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Report of the Committee on Freedom of Association

404th 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 26 to 28 October 2023 and 2 November 2023, under the chairmanship of Professor Evance Kalula.
2. The following members participated in the meeting: Mr Gerardo Corres (Argentina) (virtually), Ms Gloria Gaviria (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, Mr Kaizer Moyane and Mr Fernando Yllanes; Workers' group Vice-Chairperson, Ms Amanda Brown and members, Mr Zahoor Awan, Mr Gerardo Martínez, Mr Magnus Norddahl, Mr Jeffrey Vogt and Mr Ayuba Wabba. The members of Argentinean, Colombian, Pakistani, South African and British nationality were not present during the examination of the cases relating to Argentina (Cases Nos 3192 and 3232), Colombia (Case No. 3208), Pakistan (Case No. 3370), South Africa (Case No. 3422) and United Kingdom of Great Britain and Northern Ireland (Case No. 3432).

* * *

3. Currently, there are **97** cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined **18** cases on the merits, reaching conclusions in **5** definitive reports, **8** reports in which the Committee requests to be kept informed of developments and interim conclusions in **5** 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 **8 January 2024** will not be taken into account for cases examined at its next session in the absence of compelling circumstances in the judgement 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 3184 (China) and 3395 (El Salvador) 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.

Hearing of a Government

6. The Committee recalls that, in its 400th Report, paragraph 6, it referred to its invitation to the Government of Cambodia, by virtue of its authority as set out in paragraph 69 of its procedures, to come before it in light of the seriousness of the matters raised in Case No. 2318 and the lack of progress in the requested investigations. The Committee appreciates the efforts made by the Government to come before it at its current meeting and will examine all the information available to it at its next meeting in March 2024.

Urgent appeals: Delays in replies

7. As regards Cases Nos 3406 (China, Hong Kong Special Administrative Region), 3439 (Republic of Korea), 3441 (Bolivarian Republic of Venezuela) and 3442 (Pakistan), 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: 2923 (El Salvador), 3067 (Democratic Republic of the Congo), 3269 (Afghanistan), 3388 (Albania), 3431 (Angola), 3436 (Republic of Korea), 3445 (El Salvador) and 3446 (United States of America). 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 and 3023 (Switzerland), 3210 (Algeria), 3242 (Paraguay), 3282 (Colombia), 3325 (Argentina), 3383 (Honduras), 3419 (Argentina), 3425 (Eswatini), 3429 (Ecuador), 3440 (Peru) and 3443 (Portugal), 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), 2508 (Islamic Republic of Iran), 2609 (Guatemala), 2761, 3074 and 3027 (Colombia), 3042 and 3062 (Guatemala), 3148 (Ecuador), 3157 (Colombia), 3178 (Bolivarian Republic of Venezuela), 3179 (Guatemala), 3185 (Philippines), 3199 (Peru), 3203 (Bangladesh), 3213 and 3218 (Colombia), 3228 (Peru), 3233 (Argentina), 3234 (Colombia), 3239 (Peru), 3258 (El Salvador), 3263 (Bangladesh), 3277 (Bolivarian Republic of Venezuela), 3280 (Colombia), 3300 (Paraguay), 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), 3392 and 3402 (Peru), 3413 (Plurinational State of Bolivia), 3421 (Colombia), 3435 and 3438 (Peru), 3347 (Spain) and 3449 (Mexico) 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 Autonomous Class Union Confederation dated 26 May 2023 requesting the withdrawal of its complaint in Case No. 3335 (Dominican Republic). The Committee therefore considers that this case is closed.
12. The Committee also takes note of a communication from the Government of Colombia dated 20 September 2023 transmitting, at the request of the signing parties, an agreement between the complainant organization, the National Union of Public Finance Workers – SINTRADIAN Public Finance, and the Domestic Taxes and Customs Office of Colombia, in which the parties agree that the grounds on which the complaint was filed are now settled and in which the complainant requests the withdrawal of its complaint in Case No. 3417 (Colombia). The Committee therefore considers that this case is closed.

New cases

13. The Committee adjourned until its next meeting the examination of the following new cases which it has received since its last meeting: Cases Nos 3448 (Guinea-Bissau), 3449 (Mexico), 3450 (Norway) and 3451 (Bolivarian Republic of Venezuela), 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

14. The Committee considered Case No. 3444 (Pakistan) not admissible due to the lack of standing of the complainant.
15. In addition, 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 one complaint received between June 2023 and October 2023 and therefore decided not to examine it.

Voluntary conciliation

16. In its March 2021 report (GB.341/INS/12/1), the Committee decided to adopt a similar approach of optional voluntary conciliation for complaints as has been adopted with respect to representations under article 24 of the ILO Constitution. In June 2022, the Committee took note of the agreement between the parties to Case No. 3425, the Trade Union Congress of Swaziland (TUCOSWA) and the Government of Eswatini, to refer the dispute to voluntary conciliation. In a communication dated 12 September 2023, the Government informed the Committee of the successful completion of the national voluntary conciliation and transmitted the report of the conciliation panel. The parties have reached agreement on a certain number of the matters raised in the complaint and agreed to avail themselves of the technical assistance of the Office to ensure the implementation of the resolutions adopted. Lastly, the Government indicated that it would provide detailed responses to the remaining issues. The Committee is awaiting the Government's additional information and any further information that the complainant may wish to draw to its attention for its examination of the remaining issues in this case.
17. In October 2022, the Committee took note that the parties in Case No. 3423, the Single Confederation of Workers of Colombia (CUT) and the Colombian Association of Professional Soccer Players (ACOLFUTPRO) as well as the Government, agreed to refer the dispute to voluntary conciliation at the national level. The parties have been actively engaged since then. 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

18. 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), Poland, France 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.

Article 26 complaint

19. 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. In light of the time that has elapsed since its previous examination of this case, the Committee requests the Government to send its observations so that it may examine the follow-up measures taken with respect to the recommendations of the Commission of Inquiry at its next meeting.

Transmission of cases to the Committee of Experts

20. The Committee draws the legislative aspects of Cases Nos 1865 (Republic of Korea), 3368 (Honduras), 3370 (Pakistan), 3432 (United Kingdom of Great Britain and Northern Ireland) and 3437 (Ecuador), 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

21. The Committee examined 8 cases in paragraphs 22 to 79 concerning the follow-up given to its recommendations and concluded its examination with respect to and therefore closed 5 cases: Cases Nos 1865 (Republic of Korea), 2341 (Guatemala), 2793 (Colombia), 3146 (Paraguay) and 3310 (Peru).

Case No. 3104 (Algeria)

22. The Committee last examined this case, which concerns dismissals of officials and members of the Syndicat national autonome des postiers (Autonomous National Union of Postal Workers) (SNAP), at its June 2021 meeting. On that occasion, the Committee requested the Government to indicate the follow-up given to the ruling of 21 April 2019 of the Dar El-Beïda Court ordering Algérie Poste (Algerian postal service, hereinafter the enterprise) to pay an amount of 500,000 Algerian dinars (equivalent to US\$3,750) in compensation for its refusal to implement rulings of September 2015 ordering the reinstatement of two dismissed trade unionists (Mr Nekkache and Mr Ammar Khodja). In particular, the Committee requested the Government to indicate whether the ruling had been the subject of an appeal by the complainants or whether it had been implemented [see 395th Report, June 2021, paras 25–29].
23. In a communication dated 8 August 2021, the complainant organization denounced the judicial harassment suffered by Mr Nekkache and Mr Ammar Khodja. It recalls that they were prosecuted by the enterprise in 2016 for usurpation of office and forgery for allegedly falsifying minutes recording the establishment of the SNAP trade union branch, and were convicted in first-instance rulings. According to the complainant organization, despite being acquitted by the Algiers Court of Appeal in 2019 in these cases, both Mr Nekkache (1 March 2019) and Mr Ammar Khodja (2 October 2019), the two union officials were summoned to the Dar El-Beïda central police station on the grounds of another complaint by the enterprise following SNAP social media posts. The complainant organization also denounced a campaign of harassment and intimidation by the enterprise against SNAP union officials and members. In conclusion, the complainant organization is calling for the immediate reinstatement of the trade union officials in compliance with the decisions handed down in their favour since 2019, and for the enterprise to cease its anti-union actions against the SNAP, and in particular the judicial harassment of its union officials.
24. The Government provides its observations in communications dated 16 November 2019, 19 May 2022, 3 February and 8 September 2023 in which it indicates that, following the 21 April 2019 ruling, the enterprise paid Mr Ammar Khodja and Mr Nekkache an amount of 500,000 dinars (equivalent to US\$3,750) each in compensation for its refusal to implement the reinstatement ruling of 8 September 2015. The Government claims that they have accepted their new employment status and no appeals have been recorded by the courts in this regard. According to the Government, they cannot apply for reinstatement to their posts under the provisions of existing legislation.
25. Furthermore, the Government indicates that the SNAP has been able to continue its activities within the enterprise and has even increased its activity since 2023. The Government provides the minutes of the establishment of a branch of the trade union in the administrative district of Annaba dated 11 July 2021 as proof of the union's activity, contrary to the assertions of the complainant organization. The Government also asserts that the labour inspectorate has not received any complaints concerning SNAP members regarding the establishment of trade union branches or the renewal of union structures. In addition, in view of the information it

has provided and the absence of any information to the contrary from the complainants to the labour inspectorate or the authorized labour administration departments, the Government requests that the case be closed by the Committee.

26. *With regard to the situation of the dismissed trade union officials who were covered by the 2015 reinstatement rulings handed down in 2015 but not implemented by the enterprise, the Committee recalls that it had previously wondered how a public institution could refuse to implement the rulings of a judicial authority without being penalized. It had also expressed its deep concern at the delays in complying with the court decisions that acknowledged the unfair nature of the dismissals which, four years later, had still not been implemented, thus having an extremely serious, harmful effect on two trade union officials by leaving them without any income. The Committee recalls that it had also questioned whether the compensation ordered in April 2019 by the Dar El-Beïda Court was sufficiently dissuasive [see 395th Report, para. 28].*
27. *The Committee notes that, while the enterprise has paid the lump sum of 500,000 Algerian dinars to Mr Ammar Khodja and Mr Nekkache respectively, as ordered by the courts in April 2019, there are differing views on the reinstatement of the trade union officials. The complainant organization expresses its wish for the trade union officials to be reinstated, while the Government maintains that no action to this effect has been taken by the labour administration or the courts. In this regard, the Committee refers to the clarifications contained in the report of the high-level mission that visited Algiers in May 2019 to follow up on the June 2018 conclusions of the Committee on the Application of Standards of the International Labour Conference concerning the application by Algeria of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). According to this report, the Ministry of Justice confirmed that the 21 April 2019 rulings by the Dar El Beïda Court concerned only the payment of penalty payments to uphold an earlier decision and not settlement on the merits. As a result, the complainants would have to go back to court to enforce the reinstatement if the enterprise failed to do so. Once the deadlines had expired, the workers could lodge a further appeal to claim compensation, in addition to the penalty payment, in lieu of reinstatement. In this regard, the Committee recalls that, if the judicial authority determines that reinstatement of workers dismissed in violation of freedom of association is not possible, measures should be taken so that they are fully compensated. The compensation should be adequate, taking into account both the damage incurred and the need to prevent the repetition of such situations in the future [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1172 and 1173]. In these circumstances, the Committee requests the complainant organization to indicate whether Mr Ammar Khodja and Mr Nekkache have lodged appeals in the courts seeking enforcement of their reinstatement or compensation in lieu of reinstatement. In the absence of any additional information in this regard, the Committee will not pursue its examination of this issue.*
28. *The Committee requests the Government to provide its observations on the complainant organization's allegations that Mr Nekkache and Mr Ammar Khodja were summoned to the Dar-El-Beïda central police station in 2019 following fresh complaints from the enterprise about SNAP posts on social media, and to indicate any follow-up given to the said complaints.*
29. *Lastly, welcoming the information provided by the Government on the SNAP's presence within the enterprise, the Committee trusts that it will continue to guarantee that the trade union in question can pursue its activities in defence of its members' interests in a climate that is free from pressure, intimidation, harassment or threats against its officials and members.*

Case No. 2793 (Colombia)

30. The Committee last examined this case, which concerned allegations of violation of collective agreements in force between SINALTRACAF and Comfenalco Tolima Family Compensation Fund (the Fund) regarding union leave, wage increases, meetings of Labour Relations Committee and automated deduction of union dues at its November 2011 meeting [see 362nd Report, paras 471–500]. On that occasion, the Committee had noted that there was an internal dispute within SINALTRACAF which had been referred to the judicial authority, with a view to ascertaining which of the two union executive committees was legally constituted and had expressed the expectation that the courts rule on the case without delay in order to allow the union to function effectively and be able to begin negotiations with a view to renewing the expired collective agreement. The Committee further requested the Government to send its observations regarding the alleged disciplinary proceedings against union officials for using the trade union leave allowed under the collective agreement in force and the unwarranted withholding of union dues through a court order.
31. The Committee notes that in a communication dated May 2013, the Government submitted a copy of the ruling dated 12 December 2012 concerning the dispute within SINALTRACAF, in which the High Court of the district of Ibagué had found that none of the parties could establish its claims with regard to the status of any of the two union executive committees and its capacity to represent workers. Regarding the alleged disciplinary proceedings against union officials for using leave allowed under the collective agreement, the Government transmitted information submitted by the employer, indicating that the latter had suspended union leave pending the judicial proceedings concerning the internal SINALTRACAF dispute, and had opened disciplinary proceedings against those workers who had taken time off despite the employer's disagreement. The employer added, however, that all these proceedings were subsequently closed, and no sanction was taken against any union official in this regard. Finally, concerning the withholding of union dues, the Government and the employer indicated that the funds had been deposited in judicial deposit accounts in accordance with a judicial order and their release was also a matter for judicial decision.
32. *Noting the information submitted by the Government, the Committee observes that it appears that for a certain period, an internal union dispute had disrupted the interactions between the employer and the union, and that during this time, the employer had taken provisional measures such as suspension of union leave and depositing of union dues in a judicial deposit account. It further notes that the information submitted does not highlight specific acts of interference on the part of the employer or the Government in the said internal union dispute. The Committee recalls in this regard that it is not competent to make recommendations on internal dissensions within a trade union organization, so long as the government does not intervene in a manner which might affect the exercise of trade union rights and the normal functioning of an organization [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1613]. In view of the foregoing, the time elapsed since the occurrence of the facts, and the fact that it has not received any further information from the complainants, the Committee considers this case closed and will not pursue its examination.*

Case No. 2684 (Ecuador)

33. The Committee last examined this case, which concerns allegations of violations of freedom of association and collective bargaining in the public sector, at its June 2017 meeting [see 382nd Report, paras 97–99]. On that occasion, the Committee again urged the Government to:
 - (i) keep it informed of any developments regarding the return of union dues to the members

of the National Federation of Workers of the State Petroleum Enterprise of Ecuador (FETRAPEC); (ii) promote without delay the commencement of discussions between FETRAPEC and the company with a view to reinstating the dismissed trade union leaders, Mr Edgar de la Cueva, Mr Ramiro Guerrero, Mr John Plaza Garay and Mr Diego Cano Molestina; (iii) take the necessary measures to ensure that an independent investigation is conducted into the alleged mass anti-union dismissals that took place at the E.P. PETROECUADOR enterprise in 2009 and 2010; (iv) inform it of the outcome of the criminal proceedings against the workers who participated in a work stoppage at the Unit for the Generation, Distribution and Commercialization of Electrical Energy of Guayaquil (Unidad Eléctrica de Guayaquil) (hereafter the electricity company); and (v) continue promoting dialogue with the representative trade union organizations. On that occasion, the Committee invited the Government to be more cooperative in the future.

34. The Government sent information in communications dated 22 October 2018 and 6 March 2020. With regard to the return of trade union dues to FETRAPEC members, the Government recalls in its communication of October 2018 the legislation applicable to the issue of the payment of trade union dues and states in particular that it is the exclusive power of employers, at the request of the labour organization (FETRAPEC), to withhold or deduct these values from the remuneration of workers and deliver them directly to the beneficiary union, following for this purpose the provisions of the Law on the Financing of Trade Union Confederations.
35. With regard to the reinstatement of the dismissed trade union leaders, Messrs Edgar de la Cueva, Ramiro Guerrero, John Plaza Garay and Diego Cano Molestina, the Government reiterates in its 2018 communication that the workers were subject to a *despido intempestivo* [immediate dismissal] and that they had signed their severance agreements and received the compensation provided for in such a case, which demonstrated their acceptance of their dismissal. In its 2020 communication, the Government indicates that: (i) by means of a communication dated 20 September 2017, the public enterprise Petroecuador (hereafter the oil company) stated that the legislation applicable to public enterprises does not provide for reinstatement; (ii) on 31 May 2019, the aforementioned trade union leaders brought an action for non-compliance before the Constitutional Court of Ecuador with a view to obtaining their reinstatement and that this action was declared admissible; and (iii) pending the Court's judgment on the merits, it is not for the Government to pronounce on this case.
36. In relation to the request for an independent investigation into the alleged mass anti-union dismissals at the oil company in 2009 and 2010, the Government describes the provisions of the Labour Justice Act, which entered into force in 2015, concerning protection against anti-union discrimination. With regard to the outcome of criminal proceedings concerning workers who participated in a work stoppage at the electricity company, the Government states in its 2018 communication that while the Ministry of Labour is not the competent entity to provide information on criminal proceedings, it has nevertheless requested information in this regard from the National Council of the Judiciary. Finally, the Government states that social dialogue with representative organizations of employers and workers is one of the axes of the Government's policy.
37. Subsequent to the information provided by the Government and by means of communications dated 12 November 2021 and 5 March 2022, the complainant organization sent, for its part, additional information on the situation of the trade union leaders dismissed in 2008, Messrs Edgar de la Cueva, Ramiro Guerrero, John Plaza Garay and Diego Cano Molestina. In its communication of 12 November 2021, the complainant organization states that, by means of a judgment of 29 September 2021, following the action for non-compliance brought by the

aforementioned trade union leaders, the Constitutional Court ordered: (i) compliance with the Committee's recommendations regarding the reinstatement of the aforementioned trade union leaders; (ii) payment of an amount of US\$5,000 as non-pecuniary reparation; and (iii) the Ecuadorian State to make a public apology. In its submission of 5 March 2022, the complainant organization states that: (i) following the ruling of the Constitutional Court, Mr Edgar de la Cueva, Mr Ramiro Guerrero and Mr Diego Cano Molestina returned to the jobs they had held in 2008, while Mr John Plaza Garay was still in the process of taking steps to remove an impediment to holding public office due to debts owed to the tax authorities that he had to assume jointly and severally as legal representative of his trade union organization, the Single Enterprise Committee of Workers of Petroecuador (CETAPE); (ii) despite the requests of the trade union leaders, the aforementioned return to work has not been formalized with a reintegration act, which prevents the workers from being paid the remuneration they stopped receiving since 2008 and the social security rights they are entitled to so that they can have a dignified retirement. Based on the above, the complainant organization requests that the four union leaders be recognized and awarded full reparation for the damage caused by their anti-union dismissal and the delay (13½ years) in reinstating them into their jobs.

38. *The Committee takes note of the information provided by the complainant organization and by the Government concerning the situation of the four FETRAPEC leaders dismissed in 2008. The Committee takes note of the information provided in 2020 by the Government concerning the initiation of an action in compliance with the Constitutional Court by the aforementioned trade union leaders. The Committee notes in this respect the subsequent information provided by the complainant organization on the judgment handed down in this respect by the Constitutional Court on 29 September 2021 in favour of the reinstatement of the trade union leaders. In this respect, the Committee notes with interest that, following the aforementioned judgment, three of the four trade union leaders of FETRAPEC have returned to the jobs they held before their dismissal in 2008, while the return of the fourth is being arranged. The Committee also notes that the complainant organization claims that this return does not at this stage constitute reinstatement, since it has not been accompanied by the payment of lost wages and social security entitlements, and therefore requests full compensation for the damage caused by the dismissal of the four leaders. The Committee recalls that it has considered that if it appears that the dismissals occurred as a result of involvement by the workers concerned in the activities of a union, the Government must ensure that those workers are reinstated in their jobs without loss of pay [Compilation of decisions of the Committee on Freedom of Association, sixth edition, 2018, para. 1169]. On the basis of the above, and while noting that it has not received information from the Government concerning the above-mentioned Constitutional Court judgment and its implementation, the Committee requests the Government to facilitate without delay the holding of discussions between FETRAPEC and the oil company with a view to the effective reinstatement of the fourth trade union leader (Mr Garay) and the determination of an equitable solution for the wages not received and social security entitlements of the four FETRAPEC leaders dismissed in 2008. The Committee requests the Government to keep it informed in this respect.*
39. *With regard to its other recommendations, the Committee regrets to note that, despite the many years that have elapsed since the events at issue in the present case, the Government has not reported on specific actions taken to resolve the issues still outstanding and has not provided certain long-standing requests for information. The Committee is therefore once again compelled to urge the Government to: (i) keep it informed about the return of trade union dues to FETRAPEC members; (ii) take the necessary steps to ensure that an independent investigation is carried out into the alleged mass anti-union dismissals at the oil company in 2009 and 2010; and (iii) inform it of the outcome of the criminal proceedings concerning the workers who participated in a work stoppage at the electricity company.*

Case No. 2341 (Guatemala)

40. The Committee last examined this case, which concerns allegations of anti-union acts, among them numerous anti-union dismissals in various public entities in the country, at its June 2014 meeting [see 382nd Report, paras 36–42]. On that occasion, the Committee once again: (i) requested the Government, in relation to the dismissal of a significant number of workers following the formation of the Sindicato Gremial de Trabajadores de la Estiba y Actividades Conexas en el Puerto Quetzal (SIGRETEACOPQ) and the various collective disputes brought before the courts with respect to the aforementioned public enterprise, to keep it informed of the results of the trials pending judgment and to provide it with detailed information on the reasons for non-compliance with the reinstatement orders that were not appealed; (ii) urged the Government to keep it informed of any administrative or judicial decisions issued in connection with the allegations of interference by the state-owned company in the extraordinary general assembly of one of the company's unions, at which union leaders were dismissed; and (iii) urged the Government, with respect to the dismissal of 18 workers in the municipality of Comitancillo (San Marcos), to keep it informed of the judgment handed down on this matter by the Fourth Labor and Social Security Chamber, and to report on the reinstatement of these workers following the decision of the Constitutional Court dated 14 November 2006.
41. The Government sent information on the various recommendations mentioned above through communications dated 7 May, 21 May, 24 June, 9 September and 12 November 2015, 1 October 2021 and 3 February 2023.
42. Regarding the current status of the judicial proceedings related to the collective disputes filed in the public company and stevedoring companies, the Government informs the Committee that: (i) one of the collective disputes was admitted for processing on 31 July 2008 and, after having been notified in August 2008, the parties did not take any further steps, and therefore the process is pending; (ii) the second collective dispute, admitted for processing on 25 August 2009, was filed after the plaintiff withdrew in December 2012; and (iii) regarding the third collective dispute, after having been admitted for processing on 19 June 2008 and the parties were notified, they did not make any further action, so the process was filed.
43. In relation to the allegations presented by the SIGRETEACOPQ union regarding anti-union dismissals in response to the creation of the aforementioned organization, the Government submits updated and detailed information on the reinstatement files of 19 workers provided by the Labor and Social Security Court of First Instance of the Department of Escuintla. According to the said information, the reinstatement of these workers, dismissed between June and July 2008, was not possible for reasons that include: the impossibility of the notifier to access the offices of the public company, the refusal of the referred company to accept the notification – which resulted in the fixing of fines – or because the offices of the company were not at the place indicated to carry out the reinstatement proceedings. According to the information sent, in view of the aforementioned difficulties: (i) eight complainants ended up desisting from their request for reinstatement, which resulted in the filing of their cases in December 2012; and (ii) in the other 11 cases, the court reports that the complainant has not taken any action with the court, nor has it made an appearance at the same, “for which reason the reinstatement complaint is in that state”.
44. Regarding the allegations related to the interference of the state-owned company in the extraordinary general assembly of one of the unions of the state-owned company, the Government reports that the challenge filed by members of the union against the election of the new officers in the extraordinary general assembly was rejected by resolution on 10 June

2004, on the grounds that the procedures established in the union's own by-laws for challenging the alleged facts were not followed, and that the administrative authority was not competent to resolve them. On 24 October 2005, the request for registration of the officers of the union in question was declared admissible. The Government informs the Committee that these resolutions are final and that there are no court rulings on this matter. The background of the file shows that other general assemblies were held with the election of officers without any opposition, and the registration operations were carried out for the following periods, up to the years 2018–20.

45. Regarding the dismissal of 18 workers from the municipality of Comitancillo and their reinstatement, the Government claims that there were 12 dismissed workers who were part of the reinstatement ruling issued by the Constitutional Court on 14 November 2006. Seven of them were reinstated in their same positions. Of the remaining five, two received their benefits and compensation and three did not appear at the reinstatement proceeding. The remaining six workers who were not covered by the ruling were reinstated in their same positions and working conditions.
46. *The Committee takes due note of the information provided by the Government concerning the situation of the 18 dismissed workers of the municipality of Comitancillo, the collective disputes brought before the courts in relation to the public enterprise and the allegations relating to the extraordinary general assembly of one of its trade unions held in 2004.*
47. *With regard to the allegations of numerous dismissals in retaliation for the creation of SIGRETEACOPQ, the Committee regrets to note that the information provided refers to only 19 of the 59 cases in which reinstatement had been ordered in the first instance without the public enterprise complying with the order and without the rulings having been appealed. In addition, the Committee notes with concern that none of the 19 reinstatement judgments for which the Government has provided information has been complied with. In this respect, the Committee recalls that it has considered that the basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1140]. The Committee also highlights that, if it appears that the dismissals occurred as a result of involvement by the workers concerned in the activities of a union, the Government must ensure that those workers are reinstated in their jobs without loss of pay [see **Compilation**, para. 1169]. The Committee also recalls that the need to ensure compliance in the country with court orders for reinstatement has been the subject of its repeated recommendations (see Case No. 3251, 400th Report, October 2022, paragraph 379; Case No. 2948, 382nd Report, June 2017, paragraph 379; Case No. 3062, 376th Report, October 2015, paragraph 585; Case No. 3042, 376th Report, October 2015, paragraph 568) and continues to be the focus of the Governing Body's attention in the context of supporting the implementation of the 2013 road map on freedom of association (see GB/349/INS/10, October–November 2023). The Committee notes in this regard the creation, in 2023, of a court dedicated to hearing cases on disobedience to comply with reinstatement orders and notes as well that the Office is undertaking a technical diagnostic in this regard. The Committee welcomes the creation of the above-mentioned court and expects that it will contribute to ensuring effective compliance with court orders to reinstate workers dismissed for their union activity or affiliation.*
48. *Based on the foregoing, in light of the facts examined in this case and having received no information from the complainant organizations since 2008, the Committee considers that this case is closed and will not pursue its examination.*

Case No. 2566 (Islamic Republic of Iran)

49. The Committee last examined this case, which was lodged in May 2007 and concerns allegations of continued repression of teacher unionists, at its October 2020 meeting [see 392nd Report, paras 64–75]. On that occasion, the Committee had urged the Government to bring its conclusions to the attention of the judicial authorities with a view to ensuring that in the future trade unionists are not arbitrarily condemned under vague charges for the peaceful exercise of trade union activities, to take all the measures in its power for the immediate release of those so detained, and to keep it informed of the developments in this regard. It further requested the Government to ensure that in the future all allegations of violations of detained unionists' rights will be promptly and efficiently investigated.
50. In a communication dated 23 December 2022, the International Trade Union Confederation (ITUC) and Education International (EI) submitted supplementary information in relation to this case. They state that the Government has continued arresting trade unionists and workers and that since 16 September 2022, the mass peaceful protests following the killing of Jina Mahsa Amini in "Morality Police" custody, gave rise to severe repression and arrests where trade unionists and worker activists were also targeted. Two young workers, Mohsen Shekari and Majid Reza Rahnavardi, both 23, were executed in December 2022.
51. The ITUC and EI further indicate that earlier in 2022, over 230 teachers were detained for their participation in the May Day celebrations. They were later released on bail. Furthermore, prior to 1 May, the authorities raided the homes of several prominent trade unionists in the education sector, detained them and sentenced them to several years in prison. Several members of the Iranian Teachers' Trade Associations (ITTAs) also reported having received phone calls and summonses to intelligence service offices, or to revolutionary courts in relation to dormant cases based on security charges and having been threatened and warned not to participate in the teachers' gatherings on May Day. According to the Coordinating Council of Iranian Teachers' Trade Associations (CCITTA), at least 12 trade unionists remained in arbitrary detention, for the sole reason of having peacefully exercised their right to freedom of expression and demonstration to demand better teaching and learning conditions in the education sector. The ITUC and EI provide further details concerning 14 Iranian leaders and affiliates of provincial sections of the CCITTA who were targeted by the authorities for participation in peaceful protests or other forms of engagement in peaceful trade union activities:
 - (a) Mr Esmaeil Abdi, the former General Secretary of Tehran Teachers' Trade Association, has been detained in Evin, Karaj Central Penitentiary and Kechui prisons since 2015. He was first arrested in July 2015 to prevent his participation in the EI congress in Canada. Cumulation of several successive sentences against him means that his release is not due before 2031. His requests for retrial were rejected four times; when finally in December 2022 a court accepted his request, the intelligence forces still refused to release him, even on medical grounds. His health has deteriorated because of lack of access to medical care. His family has also suffered harassment as the authorities have cut off their social insurance and benefits since 2014. Mr Abdi's wife, Ms Monireh Abdi, has lost her employment as an architect and has been unable to find a job because of effective blacklisting. The authorities have warned her not to give further interviews or participate in rallies, otherwise a case will be opened against her, and she will be sentenced to prison.
 - (b) Mr Rasoul Bodaghi, a member of the board of directors of Eslamshahr TTA and the General Secretary of the CCITTA, was sentenced to four years in prison on 12 April 2022

on charges of “assembly and collusion with the intent to commit crime against national security” and to one year on the charge of “propaganda against the State” for his peaceful engagement with the CCITTA. His house was raided, and he was violently arrested on 30 April 2022 and since then he has been detained in Evin prison. The Court of Appeal confirmed his sentence on 1 June 2022. The sentence also bans him from travelling for one year and from residing in Tehran and its neighbouring provinces, and from membership in political parties and social groups for two years. Mr Bodaghi had several times been condemned to imprisonment and spent more than six years in prison after being sentenced for identical charges in 2010 and 2015.

- (c) Mr Jafar Ebrahimi, a member of the board of directors of Tehran TTA and an inspector at the CCITTA, was last arrested without a warrant, after his house was raided on 30 April 2022. On 27 November 2022, the Tehran Court of Appeal upheld a five-year sentence against Mr Ebrahimi on charges of “propaganda against the State” and “assembly and collusion with the intent to commit crime against the security of the State”. In December 2022 he was transferred to hospital for a health emergency. He was chained to his hospital bed and was guarded by security officers. Mr Ebrahimi was once more sentenced to four years and six months’ imprisonment in February 2020 in relation to another case.
- (d) Mr Masoud Farhikhteh, a member of the board of Eslamshahr TTA and co-chair of the CCITTA was arrested on 13 May 2022, during the teachers’ protests organized countrywide. He was released on bail on 8 June 2022 and sentenced to one year of imprisonment and 74 lashes on the charge of disturbance of public order. This ruling was later suspended for two years. However, Mr Farhikhteh was rearrested on 3 December 2022 by security forces in Karaj and was in solitary confinement in Evin prison at the time of the communication.
- (e) Mr Mehdi Fathi, a member of Fars province TTA was again arrested and detained on 7 June 2022 for having participated in a teachers’ protest in Shiraz. The provincial appeal court upheld an eight-year sentence against him. Furthermore, the court withdrew his passport and banned him from leaving the country. Mr Fathi is currently detained in Adel Abad prison in Shiraz. Previously, in 2021 he was prosecuted for his union activities and participation in peaceful protests. He spent 113 days in solitary confinement in Adel Abad prison before being released on bail on 4 January 2022.
- (f) Mr Mohammad Habibi, a member of the board of directors of Tehran TTA, had been subject to judicial harassment for years because of his union engagement. In October 2022, he was sentenced to three years and seven months’ imprisonment. His house was raided on 30 April 2022, his and his wife’s electronic devices were confiscated, and Mr Habibi was violently arrested and was held in prison at the time of the communication. Previously, in August 2018, Tehran Revolutionary Court had sentenced Mr Habibi to seven years and six months’ imprisonment on charges of “collusion against national security”, “propaganda against the State” and “disruption of public order” for his peaceful involvement in trade union activities. After serving 30 months, his sentence was reduced based on a new directive issued by the head of the judiciary, and he was released in November 2020. Furthermore, Mr Habibi’s teaching position was twice terminated during his time in detention under the pretext of “unjustified absence”.
- (g) Mr Hashem Khastar, a member of the board of Mashhad TTA and a civil rights activist was informed while serving a prison sentence in Vakil Abad prison (Mashhad) that he should appear in court for a hearing on 1 August 2022 with only one day’s notice. Mr Khastar has been jailed many times for his trade union activities.

- (h) Ms Zhila Khayer, a member of the Kazoroon (Fars province) TTA, was arrested in her hometown of Kazoroon in December 2022 and was held in Adel Abad prison in Shiraz. She was transferred to Soroush Detention Centre for interrogation and subsequently sent back to Vakil Abad. At the time of the communication, she expected to be released on bail.
- (i) Mr Eskander (Soran) Lotfi, a member of the board of directors of Mariwan (Kurdistan province) TTA and the spokesperson of the CCITTA was most recently arrested on 8 October 2022. On 3 December 2022 he was severely beaten in the Greater Prison of Tehran by an interrogator because he was providing humanitarian support to the young people who had been arrested during the uprising. He was released on 5 December 2022 but awaits a new trial and possible conviction. Mr Lotfi had previously been detained in connection with May Day events. On 8 February 2020, Sanandaj criminal court had sentenced him to two years' imprisonment on charges of "propaganda against the State" and "spreading misinformation" based on his trade union activities. However, in July 2020 the Court of Appeal acquitted him of those charges.
- (j) Ms Shiva Mafakheri, a mathematics teacher and activist affiliated with Sanandaj (Kurdistan province) TTA, was arrested in mid-November 2022 and her whereabouts remained unknown at the time of the communication. She is reported to have been arrested because she did not allow the authorities to intervene in her class to punish her students for having participated in protests.
- (k) Mr Shaban Mohammadi, a board member of Marivan TTA, had his house raided and searched in the early hours of 30 April 2022, all his electronic devices were confiscated, and he was arrested for the third time since the beginning of 2022. This arrest was related to the preparation of the teachers' gathering on May Day in Tehran and other cities. Mr Mohammadi was arrested for the fourth time on 11 May 2022, while he was visiting his fellow union leader Mr Massoud Nikkhah. He was transferred to Evin prison in Tehran on 5 June and released on bail on 20 August 2022. On 8 October 2022, security forces broke into Mr Mohammadi's house at 7 a.m. to arrest him, but he was absent and as no legal document from the judiciary was produced to justify his arrest, he did not present himself to the authorities subsequently. Since October 2022 he has been hiding in fear of rearrest and at the time of the communication his whereabouts remained unknown.
- (l) Mr Pirouz Naami, the General Secretary of the Khuzestan TTA was arrested during the 2022 popular uprising and was released on bail after one month, but subsequently the regional office of the Ministry of Education informed him that the security forces had cancelled his latest permanent contract with the Ministry and his payment was reduced to what was provided in an earlier contract. The resulting financial pressure on Mr Naami and his family is used as a punitive tool to silence teacher activists.
- (m) Mr Masoud Nikkhah, a board member of the Marivan TTA (Kurdistan province) was arrested on 30 April 2022 prior to the May Day celebrations, then released and subsequently rearrested on 11 May. He was transferred to Evin prison in Tehran along with his fellow teacher activists. Security forces raided his home and confiscated all electronic devices on 12 May 2022. During his detention, Mr Nikkhah was tortured by the Islamic Revolutionary Guard Corps. He was released on a heavy bail on 20 August 2022 but was again arrested and detained in October 2022. On 5 December 2022 he was released on a new bail.
- (n) Mr Hamid Rahmati, a member of the Shahreza TTA (Isfahan province) was last arrested on 2 October 2022 and started a hunger strike in detention on 9 December 2022. He has been arrested many times since 2008.

52. The ITUC and EI conclude that the raids, arrests, detention and heavy sentencing of both rank-and-file and prominent trade unionists form part of a pattern of systematic repression by the Iranian authorities to instil a climate of fear and violence and to suppress the legitimate exercise of the right to freedom of association and request the Committee to call on the Government to immediately drop all charges against trade unionists referred to above and release those still in detention; to refrain from raiding trade unionists' homes and from confiscating their and their families' property and travel documents; and to stop the police and judicial harassment of CCITTA members.
53. The Committee notes the Government's reply dated 1 May 2023. The Government indicates that Ms Cécile Kohler and Mr Jacques Paris, two French teachers and trade unionists arrested in Iran on 8 May 2022 and still in provisional detention in Evin prison under the charge of "assembly and collusion with the intention to commit crime against the security of the State" have had meetings with the TTA and CCITTA members, focusing on how to transform the teachers' and SVATH claims into street protest actions against the State. The Government reiterates its reply in Case No. 2508 that, prior to their arrival while they were still in France, they had organized online meetings and training webinars with the participation of the CCITTA. During those virtual meetings, methods of organizing, safe contacts and fighting with the State were presented and training pamphlets were provided. The Government adds that Ms Kohler and Mr Paris had also held several webinars and face-to-face training courses in a safe home located in a Tehran neighbourhood, aiming at holding teachers' union strikes and protests. They had injected significant amounts of money for financial support and support of the key elements; they had provided technical support and sent technical items in order to covertly communicate and not be discovered by intelligence services in their effort to overthrow the Islamic Republic of Iran.
54. The Government provides the following indications concerning the status of some of the trade unionists referred to in the EI and ITUC communication:
- (a) Mr Esmaeil Abdi was sentenced to ten years' imprisonment for charges of assembly and collusion with the intention of committing a crime against national security and propaganda against the State. This ten-year term started on 11 January 2021.
 - (b) Mr Rasoul Bodaghi was arrested once on charges of propaganda against the State, assembly and collusion against the national security and disruption of public order by participating in illegal gatherings on 11 December 2021 and released on bail on 21 December 2021. During his prison time, he met his first-degree relatives six times. During his imprisonment he was not eligible to use leave and had no recourse to the prison clinic. According to the latest information, he was sentenced to four years in prison. The start of his sentence is 7 May 2022, and it ends on 6 August 2026.
 - (c) Mr Jafar Ebrahimi has been in custody since 30 April 2022 under charges of assembly and collusion with the intention to commit crimes against national security and propaganda against the State. All judicial proceedings have yet to be completed in his case.
 - (d) Mr Massoud Farhikhteh is charged with assembly and collusion with the intention to commit crimes against national security and propaganda against the State. He was arrested on 3 December 2022 and released on bail on 1 February 2023.
 - (e) Mr Mehdi Fathi was sentenced to five years' imprisonment under charges of assembly and collusion with the intention to commit crimes against national security. He was arrested on 8 June 2022 and is currently serving his sentence in the security ward of Shiraz Central Prison.

- (f) Mr Hashem Khastar was sentenced to ten years' imprisonment on charges of membership in State opponent groups and organization of gatherings and groups with the aim of disturbing national security. He is currently held in Mashhad Prison and will be released at the end of his term on 18 June 2029.
 - (g) Ms Zhila Khayyer was arrested and placed in provisional detention on 22 November 2022 on charges of assembly and collusion with the intention to commit crimes against the security of the State. She was indicted on 9 January 2023 and was referred to the revolutionary court of Shiraz. No verdict was issued in her case at the time of the communication.
 - (h) Messrs Eskandar Lotfi, Shaban Mohammadi and Massoud Nikkhah are charged with assembly and collusion with the intention to commit crimes against national security and propaganda against the State. They were arrested on 1 May 2022, and released on bail on 17 August 2022, then arrested once again on 8 October 2022 and released on bail on 5 December 2022.
 - (i) Ms Shiva Mafakheri was arrested on 22 November 2022 on charges of assembly and collusion with the intention to commit crimes against the security of the State. Her case was referred to Sanandaj prosecutor's office. She was released on bail on 26 January 2022. Subsequently an order of termination of proceedings was issued and the case was closed.
 - (j) Mr Pirouz Naami was sentenced in absentia on the charge of assembly and collusion with the intention to commit crimes against national security. His attorney has applied for the mitigation of his punishment.
 - (k) Mr Hamid Rahmati was arrested on 3 October 2022 on charges of assembly and collusion with the intention to commit crimes against the security of the State and was released on bail on 15 December 2022.
- 55.** *The Committee notes the updated information submitted by the ITUC and EI and the Government reply. The Committee notes with deep concern that since its previous examination of this case, measures against members and leaders of CCITTA and local Teachers' Trade Associations (TTAs) seem to have significantly intensified, as allegedly a great number of them have been subject to arrest, detention and judicial prosecution and conviction, as well as administrative sanctions in relation to legitimate trade union activities. The Committee notes that with the exception of one case, the cases of all the union members and leaders referred to in the complainant's communication of December 2022 remain open at the time of the examination.*
- 56.** *The Committee notes that the following trade unionists are in prison, serving final sentences issued against them in revolutionary or criminal courts, mainly under sections 500 and 610 of the Islamic Penal Code (IPC), which respectively concern "propaganda against the State" and "assembly and collusion to commit crime against the security of the State": Mr Esmail Abdi (15 years), Mr Rasoul Bodaghi (4 years), Mr Jafar Ebrahimi (5 years), Mr Mehdi Fathi (8 years), and Mr Hashem Khastar (10 years). The Committee notes that Mr Jafar Ebrahimi, was sentenced to 5 years' imprisonment – four years of which are enforceable – based on sections 500 and 610 of the IPC and has been detained since 30 April 2022. Nevertheless, the Government indicates that the judicial proceedings concerning him are yet to be completed, without providing further detail.*
- 57.** *The Committee notes that according to the information submitted by the complainant and information published by the CCITTA, the following trade unionists have been released on bail, and are awaiting trial and possible conviction:*

- *Mr Massoud Farhikhteh was last released on 25 May after spending 25 days in solitary confinement. The Committee notes the Government's indication that Mr Farhikhteh is charged under sections 500 and 610 of the IPC.*
 - *Mr Mohammad Habibi was last released on 21 May 2023 after 47 days in detention including 21 days of solitary confinement. Charges based on sections 500 and 610 of the IPC are brought against him.*
 - *Ms Zhila Khayer was released on bail on 23 January 2023; she was charged with assembly and collusion with the intention to commit crime against the security of the State (section 610 of the IPC).*
 - *Messrs Eskandar Lotfi, Shaban Mohammadi and Massoud Nikkhah were last released on bail on 5 December 2022 and are charged under sections 500 and 610 of the IPC.*
 - *Mr Pirouz Naami was last released on bail on 9 November 2022. Judicial proceedings concerning charges of propaganda in favour of opponent groups, membership in groups aiming at disturbing the security of the State and section 610 of the IPC are still open against him.*
 - *Mr Hamid Rahmati was last arrested on 2 October 2022 and released on bail on 15 December 2022, after 74 days of detention. The Committee notes the Government's indications that he is charged under section 610 of the IPC.*
- 58.** *The Committee notes with deep concern the numerous arrests, prolonged preventive detention, prosecution, and heavy imprisonment sentences against CCITTA and local TTAs leaders and members since April 2022. The Committee notes that the Government indicates the charges brought against the arrested and sentenced teacher trade unionists, without indicating the concrete acts attributed to those charged and sentenced. It further notes that the complainants' allegations and publicly available sources suggest that the arrests and judicial measures against trade unionists are related to their trade union activities, in particular participation in demonstrations and public expression of opinions concerning questions of interest to teachers and government policies on educational, social, and economic issues. The Committee notes in particular the simultaneous raids targeting the homes of Messrs Bodaghi, Ebrahimi, Habibi, Lotfi, Mohammadi and Nikkhah in the early hours of 30 April, one day before the demonstrations of May Day 2022, followed by the arrest, long preventive detention, and prosecution of these CCITTA officials as well as the rearrest of Mr Farhikhteh on 1 May 2023. The Committee notes the reproduction of the long-standing, familiar pattern of criminal qualification of legitimate trade union activities under IPC national security and public order related provisions, in particular sections 500 and 610 of the IPC.*
- 59.** *Concerning Mr Esmaeil Abdi, the General Secretary of Tehran TTA, the Committee recalls that he was first arrested in 2015 and started serving a prison sentence in 2016 based on sections 500 and 610 of the IPC. The Committee further recalls that in 2020, the Government indicated that Mr Abdi's sentence would terminate, and he would be released on 22 December 2020 [392nd Report, para. 67]. Nevertheless, the Committee notes with deep concern that in its latest communication, the Government indicates that Mr Abdi has started serving a ten-year sentence on charges of assembly and collusion with the intention to commit crimes against national security and propaganda against the State as of 11 January 2021. The Committee notes that according to publicly available information, by the end of 2020 when Mr Abdi should have been released, the judiciary started executing an earlier suspended condemnation of ten years' imprisonment on charges of espionage. The Committee further notes that on 16 November 2022 the Iranian Supreme Court finally quashed the ten-year sentence and admitted Mr Abdi's retrial application concerning the espionage case, referring it for retrial to another branch of the Tehran Revolutionary Court. Nevertheless, the Committee notes with deep concern that months after the judgment sentencing him to imprisonment*

had been quashed, Mr Abdi has been neither released nor retried, and the Government indicates in its communication that he is serving a ten-year sentence. The Committee notes that the manifest arbitrariness of Mr Abdi's detention after an old sentence purportedly justifying his continued imprisonment was quashed constitutes an extremely alarming development. The Committee recalls in this regard 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 [see **Compilation of Decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 123]. Furthermore, no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike, public meetings or processions, particularly on the occasion of May Day [see **Compilation**, para. 156]. Therefore, the Committee urges the Government to immediately drop the charges and release the teachers referred to in this case whose detention or charges are due to their trade union activities. It further requests the Government to keep it informed of the measures taken in this regard and the status of all the persons concerned.

60. The Committee notes with deep concern the allegations of torture and ill-treatment of Messrs Lotfi and Nikkhah while in detention, as well as allegations of recourse to prolonged solitary confinement concerning Messrs Farhikhteh, Fathi and Habibi. The Committee recalls in this regard that in cases of alleged torture or ill-treatment while in detention, governments should carry out independent inquiries into complaints of this kind so that appropriate measures, including compensation for damages suffered and the sanctioning of those responsible are taken to ensure that no detainee is subjected to such treatment [see **Compilation**, para. 112]. It further recalls that regardless of the grounds for the arrests, according to the UN Standard Minimum Rules for the Treatment of Prisoners, solitary confinement shall be used only in exceptional cases as a last resort for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. Prolonged solitary confinement – solitary confinement for more than 15 consecutive days – amounts to torture and shall be prohibited (see the resolution adopted by the UN General Assembly on 17 December 2015 (the Nelson Mandela Rules), A/RES/70/175, Rules 43–45) [see 400th Report, para. 511]. The Committee therefore urges the Government to take the necessary measures to ensure that an independent inquiry into the allegations of torture and ill-treatment of Messrs Lotfi and Nikkhah while in detention is conducted and to refrain from having recourse to solitary confinement of detained trade unionists in the future. It further requests the Government to keep it informed of the steps taken in this regard.

Case No. 3146 (Paraguay)

61. The Committee last examined this case, which concerns allegations of various anti-union acts against officers and members of the Union of Professionals and Technicians of the National Institute of Technology, Standardization and Metrology (INTN Sindical), at its meeting in June 2017 [see 382nd Report, paras 467–483]. On that occasion, the Committee invited the complainant organization, if it so wished, to provide the competent authorities with additional detailed information at its disposal to enable them to investigate any remaining allegations of anti-union discrimination and, if found to have been made, to impose appropriate sanctions and compensatory measures, and requested the Government and the complainant organization to keep it informed in this respect, as well as on the outcome of the appeal lodged by Mr Mario Leiva. The Committee also encouraged the Government to promote collective bargaining so that in the near future a collective agreement could be *concluded* with the Institute.
62. With regard to the outcome of the appeal lodged by Mr Mario Leiva, the Government, by a communication dated 1 March 2018, stated that Mr Mario Leiva was reinstated by Resolution

INTN No. 908/2016, dated 28 September 2016, and by Agreement and Ruling No. 409 dated 25 October 2016, issued by the Second Chamber of the Court of Auditors, as an official of the INTN and that, at the time of preparation of the aforementioned communication, he was performing his duties as a permanent official of the INTN.

63. With regard to the promotion of collective bargaining within the INTN, the Government stated that the Directorate General of Labour had found that, according to the documents in the Trade Union Registration Department, the following INTN trade unions were registered, namely: (i) the INTN trade union, with trade union status granted on 20 March 2009; (ii) the Union of Officials of the National Institute of Technology and Standardization (SIFUINTN), with trade union status granted on 2 September 2005; (iii) the Sindicato de Trabajadores Públicos del INTN (SITRAPUINTN), with trade union status granted on 13 August 1992; and (iv) the workers organization, Union of Workers of the National Institute of Technology and Standardization (FINTNSI), with trade union status granted on 18 August 1996. Furthermore, the Government reported the existence of a collective agreement on working conditions between the INTN and the SIFUINTN trade union, approved and registered on 22 September 2006, from which strict respect for freedom of association can be inferred.
64. *The Committee takes note of the detailed information provided by the Government concerning the reinstatement of Mr Mario Leiva. The Committee also takes note of the information provided by the Government concerning the existence of a collective agreement on working conditions signed between the INTN and SIFUINTN, approved on 22 September 2006, this union being one of the four registered with the Ministry of Labour, Employment and Social Security (MTESS) and having trade union status. On the basis of the above and having received no further information in this respect from the complainant organization, the Committee, while encouraging the Government to take all necessary measures to promote the use of collective bargaining within the INTN, considers this case closed and will not pursue with further examination.*

Case No. 3310 (Peru)

65. The Committee last examined this case, which concerns allegations of violations of freedom of association of members of two public sector trade unions, at its meeting in October 2022 [see 400th Report, paras 624–651]. On that occasion, the Committee trusted that, in the framework of the examination of the criminal complaint against Mr Guillermo Huamán Llacsahuanga, General Secretary of the National Union of Workers of the Peruvian National Migration Authority (SINTRAMIG), the competent authorities would take full account of freedom of association, and requested the Government to keep it informed of the outcome of the examination and of any decision taken in this respect. The Committee also trusted that the Government would take the necessary measures to ensure that SINTRAMIG members could fully exercise their right to collective bargaining with a view to renewing the agreement signed in 2019 with the Superintendence.
66. With regard to the recommendation concerning the examination of the criminal complaint against Mr Huamán (recommendation (a)), the Government, by a communication dated 19 December 2022, transmitted an official communication dated 2 December 2022, issued by the Third Corporate Criminal Prosecutor's Office of Cercado de Lima – Breña Rímac – Jesús María, which stated that: (i) on 24 February 2021 the Prosecutor decided not to formalize the complaint against Mr Huamán and those responsible for the alleged commission of the crime of falsification of documents; and (ii) this decision was appealed before the Fourth Superior Criminal Prosecutor's Office of Lima, which, in turn, declared the appeal unfounded on 26 May 2021, and returned the proceedings to the original Prosecutor's Office for archiving.

67. With regard to recommendation (b) in which the Committee trusted that the Government would take the necessary measures to ensure that SINTRAMIG members could fully exercise their right to collective bargaining with a view to renewing the agreement signed in 2019 with the Superintendence, by a communication dated 10 February 2023, the Government states that: (i) SINTRAMIG submitted its 2019 statement of claims on 29 November 2018; (ii) the negotiating commission was formed on 17 July 2019 and held its last session on 5 December 2019, at which certain compromises were agreed upon; (iii) the pandemic interrupted negotiations from March to June 2020; (iv) in April 2021, SINTRAMIG submitted a new statement of grievances for that year, which led to confusion and legal disagreements, as the 2019 statement of grievances was still pending; (v) the National Superintendency of Migration, in a notification of 16 August 2021, requested the file to be archived due to inconsistencies; (vi) although, in accordance with the provisions of Law No. 31188 on Collective Bargaining in the State Sector, it was not possible to negotiate the lists prior to its entry into force, such as those of 2019 and 2021, the conciliation was concluded, granting food benefits through electronic cards for all SINTRAMIG affiliated staff at the national level.
68. *The Committee takes note of the information provided by the Government regarding the criminal complaint against Mr Huamán Llacsahuanga, which is currently shelved. The Committee also takes note of the information provided by the Government concerning the conciliation process carried out with SINTRAMIG PERU, which concluded with the granting of a food benefit in the form of electronic cards for all personnel affiliated to SINTRAMIG PERU at the national level. On the basis of the above and having received no further information in this respect, the Committee, while confident that, under Law No. 31188, the members of SINTRAMIG will be able to fully exercise their right to collective bargaining, considers that the present case is closed and does not require further examination.*

Case No. 1865 (Republic of Korea)

69. The Committee last examined this case, which has been pending since its May–June 1996 meeting, at its June 2017 meeting [see 382nd Report, paras 33–96]. On that occasion, the Committee made the following recommendations:
- (a) to repeal the legal provisions that prohibited dismissed workers from being trade union members [382nd Report, para. 42];
 - (b) to ensure that the charges against the teachers who participated in a 27 June 2014 rally against the decertification of the teachers' trade union be dropped [382nd Report, para. 43];
 - (c) to lift the ban on wage payment to full-time union officials and the paid time-off system and to ensure that no one is sanctioned for having entered into an agreement in this regard and to refrain from requiring the parties to collective agreements that provide for the payment of wages to full-time union officials to amend their agreement [382nd Report, para. 47];
 - (d) to provide information concerning the outcome of proceedings against 11 Korean Government Employees' Union (KGEU) members of the National Human Rights Commission of Korea (NHRCK), who had been subject to disciplinary measures in 2011 for having protested the dismissal of the union chapter's Vice-President [382nd Report, para. 58];
 - (e) to ensure that public officials' trade unions have the possibility to express their views publicly on the economic and social policy questions which have a direct impact on their members' interests and no longer take disciplinary action against public servants for their individual support of a political party or expression of views about government socio-economic policy affecting workers' interests [382nd Report, para. 60];

- (f) to ensure that the narrow interpretation of the legitimate goals of strike action – limited to industrial disputes – be set aside so that strike action can be carried out in relation to all social and economic matters of direct concern to the workers [382nd Report, para. 90];
- (g) to submit information regarding the outcome of the administrative suits filed by 11 railway company workers, dismissed for their participation in December 2013 and February 2014 strikes [382nd Report, para. 92];
- (h) to take the necessary measures to review section 314 of the Penal Code concerning the offence of “obstruction of business”, so as to ensure that it does not infringe the right of workers to exercise legitimate trade union activity [382nd Report, para. 93];
- (i) to order a thorough investigation of the claims of excessive use of force and damage to property during the police operation at the headquarters of the Korean Confederation of Trade Unions (KCTU) on 22 December 2013; to take the necessary steps to hold those responsible for the violation of the premises of the KCTU to account; and to provide information on the outcome of the judicial proceedings against KCTU leaders and members indicted in relation to these events [382nd Report, para. 94];
- (j) to reply to the allegations concerning the financial threat to the existence of the Korean Railway Workers’ Union (KRWU) and the intimidating effect of the civil lawsuits brought by the railway company against the union in relation to the strike actions of December 2009 and 2013 and to provide information on the outcome of the judicial proceedings [382nd Report, para. 95], and;
- (k) to provide full information in relation to allegations of recourse to threats and measures of compulsion to force the union to accept the employers’ proposed revision of the collective bargaining agreement between the railway company and the KRWU in 2014 [382nd Report, para. 96].

- 70.** The Korean Teachers and Education Workers Union (JeonGyojo, KTU) and Education International (EI) submitted follow-up information and additional allegations in a communication dated 19 February 2020. In their communication, the KTU and EI refer to the continued decertification of the KTU on the grounds that the union had allowed nine dismissed teachers to maintain their membership. They allege that following decertification, the Government cancelled the positions of 72 full-time union officials and ordered them to return to their school positions. Thirty-four union officials refused to return to their schools, were finally dismissed in 2016 and remained dismissed at the time of the communication. The KTU and EI further allege that after outlawing the union, the Government severely limited teachers’ freedom of expression by taking disciplinary measures and charging teachers, measures that were also upheld by the Supreme Court.
- 71.** The Government sent its observations in communications dated 17 September 2020 and 28 January 2021. In its September 2020 communication, the Government indicates that in its examination of the case filed by the KTU demanding the revocation of the Government notification of its decertification, the Supreme Court of Korea declared on 3 September 2020, that the provision of the enforcement decree which regulated the notification of invalid unions was unconstitutional, and therefore null and void and sent the case back to the lower court. The Government indicates that following this Supreme Court ruling, it immediately revoked its notification and the KTU regained its status as a trade union.
- 72.** In its January 2021 communication, the Government indicates that amendment bills of the Trade Union and Labour Relations Adjustment Act (TULRAA), the Act on the Establishment and Operation of Public Officials’ Trade Unions (AEOPOT), and the Act on Establishment and Operation of Trade Unions for Teachers (AEOTUT) were adopted by the National Assembly on 9 December 2020. The Government indicates that these amendments included the repealing of section 2.4(d) of the TULRAA, section 6(3) of the AEOPOT and section 2 of the AEOTUT which

limited the union membership of the dismissed workers in private and public sectors, thereby allowing the unions to freely determine this matter in their by-laws. Furthermore, the Government indicates that the amended version of section 23 of the TULRAA, concerning election of union officers, expanded union autonomy by providing that the eligibility of officers shall be determined by the union by-laws. However, the amended law limits this autonomy by providing that in enterprise-level unions, union officers shall be elected among persons employed at the enterprise concerned. The Government indicates that this condition resulted from the process of social dialogue and the reasoning behind it was that election of persons unfamiliar with the circumstances of an enterprise may negatively impact the bargaining procedure and industrial actions there. Concerning the public sector, the Government refers to amendments to section 6(1) of AEOPOT and the insertion of section 4.2 of the AEOTUT, pursuant to which the restriction on the grade of public officials to join a union is removed, and union membership eligibility is extended to firefighters, educational officers including research assistants and retired public officials and teachers.

73. Finally, the Government indicates that section 24.2 of the TULRAA prohibiting salary payment to full-time union officers was repealed. However, the amended law maintains the time-off system, providing that the worker remunerated by the employer may engage in union affairs within the maximum time-off limit and provision of wage exceeding this limit would be an unfair labour practice. The Government concludes its observations concerning legislative reforms by indicating that it is working on improving lower statutes of the TULRAA, AEOPOT and AEOTUT and plans to publish related public relations and reference materials.
74. The Committee notes that on 21 April 2021, the Government of the Republic of Korea 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).
75. The Committee further notes that, in their communication dated 15 June 2022 concerning Case No. 3430, the Korean Public Service and Transport Workers' Union (KPTU), the KCTU and Public Service International (PSI) alleged that the Government had yet to comply with the CFA's recommendations in the present case regarding restrictions imposed on collective actions by workers in essential public services and the Committee indicated that it would examine this matter within the framework of this case. The complainant organizations state that section 43 of the TULRAA allows employers of "essential public service businesses" to substitute up to 50 per cent of workers on strike with temporary workers drawn from outside sources, while section 71(2) of the same act, provides a too broad list of such services, including urban subway, air transportation, water, electricity, petroleum refinery and supply, hospitals, blood supply, Bank of Korea and telecommunications businesses. The Government replied in a communication dated 3 February 2023, indicating that it had introduced essential businesses in public service since 2008, after abolishing the compulsory arbitration system, so as to ensure that the exercise of the right to strike could be reconciled with the protection of public interest based on tripartite agreements. The Government considers that the scope of essential public services defined under the Republic of Korea's circumstances and context, taking into account the impact of the strike on people's lives and the economy does not go beyond ILO standards. Furthermore, the Government indicates that it allows the substitution of manpower only within certain limits during the period of industrial action in businesses where suspension can significantly jeopardize people's daily lives and hinder the national economy, with a view to reconciling the protection of the right to strike with the employer's freedom of work. Whether a business is an essential public service business is decided after comprehensive consideration of its size, replaceability in the market and other characteristics. The Government emphasizes that the essential public service business system is applied only in exceptional cases

considering the impact of the strike in the business. Furthermore, opinions of workers and management were reflected in drawing up the list of essential public services.

76. *The Committee notes the information submitted by the KTU and EI and the Government observations. It notes that these communications address certain legislative issues that have been the object of its recommendations under the present case. The Committee notes with interest that the legislative reforms described by the Government have given effect to several of its long-standing recommendations in the present case, notably by repealing the legal provisions that excluded dismissed workers from union membership and the lifting of the ban on wage payment to full-time union officials and the paid time-off system. The Committee nevertheless notes that certain other legislative aspects of the case, such as the narrow interpretation of the legitimate goals of strike action, application of section 314 of the Penal Code concerning the offence of "obstruction of business" to strike actions and the authorization of hiring of workers during strike in the "essential public-service businesses" and the broadness of the list of the latter remain unaddressed. In view of the ratification on 21 April 2021 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), by the Government of the Republic of Korea, the Committee recalls its previous recommendations in this respect and refers all these legislative aspects to the Committee of Experts on the Application of Conventions and Recommendations.*
77. *The Committee welcomes the restoration of the trade union status of the KTU following the Supreme Court decision of 3 September 2020, and trusts that the charges against the teachers who participated in a 27 June 2014 rally against the decertification of the teachers' trade union were dropped in view of this restoration. It also firmly hopes that the Government would refrain from restraining the freedom of expression of KTU and KGEU members through imposition of disciplinary measures against them. Regarding the more specific issue of the relationship between freedom of association and freedom of expression, the Committee recalls that in the present case it has several times requested the Government to ensure that public officials' trade unions have the possibility to express their views publicly on the economic and social policy questions which have a direct impact on their members' interests, in reply to which the Government has referred to the duty of neutrality of public officials laid down in the State Public Officials Acts (SPOA). In view of the ratification of Convention No. 87 by the Republic of Korea, the Committee refers this aspect of the present case to the Committee of Experts.*
78. *Regarding the alleged violations of freedom of association in relation to the railway company strikes of 2009, 2013 and 2014 and their aftermath, including the claims of dismissal of striking workers, civil lawsuits against the railway company union (KRWU), excessive use of police force during the search operations at the KCTU headquarters, and alleged threats and measures of compulsion regarding the revision of the collective bargaining agreement at the company in 2014, the Committee notes that neither the complainants nor the Government have communicated any further information since the last examination of the present case. The Committee firmly hopes that these issues have been resolved in line with its previous conclusions and recommendations.*
79. *In view of the foregoing considerations, the Committee considers this case closed and will not pursue its examination.*

* * *

Status of cases in follow-up

80. Finally, the Committee requests the Governments and/or complainants concerned to keep it informed of any developments relating to the following 51 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
2982 (Peru)	March 2014	June 2023
3011 (Türkiye)	June 2014	November 2015
3018 (Pakistan)	June 2023	–
3046 (Argentina)	November 2015	–
3054 (El Salvador)	June 2015	–
3076 (Maldives)	November 2022	–
3078 (Argentina)	March 2018	–
3098 (Türkiye)	June 2016	November 2017
3100 (India)	March 2016	–
3167 (El Salvador)	November 2017	–
3180 (Thailand)	March 2017	March 2021
3182 (Romania)	November 2016	–
3202 (Liberia)	March 2018	–
3248 (Argentina)	October 2018	–
3251 (Guatemala)	November 2022	–
3257 (Argentina)	October 2018	–
3275 (Madagascar)	June 2023	–
3285 (Plurinational State of Bolivia)	March 2019	–
3288 (Plurinational State of Bolivia)	March 2019	–
3289 (Pakistan)	June 2018	October 2020

Case No.	Last examination on the merits	Last follow-up examination
3313 (Russian Federation)	November 2021	–
3314 (Zimbabwe)	October 2019	November 2022
3326 (Guatemala)	November 2022	–
3339 (Zimbabwe)	March 2022	–
3342 (Peru)	June 2023	–
3360 (Argentina)	March 2023	–
3363 (Guatemala)	June 2023	–
3364 (Dominican Republic)	March 2022	–
3369 (India)	November 2022	–
3375 (Panama)	June 2022	–
3376 (Sudan)	June 2023	–
3385 (Bolivarian Republic of Venezuela)	March 2022	–
3397 (Colombia)	June 2023	–
3399 (Hungary)	March 2022	–
3404 (Serbia)	November 2022	–
3408 (Luxembourg)	November 2022	–
3412 (Sri Lanka)	June 2022	–
3415 (Belgium)	November 2022	–
3420 (Uruguay)	June 2023	–
3426 (Hungary)	March 2023	–
3430 (Republic of Korea)	June 2023	–

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

82. In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 2362 and 2434 (Colombia), 2528 (Philippines), 2533 (Peru), 2540 (Guatemala), 2583 and 2595 (Colombia), 2637 (Malaysia), 2652 (Philippines), 2656 (Brazil), 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), 2924 and 2946 (Colombia), 2948 (Guatemala), 2949 (Eswatini), 2952 (Lebanon), 2954 (Colombia), 2976 (Türkiye), 2979 (Argentina), 2980 (El Salvador), 2985 (El Salvador), 2987 (Argentina), 2995 (Colombia), 2998 (Peru), 3006 (Bolivarian Republic of Venezuela), 3010 (Paraguay), 3016 (Bolivarian Republic of Venezuela), 3019 (Paraguay), 3020 (Colombia), 3022 (Thailand), 3024 (Morocco), 3030 (Mali), 3032 (Honduras), 3033 (Peru), 3036 (Bolivarian Republic of Venezuela), 3040 (Guatemala), 3043 (Peru), 3056 (Peru), 3059 (Bolivarian Republic of Venezuela), 3061 (Colombia), 3069 (Peru), 3075 (Argentina), 3095 (Tunisia), 3097 (Colombia), 3102 (Chile), 3103 (Colombia), 3119 (Philippines), 3131 and

3137 (Colombia), 3139 (Guatemala), 3150 (Colombia), 3164 (Thailand), 3170 (Peru), 3171 (Myanmar), 3172 (Bolivarian Republic of Venezuela), 3183 (Burundi), 3188 (Guatemala), 3191 (Chile), 3194 (El Salvador), 3220 (Argentina), 3236 (Philippines), 3240 (Tunisia), 3267 (Peru), 3272 (Argentina), 3278 (Australia), 3279 (Ecuador), 3283 (Kazakhstan), 3286 (Guatemala), 3287 (Honduras), 3316 (Colombia), 3317 (Panama), 3323 (Romania), 3333 (Colombia), 3341 (Ukraine), 3343 (Myanmar), 3347 (Ecuador), 3374 (Bolivarian Republic of Venezuela), 3378 (Ecuador), 3386 (Kyrgyzstan), 3401 (Malaysia), 3407 (Uruguay), 3410 (Türkiye) and 3414 (Malaysia) which it will examine as swiftly as possible.

Closure of follow-up cases

83. 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 case: No. 3319 (Panama).

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Case No. 3422

Definitive report

Complaint against the Government of South Africa presented by the Association of Mineworkers and Construction Union (AMCU)

Allegations: The complainant organization alleges that section 66(2)(c) of the Labour Relations Act limits the right of workers to freedom of association by unduly restricting secondary strikes

84. The complaint is contained in a communication dated 7 March 2022 from the Association of Mineworkers and Construction Union (AMCU).
85. The Government provided its observations in a communication dated 29 April 2023.
86. South Africa 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

87. In its communication dated 7 March 2022, the AMCU alleges that its call for holding secondary strikes in ten mining companies between 28,29 February and 7 March 2019 was opposed by those companies through separate urgent applications pursuant to section 66(3) of the Labour

Relations Act (LRA), requesting the Labour Court to interdict the secondary strikes. According to the AMCU, the secondary strikes were called in support of a strike (the primary strike) that was ongoing at Sibanye Gold Limited t/a Sibanye Stillwater (hereinafter, company (a)). On 15 March 2019, the Labour Court declared the secondary strikes to be unprotected and interdicted those from proceeding. This judgment was later confirmed by the Constitutional Court in *AMCU v. Anglo Gold Ashanti Limited t/a Anglo Gold Ashanti and Others* (2021).

88. The complainant alleges that company (a), which operates in gold and platinum production, is the corporate behemoth of the mining industry. Considering that on 30 June 2018 collective agreements governing wages and conditions of employment at several gold producers including company (a) were due to lapse, the AMCU submitted its demands relating to wages and other conditions of employment on 4 June 2018. Negotiations concerning wages and terms and conditions of employment for the period between 1 July 2018 and 30 June 2021 started on 11 July under the auspices of the Minerals Council South Africa (the Minerals Council). Since the parties did not reach agreement, the AMCU referred the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA). On 26 September 2018, the CCMA issued a certificate of outcome confirming that the dispute remained unresolved and that the AMCU and its members could go on strike.
89. The complainant further alleges that following a collective bargaining process on 14 November 2018, company (a) concluded a wage agreement entitled “the 2018-2021 Review of Wages and other Conditions of Employment” with three other unions, namely the National Union of Mineworkers (NUM), Solidarity and UASA, with the specific aim of excluding the AMCU. Subsequently, AMCU issued the company a strike notice and commenced the primary strike on 21 November. This strike persisted until April 2019. A one-day secondary strike called by the AMCU took place within the platinum operations of company (a) on 22 January 2019.
90. The complainant states that on 20 and 21 February 2019 it issued notices of secondary strike action to the following mining companies: AngloGold Ashanti Limited; Lonmin Platinum (which at the time comprised Western Platinum and Eastern Platinum Limited); Rustenburg Platinum Limited, Harmony Gold Mining Company Limited; Village Main Reef (Pty) Ltd, Tau Lekoa (Pty) Ltd and Kopanang (Pty) Ltd t/a Village Main Reef; Northam Platinum Limited; Marula Platinum (Pty) Ltd; Impala Platinum Limited; Glencore Operations SA (Pty) Ltd and Bushveld Vametco Alloys (Pty) Ltd (companies b-k). The complainant states that all these companies are party to the Minerals Council.
91. The AMCU further alleges that when it sought to call a secondary strike in these companies, company (a) “had already started firing its array of collective bargaining weapons” and on 13 December 2018 had concluded a collective agreement with NUM, Solidarity and UASA, which purported to be extended to the AMCU and its members pursuant to section 23(1)(d) of the LRA. The complainant states that in reaction to all measures taken by company (a) to put it under pressure to capitulate, it had no other means to exercise counter-pressure but to embark on a secondary strike action.
92. The complainant cites section 66(2) of the LRA, which provides the requirements for a secondary strike to be legally protected, including: (a) lawfulness of the primary strike; (b) reception by the secondary employer of a written notice at least seven days before the commencement of the secondary strike; and (c) the requirement that “the nature and extent of the secondary strike is reasonable in relation to the possible direct or indirect effect that the secondary strike may have on the business of the primary employer”. According to the AMCU, companies (b-k) all admitted that requirements (a) and (b) were complied with but submitted

in their urgent applications that the secondary strike is not reasonable in terms of requirement (c) and therefore should not be allowed.

93. The complainant states that the Labour Court judgment provided that although the South African Constitution does not distinguish between primary and secondary strikes, the LRA subjects the latter to additional restraints and that the AMCU had failed to comply with the requirement embodied in section 66(2)(c) of the LRA. According to the complainant the Labour Court relied on the precedent in considering that the harm or economic loss caused to the secondary employer was materially relevant to the section 66(2)(c) inquiry. The complainant further states that in this case, the Labour Court additionally held that in terms of section 66(2)(c), it was not permissible to group together a collection of secondary employers in a specific industry and assess the combined effect on the whole industry. To do so would deprive each individual employer of the protection afforded to them by the LRA. From this standpoint, the Labour Court concluded that the case called for individual assessment of the case of each secondary employer.
94. The complainant further states that the Labour Court rejected the AMCU's argument that the seven-day secondary strike will have limited financial impact on companies (b-k) and held that some of those companies were already in a financially precarious state and further losses would deter investment and create the risk of further retrenchments. The judgment provided that although economic harm is not a factor in assessing the reasonableness of primary strikes, in the case of secondary strikes it ranks highly in consideration of the proportionality of the strike impact. According to the complainant, the Labour Court also examined the connection between the primary employer and the secondary employers, namely company (a) and companies (b-k) and found the AMCU's claim that the latter could pressurize the former to move closer to the union's demands unconvincing, as their shared membership in the Minerals Council could not bind members to accept any particular position or compel them to bargain centrally. The Labour Court further held that the proposed secondary strike would not have any effect on company (a), or affect bargaining between it and the AMCU, while it would disrupt the operation of company (a)'s competitors, damage the national economy and result in possible job losses. Therefore, the Labour Court concluded that the proposed secondary strike did not satisfy the proportionality test and would be unreasonable. The complainant adds that companies (b-k) had also expressed the fear that the secondary strike would be accompanied by violence, fear that the Court considered *prima facie* justified.
95. The AMCU states that it appealed against the Labour Court's ruling but that the appeal was dismissed on the grounds that with the end of the primary strike there was no longer a live dispute between the parties, and therefore the issues were moot. The complainant further appealed to the Constitutional Court, which admitted the appeal but found by majority that the secondary strike was unprotected and ruled in favour of companies (b-k) on 12 November 2021. The complainant sent a copy of this ruling as an annex to its complaint.
96. In support of its complaint before the Committee, the AMCU affirms that a secondary strike is an expression of worker solidarity and an exercise of their freedom of association. It recalls that South Africa has ratified Conventions Nos 87 and 98 and that the LRA expressly requires courts to apply the law in a manner consistent with ILO Conventions. The complainant affirms that the ILO's position on secondary strikes is that they should be subject only to the requirement that the primary strike be lawful. Considering that the primary strike at company (a) was protected, the complainant alleges that in holding that the secondary strike was not protected, the judgment of the Constitutional Court breached ILO standards set for the protection of secondary strikes and thus undermined the workers' freedom of association. The complainant also cites the dissent of one of the members of the Constitutional Court which

upholds that the purposive meaning given in section 66(2) must ensure compliance with South Africa's obligations as a member of the ILO and that therefore, in view of the lawfulness of the original strike, the lawfulness of the secondary strikes should have been recognized.

97. The complainant finally alleges that "section 66(2)(c) of the LRA unsuitably limits the rights of employees to freedom of association and is in breach of ILO standards" and requests the Committee to recommend to the Government of South Africa "to amend section 66(2)(c) of the LRA to provide that a secondary strike is protected if a primary strike is protected", or to make any additional or alternative recommendations in this regard. The AMCU adds that such an amendment to the law will not leave the secondary employer unprotected, because in the event of a secondary strike their ability to protect themselves through the following means will remain unaffected: (i) implementation of the "no work, no pay" rule for the period of the secondary strike; (ii) initiation of a lockout; (iii) putting in place picketing rules; (iv) interdicting violence in relation to the strike; (v) seeking compensation for any loss attributable to an unlawful strike or conduct; and (vi) fair dismissals in accordance with the law for reasons related to the employee's conduct during the strike or for a reason based on the employer's operational requirements.

B. The Government's reply

98. In its communication of 29 April 2023, the Government rejects the complaint and indicates that empowering courts to conduct a proportionality assessment is entirely consistent with the relevant ILO Conventions. According to the Government, the LRA has adopted a sensible approach to secondary strikes, which balances various competing interests and ultimately leaves it to independent and impartial courts to develop a body of jurisprudence regarding the meaning and content of what is "reasonable" in this regard considering the particular facts of each case. The Government provides an account of the facts of the case and the proceedings before domestic courts which concurs with the account provided by the complainant. The Government puts emphasis on certain passages of the Constitutional Court judgment, where the Court refers to Conventions Nos 87 and 98 and notes that while neither Convention expressly confers a right to strike, Articles 3 and 10 of Convention No. 87 inspire both the Committee on Freedom of Association (CFA) and the Committee of Experts on the Application of Conventions and Recommendations (CEACR) to progressively develop principles on the right to strike. The Constitutional Court majority considers that the CEACR has acknowledged the competing interests implicated during the strikes.
99. The Government further cites the Constitutional Court majority judgment providing that in relation to secondary strikes, although both the CEACR and the CFA have considered that a general prohibition could lead to abuse, "this is not to suggest that sympathy strikes should be afforded utterly unfettered protection. The CEACR recognizes the importance of sympathy strikes but emphasizes that the justification for recourse to this type of strike should be specified. Typical of international standards, the ILO recommends a minimum requirement for sympathy strikes". The Government submits that the Court "correctly" held that "the ILO sets a minimum requirement" and that "the ILO prescribes neither the procedural prerequisites for embarking on secondary strikes or any other substantive requirements. Those are matters for sovereign states to determine in national legislation. Section 66(2)(c) meets the ILO's minimum requirement that the primary strike must be lawful but adds procedural and other requirements consistent with the negotiations and the Constitution". The Government also refers to the dissenting judgment which held that section 66(2)(c) should be interpreted restrictively so as to have the least intrusion into the right to strike; that the impact that the secondary strike might have on the business of secondary employer is of no relevance to the

bargaining process between primary employer and its workers and section 66(2)(c) requires only that the secondary strike be reasonable in relation to the business of the primary employer.

100. The Government provides a detailed account of the guarantees of labour rights, in particular the right to strike, in the national constitution (section 23), legislation (sections 64-66 LRA) and case-law, including the historical background of transition from apartheid to democracy. In this context, the Government refers also to the 1992 ILO Fact-Finding and Conciliation Commission (FFCC), which completed its report amidst the process of negotiation and transition to a democratic system. The Government indicates that in 1994, a Task Team was appointed to draft a Labour Relations Bill that would give effect to the commitment by the Government to ILO Conventions Nos 87, 98 and 111, and the findings of the FFCC, comply with the Constitution, and contain a recognition of fundamental organizational rights of trade unions. In relation to industrial action, the Task Team identified various deficiencies in the then-existing legislation, including its failure to give effect to the right to strike and recourse to lock-out; complicated and technical pre-strike procedures; the prohibition of socio-economic strikes and the ready availability of interdicts and damage claims.
101. The Government indicates that the LRA gives particularly generous protection to the right to strike, including secondary strikes. The Constitutional Court has confirmed that the right to strike is a right “based on the recognition of disparities in the social and economic power held by employers and employees”. The law draws on distinct conceptions of the right, as an individual civil liberty, as an aspect of associational freedom, and as a right to bargain collectively. It thus protects strikes when certain substantive and procedural conditions related to the collective bargaining process have been met – a strike must be preceded by conciliation, deadlock and notice to the employer – but also permits protest action, that is, the right of workers to withhold their labour to promote or defend their broader socio-economic interests. The Government further indicates that the right to strike is not absolute and may be limited under section 36 of the Constitution provided the limitation is reasonable and justified. The LRA seeks to protect and balance the interests of both employees and employers, while protecting the integrity of the collective bargaining process. The Government underlines that one respect in which it is plainly justifiable to place reasonable limitations on the right to strike is where they involve violence or the threat thereof. A protected strike may lose its protection when strike violence displaces functional and orderly collective bargaining.
102. The Government further refers to several Constitutional Court rulings to demonstrate that the Court has adopted a rights-sensitive approach to strike action and showed a keen awareness of South Africa’s international obligations under ILO Conventions. These references include:
 - (a) *South African National Defence Union v. Minister of Defence*, in which the Court struck down as unconstitutional the provisions of the Defence Act which prohibited members of the armed forces from joining trade unions and participating in acts of “*public protest*” widely defined.
 - (b) *National Union of Metalworkers of South Africa (NUMSA) v. Bader Bop (Pty) Ltd*, in which the question before the Court was whether the LRA precluded non-representative unions from the exercise of organizational rights, either through agreement with the employer, or through industrial action. The Court had specific regard to Conventions Nos 87 and 98 and found that a reading of the LRA which permitted minority unions the right to strike over the issue of shop steward recognition would be more in accordance with the principles of freedom of association entrenched in the ILO Conventions. The Court

concluded that the LRA was capable of a broader interpretation, which did not limit fundamental rights, and that such an interpretation had to be preferred.

- (c) *South African Transport and Allied Workers Union (SATAWU) v. Moloto*, in which the majority of the Court held that to require more information in the strike notice than the time of its commencement would run counter to the underlying purpose of the right to strike in the Constitution, namely, to level the playing fields of economic and social power already generally tilted in favour of employers.
- (d) *NUMSA obo Nganezi v. Dunlop Mixing and Technical Services (Pty) Ltd*, which concerned a protected strike that had turned violent, following which the employer summarily dismissed the striking workers relying on misconduct, “derivative misconduct” (in respect of those who were present during the violence and failed to come forward), and common purpose. The Court considered that to impose a unilateral obligation on employees to disclose information about the misconduct of co-employees in a protected strike would undermine the collective bargaining power of workers and a balance had to be struck between the reciprocal duties of good faith expected of both the employer and the employee. The Court concluded that to dismiss all workers without individual identification was not justified.

- 103.** Regarding the exercise of the right to strike in practice, the Government indicates that this right is regularly utilized by workers in South Africa as a means by which to seek better wages and conditions, as well as in respect of disciplinary questions and other grievances, retrenchment, refusal to bargain, trade union recognition and other matters. The Government further provides data as to the number of strikes and working days lost according to the principal cause of dispute between 2016–20. According to this data, during this period, one secondary action has taken place (in 2016), which entailed the loss of 1,385 working days; however, the data also indicates that in 2019 and 2020, respectively 1,250 and 33,068 working days were lost due to secondary action. The number of various types of work stoppages during this period is summarized in the table below:

Period	In-company strikes	Picketing	Secondary action	Stay-away/ protest	Multi-employer strikes	Lock-out
2016–20	415	9	1	92	44	132

- 104.** Concerning the merits of the complaint, the Government submits that: (i) section 66(2)(c) of the LRA does not give rise to any breach of the Conventions; (ii) the previous point is fortified by the need to take into account national circumstances and to afford some margin of appreciation to national jurisdictions in the precise manner in which they regulate secondary strikes; (iii) while previous Committee reports have cautioned against a “general prohibition” on secondary strikes, read in context, they have not purported to preclude national jurisdictions from imposing procedural and substantive requirements to regulate secondary strikes and; (iv) while the AMCU’s failure to exhaust domestic remedies is not an absolute bar, it is a further reason to dismiss the complaint.

No breach of the Conventions

- 105.** The Government emphasizes that although Conventions Nos 87 and 98 do not expressly enshrine a right to strike, the Government accepts that the right to strike is – as the ILO supervisory bodies have held for decades – an intrinsic corollary of the right to organize protected by the Conventions and it is no part of the Government’s case that workers do not have a nationally and internationally recognized general right to strike. The Government

considers that the question in this case is whether South Africa is entitled to regulate the right to engage in secondary strikes by empowering national courts to determine, on a case-by-case basis, whether the harm caused by the secondary strikes to the secondary employer is proportional to the impact on the business of the primary employer.

106. In support of its submission that section 66(2)(c) of the LRA does not breach the Conventions, the Government submits five arguments:

- (i) Section 66(2)(c) does not entail a general prohibition of secondary strikes. The notions of proportionality and reasonableness invite judicial supervision and require a case-by-case assessment by the Labour Court, considering various factors including the duration and form of the strike, the number of employees involved, their membership of trade unions, their conduct and the sectors in which primary and secondary strikes occur. Over time, a body of jurisprudence defining the precise contours of lawful secondary strikes will develop. The approach favoured by the complainant would disempower the courts from considering any of the mentioned factors.
- (ii) Section 66(2)(c) sets an extremely low bar for a lawful secondary strike. The words “possible” and “indirect” mean that the secondary strike must merely be “capable of having an effect” on the primary employer. There would be little logic in requiring national jurisdictions to recognize secondary strikes incapable of having any effect on the primary employer.
- (iii) An employer seeking to interdict a secondary strike bears the onus of showing that the strike is unreasonable or not proportional. This affords further protection to unions seeking to engage in secondary strikes.
- (iv) It would be unjust and inequitable to permit secondary strikes to occur routinely, without giving any consideration to their harmful effect on the secondary employer. Secondary employers have no control over the collective bargaining process related to the primary strike and are not able to bring that labour dispute to an end. They also do not have the same procedural safeguards as primary employers. Proportionality and reasonableness are shields to safeguard secondary employers and to preserve the equilibrium that section 66(2)(c) seeks to establish.
- (v) The procedural requirements for a primary strike – conciliation, deadlock and notice to the employer – can take months. But a secondary strike can occur on nothing but a seven days’ notice. As the majority of the Constitutional Court explained, “cumulatively, the absence of prior engagement, the brevity of the notice and the fact that the secondary employer and its employees have no interest in the outcome of the primary strike distinguish the secondary employer from the primary employer”. In this context, it would be absurd for the lawfulness of the secondary strike to depend solely on the lawfulness of the primary strike without reference to any considerations of proportionality.

Taking account of national circumstances

107. The Government adds that its submission concerning the fairness and equity of the balance between competing interests embodied in section 66(2)(c) – which according to the Government does not infringe the Conventions – is fortified by the need for the Committee to take account of national circumstances and to afford a degree of flexibility to Member States to design legislative and other measures that protect the right to strike in the manner most appropriate to national conditions. The Government refers in this regard to the doctrine of “margin of appreciation” developed by the European Court of Human Rights and states that

Convention No. 98 recognizes the need to take into account national circumstances in its Articles 3 and 4, where it refers to machinery and measures “appropriate to national conditions”.

- 108.** The Government states that the LRA has regulated secondary strikes in a manner that seeks to achieve an equitable balance between different interest groups, while recognizing that the right to strike is an important counterweight to the power imbalance between workers and employers. The law therefore requires that the secondary strike be in some way related to the broader ambition of collective bargaining and ensures that no disproportionate harm is caused to secondary employers. The Government further states that ILO Member States regulate secondary strikes in a range of different ways and there is no consensus as to how they ought to be regulated. The Government cites excerpts of the Constitutional Court judgment, where the Court holds that countries that permit secondary strikes regulate them to a greater degree than primary strikes and something more than the lawfulness of the original strike is anticipated. Secondary strikes distinguish themselves by virtue of their relationship with the primary strike. The judgment holds that in countries like Spain, Italy and France the requirement ranges from “a professional or occupational interest” to “a sufficient interest” and “in all three jurisdictions the courts have played a key role in giving content to the definition, at times liberalizing and at other times limiting it”.
- 109.** The Government “suggests” that in circumstances where some countries prohibit secondary strikes completely and reputable courts have upheld such prohibitions, and other countries permit secondary strikes subject to varying degrees of regulation and limitation, it would be inappropriate to lay down a one-size-fits-all rule that a secondary strike must be allowed whenever the primary strike is lawful. According to the Government, while the ILO may lay down a general principle that there should be no general prohibition on secondary strikes and provide, as a “minimum” requirement, that the primary strike must be lawful, beyond this it should be left to national jurisdictions to determine the precise contours of the regulation of secondary strikes.

Previous Committee decisions concerning substantial and procedural requirements of regulation of secondary strikes

- 110.** The Government quotes excerpts of General Surveys of the CEACR and several past decisions of the CFA, which it reads as demonstrating that the Committees have not adopted an absolutist position in relation to the protection of secondary strikes, and that a national regime that allows for the judicial assessment of the lawfulness of a secondary strike based on considerations of proportionality is entirely consistent with ILO standards. The Government states that the CEACR has laid down the lawfulness of the primary strikes as the “minimum” requirement of a lawful secondary strike and has said that provided the primary strike is lawful, there should not be a general prohibition on secondary strikes; but it has not suggested that a regime that introduces a proportionality assessment of secondary strikes is impermissible.
- 111.** Referring to some of the past decisions of the CFA, the Government underlines the following points:
 - In Case No. 1381 (248th Report, para. 418) the Committee recognized that in circumstances where there is not a general prohibition, several restrictions on secondary strikes may be justified.
 - In Case No. 1810 (303rd Report), the Committee recognized that if the strike were to lose its peaceful character limitations would be justifiable.

- In Case No. 2251 (333rd Report) the Committee held that while sympathy strikes were not expressly forbidden under the legislation, their legality may be ensured more generally through developed judicial precedents.

112. In summary, the Government states that the complainant takes the oft-cited statement that “workers should be able to take such action provided the initial strike they are supporting is lawful” entirely out of context, as the two Committees have made that statement in the specific context of a complete prohibition on secondary strikes and have specifically suggested that reasonable restrictions – based, for example, on the need to respect various procedures, to guarantee security or to prevent violence – would be permissible. From these premises, the Government draws the conclusion that the approach adopted in section 66(2) of the LRA is not only justified as a matter of principle, but also consistent with the approach adopted by the two Committees regarding breaches of the Conventions.

The complainant’s failure to exhaust domestic remedies

113. The Government indicates that the AMCU could have challenged the constitutional validity of section 66(2)(c), on the basis that it unjustifiably limits the right to strike in section 23 of the Constitution, but instead it chose to challenge the interpretation and application of that legal provision by the Labour Court, arguing that properly interpreted, the provision did not entail a proportionality analysis, and the secondary strike the AMCU had called should have been protected. This argument failed in the Constitutional Court. According to the Government in view of the principle of constitutional supremacy, South African courts are expressly required to declare an Act of Parliament that is inconsistent with the Constitution unconstitutional and invalid to the extent of its inconsistency. As the case before the Constitutional Court was not a challenge to constitutional validity, the Court was required to assume, without finally deciding, that the provision was constitutionally compliant. Therefore, the Government submits that until or unless the AMCU brings a challenge to the constitutionality of section 66(2)(c) to a South African court, it would be premature and inappropriate for the Committee to pronounce upon the Government’s compliance with the Conventions.

C. The Committee’s conclusions

114. *The Committee notes that this case concerns the legal framework governing sympathy strikes in South Africa, in particular section 66(2)(c) of the LRA, and its interpretation through binding judicial precedents. The first three paragraphs of section 66 read as follows:*

- (1) In this section “secondary strike” means a strike, or conduct in contemplation or furtherance of a strike, that is in support of a strike by other employees against their employer but does not include a strike in pursuit of a demand that has been referred to a council if the striking employees, employed within the registered scope of that council, have a material interest in that demand.
- (2) No person may take part in a secondary strike unless-
 - (a) the strike that is to be supported complies with the provisions of sections 64 and 65;
 - (b) the employer of the employees taking part in the secondary strike or, where appropriate, the employers’ organisation of which that employer is a member, has received written notice of the proposed secondary strike at least seven days prior to its commencement; and
 - (c) the nature and extent of the secondary strike is reasonable in relation to the possible direct or indirect effect that the secondary strike may have on the business of the primary employer.

- (3) Subject to section 68(2) and (3), a secondary employer may apply to the Labour Court for an interdict to prohibit or limit a secondary strike that contravenes subsection (2).

115. *The Committee further notes at the outset the submission of the Government that “until or unless the AMCU brings a challenge to the constitutionality of section 66(2)(c) to a South African court, it would be premature and inappropriate for the Committee to pronounce upon the Government’s compliance with the Conventions”. The Committee recalls that “although the use of internal legal procedures, whatever the outcome, is undoubtedly a factor to be taken into consideration, the Committee has always considered that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures” [Compilation of decisions of the Committee on Freedom of Association, sixth edition, 2018, para. 12]. The Committee will therefore proceed with its examination of the national law governing secondary strikes and the recent interpretation by the Constitutional Court with a view to determining whether the law and practice in South Africa is such as to constitute a serious obstacle to the calling of such strikes or result in practice in a general prohibition.*
116. *The Committee notes the complainant’s allegation that despite the undisputed lawfulness of the primary strike, the Labour Court interdicted secondary strikes that it had called in ten mining companies, for non-compliance with section 66(2)(c) of the LRA, and the Constitutional Court of South Africa upheld this judgment and the reading of the law on which it was founded. The Committee notes that the complainant submits that to abide by its international obligations, South Africa should subject secondary strikes only to the requirement that the primary strike be lawful and that therefore, section 66(2)(c) of the LRA unduly limits the right of employees to freedom of association and should be amended to provide that a secondary strike is protected if the primary strike is protected. The Committee notes that the Government submits in this regard that section 66(2)(c) does not infringe South Africa’s international obligations, and that the lawfulness of a primary strike is only a minimum requirement set by ILO supervisory bodies, beyond which it should be left to national jurisdictions to determine the precise contours of the regulation of secondary strikes.*
117. *The Committee takes due note of the detailed information provided by the Government on the steps taken to ensure the right to strike, including secondary strikes, in the country and its reference to several Constitutional Court rulings that demonstrate that the Court has adopted a rights-sensitive approach to strike action and showed a keen awareness of South Africa’s international obligations under ILO Conventions. The Committee further observes that this is the first time that section 66 and its application has been challenged before the Committee.*
118. *The Committee recalls that in the context of national law regulating strike action it has stated that “the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations” [Compilation, para. 789]. It has over the years examined the restriction of strike action in specific contexts and found certain restrictions to be in violation of freedom of association while others were not and it has always conducted its work in this regard on a case-by-case basis.*
119. *In view of the foregoing, the Committee observes the efforts made by the Government to ensure full guarantees of freedom of association, in particular the right to strike. The Committee wishes to make clear that it is not determining the conformity with freedom of association of section 66(2) of the Labour Relations Act. The Committee would invite the Government, along with the representative workers’ and employers’ organizations, to keep the application of section 66(2) under review and, where appropriate, to consider any measures that may be necessary to ensure conformity with freedom of association.*

The Committee's recommendation

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

Case No. 3192

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

Complaint against the Government of Argentina presented by

- the Confederation of Education Workers of the Republic of Argentina (CTERA) and
- the Union of Education Workers (UTE)
- Education International (EI)

Allegations: The complainant organization alleges restrictions on freedom of association and collective bargaining in the public education sector in the Province of Corrientes and in the Autonomous City of Buenos Aires

- 121.** The complaint is contained in a communication from the Confederation of Education Workers of Argentina (CTERA) dated 30 November 2015, and in a joint communication from the CTERA, the Union of Education Workers (UTE) and Education International (EI) dated 27 May 2021.
- 122.** The Government of Argentina sent its observations in communications dated October 2016, September 2017, 11 and 12 September 2023.
- 123.** Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

- 124.** In a communication dated 30 December 2015, the CTERA alleges that resolution No. 352/13 issued in March 2013 by the Provincial Government of Corrientes, Republic of Argentina, violates the freedom of association and the right to strike of the province's education workers, who are members of the CTERA. The complainant states that, by means of this resolution, the Provincial Government of Corrientes informed the Single Union of Education Workers of Corrientes (SUTECO), which is the CTERA's primary union in the Province of Corrientes, that "it cannot take direct action, as the subject of the dispute has become abstract in the light of the conclusion of the wage agreement" and that "it is not entitled to represent the collective interests of educational staff", under penalty of investigatory proceedings and sanctions.

125. The complainant refers below to the context in which the resolution was adopted and states that: (i) the Corrientes Association of the Provincial Teachers (ACDP), SUTECO and the Argentine Union of Private Teachers (SADOP) informed the Labour Directorate, the Undersecretariat of Labour for the province, of its decision to hold a 24-hour strike as of midnight on 25 February 2013; (ii) the collective dispute and strike are the result of the refusal by the provincial Ministry of Education to recognize the legitimacy of the teachers' wage claim; (iii) on 22 February 2013, SUTECO notified that the strike would be extended by an additional 24 hours, thus lasting 48 hours; (iv) faced with this situation, the Labour Directorate issued resolution No. 187/13 on 25 February 2013, submitting the collective dispute to mandatory conciliation, regulated by National Law No. 14.786/59; (v) the Labour Directorate also stipulated through resolution No. 187/13 that the three unions, ACDP, SUTECO and SADOP, should refrain from holding a strike for the duration of the mandatory conciliation, scheduling the first hearing for 28 February 2013, but which never took place; (vi) however, the three unions held the strike on 25 February 2013; (vii) with no legal basis, and based on the fact that the three unions had failed to comply with the decision to refrain from holding the strike, the Labour Directorate decided to terminate the mandatory conciliation and ordered the initiation of the investigatory proceedings required to issue fines for alleged "obstruction"; (viii) in this context, the provincial Ministry of Education of Corrientes summoned the five teachers' unions, including SUTECO, to the its headquarters where on 8 March 2013, it eventually made a modest wage proposal, which was accepted by the unions with the exception of SUTECO; (ix) the wage agreement was concluded outside any legal regulation; (x) on 13 March 2013, SUTECO called for another 24-hour strike on 15 March 2013; and (xi) the Labour Directorate incorporated into file No. 524-21-02-486/13 in an irregular manner the wage agreement concluded with the other unions and on the basis of that agreement, issued the denounced resolution No. 352/13, notifying SUTECO that it should refrain from holding the strike – threatening it with sanctions – for "lacking legitimacy" to represent the collective interests of teachers, overlooking the fact that both the Labour Directorate and the provincial legislature had recognized its legitimacy.
126. Moreover, the CTERA denounces the Provincial Government's malicious failure to regulate Provincial Law No. 6030 of 2011 regarding the collective agreement for teachers, thus rendering it inapplicable. The complainant specifically alleges that: (i) this situation becomes fundamentally important when measuring the limited legal effect of the agreement concluded between the representatives of the Provincial Government and the representatives of the four teachers' unions; (ii) the Labour Directorate of the Province of Corrientes did not take into account that the only agreements on working conditions that have *erga omnes* effect are those that are concluded under Law No. 6030 of 2011 regarding the collective agreement, once it is regulated; (iii) it is a serious error for the Labour Directorate to stipulate in article 1 of resolution No. 352 that SUTECO cannot take direct action (strike), as the subject of the dispute has become abstract in the light of the agreement concluded with the ACDP, the Argentine Teachers' Union (UDA), the Association of Technical Teachers (AMET) and the Teacher Unification Movement (MUD), since SUTECO has not signed the wage agreement and therefore its effects do not apply to its members or to teachers who are not members any union; (iv) resolution No. 352/13 is absolutely and irrevocably null and void, insofar as the Provincial Government disregards SUTECO's right to represent the collective interests of teachers at all levels of education by arguing that this right belongs to the ACDP because it is the only association with trade union status, on the basis of paragraphs 4, 5, 6 and 7 of the recitals of resolution No. 352/13; (v) this is a restrictive and arbitrary interpretation of articles 23 and 31 of Law No. 23.551 on trade union associations, which runs counter to article 14 bis of the National Constitution, and in particular to article 3 of Provincial Law No. 6030 of 2011, which recognizes the legitimacy of SUTECO to form part of future collective bargaining committees, on the basis of the future

collective bargaining agreement for teachers at all levels; and (vi) the body that issued the contested Provision No. 352/13 is the employing party in the collective dispute with the teachers' unions, as the Labour Directorate depends on the provincial executive branch; thus, as a party to the collective dispute, it cannot intervene as a conciliatory party (objective and impartial), in accordance with the procedure regulated by the aforementioned Law No. 14.786.

127. The complainant then denounces resolution No. 1769/15 issued by the Labour Directorate of the Province of Corrientes, which declared the strike action ordered by SUTECO for 9 October 2015 illegal, which also shows how this body follows the political directives of the Provincial Government of Corrientes, which is party to the collective dispute. By establishing that SUTECO lacks the status to call a strike, the Labour Directorate disregards the fact that the provincial executive branch fined SUTECO for allegedly refusing to comply with a resolution of the Labour Directorate requiring it to undergo mandatory conciliation, in accordance with Law No. 14.786, a procedure which only trade union associations with the right to declare strikes are obliged to undergo. The complainant requests that the Argentine Government be informed that the Province of Corrientes must annul resolutions Nos 352/13 and 1769/15 and cancel the fine of 700,000 Argentine pesos for the February 2015 strike.
128. In a communication dated 10 May 2021, the complainant (together with the UTE) alleges that: (i) the Government of the Autonomous City of Buenos Aires violated the principles guaranteeing freedom of association and the right to strike by issuing Decree No. 125/21 dated 14 April 2021, in which it declared, inter alia, that the Ministry of Education of the Autonomous City of Buenos Aires, the bodies within its ambit and the educational establishments under its authority or supervised by it constituted essential services during the COVID-19 pandemic, in order to disregard the right to strike of education workers in public schools, whether publicly and privately managed, that answer to the Ministry of Education of the Autonomous City of Buenos Aires, while also deducting wages from teachers for the days they did not work and went on strike; (ii) the Government of the Autonomous City of Buenos Aires threatened to apply sanctions to those who intended to take collective direct action (strike); (iii) designating educational establishments to be of an "essential nature", by means of the aforementioned decree, was part of a policy of persecution that, in recent years, the Government of the Autonomous City of Buenos Aires has implemented against the workers of educational establishments; (iv) the decree issued by a local authority, like the Government of the Autonomous City of Buenos Aires, declaring the "essential nature" of educational establishments, is clearly unconstitutional, not only because that jurisdiction lacked the competence to establish the essential nature of education, but mainly because it directly affected the exercise of basic constitutional rights, to the detriment of education workers, such as the right to strike established in article 14 bis of the National Constitution; (v) education does not constitute an essential service if we take into account the provisions of article 24 of Law No. 25.887 on disputes in essential services, the relevant part of which provides that: "... Health and hospital services, the production and distribution of drinking water, electricity and gas and air traffic control shall be considered essential services. An activity not included in the preceding paragraph may exceptionally be designated an essential service, by an independent committee established in accordance with regulation..." "[...] The national executive branch, with the intervention of the Ministry of Labour, Employment and Social Security and following consultation with the employers' and workers' organizations, shall issue the regulation referred to in this article within ninety (90) days, in accordance with the principles of the International Labour Organization"; (vi) moreover, education could not be considered an essential service under the principles established by the International Labour Organization, as set forth in the *Compilation of decisions of the Committee on Freedom of Association*; (vii) pursuant to Decree No. 362/10 dated 18 March 2010, regulating the Guarantees Committee provided

for in article 24 of the aforementioned Law No. 25.877, an activity not included in the above-mentioned list may exceptionally be designated an essential service if a conciliation procedure has already initiated; (viii) any resolution or decree that designates a service to be “essential” without complying with the legislation in force and international labour principles is null and void; (ix) resolution No. 408/2001 issued by the Ministry of Labour in 2001, declaring education to be an “essential service”, had already been declared null and void by the Supreme Court of Justice (and led to the decision of the Committee on Freedom of Association in Case No. 2157); (x) at the date of drafting the present communication (May 2021), the Decree of Necessity and Urgency No. 287/21 dated 1 May 2021, issued by the national executive branch, was in force, requiring the continuation of online classes and the prohibition of in-person classes in the Autonomous City of Buenos Aires as a result of the high number of COVID-19 cases, as was resolution No. 394/2021 dated 4 May 2021, issued by the Federal Education Council, ordering the suspension of in-person classes in the Autonomous City of Buenos Aires until 21 May 2021; (xi) the real reason the Government of the Autonomous City of Buenos Aires declared educational establishments to be of an “essential nature” was that it did not wish to implement the aforementioned emergency decree of the national executive branch (making mandatory online classes) so that it could impose its decision to resume in-person classes, which it had used as an electoral and political pledge; (xii) as a result, following the UTE’s strike to uphold Decree No. 287/21 (making online classes mandatory) so as to prevent COVID-19 from further spreading in schools, the Government of the Autonomous City of Buenos Aires deducted wages from education workers, in an act of retaliation against those who merely sought compliance with a higher-ranking norm during a serious health crisis; and (xiii) the surreptitious designation of education as an essential service by means of Decree No. 125/21 of the Autonomous City of Buenos Aires, the deduction of wages and the threats of disciplinary sanctions for the strikes called by the UTE directly prevented the right to strike from being exercised, and such acts clearly violate the decisions of the ILO Committee on Freedom of Association.

B. The Government’s reply

129. In a communication dated October 2016, the Government provides its observations on the complainant’s allegations concerning the public education sector in the Province of Corrientes. The Government states, first, that SUTECO is and continues to be recognized by the various government bodies and actively participates with the other unions operating in the Province of Corrientes. There is thus no discrimination against this union, as demonstrated by its participation in the resolution dated March 2014 (which later became a joint agreement in which the other trade union organizations accepted the wage increase). Likewise, SUTECO was involved in the regulation of the law on collective bargaining, as evidenced by the copy of the resolution dated 16 June 2015, which confirms that the discrimination alleged by the complainant does not exist. The Government adds that: (i) in the midst of the bargaining process, SUTECO did not comply with the mandatory conciliation process and resorted to a strike, which is why it was expelled from the collective bargaining table; (ii) according to information provided by the Undersecretariat of Labour for the Province of Corrientes, the collective dispute was, at the date of this communication (October 2016), in a judicial process and, therefore, it is proposed that the Committee wait for the resolution of that process before taking a decision; and (iii) the complainant did not provide any evidence to support its statements, making it impossible to corroborate the veracity of its arguments.
130. In a communication dated September 2017, the Government states that the Undersecretary of Labour for the Province of Corrientes indicated that the collective dispute was still being

processed at the judicial level, without any definitive developments in the case at the date of the communication (September 2017). Furthermore, the Government indicates once again that the complainant did not provide any evidence to support its allegations, making it impossible to corroborate whether they are duly founded.

131. In a communication dated 12 September 2023, the Government states that: (i) the judicial process related to the collective dispute disclosed in the case “Single Union of Education Workers Corrientes v. Provincial Government of Corrientes re. Administrative Action”, file No. 123426/15, has already concluded by means of rulings issued by the Administrative Court of First Instance No. 2 (of the Province of Corrientes) and the Administrative and Electoral Court of Appeals, as has the special judicial review before the Supreme Court of Justice; (ii) the case was initiated by SUTECO with the aim of having Decree No. 2327/15 declared null and void, as it rejected the hierarchical appeal filed by SUTECO against resolution No. 646/13 of the Labour Directorate, which had rejected the hierarchical appeal filed by SUTECO against resolution No. 455/13, which had imposed a fine for non-compliance with resolution No. 187/13 (which had, inter alia, prohibited the strike from being held for the duration of the mandatory conciliation). Thus, SUTECO alleged in the judicial proceedings that there was a procedural irregularity and that, from the issuance of resolution No. 187/13 by the Labour Directorate to the conclusion of the procedure, it had to comply with the provisions of Law No. 14.786 concerning collective dispute procedure and not with the provisions of articles 26 to 32 of Law No. 2.477 (procedure for labour law infractions). On 30 July 2018, the Court of First Instance rejected SUTECO's claim by ruling that the complainant had failed to prove the illegitimacy of Decree No. 2327/15 or the acts that had preceded it, since no visible irregularities in its essential elements had emerged or been proven, nor were there any convincing indications of the illegality alleged by the complainant; (iii) however, this decision was reversed by decision of the Court of Appeals, in February 2020, when it declared that the application of article 31 of Law No. 2.477 to the case was unconstitutional and thus decreed that Decree No. 2327/15, challenged by the appellant SUTECO, was null and void and ordered the provincial executive branch to issue a new administrative act analysing the legality of the fine ordered in resolution No. 455/13; (iv) although the Provincial Government of Corrientes filed a special judicial review before the provincial Supreme Court of Justice, it was declared inadmissible in a ruling dated 9 December 2021; (v) this ruling concluded the judicial proceedings initiated by SUTECO against the Provincial Government of Corrientes to challenge the administrative acts issued in the context of the mandatory conciliation process and which, according to the complainant, would have interfered with the exercise of the right to freedom of association and the right to strike; (vi) although the legal action initiated by SUTECO had a favourable ruling, it is also true that the merits of the claim are not based on the arguments put forward by SUTECO (that the alleged irregularities of the contested administrative acts violate freedom of association), as it had alleged irregularities of competence, cause and procedure in the administrative acts issued in the context of the mandatory conciliation, which were also invoked when filing the present complaint before the Committee on Freedom of Association; (vii) however, the Court of Appeals decreed Decree No. 2327/15 null and void as a logical consequence of having decreed that the application of article 31 of Law No. 2.477 was unconstitutional, considering that the requirement of prior payment established in that article *solve et repete*, as a condition for the admission of the hierarchical appeal filed by SUTECO against the penalizing provision issued by the Labour Directorate, violated the constitutional right of defence; (viii) it should be noted that the fact that Decree No. 2327/15 was declared null and void by the judiciary of Corrientes did not put an end to the administrative process in which the resolutions were issued by the Labour Directorate, which were challenged by SUTECO and which form the basis for the filing of the present complaint before the Committee, as the Court of Appeals ordered

“the defendant to issue a new administrative act analysing the legality of the fine ordered in resolution No. 455/13”, and (ix) therefore, the correct interpretation of the ruling of the Court of Appeals is that the administrative actions challenged by SUTECO should date back to the instance prior to the issuance of Decree No. 2327/15 (declared null and void), and the provincial executive branch should reanalyse the hierarchical appeal filed against resolution No. 455/13, in which the Labour Directorate fined the union.

132. In a communication dated 11 September 2023, the Government forwarded the observations of the Autonomous Government of the City of Buenos Aires on the allegations sent in May 2021 by CETERA, UTE and EI. The Government of the Autonomous City of Buenos Aires underlines that the allegations of the complainant organisations that Decree No. 125/2021 violates the right to strike lack any factual and normative precision. The Government of the Autonomous City of Buenos Aires first refers to the context in which the Decree was adopted and states in this respect that: (i) the declaration of the essential nature of the activities carried out by the agents of the Ministry of Education of the City was adopted at a time when the health situation (reduction in the number of cases, vaccination schedule) caused by the COVID-19 pandemic made it possible to relax the isolation measures and return to the development of activities as normal; (ii) the aforementioned declaration of essentiality stems from the existence, recognized by the Supreme Court of Justice of the Nation, of a human right to education that must be satisfied to the greatest extent possible; and (iii) although the remote education modalities produced a significant participation of students, they did not replace the benefits of face-to-face education in the learning process and in the socialisation of the children.
133. The Government of the Autonomous City of Buenos Aires then refers to the alleged impact of Decree No. 125/2021 on the right to strike. It states in this regard that: (i) the essential nature of educational activity established by the above-mentioned decree was different from the mechanism established by article 24 of Law 25.877, which allows for the exceptional classification of certain activities as essential services with a view to establishing minimum services in the event of a strike; (ii) on the contrary, trade union organizations in general and the complainants in particular were at all times granted the right to take industrial action; (iii) in fact, industrial actions were carried out during the periods when Decree No. 125/2021 was in force; (iv) the exercise of the right to strike entails the suspension of workers' activities on the one hand and the non-payment of the corresponding wages on the other hand; and v) the fact that striking workers in the education sector did not receive wages for the days not worked constitutes evidence of the operability of the right to strike during the term of Decree No. 125/2021.
134. The Government of the Autonomous City of Buenos Aires finally submits that the factual and legal situation has changed radically since the adoption of the above-mentioned decree, which is why it considers that the complainants' allegations have become abstract.

C. The Committee's conclusions

135. *The Committee notes that the present case concerns the alleged violation of freedom of association in the public education sector in the Province of Corrientes and in the Autonomous City of Buenos Aires.*
136. *In relation to the aspects of the complaint regarding the Province of Corrientes, the Committee notes that the CTERA alleges that, since February 2013, the provincial authorities have disregarded the right of SUTECO (the CTERA's primary union in the education sector in the Province of Corrientes) to bargain collectively and to strike, in contradiction with the provisions of both national and international regulations and Provincial Law No. 6030 of 2011 on collective bargaining in the public*

education sector. The Committee notes that the CTERA specifically states that: (i) during difficult wage negotiations between the provincial authorities and five unions in the public education sector in early 2013, SUTECO and two other unions communicated their intention to hold a strike on 25 February 2013; (ii) in accordance with National Law No. 14.786/59, the provincial Labour Directorate decided to submit the collective dispute to mandatory conciliation, ordering the three unions to refrain from holding the strike until the conciliation process had ended (resolution No. 187/13); arguing that the unions had not refrained from holding the aforementioned strike, the Labour Directorate unjustifiably terminated the conciliation and initiated proceedings to fine the three organizations; (iv) outside any legal regulation, the provincial Ministry of Education met with the five unions and proposed a modest wage increase that was accepted by four unions, but rejected by SUTECO; (v) in view of SUTECO's call for a one-day strike on 15 March 2013, the provincial Labour Directorate issued resolution No. 352/13, which established that SUTECO could not take direct action (strike), as the subject of the collective dispute had become abstract as a result of the conclusion of a wage agreement with other trade union organizations, and that SUTECO was not entitled to represent the collective interests of educational staff; and (vi) disregard for SUTECO's prerogatives was confirmed by resolution No. 1769/15, issued by the Labour Directorate of the Province of Corrientes, which declared the strike ordered by SUTECO for 9 October 2015 illegal. The Committee notes that the complainant considers that: (i) the prohibition on strike action contained in resolution No. 352/13, based on the fact that a collective bargaining agreement had just been concluded, is unfounded, as SUTECO had not signed the agreement in question; (ii) the denial in the same resolution of SUTECO's capacity to collectively represent the teachers of the province runs counter to the provisions of Provincial Law No. 6030; and (iii) the various decisions of the provincial authorities described above are also irregular insofar as the provincial administration assumes the role of judge in collective disputes to which it is a direct party. The Committee notes that the complainant concludes that the aforementioned decisions should be annulled, including the fine of 700,000 pesos for the February 2013 strike.

137. The Committee notes that, for its part, the Government states that: (i) there is no discrimination on the part of the provincial authorities of Corrientes against SUTECO, as evidenced by its inclusion in the negotiations leading to the conclusion of the collective bargaining agreement of March 2014, as well as in discussions in June 2015 regarding the regulation of Provincial Law No. 6030; (ii) in the midst of the bargaining process, SUTECO did not comply with the mandatory conciliation process and resorted to a strike, even though Provision No. 187/13 had ordered it to refrain from doing so, which is why it was expelled from the collective bargaining table; (iii) this collective dispute gave rise to legal action regarding the legality of the fine imposed against SUTECO for holding the February 2013 strike in violation of resolution No. 187/13; and (iv) in decisions dated February 2020 and December 2021, the Court of Appeals and the Supreme Court of Justice of the province declared, on formal grounds, the provincial authorities' actions to be null and void and ordered the provincial executive branch to issue a new administrative act analysing the legality of the fine ordered. The Committee notes that the Government states in this respect that SUTECO's legal action and the corresponding court decisions were not based on the violations of freedom of association alleged in the present case, but on the consideration that the requirement of prior payment of the fine, as a condition for the admission of the hierarchical appeal filed by SUTECO against the penalizing provision issued by the Directorate of Labour, violated the constitutional right of defence.
138. The Committee takes due note of the information provided by the parties concerning the dispute between SUTECO and the authorities of the Province of Corrientes in the context of the negotiation of public teachers' wages. The Committee notes that the complainant denounces both specific decisions of the provincial administration in this regard (in particular resolutions Nos 187/13 and 455/13, resolution No. 352/13 and resolution No. 1769/15), which, according to the complainant, reflect more generally the intention to exclude SUTECO from collective labour relations, as well as

the irregular nature of the intervention of the provincial executive branch, which would assume the role of judge and party in collective disputes in the public sector. The Committee notes that the dispute is taking place in a context of trade union pluralism in the education sector of the province where, according to the information provided by the parties, SUTECO has a simple registration, while the ACDP has trade union status (a type of registration reserved by Argentine law for the most representative organizations, which under national law have a monopoly on collective bargaining), while article 3 of Provincial Law No. 6030 provides for collective bargaining status that is not limited to organizations with trade union status.

139. With regard to the fine imposed against SUTECO by the provincial Labour Directorate (resolution No. 455/13) for holding a one-day strike in February 2013 despite a decision from the Labour Directorate ordering it to refrain from striking (Decision No. 187/13), the Committee notes that the complainant and the Government agree that the strike held by SUTECO took place in the midst of a mandatory conciliation process ordered by the provincial Labour Directorate in accordance with National Law No. 14.786/59, and that the prohibition on strikes was aimed at ensuring the completion of the conciliation process. The Committee recalls in this regard that legislation which provides for voluntary conciliation and arbitration in industrial disputes before a strike may be called cannot be regarded as an infringement of freedom of association, provided recourse to arbitration is not mandatory and does not, in practice, prevent the calling of the strike [**Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 793]. The Committee also emphasizes that in cases of mandatory conciliation, it is desirable to entrust the decision of opening the conciliation procedure in collective disputes to a body which is independent of the parties to the dispute [**Compilation**, para. 796]. Lastly, the Committee recalls that in previous cases, it expected that any fines that could be imposed against trade unions for unlawful strikes would not be of an amount that was likely to lead to the dissolution of the union or to have an intimidating effect on trade unions and inhibit their legitimate trade union activities, and trusted that the Government would endeavour to resolve such situations by means of frank and genuine social dialogue [**Compilation**, para. 969]. Noting that the decisions relating to the imposition of the aforementioned fine were annulled by the courts for violation of the right of defence and that the file is once again before the provincial authorities, the Committee expects that they will take due account of the criteria set out above.
140. With regard to the two additional prohibitions on SUTECO's recourse to strike action by means of resolutions Nos 352/13 and 1769/15 adopted by the provincial Labour Directorate, the Committee notes that: (i) the CTERA alleges that the prohibition contained in resolution No. 352/13 of March 2013 is illegal because it was based on the wage agreement signed by the other trade union organizations, but rejected by SUTECO, in order to claim that the collective dispute that led to the strike had been settled; and (ii) the CTERA alleges that in both cases, the provincial labour administration is judge and party, as it prohibited strikes in a collective dispute involving the provincial administration itself. At the same time, the Committee notes that: (i) it has not been provided with the text of the incriminated provisions, which are also not publicly available; (ii) it does not have the specific observations of the Government on this matter; (iii) it does not have any factual information on the strike planned by SUTECO in 2015, which gave rise to resolution No. 1769/15. In the light of the above, the Committee does not have at its disposal the information that would allow it to comprehensively assess the validity of the grounds for prohibiting the strike movements put forward by SUTECO. The Committee does find, however, that in both cases the decisions to prohibit the strike, like the decision previously examined to impose mandatory conciliation, were taken by the provincial public administration and not by a body independent of the parties. In this regard, the Committee recalls once again that in cases of mandatory conciliation, it is desirable to entrust the decision of opening the conciliation procedure in collective disputes to a body which is independent of the parties to the dispute and, moreover, that the responsibility for declaring a strike

illegal should not lie with the Government, but with an independent and impartial body [Compilation, paras 796 and 909]. In the light of the above, the Committee requests the Government to take the necessary measures to ensure that decisions concerning recourse to mandatory conciliation and the prohibition of strike movements are taken by bodies independent of the parties. The Committee requests the Government to keep it informed in this respect. The Committee recalls additionally that the Government may avail itself of the technical assistance of the Office with respect to the requested measures.

141. *With respect to the CTERA's allegation that the provincial administration had not only prohibited SUTECO from striking in the context of the collective dispute in February-March 2013, but also sought to deny it the right to collectively represent public teachers, the Committee notes that, on the one hand, the complainant states that: (i) resolution No. 352/13 implies that only ACDP, which enjoys trade union status, would be entitled to represent the province's teachers in collective bargaining processes, and (ii) the lack of regulation of Provincial Law No. 6030, article 3 of which provides for the participation of all trade union organizations in the education sector at the bargaining table, illustrates the administration's desire to exclude SUTECO. The Committee notes that, for its part, the Government claims that there is no intention to exclude SUTECO, as evidenced by its participation in the wage agreement negotiations in 2013 and in discussions in 2015 on the regulation of Provincial Law No. 6030. While recalling that systems based on a sole bargaining agent (the most representative) and those which include all organizations or the most representative organizations in accordance with clear pre-established criteria for the determination of the organizations entitled to bargain are both compatible with Convention No. 98 [Compilation, para. 1360], the Committee observes that the Government has not reported that the regulation of Provincial Law No. 6030 has concluded. Emphasizing that, under Article 5(d) of Convention No. 154 ratified by Argentina, measures should be taken to ensure that collective bargaining is not hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules, the Committee trusts that the necessary steps will be taken to ensure the full applicability of the laws governing collective bargaining in the Province of Corrientes, which provide for the participation of the various trade union organizations in the education sector in collective bargaining.*
142. *The Committee further notes that, by means of a communication dated May 2021, the CTERA, the UTE and EI allege undue restrictions on the right to strike by the Government of the Autonomous City of Buenos Aires. The Committee notes that the complainants state that Decree No. 125/21 dated 14 April 2021 declared that the Ministry of Education of the Autonomous City of Buenos Aires, the bodies within its ambit and the educational establishments under its authority or supervised by it "constituted essential services during the COVID-19 pandemic", thus disregarding the right to strike of education workers in educational establishments. The Committee notes that the complainants allege in particular that: (i) Decree No. 125/21 clearly runs counter to the national and international regulations in force; (ii) the Supreme Court of Justice had already declared resolution No. 408/2001 null and void, which had been issued by the Ministry of Labour in 2001, declaring education to be an essential service; (iii) the real reason the Government of the Autonomous City of Buenos Aires declared educational establishments to be of an essential nature was that it did not wish to comply with Decree No. 287/21 of the national executive branch, making online classes mandatory; and (iv) following the UTE's strike to uphold the aforementioned Decree No. 287/21 (making mandatory online classes) and thus prevent COVID-19 from further spreading in schools, the Government of the Autonomous City of Buenos Aires deducted wages from education workers, in an act of retaliation against those who sought compliance with a higher-ranking norm during a serious health crisis.*
143. *The Committee also notes that the Government forwards the observations of the Government of the Autonomous City of Buenos Aires, which considers that the allegations of the complainant organizations that Decree No. 125/2021 violates the right to strike lack any factual and normative*

precision. The Committee notes in particular that the Government of the Autonomous City of Buenos Aires first states that: (i) the declaration of the essential nature of the activities carried out by the employees of the Ministry of Education of the City was adopted at a time when the health situation caused by the COVID-19 pandemic made it possible to return to normal activities; ii) the aforementioned declaration of essentiality stems from the existence, recognised by the Supreme Court of Justice of the Nation, of a human right to education that must be satisfied to the greatest extent possible, and it should also be considered that the remote education modalities did not replace the benefits of face-to-face education in the learning process and in the socialisation of children. The Committee notes that the Government of the City of Buenos Aires states secondly that: (i) the essential nature of the educational activity established by the aforementioned decree was different from the mechanism established by article 24 of Law 25. 877, which allows the exceptional classification of certain activities as essential services with a view to establishing minimum services in the event of a strike; ii) on the contrary, the trade unions in general and the plaintiffs in particular were at all times recognised as having the right to take industrial action; iii) in fact, industrial action measures were taken during the periods when Decree No. 125/2021 was in force; (iv) the exercise of the right to strike entails the suspension of workers' activities on the one hand and the non-payment of the corresponding wages on the other hand; and (v) the fact that striking workers in the education sector have not received wages for the days they did not work during the period of validity of Decree No. 125/2021 is evidence of the operability of the right to strike in this context. The Committee notes that the Government of the Autonomous City of Buenos Aires finally affirms that the factual and legal situation has changed radically since the adoption of the above-mentioned decree, which is why it considers that the complainants' allegations have become abstract.

- 144.** The Committee takes due note that the reply provided by the Government of the Autonomous City of Buenos Aires indicates that: (i) the declaration of the essential nature of the education sector by Decree No. 125/2021 was not intended to disregard the teachers' right to strike but to exempt that sector from the restrictions on activity imposed in the context of the pandemic; and (ii) strike action was in fact carried out in that sector in the City of Buenos Aires while the decree was in force without the legality of such action being questioned. In this respect, the Committee has taken note of judgement No. 42853 of 30 August 2022 handed down by Labour Court No. 4 (Asociación Docente de Enseñanza Media y Superior (ADEMYS)/ v. Gobierno de la Ciudad Autónoma de Buenos Aires). The Committee notes that this judgement was the result of legal action brought by a trade union organization to obtain payment for the strike days taken between April and June 2021 in order to maintain the distance education system. While recalling that it has considered that salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles [Compilation, para. 942] and that the judgement in question has been the subject of an appeal that is still pending, the Committee notes that in the referred judgement: (i) the Court ruled in favour of ADEMYS, finding that the strike by the teachers of the City of Buenos Aires constituted a response to the employer's failure to comply with the national provisions which continued to impose distance education; and (ii) the City of Buenos Aires did not challenge the legality of the strike. Noting that it is clear from the above elements that Decree No. 125/21 did not have the effect of restricting the exercise of the right to strike, the Committee will not pursue the examination of this allegation.

The Committee's recommendations

- 145.** In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) With regard to the consequences of the strike held by SUTECO in February 2013, the Committee expects that the competent authorities will take due account of the criteria set out in the present conclusions.

- (b) **The Committee requests the Government to take the necessary measures to ensure that decisions concerning recourse to mandatory conciliation and the prohibition of strike movements are taken by bodies independent of the parties. The Committee requests the Government to keep it informed in this respect.**
- (c) **The Committee recalls that the Government may avail itself of the technical assistance of the Office with respect to the implementation of recommendation (b).**

Case No. 3232

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

Complaint against the Government of Argentina presented by the Trade Union Federation of Healthcare Workers of the Argentine Republic (FESPROSA)

Allegations: The complainant alleges that several of its affiliated organizations have been excluded from collective bargaining in various provinces of the country because they do not have trade union status. It also alleges delays in granting such status, failure to deduct union dues and other acts of anti-union discrimination

- 146.** The complaint is contained in communications from the Trade Union Federation of Healthcare Workers of the Argentine Republic (FESPROSA) dated 23 June 2016, 8 September 2017, 23 February 2018 and 2 May 2018.
- 147.** The Government sent its observations in communications dated 6 April 2018, 7 August 2019, 12 September and 11 October 2023.
- 148.** Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

- 149.** In its communications dated 23 June 2016, 8 September 2017, 23 February 2018 and 2 May 2018, FESPROSA, which claims to represent healthcare professionals working in public establishments and bodies throughout the country, alleges that the State, as an employer, has violated the right to collective bargaining of several of its affiliated trade union organizations in various provinces of the country.

Province of Santa Cruz

- 150.** The complainant alleges that, after receiving an invitation from the Government of the Province of Santa Cruz to engage in collective bargaining for the health sector on 14 June 2016, it sent the Government, in writing, the names of the two delegates who would attend the

meeting on its behalf and on behalf of its affiliate, the Trade Union Association of Public Health Workers of Santa Cruz (APROSA). The complainant alleges that, while the Government did not object to its communication, when the delegates arrived at the meeting site on 14 June, the police questioned them and would not let them to enter. The complainant indicates that this situation was recorded by the media and that, afterwards, they went to the provincial Ministry of Labour and a report of the incident was drawn up. The complainant indicates that, to date, it has not been able to take part in the bargaining.

Province of Buenos Aires: Dr Juan P. Garrahan Paediatric Hospital

151. The complainant alleges that the State has refused to allow the Association of Professionals and Technicians of the Dr Juan P. Garrahan SAMIC Paediatric Hospital (a first-level entity with union registration, affiliated with FESPROSA, with majority representation in the hospital) participate in sectoral bargaining. The complainant also alleges that it has been denied a physical space within the establishment for its union headquarters as well as the possibility of automatically deducting union dues from its members' wages, even though other unions operating in the sector are able to do so. The complainant alleges that the hospital's board of directors, which consists of representatives of the National Government and of the Government of the Autonomous City of Buenos Aires, has denied them these rights under the pretext that it does not have trade union status.

Province of Buenos Aires: Prof Alejandro Posadas Hospital

152. The complainant alleges that for eight years the Trade Union Association of Healthcare Workers of the Province of Buenos Aires (CICOP) (a first-level union with trade union status, affiliated with FESPROSA, with a scope of action in the Province of Buenos Aires) has been excluded from the Standing Committee on the Interpretation of Healthcare Work (COPICPROSA) under the pretext that it lacks national representation. The complainant indicates that this committee is the body responsible for applying the collective agreement for national hospital workers established in 2009 by means of Decree No. 1133/2009 and indicates that the relevant actors had agreed that the trade union part would be represented by the relevant unions, including CICOP, of which most Posadas Hospital workers are members. The complainant alleges that, despite this agreement, the hospital's management has not allowed CICOP to participate in this committee.
153. The complainant also alleges that FESPROSA, which also has trade union status, has been excluded from this committee. It further alleges that the hospital provides CICOP with a small office when the other unions have two or three spaces. It also alleges discrimination against its members: the contract of a member who had recently joined was terminated after 8 years of employment and 32 workers, some of whom had recently become members, had 80 per cent of their wages arbitrarily deducted without any explanation.
154. The complainant alleges that on 2 January 2018, the hospital authorities made public the decision to dismiss 122 workers, most of whom were night-shift workers and members of CICOP who had had 70 per cent of their wages deducted by the hospital for failing to comply with a resolution that increased working hours. The complainant also states that after CICOP sent the hospital's management and the Ministry of Labour, Employment and Social Security the list of delegates elected on 23 October 2017, 16 of them were dismissed (all of whom were highly qualified, demonstrated impeccable professional conduct, without proceedings or sanctions, and had been working at the hospital for between 5 and 20 years) and that the national ministerial authorities and the hospital's management refused to engage in any dialogue with the union representatives despite repeated requests for meetings, measures of

force and mobilizations at the hospital. The complainant also alleges that on 30 January 2018, the hospital's management stopped deducting the entity's membership fees after more than 20 years, affecting the union's assets and defunding its activities.

Province of Santa Fe

- 155.** The complainant alleges that, although the Union of University Healthcare Workers (SIPRUS), affiliated with FESPROSA, is the most representative entity of healthcare workers in the public sector, it is prevented from participating in collective bargaining because it does not have trade union status. The complainant indicates that SIPRUS has been registered as a union since 2008 and that although it requested the Ministry of Labour to conduct a membership comparison in 2014, it was not until 2017 that it was informed that the comparison was about to begin. The organization is concerned that this arbitrary delay in the comparison has resulted in bargaining in the province with a sector that is foreign to the legitimate interests of SIPRUS.

Province of Córdoba

- 156.** The complainant indicates that the Province of Córdoba is covered by the Union of Healthcare Workers (UTS), the most representative union in the provincial public health sector, which is affiliated with FESPROSA and has simple union registration. The complainant states that there are four trade union organizations in the provincial public administration and that, with exception of the UTS, the other three (the Public Employees Union (SEP) of the Province of Córdoba, the Association of State Workers (ATE) and the Association of Argentine Healthcare Workers (ATSA)) have trade union status. The complainant states that ATE and ATSA are unions with a scope of action throughout the Argentine Republic, but that only ATSA specifically covers the healthcare sector, albeit with little representation in the public health sector in the Province of Córdoba, where the UTS represents the absolute majority. The complainant states that, although in the province there is no bargaining specifically and exclusively for the health sector, the UTS has never been invited to participate in general bargaining. The complainant also states that even though a sectoral health board has been meeting to address the demands of workers in the provincial public healthcare system since 2014, the UTS has formally submitted a list of demands at every meeting that has never been addressed. It further indicates that at practically all these meetings, it has expressed a desire to be invited to participate in general bargaining, as well as the need for bargaining specifically and exclusively for the health sector.

Province of Chaco

- 157.** The complainant alleges that the Government of the Province of Chaco refuses to invite the Association of Public Health Professionals, Technicians and Assistants of the Province of Chaco (APTASCH), an organization affiliated with FESPROSA that claims to be the most representative organization for the health sector with 2,000 members, to participate in collective bargaining. The complainant alleges that the Provincial Government disregards the union's representation, its demands, and the very serious deterioration of working conditions. The complainant also alleges that the Provincial Government ignores the judgments of the Supreme Court of Justice, such as its judgment in ATE versus the Ministry of Labour, which states that exclusive trade union status undermines freedom of association and that unions with simple union registration can participate in sectoral bargaining just as unions with trade union status do.

Province of Neuquén

- 158.** The complainant alleges that the Government of the Province of Neuquén denies the Union of Public Health Workers of Neuquén (SIPROSAPUNE) the right to participate in collective bargaining and that this is a result of an omission by the State itself, which has failed to issue the corresponding trade union status, which has been technically approved but not yet issued, in a timely manner. The complainant states that this situation is arbitrary, unfair and discriminatory, since it has completed all the formalities, complied with all the recommendations, and yet both procedures are paralysed, leaving them hostage to a situation that was neither sought nor agreed to.

B. The Government's reply

- 159.** In its communication of 6 April 2018, the Government provides observations in relation to the allegations concerning the Province of Santa Cruz. In its communication of 7 August 2019, the Government provides observations on the Posadas Hospital in the Province of Buenos Aires and in its communication sent on 12 September 2023, the Government provides observations regarding several of the other provinces mentioned in the complaint. In the latter communication, the Government indicates that, despite the time that has elapsed, the complainant has not insisted on its presentation. The Government also indicates that the claims made by the complainant have not been accompanied by evidence of greater representativeness to support and legitimize the request(s) for the required comparison of representativeness. In its communication sent on 11 October 2023, the Government sends updated information in relation to some of the provinces mentioned in the complaint.
- 160.** The Government indicates that the main issue raised in the complaint concerns the trade union organizations' role of representation in the institutional spheres where working conditions are discussed, which the system of freedom of association and its provisions have reserved for the most representative organizations. The Government indicates that the national legislation is clear regarding representativeness and that, under the Trade Union Associations Law No. 23.551 and its Regulatory Decree No. 467/88, it is possible to distinguish three different classes or types of trade union entities, based on a strictly temporal/gradual approach: (i) unregistered trade union associations, (ii) associations with simple union registration and (iii) associations with trade union status. The Government explains that a trade union association exists from the very moment a group of workers gets together and decides to form a permanent entity to defend its interests. This means that the *affectio societatis* of the group of workers, accompanied by certain acts, such as holding meetings, drafting a founding act and discussing bylaws, is sufficient to create the association. It is to be expected that by this stage, the categories of persons and geographical area to be represented, as well as the name, bylaws and founding authorities will have to be specified, all of which usually occurs after agreeing on criteria during successive meetings convened for this purpose.
- 161.** The Government indicates that the creation of a workers' trade union association is a spontaneous act by the group, which does not require prior authorization from the state authority, and that union registration with the Ministry of Labour suffices. The Government indicates that the associations that prove to be the most representative of the group are the ones that negotiate working conditions because they have trade union status. This status is used to designate the organizations that are able negotiate working conditions. The Government explains that this status cannot be granted without making the necessary comparison to determine which organization is the most representative in accordance with the procedure in article 28 of the Trade Union Associations Law No. 23.551. Failure to meet the

indicated requirements will result in the annulment of the administrative or judicial act. Once the comparison has been made, the representation must be recognized without any further procedure.

162. With regard to the Province of Santa Cruz, in its communication sent in 2018, the Government indicates that: (i) APROSA is an association with simple union registration and (ii) although the Federation of Argentine Healthcare Workers' Associations (FATSA) is the entity that represents the health sector and participates in bargaining due to its trade union status, the necessary steps were being taken to analyse granting trade union status to APROSA. In its communication sent on 12 September 2023, the Government indicates that the complainant has not included any evidence in the complaint of a request for comparison or of a comparison being made to displace the organizations representing the workers in the workplace. The Government indicates that it does not have any information that would allow it to establish that APROSA has the largest number of members in the workplace that it claims to represent. In its communication sent on 11 October 2023, the Government indicates that: (i) there was not any arbitrary or unilateral decision to exclude APROSA and FESPROSA from participating in the bargaining in June 2016, but rather that, at that time, the organizations did not comply with the requirements demanded by the national and provincial legislation; ii) on 21 August 2016, members of the Secretary of State for Labor and Social Security and of the Ministry of Health and Environment met with APROSA and FESPROSA and indicated to them what was the necessary documentation to be submitted to be part of the negotiating table, assuring that there was commitment and political will for them to be part of the bargaining; and iii) since 5 September 2016, FESPROSA-APROSA have been participating in the bargaining and have one vote.
163. As to the Posadas Hospital in the Province of Buenos Aires, in its communication of 2019, the Government sent a copy of the report issued by the Undersecretariat of Labour Relations and Strengthening of the Civil Service of the Ministry of Modernization rejecting the request by FESPROSA to join COPICPROSA for that hospital and the other hospitals and national institutions covered by the collective agreement. The report states that as FESPROSA is not a signatory to the sectoral collective agreement that created the above-mentioned committee, it would not be appropriate to grant its request.
164. In its communication sent in 2023, the Government indicates that Law No. 24.185 applies to the representation of trade unions in the State. The law is clear and not only provides for plural representation at both the national and sectoral levels (article 6), but also states that if the trade unions are unable to agree on the composition of the representative delegation, the delegation may be established by the State, with percentages based on representation (article 4). The Government indicates that the complainant has not included any evidence in the complaint to suggest that there was a negotiation between the trade union organizations or a disagreement over which organizations would participate in COPICPROSA. The Government emphasizes that there is no data, number of members, or organizations that have participated in the comparison, and that the State cannot intervene if it is not first clearly established that there is no agreement, because that would violate union autonomy in a broad sense. It would be an imposition without knowing the arguments of each side, as it would mean that the workers were not involved in the discussion to establish representation. The Government considers this to be an internal matter of the unions, which precludes the State from intervening until the unions decide on the matter. The Government indicates that this is an internal disagreement and that the unions must establish the representativeness. If there is no agreement, the State may intervene, but it does not seem appropriate for the State to impose agreements before the dispute between the parties has been resolved, when the law

empowers all of them. Dialogue and the possibility of an agreement are favoured and determine intervention by the State.

165. The Government considers that the allegations concerning the Province of Córdoba are misplaced and have no factual or legal basis. The Government states that: (i) FESPROSA, as a second-level entity, does not have trade union status in the Province of Córdoba (that is, it does not represent the direct interests of workers in the provincial health sector); and (ii) the UTS carries out its trade union activities within the scope of article 23 of the Trade Union Associations Law No. 23.551, as a first-level entity with simple union registration. The Government states that the UTS has never established its trade union status and emphasizes that the recognition of trade union status does not stem from a unilateral voluntary act by the employer or a unilateral decision by the trade union, but that, in accordance with the national regulatory framework, the conditions stipulated in the applicable regulations must be met.
166. The Government indicates that, although the complainant alleges that there is no collective bargaining in the provincial public health sector, the assessment of FESPROSA is erratic. The Government indicates that collective bargaining in the provincial public health sector is long-standing and has strong institutional roots in the province. Collective bargaining consists of an area that includes two defined sectors: (a) general staff regulated by Law No. 7233 (including hospital administrative support staff and staff working in the central area of the Ministry) and (b) human healthcare teams (regulated by Law No. 7625). The Government indicates that the framework regulating the bargaining process is provided for in Law No. 8329 and its regulatory decree and Law No. 8015, which establishes the competence of the Ministry of Labour. In this context, the parties comprising the bargaining unit are the health authorities, members of the general secretariat under the Ministry of Coordination and the three unions that have trade union status.
167. The Government indicates that the general staff is represented by the Union of Public Employees (SEP) (trade union membership No. 838/66) in the executive staff section and by the Union of Senior Staff in the Provincial Public Administration of Córdoba (UPS) (trade union membership No. 1451) in the managerial staff section. As to the group consisting of human healthcare teams, it is represented by SEP and ATSA, which specifically represent the health sector according to their respective statuses. Both entities have sufficient accredited representation of contributing members for the representation.
168. As to the Province of Santa Fe, the Government indicates that this is a request to participate in the bargaining committee, when there is no evidence that there has been a comparison of representativeness or, at least, any initiative or administrative evidence showing that the complainant wanted to resolve which categories of persons it represented with the current trade union status holder, the Medical Association of the Argentine Republic.
169. The Government indicates that the complainant has not even attempted to conduct a comparison with the Medical Association of the Argentine Republic, which covers all physicians regardless of their specialty, including the physicians that SIPRUS claims to represent. The Government indicates that it would have to determine which organization has more members and that, in this case, everything seems to indicate that, even though the representation has not been determined, a mandate to participate in the advisory committee is assigned, with degrees of institutional participation commensurate with the de facto representation it claims to hold. The law thus ensures institutional levels of participation, even for an organization with union registration, reserving the ability to bargain working conditions collectively for those who hold the greatest representativeness through their trade union status.

170. With regard to APTASCH (Province of Chaco), the Government indicates that, even though the complaint alleges that it is the most representative organization in the health sector, no documentation or evidence of any request for a comparison with the organization that currently holds the negotiating representation has been attached to the complaint.

C. The Committee's conclusions

171. *The Committee notes that in the present case the complainant (FESPROSA), which represents professionals working in public healthcare establishments in the country, alleges that several of its affiliated organizations have been excluded from collective bargaining in various provinces of the country because they do not have trade union status. The complainant also alleges delays in the granting of trade union status, refusal to deduct union dues because of a lack of trade union status and other acts of anti-union discrimination against several of its affiliated organizations.*
172. *The Committee observes that the Government sends its observations in this regard and indicates that, under Argentine law, there are three types of trade union entities: unregistered trade union associations, associations with simple union registration and associations with trade union status. The Government indicates that, while the creation of a workers' association does not require prior authorization and that union registration with the Ministry of Labour suffices, the associations that are the most representative of the group are those that have trade union status and are able to negotiate working conditions. In general terms and in relation to the various provinces, the Government indicates that the claims made in the complaint have not been accompanied by evidence of the greater representativeness of the organizations affiliated with FESPROSA that would support and legitimize the request for a comparison of representativeness.*
173. *The Committee notes that one of the issues raised in the complaint is the right of only those trade union organizations with trade union status, and not those that are simply registered, to participate in collective bargaining. The Committee notes from the complaint and the Government's reply that, out of the seven trade union organizations affiliated with FESPROSA: (i) only CICOP (Posadas Hospital of Buenos Aires) has trade union status; (ii) four trade union organizations have simple union registration: APROSA (Province of Santa Cruz), SAMIC (Garrahan Hospital of Buenos Aires), the APTASCH (Province of Chaco) (even though the complainant indicates that it is the most representative union in the health sector, the Government indicates that no documentation or evidence of any request for a comparison with the organization that currently holds the negotiating representation has been attached to the complaint), the UTS (Province of Córdoba) (even though the complainant indicates that in the province there is no bargaining specifically for the health sector, the Government indicates that collective bargaining in that sector is long-standing and that there are three unions with trade union status); and (iii) SIPROSAPUNE (Province of Neuquén), which supposedly applied for trade union status, and SIPRUS (Province of Santa Fe), which supposedly requested a comparison of members.*
174. *The Committee notes from the complaint and the Government's reply that the organizations affiliated with FESPROSA that have simple union registration have not been able to participate in collective bargaining because they do not have trade union status. The Committee observes that, according to the Government, the Trade Union Associations Law No. 23.551 distinguishes trade union organizations that are simply registered from those that have trade union status and are recognized by the State as being the most representative in their geographical area and that, under the provisions of article 31, trade union organizations with trade union status have the exclusive right to participate in collective bargaining. The Committee recalls in this regard that systems based on a sole bargaining agent (the most representative) and those which include all organizations or the most representative organizations in accordance with clear pre-established criteria for the determination of the organizations entitled to bargain are both compatible with Convention No. 98.*

The Committee also recalls that the granting of exclusive right to the most representative organizations should not mean that the existence of other unions to which certain involved workers may wish to belong is prohibited. Minority organization should be permitted to carry out their activities and at least to have the right to speak on behalf of their members and to represent them. [See **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, paras 1360 and 1388].

175. In relation to the APROSA (Province of Santa Cruz), the Committee notes that, even though the complainant does not indicate if the APROSA had applied for trade union status, the Government indicates that the granting of trade union status to APROSA was analysed in 2018, and in any event affirms that, since 5 September 2016, APROSA and FESPROSA have been participating in the bargaining in relation to the health sector.
176. With regard to SIPRUS (Province of Santa Fe), the Committee notes that, while the complainant claims that it is the majority organization in its area of representation; that in 2014, it submitted its request for a comparison and that in 2017, it was informed that the comparison was about to begin, the Government indicates that the complainant has not sent any evidence that the organization has wanted to resolve which categories of persons it represented with the current trade union status holder, which covers all physicians regardless of their specialty, including those that SIPRUS claims to represent. While noting the divergent position of the parties, the Committee requests the Government to ensure that, if indeed SIPRUS has requested a membership comparison, such a comparison has actually been conducted in a timely manner. The Committee requests the Government to keep it informed in this regard.
177. As to SIPROSAPUNE (Province of Neuquén), the Committee notes that the complainant alleges that the State has not issued the corresponding trade union status, which has been technically approved but not yet issued, in a timely manner. The Committee observes that the Government has not provided any information in this regard. The Committee recalls that it has previously examined complaints against the Government of Argentina concerning allegations of excessive delays in the granting of recognition to organizations, and also recalls that in 1997 it urged the Government to take measures to ensure that in future, when requests were made for the registration of an organization or the granting of recognition, the competent administrative authorities would decide on the matter without unjustified delay [see Report No. 307, Case No. 1872, para. 53]. Recalling the importance of the Government taking measures to ensure that, when requests are made for the granting of trade union status, the administrative authorities decide on the matter without unjustified delay, and noting with concern the absence of up-to-date information on the granting of trade union status to SIPROSAPUNE, the Committee hopes that this process has concluded and requests the Government to provide information in this regard.
178. The Committee notes that, in relation to CICOP (Posadas Hospital, Province of Buenos Aires), the complainant alleges that despite the fact that it has trade union status and that in the process that led to the adoption of Decree No. 1133/2009 establishing the sectoral collective agreement for professional staff in hospital and healthcare establishments and research and production institutes under the Ministry of Health, the relevant actors had agreed that CICOP would be represented in COPICPROSA (the body responsible for implementing the collective agreement established in 2009), it was not allowed to participate because it "lacks national representation". The Committee notes that, in this respect, the Government indicates that: (i) the complainant has not included any evidence in the complaint to suggest that there was a negotiation between the trade union organizations on participation in COPICPROSA, which would make this an internal matter of the unions and preclude the State from intervening until the unions decide on the matter; and (ii) the Undersecretariat of Labour Relations and Strengthening of the Civil Service of the Ministry of Modernization rejected the

request by FESPROSA to join COPICPSOSA because it is not a signatory to the sectoral collective agreement that created the above-mentioned committee.

179. *The Committee observes that article 4 of the Decree No. 1133 provides that the trade union part of COPICPROSA shall be represented by five regular and five substitute members. It also establishes that only trade union organizations with trade union status may participate in the committee, in accordance with Law No. 24.185, and that the organizations whose representation is limited to one or more of the establishments shall be incorporated into the jurisdictional delegations of those bodies. The article also states that these organizations shall be invited to participate in any COPICPROSA meetings that deal with issues affecting the category of persons and geographical area covered by them. The Committee observes that, although it does not have more specific information on a possible agreement between the organizations on their participation in COPICPROSA, according to publicly available information, in May 2021, CICOP took part in the COPICPROSA bargaining team. In the light of the above, and having received no further information on this matter, the Committee will not pursue its examination of these allegations.*
180. *The Committee notes that the complainant organization also alleges that: (i) the Garrahan Hospital in Buenos Aires does not allow SAMIC to automatically deduct union dues under the pretext that it does not have trade union status; and that (ii) in January 2018, the Posadas Hospital in Buenos Aires stopped deducting CICOP's membership fees after more than 20 years. The Committee regrets that it has not received any observations from the Government in this regard.*
181. *The Committee recalls that, in previous cases concerning Argentina, it requested the Government to take measures to ensure that with respect to the deduction of trade union dues from wages, legislation does not discriminate against trade union organizations that are merely registered as opposed to those with trade union status [see Report No. 320, Case No. 2054, para.142]. The Committee also recalls that for many years the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has been requesting the Government to take the necessary measures to bring several provisions of the Trade Union Associations Law No. 23.551 into full conformity with the Convention, including article 38, which allows only associations with trade union status, but not those that are simply registered, to deduct union dues from wages. Emphasizing the importance of the Government taking the aforementioned measures, and having received neither observations from the Government on this matter nor up-to-date information from the complainant, the Committee requests the Government to ensure that both SAMIC and CICOP are able to automatically deduct union dues in the hospitals concerned and requests the Government and the complainant to provide information in this regard.*
182. *The Committee notes that the complainant also alleges other acts of anti-union discrimination against members of CICOP (Posadas Hospital, Province of Buenos Aires). While taking due note of the allegations, which include the decision allegedly taken by the hospital's management in early 2018 to dismiss more than 100 workers, most of whom were union members, as well as the alleged dismissal of 16 elected delegates of CICOP, without proceedings or sanctions, after CICOP communicated its list of elected delegates on 23 October 2017, the Committee notes that the complainant has not provided specific data that would enable the workers in question to be identified or information on whether administrative or judicial appeals were filed in this regard. While noting that the Government has not sent its observations on this matter, and taking into account the time that has elapsed without having received specific information on the alleged facts, unless the complainant provides such information, the Committee will not pursue its examination of this aspect of the case. Noting, however, that the complainant also indicates that the ministerial authorities and the hospital's management refused to engage in any dialogue with the union representatives despite repeated requests for meetings, measures of force and mobilizations at the*

hospital, the Committee recalls that it has highlighted the importance for harmonious labour relations of full and frank consultations on matters affecting the workers' occupational interests.

- 183.** *Lastly, the Committee notes that the complainant alleges that the management of the two hospitals in the Province of Buenos Aires does not provide SAMIC and CICOP with adequate physical space for their operations while other trade union organizations supposedly enjoy the necessary facilities. While noting that it has not received any observations from the Government on this matter, the Committee recalls that it has underlined the need to strike a balance between two elements: (i) facilities in the undertaking should be as such 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 of decisions of the Committee on Freedom of Association**, sixth edition, para. 1580]. In the light of the above, the Committee requests the Government to encourage dialogue between the hospital authorities and the trade union organizations concerned in order to define the facilities necessary for carrying out their activities that are compatible with the smooth functioning of the hospitals and commensurate with their level of representativeness.*

D. The Committee's recommendations

- 184.** In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee requests the Government to ensure that, if indeed SIPRUS has requested a membership comparison, such a comparison has actually been conducted in a timely manner. The Committee requests the Government to keep it informed in this respect.
 - (b) Recalling the importance of the Government taking measures to ensure that, when requests are made for the granting of trade union status, the authorities decide on the matter without unjustified delay, and noting with concern the absence of up-to-date information on the granting of trade union status to SIPROSAPUNE, the Committee hopes that this process has concluded and requests the Government to provide information in this regard.
 - (c) The Committee requests the Government to ensure that both SAMIC and CICOP are able to automatically deduct union dues at the Garrahan and Posadas hospitals and requests the Government and the complainant to provide information in this regard.
 - (d) The Committee requests the Government to encourage dialogue between the hospital authorities and the trade union organizations concerned in order to define the facilities necessary for carrying out their activities that are compatible with the smooth functioning of the hospitals and commensurate with their level of representativeness.

Case No. 3424

Interim report

Complaint against the Government of Cambodia presented by

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

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

- 185.** The Committee last examined this case at its March 2023 meeting when it presented an interim report to the Governing Body [see 401st Report, paras 197–269, approved by the Governing Body at its 347th Session (March 2023)].¹
- 186.** The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) sent new allegations in a communication dated 4 August 2023.
- 187.** The Government forwarded supplementary observations in a communication received on 14 September 2023.
- 188.** Cambodia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 189.** At its March 2023 meeting, the Committee made the following recommendations on the matters still pending [see 401st Report, para. 269]:
- (a) The Committee urges the Government to provide detailed information on the current status of the LRSU's request for MRS and, should they meet the legal requirements, to ensure that they are granted MRS without delay. It further requests the Government to provide information on the steps taken to ensure that the LRSU at least has the right to make representations on behalf of its members and represent them in respect of their individual grievances.
 - (b) The Committee urges the Government to take the necessary steps for an independent investigation into the detailed allegations provided by the complainants in respect of government, military and police intervention, violence and harassment in the industrial action carried out by the LRSU and to transmit the outcome and ensure that the competent authorities receive adequate instructions so as to avoid any danger of violence. The Committee further requests the Government to ensure that all charges brought

¹ [Link to previous examination.](#)

against LRSU leaders and members for participating in a peaceful strike are dropped. It requests the Government to keep it informed of the steps taken in this regard.

- (c) The Committee urges the Government to take the necessary measures to ensure an independent investigation is carried out into the various acts of anti-union discrimination and interference alleged by the complainants to have been carried out by the employer since the beginning of the dispute and to keep it informed of the outcome.
- (d) Bearing in mind the allegations that the status of the voting members has yet to be finalised in light of the ongoing dispute and the long history of non-recognition and termination of LRSU leaders going back to the previous complaint in 2011, the Committee urges the Government to ensure that the April 2022 election of LRSU officers is duly recognized so that they may effectively defend the interests of their members and that the necessary steps are taken to ensure that members' dues are duly transferred to the union.
- (e) As regards the allegations that the enterprise filed a formal complaint against 18 female strikers, including Chhim Sithar, the Committee requests the Government and the complainants to provide detailed information on the nature of the charges and the current status of these cases.
- (f) The Committee expresses its deep concern that Chhim Sithar was arrested upon her return from the 5th World Congress of the ITUC and has been retained in preventive detention over two months and, given that the initial charges concerned her participation in peaceful industrial action, urges the Government to ensure her immediate and unconditional release and the restitution of any confiscated trade union property.
- (g) Given that the allegations in this case refer to an enterprise, the Committee urges the Government to solicit information from the employers' organization concerned with a view to having at its disposal the organization's views, as well as those of the enterprise concerned on the questions at issue.

B. Additional information and new allegations from the complainant

- 190.** In its communication dated 4 August 2023, the IUF and its affiliate the Labor Rights Supported Union of Khmer Employees of Naga Hotel (LRSU) provide additional information and new allegations in relation to this case. In particular, they note with urgency, the criminal convictions of 9 LRSU members and the continued imprisonment of LRSU President Chhim Sithar, as well as remarks by current Prime Minister Hun Sen discouraging LRSU members from continuing to participate in the lawful, peaceful strike.
- 191.** The IUF recalls in this regard the Committee's previous conclusions emphasizing that, "Penal sanctions should not be imposed on any worker for participating in a peaceful strike" and "no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike." and the Committee's request that the Government ensure all charges brought against LRSU leaders and members for participating in a peaceful strike were dropped. The IUF highlights, in particular, the conclusion related to the LRSU President that, "Given that the initial charges brought against Chhim Sithar concerned her participation in peaceful industrial action, and deeply concerned at her continued preventive detention over two months, the Committee urges the Government to ensure her immediate and unconditional release and the restitution of any confiscated trade union property."
- 192.** The IUF however observes that on 25 May 2023, the Phnom Penh Court of First Instance announced its decision and sentencing in the incitement trials of nine members of LRSU including Chhim Sithar after a trial ending 3 May 2023. The Court convicted LRSU President Chhim Sithar on the charge of incitement to commit a felony under criminal code articles 494

and 495 with a sentence of two years imprisonment, and she was transferred back to prison. Sithar was originally held for 74 days in pre-trial detention before being released on bail in March 2022. She was then re-arrested and detained on 26 November 2022. With eighth months served pre-trial, the sentence adds sixteen months of detention in prison.

193. The Court also convicted LRSU members Chhim Sokhorn, Sun Sreypich, Hay Sopheap, Kleang Soben, and Touch Sereymas on the charges of incitement to commit a felony under criminal code articles 494 and 495 with a suspended sentence of 1.5 years and judicial supervision including monthly police check ins. LRSU members Ry Sovandy, Sok Narith, and Sok Kongkea were also convicted on charges of incitement to commit a felony under criminal code articles 494 and 495 with a suspended sentence of one year.
194. While the Committee emphasized that, “it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests”, Prime Minister Hun Sen has repeatedly and publicly urged the LRSU strikers to end the strike and protests and undermined the legitimacy of the industrial action. These statements urge strikers to leave the strike and accuse them of being hired non-employees, accuse foreigners of illegally funding the strike, and defend NagaWorld’s Mass layoffs.
195. The IUF and LRSU therefore once again request the committee to: (i) urge withdrawal of all the convictions based on lawful organizing and participating in peaceful strikes; (ii) release of LRSU President Chhim Sithar and removal of all judicial supervision requirements for LRSU members Chhim Sokhorn, Sun Sreypich, Hay Sopheap, Kleang Soben, and Touch Sereymas; and (iii) the cessation of statements discouraging strikes and lawful trade union activity.

C. The Government’s reply

196. The Government provides the following information in relation to the Committee’s previous recommendations. As regards recommendation (a), the Government states that the Department of the Labour Dispute (DLD) has never received any application for the most representative status(MRS) recognition from the LRSU. As regards the elected LRSU officers (in April 2022), the DLD received a request to register the new leaders on 9 May 2022 and, after carefully scrutinizing the supporting documents, found that the election of new leaders of the LRSU did not comply with article 4 and particularly article 9 of the Law on Trade Unions (LTU), due to the fact that the elected leaders, as well as some participants who joined in the election, were no longer employed by Naga World. As a result, this led to the false determination of quorum in the election, which also did not comply with article 22 of the LTU. According to registration requirements, set forth in article 12 of the LTU, the DLD issued a letter dated 6 June 2022 to delay the new leader registration of the LRSU. In this sense, the LRSU has a period of 30 days to rectify and re-submit its documents as stipulated in article 16 of the LTU. On 20 June, 2022, the DLD issued another letter requesting Naga World to temporarily withhold union dues in order to guarantee transparency and benefits of the union members until the new union leaders are legally registered and recognized. The DLD’s decision was underpinned by the provision of article 25 of the LTU, providing that “The leaders and persons responsible for the administration shall be liable for the use and management of the finances and assets of the worker union or employer association”.
197. In respect of peaceful assembly and protest, the Government emphasizes that, in cooperation with the authorities and in compliance with security, safety, and public health measures, these are the exercise of the rights guaranteed by the Cambodian Constitution. On the contrary, however, assembly and protest without notifying and cooperating with the authorities violate security, safety, and public health measures, triggering violence and social unrest, affecting

public order, national security, and the rights and freedoms of others, as well as putting pressure on the judiciary, which is an independent body. These actions are in violation of the law, and the authorities must take all possible measures to prevent them, and protesters held responsible.

198. The authorities therefore found compelling evidence that the leaders of the union, as the organizers of the protest, had a malicious intention to vandalize the company's property and incite violence to cause social unrest and insecurity by using the workers and protesters as a political tool. As a result, three of them were arrested and sent to the court for further proceedings in accordance with articles 494 and 495 of the Cambodian Criminal Code. In addition, another three protesters have also been arrested and charged with the obstruction of health measures against COVID-19 in accordance with the Cambodian COVID-19 Law. Currently, they are released under judicial supervision. Only the leader has been sent back to pre-trial detention due to the breach of release on bail condition.
199. Ms. Chhim Sithar was not rearrested because of her involvement in the labour dispute between the trade union and Naga World but rather due to her violation of the terms of release under which she must seek the court's consent should she wish to leave the country. This violation constituted an act of breaching obligation under judicial supervision. Thus, the court ordered her arrest in accordance with article 230 of the Code of Criminal Procedures. In reply to the allegation that both Ms Chhim Sithar and her lawyer were not informed by the court of the obligation to have prior permission from the investigating judge before leaving the country, the Government reiterates that this requirement is a standard term in the court's verdict for provisional release and Ms. Chhim Sithar's lawyer should have been very well aware of this obligation and advised their client. Her case is a matter for the sole discretion of the courts in accordance with the law. Parties that are dissatisfied with the court's decision may make an appeal against it.
200. Finally, the Government reaffirms its firm commitment to promoting, protecting, and adhering to all duties and obligations stipulated in relevant international labour conventions to which it is a party.

D. The Committee's conclusions

201. *The Committee recalls that this case concerns allegations of retaliation, anti-union discrimination and dismissals, and arrest and detention against workers for having participated in strike action, in a context where the legislative framework inadequately ensures the effective recognition of freedom of association and where the union in question, the LRSU, formed in 2000, has repeatedly met obstacles to its full recognition.*
202. *The Committee observes with deep concern that, despite its previous recommendations, the complainants have provided additional information and new allegations, including the conviction with suspended sentences of a number of LRSU activists for their participation in the industrial action concerning the conflict at the enterprise and in particular the sentencing and continuing prison detention of the LRSU president, Chhim Sithar.*
203. *With regard to these grave allegations, the Committee observes that the Government repeats its view that the actions were illegal as they did not conform to security, safety, and public health measures again without providing detailed information on the manner in which their actions impacted upon the above concerns. Moreover, the Committee regrets that the Government has not provided the judicial decisions against the LRSU members that may have shed some light in this regard. The Committee recalls that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests and that no one should be*

deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike. The Committee has pointed out that, where persons have been sentenced on grounds that have no relation to trade union rights, the matter falls outside its competence. It has, however, emphasized that whether a matter is one that relates to the criminal law or to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned. This is a question to be determined by the Committee after examining all the available information and, in particular, the text of the judgement. [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 752, 971 and 181]. The Committee therefore is bound to reiterate its call on the Government to ensure the immediate and unconditional release of Chhim Sithar, as it had urged in its previous recommendation, and to furnish all judicial decisions in the sentencing of the LRSU leaders and members.

204. The Committee further notes that the Government reiterates its position in respect of the non-recognition of the April 2022 election of LRSU officers and must recall in this respect its conclusions that the consideration of the request for recognition of the April 2022 election of LRSU officers should have taken into account that the status of the voting members had yet to be finalized in light of the ongoing dispute and the long history of non-recognition and termination of LRSU leaders going back to the previous complaint in 2011 and therefore a strict application of article 4 and article 9 of the LTU concluding that the elected leaders, as well as some participants who joined in the election, were no longer employed by Naga World should not apply. The Committee therefore once again urges the Government to ensure that the April 2022 election of LRSU officers is duly recognized so that they may effectively defend the interests of their members and that the necessary steps are taken to ensure that members' dues are duly transferred to the union.
205. As regards the request for most representative status (MRS) refused to the LRSU and considered in the context of a previous case concerning Cambodia (Case No. 2783), the Committee recalls that in the absence of MRS, the LRSU has not been able to represent its members before the Arbitration Council (AC). While the Committee had insufficient information to determine the representative status of the LRSU, it recalled that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members [see **Compilation**, para. 1389 and that workers should be able to be represented in their grievances, whether collective or individual, by the organization of their own choosing. The Committee notes the Government's indication that the LRSU has not requested MRS. In the current context, including with the non-recognition of the April 2022 officers' election, the Committee urges the Government to ensure that the LRSU at least has the right to make representations on behalf of its members and to represent them in respect of their individual grievances.
206. Finally, observing that the Government has not replied to its other requests for action and information, the Committee is bound to reiterate its recommendations and requests the Government to provide detailed information in this respect without delay.

The Committee's recommendations

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

- (a)** The Committee urges the Government once again to ensure the immediate and unconditional release of Chhim Sithar and to furnish all judicial decisions in the sentencing of the LRSU leaders and members.
- (b)** The Committee once again urges the Government to ensure that the April 2022 election of LRSU officers is duly recognized so that they may effectively defend the interests of their members and that the necessary steps are taken to ensure that members' dues are duly transferred to the union. In the current context, including with the non-recognition of the April 2022 officers election, the Committee urges the Government to ensure that the LRSU at least has the right to make representations on behalf of its members and to represent them in respect of their individual grievances.
- (c)** The Committee once again urges the Government to take the necessary steps for an independent investigation into the detailed allegations provided by the complainants in respect of government, military and police intervention, violence and harassment in the industrial action carried out by the LRSU and to transmit the outcome and ensure that the competent authorities receive adequate instructions so as to avoid any danger of violence. It requests the Government to keep it informed of the steps taken in this regard.
- (d)** The Committee once again urges the Government to take the necessary measures to ensure an independent investigation is carried out into the various acts of anti-union discrimination and interference alleged by the complainants to have been carried out by the employer since the beginning of the dispute and to keep it informed of the outcome.
- (e)** As regards the allegations that the enterprise filed a formal complaint against 18 female strikers, including Chhim Sithar, the Committee once again requests the Government and the complainants to provide detailed information on the nature of the charges and the current status of these cases.
- (f)** Given that the allegations in this case refer to an enterprise, the Committee urges the Government to solicit information from the employers' organization concerned with a view to having at its disposal the organization's views, as well as those of the enterprise concerned on the questions at issue.

Case No. 3184

Interim report

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

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

- 208.** The Committee last examined this case (submitted in February 2016) at its March 2023 meeting, when it presented an interim report to the Governing Body [see 401st Report, paras 270–297, approved by the Governing Body at its 347th Session (March 2023)].²
- 209.** The Government forwarded its observations in a communication dated 13 September 2023.
- 210.** China has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

- 211.** At its March 2023 meeting, the Committee made the following recommendations [see 401st Report, para. 297]:
- (a) The Committee once again requests the Government to confirm Mr Meng is not being prosecuted on charges of “picking quarrels and provoking trouble” and that he is no longer under any measure of supervision by the authorities.
 - (b) The Committee once again urges the Government to transmit without further delay copies of judicial decisions in the cases of Messrs Meng, Wu Lijie, Zhang Zhiyu, Jian Hui, Wu Guijun, He Yuancheng, Song Jiahui, Yang Zhengjun, Wei Zhili, Ke Chengbing, Mi Jiuping, Liu Penghua, Yu Juncong and Li Zhan.
 - (c) The Committee urges the Government to take all steps, with the technical assistance of the Office, to facilitate constructive and inclusive dialogue with the social partners with a view to ensuring complete respect for freedom of association, including the right of workers to establish organizations of their own choosing, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party, and to ensure the right to peaceful demonstration for workers and employers. It requests the Government to indicate all measures taken or envisaged in this respect.
 - (d) The Committee once again urges the Government to transmit a copy of the investigation report into the allegations of harsh treatment of the labour activists while in custody which

² [Link to previous examination.](#)

had revealed that Mr Zeng and others were not subject to cruel treatment while in detention.

- (e) The Committee urges the Government to provide information on all measures taken or envisaged to ensure adequate protection against anti-union discrimination in law and in practice, to provide a copy of the report on the outcome of the above-mentioned investigation (cases of Messrs Liu and Yu) and detailed information on the alleged dismissals of Messrs Mi Jiuping, Li Zhan, Song Yiao, Kuang Hengshu, Zhang Baoyan and Chang Zhongge.
- (f) The Committee once again urges the Government to submit a detailed reply on each of the allegations of arrests, detention, ill-treatment and disappearance of labour activists and their supporters, as set out in Appendix I, as well as criminal charges laid against some and sanctions imposed. The Committee requests the Government to provide information regarding Mr Wang Ji'ao, mentioned in Appendix II.
- (g) In view of the arbitrary nature of Mr Wang's detention for allegedly advocating for workers' rights in an environment where, as previously concluded by the Committee, the exercise of freedom of association is severely restricted in law and in practice, and in view of the absence of any information on the part of the Government, the Committee urges the Government to ensure the immediate release of this labour activist and to provide detailed observations on the ITUC allegations, including on the situation of Ms Hiang Xueqin.
- (h) The Committee expects the Government to make additional efforts necessary to submit the remaining information requested without further delay so that the Committee will have available to it all necessary information to examine this case in full knowledge of the facts and once again invites the Government to accept a direct contacts mission to understand better the situation on the ground and resolve any pending matters.
- (i) The Committee expresses its concern that the facts of this case, under examination since October 2016, indicate a systemic problem which has been seen to have had an impact on workers' freedom of association by virtue of the numerous persons arrested, disappeared, and intimidated for having tried to defend workers' collective interests and for whom the Government has consistently failed to provide the detailed information requested by the Committee, including as to whether charges are still pending against any of the labour activists and on the steps taken to ensure complete respect for freedom of association. In light of the persistent failure by the Government to provide detailed information on the above and to take steps to address the Committee's longstanding recommendations, the Committee finds itself obliged to draw the Governing Body's attention to the serious and urgent nature of this case.

B. The Government's reply

- 212.** In its communication dated 13 September 2023, the Government recalls that it had previously pointed out that the period of obtaining a guarantor pending trial for Mr Meng Han has expired on 7 October 2020. Mr Meng Han has effectively met all the obligations during the period of obtaining a guarantor pending trial and the public security organ has lifted the measure imposed on him. His identity document has not been seized.
- 213.** The Government further reiterates that on 27 July 2018, the public security organ in Shenzhen City of Guangdong Province lawfully summoned Mr Lan Zhiwei and Ms Zhang Zeying, both suspected of committing a crime, and the next day imposed on them a measure of criminal detention. On 27 August, the measure was changed to one of obtaining a guarantor pending trial, which was lifted upon expiration. On 3 January 2019, the public security organ in Guangzhou City of Guangdong Province lawfully summoned Mr Li Yuanzhu, also suspected of committing a crime, and imposed on him the measure of criminal detention. On 30 January, the measure was changed to one of obtaining a guarantor pending trial, which was lifted upon

expiration. Ms Zhang Zeying, and Messrs Lan Zhiwei and Li Yuangzhu have not consequently been prosecuted and criminally penalized. All of them now live and work normally.

- 214.** The Government indicates that it is making efforts to gather information on other relevant persons and that further information, if available, will be timely provided to the Committee. The Government reiterates that the national Constitution and legislation guarantees the citizens the right to freedom of association. However, Chinese citizens and organizations, like those of any other nations, shall abide by relevant provisions of national laws in exercising the aforementioned right. The persons mentioned in this case were investigated and punished not for establishing trade unions or participating in trade union activities, but for using illegal means in the process of dealing with labour disputes and violating relevant provisions of the Criminal Law. The courts and public security organs of China handle these cases in strict accordance with the procedures established by the laws and the legal rights of the persons involved are effectively safeguarded. The Government indicates its willingness to maintain communication with the ILO in this regard.

C. The Committee's conclusions

- 215.** *The Committee recalls that this case, lodged in February 2016, concerns allegations of arrest and detention on charges of "gathering a crowd to disturb public order" of advisers and paralegals who have provided support services to workers and their organizations in handling individual and/or collective labour disputes.*
- 216.** *The Committee recalls, in particular, that Mr Meng, one of the advisers, was allegedly under police surveillance to prevent him from assuming his role as a worker activist following his release from prison. As the Government continues to reiterate that the public security has lifted the measure imposed upon him, the Committee firmly expects that this is to be understood as the Government's confirmation that he is no longer being prosecuted for "picking quarrels and provoking trouble", charges initially brought against him, and that he is no longer under any measure of supervision by the authorities.*
- 217.** *The Committee once again observes with deep regret that no information has been provided by the Government in relation to the whereabouts, charges, judgments, or convictions of any of those individuals mentioned in Appendix I, as previously requested. The Committee finds itself bound to once again urge the Government to submit a detailed reply on each of the allegations of arrests, detention, ill-treatment and disappearance of labour activists and their supporters, as set out in Appendix I, as well as criminal charges laid against some and sanctions imposed. As regards Appendix II, while noting that the Government reiterates the information it had already provided in respect of Ms Zhang Zeying, and Messrs Lan Zhiwei and Li Yuangzhu, the three workers whose names were mentioned in Appendix II (list of individuals detained or disappeared submitted by the ITUC in its communication dated 11 February 2020), and for which the Committee is no longer awaiting information, the Committee regrets that the Government has yet to provide information regarding Mr Wang Ji'ao and requests it to provide full particulars on his situation.*
- 218.** *The Committee recalls that it had previously urged the Government to transmit a copy of all relevant judicial decisions in the cases of Messrs Meng, Wu Lijie (convicted of the crime of illegal business operation and sentenced to three years' imprisonment and a fine of 30,000 Chinese yuan renminbi on 13 November 2019), Zhang Zhiyu, Jian Hui, Wu Guijun, He Yuancheng, Song Jiahui (all five were convicted of the crime of assembling crowds to disturb public order and sentenced to various terms of probation on 24 April 2020), Yang Zhengjun, Wei Zhili, Ke Chengbing (all three were tried on 24 April 2020 on suspicion of provocative offences and sentenced to one year and six months of imprisonment with a three-year probation term), Mi Jiuping, Liu Penghua, Yu Juncong and Li Zhan*

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

219. The Committee further recalls that it had requested the Government to transmit a copy of the investigation report into the allegations of harsh treatment of the labour activists while in custody which had revealed that Mr Zeng and others were not subject to cruel treatment while in detention. Once again noting with regret the absence of any information in this respect, the Committee is obliged to reiterate its previous request. The Committee expects the Government to transmit a copy of the investigation report to which it had previously referred without further delay.
220. With regard to its previous recommendation regarding the dismissal of workers from the Shenzhen Jasic Technology Co. Ltd, the Committee notes with regret that the Government provides no information on measures taken or envisaged to ensure adequate protection against anti-union discrimination in law and in practice, nor on the alleged dismissals of Messrs Mi Jiuping, Li Zhan, Song Yiao, Kuang Hengshu, Zhang Baoyan and Chang Zhongge. The Committee further notes with regret that the Government does not provide a copy of the report on the outcome of the investigation involving Messrs Liu Penghua and Yu Juncong. The Committee reiterates its previous request and urges the Government to provide the information without further delay.
221. The Committee further recalls that it had previously noted the complainant's general allegation that it was not possible for workers and labour activists to participate in a legitimate strike or demonstration without violating the law that prohibits the disturbance of public order; and that it was common for the prosecutor and the court to view industrial action taken by workers as public security violations rather than as the exercise of fundamental rights. The Committee had noted the Government's general observation that the Law on Assemblies, Processions and Demonstrations was a special law that regulated the demonstrations of Chinese citizens enacted to serve two purposes: (1) safeguard citizens' exercise of their right to assembly, procession and demonstration according to law; and (2) maintain social stability and public order. The Committee observed that while some of the specific requirements relating to demonstration would clearly be in conformity with the principles of freedom of association (such as the ban on weapons, controlled cutting tools or explosives and the use of violence), several others appeared quite broad in nature and their implementation could give rise to a violation of freedom of association. In particular, the Committee observed with concern the Government's indication that no citizen shall, in a city other than their

place of residence, start, organize or participate in an assembly, a procession or a demonstration of local citizens. Recalling that workers should enjoy the right to peaceful demonstration to defend their occupational interests [see **Compilation**, para. 208], the Committee considered that this geographical restriction placed by legislation on the right to demonstrate is not in conformity with the freedom of peaceful assembly and requested the Government to indicate all steps taken to facilitate constructive and inclusive dialogue with the social partners with a view to ensuring complete respect for freedom of association and to ensure the right to peaceful demonstration for workers and employers. The Committee had further recalled that the right of workers to establish organizations of their own choosing implied, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party and once again calls upon the Government to ensure this right for all workers. The Committee regrets that once again the Government's reply is limited to the indication that the constitution and the laws of the country fully guarantee the freedom of association to its citizens, but points out that like in any other nation, the Chinese workers and their organizations shall abide by the relevant provisions of national laws. The Committee therefore once again urges the Government to take all steps, with the technical assistance of the Office, to facilitate constructive and inclusive dialogue with the social partners with a view to ensuring complete respect for freedom of association, including the right of workers to establish organizations of their own choosing, which implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party, and to ensure the right to peaceful demonstration for workers and employers. It requests the Government to indicate all measures taken or envisaged in this respect.

222. The Committee recalls the ITUC allegation of a near complete absence of civic space for independent public advocacy or collective labour actions in China exacerbated by digital surveillance and stringent restrictions on suppression of civil liberties and freedom of expression and against this background, of the arrest of labour activist Mr Wang Jiangbing and Ms Hiang Xueqin on 19 September 2021. In view of the arbitrary nature of Mr Wang's detention for allegedly advocating for workers' rights in an environment where the exercise of freedom of association is severely restricted in law and in practice, the Committee urged the Government to ensure the immediate release of this labour activist and to provide detailed observations on the ITUC allegations, including on the situation of Ms Hiang Xueqin. Deeply regretting the absence of any information in this respect in the Government's reply, the Committee is bound to reiterate its previous request.
223. The Committee had previously recalled that such grave allegations as examined in this case figure among the terms set out in paragraph 54 of the special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association. The Committee once again expresses its concern that the facts of this case, under examination since October 2016, indicate a systemic problem which has been seen to have had an impact on workers' freedom of association by virtue of the numerous persons arrested, disappeared, and intimidated for having tried to defend workers' collective interests and for whom the Government has consistently failed to provide the detailed information requested by the Committee, including as to whether charges are still pending against any of the labour activists and on the steps taken to ensure complete respect for freedom of association. In light of the persistent failure by the Government to provide detailed information on the above and to take steps to address the Committee's long-standing recommendations, the Committee finds itself once again obliged to draw the Governing Body's attention to the serious and urgent nature of this case. The Committee expects the Government to make additional efforts to submit the remaining information requested without further delay so that the Committee will have available to it all necessary information to examine this case in full knowledge of the facts and once again invites the Government to accept a direct contacts mission to understand better the situation on the ground and resolve any pending matters.

The Committee's recommendations

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

- (a) The Committee once again urges the Government to submit a detailed reply on each of the allegations of arrests, detention, ill-treatment and disappearance of labour activists and their supporters, as set out in Appendix I, as well as criminal charges laid against some and sanctions imposed. The Committee requests the Government to provide full particulars regarding Mr Wang Ji'ao, mentioned in Appendix II.
- (b) The Committee once again urges the Government to transmit without further delay copies of judicial decisions in the cases of Messrs Meng, Wu Lijie, Zhang Zhiyu, Jian Hui, Wu Guijun, He Yuancheng, Song Jiahui, Yang Zhengjun, Wei Zhili, Ke Chengbing, Mi Jiuping, Liu Penghua, Yu Juncong and Li Zhan.
- (c) The Committee expects the Government to transmit without further delay a copy of the investigation report into the allegations of harsh treatment of the labour activists while in custody which had revealed that Mr Zeng and others were not subject to cruel treatment while in detention.
- (d) The Committee urges the Government to provide without further delay information on all measures taken or envisaged to ensure adequate protection against anti-union discrimination in law and in practice, to provide a copy of the report on the outcome of the above-mentioned investigation (cases of Messrs Liu Penghua and Yu Juncong) and detailed information on the alleged dismissals of Messrs Mi Jiuping, Li Zhan, Song Yiao, Kuang Hengshu, Zhang Baoyan and Chang Zhongge.
- (e) The Committee once again urges the Government to take all steps, with the technical assistance of the Office, to facilitate constructive and inclusive dialogue with the social partners with a view to ensuring complete respect for freedom of association, including the right of workers to establish organizations of their own choosing, which implies, in particular, the effective possibility of forming, in a climate of full security, organizations independent both of those which exist already and of any political party, and to ensure the right to peaceful demonstration for workers and employers. It requests the Government to indicate all measures taken or envisaged in this respect.
- (f) In view of the arbitrary nature of Mr Wang's detention for allegedly advocating for workers' rights in an environment where, as previously concluded by the Committee, the exercise of freedom of association is severely restricted in law and in practice, and in view of the absence of any information on the part of the Government, the Committee urges the Government to ensure the immediate release of this labour activist and to provide detailed observations on the ITUC allegations, including on the situation of Ms Hiang Xueqin.
- (g) The Committee expects the Government to make additional efforts necessary to submit the remaining information requested without further delay so that the Committee will have available to it all necessary information to examine this case in full knowledge of the facts and once again invites the Government to accept a direct contacts mission to understand better the situation on the ground and resolve any pending matters.

- (h) The Committee expresses its concern that the facts of this case, under examination since October 2016, indicate a systemic problem which has been seen to have had an impact on workers' freedom of association by virtue of the numerous persons arrested, disappeared, and intimidated for having tried to defend workers' collective interests and for whom the Government has consistently failed to provide the detailed information requested by the Committee, including as to whether charges are still pending against any of the labour activists and on the steps taken to ensure complete respect for freedom of association. In light of the persistent failure by the Government to provide detailed information on the above and to take steps to address the Committee's long-standing recommendations, the Committee finds itself obliged to draw the Governing Body's attention to the serious and urgent nature of this case.

Appendix I

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

13. Mr Tang Jialiang: postgraduate student at Beijing Institute of Technology, forcibly disappeared since early September 2018. Still missing.
14. Mr Zhang Shengye: graduate of Peking University, taken from campus and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
15. Ms Sun Min: graduate of Peking University, taken away in Guangzhou and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
16. Mr Zong Yang: graduate of Peking University, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
17. Mr Liang Xiaogang: worker supporter, taken away in Shanghai and forcibly disappeared on 9 November 2018.
18. Mr Tang Xiangwei: worker supporter, taken away by police in Wuhan for supporting Jasic workers and forcibly disappeared on 11 November 2018. No further information.
19. Mr Zheng Shiyong: worker supporter, taken away in Wuhan on 11 November 2018. Arrested for inciting subversion of state power. No indictment. Not reachable.
20. Ms Zheng Yiran: graduate of Beijing Language and Culture University, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
21. Mr Lu Daxing: graduate of Nanjing University of Science and Technology, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
22. Ms Li Xiaoxian: graduate of Nanjing University of Chinese Medicine, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for supporting Jasic workers. Not reachable.
23. Mr He Pengchao: graduate of Peking University, founder of Qingying Dreamworks Social Worker Centre, taken away in Beijing and forcibly disappeared on 9 November 2018. Arrested for inciting subversion of state power. No indictment. Not reachable.
24. Ms Wang Xiangyi: graduate of Peking University, founder of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
25. Ms Jian Xiaowei: graduate of Renmin University, staff member of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
26. Ms Kang Yanyan: graduate of University of Science and Technology Beijing, staff member of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
27. Ms Hou Changshan: graduate of Beijing Foreign Studies University, staff member of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
28. Ms Wang Xiaomei: graduate of Nanjing University of Information Science and Technology, staff member of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.

29. Ms He Xiumei: supporter of Qingying Dreamworks Social Worker Centre, taken away by police in Shenzhen and forcibly disappeared on 9 November 2018. No further information.
30. Ms Zou Liping: local trade union staff member, detained in Shenzhen on 9 November 2018, charged with “picking quarrels and provoking trouble”. Taken away by police. Forcibly disappeared. No further information.
31. Mr Li Ao: local trade union staff member, detained in Shenzhen on 9 November 2018, charged with “picking quarrels and provoking trouble”. Taken away by police. Forcibly disappeared. No further information.

Appendix II

1. Mr Jia Shijie: Peking University student, arrested on 23 September 2018 for supporting Jasic workers. Not reachable.
2. Mr Lan Zhiwei: worker, arrested on 2 January 2019 for supporting Jasic workers. Not reachable.
3. Ms Zhang Zeying: worker, arrested on 2 January 2019 for supporting Jasic workers. Not reachable.
4. Mr Zhan Zhenzhen: Peking University student, arrested on 2 January 2019 for supporting Jasic workers. Not reachable.
5. Mr Li Yuanzhu: worker, arrested on 3 January 2019 for supporting Jasic workers. Not reachable.
6. Mr Feng Junjie: Peking University student, arrested in January 2019 for supporting Jasic workers. Not reachable.
7. Mr Wang Ji'ao: Renmin University canteen worker, arrested on 18 January 2019 for supporting Jasic workers. Not reachable.
8. Ms Li Ziyi: Peking University student, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
9. Mr Ma Shize: Peking University student, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
10. Mr Yan Zihao: Renmin University student, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
11. Mr Li Jiahao: graduate of Peking University, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
12. Mr Huang Yu: graduate of Peking University, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
13. Ms Sun Jiayan: Peking University student, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
14. Mr Zhang Ziwei: Peking University student, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
15. Ms Chen Ke Xin: Renmin University student, arrested on 21 January 2019 for supporting Jasic workers. Not reachable.
16. Mr Wu Jia Wei: graduate of Renmin University, arrested on 16 February 2019 for supporting Jasic workers. Not reachable.

Case No. 3208

Definitive report

Complaint against the Government of Colombia presented by

- the General Confederation of Labour (CGT) and
- the National Union of State and Public Service Workers of Colombia (UTRADEC-CGT)

Allegations: The complainant organizations allege persecution against members of the National Union of Officials and Employees in the Judicial Branch, “El Vocero Judicial” (The Judicial Representative) and violation of the right to peaceful demonstration

- 225.** The complaint is contained in a communication from the General Confederation of Labour (CGT) and the National Union of State and Public Service Workers of Colombia (UTRADEC-CGT), dated 18 March 2016. The CGT submitted additional information in a communication dated 1 June 2017.
- 226.** The Government sent its observations in communications dated 3 April 2017, 13 February 2018, and also 11 May and 20 September 2023.
- 227.** Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151) and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant’s allegations

- 228.** In its communications dated 18 March 2016 and 1 June of 2017, the complainant organizations indicate that, on 16 December 2015, the Administrative Chamber of the Higher Council of the Judiciary issued Decision No. PSAA-15-10445, which provides for the creation of “centres for judicial services” for civil and family courts in Bogotá. The complainant organizations allege that this Decision was issued without consultation and jeopardized the continued employment of many public servants in the judicial branch such as notifiers, secretaries and scribes, who make up over 60 per cent of the employees in each judicial office. The complainant organizations indicate that the trade unions, ASONAL-JUDICIAL, ASONAL JUDICIAL S.I. and ASOJUDICIALES did not address the request by the grass-roots organizations to revoke the Decision, and chose to respond to the proposal of the Higher Council of the Judiciary to postpone the entry into force of the Decision by one month. As a result, most judicial officials felt betrayed, and decided to create a new trade union organization, which was established with 250 founding members on 26 January 2016, and which is called the National Union of Civil Servants and Employees in the Judicial Branch, “El Vocero Judicial” (The Judicial Representative).
- 229.** The complainant organizations indicate that this trade union attempted to negotiate with the Higher Council of the Judiciary and that, in response, it was subject to threats and attacks by

this body, which posted communications on its website comparing the actions of the activists to those of guerrillas and paramilitaries. The complainant organizations allege that the workers exercised the right to peaceful demonstration and that, on 1 February 2016, the Higher Council of the Judiciary granted authorization to enter judicial buildings in the capital to the police and the mobile anti-riot squad who, using tear gas, electric shocks and explosives, expelled officials, employees, trial lawyers and clients, assaulted women and caused incapacity, with the sole aim of sabotaging the right to peaceful demonstration.

- 230.** The complainant organizations further allege that, in February and March 2016, the wages of some workers were withheld with no legal justification, including the wages of the president of the trade union “El Vocero Judicial”, Mr Luis Orlando Chinchilla Vargas, and that, subsequently, indiscriminate payments were made to some workers in order to create confrontation, with the indication that the wages of members and supporters of the trade union would not be paid. The complainant organizations state that the withholding of wages was based on a circular issued by the Office of the Comptroller-General of the Republic, which was declared unenforceable (unconstitutional) in 2015. The complainant organizations add that the physical integrity of the president of the trade union was endangered when notices were placed in the payment office, which stated that, for payroll purposes, it was necessary to communicate with him, and which made public his mobile phone number.
- 231.** The complainant organizations also allege that, in March 2016, the president of the Administrative Chamber of the Higher Council of the Judiciary urged the civil judge from the office in which the trade union president was working, to initiate disciplinary investigations, and that the civil judge therefore proceeded to open a preliminary inquiry against the trade union president. The complainant organizations consider that the aforementioned conduct displayed by the Higher Council of the Judiciary constitutes anti-union persecution, and request that the Government be urged to respect the right to freedom of association and the right to collective bargaining, that an end be brought to the acts of anti-union persecution, and therefore, that the free exercise of the right to establish trade unions be allowed, thus ensuring the provision of constitutional guarantees, and the demilitarization of each of the buildings in which the courts of Bogotá operate. They also request that the constant threats and repression for exercising the constitutional right to establish trade unions cease, and that the communications on the web page of the Higher Council of the Judiciary be corrected.

B. The Government’s reply

- 232.** In its communications dated 3 April 2017 and 13 February 2018, the Government sent its observations, as well as the observations of the Ministry of Justice and Law, the Bogotá Territorial Directorate and the Higher Council of the Judiciary. The Government states that the events described in the complaint are not indicative of any violation of freedom of association, and indicates that they occurred as a result of the issuance by the Higher Council of the Judiciary, in December 2015, of Decision No. PSAA-15-10445 which provides for the creation of centres for judicial services in civil and family courts, establishes coordination, monitoring and control mechanisms and regulates the corresponding functions.
- 233.** The Government indicates that, while the Decision was issued by the competent authority and in exercise of the powers conferred by both the Constitution and the law, the complainant organizations opposed it on the grounds that: (i) it was going to affect the continued employment of many public servants in the judicial branch such as notifiers, secretaries and scribes; (ii) it would result in judges losing their autonomy, direction and control of proceedings; (iii) jurisdictional secretarial functions would be moved to administrative offices; (iv) some employees would be moved from courts to administrative settings with changes to

their wages; (v) it would create greater bureaucracy; (vi) judicial functions would be assigned to administrators and staff with no legal knowledge for the conduct of constitutional actions; and (vii) the centres for judicial services provided for in the Decision would run counter to the principles of prompt process, procedural economy, immediacy and access to justice. The Government indicates that, in response to this situation, the trade union organizations belonging to the judicial branch initiated what they called permanent assemblies which, in practice, resulted in work stoppages and the blocking of access to civil and family office buildings for clients and the general public.

234. The Government indicates that, in light of this situation, the Higher Council of the Judiciary established consultation committees as from 29 December 2015, and that eight sessions were held and were attended by the trade union organizations of all sectors in the justice system, and by representatives of the Government and the Ministry of Justice and Law, with the support of the Office of the Ombudsperson, who in their capacity as guarantors, assisted the process to restore judicial services, in view of the fact that the administration of justice is an essential public service ([Act 270 of 1996, section 125](#)). The Government indicates that it was during the negotiations between the parties that the trade union organization “El Vocero Judicial” was created, which sought to vindicate the petition by employees from the judicial branch to revoke the Decision on the grounds that it went against the administration of justice, the interests of citizens and the work of trial lawyers by creating delays in the processing of cases.
235. The Government indicates that, during the above-mentioned consultation committees, the parties agreed to postpone the entry into force of the Decision on several occasions: (first, until 30 April 2017 and subsequently until 30 June 2018) and that, as a result of the agreement reached in the consultation committees, the services of judicial offices returned to normal. The Government emphasizes that the fact that agreements were reached between the parties demonstrates that there was dialogue and that guarantees were provided for the trade union organizations. The Government indicates that, in total, six trade union organizations participated in the consultation committees and that “El Vocero Judicial” was the only organization to walk out of the committees and to stop participating in them. The Government adds that this complaint was submitted at a time when the parties had agreed to suspend the entry into force of the Decision until 30 April 2017, which indicated that they were still at the dialogue stage.
236. The Government indicates that, no sooner had the trade union organization “El Vocero Judicial” been established than it decided to carry out a peaceful demonstration, impeding access to judicial facilities and threatening to paralyse the administration of justice, which is an essential public service. The Government indicates that the Constitutional Court has stated that, in the case of essential public services, public interest must prevail and should not yield to individual interests, although it makes the caveat that alternatives should be sought to ensure, in some form, this right for those providing such services. Similarly, the Supreme Court of Justice issued a Decision on the strike called by officials in the judicial branch in 2009, in which it referred to the nature of the administration of justice as an essential public service, confirming at the time the illegal nature of the strike called by the National Association of Officials and Employees in the Judicial Branch. The Government clarifies that this should not be interpreted as condoning possible abuse by law enforcement agencies against society, but rather that law enforcement agencies should always be a wall of protection for ordinary citizens, and particularly when special guarantees are required for their lives and safety.
237. The Government underscores that, in a State subject to the rule of law, the police must ensure access to public facilities when that access has been hindered or obstructed, to ensure that rights can be claimed, particularly in order to obtain judicial instruments to guarantee

maintenance payments for minors, and the right to the prompt and full administration of justice when it is considered that their constitutional rights, such as the right to health, are being violated; to allow for the provision of medicine or priority care and thus avoid endangering their lives and physical integrity, through constitutional and legal actions: actions for protection, enforcement actions and other judicial proceedings. The Government indicates that, in this case in particular, the complainant organizations did not provide documents that prove the actual occurrence of the alleged anti-union acts. The Government indicates that, while the printouts provided by the complainant organizations show the presence of people on one side and the national police on the other, there are no images of clashes between parties, and that there are no medical documents providing evidence of medical incapacity caused by the alleged mistreatment of workers by the police. The Government indicates that it does not have videos or photos that show assaulted officials or, as stated by the complainant organizations, assaulted women and that, in any case, as the State is subject to the rule of law, there are judicial and administrative channels for the denunciation of the alleged acts of aggression by law enforcement agencies.

238. Regarding the alleged threats, attacks and actions carried by the Higher Council of the Judiciary through communications, the Government indicates that it visited the web page of the judicial branch and that, while there were press releases from different secretariats (such as labour, civil and criminal secretariats) referring to situations that occurred internally, no written material against the trade union and/or its members was found.
239. Regarding the alleged withholding of the wages of workers, the Government indicates that a situation in which an employer does not pay a worker for time that a worker has not worked, for reasons that are not attributable to the employer, does not imply that wages have been withheld. The Government states that there were legal and jurisprudential grounds justifying the decision not to pay wages, since there was a work stoppage that was not attributable to the employer, as evidenced by the conduct demonstrated by officials in the judicial branch in the service of the civil and family courts of the city of Bogotá, who were opposed to the entry into force of the Decision. The Government indicates that, while it is true that section 5(I), paragraph 7 of Legislative Decree 267 of 2000, cited in External Circular 029 of 2014, issued by the Comptroller-General of the Republic, was declared unenforceable in Ruling C 103 of 2015, this section covers a function performed solely by the Comptroller-General of the Republic, and the other legal bases related to the payment of wages continue to be in force and are applicable to the case in question.
240. The Government transcribes several extracts from court rulings that state that a strike suspends employment contracts for the duration of the strike and, consequently, the employer is not required to pay wages and other employment benefits during this period. The Government indicates that, if in the case of a legally declared strike, it is lawful not to pay wages for non-worked days, except, of course, when the causes are imputable to the employer, there is even more reason for a deduction of wages authorized by law in the case of absence from work due to a work stoppage that is not legally permitted, but rather specifically prohibited by law. The Government adds that it was the Regional Director of the Judiciary who verified the work stoppage by means of the reports issued by labour inspectors in order to determine, based on the facts, whether the employees were in such a situation, and to proceed with their inclusion on the payroll, as appropriate. Regarding Mr Chinchilla Vargas, the Government indicates that it was found that, on many occasions, he carried out trade union protest activities without having been granted union leave and without a written agreement or accord by means of which he made a commitment to the head of office to compensate for or make up time.

241. The Government indicates that mechanisms were agreed upon in order for those who had not received wages in February and March 2016 to compensate for non-worked hours and therefore obtain remuneration, which most of those who had not worked accepted and therefore agreed with their immediate supervisors to replace the non-worked hours, and thus effectively received the relevant pay. However, Mr Chinchilla Vargas did not agree. Once he has made up for the non-worked hours, he will be paid accordingly.
242. Concerning the disciplinary proceedings initiated against Mr Chinchilla Vargas, the Government indicates that public officials are not exempt from the possibility of being questioned, where the circumstances so require, under the Single Disciplinary Code, without this being considered a violation of any rights. The Single Disciplinary Code establishes that officials who are active subjects of disciplinary action must be provided with the possibility and opportunity to prove their innocence, thus allowing for the exercise of the right to defence and for investigations to be carried out through due process. The Government considers that it is not possible to say that the initiation of disciplinary action against a specific public servant amounts to conduct constituting a violation of freedom of association. In a communication dated 20 September 2023, the Government indicates that between 2018 and 2023 several motions for reconsideration and appeals related to Mr Chinchilla Vargas' administrative file were resolved, including those regarding compliance with the work schedule. The Government does not provide further details regarding the outcome of these appeals. The Government informs that Mr Chinchilla Vargas passed away on 30 April 2020.
243. In a communication of 11 May 2023, the Government indicates that the administrative labour investigation initiated against the Higher Council of the Judiciary for acts undermining the freedom of association, by means of a complaint submitted by the trade union "El Vocero Judicial" on 29 April 2016, was archived through resolution No. 06472 of December 2018, and that, on 2 October 2019, an appeal was settled, which upheld the resolution that ordered the archiving of the complaint, and therefore the file has been closed and archived.

C. The Committee's conclusions

244. *The Committee observes that in the present case, the complainant organizations allege persecution against members of the trade union "El Vocero Judicial" and the violation of the peaceful exercise of the right to demonstrate, which, according to the allegations, occurred between 2016 and 2017.*
245. *The Committee observes that, according to the complaint and the Government's reply: (i) on 16 December 2015, the Higher Council of the Judiciary issued a Decision providing for the creation of "centres for judicial services" for civil and family courts in Bogotá; (ii) while the trade union organizations belonging to the judicial branch considered that this Decision had been issued without consultation and that it, inter alia, threatened the continuity of employment for over 60 per cent of judicial employees, the Government indicates that the Decision was issued by the competent authority in the exercise of the powers conferred upon it by the Constitution and the law; (iii) given that the trade union organizations opposed the Decision and held permanent assemblies, during which they engaged in a work stoppage and impeded access to civil and family office buildings, and considering that administration of justice is an essential public service, in December 2015, the Higher Council of the Judiciary established consultation committees with trade union organizations from the sector; (iv) in January 2016, as a result of the aforementioned consultation committees, the Higher Council of the Judiciary reached an agreement with six organizations, to postpone the entry into force of the Decision (until April 2017 and subsequently until June 2018); and (v) during the negotiations and due to a disagreement with the position of the trade union organizations, at the end of January 2016, the trade union "El Vocero Judicial" was established, which sought to revoke the Decision and which left the consultation committees.*

246. Concerning the allegation that, on 1 February 2016, the Higher Council of the Judiciary authorized the entry of the police and the mobile anti-riot squad into judicial buildings in the capital to put an end to a peaceful protest, using, *inter alia*, tear gas, and assaulting women and causing incapacity, the Committee notes the Government's indications that: (i) national legislation recognizes the administration of justice as an essential public service; (ii) the police must guarantee access to public facilities when that access is hindered or obstructed, in order to ensure, *inter alia*, the conduct of proceedings concerning the provision of maintenance payments and medicine for minors; and (iii) the complainant organizations have not provided documents that demonstrate the occurrence of mistreatment or clashes with the police, or medical evidence of incapacity caused by this mistreatment.
247. The Committee recalls that, on several occasions, it has noted that officials working in the administration of justice and the judiciary are officials who exercise authority in the name of the State and whose right to strike could thus be subject to restrictions, such as its suspension or even prohibition [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 832]. The Committee observes, firstly, that in this case, the Higher Council of the Judiciary initiated dialogue with the different trade unions in the judicial branch, through which it was decided to postpone the entry into force of the Decision until at least 2018, and thus the service of the judicial offices returned to normal. The Committee notes the divergent accounts presented by the complainant organizations and the Government on the manner in which the police acted during the peaceful protest. However, it recalls that, in cases of strike movements, the authorities should resort to the use of force only in grave situations where law and order is seriously threatened [see **Compilation**, para. 932]. The Committee observes that: (i) the documentation provided indicates that the police were at the entrance of the judicial buildings with the aim of ensuring access to those buildings; (ii) the complainant organizations have not submitted elements confirming that violent acts were committed by the police; and (iii) there is no record of any complaints having been filed in this regard with the competent national authorities. In the light of the above, the Committee will not pursue its examination of these allegations.
248. Regarding the allegation that the Higher Council of the Judiciary threatened and attacked the organization "El Vocero Judicial" through communications published on the web page, the Committee notes the Government's indications that it did not find evidence of such communications on the web page in question. Observing that the documentation submitted does not provide evidence of threats or attacks by the Higher Council of the Judiciary against the organization and its members, the Committee will not pursue its examination of these allegations.
249. Concerning the allegation that the wages of workers were withheld for two months on the basis of a circular by the Higher Council of the Judiciary that had been declared unconstitutional, and that, subsequently some workers were paid but not members of the trade union, the Committee notes the Government's indications that: (i) the wages were not paid due to a work stoppage that was not attributable to the employer and, while a section of the article of the circular in question was declared unconstitutional on grounds unrelated to the allegations in the present case, the other aspects of the circular related to the payment of wages continue to be in force and are applicable to the case in question; (ii) there is a jurisprudential basis stating that a strike suspends employment contracts and that the employer is not required to pay wages during this period; (iii) in this case, the work stoppage was verified through reports issued by labour inspectors, and it was found that, on many occasions, the president of the trade union "El Vocero Judicial" carried out trade union protest activities without having been granted union leave and without an agreement committing to compensate for or make up time; and (iv) while most of the workers agreed to compensate for the hours not performed and were paid for the time not worked previously, the president of the trade union did not agree to compensate for the non-worked hours. Duly noting the above-mentioned

*indications and recalling that salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles [see **Compilation**, para. 942], the Committee will not pursue the examination of this allegation.*

- 250.** *The Committee further notes that, the complainant organizations indicate that disciplinary investigations were initiated against the president of the trade union and that, in this respect, the Government indicates that initiating an investigation does not in itself constitute a violation of freedom of association, the Committee has no knowledge of the result of these investigations. The Committee notes that the Government informed that between 2018 and 2023, several appeals related to Mr Chinchilla Vargas' administrative file were resolved, and that the union leader passed away on 30 April 2020. Also, the Government indicates that an administrative labour investigation initiated against the Higher Council of the Judiciary for acts undermining the freedom of association, by means of a complaint submitted by the trade union "El Vocero Judicial" in 2016, was archived in 2019. Duly noting all of these indications and observing with regret over the passing of the union leader, the Committee considers that this case is closed and does not call for further examination.*

The Committee's recommendation

- 251.** **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.**

Case No. 3271

Interim report

Complaint against the Government of Cuba presented by the Independent Trade Union Association of Cuba (ASIC)

Allegations: The complainant organization alleges that lack of recognition, and harassment and persecution of independent trade unionists, involving acts of aggression, assaults and dismissals of independent trade unionists, and other acts of anti-union discrimination and interference by the public authorities

- 252.** The Committee last examined this case (presented in December 2016) at its March 2022 meeting, when it presented an interim report to the Governing Body [see 397th Report, approved by the Governing Body at its 344th Session (March 2022), paras 332–364].³
- 253.** The complainant organization submitted new allegations in its communications dated 23 February, 1, 18 and 22 March, 11 April, 4, 29 and 30 September, 10, 14 and 24 October, 5 and 13 December 2022, and 9 and 23 February, 21 April, 28 May, 11 June, 20 July and 6 September 2023.

³ [Link to previous examination.](#)

- 254.** The Government submitted its observations in communications dated 2 and 17 March, 11 July, 24 and 26 August, 24 October, 16 November 2022, and 1 February, 2 March, 25 April, 5 and 12 October 2023.

A. Previous examination of the case

- 255.** At its March 2022 meeting, the Committee made the following recommendations [see 397th Report, para. 364]:

- (a) The Committee once again firmly urges the Government to ensure that the Independent Trade Union Association of Cuba (ASIC) is given recognition and that it can freely operate and carry out its trade union activities.
- (b) The Committee once again strongly urges the Government to ensure that an investigation is made into all the allegations of acts of aggression and restrictions on public freedoms raised with respect to Mr Iván Hernández Carrillo, Mr Osvaldo Arcis Hernández, Mr Bárbaro Tejeda Sánchez, Mr Pavel Herrera Hernández, Mr Emilio Gottardi Gottardi, Mr Raúl Zerguera Borrell, Mr Reinaldo Cosano Alén, Mr Felipe Carrera Hernández, Mr Pedro Scull, Mr Lázaro Ricardo Pérez, Mr Hiosvani Pupo, Mr Daniel Perea García, Mr Dannery Gómez Galeto, Mr Willian Esmérito Cruz, Mr Roque Iván Martínez Beldarrain, Mr Yuvisley Roque Rajadel, Mr Yakdislania Hurtado Bicet, Mr Alejandro Sánchez Zaldívar, Mr Jefferson Ismael Polo Mezerene, Mr Ramón Zamora Rodríguez, Mr Yisan Zamora Ricardo, Mr Lisan Zamora Ricardo, Mr Ulises Rafael Hernández López, Mr Daniel Perea García, Mr Humberto Bello Lafita, Ms Aimée de las Mercedes Cabrera Álvarez, Ms Ariadna Mena Rubio, Ms Hilda Aylin López Salazar, Ms Anairis Dania Mezerene Sánchez, Ms Consuelo Rodríguez Hernández and Ms Mailín Ricardo Góngora; and to provide the Committee with further detailed information on the outcome (copies of decisions or rulings) of any administrative or judicial proceedings instituted in relation to the above-mentioned allegations, and to include a copy of the conviction against Mr Humberto Bello Lafita. The Committee requests the Government to ensure that no workers are arrested for their trade union activities.
- (c) The Committee also requests the Government to send its observations on the allegations by ASIC, contained in its communication dated 6 December 2021, and ensure that an investigation is conducted into the allegations of acts of aggression and restrictions on public freedoms made in the above-mentioned communications.
- (d) Regarding the alleged restrictions on the capacity of ASIC members to participate in international activities related to their trade union work, the Committee reminds the Government that it must not restrict the right of ASIC officials and members to organize and freely exercise their trade union activities, including when these activities are conducted outside the country, or when they involve participation in international online forums.
- (e) The Committee firmly urges the Government to fully ensure that ASIC officials have the freedom of movement in the national territory to carry out their trade union activities without Government interference.
- (f) With regard to the alleged anti-union dismissals, the Committee requests the Government to send a copy of the outcome of the investigations into the dismissals of Mr Kelvin Vega Rizo and Mr Pavel Herrera. The Committee also urges the Government to investigate and send its observations on the new allegations of the anti-union dismissals of Mr Ismael Valentín Castro and Ms Dania Noriega, contained in the communication from ASIC dated 7 April 2021.
- (g) Given the lack of information in some instances and the lack of progress in others, the Committee invites the Government to accept a direct contacts mission to gather further information, facilitate dialogue between the parties and encourage the application of its recommendations.

B. The complainant's new allegations

- 256.** In its communications, the complainant provides new information on the specific violations of public freedoms of ASIC union officials and members.
- 257.** The complainant alleges, firstly, that 116 workers, 55 of which are employed by the State and 61 are self-employed, remain in prison, some of whom have already received heavy sentences, after having taken part in the peaceful social protests of 11 and 12 July 2021. The list of 116 workers was drawn up by ASIC and its officials, including the provincial secretary of Holguín, Mr Ramón Zamora Rodríguez, who had received threats for publishing it. The complainant indicates in this regard that many international bodies have spoken out against the violations committed by the State on those days, including the High Representative of the European Union for Foreign Affairs. The complainant alleges, in addition, that two ASIC members, Mr Yunier Herrera Rodríguez and Mr Humberto Bello Laffita, were arrested [in April 2022] after taking part in the 2021 peaceful demonstrations. It alleges in this respect that: (i) Mr Yunier Herrera Rodríguez was violently arrested on 12 July 2021, after peacefully demonstrating to reclaim the trade union rights constantly being violated by the regime. During the arrest, he was violently beaten, during which he lost a number of teeth. In prison, he is being bullied by prison guards who are trying to subjugate him; (ii) Mr Humberto Bello Laffita was arrested after responding to the peaceful call to demonstrate on 15 November 2021. He was sentenced to a one-year prison term for the alleged offence of "spreading an epidemic". He is being held in prison "1580" in the San Miguel del Padrón district in Havana, kept in isolation in a punishment cell without electricity or drinking water (communication dated 11 April 2022).
- 258.** In numerous communications, the complainant alleges that ASIC members and officials are constantly subjected to threats and to frequent brief but arbitrary and intimidating arrests by state security agencies. It alleges specifically that:
- (a) On 19 February 2022, the trade union activist, Mr Juan Alberto de la Nuez Ramírez, and brother of the independent ASIC member Mr Bárbaro de la Nuez Ramírez, was arrested in Cienfuegos province while returning from a visit to the city of Colón in Matanzas province. Mr Juan Alberto de la Nuez Ramírez was taken in a police car to the provincial unit's technical investigations department of the Departamento de Seguridad del Estado (DSE) (Department of State Security) in the city of Cienfuegos, where he was interrogated for four hours by an official of the secret political police about his visit to Matanzas province and his meeting with the ASIC general secretary. During the interrogation, the official accused him of "mercenary activity", allegedly for receiving funds from a foreign power for the purpose of "subverting internal order". He warned him that, in addition to the fact that no trade unionist will be allowed to travel from one province to another for work meetings and that, with the new Criminal Code, any persons who accept financial assistance from abroad, including mobile phone top-ups, will be imprisoned (communication dated 23 February 2022).
 - (b) Mr Leonardo Hernández Camejo, an activist affiliated to ASIC's Havana provincial secretariat, was stopped in the early hours of 16 March 2022 by a police car as he was leaving his home in the capital's Centro Habana municipality and arbitrarily arrested. He was taken to the Zanja police unit in the same municipality, where he was placed in a cell and interrogated by a DSE agent about his trade union activities. He was released the same day after 7 p.m. and issued serious threats and warnings (communication dated 22 March 2022). He was also threatened by the police during a subsequent interrogation in August 2023 (communication dated 6 September 2023).

- (c) On 22 February 2022, three state security agents arrested ASIC's general secretary in Holguín province, Mr Ramón Zamora Ricardo Rodríguez, at his home and took him to the criminal prosecution unit in Pedernales, where they issued him with a warning for his posts on social media networks, warning him that if he continued, he would be prosecuted for the offences of "enemy propaganda" and "dissemination of fake news". Mr Ramón Zamora Ricardo Rodríguez, his two sons Yisan Zamora Ricardo (ASIC youth secretary) and Lisan Zamora Ricardo, and his wife, Ms Mailín Ricardo, were victims of fresh attacks on 5 October 2022. They were arrested after demonstrating peacefully the previous day in front of their home, banging pots and pans to protest against the continuous and prolonged power cuts, in a simultaneous demonstration with neighbours in the area. Department of State Security agents raided the home of Mr Ramón Zamora Ricardo Rodríguez, seizing all telephones, computer equipment and printed trade union training material, as well as documents relating to his responsibilities as ASIC's national trade union leader. The family was subsequently transferred to the centre for criminal and police investigations in Holguín province for public order offences. The wife was released the same night, and the other family members four days later, without any explanation and with total disregard for their human and procedural rights (communications dated 10 and 14 October 2022).
- (d) On Sunday 16 October 2022, ASIC provincial secretary, Mr Ibán Guerra Hernández, and his wife, Ms Kety Martínez, were summoned to the police unit in the municipality of Santa Cruz del Norte, Mayabeque province. During the interrogation by a DSE agent, the latter threatened the trade unionist with imprisonment and gave him a warning. In the case of his wife, who is not an ASIC member, the police officer interrogated her separately and warned her that her husband would go to prison for his activism and especially for his comments on social media (communication dated 24 October 2022).
- (e) Also subjected to threats from DSE agents, in the province of Cienfuegos in November 2022, were ASIC national executive member, Mr Carlos Roberto Reyes (a victim of similar threats on other occasions), and ASIC representative in the aforementioned province, Ms Consuelo Rodríguez Hernández, and her husband Mr Lázaro Roberto Aguiar Mendoza (who were subjected to harassment in the street and threats at work). A DSE agent took the opportunity to send an intimidating message through Mr Lázaro Roberto Aguiar Mendoza to Mr Carlos Roberto Reyes Consuegras, ASIC executive member, to stop him from continuing to register complaints and send them to ASIC's general secretary, Mr Iván Hernández Carrillo (communication dated 5 December 2022).
- (f) On 9 December 2022, trade unionists Mr Lázaro Roberto Aguiar Mendoza and Mr Carlos Roberto Reyes Consuegras were arrested in the municipality of Cruces. After agents of the National Revolutionary Police and an unidentified DSE agent searched their belongings, they were warned that they could not leave the municipality of Cruces until after 10 December. On that date, ASIC provincial secretary, Ms Yorsi Kelin Sánchez Perdigón, was arrested at her home in Sancti Spíritus and taken to the police unit in the city, where she was detained for three days. According to relatives, the arrest followed a call for a national strike. On the same day, several trade unionists were kept under house arrest and not allowed to leave: in the municipality of Caibarién, Mr Ismael Castro Valentín and Ms Dania Marité Noriega Castriz; in Havana, trade union journalist Ms Yunia Figueredo Cruz; in the municipality of Cruces, Mr Carlos Reyes Consuegras; and in Colón, Mr Iván Hernández Carrillo, ASIC general secretary, was kept under close guard in and around his home. On 8 December 2022, another ASIC member, Mr Yolsdan Armenteros Vázquez, was summoned to the 3rd police unit in Santa Clara, where he was threatened

with conviction under the new Criminal Code – which increases the number of crimes that carry life imprisonment and the death penalty – if he continued to post news on social media (communication dated 13 December 2022).

- (g) Seven ASIC activists and officials were arrested in early February 2023: activists Mr Luis Orlando León Randich, Mr Ulises González, Mr Leonardo Hernández Camejo, Ms Yaquelin Dalis Caballero, Mr Felipe Carrera Hernández, as well as provincial secretaries Mr Reinaldo Cosano Alén and Mr Emilio Gottardi Gottardi, who had previously been briefly arrested on 24 February 2022 by a police unit while on his way to the home of an opposition activist in the Santo Suárez neighbourhood (communication dated 1 March 2022). During the arrests, in addition to the persistent threats of judicial sanctions and the attempt to implicate general secretary Mr Iván Hernández Carrillo in an offence, an accusation of a heinous crime was recorded for the first time: DSE agents told the detainees that there was a “suspicion” that ASIC members might be involved in the “poisoning of the water in *los círculos infantiles* [children’s day-care centres]”, which, according to the agents, was under investigation (communication dated 9 February 2023). Furthermore, during interrogations on 7 February, the DSE agents added the serious accusation that they considered ASIC to be “a terrorist organization” (communication dated 23 February 2023).
- (h) ASIC general secretary, Mr Iván Hernández Carrillo, is particularly targeted by threats. The complainant recalls that he was one of the 75 prisoners of the “Black Spring” of March 2003, sentenced to an arbitrary and excessive 25-year prison term, of which he served eight years and six months. In 2011 he was granted a *licencia extrapenal* [parole], meaning that the sentence still hangs over him and he could be sent to prison to serve the remainder of his sentence without any judicial proceedings (communications dated 4 September 2022 and 9 February 2023). On Tuesday, 21 February 2023, he was arrested as he left the El Focsa building in Havana, together with another independent trade unionist, Ms Maybell Padilla Pérez, and was taken away in a police car. Around 20 officers from the political and national police took part in the operation led by two DSE agents. The reason for his arrest centred on the ban on visiting Havana. Mr Iván Hernández Carrillo was kept locked in a patrol car for four hours, with the outside temperature at 32 degrees Celsius, before being taken to an interrogation office, where he was stripped completely naked in order to humiliate him. During the interrogation, in addition to the persistent threats of judicial sanctions and that his parole would be revoked, he was also banned from visiting the capital so as to prevent him from carrying out his trade union work (communication dated 23 February 2023). The political police officers who interrogated him behaved aggressively and violently throughout. The other trade unionist also suffered the same consequences.
- (i) On 14 April 2023, the independent trade unionists Mr Leonardo Hernández Camejo and Mr Luis Orlando León Randich were interrogated by DSE agents about their work, as well as, in the same police station in Centro Habana, ASIC provincial secretary Mr Emilio Gottardi Gottardi. On the same day, in a police unit in the municipality of Habana Vieja, independent trade unionist Ms Yaquelin Sánchez Batista was also interrogated about her trade union work. The aforementioned events are yet another example of the continued repressive actions of Ministry of the Interior institutions to prevent the normal development of the organization’s trade union activities, and show that the aim of the escalation of repression is, as the officials of this institution have stated, “to dismantle ASIC and make it disappear” (communication dated 21 April 2023).
- (j) Independent trade unionists Mr Emilio Gottardi Gottardi and Mr Charles Rodríguez were subjected to unlawful and arbitrary treatment by the political police on their return to the

island after attending international events on defending human and labour rights in Panama City in the space of a week. On 20 May 2023, at around 10.15 p.m., on arrival in Havana, from the flight from Panama City, the trade unionists were subjected to an arbitrary search of their luggage and to a “conversation” with the political police – in reality an interrogation – about their trade union activities, the names of the leaders with whom they had met and the main issues they had discussed. This unlawful procedure lasted around three hours between the search and the detention, so that they remained at the airport until 1.30 a.m., being the last passengers to leave the airport (communication dated 28 May 2023).

- (k) On the occasion of the commemoration of the second anniversary of the mass protests that shook the country on 11 July 2021, in order to pre-empt potential peaceful protests, in the days leading up to the date the regime arrested, threatened and interrogated a dozen independent trade unionists, Mr Alexis Gómez Rodríguez, Mr Carlos Javier Gómez Guevara, Mr Rodolfo Aparicio Alemán, ASIC provincial secretary Mr Emilio Gottardi Gottardi, and general secretary Mr Iván Hernández Carrillo. Similarly, the homes of several ASIC activists were kept under surveillance by DSE agents: the homes of provincial secretary Mr Liván Monteagudo Rivero, independent trade unionists Ms Yunia Figueredo Cruz, Ms Yaquelin Daly Caballero, Mr Ulises González Moreno and Mr Emilio Gottardi Gottardi remained under siege throughout the day by police or DSE agents in civilian clothes (communication dated 20 July 2023).

- 259.** The complainant once again alleges that the harassment also includes a travel ban. Thus, on 18 March 2022, ASIC’s deputy general secretary, Mr Alejandro Sánchez Zaldívar, was refused a passport and notified of a ban on travel outside the country. This action is due to the fact that Alejandro visited the ILO headquarters for the 107th Session of the International Labour Conference, where he denounced the anti-union practices of the Cuban regime. Since then, he has been banned from leaving the national territory, making it impossible for him to attend international events, including seminars, trade union congresses and events held in support of Cuban workers (communication dated 18 March 2022).
- 260.** Lastly, the complainant alleges that the authorities continue to use the new repressive weapon of cutting off communications. Thus, on 22 September 2022, trade union and civil society organizations from several countries in the Americas met in the city of San José, Costa Rica, for the regional forum on solidarity with Cuban workers. The virtual participation of ASIC leaders was planned. However, the internet connections were individually and selectively cut off to prevent their participation (communications dated 29 and 30 September 2022).

C. The Government’s reply

Regarding the Committee’s latest recommendations

- 261.** As regards recommendation (a) of the Committee’s last report (recognition and free operation of ASIC), the Government once again states, in its communication dated 24 October 2022, that: (i) the members of the organization that calls itself ASIC are neither workers nor employers; they do not belong to any labour collective and therefore have not been elected or appointed by the members as trade union representatives; they do not have the objective of promoting or defending workers’ interests, nor do they have the genuine support of the membership or any labour collective; and (ii) its supposed members answer to a foreign government, which provides them with funds in the political aim of subverting the internal order legitimately established by the Cuban people. The complainants operate under the agendas of the International Group for Corporate Social Responsibility in Cuba and the American organization

National Endowment for Democracy to engage in internal subversion that constitutes an affront to the purposes and principles of the Charter of the United Nations and international law, particularly the principles of sovereignty, self-determination and non-interference in internal affairs.

- 262.** Regarding recommendation (b) (investigations into the allegations of acts of aggression and restrictions on public freedoms with respect to certain union activists and officials), the Government indicates in its communication dated 24 October 2022 that: (i) as undertaken each time a communication is received from the ILO or another United Nations mechanism, an investigative action plan was devised and implemented immediately, coordinated by different entities and using the necessary measures and established procedures, in order to verify each of the allegations against the individuals mentioned in the recommendation; and (ii) action taken included: searches in Ministry of the Interior automated records used for monitoring detained persons and other persons prosecuted in connection with alleged criminal acts; use of data intelligence procedures to establish the identity of persons; consultation of databases of bodies such as the Ministry of Justice; locating persons in places of residence; and interviews. The investigations involved heads and specialists from different bodies of the Ministry of the Interior, the General Prosecutor's Office, the People's Supreme Court and the Ministry of Labour and Social Security. The Government reiterates that: (i) none of the persons arrested were genuine trade unionists, let alone trade union leaders; (ii) none of them were tried or sentenced for any act or activity relating to the defence of workers' interests and, less still, with the exercise of trade union freedoms; (iii) the criminal proceedings brought against these individuals were in response to activities constituting offences provided for and sanctioned under the Cuban Criminal Code in force at the time; and (iv) the Cuban legal system, in particular the Constitution, protects and respects the guarantees of due process. Trials are public, oral and adversarial and in accordance with criminal procedural law, and final rulings are communicated to the public prosecutor and the accused person or his or her counsel, who are also provided with a copy. Each of the complainants could provide the Committee with these rulings, if they really have an interest in having them reviewed by the Committee.
- 263.** While considering that sufficient information has been provided to refute the reported allegations of attacks, harassment, disrespect for freedoms and restrictions against these persons, the Government indicates that: (i) some of the citizens mentioned in recommendation (b) no longer reside in the national territory. One of their main objectives in engaging in activities against the Cuban constitutional order has been precisely to obtain the corresponding "endorsement" in order to be able to emigrate and more easily obtain immigration status to reside in the United States of America in particular; and (ii) investigations have shown on several occasions that some of these persons have never been subjected to police or any other type of action. They simply fabricate unsubstantiated allegations that the Government is then required to respond to and prove to be false, when they did not even occur. In its communication dated 24 October 2022, the Government reports on each of the individuals mentioned in recommendation (b):
- (1) **Mr Iván Hernández Carrillo:** The Committee has been informed on several occasions that this person has no employment relationship and that he has engaged in making false accusations to the ILO supervisory bodies in order to denigrate the country's record on labour and trade union rights. It has been reported on numerous occasions that this citizen has been granted parole and is currently serving the remainder of his sentence in freedom, which ends in the first half of 2028. This means that, under existing criminal legislation in the country, he must comply with certain obligations imposed by law.

- (2) **Mr Osvaldo Arcis Hernández:** The investigation reiterated that he had been declared “unfit to work” by the Expert Occupational Medical Examination Commission owing to his schizophrenia. His social and moral behaviour is despised by society and he lacks any support in his community.
- (3) **Mr Bárbaro Tejeda Sánchez:** He displays appalling social behaviour and has been prosecuted on 12 occasions for the offences of theft, leaving the national territory illegally, public disorder, making threats, speculation, hoarding and handling stolen goods. He left Cuba for Nicaragua in 2019 and has not returned.
- (4) **Mr Pedro Scull:** He has had no employment relationship and no links to ASIC since 2016. It has been reported that this person died in 2020.
- (5) **Mr Felipe Carrera Hernández:** His activities have been aimed at seeking financial gain, with no credibility in his area of operation. No police action has been taken against him. Since 2017, he has made five trips abroad, three to Panama and two to Colombia.
- (6) **Ms Ariadna Mena:** She has no relationship with ASIC, from which she was separated due to conflicts with Mr Iván Hernandez Carrillo, who expelled her from the organization. Since 2015, she has made eight trips abroad, including three to Colombia, two to Panama, two to Peru and one to France. On 21 June 2022, she left the country for Guyana, to make the journey to settle permanently in the United States. No police action was ever taken against her.
- (7) **Ms Hilda Aylín López Salazar:** She has been living abroad since 21 April 2017. Between 2015 and 2017 she made four trips abroad, three to Panama and one to the United States.
- (8) **Mr Pavel Herrera Hernández:** He has been living abroad since 18 June 2016 and was previously the subject of a criminal prosecution for the offence of theft.
- (9) **Mr Emilio Gottardi Gottardi:** Several allegations have been received by the Committee about this citizen, which have been answered after the corresponding investigations.
- (10) **Mr Raúl Domingo Zerguera Borren:** He has not been subjected to measures of any kind, nor has any regulation been imposed on his movements outside the territory. He has complete freedom of movement, precisely because he works as a taxi driver. He is not linked to ASIC at the moment, as he is focused on his arrangements for leaving the country, as he was accepted in the “visa lottery” of the United States embassy.
- (11) **Mr Reinaldo Cosano Alén:** He is unemployed due to his advanced age. No police action has been taken against him. From 2015 to date he has made three trips to Panama and two to Colombia.
- (12) **Mr Lázaro Ricardo Pérez:** Since 2015, he has made ten trips to Colombia and Mexico, three to Panama and five to the United States. Since 2019 he has lived in the United States with his family.
- (13) **Mr Hiosvani Pupo:** He currently resides outside Cuba. During his stay in the country, he worked as a bicycle taxi driver in the municipalities of Centro Habana and Habana Vieja, illegally and without applying for the required licence.
- (14) **Mr Daniel Perea García:** On 5 August 2019 he was charged with the offence of receiving and selling electrical transformer oil. He currently has no links with ASIC. He has not been subjected to threats or harassment.

- (15) **Mr Yisan Zamora Ricardo:** He was arrested on 25 July 2021, charged with the offence of public disorder for holding demonstrations obstructing the public highway. After 72 hours, he was released, with no other charges against him.
- (16) **Mr Willian Cruz Delgado:** He has an extensive criminal record, which has been previously reported to the Committee. Between 2004 and 2018 he was sanctioned for the offences of assault, making threats, contempt of court and public disorder. On 24 August 2019, he was fined for contravening the provisions of Decree Law No. 141/88 and failing to carry with him his personal identification papers. Between 2015 and 2021, he was reported on four occasions for less serious injury, contempt and public disorder; he was also taken on nine occasions to a National Revolutionary Police station for engaging in the illicit sale of goods and foreign currency. It was ascertained that this person has never been prosecuted for exercising his labour or trade union rights.
- (17) **Mr Yuvisley Roque Rajadel:** He now resides permanently abroad. During his stay in the country he remained unemployed.
- (18) **Ms Yadislandia Hurtado Bicet:** She is not linked to any trade union association in Cuba, nor is she linked to ASIC. The link that has been established is related to the support she receives from Mr Iván Hernández Carrillo, for personal interests that are unrelated to labour or trade union matters.
- (19) **Mr Dannery Gómez Galeto:** He now resides permanently abroad. During his stay in the country he remained unemployed.
- (20) **Mr Roque Iván Martínez Beldarraín:** This is a person with a long criminal record, which has already been reported to the Committee. He was dismissed from the Port of Cienfuegos due to repeated indiscipline associated with unjustified absences, lateness, mistreatment and disrespect towards co-workers and superiors, for which he was repeatedly summoned by members of his trade union branch and workplace management, who then terminated his contract in accordance with the established procedures.
- (21) **Mr Alejandro Sánchez Zaldívar:** This person has no employment relationships. Investigations have shown that there is no record of any police action or complaint against him in 2021.
- (22) **Mr Jefferson Ismael Polo Mezerene:** He has no links to ASIC. He and his mother, Ms Anairis Dania Mezerene, were arrested and taken to the national police unit in Holguín at 5.30 p.m. on 11 July 2021 for a breach of public order during disturbances on that day. Polo Mezerene was held there for 72 hours and subsequently released with an administrative fine.
- (23) **Mr Ramón Zamora Rodríguez and Mr Yisan Zamora Ricardo:** Information on these two citizens has been sent to the Committee in the past following relevant investigations.
- (24) **Mr Lisan Zamora Ricardo:** No police action has been taken against him, let alone any kind of harassment.
- (25) **Mr Ulises Rafael Hernández López:** This is a person who displays anti-social behaviour, with three official warnings issued for such behaviour, for not looking after his children and for breach of public order.
- (26) **Mr Humberto José Bello Laffita:** Detailed information on this person was sent to the Committee in response to two communications received during the period.

- (27) **Ms Aimée de las Mercedes Cabrera Álvarez:** No police action has been taken against this citizen. Between 2015 and 2019 it is recorded that she made four trips abroad, three of them to Panama and one to the United States. She has no employment relationship.
- (28) **Ms Consuelo Rodríguez Hernández:** No police action has been taken against this citizen.
- (29) **Ms Maílín Ricardo Góngora:** No police action has been taken against this citizen either. As far as is known, she has no links with any trade union group or with ASIC.
- 264.** Regarding recommendation (c) (conducting an investigation into the allegations of acts of aggression and restrictions on public freedoms raised in the communication dated 6 December 2021, namely concerning Mr Iván Hernández Carrillo, ASIC general secretary), the Government refers to the information that it provided relating to recommendation (b).
- 265.** With regard to recommendation (d) (alleged restrictions imposed on the capacity of ASIC members to participate in international activities in connection with their trade union work), the Government reiterates in its communication dated 24 October 2022 that in Cuba the right of every person to leave the country and return from abroad is protected and guaranteed. Current migration legislation determines the grounds on which the authorities may restrict the right of a person to leave the country and this is regulated clearly and precisely in article 25 of Decree Law No. 302 of 2012, amending Act No. 1312 of 1976, the "Migration Act". This power is exercised in a non-arbitrary manner, in accordance with the law and respecting the guarantees provided. The Government reiterates that the restriction of access to virtual platforms is related to technical obsolescence resulting from the policy of sanctions imposed by the United States' Government on Cuba (communication dated 2 March 2023). Attempting to use the argument of the impossibility of participating in a virtual forum through a platform prohibited in Cuba, holding the Cuban Government responsible and not the Government imposing such restrictions, demonstrates the complainants' real objective.
- 266.** With reference to recommendation (e) (restrictions on the freedom of movement of ASIC officials in national territory), the Government reiterates that the alleged restrictions by the national authorities are false.
- 267.** Regarding recommendation (f) (alleged anti-union dismissals), the Government provides information on the situation of Mr Ismael Valentín Castro and Ms Dania Marité Noriega Castriz, stating that the complainants are untruthful when they allege that the dismissals of Mr Ismael Valentín Castro and Ms Dania Noriega Castriz are politically motivated in connection with their apparent "trade union activism". However, Cuba's willingness to cooperate with the ILO supervisory bodies led to a thorough investigation resulting in clarification of the true nature of the facts: in the context of the COVID-19 pandemic, isolation centres were created, such as in the province of Villa Clara, where the "Brisas del Mar" basic business unit for accommodation and catering services was set up in the municipality of Caibarién. In the aforementioned entity, violations of the prices established for the products on offer were detected, for which disciplinary measures and financial sanctions were applied against all those responsible. In the case of Ms Dania Noriega Castriz, she was fined under article 7(h) of Decree No. 30 "On personal offences, sanctions, measures and procedures to be applied for the violation of the rules governing the pricing and tariff policy" of the Council of Ministers of 28 January 2021. The corresponding inspection report of the Integral Supervision Directorate states the reasons why these sanctions were applied. As a result of this measure, her husband, Mr Ismael Castro Valentín, voluntarily asked to be relieved of his position in the enterprise (communications dated 17 March and 24 October 2022).

268. With regard to recommendation (g) (proposed direct contacts mission), the Government reports that it is still considering the proposed direct contacts mission.

Regarding the new allegations

269. In its communications, the Government rejects ASIC's new allegations and reiterates that the complainants are not trade unionists and are not acting independently. It reiterates that they are persons funded by foreign governments, with the aim of presenting themselves as independent trade union activists, inventing violations of workers' rights by the Government and denouncing them without evidence. The Government reiterates once again in this regard that Mr Iván Hernández Carrillo is a Cuban citizen with no employment relationship, who has engaged in making false accusations to the ILO supervisory bodies in order to denigrate the country's record on labour and trade union rights (communications dated 11 July and 24 October 2022, and 5 October 2023).
270. The Government once again stresses that the Cuban authorities, including the security and law enforcement agencies and their officers, must adhere strictly to the law and are in no circumstances permitted to threaten or intimidate citizens; should such acts occur, there are mechanisms to report them and to adopt the necessary internal disciplinary and criminal measures.
271. With regard to the facts and persons mentioned in the new allegations, the Government reports the following, in its communications of 24 and 26 August 2022, and 25 April, 5 and 12 October 2023: (i) Mr Juan Alberto de la Nuez Ramírez: it is false to claim that he was arrested on 19 February 2022. There is no evidence in any police record of this citizen having been arrested, let alone detained in a Ministry of the Interior facility; (ii) Mr Ramón Zamora Rodríguez: neither he, nor his children or wife, have been victims of threats, persecution or harassment, but rather they committed acts designated as breaches of public order (communication dated 1 February 2023); (iii) Mr Emilio Gottardi Gottardi: on 24 February 2022, he was fined 150 Cuban pesos under Decree Law No. 141(h) for attempting to breach a security measure on the public highway. There is no evidence of any other action against this person; (iv) Mr Alejandro Sánchez Zaldívar: he has had no employment relationship since 2013, he is neither a leader nor representative of any trade union organization and there is no evidence of police surveillance against him; (v) Mr Leonardo Hernández Camejo: relevant investigations were carried out and no link to ASIC was established in respect of this citizen. However, it was known that this was a person with numerous previous convictions. There is no evidence in any police records that any action was taken to detain him on 16 March 2022 or on 14 April 2023, as indicated in the allegations; (vi) Mr Humberto Bello Laffita: following investigations, it has been established that this citizen has had no links to ASIC. This person was the subject of sanctions in November 2021 for failing to comply with the measures ordered by the health authorities to curb the COVID-19 pandemic. He was the subject of a criminal prosecution in Case No. 174/21, acknowledging his responsibility for the acts for which he was charged. The trial was held with all the guarantees established by criminal law and, at the time of sentencing, the court took into account the previous conduct of the accused who had been prosecuted for the offences of illegal currency trafficking, theft, contempt and resistance. He was also officially warned about conduct likely to encourage prostitution. It is false to claim that he is in solitary confinement. Mr Humberto Bello Laffita enjoys the conditions required for Cuban prisons, including the "1580" facility where he is serving his sentence. He has electricity, water and the possibility of making telephone calls and receiving visits from family members; (vii) Mr Yunier Herrera Rodríguez: it is false to state that he was arrested for peacefully claiming trade union rights. He was arrested when found inebriated on the public highway shouting abusive

phrases, totally unrelated to labour or trade union matters; (viii) lastly the Government denies the allegations that seven ASIC activists and officials were arrested in early February 2023 and rejects the allegations of interrogation or detention concerning Luis Orlando León Randich and Yaquelín Sánchez Batista.

- 272.** With regard to the disturbances that occurred on 11 July 2021, referred to in the allegation letter, the Government indicates, in its communication dated 26 October 2022, that: (i) peace was disturbed for the deliberate purpose of subverting the constitutional order. There was a very serious incitement to violence in the country, causing injuries and endangering collective security and the lives of citizens, officials and law enforcement officers. Property and facilities were damaged and destroyed; (ii) no one was arrested or punished for exercising their constitutionally recognized rights, including their labour and trade union rights; and (iii) the ILO complaints mechanism cannot be used to settle issues unrelated to alleged violations of freedom of association. There is an attempt to make people believe that there is a “wave of repression” in the country against alleged independent trade unionists, which is doubly false, given that there is neither repression nor are the persons mentioned in the allegation submitted trade unionists.
- 273.** The Government indicates that, since the receipt of the communication of 11 April 2022, a thorough investigation has been conducted into the list of persons submitted as an annex. There is no evidence of the dissemination of this alleged list of workers, let alone that anyone has been threatened because of it or because it was drawn up. In particular, the alleged threats to Mr Ramón Zamora Rodríguez have not been proven.

D. The Committee’s conclusions

- 274.** *The Committee recalls that this complaint concerns several allegations of acts of aggression, harassment, persecution, arrests, assault and restrictions on the free movement of trade union officials and members while carrying out their functions by state security forces. The complainant also denounces its non-recognition by the Government.*
- 275.** *As regards recommendation (a) (recognition and free operation of ASIC), the Committee notes that the Government once again stresses that: (i) ASIC is not a trade union organization; ASIC members do not have employment relationships, do not belong to any labour collective and therefore have not been elected or appointed by the members as trade union representatives; they do not have the objective of promoting or defending workers’ interests, nor do they have the genuine support of the membership or any labour collective; and (ii) its supposed members answer to a foreign government, which provides them with funds in the political aim of subverting the legitimately established internal order.*
- 276.** *In this regard, the Committee firstly recalls that, for several decades, it has been examining allegations of non-recognition and interference by the Government in the free operation of trade union organizations not affiliated to the Confederation of Workers of Cuba [see Cases Nos 1198, 1628, 1805, 1961 and 2258 of the Committee on Freedom of Association]. The Committee also recalls that the right to official recognition through legal registration is an essential facet of the right to organize since this is the first step that workers’ or employers’ organizations must take in order to be able to function efficiently, and represent their members adequately; and a long registration procedure constitutes a serious obstacle to the establishment of organizations and amounts to a denial of the right of workers to establish organizations without previous authorization. It further recalls that freedom of association implies the right of workers and employers to elect their representatives in full freedom and to organize their administration and activities without any interference by the public authorities [see **Compilation of decisions of the Committee on Freedom***

of Association, sixth edition, 2018, paras 449, 463 and 666]. Considering that, according to the information provided by the complainant, some trade union members and officials mentioned in the complaint were self-employed workers, and that others had been dismissed for anti-union reasons, the Committee secondly recalls that the criterion for determining the persons covered by the right to organize is not based on the existence of an employment relationship. Workers who do not have employment contracts should have the right to form the organizations of their choosing if they so wish [see *Compilation*, para. 330]. The Committee reiterates that in its initial examination of this case, it had noted that ASIC, in its founding declaration of principles, advocates trade union autonomy in the framework of the rule of law, aims to promote full compliance with ILO international labour standards and proclaims that it will not compromise or associate itself with party-political activities. In its union constitution, ASIC states that its key objectives include grouping together independent trade unions and reporting violations of international labour standards. Moreover, ASIC members' duties as set out in the union constitution include defending workers' claims and benefits. It is in this context that the Committee observes that the elements of ASIC's declaration of principles and union constitution fall within the scope of action and definition of a workers' organization. The Committee can only regret that there has been no progress since its last examination of this case and therefore once again refers to its previous conclusions and once more strongly urges the Government to ensure that ASIC is given recognition, and that it can freely operate and carry out its trade union activities.

277. Regarding recommendation (b) (investigations into the allegations of acts of aggression and restrictions on public freedoms with respect to certain union activists and officials), the Committee notes that the Government, in its communication dated 24 October 2022, provides information about the members identified in the said recommendation, indicating or reiterating that the persons in question: (i) do not have, or have not had, employment relationships (Mr Iván Hernández Carrillo, Ms Ariadna Mena, Mr Raúl Domingo Zerguera Borren, Mr Reinaldo Cosano Alén, Mr Daniel Perea García, Mr Yuvisley Roque Rajadel, Ms Yadislandia Hurtado Bicet, Mr Dannery Gómez Galeto, Mr Alejandro Sánchez Zaldívar, Mr Jefferson Ismael Polo Mezerene); (ii) continue to engage in inappropriate social behaviour and/or have committed offences, including public order offences (Mr Osvaldo Arcis Hernández, Mr Bárbaro Tejeda Sánchez, Mr Felipe Carrera Hernández, Mr Pavel Herrera Hernández, Mr Daniel Perea García, Mr Yisan Zamora Ricardo, Mr Willian Cruz Delgado, Mr Roque Iván Martínez Baldarraín, Mr Jefferson Ismael Polo Mezerene, Ms Anairis Dania Mezerene, Mr Ulises Rafael Hernández López); (iii) have never been subject to police action, such as arrests, ill-treatment and isolation, or any other kind of action such as travel restrictions (Mr Felipe Carrera Hernández, Mr Raúl Domingo Zerguera Borren, Mr Reinaldo Cosano Alén, Mr Daniel Perea García, Mr Lisan Zamora Ricardo, Ms Aimée de las Mercedes Cabrera Álvarez, Ms Consuelo Rodríguez Hernández, Ms Mailín Ricardo Góngora); (iv) reside overseas (Ms Hilda Aylin López Salazar, Mr Pavel Herrera Hernández, Mr Lázaro Ricardo Pérez, Mr Hiosvani Pupo, Mr Yuvisley Roque Rajadel, Mr Dannery Gómez Galeto, Ms Aimée de las Mercedes Cabrera Álvarez); (v) have died (Mr Pedro Scull); and/or (vi) have already been subject to comments by the Government (Mr Iván Hernández Carrillo, Mr Emilio Gottardi Gottardi, Mr Willian Cruz Delgado, Mr Ramón Zamora Rodríguez, Mr Yisan Zamora Ricardo, Mr Humberto José Bello Laffita).
278. While taking due note of the Government's reply, the Committee cannot fail to observe the numerous additional allegations made by the complainant regarding the commission of new acts of anti-union discrimination, in particular arbitrary arrests, threats of deprivation of liberty and various acts of harassment against ASIC members and officials. The Committee notes that ASIC even reports intensified repression by state security agencies against its union officials and activists, with the declared objective of putting an end to ASIC.

- 279.** *The Committee notes in this respect that, in the numerous communications received since its last examination of the present case, the complainant alleges that ASIC members and officials are constantly subjected to threats and to frequent brief but arbitrary and intimidating arrests by state security agencies, including: the trade union activist Mr Juan Alberto de la Nuez Ramírez; the activist Mr Leonardo Hernández Camejo; ASIC general secretary in the province of Holguín and his family; ASIC provincial secretary, Mr Ibán Guerra Hernández, and his wife Ms Kety Martínez; ASIC national executive member, Mr Carlos Roberto Reyes Consuegras; ASIC representative Ms Consuelo Rodríguez Hernández and her husband Mr Lázaro Roberto Aguiar Mendoza; ASIC provincial secretary, Mr Yorsi Kelin Sánchez Perdigón; members Mr Ismael Castro Valentín and Ms Dania Marité Noriega Castriz; trade union journalist Ms Yunia Figueredo Cruz; another ASIC member, Mr Yolsdan Armenteros Vázquez; activists Mr Luis Orlando León Randich, Mr Ulises González, Ms Yaquelin Dalis Caballero, Mr Felipe Carrera Hernández, as well as provincial secretaries Mr Reinaldo Cosano Alén and Mr Emilio Gottardi Gottardi; and ASIC general secretary, Mr Iván Hernández Carrillo; the independent trade unionist Ms Maybell Padilla Pérez; independent trade unionists Mr Leonardo Hernández Camejo, Mr Charles Rodríguez; Ms Yaquelin Sánchez Batista; Mr Alexis Gómez Rodríguez, Mr Carlos Javier Gómez Guevara, Mr Rodolfo Aparicio Alemán; and provincial secretary Mr Liván Monteagudo Rivero (see paragraph 7, subparagraphs (a) to (k) above).*
- 280.** *With regard to the persons referred to specifically in the new allegations, the Committee notes that the Government provides the following: (i) Mr Juan Alberto de la Nuez Ramírez: it is false to claim that he was arrested on 19 February 2022. There is no evidence in any police record that this citizen was arrested, let alone detained in a Ministry of the Interior facility; (ii) Mr Ramón Zamora Rodríguez: neither he, nor his children or wife, have been victims of threats, persecution or harassment, but rather they committed acts designated as breaches of public order (communication dated 1 February 2023); (iii) Mr Emilio Gottardi Gottardi: on 24 February 2022 he was fined an amount of 150 Cuban pesos, under paragraph 2(h) of Decree Law No. 141, for attempting to breach a security measure on the public highway. There is no evidence of any other action against this person; (iv) Mr Alejandro Sánchez Zaldívar: he has not had an employment relationship since 2013, he is neither a leader nor representative of any trade union organization and there is no evidence of police surveillance against him; (v) Mr Leonardo Hernández Camejo: relevant investigations were carried out and no link to ASIC was established in respect of this citizen. According to the Government, it was known that this was a person with numerous previous convictions. There is no evidence in any police records that any action was taken to detain him on 16 March 2022 or on 14 April 2023, as indicated in the allegations; (vi) Mr Humberto Bello Laffita: following investigations, it has been established that this citizen has had no links to ASIC. This person was the subject of sanctions in November 2021 for failing to comply with the measures ordered by the health authorities to curb the COVID-19 pandemic. He was the subject of a criminal prosecution in case No. 174/21, acknowledging his responsibility for the acts for which he was charged. The trial was held with all the guarantees established by criminal law and, at the time of sentencing, the court took into account the previous conduct of the accused who had been prosecuted for the offences of illegal currency trafficking, theft, contempt and resistance. He was also officially warned about conduct likely to encourage prostitution. It is false to claim that he is in solitary confinement. Mr Humberto Bello Laffita enjoys the conditions required for Cuban prisons, including the “1580” facility where he is serving his sentence. He has electricity, water and the possibility of making telephone calls and receiving visits from family members; (vii) Mr Yunier Herrera Rodríguez: it is false to state that he was arrested for peacefully claiming trade union rights. He was arrested when found inebriated on the public highway shouting abusive phrases, totally unrelated to labour or trade union matters; lastly, (viii) the Government denies the allegations that seven ASIC activists and officials were arrested in early February 2023 and rejects the allegations of interrogation or detention concerning Luis Orlando León Randich and Yaquelin Sánchez Batista.*

281. *The Committee cannot fail to once again note the diverging versions of events of the Government and the complainant and the fact that the Government continues to deny the alleged acts.*
282. *While the Government continues to list the offences or details of previous legal proceedings against various persons (including illicit economic activities, handling stolen goods, causing damage, public disorder, antisocial behaviour) mentioned both in recommendation (b) of the last report on the present case and in ASIC's new allegations, the Committee regrets to note that it has still not provided information on the commission of such offences, nor has it annexed documents on the relevant investigations or copies of rulings, as the Committee noted in previous conclusions concerning the present case. The Committee recalls in this regard that on numerous occasions where the complainants alleged that trade union officials or workers had been arrested for trade union activities, and the governments' replies amounted to general denials of the allegation or were simply to the effect that the arrests had been made for subversive activities, for reasons of internal security or for common law crimes, the Committee has always followed the rule that the governments concerned should be requested to submit further and as precise information as possible concerning the alleged arrests, particularly in connection with the judicial proceedings instituted as a result thereof, and the outcome of such proceedings, in order to be able to make a proper examination of the allegations. It also recalls that in many cases, it has asked the government concerned to communicate the texts of any judgments that have been delivered together with the grounds adduced therefor [see **Compilation**, paras 178 and 179]. In these circumstances, in order to be able to examine the allegations in full knowledge of the facts, the Committee again requests the Government to provide the outcome of the investigations carried out and, if applicable, the court rulings concerning the union members or officials in respect of whom the Government states that they are engaged in inappropriate social behaviour and/or have committed offences, including public order offences, in particular: Mr Osvaldo Arcis Hernández, Mr Bárbaro Tejeda Sánchez, Mr Felipe Carrera Hernández, Mr Pavel Herrera Hernández, Mr Daniel Perea García, Mr Yisan Zamora Ricardo, Mr Willian Cruz Delgado, Mr Roque Iván Martínez Baldarraín, Mr Jefferson Ismael Polo Mezerene, Ms Anairis Dania Mezerene, Mr Ulises Rafael Hernández López, and Mr Leonardo Hernández Camejo.*
283. *The Committee also deeply regrets that the Government once again refuses to send a copy of the court ruling handed down against Mr Humberto Bello Laffita sentencing him to a one-year prison term. The Committee requests the Government to do so without further delay. The Committee requests the Government to ensure that no workers are arrested for their trade union activities.*
284. *Regarding recommendation (c) (conducting an investigation into the allegations of acts of aggression and restrictions on public freedoms) raised in the communication dated 6 December 2021, referring to the situation of Mr Iván Hernández Carrillo, ASIC general secretary, threatened by the DSE that his parole would be revoked and that he would be charged with mercenary activity, the Committee notes that the Government refers to the information it provided on recommendation (b), in other words merely recalling that Mr Iván Hernández Carrillo is currently serving the remainder of his sentence in freedom, meaning that under existing criminal legislation he must fulfil certain obligations. Noting both this information and the complainant's repeated allegations about the many restrictions to which Mr Iván Hernández Carrillo is allegedly subject, the Committee requests the Government to ensure that Mr Hernández Carrillo can freely carry out his legitimate trade union activities.*
285. *Regarding recommendation (d) (alleged restrictions on travelling outside the country to participate in international activities in connection with their trade union work), the Committee observes that the Government once again denies the existence of restrictions, repeating what it had already indicated to the Committee. While noting the diverging versions of events of the Government and the complainant, the Committee observes that the complainant reports new restrictions on travelling*

(as in the case of ASIC deputy general secretary, Mr Alejandro Sánchez Zaldívar, for denouncing the Government's anti-union practices at the 107th Session of the International Labour Conference (communication dated 18 March 2022). The Committee also notes that, in its most recent allegations, the complainant reports that the authorities continue to use the repressive weapon of cutting off communications to prevent ASIC trade unionists from participating in international online events with other trade union organizations (communications dated 29 and 30 September 2022). The Committee observes in this regard that the Government also stresses that these are false allegations and unfounded accusations, and that the restrictions on access to the internet and information technology are due to the blockade imposed on the country.

286. In light of the foregoing and the complainant's new allegations in the case, the Committee recalls that it has highlighted that trade unionists, just like all persons, should enjoy freedom of movement and that, in particular, they should enjoy the right, subject to national legislation, which should not be such so as to violate freedom of association principles, to participate in trade union activities abroad [see **Compilation**, para. 190]. The Committee strongly urges the Government to ensure that the right of ASIC officials and members to organize and freely carry out their trade union activities are not restricted, including when these activities are conducted outside the country, or when they involve participation in international online forums.
287. With reference to recommendation (e) (restrictions on the freedom of movement of ASIC officials in the national territory), the Committee notes that the Government reiterates that the alleged restrictions by the national authorities on the right to freedom of movement are false. While once again noting that the Government's and complainant's versions of events differ, the Committee observes that the complainant reports new restrictions on freedom of movement such as, for example, the ban on ASIC general secretary Mr Iván Hernández Carrillo from entering the capital (communication dated 23 February 2023) or the surveillance of the homes of trade unionists to pre-empt potential peaceful protests during the commemoration of the second anniversary of the mass protests that shook the country on 11 July 2021 (communication dated 20 July 2023). While recalling in this regard that the right to peaceful demonstration to defend the occupational interests of workers is a fundamental aspect of trade union rights, the Committee firmly urges the Government to fully ensure that ASIC officials have the freedom of movement in the national territory to carry out their trade union activities, including participation in demonstrations to defend the interests of their members, without Government interference.
288. Regarding recommendation (f) (alleged anti-union dismissals), the Committee regrets that the Government simply provides information on the situation of Mr Ismael Valentín Castro and Ms Dania Marité Noriega Castriz, stating that these dismissals are related to violations of labour discipline and are not politically motivated in connection with their apparent "trade union activism", without providing a copy of the outcome of the investigations carried out in this regard. It deeply regrets that the Government has not provided the outcome of the corresponding investigations into the dismissals of Mr Kelvin Vega Rizo and Mr Pavel Herrera Hernández either. The Committee requests the Government to provide a copy of the outcome of the investigations into the dismissals of Mr Ismael Valentín Castro and Ms Dania Marité Noriega Castriz, as well as that of Mr Kelvin Vega Rizo and Mr Pavel Herrera.
289. Lastly, seven years after receiving the first communication concerning the present case, the Committee regrets that the situation has reached such a point that the complainant continues to submit new allegations and that the Government continues to systematically reject them without providing the additional information necessary for an informed examination by the Committee. In these circumstances, given the lack of information in some instances and the lack of progress in others, the Committee once again invites the Government to accept a direct contacts mission to

gather further information, facilitate dialogue between the parties and encourage the application of its recommendations.

The Committee's recommendations

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

- (a) The Committee once again strongly urges the Government to ensure that the Independent Trade Union Association of Cuba (ASIC) is given recognition and that it can freely operate and carry out its trade union activities.**
- (b) The Committee requests the Government to provide information on the outcome of the investigations carried out and, if applicable, the relevant court rulings in respect of the following union members or officials: Mr Osvaldo Arcis Hernández, Mr Bárbaro Tejeda Sánchez, Mr Felipe Carrera Hernández, Mr Pavel Herrera Hernández, Mr Daniel Perea García, Mr Yisan Zamora Ricardo, Mr Willian Cruz Delgado, Mr Roque Iván Martínez Baldarraín, Mr Jefferson Ismael Polo Mezerene, Ms Anairis Dania Mezerene, Mr Ulises Rafael Hernández López and Mr Leonardo Hernández Camejo.**
- (c) The Committee requests the Government to send a copy of the court ruling handed down against Mr Humberto Bello Laffita without further delay. The Committee requests the Government to ensure that no workers are arrested for their trade union activities.**
- (d) The Committee requests the Government to ensure that ASIC general secretary, Mr Iván Hernández Carrillo, is able to freely carry out his trade union activities without interference.**
- (e) The Committee strongly urges the Government to ensure that the right of ASIC officials and members to organize and freely carry out their trade union activities are not restricted, including when these activities are conducted outside the country, or when they involve participation in international online forums.**
- (f) The Committee firmly urges the Government to fully ensure that ASIC officials have the freedom of movement in the national territory to carry out their trade union activities, including participation in demonstrations to defend the interests of their members, without Government interference.**
- (g) The Committee requests the Government to provide a copy of the outcome of investigations into the dismissals of Mr Ismael Valentín Castro and Ms Dania Marité Noriega Castriz, and of Mr Kelvin Vega Rizo and Pavel Herrera Hernández.**
- (h) Given the lack of information in some instances and the lack of progress in others, the Committee invites the Government to accept a direct contacts mission to gather further information, facilitate dialogue between the parties and encourage the implementation of its recommendations.**

Case No. 3161

Definitive report

**Complaint against the Government of El Salvador
presented by the Trade Union Coordinating Body of El Salvador**

Allegations: The complainant organization alleges that numerous anti-union acts, including transfers and dismissals, have been carried out against officials and members of a trade union in a public hospital, and that labour relations roundtables have been set up in the public health sector with representatives of non-unionized workers, with the aim of undermining dialogue and negotiations with the trade unions

- 291. The complaint was presented by the Trade Union Coordinating Body of El Salvador in communications dated 7 September and 5 November 2015.
- 292. The Government of El Salvador sent its observations on the allegations in two communications, dated 31 October 2016 and 27 September 2019.
- 293. 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), the Workers' Representatives Convention, 1971 (No. 135), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. The complainant's allegations

- 294. In its communication dated 7 September 2015, the Trade Union Coordinating Body of El Salvador states that it is presenting a complaint concerning the violation of the ILO Conventions on freedom of association and collective bargaining ratified by El Salvador on the grounds of numerous anti-union acts carried out against the Trade Union of Doctors of Rosales Hospital (SIMEHR), a hospital that is under the remit of the Ministry of Health (MINSAL).
- 295. The complainant organization states that the SIMEHR, an organization that was established in 2009, submitted on multiple occasions requests for compliance with Article 7 of Convention No. 151 in order to participate in the determination of the terms and conditions of employment of doctors at Rosales Hospital, which the SIMEHR considers to be abysmal, inhuman and inadequate.
- 296. The SIMEHR states that, after it filed a series of complaints with a view to achieving a safe working environment with the necessary resources to provide adequate care for the hospital's patients, the director took retaliatory measures. According to the complainant, the aim of the measures was to harass and violate the rights of the trade union and its members, all under the complacent eye of the senior authorities of MINSAL and the Ministry of Labour and Social Welfare.
- 297. In this respect, the complainant organization alleges that the director of Rosales Hospital took a series of anti-union measures in 2010 and 2011, namely: (i) the arbitrary transfer of three

doctors, who were in charge of the teaching units and who were also union officials; (ii) the workplace harassment and transfer of the former head of pathology, a union member, through the dissemination of falsified audit reports; (iii) labour rights violations and psychological harassment against a specialist in the pathology department, Dr Genoveva Ochoa, a union member, who, as a result, asked to be transferred to another hospital; and (iv) labour rights violations against the head of the research unit at Rosales Hospital, a union member, by forcing her immediate superior to adjust her performance appraisal downwards in retaliation for her participation in a protest against him.

298. The complainant organization further alleges that the director of Rosales Hospital committed a series of violations of the trade union rights of officials and members of the union in 2012 and 2013, namely: (i) the unfair and arbitrary dismissal of union members, including the head of the intensive care unit and the head of otorhinolaryngology; (ii) the violation of the rights of Dr Alcides Gómez Hernández, the general secretary of the union, by issuing him with a warning in 2012 for reasons that he was never able to establish and by denying him the right to defence in the disciplinary proceedings; (iii) unwarranted searches of union members' belongings following a complaint in 2012 that supplies had gone missing; (iv) the suspension of union member Dr Guillermo Reyes in 2012 for refusing a police search, without him being given the opportunity to defend himself; and (vi) the refusal to grant union leave to union officials.
299. The organization also alleges that, in June 2014, a system for clocking in and out of the workplace exclusively through the use of biometric markers was unilaterally imposed, without the trade union being consulted, which was perceived to be an act of repression. The complainant organization further alleges that this practice goes against the grain of specialized medical care and trade union rights, as it contributes to the mechanization of medical care work. The complainant also states that all these measures are part of an ongoing pattern of mistreatment, workplace harassment, and supply and equipment shortages. The complainant organization states that, since the appointment of Dr Mauricio Ventura as director of Rosales Hospital, the SIMEHR has tried unsuccessfully to resolve these labour issues with the hospital director and with the MINSAL authorities. To this end, according to the complainant organization, it held meetings with several senior officials from MINSAL and from Rosales Hospital, without managing to find a solution to the labour issues being faced.
300. The complainant organization alleges that the very tense situation created by these labour issues led to a decision by the Assembly of Doctors on 9 September 2014 to reduce outpatient work, with the exception of certain critical specialities. The complainant organization states that it was only after the adoption of this measure that the authorities of MINSAL and the Office of the Human Rights Ombudsman (PDDH) decided to take action in this regard. Furthermore, the complainant organization states that, although the PDDH set up a table for dialogue and negotiation between the authorities of MINSAL and the medical specialists of Rosales Hospital, represented by the SIMEHR, no progress has been made, and it attributes this lack of progress to the political alignment of the PDDH and the personal ambitions of the Human Rights Ombudsman.
301. The complainant organization states that, on 17 September 2014, it was notified of a decision handed down by the First Labour Court of San Salvador declaring the strike staged by the SIMEHR since 9 September 2014 to be unlawful and ordering the strikers to return to their respective posts. The complainant organization also states that, after an appeal brought before the same court was rejected, the SIMEHR filed, on 20 October 2014, an application for *amparo* (protection of constitutional rights) before the Constitutional Chamber of the Supreme Court of Justice, which, at the time of the presentation of the complaint in September 2015, had not been settled. The complainant organization goes on to state that it was obliged to file an

application for *amparo* with the Supreme Court because, under section 565 of the Labour Code, decisions concerning the determination of a strike or work stoppage are not open to appeal. The complainant alleges that this provision is contrary to international labour standards.

302. The complainant organization further alleges that the dispute continued to escalate as a result of the retaliatory measures taken by the authorities of Rosales Hospital, namely: (i) wage deductions of 40 per cent were applied in July 2014, even before the reduction of work began; (ii) wage deductions of 100 per cent were applied in August 2014 and of over 100 per cent were applied in September and October 2014 and from January to May 2015; (iii) criminal complaints were filed on 10 September 2014, in other words the day after the reduction of work began, by the hospital director with the Office of the Attorney General of the Republic against the union's executive committee and 42 specialist doctors who were also union members, for the alleged offences of denial of health care (section 176 of the Criminal Code) and breach of duty (section 231 of the Criminal Code); (iv) complaints were filed with the First Labour Court by the hospital director against 82 specialist doctors, calling for the strike consisting of a reduction of work to be declared unlawful, with the First Labour Court declaring it unlawful on 17 September 2014; (v) acts of harassment were carried out by members of the political police on 14, 15 and 16 September 2014, who went to the homes of certain union members without showing identification to inform them that they were under investigation, with the aim of intimidating them; (vi) a one-day suspension from work was imposed on 21 chief medical specialists, the majority of whom are members of the union and its executive committee; and (vii) disciplinary proceedings with threats of dismissal were initiated against union officials and anyone who did not obey the orders of the hospital director. Furthermore, the complainant organization alleges that, from June 2014 until at least the date on which this complaint was presented (7 September 2015), the union members who participated in the strike have not been paid their wages and have not received social benefits or social security.
303. The complainant also alleges that, in June 2015, the director of Rosales Hospital filed an action with the First Civil and Commercial Court to dismiss union officials and union members, in violation of the ILO Conventions ratified by El Salvador.
304. In its communication dated 11 November 2015, the complainant organization alleges that the instruction document concerning the establishment and functioning of the labour relations roundtables of MINSAL (hereinafter "the instruction document"), which was adopted in August 2015 and which provides for the establishment of a series of labour relations roundtables at the national, regional and local levels within El Salvador's public health system, as well as in every public hospital, constitutes a clear violation of freedom of association, rather than fulfilling its stated purpose of improving the work climate and environment. The complainant organization states in particular that: (i) according to the recitals of the instruction document, labour relations roundtables are appropriate forums and mechanisms for dialogue, conciliation and agreement so that the issues that exist in every institution in respect of labour relations and the improvement of services can be addressed in a timely way; (ii) section 1 of the instruction document provides that the document will "also govern the procedure for the adoption of agreements and recommendations and the formal conditions for ensuring their validity and effective application"; (iii) according to section 5 of the instruction document, the national labour relations roundtable shall be composed of: one delegate from the Ministerial Office; one delegate from the Office of the Deputy Minister for Health Policies; one delegate from the Office of the Deputy Minister for Health Services; one delegate from the Office of General Operations Management; one Ministerial Legal Adviser; one delegate from every national trade union duly accredited by the Ministry of Labour and Social Welfare; one delegate from every national association of employees or workers duly accredited by the Ministry of the

Interior; and one or more delegates for employees that do not belong to a trade union organization, so that there is one such delegate for every delegate from a trade union or workers' association; and (iv) according to section 17 of the instruction document, the roundtable agendas are set unilaterally, as a number of requirements are imposed regarding the items that may be put forward by the representatives of the roundtables, such as the requirement that the items must benefit administrative management in the interests of the users of the network of public health establishments or the employees of these establishments, and must be viable from a technical and financial point of view.

- 305.** The complainant organization, after claiming that the instruction document was adopted without prior consultation with the trade unions, alleges that this instrument: (i) encourages the participation of representatives of workers who are not union members, to the detriment of trade unions; and (ii) violates the bipartite bargaining process by allowing the participation of elected representatives under employer control with a view to obtaining the majority of votes, thereby undermining the trade union's participation in the determination of terms and conditions of employment and in the settlement of disputes. The complainant organization concludes by stating that labour relations roundtables are a mechanism that will facilitate favouritism or hostility towards certain trade union organizations and undue interference by the public authorities in trade union activities.

B. Information submitted by the Government

- 306.** In its communication dated 31 October 2016, the Government provides its observations on the complainant organization's allegations concerning the anti-union nature of the instruction document, stating that: (i) the aim is simply to establish forums and mechanisms that encourage dialogue, conciliation and agreement, and there is therefore no violation of trade union rights; (ii) the instruction document is not a law or a formal legislative act, but an instrument providing administrative support; and (iii) it neither replaces nor hinders dialogue with trade unions – rather, it encourages trade union activity and strengthens protection against acts of interference. The Government adds that: (i) labour relations roundtables provide an opportunity to discuss problems and find solutions and in no way do they restrict trade union activity or prevent bipartite bargaining; (ii) the Government is not engaged in any collective bargaining and it refutes the complainant's allegations in that regard; and (iii) the Government encourages the inclusion of non-unionized workers in labour relations roundtables in accordance with the legislation in force.
- 307.** In its communication of 27 September 2019, the Government presents its observations on the allegations that the director of Rosales Hospital carried out violation of rights and acts of repression against the SIMEHR trade union and its members, depriving them of their wages, social security, pension funds, social and economic benefits and union dues. In this respect, the Government states that such allegations are false and lack any factual and legal basis. Likewise, with regard to the complainant's allegations of deplorable and unsafe conditions in Rosales Hospital, including equipment and medicine shortages, while the Government acknowledges that resources are insufficient, it emphasizes that significant improvements have been made under the leadership of Dr Mauricio Ventura, the hospital director, such as, for example, a reduction in waiting times and a lower rate of medical supply shortages.
- 308.** The Government states that the complainant organization's allegations stem from the fact that the administrative authorities had launched administrative proceedings against staff members of Rosales Hospital for having refused to comply with the institutional regulations imposed on them concerning the clocking in and out of staff by biometric means. The Government states that the financial impact on their wages, their social security and their pension funds is due to

the deductions that had to be made when they refused to comply with the requirement to register their attendance at work using a biometric clocking system. The Government states that this refusal led to findings of administrative misconduct that were handled in accordance with due process. The Government specifies that the findings of administrative misconduct also applied to union members, as the trade union guarantees they enjoy are not a shield that exempts them from their responsibilities or from following due process.

- 309.** With regard to the complainant organization's allegations that no headway has been made in the talks with the authorities of MINSAL and the PDDH aimed at establishing a dialogue and negotiation table, and that this has led to increased retaliation against the union's members and its executive committee through various anti-union acts, the Government states that, since the suspension of the meetings with the PDDH, no decision at all has been handed down against the director of Rosales Hospital for arbitrary acts, abuse of authority or unfair deductions. It follows, in the Government's view, that the institution responsible for the protection of labour rights investigated the allegations made by the complainant and found insufficient evidence and the PDDH has not requested further information on these cases either.
- 310.** The Government states that ensuring respect for the rights of users is a priority in El Salvador's public administration and that, with a view to improving the health services offered to its users, Rosales Hospital has set up its own institutional regulatory framework. The Government also states that the supervisory body that is competent to determine compliance with this regulatory framework is the Court of Auditors of the Republic, which assesses all activities, and if an unlawful wage deduction is detected, the Court will be responsible for ensuring the reimbursement of the money that has been deducted arbitrarily.
- 311.** The Government reiterates once again that the issues at Rosales Hospital arose as a result of the decision by the hospital authorities that, as of July 2014, medical staff would have to register their attendance at work using a biometric system, in accordance with the provisions of section 35 of the regulations setting out the hospital's specific technical standards for internal oversight.
- 312.** The Government states that it was because of the refusal by several doctors to register their attendance using the biometric system when it was introduced in June 2014 that a decision was taken to apply the relevant deductions to certain unionized doctors. The Government further states that the relevant evidence was submitted to the labour courts and arguments were put forward demonstrating that the doctors' claims were false, since, according to the documentary evidence submitted to the courts, all the procedures under the institutional regulations had been followed in making the deductions. The Government also provides the numbers of the cases brought before the Civil Service Courts, which contain details of the procedures followed in making the deductions.
- 313.** The Government states that the fact that some staff members at Rosales Hospital failed to apply the provisions of the regulatory framework is demonstrated by the final decision handed down by the Government Ethics Court on 3 October 2018, a copy of which is annexed to its communication. In this decision, 16 doctors were found to be responsible for failing to comply with section 6(d) of the Government Ethics Act, which prohibits the holding of two or more incompatible posts in the public sector.
- 314.** With regard to the allegations concerning the written warnings given to union members, the Government explains that the issuance of such warnings is provided for in section 43 of the Civil Service Act. The Government adds that the power and the competence to issue this type of warning lies with the immediate superiors, as is provided for in the Act, and that such

warnings are a tool to prevent anarchy from a work and administrative point of view. The Government also states that only the immediate superior can issue a written warning and that the steps leading to the issuance of the warnings were approved by the Civil Service Court in the corresponding proceedings. Specifically with regard to the disciplinary proceedings initiated by the hospital director against Dr Alcides Gómez Hernández, the general secretary of the SIMEHR union, and the acts of discrimination against him, the Government states that, in this case, a court decision has already been handed down in favour of Rosales Hospital, establishing that the proceedings were lawful and that the relevant institutional regulations were duly applied.

- 315.** With regard to the complainant's allegations concerning the arbitrary deductions of wages, social security, pension funds and economic and social benefits that were applied to union officials and union members, the Government states that, in the various court cases that have been brought against the director of Rosales Hospital, decisions have been handed down that are favourable to the interests of the institution.
- 316.** With regard to the complainant's allegations that union leave has not been granted to union members, the Government states that requests for such leave are processed by MINSAL and that the trade unions that have requested such leave have been granted it without any problem. However, the Government states that the SIMEHR has not taken any steps to request such leave and it cannot provide any evidence of a decision rejecting a request for time off for union purposes as it has never made such a request. Furthermore, the Government states that the members of the complainant organization hold their general assemblies on days and at the time of their own choosing and do not request permission from their immediate supervisors to be absent from their workplaces.
- 317.** With regard to the establishment of labour relations roundtables in the context of Rosales Hospital, the Government states that the majority of the hospital's employees are not members of the SIMEHR, which has a membership of 69 doctors, whereas the hospital has a total of 2,007 public servants. The Government adds that the workers who are not union members have their own mechanism for election to and participation in the establishment of labour relations roundtables. The Government also states that Rosales Hospital is merely a user of the instruction document in question and was not involved in drafting it.
- 318.** With regard to the dismissal action brought by the director of Rosales Hospital against union members and union officials, the Government alleges that all public servants possess the constitutional power to bring legal action when they detect a possible violation and that failure to do so constitutes a breach of that constitutional duty. Therefore, according to the Government, bringing legal proceedings against union members and union officials does not in itself constitute a violation of the labour rights of union members, as, in the Government's view, trade union membership does not mean that union members are free not to meet their work obligations.
- 319.** With regard to the complainant's allegation concerning the complaints of manifest injustice filed with the Civil Service Court, the Government states that the Court reported that, in 2013, 2014 and 2015, it received 45 complaints of manifest injustice from doctors working at Rosales Hospital and that the proceedings had been completed, according to a report submitted by the Civil Service Court at the time the Government submitted the present communication.
- 320.** With regard to union members not being paid their wages as from July 2015 because of their participation in the strike, the Government states that the court hearing the case ruled that the deductions were applied to the employees in accordance with the legal provisions and that the administrative process allowing for the non-payment of these wages was carried out in

compliance with the guarantees of due process. Accordingly, the court found that the manifest injustice action brought by the union members was without merit.

- 321.** With regard to the dismissal action brought in June 2015 against union officials and union members, the Government states that this action has now been closed and filed, as the First Civil and Commercial Court before which the action was brought found that it had no jurisdiction and the action was dismissed. The Government also states that the fact that the hospital director initiated the dismissal action does not in itself mean that any trade union rights were violated, but rather that the hospital director applied the principle of legality enshrined in article 86 of the Constitution of El Salvador.

C. The Committee's conclusions

- 322.** *The Committee notes that, in the present case, the complainant organization alleges that a series of anti-union acts were committed between 2010 and 2015 by a public hospital against the officials and members of a trade union of doctors, the SIMEHR, before and after a strike was staged in September 2014 demanding the modification of the system for monitoring the attendance of medical staff by means of biometric markers that was introduced in the hospital in June 2014. The Committee notes that the complainant organization also alleges that the instruction document adopted in August 2015, which provides for equal representation between trade union representatives and representatives of non-unionized workers, facilitates interference by the public authorities in the representation of workers and undermines the rights of trade union organizations, including in respect of collective bargaining.*
- 323.** *The Committee notes that, for its part, the Government states that: (i) the acts against the officials and members of the SIMEHR alleged by the complainant organization are not anti-union in nature but are the result of the failure by some doctors to apply the hospital's regulations, notably the system for monitoring attendance using biometric markers; (ii) the strike staged in September 2014 was declared unlawful by the courts, which, in accordance with the regulations in force, carried a number of implications for the doctors who took part in it; and (iii) the Ministry of Health's instruction document of August 2015 creating labour relations roundtables encourages consultation with both the trade unions in the health sector and the representatives of non-unionized workers and therefore does not undermine dialogue with the trade unions.*
- 324.** *The Committee notes that the complainant organization alleges first of all that, between 2010 and 2013, a series of anti-union acts were carried out against the officials and members of the SIMEHR, including, inter alia: (i) the arbitrary transfer of three doctors who were union officials and of two others who were members of the union; (ii) the issuance of unfounded warnings to Dr Alcides Gómez Hernández, the general secretary of the union, without giving him the opportunity to defend himself; (iii) the dismissal of the head of the intensive care unit and the head of otorhinolaryngology; (iv) the suspension of Dr Guillermo Reyes, a union member, in 2012, for having refused a police search; and (v) the denial of requests for union leave made under the instruction document and to the director of Rosales Hospital in order to enable officials of the SIMEHR to carry out their union activities. With regard to this first set of allegations, the Committee notes that the Government states that: (i) having the status of a trade union official does not constitute a shield that exempts that person from responsibility for any misconduct that they might commit; (ii) the disciplinary proceedings against the general secretary of the trade union were the subject of legal action and concluded with a decision in favour of Rosales Hospital, which found that the disciplinary proceedings were in accordance with the law and that the institutional regulations were duly applied; and (iii) although trade union leave can be requested without any problem under the instruction document, the SIMEHR has not requested such leave, which has not prevented union members from holding assemblies without the permission of their superiors.*

325. With regard to the granting of trade union leave to the SIMEHR, the Committee, while noting the differing versions of events given by the parties, takes note of the document provided by the Government containing a notification addressed to the complainant organization, dated 5 February 2016, in which its representatives are invited to a second meeting for the granting of trade union leave. On the basis of the foregoing, the Committee trusts that the SIMEHR is able to enjoy the trade union leave to which it is entitled and it will therefore not pursue the examination of this allegation.
326. With regard to the allegations concerning a series of specific acts that were carried out between 2010 and 2013 against certain officials and members of the SIMEHR, the Committee, while taking due note of the Government's reply concerning the confirmation by the courts of the lawfulness of the warning issued to the general secretary of the trade union, observes that: (i) neither the reference number nor the text of the above-mentioned court decision has been provided; and (ii) the Government has not provided a response concerning the other specific acts alleged by the complainant organization. Recalling that the Government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, para. 1138], the Committee requests the Government to ensure that, from now on, any allegations of anti-union acts in the hospital in question are promptly followed up by effective investigations by the competent authorities so as to guarantee full respect for freedom of association within the hospital.
327. The Committee also notes that the complainant organization also alleges that, due to the opposition of the SIMEHR to the unilateral implementation in June 2014 of a biometric attendance monitoring system and the impossibility of engaging in a constructive dialogue with the hospital management and the Office of the Human Rights Ombudsman, the trade union was forced to carry out a partial work stoppage as from 9 September 2014. The Committee notes that the complainant organization states that the dispute over biometric attendance monitoring led to an escalation of anti-union acts against the SIMEHR, alleging in particular that: (i) union members were subject to a wage deduction of 40 per cent in July 2014; (ii) wage deductions of 100 per cent were imposed in August 2014 and of more than 100 per cent in September and October 2014 and from January to May 2015; (iii) in retaliation for the reduction of work, the hospital director filed criminal complaints against the union's executive committee and 42 specialist doctors, who are themselves members of the union, as well as complaints before the First Labour Court against 82 specialist doctors; (iv) a total of 21 chief medical specialists, the majority of whom are also members of the union and its executive committee, were suspended from work for one day; (v) the doctors who participated in the work stoppage were harassed by members of the political police on 14, 15 and 16 September 2014, with the aim of intimidating them; and (vi) in June 2015, disciplinary proceedings with threats of dismissal were initiated against union officials and all those who did not obey the orders of the hospital director.
328. The Committee notes that the complainant organization adds that the work stoppage was declared unlawful by a decision of the First Labour Court of 17 September 2014, that the Labour Code provides that the Court's decision is not open to appeal and that the amparo action brought in this respect before the Supreme Court was pending at the time of submission of the present complaint.
329. The Committee notes that, for its part, the Government states that: (i) the financial impact on wages, social security and pension funds mentioned in the complaint is due to the deductions that had to be applied to staff members who refused to comply with the requirement to register their attendance at work using the biometric clocking system; (ii) this refusal led to findings of administrative misconduct against staff, whether union members or not, which were handled in accordance with due process; (iii) in the different court cases that have been brought against the director of Rosales

Hospital with respect to the aforementioned deductions, decisions have been handed down that are favourable to the interests of the institution; (iv) in its final decision of 3 October 2018, the Government Ethics Court found that 16 doctors at the hospital were responsible for failing to comply with the Government Ethics Act, which prohibits the holding of two or more incompatible posts in the public sector; (v) a court heard the case concerning the non-payment of the wages of union members for having participated in the strike and ruled that the deductions were applied to the employees in accordance with the legal provisions and that the administrative process allowing for the non-payment of these wages was carried out in compliance with the guarantees of due process; and (vi) the dismissal action brought in June 2015 against union officials and union members has now been closed and filed, as the First Civil and Commercial Court before which the action was brought declared itself incompetent and the action was dismissed. The Committee takes due note of the information provided by the parties in relation to the dispute arising from the introduction in June 2014 of the biometric monitoring of staff attendance. The Committee wishes to recall first of all that its mandate consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions [see **Compilation**, para. 9]. It is therefore not within its competence to examine the merits and suitability of the biometric attendance monitoring system introduced by the hospital, as it is not alleged that such a system had the purpose or effect of infringing freedom of association. Noting, however, that the Government does not object to the allegation that the new attendance monitoring system was introduced unilaterally, the Committee emphasizes that it has recalled the importance of consulting all trade union organizations concerned on matters affecting their interests or those of their members [see **Compilation**, para. 1521]. The Committee therefore invites the Government to take the necessary steps to establish a framework for constructive dialogue between the trade unions present in the hospital and the hospital management and the Office of the Human Rights Ombudsman on matters affecting their interests or those of their members.

330. With regard to the deductions of wages after the entry into force of the attendance monitoring system and prior to the strike action, while regretting that it has not received the text of the rulings referred to by the Government, the Committee trusts that these rulings have ensured that the deductions have been applied objectively, irrespective of the trade union membership or union activity of the hospital workers.
331. With regard to the partial strike staged from 9 July 2014, the Committee recalls that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests [see **Compilation**, para. 753]. Nevertheless, the Committee recalls that it has considered 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] and that, in this regard, it has considered that the hospital sector may be considered to be an essential service [see **Compilation**, para. 840]. Lastly, the Committee recalls that salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles [see **Compilation**, para. 942]. With regard to the allegation that court decisions on the lawfulness of a strike cannot be challenged, the Committee notes that the SIMEHR did file an application for amparo before the Constitutional Chamber of the Supreme Court of Justice and trusts that this matter has been resolved promptly and in conformity with the principles of freedom of association.
332. With regard to the complainant organization's allegations concerning a series of reprisals following the strike action, the Committee notes that the Government states that it stopped pursuing the dismissal actions after the court hearing the case found it had no jurisdiction, and that these cases

have been closed and filed. The Committee regrets to note, however, that the Government has not provided its observations on the allegations of criminal proceedings against 42 officials and members of the SIMEHR and the other legal actions mentioned by the complainant organization. While emphasizing the importance of conducting legitimate trade union activities in a peaceful manner, the Committee considers that the criminalization of industrial relations is in no way conducive to harmonious and peaceful industrial relations [see **Compilation**, para. 974]. On the basis of the foregoing, the Committee trusts that the various criminal and legal actions arising from the strike action mentioned by the complainant organization have been brought to a close. The Committee also invites the Government to take the necessary steps to establish a framework for constructive dialogue between the hospital and the various trade union organizations present in the hospital.

- 333.** Furthermore, the Committee notes that the complainant organization claims that the instruction document violates the principles of freedom of association in that: (i) it encourages acts of interference by supporting the representation of workers who are not members of a trade union and who answer to MINSAL, to the detriment of trade unions; and (ii) it violates the bipartite bargaining process by allowing a majority to be obtained as a result of the participation of elected representatives under employer control, thereby undermining the trade union's participation in the determination of terms and conditions of employment and in the settlement of disputes through labour relations roundtables. The Committee also notes that the Government, for its part, stated that the instruction document: (i) aims to establish labour relations roundtables, which are forums and mechanisms that encourage dialogue, conciliation and agreement; (ii) is not a formal legislative act, but merely an instrument that provides administrative support; (iii) allows for the participation of all workers in labour relations roundtables, including those who are not members of a trade union organization, in accordance with the legislation in force, without restricting trade union activity; and (iv) does not affect collective bargaining with trade union organizations.
- 334.** The Committee takes due note of these various points. The Committee notes that the above-mentioned instruction document, which was adopted in August 2015, establishes a number of labour relations roundtables at the national, regional and local levels within the public health system of El Salvador, as well as in every public hospital. The Committee notes in particular that: (i) section 5 of the instruction document provides for equal representation in the labour relations roundtables between trade union representatives and (elected) representatives of non-unionized workers; and (ii) section 1 of the instruction document "also governs the procedure for the adoption of agreements and recommendations and the formal conditions for ensuring their validity and effective application", and that section 13 stipulates that "[t]he members of the labour relations roundtables shall try to reach consensus on recommendations and agreements concerning the determination of measures, actions or terms and conditions relating to the performance of work of MINSAL staff". While noting that the parties have not provided comprehensive data on the rate of trade union membership in the public health sector, the Committee further notes that: (i) the instruction document does not provide for or make reference to representativeness mechanisms that would ensure that the number of seats given to the different workers' representatives at labour relations roundtables is proportionate to the support they have from staff; (ii) the instruction document establishes that the delegates representing non-unionized employees shall be elected by the assembly of non-unionized employees, and therefore it does not provide for a mechanism allowing trade union organizations to try to obtain the votes of non-unionized workers; and (iii) the Government does not mention other platforms through which it negotiates exclusively with trade union organizations in the public health sector or the existence of collective bargaining agreements signed with unions in this sector.

335. *The Committee considers that the various points highlighted in the preceding paragraph should be taken into consideration when examining the complainant organization's allegations that the instruction document enables the public authorities to interfere in the representation of workers in the public health sector and undermines bipartite collective bargaining with trade union organizations in the sector. In this regard, the Committee recalls that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements [see **Compilation**, para. 1231]. Noting also that El Salvador has ratified Convention No. 135, the Committee recalls that Article 5 of this Convention provides that "[w]here there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives". In view of the above, the Committee requests the Government, in consultation with the most representative trade union organizations in the sector, to take the necessary measures to ensure that the instruction document is revised so that dialogue with elected workers' representatives does not undermine the position of the trade union organizations and is not carried out to the detriment of the collective bargaining processes with these organizations.*

The Committee's recommendations

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

- (a) The Committee requests the Government to ensure from now on that any allegations of anti-union acts in the hospital in question are promptly followed up by effective investigations by the competent authorities so as to ensure full respect for freedom of association within the hospital.
- (b) The Committee invites the Government to take the necessary steps to establish a framework for constructive dialogue between the trade unions present in the hospital and the hospital management and the Office of the Human Rights Ombudsman on matters affecting their interests or those of their members.
- (c) Concerning the wage deductions for non-compliance with the attendance monitoring system, the Committee trusts that the courts have ensured that such deductions are applied objectively, irrespective of the trade union membership or union activity of the hospital workers.
- (d) The Committee trusts that the *amparo* action brought by the SIMEHR before the Constitutional Chamber of the Supreme Court of Justice has been resolved promptly and in conformity with the principles of freedom of association.
- (e) The Committee trusts that the various criminal and legal actions arising from the strike action mentioned by the complainant organization have been brought to a close. The Committee also invites the Government to take the necessary steps to establish a framework for constructive dialogue between the hospital and the trade union organizations present in the hospital.
- (f) The Committee requests the Government, in consultation with the most representative trade union organizations in the sector, to take the necessary measures to revise the instruction document concerning the establishment and

functioning of the labour relations roundtables of the Ministry of Health so that dialogue with elected workers' representatives does not undermine the position of the trade union organizations and is not carried out to the detriment of the collective bargaining processes with these organizations.

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

Case No. 3395

Interim report

Complaint against the Government of El Salvador presented by

- the Salvadoran Association of Municipal Workers (ASTRAM) and
- the Union of Workers of the Municipality of San Salvador (STAMSS)

Allegations: The complainant organizations denounce the murder for anti-union reasons of Mr Weder Arturo Meléndez Ramírez, trade union official and worker at the Municipality of San Salvador

337. The Committee examined this case at its June 2021 meeting. On that occasion, it presented an interim report to the Governing Body [see 395th Report, approved by the Governing Body at its 342nd Session (June 2021), paras 174–203].⁴

338. The Government sent its observations in a communication dated 5 October 2021.

339. 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), the Workers' Representatives Convention, 1971 (No. 135), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

340. At its June 2021 meeting, the Committee made the following recommendations [see 395th Report, para. 203]:

- (a) The Committee deeply deplores the murder of the trade union official, Mr Meléndez, and urges the Government to take all necessary steps to ensure that the competent authorities: (i) prioritize the ongoing investigations and devote all necessary efforts to identify and punish without delay both the instigators and perpetrators of the murder; and (ii) take full account in the investigations of all relevant elements arising from Mr Meléndez's trade union activities. The Committee requests the Government to keep it informed, without delay, of the progress made in this respect.
- (b) The Committee requests the Government to ensure that the workers from the institution in which Mr Meléndez carried out his trade union activities enjoy adequate protection

⁴ [Link to previous examinations.](#)

against any act that may cause prejudice to them by reason of their participation in union activities.

- (c) The Committee requests the Government to provide up-to-date information on the actions taken in relation to the initiative “Proposal for reform of the Criminal Code”, which was drafted by the MTPS with the aim of improving the protection of the freedom of association of trade union leaders and trade unionists.
- (d) The Committee draws the Governing Body’s attention to the serious and urgent nature of this case.

B. The Government’s reply

- 341.** By means of a communication dated 5 October 2021, the Government transmitted, firstly, information on the actions taken in connection with the investigations to identify the perpetrators of Mr Meléndez’s murder (recommendation (a) of the Committee), stating that: (i) the Attorney General and the Director of the National Civil Police were once again requested, in a letter of 21 September 2021, to provide information on the progress of the corresponding investigations, and to follow up on the actions undertaken concerning this case; and (ii) it was awaiting the relevant responses.
- 342.** With respect to recommendation (b) of the Committee on the need to provide members of the trade union to which Mr Meléndez belonged with adequate protection against any act that may cause prejudice to them by reason of their participation in union activities, the Government transmitted the observations of the Mayor of San Salvador city, who indicates that: (i) the regulations governing labour relations between workers’ associations and the administration of the municipality of San Salvador, whose purpose is to regulate and organize relations between the administration and the associations of municipal workers, are applied; and (ii) the San Salvador municipal administration ensures the safety of workers through its corps of municipal police officers, and as a municipality they do not carry out acts intended to undermine the workers of the institution who belong or might belong to trade union associations. The Government adds that steps are being taken to obtain more information on the execution of the measures to protect workers against any act that may cause prejudice to them by reason of their participation in union activities in the said workplace.
- 343.** Concerning recommendation (c) of the Committee on the actions taken in relation to the “Proposal for reform of the Criminal Code” initiative, which was drafted by the Ministry of Labour and Social Welfare with the aim of improving the protection of the freedom of association of trade union officials, the Government states that: (i) in response to the murder of the trade union leader and official Weder Meléndez, it was proposed to conduct an analysis of legislative changes that would protect against, penalize and eradicate similar acts and those that may affect workers by reason of their membership in trade unions; (ii) in this context, it became apparent that it was necessary to include such acts that go against workers’ freedom of association as aggravating circumstances in the Penal Code and to increase the penalties for them; and (iii) the proposal for reform is under examination within the Ministry of Labour and Social Welfare for subsequent submission to the Legislative Assembly.

C. The Committee’s conclusions

- 344.** *The Committee recalls that the purpose of the present case is to denounce the murder for anti-union reasons of Mr Weder Arturo Meléndez Ramírez, a trade union official and worker of the Municipality of San Salvador, which occurred on 7 August 2020 in San Salvador. The Committee takes note of the information provided by the Government in a communication of 5 October 2021. While noting that the Government indicates that it once again requested the Attorney General’s Office and the National*

Civil Police to follow up on the actions undertaken to identify and punish the perpetrators of Mr Meléndez's murder, the Committee deeply deplores the fact that it has no new information concerning the progress made in the relevant investigations.

345. The Committee recalls once again that the killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 94]. It is important that investigations into the murders of trade unionists yield concrete results in order to reliably determine the facts, the motives and the persons responsible, in order to apply the appropriate punishments and to prevent such incidents recurring in the future [see **Compilation**, para. 96]. The Committee also recalls that 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**, para. 102].
346. The Committee therefore once again urges the Government to take the necessary steps to ensure that the competent authorities: (i) prioritize the ongoing investigations and devote all necessary efforts to identify and punish without delay both the instigators and perpetrators of the murder; and (ii) take full account in the investigations of all relevant elements arising from Mr Meléndez's trade union activities. The Committee requests the Government to keep it informed, without delay, of the progress made in this respect.
347. In connection with recommendation (b) on the need to provide the members of the trade union to which Mr Meléndez belonged with adequate protection against any act that may cause prejudice to them by reason of their participation in union activities, the Committee takes note of the information provided by the municipal administration of San Salvador submitted by the Government, according to which: (i) the regulations governing labour relations between workers' associations and the administration of the municipality of San Salvador, whose purpose is to regulate and organize relations between the administration and the associations of municipal workers, are applied; and (ii) the San Salvador municipal administration ensures the safety of workers through its corps of municipal police officers, and as a municipality they do not carry out acts intended to undermine the workers of the said institution who belong or might belong to trade union associations. The Committee also notes that the Government adds that steps are being taken to obtain more information on the execution of the measures to protect workers against any act that may cause prejudice to them by reason of their participation in union activities in the workplace. While duly noting the information related to the actions taken by the municipal administration of San Salvador, the Committee, recalling that the complainants allege that Mr Meléndez's murder is a consequence of his trade union activities, urges the Government to ensure that all of the competent state authorities take the necessary actions to provide the members of the union to which Mr Meléndez belonged with adequate protection against any act that may cause prejudice to them by reason of their participation in union activities. The Committee requests the Government to provide specific information in this respect.
348. In connection with recommendation (c) on the actions taken in relation to the "Proposal for reform of the Criminal Code" initiative, which was drafted by the Ministry of Labour and Social Welfare with the aim of improving the protection of the freedom of association of trade union leaders, the Committee notes that the Government indicates that: (i) in the context of the murder of Mr Meléndez, it became apparent that it was necessary to characterize the anti-union nature of the offences

committed against union leaders and trade unionists by reason of their trade union activity as an aggravating circumstance in the Penal Code and to increase the corresponding penalties; and (ii) the proposal for reform is under examination within the Ministry of Labour and Social Welfare for subsequent submission to the Legislative Assembly. Observing that it has not received any new information on the progress in handling of this initiative since October 2021, the Committee urges the Government to keep it informed of any developments. The Committee reminds the Government that it can seek technical assistance from the Office in this respect.

The Committee's recommendations

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

- (a) The Committee deeply deplores the lack of information on progress in the investigations into the murder of the trade union official, Mr Meléndez, and once again urges the Government to take all necessary steps to ensure that the competent authorities: (i) prioritize the ongoing investigations and devote all necessary efforts to identify and punish without delay both the instigators and perpetrators of the murder; and (ii) take full account in the investigations of all relevant elements arising from Mr Meléndez's trade union activities. The Committee requests the Government to keep it informed, without delay, of the progress made in this respect.**
- (b) The Committee urges the Government to ensure that all of the competent state authorities take the necessary actions to provide the members of the union to which Mr Meléndez belonged with adequate protection against any act that may cause prejudice to them by reason of their participation in union activities. The Committee requests the Government to provide specific information in this respect.**
- (c) The Committee urges the Government to keep it informed of any progress in the handling of the "Proposal for reform of the Criminal Code" initiative, which was drafted by the Ministry of Labour and Social Welfare with the aim of improving the protection of the freedom of association of trade union leaders. The Committee reminds the Government that it can seek technical assistance from the Office in this respect.**
- (d) The Committee draws the Governing Body's attention to the serious and urgent nature of this case.**

Case No. 3437

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

**Complaint against the Government of Ecuador
presented by
the Ecuadorian Digital Platform Workers' Front (FRENAPP)**

Allegations: The complainant organization alleges that the Ministry of Labour has refused its registration as a trade union because it brings together workers from several enterprises

- 350.** The present complaint was submitted in a communication of 16 August 2022 from the Ecuadorian Digital Platform Workers' Front (FRENAPP).
- 351.** The Government sent its observations in communications of 15 December 2022 and 12 September 2023.
- 352.** Ecuador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 353.** In its communication of 16 August 2022, the complainant organization alleges that the Government has violated the ILO Conventions ratified by Ecuador on freedom of association and collective bargaining by refusing the trade union registration of FRENAPP. The trade union alleges in particular that: (i) on 8 November 2021, it submitted an application for registration to the Ministry of Labour in order to safeguard the rights of the 100,000-plus digital platform workers in the country who are not recognized as employees and who are subjected to highly precarious working conditions; (ii) by Official Letter No. MDT-DOL-2021-1817-O, the Ministry of Labour stated that the intention of the applicants is to establish a primary-level trade union of digital platform workers in Ecuador who do not have an employment relationship with the same employer, and therefore the application in question falls outside the scope of the Labour Code; (iii) in the aforementioned official letter, the Ministry of Labour referred to a ruling of 25 May 2021 (Case No. 17981-2020-02407) concerning the application for the registration of the Trade Union Association of Rural Banana Workers (ASTAC), in which the Criminal Chamber of the Pichincha Provincial Court instructed the Ministry of Labour 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, under the same conditions and circumstances as those examined in this case; (iv) the official letter further stated that the Ministry of Labour has filed an appeal against this ruling and a recommendation was therefore made to FRENAPP to reapply once the appeal has been resolved; (v) noting that, by Ministerial Agreement No. MDT-2022-001 of 11 January 2022, the Ministry of Labour agreed to endorse and register the statutes of and grant legal status to ASTAC, on 9 May 2022 FRENAPP submitted in writing to the Ministry of Labour another request to register it as a trade union and to grant it legal status immediately, drawing attention to the

aforementioned ruling of 25 May 2021; (vi) by Official Letter No. MDT-DOL-2022-0735-O of 23 August 2022, the Ministry of Labour reiterated its previous reply, again inviting FRENAPP to resubmit its request once the appeal filed by the Ministry of Labour against the ruling of 25 May 2021 has been resolved; and (vii) on 28 July 2022, an action for non-compliance was brought before the Constitutional Court of Ecuador against the Ministry of Labour, under Case No. 147-22-IS, which is under evaluation.

- 354.** The complainant organization further states that, on 11 October 2022, the Ministry of Labour also refused, on the same grounds, the registration of the branch-level Trade Union Association of Self-Employed Workers of the Ecosystems of the Marine Coastal Territories of the Ecuadorian Pacific (ASIMARMANGLAR) and that, on that occasion, the Ministry of Labour referred to Memorandum No. MDT-DAJ-2022-0925-M of 2 September 2022, in which it had issued a legal opinion regarding trade unions by branch of activity, stating that: “[...] the Ministry of Labour would not, by ministerial agreement, be able to regulate something that is not already prescribed by law. In other words, the Labour Code must be AMENDED”.

B. The Government’s reply

- 355.** In a communication of 15 December 2022, the Government, after recalling that the Constitution of Ecuador recognizes freedom of association, states that: (i) the content of the complaint is identical to the request made by the Ombudsman's Office concerning the registration of FRENAPP; (ii) the legislation does not provide for the possibility of establishing trade unions bringing together workers from several enterprises; (iii) the ruling of 25 May 2021 concerning the registration of the banana workers’ union ASTAC is applicable only to the parties concerned and its legal effect does not extend beyond those parties; and (iv) the aforementioned ruling was appealed by the Government and the matter is pending consideration by the Constitutional Court. The Government adds that section 459 of the Labour Code, which was amended by a 2018 decision of the Constitutional Court (Decision No. 2 of the Constitutional Court, published in the Official Journal, Supplement 40, of 6 April 2018), provides for the possible establishment of workers' associations by branch of activity, provided that the workers work in the same enterprise and not in different enterprises, since an employer–employee relationship is a precondition for the right to freedom of association. In the light of the foregoing, the Government states that the non-registration of FRENAPP is not contrary to freedom of association, which is safeguarded both by the Constitution of Ecuador and by Convention No. 87.
- 356.** In a communication dated 12 September 2023, the Government reiterates the various arguments set out above. In particular, the Government reiterates that: (i) in accordance with section 97 of the Organic General Procedural Code, the ruling of 25 May 2021 concerning the registration of the ASTAC banana workers’ union has binding effect only for the parties that instituted the proceedings; (ii) the part of the said ruling instructing the Ministry of Labour to regulate the exercise of the right to freedom of association by branch of activity would contravene the Constitution and the Ecuadorian legal system whose legislation restricts the registration of organizations of workers who do not belong to the same enterprise or share the same employer; and (iii) the said ruling is still under review by the Constitutional Court of Ecuador.

C. The Committee’s conclusions

- 357.** *The Committee notes that the present case concerns the alleged refusal by the Ministry of Labour of the registration of FRENAPP, an organization whose purpose is to bring together the workers of the*

different digital platforms that exist in Ecuador. The Committee notes that the complainant organization specifically alleges that: (i) the Ministry of Labour, by its decisions of 28 December 2021 and 23 August 2022, refused the registration of FRENAPP on the grounds that it is seeking to bring together workers from several enterprises; (ii) the refusal of the registration of FRENAPP is contrary to the ruling of 25 May 2021 of the Pichincha Provincial Court relating to the application for the registration of another trade union, the banana workers' association ASTAC, which instructed the Ministry of Labour 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; (iii) the Ministry of Labour invited FRENAPP to resubmit its application for registration once the Constitutional Court has handed down a decision on the ASTAC case; and (iv) in view of the above, FRENAPP brought an action for non-compliance before the Constitutional Court against the Ministry of Labour. The Committee notes that, for its part, the Government states that: (i) the national legislation, in particular the Labour Code, does not provide for the possibility of establishing trade unions composed of workers from several enterprises, since the existence of an employer–employee relationship is a precondition for freedom of association; and (ii) in accordance with the Organic General Procedure Code, the ruling of the Pichincha Provincial Court in the ASTAC case is limited in effect to the parties to the dispute in question and is the subject of an appeal before the Constitutional Court.

- 358.** The Committee observes that it is clear from the foregoing that the present case concerns the refusal of the registration of a trade union whose objective is to bring together workers from the different digital platforms that exist in the country. The Committee notes that both the complainant organization and the Government agree that the refusal by the Ministry of Labour of the registration of FRENAPP was based on the fact that the latter is seeking to bring together workers from different enterprises. The Committee recalls that Case No. 3148, which has given rise to two interim reports of the Committee [see 381st Report, March 2017, paras 420–442, and 391st Report, October 2019, paras 225–252], concerns the same issue, which in that case relates to the registration of ASTAC, a trade union in the country's banana sector whose situation has been mentioned by both the complainant organization and the Government in the present case. The Committee recalls that, in the context of Case No. 3148, it requested the Government to: (i) take the necessary measures to ensure that national legislation complies with the principles of freedom of association concerning the minimum membership required to establish a trade union at the enterprise level and the possibility of setting up primary-level trade unions comprising workers from various companies; and (ii) to take the necessary measures to enable the registration of ASTAC without delay. The Committee also recalls that it referred the legislative aspects of that case to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) [see Case No. 3148, 381st Report, March 2017, paragraph 442].
- 359.** The Committee notes with regret that, despite its recommendations in the context of Case No. 3148 and the follow-up by the CEACR of the legislative aspects of the case, neither the country's legislation nor the practices of the Ministry of Labour yet allow for the establishment of primary-level trade unions composed of workers from different enterprises. The Committee recalls that this constraint is particularly detrimental to the exercise of freedom of association in view of the Labour Code of Ecuador, which requires a minimum number of 30 workers to establish a trade union (sections 443 and 452). 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 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 of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 502 and 504]. With respect to the statement by the Government that the existence of an employer–employee relationship would be a precondition for freedom of association, the Committee recalls that it has

*considered that, by virtue of the principles of freedom of association, all workers – with the sole exception of members of the armed forces and the police – should have the right to establish and join organizations of their own choosing. The criterion for determining the persons covered by that right, therefore, is not based on the existence of an employment relationship, which is often non-existent, for example in the case of agricultural workers, self-employed workers in general or those who practise liberal professions, who should nevertheless enjoy the right to organize [see **Compilation**, para. 387].*

- 360.** *In the light of the foregoing, the Committee urges the Government to take the necessary measures to complete the registration process of the organization in question without delay. The Committee requests the Government to keep it informed in this regard. The Committee refers the legislative aspects of this case to the CEACR and urges the Government to avail itself of the technical assistance of the Office in order to proceed with a reform of its legislation without delay in the manner indicated in the present conclusions. Lastly, the Committee requests the Government and the complainant organization to keep it informed of the outcome of the action for non-compliance brought by FRENAPP against the Ministry of Labour before the Constitutional Court.*

The Committee's recommendations

- 361.** **In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee urges the Government to take the necessary measures to complete the registration process of FRENAPP without delay. The Committee requests the Government to keep it informed in this regard.**
 - (b) **The Committee refers the legislative aspects of this case to the CEACR and urges the Government to avail itself of the technical assistance of the Office in order to proceed with a reform of its legislation without delay in the manner indicated in the present conclusions.**
 - (c) **The Committee requests the Government and the complainant organization to keep it informed of the outcome of the action for non-compliance brought by FRENAPP against the Ministry of Labour before the Constitutional Court.**

Case No. 3403

Interim report

**Complaint against the Government of Guinea
presented by
the International Union of Food, Agricultural, Hotel, Restaurant, Catering,
Tobacco and Allied Workers Associations (IUF)**

Allegations: The complainant organization denounces anti-union discriminatory acts by the management of a hotel against a newly established trade union, including the dismissal of trade union officials and harassment of workers who had expressed support for the trade union. The complainant also denounces the Government's failure to ensure respect for the right to freedom of association and collective bargaining in this case

- 362.** The complaint is contained in a communication dated 2 March 2021, submitted by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations (IUF). The complainant provided additional information in communications dated 9 November 2021, 18 February 2022, 3 February and 18 August 2023.
- 363.** The Government sent partial observations in a communication dated 20 August 2021.
- 364.** Guinea has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

- 365.** In its communication dated 2 March 2021, the complainant alleges that, since at least March 2019, the employees of the Marriott Sheraton Grand Conakry Hotel (hereinafter "the hotel") have faced numerous obstacles to the exercise of the right to freedom of association and collective bargaining and denounces the Government's inability to remedy the situation.
- 366.** The complainant alleges that, on 15 March 2019, the IUF-affiliated Federation of Hotel, Tourism, Restaurant and Catering and Allied Workers Associations of the National Organization of Free Trade Unions of Guinea (FHTRC-ONSLG) formally requested the hotel's management to begin the trade union electoral process pursuant to national legislation. The trade union organization indicates that, for the next eight months, although the FHTRC-ONSLG made every effort to move the electoral process forward, supported by a petition with more than 150 signatures out of 400 employees calling for elections to be held, it was not until 11 February 2020 that management finally organized the elections. According to the complainant, the trade union won the elections by a large margin, with 72 per cent of the votes cast for the list of trade union officials.

- 367.** The organization alleges that, in the period leading up to the elections, the workers faced increasing anti-union hostility from management and that two employees, Mr Alhassane Sylla and Mr Mory Soumaoro, were dismissed in November 2019 on minor disciplinary grounds shortly after they had expressed support for the trade union, such dismissals in fact being meant to intimidate other employees who might follow suit. Mr Sylla was also reportedly imprisoned by the local police for three days, on the pretext that he had left the hotel with prepared food, when it was in fact his own meal that he had been unable to eat during his break.
- 368.** The complainant alleges that, in March 2020, the newly established trade union wished to enter into negotiations with management on staff health and safety conditions, access to medical care and unpaid overtime, but that management refused, despite the urgency in the context of the COVID-19 pandemic.
- 369.** The complainant alleges that another trade union member, Mr Mohammed Sampil, was disciplined and then dismissed in September 2020 for accidentally breaking a flowerpot and that management refused to allow him to be represented by the union in the disciplinary proceedings against him.
- 370.** The complainant alleges that, in the same period, management convened an initial meeting with Mr Amadou Diallo, secretary-general of the trade union, Mr Alhassane Diallo, deputy secretary-general, and Ms Maminata Camara, a member of the trade union committee, to discuss issues of common concern and that, following the meeting, management suspended Mr Amadou Diallo and Mr Alhassane Diallo without pay and subsequently dismissed them. The complainant indicates that, in response, the trade union presented a petition to management, signed by more than 100 workers, seeking their reinstatement. According to the complainant, the Ministry of Labour held a meeting with management and employees to discuss the dismissals and the allegation of discrimination against union officials, but took no further action on the dismissals. Ms Maminata Camara was reportedly prevented from testifying before the labour inspector by order of the hotel's deputy general manager. The complainant states that it alerted the International Finance Corporation (IFC), in its capacity as the main investor in the hotel development project, about the discriminatory dismissals of union officials, but that the IFC replied that it could not take any action because "the disciplinary measures applied in this case are provided for in the hotel's internal regulations for this type of conduct and the hotel's internal regulations have been officially approved by the labour inspectorate and the Guinean Ministry of Labour".
- 371.** The complainant alleges that the trade union presented a further petition to management, containing more than 100 photos of unionized employees, to demand the reinstatement of their union leaders, but that management subsequently used this petition to threaten workers during individual interviews or in front of a "captive audience" in February 2021. The complainant denounces an "escalation of anti-union animosity and hostility in the workplace", with an increase in the number of surveillance cameras and the monitoring of employees throughout the hotel, and regular visits by plain-clothed police officers and the Federal Minister for Security.
- 372.** The complainant alleges that, on 10 December 2020, the trade union's noticeboard and office within the hotel was vandalized. It claims that management had not informed the trade union of its intention to enter the trade union's premises, the latter not having the keys to the office, which are kept in security's premises by order of the hotel management.

- 373.** In its communication dated 9 November 2021, the organization reiterates the lack of reaction from the public authorities to the worsening situation following the dismissal of the two union officials.
- 374.** In its communication dated 18 February 2022, the complainant alleges that the hotel's employees had set 22 October 2021 as the deadline for reaching an agreement with management on the reinstatement of their elected representatives, general secretary Amadou Diallo and deputy general secretary Alhassane Diallo. As their petition, signed by almost all of the 210 or so employees under contract, went unanswered, the union issued a call for strike action for 26 October 2021.
- 375.** The organization alleges that the call for strike action led to intimidation and threats of retaliation by management. According to the organization, the director of human resources took employees on fixed-term contracts aside individually, telling them that their contracts would not be renewed if they went on strike. A representative of the owner reportedly questioned the union representatives about the call for strike action and when one of the representatives asked, "are you trying to intimidate us?" the representative confirmed this, saying, "the authorities are on our side".
- 376.** According to the complainant, management unlawfully abused its disciplinary power over employees in order to increase pressure on the strikers and to take retaliatory action against them; thus, shortly after the call for strike action, management hired trainees and temporary maintenance workers to work at the hotel, so as to have a pool of potential replacement employees; and, in order to intimidate workers who were considering going on strike, management hired 30 additional security guards at the hotel. The complainant alleges that management also announced a general wage increase of approximately US\$50 per month, an increase of 25 per cent, reserved for non-strikers. In addition, the hotel director allegedly threatened to prevent striking employees from benefiting from a low-interest loan programme.
- 377.** In its communication dated 3 February 2023, the complainant reports that the hotel management has continued to breach its domestic and international legal obligations towards its employees, including by dismissing four of the six trade union representatives remaining in the hotel, without prior authorization from the labour inspectorate, in violation of the provisions of the Labour Code. According to the organization, despite its efforts, the Government has failed to ensure that the hotel management fulfils its obligations towards its employees. The IFC, which financed the construction and operation of the hotel, also failed to impose specific penalties on its client, despite the requirements of the applicable social performance standards. Noting the lack of consequences incurred by the hotel management for its rights' violations, other employers in the Guinean hotel sector reportedly even began to use the same illegal tactics.
- 378.** In its communication dated 18 August 2023, the complainant reports that, on 31 March 2023, the labour court of Guinea ruled in favour of the hotel's two union officials, Mr Amadou Diallo and Mr Alhassane Diallo, on the grounds that their dismissal was unlawful and unfair and that it formed part of an anti-union campaign conducted by the hotel's management. The organization states that the court ordered the employer to pay damages of 78,083,190 Guinean francs (US\$9,081) to Mr Alhassane Diallo and 55,510,000 Guinean francs (US\$6,414) to Mr Amadou Diallo, without ordering their reinstatement, and that the employer has appealed the ruling. A copy of the ruling is attached to the communication.

379. Lastly, the complainant provides further examples to support its earlier allegations that infringements of trade union freedom, particularly with regard to the holding of trade union elections, were widespread in the Guinean hotel industry.

B. The Government's reply

380. In its communication of 20 August 2021, the Government indicates that, despite the delay in holding the elections planned for establishing a trade union within the hotel, the elections in question were held on 11 February 2020, thanks to the active involvement of the IFC and the general labour inspectorate.
381. With regard to the issue of the dismissal of Mr Alhassane Sylla and Mr Mory Soumaoro, the Government states that there is no plausible evidence in the file to establish a causal link between their dismissal and their trade union activities. The Government indicates that, after verification, the persons concerned were dismissed for disciplinary misconduct, which they themselves acknowledged, and that they also did not have the status of trade union members, as at the time of the events in November 2019 the hotel's trade union had not yet been formed.
382. The Government states that the general labour inspectorate has not been informed of any acts of discrimination by the hotel against trade union officials on the grounds that they had submitted trade union demands to their general management.
383. As for Mr Sampil's dismissal, the Government denies the allegations, namely that the person concerned was not a member of the trade union, that his dismissal was for personal misconduct and that he was entitled to assistance, as stated in the letter summoning him to the initial interview dated 28 August 2020.
384. Concerning the dismissal of Mr Amadou Diallo and Mr Alhassane Diallo, who were official representatives, the Government indicates that, in view of the trade union protection enjoyed by the two representatives, the hotel management was obliged, in accordance with the provisions of sections 332.2 *et seq.* of the Labour Code, to request the authorization of the local labour inspector, which it did. The Conakry local labour inspectorate found independently that these employees were guilty of serious misconduct. The Conakry regional labour inspector responded favourably to the hotel's request, while opening up the possibility of an amicable settlement in order to safeguard the interests of these two employees. The Government points out that the available administrative and judicial remedies were not used (sections 523.1 *et seq.* of the Labour Code).

C. The Committee's conclusions

385. *The Committee notes that this case mainly concerns anti-union discriminatory acts and harassment by the management of a hotel, targeting both the officials of the newly established union and the workers who had expressed their support for the union. The complainant also denounces the Government's failure to ensure respect for the right to freedom of association and collective bargaining in this case.*
386. *The Committee takes note of allegations that, including in the months leading up to the trade union elections in February 2020, workers faced increasing anti-union hostility by management. The Committee notes in particular that two employees, Mr Alhassane Sylla and Mr Mory Soumaoro, were dismissed in November 2019 shortly after expressing their support for the trade union and that, according to the complainant, such dismissals were in fact meant to intimidate other employees who might follow suit.*

387. *The Committee also takes note of the allegations of unfair dismissal, which this time took place after the February 2020 trade union elections, concerning Mr Amadou Diallo and Mr Alhassane Diallo, general secretary and deputy general secretary respectively. It is alleged that they were dismissed following a meeting with hotel management in which they were participating as part of their legitimate trade union activities. The Committee notes that, according to the complainant, management had taken retaliatory action against the workers who had expressed their support for the union officials, in particular through petitions and a call for strike action in October 2021 with a view to securing their reinstatement. This is said to have led to an "escalation of anti-union animosity and hostility in the workplace", with an increase in the number of surveillance cameras and the monitoring of employees throughout the hotel, and regular visits by plain-clothed police officers and the Federal Minister for Security.*
388. *The Committee notes that the Government, in its communication dated 20 August 2021, essentially denies the allegations. The Committee notes that the Government merely states that: (i) in the case of the dismissal of Mr Alhassane Sylla and Mr Mory Soumaoro, there is no plausible evidence in the file to establish a causal link between their dismissal and their trade union activities, especially as at the time of the events, in November 2019, the hotel's trade union had not yet been formed; and (ii) in the case of the dismissal of Mr Amadou Diallo and Mr Alhassane Diallo, official representatives of the hotel's trade union, the Conakry regional labour inspectorate found independently that these employees were guilty of serious misconduct and that the employees concerned did not appeal against the decision.*
389. *However, on the basis of additional information provided by the complainant on 18 August 2023, the Committee notes that on 31 March 2023 the labour court of Guinea ruled in favour of the hotel's two union officials, Mr Amadou Diallo and Mr Alhassane Diallo – a copy of which has been provided – to the effect that the dismissal ordered against them was "regular in form, but unfair and lacking in any real and serious grounds". The Committee notes that the court found "simple or minor misconduct, characterized by the fact that they had engaged in a reciprocal shouting match with their hierarchical superior", and ordered the employer to pay damages to the parties concerned, while noting that "this simple or minor misconduct is not so serious as to make it impossible for them to remain with the enterprise".*
390. *Noting the allegations that workers were repressed for supporting the establishment of a trade union and for seeking to organize elections, in order to dissuade other workers from doing the same, the Committee wishes first of all to recall that acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities, while not necessarily prejudicing workers in their employment, may discourage them from joining organizations of their own choosing, thereby violating their right to organize [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1098].*
391. *With particular reference to the allegations of unfair dismissal brought before it, the Committee recalls that anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions. No person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment. The Committee recalls, further, that no one should be penalized for carrying out or attempting to carry out a legitimate strike [see **Compilation**, paras 1072, 1075 and 953].*
392. *Noting that the employer has appealed against the labour court of Guinea's ruling of 31 March 2023 in favour of the hotel's trade union officials, Mr Amadou Diallo and Mr Alhassane Diallo, the Committee requests the Government to provide information on the outcome of the proceedings and to inform it of the court of appeal's ruling once it has been handed down. The Committee recalls in*

this regard that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organizations shall have the right to elect their representatives in full freedom [see **Compilation**, para. 1117]. The Committee recalls, further, in reference to the above-mentioned labour court's ruling, that, in certain cases of dismissals in which judicial proceedings were ongoing, if the decision concludes that there have been acts of anti-union discrimination, the Committee has requested the reinstatement of the workers concerned as a priority solution [see **Compilation**, para. 1171].

393. With regard to the allegations concerning the dismissal of Mr Alhassane Sylla and Mr Mory Soumaoro, in November 2019, on minor disciplinary grounds shortly after they had expressed support for the trade union, the Committee notes that, according to the complainant, such dismissals were meant to intimidate other employees who might follow suit and that these dismissals took place in the run-up to the elections. The Committee wishes to emphasize that the fact that the persons concerned did not at the time enjoy formal trade union status does not preclude ruling out any act of harassment against them, contrary to what the Government seems to suggest. The Committee requests the Government to conduct an independent investigation into the conditions of their dismissal. The Committee also requests the Government, as well as the complainant, to provide information on any legal proceedings initiated in this regard.
394. With regard to the allegations concerning Mr Sampil's dismissal in September 2020, on minor grounds (broken flowerpot), the Committee, while noting the contradictory information brought to its attention by the parties as to whether or not he was a member of the trade union and as to the applicable procedure, observes that it appears from a reading of the above-mentioned labour court ruling of 31 March 2023 that the labour court, in a ruling dated 19 July 2021, ordered the employer to pay compensation for unfair dismissal. The Committee requests the Government and the complainant to provide information on Mr Sampil's situation and to indicate whether an appeal has been lodged against the labour court's ruling of 19 July 2021 concerning him.
395. With regard to the allegations that the hotel management dismissed four of the six trade union representatives remaining in the hotel, without prior authorization from the labour inspectorate, the Committee, while recalling that, in cases of anti-union dismissals, newly established enterprise level unions are likely to suffer adverse consequences threatening their very existence, if their entire leadership and a large part of their membership is dismissed [see **Compilation**, para. 1107], requests the complainant to provide detailed information on the situation of four of the trade union representatives in question and on any associated legal proceedings.
396. Noting the allegations that Mr Alhassane Sylla was imprisoned by the local police for three days, on the pretext that he had left the hotel with prepared food, when it was in fact his own meal, the Committee recalls that the detention of trade union leaders or members for trade union activities or membership is contrary to the principles of freedom of association [see **Compilation**, para. 120]. The Committee requests the Government to give all appropriate instructions to ensure that the police are not used as an instrument of intimidation or surveillance of trade union members and to keep it informed of the action taken or envisaged in this regard.
397. The Committee also notes the complainant's allegations that the hotel's management unlawfully abused its disciplinary power over employees in order to increase pressure on the strikers. The

Committee noted that: (i) management allegedly clearly threatened employees on fixed-term contracts that they would not renew their contracts if they went on strike; (ii) shortly after the call for strike action was issued in October 2021, management allegedly hired trainees and temporary maintenance workers to work at the hotel, so as to have a pool of potential replacement employees, and, in order to intimidate workers who were considering going on strike, it allegedly hired 30 additional security guards at the hotel; and (iii) management also allegedly announced a general wage increase of approximately US\$50 per month, an increase of 25 per cent, reserved for non-strikers, and threatened to prevent striking employees from benefiting from a low-interest loan programme. While expressing regret that the Government fails to provide any replies on these points, the Committee recalls, on the one hand, that fixed-term contracts should not be used deliberately for anti-union purposes and, on the other, that, concerning measures applied to compensate workers who do not participate in a strike by bonuses, the Committee considers that such discriminatory practices constitute a major obstacle to the right of trade unionists to organize their activities [see **Compilation**, paras 1096 and 976].

- 398.** Lastly, noting the allegations that on 10 December 2020 the trade union's noticeboard and office within the hotel had been vandalized and that management had not informed the trade union of its intention to enter the trade union's premises, the latter not having the keys to the office, which are kept in security's premises by order of the hotel management, the Committee, noting once again the Government's failure to reply on this issue, recalls that the inviolability of trade union premises and property is a civil liberty which is essential to the exercise of trade union rights [see **Compilation**, para. 276].
- 399.** Noting with concern the complainant's overarching allegations that the Government's failure to ensure effective protection of trade union rights, not only in the hotel in question, but also in numerous establishments in the hotel sector, the Committee recalls that the ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government [see **Compilation**, para. 46] and that the basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed [see **Compilation**, para. 1140]. In view of the above, the Committee requests the Government to take all necessary steps, in consultation with the social partners concerned, to ensure that protection of trade union rights and protection against anti-union discrimination, in particular in the hotel sector, are fully guaranteed both in law and in practice.

The Committee's recommendations

- 400.** In light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) Noting that the employer has appealed against the labour court of Guinea's ruling of 31 March 2023 in favour of the hotel's trade union officials, Mr Amadou Diallo and Mr Alhassane Diallo, the Committee requests the Government to provide information on the outcome of the proceedings and to inform it of the court of appeal's ruling once it has been handed down.
 - (b) The Committee requests the Government to conduct an independent investigation into the conditions of the dismissal of Mr Alhassane Sylla and Mr Mory Soumaoro in November 2019. The Committee also requests the Government, as well as the complainant, to provide information on any legal proceedings initiated in this regard.

- (c) The Committee requests the Government and the complainant to provide information on Mr Sampil's situation and to indicate whether an appeal has been lodged against the labour court's ruling of 19 July 2021 concerning him.
- (d) The Committee requests the complainant to provide detailed information on the situation of four of the six trade union representatives remaining who were allegedly unfairly dismissed, as well as on any associated legal proceedings.
- (e) The Committee requests the Government to give all appropriate instructions to ensure that the police are not used as an instrument of intimidation or surveillance of trade union members and to keep it informed of the action taken or envisaged in this regard.
- (f) The Committee requests the Government to take all necessary steps, in consultation with the social partners concerned, to ensure that the protection of trade union rights and protection against anti-union discrimination, in particular in the hotel sector, are fully guaranteed both in law and in practice.

Case No. 3368

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

Complaint against the Government of Honduras presented by the Authentic Trade Union Federation of Honduras (FASH)

Allegations: The complainant alleges non-compliance with a collective agreement in an enterprise in the health sector, anti-union dismissals in two municipalities in the country, as well as the non-remittance of union dues and a lack of willingness to negotiate a collective agreement in one of them. It also alleges that the Labour Inspectorate is slow and ineffective in putting an end to these violations of freedom of association

- 401.** The complaint is contained in communications dated 20 May 2019 submitted by the Authentic Trade Union Federation of Honduras (FASH).
- 402.** The Government sent its observations in communications dated 21 October 2019 and 13 September 2023.
- 403.** Honduras has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

- 404.** In its communications dated 20 May 2019, FASH questions the slowness and ineffectiveness of the Labour Inspectorate in putting an end to the violations of freedom of association, alleging the following:

Polyclinic Hospital SA

- 405.** The complainant alleges that, in August 2013, its affiliate, the Union of Hospital, Clinic and Health Centre Workers (SITRAHCYCS), contacted the Labour Inspectorate about violation of the rights of an employee of the enterprise Polyclinic Hospital SA (hereinafter "the enterprise") who had been suspended without pay for five days. In February 2016, the SITRAHCYCS also requested that the Inspectorate sanction the violation of the enterprise's unionized workers' rights concerning the applicable collective agreement on working conditions. On 9 October 2013, the Inspectorate ruled in favour of the worker and on 23 January 2017, the enterprise was notified that the Labour Inspectorate had found violations (in relation to wage increase) by the enterprise of the application of the collective agreement in question. The complainant indicates that the enterprise appealed the decision before the Ministry of Labour, but that the latter had yet to take any action as of the filing of the complaint. After being sought on various occasions in 2017 regarding individual situations relating to the violation of the applicable legislation on rest in the radiology department, the Labour Inspectorate finally issued a decision in 2018 that was appealed without further outcome. The complainant condemns this delay, which makes it impossible for the enterprise to correct the violations in question.

Municipality of Choluteca

- 406.** The complainant alleges that on 28 February 2018, Mr Presentación Vásquez and Mr Carlos Mondragón, respectively the President and General Secretary of the Union of Workers and Employees of the municipality of Choluteca, were unfairly dismissed by the mayor of the municipality because of their union responsibilities (having submitted a list of demands). As the head of the human resources of the mayor's office did not appear, the complainant alleges that on 22 March 2018, the labour inspector verified the reported violations, but that the municipality refused to correct them. It indicates that on 19 April 2018, the regional headquarters of the Labour Inspectorate of Choluteca maintained that workers who are members of the executive committee of a trade union organization, from the time they are elected until six months after the termination of their duties, cannot be dismissed from their jobs without first proving before the labour court judge that there is just cause to terminate the contract. However, according to the complainant, the union leaders were not reinstated in their posts. On the contrary, they were threatened by the mayor, who declared that he did not want any union members on his council and that he wanted to dismiss the other union members.

Municipality of Tela Atlántida

- 407.** The complainant alleges the unfair dismissal of some 50 unionized municipal employees by the mayor of the municipality of Tela Atlántida since 2015, which was verified by the Labour Inspectorate in May 2017. The complainant alleges that although the Labour Inspectorate ordered the reinstatement of the unionized municipal employees who had been dismissed, that decision was not respected.
- 408.** It also alleges that the municipality has not complied with the collective agreement concluded between the Union of Public Employees of the Municipality of Tela (SIDEPMUT), notably by

failing to remit union dues to the union. The municipality was also fined for this infraction by the administrative secretariat of the General Directorate of the Labour Inspectorate.

- 409.** Lastly, the complainant alleges that the municipality was unwilling to negotiate a collective agreement for 2018 and 2019, for which the services of a labour inspector were also requested. The complainant condemns the lack of progress in these matters.

B. The Government's reply

- 410.** In its communication dated 21 October 2019, the Government indicates that: (i) in all the cases presented in the complaint, the General Directorate of the Labour Inspectorate has issued a ruling and always complied with the corresponding administrative procedures and guaranteed the parties' right to defence and due process; (ii) the Ministry of Labour, through the General Directorate of the Labour Inspectorate, has guaranteed the exercise of freedom of association by imposing the relevant sanctions in each specific case and in accordance with the labour legislation in force, specifically the Labour Inspection Act; (iii) the General Directorate of the Labour Inspectorate, in exercising its powers and without prejudice to the sanctions imposed for violations of freedom of association, has formally required the immediate correction of the violations found, including the payment of dues to unions and the reinstatement of dismissed workers; (iv) the certifications of the decisions concluding administrative proceedings have been issued in a timely manner (for example, in the case of the mayor's office of Tela) so that the union can claim its legal rights through the courts; and (v) the Ministry of Labour and Social Security has ensured protection of the right to freedom of association for workers and employers, respect for the working conditions agreed collectively, and continuous monitoring to ensure appropriate relations between employers and unions, intervening when necessary and issuing appropriate decisions, always in compliance with the national and international labour legislation in force and tailored to each specific case.
- 411.** In its communication dated 13 September 2023, the Government declares that:
- (i) As to the enterprise, administrative file IL-130917-0801-145608, whose parties include Ms Katia Mirandes as complainant, is on file without further processing, in accordance with the relevant provisions of the Administrative Procedure Act; and that administrative file IL-160726-0801-97771 concerning the violation of the applicable legislation on rest in the radiology department is with the Office of the Attorney General of the Republic, in accordance with the relevant provisions of the Administrative Procedure Act and the Labour Inspection Act;
 - (ii) As to the municipality of Choluteca, administrative file ILN-180305-0601-18901, to which Mr Presentación Vásquez is a party, is with the Office of the Attorney General of the Republic, in accordance with the relevant provisions of the Administrative Procedure Act and the Labour Inspection Act; and
 - (iii) As to the municipality of Tela Atlántida, administrative file ILN-170613-0101-03919 is to be sent to the Office of the Attorney General of the Republic so that it may be duly processed under the relevant provisions of the Administrative Procedure Act and the Labour Inspection Act.
- 412.** The Government indicates that the information provided is the result of interinstitutional consultations held with the bodies tasked with hearing and following up on the allegations made by the parties. It states that information was also requested from the General Confederation of Workers (CGT) and FASH, but that no additional information or observations were received regarding the allegations.

C. The Committee's conclusions

413. *The Committee notes that the present case mainly concerns allegations of non-compliance with a collective agreement in an enterprise in the health sector, anti-union dismissals in two municipalities in the country, as well as the slowness and ineffectiveness of the Labour Inspectorate in putting an end to the reported violations of freedom of association.*

Polyclinic Hospital SA

414. *The Committee observes that the complainant, in the allegations on specific cases (relating to the suspension without pay of a worker of the enterprise or to failure to respect rest periods in the radiology service), has not established any link to a possible violation of union rights. The Committee wishes to recall in this regard that its mandate consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions [see **Compilation of Decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 9]. Recalling the importance of the complainants' communication of relevant information and specific facts in order to enable it to reach a determination in full knowledge of the facts, the Committee observes that the complainant has not indicated how the union rights of the workers concerned have been violated and will therefore not pursue its examination of these allegations.*
415. *Moreover, the Committee notes that the complainant alleges failure to comply with certain clauses of the applicable collective agreement on working conditions, which was confirmed by the Labour Inspectorate in a decision dated 23 January 2017 (in particular in relation to wage increase), but which has not yet been corrected in practice. The Committee notes that, according to the complainant, the enterprise appealed the decision before the Ministry of Labour, but that the latter had yet to take any action as of the filing of the complaint. The Committee also observes that, contrary to the other issues raised by the complainant concerning the enterprise, the Government has not provided any information on the processing of the file by the Office of the Attorney General of the Republic.*
416. *The Committee wishes to recall that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground, and that failure to implement a collective agreement, even on a temporary basis, violates the right to bargain collectively, as well as the principle of bargaining in good faith [see **Compilation**, paras 1336 and 1340]. In the light of the above, the Committee requests the Government to provide information on the measures taken to ensure that the members of the SITRAHCYCS are able to fully exercise their right to bargain collectively and that the collective bargaining agreement signed by the union and the enterprise is effectively applied, and to provide information on the action taken by the Office of the Attorney General of the Republic and the outcome of the applicable sanctions.*

Municipalities of Choluteca and Tela Atlántida

417. *The Committee observes that cases of anti-union dismissals have been brought to its attention in the case of the two above-mentioned municipalities and will therefore be examined together.*
418. *The Committee notes that the complainant alleges that: (i) on 28 February 2018, Mr Presentación Vásquez and Mr Carlos Mondragón, respectively the President and General Secretary of the Union of Workers and Employees of the municipality of Choluteca, were unfairly dismissed by the mayor because of their union responsibilities (having submitted a list of demands); (ii) the labour inspector verified the reported violations on 22 March 2018, but the municipality refused to correct them; and (iii) although the regional headquarters of the Labour Inspectorate of Choluteca maintained on 19*

April 2018 that workers who are members of the executive committee of a trade union organization, from the time they are elected until six months after the termination of their duties, cannot be dismissed from their jobs without first proving before the labour court judge that there is just cause to terminate the contract, the union leaders were not reinstated in their posts.

419. The Committee also notes that the complainant alleges that: (i) some 50 unionized municipal employees have been unfairly dismissed by the mayor of the municipality of Tela Atlántida since 2015 in an attempt to destabilize SIDEPMUT, which was verified by the Labour Inspectorate in May 2017; and (ii) the Labour Inspectorate's decision ordering the reinstatement of the dismissed unionized municipal employees was not respected.
420. The Committee notes that the Government indicates in both cases that the Labour Inspectorate did indeed find the violations reported, that the mayors refused to comply with the corresponding decisions and that the respective files are (as of September 2023) with the Office of the Attorney General of the Republic, in accordance with the relevant legal provisions. The Committee notes in this respect the Government's indication that the certifications of the decisions concluding administrative proceedings have been issued in a timely manner so that the union can take legal action.
421. The Committee notes, on the one hand, that the national legislation provides for measures to protect trade unionists and trade union leaders against discrimination and, on the other hand, that the competent authorities have carried out the appropriate investigations to remedy the consequences of the acts of anti-union discrimination, but that there are still significant difficulties surrounding implementation in practice, insofar as, according to the information available, the decisions of the Labour Inspectorate have allegedly not been enforced.
422. The Committee recalls in this respect that no one should be subjected to anti-union discrimination because of legitimate trade union activities and that the remedy of reinstatement should be available to those who are victims of anti-union discrimination [see **Compilation**, para. 1163]. In addition, observing that there are reportedly still no rulings in the enforcement actions initiated against the dismissals that took place in February 2018, the Committee recalls that cases concerning anti-union discrimination should be examined rapidly, so that the necessary remedies can be really effective; an excessive delay in processing such cases constitutes a serious attack on the trade union rights of those concerned [see **Compilation**, para. 1139]. In the light of the foregoing, the Committee requests the Government to provide information on the action taken by the Office of the Attorney General of the Republic in this respect. In addition, the Committee requests the Government, as well as the complainant, to provide information on any legal proceedings initiated in relation to the dismissals mentioned above and trusts that any such proceedings will be resolved without delay in accordance with freedom of association.
423. Regarding the alleged threats against union leaders Mr Presentación Vásquez and Mr Carlos Mondragón, the Committee notes that the complainant specifically alleges that, instead of being reinstated in their posts, they were threatened by the mayor, who stated that he did not want any union members on his council and that he wanted to dismiss the other union members. Recalling 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 without delay the necessary measures to investigate the complainant's allegations. The Committee requests the Government to keep it informed in this respect.
424. The Committee further notes that, in the case of the municipality of Tela Atlántida, according to the complainant, the municipality failed to give SIDEPMUT the union dues that had been deducted from

the salaries of the affiliated employees. The Committee notes that the complainant alleges that the municipality was fined for this infraction by the administrative secretariat of the General Directorate of the Labour Inspectorate, but that this sanction does not appear to have had any effect. Recalling that a considerable delay in the administration of justice with regard to the remittance of trade union dues withheld by an enterprise is tantamount in practice to a denial of justice [see **Compilation**, para. 702], the Committee requests the Government to provide information in this regard, so as to ensure that the amounts withheld have been paid to the union in question.

425. Moreover, the Committee notes that the complainant reports the unwillingness of the municipality of Tela Atlántida to negotiate a collective bargaining agreement for 2018 and 2019 with SIDEPMUT, indicating that it requested the services of a labour inspector in this regard and regretting the lack of progress on these issues, without providing further details. Recalling that both employers and trade unions should bargain in good faith and make every effort to come to an agreement, and that satisfactory labour relations depend primarily on the attitudes of the parties towards each other and on their mutual confidence [see **Compilation**, para. 1329], the Committee requests the Government to take the necessary measures to ensure that the members of SIDEPMUT are able to fully and effectively exercise their right to bargain collectively, and to keep it informed in this respect.
426. Finally, as to the allegations concerning the slowness and ineffectiveness of the Labour Inspectorate in putting an end to the violations of freedom of association in the situations mentioned above, the Committee notes that, according to the information available, the Labour Inspectorate has issued decisions requiring the correction of the violations found to remedy violations of freedom of association, as in the case of the unjustified dismissals.
427. While duly noting the progress made in the Labour Inspection Act of 2017, observed by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in supervising the application of Convention No. 98, the Committee observes the particularly lengthy nature of the administrative procedures described in the present case, which would deprive those concerned of effective protection, taking into account that the unjustified dismissals date back to 2018 in the case of the municipality of Choluteca, and even to 2015 in the case of the municipality of Tela Atlántida. The Committee trusts that the competent authorities will take the necessary measures to ensure the prompt application of sanctions and remedial measures, applicable to the situations presented in this case. The Committee draws the attention of the CEACR to the aspects of this case concerning the application in practice of the Labour Inspection Act, so that it can take them into consideration in supervising the application of Convention No. 98.

The Committee's recommendations

428. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee requests the Government to provide information on the measures taken to ensure that the members of the Union of Hospital, Clinic and Health Centre Workers (SITRAHCYCS) are able to fully exercise their right to bargain collectively and that the collective agreement signed by the union and the enterprise is effectively applied, and to provide information on the action taken by the Office of the Attorney General of the Republic and the outcome of any applicable sanctions.
 - (b) The Committee requests the Government to provide information on the action taken by the Office of the Attorney General of the Republic and the applicable sanctions concerning the dismissals of the leaders Mr Presentación Vásquez and Mr Carlos Mondragón. The Committee also requests the Government, as well as the complainant, to provide information on any legal proceedings initiated in relation

to the dismissals reported in the two municipalities and trusts that any such proceedings will be resolved without delay in accordance with freedom of association.

- (c) The Committee urges the Government to take without delay the necessary steps to investigate the complainant's allegations regarding the threats against the unionized employees of the municipality of Choluteca. The Committee requests the Government to keep it informed in this respect.
- (d) The Committee requests the Government to provide information on the issue of union dues, so as to ensure that the amounts withheld have been paid to the union in question.
- (e) The Committee requests the Government to take measures to ensure that the members of the Union of Public Employees of the Municipality of Tela (SIDEPMUT) are able to fully and effectively exercise their right to bargain collectively, and to keep it informed in this respect.
- (f) The Committee trusts that the competent authorities will take the necessary measures to ensure the prompt application of the sanctions and remedial measures applicable to the situations presented in this case.
- (g) The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) to the aspects of this case concerning the application in practice of the Labour Inspection Act, so that it can take them into consideration in supervising the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Case No. 3370

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

**Complaint against the Government of Pakistan
presented by
the Pakistan Workers Federation**

Allegations: The complainant denounces the cancellation of 62 trade unions in civil service, semi-government and non-governmental institutions, in the Province of Balochistan in pursuance of a decision of the provincial High Court

- 429.** The complaint is contained in communications from the Pakistan Workers Federation (PWF) dated 1 October 2019 and 2 September 2021.
- 430.** The Government forwarded its observations in communications dated 11 and 18 October 2021, 17 May 2022 and 12 September 2023.

431. 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 complainant's allegations

432. In its communication dated 1 October 2019, the PWF expressed its deep concern about the cancellation of 62 trade unions in the Province of Balochistan of Pakistan in pursuance of a decision dated 24 June 2019 of the Provincial High Court whereby direction has been issued to the Chief Secretary as well as secretaries of all government departments to move towards the cancellation of trade unions and their registration in all public departments. In the complainant's view, this move is highly disturbing for the trade union movement in Pakistan and elsewhere, since such decision is contrary to the provisions of Conventions Nos 87 and 98 ratified by Pakistan, and inconsistent with the provisions of the Provincial Industrial Relations Act and the Federal (trans-provincial) Industrial Relations Act, 2012. The decision also contravenes the law interpreted and laid down by the apex Supreme Court, according to which public sector organizations do not fall in the ambit of administration of the State and are performing non-regal function.
433. By holding that the employees of public sector organizations can form associations under the Societies Act, 1860, the Balochistan High Court took away their genuine freedom of association and collective bargaining right and pushed them to work as non-governmental organizations. The ruling has met with strong resistance from the labour force and disrupted social peace in the country. The complainant urges the Committee to intervene and request the Federal Government and the Government of Balochistan to withdraw Order No. 45/R&R/DGL W/QTA/1385-1433 dated 12 July 2019 from the Directorate-General of Workers' Welfare of Balochistan whereby registration of "all the trade unions formed by the employees of Government Departments, Semi Government Departments and Autonomous Bodies." has been cancelled.
434. The complainant asserts that the cancellation of 62 trade unions in Balochistan has been greatly felt by the global labour movement. It refers particularly to a resolution passed by the International Trade Union Confederation – Asia Pacific (ITUC-Asia Pacific) (representing 60 million effective memberships in the Asia and the Pacific region) which deplored that the Labour Department of Balochistan had cancelled unions not only in the civil service as determined by the High Court but it had crossed the limitation and jurisdiction given by the High Court ruling by cancelling unions of semi-government and non-governmental institutions. The ITUC-Asia Pacific decided to: (i) request all affiliates to send protest letters to the Government of Balochistan in Pakistan; (ii) invoke further the ILO supervisory mechanism against the Government of Pakistan demanding the ban of ILO technical assistance in the province of Balochistan; and (iii) lodge a complaint against the Government of Pakistan before the International Monetary Fund, the World Bank, the Asian Development Bank and the European Union, in relation to the Generalised Scheme of Preferences+ (GSP+) status of Pakistan.
435. The complainant recalls that the Constitution of the Islamic Republic of Pakistan has given the right of freedom of association to its citizens by providing that "every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality" (Article 17) and by prescribing that "for the determination of his civil rights and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process" (Article 10-A). The complainant also recalls that the Government has ratified ILO Conventions Nos 87 and 98 on

freedom of association and the right to collective bargaining which clearly stipulate that “workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization” and “the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof”. Further, “workers’ and employers’ organizations shall not be liable to be dissolved or suspended by administrative authority.”

436. The complainant further recalls that following the 18th Constitutional Amendment, the four Provinces of Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan have enacted their own Industrial Relations Laws in relation to the formation of unions. The Balochistan Industrial Relations Act (BIRA) determined its application and limitations by providing that it shall apply to all persons employed in any establishment or industry to the extent of Balochistan, but shall not apply to any person employed: (i) in the police or any of the Defense Services of Pakistan or any services or installations exclusively connected with or incidental to the armed forces of Pakistan including an Ordinance Factory maintained by the Federal Government except those run on commercial basis; (ii) in the administration of the State other than those employed as workmen by the railway and Pakistan post; (iii) as a member of the security staff of the Pakistan International Airlines Corporation, or drawing wages in pay group, not lower than group V, in the establishment of that Corporation as the Federal Government may, in the public interest or in the interest of security of the airlines, by notification in the *Official Gazette*, specify in this behalf; (iv) by the Pakistan Security Printing Corporation or the Security Papers Limited; (v) by an establishment or institution for the treatment or care of sick, infirm, destitute or mentally unfit persons excluding those run on commercial basis; (vi) as a member of the Watch and Ward, Security or Fire Service Staff of an oil refinery, an airport or seaport; and (vii) as a member of the security or fire service staff of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas (section 1).
437. In spite of the above clear national and international obligations, the High Court of Balochistan has banned union existence in the civil service of Balochistan (in cases CP No. 669 of 2013 and CP No. 400 of 2015). The Court ruling is based on certain anomalies of the labour laws where civil service and its connected departments have been excluded from the right of unionism and collective bargaining. The complainant deplores that the Labour Department of Balochistan crossed the limitation and jurisdiction given by the High Court decision by cancelling unions (some of them in existence for two to three decades) not only of civil service but also of semi-Government and non-governmental institutions, leaving the trade union movement in Balochistan with organized workers only in mines and in the private industrial sector.
438. The complainant indicates that the trade unions have challenged the decision before the Supreme Court of Pakistan on the grounds that the High Court of Balochistan ignored the legal proposition involved in the case and proceeded to decide the matter without taking cognizance of the law and facts involved. The High Court travelled beyond the scope of pleadings submitted by the parties in dispute which had not taken up the matter of registration of trade unions for an establishment of a public sector department for the determination of its legal permissibility. Furthermore, in the complainant’s view, the employees serving in the public sector organizations are not performing any sovereign functions of the State. They cannot be said to have been employed for the purpose of the administration of the State. The expression “administration of the State” has been defined by the Courts in several pronouncements and should be interpreted in a limited and narrow sense. A quick glance over the list of functions being performed by the public sector organizations would show that none of those functions are carried out by the petitioning unions under the industrial relations law.

439. The complainant maintains that the Supreme Court has held in a ruling (SCMR No. 666 of 1997) that the registration of a trade union cannot be cancelled by the High Court in exercise of its constitutional jurisdiction. This can only be adjudicated upon by the relevant forum provided under the industrial relations law, that is, namely the BIRA, 2010. Section 12 of the BIRA provides a comprehensive procedure for cancellation of a registered trade union if the same is registered in contravention of law. The power to proceed in such case against a particular trade union lies with the Labour Court and the same can only be exercised upon a written complaint of the Registrar of Trade Unions. Consequently, the High Court, by rendering the impugned judgment, would have encroached upon the domain of a statutory forum which act of the High Court is not permissible in view of the law laid down by the Supreme Court.
440. The complainant maintains that the impugned judgment was circulated not only by the Registrar of the High Court but also the Provincial Government of Balochistan among all departments of the Government of Balochistan and immediately after receiving the same, the Directorate-General Labour Welfare Government of Balochistan cancelled the registration of the trade unions, even though not all of them were even party to the proceedings held before the High Court. The Directorate-General Labour Welfare, contravening the spirit of Article 17 of the Constitution of the Islamic Republic of Pakistan, cancelled the registration of trade unions in semi-government departments and autonomous bodies, although there is absolutely no doubt that employees of these semi-government and autonomous bodies have nothing to do with the affairs of administration of the State/Province. It is a matter of record that in all other federating units, the trade unions are functioning in government organizations which are not performing any acts related to the sovereign functions of the State.
441. Furthermore, the complainant maintains that the High Court, not only overlooked the proposition involved in the case but also issued direction to the Government of Balochistan and to all the government departments to cancel the registration of all trade unions working in their respective institutions. The High Court, instead of confining itself to the controversy involved, passed certain *suo moto* directions (taken without formal prompting from the parties) for which, as per the law settled by the Supreme Court, the High Court had no power at all. The directions were issued against those who were not even party to the proceedings in the instant case. By doing so, the High Court acted in violation of Article 10-A of the Constitution of the Islamic Republic of Pakistan and the principle of *audi alteram partem* (listening to the other side), making its judgment unsustainable in the eye of the law.
442. The complainant observes that the High Court, while rendering the judgment, also overlooked ILO Conventions ratified by Pakistan. These Conventions impose obligations on the State of Pakistan that it shall endeavour to implement them in letter and spirit in the country. No legislation contrary to those Conventions can be made in the country. Even though the subject of labour has been devolved upon the provinces after the insertion of the 18th constitutional amendment, the fulfilment of obligations contained in international Conventions or treaties is the responsibility of the Federal Government. If there is any ambiguity in a provincial legislation, the responsibility lies on the Federation to intervene. Hence the Government of Balochistan needs to amend its labour laws to bring them in conformity with Conventions Nos 87 and 98. Additionally, the impugned judgment having literally imposed a complete ban on the union activities in the Province of Balochistan needs to be set aside as access to international financial institutions concessional aid is linked with respect to ILO fundamental Conventions.
443. With regard to the responsibilities of the Federal Government and of the Government of Balochistan in the aftermath of the High Court decision, the complainant acknowledges the technical assistance provided by the Office to the Federal Government to organize a tripartite

meeting in the capital with the participation of a representation of the Provincial Government, given the seriousness of the matter. The complainant regrets that, during the meeting, the Balochistan Government indicated that the High Court decision would not have any effect as the cancelled unions would be able to register as associations under the Societies Act, 1860.

- 444.** The complainant observes that the only law at the Federal and Provincial levels, since 1926 and after independence in 1947, were the industrial relations laws which governed the formation of unions and collective bargaining. The old Societies Act is a general Act for societies or non-governmental organizations such as employer or other associations such as association of doctors, traders, and so on. The Societies Act does not provide any remedy against dismissal of office bearers or members of associations. The associations so registered cannot undertake any collective bargaining on employment, non-employment, terms of employment and conditions of work. The legal redress of individual grievances and shop steward systems is completely absent from the Societies Act. The right of workers' participation in management and in joint Management Boards is not available. There is not any legal mechanism for raising industrial disputes, collective bargaining process and legal procedure for rights of strike. There is no mechanism for awards and settlement of disputes in the Societies Act. The redress of grievances is also absent as the labour courts do not have jurisdiction to entertain the complaints under the Societies Act. No Check-off facility for associations registered under the Societies Act has been provided. Therefore, the associations registered under the Societies Act have no ability to undertake collective bargaining and in no manner can be treated as a trade union under Conventions Nos 87 and 98. They could simply work as non-governmental organizations and act as pressure groups.
- 445.** In its latest communication of September 2021, the complainant regrets that, even though the trade unions have contested the decision of the High Court of Balochistan in the Supreme Court of Pakistan on the legal grounds, more than a year had passed without any date of hearing fixed. Therefore, the Federal Government and the Government of Balochistan should be urged to amend the following definitions in their respective labour laws so that the anomalies, defects, and deficiencies identified in the decision of the Balochistan High Court are removed and the 62 unions are accordingly restored: (i) at the Federal level, section 1(3) of the Federal Industrial Relations Act should be amended as such: "It applies to all persons who are employers of and all persons who are employed or engaged in rendering services of any nature for remuneration in any form and on any basis in all occupations, professions and industry, at all places of work established towards any private or public purpose with the sole exception of persons employed in the police and armed forces of Islamic Republic of Pakistan"; (ii) accordingly, section 1(4) of the Balochistan Industrial Relations Act should be amended as such: "It applies to all persons who are employers of and all persons who are employed or engaged in rendering services of any nature for remuneration in any form and on any basis in all occupations, professions and industry, at all places of work established towards any private or public purpose with the sole exception of persons employed in the police and armed forces of the Islamic Republic of Pakistan"; (iii) section 2(b)(iii) of the Balochistan Civil Servants Act should be amended as such: (*civil servant means [...]*) "a person who is worker or workmen as defined in the Baluchistan Industrial Relations Act (BIRA)"; (iv) section 2(i) of the Balochistan Factories Act should be amended as such: "Worker means a person who has been defined as worker in Baluchistan Industrial Relation Act"; and (v) section 30(b) of the Balochistan Government Servants (Conduct) Rules should be amended as such: (*No Government servant shall be a member, representative or officer of any association [...] unless such association satisfied the following conditions:*) "Provided the workers/workman defined in the BIRA shall be exempted from the above restriction".

B. The Government's reply

- 446.** The Government provided regular updates on the steps taken to address the matters raised in the complaint in its communications dated 11 and 18 October 2021, 17 May 2022 and 12 September 2023.
- 447.** The Government recalls that the High Court of Balochistan in various cases (CP No. 669/2013 and CP No. 400/2015) ruled that employees working in governments, semi-governments and autonomous bodies are governed by the Balochistan Civil Servant (Conduct) Rules, 1979, and are persons employed in the administration of the State. The BIRA, 2010, as provided in its section 1(4), is thus not applicable to any such person employed in the administration of the State. Foregoing in view, the High Court of Balochistan declared that such persons who are governed by Balochistan Civil Servant Conduct Rules cannot form trade unions. Accordingly, all trade unions formed by such persons in the administration of the State were declared as illegal and directed for cancellation of their registration except unions formed by the workmen who are governed under the BIRA.
- 448.** The Government asserts that the cancellation of the 62 unions was neither a targeted administrative action of the Government of Balochistan nor a *suo moto* action from the judiciary. It resulted from a dispute from within union leaders who themselves approached the High Court. During proceedings it occurred that the parties were government employers/employees in the administration of the State, whose appointment in the Government and terms and conditions of their service is governed purely by the Balochistan Civil Servants Act, 1974, and are excluded from the ambit of the BIRA vide its section 1(4). Therefore, the decision of the High Court was not meant to violate the right to freedom of association of these government employees/persons in administration of the State, but rather to point out that the unions were wrongfully registered with the Registrar of Trade Unions under the BIRA instead of their own respective Rules under the Balochistan Government Servants (Conduct) Rules, 1979. According to the Government, the civil servants whose unions were cancelled have all the rights intact to form their Service Associations under Rule 30 of the Balochistan Government Servants (Conduct) Rules, 1979, wherein certain conditionalities are attached for making associations by employees of the public sector.
- 449.** While informing that the aggrieved parties whose unions were cancelled, challenged the said judgment of the High Court of Balochistan at the next judicial forum, namely the Supreme Court of Pakistan, the Government also indicates that the Ministry of Overseas Pakistani and Human Resource Development (MOPHRD) attached high priority to the subject case and conducted thorough tripartite deliberations with all stakeholders, including the representatives of workers' organizations which were affected by the High Court decision and the employers' organizations. The Government informs that, subsequently, it was deduced that the resolution of the matter and future modus operandi would depend on the verdict of the Supreme Court of Pakistan.
- 450.** Accordingly, the MOPHRD, vide letter dated 29 September 2021, requested the Law and Justice Division that the Office of the Registrar Supreme Court may be requested for early hearing of the said civil petitions. Further, the Secretary of MOPHRD visited the Province of Balochistan in September 2021 and conducted important high-level meetings in Quetta with the Chief Secretary and the Secretary of the Labour and Manpower Department (LMD) Balochistan on the subject matter, along with all other stakeholders.
- 451.** The Government indicates that the right of association of persons employed in the administration of State, whose unions have been cancelled, is not infringed in any form, neither are they deprived of grievance redressal mechanism. A parallel rather stronger system is

already available to address the grievances of persons in the administration of State in the form of Balochistan Service Tribunal under the Balochistan Service Tribunals Act, 1974. Being aggrieved by the Service Tribunal, they can approach the High Court and further the Supreme Court of Pakistan. Moreover, there are variety of laws and rules like the Appeal Rules, Leave Rules, Appointment Rules and so on, which provide sufficient space to the government servants to protect their rights as per the following details.

452. The Government declares itself fully committed to abide by the principles and provisions of Conventions Nos 87 and 98 ratified by the country. Once the case is decided by the Supreme Court of Pakistan, the Federal Government, in collaboration with the Government of Balochistan, will take appropriate actions in consonance with ILO Conventions. In the meantime, the Government informs that the MOPHRD has become a party in the ongoing court cases between two unions at the Supreme Court of Pakistan to present the perspective in terms of international obligations.
453. In its latest communication dated 12 September 2023, the Government provides the following update in connection with the Supreme Court of Pakistan's potential ruling on the case against the High Court of Balochistan decision dated 24 June 2019, concerning civil servants' rights to form trade unions (CP No. 3230/2019): the case has been scheduled for hearings on three distinct dates (11 January 2023, 1 March 2023 and 7 April 2023). However, the Court adjourned the case on all three occasions. During the latest hearing held on 7 April 2023, the Supreme Court recognized the significance of the matter pertaining to the rights of civil servants to form trade unions. Consequently, the Court directed the Attorney-General for Pakistan, as well as the Advocate-Generals of Punjab, Sindh, Islamabad Capital Territory, and Khyber Pakhtunkhwa, to submit their respective concise statements within four weeks. As of now, the Supreme Court has not set a new date for the next hearing.
454. Regarding the Federal and Provincial Governments' efforts to align their laws with relevant ILO Conventions, the Government draws attention to the BIRA of 2022 which has been revised and put into effect as a significant step in this direction. The amendments removed exceptions for the categories covered under the Act, aligning it more closely with the relevant ILO Conventions. In particular, the Government highlights that section 4 of the BIRA now states that it applies to all workers and employers at all workplaces operating or conducting business within Balochistan. This action demonstrates an effort to bring the law in line with international labour standards, as recommended by the ILO.
455. As a future course of action, the Government is exploring the possibility of benefiting from the technical advice of an ILO legal specialist as *amicus curiae* (permitted to assist by offering expertise) to the Court in the current matter. This assistance aims to provide the Court with a clearer understanding of the international obligations stemming from Pakistan's ratifications of Conventions Nos 87 and 98.

C. The Committee's conclusions

456. *The Committee notes that in this case the complainant, the PWF, denounces the cancellation of trade unions in civil service, semi-government and non-governmental institutions, in the Province of Balochistan in pursuance of a decision of the Provincial High Court in 2019.*
457. *The Committee notes that PWF expresses its deep concern about the cancellation of 62 trade unions in the Province of Balochistan of Pakistan in pursuance of a decision dated 24 June 2019 of the Provincial High Court whereby direction has been issued to the Chief Secretary as well as secretaries of all government departments to move towards the cancellation of trade unions and their registration in all Public Departments. The Committee observes that, following the High Court ruling,*

the Directorate-General of Workers' Welfare of Balochistan issued Order No. 45/R&R/DGL W/QTA/1385-1433 dated 12 July 2019 whereby registration of "all the trade unions formed by the employees of government departments, semi-government departments and autonomous bodies" was cancelled. According to the PWF, by holding that the employees of public sector organizations can form associations under the Societies Act, 1860, the Balochistan High Court took away public sector unions' genuine freedom of association and collective bargaining rights and pushed them to work as non-governmental organizations.

- 458.** *The complainant asserts that the ruling from the High Court has met with strong resistance from the labour force and disrupted social peace in the country. Similarly, the cancellation had been greatly felt by the global labour movement. The complainant refers in particular to a resolution passed by the ITUC-Asia Pacific in August 2019 requesting all affiliates to protest to the Government of Balochistan, demanding the ban of ILO technical assistance in the Province of Balochistan, and calling for complaints against the Government of Pakistan before the International Monetary Fund, the World Bank, the Asian Development Bank and the European Union, in relation to the Generalised Scheme of Preferences+ (GSP+) status of Pakistan.*
- 459.** *The Committee notes the Government's assertion that the cancellation of the 62 unions was not targeted administrative action of the Government of Balochistan. It resulted from a dispute from within union leaders who brought their case to the High Court. During proceedings it occurred to the Court that the parties were government employers/employees in the administration of the State, whose appointment in the Government and terms and conditions of their service is governed purely by the Balochistan Civil Servants Act, 1974, and are excluded from the ambit of the BIRA vide its section 1(4). Therefore, the decision of the High Court was not meant to violate the right to freedom of association of these government employees/persons in administration of the State, but rather to point out that the unions were wrongfully registered with the Registrar of Trade Unions under the BIRA instead of their own respective Rules under the Balochistan Government Servants (Conduct) Rules, 1979.*

Rights of public servants to form and join organizations

- 460.** *The Committee notes the Government's indication that the High Court of Balochistan in various cases (CP No. 669/2013 and CP No. 400/2015) had ruled that employees working in governments, semi governments and autonomous bodies are governed by the Balochistan Civil Servant (Conduct) Rules, 1979, and are persons employed in the administration of the State. Therefore, the BIRA, 2010, as provided in its section 1(4), is not applicable to any such person employed in the administration of the State. Foregoing in view, the High Court of Balochistan declared that such persons who are governed by the Balochistan Government Servants (Conduct) Rules, 1979, cannot form trade unions. The Government adds that the civil servants whose unions were cancelled by order of the Directorate-General of Workers' Welfare of Balochistan have all the rights intact to form their Service Associations under Rule 30 of the Balochistan Government Servants (Conduct) Rules, 1979, wherein certain conditionalities are attached for making associations by employees of the public sector.*
- 461.** *According to the Government, the right of association of persons employed in the administration of the State, whose unions have been cancelled, is not infringed in any form, neither are they deprived of grievance redressal mechanism. A parallel rather stronger system is already available to address the grievances of persons in the administration of the State in the form of the Balochistan Service Tribunal under the Balochistan Service Tribunals Act, 1974. Being aggrieved by the Service Tribunal, they can approach the High Court and further the Supreme Court of Pakistan. Moreover, there are variety of laws and rules like the Appeal Rules, Leave Rules, Appointment Rules and so on, which provide sufficient space to the government servants to protect their rights.*

462. The Committee notes that PWF denounces the fact that the High Court of Balochistan has banned union existence in the civil service in the Province. The Court ruling is said to be based on certain anomalies of the labour laws where civil service and its connected departments have been excluded from the right of unionism and collective bargaining. The complainant deplores that the Labour Department of Balochistan crossed the limitation and jurisdiction given by the High Court decision by cancelling unions (some of them in existence for two to three decades) not only of civil service but also of semi-government and non-governmental institutions, leaving the trade union movement in Balochistan with organized workers only in mines and in the private industrial sector. The Committee further notes the complainant's referral to the Constitution of the Islamic Republic of Pakistan which has given the right of freedom of association to its citizens by providing that "every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality" (Article 17) and by prescribing that "for the determination of his civil rights and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process" (Article 10-A). The Committee also notes that, according to the complainant, the High Court, while rendering the judgment, overlooked Conventions Nos 87 and 98 on freedom of association and the right to collective bargaining which clearly stipulate that "workers and employers without distinction whatsoever shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization and the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. Further, workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority".
463. The Committee notes the complainant's view that the only law at Federal and Provincial levels governing the formation of unions and collective bargaining, since 1926 and after independence in 1947, were the industrial relations laws. In comparison, the old Societies Act is a general Act for societies or non-governmental organizations such as employer or other associations such as association of doctors, traders, and so on. The Societies Act does not provide any remedy against dismissal of office bearers or members of associations. The associations so registered cannot undertake any collective bargaining on employment, non-employment, terms of employment and conditions of work. The legal redress of individual grievances and shop steward system is completely absent from the Societies Act. The right of workers participation in management and in joint Management Boards is not available. There is not any legal mechanism for raising industrial disputes, collective bargaining process and legal procedure for rights of strike. There is no mechanism for awards and settlement of disputes in the Societies Act. The redress of grievances is also absent as the labour courts do not have jurisdiction to entertain the complaints under the Societies Act. No Check-off facility for associations registered under the Societies Act has been provided. Therefore, in the view of the PWF, the associations registered under the Societies Act have no ability to undertake collective bargaining and in no manner can be treated as a trade union under Conventions Nos 87 and 98. They could simply work as non-governmental organizations and act as pressure groups.
464. The Committee recalls that public servants, like all other workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 336]. The denial of the right of workers in the public sector to set up trade unions, where this right is enjoyed by workers in the private sector, with the result that their associations do not enjoy the same advantages and privileges as trade unions, involves discrimination as regards government-employed workers and their organizations as compared with private sector workers and their organizations. Such a situation gives rise to the question of compatibility of these distinctions with

Article 2 of Convention No. 87, according to which workers without distinction whatsoever shall have the right to establish and join organizations of their own choosing without previous authorization, as well as with Articles 3 and 8, paragraph 2, of the Convention [see **Compilation**, para. 339]. The existence of a dispute settlement mechanism cannot justify the denial to government employees of the right to organize [see **Compilation**, para. 341]. In view of the elements of the case acknowledged by both the complainant and the Government, the Committee observes that the impossibility under the applicable law for civil servants in the Province of Balochistan to form or join an organization within the meaning of Article 2 of Convention No. 87 is incompatible with the principle of freedom of association. In this regard, the Committee aligns itself to the comments made for many years by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) urging the Government to ensure that the federal and provincial governments take the necessary measures to revise their respective laws so that all categories of workers can enjoy their rights under the Convention, the only admissible exception – which must be construed in a restrictive manner – being the police and the armed forces. The Committee therefore urges the Government to ensure that the Government of Balochistan takes all the necessary measures to guarantee that civil servants are able to form and join organizations of their own choosing freely and to engage in activities for the defence of their members' interest. Additionally, the Committee urges the Government to ensure without delay that the associations of currently excluded civil servants can represent the interests of their members in relation to the employer and the authorities. The Committee requests the Government to keep it informed of the measures taken in this regard.

Legislative measures

465. The Committee notes that the complainant urges the Federal Government and the Government of Balochistan to amend a number of definitions in their respective labour laws so that the anomalies, defects, and deficiencies identified in the decision of the Balochistan High Court are removed and the 62 unions are accordingly restored. The Committee notes the information provided by the Government, in relation to the Federal and Provincial Governments' efforts to align their laws with relevant ILO Conventions, that the BIRA, revised in 2022, is a significant step in this direction by removing exceptions for the categories covered under the Act, aligning it more closely with the relevant ILO Conventions. The Government highlights that section 4 of the BIRA now states that it applies to all workers and employers at all workplaces operating or conducting business within Balochistan.
466. While acknowledging the efforts made to bring previously excluded categories of workers within the scope of the industrial relations legislation in Balochistan, the Committee draws the Government's attention to the observations of the CEACR in 2022 that the exceptions retained in the new law are still larger than the permissible exclusions set out in the Convention. The Committee recalls that the standards contained in Convention No. 87 apply to all workers without distinction whatsoever, and are therefore applicable to employees of the State. It was indeed considered inequitable to draw any distinction in trade union matters between workers in the private sector and public servants, since workers in both categories should have the right to organize for the defence of their interests [see **Compilation**, para. 334] and encourages the Government to take all necessary measures to bring the BIRA and relevant legislations in Balochistan in line with the principle of freedom of association in this regard. The Committee draws the attention of the CEACR to this legislative aspect of the case.

Appeals to the Supreme Court

467. The Committee notes the indication from the PWF that trade unions have challenged the decision before the Supreme Court of Pakistan (Civil Petitions Nos 3230/2019 and 3221/2019) on the grounds that: (i) the High Court of Balochistan ignored the legal proposition involved in the case and

proceeded to decide the matter without taking cognizance of the law and facts involved. The High Court travelled beyond the scope of pleadings submitted by the parties in dispute which had not taken up the matter of registration of trade unions for an establishment of a public sector department for the determination of its legal permissibility; (ii) the High Court, instead of confining itself to the controversy involved, passed certain suo moto directions (taken without formal prompting from the parties) to the Provincial Government for which, as per the case law settled by the Supreme Court, the High Court had no power at all; (iii) the directions were issued against those who were not even party to the proceedings in the instant case. By doing so, the High Court acted in violation of Article 10-A of the Constitution of the Islamic Republic of Pakistan and the principle of audi alteram partem (listening to the other side), making its judgement unsustainable in the eye of the law; (iv) the employees serving in the public sector organizations in semi-government departments and autonomous bodies that were cancelled are not performing any sovereign functions of the State. Therefore, they cannot be said to have been employed for the purpose of the administration of the State which expression has been defined by the Courts in several pronouncements and should be interpreted in a limited and narrow sense. In particular, according to the Supreme Court, public sector organizations do not fall in the ambit of administration of the State and are performing non-regal functions; and (v) the Supreme Court has held in a case (SCMR No. 666 of 1997) that the registration of a trade union cannot be cancelled by the High Court in exercise of its constitutional jurisdiction but only be adjudicated upon by the relevant forum provided under the Industrial Relations Law, that is, namely the BIRA, 2010. In the instant case before the High Court, section 12 of the BIRA provides a comprehensive procedure for cancellation of a registered trade union if the same is registered in contravention of law. The power to proceed in such case against a particular trade union lies with the Labour Court and the same can only be exercised upon a written complaint of the Registrar of Trade Unions.

468. The Committee observes that in its latest communication of September 2021, the complainant regretted that more than a year had passed without any date of hearing fixed.
469. The Committee notes the Government's statement that once the case is decided by the Supreme Court of Pakistan, the Federal Government, in collaboration with the Government of Balochistan, will take appropriate actions in consonance with ILO Conventions. The Committee however notes with concern that Case No. 3220/2019 has been scheduled for hearings on three distinct dates (11 January 2023, 1 March 2023 and 7 April 2023). However, the Court adjourned the case on all three occasions. It notes that during the latest hearing held on 7 April 2023, the Supreme Court, recognizing the significance of the matter pertaining to the rights of civil servants to form trade unions, directed the Attorney-General for Pakistan, as well as the Advocate-Generals of Punjab, Sindh, Islamabad Capital Territory, and Khyber Pakhtunkhwa, to submit their respective concise statements within four weeks. The Committee also notes with concern that it has not received any information as to a new date for the next hearing.
470. As concerns allegations that legal proceedings are overly lengthy, the Committee has recalled the importance it attaches to such proceedings being concluded expeditiously, as justice delayed is justice denied [see **Compilation**, para. 169]. The Committee wishes to express its deep concern about the length of time that has passed without the Supreme Court being able to examine the appeals against the High Court of Balochistan's decision. This delay has impeded the conduct of trade union activities in the public sector and hindered the free exercise of freedom of association in the Province. Therefore, the Committee expects that the Supreme Court will examine Cases Nos 3220/2019 and 3221/2019 brought before it without further delay and that the Government will keep it informed of the outcomes and of any follow-up measures taken both at Federal and Provincial levels.
471. The Committee acknowledges the efforts from the part of the Government, in the aftermath of the High Court decision, to seek the technical assistance of the Office given the seriousness of the matter.

The Committee also notes the indication that: (i) the MOPHRD conducted thorough tripartite deliberations with all stakeholders, including the representatives of workers' organizations which were affected by the High Court decision and the employers' organizations; (ii) the MOPHRD, vide letter dated 29 September 2021, requested the Law and Justice Division that the Office of the Registrar Supreme Court may be requested for early hearing of the said civil petitions; (iii) the Secretary of MOPHRD visited the Province of Balochistan in September 2021 and conducted important high-level meetings in Quetta with the Chief Secretary and the Secretary Labour and Manpower Department (LMD) Balochistan on the subject matter, along with all other stakeholders; (iv) the Government also informs that the MOPHRD has become a party in the ongoing court cases between two unions at the Supreme Court of Pakistan to present the perspective in terms of international obligations; and (v) the Government is exploring the possibility of benefiting from the technical advice of the ILO to provide the Supreme Court with a clearer understanding of the international obligations stemming from Pakistan's ratifications of Conventions Nos 87 and 98.

- 472.** *The Committee encourages the Government to pursue its effort to find solutions to the pending matters. In view of the time that has elapsed since the lodging of the complaint in 2019, the Committee trusts that the Government will receive the technical assistance of the Office necessary to take swift action on the outstanding matters in this case.*

The Committee's recommendations

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

- (a) The Committee urges the Government to ensure that the Government of Balochistan takes all the necessary measures to guarantee that civil servants are able to form and join organizations of their own choosing freely and to engage in activities for the defence of their members' interest. Additionally, the Committee urges the Government to ensure without delay that the associations of currently excluded civil servants can represent the interests of their members in relation to the employer and the authorities. The Committee requests the Government to keep it informed of the measures taken in this regard.
- (b) Recalling that it considers inequitable to draw any distinction in trade union matters between workers in the private sector and public servants, since workers in both categories should have the right to organize for the defence of their interests, the Committee encourages the Government to take all necessary measures to bring the Balochistan Industrial Relations Act (BIRA) and relevant legislations in Balochistan in line with the principle of freedom of association in this regard. The Committee draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this legislative aspect of the case.
- (c) The Committee expects that the Supreme Court will examine Cases Nos 3220/2019 and 3221/2019 brought before it without further delay, and that the Government will keep it informed of the outcomes and any follow-up measures taken both at Federal and Provincial levels.
- (d) The Committee encourages the Government to pursue its effort to find solutions to the pending matters. In view of the time that has elapsed since the lodging of the complaint in 2019, the Committee trusts that the Government will receive the technical assistance of the Office necessary to take swift action on the outstanding matters in this case.

Case No. 3359

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

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

Allegations: the complainant alleges violations of the rights of freedom of association and collective bargaining by enterprises in various sectors. It also alleges that the Government has failed to consult with trade union organizations during the process of adopting decrees that affect their interests

- 474.** The complaint is contained in a communication from the Autonomous Confederation of Workers of Peru (CATP) dated 5 May 2019.
- 475.** The Government of Peru sent its observations on the allegations in eight communications dated 1 and 15 October and 25 November 2019, 3 January, 2 March and 24 July 2020, 10 August 2022 and 12 September 2023.
- 476.** 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 complainant's allegations

- 477.** In its communication dated 5 May 2019, the complainant alleges violations of freedom of association and the right to collective bargaining in various ways by several enterprises and the Government of Peru.

Enterprise A

- 478.** The complainant organization states that since the establishment of the Single Union of Calidda Workers (SUTRACADD) in 2015, the enterprise Natural Gas of Lima and Callao S.A. (hereinafter "enterprise A") has carried out all kinds of obstructionist actions to dilute trade union activity and eliminate SUTRACADD. It indicates that on 5 December 2017, the National Labour Inspection Authority (SUNAFIL) sanctioned enterprise A through infraction report No. 3131-2017-SUNAFIL/ILM for unilaterally extending the benefits agreed with SUTRACADD to workers not affiliated with a trade union.
- 479.** The complainant further alleges that: (i) in 2018, enterprise A sanctioned Mr Harold Villón Rojo, SUTRACADD's organization secretary, on two occasions, by means of unfair and arbitrary reprimands; (ii) after Mr Villón Rojo submitted a list of claims on 15 November 2018, on 25 November 2018 the parties entered into a collective bargaining process, and (iii) on 26 November 2018, enterprise A dismissed Mr Villón Rojo with the intention of removing him from the leadership of SUTRACADD and the collective bargaining process.

Enterprises B and C

- 480.** The complainant alleges that: (i) on 31 December 2017, 27 workers of the Casapalca Mining Company (hereinafter “enterprise B”) formed the Single Union of the Casapalca Mining Company (hereinafter “the trade union of enterprise B”); (ii) on 8 January 2018, enterprise B began circulating leaflets in the mining camp, stating that 80 per cent of its workers had been transferred to the staff of the subcontracting company Comprehensive Mine Management S.A.C. (hereinafter “enterprise C”), which enterprise B had created; (iii) on 18 February 2018, enterprise B dismissed 26 of the union’s 27 members, including its six leaders, for not agreeing to be transferred to enterprise C; (iv) the dismissed workers challenged this decision before the judicial authorities and, although one year had passed, no ruling had been issued at the date of submission of the complaint, and (v) on 26 February 2019, enterprise B dismissed the last member of the trade union, Mr Julio Gregorio García Burga, thereby completing its elimination.

Enterprises D and E

- 481.** The complainant states that on 2 May 2014, the workers of the enterprise Rímac Insurance and Reinsurance S.A. (hereinafter “enterprise D”) and the enterprise Rímac EPS S.A. (hereinafter “enterprise E”), operating in the insurance and hospital sectors, respectively, formed the Rímac Workers’ Union (SINTRARIMAC, hereinafter “the trade union of enterprises D and E”). It states that enterprises D and E, in an act of discrimination and with the intention of intimidating the trade union leaders, filed a criminal complaint for aggravated defamation against its secretary general, Mr José Carlos García. The complainant states that this complaint was finally closed after a lengthy judicial process. It further maintains that the managers of enterprises D and E are persecuting Mr García and prowling around his home, so he had to request personal protection measures from the Sub-Prefecture of San Isidro against those managers.
- 482.** The complainant also alleges acts of anti-union discrimination and abuse against the union members. In this regard, it indicates that complaints were lodged with SUNAFIL in relation to the following matters: payment of utilities (File No. 76108), hostility (File No. 76110), working hours and attendance records (File No. 76111), as well as occupational safety and health (File No. 76112). According to the complainant, these complaints led to the imposition of sanctions against enterprises D and E.
- 483.** The complainant further maintains that: (i) in April 2015, the trade union of enterprises D and E submitted its first list of claims at the branch level to enterprises D and E, as well as to the Ministry of Labour and Employment Promotion; (ii) the enterprises systematically refused to negotiate with the trade union and lodged administrative objections; (iii) after the union had resorted to optional arbitration, the enterprises delayed the process through acts of bad faith, and (iv) collective bargaining has been paralyzed since the issuance, on 5 April 2019, of an arbitral award that declared the list of claims inadmissible and ordered the union to adapt the list to the scope that corresponds to its capacity and legitimacy to negotiate with enterprises D and E.

Enterprises F and G

- 484.** The complainant alleges that on 30 May 2016, the subcontractor Confipetrol Andina S.A., formerly known as Skanska Peru S.A. (hereinafter “enterprise F”), dismissed 115 members of the Single Trade Union of Workers of Skanska Peru S.A. El Alto, Los Órganos and Talara (hereinafter “the trade union of enterprise F”), who worked for the client enterprise CNPC Peru,

formerly known as Petrobras Energía (hereinafter “enterprise G”), in an attempt to abolish the union.

- 485.** The complainant also states that: (i) enterprise F did not deduct union dues from the union members during the last seven months of 2016; (ii) enterprise F systematically refused to accept letters of membership from new union members in 2017; (iii) following a complaint to SUNAFIL by the trade union on 15 December 2017, the enterprise was fined and ordered to deduct the union dues of four workers (File No. 465-2018); (iv) in 2018, the enterprise continued its anti-union practices, as it did not recognize the membership and, consequently, did not deduct the union dues of nine union members, and (v) on 6 September 2018, the union filed a complaint with SUNAFIL in this regard.

Enterprise H

- 486.** The complainant states that Petroperú S.A. (hereinafter “enterprise H”) is a State-owned enterprise in the energy and mining sector. It states that there are 12 trade union organizations within enterprise H, all of which are minority unions, and that, since 2008, eight of them have formed the National Coalition of Trade Unions of Petroperú S.A. (hereinafter “the Coalition”), which maintains trade union relations with enterprise H. According to the complainant, there is open discrimination against non-grouped trade union organizations, which are excluded from the collective bargaining table.
- 487.** The complainant also alleges that the clauses contained in the collective agreements concluded over the years are only applied to the trade union organizations attached to the authority of the time, which openly favours them over other organizations. It states that enterprise H, by means of the Single Collective Labour Agreement of 1982–1983, undertook to grant trade union leave to four representatives of each trade union so that they could perform the functions inherent to their duties. It explains that, despite the changes introduced over the years, this benefit was never lost, since only the number of leaders has changed according to the number of members in each trade union organization. However, it maintains that when the National Unified Union of Employees and Administrative Workers of Petróleos del Perú (SINUTREAPP) requested trade union leave for two of its leaders, enterprise H refused to grant it.
- 488.** The complainant also indicates that clause 16 of the Single Collective Labour Agreement provides for the establishment of a committee composed of representatives of the Industrial Relations Department, as well as two members of each of the trade union organizations, in order to detect unsafe conditions in the different areas of work. It states that SINUTREAPP has been requesting to participate in these important work visits for many years, but has thus far been excluded.
- 489.** The complainant further states that clause 22 of the Single Collective Labour Agreement provides for the granting of an annual allowance of 3,000 Peruvian soles to trade unions that do not have their own premises allocated by enterprise H, and alleges that enterprise H discriminates against SINUTREAPP by not granting it this benefit. According to the complainant, although it is true that the aforementioned clause was last amended in 2006 when SINUTREAPP did not yet exist, this benefit is granted to other organizations that also did not exist at that time.

Enterprises I and J

- 490.** The complainant indicates that in 2014, the Lindley Corporation (hereinafter “enterprise I”), which specializes in the bottling of carbonated beverages, built two mega plants in Trujillo and

Lima in order to increase its production and reduce labour costs by reducing its personnel and using state-of-the-art technology, which resulted in the closure of other plants. It states that, as part of these changes, enterprise I reduced the workforce of its mega plant in Pucusana from more than 2,000 to 500 workers, particularly dismissing workers who belonged to a trade union organization.

- 491.** The complainant further maintains that in May 2017, enterprise I, resorting to illegal proceedings, implemented a process of outsourcing its activities, through which it replaced several unionized workers with workers from the subcontracting company San Miguel Industrial S.A (hereinafter “enterprise J”). It also states that enterprise I incentivized or forced its workers to transfer to subcontracting companies and increased the salaries of the staff working for them, which has weakened the trade union organizations present in enterprise I. According to the complainant, enterprise I also created new trade union organizations that promote outsourcing and submit to its proposals when signing collective agreements. It states that workers in subcontracting companies only have temporary contracts that are not renewed if they try to organize to demand better working conditions.

Enterprise K

- 492.** The complainant states that, in order to be able to work on civil construction projects, metallurgical workers in the country must register in the National Register of Civil Construction Workers (RETCC). It indicates that when they do so, they are automatically covered by the collective agreement drawn up by the civil construction union, whose dues are also deducted weekly. The complainant states that this situation does not allow metallurgical workers’ unions to participate in collective bargaining processes and that, as a result, their working conditions have deteriorated, since the differences between these workers – who generally work on an industrial project until its completion – and those regulated by the civil construction regime – who are only active on site in the initial phase – are not taken into account.
- 493.** The complainant also alleges the abuse of fixed-term contracts, which allow enterprises to dilute trade union activity in the civil construction sector. It maintains that, in most cases, metallurgical workers do not report the injustices and arbitrary acts committed against them because when they do, employers do not renew their contracts and coordinate with other enterprises in the sector to not accept them by establishing blacklists of trade union leaders and activists. The complainant refers to the cases of Mr Pedro Condori Laurente and Mr Alfredo Cahuaya, trade union leaders and former workers of the enterprise Techint (hereinafter “enterprise K”), who are no longer able to work in their field due to rumours that they are social agitators.

Supreme Decree No. 345-2018-EF

- 494.** In addition, the complainant indicates that on 31 December 2018, Supreme Decree No. 345-2018-EF was issued, through which the Government approved the National Competitiveness and Productivity Policy. According to the complainant, this policy should have been developed in consultation with the social partners, but this was not the case. Therefore, the policy accepts the reasoning expressed at the Annual Conference of Executives, where it was noted that the reinstatement of workers before dismissal generates costs and hinders the free action of employers. The complainant states that this situation violated the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and points out that it had requested the Government to hold the discussion on the above-mentioned policy at the National Council for Labour and Employment Promotion (CNTPE).

Supreme Decree No. 009-2017-TR

- 495.** The complainant also denounces the issuance of Supreme Decree No. 009-2017-TR, which introduced several amendments to the legislation regarding recourse to optional arbitration and its modalities, introducing among other things a mandatory ninety-day period before it may be used. According to the complainant, this decree was adopted without prior consultation with trade union organizations, discourages collective bargaining and hinders the process of concluding collective agreements, which is becoming costly and tedious for workers.

B. The Government's reply

Enterprise A

- 496.** In its communication dated 1 October 2019, the Government provides the observations of enterprise A on the allegations against it presented by CATP. Enterprise A informs that it operates in the natural gas sector and has 414 workers, of which 25 are members of SUTRACADD. With regard to the alleged extension to non-unionized workers of the benefits agreed with SUTRACADD, enterprise A confirms that it was sanctioned by SUNAFIL, but indicates that it challenged this sanction through administrative litigation proceedings, since the infringements for which the fine was imposed were not duly proven.
- 497.** With regard to the list of claims presented by SUTRACADD on 15 November 2018, enterprise A indicates that the parties are negotiating in administrative conciliation. It also denies having dismissed Mr Villón Rojo in order to remove him from the collective bargaining process. According to enterprise A, he was dismissed for having falsified documents signed by an enterprise representative before presenting them to an insurance company.
- 498.** In its communications dated 2 March and 24 July 2020, 10 August 2022 and 12 September 2023, the Government indicates that: (i) SUNAFIL imposed a fine of 41,006.25 soles on enterprise A for having unilaterally extended the benefits agreed with SUTRACADD to non-unionized workers, (ii) on 12 September 2019, an administrative appeal lodged by enterprise A against the sanctioning resolution was dismissed; (iii) enterprise A challenged this decision before the 25th Permanent Labour Court of Lima, which declared its claim unfounded, and (iv) on 18 May 2022, enterprise A lodged an appeal against this decision before the Lima Superior Court of Justice, which remains pending. With regard to Mr Villón Rojo, the Government states that he filed a complaint against enterprise A with regard to the payment of social benefits, which was declared unfounded by the 1st Permanent Labour Court of Lima on 25 September 2020.

Enterprises B and C

- 499.** In its communication dated 1 October 2019, the Government provides the observations of enterprises B and C. Enterprise B states that its reorganization with enterprise C was of a strategic business nature. It states that the reorganization was not intended to prevent the establishment of a trade union organization, but to optimize its activities through the spin-off of an equity block, which of course involved the movement of staff.
- 500.** Enterprise B states that it took this decision before becoming aware of the formation of the trade union of enterprise B. In this regard, it maintains that on 15 May 2018, the Regional Labour and Employment Promotion Directorate of the Lima Regional Government cancelled the registration of the aforementioned union for falsely stating that its members still had an employment relationship with enterprise B on 8 January 2018, the date on which it was established.

- 501.** In addition, enterprise B states that the members of the trade union, with the exception of Mr García Burga, were not dismissed, but transferred to enterprise C. With regard to Mr García Burga, it states that he held a position of trust by virtue of his duties, and in spite of this, he committed a dishonest act in the course of his work, for which he had to be dismissed. In this regard, the Government, in its communications of 2 March 2020, 10 August 2022 and 12 September 2023, states that: (i) Mr García Burga filed an appeal before the 20th Permanent Labour Court of Lima; (ii) following the issuance of a ruling on 21 February 2021, enterprise B filed a cassation appeal before the Fourth Chamber of Constitutional and Social Law of the Supreme Court of Justice, which was declared inadmissible; and (iii) as a result of this decision, enterprise B reinstated Mr García Burga to his post.
- 502.** For its part, enterprise C also maintains that the reorganization was never implemented with the intention of undermining the collective rights of the workers. With regard to the 26 workers transferred, it indicates that: (i) 7 workers continue to work for it; (ii) 3 workers have resigned; and (iii) 16 workers have been dismissed for repeated failure to perform their duties for more than forty days.

Enterprises D and E

- 503.** In its communication dated 25 November 2019, the Government provides the observations of enterprise D. With regard to the criminal complaint lodged against Mr García, enterprise D denies having lodged it for anti-union reasons. It maintains that: (i) the complaint was filed in 2018, four years after the establishment of the trade union of enterprises D and E; (ii) it was a result of the commission of defamatory acts by Mr García, who had made false accusations against the enterprise on social media; and (iii) although the complaint was dismissed, the enterprise did not act with an unlawful purpose. Enterprise D also rejects the allegation that its staff prowled around Mr García's home. In that regard, it maintains that, on 7 August 2018, the Sub-Prefecture of San Isidro rejected Mr García's request on the grounds that it lacked sufficient reasonable evidence to justify granting protection measures.
- 504.** With regard to the allegations that it is repeatedly opposing collective bargaining with the union of enterprises D and E, enterprise D refers to the arbitral award of 5 April 2019, mentioned in the complaint, which established that the union was not entitled to bargain at the level of the branch of activity with enterprises D and E, since they do not execute the same activities. It maintains that this decision, which was issued in the optional arbitration initiated by the union for the settlement of its 2015–2016 list of claims, has repercussions on the other lists of claims that were presented subsequently, in which the union also intends to negotiate at the level of the branch of activity.
- 505.** Enterprise D also rejects the allegations that it committed acts of discrimination and abuse against members of the trade union of enterprises D and E. In this regard, the Government confirms, in its communication dated 3 January 2020, that SUNAFIL carried out labour inspections in relation to Files Nos 76108, 76110, 76111 and 76112. It reports that the inspections that were carried out resulted in the imposition of two infraction reports against enterprise D with regard to attendance records (Files No. 76111) and occupational safety and health (Files No. 76112).

Enterprises F and G

- 506.** In its communication dated 1 October 2019, the Government transmits the observations of enterprise F on the allegations against it from CATP. With regard to the alleged anti-union dismissals, enterprise F indicates that on 22 September 2014, it signed a service contract with

enterprise G, which expired on 31 May 2016, as it was not renewed. It states, therefore, that the dismissal of the workers was due to a cause beyond its control and involved both unionized and non-unionized workers.

- 507.** As regards the alleged non-deduction of trade union dues, enterprise F states that the non-deduction of trade union dues mentioned in File No. 465-2018, to which the complainant refers, was not proven before SUNAFIL. It also maintains that there was an error in its payment system, which did not take into account the union deductions of nine workers, which were eventually regularized in favour of the union of enterprise F. For its part, the Government, in its communication dated 3 January 2020, confirms that SUNAFIL, in a decision dated 31 November 2019, declared that the offences imputed by the acting inspector in File No. 465-2018 did not exist.

Enterprise H

- 508.** In its communication dated 1 October 2019, the Government forwards the observations of enterprise H on the allegations made against it. Enterprise H states that SINUTREAPP is a minority trade union that lacks legitimacy for the purposes of collective bargaining, given that the Coalition exists, with which it has been negotiating. It indicates that the product of this negotiation is applicable to all workers, including those affiliated to SINUTREAPP, since the legal system has established the mechanism of greater representativeness as the instrument that protects the interests of workers. Enterprise H reports that a collective bargaining process requested by SINUTREAPP is ongoing before the Ministry of Labour and Employment Promotion.
- 509.** According to enterprise H, three trade union organizations, including SINUTREAPP, are not part of the aforementioned Coalition. It states that, in accordance with the Collective Labour Relations Act and its regulations, two leaders from each of these organizations are granted trade union leave for a period of thirty days per year. Furthermore, enterprise H maintains that, in accordance with the Law on Safety and Health at Work and its regulations, it established a Safety and Health at Work Committee, made up of its own representatives and workers' representatives who are selected through an election process every two years. With regard to the provision of trade union premises, it states that SINUTREAPP does not enjoy that benefit, as it did not participate in the collective bargaining carried out in 2006.

Enterprises I and J

- 510.** In its communication dated 3 January 2023, the Government reports that SUNAFIL carried out 74 labour inspections at enterprise I between 2017 and 2019, which resulted in the issuance of 25 infraction reports against it. It states that five of those infraction reports related to freedom of association, including two for acts of anti-union discrimination.

Enterprise K

- 511.** In its communication dated 1 October 2019, the Government indicates that, following complaints by Mr Condori Laurente, SUNAFIL initiated labour inspections related to discrimination at work and employment contracts on 24 May 2017 and 29 August 2019, respectively. It points out that these cases are still ongoing.

Supreme Decree No. 345-2018-EF

- 512.** With regard to the National Competitiveness and Productivity Policy, the Government states that the Ministry of Labour and Employment Promotion has developed a broad process of

social dialogue and consultation with labour actors at the national, regional and civil society levels. It also points out that the tripartite consultations referred to in Convention No. 144 refer specifically to the promotion of the application of international labour standards, not to national policies.

Supreme Decree No. 009-2017-TR

- 513.** In its communication dated 15 October 2019, the Government states that Supreme Decree No. 009-2017-TR amended Article 61-A of the Regulations of the Collective Labour Relations Act to provide that optional arbitration may only be used for collective bargaining if at least six direct or conciliation meetings have been convened, and three months have elapsed since the start of the negotiation. According to the Government, the intention was to avoid practices that seek to shorten the natural course of direct negotiation in order to resort directly to arbitration and, thus, distort the system of voluntary negotiation.

C. The Committee's conclusions

- 514.** *The Committee takes note that, in the present case, the complainant alleges, on the one hand, a series of anti-union acts on the part of enterprises in various sectors and, on the other, that the Government did not consult trade union organizations before adopting two supreme decrees that would affect the interests of their members. The Committee takes note that the Government, for its part, responds to the allegations against it, in addition to sending in the observations of most of the enterprises concerned, as well as information on the judicial proceedings initiated as a result of some of the alleged anti-union measures.*

Enterprise A

- 515.** *The Committee takes note that the complainant alleges that enterprise A, which operates in the energy sector, attempts to obstruct SUTRACADD's activity and was sanctioned by SUNAFIL on 5 December 2017 for having unilaterally extended the benefits agreed with this union to its non-unionized workers. The Committee notes that the Government, for its part, indicates that: (i) SUNAFIL imposed a fine of 41,006.25 soles on enterprise A for having committed the aforementioned infringement; (ii) an administrative appeal lodged by enterprise A against the sanctioning resolution was dismissed on 12 September 2019; (iii) enterprise A challenged this decision before the 25th Permanent Labour Court of Lima, which declared its claim unfounded; and (iv) on 18 May 2022, enterprise A appealed this decision before the Lima Superior Court of Justice. In this respect, the Committee recalls that, in a case in which some collective agreements applied only to the parties to the agreement and their members and not to all workers, the Committee considered that this is a legitimate option – just as the contrary would be – which does not appear to violate the principles of freedom of association, and one which is practised in many countries [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1287]. The Committee observes that, in the Peruvian legal system, article 9 of the Collective Labour Relations Act provides that, in collective bargaining, the trade union that has the absolute majority of the workers within its field as members assumes the representation of all of them, even if they are not members, while the minority trade union represents only its members, unless it allies itself with other unions and they collectively have more than half of those workers as members. Noting that the matter in question is the subject of a pending appeal, the Committee trusts that a decision will be issued shortly.*
- 516.** *The Committee also notes the complainant's statement that after Mr Harold Villón Rojo, SUTRACADD's organization secretary, submitted a list of claims on 15 November 2018, enterprise A dismissed him on 26 November 2018 in order to prevent him from participating in the collective*

bargaining process between the parties, which had started one day before. The Committee notes that enterprise A, in its observations transmitted by the Government, maintains that it did not dismiss Mr Rojo to keep him away from the collective bargaining process, but for having falsified documents signed by an enterprise representative before presenting them to an insurance company. The Committee also notes the Government's indication that, in a decision dated 25 September 2020, the 1st Permanent Labour Court of Lima declared unfounded a complaint filed by Mr Rojo against enterprise A regarding the payment of social benefits. The Committee notes the contradictory versions of the complainant and enterprise A concerning the reasons for Mr Rojo's dismissal. Understanding that the decision of 25 September 2020 from the 1st Permanent Labour Court of Lima on the payment of social benefits was issued as a result of an appeal lodged by Mr Rojo following his dismissal, the Committee requests the Government and the complainant to indicate whether, through this appeal or any other that may have been lodged, the dismissal itself was also contested, and to report on any decision issued in this regard.

Enterprises B and C

517. The Committee takes note that the complainant maintains that: (i) after 27 workers from enterprise B, which operates in the mining sector, established the trade union of enterprise B on 31 December 2017, enterprise B created enterprise C and transferred 80 per cent of its workforce, including 26 unionized workers, to this new subcontracting company on 8 January 2018; (ii) on 18 February 2018, enterprise B dismissed the 26 members of the union for not agreeing to the transfer, a decision which they challenged in court; and (iii) in order to eliminate the union, enterprise B dismissed its last member, Mr Julio Gregorio García Burga, on 26 February 2019. Furthermore, the Committee takes note that enterprise B, in its observations provided by the Government, states that: (i) its reorganization with enterprise C was of a strategic nature and the decision was taken before it became aware of the existence of the trade union; (ii) on 15 May 2018, the union's registration was cancelled by the Regional Labour and Employment Promotion Directorate of the Lima Regional Government due to the absence of an employment relationship between its members and enterprise B on 8 January 2018, the date on which the trade union was established; (iii) the 26 members of the trade union were not dismissed, but transferred to enterprise C; and (iv) Mr García Burga was dismissed for having committed a dishonest act in the course of his work. The Committee also takes note that the Government, for its part, states that: (i) Mr García Burga filed an appeal before the 20th Permanent Labour Court of Lima; (ii) a ruling was handed down on 21 February 2021, against which enterprise B lodged a cassation appeal before the Fourth Chamber of Constitutional and Social Law of the Supreme Court of Justice; and (iii) as a result of the decision to reject that cassation appeal, Mr García Burga was reinstated by enterprise B.
518. The Committee takes due note of the information provided by the Government with regard to the reinstatement of Mr García Burga. The Committee also takes note of the divergent versions expressed by the complainant and enterprise B concerning the date on which the trade union was established and the relationship between the establishment of the trade union, the decision of enterprise B to establish enterprise C and the alleged dismissals or transfers of 26 unionized workers by enterprise B. While noting that it does not have sufficient information to comment on these matters, the Committee takes note that 26 of the 27 members of the trade union were among the workers transferred to enterprise C, and that the last member of the union was dismissed, before being reinstated following judicial proceedings. Recalling 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 [see **Compilation**, para. 1114], the Committee requests the Government to respond specifically to the allegation of the complainant regarding the transfer of workers from enterprise B to enterprise C. It also requests the Government and the complainant to provide information on any

administrative or judicial proceedings brought by members of the trade union of enterprise B in this regard and on the eventual outcome of such proceedings.

Enterprises D and E

- 519.** *The Committee takes note that the complainant alleges that: (i) workers in enterprises D and E, which operate respectively in the insurance and health sectors, formed the trade union of enterprises D and E on 2 May 2014; (ii) in order to intimidate the trade union leaders, the enterprises filed a criminal complaint for aggravated defamation against Mr José Carlos García, secretary general of the trade union of enterprises D and E, which was closed after a lengthy legal process, and (iii) the managers of enterprises D and E are persecuting Mr García and patrolling around his residence; so he had to request personal protection measures from the Sub-Prefecture of San Isidro. The Committee notes that enterprise D, in its observations transmitted by the Government, states that: (i) the criminal complaint was filed in 2018, four years after the establishment of the trade union, and it was a result of false accusations made against the enterprise on social media; (ii) although the complaint was rejected, it did not act for anti-union or illegal reasons; (iii) its staff do not prowl around near Mr García's home, and (iv) the Sub-Prefecture of San Isidro rejected Mr García's requests for protection measures on 7 August 2018. The Committee takes due note of the rejection of the criminal complaint by the courts and the request for protection measures by the Sub-Prefecture of San Isidro. Noting that the criminal complaint was made following Mr García's posts on social media, the Committee 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 [see **Compilation**, para. 239]. In this context, the Committee invites the Government to take the necessary measures to foster a climate of dialogue and trust between the parties, conducive to the establishment of harmonious labour relations.*
- 520.** *With regard to the allegations of anti-union discrimination against members of the trade union of enterprises D and E, the Committee notes that the complainant maintains that several violations were reported to SUNAFIL in relation to the payment of utilities, acts of hostility, working hours, attendance records, and occupational safety and health, which have led to the imposition of sanctions on enterprises D and E. The Committee also notes that enterprise D denies any acts of discrimination and abuse against trade union members. The Committee notes that the Government, for its part, confirms that SUNAFIL carried out inspections on the aforementioned matters and sanctioned enterprise D in the areas of attendance records (File No. 76111) and occupational safety and health (File No. 76112). Taking account of the decisions already issued by SUNAFIL, as well as the vagueness of the allegations concerning the anti-union component of the violations, the Committee will not pursue its examination of this aspect of the case.*
- 521.** *As regards the alleged refusal to bargain collectively, the Committee notes that the complainant alleges that: (i) following the submission by the trade union of enterprises D and E of its first list of claims at the level of the branch of activity, enterprises D and E repeatedly refused to bargain collectively and lodged administrative objections; and (ii) after the union resorted to optional arbitration, an arbitral award dated 5 April 2019 was issued, which paralyzed the negotiation by declaring the list inadmissible and ordering that it be amended to correspond to the capacity and legitimacy of the union. The Committee notes that enterprise D states that the aforementioned arbitral award established that the trade union of enterprises D and E could not negotiate with enterprises D and E at the level of the branch of activity, since they do not carry out the same activities. In this regard, the Committee recalls that it does not adopt a stance either in favour of bargaining at the level of the branch of activity or at the enterprise level and that the fundamental principle concerns the need for the level of collective bargaining to be freely determined by the parties concerned [see **Compilation**, para. 1407]. Noting that the arbitral award of 5 April 2019 was*

issued at the request of the trade union, the Committee will not pursue its examination of this allegation.

Enterprises F and G

- 522.** *The Committee takes note that, according to the complainant, on 30 May 2016, enterprise F, which operates in the energy sector, dismissed 115 members of the trade union of enterprise F, who worked for the same client enterprise, enterprise G, with a view to eliminating this union. It also notes that enterprise F, in its observations communicated by the Government, maintains that the dismissal of the workers affected both unionized and non-unionized workers, and was due to a cause beyond its control, since its service contract with enterprise G had expired and was not renewed. The Committee notes the opposing views of the complainant and enterprise F on the reasons that led to the aforementioned dismissals, as well as the lack of observations from the Government relating to this allegation. While it does not have sufficient information to make a determination on this matter, the Committee recalls that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention [see **Compilation**, para. 1159]. The Committee therefore requests the Government to take the necessary measures to carry out an investigation into the alleged anti-union nature of the dismissals carried out by enterprise F at the time of the termination of its service contract with enterprise G. The Committee also requests the Government and the complainant to indicate whether the workers dismissed at that time have initiated legal proceedings and, if so, to be kept informed of any rulings handed down.*
- 523.** *Furthermore, the Committee takes note of the complainant's statement that: (i) enterprise F did not deduct union dues from the members of the aforementioned trade union for seven months in 2016, and refused to accept the letters of membership from its new members in 2017; (ii) following a complaint by the trade union in this regard, SUNAFIL fined the enterprise and ordered it to deduct the union dues of four workers (File No. 465-2018), and (iii) in 2018, the enterprise did not deduct the union dues of nine members of the union, so the union filed another complaint with SUNAFIL. The Committee notes the Government's statement that, for its part, in a decision dated 31 November 2019, SUNAFIL declared that the offences identified by the inspector in File No. 465-2018 did not exist. With regard to the union deductions of the nine workers in 2018, the Committee takes note that enterprise F states that these were initially not made due to an error in its payment system, but that the situation was corrected in the end. In this regard, the Committee recalls that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations and should therefore be avoided [see **Compilation**, para. 690]. Noting the indication by enterprise F that the problem with its payment system has been rectified, the Committee trusts that the competent authorities will continue to ensure that the trade union benefits fully from the deduction at source (check-off) of its members' union dues.*

Enterprise H

- 524.** *The Committee notes that the complainant alleges that: (i) since 2018, 8 of the 12 trade union organizations, all minority unions, that exist within enterprise H, which operates in the energy and mining sectors, have joined forces to form the National Coalition of Trade Unions of enterprise H, which maintains trade union relations with enterprise H; and (ii) as a result, the other four organizations are excluded from collective bargaining, which is discriminatory. The Committee notes that enterprise H, in its observations provided by the Government, states that: (i) the collective agreements concluded with the Coalition apply to all its workers due to the mechanism of greater*

representation provided for in the legislation; and (ii) SINUTREAPP, one of the trade unions not included in the Coalition, submitted a request for collective bargaining which is being processed by the Ministry of Labour and Employment Promotion. The Committee notes the divergent positions of the complainant and enterprise H on the possibility for minority trade unions in the enterprise that are not included in the Coalition to bargain collectively. In this respect, the Committee notes that section 9 of the Collective Labour Relations Act provides that “if there are several trade unions within the same field, trade unions which together have members representing more than half of all the workers may jointly represent them all” and that (...) “if there is no agreement, each union represents only its members.” The Committee recalls that systems based on a sole bargaining agent (the most representative) and those which include all organizations or the most representative organizations in accordance with clear pre-established criteria for the determination of the organizations entitled to bargain are both compatible with Convention No. 98 [see **Compilation**, para. 1360]. The Committee further observes that, according to the publicly available sustainability reports of enterprise H, SINUTREAPP did participate in the negotiation and signing of a collective agreement for the periods 2019–2020 and 2021–2022. In the light of the foregoing, the Committee will not pursue its examination of this allegation.

- 525.** The Committee also notes that the complainant maintains that enterprise H applies the clauses contained in the collective agreements concluded over the years only to certain trade unions. The Committee notes that the complainant states in particular that: (i) although it undertook to grant trade union leave to a certain number of representatives of each trade union, depending on the number of members of each organization, enterprise H refused to grant union leave to SINUTREAPP when it requested it for two of its leaders; (ii) although clause 16 of the Single Collective Labour Agreement provides for the inclusion of two members from each trade union organization on a committee responsible for detecting unsafe working conditions, SINUTREAPP was excluded in spite of its repeated requests to participate in the work visits organized by this committee; and (iii) although clause 22 of the Single Collective Labour Agreement provides for the granting of an annual allowance of 3,000 soles to trade unions that do not have their own premises allocated by enterprise H, the enterprise refuses to grant this benefit to SINUTREAPP.
- 526.** The Committee notes that, for its part, enterprise H states that: (i) in accordance with the Collective Labour Relations Act and its regulations, it grants trade union leave for a period of thirty days per year to two officials from each trade union organization that is not part of the Coalition; (ii) in accordance with the Law on Safety and Health at Work and its regulations, it created a Safety and Health at Work Committee made up of its own representatives and workers’ representatives, elected every two years; and (iii) SINUTREAPP did not participate in the collective bargaining carried out in 2006, so it does not benefit from the privilege established by the collective agreement in relation to trade union premises.
- 527.** The Committee takes due note of the information provided by the complainant and by enterprise H concerning the applicability to SINUTREAPP, a minority trade union that has not signed the enterprise’s collective agreement, of a series of facilities provided for therein. Observing once again that it appears from the sustainability reports of enterprise H that SINUTREAPP did participate in the negotiation and signing of a collective agreement for the periods 2019–2020 and 2021–2022, the Committee will not pursue its examination of this allegation.

Enterprises I and J

- 528.** The Committee notes that the complainant states that, in 2014, enterprise I, which operates in the bottling sector, decided to cut its labour costs by building two new state-of-the-art mega plants in Trujillo and Lima and reducing the workforce of its mega plant in Pucusana from more than 2,000 to 500 workers. According to the complainant, these dismissals were aimed particularly at unionized

workers. Regretting that the Government has not responded to this allegation, the Committee recalls once again 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 [see **Compilation**, para. 1114]. The Committee requests the Government to respond specifically to the allegation of the complainant regarding the dismissals of workers at the Pucusana mega plant carried out by enterprise I. The Committee also requests the Government and the complainant to provide information on any administrative or judicial proceedings that might have been brought by the dismissed workers in this regard and on the eventual outcome of such proceedings.

- 529.** The Committee also notes that the complainant maintains that, as part of a process of outsourcing its activities initiated in May 2017, enterprise I: (i) replaced several unionized workers with workers from enterprise J; (ii) incentivized or forced unionized workers to transfer to subcontracting companies; (iii) created new trade union organizations that promote outsourcing and submit to its proposals when signing collective agreements; and (iv) ensures that the temporary contracts of subcontracted workers who try to organize are not renewed. The Committee notes that the Government, for its part, indicates that between 2017 and 2019, 74 labour inspections carried out by SUNAFIL in enterprise I led to the issuance of 25 infraction reports, of which five were related to freedom of association, including two for acts of anti-union discrimination.
- 530.** While taking due note of the information provided by the Government, the Committee notes that it is not clear whether the aforementioned infraction reports are related to the specific allegations presented by the complainant in the context of this case. Recalling once again that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention, the Committee requests the Government to provide information on the content of the five infraction reports issued by SUNAFIL concerning violations of freedom of association by enterprise I, and indicate whether sanctions have been imposed and corrective measures taken in relation to the acts of anti-union discrimination and interference alleged by the complainant.

Enterprise K

- 531.** The Committee notes that the complainant states that: (i) Peruvian metallurgical workers must register in the RETCC in order to work on civil construction projects; (ii) when they register, they are automatically covered by the collective agreement concluded by the civil construction union, whose dues are also deducted, which prevents metallurgical workers' unions from participating in collective bargaining processes, and (iii) as a result, their working conditions have deteriorated, as they usually work on an industrial project until its completion, and not only in the initial phase like civil construction workers. The Committee, while observing that the Government has not responded to these allegations, understands that under the Peruvian legislation that recognizes the majority trade union's ability to negotiate on behalf of all workers in the area of bargaining in question, it is the civil construction trade union which, in the context of bargaining by branch of activity in the civil construction sector, negotiates for all workers in the sector, including the metallurgical workers registered in the RETCC. The Committee also understands that, according to the complainant's allegation, the collective agreements concluded by the civil workers' union would not meet the needs of metallurgical workers, which are different to those of civil construction workers. In this context, the Committee invites the Government to take the necessary measures to promote dialogue with all interested parties with a view to identifying modalities to enable the interests and needs of metallurgical workers and their organizations to be duly taken into account in the collective

bargaining processes in the civil construction sector. The Committee requests the Government to keep it informed in this regard.

- 532.** *On the other hand, the Committee notes that the complainant alleges that: (i) enterprises in the civil construction sector abuse temporary contracts in order to dilute trade union activity; (ii) when metallurgical workers report injustices committed against them, the enterprises do not renew their contracts and coordinate to draw up blacklists of trade union leaders and activists, and (iii) two trade union leaders and former workers in enterprise K, Mr Pedro Condori Laurente and Mr Alfredo Cahuaya, are no longer able to work in their field because of rumours that they are social agitators. The Committee also notes the Government's indication that, following complaints lodged by Mr Condori Laurente, SUNAFIL initiated inspections concerning discrimination at work and employment contracts on 24 May 2017 and 29 August 2019, respectively, and that these cases are still ongoing. The Committee recalls that fixed-term employment contracts should not be used deliberately for anti-union purposes [see **Compilation**, para. 1096]. It also 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]. The Committee requests the Government to take the necessary measures to ensure that the inspections carried out by SUNAFIL in relation to the complaints submitted by Mr Condori Laurente are concluded as soon as possible and to keep it informed of the outcome of the inspections.*

Supreme Decree No. 345-2018-EF

- 533.** *The Committee notes that the complainant alleges that: (i) on 31 December 2018, the Government issued Supreme Decree No. 345-2018-EF, which approved the National Competitiveness and Productivity Policy, and (ii) although this policy should have been developed in consultation with the social partners, this was not the case, in contravention of Convention No. 144. While noting the Government's replies in this respect, the Committee notes that it has received similar allegations in Case No. 3373. The Committee therefore refers to its conclusions and recommendations adopted in the above-mentioned case (see 404th Report of the Committee, October–November 2023, paragraphs 580 to 584).*

Supreme Decree No. 009-2017-TR

- 534.** *With regard to the allegations concerning Supreme Decree No. 009-2017-TR, which amended article 61-A of the Regulations of the Collective Labour Relations Act, the Committee notes that the complainant states that: (i) it was adopted without consulting the trade union organizations; and (ii) several of its provisions relating to recourse to optional arbitration and its modalities discourage collective bargaining and make the process more difficult and costly for workers. The Committee notes that the Government, for its part, states that its intention, in adopting Supreme Decree No. 009-2017-TR, was to prevent practices that seek to shorten the natural processes of direct negotiation in order to have direct recourse to arbitration. The Committee, noting that the Government does not make reference to the alleged lack of consultation with the trade union organizations on the Supreme Decree, recalls that any changes to the scope and exercise of trade union rights should, as a matter of importance, be subject to in-depth consultations with the most representative organizations, in order to find, as far as possible, shared solutions [see **Compilation**, para. 1542]. The Committee therefore requests the Government to take the necessary measures to ensure that, in the future, the social partners are consulted during the process of drafting laws and regulations that affect the interests of trade union organizations and their members. With regard to the contents of Supreme Decree No. 009-2017-TR, the Committee observes that: (i) section 61-A of the Regulations of the Collective Labour Relations Act, which is the subject of the aforementioned*

Decree, was amended, and (ii) these provisions and their amendments are being examined by the Committee of Experts on the Application of Conventions and Recommendations in the context of monitoring Peru's application of Convention No. 98. In these circumstances, the Committee will not pursue its examination of this aspect of the case.

The Committee's recommendations

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

- (a) The Committee trusts that a decision will be issued shortly in the pending appeal relating to the extension by enterprise A of the benefits agreed with SUTRACADD to its non-unionized workers.
- (b) The Committee requests the Government and the complainant to indicate whether, as a result of the appeal on the payment of social benefits lodged by Mr Rojo following his dismissal, or any other that may have been lodged, the dismissal itself was also contested, and to report on any decision issued in this regard.
- (c) The Committee requests the Government to respond specifically to the allegation of the complainant regarding the transfer of workers from enterprise B to enterprise C. It also requests the Government and the complainant to provide information on any administrative or judicial proceedings brought by members of the trade union of enterprise B in this regard and on the eventual outcome of such proceedings.
- (d) The Committee requests the Government to take the necessary measures to carry out an investigation into the alleged anti-union nature of the dismissals carried out by enterprise F at the time of the termination of its service contract with enterprise G. The Committee also requests the Government and the complainant to indicate whether the workers dismissed at that time have initiated legal proceedings and, if so, to be kept informed of any rulings handed down.
- (e) The Committee requests the Government to respond specifically to the allegation of the complainant regarding the dismissals of workers at the Pucusana mega plant carried out by enterprise I. The Committee also requests the Government and the complainant to provide information on any administrative or judicial proceedings that might have been brought by the dismissed workers in this regard and on the eventual outcome of such proceedings.
- (f) The Committee requests the Government to provide information on the content of the five infraction reports issued by SUNAFIL concerning violations of freedom of association by enterprise I, and indicate whether sanctions have been imposed and corrective measures taken in relation to the acts of anti-union discrimination and interference alleged by the complainant.
- (g) The Committee invites the Government to take the necessary measures to promote dialogue with all interested parties with a view to identifying modalities to enable the interests and needs of metallurgical workers and their organizations to be duly taken into account in the collective bargaining processes in the civil construction sector. The Committee requests the Government to keep it informed in this regard.
- (h) The Committee requests the Government to take the necessary measures to ensure that the inspections carried out by SUNAFIL in relation to the complaints submitted

by Mr Condori Laurente are concluded as soon as possible and to keep it informed of the outcome of the inspections.

- (i) The Committee requests the Government to take the necessary measures to ensure that, in the future, the social partners are consulted during the process of drafting laws and regulations that affect the interests of trade union organizations and their members.

Case No. 3373

Definitive report

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

Allegations: The complainant organization alleges that an enterprise has an economic benefits policy with anti-union criteria. It also alleges hostility against unionized staff and non-compliance with a collective agreement

- 536. The complaint is contained in a communication from the General Confederation of Workers of Peru (CGTP) dated 4 November 2019.
- 537. The Government sent its observations in communications dated 18 September 2020 and 12 September 2023.
- 538. 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

- 539. In its communication dated 4 November 2019, the complainant organization indicates that in 2000, Telefónica del Perú S.A.A. (hereinafter "the enterprise") dismissed a significant group of workers affiliated with the Single Union of Telefónica del Perú Workers (SUTTP), which gave rise to a fundamental change in the case law of the Constitutional Court, establishing the right to reinstatement in constitutional amparo proceedings against dismissals that violate trade union rights. The complainant organization alleges that despite this serious record of anti-union practice, the enterprise continues to have the highest number of complaints for labour infractions before the National Labour Inspection Authority (SUNAFIL).
- 540. The complainant alleges that the enterprise has benefits policies with anti-union criteria. The complainant organization refers first to the "benefits policy for employees of the enterprise", adopted in 2014, stating that it "provides exclusive benefits for workers who are not subject to the scope of application of collective agreements and who, consequently, are not members of a union". The complainant organization indicates that this policy "applies exclusively to non-executive workers whose remuneration and fringe benefits are not governed by collective bargaining". The complainant organization indicates that the benefits to which workers who

are members of a trade union are entitled are governed by the respective collective agreements that those organizations conclude with the enterprise. In this respect, the complainant organization explains that “the exclusive benefits for workers who are not members of trade union organizations include the refreshment and mobility allowance, the annual leave incentive and the career bonus, in addition to other fringe benefits”.

541. The complainant organization alleges that “this discriminatory criterion” was ratified and disseminated in a document entitled “Making more of ourselves” (*Transformándonos para ser más*) (2014) which further develops principles applicable to non-executive workers whose relationship with the enterprise is regulated outside the scope of the collective bargaining agreement. The complainant organization indicates that the first principle set out in the document is that of a specific and exclusive wage system for employees not subject to a collective agreement, and that the other principles established for such employees are: a remuneration review every calendar year, adjustment for inflation, wage positioning in accordance with the market and adjustments for merit. The complainant organization adds that neither the benefits of the collective agreement nor the aforementioned policy are applicable to unionized executive workers. The complainant organization further indicates that while the enterprise requires SUTTP members to perform compensatory work for holidays on days when they are entitled to rest, members of other unions are not required to perform compensatory work.
542. The complainant organization also alleges that the enterprise has engaged in systematic acts of hostility against unionized and particularly vulnerable staff and that it has failed to comply with the collective agreement in force. The complainant organization indicates that the enterprise and the SUTTP concluded a collective agreement (2016–19) in which the enterprise agreed that it would not carry out a collective termination procedure for economic, technological or structural reasons, and that ongoing training should be provided that would contribute to the retraining and internal employability of affiliated workers. The complainant organization alleges that despite the terms of the agreement, the enterprise transferred workers to other areas, in particular the area known as the Technical Operations Centre (COT) without taking into account the occupational qualifications, age or health of those involved.
543. The complainant organization indicates that according to a SUNAFIL report dated 15 February 2019, although the enterprise has a trade union membership rate of 56 per cent, 98.6 per cent of workers at the COT are unionized. The complainant organization adds that although 26 per cent of workers at the enterprise are SUTTP members, 65 per cent of the transferred staff are SUTTP members, which, in its view, indicates the anti-union objective behind the transfer of unionized workers to the COT. The complainant organization also alleges that the enterprise denied the leadership of SUTTP access to the meetings held to address the problems arising from the transfer to the COT of affiliated workers and that the enterprise failed to comply with clause 20 of the collective agreement which states that a working group and two discussion groups are to be established between the enterprise and the SUTTP. According to the complainant organization, the groups should be bipartite in nature and the enterprise distorted the agreement by inviting third parties to these groups, which had a serious impact on the implementation of the agreements.
544. The complainant organization indicates that in September 2019, a new performance evaluation system for workers was implemented, applicable primarily to the COT, in other words, to the area with 98.6 per cent of unionized workers. The complainant organization states that while the benefits established under this evaluation system are minimal (such as the right to half a day of leave with pay for persons ranked in first and second place), the penalties are drastic (they include disciplinary action or the institution of dismissal proceedings

for insufficient productivity). The complainant organization considers that this work performance evaluation system is rigid and that the associated penalties lead to numerous cases of dismissal that are unreasonable and violate the right to freedom of association, given that this applies to the COT area where the majority of workers are members of the SUTTP.

- 545.** The complainant organization alleges that one major shortcoming of the Peruvian State, and in particular of the Ministry of Labour and Employment Promotion, and of SUNAFIL is that there is no effective procedure for monitoring labour violations linked to the protection of fundamental rights at work and, in particular, with respect to the protection of freedom of association. The complainant organization notes that the procedure for the defence of freedom of association is the ordinary procedure, the investigation stage of which alone takes more than two months on average, a situation that has a serious impact on the protection of these rights and leaves trade union leaders and members defenceless. The complainant organization also states that the remit of the SUNAFIL specialized team on fundamental rights does not include protection of the right to freedom of association.
- 546.** The complainant organization indicates that, in the case of the workers transferred to the COT almost all of whom were members of the SUTTP, SUNAFIL set aside the proceedings indicating that “according to the information provided, it is confirmed that there are workers between 24 and 69 years of age, as well as members of different trade union organizations, in addition to non-unionized staff”. The complainant organization notes that the SUNAFIL report does not consider that the non-unionized workers represent 1.4 per cent of the total staff of the COT; that it does not analyse whether it has complied with its obligation to retrain and protect the internal employability of workers, as per the collective agreement in force, and that it suffices to state that “the inspected enterprise indicated that the workers assigned to the COT were trained in the new duties to be performed.” The complainant organization indicates that the decision of SUNAFIL was based solely on an assertion by the enterprise, without any analysis of the occupational profiles, health conditions and age of workers or the reasonableness of the retraining procedures. The complainant organization considers that many of the transfers to the COT constitute multiple rights violations, due to the fact that they affect not only working conditions, freedom of association and collective bargaining but also health and safety at work. The complainant organization considers that the practice by developed by the labour inspectorate in the wake of complaints of multiple anti-union violations has given rise to serious situations of defencelessness, in a national context in which trade union membership and collective bargaining rates are very limited.
- 547.** The complainant organization adds that the Government introduced regulatory provisions that substantially weaken social dialogue and, in this respect indicates that while the National Council for Labour and Employment Promotion (CNTPE), to which the most representative trade union and employers’ organizations in the country belong, on an equal footing, as well as government officials at the highest level, was recognized as the privileged forum for social dialogue, at the end of 2018 Supreme Decree No. 345 approving the National Competitiveness and Productivity Policy (PNCP) was promulgated, although it had been agreed that it would be discussed and agreed by consensus in the CNTPE. The complainant organization further alleges that: (i) the composition of the National Council for Competitiveness and Formalization (CNCF), responsible for defining strategies and approving proposals and updates to the National Competitiveness and Productivity Plan, was amended by Supreme Decree No. 038 of 2019 such that the Council is composed as follows: 13 Government representatives, 6 representatives of employers’ organizations, 1 academic representative and 1 trade union representative, who must be elected by the 4 confederations that are part of the CNTP; (ii) the Decree establishes public-private technical committees for the development of the various

aspects of the National Competitiveness and Productivity Plan without making provision for the presence of trade union representatives in their composition, despite the fact that one technical committee is concerned with the labour market; and (iii) to the extent that the CNCF addresses themes on which there should be consultation, such as labour, employment promotion, vocational training and social protection, all of the above has a serious impact on social dialogue that should be conducted on equal terms within the CNTPE.

B. The Government's reply

- 548.** In its communication of 18 September 2020, the Government sends its observations as well as those of SUNAFIL and the detailed observations of the enterprise. The enterprise categorically denies having engaged in acts against freedom of association and notes that 96.48 per cent of workers in the category of employee are members of one of the six trade union organizations operating in the enterprise, indicating that one of them is a trade union federation, which, in its view, demonstrates that it is inextricably linked to the effective and unrestricted exercise of freedom of association that is the linchpin of labour relations. According to the data submitted by the enterprise, out of a total of 4,365 workers, 1,934 (44 per cent) are members of one of the six trade union organizations.
- 549.** The enterprise states that the “benefits policy for employees”, implemented in 2014 and updated over the years, was developed on the basis of objective principles and criteria and with an internal logic that substantiate its legitimacy, and was not intended to discourage union membership. The enterprise indicates that not only does the policy lack an anti-union purpose, but that, in fact, the policy has not indirectly encouraged withdrawal from union membership and its implementation has been evaluated by the Labour Inspection Authority without any anti-union purpose being found.
- 550.** The enterprise indicates that in 2014, also, in the context of the transformation that the telecommunications sector in the country was beginning to undergo, it adopted a “salary review policy” with objective criteria for salary increases for employees whose remuneration was not fixed by collective bargaining. The enterprises refers to the “wage review policy” in conjunction with the aforementioned “benefits policy for employees”, calling them both a “salary and benefits review policy”. The enterprise states that the aforementioned salary and benefits policy follows best human resource management practices in the market and adjusts salaries and benefits taking into account market salaries, the performance of the enterprise, the consumer price index (CPI) and individual performance. The enterprise states that it agrees with the trade union organizations on benefits beyond wages received simply for membership without being subject to the performance of the enterprise or the individual; trade union organizations have systematically been opposed to their members being individually evaluated in terms of objectives.
- 551.** The enterprise states that it is committed to firm respect for collective agreements and awards applicable to staff under collective bargaining and explains that its salary and benefits review policy establishes its own deadlines, independent of those established by collective bargaining or an arbitration award; under no circumstances is the policy used as a mechanism for pressure nor does it undermine collective bargaining, which follows its own channels without prejudice to the fact that collective agreements already agreed continue to be implemented until new collective agreements are reached; and that from a position of respect towards freedom of association, the policy allows the remuneration of the 3.52 per cent of employees who exercise the negative dimension of freedom of association – the right not to join a trade union – to be reviewed, subject to conditions, without compromising or discouraging the trade union membership of other employees. The enterprise indicates that the policy conditions are

based on objective criteria for the rationalization of increases for non-unionized staff, whereas workers covered by collective bargaining receive benefits greater than wage-based benefits: workers covered by collective bargaining receive profit advances agreed with their respective trade union organizations, whereas staff subject to the policy do not enjoy this benefit; workers covered by collective bargaining have a higher guaranteed and assured minimum increase than workers not so covered by collective bargaining, since the increase is not subject to the CPI or any conditions other than membership alone; and workers covered by collective bargaining receive closure bonuses, a benefit not received by non-unionized workers. The enterprise adds that the average remuneration of workers affiliated with the SUTTP in January 2020 was greater than that of workers in the enterprise.

- 552.** The enterprise states that in practice, the salary and benefits review policy has not had a negative impact or effect on trade union membership, has not undermined or discouraged membership in existing trade union organizations in the enterprise and has not given rise to actual or potential violations of freedom of association. The enterprise indicates that the volume of staff in the enterprise who are members of a union has remained constant over time, or even steadily increased, in parallel with the introduction and implementation of the salary and benefits review policy, which, in its view, demonstrates clearly that the policy has not had any negative impact or effect on trade union membership. Furthermore, over the years the SUTTP has experienced steady growth in the percentage of its members in contrast with the percentage of workers not affiliated with any trade union organization (the percentage of workers not affiliated with any trade union organization has shrunk significantly through the years). The enterprise states that this demonstrates that two independent salary and benefits “structures”, each with its own rules, coexist in perfect harmony without the policy in question being described as anti-union.
- 553.** The enterprise indicates that in 2018, the SUTTP filed a complaint with SUNAFIL for the application of the wage policy to non-unionized workers and that the Inspection Report concluded that there were no violations of collective labour relations nor any anti-union discrimination as a result of the said policy, and it was established that the average remuneration of unionized workers was 5,702.32 Peruvian soles and that of non-unionized workers was 5,295.67 soles.
- 554.** With regard to the allegation that neither the benefits of the collective agreement nor the salary and benefits review policy are applicable to the category of unionized executive workers, the enterprise indicates that: (i) executive workers are outside the scope of application of the aforementioned policy; (ii) section 42 of the single consolidated text of the Industrial Relations Act (TUO-LRCT), adopted by Supreme Decree No. 010-2003-TR, expressly states that: “A collective labour agreement shall be binding upon the parties thereto. It shall be binding upon the latter, the persons in whose name the agreement was concluded and to whom it is applicable, as well as the workers who subsequently join the enterprises covered by the agreement, with the exception of those who occupy management posts or hold positions of trust”; and (iii) in any case it should be taken into account that this particular case is currently under way before the courts.
- 555.** With regard to the allegation that SUTTP members are required to perform compensatory work for holidays on days when they are entitled to rest whereas members of other unions are not required to perform compensatory work, the enterprise indicates that the trade union was informed that measures relating to this issue apply to all workers in the enterprise equally, within the criteria set by the regulations governing the enjoyment of regional holidays, with no distinction other than such holidays, so that workers can spend this time in the company of their loved ones.

- 556.** The enterprise indicates that the transfer of workers to the area known as the COT does not constitute non-compliance with collective agreements, much less an act of hostility against unionized workers, as the Labour Inspectorate has consistently confirmed on more than one occasion. The enterprise rejects the assertions that staff transfers to the COT had anti-union objectives and indicates that no individual workers are mentioned in the complaint, which precludes further details on specific cases. The enterprise states that any staff transfer to the COT is always based on objective grounds, with full respect for the worker's occupational category and labour rights. It indicates that retraining and internal employability are the linchpins of the agreement derived from the collective agreement and that the establishment of the COT and assignment of staff to that area is precisely aligned with those objectives, since prior to transferring staff to the new area, the change was assessed at the organizational level and the match between the worker's profile and the activity that they would assume confirmed. The enterprise highlights that since a clear majority of staff in the enterprise is unionized, it is logical that the majority of staff working at the COT should also be unionized.
- 557.** The enterprise emphasizes that it has never considered trade union membership as a criterion for determining whether or not a transfer to the COT is appropriate. The enterprise further indicates that the Labour Inspectorate has on several occasions had the opportunity to rule on transfers to the COT and has consistently found in this regard that these staff movements did not constitute acts of harassment and did not violate labour standards, much less freedom of association. The enterprise points out that to date 11 cases are under way before the courts in relation to this issue.
- 558.** The enterprise indicates that in early 2019, it created a forum with the SUTTP to reply to questions that the trade union organization might have on this issue and that, with the exception of one meeting that could not be held in July 2019 because the trade union leaders convoked refused to show their identification, the meetings continued to take place periodically until the first quarter of 2020.
- 559.** With regard to the allegation that there is a clause relating to working groups in the 2016–19 collective agreement that the enterprise is violating, the enterprise indicates that the parties undertook to set up and manage three forums and that, by Inspection Order No. 19661–2019, it was confirmed to SUNAFIL that these working groups had been set up in accordance with the terms agreed in the collective agreement. Nonetheless, the enterprise clarifies that the alleged working group to which the SUTTP refers is the Bipartite Clothing Commission, the nature and working methods of which differ from those of the working groups agreed under the 2016–19 collective agreement; these groups date back to 2008 and it was agreed between the parties that their work would be managed jointly with two other trade union organizations (the Federation of Telefónica del Perú Workers (FETRATEL) and the Trade Union of Workers of Telefónica del Perú Companies (SITENTEL)), hence there is no failure of the enterprise to comply in this regard. The enterprise indicates that since 2018, the SUTTP has disregarded this agreement and refused to meet with the enterprise as long as the other trade union organizations are convoked to the meetings of the Bipartite Commission. The enterprise points out that the SUTTP has brought this issue before the courts under Judicial File No. 00794-2019-0-1801-JR-LA-09, which remains before the courts.
- 560.** The enterprise also explains that in 2019, it designed a productivity and performance evaluation system for the COT and, specifically, for management analysts, functional analysts, operations analysts, specialized technicians, operations technicians and support technicians with a view to improving the customer satisfaction rate. The enterprise indicates that it was necessary to implement a measurement system in areas where there is direct customer contact, as is the case with the COT, which is increasingly a higher priority area. The enterprise

indicates that the system evaluates and recognizes performance and is based on objective, rational criteria; the fact that the system might not be to the liking of the SUTTP does not make the current policy an anti-union act. The enterprise also indicates that the possible disciplinary measures are not disproportionate; they are aimed at poor performance in relation to the worker's ability and average performance in similar work under similar conditions, and at deliberate and repeated reduction in the performance of tasks or the quantity or quality of production, without in any way being illegal or violating freedom of association.

- 561.** The enterprise also asserts that disciplinary measures, which play a secondary role and are applicable only in extreme cases, establish an entirely reasonable, gradual and progressive approach to the actions that the enterprise can take and that to date, it has not implemented any drastic disciplinary measure (suspensions) or any dismissal procedure for failure to meet targets. The enterprise indicates that an amparo (protection of constitutional rights) appeal is under way in this respect (Judicial File No. 06642-2019-0-1801-JR-DC-06).
- 562.** The Government indicates that SUNAFIL, created in 2014, is the central authority of the system of labour inspection and, as such, it is the specialized technical body responsible for promoting and monitoring compliance with the legislation on social, labour and occupational safety and health matters and for providing technical advice, performing controls and proposing the adoption of standards in these areas. The Government reports that during the period 2016–21, regional labour departments and/or directorates dealt with 30 inspection orders for the enterprise in relation to various areas, which resulted in 27 inspection activity reports and seven violation reports; and (ii) during the period 2016–23, SUNAFIL undertook 405 inspections at the enterprise (57 relating to collective labour relations and 9 on discrimination based on union affiliation of which 4 resulted in a violation report). The Government also indicates that on 28 February 2023, SUNAFIL introduced a register of trade union organizations in the virtual complaints system which allows the representatives of these organizations to follow up on complaints lodged. The Government also reports that the inspection orders referred to in the complaint have been closed and that the three investigations conducted between 2017 and 2018 concluded that it had not been possible to establish acts of harassment in the area known as the COT and there was also no evidence of acts of discrimination or violation of social and labour standards on freedom of association (trade union leave and dues). The Government attached the three inspection reports resulting from the inspection orders for the enterprise and indicates that these reports are issued not only when no labour violation is found, but also when violations detected at the inspected enterprise are corrected.
- 563.** The Government indicates that the labour inspection system consists of two stages; a period of time is given to inspection, and another is given to evaluation and determination of the penalty, if appropriate. The Government indicates that the inspection stage, during which investigations or checks are carried out, is for the labour inspector to verify compliance with the social and labour regulations, and for this reason it must be a reasonable period that allows the inspector to analyse the particular elements of each case and to gather the necessary evidence to conclude whether or not the employer's conduct is within the legal framework. In view of the foregoing, the General Labour Inspection Act establishes that inspection activities must be carried out within the time frame indicated in inspection orders, which may not exceed 30 days. The above time frame may be extended on an exceptional basis for a further 30 days in the event of objective circumstances that demonstrate that this is warranted, in which case the labour inspector must submit a request and the competent Labour Inspection Authority approve it.
- 564.** The Government indicates that the labour inspection regulations have been adjusted when areas for improvement have been identified and that various improvements have been

introduced to the inspection procedure, not only to penalize employers for practices that do not comply with the regulations but, also, to prevent situations of non-compliance. The Government cites as an example Ministerial Resolution No. 291-2019-TR, pursuant to which a software tool for analysis, detection and the issuance of alerts was created that provides timely and effective information to prevent, provide guidance and monitor potential risks of non-compliance with social and labour regulations, as part of the inspection intelligence activities carried out by SUNAFIL.

- 565.** With regard to the PNCP, the Government indicates that in July 2018, the Ministry of Economy and Finance (MEF) published a document for discussion on the main drivers to boost the country's competitiveness and productivity and it was not until November of that year that the members of the CNTPE agreed to submit the labour aspects of the document to tripartite dialogue. The Government indicates that the first meeting to discuss the issue could not be held because the representatives of the trade union confederations did not attend and that although a meeting was scheduled for January 2019, the PNCP was approved by the executive by Supreme Decree in December 2018. The Government indicates that although the trade union confederations disagreed with the manner in which the PNCP was approved, given that there had been no prior dialogue process within the CNTPE, the approval of the PNCP was not the end but the beginning of a process for the adoption of specific measures through dialogue with the social actors. The Government indicates that the CNTPE and the CNCF are two distinct forums for dialogue and deal with different matters. While the CNTPE is a body set up in 2001 under the Ministry of Labour in which employers' associations and trade union confederations are represented in equal numbers, the CNCF, established in 2002, reports to the MEF and deals with matters related to national productivity and competitiveness such as investment, infrastructure and innovation, hence the business sector is more broadly represented in the CNCF, given that it discusses economic and financial matters. The Government indicates that Supreme Decree No. 038-2019-EF, amending Supreme Decree No. 024-2002-PCM to enhance the functions of the CNCF, provides that the CNTPE is the body responsible for communicating the name of the representative selected by all of the accredited trade union confederations to the Technical Secretariat of the CNCF. The Government points out that between 2002 and 2009, there was only one worker representative on the Executive Board of the CNCF and that in 2009, pursuant to Supreme Decree No. 223-2009-EF, worker representation on the Board was eliminated, hence until the issuance of Supreme Decree No. 038-2019, trade union organizations were not represented on the Executive Board of the CNCF.
- 566.** The Government indicates that although in early 2019 some trade union confederations expressed dissatisfaction with the PNCP and suspended their participation in the CNTPE, the confederations met with the President of the Republic, the secretariat of the CNTPE renewed the invitation to engage in dialogue, sessions were held at which worker representatives presented proposals for the PNCP plan, input was gathered from judicial officers and academics and various workshops and activities were held with trade union representatives; as a result of this dialogue process, to which significant inputs were made by various stakeholders in the sphere of social and labour affairs, the National Competitiveness and Productivity Plan was approved by Supreme Decree No. 237-2019. The Government states in particular that for the development of priority objective 5 of the Plan: "To create the conditions for a dynamic and competitive labour market to generate decent employment", although it was only possible to hold one information session in the CNTPE because of the decision of various trade union confederations to withdraw from it, discussions held in the regional labour and employment councils were used for input. The Government emphasizes that social dialogue is a cross-cutting driver of its action and that it promotes forums for tripartite social dialogue, the CNTPE being the most relevant social dialogue forum in the country. The

Government notes that during 2019 and 2020, the CNTP maintained a constant call for social dialogue. The Government adds that, after almost one year since the activities of the CNTPE plenary and committees were suspended, on 13 July 2023 the first meeting of the CNTPE plenary was held, at which it was agreed to resume dialogue within the CNTPE and to reactivate its committees.

C. The Committee's conclusions

- 567.** *The Committee notes that in the present case the complainant organization alleges that an enterprise in the telephony sector has an economic benefits policy with anti-union criteria and that it has carried out anti-union acts of various kinds against workers affiliated with the SUTTP, a trade union operating in the enterprise. The complainant organization further alleges that, although those acts were reported to SUNAFIL, the country does not have a system that provides effective protection of collective labour rights. The Committee notes that the enterprise denies carrying out acts against freedom of association, and the Government's explanation that labour inspection regulations have been amended over time and that improvements continue to be made in this respect.*
- 568.** *The Committee notes the complainant organization's allegation that: (i) since 2014, the enterprise has an exclusive benefits policy and salary system for persons not affiliated to any trade union and to whom no collective agreement applies; (ii) neither the collective agreement nor the aforementioned policy apply to unionized executive workers; (iii) while the enterprise requires SUTTP members to perform compensatory work for holidays on days when they are entitled to rest, members of other unions are not required to perform such work; and (iv) although under the existing collective agreement concluded with the SUTTP the enterprise agreed to protect internal employability in a climate of respect and calm, the enterprise transferred workers to the area known as the COT without taking into account the occupational qualifications, age or health of those involved. The Committee notes that the complainant organization highlights in this respect that: (i) although the enterprise has a trade union membership rate of 56 per cent, 98.6 per cent of workers at the COT are unionized, which indicates the anti-union nature of the transfers; (ii) in 2019, the enterprise introduced a new performance evaluation system applicable primarily to the COT with minimal benefits and drastic penalties that range up to dismissal; and (iii) the enterprise denied the leadership of SUTTP access to the meetings held to address the problems arising from the transfers to the COT and failed to comply with the collective agreement in that instead of holding bipartite discussion groups with the SUTTP it invited third parties.*
- 569.** *The Committee notes the indication of the enterprise in this respect that: (i) 96.48 per cent of workers in the category of employee, which represents 44 per cent of the total number of workers in the enterprise, are members of one of the six trade union organizations operating in the enterprise; (ii) the 2014 wage review and benefits policy, updated over the years, has applied to 3 per cent of the enterprise's non-unionized "employees" (neither executives nor managers); (iii) the policy does not seek to avoid or discourage trade union membership; the benefits that it grants are not greater than those agreed under the collective agreements and it has objective criteria for salary increases for employees who decide not to join a trade union and whose remuneration is not fixed by collective bargaining, but under no circumstances is it used as a mechanism for pressure nor does it undermine collective bargaining; (iv) the average remuneration of unionized workers is greater than that of non-unionized workers and in practice, the salary review policy has not had a negative impact on trade union membership, has not undermined or discouraged membership, since the volume of staff who are members of a union has remained constant over time and the SUTTP has experienced steady growth in its membership; and (v) the policy in question was evaluated by the Labour Inspection Authority, which found it to have no anti-union purpose.*

- 570.** *The Committee notes the further indication of the enterprise that: (i) unionized executive workers are outside the scope of application of the salary and benefits review policy and the national legislation (section 42 of the TUO-LRCT) provides that collective agreements are not applicable those who occupy management posts or hold positions of trust; and (ii) compensatory work for holidays is applicable to all workers in the enterprise. In respect of the transfer of workers to the COT, the enterprise indicates that: (i) this does not constitute failure to comply with the collective agreement or an act of hostility against unionized workers; (ii) the transfers were justified on objective grounds, union membership was not a criterion taken into account to determine whether or not the transfer was appropriate and worker' profiles were assessed taking into account occupational categories and labour rights; (iii) no individual workers are mentioned in the complaint, which precludes further details on specific cases; and (iv) a clear majority of staff in the enterprise is unionized, hence it is logical that the majority of staff working at the COT should also be unionized.*
- 571.** *The enterprise also states that: (i) in early 2019, it created a forum with the SUTTP to reply to questions that the trade union organization might have on this issue and, with the exception of one occasion on which the leadership refused to show their identification, the meetings took place periodically until the first quarter of 2020; (ii) it set up three forums as agreed under the collective agreement, and these are different from the working group to which the complainant organization refers, namely, the Bipartite Clothing Commission, in which other trade union organizations took part; and (iii) the productivity and performance evaluation system applied to the COT seeks to improve the customer satisfaction rate on the basis of objective criteria, and although it provides for disciplinary measures they are not disproportionate and no drastic disciplinary measure has been implemented. The Committee also notes that, according to the Government and the enterprise, various court proceedings are under way relating to almost all of the above-mentioned topics.*
- 572.** *The Committee takes due note of the above-mentioned information. The Committee notes that whereas the complainant organization states that the enterprise has a trade union membership rate of 56 per cent, the enterprise indicates that 96.48 per cent of workers in the employee category, which it explains represent 44 per cent of the total number of workers, are members of one of the six trade union organizations.*
- 573.** *The Committee notes that in the complaint it is firstly alleged that the enterprise has anti-union remuneration policies. The complainant organization refers on the one hand to the "benefits policy for employees" and on the other hand to the "exclusive salary system for persons not affiliated to a trade union and to whom no collective agreement applies". The Committee notes that, in its reply, the enterprise refers to the "salary and benefits review policy" as a whole. The Committee duly notes the enterprise's indications that, from 2014 to 2020, this policy did not offer greater advantages than the collective agreements, that it applied solely to non-unionized employees in the enterprise (not to executives or directors), who constituted 3 per cent of the total number of employees, and that the practice did not have a negative impact on the trade union membership rate and its emphasis on the fact that the average remuneration of unionized workers is greater than that of non-unionized workers. The enterprise also states that following a complaint lodged with SUNAFIL, the latter confirmed that the salary and benefits review does not constitute a practice that violates freedom of association. Noting the enterprise's indication that the average remuneration of unionized workers is greater than that of non-unionized workers, the Committee observes that it does not have sufficient information and elements at its disposal to be able to effectively compare the two existing salary and benefits "structures" in the enterprise and evaluate the impact that they might have on one another. In any event, the Committee observes that in a situation in which collective agreements are not applicable to all workers in an enterprise and there is a wage structure applicable to workers whose remuneration is not fixed by collective bargaining, it is important to ensure that such a*

structure neither has a detrimental effect on collective bargaining processes nor discourages trade union membership in the enterprise.

- 574.** *With regard to the allegation that neither the collective agreement nor the wages and benefits policy applies to unionized executive workers in the enterprise, the Committee notes the enterprise's indication that the national legislation (section 42 of the TUO-LRCT) provides that collective agreements do not apply to those who occupy management posts or hold positions of trust. In this respect, the Committee notes that the 2016–19 collective agreement signed between the SUTTP and the enterprise stipulates that the benefits agreed therein are granted exclusively to members of the union. The Committee also notes that in 2018, the MTPE issued a technical opinion on the application of a collective agreement to workers in positions of trust in the enterprise in question who are members of another trade union operating therein. The Committee notes that the technical opinion, published on the Ministry's website, states that: (i) an isolated reading of section 42 of the TUO-LRCT, which excludes from the scope of a collective agreement workers in positions of trust who are members of the trade union organization that concluded the collective agreement, is contrary to the freedom of association enshrined in the Political Constitution for the benefit of workers, including those in positions of trust; and (ii) with further reference to Conventions Nos 87 and 98, it finds that the collective agreement is applicable to workers in positions of trust in the enterprise who are members of the trade union organization that concluded the agreement. The Committee notes these different elements which point to the existence of an ongoing debate on the applicability of collective agreements to staff in management posts or positions of trust. With regard to the rights to collective bargaining, the Committee recalls that this right should be guaranteed to trade unions representing all kinds of workers. Noting that, according to the enterprise, the applicability of the agreement signed with the SUTTP is under way before the courts, the Committee expects that the courts have ruled taking into due account both the will expressed by the parties to the agreement in question and the criteria set out above with regard to the personal scope of collective bargaining.*
- 575.** *The Committee notes that another of the elements in respect of which the complainant organization expresses concern relates to the transfer of workers to the area known as the COT, since, it claims, the enterprise had not only undertaken in the collective agreement to protect employability in a climate of respect and calm, but that almost all the transferred workers were unionized. The Committee notes the enterprise's assertion that the transfers were justified on objective grounds and that, given that a clear majority of staff in the enterprise is unionized, it is logical that in the COT the majority of staff should also be unionized.*
- 576.** *The Committee observes that both the complainant organization and the Government indicate that SUNAFIL conducted several inspections of the enterprise in relation to the transfers to the COT. The Committee notes the content of the inspection reports appended by the Government and observes that, while in one of them SUNAFIL stated that in the COT there were both unionized and non-unionized staff, that report contains a list of COT staff which shows that only 3 of the 286 workers were not affiliated to a trade union. The Committee also observes that in the reports SUNAFIL: noted that the transferred workers retained the same category and remuneration as previously; observed that the transfer corresponded to a restructuring plan for the enterprise which was not intended to harm the workers in any way; found that trade union leave and deductions of union dues had been granted; and concluded that freedom of association had not been violated. The Committee also observes that, while the complainant organization alleges that a performance evaluation system was introduced that was applicable primarily to the COT, with penalties ranging up to dismissal, the complaint does not indicate whether there have been any disciplinary sanctions or dismissals of unionized or non-unionized workers. Further noting that SUNAFIL has carried out checks with respect to this area, the Committee expects that the competent authorities will continue to ensure that the practice at the COT does not affect the exercise of freedom of association.*

577. The Committee notes that the complainant organization also alleges that, while complaints are lodged with SUNAFIL, the country does not have an effective procedure for monitoring violations linked to the protection of freedom of association.
578. The Committee takes due note of the concerns expressed by the complainant organization regarding the time involved in investigations (over two months spent on the investigation stage), and the lack of specialized knowledge in the area of freedom of association, and notes the Government's statements whereby: (i) inspection activities are carried out within a maximum time frame of 30 days, which only in exceptional cases may be extended for a further 30 days; (ii) the labour inspection regulations have been adjusted over time; (iii) during the period 2016–23, 405 inspections were carried out at the enterprise (57 relating to collective labour relations and 9 on discrimination based on union affiliation of which 4 resulted in a violation report); and (iv) in February 2023, SUNAFIL introduced a register of trade union organizations in the virtual complaints system which allows the representatives of these organizations to follow up on complaints lodged. Bearing in mind that the Committee of Experts on the Application of Conventions and Recommendations (CEACR) is monitoring the role of SUNAFIL in respect of anti-union discrimination in the context of the application of Convention No. 98, the Committee invites the Government to continue to provide information in this context on the measures adopted to improve the effectiveness of inspection activities in the area of trade union rights.
579. The Committee observes that both the complainant organization and the Government indicate that, at the time they submitted their communications, various court proceedings were under way relating to several of the topics raised in the complaint, including alleged non-compliance with various provisions of the 2016–19 collective agreement and the transfer of workers to the COT. The Committee does not have any information concerning the results of these court proceedings. While it recalls that agreements should be binding on the parties [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 1334], the Committee observes that, according to publicly available information, on 8 June 2023 the enterprise signed an agreement which settled various claims with a number of trade union organizations, including the claims submitted by the SUTTP corresponding to the periods 2019–20, 2020–21 and 2021–22. The Committee hopes that these agreements have clarified a number of the issues raised in the complaint and, trusting that the above-mentioned judicial proceedings have been concluded, urges the parties to strengthen the existing forums for dialogue within the enterprise so that any outstanding issues can be submitted for open dialogue conducted in good faith.
580. Lastly, the Committee notes that the complainant organization also alleges that the Government has introduced regulatory provisions that substantially weaken social dialogue, mentioning as examples decrees issued in 2018 and 2019 by means of which: (i) the PNCP was allegedly approved without it having been the subject of consultations in the CNTPE; (ii) the representativeness of workers on the Executive Board of the CNCF was allegedly amended, with just one of the 21 representatives who constitute the CNCF representing workers; and (iii) the same decree allegedly established public–private technical committees for the development of the various aspects of the PNCP without making provision for the presence of trade union representatives in their composition, despite the fact that one technical committee is concerned with the labour market.
581. The Committee notes that, in this respect, the Government indicates that: (i) it promotes forums for tripartite social dialogue, with the CNTPE being the most relevant social dialogue forum in the country; (ii) the PNCP proposal was made public in July 2018 with a view to obtaining all relevant comments; (iii) it was only in November 2018 that the CNTPE decided to schedule a meeting to examine the PNCP; (iv) the PNCP was adopted on 31 December 2018 after the CNTPE session in question scheduled for the beginning of December 2018 was postponed until January 2019 owing to the absence of several trade union confederations; and (v) the approval of the PNCP was just the

beginning of a process, through dialogue with the social partners, that led to the adoption of the National Competitiveness and Productivity Plan (Supreme Decree No. 237-2019-EF) for the development of priority objective 5 of the Plan ("To create the conditions for a dynamic and competitive labour market to generate decent employment"), although it was only possible to hold one information session in the CNTPE because of the decision of various trade union confederations to withdraw from it, discussions held in the regional labour and employment councils were used for input. The Government also indicates that the representation of workers on the Executive Board of the CNCF has not been balanced in the past, stressing that it reports to the MEF and deals with matters related to competitiveness, such as investment, infrastructure and innovation, hence the business sector is more broadly represented.

- 582.** *The Committee notes that the complainant's allegations relate, on the one hand, to the composition of the CNCF and its technical committees and, on the other, to consultations on the PNCP adopted on 31 December 2018. The Committee notes that similar allegations were submitted by another trade union confederation, the Autonomous Workers' Confederation of Peru (CATP), in the framework of Case No. 3359. The Committee observes that the parties agree that: (i) since the postponement to January 2019 of the meeting scheduled by the CNTPE for December 2018 and owing to the absence of various trade union confederations from it, the PNCP was adopted on 31 December 2018 without the CNTPE conducting a tripartite review of it; (ii) consequently, two trade union confederations suspended their participation in the CNTPE; (iii) owing to the suspended participation of the two confederations, the National Competitiveness and Productivity Plan adopted in 2019 in application of the policy in question was not preceded by national tripartite dialogue in the CNTPE but did give rise to regional dialogue in the regional labour and employment promotion councils (CRTPE); (iv) the Plan in question contains priority objective 5 entitled "To create the conditions for a dynamic and competitive labour market to generate decent employment"; (v) Supreme Decree No. 038 of 2019, which amends the composition of the CNCF, reintroduces a trade union presence into it, albeit limited to a single representative as compared to 13 Government representatives and 6 representatives of employers' organizations; and (vi) the decree mentioned does not refer to the participation of trade unions in the public-private technical committees established in the CNCF. The Committee observes that it is apparent from the above that: (i) in a context of difficult relations between the Government and various trade union confederations, the PNCP could not be preceded by national tripartite dialogue in the CNTPE; (ii) the trade union representation reintroduced by decree in the CNCF is still restricted and does not extend to the technical committees; and (iii) while the activities of the CNCF extend beyond labour and employment issues, its sphere of competence includes them, as indicated by the existence of the public-private technical committee on the labour market and of priority objective 5 of the National Competitiveness and Productivity Plan.*
- 583.** *The Committee recalls that it has emphasized the vital importance that it attaches to social dialogue and tripartite consultation, not only concerning questions of labour law but also in the formulation of public policy on labour, social and economic matters. [see **Compilation**, para. 1525]. On the basis of the foregoing, the Committee urges the Government, in consultation with the most representative social partners, to take the necessary measures to ensure that the most representative trade union organizations are duly consulted and can make their voice heard in economic policy-making processes that could affect the interests of workers. The Committee welcomes the fact that in mid-2023 the CNTPE was reactivated and calls on the Government to pay particular attention to the participation of the most representative trade union organizations in CNCF bodies concerned with labour market issues and ensure smooth collaboration between the CNCF and the CNTPE in their respective spheres of competence.*

The Committee's recommendations

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

- (a)** The Committee requests the Government to ensure that the competent authorities continue to evaluate the impact of the salary and benefits review policy on collective negotiation processes and trade union membership in the enterprise.
- (b)** Observing that the matter of the applicability of the collective agreement of the enterprise to executive workers was under way before the courts, the Committee expects that the courts have ruled taking into due account both the will expressed by the parties to the agreement and its conclusions with regard to collective bargaining.
- (c)** Noting that the National Labour Inspection Authority (SUNAFIL) has carried out checks with respect to the transfer of workers to the Technical Operations Centre (COT), the Committee expects that the competent authorities will continue to ensure that the aforementioned practice does not affect the exercise of freedom of association.
- (d)** The Committee invites the Government to continue to provide the Committee of Experts on the Application of Conventions and Recommendations (CEACR) with information on measures taken to improve the effectiveness of inspection activities in the area of trade union rights.
- (e)** The Committee hopes that the agreements reached in June 2023 have clarified a number of the issues raised in the complaint and, trusting that the judicial proceedings that were under way have been concluded, urges the parties to strengthen the existing forums for dialogue within the enterprise so that any outstanding issues can be submitted for open dialogue conducted in good faith.
- (f)** The Committee urges the Government, in consultation with the most representative social partners, to take the necessary measures to ensure that the most representative trade union organizations are duly consulted and can make their voice heard in economic policy-making processes that could affect the interests of workers. The Committee welcomes the fact that in mid-2023 the National Council for Labour and Employment Promotion (CNTPE) was reactivated and calls on the Government to pay particular attention to the participation of the most representative trade union organizations in the National Council for Competitiveness and Formalization (CNCF) bodies concerned with labour market issues and ensure smooth collaboration between the CNCF and the CNTPE in their respective spheres of competence.
- (g)** The Committee considers that the present case is closed and will not pursue its examination.

Case No. 3433

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

Complaint against the Government of the Republic of Korea presented by

- the Federation of Korean Trade Unions (FKTU)
- the Federation of Korean Public Industry Trade Unions (FKPITU)
- the Korea Financial Industry Union (KFIU) and
- the Federation of Korean Public Trade Unions (FKPTU)

Allegations: The complainant organizations allege that the Government's unilateral revision of the "Guidelines on Innovation of Public Institutions" and the "Management Evaluation Manual of Public Institutions" unduly restricted free and voluntary bargaining on welfare benefits in public institutions

- 585.** The complaint is contained in a communication dated 20 July 2022 from the Federation of Korean Trade Unions (FKTU), the Federation of Korean Public Industry Unions (FKPITU), the Korea Financial Industry Union (KFIU) and the Federation of Korean Public Trade Unions (FKPTU). In a communication dated 20 July 2022, the UNI Global Union supported the allegations of its affiliate the KFIU.
- 586.** The Government provided its observations in a communication dated 3 February 2023.
- 587.** The Republic of Korea 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

- 588.** In their communication dated 20 July 2022, the FKTU, the FKPITU, the KFIU and the FKPTU state that through its 2021 revision of the Management Evaluation Manual of public institutions and the Guidelines for Innovation of Public Institutions (hereafter, Innovation Guidelines), the Ministry of Economy and Finance (MOEF) has added a new management performance evaluation indicator concerning welfare-related matters in public institutions, including intra-company loans, which in practice limits the freedom of workers and employers to determine these matters through free collective bargaining. The complainants allege that welfare benefits were one of the matters that used to be determined by collective bargaining in the framework of "autonomous operation of public institutions", guaranteed by the Act on Management of Public Institutions (AMPI); and that the 2021 revisions infringed the obligations of the Government of the Republic of Korea under Convention No. 98, including the obligations to respect and protect autonomous bargaining between labour and management and to refrain from affecting collective bargaining by compulsory means.

- 589.** The complainants state that the AMPI provides that the Government shall ensure the self-controlling operation of public institutions, but also provides that the Minister of Economy and Finance shall establish guidelines after deliberation and resolution by the Steering Committee and shall notify those to the heads of subject public institutions. Concerning intra-company loans, the complainants allege that until 2021, Innovation Guidelines only provided that: (i) public institutions may provide loans for housing funds from their budget or labour welfare funds alike, while loans for living stabilization funds could be provided from labour welfare funds only, except in case of company relocation, when living stabilization could be supported from the budget as well; and (ii) interest rates should be determined in consideration of market rates, interest-free loans being prohibited in principle. According to the complainants, within this framework, housing and livelihood loans were provided in accordance with labour-management agreements reached through collective bargaining. But the revised version of Innovation Guidelines dated 29 July 2021 introduced the prohibition of providing intra-company loans for purchasing a house larger than 85 m² and set limits to the amount of the loan and specified the interest rate to be applied. Furthermore, on 1 October 2021, the steering committee of the MOEF decided to include in the Management Evaluation Manual of Public Institutions a new indicator concerning the improvement of intra-company loan system in line with the revised Innovation Guidelines. The complainants specify that as the results of management performance evaluation of public institutions have a direct impact on the performance-based payment – the workers at the public institutions that are evaluated below the grade D will not receive any performance-based payment – these evaluations serve as a compulsory means to invalidate collective bargaining.
- 590.** Regarding the contribution of the employer to Employee Welfare Funds, the complainants allege that the Framework Act on Labour Welfare does not contain specific restrictions concerning the contribution of business owners to intra-company labour welfare funds, except that the amount of this contribution shall be determined by the rehabilitation fund council. Nevertheless, Government Guidelines drew up a framework in this regard, providing that contributions will be made to the funds taking into consideration the amount of contribution per employee, the level of contribution by private companies in the same industry, and the financial resources required for welfare projects. The complainants allege that these Budget Guideline provisions, make the determination of the matter through autonomous negotiations between labour and management impossible.
- 591.** The complainants refer to the ruling of Suwon District Court of 11 January 2011 concerning the allowance of researchers at government-funded research institutes designated as public institutions, which provides that Government Guidelines do not change the content of existing collective agreements and are no basis for excluding the application of the Labour Standards Act (LSA). They argue that despite this ruling, by revising its Guidelines and the Management Evaluation Manual, the Government interferes in the autonomous bargaining between labour and management concerning matters such as total labour cost, welfare and intra-company labour welfare fund. They emphasize specifically that although matters related to welfare should be determined autonomously between labour and management, the scope and specific details set in the Guidelines make negotiations about them virtually impossible, especially in light of potential negative consequences of poor management performance evaluation results for a public institution, which include the dismissal of the head of the agency, warning measures and differential payment of performance-based wages. According to the complainants, as the scope and limits of negotiations are externally determined and labour and management can determine working conditions within that limited scope only, there is infringement of the right to collective bargaining. The Government is practically forcing collective bargaining to reflect the details of management performance evaluation criteria, as

the public institution employers cannot take the risk of unfavourable evaluation results and have no choice but to change the matters of collective bargaining in accordance with the Guidelines and the Management Evaluation Manual. The complainants stress that the Government has revised the Guidelines and the Management Evaluation Manual according to financial necessity, unilaterally and without any notice.

B. The Government's reply

- 592.** In its communication of 3 February 2023, the Government rejects the complainants' allegation that it has infringed the right to collective bargaining of workers and employers of public institutions by revising its guidelines and management evaluation manual. Concerning the allegation that the guidelines were revised unilaterally and without any notice, the Government indicates that while establishing the Budget Guidelines, it has executed tripartite consultations through the Economic, Social and Labour Council. It specifies in this regard that the Public Sector Development Committee (PSDC) was the tripartite body, composed of one chairperson, nine commissioners from labour, employers and the Government respectively, and five public interest commissioners, through which consultations were conducted from 17 September 2014 to 30 April 2015. At the time, the PSDC was organized under the "Economic and Social Development Tripartite Council" which is now known as the Economic, Social and Labour Council. During its operation period, the PSDC discussed issues related to the "2015 Budget Guideline", improvement plans for the public sector management system, rational strategies on workforce management and the wage system.
- 593.** The Government further indicates that in November 2014, the PSDC discussed labour proposals concerning the Budget Guidelines, including in two working meetings with the MOEF and the Workers' representatives. Although no final agreement was reached between the Government and labour and no recommendation was adopted at the time, both parties achieved decent accomplishments in improving the system related to the contribution rate of Employee Welfare Funds through dialogue, and the Government later partially revised the 2015 Budget Guidelines to reflect the criteria demanded by labour. In the revised version of the Guidelines, five contribution rates were provided (5, 4, 3, 2 and 0 per cent of the net profit of the enterprise before tax) corresponding to five ranges of the cumulative amount of the fund per person, (5 or less, 5–10, 10–15, 15–25 and more than 25 million South Korean won (KRW)) while previously there were three contribution rates (5, 2 and 0 per cent of the net profit before tax, corresponding to 5 or less, 5–20 and more than KRW20 million cumulative amount of fund per person). According to the Government communication, the 2014 and revised 2015 Budget Guidelines both provided that the size of contribution per employee and the level of contribution from private enterprises in the same or similar industries will be considered in fixing the amount of contributions and that all other special contributions were prohibited.
- 594.** The Government cites provisions of national law guaranteeing freedom of association and the right to collective bargaining, including section 94 of the LSA, which provides that "an employer shall, with regard to the preparation or alteration of the rules of employment, hear the opinion of a trade union if there is such a trade union composed of the majority of the workers in the business or workplace concerned, or otherwise hear the opinion of the majority of the said workers... in case of amending the rules of employment unfavourably to employees, the employer shall obtain their consent thereto". It further indicates that although Budget and Innovation Guidelines are notified to public institutions, according to the national law these institutions should first undergo their own decision-making process to confirm matters related to wages, welfare, contribution to Employee Welfare Fund and in-company loan programmes, propose revision frameworks such as employment rules or collective agreements covering

these matters and receive consent from workers' groups (trade unions or representatives) regarding them. Opposition from workers may defeat the amendment of employment rules or collective agreements in line with Government Guidelines. In such a case, the institutions are only evaluated as insufficient in the management performance evaluation in relevant matters such as wages and welfare expenses.

- 595.** In reply to the allegation that its Guidelines infringe public sector workers' right to collective bargaining and Convention No. 98, the Government indicates that in a judgment dated 31 January 2002, the Constitutional Court ruled that Budget Guidelines are notified to government-invested institutions as an internal act of management and thus the counterpart of collective bargaining cannot blame it, as it does not constitute an exercise of public power on workers, but an act of internal supervision between the Government and public institutions. The Government stresses in this regard that the Guidelines do not directly bind public institutions, but only offer internal recommendations to the investee institution. It further indicates that these arguments also apply to Innovation Guidelines and that specifically regarding the in-company loans, amendment of internal regulations with a view to bringing them in line with the provisions of Innovation Guidelines requires the agreement of the trade union in accordance with sections 4 and 94 of the LSA. According to the Government, labour and management can decide not to apply the Guidelines concerning loan limits and interest rates. Therefore, the Government concludes that it has not infringed the right to collective bargaining concerning this issue in public institutions.
- 596.** In reply to the allegation of infringement of the right to collective bargaining through the revision of the management evaluation manual, the Government indicates that it conducts management performance evaluations to enhance publicity and management efficiency and to induce improvement of public services. Evaluation standards and methods are presented in advance in the manual, but the manual does not have binding force on public institutions or workers and if public institutions do not perform well under certain indicators, they will only be evaluated as insufficient in the management improvement concerning those indicators. For example, in the 2021 Manual, the execution of total labour cost under the Budget Guidelines and compliance with the intra-company loan system under the Innovation Guidelines are presented as indicators for evaluation. Nevertheless, three institutions executed total labour cost greater than the limit set forth and many institutions applied different criteria to intra-company loans. Therefore, the Government concludes that the management performance evaluations and the related Manual do not infringe the right to collective bargaining.
- 597.** In reply to the allegation of infringement of the right to collective bargaining by unilateral restriction of total labour cost in Budget Guidelines, the Government indicates that setting a ceiling for total labour cost in the Guidelines aims at preventing excessive expansion and lax management of the public sector and as most public institutions use government budget support and benefit from exclusive business rights, strict management of their labour cost is essential. Nevertheless, each institution can autonomously decide on specific payment methods and amount within the ceiling fixed. Furthermore, the Government applies the system flexibly, for example, through differential application of the increase rate according to the level of remuneration in institutions, with a view to reducing the wage gap between various public institutions. The Government again stresses that it cannot be considered that total labour cost regulations violate the right to collective bargaining in public institutions as the Budget Guidelines do not invalidate collective agreements that have already taken effect nor do government agencies block or restrict the effectiveness of those agreements. It reiterates that the Guidelines do not bind collective agreements nor do they require government approval of concluded collective agreements. Finally, according to the Government, the Budget

Guidelines standard concerning the performance-based payment rate is also proposed as an ideal model and is used for management and government supervision over public institutions.

- 598.** In reply to the allegation of its interference in collective bargaining concerning intra-company loans, the Government indicates that public institutions provide housing funds and living stability funds to their employees through this loan system and reiterates that Innovation Guidelines, the 2021 revision of which has tightened the requirements on limits and interest rates of intra-company loans, do not directly bind public institutions and are only proposed by the MOEF for innovation in management. Any change unfavourable to workers in the existing rules concerning loans within a public institution will require the agreement of the unions. The Government further indicates that the Suwon District Court ruling of 11 January 2012 cited by the complainants, confirms that Government Guidelines cannot change the contents of collective agreements. It re-emphasizes the specific character of public institutions, which gain profit in exchange for providing exclusive services designated by the Government or benefit from other forms of public financial assistance providing them significant competitive advantages. According to the Government, the Innovation Guidelines' provisions concerning welfare benefits and intra-company loans are management recommendations to the public institutions' employers. Therefore, the Government concludes that these provisions are compatible with free conclusion of collective agreements in public institutions.
- 599.** Rejecting the allegation that Budget Guidelines' regulation of level of contributions to Employee Welfare Funds makes autonomous negotiations between labour and management on this matter impossible, the Government indicates that section 61.1 of the Framework Act on Labour Welfare provides that a business owner may contribute an amount decided by the welfare fund council, based on 5 per cent of the net income before deducting corporate or income tax for the preceding year as financial resources for the intra-company labour welfare fund and the Guidelines' provision on capping of the contribution is compatible with this provision of the Framework Act. The Government further refers to a Supreme Court ruling on a case related to Korea District Heating Corporation, where the labour welfare fund council had decided to contribute 2 per cent of the earnings before tax, with a view to complying with the 2010 Budgeting Guidelines. The Government communication quotes an excerpt of the Supreme Court ruling in the following terms: "...since the Defendant's obligation to contribute welfare funds occurs only when the council has agreed or decided on the contribution ratio, the Plaintiff cannot immediately request the Defendant to fulfil the obligation to contribute under the agreement (the collective agreement of Korea District Heating Corporation's labour and management prescribing to save 5% of net profits before taxation for intra-company labour welfare fund) in this case".
- 600.** The Government further indicates that pursuant to section 51(2)(1) of the AMPI, when a public institution intends to pay a contribution to a separate intra-company welfare fund corporation, it must first consult the MOEF. This preliminary consultation is to prevent reckless investments by public institutions which, unlike private companies, operate with taxes or generate profits from the provision of exclusive services designated by the Government. According to the Government, the relevant provisions in Budget Guidelines specify the procedures of these preliminary consultations, the object of which is the amount of contribution to be presented during the labour-management consultation process. Ultimately, the amount of contribution is determined by the welfare council of the fund corporation, which is composed of an equal number of labour and management members. This amount may differ from the results of the prior consultation. Therefore, Budget Guidelines have no binding force in this regard and do not interfere in collective bargaining on the matter.

C. The Committee's conclusions

- 601.** *The Committee notes that this case concerns the Government's alleged interference in collective bargaining at public institutions through the issuance of guidelines and management performance evaluations. It recalls that the question of impact of Government Guidelines and management performance evaluations on collective bargaining in the public sector has been raised in several previous cases concerning the Republic of Korea including in Cases Nos 2829 and 3237 [365th Report, paras 430–582 and 386th Report, paras 160–213], and most recently in Case No. 3430 [see 403rd Report, paras 438–495].*
- 602.** *The Committee notes that the complaint focuses mainly on the impact of Government Guidelines and evaluations on collective bargaining concerning two matters: intra-company loans and the level of employer contribution to Employee Welfare Funds. In particular, the Committee notes that the complainants allege that the 2021 unilateral revision of Innovation Guidelines and the Evaluation Manual resulted in the addition of new management performance evaluation indicators concerning remuneration and welfare, including compliance with new guidelines on intra-company loans. The Committee notes that according to the complainants, these changes leave the employers of public institutions no choice but to change the previous internal rules governing welfare benefits – which were defined through collective bargaining – with a view to complying with the new Guidelines, because they cannot be expected to maintain the existing rules at the expense of unfavourable management performance evaluation results. The Committee notes the complainants' allegation that since the Guidelines, as enforced through management performance evaluation, determine the scope and limits of negotiations between labour and management, by their adoption the Government has infringed the right to free collective bargaining in public institutions.*
- 603.** *The Committee notes that in reply to these allegations, the Government confirms the alleged changes were made in the Guidelines and the Evaluation Manual, nevertheless, it indicates that the Guidelines are not directly binding on public institutions, and that any change to the internal rules that would be unfavourable to workers would require the consent of the union or the majority of workers to become effective. Therefore, the Government rejects the allegation that the revision of the Guidelines and Evaluation Manual infringed the right to collective bargaining in public institutions. The Committee also notes the Government's indications in reply to the allegation that the Guidelines were revised unilaterally, indicating that tripartite consultations took place prior to the adoption of the 2015 Budget Guidelines, and that although they did not lead to a formal agreement between labour and Government, the Government partially revised the 2015 Budget Guidelines to reflect the demands of labour concerning the criteria of determination of the rate of contribution to Employee Welfare Funds. The Committee notes however that the Government does not refer to any consultations conducted prior to the 2021 revision of the Innovation Guidelines, or specifically concerning the recommended system for granting of intra-company loans, on which the complainants' allegations focus.*
- 604.** *The Committee recalls that in its examination of Case No. 3430, which also addressed, among many other issues, the impact of recommendations included in the 2021 Innovation Guidelines on collective bargaining concerning intra-company loans [403rd Report, para. 489], it had noted that "collective bargaining on terms and conditions of employment in the public institutions of the Republic of Korea is completely decentralized and takes place at the individual public institution level. Nevertheless... regarding certain terms and conditions of employment referred to in the complaint, the Government has formulated general standards and policies in form of Guideline 'recommendations' that are applicable to all public institutions under MOEF monitoring. These recommendations are not legally binding but are integrated into the indicators used to evaluate the management performance of public institutions, which in turn determines budget availability in*

future exercises. As such, they operate as a legally soft, but practically effective framework for collective bargaining at the individual institution level" [403rd Report, para. 481]. The Committee had considered that in view of the special characteristics of most public institutions such as their receiving government budget support and enjoyment of exclusive business rights, a framework may be defined for the exercise of the right to collective bargaining in those institutions with a view to ensuring the preservation of public interest. Nevertheless, it had also considered that to be compatible with the right to free and voluntary collective bargaining this framework should leave a significant role to collective bargaining, and workers and their organizations should be able to participate fully and meaningfully in designing this overall bargaining framework, which implies in particular that they must have access to all financial, budgetary and other data enabling them to assess the situation on the basis of the facts [403rd Report, para. 482]. The Committee finds that these considerations are identically applicable to the present case. It will then examine whether the Government Guidelines concerning intra-company loans and rate of employer contribution to Employee Welfare Funds still leave a significant role to collective bargaining regarding these issues and whether the workers and their organizations have been able to participate fully and meaningfully in designing the framework put in place through the Guidelines and enforced through management performance evaluations.

605. Concerning the rate of employer contribution to Employee Welfare Funds, the Committee notes that the complainants allege that the Framework Act on Labour Welfare allows business owners to contribute to the funds within the scope prescribed by law without providing specific restrictions, except that the amount shall be determined by the "rehabilitation fund council". However, the Government Guidelines establish detailed standards in this regard that impose strict restrictions on autonomous negotiations between labour and management. The Committee also notes the Government's indication that the criteria of contribution were partially revised in the 2015 revision of Budget Guidelines to accommodate labour demands, which were expressed during tripartite consultations held in 2014; however, the Government does not refer to any further tripartite consultations on the matter since 2014.
606. The Committee notes that the relevant standard in the 2015 Budget Guidelines ties the level of employer contribution to Employee Welfare Funds to the cumulative amount of the fund per person and excludes employer contribution once this amount reaches KRW25 million. It further notes that final decision-making on the employer's contribution rate belongs to the "welfare fund council", which is composed of an equal number of members from labour and management. The Committee notes the Government's reference to the Supreme Court decision concerning the case of Korea District Heating Corporation, where the welfare fund council had set the level of employer's contribution at 2 per cent of the earnings before tax with a view to comply with the 2010 Budgeting Guidelines, while the collective agreement of the company provided for a 5 per cent contribution. The Committee notes that the Supreme Court ruling validated the prevalence of the welfare fund council's decision over the collective agreement. It further notes the Government's indication that the level of contribution proposed for decision to the welfare fund council is the outcome of preliminary consultations between the Public Institution concerned and the MOEF and the relevant provisions of the Budget Guidelines are applied in the process of these preliminary consultations but are not binding on the welfare fund council, whose decision may differ from the results of the preliminary consultations. Nevertheless, the Committee notes that the text of the relevant provision in the Budget Guidelines provides that "the amount of Employees Welfare Funds shall be contributed under the criteria stated below...". Furthermore, the 2021 Management Evaluation Manual defines an indicator with 1.5 points which covers improvement in the system of benefits including in-company loans, and which addresses the question "whether the institution has expanded an excessive amount of money on employee benefits compared to the previous year". In view of the foregoing, the Committee understands that although the welfare fund councils have no legal obligation to follow the

Guidelines, in practice they may feel obliged not to ignore them to avoid poor management performance evaluation scores. The Committee therefore considers that the current system is likely to reduce the space for free and voluntary collective bargaining in determining the level of employer contribution to Employee Welfare Funds.

- 607.** *Concerning conditions of allocation of intra-company loans, the Committee notes that according to the complainants, until 2021, Innovation Guidelines contained only general provisions concerning allocation of loans which allowed the parties to collective bargaining within each public institution to define the applicable rules by agreement and loans were allocated in accordance with those agreements. But the 2021 revision recommended the introduction of significant restrictions concerning the conditions of allocation of housing loans. The Committee notes that the revised Innovation Guidelines also set limits to the amount of housing and household stabilization loans, raised the interest rates applicable and required the application of loan-to-value ratio while allocating housing loans. The complainants allege that the Government has made autonomous negotiations de facto impossible by setting specific details in the Guidelines and integrating those criteria into a management performance evaluation indicator. The Committee notes that the Government rejects this allegation, indicating that Innovation Guidelines are not directly binding on public institutions and workers' consent is indispensable to modify previously applicable agreements concerning intra-company loans. The Committee further notes that according to the Government, labour and management can decide not to apply the Guidelines' standards concerning loan limits and interest rates and that many public institutions do not follow Guideline recommendations concerning intra-company loans. In view of the fact that the Government does not provide any indication on the participation of workers' organizations in the process of revision of Innovation Guidelines, the Committee observes that, regarding intra-company loans, Innovation Guidelines as enforced through management performance evaluations are likely to restrict the scope of collective bargaining in public institutions on the basis of a framework that has been designed without meaningful participation of workers and their organizations.*
- 608.** *The Committee recalls that in Case No. 3430, it had requested the Government to establish a regular consultation mechanism that would allow the full and meaningful participation of the organizations representing workers of public institutions in the formulation of guidelines pertaining to the working conditions. The Committee therefore similarly considers that, to ensure effective respect for the right of workers and employers of public institutions to collective bargaining with respect to welfare benefit matters, the Government should submit these issues to consultation with the organizations representing workers of public institutions and ensure that the relevant guidelines fully respect the autonomy of the parties to bargain collectively their conditions. The Committee requests the Government to keep it informed of the measures taken in this regard.*

The Committee's recommendation

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

The Committee requests the Government to submit the welfare benefit issues raised in the present case to consultation with the organizations representing workers of public institutions and ensure that the relevant guidelines fully respect the autonomy of the parties in bargaining collectively their conditions. The Committee requests the Government to keep it informed of the measures taken in this regard.

Case No. 3432

Definitive report

Complaint against the Government of the United Kingdom of Great Britain and Northern Ireland

presented by

- the Nautilus International (Nautilus)
- the National Union of Rail, Maritime and Transport Workers (RMT)
- the Trades Union Congress (TUC)
- the European Transport Workers' Federation (ETF)
- the International Transport Workers' Federation (ITF) and
- the International Trade Union Confederation (ITUC)

Allegations: The complainant organizations allege that 786 seafarers were dismissed by a company in the maritime industry without prior notice or trade union consultation, in breach of collective agreements concluded with two trade unions as well as the national legislation, and subsequently rehired under lesser working conditions or replaced by non-unionized agency workers

- 610.** The complaint is contained in a communication dated 11 May 2022 submitted by the Nautilus International (Nautilus), the National Union of Rail, Maritime and Transport Workers (RMT), the Trades Union Congress (TUC), the European Transport Workers' Federation (ETF), the International Transport Workers' Federation (ITF) and the International Trade Union Confederation (ITUC).
- 611.** The Government transmitted its observations in communications dated 9 March and 20 September 2023.
- 612.** The United Kingdom of Great Britain and Northern Ireland 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

- 613.** In their communication dated 11 May 2022, the complainant organizations – the Nautilus, the RMT, the TUC, the ETF, the ITF and the ITUC – allege that on 17 March 2022, P&O Ferries (the company) summarily dismissed 786 seafarers who were directly employed by the company. According to the complainants, the seafarers were hand-delivered letters of instant dismissal. Those on board the vessels were escorted off past waiting replacement crews in coaches by hired security. One crew member, having been woken to be given the news, was given 15 minutes to collect his things. Cabins were emptied of possessions and one crew member said that it took 15 days before his belongings were returned to him. Two British crew

members, sacked while their ship was in Rotterdam, were bussed to Calais and left to make their own arrangements to return home from there.

614. According to the complainants, there was no prior consultation with the seafarers' unions. No prior notice was given to the UK authorities or those of the countries in which the ships were registered. No warning was given to the seafarers at all.
615. The complainants indicate that the company had collective agreements with the RMT and Nautilus. There was a "Recognition and Procedural Agreement" with each of the unions which conferred recognition on them and set out the procedure for negotiation with the employers. Pursuant to it, various substantive agreements setting the terms and conditions of employment were concluded. The latter provided that the agreements "remain in force indefinitely subject to ... a minimum of six months' notice in writing to the other parties of their/its intention to terminate this Agreement". The terms and conditions set out in these substantive agreements were expressly incorporated (together with any variations by subsequent collective agreement) into the standard form contracts of employment of the seafarers. Among the agreements on terms and conditions were provisions setting out a disputes procedure, both individual and collective. The latter provided a series of stages ending with the possibility of mediation and arbitration and the involvement of advisory, conciliation and arbitration service or third-party mediators or arbitrators and a status quo provision pending exhaustion of the procedure. The complainants allege that these agreements were intentionally and flagrantly breached by the company which disregarded the disputes procedure and, without saying so, effectively terminated the agreements without giving the specified six months' (or any) notice.
616. The complainants allege that that under the UK law, the collective agreements are not enforceable by the unions. The employer could and did breach them with impunity. Moreover, since the dismissals were instantaneous, the possibility of industrial action by the seafarers was denied to them. According to the complainants, under the UK law, the unions are prohibited from calling on other workers to take solidarity action in support of those dismissed. The RMT and Nautilus were thus denied the possibility of taking either legal or industrial action to protect the collective agreements, and the jobs, terms, and conditions of their members.
617. The complainants consider that in dismissing the workforce, the employer completely failed to comply with its legal obligations to engage in consultation with Nautilus and the RMT, set out in section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) (also referred to in the relevant collective agreements between the company and the unions). According to the complainants, the CEO of the company admitted to the Transport and Business Select Committee of the United Kingdom's House of Commons (Select Committee) that the company had a statutory duty to consult the unions but decided to flout it.
618. In addition, the company failed to carry out its obligation to inform and consult Nautilus and the RMT, as required by regulation 13 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE Regulations). The complainants indicate that the TUPE Regulations applied because the employer outsourced crew management to Malta-based, International Ferry Management (a corporation registered in Malta just one month prior to the mass dismissals international company), which engaged new crew through agencies to replace the dismissed seafarers thus amounting to a "service provision change". Furthermore, according to the complainants, no individual consultations with seafarers were carried out, rendering these dismissals procedurally unfair under domestic law. They further allege that the dismissals were in any event unfair since they were caused by the service provision changes (TUPE Regulations 3 and 7) and not redundancies, as characterized by the company, as the

company intended to (and did in fact) carry out the very same activities with new crew on board the vessels.

619. The complainants allege that the company had long employed the device of flags of convenience on their vessels. To preserve the secrecy of the ambush, the company broke UK law by failing to inform the flag States of the alleged redundancies within the prescribed timeframes contained in sections 193-193A of the TULRCA. Whether or not this was a legitimate restructuring, which in the complainants view it was not, the dismissed seafarers should have been transferred under the exact same terms and conditions, and maintaining continuity of service duration, to the incoming crew manager. After the dismissals, some (less than 100) were offered, and accepted, jobs with the international company on inferior terms and conditions. The new jobs were only offered on condition that the dismissed seafarers sign a settlement agreement, barring them from claims against both companies.
620. The company offered the dismissed seafarers the so-called enhanced redundancy packages which included compensation for the failure to consult the unions, unfair dismissal and all other claims – subject to them signing a settlement agreement, which bars them from commencing claims in the employment tribunal and contains a non-disclosure agreement (NDA) barring them from discussing the dismissals. The breaches of UK law entitle claims to be made in an employment tribunal. However, all such claims are subject to statutorily fixed (and very modest) maxima. For this reason, the company was able to quantify with precision what the cost of the dismissals by ambush would be and to assess how long it would be before that cost could be recouped from future profits generated by the poverty wages and diminished terms and conditions of the new crews.
621. The complainants allege that months before the dismissals by ambush, the company had decided to replace the dismissed seafarers with non-union low-cost agency workers and made the arrangements to do so. The CEO of the company admitted to the Select Committee that the average wage of the incoming agency staff would be £5.50 per hour, with some to be paid as low as £5.15 per hour, which does not reach the UK National Minimum Wage. Furthermore, until their dismissal, crew worked on a pattern of seven days of consecutive 12-hour shifts, sleeping on board, followed by seven days off, all paid at the full rate; the replacement agency staff will, in some cases, work 12-hour days for 17 weeks. Not only will the hourly rate be lower, but the compensatory time off will not be paid at all, as these are voyage only contracts.
622. Further still, the international corporation is discriminating against seafarers on grounds of nationality. For example, an Indian able seafarer is paid less to work far longer than a Georgian able seafarer doing the same job on the same ship. This discriminatory employment model is common in the ferry and wider shipping industry. The UK Government has pledged to review legislation (Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011, S.I. 1771 currently protecting seafarers from nationality-based pay discrimination, outside of the Maritime 2050 Strategy.
623. At the Select Committee hearing, the CEO of the company stated that any “consultation process would have been a sham” and that the unions would “not accept” the new employment model, so the company decided to compensate staff instead. When asked at the hearing whether he would make the decision again, he said categorically that he would.
624. The complainants consider that the actions of the company and the Government’s failure to enforce relevant labour laws and provide for dissuasive sanctions to ensure compliance have highlighted serious violations of freedom of association and collective bargaining. The company’s total disregard for the collective consultation provisions in the applicable collective agreements amounts to a breach of the principle of bargaining in good faith. The complainants

point out that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively. Also, the failure to implement a collective agreement, even on a temporary basis, violates the right to bargain collectively, as well as the principle of bargaining in good faith. The failure of an employer to engage in full and frank consultation with trade unions when elaborating restructuring, rationalization or staff reduction plans constitutes a basic violation of the principles of freedom of association since trade unions have a fundamental role to play in ensuring that programmes of this nature have the least possible negative impact on workers.

625. Considering recent industrial disputes at the company, the statements about trade unions made by the CEO of the company at the Select Committee hearing, the company's disregard for the collective agreements and their abrupt termination, the absence of any attempt to negotiate replacement agreements, and the company's use of non-union agency workers, the complainants believe that the dismissals of the 786 seafarers also constitute an act of anti-union discrimination. Dismissing a unionized workforce to hire an entirely non-unionized group of workers to carry out the job has the same chilling effect. It is also evident that existing legislation is insufficient to deter anti-union discrimination as employers can, in practice, on condition that they pay the compensation prescribed by law for cases of unfair dismissal, dismiss any worker, for being a union member with better terms and conditions under a collective agreement. Finally, the complainants consider that the United Kingdom's labour market enforcement and sanctions regimes are wholly inadequate when a company can pay off its workforce so as not to pursue their rights under the law. The complainants conclude that the Government has failed in its proactive duty, as a Member of the ILO and as a party to Conventions Nos 87 and 98, to protect the fundamental rights of all workers, including seafarers, to associate and bargain collectively. In light of the above, the complainants call on the Committee to request the Government to:

- call on the company to immediately reinstate the dismissed seafarers or in the alternative, ensure that the newly recruited seafarers are provided the same terms and conditions under the relevant collective bargaining agreements with the successor company;
- introduce legislation to establish sector-wide collective bargaining between unions and employers in respect of all ferries serving ports in the United Kingdom, and make the collective agreements binding by law (as under the Wages Councils Act 1976);
- remove the prohibition on secondary industrial action where the employer in dispute has failed to fulfil a statutory obligation to consult the recognized union;
- amend the TULRCA to: (a) introduce a statutory right, where there is a failure to consult the recognized union, for the union to apply for an injunction to prohibit dismissals from taking effect, or, where they have taken effect, to reinstate the workers, until full and meaningful consultation has been carried out; (b) consider how to make it a criminal offence for a company and its directors to fail to consult the unions, punishable by unlimited fines; and (c) to provide that compensation for a protective award for failure to consult the unions be unlimited (it is currently capped at 90 days contractual pay);
- amend the TUPE Regulations 2006 to introduce a statutory right, where there is a failure to consult the recognized union in good time before a relevant transfer takes place, for the union to apply for an injunction for the transfer proceedings to be seized until full and meaningful consultation has been carried out;
- amend the Employment Rights Act 1996, to prevent the "fire and rehire" techniques that the company and the corporation were able to use in regard to the seafarers it re-engaged, and

which has the effect, in practice, of undermining collective agreements to the detriment of trade union members;

- implement stronger, flag-blind domestic legislation protecting all seafarers from all forms of discrimination;
- work with trade unions to develop joint proposals for possible amendments to the Maritime Labour Convention, 2006 (MLC, 2006), as amended, to strengthen minimum standards on recruitment and placement and conditions; and
- amend the Company Directors Disqualification Act (CDDA) 1986 to make for failure to collectively consult an express ground for disqualification as a company director.

B. The Government's reply

- 626.** In its communications dated 9 March and 20 September 2023, the Government indicates that it has condemned in the strongest possible terms the actions of the company that gave rise to this complaint. The Government has provided support to the affected workers and has taken steps to ensure they were signposted to access appropriate support. It has also taken robust action to enforce the existing rules and is determined to take further action where needed to protect seafarers. However, it disagrees with the complainants that the law in the United Kingdom needs to be amended in the ways they seek. The Government provides the following observations to provide an explanation of the current law, the action the UK Government has taken, and how this addresses the issues raised by the complainants in relation to this case.

Regulatory framework for collective redundancies

- 627.** In the United Kingdom, employers proposing to make more than 20 redundancies must in most circumstances consult employee representatives and notify the Secretary of State (or in Northern Ireland, the relevant department) in advance of such redundancies. The description below focuses on the relevant legislation in Great Britain (that is, England, Wales and Scotland), but equivalent provision is made for Northern Ireland by the Employment Rights (Northern Ireland) Order 1996. Section 188 of the TULRCA requires employers proposing to make 20 or more employees redundant from one establishment in a 90-day period to consult employees or their representatives in good time and in any event: at least 30 days before the first dismissal takes effect; and where 100 or more redundancies are proposed, at least 45 days before the first dismissal takes effect. The consultation must include consultation on ways to avoid redundancies, reduce the numbers of redundancies, and mitigate their impact. Section 189 of the same Act allows a complaint to be presented to an employment tribunal where an employer has not complied with the consultation requirement. If the Tribunal finds that the complaint is well-founded it may make a protective award of up to 90 days' pay, intended to encourage compliance with the consultation requirement, and to punish employers who do not comply with it. Section 193 provides that the employer must notify the Secretary of State (in practice, the Insolvency Service, an Executive Agency of the Department for Business and Trade) of proposed collective redundancies within similar timescales. Under section 194, an employer who fails to give notice of proposed redundancies to the Secretary of State in accordance with section 193 commits a criminal offence and is liable to an unlimited fine. The notification requirement is modified in the case of vessels registered outside of Great Britain (or in Northern Ireland legislation, Northern Ireland). The European Union's Seafarers Directive (Directive 2015/1794) required that EU Member States, as the United Kingdom was at the time, legislate so that in the event of collective redundancies aboard foreign-flagged vessels, the relevant employer is obliged to notify the vessel's flag State. This supports the flag State in

extending the protection of its employment law to seafarers aboard vessels they flag. Section 193A of the Act implements the Directive, requiring that the competent authority in the state where the ship is registered is notified of collective redundancies instead of the UK Secretary of State. This applied in the instance of the company dismissals, as the affected vessels were flagged outside of the United Kingdom (in addition to their seafarers being employed by a company based outside of the United Kingdom).

- 628.** The Government also indicates that as part of its long-term commitment to improving seafarer welfare and working conditions, the Department for Transport will keep under review the need for further legislative action. In particular, the Department will review the employment protection of those who work at sea, taking into account the comparable rights available to land-based workers and the internationally regulated nature of the maritime sector. The review will include consideration of whether the TULRCA provisions on notification of collective redundancies are sufficiently robust.

Responses to the points made by the complainants

- 629.** The UK Government's focus has been on the well-being of the 786 seafarers considering their appalling treatment by the company. As the complainants have requested, following the announcement of the company decision on 17 March 2022, the Government wrote to the company to express its anger and disappointment. In these letters, it pressed for the company to reconsider their decision and offered to facilitate any dialogue between seafarers, unions and the company. The Government made similar representations to the parent company, DP World, and on 28 March 2022 it wrote again to the company asking them to offer the workers their jobs back on the previous terms, conditions, and wages. The Government has also supported seafarers in recovering their belongings.
- 630.** The Government also asked the Employment Agency Standards Inspectorate to investigate the terms of agency workers' contracts within its scope, which they have done. The Government also asked HM Revenue and Customs to focus minimum wage enforcement resources on the maritime sector to ensure companies in the sector are complying with their legal obligations in relation to pay.
- 631.** The Government does not believe that the current arrangements for collective bargaining in the United Kingdom need to be strengthened. Workers have a right to join a union, they have the right to organize and, in many workplaces, employers choose to recognize a union voluntarily for collective bargaining purposes. Where an employer refuses to recognize a union voluntarily, the union can obtain statutory trade union recognition so long as it can demonstrate to the Central Arbitration Committee (CAC) that there is majority support for union recognition in a workplace. There is no indication that different arrangements, including a sectoral bargaining framework, would have changed the decisions taken by the company in question.
- 632.** Similarly, the prohibition on secondary industrial action has no bearing on the rights of the workers affected by the company's actions. Secondary industrial action is prohibited because it has proved to be highly damaging to the UK economy in the past. In the United Kingdom, workers have the right to strike against their direct employer where there is a trade dispute and where certain conditions are met. This right is given effect in the trade union legislation. The prohibition on secondary industrial action does not infringe the rights of the company's workers to take legal industrial action in anticipation or furtherance of a dispute with their employer while they remain in employment. It also does not prevent those dismissed workers using their rights for peaceful campaigning and protest action. It continues to be open to them

to seek redress in an employment tribunal, where they have been unfairly dismissed by the employer, and a remedy in court, where a contractual obligation in their terms and conditions of employment has been breached. The Government is therefore not going to legalize secondary industrial action.

- 633.** Making collective bargaining agreements legally enforceable would go against the United Kingdom's voluntarist approach to collective bargaining, where in the great majority of cases many employers choose to recognize a union voluntarily. Most employers and unions have traditionally preferred not to have legally enforceable collective bargaining agreements, and the Government does not see why the law should be changed in this area to try and deal with this exceptional case.
- 634.** Furthermore, there are already clear rules in place requiring companies to consult when making large scale redundancies. At this stage, the Government does not believe that the issue here is the rules themselves but rather, as the company has admitted, the fact that the company decided to completely ignore them.
- 635.** The UK Government asked the Insolvency Service to review the actions of the company. On 1 April 2022, the Insolvency Service wrote to the Secretary of State for Business, Energy and Industrial Strategy confirming that following its enquiries it commenced formal criminal and civil investigations into the circumstances surrounding the redundancies. The Insolvency Service's criminal investigation into the events surrounding the dismissal on 17 March 2022 of 786 seafarers employed by the company was into whether there had been a failure to notify the competent authorities of the flag States of the ships in breach of section 193 of the TULRCA as modified by section 193A and, if there was such a breach, whether that amounted to a criminal offence contrary to section 194(1) of the Act, and if it was, whether that was justiciable before the criminal courts of England and Wales. It also considered whether there was any secondary criminal liability on the parts of any individuals. On 19 August 2022, a Senior Insolvency Service prosecutor considered that the chances of proving that the employees were subject to section 193 were evenly balanced. Therefore, he could not say having regard to the Evidential Stage of the Full Code Test of the Code for Crown Prosecutors, by which he was bound, that the tribunal of fact was more likely than not to convict. As result, the Code prevented a prosecution being instituted. The Insolvency Service's civil investigation into the circumstances surrounding the redundancies made by the company remains ongoing. As such it would not be appropriate for the Government to provide any further comment at this time.
- 636.** In May 2022, the UK Government actively supported measures to improve seafarer welfare at the International Labour Organization's recent Fourth Meeting of the Special Tripartite Committee of the MLC, 2006. The United Kingdom voted in favour of the eight amendments to the MLC, 2006, proposed for adoption by the Committee, including measures to improve minimum standards on recruitment, placement and conditions. Measures to implement these provisions will be considered by the Maritime and Coastguard Agency (MCA) Tripartite Working Group (TWG) on the MLC, 2006, which includes seafarer unions. The MCA would be happy to receive proposals for future amendments to the MLC, 2006, to further strengthen standards for recruitment and placement for consideration by the TWG and with the Department for Business and Trade, the Government department which regulates recruitment and placement services in the United Kingdom.
- 637.** Regarding the request to amend the Employment Rights Act 1996, the Government indicates that it is taking action to address the practice of dismissal and re-engagement, also known as "fire and rehire". It has launched a twelve-week consultation on a draft Statutory Code of Practice that will deter employers from using controversial tactics and failing to engage in

meaningful consultations with employees and their representatives. The consultation process was concluded on 18 April 2023. While the Government still analyses responses and indicates that it will take the views expressed into account before publishing its response and the final version of the Code, it explains that the Code sets out employers' responsibilities when seeking to change contractual terms and conditions of employment and seeks to ensure that dismissal and re-engagement is only used as a last resort. Once in force, an employment tribunal will be able to increase an employee's compensation in certain circumstances by up to 25 per cent if an employer has unreasonably failed to comply with the Code. The Government considers that it would not be appropriate to impose an outright ban – there are some situations in which businesses may need the flexibility to use this option to save as many jobs as possible. The Code of Practice is a proportionate response, balancing protections for workers with business flexibility.

- 638.** The Government indicates that the Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011 provide a cross-cutting legislative framework to protect the rights of individuals and advance equality of opportunity for all; to update, simplify and strengthen the previous legislation; and to deliver a simple, modern and accessible framework of discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society. The Government has begun work on the second post implementation review of the Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011. It acknowledges the objections to nationality-based differential pay as set out in the complaint and indicates that it will be consulting with social partners and other interested parties on this, as part of that review.
- 639.** Regarding the complainants' call to amend the CDDA to make failure to collectively consult an express ground for disqualification as a company director, the Government indicates that although there is no finite list of conduct which may lead to disqualification, given the grounds for disqualification under the CDDA are already wide-ranging, it is not considered appropriate to seek amendment to include "failure to collectively consult" as an express ground for disqualification. The Government points out that section 12C and Schedule 1 of the CDDA already provide that the Court, when considering whether someone should be disqualified, or the Secretary of State, when deciding whether to accept a disqualification undertaking, must take into account, among other things, the extent to which the person was responsible for a company contravening any applicable legislative requirement. The extent to which the conduct of any director leads to disqualification will depend on all the circumstances of the particular case.

Other action taken by the UK Government

- 640.** The Government states its commitment to protecting workers' rights and indicates that it has already brought forward several reforms to enhance seafarers' employment protections. The National Minimum Wage is the statutory minimum wage for almost all workers in the United Kingdom. Seafarers' eligibility for this right is a key concern for Government and other stakeholders. In 2017, a working group encompassing the Government and industry was formed to explore providing greater eligibility for seafarers of the National Minimum Wage. Included in this group were representatives from government departments, shipping companies and the maritime unions. In response to the recommendations of this working group, in 2020 the Government brought forward the National Minimum Wage (Offshore Employment) (Amendment) Order 2020 to extend entitlement to the National Minimum Wage to protect more seafarers. As a result, since 1 October 2020, seafarers ordinarily working in the UK territorial sea or UK section of the continental shelf on domestic voyages are entitled to be

paid the UK National Minimum Wage. This change ensured fair pay for over 10,000 maritime workers across the country. The National Minimum Wage also applies to agency workers in the United Kingdom. This means that seafarers who are agency workers have the same entitlement to the minimum wage as non-agency workers. In addition, the National Minimum Wage also applies to any seafarers working in the UK Exclusive Economic Zone whose activities are in connection with exploiting and exploring of the seabed or subsoil.

641. On 30 March 2022, the UK Secretary of State for Transport announced a nine-point plan for seafarer protection, a package of measures to ensure there is no repeat of the company's actions. The plan boosts and reforms seafarer employment protections and welfare, ensuring they are paid and treated irrespective of flag or nationality, while closing down avenues that could give employers the ability to avoid doing so.
642. In order to extend fair pay to more seafarers working in the United Kingdom, the Government is changing the law so that seafarers with close ties to the United Kingdom who work aboard services that call regularly at UK ports (more than once every 72 hours over a year) and who do not qualify for UK National Minimum Wage, will receive the equivalent of the National Minimum Wage through the Seafarers' Wages Bill. According to the Government, this legislation, which is now in its final stages in Parliament, will achieve this by making access to UK ports conditional on vessel operators demonstrating that they are paying at least an equivalent rate to the UK National Minimum Wage to their seafarers while in UK waters. The plan is the centre of the Government's response to the company's decision to dismiss 786 seafarers without consultation or notice.
643. The Government indicates that its officials have worked constructively and consistently with some of the complainants (RMT and Nautilus) since the dismissals took place, that it has been clear in its intention to hold the company to account and that the nine-point plan does exactly that. Under goal 8 of the nine-point plan, the Government is pursuing a number of initiatives to advance and protect the long-term working conditions of seafarers. For example, the Department for Transport has engaged with trade unions, industry and the UK Chamber of Shipping to develop a voluntary framework, the Seafarers' Charter, to introduce a number of employment and welfare protections for seafarers. The Government provides information on the launch of the Seafarers' Charter in Paris, alongside a similar initiative of the French Government, and explains that the Charter is intended to encourage ferry operators to commit to good working conditions for seafarers and that it is built upon provisions of the MLC, 2006, such as in the areas of overtime pay and social protection, and by recognizing good practice, incentivize it. The Government also continues to work internationally to encourage other States to adopt similar measures. Further, the Government is exploring welfare initiatives to improve the social connectivity available to seafarers and to better understand seafarer fatigue. The Government believes that this work will help it to make important steps to protect seafarers and ensure there is not a repeat of the company's actions. The Government indicates that it continues to highlight its ambitious seafarer protections nine-point plan and the wider objectives of Maritime 2050 to international partners both bilaterally and at the multilateral level at every opportunity (including at the International Maritime Organization (IMO) and ILO), as we work towards a step change in seafarer protections and welfare at the global level.

C. The Committee's conclusions

644. *The Committee notes that the complainants in this case allege that 786 seafarers were dismissed by a company in the maritime industry without prior notice or trade union consultation, in breach of collective agreements concluded with two trade unions and the national legislation, and subsequently rehired under lesser working conditions or replaced by non-unionized agency workers.*

The complainants further allege that the Government's failure to enforce relevant labour laws and impose dissuasive sanctions to ensure compliance highlights violations of freedom of association and collective bargaining. In this respect, they allege that the legislation in force does not adequately protect against acts of anti-union discrimination and violation of collective bargaining rights. While the complainants also refer to issues of discrimination based on nationality, wages, work hours, and amendments to the MLC, 2006, to strengthen minimum standards on recruitment and placement and conditions, the Committee recalls that these questions fall outside its competence; it will therefore proceed to examine only the alleged violations of freedom of association and collective bargaining rights.

- 645.** *The Committee notes that the Government does not dispute the facts of the case and condemns the actions of the company that gave rise to this complaint. The Committee notes the Government's indication that it has provided support to the affected workers and has taken steps to ensure they were signposted to access appropriate support. The Government indicates that it has taken robust action to enforce the existing rules and that it is determined to take further action where needed to protect seafarers. While the Government agrees that the legislation has been breached, it disagrees with the complainants that the law in the United Kingdom needs to be amended in the ways they seek.*
- 646.** *The Committee notes that according to the complainants, under the current legislation, collective agreements are not enforceable. It further notes that the Government does not believe that the current arrangements for collective bargaining in the United Kingdom need to be strengthened and that making collective bargaining agreements legally enforceable would go against the United Kingdom's voluntarist approach to collective bargaining. The Committee recalls that agreements should be binding on the parties and that mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 1334 and 1336]. It further recalls that failure to implement a collective agreement, even on a temporary basis, violates the right to bargain collectively, as well as the principle of bargaining in good faith [see **Compilation**, para. 1340]. Recalling that meaningful collective bargaining is based on the premise that all represented parties are bound by voluntarily agreed provisions, the Committee urged the Government to ensure the statutory enforceability of every collective agreement among those represented by the contracting parties [see **Compilation**, para. 1335]. The Committee considers that collective bargaining implies both a give-and-take process and a reasonable certainty that negotiated commitments will be honoured. The Committee urges the Government, with the social partners, to ensure mutual respect for the commitment undertaken in collective agreements, which is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground.*
- 647.** *The Committee further notes the complainants' allegation that under the legislation in force, trade unions are prohibited from calling on other workers to take solidarity action in support of those dismissed. In this respect, the Committee notes the Government's indication that: (1) a prohibition on secondary industrial action has no bearing on the rights of the workers affected by the company's actions; (2) in the United Kingdom, workers have the right to strike against their direct employer where there is a trade dispute and where certain conditions are met; (3) secondary industrial action is prohibited because it has proved to be highly damaging to the UK economy in the past and (4) therefore, it is not going to legalize this type of industrial action. At the outset, the Committee recalls that a general prohibition of sympathy strikes could lead to abuse and workers should be able to take such action provided the initial strike they are supporting is itself lawful [see **Compilation**, para. 770]. The Committee recalls that it had previously requested the UK Government*

to take the necessary measures to ensure that sympathy strikes were protected under the law (see Case No. 2473, Report No. 346, para. 1543 and Report No. 349, para. 277). The Committee requests the Government to engage with the social partners to overcome challenges regarding the legislative prohibition on sympathy strikes, in conformity with freedom of association.

648. As concerns this particular case, Committee notes the Government's indication that the prohibition on secondary industrial action does not prevent those dismissed workers using their rights for peaceful campaigning and protest action and that they can seek redress in an employment tribunal, where they have been unfairly dismissed by the employer, and a remedy in court, where a contractual obligation in their terms and conditions of employment has been breached. The Committee understands, however, that to be rehired (albeit, according to the complainants, on inferior terms and conditions), some seafarers (less than 100) signed a settlement agreement, which precluded them from commencing claims in the employment tribunal. While the complainants do not indicate whether other seafarers applied to an employment tribunal, the Committee notes their indication that while breaches of the UK law entitle claims to be made in an employment tribunal, such claims are subject to statutorily fixed (and very modest) maxima; for this reason, the company was able to quantify with precision what the cost of the dismissals would be and to assess how long it would be before that cost could be recouped from future profits generated by the poverty wages and diminished terms and conditions of the new crews. The complainants thus allege that the dismissal of 786 seafarers to replace them with non-unionized agency workers constitutes an act of anti-union discrimination. The complainants further allege that the existing legislation is insufficient to deter anti-union discrimination as in practice, employers can, on condition that they pay the compensation prescribed by the law for cases of unfair dismissals, dismiss any worker for being a trade union member with better terms and conditions under a collective agreement. The Committee recalls in this respect that protection against acts of anti-union discrimination would appear to be inadequate if an employer can resort to subcontracting as a means of evading in practice the rights of freedom of association and collective bargaining [see **Compilation**, para. 1082]. The Committee considers that it would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation in cases where employers can in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker, if the true reason is the workers trade union membership or activities [see **Compilation**, para. 1106]. The Committee recalls that the Government must ensure an adequate and efficient system of protection against acts of anti-union discrimination, which should include sufficiently dissuasive sanctions and prompt means of redress, emphasizing reinstatement as an effective means of redress [see **Compilation**, para. 1165]. Furthermore, the compensation should be adequate, taking into account both the damage incurred and the need to prevent the repetition of such situations in the future [see **Compilation**, para. 1173]. The Committee therefore requests the Government to ensure an adequate and efficient system of protection against acts of anti-union discrimination, which should include sufficiently dissuasive sanctions and prompt means of redress, emphasizing reinstatement as an effective means of redress.
649. The Committee requests the Government to provide information on all developments in respect of the above recommendations to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) to which it refers the legislative aspects of the case.
650. The Committee notes the information provided by the Government on the measures it has taken to address the matters raised in this case. The Committee notes, in particular, that the Government asked the Insolvency Service to review the actions of the company and that a formal civil investigation is currently under way. The Government has launched and concluded a 12-week consultation on a draft Statutory Code of Practice that will deter employers from using controversial tactics, such as the practice of dismissal and re-engagement, also known as "fire and rehire", and

failing to engage in meaningful consultations with employees and their representatives. According to the Government, the Code sets out employers' responsibilities when seeking to change contractual terms and conditions of employment and seeks to ensure dismissal and re-engagement is only used as a last resort. The Government indicates that once in force, an employment tribunal will be able to increase an employee's compensation in certain circumstances by up to 25 per cent if an employer has unreasonably failed to comply with the Code. The Committee also notes the Government's indication that as part of the Government's commitment to improving seafarer welfare and working conditions, the Department for Transport will keep under review the need for further legislative action and as part of this work, will review the TULRCA with a view to assessing whether its provisions on notification of collective redundancies are sufficiently robust. The Committee welcomes the Government's indication that since the dismissals took place, its officials have worked constructively and consistently with some of the complainants (RMT and Nautilus) and that it has been clear in its intention to hold the company to account and that it had developed a nine-point plan to that effect. Observing that in its 2022 direct request on the application of Convention No. 98 by the United Kingdom of Great Britain and Northern Ireland (published in 2023) the same issues had been raised by the TUC, the Committee expects the Government to provide the CEACR with full and detailed information on the measures it has taken to address the matters raised in this case and the outcome achieved.

The Committee's recommendations

- 651. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) Collective bargaining implies both a give-and-take process and a reasonable certainty that negotiated commitments will be honoured. The Committee urges the Government, with the social partners, to ensure mutual respect for the commitment undertaken in collective agreements, which is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground.**
 - (b) The Committee requests the Government to engage with the social partners to overcome challenges regarding the legislative prohibition on sympathy strikes, in conformity with freedom of association.**
 - (c) The Committee requests the Government to ensure an adequate and efficient system of protection against acts of anti-union discrimination, which should include sufficiently dissuasive sanctions and prompt means of redress, emphasizing reinstatement as an effective means of redress.**
 - (d) The Committee requests the Government to provide information on all developments in respect of the above recommendations to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) to which it refers the legislative aspects of the case. The Committee expects that the Government will provide the CEACR with full and detailed information on the measures aimed at addressing the matters raised in this case and the outcome achieved.**
 - (e) The Committee considers that this case is closed and does not call for further examination.**

Case No. 3427

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

**Complaint against the Government of Togo
presented by
the Syndicat des enseignants du Togo (Togo Teachers' Union) (SET)**

Allegations: The complainant organization alleges the government authorities' failure to recognize the SET, reprisals by the Government against many teachers for striking, as well as acts of intimidation, threats and violent robberies against SET members

- 652. The complaint is contained in a communication dated 28 April 2022, submitted by the Syndicat des enseignants du Togo (Togo Teachers' Union) (SET). The complainant provided supplementary information in communications dated 25 May, and 13 and 20 June 2023.
- 653. The Government sent its observations in communications dated 7 September 2022 and 10 January 2023.
- 654. Togo 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

- 655. In its communication dated 28 April 2022, the complainant indicates that the SET was established on 22 May 2021 in compliance with current legislation and that the union's officials had, in a letter dated 14 June 2021, filed the relevant documents with the competent authorities, namely the mayor of Golfe 2, in accordance with the legislation applicable at the time, in this case article 10 of Law No. 2006-010 of 13 December 2006 on the Labour Code, and in a letter dated 6 October 2021 informed the Minister of Primary, Secondary, Technical and Arts and Crafts Education. The complainant states that, under the terms of article 10: "The founders of any trade union are required to file their by-laws and the names, including the nationality, place of residence, age, status and profession/occupation of the persons who, in any way, are responsible for its administration or management. Four copies of these documents must be filed, in return for an acknowledgement of receipt, at the town hall or prefecture headquarters where the trade union is based. The mayor or prefect sends a copy to the public prosecutor and to the local labour and social legislation inspectorate respectively". The complainant also states that, under article 242 of the General Public Service Regulations, the right of public officials to organize is recognized and that: "In addition to the legal filing, any public officials' trade union is required, within two (2) months of its establishment, to file its by-laws and list of administrators with the authority invested with the power to appoint the public officials invited to join it, or with the minister responsible for the public or labour service". The complainant alleges that, even though these formalities have been completed, the administrative authorities of Togo do not recognize the SET as a trade union organization and deny it the prerogatives that come with such recognition, as they wrongly adhere to the

provisions of section 13 of the new Labour Code of 18 June 2021, according to which registration must be made with the Minister of Territorial Administration, with a copy to the Minister of Labour, whereas the law can only make provision for the future.

- 656.** The complainant indicates that, on 3 February 2022, it sent a letter submitting a “platform of demands” to the Minister of Public Service, Labour and Social Dialogue, with a copy to the Minister of Primary, Secondary, Technical and Arts and Crafts Education, together with a reminder letter dated 21 February 2022. In the absence of a reply, the SET indicates that it had given notice of strike action to the minister in a communication dated 9 March 2022, with a view to staging a work stoppage on 24 and 25 March 2022 and with the possibility of extending it if the platform of demands was not met, as well as in another letter dated 22 March 2022. The strike call had been extended for a further four days, namely 4, 5, 6 and 7 April 2022.
- 657.** The trade union alleges that, in reply, SET officials and teachers were subjected to violent threats of reprisals by the Minister of Primary, Secondary, Technical Education and Arts and Crafts Education, which were immediately followed up by three successive orders (Order No. 0957/MFPTDS of 30 March 2022, Order No. 1013/MFPTDS of 5 April 2022 and Order No. 1220/MFPTDS of 19 April 2022). The Minister for Public Service removed a total of 150 teachers from the cadre of education officials and seconded them to the Ministry of Public Service to meet “service needs” and because of “repeated actions and conduct incompatible with the skills and requirements of the teaching profession”. The SET points out that “secondment” does not comply with the General Public Service Regulations, in particular article 102(3), insofar as the orders in question do not specify the duration of secondment or the procedures for reinstating the officials concerned. It also contested the legality of the aforementioned orders with regard to the procedure for imposing sanctions. The disciplinary sanctions set out in articles 170 and 171 of the General Public Service Regulations provide that the first-level sanctions in question are imposed following a clearly established procedure. A written request for explanations is sent to the public official concerned, setting out the allegations made against him/her and setting a deadline for reply; the sanction is imposed only after the official has replied or, in the absence of a reply, on expiry of the deadline set. The complainant alleges that requests for explanations, which should have preceded the disciplinary sanctions, were instead sent to the teachers in question after the event, which renders them unlawful and without legal basis, and indicates that an appeal against abuse of power has been lodged with the Administrative Chamber of the Supreme Court against disciplinary measures by some of the teachers subjected to these disciplinary measures.
- 658.** The complainant alleges that, on the evening of 8 April 2022, Mr Kossi Kossikan, Mr Joseph Toyou and Mr Ditorga Sambara Bayamina, Deputy Secretary-General, Regional Secretary for Savanes and Representative of the Grand Lomé prefecture respectively, were arrested and detained at the premises of the Service central de recherches et d'investigations criminelles (SCRIC) (central service for criminal research and investigations), before being remanded in custody by the dean of senior investigating judges of the Lomé court on 11 April. They are accused of inciting students and other persons to revolt, through inducements, threats, rallying orders or signals, based on a statement issued on 30 March 2022, which was neither signed nor recognized by SET officials. The trade union states that Mr Ditorga Sambara Bayamina has been on hunger strike since his arrest.
- 659.** The complainant also alleges that, on 25 April 2022, the Minister for Public Service through three successive orders (No. 1245/MFPTDS, No. 1246/MFPTDS and No. 1247/MFPTDS) proceeded to dismiss, make redundant or impose a temporary suspension on most of the teachers subjected to the “secondment” orders (No. 0957/MFPTDS of 30 March 2022, No. 1013/MFPTDS of 5 April 2022 and No. 1220/MFPTDS of 19 April 2022) (see para. 6 above).

Of the 150 teachers concerned, 116 public officials and trainee public officials have been removed or dismissed.

660. According to the complainant, the Minister of Public Service, Labour and Social Dialogue, who issued the disciplinary orders, claimed that, since the SET is not legally established, the strike calls it has issued are also illegal. Thus, he is proceeding in support of the said orders, and without even specifying the offences, on the basis of "repeated actions and conduct incompatible with the skills and requirements of the teaching profession".
661. The complainant drew attention to the terms of Law No. 2021-012 of 18 June 2021 on the Labour Code: "A strike is understood as being a concerted and collective cessation of work by workers with a view to having their demands of an occupational nature met. Workers have the right to strike to defend their rights and occupational interests, either individually, collectively or through trade union action, under the conditions laid down by the laws and regulations in force (section 322) and that: "Any dispute relating to the exercise of the right to strike shall be *referred to the labour court, which shall issue a summary judgment*" (section 333). In other words, in addition to the fact that a strike is a worker's right, its unlawful nature cannot simply be alleged or proclaimed; it must be decided by a decision of the court, in this case the labour court, ruling on summary proceedings.
662. In support of its complaint, the SET alleges that, in two previous statements (January and February 2022), movements and associations expressed their deep concern about the shrinking of freedoms in Togo, characterized by the systematic ban on freedom of assembly and peaceful public protest, the muzzling of the private press and the "decapitation of the trade union world", and alerted development partners to this, particularly with regard to a rapporteur member of the SET, who was abducted from his home by elements of the anti-gang force attached to the national gendarmerie in January 2021, as well as a member of another organization (Mouvement pour la justice sociale (MJS) (Movement for Social Justice).
663. In its communication dated 13 June 2023, the complainant draws attention to the alarming situation of the 116 teachers who had been dismissed or made redundant and the three "former detainees" of the SET. It alleges that, 13 months after the events, the authorities are determined to stifle the trade union movement by placing the victims in a very precarious situation. Threats and intimidation, manipulation, violent and even fatal robberies, as in the case of Mr N'Moigni Gnonkpa, the organization's first general secretary, are all elements characteristic of a violent method aimed at silencing any demands and dissuading the victims from taking legal action. In support of its claim, the complainant produced a new press release, dated 23 October 2022, from civil society organizations sounding the alarm and calling on the Minister of Security and Civil Protection to open an investigation to shed light on the circumstances of Mr N'Moigni Gnonkpa's assassination and into the various robberies and accidents suffered by his three other colleagues Mr Mawuli Kokouvi Adjogble, Mr Mayigma Gbantchare and Mr Kokou Miwonounyue Mawouegna.
664. In the communication of 13 June 2023, the organization also forwards the decision of the Lomé court of first instance of 23 May 2022 prohibiting the Togo Teachers' Union from using the acronym SET, given that the association Synergie des Etudiants du Togo (Togolese students association) has been duly registered with this acronym since January 2014.
665. In its communication dated 20 June 2023, the SET alleges that a minority of the 116 teachers dismissed or made redundant have opted "for the pardon route", in the hope of reinstatement, and denounce the pressure and manipulation to which its members had been subjected.

- 666.** In particular, the SET asks the Committee to urge the authorities to: (i) revoke the three orders that removed the 150 teachers from the cadre of education officials and second them to the Ministry of Public Service; (ii) cease threats and intimidation against teachers who are members of the SET; and (iii) reinstate the teachers who have been unjustly and illegally made redundant, suspended and dismissed.

B. The Government's reply

- 667.** In a communication dated 7 September 2022, the Government begins by pointing out that in 2018 it initiated dialogue and consultations with all the stakeholders in the education system. This initiative led to the signing, in April 2018, of a protocol agreement on the education sector, together with a follow-up mechanism, and to the adoption of the special status of the cadre of education officials. The Government also announced the signing of a memorandum of understanding in March 2022, devoting significant effort to the mobilization of exceptional budgetary resources to ensure, in particular, increased bonuses for teaching staff and the payment of subsidies to volunteer teachers in state schools.
- 668.** The Government indicates that it is against this background that an organization known as the "Togo Teachers' Union" appeared in the media and on social networks on 21 January 2021, reporting its establishment as a trade union and at the same time announcing a strike notice and sit-ins and affirming its intention to paralyse school and teaching activities on 27 and 28 January 2021. On 22 January 2021, the Ministry of Public Service, Labour and Social Dialogue reminded the SET of the legal and regulatory framework governing the establishment of trade unions and the conditions for exercising the right to strike. Then, on 27 January 2021, the SET published a press release in which it acknowledged the shortcomings and irregularities that had marred its establishment process and the strike calls and announced the suspension of all activity until its situation was regularized.
- 669.** The Government indicates that: (i) in a letter dated 6 October 2021, a group of teachers nevertheless announced the establishment of a trade union also called the Togo Teachers' Union (SET), following a constituent assembly reportedly held virtually on 22 May 2021, with the same leaders as those referred to above; (ii) the by-laws of the new trade union were never sent either to the Ministry of Labour or to the public prosecutor for verification of the status of the founding members, as required under the 2006 Labour Code in force at the time; (iii) according to information disclosed in the media and social networks by the teacher founding members of the "purported" trade union, the by-laws of the trade union were filed with a town hall in Lomé on 18 June 2021, that is on the same day as the entry into force of the new Labour Code, which simplifies and clarifies the terms and conditions for setting up trade unions.
- 670.** According to the Government, the process of establishing the SET was therefore carried out in disregard of the legal and regulatory requirements and despite the health-crisis restrictions in force at the time. On a number of occasions, meetings were held with the teachers concerned to urge them to exercise restraint and adhere to the laws and regulations in force (see letters Nos 020, 278 and 286/2021/MFPTDS/CAB dated 22 January 2021 and 14 and 21 October 2021). Similar initiatives have been taken by the Conseil national du dialogue social (CNDS) (National Social Dialogue Council) and trade union confederations to explain to the teachers concerned the legislation and principles with regard to trade unionism and the exercise of the right to strike, but to no avail.
- 671.** The Government indicates that, despite this desire for appeasement, the SET has embarked on unlawful and illegal strikes and has repeatedly engaged in acts of violence and serious public

order disturbances, including by forcing pupils to go to other schools in order to force their fellow pupils to join street demonstrations and protests, in order to force the Government to meet their demands and requirements. This resulted in serious injuries and the destruction of and damage to public and private property.

- 672.** The Government states that it has so far refrained from deducting the salaries of striking teachers for days not worked, as a gesture to ease tensions and calm the social climate, but that, in view of these repeated actions, two steps were taken: (i) a precautionary administrative measure, in accordance with current legislation (Decree No. 2018-130/PR of 28 August 2018, on the special status of the cadre of education officials, and Inter-ministerial Order No. 001/2022/MFPTDS/MEPSTA of 24 February 2022 on the code of conduct for staff in public schools and technical and vocational training centres), aimed at maintaining a calm social climate in order to ensure the physical integrity of learners and teaching staff; and (ii) disciplinary proceedings against the teachers concerned, in compliance with legislation in force and their right to be heard (see letter dated 7 April 2022 and Order No. 1136/MFPTDS dated 13 April 2022 referring public officials to the Disciplinary Board). The Government states that, at the end of these disciplinary proceedings involving representatives of the public officials concerned, the culpability of each public official was established, as well as the level of misconduct and appropriate sanctions.
- 673.** Lastly, the Government emphasizes that the public officials in no way dispute the gross misconduct and failings of which they are accused: it produced a letter of apology from the SET Secretary-General, dated 8 August 2022, referring to many errors committed and problems in carrying out its activities in the education sector, actions that had escaped the control and attention of the organization's leaders. It also referred to a letter "seeking pardon", dated 4 May 2022, from a group of teachers who had been dismissed, and another making an "application for leniency, for the reinstatement of teachers that had been dismissed, made redundant and detained", dated 4 July 2022, signed by Mr N'Moigni Gnonkpa in his capacity as representative of the dismissed and redundant teachers.
- 674.** In its communication dated 10 January 2023, the Government states that almost all of the persons concerned have, on numerous occasions and through steps freely taken, either directly or through trade union and civil society organizations, acknowledged unreservedly the materiality and even the seriousness of the offences of which they are accused, while expressing their regret and pleading for leniency. These are therefore, according to the Government, facts and actions that are now "irrefutable and compelling". The disciplinary or other measures against the persons concerned were taken only after numerous unsuccessful attempts and steps had been taken by the Government. The teaching officials were subjected to disciplinary proceedings for professional misconduct and failings levelled at them that have nothing to do with the exercise of trade union freedoms. The Government states that, at the end of the disciplinary proceedings, the situation was as follows: (i) 33 teachers were reinstated in their posts as their misconduct had not been sufficiently established; (ii) 29 teachers were temporarily suspended as they had been found guilty of first-degree disciplinary offences (minor professional misconduct). To date, the persons concerned have complied with the disciplinary measure and have returned to their government posts; (iii) 30 trainees, whose appointment to public service was still in process and who therefore did not enjoy full public servant status at the time of the events, were dismissed for serious disciplinary offences; and (iv) 86 fixed-term public servants also found guilty of serious disciplinary offences were dismissed.
- 675.** Lastly, regarding the situation of Mr Kossi Kossikan, Mr Joseph Toyon and Mr Ditorga Sambara Bayamina, the Government explains that they are subject to criminal proceedings, including

for aggravated public disorder offences resulting in the destruction of public and private property, violence and assault and battery.

C. The Committee's conclusions

- 676.** *The Committee notes that the present case concerns allegations of the government authorities' failure to recognize the SET, reprisals by the Government against many teachers for striking, as well as acts of intimidation, threats and violent robberies against SET.*
- 677.** *With regard to the issue of the lack of recognition of the SET as a trade union organization by the government authorities, the Committee notes that the complainant states that the SET was established on 22 May 2021 pursuant to section 10 of the 2006 Labour Code, according to which: "The founders of any trade union are required to file their by-laws and the names, including the nationality, place of residence, age, status and profession/occupation of the persons who, in any way, are responsible for its administration or management. Four copies of these documents must be filed, in return for an acknowledgement of receipt, at the town hall or prefecture headquarters where the trade union is based. The mayor or prefect sends a copy to the public prosecutor and to the local labour and social legislation inspectorate respectively". The Committee notes that the SET indicates that, in a letter dated 14 June 2021 and received on 18 June 2021, it filed the relevant documents with the town hall of Golfe 2, and that it informed the Minister of Primary, Secondary, Technical and Arts and Crafts Education in a letter dated 6 October 2021. The Committee also notes that the complainant states that it has also fulfilled its obligations under article 242 of the General Public Service Regulations, which provides that: "In addition to the legal filing, any public officials' trade union is required, within two (2) months of its establishment, to file its by-laws and list of administrators with the authority invested with the power to appoint the public officials invited to join it, or with the minister responsible for the public or labour service."*
- 678.** *The Committee notes that the SET alleges that, even though these formalities have been completed, the administrative authorities do not recognize the SET as a trade union organization and deny it the prerogatives that come with such recognition, as they wrongly adhere to the provisions of section 13 of the new Labour Code of 18 June 2021, according to which registration must be made with the Minister of Territorial Administration, with a copy to the Minister of Labour, as the new code had not entered into force when the trade union was set up.*
- 679.** *The Committee notes that, in the light of information provided by the Government, although the SET had already tried to set up a trade union organization in January 2021, at the same time issuing a strike notice, the subject of the complaint relates solely to the conditions of its registration following its constituent assembly in May 2021.*
- 680.** *The Committee notes in this regard that the Government indicates that the process of establishing the SET was carried out in disregard of the legal and regulatory requirements, and incidental to the health measures in force at the time. The Government states that: (i) in a letter dated 6 October 2021, the establishment of the SET was announced at the end of a constituent assembly that would have taken place virtually on 22 May 2021; (ii) the by-laws of the new organization were never sent either to the Ministry of Labour or to the public prosecutor for verification of the status of the founding members, as required under the 2006 Labour Code in force at the time; and (iii) according to information disclosed in the media and social networks by its founding members, the SET's by-laws would have been filed with a town hall in Lomé on 18 June 2021, that is on the same day as the entry into force of the new Labour Code, which simplifies and clarifies the terms and conditions for setting up trade unions.*
- 681.** *The Committee takes note of the contradictory information brought to its attention on this subject and notes that the SET registration procedure was carried out at the same time as the adoption of*

the new Labour Code, in other words on 18 June 2021. The Committee notes in this respect that the provisions on registration have been amended, pursuant to section 13 of the new Labour Code, and considers that it does not have any information enabling it to verify whether the by-laws and other information required under section 10 of the 2006 Labour Code have actually been sent to the public prosecutor and the local labour and social legislation inspectorate. The Committee also notes the decision of the Lomé court of first instance of 23 May 2022 concerning the use of the acronym SET already being used by the Synergie des Etudiants du Togo. In these circumstances, while recalling that the right to official recognition through legal registration is an essential facet of the right to organize since that is the first step that workers' or employers' organizations must take in order to be able to function efficiently, and represent their members [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 449], the Committee requests the Government to work with the complainant to ensure that any doubt as to the formalities required for the registration of the Togo Teachers' Union be removed as soon as possible and that the said union be able to carry out its trade union activities in the same way as the country's other trade union organizations and enjoy the same prerogatives. The Committee requests the Government to keep it informed in this regard.

682. With regard to the industrial action taken by the SET, the Committee notes that the complainant indicates that, on 3 February 2022, it sent a letter submitting a "platform of demands" to the Minister of Public Service, Labour and Social Dialogue, with a copy to the Minister of Primary, Secondary, Technical and Arts and Crafts Education, together with a reminder letter dated 21 February 2022. The Committee notes that, in the absence of a reply, the SET indicates that it had given notice of strike action to the minister in a communication dated 9 March 2022, with a view to staging a work stoppage on 24 and 25 March 2022 and with the possibility of extending it if the platform of demands was not met, as well as in another letter dated 22 March 2022, and that the strike call had been extended for a further four days, namely 4, 5, 6 and 7 April 2022.
683. The Committee notes that, according to the complainant, the Minister of Public Service, Labour and Social Dialogue considered that, since the SET is not legally established, the strike calls are also illegal, whereas the Minister has no power to rule on the lawfulness or otherwise of industrial action and that this issue, under sections 322 and 333 of the Labour Code, must be decided by a decision of the court, in this case the labour court, ruling on summary proceedings.
684. The Committee notes that the Government stresses that it has repeatedly played the dialogue card but that, despite this desire for appeasement, the SET has embarked on unlawful and illegal strikes and has repeatedly engaged in acts of violence and serious public order disturbances.
685. The Committee wishes to recall from the outset that, if the principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike, the responsibility for declaring a strike illegal should not lie with the Government, but with an independent and impartial body [see **Compilation**, paras 965 and 909].
686. The Committee notes the complainant's allegations that SET officials and teachers were subjected to violent threats of reprisals by the Minister of Primary, Secondary, Technical Education and Arts and Crafts Education, with immediate consequences: by three successive orders (Order No. 0957/MFPTDS of 30 March 2022, Order No. 1013/MFPTDS of 5 April 2022 and Order No. 1220/MFPTDS of 19 April 2022), the Minister for Public Service removed a total of 150 teachers from the cadre of education officials and seconded them to the Ministry of Public Service to meet "service needs" and because of "repeated actions and conduct incompatible with the skills and requirements of the teaching profession".
687. The Committee notes that the SET points out in this respect that "secondment" does not comply with the General Public Service Regulations, in particular article 102(3), insofar as the orders in question

do not specify the duration of secondment or the procedures for reinstating the officials concerned, and articles 170 and 171. The disciplinary sanctions set out in the above-mentioned articles provide that the first-level sanctions in question are imposed following a clearly established procedure. A written request for explanations is sent to the public official concerned, setting out the allegations made against him/her and setting a deadline for reply; the sanction is imposed only after the official has replied or, in the absence of a reply, on expiry of the deadline set for the official. However, according to the complainant, the requests for explanations, which should have preceded the disciplinary sanctions, were instead sent to the teachers in question after the event, which, according to the complainant, rendered them unlawful and without legal basis.

- 688. Noting that an appeal against abuse of power has been lodged with the Administrative Chamber of the Supreme Court against disciplinary measures by some of the teachers subjected to these disciplinary measures, the Committee requests the Government to provide information on the outcome of this appeal.
- 689. The Committee notes, moreover, that the complainant alleges that, on 25 April 2022, the Minister for Public Service through three successive orders (No. 1245/MFPTDS, No. 1246/MFPTDS and No. 1247/MFPTDS) proceeded to remove, dismiss and impose a temporary suspension on most of the teachers subjected to the "secondment" orders (No. 0957/MFPTDS of 30 March 2022, No. 1013/MFPTDS of 5 April 2022 and No. 1220/MFPTDS of 19 April 2022). The Committee notes that of the 150 teachers concerned, 116 public officials and trainee public officials have been dismissed.
- 690. The Committee notes that the Government indicates in this regard that the disciplinary proceedings against the teachers concerned were conducted in compliance with legislation in force and their right to be heard, and that at the end of these disciplinary proceedings, which involved representatives of the public officials concerned, the culpability of each public official was established, as well as the level of misconduct and appropriate sanctions.
- 691. The Committee notes the Government's statement that: (i) almost all of the persons concerned have, on numerous occasions and through steps freely taken, either directly or through trade union and civil society organizations, acknowledged unreservedly the materiality and even the seriousness of the offences of which they are accused, while expressing their regret and pleading for leniency. These are therefore facts and actions that are now "irrefutable and compelling"; (ii) the disciplinary or other measures against the persons concerned were taken only after numerous unsuccessful attempts and steps had been taken by the Government; and (iii) the teaching officials were subjected to disciplinary proceedings for professional misconduct and failings levelled at them that had nothing to do with the exercise of trade union freedoms.
- 692. The Committee notes that the Government states that, at the end of the disciplinary proceedings, the situation was as follows: (i) 33 teachers were reinstated in their posts as their misconduct had not been sufficiently established; (ii) 29 teachers were temporarily suspended as they had been found guilty of first-degree disciplinary offences (minor professional misconduct). To date, the persons concerned have complied with the disciplinary measure and have returned to their government posts; (iii) 30 trainees, whose appointment to public service was still in process and who therefore did not enjoy full public servant status at the time of the events, were dismissed for serious disciplinary offences; and (iv) 86 fixed-term public officials also found guilty of serious disciplinary offences were dismissed.
- 693. With regard to the letters seeking pardon and leniency referred to by the Government, the Committee notes from the information brought to its attention by the complainant on 20 June 2023 that some teachers had made an application for leniency from the Government with a view to being reinstated in their posts. The Committee observes that the mere fact that the SET intended to uphold its complaint before the Committee does not preclude ruling out at this stage the possibility of pressure

being brought to bear on SET members. The Committee also notes the allegations made by the complainant in his communication dated 13 June 2023 concerning the "alarming" situation of the 116 teachers dismissed and the three "former detainees" of the SET, according to which, 13 months after the events, the authorities were determined to stifle the trade union movement by placing the victims in a very precarious situation.

694. Recalling that no person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and that it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see **Compilation**, para. 1075], the Committee requests the Government to provide the Disciplinary Board's report of 22 April 2022, as referred to in Orders Nos 1245, 1246 and 1247/MFPTDS of 25 April 2022.
695. The Committee also takes note of the allegations of threats and violent robberies, sometimes resulting in death, provided by the SET, namely the assassination of Mr N'Moigni Gnonkpa, the SET's first Secretary-General, and the robberies and accidents involving three of his colleagues, Mr Mawuli Kokouvi Adjogble, Mr Mayigma Gbantchare and Mr Kokou Miwonounyue Mawouegna. Recalling that all appropriate measures should be taken to guarantee that, irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind [see **Compilation**, para. 73], the Committee requests the Government to provide information on any investigations carried out in this regard.
696. Lastly, the Committee notes that the complainant alleges that, on the evening of 8 April 2022, Mr Kossi Kossikan, Mr Joseph Toyou and Mr Ditorga Sambara Bayamina, Deputy Secretary-General, Regional Secretary for Savanes and Representative of the Grand Lomé prefecture respectively, were arrested and detained at the premises of the central service for criminal research and investigations (SCRIC), before being remanded in custody by the dean of investigating judges of the Lomé court on 11 April. They are accused of inciting students and other persons to revolt, through inducements, threats, rallying orders or signals, based on a statement issued on 30 March 2022, which was neither signed nor recognized by SET officials. The Committee notes that, in its communication of 13 June 2023, the SET refers to them as "former detainees" and that, for its part, the Government explains that they are subject to criminal proceedings, including for aggravated public disorder offences resulting in the destruction of public and private property, violence and assault and battery.
697. Recalling, on the one hand, that measures designed to deprive trade union leaders and members of their freedom entail a serious risk of interference in trade union activities and, when such measures are taken on trade union grounds, they constitute an infringement of the principles of freedom of association and, on the other, that penal sanctions should only be imposed if, in the framework of a strike, violence against persons and property or other serious violations of the ordinary criminal law are committed, and this, on the basis of the laws and regulations punishing such acts [see **Compilation** paras 124 and 955], the Committee requests the Government to provide information on the situation of Mr Kossi Kossikan, Mr Joseph Toyou and Mr Ditorga Sambara Bayamina, to indicate whether they have been convicted of a criminal offence and, if so, to provide copies of the relevant court decisions.

The Committee's recommendations

698. In light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee requests the Government to ensure that any doubt as to the formalities required for the registration of the Togo Teachers' Union be removed as soon as possible and that the said union be able to carry out its trade union activities

in the same way as the country's other trade union organizations and enjoy the same prerogatives. The Committee requests the Government to keep it informed in this regard.

- (b) Noting that an appeal against abuse of power has been lodged with the Administrative Chamber of the Supreme Court against disciplinary measures concerning a total of 150 teachers of the cadre of education officials (Order No. 0957/MFPTDS of 30 March 2022, Order No. 1013/MFPTDS of 5 April 2022 and Order No. 1220/MFPTDS of 19 April 2022), the Committee requests the Government to provide information on the outcome of this appeal.
- (c) The Committee requests the Government to provide the Disciplinary Board's report of 22 April 2022, as referred to in Orders Nos 1245, 1246 and 1247/MFPTDS of 25 April 2022 concerning dismissal and temporary suspension from duty respectively.
- (d) With regard to the allegations of threats and violent robberies, sometimes resulting in death, namely the assassination of Mr N'Moigni Gnonkpa, the SET's first Secretary-General, and the robberies and accidents involving three of his colleagues, Mr Mawuli Kokouvi Adjogble, Mr Mayigma Gbantchare and Mr Kokou Miwonounyue Mawouegna, the Committee requests the Government to provide information on any investigations carried out in this regard.
- (e) The Committee requests the Government to provide information on the situation of Mr Kossi Kossikan, Mr Joseph Toyou and Mr Ditorga Sambara Bayamina, Deputy Secretary-General, Regional Secretary for Savanes and Representative of the Grand Lomé prefecture respectively, to indicate whether they have been convicted of a criminal offence and, if so, to provide copies of the relevant court decisions.

Geneva, 2 November 2023

(Signed) Professor Evance Kalula
Chairperson

Points for decision:

paragraph 120	paragraph 361
paragraph 145	paragraph 400
paragraph 184	paragraph 428
paragraph 207	paragraph 473
paragraph 224	paragraph 535
paragraph 251	paragraph 584
paragraph 290	paragraph 609
paragraph 336	paragraph 651
paragraph 349	paragraph 698