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Institutional Section

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Reports of the Director-General concerning institutional matters

Fourth report: Report of the Committee set up to examine the representation alleging non-observance by Uruguay of Conventions Nos 87 and 98

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► I. Introduction

1. In a communication dated 9 October 2021, the Association of Locally Recruited Officials of Diplomatic Missions and Consular Offices of Uruguay Abroad (ASFUCOUREX), made a representation under article 24 of the ILO Constitution alleging non-observance by Uruguay of 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 Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
2. At its 344th Session (March 2022), the Governing Body decided that the representation was not receivable in relation to Convention No. 111 and that it was receivable in relation to Conventions Nos 87 and 98.
3. Uruguay has ratified Conventions Nos 87 and 98.
4. The provisions of the ILO Constitution concerning the submission of representations are as follows:

Article 24

Representations of non-observance of Conventions

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

Article 25

Publication of representation

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

5. In accordance with the decision of the Governing Body, adopted at its 334th Session (October–November 2018), instructing the Committee on Freedom of Association to examine representations referred to it according to the procedures for the examination of article 24 representations, the Committee established a tripartite subcommittee composed of Mr Sandro Lunard (Government member, Brazil), Mr Fernando Ylanes (Employer member, Mexico) and Mr Gerardo Martínez (Worker member, Argentina) to examine the representation.
6. In communications dated 13 April 2022, the complainant and the Government were informed of the Governing Body's decision, adopted at its 344th Session (March 2022). In its communication of 2 June 2022, the Government expressed willingness to engage more closely with ASFUCOUREX, which would allow avenues of understanding and possible reconciliation to be explored. In its communication of 27 October 2022, the Government indicated that a meeting would be held with ASFUCOUREX on 4 November of that year. In its communication of 15 December 2022, the Government indicated that although significant progress had been made at the meeting, the deadline for achieving voluntary conciliation would expire on 8 January 2023 unless an agreement was reached.
7. The Government provided its reply in a communication of 7 March 2023.
8. The Committee held its meeting on 20 March 2026.

► II. Draft decision

9. In the light of the conclusions and recommendations set out in the report of the Committee contained in document GB.356/INS/19/4, the Governing Body:
 - (a) approved the report of the Committee;
 - (b) requested the Government of Uruguay to take into account, in the context of the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the observations made in paragraph 25;
 - (c) requested the Government to provide information in that regard for review by the Committee of Experts on the Application of Conventions and Recommendations;
 - (d) decided to make the report publicly available and to close the representation procedure.

► III. Examination of the representation

A. The complainant's allegations

10. The complainant alleges that the Ministry of Foreign Affairs, in its capacity as an employer, does not respect the fundamental right to freedom of association of locally recruited officials of its diplomatic missions and consular offices. Specifically, the complainant alleges that the Ministry of Foreign Affairs: (i) does not recognize locally recruited officials as part of the Ministry; (ii) does not take into account the existence of a group of locally recruited officials with common interests, thereby preventing the right to collective bargaining and discriminating against locally recruited officials compared with the other officials who work for the Ministry; and (iii) although various actions were undertaken between 2016 and 2018 to enable collective bargaining with the executive and legislative authorities, the Ministry does not enable, promote or encourage communication channels and procedures for dialogue with ASFUCOUREX as a group of locally recruited officials. According to the complainant, this demonstrates that the effective application of Conventions Nos 87 and 98 has not been ensured.
11. In the attached documentation, the complainant indicates that although locally recruited officials are not public officials, their employment relationship is governed by the regulations applicable to the head of mission and recruitment is carried out on site by the head of the diplomatic mission or consular office, it is the Ministry of Foreign Affairs that authorizes recruitment and determines salaries and cost-of-living adjustments and, therefore, that locally recruited officials ultimately work for the Ministry of Foreign Affairs, considering also that diplomatic missions and consular offices form an integral part of the Ministry. The complainant further indicates that many of these officials are members of and make contributions to the Uruguayan Social Security Bank and many are required to contribute and pay personal income tax in Uruguay, through the Ministry of Foreign Affairs.
12. In addition, it is indicated in the documents attached by the complainant that in 2015, ASFUCOUREX represented approximately 76 locally recruited officials residing in 26 different countries. It is further indicated that the complainant maintains contact with other entities that represent locally recruited officials, and that the pursuit by ASFUCOUREX of its objectives is not

limited to a particular State. Lastly, the complainant indicates that the issues to which the representation refers are related to those examined by the Committee on Freedom of Association in [Case No. 2437 \(United Kingdom\)](#).

B. The Government's reply

13. In its communication of 7 March 2023, the Government indicates that the designation “locally recruited officials” used by the complainant is not technically correct, since in Uruguay the term “official” is limited to those whose status is conferred through a legal procedure that differs in scope from private sector employment. The Government indicates that persons who exercise public authority have a statutory rather than a contractual relationship with the central administration, reflecting two entirely different types of employment relationship.
14. The Government indicates that, in accordance with the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961 and the Vienna Convention on Consular Relations of 24 April 1963, both of which were approved by Law No. 13.774 of 17 October 1969, local employees engaged by the head of mission or consular office are essentially governed by the labour legislation of the receiving State, which regulates the rights and obligations arising from the employment relationship, and the courts competent to investigate any dispute related to the employment contract are also those of the receiving State.
15. The Government indicates that the employer of locally recruited personnel is neither the Ministry of Foreign Affairs nor the Uruguayan State but each head of mission or consular office, and that the Ministry's involvement in the recruitment process is intended to ensure that the call for applications is publicized, to monitor the contracts entered into locally in each State, to ensure compliance with the labour law of the receiving State and respect for the rights, guarantees and obligations of the persons to be engaged and, thereby, to authorize the head of mission or consular office to engage the person selected and adjust the quarterly recruitment budget allocated by the Ministry to each mission. The Government indicates that as they are not public officials and are not recruited by the Uruguayan State but have private employment relationships with each head of mission or consular office that recruited them, it is with these, their employers, that they must conduct the negotiations that they consider appropriate; this is because the employment contract of each person recruited is governed by the labour law of the State in which they perform their duties. The Government notes that collective bargaining with employees distributed across more than 40 countries with different laws is a complex matter. The Government notes that notwithstanding the above, freedom of association has always been respected, given that: (i) locally recruited officials formed a trade union organization and the Ministry of Foreign Affairs never opposed or intervened in its establishment; and (ii) ASFUCOUREX obtained legal personality by Ministry of Education and Culture resolution of 9 June 2021 approving its statute as a civil association.
16. The Government indicates that ASFUCOUREX, in a Note of 15 July 2016 addressed to the Directorate-General for Technical and Administrative Affairs, acknowledged that: (i) locally recruited officials are not public officials; (ii) such officials are governed by the applicable local regulations; (iii) it is the head of the mission who carries out the recruitment with authorization from the Ministry of Foreign Affairs and who serves as immediate supervisor. The Government indicates that while it understands that ASFUCOUREX represents common interests and in this regard acts as a union, it nevertheless emphasizes the difficulty of conducting collective bargaining when contracts are regulated by the local labour law of each receiving State and, furthermore, that since they are not public officials, collective bargaining under national laws is also not possible as these are territorial in scope and the contracts in question, being local

recruitment contracts, are concluded abroad and, therefore, are not governed by Uruguayan law.

17. The Government submits that it has always been open to dialogue, indicating that: (i) ASFUCOUREX was received on multiple occasions by the Ministry of Foreign Affairs, the Parliament of the Republic and the Ministry of Labour and Social Security; (ii) in 2016, the Ministry of Foreign Affairs participated with ASFUCOUREX in a dialogue forum convened by the National Directorate of Labour within the Ministry of Labour and Social Security, which is evidence that ASFUCOUREX is recognized as an organization with trade union rights; and (iii) on 4 November 2022, a meeting was held with the representatives of ASFUCOUREX in the context of the present representation.
18. The Government adds that there has never been any discrimination by the Uruguayan State against locally recruited employees or the Association that represents them, let alone against groups of Ministry of Foreign Affairs officials. The Government indicates that the three existing trade union associations in Montevideo in the Ministry of Foreign affairs represent public officials with whom it has a statutory legal relationship, and that the relationships that missions have with their locally recruited staff, which are typically governed by private employment law and the corresponding local law, are different. The Government emphasizes that the Ministry of Foreign Affairs has not restricted the freedom of association or collective bargaining rights of ASFUCOUREX nor discriminated against it in any way and has afforded adequate protection against acts of trade union discrimination.

► IV. The Committee's conclusions

19. *The Committee notes that this representation concerns allegations that the Ministry of Foreign Affairs does not guarantee the effective exercise of freedom of association or collective bargaining of locally recruited workers in the diplomatic missions and consular offices of Uruguay, in particular by not recognizing them as a group with common interests and not providing opportunities for collective bargaining with ASFUCOUREX, which represents locally recruited workers in diplomatic and consular missions in 26 countries.*
20. *The Committee notes the complainant's specific allegation that while locally recruited staff are not public officials and their employment relationship is governed by the regulations applicable in the sending State, it is the Ministry of Foreign Affairs that authorizes recruitment, fixes salary levels and adjustments and manages tax and social security matters in Uruguay and that, therefore, in the complainant's view, locally recruited staff ultimately work for the Ministry.*
21. *The Committee notes the Government's concurrence that locally recruited workers are not public officials and that they are bound by private law contracts, concluded with each head of mission or consular office, which are governed by the employment law of the receiving State and that, therefore, Uruguayan collective bargaining rules do not apply. Contrary to the complainant's allegation, the Government states that the employer is neither the Ministry of Affairs nor the Uruguayan State but each head of mission or consular office, and that the Ministry's involvement is limited to authorizing recruitment, ensuring that calls for applications are publicized and monitoring compliance with the applicable labour legislation, as well as respect for the rights and obligations of workers. In the Government's view, collective bargaining should be conducted with each contracting head of mission or consular office in accordance with local labour law. The Government indicates that even though the existence of common interests among workers located in different countries is recognized, it is difficult to engage in general collective bargaining. The Committee notes the Government's*

indication that freedom of association has been respected, in particular that neither the establishment nor the functioning of ASFUCOUREX, which the Government has received on several occasions, has been obstructed.

22. The Committee notes that, according to the documentation provided by the complainant, between 2016 and 2018 the complainant applied to the Ministry of Foreign Affairs, the Office of the President of the Republic and Parliament to engage in a collective bargaining process. Nevertheless, these efforts, as well as the conciliation meetings held after the submission of the present complaint, did not result in any specific solutions to the matters raised.
23. The Committee recalls that Conventions Nos 87 and 98 are applicable to locally recruited personnel in embassies.¹ The Committee further recalls that the Committee on Freedom of Association, when it examined allegations relating to collective bargaining for locally recruited embassy staff, recalled that governments are under a duty to encourage and promote voluntary collective bargaining in good faith between the parties, including the Government itself in the quality of employer.²
24. The Committee notes that, in this representation, the complainant and the Government diverge with regard to the role and scope of involvement of the Ministry of Foreign Affairs in the recruitment of and employment relationship with locally recruited personnel and, ultimately, concerning the authority with which collective bargaining on their working conditions should be conducted. The Committee observes from the allegations and the Government's reply that although the personnel in question are recruited locally, the authority on which the direct employer depends, that is to say, the diplomatic missions and consular offices, is the Government of Uruguay. In this regard, the Committee notes that one of the organizational units reporting directly to the Ministry of Foreign Affairs is responsible for the economic, financial, accounting and estate management both of the Ministry and of diplomatic missions abroad.³
25. The Committee recalls that only armed forces, the police and public servants engaged in the administration of the State may be excluded from collective bargaining rights.⁴ The Committee notes that the complainant and the Government concur that locally recruited workers are not public officials and are not, therefore, public servants engaged in the administration of the State. Taking due account of the above-mentioned elements regarding the specific characteristics of locally recruited workers, the Committee requests the Government to take all necessary measures with a view to encouraging and promoting negotiations between the Ministry of Foreign Affairs and the diplomatic missions and consular offices of Uruguay abroad, on the one hand, and the complainant, on the other hand, in order to reach agreements on the employment conditions of the aforementioned personnel. The Committee requests the Government to provide information on developments in this respect to the Committee of Experts on the Application of Conventions and Recommendations and reminds it that ILO technical assistance is available in this regard.

¹ Compilation of decisions of the Committee on Freedom of Association, paras 367 and 1255.

² [Case No. 2197 \(South Africa\)](#) 334th Report, June 2004 and [Case No. 2437 \(United Kingdom\)](#), 344th Report, March 2007.

³ [Decree 197/997](#) concerning the organizational structure of the executive unit of the Ministry of Foreign Affairs.

⁴ Compilation of decisions of the Committee on Freedom of Association, para. 123.

► V. The Committee's recommendations

- 26. In light of the conclusions set out in paragraphs 19–25 above concerning the issues raised in the representation, the Committee recommends that the Governing Body:**
- (a) approve this report;**
 - (b) request the Government of Uruguay to take into account, in the context of the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the observations made in paragraph 25;**
 - (c) request the Government to provide information in this regard for review by the Committee of Experts on the Application of Conventions and Recommendations;**
 - (d) make the report publicly available and close the representation procedure.**

Geneva, 20 March 2026

(signed) Mr Sandro Lunard
(Government member)

Mr Fernando Ylanes
(Employer member)

Mr Gerardo Martínez
(Worker member)