judiciary to ensure that cases of anti-union violence are promptly examined by the criminal courts, and to facilitate the participation of trade union organizations in criminal proceedings relating to crimes affecting their members, the Government reports that the Public Prosecutor's Office continues to invite trade union leaders and members to participate as adhering complainants in the proceedings mentioned, which offers a channel for their involvement and their requests.
- 235.** With regard to ensuring the continued role of the National Tripartite Committee and its subcommittee on implementation of the road map, the Government states that, between September 2022 and September 2023, four meetings of the subcommittee on implementation of the road map were held, in which issues related to the key indicators of the road map were addressed. It also reports that the Chief Public Prosecutor and the head of the Special Investigation Unit for Crimes against Judicial Officials and Trade Unionists participated in the meetings of the National Tripartite Committee held on 8 and 29 March 2023, and the Public Prosecutor's Office and the workers' sector agreed a working methodology for managing cases comprehensively. In its communication dated 15 April 2024, the Government also indicates that the Public Prosecutor's Office is taking the necessary steps to establish the legal instrument or instruments to ensure the continuity of the Trade Union Technical Committee of the Public Prosecutor's Office, which will be subject to consultation with the trade unions.
- 236.** Regarding recommendation (c), which refers to the protection of members of the trade union movement who may be at risk, the Government indicates that, since the beginning of 2023, the Public Prosecutor's Office has promoted dialogue with workers' representatives, and they have agreed to meet to address issues related to workers' interests. It also reports that at the end of 2022 the Ministry of the Interior began a dialogue with workers' representatives to update Ministerial Decision No. 288-2022 concerning the Special Investigation Unit for the analysis of attacks against trade union leaders and members, in order to address the needs of this sector with greater certainty and focus.
- 237.** With respect to establishing 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, the Government states that: (i) the Committee invites the Ministry of the Interior to a face-to-face meeting at least twice a year to report on the protection measures accorded to members of the trade union movement and on other actions to prevent and mitigate acts of anti-union violence; and (ii) in 2023, these meetings were held on 20 January and 8 March.

- 238.** Concerning the strengthening and systematization of 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, the Government explains that the staff of the Ministry of the Interior, the entity which is responsible for the National Civil Police, provides security measures to trade unionists, both perimeter and personal, in accordance with a risk analysis conducted within a week. It reports that these measures can be requested by the Office of the Public Prosecutor, the injured party, the Human Rights Procurator's Office, and the Ministry of the Interior, and that in 2023, all the cases handled were at the request of the Office of the Public Prosecutor and ultimately all of them involved an investigation process.
- 239.** With respect to providing the necessary funds for the granting of all security measures required to members of the trade union movement who may be at risk, the Government reports that it has the financial resources and the staff to provide those measures quickly and efficiently. It states that, with an annual allocation of US\$1,239,120, the Ministry of the Interior is responsible for logistical and planning aspects to ensure that security requirements are met. The Government indicates that trade union leaders and members are not required to pay for their protection, as security is a right. It also notes that there are six canteens in the capital to ensure that protected trade unionists do not pay for police officers' meals.
- 240.** In its communication dated 15 April 2024, the Government stated finally that its commitment to international labour standards and to the legitimate concerns of the trade unions was demonstrated at the highest level during the third International Conference in support of Guatemala, held on 11 and 12 April 2024, in which the President of the Republic and other senior state officials participated. On that occasion the Government stated that the trade unions could not perform under normal conditions without the essential protections of a democratic State and that Guatemala was at a historic juncture for the strengthening of social dialogue.

C. The Committee's conclusions

- 241.** *The Committee recalls that, in the present case, the complainants denounce numerous murders and acts of violence against trade union leaders and members, as well as impunity in that regard.*
- 242.** *With regard to the adoption and intensification of measures to ensure the effective investigation of acts of violence against trade union leaders and members (recommendation (b)), the Committee takes due note of the information supplied by the Government in this respect. The Committee notes in particular that: (i) since 2017, the Public Prosecutor's Office has gone from having 64 municipal prosecutor's offices to having a presence in the country's 340 municipalities; and (ii) the budget of the Special Investigation Unit for Crimes against Judicial Officials and Trade Unionists went from US\$1,288,252 to \$1,654,150 between 2022 and 2024, which translated into better technology and a more skilled team. The Committee also notes the Government's indication that the Public Prosecutor's Office: (i) continues to invite trade union leaders and members to participate as adhering complainants in criminal proceedings concerning offences that have affected their members; (ii) met with the National Tripartite Committee in March 2023; and (iii) indicates that it is taking the necessary measures to ensure the continued existence and operation of its Trade Union Technical Committee, which allows for the exchange of information and views with trade union organizations.*
- 243.** *The Committee goes on to note the updates 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: (i) of a total of 99 homicides (with respect to which the Government states that 14 victims were not members of the trade union movement), 38 rulings have*

been handed down, of which 27 were guilty verdicts, 10 not guilty, and 1 a security and correction measure; (ii) of these rulings, 15 related to the perpetrator of the homicide, 3 to the instigator and 11 to both of these; (iii) the average time taken to investigate and obtain guilty verdicts has been reduced to an average of one year and nine months in cases of homicides of trade union leaders and members; (iv) 48 cases have been shelved as it was materially not possible to identify the perpetrators of the homicide, in accordance with section 327 of the Code of Criminal Procedure (although the possibility remains of reopening the cases); (v) arrest warrants have been issued in 7 cases; (vi) 8 cases are at the investigation stage; and (vii) proceedings are at an intermediate stage in 2 cases. With regard to the 35 cases reported by the National Tripartite Committee as having particular significance, the Committee notes that: (i) 7 guilty verdicts have been handed down; (ii) criminal proceedings have been dropped in 4 cases; (iii) arrest warrants have been issued in 4 cases; (iv) 18 cases have been shelved in accordance with section 327 of the Code of Criminal Procedure; and (v) 2 cases are under investigation by the Special Prosecutor's Office against Impunity. With respect to the murder of Mr Tomás Francisco Ochoa Salazar, Dispute Secretary of the SITRABREMEN trade union organization, the Committee notes that the Public Prosecutor's Office decided not to appeal the acquittal handed down in order to avoid the risk of altering the status of the guilty verdict previously obtained in the same judicial file against the perpetrators.

- 244.** The Committee takes due note of these various elements. It notes the measures that are still being adopted to improve the effectiveness of investigations into acts of anti-union violence, welcoming in particular the increase in the budget of the Special Investigation Unit for Crimes against Judicial Officials and Trade Unionists. In terms of results achieved, the Committee observes that since its last examination of the present case, five new guilty verdicts have been handed down, and that, according to the information provided by the Government, the average time for sentences to be handed down has been reduced significantly. At the same time, the Committee notes with deep concern that: (i) the majority of the 99 homicides reported in the present case have still not been resolved; and (ii) 48 cases, including 18 of the 35 cases identified as having particular significance by the National Tripartite Committee in 2021 (see 396th Report, para. 340), have been shelved and are consequently not being investigated by the Public Prosecutor's Office. While it recognizes the particular difficulties involved in shedding light on older murder cases, the Committee observes that it still has no information about any of those cases nor about the specific criteria used in this regard. The Committee recalls once again that it is important that investigations into the murders of trade unionists should yield concrete results in order to determine reliably 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 of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 96].
- 245.** In view of the above, the Committee urges the Government, in collaboration with the National Tripartite Committee and its subcommittee on implementation of the road map, to continue to take and intensify the necessary measures to ensure the effective investigation of all acts of violence against trade union leaders and members, in order to determine the motives, responsibilities and punish the perpetrators and instigators of the acts, taking the trade union activities of the victims fully into consideration in the investigations. In particular, the Committee urges the Government: (i) to continue guaranteeing that the Special Investigation Unit has a budget commensurate with the importance of its functions and to ensure that the resources allocated allow it to solve cases more effectively, both older and more recent ones; (ii) to guarantee that the competent authorities devote special attention and the resources required to the investigations into the 35 homicides identified as having particular significance by the National Tripartite Committee; and (iii) to ensure that regular meetings continue to be held between the National Tripartite Committee and the Public Prosecutor's Office, on the one hand, and the Public Prosecutor's Office and the trade union organizations, on

the other, with a view to fostering ongoing collaboration and a comprehensive approach to dealing with cases. The Committee requests the Government to keep it informed in this respect.

- 246.** *Regarding the protection of members of the trade union movement who may be at risk (recommendation (c)), the Committee notes the Government's statement that: (i) at the end of 2022, a dialogue began between the Ministry of the Interior and representatives of the trade union organizations to update Ministerial Decision No. 288-2022 concerning the Special Investigation Unit for the analysis of attacks against trade union leaders and members, in order to address their needs with greater certainty and focus; (ii) in January and March 2023, the National Tripartite Committee invited the Ministry of the Interior to report on the protection measures granted and on other actions to prevent and mitigate acts of anti-union violence; (iii) between 1 June 2022 and 15 January 2023, the Ministry of the Interior received 97 risk analysis requests (58 of which were from the Public Prosecutor's Office), processed them all within a week and granted 128 perimeter protection measures; (iv) two trade union leaders continue to receive personal security measures, the first since 2017 and the second since 2019; and (v) trade union leaders and members are not required to pay for their protection, as the Ministry of the Interior is responsible for logistical and planning aspects, for which it has an annual allocation of US\$1,239,120; and (vi) there are six canteens in the capital to ensure that protected trade unionists do not pay for police officers' meals.*
- 247.** *While it takes due note of these elements, the Committee notes with deep concern the Government's report of the murder of a SITRABI trade union leader in October 2023. 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], the Committee urges the Government to take, in coordination with all the competent authorities, the necessary steps to increase the effectiveness of measures to prevent anti-union violence and to protect members of the trade union movement who may be at risk. In particular, the Committee requests the Government: (i) to keep it informed of the result of discussions with trade union organizations regarding a possible modification of Ministerial Decision No. 288-2022 concerning the Special Investigation Unit for the analysis of attacks against trade union leaders and members, recalling that the Government may avail itself of the technical assistance of the Office in this respect; and (ii) to ensure that a regular dialogue is maintained between the National Tripartite Committee and the Ministry of the Interior on measures taken to prevent and mitigate acts of anti-union violence.*
- 248.** *Observing that the persistence of anti-union violence and the corresponding situation of impunity form part of the allegations in the complaint submitted against Guatemala in June 2023 under article 26 of the ILO Constitution by a number of delegates to the International Labour Conference and, while welcoming the commitment shown by the State at the highest level to the protection of freedom of association and the previously described actions taken, the Committee requests the Government to give due consideration to the points raised in these conclusions and to take all necessary steps in this respect.*

The Committee's recommendations

- 249.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **While welcoming the commitment shown by the State at the highest level to the protection of freedom of association and the actions taken in this respect, 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 urges the Government, in collaboration with the National Tripartite Committee and its subcommittee on implementation of the road map, to continue to take and intensify the necessary measures to ensure the effective investigation of all acts of violence against trade union leaders and members, in order to determine the motives, responsibilities and punish the perpetrators and instigators of the acts, taking the trade union activities of the victims fully into consideration in the investigations. In particular, the Committee urges the Government: (i) to continue guaranteeing that the Special Investigation Unit has a budget commensurate with the importance of its functions and to ensure that the resources allocated allow it to solve cases more effectively, both older and more recent ones; (ii) to guarantee that the competent authorities devote special attention and the resources required to the investigations into the 35 homicides identified as having particular significance by the National Tripartite Committee; and (iii) to ensure that regular meetings continue to be held between the National Tripartite Committee and the Public Prosecutor's Office, on the one hand, and the Public Prosecutor's Office and the trade union organizations, on the other, with a view to fostering ongoing collaboration and a comprehensive approach to dealing with cases. The Committee requests the Government to keep it informed in this respect.
- (c) Expressing its deep concern about the murder of a trade union leader in 2023, the Committee urges the Government to take, in coordination with all the competent authorities, the necessary steps to increase the effectiveness of measures to prevent anti-union violence and to protect members of the trade union movement who may be at risk. In particular, the Committee requests the Government: (i) to keep it informed of the result of discussions between the Ministry of the Interior and the trade union organizations regarding a possible modification of Ministerial Decision No. 288-2022 concerning the Special Investigation Unit for the analysis of attacks against trade union leaders and members, reminding the Government that it may avail itself of the technical assistance of the Office in this respect; and (ii) to ensure that a regular dialogue is maintained between the National Tripartite Committee and the Ministry of the Interior on measures taken to prevent and mitigate acts of anti-union violence.
- (d) The Committee draws the special attention of the Governing Body to the serious and urgent nature of this case.

Case No. 2508

Interim report

Complaint against the Government of the Islamic Republic of Iran presented by

- the International Trade Union Confederation (ITUC) (the initial complainant in 2006 was the International Confederation of Free Trade Unions (ICFTU), before it merged into the ITUC) and
- the International Transport Workers' Federation (ITF)

Allegations: The complainants denounce acts of repression against the local trade union at a city bus company, as well as the arrest and detention of large numbers of trade unionists

- 250.** The Committee last examined this case (submitted in 2006) at its June 2023 meeting, when it presented an interim report to the Governing Body [see 403rd Report, approved by the Governing Body at its 348th Session, paras 278–304].⁹
- 251.** The International Trade Union Confederation (ITUC) sent additional information in a communication dated 9 February 2024.
- 252.** The Government forwarded its observations in a communication dated 13 September 2023.
- 253.** The Islamic Republic of Iran has not ratified 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).

A. Previous examination of the case

- 254.** At its June 2023 meeting, the Committee made the following recommendations [see 403rd Report, para. 304]:
- (a) The Committee expects that the process of ratification of Conventions Nos 98 and 144 will soon come to conclusion and requests the Government to keep it informed of developments in this regard.
 - (b) The Committee firmly expects that the processes of reviewing Chapter VI of the Labour Law; the by-law on establishment, the scope of duties and powers, and the forms of operation of trade associations and their confederations; and the guidelines and procedures concerning arts, media, and culture professional organizations will soon come to their conclusion, resulting in a legislative reform that will at last allow for union pluralism at all levels in the Islamic Republic of Iran. It requests the Government to keep it informed of any progress in this regard.
 - (c) The Committee once again urges the Government to ensure that the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH) can function without hindrance through its

⁹ [Link to previous examination.](#)

de facto recognition pending legislative reform, and by ensuring that its officials and members are not arrested, detained and prosecuted for legitimate trade union activities.

- (d) The Committee firmly urges the Government to ensure the immediate release of Messrs Shahabi and Saeedi, should their conviction be related to their trade union activities. It further firmly urges the Government to take the necessary measures to ensure that Ms Kohler and Mr Paris are immediately released and to guarantee their safe return to their country and to keep it informed of the measures taken in this regard.
- (e) The Committee requests the Government to refrain from having recourse to broad and persistent surveillance of trade unionists' communications and meetings and to also refrain from prosecuting and sentencing trade unionists for having used methods and technics of avoiding surveillance or for having provided training or technical assistance to other trade unionists in this regard.
- (f) The Committee recalls the importance it attaches to the 1970 Resolution concerning Trade Union Rights and Their Relation to Civil Liberties and draws the Governing Body's attention to the extremely serious and urgent nature of this case.

B. Additional information from the complainant

- 255.** In a communication dated 9 February 2024, the ITUC expresses deep concern that protection of and respect for civil liberties and fundamental human and labour rights is deteriorating in Iran and workers and trade unionists who have exercised their civil liberties including freedom of expression and assembly are facing persecution and heavy prison sentences. The ITUC states that Ms Cécile Kohler and Mr Jacques Paris, two teacher members of Force Ouvrière France, remain in detention since their unlawful arrest on the night of 7 May 2022. According to the ITUC, they are detained incommunicado, without a trial and without access to freely chosen lawyers and consular assistance, except for only two consular visits since May 2022 of a total duration of 30 minutes. The couple do not have the possibility to communicate freely and in good conditions with their families. The complainant alleges that these deplorable conditions of detention, including full isolation, amount to torture. Their situation constitutes a grave violation of civil liberties essential to the normal exercise of trade union rights, including the right to freedom and security of person, freedom from arbitrary arrest and detention, freedom of opinion and expression and freedom to seek, receive and impart information and ideas through any media and regardless of frontiers, freedom of assembly and the right to a fair trial by an independent and impartial tribunal.

C. The Government's reply

- 256.** In its communication of 13 September 2023, the Government indicates the amendment to chapter 6 of the Labour Law has been the subject of regular meetings of an expert working group, and it has been agreed to develop a draft in collaboration with the most representative workers' and employers' organizations. The Government does not indicate any new developments concerning the revision of the "By-law on establishment, the scope of duties and powers, and the forms of operation of trade associations and their confederations", but indicates that, in close interaction with social partners, policy and implementation measures were taken to further develop such organizations. Within the construction sector, more than 350 organizations were established and registered in the four years preceding the Government communication. In the framework of the review of Chapter VI of the Labour Law, it is intended to extend the right to establish organizations to self-employed workers who are currently not covered by the law. The Government also reports that it intends to take measures to promote greater female participation in workers' and employers' organizations and in this regard provincial labour administrations were requested to promote women's role in the

decision-making process in organizations, encouraging their membership in boards of directors or their assuming the function of the inspector. The provincial departments were also asked to register and notify to the Ministry of Labour any breaches of law or complaints concerning establishment or activity of workers' and employers' organizations. Concerning the guidelines and procedures concerning arts, media, and culture professional organizations, the Government indicates that it is seeking to bring those in line with domestic laws and regulations and international labour standards through partnership between the stakeholders' representatives and competent authorities.

257. Regarding the ratification of Convention No. 98 and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the Government reiterates that the bills are on the agenda of the competent parliamentary committee. Regarding Convention No. 87, it indicates that it has taken measures to remove implementation barriers and ensure compatibility of domestic regulations and to develop appropriate mechanisms to ensure maximum participation of workers' and employers' organizations.
258. Regarding the situation of the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH), the Government reiterates that the fact that more than 15,000 workers' and employers' organizations were established and operated in various sectors in the country, shows that there are no obstacles impeding the establishment of the SVATH in conformity with the currently applicable laws and regulations. According to the Government, any application for establishment and registration will be reviewed in accordance with the law.
259. Regarding the situation of Mr Reza Shahabi and Mr Hassan Saeedi, the Government indicates that they have had a fair trial in compliance with all laws and regulations. They have had the right to appeal and presumption of innocence, their charges were heard and dealt with by several judges, and their access to their chosen attorney was guaranteed in accordance with international standards of a fair trial. While in prison, they have access to all legal services, including their chosen attorney, welfare and family visits and phone calls, as well as health and medical services inside and outside prison.
260. Concerning the situation of Ms Kohler and Mr Paris, the Government indicates that they have been in provisional detention since 7 May 2022, they have been indicted and put on trial, but no verdict is delivered yet. The Government adds that during their detention both unionists received three consular visits and video calls with their families (Ms Kohler had eight calls and Mr Paris four calls); on 4 July 2023, two eyeglasses and the books provided by the French embassy were delivered to the couple. They are held in a three-person suite with fridge and TV and also have access to other facilities including walks in the open air, a shop where they can buy fruits and other articles, and medical and healthcare services.

D. The Committee's conclusions

261. *The Committee recalls that this case, lodged in 2006, concerns acts of repression against the SVATH, as well as the arrest, detention and condemnation of large numbers of trade union members and officials, and the inadequate legislative framework for the protection of freedom of association.*
262. *The Committee notes with deep concern the additional information submitted by the ITUC concerning the continued provisional detention of Ms Cécile Kohler and Mr Jacques Paris since 7 May 2022, which has by now lasted for about two years. The Committee recalls in this respect that according to the previous indications of the Government, the couple were charged with the crime of "assembly and collusion with the intention of committing crime against the security of the State", which carries a punishment of two to five years imprisonment, for having provided training to the members of Iranian teachers' unions on methods of organizing, on holding strikes and protests, and*

on methods of safe contacts and communications avoiding surveillance by intelligence services. The Committee further recalls that it had noted in its previous examination of this case, that the acts attributed by the Government to Ms Kohler and Mr Paris fall within legitimate trade union activities for which no one should be arrested, detained, prosecuted or sentenced and had firmly urged the Government to ensure that they are immediately released and to guarantee their safe return to their country. The Committee notes that in its communication dated 13 September 2023, the Government briefly indicates that the two trade unionists were put to trial, but that no verdict was delivered on their case. The Committee deeply regrets that no further information was provided by the Government concerning the nature of the trial and the due process guarantees ensured to these two trade unionists, including those rights set forth in the United Nations International Covenant on Civil and Political Rights and in particular: to be informed promptly and in detail in a language which he/she understands of the nature and cause of the charge against him/her; to have adequate time and facilities for the preparation of his/her defence and to communicate with counsel of his/her own choosing; to be tried without undue delay; and to have the free assistance of an interpreter if he/she cannot understand or speak the language used in court. The Committee is especially concerned that given the Government's own admission that the two unionists have only received three consular visits over the nearly two years in detention, it would be appear inconceivable that the above due process rights were assured. Recalling that "The detention of trade unionists for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular", and that "Preventive detention should be limited to very short periods of time intended solely to facilitate the course of a judicial inquiry", [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 123 and 140], the Committee notes with deep regret, that two years after their arrest, the "provisional" detention of Ms Kohler and Mr Paris continues and the Government has not provided any information on the due process guarantees provided to these detainees. The Committee therefore once again urges the Government to ensure their immediate release and guarantee their safe return to their country.

263. Concerning the situation of Mr Shahabi and Mr Saeedi, members of the SVATH sentenced to six years imprisonment for having met with Ms Kohler and Mr Paris and participated in May Day demonstrations in 2022, the Committee notes with deep concern that according to the information provided by the Government, they continue to serve their sentence even though the Committee has observed that the Government has failed to show that their sentencing was in no way occasioned by their trade union activities. The Committee therefore once again urges the Government to immediately release them, should their conviction be related to their trade union activities.
264. The Committee notes that the Government does not indicate any specific measure or significant progress in the process of reviewing Chapter VI of the Labour Law; the bylaw on the establishment, the scope of duties and powers, and the forms of operation of trade associations and their confederations (the bylaw); and the guidelines and procedures concerning arts, media, and culture professional organizations. The Committee recalls in this respect that throughout the examination of this case, it has noted that all these texts contain provisions restricting trade union pluralism and establishing union monopoly at various levels: note 4 of article 131, chapter VI of the Labour Law establishes union monopoly at the work unit level, and note 1 of the same provision, provides for one confederation of associations of workers or employers at the provincial level and a single general confederation of associations of workers or employers at the national level. Article 15 of the bylaw, which governs the procedure of establishment and registration of workers' and employers' organizations provides that "registration of two homogeneous organizations (trade association or confederation) in a single occupation or industry in a common geographical zone is not permitted" [see 396th Report, paras 442–443]. The Committee had also noted that the same pattern was reproduced in the regulatory texts concerning organizations in arts, media, and culture-related

occupations [see 396th Report, para. 445]. The Committee once again draws the attention of the Government to the point that, by significantly limiting their right to establish and join organizations of their own choosing, the above-mentioned legislative and regulatory provisions unduly restrict the freedom of association of workers and employers and again urges the Government to expedite the process of reviewing Chapter VI of the Labour Law; the bylaw on the establishment, the scope of duties and powers, and the forms of operation of trade associations and their confederations; as well as the guidelines and procedures concerning arts, media, and culture professional organizations, with a view to repealing the provisions that impose trade union monopoly at any level and replacing them with rules that recognize the right of all workers and employers to establish and join organizations of their own choosing. It requests the Government to provide information on the steps taken in this respect and to communicate any draft drawn up or text adopted in the process.

- 265.** *The Committee notes that it has not received full information and reiterates its previous request for information, as set out in its 403rd Report, paragraph 304(a).*
- 266.** *Concerning the Committee's recommendation as to the de facto recognition of the SVATH pending legislative reform, the Committee notes that the Government reiterates that any application for registration of the SVATH will be examined in accordance with the applicable laws and regulations. The Committee recalls however, that note 4 of article 131 of the Labour Law provides that workers of every work unit can only have one of the three forms of representation: Islamic labour council, professional associations, or workers' representatives. The Committee notes that considering that at the Tehran and Suburbs Bus Company an Islamic Labour Council is recognized and active, it seems that the current law would not allow the registration and de jure recognition of another organization representing the company's workers, hence the Committee's recommendation concerning the de facto recognition of the SVATH, which it is bound to reiterate.*

The Committee's recommendations

- 267.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following:**
- (a) **Noting that two years after their arrest, Ms Kohler and Mr Paris remain in provisional detention, the Committee again firmly urges the Government to ensure that they are immediately released and to guarantee their safe return to their country and to keep it informed of the measures taken in this regard. The Committee further firmly urges the Government to ensure the immediate release of Mr Shahabi and Mr Saeedi, should their conviction be related to their trade union activities.**
 - (b) **The Committee reiterates its previous request for information, as set out in its 403rd Report, paragraph 304(a).**
 - (c) **The Committee again urges the Government to expedite the process of reviewing Chapter VI of the Labour Law; the bylaw on establishment, the scope of duties and powers, and the forms of operation of trade associations and their confederations; and the guidelines and procedures concerning arts, media, and culture professional organizations, with a view to repealing the provisions that impose trade union monopoly at any level and replacing them with provisions that recognize the right of all workers, to establish and join organizations of their own choosing. It requests the Government to provide information on the steps taken in this respect and to communicate any draft drawn up or text adopted in the process.**

- (d) The Committee once again urges the Government to ensure that the Syndicate of Workers of Tehran and Suburbs Bus Company (SVATH) can function without hindrance through its de facto recognition pending legislative reform, and by ensuring that its officials and members are not arrested, detained and prosecuted for legitimate trade union activities.
- (e) The Committee recalls the importance it attaches to the 1970 Resolution concerning Trade Union Rights and Their Relation to Civil Liberties and draws the Governing Body's attention to the serious and urgent nature of this case.

Case No. 3405

Interim report

Complaint against the Government of Myanmar presented by

- International Trade Union Confederation (ITUC) and
- Education International

Allegations: The complaint contains grave allegations of continuing attacks by the military authorities against trade unionists, workers and civil servants who are calling for the return to civilian rule following the coup d'état in Myanmar on 1 February 2021. The allegations include intimidation and threats against trade unionists, workers and civil servants to ensure their return to work and to renounce their participation in the Civil Disobedience Movement, suspension from posts and use of striker replacements, withdrawal of benefits and professional competency certificates, police lists of workers and trade unionists for arrest, imprisonment and detention and numerous deaths following interventions by the military and police forces in peaceful protests, including the torture and killing of union leaders

268. The Committee last examined this case at its March 2022 meeting, when it presented an interim report to the Governing Body [see 397th Report, paras 503–584, approved by the Governing Body at its 344th Session].¹⁰ The Committee recalls that it suspended its examination of this case after its last examination in light of the Governing Body's decision to appoint a Commission of Inquiry to examine the non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), among other Conventions [see 399th Report, para. 15, approved by the Governing Body at its 345th Session].

¹⁰ [Link to previous examination.](#)

The Governing Body took note of the report of the Commission of Inquiry at its 349th Session (October–November 2023). 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. The Committee also observes that several of the pending recommendations of the Commission of Inquiry concern matters raised in Case No. 3405, the examination of which may now be reactivated. In its 405th Report (March 2024, paragraph 16), considering the gravity and persistence of the matters involved in this case, the Committee requested the Myanmar military authorities to send their observations in relation to its previous recommendations and in light of the relevant recommendations of the Commission of Inquiry so that it may pursue its examination of this case in full knowledge of the facts at its next meeting.

- 269.** The International Trade Union Confederation (ITUC) provided new allegations in a communication dated 12 April 2024.
- 270.** The Ministry of Labour, Immigration and Population (MOLIP) and the Permanent Mission in Geneva provided a reply in communications dated 12 April, 27 and 29 May 2024.
- 271.** Myanmar has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 272.** At its March 2022 meeting, the Committee had made the following recommendations:

- (a) The Committee firmly urges the responsible military authorities to cease immediately the ongoing use of violence against peaceful protesters and to carry out independent investigations into the deaths of all the above-named workers and trade unionists killed in relation to protest actions and the exercise of their basic civil liberties, including fundamental freedom of association rights, and to provide detailed information on the steps taken in this regard and the outcome of the investigations.
- (b) The Committee firmly urges the repeal and amendment of section 505A of the Penal Code, section 124 of the Criminal Code, section 38(c) of the Electronic Transaction Act (ETA), the withdrawal of the surveillance powers that were restored to the wards and villages under the amended Ward or Village-tract Administration Law and the withdrawal of the declaration of the trade unions declared as unlawful so as to ensure full respect for the basic civil liberties necessary for the exercise of freedom of association, including freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal so that workers' and employers' organizations can carry out their activities and functions without threat of intimidation or harm and in a climate of complete security.
- (c) The Committee expects that all the cases of trade unionists and workers arrested or detained for action in relation to the restoration of their trade union rights and democracy in the country will be investigated and that steps will be taken without delay to ensure their immediate release. It requests to be informed of all steps taken to this end.
- (d) The Committee once again calls on the responsible authorities to reinstate any civil servants, healthcare workers or teachers dismissed or suspended for their participation in the CDM and to restore any benefits that may have been withdrawn.
- (e) The Committee recalls its previous recommendation that appropriate steps be taken to ensure that trade unionists and workers in the private sector are not penalized for having engaged in the CDM for the restoration of their trade union rights and requests to be informed of the specific measures taken in this regard.

- (f) Observing the magnitude of the task of reviewing all the cases brought before it, the Committee considers that the institution of an investigative authority independent of the military would be a necessary measure to bring justice to those who have peacefully exercised their rights of freedom of assembly, expression and association and requests to be informed of the measures taken in this regard.
- (g) The Committee urges the military authorities to recognize the critical importance of ensuring these rights and freedoms to the workers and employers of the country as a necessary prerequisite to any legitimate democracy and the sustainable development of the country.
- (h) The Committee draws the Governing Body's attention to the extreme seriousness and urgency of this case.

B. The complainant's new allegations

- 273.** In its communication dated 12 April 2024, the ITUC submits supplemental information regarding numerous attacks by the military authorities against trade unionists, workers and civil servants, including: intimidation and threats against trade unionists, workers and civil servants to ensure their return to work and to renounce their participation in the Civil Disobedience Movement, suspension from posts and use of striker replacements, withdrawal of benefits and professional competency certificates, police lists of workers and trade unionists for arrest, imprisonment and detention and numerous deaths following interventions by the military and police forces in peaceful protests, including the killing of union leaders.
- 274.** The ITUC alleges in particular that on 20 August 2023, the military-led State Administration Council (SAC) issued notification No. 161 (attached to the complaint) to establish a steering committee to respond to the ILO Commission of Inquiry on Myanmar (CoI) which includes specifically to coordinate actions "against organizations such as CTUM (Confederation of Trade Unions Myanmar) that is inciting international to give pressures on Myanmar and to stage demonstrations by using ILO platform".
- 275.** Basic civil liberties essential to the exercise of freedom of association have not been restored and trade unionists who were arbitrarily arrested and detained remain in prison, while more workers have been arrested under various criminal laws for acts related to their legitimate trade union activity. The ITUC refers in particular to the new sentence handed down by South Dagon Military Tribunal of seven years imprisonment with hard labour to the General Secretary of the Myanmar Industry, Crafts and Services Trade Union Federation (MICS-TUsF), Thet Hnin Aung after his re-arrest from Insein Prison on 23 June 2023.
- 276.** Trade unionists who were forced into hiding or exile with their passports or citizenship voided remain so today. Nor has the situation changed for trade union organizations at all levels which were dissolved, often replaced with employer-dominated unions or workplace committees that do not genuinely represent the workers' interests. The ITUC adds that those who have committed serious crimes against trade unionists, including sexual violence, torture or murder, have faced no consequences of any kind.
- 277.** The ITUC emphasizes that workers in Myanmar have no meaningful ability to exercise their right to associate and organize in law or in practice. The legislation and orders promulgated by the military-led SAC remain effective while more townships have been put under the state of emergency. The country's industrial zones, which produce goods for well-known brands worldwide, remain under martial law. Workers are working under a coercive environment, unable to exercise their freedom of association rights including civil liberties. As an example, the ITUC refers to a factory where 48 workers tried to organize a union to improve the workplace conditions in September 2023. They applied for registration of the basic labour

organization but the military transferred their personal information to the employer, which then dismissed 41 of the workers. Five soldiers entered another factory in October 2023, summoned seven workers who had raised complaints about wage theft, and accused them of organizing a protest and inciting riots. The workers were arrested and forced to sign a pledge not to engage in similar actions in the future. The soldiers threatened them with political charges and imprisonment if they refused to sign the pledge. There are several more such cases, which continue to this day.

278. According to the ITUC, arbitrary arrests and extortion by the military are being systematized since the enactment of the conscription laws, while accounts show that more than 4,600 people have been killed by the military since February 2021, including 659 women and 490 children with the real death toll being much higher. More than 20,000 opponents of the military, including 3,909 women, are detained.
279. On 10 February 2024, the military junta under the SAC enacted the People's Military Service Law (2010) for compulsory conscription of males (17–35 years old) and females (18–27 years old). The enacted law seeks to legitimize practices of forced recruitment of civilians to military trainings and conscription to militias which have been going on since the coup. Fourteen million youths in the country, including 7.7 million women, 6.3 million men accounting 26 per cent of the population will be subjected to conscription which will last from 24 months to up to 36 months if they are considered “experts” to provide military technician service. The service duration is extendable to maximum 5 years under emergency situation (article 3). Evasion of the conscription order is punishable with 5 years' imprisonment.
280. The Military Service Law (article 21(a)) provides for imposition of compulsory conscription on the population for a prolonged period of time within the framework of the national service programme that includes non-military services and work under vaguely formulated, undefined “states of emergency”. The broad scope of conscription provided in the law goes well beyond the exceptions provided for in Convention No. 29 (article 2(2)(a)). The Confederation of Trade Unions Myanmar (CTUM), the Myanmar Labour Alliance (MLA) and the National Unity Government (NUG) have denounced the conscription, which is aimed at forcing young civilians to defend the military regime that they have been rejecting for the last three years through peaceful means and public protests. According to the mapping of CTUM, within one month of the law's enactment, reports of forced conscription to military trainings have been reported in 25 townships. In Shan and Kachin state, and in Magway, Mandalay, Sagaing, Bago and Yangon region, soldiers stationed at the checkpoints and on the main roads stopped young passers-by and cars to search for youths and take them away. Between 11 and 14 Feb, 80 people have reportedly been taken away by soldiers from 6 townships in Mandalay. Some have remained incommunicado with their family, others were detained for hours at the ward administration or police station before their relatives paid for their release.
281. Trade unionists, students, activists, as well as civil servants, railway, garment and health workers who have been dismissed, blacklisted or driven out of their dormitories for taking part in the strikes, are fleeing the country. The practice of forced recruitment of young people for military training is on the rise. In Yangon region, workers are being asked by factory management to fill in and return the biometric enrolment form of the Military Council's Immigration and Labour Department. On 13 February, 17 male factory workers aged 18 were summoned from their dormitories in Industrial Zone 1 in South Dagon Township by a joint team of army, police and township administration officials.
282. In regions where militia conflicts with armed ethnic organizations have grown intense, such as in Naung Tayar Township in Shan state, villagers are threatened by soldiers that they will be

portered if they try to leave the village. The ITUC makes detailed allegation on the treatment of Rohingya and indigenous peoples in the implementation of the law. The ITUC adds that large numbers of young people and factory workers from Rakhine State were arrested by the military and police upon their return from Yangon. On 18 February, 76 of them were arrested on arrival at Kyaukphyu airport. A further 26 were arrested at the same airport the following day and the arrest on 20 February of a hundred young people at a checkpoint in Yangon's Shwe Phyi Thar Township, were mostly workers on their way back to Rakhine State by bus.

- 283.** These developments, violating trade union rights, civil liberties and prohibition of forced labour, undermining further the environment for the meaningful exercise of freedom of freedom of association, are occurring in the context of the published ILO Commission of Inquiry report to which the military authorities replied to the ILO office on 29 February 2024, claiming that it accepted the recommendations and had made progress on enforcement of Conventions Nos 87 and 29. The military authorities have shown no evidence of measures being taken to cease violence and reverse the laws and practices specified in the CoI's recommendations, paras 642–645.
- 284.** In conclusion, the ITUC urges the Committee to disregard any claims made by the Myanmar military authorities of enforcing Myanmar's obligations under these two Conventions given its absence of recognition by the UN General Assembly and the ILC and rather to urge them to immediately revoke the Military Service Law and cease military recruitment and forced conscription under the law and immediately cease or reverse any measures or actions that violate Myanmar's obligations under Conventions Nos 87 and 29 specified in the CoI's recommendations.

C. The reply from Myanmar

- 285.** In a communication dated 12 April 2024, the Permanent Mission in Geneva transmits information from the Ministry of Labour that it has conducted extensive awareness campaigns to ensure the employers and workers are widely aware that they can freely establish labour organizations according to the Labour Organization Law, 2011. Between December 2023 and February 2024, awareness-raising workshops were conducted in 268 workshops and factories and 16,860 workers and employers attended. Moreover, the Ministry is currently conducting the distribution of educational pamphlets on the Labour Organization Law to ensure that workers are aware of it. For the workers who wish to form labour organizations, they have the right to form the organizations in accordance with the law, and the Ministry processes applications promptly without any restrictions. In 2024, as of 1 April 2024, two new basic labour organizations had been registered and certificates were issued to GTIG Guohua Glory Garment and Gysen Garment basic labour organizations in Shwepyithar Township, Yangon.
- 286.** To resolve the collective bargaining and labour disputes that may arise in factories and workshops, employers, workers and relevant departments collaborate to ensure the employers resolve the disputes in compliance with labour laws administered by the Ministry of Labour rather than file the complaint directly with the Myanmar Police Force for resolution. The military authorities state that no legislative amendments or new legislations in connection with the matters related to labour affairs has been introduced. The relevant mechanisms to enforce the labour related laws have been functioning and there is no ground to assume that Myanmar is not complying with ratified ILO Conventions from the legislative point of view. The military authorities add that they have responded to the recommendations of the Commission of Inquiry that some recommendations of legislative nature will be reviewed in accordance with their internal procedures.

- 287.** With regard to the so-called CDM movement, the military authorities reiterate that the movement calls all workers including public servants to stop their services including essential public services like healthcare services to the population for unlimited period of time. The Labour Organization Law stipulates that strikes shall be illegal if they involve essential services and those whose interruption are liable to endanger the life, health and security of the people. It is internationally accepted that the right to strike is not absolute and it may be subject to certain legal conditions or restrictions in essential services. The length of the strike is also taken into account and some countries choose to prohibit a strike in a service when its length has created a situation that is akin to an emergency for the whole part of the population.
- 288.** The military authorities indicate that certain civil servants were suspended or dismissed not for exercising their rights lawfully, but for their involvement in the so-called CDM movement committing offenses such as neglecting their duties, abandoning the workplace, violating the civil servant rules relating working hours and absence without leave. In accordance with the Civil Service Personnel Law and Rules, Departmental Enquiry was undertaken and those found guilty received the appropriate disciplinary measures, while those proven innocent were reinstated in their respective departments. If the civil servants are dissatisfied with the penalty or disciplinary measures, they can lodge appeals in accordance with the Civil Service Personnel Law and Rules.
- 289.** The military authorities add in this respect that according to the Ministry of Education, 119,615 civil servants were dismissed for absence without leave, without sufficient reasons under Civil Service Personnel Law. 7,904 civil servants were reinstated in their positions following their appeals. As of November 2023, a total of 6,120 healthcare personnel were reinstated and the Ministry of Health has been also taking care of those who face legal charges in collaboration with relevant heads of department, local administrative departments and prosecution organizations in their proceedings.
- 290.** The military authorities recall that civil servants have the right to submit, defend and appeal in respect of imposed disciplinary penalty for failure to observe code of conduct, breaching disciplines and failure to perform duty in accordance with the Civil Service Personnel Law.
- 291.** Myanmar further provides additional information for the following individuals:
- (a) On 3 March 2021, Daw Myo Myo Aye was charged with (FIR) 62/2021 at Shwe Pyi Thar Township Police Station under section 505(A) of the Penal Code. She was arrested on 15 April 2021 and her case was sent to the Court. Then, with the order No. (147/2021) of the State Administration Council, the case was closed and she was released on 18 October 2021.
 - (b) On 14 March 2021, a group of approximately 200 rioters attacked the administration office located in Bayin Naung Road, Ward No. 6, Shwe Pyi Thar Township with swords, staves and Molotov cocktails and setting fire as they carried out riotous violence. The security forces took necessary measures. Among the crowd, Zaw Zaw Htwe, 21 years old, SUNTIME JCK Co., Ltd worker was injured and died. A death report (No.15/2021) was filed at Shwe Pyi Thar Police Station and forwarded it to Shwe Pyi Thar Township Court. The Court issued an order on 18 March 2022 stating that the death happened due to riot control measures taken in accordance with section 76 of the Penal Code.
 - (c) Myanmar Industrial Craft and Service Trade Unions Federation (MICS-TUzf) Secretary-General Thet Hnin Aung was arrested at the Joint Checkpoint in Paund Township, Mon State on 15 June 2021. It was revealed that he received the financial assistance from Khin Kyaw, Chief of so-called UNRA armed group and transported 12 trainees to attend the PDF

(People's Defence Force) terrorist training in KNU Brigade 5 area. He was charged under section 17(1) of the Unlawful Associations Act. On 5 December 2022, Thet Hnin Aung was sentenced to two years imprisonment and imposed fine of (20,000) Kyats. Thet Hnin Aung was released on 23 March 2023 after completing his sentence. It was further verified that Thet Hnin Aung sent 4 friends and 11 young people to attend the PDF terrorist training school near War Mee Koe village located in KNU Brigade 5 area. Moreover, it was also found out that Thet Hnin Aung took the lead in the riots in Mandalay with inciting text. For those reasons, he was charged under section 52(a) of the Anti-Terrorism Law and section 505-A of the Penal Code, and on 15 November 2023, Thet Hnin Aung was sentenced to serve 7 years imprisonment for both cases for his involvement in unlawful activities, in accordance with the law.

292. Subsequently, in a communication received on 27 May 2024, the Permanent Mission in Geneva transmitted additional information in reply to the ITUC additional allegations wherein it asserts that the military authorities only facilitate applications to dissolve labour organizations upon request from respective labour organization executive committees and action plans have been set up to ensure to freely organize labour organizations across the country. In addition to previous information provided on the number of labour organizations in the country, two newly formed basic garment labour organizations were issued certificates in 2024.
293. As regards the allegation that the military transferred personal information of workers attempting to form an organization to the employer and that they were later dismissed, the military authorities state that as no meaningful facts such as the name of the factory, and date, were provided, they are not in a position to respond. As regards the allegations related to military enrolment by factory management, it is stated that these allegations were based on fake news disseminated by media in exile aimed at discrediting them and creating unnecessary concerns among the public and workers in industrial zones following the enactment of the People's Military Service Law and that no such inspection was carried out in the industrial zone on that day.
294. On 24 February 2024, the Spokesperson of the Information Team announced that anyone who has the knowledge of forced recruitment can file a complaint with the Central Body and the 1st batch of training is composed only of volunteers, thus there are no Bengali recruits.
295. It is recalled that the 2011 Labour Organization Law sets out the framework for workers exercise of freedom of association and the Settlement of Labour Disputes Law requires the setting up of Workplace Coordinating Committees (WCCs) for resolving labour disputes. Interest disputes that cannot be resolved by WCCs are submitted to Township Conciliation Bodies, Arbitration Bodies and the tripartite Arbitration Council.
296. In a communication received on 29 May 2024, the military authorities refer to the allegations concerning forced labour and the provisions of the Forced Labour Convention. The military authorities state that the People's Military Service Law was enacted bearing this Convention in mind. They contest the allegations as inaccurate and primarily based on assertions from anti-government organizations. These claims are aimed at tarnishing the reputation of the Tatmadaw and should be considered as unsubstantiated allegations. If any violations occurred, actions would be taken against perpetrators regardless of their ranks in accordance with the laws.

D. The Committee's conclusions

297. *The Committee recalls that the serious allegations in this case concern continuing attacks by the military authorities against trade unionists, workers and civil servants calling for the return to*

civilian rule following the coup d'état in Myanmar on 1 February 2021. The grave allegations include killing, torture and other acts of brutality against trade unionists and workers who have participated in the CDM. This case concerns further serious allegations of numerous arrests, imprisonment and detention of workers and trade unionists for their participation in peaceful protests and acts of intimidation and threats by the security forces and military authorities against protesting workers and civil servants to ensure their return to work and to renounce their participation in the CDM, including through dismissals, suspensions, use of striker replacements and withdrawal of benefits.

298. The Committee takes note of the report of the Commission of Inquiry (Towards Freedom and Dignity in Myanmar) appointed by the Governing Body to examine allegations of non-observance by Myanmar of Convention No. 87, among other Conventions, which was adopted on 4 August 2023. The report highlights the crucial link of its recommendations concerning Convention No. 87 with the broader mandate of the ILO stating that “the Commission considers that freedom of association lies at the heart of democracy and the rule of law and is a prerequisite for social dialogue, collective bargaining and tripartite cooperation”. The Committee notes that many matters in the present case were examined by the Commission of Inquiry, which after a detailed examination confirmed a number of the deep concerns raised by the Committee in the present case. In this respect, the Committee observes with great concern the Commission’s findings and takes due note of the Commission’s recommendations relevant to the matters addressed in the case before it, namely, the call on the military authorities to immediately cease all forms of violence, including gender-based violence, torture and other inhumane treatment against trade union leaders and members and other persons in relation to the exercise of legitimate workers’ or employers’ activities, including in particular, violence perpetrated in the context of the suppression of peaceful public protests and demonstrations, at the time of arrests, during detention, as well as military attacks against civilian infrastructure, which all together create a climate of violence and terror that undermines the effective exercise of freedom of association. As regards legislative matters, the Commission called on the military to revoke all military orders or other measures, decreed since February 2021 and identified as restricting freedom of association and the basic civil liberties of trade unionists and revoke the withdrawal of citizenship and return travel documents to the trade union leaders and members concerned without delay. Finally, the Commission called for an end to all forms of interference in the establishment, administration and functioning of trade unions at all levels, including interference in the election of trade union leadership, labour dispute resolution, conduct of collective action and administrative dissolution or suspension of trade unions.
299. The Committee notes with deep concern the latest information provided by the complainants in its April 2024 communication concerning continuing attacks by the military authorities, including: intimidation and threats against trade unionists, workers and civil servants to ensure their return to work and to renounce their participation in the Civil Disobedience Movement, suspension from posts and use of striker replacements, withdrawal of benefits and professional competency certificates, police lists of workers and trade unionists for arrest, imprisonment and detention and numerous deaths following interventions by the military and police forces in peaceful protests, including the killing of union leaders. The complainants affirm that the basic civil liberties essential to the exercise of freedom of association have not been restored and trade unionists who were arbitrarily arrested and detained remain in prison, while more workers have been arrested under various criminal laws for acts related to their legitimate trade union activity.
300. The ITUC further draws attention to attacks against the main trade union movement through notification No. 161 issued by the military-led State Administration Council (SAC) on 20 August 2023 to establish a steering committee to respond to the ILO Commission of Inquiry on Myanmar which includes specifically to coordinate actions “against organizations such as CTUM (Confederation of Trade Unions Myanmar) that is inciting international to give pressures on Myanmar and to stage

demonstrations by using ILO platform". The Committee must express the deepest concern at any measure aimed at retaliating against the CTUM for its use of the ILO constitutionally based supervisory machinery and recalls that the International Labour Conference has pointed out that the right of assembly, 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, constitute civil liberties which are essential for the normal exercise of trade union rights (resolution concerning trade union rights and their relation to civil liberties, adopted at the 54th Session, 1970 [**Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 77]). The Committee further recalls the Governing Body decision taking note of the report of the Commission of Inquiry and similarly urges the military authorities to desist from any and all acts of retaliation against any individual or organization which provided information to the Commission of Inquiry or continues to engage in the ILO procedures ensuring follow-up to the Commission's recommendations.

301. As regards the sentencing and imprisonment of trade union leaders, the ITUC refers in particular to the new sentence handed down by South Dagon Military Tribunal of seven years imprisonment with hard labour to the General Secretary of the Myanmar Industry, Crafts and Services Trade Union Federation (MICS-TUsF), Thet Hnin Aung after his re-arrest from Insein Prison on 23 June 2023. The Committee notes the information concerning two of the scores of unionists previously alleged to have been arrested provided by the military authorities. According to the military, Daw Myo Myo Aye was released in October 2021. As for Thet Hnin Aung, the military authorities state that he was arrested at the Joint Checkpoint in Paund Township, Mon State on 15 June 2021 where it was revealed that he received the financial assistance from Khin Kyaw, Chief of so-called UNRA armed group and transported 12 trainees to attend the PDF terrorist training. He was charged under section 17(1) of the Unlawful Associations Act and sentenced to two years imprisonment and imposed a fine of 20,000 kyats on 5 December 2022. After his release on 23 March 2023, the military authorities state that it was further verified that he had sent 4 friends and 11 young people to attend another PDF terrorist training school and that he took the lead in the riots in Mandalay with inciting text. He was therefore charged under section 52(a) of the Anti-Terrorism Law and section 505-A of the Penal Code, and on 15 November 2023, sentenced to serve 7 years imprisonment for his involvement in unlawful activities, in accordance with the law.
302. The Committee must recall the deep concern it had expressed in its previous examination of this case in relation to section 505-A of the Penal Code which was amended by the military authorities in a manner containing broad language permitting threat and sanction against anyone who criticizes the military action and therefore called for its repeal. The Committee notes that, in his first trial, Thet Hnin Aung was charged under the Unlawful Associations Act and on the second instance, for actions similarly described by the Government, he was charged under the Anti-Terrorism Law and section 505-A of the Penal Code before a military tribunal in a trial that has been described as devoid of due process. The Committee deeply deplores the circumstances of his trial and the absence of judicial decisions concerning the precise nature of his condemnation. It recalls its previous recommendation that steps be taken without delay to ensure the immediate release of trade unionists and workers arrested or detained for action in relation to the restoration of their trade union rights and democracy in the country, as well as the ILO Governing Body's call on the military authorities to ensure the release of Thet Hnin Aung, and requests to be informed of all steps taken to this end and a copy of the judgment against Thet Hnin Aung.
303. The Committee notes the complainant's further allegations that those who have committed serious crimes against trade unionists, including sexual violence, torture or murder, have faced no consequences of any kind, while trade unionists who were forced into hiding or exile with their passports or citizenship voided remain so today. Moreover, the situation has not changed for trade

union organizations at all levels which were dissolved, often replaced with employer-dominated unions or workplace committees that do not genuinely represent the workers' interests.

304. As regards the killing of trade unionists and worker activists, the Committee deeply regrets that the military authorities have not provided detailed information in relation to these serious allegations other than the information in one out of over two dozen killings alleged when it last examined this case (see 397th Report, para 560) and in that case (Zaw Zaw Htwe) merely indicating that she was among a group of rioters and that the Court issued an order on 18 March 2022 stating that the death happened due to riot control measures taken in accordance with section 76 of the Penal Code. The Committee must emphasize in the strongest of terms 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]. The Committee once again urges the responsible military authorities to cease immediately the ongoing use of violence against workers and trade unionists participating in peaceful protests and to have independent investigations carried out into the allegations of violence against them with a view to determining responsibilities and punishing the perpetrators. The Committee requests detailed information on the steps taken in this regard and the outcome of the investigations. The Committee, further noting the issue of revocation of citizenship of trade unionists raised in the conclusions of the Committee on the Application of Standards and the Commission of Inquiry recommendations, calls on the military authorities to reinstate citizenship to the trade unionists and workers concerned and to indicate the steps taken in this regard.
305. The Committee further regrets that the military authorities have not provided any information in relation to its previous recommendations to amend or revoke legislative amendments and decrees issued by them that were identified as in violation of freedom of association. The Committee must therefore once again firmly urge the repeal and amendment of section 505-A of the Penal Code, section 124 of the Criminal Code, section 38(c) of the Electronic Transaction Act (ETA), the withdrawal of the surveillance powers that were restored to the wards and villages under the amended Ward or Village-tract Administration Law and the withdrawal of the declaration of the trade unions declared as unlawful so as to ensure full respect for the basic civil liberties necessary for the exercise of freedom of association so that workers' and employers' organizations can carry out their activities and functions without threat of intimidation or harm and in a climate of complete security.
306. The Committee takes due note of the complainant's general conclusion that workers in Myanmar have no meaningful ability to exercise their right to associate and organize in law or in practice. The legislation and orders promulgated by the military-led SAC remain effective while more townships have been put under the state of emergency. The country's industrial zones, which produce goods for well-known brands worldwide, remain under martial law and the complainant provides examples of situations where workers in such a coercive environment are unable to exercise their freedom of association rights, including civil liberties. Trade unionists, students, activists, as well as civil servants, railway, garment and health workers who have been dismissed, blacklisted or driven out of their dormitories for taking part in the strikes, are fleeing the country. The ITUC further refers to general and rampant measures of forced recruitment in the military through the People's Military Service Law.
307. As regards the allegations of retaliation and penalties for civil servants not returning to work, the Committee notes the military authorities' reiteration that the CDM movement called on all workers including public servants and those in essential public services to stop their services. In accordance with the Civil Service Personnel Law and Rules, Departmental Enquiry was undertaken and those found guilty received the appropriate disciplinary measures, while those proven innocent were reinstated in their respective departments. If the civil servants are dissatisfied with the penalty or

disciplinary measures, they can lodge appeals in accordance with the Civil Service Personnel Law and Rules. The military authorities add in this respect that according to the Ministry of Education, out of the 119,615 civil servants dismissed for absence without leave, without sufficient reasons, 7,904 civil servants were reinstated in their positions following their appeals. As of November 2023, a total of 6,120 healthcare personnel were reinstated and the Ministry of Health has been also taking care of those who face legal charges in collaboration with relevant heads of department, local administrative departments and prosecution organizations in their proceedings.

- 308.** As regards the retaliatory measures against civil servants for their engagement in the CDM, the Committee recalls its conclusions from its previous examination that, for the contribution of trade unions and employers' organizations to be properly useful and credible, they must be able to carry out their activities in a climate of freedom and security. This implies that, insofar as they may consider that they do not have the basic freedom to fulfil their mission directly, trade unions and employers' organizations would be justified in demanding that these freedoms and the right to exercise them be recognized and that these demands be considered as coming within the scope of legitimate trade union activities [see **Compilation**, para. 75]. The Committee takes due note of the information provided of the number of civil servants that have been reinstated in their positions and calls on the responsible authorities to continue to take steps to ensure the reinstatement of all remaining civil servants, healthcare workers and teachers dismissed or suspended for their participation in the CDM and to restore any benefits that may have been withdrawn.
- 309.** Taking due note of the latest allegations relating to an overall climate in which it is not possible to exercise freedom of association and noting that the military authorities have not provided any information in relation to the remaining recommendation to ensure a climate for the full exercise of freedom of association for all workers in the public and private sectors other than to refer to the framework provided by the Labour Organization Law and the Settlement of Labour Disputes Law, the Committee once again calls on Myanmar to take the appropriate steps in this regard and to keep it informed of the specific measures taken.
- 310.** In conclusion, the Committee deplores the continuing steps taken to suppress trade union rights since its last examination of the case and the prolongation and expansion of the state of emergency, which have led to a complete denial of any possible protection of the civil liberties necessary for workers and employers to be able to carry out their trade union activities in a climate of complete freedom and security. The Committee urges the military authorities to fully recognize the critical importance of ensuring these rights and freedoms to the workers and employers of the country as a necessary prerequisite for the restoration of democracy and the exercise of trade union activities and to take all necessary steps to create a climate where freedom of association can be fully and meaningfully restored in Myanmar.

The Committee's recommendations

- 311.** In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee urges the military authorities to desist from any and all acts of retaliation against any individual or organization which provided information to the Commission of Inquiry or continues to engage in the ILO procedures ensuring follow-up to the Commission's recommendations.
 - (b) The Committee recalls its previous recommendation that steps be taken without delay to ensure the immediate release of trade unionists and workers arrested or detained for action in relation to the restoration of their trade union rights and democracy in the country, as well as the call on the military authorities to ensure

the release of Thet Hnin Aung, and requests to be informed of all steps taken to this end and a copy of the judgment against Thet Hnin Aung.

- (c) The Committee once again urges the responsible military authorities to cease immediately the ongoing use of violence against workers and trade unionists participating in peaceful protests and to have independent investigations carried out into the allegations of violence against them with a view to determining responsibilities and punishing the perpetrators. The Committee requests detailed information on the steps taken in this regard and the outcome of the investigations. The Committee, further noting the issue of revocation of citizenship of trade unionists raised in the conclusions of the Committee on the Application of Standards and the Commission of Inquiry recommendations, calls on the military authorities to reinstate citizenship to the trade unionists and workers concerned and to indicate the steps taken in this regard.
- (d) The Committee once again firmly urges the repeal and amendment of section 505-A of the Penal Code, section 124 of the Criminal Code, section 38(c) of the Electronic Transaction Act (ETA), the withdrawal of the surveillance powers that were restored to the wards and villages under the amended Ward or Village-tract Administration Law and the withdrawal of the declaration of the trade unions declared as unlawful so as to ensure full respect for the basic civil liberties necessary for the exercise of freedom of association so that workers' and employers' organizations can carry out their activities and functions without threat of intimidation or harm and in a climate of complete security.
- (e) The Committee calls on the responsible authorities to continue to take steps to ensure the reinstatement of all remaining civil servants, healthcare workers and teachers dismissed or suspended for their participation in the CDM and to restore any benefits that may have been withdrawn.
- (f) Recalling the importance of ensuring a climate for the full exercise of freedom of association for all workers in the public and private sectors, the Committee once again calls on Myanmar to take the appropriate steps in this regard and to keep it informed of the specific measures taken.
- (g) The Committee urges the military authorities to fully recognize the critical importance of ensuring these rights and freedoms to the workers and employers of the country as a necessary prerequisite for the restoration of democracy and the exercise of trade union activities and to take all necessary steps to create a climate where freedom of association can be fully and meaningfully restored in Myanmar.
- (h) Noting with deep regret the failure of the military authorities to implement the recommendations of the Commission of Inquiry and of this Committee and the continuing situation of extreme violence and repression in the country, the Committee draws the Governing Body's attention to the seriousness and urgency of this case so that it may consider any further measures to secure compliance therewith.

Case No. 3442

Definitive report

Complaint against the Government of Pakistan presented by

- Building and Wood Workers' International (BWI)
- the Pakistan Workers' Federation (PWF) and
- the Pakistan Federation of Building and Wood Workers (PFBWW)

Allegations: The complainant organizations denounce violation of trade union and collective bargaining rights of the Awami Labour Union and its members at the Karot Hydropower Plant

312. The complaint is contained in a communication dated 17 August 2022 from Building and Wood Workers' International (BWI), the Pakistan Workers' Federation (PWF), and the Pakistan Federation of Building and Wood Workers (PFBWW). The PFBWW sent additional information in a communication dated 12 April 2024.
313. The Government forwarded its observations in a communication dated 16 January and 22 April 2024.
314. Pakistan has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

315. In a communication dated 17 August 2022, the BWI, the PWF and the PFBWW denounce a five-year struggle for workers employed at the Karot Hydropower Plant in the Rawalpindi District, Province of Punjab, to exercise their trade union rights. The Karot Hydropower Plant was a project financed by the International Finance Corporation (IFC), the Silk Road Fund, the Export-Import Bank of China and China Development Bank. The construction work at the project completed in 2022 and the hydropower plant has started generating electricity. According to the complainants, the workers formed the Awami Labour Union (ALU) in May 2017 in response to numerous violations of the labour law during the construction work period, including the failure to provide valid employment contracts, the lack of overtime pay, and violations of occupational health and safety rules. However, the ALU was only registered a year later by the Registrar of the Labour Department when compelled to do so by order of the Rawalpindi Labour Court in May 2018. The complainants allege that, despite multiple attempts by the ALU to engage with the management of the company on labour law violations, it took the intervention of the IFC for any meetings to start. While there were some positive changes concerning some of the union's complaints, violations of trade union rights remained, including difficulties for the union leaders to access the worksite, making it effectively impossible for the union to access the workplace and communicate with the union members, dismissal of 200 union members without justification (when the management of the Karot hydropower project terminated more than 2,400 workers in December 2021, during the

COVID-19 pandemic, under the guise of “termination of non-essential workers”, without paying their termination benefits or annual leave dues, which constitutes a gross violation of the labour law of Punjab), and interference in trade union activities by the employer through its support to the creation of a parallel, management dominated union.

- 316.** With regard to the registration of the ALU, the complainants specify that, in its decision of 29 May 2018, the Rawalpindi Labour Court found that the Registrar of the Labour Department violated the labour law when it refused to register the ALU. The Court found the Registrar’s motives – that the ALU could not be registered in Rawalpindi because the Karot hydropower project (and the union membership) spanned multiple districts – to be in contravention of the Punjab Industrial Relations Act (PIRA). Furthermore, the Court found that the ALU fulfilled all the requirements for registration and nothing in the PIRA prohibited the Registrar of the Labour Department to register the union just because of jurisdiction. The Court found that “the Law does not demand that at the time of registration of any trade or labour union permanent residents of its members should be looked into or has any weight. Permanent residents of members of any Labour Union has no value for the purpose of Registration of Union.” The Court further held “it is fundamental rights of employees to frame the Labour Union just to protect their lawful rights and such right could not be withheld merely on the ground of lack of jurisdiction appellant could not be restraint from the Registration of their Labour Union which is their fundamental right as guaranteed by the Constitution of the Islamic Republic of Pakistan”. On 9 June 2018, the Office of the Registrar of Trade Unions, following the judgment, officially registered the ALU, China Three Gorges Corporation Karot Power Company Private Limited (KPCL) (hereafter “the company”). The ALU affiliated with the PFBWW.
- 317.** According to the complainants, following the registration, the company committed several violations of the labour law and international labour standards. The ALU union members and leaders were targeted and harassed with threats of termination and fabrication of legal cases against them. Six months after registration, workers were still not allowed to undertake any union activities at the worksite or even in residential areas. Neither the general secretaries nor the presidents of the ALU or the PFBWW were allowed on the worksite to meet with union members, conduct legitimate union activities or meet with the management to discuss grievances.
- 318.** The PFBWW, through the BWI, requested the IFC to intervene to compel the company to meet with the ALU to address the labour law violations. After the IFC’s intermediation, several meetings were held between the company, the ALU and the PWF. During a meeting held in March 2019, the company disregarded the charter of demands and instead demanded that the ALU provide the approved list of office bearers and a complete list of union members. The ALU representatives replied that all names and paperwork had been supplied to the Labour Department, and the Registrar of trade unions had already officially informed the company, with the legal registration certificate and the list of union office bearers. The ALU replied that it would not supply additional information as members had been threatened to resign from the union which is an unfair labour practice on the part of the company according to the law. According to the complainants, the company asserted that it would not negotiate on workers’ demands until such lists were provided and ended the meeting with no conclusion. The complainants denounce the intention of the company to use the union to obtain information that would enable it to identify unionized workers and target them.
- 319.** The complainants report that following other meetings between the company’s representatives, the ALU and the PWF, incremental changes were made; however, violations of fundamental trade union rights persisted. In particular, the complainants allege that ALU and PFBWW representatives were unable to freely enter the premises and the heavy military

presence on the worksite created an environment of intimidation. If meetings were arranged, security protocols were so lengthy and cumbersome that it took hours to clear before a meeting could be held. This difficulty to access union members and workers was still a reality two years later, as the ALU President was still required to request permission two days prior to be able to enter the worksite at all. This denial of access to the company worksite for union leadership and organizers, and the cumbersome security measures and prior notice requirements are serious violations of freedom of association. In its latest communication of April 2024, the PFBWW indicates that it endeavours to maintain, via the ALU, regular contact with the workers at the Karot Hydropower Plant, as ALU's President and other union officials are still working on the site.

- 320.** Furthermore, the complainants allege serious interference by the company. Two years after it was formed and over a year after it was formally registered, when the ALU reiterated its need to continue with the collective bargaining process with the company, it was informed that a new union, named Social Hydro Labour Union (SHLU), had been formed and was registered only a week after its paperwork had been sent to the Registrar of trade unions. According to the ALU, no workers at the worksite knew of this other union. The swiftness of the registration of the SHLU and its rapid recognition by the company led the ALU to have real doubts as to the independence and legitimacy of the SHLU. As a result, in December 2019 the ALU sent a letter to the Registrar of trade unions questioning the legitimacy of the SHLU and demanding its de registration. In addition, the complainants assert that the company directly facilitated meetings between the IFC and the SHLU officials during an IFC investigation in Pakistan in April 2022, including on the use of company resources for the benefit of the SHLU. The complainants regret that the company had not ensured such opportunities for the incumbent union, the ALU and the PFBWW. In their view, the fact that the company had facilitated access and engagement of the SHLU with the workforce and the IFC investigators – while not inviting the ALU – is a clear indication of favouritism.
- 321.** The complainants further denounce the Government's violation of the right to collective bargaining. The complainants recall that the ALU has submitted paperwork to the authorities demonstrating that it meets the threshold to be the bargaining agent for the workers in the company – the union had submitted evidence of 1,272 members, easily exceeding the one third of the total number of workers necessary under the law to be deemed the collective bargaining agent. As such, the authorities should obtain the company's recognition of the ALU for collective bargaining purposes. However, the company refused to recognize the ALU as the collective bargaining agent and the sole union on the worksite at that time. In its latest communication, the PFBWW informs that since the construction work at the project was completed in 2022 and work at the site is over, there is no need to secure recognition as collective bargaining agent or to hold the referendum anymore.
- 322.** The complainants consider that the persistent interference by the company and subsequent lack of action by the Government in ensuring workers' fundamental trade union rights is of serious concern. Workers have been trying to ensure labour rights and protections as guaranteed under the labour law and under Pakistan's international labour obligations for five years. They have tried various paths including the local court and the IFC grievance process to no avail. The complainants demand that the Government review and enforce its labour laws, ensure that all dismissals shown to be in violation of freedom of association in this case are reversed, and ensure that recognition and good faith negotiations are conducted between the ALU and the company. Furthermore, the Government should ensure that no further intimidation, harassment or interference take place at the company worksite.

- 323.** The complainants are of the view that, while the Karot hydropower project concluded its construction work in June 2022 and has commenced its commercial operation, these issues will continue as there are other projects approved by the IFC in the area with the same employer and financiers, thus the violations of trade union rights will likely be replicated. Therefore, the Committee should intervene as a matter of urgency in this case to provide workers with a remedy and to prevent the repetition of similar violations on future projects by the same actors.

B. The Government's reply

- 324.** In its communications dated 16 January and 22 April 2024, the Government provided the following information: The Karot Hydropower Plant project falls under the jurisdiction of the Directorate General of Labour Welfare, operating within the Labour and Human Resource Department of the Government of Punjab. The Registrar of trade unions, functioning under the said Directorate, has communicated that no complaints regarding interference, harassment, workplace access, or management violations under national law have been received from the trade unions, namely the ALU and the SHLU, at the Registrar's office in Rawalpindi.
- 325.** With regard to the allegations related to collective bargaining, the Government forwards the indication from the Registrar of trade unions that the ALU was formally registered on 9 June 2018 after it fulfilled all legal requirements mandated by the PIRA. The office bearers of the ALU applied for a collective bargaining agent certificate on 16 October 2018. However, concurrently, an application for the registration of another trade union, the SHLU, was submitted to the Registrar in the same company. The SHLU was registered on 30 August 2019. The registration of the second union rendered the application of the ALU for the issuance of a collective bargaining agent certificate ineffective. The SHLU applied for a secret ballot to determine the collective bargaining agent in the company in 2019. The referendum process commenced on 20 December 2019 and continued until 1 August 2022. Both unions participated in the meetings for the referendum proceedings. The Registrar had initially scheduled the referendum for 9 August 2022, but the company requested a postponement to 18 August 2022, citing the need for the submission of the cost for the secret ballot. Despite the accepted request for postponement, the company failed to submit the required cost, leading to the non-execution of the referendum. On three occasions, the Registrar of trade unions called upon the office bearers of both trade unions and the management of the company to attend meetings for the referendum and collective bargaining agent determination through letters dated 18 August, 1 September and 31 October 2023. However, none of the unions or the company attended the scheduled meetings. Considering the above, it appears to the Government that neither the office bearers of the trade unions nor the management of the establishment are inclined towards conducting a referendum through a secret ballot for the determination of a collective bargaining agent.

C. The Committee's conclusions

- 326.** *The Committee notes that in this case, the complainants – namely Building and Wood Workers' International (BWI), the Pakistan Workers' Federation (PWF), and the Pakistan Federation of Building and Wood Workers (PFBWW) – allege serious violations of trade union rights of an affiliate organization, the Awami Labour Union (ALU), including difficulties for a trade union to get its registration until a court order, cumbersome security measures and prior notice requirements making it effectively impossible for the union representatives to access the workplace and communicate with the union members, the harassment of union leaders and members, the*

termination work of 200 union members during a mass collective dismissal without justification, and acts of interference by the employer.

- 327.** *In their communications dated 17 August 2022 and 12 April 2024, the BWI, the PWF and the PFBWW allege that workers employed at the Karot Hydropower Plant in the Rawalpindi District, Province of Punjab, have struggled to exercise their trade union rights since 2017. The Committee notes the allegation that the workers formed the ALU in May 2017 during the construction work in response to numerous labour violations, including the failure to provide valid employment contracts, the lack of overtime pay, and violations of occupational health and safety rules. However, the ALU was only registered a year later by the Registrar of the Labour Department following an order of the Rawalpindi Labour Court in May 2018. The Committee notes the indication that, in its decision the Rawalpindi Labour Court found that the Registrar of trade unions violated the Punjab Industrial Relations Act (PIRA) when it refused to register the ALU. The Committee notes that the Office of the Registrar of trade unions, following the judgment, officially registered the ALU on 9 June 2018. While it understands that the process for registering the ALU complied with the requirements of the PIRA (section 9) concerning recourse to the labour courts following a refusal by the administration to register a union, and the recourse eventually resulted in the proper registration of the union, the Committee regrets the time taken to register the union, which probably had an impact on the ability of its representatives to carry out their activities in defence of their members' interests during a year.*
- 328.** *The Committee notes the allegations that, following the registration, the company committed several violations of the labour law and international labour standards relating to the exercise of trade union rights. In particular, the Committee notes with concern the allegation that ALU union members and leaders were targeted and harassed with threats of termination and fabrication of legal cases against them. It notes that the BWI and the PFBWW filed a complaint to the Office of the Compliance Advisor Ombudsman of the IFC in relation to the company's compliance with the IFC's Performance Standard 2 on Labour and Working Conditions (attached to the present complaint), denouncing the mass collective dismissal of 2,410 workers, including 200 union members, in December 2021 without justification. The Committee notes the allegations that the 2,410 workers were forcibly asked to leave the worksite and take all their personal belongings without any information about the future of the project. This termination was undertaken during the COVID-19 pandemic allegedly under the guise of termination of employment of non-essential workers. Most of the workers were already working for two to three years and were not paid termination benefits or dues, in gross violation to the labour law of Punjab. The Committee recalls that it is not within the Committee's purview to pronounce itself on allegations relating to restructuring programmes, even when these involve collective dismissals, unless they have given rise to acts of anti-union discrimination or interference. However, the Committee also recalls that the application of staff reduction programmes must not be used to carry out acts of anti-union discrimination. [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1112 and 1114]. The Committee observes from the information provided by the complainants that there is no specific allegation of anti-union discrimination during the mass collective dismissal which impacted more than 2,400 workers of the project in December 2021. Nor has it been provided with any information about any appeals being made to the court for anti-union dismissals. In these circumstances, the Committee will not pursue the examination of this aspect of the case.*
- 329.** *The Committee notes, however, with concern the allegation that, six months after registration, workers were still not allowed to undertake any union activities on the worksite or even in residential areas. In particular, ALU and PFBWW representatives allege that they were unable to freely enter the premises and the heavy military presence on the worksite created an environment of intimidation. If meetings were arranged, security protocols allegedly were so lengthy and cumbersome that it took hours to clear before a meeting could be held. The Committee also notes the indication that,*

following the commencement of the commercial work of the plant in June 2022, the PFBWW and the ALU still endeavour to maintain regular contact with the workers at the Karot Hydropower Plant, as ALU's President and other union officials are still working on the site. At the same time, the Committee further observes that the ALU is not seeking any more the collective bargaining status in the undertaking as the construction work ended in 2022.

330. The Committee recalls its view that workers' representatives should be granted access to all workplaces in the undertaking where such access is necessary to enable them to carry out their representation function. In addition, trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking. The granting of such facilities should not impair the efficient operation of the undertaking concerned. If necessary, workers' organizations and employers could reach agreements so that access to workplaces, during and outside working hours, can be granted to workers' organizations without impairing the functioning of the establishment or service [see **Compilation**, paras 1591, 1593 and 1599]. In the future, the Committee expects the Government to encourage dialogue between the management of the plant and the trade unions concerned to agree upon the parameters for access to the workplace, during and outside working hours to facilitate access of representatives while taking into account the security protocols that may be necessary in view of the strategic nature of the undertaking and the need to maintain its efficient operation.
331. The Committee notes the indication that, despite multiple attempts after its registration, the ALU was unable to engage with the management of the company on its demands. The PFBWW, through the BWI, requested the IFC to intervene to compel the company to meet with the ALU to address the alleged labour law violations and that after the IFC's intermediation, several meetings were held between the company, the ALU and the PWF. The company allegedly refused to address any issue unless the ALU provide it with the list of office bearers and a complete list of union members. However, the ALU representatives refused to supply any information on its members and denounced the apparent intention of the company, through its demand, to identify unionized workers and target them. In this regard, the Committee recalls that the list of members of a trade union given for registration purposes should be kept confidential in order to prevent acts of trade union discrimination [see **Compilation**, para. 434].
332. Furthermore, the Committee notes the allegation of further serious acts of interference by the company. Two years after it was formed and over a year after it was formally registered, the ALU was informed that a new union, named Social Hydro Labour Union (SHLU) had been formed and was registered only a week after its paperwork had been sent to the Registrar of trade unions. According to the ALU, no workers at the worksite knew of this other union. The swiftness of the registration of the SHLU and its rapid recognition by the company led the ALU to have real doubts as to the independence and legitimacy of the SHLU. In December 2019, the ALU sent a letter to the Registrar of trade unions questioning the legitimacy of the SHLU and demanding its de-registration. In addition, the complainants assert that the company directly facilitated meetings between the IFC and SHLU officials during an IFC investigation in Pakistan in April 2022, and recall that the company did not ensure that the incumbent union, the ALU and the PFBWW had such opportunities. In the complainants' view, the fact that the company had facilitated access and engagement of the SHLU with the workforce and the IFC investigators – while not inviting the ALU – is a clear indication of favouritism. The Committee recalls that extending an invitation to participate in the meetings with the enterprise management to one organization and not to another, may be an informal way of showing favouritism to one organization and thereby influencing the trade union membership of workers [see **Compilation**, para. 1204].
333. The Committee further notes the allegations that in 2018 the ALU submitted paperwork to the authorities demonstrating that it met the threshold to be the bargaining agent for the workers in

the company – the union had submitted evidence of 1,272 members (out of 3,000 workers), easily exceeding the one third of the total number of workers necessary under the law to be deemed the collective bargaining agent. The complainants denounce the inability of the authorities to obtain the company's recognition for the ALU for collective bargaining purposes despite these figures at the time when it was the sole union in the establishment.

- 334.** *The Committee notes the Government's indication that the office bearers of the ALU applied for a collective bargaining agent certificate on 16 October 2018. However, concurrently, an application for the registration of the SHLU was submitted to the Registrar in the company. The registration of the SHLU on 30 August 2019 rendered the application of the ALU for the issuance of a collective bargaining agent certificate ineffective. In addition, the SHLU's application for a secret ballot to determine the collective bargaining agent gave rise to a referendum process that commenced on 20 December 2019 and continued until 1 August 2022 with the participation of both unions in the meetings for the referendum proceedings. According to the Government, the Registrar had initially scheduled the referendum for 9 August 2022, but the company requested a postponement to 18 August 2022, citing the need for submission of the cost for the secret ballot. Despite acceptance for postponement, the company failed to submit the required cost, leading to the non-execution of the referendum. The Committee observes that during this long process, according to the information provided by the complainants and not contested by the Government, the company engaged in a massive collective dismissal of more than two thirds of the 3,000 workers of the project (December 2021), before the commencement of the commercial operation of the plant (June 2022) with a much-reduced workforce.*
- 335.** *According to the Government, the Registrar of trade unions called upon the office bearers of both trade unions and the management of the company to attend meetings for the referendum and collective bargaining agent determination on three occasions through letters dated 18 August, 1 September and 31 October 2023; however, none of the unions or the company attended the scheduled meetings. Considering the above, the Government asserts that neither the office bearers of the trade unions nor the management of the establishment are inclined towards conducting a referendum through a secret ballot for the determination of a collective bargaining agent. In its communication of April 2024, the PFBWW explains that since the construction work at the project site has been over since 2022, it is no longer necessary to secure recognition as collective bargaining agent or to hold the referendum.*
- 336.** *The Committee must note with regret the abnormally long time of the procedure for the determination of the collective bargaining agent in the present case, which finally became moot not having ever been able to be held. It also notes with regret that this prevented union members and workers at the worksite from benefiting from collective negotiations on their employment and working conditions. The Committee further observes that the ALU is not seeking anymore the collective bargaining agent status in the undertaking as the construction work ended in 2022. In these circumstances, recalling the time limits provided under the PIRA for the determination of a collective bargaining agent by secret ballot (section 24(2) and (3) provides that, upon the application made by a union, the Registrar should hold the secret ballot within 15 days and up to 30 days in large establishments), the Committee expects that the Government will ensure that these time limits are fully respected in the future for the application for the determination of the collective bargaining agent in any undertaking.*
- 337.** *The Committee duly notes the complainants' argument that the infringement of trade union rights could replicate in other projects in the area with the same employer and financiers unless the Committee intervenes in the present case to provide workers with a remedy and to prevent the repetition of similar violations on future projects by the same actors. Bearing in mind the above*

considerations, the Committee draws the Government's attention to the need to ensure that trade union rights are fully respected in any similar undertaking in the future.

The Committee's recommendations

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

- (a) Recalling the time limits provided under the Punjab Industrial Relations Act for the determination of a collective bargaining agent by secret ballot, the Committee expects that the Government will ensure that they are fully respected in the future for the registration of a union and for the application for the determination of the collective bargaining agent in any undertaking.
- (b) Bearing in mind the above conclusions, the Committee draws the Government's attention to the need to ensure that trade union rights are fully respected in any similar undertaking in the future.
- (c) The Committee considers that this case is closed and does not call for further examination.

Case No. 3300

Definitive report

Complaint against the Government of Paraguay presented by

- Federation of Banking and Allied Workers of Paraguay (FETRABAN)
- Central Confederation of Workers Authentic (CUT-A) and
- UNI Américas Finanzas

Allegations: The complainant organizations allege anti-trade union persecution and interference by employers in trade union matters: the payment of additional benefits to members of a particular trade union and to non-unionized employees and the refusal to register a new trade union despite its fulfilment of all applicable formal requirements

339. The complaint is contained in a communication dated 18 August 2017 presented by the Federation of Banking and Allied Workers of Paraguay (FETRABAN), the Central Confederation of Workers Authentic (CUT-A) and UNI Américas Finanzas. UNI Global Union submitted a communication supporting the complaint on 3 October 2017.

340. The Government sent its observations in communications dated 28 August 2018 and 30 August 2023.

- 341.** Paraguay 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

- 342.** In their communication of 18 August 2017, the complainants allege multiple violations of the rights of workers and of the organizations belonging to FETRABAN by the SAECA regional bank (hereinafter "the bank"), including violations of guarantees that ensure the effective exercise of freedom of association. The complainants allege that the Government's inactivity in that regard, and its precarious and vulnerable institutions, have allowed the bank to steamroller the rights of workers and their organizations on a daily basis, with anti-trade union persecution by the employers often supported by the State.
- 343.** The complainants allege that the bank pays additional benefits in a discriminatory manner, since payment is contingent on membership of "a particular trade union" or on not being a member of a trade union, excluding members of the "bank workers' union" from receiving those additional benefits. The complainants also allege that the registration of a new trade union, the Organization of Workers of the Bank (OTRABR), formed on 18 April 2015, was refused, despite its fulfilment of all applicable formal requirements. The complainants allege that the bank has taken a series of actions with the aim of intimidating and frightening new trade union leaders and workers in general, such as the dismissal of founding leaders and members of the OTRABR, who were protected by the legal regulations in force, and the subsequent coercion of other workers into leaving the union with the aim of bringing the number of members below the minimum required by the Labour Code. According to the complainants, all these actions were supported by the Ministry of Labour, Employment and Social Security (MTESS), which accepted objections submitted by the employers outside the applicable time frame since the authority had yet to resolve the matter of the OTRABR's provisional registration.
- 344.** The complainants also allege that the bank employs harmful practices, such as branch closures, that hinder workers' right to employment stability, thereby affecting other rights such as the right to a dignified retirement, leaving hundreds of workers without protection. Furthermore, the complainants allege that the bank requires its workers to work unplanned and unpaid overtime, and they also refer to a practice used by the bank that consists of bullying or emotional abuse. According to the complainants, although complaints have been lodged with the MTESS, it has failed to send its inspectors or officers.

B. The Government's reply

- 345.** To its communications dated 28 August 2018 and 30 August 2023, the Government annexed note No. 563/17 of 18 December 2017 of the Collective Relations and Union Registration Department of the Labour Directorate relating to Resolution No. 11 of 25 April 2016, through which the OTRABR was denied provisional registration. The Resolution indicates that Mr José Caballero and Mr Rigoberto Urbieta requested the OTRABR's provisional registration on 27 April 2015 and that on 12 May and 30 June 2015 the bank submitted objections to the OTRABR's provisional registration owing to several irregularities and the fact that: (i) Ms Sonia Margarita Espínola Báez had been dismissed from the bank on 5 March 2015, (ii) Mr Luis María Ocampos Fernández, Mr Sergio Osorio, Ms Bianca Bataglia and Mr Luis Bello were dismissed on 8 May 2015 and (iii) Mr Sergio David Silvero Careaga withdrew from the OTRABR.

- 346.** The Resolution also states that on 16 October 2015 the bank extended its objection to the OTRABR's provisional registration, providing to that end documentation relating to Ms María Sehila Gwynn Leguizamón's withdrawal from the OTRABR and the employment relationship termination agreement of Mr Luis María Ocampos Fernández, Mr Sergio Osorio, Ms Bianca Bataglia and Mr Luis Bello. Moreover, the Resolution states that in October 2015 Ms Diana Beatriz Sosa Riveros and Mr Carlos Alcides Arbo Rojas informed the Administrative Labour Authority that they had withdrawn from the OTRABR.
- 347.** The Government indicates that, according to article 292 of the Labour Code, enterprise unions must have at least 20 founders, and although the OTRABR had a total of 23 founding members, 9 were dismissed from the bank or withdrew from the union, leaving it without the legally required minimum number of members. The Government states that the OTRABR's failure to comply with the formal requirements for its provisional registration as set out in law prevented the Administrative Labour Authority from granting its request.
- 348.** The Government also states that although the dismissals for serious misconduct of Mr Sergio Hugo Felipe Osario Acosta, Mr Luis María Ocampos Fernández, Ms Bianca Giannina Battaglia Benítez and Mr Luis Fernando Bello Torres led to a judicial dispute at the time, they all reached conciliatory agreements with the bank in which the controversial matters were settled and all claims dropped by mutual agreement, allowing the respective court cases to be closed.
- 349.** With regard to the other alleged violations of labour rights and the allegation that the MTESS did not send its inspectors or officials to the bank, the Government states that the bank was visited by MTESS officials under Inspection Order No. 88/2016 of 10 June 2016 and that the proceedings concluded with Resolution No. 325 of 25 November 2016, which sanctioned the bank for several violations of labour, health, hygiene and occupational safety standards.
- 350.** The Government adds that the bank appealed the Resolution, and the administrative records were submitted to the First Chamber of the Court of Appeal, which requested a constitutional opinion from the Supreme Court of Justice; the Supreme Court, in turn, issued a ruling on 6 September 2022 that the Resolution was constitutional.

C. The Committee's conclusions

- 351.** *The Committee notes that in this case the complainants allege a series of violations by the bank of the trade union rights of organizations belonging to FETRABAN and their members. The complainants also allege that the Government's inactivity in that regard, and its precarious and vulnerable institutions, have allowed the aforementioned rights to be steamrollered, with the anti-trade union persecution often supported by the State.*
- 352.** *The Committee notes that the complainants allege specifically that: (i) the bank pays additional benefits to members of a particular trade union and to non-unionized workers, excluding members of the "bank workers' union"; and (ii) registration was refused to a new trade union, the OTRABR, which, despite having initially complied with all applicable formal requirements, ceased to have the required number of members because the bank dismissed some of its leaders and members and coerced others into withdrawing from the union with the aim of bringing the number of members below the minimum required by the Labour Code.*
- 353.** *With regard to the alleged payment of additional benefits to the members of a particular trade union, the Committee notes that the complainants have annexed a copy of an email sent by the bank's management on 21 December 2011 indicating that it had signed a new collective agreement on working conditions with the "bank employees' union" and that, in strict compliance with the commitment entered into by the bank at the request of one of the parties during the negotiation of*

the collective agreement, it would pay to all workers who were members of the signatory trade union a special one-off bonus equivalent to half their salary, a benefit that was also extended to non-unionized workers. The Committee regrets that the Government has not sent its observations on that matter. The Committee notes that, according to the information available: (i) there are at least two trade unions within the bank: the bank employees' union and the bank workers' union, the latter being a member of FETRABAN; (ii) the bonus in question was not among the benefits set out in the aforementioned collective agreement on working conditions (in fact, under Paraguayan legislation, the provisions of collective agreements apply to all workers in a company, regardless of whether they are members of the signatory union); and (iii) the bonus was allegedly granted directly by the employer based on what was agreed between the bank and the bank employees' union during the negotiation of the collective agreement on working conditions. The Committee also notes that the way in which the bonus was granted, that is, including workers who were members of the signatory union and non-unionized workers, but excluding members of the other trade union present in the company, could constitute a display of favouritism towards one trade union, influencing workers' trade union membership. In the absence of additional information or updates, and recalling that workers shall have the right to join organizations of their own choosing without any interference from the employer [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1189], the Committee requests the Government to adopt the necessary measures to ensure that the bank refrains from acting in such a way that favours one trade union over the other.

354. Moreover, with regard to the allegation that the MTESS refused to register a new trade union within the bank, known as the OTRABR, the Committee notes that, according to the Government, the union did not have the minimum number of founding members. The Committee notes that the complainants allege that, although the OTRABR initially had the minimum number of members required by law, the bank dismissed some workers who were founding members and also coerced others into withdrawing from the trade union, causing the OTRABR's membership to fall below the required minimum. According to the information annexed by the Government, the OTRABR requested provisional registration on 27 April 2015, and on 8 May 2015 the bank dismissed four founding members (Mr Luis María Ocampos Fernández, Mr Sergio Osorio, Ms Bianca Bataglia and Mr Luis Bello). The Committee also notes that, according to the documentation provided by the Government, the dismissed workers brought legal action against the bank, and those court cases were closed after the signing of conciliatory agreements. The Committee notes that although, on the one hand, the Government states that the founding members were dismissed for serious misconduct, on the other, it reports that the bank decided to sign conciliatory agreements with them to bring an end to the legal action that had been brought against it. The Committee notes that, according to the documentation annexed by the complainants, that legal action related to a request for the reinstatement of the trade unionists in their jobs in order to ensure their employment stability.
355. The Committee also notes that as well as referring to the dismissed workers, the complainants allege that the bank coerced workers into leaving the OTRABR with the aim of bringing the number of members below the minimum required by the Labour Code.
356. The Committee recalls that, in a case in which it concluded that the reduction in the number of union members to below the legal minimum of 25 was the consequence of anti-trade union dismissals or threats, the Committee requested the Government, should it be concluded that these were anti-trade union dismissals and that the withdrawal from union membership of trade union leaders resulted from pressure or threats from the employer, to impose the penalties provided by the legislation, reinstate the dismissed workers in their jobs and permit the dissolved trade union to be reconstituted [see **Compilation**, sixth edition, 2018, para. 985]. Noting that the case at hand concerns the registration, rather than the dissolution, of a newly formed trade union and that the legal action

brought against the bank seeking the reinstatement of trade unionists to ensure their employment stability culminated in conciliatory agreements, the Committee observes that the complaint also alleges anti-trade union action intended to prevent a trade union from meeting the minimum number of members required by law. In view of the above, the Committee requests the Government, in light of the circumstances of this case, to take the necessary measures to ensure that, in future, in the case of dismissals and/or withdrawals suspected of being related to the creation of a trade union: an investigation is conducted, in a short space of time, that verifies whether the dismissals were anti-trade union in nature and/or whether the withdrawals resulted from pressure or threats from the employer so that, should it be concluded that anti-trade union acts took place, the penalties provided by legislation are imposed, the dismissed workers are reinstated in their jobs and the newly formed trade union is registered.

- 357.** *Lastly, noting the other allegations made by the complainants that are not related to issues of a trade union nature, the Committee also takes note of the information provided by the Government in that regard and of the administrative and judicial steps taken by the authorities.*

The Committee's recommendations

- 358.** 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 adopt the necessary measures to ensure that the bank refrains from acting in such a way that favours one trade union over another.
 - (b) The Committee requests the Government, in light of the circumstances of this case, to take the necessary measures to ensure that, in future, in the case of dismissals and/or withdrawals suspected of being related to the creation of a trade union: an investigation is conducted, in a short space of time, that verifies whether the dismissals were anti-trade union in nature and/or whether the withdrawals resulted from pressure or threats from the employer so that, should it be concluded that anti-trade union acts took place, the penalties provided by legislation are imposed, the dismissed workers are reinstated in their jobs and the newly formed trade union is registered.
 - (c) The Committee considers that this case is closed and does not call for further examination.

Case No. 3228

Definitive report

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

- the National Union Confederation of the State Sector Unions (UNASSE)
- the Intersectoral Confederation of State Workers (CITE)
- the General Confederation of Workers of Peru (CGTP) and
- the National Confederation of State Workers of Peru (CTE-Peru)

Allegations: The complainant organizations allege the incompatibility of several provisions of the Civil Service Act and its implementing regulations with Conventions Nos 87, 98 and 151, the non-implementation of the Civil Service Support Commission and its impact on collective rights, the existence of practical barriers to exercising the right to collective bargaining in the public sector and government interference in the trade union organizations' internal affairs.

- 359.** The complaint is contained in a communication dated 6 June 2016 from the National Union Confederation of State Sector Unions (UNASSE) and the Intersectoral Confederation of State Workers (CITE). These organizations together with the General Confederation of Workers of Peru (CGTP) and the National Confederation of State Workers of Peru (CTE-Peru) sent additional allegations in a communication dated 3 March 2023.
- 360.** The Government sent its observations in communications dated 14 June 2017, 6 February 2018, 6 May 2019, 7 May 2021, 12 September 2023 and 15 April 2024.
- 361.** Peru 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 Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

- 362.** In their communication of 6 June 2016, two of the complainants (UNASSE and CITE) begin by alleging that several provisions of Act No. 30057 on the Civil Service and its implementing regulations violate Conventions Nos 87, 98 and 151 and are incompatible with public officials' freedom of association and right to collective bargaining and their organizations' right to implement their programmes of action. In particular, the complainants refer to: (i) the exclusion of public officials, public managers and public servants in positions of trust from the right to organize under section 40 of the Act; (ii) various restrictions on the right to strike under sections 41 and 45.2 of the Act and sections 80 and 81 of its implementing regulations, referring in particular to trade union organizations' duty not to affect the functioning of public entities, the temporary recruitment of staff needed to ensure the provision of minimum services in essential services, voting conditions for the declaration of strikes and the prohibition of atypical forms of strikes; and (iii) with regard to collective bargaining, the

prohibition, under sections 42 and 44(b) of the Act, of negotiating wages and other issues with financial implications throughout the public service, as well as the obligation under section 44(d) of the Act of a minimum term of two years for collective agreements concluded in the public service.

363. The two complainants then allege the non-implementation of the Civil Service Support Commission, which is responsible for: ruling on the admissibility and lawfulness of strikes; determining the minimum services in essential services in the event of a dispute; and electing the chair of the arbitration tribunal in the event of a disagreement between the parties (sections 86 to 89 of the implementing regulations of the Civil Service Act). The complainants add that the Commission's powers are still entrusted to the Labour Administrative Authority.
364. The complainants also report lengthy delays in the Labour Administrative Authority's scheduling of conciliation hearings in the authorities' scheduling of conciliation hearings when negotiating lists of demands in the public service, in collective bargaining proceedings in the public service, which do not comply with the delays established in section 72 of the implementing regulations of the Civil Service Act. The complainants refer in this regard to the situation of three unions (the Union of Municipal Workers, the Union of Municipal Workers of San Juan de Miraflores and the United National Union of Workers of the National Tax Administration Supervisory Authority) that allegedly dealt with significant delays in conciliation proceedings.
365. Moreover, the two complainants report: (i) the Government's refusal to respond to their lists of national demands in 2014, 2015 and 2016, which is a clear violation of their right to collective bargaining to determine their terms and conditions of employment; and (ii) the Government's refusal to respond to the list of sectoral demands submitted in 2015 by the National Federation of University Workers of Peru (FENTUP), which is affiliated with CITE and brings together unions of administrative workers from public and private universities in the country. The complainants indicate in this regard that the relevant unit of the Ministry of Economy and Finance rejected the lists of demands submitted by FENTUP on the grounds that: (i) financial issues cannot be negotiated under the Civil Service Act; (ii) FENTUP was not authorized to submit lists of decisions, negotiate collectively on behalf of employees of public universities or sign a collective agreement, as that is the role of the unions of the respective universities; (iii) section 54 of the implementing regulations of the Act establishes that trade union organizations are responsible for representing civil servants in demands of a collective nature and for signing of collective agreements, but does not refer to federations or confederations; and (iv) the role of federations and confederations is to advise unions. The complainants thus allege that, in the Government's view, higher-level organizations (federations and confederations) do not have the right to collective bargaining, and that due to a peculiar interpretation of the law, they cannot submit lists of demands, bargain collectively or sign collective agreements.
366. In their communication of 12 September 2023, the various complainants allege that the Government interfered in the trade union organizations' internal affairs by arbitrarily recommending the three most representative trade union organizations of state workers that, under Act No. 31188 on State Sector Collective Bargaining, should form the bargaining committee for the centralized collective agreement for 2023. The ninth recital of Ministerial Resolution No. 035-2023-PMC, establishing the employers' representation for the centralized collective bargaining for this period, recommends that the committee consists of CITE, CTE-Peru and the National Confederation of Public Servants of Peru (CONASEP-PERU), excluding UNASSE. The complainants state that this would mean, in practice, the dissolution of the trade union coalition formed by CITE, CTE-Peru and UNASSE, which was formalized at the national level and which submitted the relevant draft collective agreement, as well as the

imposition of another confederation, CONASEP-Peru, as part of the trade union representation in question.

B. The Government's reply

- 367.** Regarding the exclusion of certain categories of state officials from the right to organize (section 40 of the Civil Service Act), the Government indicates that such exclusions are constitutional (article 42 of the Constitution). In addition, the Government points out that the exclusion only applies to persons who have managerial power, expressed in the capacity and obligation to lead a group of individuals and which also involves representation of the organization or the leadership of a particular organizational unit, as well as the capacity to take decisions within its remit.
- 368.** As to the alleged legislative restrictions on the right to strike, the Government indicates that: (i) the complainants' arguments regarding the supposed implicit restriction on this right provided for in section 41 of the Civil Service Act are unfounded, as (the final part of) this provision is intended to prohibit the authority from promoting acts that restrict or limit the right of public servants to organize; (ii) the recruitment of staff needed to ensure the provision of minimum services in services deemed "indispensable" and "essential" (section 45.2 of the Act) is an exceptional measure to ensure the provision of minimum services in the event that public servants do not deliver the services deemed indispensable and essential, and in order to implement this measure, the various guarantees provided for in the legislation must be met; (iii) the fact that strike declarations must be supported by the majority of workers (section 80 of the implementing regulations of the Act) is not a restriction on the right to strike of public servants, as it is up to the trade union organizations to establish the percentage and mechanisms required to ensure that the will of the majority of their members is guaranteed when approving their decisions on their programmes of action; and (iv) the prohibition of atypical forms of strikes (section 81 of the implementing regulations of the Act) is intended to prevent such strikes from generating acts of violence and disrupting the work of non-striking workers; although any suspension of work, however brief, should be considered a strike, certain types of actions have paralysing effects comparable to a radical suspension of work, even if they do not bring activity to a complete halt (such as go-slow or work-to-rule strikes).
- 369.** As regards the Civil Service Support Commission, the Government indicates that the new civil service system is being implemented gradually and that this Commission has not been implemented yet. As a result, according to the Government, the powers of this Commission are temporarily entrusted to the Labour Administrative Authority, and election of the president of the arbitration tribunal is being held at the request of the parties involved in collective bargaining proceedings in the public sector.
- 370.** As to the alleged restrictions on collective bargaining contained in the legislation (sections 42 and 44 of the Civil Service Act) and the possibility of negotiating lists of national and sectoral demands, the Government states that: (i) in a judgment in 2015, the Constitutional Court ruled that the absolute restrictions on collective bargaining in the public sector contained in the legislation were unconstitutional, recognizing that wage increases may be discussed through the collective bargaining mechanism, with respect for the principle of budgetary balance and legality; (ii) the Constitutional Court stated that collective bargaining is a statutory right and urged the legislature to approve the regulation of collective bargaining for the public sector; (iii) since 3 May 2021, the State Sector Collective Bargaining Act has been in force, which regulates the right to collective bargaining of trade union organizations of state workers (section 1), provides that collective bargaining in the public sector may be centralized or decentralized (section 5) and establishes that the most representative trade union

confederations of state workers at the national level may engage in centralized collective bargaining on behalf of public servants (sections 7 and 9); and (iv) centralized collective bargaining proceedings took place in 2022 and 2023, and the centralized collective agreement for 2023–24 was signed on 30 June 2023 by five confederations of state workers, including UNASSE, CITE and CTE-Peru.

- 371.** With regard to the Government's alleged interference in the trade union organizations' internal affairs by recommending, in Ministerial Resolution No. 035-2023-PMC, the three most representative trade union organizations of state workers that should form the bargaining committee for the centralized collective agreement for 2023 (excluding UNASSE), the Government specifies that: (i) the Resolution affected only the composition of the employers' representation for collective bargaining for 2023 and not the trade union organizations' representation; (ii) following the publication of the Resolution, the seventh temporary supplementary provision of the guidelines for the implementation of the State Sector Collective Bargaining Act (approved by Supreme Decree No. 008-2022-PCM and amended by Supreme Decree No. 054-2023-PCM) was adopted, and which provides that, until the Labour Administrative Authority finishes implementing the register of state workers' union membership, centralized collective bargaining shall involve, instead of only three higher-level trade union organizations, the five national and multisectoral confederations recorded in the register of trade union organizations of public servants, which, in their most recent list of members that was sent to the Labour Administrative Authority prior to the submission of the draft collective agreement, have the largest number of affiliated public servants; and (iii) UNASSE and other confederations were involved in the collective bargaining for 2022 and 2023.

C. The Committee's conclusions

- 372.** *The Committee notes that the present case refers to the alleged incompatibility of several provisions of the Civil Service Act and its implementing regulations with Conventions Nos 87, 98 and 151, which have been ratified by Peru, the non-implementation of Civil Service Support Commission provided for by the Act and its impact on collective rights, the existence of various practical barriers to exercising the right to collective bargaining in the public sector, as well government interference in the trade union organizations' internal affairs.*
- 373.** *The Committee notes that, since the submission of the complaint, the rules applicable to collective bargaining in the public sector have been amended with the adoption of the State Sector Collective Bargaining Act in 2021 and Supreme Decree No. 008-2022-PCM, establishing guidelines for the implementation of this Act, in 2022, and that this legislation covers collective bargaining in the areas in which the complainants operate (public entities of the executive, legislature and judiciary and of the central, regional and local Government).*
- 374.** *As to the legislative aspects of this case, the Committee first notes that the State Sector Collective Bargaining Act has repealed the provisions of the Civil Service Act which, according to the complaint, restricted the right to strike in the public sector (sections 41 and 45.2) and restricted collective bargaining in the sector (sections 42 and 44). With respect to the latter, the Committee recalls that it had noted with satisfaction that the State Sector Collective Bargaining Act provides that collective bargaining in the public service may cover all types of working and employment conditions, including remuneration and other conditions of work with an economic impact (see Case No. 3026, 401st Report, March 2023, paras 45 and 46). In the light of the foregoing, the Committee will not pursue its examination of this allegation.*

375. With regard to the allegation that certain categories of state officials are excluded from the right to organize under the legislation, the Committee, while observing that section 40 of the Civil Service Act (which excluded public officials, public managers and public servants in positions of trust from collective rights) was repealed by the State Sector Collective Bargaining Act, notes the Government's indication that this exclusion is constitutional (article 42 of the Constitution). Noting that this matter is being examined by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its supervision of the application of Convention No. 87, the Committee refers this aspect of the case to the CEACR.
376. With regard to the other legislative issues related to the implementing regulations of the Civil Service Act, which remain in force, the Committee notes that, referring to the allegation that section 80 of the implementing regulations of the Act restricts the right to strike by requiring strike declarations to be supported by the majority of workers, the Government states that this section is not a restriction on this right of public servants, as it is up to the trade union organizations to establish the percentage and mechanisms required to ensure that the will of the majority of their members is guaranteed when approving their decisions on their programmes of action. In the light of this information, the Committee will not pursue its examination of this allegation.
377. Moreover, with regard to the fact that section 81 of the implementing regulations of the Civil Service Act prohibits atypical forms of strikes in the public service (staggered stoppages, go-slow strikes, deliberate reductions in output, stay-in strikes and picketing), the Committee takes notes of the Government's indication that the purpose of this provision is to avoid generating acts of violence and disrupting the work of non-striking workers. The Committee recalls that, regarding various types of strike action denied to workers (wild-cat strikes, tools-down, working to rule and sit-down strikes), the Committee considers that these restrictions may be justified only if the strike ceases to be peaceful [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 784]. The Committee also recalls that taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work; such acts constitute criminal offences in many countries [see **Compilation**, para. 939]. Furthermore, the Committee recalls that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) 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) [see **Compilation**, para. 830]. The Committee therefore trusts that the Government will review, in consultation with the representative workers' and employers' organizations, the regulations in force in the public service to ensure that they do not prohibit peaceful forms of the right to strike that allow non-striking workers to enter the workplace and carry out their work.
378. As to the alleged non-implementation of the Civil Service Support Commission, which is responsible, *inter alia*, for determining the lawfulness of strike movements in the public service and establishing the level of minimum services in the event of a disagreement between the parties, the Committee notes the Government's indication that the new civil service system is being implemented gradually and that the powers of this Commission are temporarily entrusted to the Labour Administrative Authority. In this regard, the Committee wishes to emphasize that, in previous cases, it has reminded the Government that responsibility for declaring a strike illegal (see, for example: Case No. 3096, 376th Report, October 2015, para. 889, and Case No. 3033, 371st Report, March 2014, para. 763) and the establishment of minimum services in the absence of an agreement between the parties (see Case No. 3096, 376th Report, October 2015, para. 891) should not lie with the Government but with an impartial and independent body. The Committee expects the Government to take the necessary measures, including at the legislative level, to ensure that both responsibility for declaring strike

movements legal or illegal and the establishment of minimum services in the absence of an agreement between the parties are effectively examined by an impartial and independent body, and that the Civil Service Support Commission is established without further delay.

- 379.** *With regard to the alleged delays in the authorities' scheduling of conciliation hearings in collective bargaining proceedings in the public sector, which do not comply with the delays established in section 72 of the implementing regulations of the Civil Service Act, the Committee notes that the Government has not commented on this issue in general or on the specific situation of the three unions mentioned in the complaint. While the provision to which the complainants refer has been repealed by the guidelines for the implementation of the State Sector Collective Bargaining Act, the Committee wishes to recall that Article 8 of Convention No. 151 establishes that the settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved. The Committee therefore expects the Government to take the necessary measures to ensure the smooth and effective functioning of the mediation and conciliation procedures for collective labour disputes in the public sector that may have been established in the national legislation and regulations in force.*
- 380.** *As to the Government's alleged refusal to respond to various lists of national and sectoral demands in the public service submitted in 2014, 2015 and 2016, on the grounds, inter alia, that higher-level trade union organizations (federations and confederations) in the public sector do not have the right to collective bargaining, the Committee notes the Government's indication that the State Sector Collective Bargaining Act provides for forms of both centralized and decentralized collective bargaining in the public sector (section 5) and establishes that the most representative trade union confederations of state employees at the national level may engage in centralized collective bargaining on behalf of public servants (sections 7 and 9). The Committee also notes that, according to the Government, the central collective agreement for 2023–24 was signed by five confederations of state workers, including three of the complainants (UNASSE, CITE and CTE-Peru). In the light of this information and given that it has not received additional information from these organizations on the lists of demands referred to in this allegation, the Committee will not pursue its examination.*
- 381.** *Lastly, with regard to the Government's alleged interference in the trade union organizations' internal affairs by recommending, in a Ministerial Resolution, that the bargaining committee for the centralized collective agreement for 2023 be composed of three specific trade union organizations and excluding UNASSE from this coalition, the Committee notes the information provided by the Government and recalls that the centralized collective agreement for 2023–24 was signed by five confederations, including UNASSE. In this context, the Committee will not pursue its examination of this allegation.*

The Committee's recommendations

- 382.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **Noting that the issue of excluding certain categories of public officials from the right to organize is being examined by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its supervision of the application of Convention No. 87, the Committee refers this aspect of the case to the CEACR.**
 - (b) **The Committee expects the Government to take the necessary measures, including at the legislative level, to ensure that both responsibility for declaring strike movements legal or illegal and the establishment of minimum services in the**

absence of an agreement between the parties are effectively examined by an impartial and independent body, and that the Civil Service Support Commission is established without further delay.

- (c) Recalling that the right to strike may be restricted or prohibited for public servants exercising authority in the name of the State or in essential services in the strict sense of the term, the Committee trusts that the Government will review, in consultation with the representative workers' and employers' organizations, the regulations in force in the public service to ensure that they do not prohibit peaceful forms of the right to strike that allow non-striking workers to enter the workplace and carry out their work.
- (d) The Committee expects the Government to take the necessary measures to ensure the smooth and effective functioning of the mediation and conciliation procedures for collective labour disputes in the public sector that may have been established in the national legislation and regulations in force.
- (e) The Committee considers that this case does not call for further examination and is closed.

Case No. 3392

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

Complaint against the Government of Peru presented by the General Confederation of Workers of Peru (CGTP)

Allegations: The complainant organization alleges the harassment and subsequent dismissal of the general secretary of a brewery workers' union as a result of social media posts during the COVID-19 pandemic

- 383.** The complaint is contained in a communication dated 18 August 2020 from the General Confederation of Workers of Peru (CGTP). This organization sent additional information in communications dated 9 December 2020 and 13 August 2021.
- 384.** The Government sent its observations in communications dated 16 November, 4 and 16 December 2020, 7 May, 11 and 25 June, 28 September 2021, 9 August 2022 and 15 April 2024.
- 385.** 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

- 386.** In its various communications, the CGTP alleges that in 2020 the enterprise Backus and Johnston Peruvian Breweries Union SAA (hereinafter, the enterprise) harassed and subsequently dismissed

the general secretary of the National Union of Workers of Backus and Johnston Peruvian Breweries Union SAA, Mr Luis Rolando Samán Cuenca, as a result of social media posts regarding the enterprise's failure to comply with occupational safety and health measures during the COVID-19 pandemic. The complainant alleges that these statements were made by the general secretary while performing the tasks inherent to his role and that, therefore, the measures taken by the enterprise entailed a restriction on his freedom of expression, opinion and denunciation, which are essential to freedom of association.

- 387.** The complainant alleges that: (i) primarily between March and July 2020, there were social media (Facebook and Twitter) posts by the union and its general secretary stating that, during the pandemic, the enterprise had carried out production activities without the relevant authorization and in violation of the occupational safety and health measures issued by the Government, that there was an increase in the number of infected workers and that some of those workers died, and that the enterprise had pressured, intimidated and threatened unionized workers to sign special individual agreements regarding, inter alia, the granting of paid and compensatory leave; (ii) these posts initially prompted the enterprise to harass the union and its general secretary by sending them three successive letters (one dated 22 July 2020 addressed to the union and another two dated 1 and 3 August 2020 addressed to the general secretary) alleging that the posts contained false claims about the enterprise, while urging the union to provide evidence to substantiate the posts and the general secretary to rectify the false claims within a specified time frame; and (iii) the posts in question also subsequently led the enterprise to arbitrarily dismiss the general secretary in a letter dated 4 December 2020, having already sanctioned and charged the general secretary in 2018 for allegedly illegitimately exercising his freedom of expression. The complainant also states that, in Decision No. 13 of 21 July 2021, the competent criminal court acquitted the general secretary of the charges filed by the enterprise in 2020 for allegedly committing aggravated defamation through the posts in question.
- 388.** The complainant alleges that the measures taken by the enterprise are retaliation for statements that the general secretary made while legitimately exercising his freedom of association and his role of defending the rights and interests of workers, including their lives and health.
- 389.** The complainant also alleges that the issues described in the posts were accurate and of public interest in the context of the pandemic, and states that there are charges against the enterprise for violation of occupational safety and health conditions before the Emergency Criminal Prosecutor's Office in Lima.
- 390.** Lastly, the complainant alleges that the enterprise's anti-union conduct was also reflected by the fact that it sought to accuse the union and its general secretary of illegitimately exercising their freedom of expression while collective bargaining for 2020–21 was under way.

B. The Government's reply

- 391.** In its communications, the Government sends the observations of the enterprise and of the Labour Inspection Authority (SUNAFIL) and forwards information on the ongoing legal proceedings.
- 392.** On the one hand, the enterprise: (i) indicates that the social media posts contain false claims and are offensive, insulting and harmful to its good name, image and its internal and external reputation, and thus an illegitimate exercise of freedom of expression; (ii) explains that it sent the letters to the union and the general secretary so that they could provide evidence to substantiate the content of the posts and rectify the false claims within a specified time frame;

(iii) points out that it decided to dismiss the general secretary because the posts constituted a serious misconduct under national legislation (slander and libel in writing against the employer) and considering that the statements of defence sent by the general secretary did not include any proposed amendments or refute the misconduct and that, moreover, he already had a disciplinary record for similar conduct and had even unsuccessfully challenged the previous sanctions in legal proceedings; (iv) denies any alleged systematic persecution of the general secretary; (v) indicates that the general secretary was initially acquitted of aggravated defamation in first and second instance judgments in 2021, but that, in the cassation judgment of 28 February 2024, the Permanent Criminal Chamber of the Supreme Court of Justice declared those judgments null and void due to procedural flaws and ordered a new judgment to be handed down; (vi) reports that the general secretary filed a lawsuit against his dismissal in 2020 and that in first and second instance judgments in 2022 and 2023, respectively, the lawsuit was declared founded and his reinstatement in the enterprise was ordered, and the cassation appeal granted to the enterprise by the Permanent Labour Chamber of the Supreme Court of Justice in Decision No. 20 of 31 January 2024 is still pending; and (v) states that the enterprise has temporarily reinstated the general secretary while awaiting the resolution of the last instance proceeding on his dismissal.

- 393.** The enterprise points out that both the sending of the letters to the union and the general secretary and the dismissal of the general secretary were in line with the procedures provided for in the legislation (he was even invited to a discussion and investigation meeting with the enterprise, which he did not attend for health reasons) and that they did not have anti-union motives and were not intended to intimidate, harass or coerce the general secretary or undermine his right to freedom of association or deprive him of freedom of expression or defence.
- 394.** The enterprise also describes several measures taken during the pandemic to protect the safety and health of its workers and to comply with its corresponding legal obligations.
- 395.** The enterprise also denies that the measures taken as a result of the posts were related in any way to the ongoing collective bargaining.
- 396.** On the other hand, SUNAFIL reports that four labour inspections were carried out in 2020 at various facilities of the enterprise in the country to verify compliance with occupational safety and health regulations during the pandemic. In every case, the concerned labour inspectors found that the enterprise had failed to comply with certain occupational safety and health standards. Two inspections thus led to the issuance of violation notices and, in the other two, the enterprise was required to correct the violations found, which it did in a timely manner.

C. The Committee's conclusions

- 397.** *The Committee observes that the present case concerns alleged violations of freedom of association in a brewing enterprise due to the harassment and subsequent dismissal of the general secretary of a workers' union as a result of social media posts regarding the enterprise during the COVID-19 pandemic.*
- 398.** *The Committee notes that the complainant alleges that: (i) in 2020, the enterprise harassed the union and its general secretary by sending successive letters and then dismissing the general secretary as a result of posts primarily on social media regarding the enterprise's failure to comply with occupational safety and health standards during the pandemic; and (ii) the measures taken by the enterprise are retaliation for statements that the general secretary made while legitimately exercising his freedom of expression and his role of defending the rights and interests of workers, including their lives and health, which are essential to freedom of association.*

399. *In this regard, the Committee notes that the communications sent by the Government show that according to the enterprise: (i) the social media posts contain false claims and damage its good name, image and internal and external reputation, and are thus an illegitimate exercise of freedom of expression; (ii) the purpose of the letters sent to the union and its general secretary was to request them to provide evidence to substantiate the content of the posts and to rectify the false claims; (iii) the general secretary was subsequently dismissed considering that the posts in question constituted a serious misconduct under national legislation, that his statements of defence did not include any amendments or refute the misconduct and that, moreover, he already had a disciplinary record for similar conduct (and had even unsuccessfully challenged the previous sanctions in court), and (iv) both the sending of the letters to the union and the general secretary and the dismissal of the general secretary were in line with the procedures provided for in the national legislation, were not a form of systematic persecution of the general secretary, did not have anti-union motives and were not intended to harass him or undermine his freedom of expression or his right to freedom of association.*
400. *The Committee notes that while the complainant alleges that the descriptions in the social media posts about the enterprise were accurate and of public interest in the context of the pandemic, the enterprise describes several measures taken to protect the safety and health of its workers and to comply with its legal obligations during the pandemic. With regard to the above, the Committee notes that SUNAFIL reports that in 2020, four labour inspections on occupational safety and health were carried out at various facilities of the enterprise in the country and that in every case, the concerned labour inspectors found that the enterprise had failed to comply with certain occupational safety and health standards. Two inspections thus led to the issuance of violation notices and, in the other two, the enterprise was required to correct the violations found, which it did in a timely manner. The Committee also notes that, according to the complainant, there are charges against the enterprise for violation of occupational safety and health conditions before the Emergency Criminal Prosecutor's Office in Lima.*
401. *Furthermore, the Committee notes that, according to the information provided by the complainant, the enterprise and the Government, the posts in question, as well as the subsequent dismissal of the general secretary, led the enterprise to file charges against the general secretary for aggravated defamation in 2020, and to legal action against the enterprise to annul the dismissal of the general secretary and order his reinstatement. In this regard, the Committee notes that according to the information provided: (i) although the general secretary was acquitted of aggravated defamation in first and second instance judgments in 2021, the Permanent Criminal Chamber of the Supreme Court of Justice has declared those judgments null and void due to procedural flaws and ordered a new judgment to be handed down; and (ii) in first and second instance judgments in 2022 and 2023, respectively, the lawsuit filed against the dismissal of the general secretary was declared well-founded and his reinstatement in the enterprise was ordered, and the cassation appeal granted to the enterprise is still pending; and (iii) the enterprise has temporarily reinstated the general secretary while the above-mentioned cassation appeal is being resolved.*
402. *While the Committee observes that the legal proceedings initiated by the parties involved in the complaint have been actively processed by the judicial authorities, it also recalls that cases concerning anti-union discrimination should be examined rapidly, so that the necessary remedies can be really effective, and that 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, para. 1139]. The Committee also recalls that the right of workers' and employers' organizations to express opinions through the press or otherwise is an essential aspect of trade union rights and that nevertheless, in expressing their opinions, these organizations should respect the limits of propriety and refrain from the use of*

*insulting language [see **Compilation**, paras 239 and 236]. The Committee expects that the proceedings pending final judgment (on aggravated defamation and nullity of dismissal) will be resolved without delay, taking into account the above-mentioned criteria relating to the freedom of expression of trade union organizations and its scope, and requests the Government to keep it informed in this regard.*

- 403.** *Lastly, the Committee notes that the complainant alleges that the enterprise's anti-union conduct was also reflected by the fact that it sought to accuse the union and its general secretary of illegitimately exercising their freedom of expression while collective bargaining for 2020–21 was under way. The Committee notes, in this regard, that the enterprise denies that the measures taken as a result of the social media posts were related to the ongoing collective bargaining. The Committee observes that, according to the information available on the union's public social media accounts, the enterprise has allegedly decided to legally challenge the arbitration award that resolved collective bargaining for 2020–21 and that, nevertheless, the parties signed a new collective bargaining agreement with a three-year term in 2021. In this context, the Committee will not pursue its examination of these allegations.*

The Committee's recommendation

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

The Committee expects that the proceedings pending final judgment (on aggravated defamation and nullity of dismissal) will be resolved without delay, taking into account the criteria set out in the conclusions of the present case in relation to the freedom of expression of trade union organizations and its scope, and requests the Government to keep it informed in this regard.

Case No. 3443

Definitive report

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

- the Graduate Teachers' Trade Union Association (ASPL)
- the National Teachers' Federation (FENPROF)
- the National Education Federation (FNE)
- the Teachers' Trade Union Association (PRÓ-ORDEM)
- the Union of Educators and Graduate Teachers of Higher Education Schools and Universities (SEPLEU)
- the National Union of Professionals in Education (SINAPE)
- the National and Democratic Union of Teachers (SINDEP)
- the Independent Union of Teachers and Educators (SIPE) and
- the National Union of Graduate Teachers of Polytechnic Schools and Universities (SPLIU)

Allegations: The complainant organizations allege that the arbitration board in the education sector illegally established minimum services during two one-day strikes that they called in March 2023 in several districts of the country

- 405.** The complaint is contained in a communication from several federations and trade union associations of teachers and educators: the Graduate Teachers' Trade Union Association (ASPL), the National Teachers' Federation (FENPROF), the National Education Federation (FNE), the Teachers' Trade Union Association (PRÓ-ORDEM), the Union of Educators and Graduate Teachers of Higher Education Schools and Universities (SEPLEU), the National Union of Professionals in Education (SINAPE), the National and Democratic Union of Teachers (SINDEP), the Independent Union of Teachers and Educators (SIPE) and the National Union of Graduate Teachers of Polytechnic Schools and Universities (SPLIU), dated 23 March 2023, as well as an additional communication from the SPLIU, dated 14 April 2023.
- 406.** The Government sent its observations in communications dated 12 September 2023 and 8 January 2024.
- 407.** Portugal 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 Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

- 408.** In their communication of 23 March 2023, the complainants allege that the arbitration board in the education sector illegally established minimum services during two one-day strikes that they called for teachers and educators in the districts of Aveiro, Braga, Bragança, Coimbra,

Porto, Viana do Castelo, Vila Real and Viseu on 2 March 2023, and in the districts of Beja, Castelo Branco, Évora, Faro, Leiria, Lisbon, Portalegre, Santarém and Setúbal on 3 March 2023.

409. The complainants indicate that the minimum services were deemed to be: (i) in preschool and the first cycle of basic education: three hours of education (preschool) or teaching (first cycle) per day, ending with the opening of the canteen; (ii) in the second and third cycles of basic education and secondary education: three teaching slots (lessons) per day, per class, ensuring weekly coverage of various subjects/disciplines/training components from the curriculum; (iii) irrespective of the cycle of education, the provision of academic and therapeutic support, ensuring support for pupils in vulnerable situations and at risk of dropping out of school and ensuring the continuity of measures provided to support pupils' social and emotional well-being; and (iv) to ensure the above-mentioned minimum services, in every school, depending on the size of the school and the numbers of pupils attending it, there was to be one teacher for each group/class in preschool and the first cycle of education; one teacher for each class/subject in the other cycles, and one teacher or specialist to provide support, according to their specialty, to pupils in need of the measures identified above.
410. The complainants point out that the minimum services determined by the arbitration body would, in their view, correspond to 60 per cent or more of the daily teaching component of an educator or teacher.
411. The complainants allege that the Ministry of Education, as the party requesting the establishment of a minimum service, had an obligation to demonstrate that the two strike days in question were likely to cause irreparable damage warranting the establishment of a minimum service. The Ministry had pointed to the succession of strikes in the sector called by another trade union organization, the Union of Professionals in Education (STOP), since December 2022, while the complainants had declared only one strike day since then.
412. The complainants allege that the establishment of a minimum service is legally justified only when there is an irreparable risk, in this case in the education sector; in the absence of such a risk, unless national final evaluations, exams or tests are being held, which must take place on the same date throughout the country (under section 397 of the General Act on Public Employment), there are no grounds for establishing a minimum service.
413. In the view of the complainants, given that the strike in question was called for a single day (spread over two regions of the country), there were no grounds for the existence of an imperative social need whose fulfilment would take precedence over the legitimate exercise of the right to strike, so that any minimum service during this strike would violate the principles of proportionality, adequacy and necessity. In this regard, the complainants allege that the minimum service provided for the unlimited strikes of STOP had adverse legal effects on the members of other unions, as it was eventually extended to strike notices issued by the complainant unions, due to the analysis of the arbitration board. The complainants allege that it was not up to the arbitration board to rule on the combined effect of strike notices issued by other trade union structures, as this undermines the free exercise of trade union activities and the constitutional right to strike, as well as the autonomy of organizations (see communication of 23 April 2023), thereby setting a dangerous precedent likely to jeopardize the fundamental rights acquired by workers.
414. Lastly, they allege that such decisions could also cause confusion in establishments about the very notion of a minimum service, and even lead to its misuse.
415. The trade union organizations state that they have challenged the arbitration decision before the courts.

B. The Government's reply

- 416.** In its communication of 12 September 2023, the Government states that the above-mentioned unions sent the competent authorities strike notices for teachers and educators for the period between 00.00 and 24.00 on 2 March 2023 in the districts of Aveiro, Braga, Bragança, Coimbra, Guarda, Porto, Viana do Castelo, Vila Real and Viseu, and for the period between 00.00 and 24.00 on 3 March 2023 in the districts of Beja, Castelo Branco, Évora, Faro, Leiria, Lisbon, Portalegre, Santarém and Setúbal.
- 417.** The Government states that the Ministry of Education had requested the initiation of proceedings with a view to negotiating an agreement on the definition of minimum services and the means of providing them, in accordance with the law and for legal purposes, without seeking to undermine the constitutional right to strike, but rather with a view to safeguarding another equally important constitutional right, namely the right to education. The Government points out that: (i) in the absence of a provision in a collective labour regulation instrument or an agreement between the parties on the definition of minimum services, the public employer may request a meeting with the Directorate General for Public Employment with a view to negotiating an agreement between the parties on minimum services and the means required to provide them, in accordance with the provisions of the General Act on Public Employment (section 398(2)). In the absence of an agreement by the end of the third day following a strike notice, an arbitration board must define such services (section 398(3) of the Act); (ii) a meeting was held on 17 February 2023 at the Directorate General for Public Employment to negotiate a minimum service agreement for the strikes in question, but it was unsuccessful; (iii) as a result, on the same day, in accordance with section 8(4) of Decree-Law No. 259/2009 of 25 September, applicable under section 405 of the above-mentioned Act, an arbitration board was established. Arbitrators are selected at random from the lists of arbitrators for workers, public employers and presidents to ensure impartiality; (iv) on 19 February 2023, following the establishment of the arbitration board and prior to the issuance of its decision (on 27 February 2023), the Ministry of Education requested that the case be closed, under section 95 of the Administrative Procedure Code, on the grounds that the request for minimum services and the means required to provide them had become superfluous; and (v) the arbitration board nevertheless decided to rule on the need to define minimum services.
- 418.** As to the arbitration board's grounds for defining minimum services, the Government states that the arbitration board: (i) considered that the strike concerned a sector of undeniable social importance, which underpins the pursuit of rights equally important to those on which the right to strike is based, which, in principle, would warrant the introduction of a minimum service to safeguard them; (ii) reached a majority decision, after analysing and weighing the nature and scope (in terms of staff and duration) of the strike and the circumstances in which it would take place; and (iii) took into account, among other factors, the combined effect of other strikes that had taken place in the sector, held by various trade union organizations, and concluded that the strike in question formed part of a longer period of strikes that had taken place virtually non-stop since 9 December 2022. As a result, the strike in question could not be viewed as a simple one-day strike, causing only the usual and legitimate inconveniences inherent in any strike, but rather as one more strike forming part of a series of strikes, which, taken as a whole, risked jeopardizing the right to education and the right to learn of children and young people.
- 419.** The Government specifies that the arbitration decision is a judicial act that is equivalent to a first-instance judgment for all legal purposes and may be challenged before the Court of

Appeal. It is up to the Ministry of Education to define, organize and implement the minimum services previously decreed by decision of the arbitration body.

- 420.** In its communication of 8 January 2024, the Government emphasizes that the trade unions had appealed the arbitration board's decision before the Lisbon Court of Appeal, which had ruled in their favour (Decision of 17 May 2023). Following an appeal by the Ministry of Education, the Supreme Court of Justice ruled that the Court of Appeal's ruling on the arbitration body's decision could not be appealed (Decision of 3 November 2023). The decision on the merits handed down by the Lisbon Court of Appeal, which revoked the arbitration decision, is therefore final.
- 421.** Lastly, as to the alleged misuse of the minimum service in educational establishments, the Government considers that these allegations are not supported by documents submitted in support of the complaint or by other evidence.

C. The Committee's conclusions

- 422.** *The Committee notes that the present case concerns the complainants' criticism of the arbitration board's decision of 27 February 2023, to establish a minimum service in the education sector during two one-day strikes in several districts of the country on 2 and 3 March 2023. In particular, the organizations denounce the fact that the board in question based its decision to introduce a minimum service on other, supposedly unrelated, industrial actions, thereby undermining the free exercise of trade union activities and the constitutional right to strike, as well as the autonomy of organizations. The Committee notes in this regard that they consider that: (i) the minimum service provided for the unlimited strikes of STOP had adverse legal effects on the members of other unions, as it was eventually extended to the strike notices issued by the complainant unions, due to the analysis of the arbitration board; (ii) the establishment of a minimum service is legally justified only when there is an irreparable risk for the sector concerned. In the absence of such a risk, and given that the strike in question was called for a single day (spread over two regions of the country), there was no justification for the existence of an essential social need whose fulfilment would take precedence over the legitimate exercise of the right to strike; and (iii) unless national final evaluations, exams or tests are being held, which must take place on the same date throughout the country (under section 397 of the General Act on Public Employment), there are no grounds for establishing a minimum service. According to the complainants, any minimum service during this strike would violate the principles of proportionality, adequacy and necessity.*
- 423.** *The Committee notes that the Government, for its part, indicates that: (i) the Ministry of Education had requested the initiation of proceedings with a view to negotiating an agreement on the definition of minimum services and the means of providing them, in accordance with the law and for legal purposes, without seeking to undermine the constitutional right to strike, but rather with a view to safeguarding another equally important constitutional right, namely the right to education; and (ii) the arbitration body's decision was issued after negotiations at the Directorate General for Public Employment failed.*
- 424.** *The Committee notes that the Lisbon Court of Appeal overturned the arbitration body's decision (Judgment of 17 May 2023) on the grounds that there was no factual basis to support an infringement on the right to education and that the right to strike, which is a constitutional right, may only be restricted when necessary, to the strict extent of what is appropriate and proportionate to the defence and maintenance of another fundamental right which, in this case, comes into conflict. The Committee notes in this regard that the Supreme Court of Justice subsequently ruled that the appeal lodged by the Ministry of Education against the Court of Appeal's decision was inadmissible (Judgment of 3 November 2023).*

425. *In the light of the above, the Committee considers that this case does not call for further examination and is closed.*

The Committee's recommendation

426. *In the light of its foregoing conclusions, the Committee invites the Governing Body to decide that the present case does not call for further examination.*

Geneva, 6 June 2024

(Signed) Professor Evance Kalula
Chairperson

Points for decision:

paragraph 74	paragraph 249
paragraph 90	paragraph 267
paragraph 105	paragraph 311
paragraph 128	paragraph 338
paragraph 162	paragraph 358
paragraph 171	paragraph 382
paragraph 188	paragraph 404
paragraph 222	paragraph 426