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Reports of the Committee on Freedom of Association

405th 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 29 February to 2 March 2024, 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, Mr Fernando Yllanes and Mr Hicham Zouanat; Workers' group Vice-Chairperson, Ms Amanda Brown and members, Mr Zahoor Awan, Mr Magnus Norddahl, Mr Jeffrey Vogt and Mr Ayuba Wabba. The member of Colombian nationality was not present during the examination of the case relating to Colombia (Case No. 3027).

* * *

3. Currently, there are **86** cases before the Committee in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined **13** cases on the merits, reaching conclusions in **3** definitive reports, **4** reports in which the Committee requests to be kept informed of developments and interim conclusions in **6** 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 **15 April 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 2318 (Cambodia), 3185 (Philippines) and 3203 (Bangladesh) 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. Commencing with the next report of the Committee, all cases involving the elements above will now be referred to as serious and urgent. The designation "extremely" will no longer be used.

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

6. The Committee deeply regrets that it was obliged to examine the following case without a response from the Government: 3441 (Bolivarian Republic of Venezuela).

Urgent appeals: Delays in replies

7. As regards Cases Nos 3067 (Democratic Republic of the Congo), 3269 (Afghanistan), 3388 (Albania) and 3431 (Angola) 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: 3184 (China), 3395 (El Salvador), 3403 (Guinea), 3424 (Cambodia), 3448 (Guinea-Bissau), 3450 (Norway) and 3451 (Bolivarian Republic of Venezuela). 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), 3242 (Paraguay), 3325 (Argentina), 3383 (Honduras), 3419 (Argentina), 3425 (Eswatini), 3442, (Pakistan), 3445 (El Salvador) and 3449 (Mexico), the Governments have sent partial information on the allegations made. The Committee requests all these Governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

10. As regards Cases Nos 2177 and 2183 (Japan), 2254 (Bolivarian Republic of Venezuela), 2508 (Islamic Republic of Iran), 2609 (Guatemala), 2761 (Colombia), 2923 (El Salvador), 3074 (Colombia), 3062 (Guatemala), 3148 (Ecuador), 3157 (Colombia), 3179 (Guatemala), 3210 (Algeria), 3213 and 3218 (Colombia), 3228 (Peru), 3233 (Argentina), 3234 (Colombia), 3239 (Peru), 3258 (El Salvador), 3263 (Bangladesh), 3271 (Cuba), 3277 (Bolivarian Republic of Venezuela), 3280 and 3282 (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 (Peru), 3436 (Republic of Korea), 3438 and 3440 (Peru), 3443 (Portugal) and 3446 (United States of America), the Committee has

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

New cases

11. The Committee adjourned until its next meeting the examination of the following new cases which it has received since its last meeting: Cases Nos 3452 (Argentina), 3453 and 3454 (Mexico) and 3455 (United Kingdom of Great Britain and Northern Ireland) 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

12. 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 two complaints received between October 2023 and March 2024 and therefore decided not to examine them.

Voluntary conciliation

13. 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 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. Through a communication dated 12 February 2024, ACOLFUTPRO stated that, despite several conciliation meetings since January 2023 with the Ministry of Labour, the Colombian Football Federation and the Colombian Football Major League, it had not been possible to reach an agreement on the issues raised in the complaint. Based on the above, the complainant organization requests that the Committee declare the optional voluntary conciliation procedure closed and resume the examination of the case.

14. The Committee recalls that the ILO fully supports the resolution of disputes at national level and is available to assist the parties in this regard.

Article 24 representations

15. The Committee has received certain information from the following Governments with respect to the article 24 representations that were referred to them: Brazil, Costa Rica (Case No. 3241), 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. The Committee takes due note that the parties in three article 24 representations concerning Chile have agreed to refer the dispute to voluntary conciliation at the national level. This suspends the consideration by the Committee of the three representations for a period of up to six months.

The Committee further draws the Governing Body's attention to the reports presented by its committee appointed according to the Standing Orders under article 24 of the Constitution to examine the representations against the Government of Poland for non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135) (GB.350/INS/17/3 and GB.350/INS/17/4).

Article 26 complaint

16. The Committee recalls that it has been examining serious and urgent violations of freedom of association in Myanmar in respect of a complaint submitted by the International Trade Union Confederation (ITUC) and Education International (EI) (Case No. 3405). The Committee suspended its examination of this case following its last examination in March 2022 in light of the decision by the Governing Body to appoint a Commission of Inquiry to examine the non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), among other Conventions. At its 349th Session in October–November 2023, the Governing Body took note of the Report of the Commission of Inquiry. The Committee observes that several of the pending recommendations of the Commission of Inquiry concern matters raised in Case No. 3405, the examination of which may now be reactivated. Considering the gravity and persistence of the matters involved in this case, the Committee requests the Myanmar military authorities to send their observations in relation to its previous recommendations and in light of the relevant recommendations of the Commission of Inquiry so that it may pursue its examination of this case in full knowledge of the facts at its next meeting.

Transmission of cases to the Committee of Experts

17. The Committee draws the legislative aspects of Cases Nos 3042 (Guatemala) and 3434 (Algeria) as a result of the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), to the attention of the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

▶ Cases in follow-up

18. The Committee examined four cases in paragraphs 19 to 63 concerning the follow-up given to its recommendations and concluded its examination with respect to and therefore closed three cases: Cases Nos 2924 (Colombia), and 2533 and 3170 (Peru).

Case No. 2924 (Colombia)

19. The Committee last examined this case, which concerns allegations of violation of a collective agreement and of the trade union privileges of two leaders of the Union of Official Workers and Other Public Servants of the Caja de la Vivienda Popular (SINTRACVP) at its meeting in June 2014 [see 372nd Report, paras 59–79]. On that occasion, the Committee requested the Government: (i) to keep it informed of the pending court judgments concerning the applicability to public employees of the collective agreements signed by the Caja until 1992, including the employment stability clause; and (ii) to take the necessary measures to ensure that the submission to public competition of several jobs in the Caja does not lead to the

dismissal of Ms Nancy Bohórquez Chacón, General Secretary of SINTRACVP, and Mr Omar Merchán Galeano, prosecutor of that organization.

20. The Government sent information by means of communications dated 12 August 2015 and 11 May 2023. The Committee takes note of the information provided by the Government in 2015 and 2023 concerning the status of the court judgments pending at the date of the last report relating to the applicability of the collective agreements signed by the Fund up to 1992 as it relates to public employees, including the employment stability clause. The Committee notes that the three proceedings reported by the Government have ended with court decisions in favour of the Fund.

21. In relation to the situations of Ms Nancy Bohórquez Chacón, General Secretary of SINTRACVP and an employee of the Fund since 1992, and of Mr Omar Merchán Galeano, a prosecutor of the said organization and an employee of the Fund since 1978, the Government points out that: (i) domestic legislation provides rules on the permanence of officials on provisional status until the position is filled by public competition; (ii) the two officials in question, like any other citizen, had the opportunity to participate in the public merit-based competition to occupy the positions definitively; and (iii) Mr Omar Merchán Galeano was removed from his position after the National Civil Service Commission had submitted a list of persons eligible for the position he occupied through a competitive process. With regard to the above, the Government states that: (i) the jurisprudence of the Constitutional Court stresses the need for all public employee positions to be subject to a merit-based competition; and (ii) being a member of the board of directors of a trade union organization does not create a privilege that would make it possible to avoid the obligation to access public positions through merit-based competitions, which would be contrary to the right to equality; and (iii) the dismissal of Mr Merchán Galeano was therefore not anti-union in nature.

22. The Committee takes note of the various elements provided by the Government and recalls that the points raised in the present case follow the determination, after a long judicial dispute, of the public nature of the Fund and the qualification of its workers as public employees, for which reason their jobs were, in accordance with domestic legislation, subject to public competition. The Committee notes in particular that: (i) it appears from the provided information that the two trade union leaders did not succeed in the merit-based competitions corresponding to their posts (either because they did not win them or because they did not apply for them); (ii) Mr Merchán Galeano, the trade union's prosecutor, was relieved of his duties because other persons had won the merit-based competition corresponding to his post; and (iii) the Government has not provided information on the situation of Ms Nancy Bohórquez Chacón, the General Secretary of the trade union. In this respect, the Committee notes, on the basis of information available on the website of the Fund, that Ms Bohórquez Chacón was listed in the Fund's personnel registers as a temporary worker until at least 2019.

23. While regretting that it has not been informed of any action taken to bring the application of the rules on merit-based competitions into line with the recommendation made in its previous consideration of the case, the Committee notes that the complainant organizations have not provided any additional information on the case in general and regarding the two workers mentioned in particular. *In this regard, the Committee notes that it has received no information on possible administrative or judicial action in relation to the dismissal of Mr Merchán Galeano. Based on the foregoing, and in the absence of further elements from the complainant organization, the Committee considers that this case does not require further examination and is closed.*

Case No. 2694 (Mexico)

24. The Committee last considered this case, concerning various allegations of specific situations relating to the use of protection contracts, at its October 2018 meeting [see 387th Report, paras 26–34]. On that occasion, the Committee made the following recommendations [see 387th Report, paras 31–34]:

(a) The Committee invites the complainant to send the additional information at its disposal in relation to these allegations regarding the phenomenon of protection unions and protection agreements, and requests the Government to review with the organizations in question the issues that could remain with a view to conducting the relevant additional investigations and taking the necessary measures to ensure full respect for the principles of freedom of association and collective bargaining. The Committee requests the Government to keep it informed in this respect.

(b) The Committee invites the Government to consider the possibility of consulting the most representative workers' and employers' organizations and the national organizations that have supported this complaint with regard to the functioning of the protocol on free collective bargaining. The Committee requests the Government to keep it informed in this regard and indicate whether, as a result of the application of the protocol, protection unions and protection agreements have been identified and, if so, what measures have been taken.

(c) Expressing its concern at the seriousness of some of the additional allegations presented by IndustriALL – particularly the murders of trade unionists – the Committee requests the Government to conduct the necessary investigations and provide its observations in that respect.

(d) The Committee trusts that in the development and implementation of the constitutional reform and its secondary legislation, in consultation with the most representative workers' and employers' organizations, and the national organizations that have supported this complaint, all the necessary measures will be taken to address the different dimensions of the problem of protection agreements and protection unions that have been presented in this case.

25. In a communication dated 28 October 2020, IndustriALL Global Union (hereinafter IndustriALL, formerly the International Metalworkers' Federation), submits additional information in relation to some of the Committee's recommendations, as well as new allegations. In general, IndustriALL states that, despite changes in government, most of the cases exposed through this complaint remain unresolved, without acknowledgement of the facts and without response from the Government, implying widespread impunity.

26. With regard to five specific situations concerning the Honda Mexico United Workers' Union (STUHM), the Commercial, Office, Retail, Similar and Allied Workers' Union (STRACC), the National Union of Petroleum Technicians and Professionals (UNTyPP), the first car manufacturer [1], as well as the second car manufacturer [2] (recommendation a)), IndustriALL claims that it has not yet received an institutional or legal response.

27. Regarding the STRACC, IndustriALL alleges that several transnational companies in the energy sector continue to hire new staff through outsourcing companies and affiliate them to a protection union in collusion with labour authorities. According to IndustriALL, officials at the Mexico City Local Conciliation and Arbitration Board (JLCACDMX) withhold information on collective bargaining agreements and union records, and delay procedures to give employers

[1] BMW.

[2] KIA Motors Corporation.

time to leak data on STRACC members and dismiss them. It refers in particular to a legal action to seek title brought by STRACC in June 2019 that was not dealt with by the JLCACDMX, leading to numerous dismissals.

28. Regarding the UNTyPP, IndustriALL claims that the oil company [3] still refuses to recognize it as an interlocutor and blocks any union activity in the workplace. It also alleges that the oil company refuses to comply with the resolutions of the Federal Conciliation and Arbitration Board to reinstate dismissed workers who initiated the process of organizing the UNTyPP, as well as discriminating against those it identifies as UNTyPP affiliates in its admission and promotion processes.

29. In terms of addressing the different dimensions of the issue of protection contracts and unions through the development and implementation of constitutional reform and its secondary legislation (recommendation (d)), IndustriALL argues that, while changes are being made for labour law transformation, the control groups of the employer protection collective contracting labour model are imposing themselves at a faster pace, and trade unionists continue to be harassed, threatened and dismissed. It alleges that influence peddling between officials and corporate lawyers continues, and that trade union organizations close to the new actors in government are being promoted.

30. IndustriALL also argues that while the new Federal Labour Act (LFT), adopted on 1 May 2019, provides for sanctions against employers who interfere in trade union life and repress the exercise of freedom of association, there is no mechanism for this, nor measures to redress the harm suffered by those who are victims of repression, and that much of the LFT is therefore unenforceable in practice.

31. IndustriALL further argues that, although the protocol for the legal validation of existing collective agreements, issued on 31 July 2019, provides for the obligation to consult workers to check whether they agree with their collective bargaining agreements, the responsibility for legitimization lies with the incumbent union and there have been several known cases of legitimization of a protection contract.

32. Furthermore, according to IndustriALL, since the new Government came to power, it has applied a policy of austerity without objective criteria, which has had serious negative repercussions in the labour sphere, as the Ministry of Labour and Social Security, the labour courts, the labour inspectorate and the prosecutor's offices do not have sufficient human and material resources to act. It affirms that the employers' sector is taking advantage of the transition stage and the weaknesses of the State to consolidate protection contracts, using strategies such as hiring personnel through outsourcing, employment agencies, false self-employment, simulation of labour relations and temporary contracts, which results in a sustained process of labour precariousness and the nullification of freedom of association.

33. IndustriALL adds that, while at the federal level, calls for the positions of labour judges and staff of the Federal Labour Conciliation and Registration Centre (CFCRL) are published, in the states this process is obscure and under the control of the local executive power in collusion with regionally influential economic groups, which maintain control of the bodies for the administration of justice, and for union registration and updating. In general, IndustriALL states that despite legal changes, the practice of protection contracts persists.

34. In addition, IndustriALL submits new allegations concerning other situations relating to the use of trade unions and protection contracts and, in some cases, acts of discrimination and

[3] Petróleos Mexicanos (PEMEX).

anti-union violence that were committed as a result of this issue. It alleges in particular: (i) the murder of Mr Santiago Rafael Cruz, organizer of the Farm Labor Organizing Committee (AFL-CIO), in Monterrey on 9 April 2007; (ii) the disappearance of Mr Oscar Hernández Romero, activist supporting the National Union of Miners, Metalworkers and Allied Workers of the Republic of Mexico (SNTMMSSRM) in its organization campaign at the Media Luna mine owned by Torex Gold Resources, on 23 September 2009; (iii) the arbitrary arrest and detention of Mr Antonio Bautista Crespo, General Secretary of the Union of Workers of State Powers, Municipalities and Decentralized Bodies in Nayarit (SITEM), by members of the Attorney General's Office of the State of Nayarit on 2 October 2020; (iv) the signing of protection contracts, anti-union dismissals, illegal recounts, acts of violence and intimidation, and death threats by several enterprises in the mining sector between 2008 and 2019; (v) the signing of protection contracts, as well as acts of interference and anti-union dismissals in the electricity sector between 2009 and 2020; (vi) the refusal to bargain collectively, anti-union dismissals, acts of harassment and threats in the media sector in 2017 and 2018; (vii) non-recognition of a trade union and acts of anti-union interference in the health sector in 2019 and 2020; (viii) anti-union dismissals, blacklisting, persecution of trade union leaders, as well as the imprisonment of a trade union advisor for three weeks in June 2020 in the maquila industry in the north of the country; (ix) the signing of protection contracts, anti-union dismissals, forced resignations, illegal recounts, acts of violence, intimidation and harassment, and an armed assault and attempted kidnapping in the rubber industry between 2015 and 2019; (x) the signing of protection contracts by transnational companies prior to the installation and operation of their workplaces in the wind energy sector; (xi) acts of anti-union interference by the Mexico City government in favour of protection unions; (xii) the non-recognition of a union and anti-union dismissals of several of its members and leaders in the beverage industry between 2017 and 2019; (xiii) the prevalence of employer protection collective bargaining, the use of outsourcing agencies for anti-union purposes and blacklisting in the electronics industry in Guadalajara; and (xiv) the administrative elimination of a union and its replacement by a protection union in the education sector in the State of Tabasco in June 2019.

35. In communications dated 12 November 2020, 28 October 2021 and 25 January 2024, the Government provides information on the measures taken to combat the problem of protection contracts and unions through labour reform (recommendation (d)). According to the Government, the allegations made by the complainant organizations in the present case were addressed through this far-reaching transformation, which was successfully implemented.

36. The Government indicates that the new labour model establishes the obligation of trade unions to prove their representativeness before and at the end of collective bargaining, as well as in the contractual reviews that must be carried out every two years. It explains that such representativeness must be accredited before the CFCRL, the body responsible for ensuring that the guarantees of a personal, free, secret and direct vote of the workers have been complied with.

37. The Government also indicates that, in order to prevent contracts signed under the rules of the past from being included in the new labour model, the transitional regime of the reform included the obligation to review, within a period of four years, all those contracts signed prior to 1 May 2019. It states that this review is carried out through a legitimization process organized by the union holding the contract and supervised by the labour authorities to prove that the workers are aware of the contract and that they cast their personal, free, secret and direct vote under peaceful conditions.

38. The Government also refers to other measures taken in the framework of the reform, such as the adoption of effective dispute resolution mechanisms through a pre-judicial conciliation

body and expeditious jurisdictional processes by impartial and autonomous labour courts, as well as the establishment of democratic rules for the election of union leadership, and the establishment of transparency and accountability mechanisms applicable to trade unions.

39. The Government points out that the legislative process by which the 2019 reform was approved was the product of a broad consensus between the Government and the most representative workers' and employers' organizations, which were invited to participate in the process through consultative forums in which the legislators of the Chamber of Deputies and the Senate of the Republic listened to their opinions, as well as those of specialists and academics.

40. The Government specifies that among those invited were representatives of the complainant organizations in the present case, and that the forums proved to be pluralistic, inclusive and transparent. The Government affirms that this social dialogue has continued since then and has even been strengthened in recent years, and expresses its willingness to enter into dialogue with IndustriALL on the issues raised in this case.

41. *The Committee takes due note of the information provided by IndustriALL and the Government. With regard to the five specific situations concerning the STUHM, the STRACC, the UNTyPP, the first car manufacturer and the second car manufacturer (recommendation (a)), the Committee notes that IndustriALL states that: (i) it has not yet received any institutional or legal response; (ii) in the case of the STRACC, several transnational corporations continue to use protection unions with the complicity of the labour authorities, and numerous members of the STRACC were dismissed after the STRACC filed a legal action to seek title in June 2019; and (iii) in the case of the UNTyPP, the oil company continues to refuse to recognize the UNTyPP as an interlocutor and to comply with the reinstatement orders issued in favour of dismissed workers who initiated its organizing process, and continues to discriminate against its members. The Committee notes that the Government does not provide any information in relation to the five situations mentioned above but expresses its willingness to enter into dialogue with IndustriALL on the issues that are the subject of the present case. The Committee once again requests the Government to review with the organizations concerned the matters still pending in relation to the specific situations raised with respect to the STUHM, the STRACC, the UNTyPP, the first car manufacturer and the second car manufacturer, with a view to carrying out further investigations as appropriate and taking the necessary measures to ensure full respect for the principles of freedom of association and collective bargaining. The Committee requests the Government to keep it informed in this respect and reminds it that it may, if it so wishes, avail itself of the technical assistance of the Office.*

42. *With regard to the application of the protocol on free collective bargaining (recommendation (b)), the Committee notes, on the basis of publicly available information, that the labour reform is fully in force and that the new regulations, including the General Guidelines for Trade Union Democracy Procedures issued on 17 August 2022, are already applicable. Noting that this issue is also followed by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the Committee trusts that these regulations will ensure the application of the principles of freedom of association and collective bargaining in law and in practice. In these circumstances, the Committee will not pursue the examination of this aspect of the case.*

43. *As regards the additional allegations made by IndustriALL in 2018 (recommendation (c)), the Committee notes that they are not addressed in the Government's communications. The Committee also notes that IndustriALL, in its 2020 communication, alleges further violations of the principles of freedom of association and collective bargaining through the practice of protection contracts, as well as acts of anti-union discrimination and violence that would be closely linked to this issue, in several sectors. While noting that some of the facts referred to date back to 2007, the Committee*

expresses great concern at the seriousness of some of the alleged facts, which include the murder of trade unionists, the disappearance of a trade union activist, the imprisonment of trade union leaders, an attempted kidnapping and death threats. In this regard, the Committee recalls that freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed, and that a genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty [see ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, paras 82 and 86]. With a view to ensuring that violence against trade unionists does not go unpunished, the Committee urges the Government to carry out the necessary investigations and provide its observations on the additional allegations made by IndustriALL in 2018 and 2020, including in particular the murders of Messrs Javier García Salinas, leader of the Union of workers of the "Union and Strength" Heroic Body of Firefighters of Mexico City, Víctor Sahuanitla Peña and Marcelino Sahuanitla Peña, members of SNTMMSSRM, Quintín Salgado, leader of the SNTMMSSRM, and Santiago Rafael Cruz, organizer of the AFL-CIO, the disappearance of Mr Oscar Hernández Romero, trade union activist, as well as the arbitrary detention of Mr Antonio Bautista Crespo, General Secretary of the SITEM.*

44. *With regard to addressing the different dimensions of the problem of protection contracts and unions through the development and implementation of the constitutional reform and its secondary legislation (recommendation (d)), the Committee notes that, according to IndustriALL: (i) despite the legal changes being made, the control groups of the protective collective contracting model are imposing themselves more rapidly, and trade unionists continue to be harassed, threatened and dismissed; (ii) while the LFT provides for sanctions against acts of anti-union interference, there is no mechanism for this, nor redress measures, so that much of the LFT is unenforceable in practice; (iii) several protection contracts have been legitimized through the process established in the Protocol for the legal validation of existing collective agreements; and (iv) the austerity policy of the new Government has allowed the employers' sector to take advantage of the lack of resources of the labour authorities to consolidate protection contracts through strategies of labour precariousness.*

45. *The Committee notes that the Government, for its part, indicates that: (i) the allegations in the present case were addressed through various measures adopted in the framework of the labour reform, which was successfully implemented; (ii) the legislative process through which the reform was adopted was the product of a broad consensus between the Government and the most representative social partners; and (iii) the complainant organizations in this case were among the organizations invited to participate in the consultative forums on the reform.*

46. *While welcoming the measures taken by the Government, the Committee also notes that IndustriALL alleges that the problem of protection contracts and trade unions remains and that there are gaps in the practical application of the reform, referring specifically to the lack of a mechanism to implement the provisions protecting against acts of anti-union discrimination and interference in the LFT, and to the legitimization of several protection contracts through the Protocol for the legal validation of existing collective agreements. Recalling that the legislative aspects of the present case were brought to the attention of the CEACR, the Committee encourages the Government to take steps, in consultation with the social partners, to address the above-mentioned issues, and requests it to inform the CEACR of any developments in this respect. In view of the above, the Committee will not pursue the examination of these matters.*

Case No. 2533 (Peru)

47. The Committee last examined this case, which concerns allegations of violations of freedom of association and collective bargaining in companies in the fishing, mining and textile sectors, at its March 2016 meeting [see 377th Report, paras 54–57]. On that occasion, with regard to the

matters still pending, the Committee requested the Government to keep it informed of the outcome of the judicial proceedings under way relating to the dismissal of certain trade unionists by the fishing company CFG Investment SAC (hereinafter "the fishing company"). Similarly, regretting not having received information on the continuity of the activities of the company Textiles San Sebastian SAC (hereinafter "the textile company"), the Committee requested the Government to continue conducting investigations in this respect and, if the reinstatement of the trade union officials and workers dismissed by this company was not possible, to ensure that they receive legal indemnities and compensation constituting a sufficiently dissuasive sanction against anti-union dismissals.

48. By communications dated 5 October 2018, 19 April 2023 and 22 January 2024, the Government provides information on the outcome of the judicial proceedings initiated against the fishing company concerning the aforementioned dismissals of trade unionists. According to this information: (i) the complaint for annulment of the dismissal of Mr Rodolfo Toyco was declared founded in both first and second instance, and the cassation appeal lodged by the company on 19 January 2024 against the last instance judgment is still pending; (ii) the claims for annulment of the dismissal of Mr Juan Germán Cáceres and Mr Ángel Maglorio were declared founded in the first and second instance, and they were reinstated by the company in their posts on 14 October 2014 and 3 December 2015 respectively, while the settlement and payment of their accrued wages remain pending; and (iii) the claims for annulment of the dismissal of Mr Primitivo Ramos and Mr Segundino Flores were declared founded in the first and second instance. With regard to this last point, and taking into account the information available in the section on judicial files on the website of the Peruvian judiciary, the Committee notes that: (a) since 2023, actions are taken before the competent specialized labour court in order to reinstate Mr Primitivo Ramos in his post under the conditions established in the corresponding judgment; and (b) the fishing company summoned Mr Segundino Flores by means of letters to reinstate him in his post; however, this worker finally opted to terminate his employment relationship in 2023.

49. With regard to the continuity of the textile company's activities, the Government, by communication dated 5 October 2018, provided a copy of resolution No. 12449-2013/CCO-INDECOPI of 21 October 2013, in which the Insolvency Proceedings Commission of the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) resolved to place the referred company into insolvency proceedings, which is aimed at paying the textile company's creditors subject to certain conditions, since it is economically and financially impossible for the company to meet all its debts. By the same communication, the Government submitted official letter No. 861-2018-MTPE/4/10, informing the appointment of a liquidator for the textile company and indicating that the liquidator had confirmed that the textile company was in the process of dissolution and liquidation under the aforementioned insolvency proceedings. In this respect, the Committee notes that, according to the information available on the INDECOPI's insolvency information system website, the textile company's insolvency proceedings were concluded by resolution No. 2216-2022/CCP-INDECOPI of 14 June 2022. The Committee also notes that among the labour creditors who participated in the proceedings were two of the workers (Mr Michael Martínez Arias and Mr César Cajo Rivas) whose dismissal was denounced as anti-union by the complainants in their complaint.

50. *The Committee takes due note of the information provided by the Government and of the information available on the website of the Peruvian judiciary concerning the outcome of the judicial proceedings relating to the dismissals by the fishing company of the above-mentioned trade unionists. The Committee notes with interest that several workers have already been reinstated in*

their posts while cases concerning other workers are still pending. The Committee trusts that the cassation appeal lodged in the proceedings concerning the dismissal and subsequent reinstatement of Mr Toyco will be concluded shortly and that the Government will continue to take the necessary measures to ensure full compliance with the court judgments rendered, including with regard to the payment of accrued wages to these workers.

51. *The Committee also takes note of the information provided by the Government, as well as of that available on the INDECOPI's insolvency information system on the liquidation and extinction proceedings concerning the textile company, which were completed in 2022. Recalling that in 2008 the labour inspectorate had confirmed the anti-union nature of various measures adopted by the textile company and imposed the corresponding fine, the Committee trusts that the liquidation and extinction of this company did not hinder the timely adoption by the competent authorities of the measures necessary for compensating the workers affected by the aforementioned anti-union measures, including the payment of legal indemnities and adequate compensation to those who were dismissed.*

52. *On the basis of the foregoing and having received no information from the complainant organizations since 2009, the Committee considers this case closed and will not pursue its examination.*

Case No. 3170 (Peru)

53. The Committee last examined this case, which concerns allegations of obstruction of collective bargaining by branch of activity in the textile sector and violations of freedom of association in several enterprises in the same sector, at its meeting in October 2018 [see 387th Report, paras 576–598]. On that occasion, the Committee requested the Government to inform it of: (a) the consultations held with the most representative workers' and employers' organizations on the possibility of establishing a mechanism to settle disputes relating to the level at which collective bargaining should take place and on the amendments to the first paragraph of article 45 of the TUO of the Collective Labour Relations Act (hereinafter "the LRCT"), approved by supreme decree No. 010-2003-TR, that are required to ensure that the level of collective bargaining is freely determined by the parties concerned; (b) developments with regard to the granting of trade union leave to the General Secretary of the complainant organization in textile company 1, including the outcome of the ongoing judicial proceedings on this matter; (c) investigations carried out and the outcome of administrative and judicial proceedings, in relation to the allegations of anti-union discrimination (dismissals, threats of dismissal and attempts to persuade members to resign from the trade union) and denial of trade union leave in textile company 2, having invited the complainant organization to provide information on these matters; and (d) the outcome of the ongoing judicial proceedings concerning the allegations of anti-union dismissals, the misuse for anti-union proposes of fixed-term contracting under the law on the promotion of non-traditional exports (hereinafter "LPENT"), as well as the failure to pay the agreed snacks and refreshment allowance by textile company 3.

54. The Committee takes note of the observations provided by the Government by means of communications dated 11 December 2018, 30 January 2019, 27 January 2020 and 23 April 2023.

55. With regard to recommendation (a) concerning the determination of the level of collective bargaining by the parties concerned, the Government indicates in its communication of 30 January 2019 that the Constitutional Court considers that the first paragraph of article 45 of the LRCT, in the part that states that, in the absence of agreement, the first collective bargaining shall be conducted at the enterprise level, is unconstitutional as it contravenes the freedom of decision of the parties and infringes the right to collective bargaining, since no law

can imperatively fix the level of bargaining (ground 28 of the judgment in file No. 3561-2009-PA/TC).

56. With regard to recommendation (b) concerning the granting of trade union leave to the General Secretary of the complainant organization, Mr Vicente Castro Yacila, by textile company 1, the Government informs, in its communications dated 30 January 2019 and 23 April 2023, that: (i) the complaint filed in this regard was also declared founded at second instance in 2018, recognizing the right of the aforementioned General Secretary to be granted paid trade union leave of up to 200 days per year of mandate by the company concerned and ordering it to pay the remuneration and social benefits foregone for unpaid trade union leave granted during the years 2014 to 2018; and (ii) after the competent labour court, by resolution No. 17 of 2021, requested textile company 1 to report on the execution of the mandate, the company reported, also in 2021, that it had complied with it.

57. With regard to recommendation (c) on investigations and proceedings concerning allegations of anti-union discrimination and denial of leave at textile company 2, by its communications dated 11 December 2018 and 30 January 2019, the Government: (i) submits a communication from the above-mentioned company in which, in relation to the alleged dismissal of trade unionists, it specifies that the administrative labour authority, in the framework of the corresponding proceeding, ultimately approved in 2017 the collective dismissal of 75 workers (and not 185 workers as initially requested), excluding the members of the executive committee of the company's trade union after reaching an agreement in this regard; (ii) provides report No. 007-2019/SUNAFIL/INII in which the National Superintendence of Labour Inspection (hereinafter SUNAFIL) states that no labour inspections on freedom of association or discrimination on trade union grounds have been carried out in textile company 2 and that only one infraction report was issued against it following an inspection on collective agreements, without providing further information in this regard; and (iii) notes that the complainant organization has not provided additional information in relation to this recommendation of the Committee.

58. With regard to recommendation (d), the Government provides information on the proceedings concerning the allegations of dismissal of two trade unionists, the use of fixed-term contracting under the LPENT for anti-union purposes, as well as the failure to pay the snacks and refreshment allowance by the textile company 3, by communications dated 20 September 2019 and 27 January 2020. According to the information submitted: (i) two union workers, Mr José Alfredo Bedia and Mr Emilio Albert Quiñones Zavala, filed in 2016 claims for denaturalization of their fixed-term employment contracts and for reinstatement in their posts; while the case of Mr Bedia was declared partially founded in the first and second instance in 2017 and 2019 respectively (recognizing that he had an indefinite-term relationship with textile company 3 and ordering his reinstatement), the case of Mr Emilio Albert Quiñones Zavala did not reach a conclusion because the withdrawal of the proceeding he had initiated was admitted; (ii) the judicial proceeding initiated by textile company 3 against SUNAFIL to declare the nullity of the administrative resolutions that sanctioned it for having entered into 629 temporary employment contracts without complying with the requirements of the LPENT is still pending; and, (iii) the complaint filed in 2016 by five trade union workers regarding the failure to pay the snacks and refreshment allowance agreed in several collective agreements, was rejected as unfounded by a first instance decision in 2019, establishing that they were not entitled to receive the increases in the allowance agreed during the periods sued in view of the fact that the agreements in question expired earlier. With regard to this last point, and taking into account the information available in the section on judicial files on the website of the Peruvian judiciary, the Committee notes that the aforementioned judgment was upheld by a

second instance court in 2021 and that the cassation appeal lodged by the trade unionists against the latter judgment in the same year is currently pending.

59. *Regarding the determination of the level of collective bargaining by the parties concerned (recommendation (a)), the Committee notes with interest the information provided by the Government concerning the declaration of unconstitutionality of article 45 of the LRCT, which maintained a presumption in favour of collective bargaining at the enterprise level in the event of disagreement. The Committee also notes that, according to the findings of the Committee of Experts on the Application of Conventions and Recommendations in its 2022 observation concerning the application by Peru of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98): (i) the above-mentioned provision of the LRCT was amended by Act No. 31110 of 2022; (ii) its amended version provides that the parties shall decide, by mutual agreement, the level at which they will engage in collective bargaining and that, in the event of disagreement concerning the level of negotiation, the matter shall be resolved through the use of alternative dispute resolution machinery; and (iii) in this respect, article 33-A of the Regulations of the LRCT, incorporated by Presidential Decree No. 014-2022-TR, provides that the parties shall decide, by mutual agreement, the level at which they will engage in collective bargaining and that, in the event of disagreement on the level of collective bargaining, recourse may be had to conciliation, mediation or arbitration, while article 61-A(a) of the same Regulations (also amended by the above-mentioned decree) provides for the possibility for workers to have resource to optional arbitration (*arbitraje potestativo*) when, in the context of a first negotiation and in certain circumstances, the parties are unable to reach an agreement on the level of collective bargaining. The Committee expects that the application of these provisions will ensure the free determination of the level of bargaining by the parties concerned and refers the follow-up of this legislative aspect of the case to the CEACR.*

60. *The Committee notes the information provided by the Government concerning the judicial proceeding relating to the granting of trade union leave to the General Secretary of the complainant organization by textile company 1 (recommendation (b)). The Committee notes with interest that, in the framework of this proceeding, his right to paid trade union leave of up to 200 days per year of mandate was recognized and that the textile company 2 reported in 2021 that it had complied with the payment of the remuneration and social benefits foregone for unpaid trade union leave granted in previous years.*

61. *The Committee takes note of the documentation submitted with regard to investigations and proceedings concerning allegations of anti-union discrimination (dismissals, threats of dismissal and attempts to persuade members to resign from the trade union) and denial of trade union leave in textile company 2 (recommendation (c)). The Committee notes that, according to the enterprise concerned, in the context of an administrative procedure for collective dismissal, which has already been completed, the competent authority authorized the dismissal of a reduced number of workers and excluded the members of the executive committee of the company's trade union after reaching an agreement to that effect. The Committee also notes that, as informed by SUNAFIL, no labour inspections for violations of freedom of association or discrimination on trade union grounds have been carried out in the textile company 2 but that an inspection concerning the application of collective agreements was carried out and led to the issuance of an infraction report. Finally, the Committee notes that, despite its invitation, the complainant organization has not provided additional information concerning any issues that may have remained outstanding in this respect.*

62. *The Committee takes due note of the elements provided by the Government and of the information available on the website of the Peruvian judiciary concerning the proceedings relating to the denaturalization of fixed-term contracting of the two trade unionists mentioned above, the use of fixed-term contracting under the LPENT for anti-union purposes, as well as the non-payment of the snacks and refreshment allowance by textile company 3 (recommendation (d)). The Committee notes*

with interest that the reinstatement of one of the trade unionists was ordered and notes that the other trade unionist withdrew his claim. On the other hand, the Committee trusts that both the judicial proceeding initiated by the enterprise concerned in relation to the use of temporary employment under the LPENT, as well as the cassation appeal lodged in the proceeding concerning the payment of the snacks and refreshment allowance to several members of the trade union, will be resolved promptly and that the Government will take the *necessary measures to ensure full compliance with the courts' decisions.*

63. *Based on the above and having received no information from the complainant organization since 2016, the Committee considers this case closed and will not pursue its examination.*

* * *

Status of cases in follow-up

64. Finally, the Committee requests the Governments and/or complainants concerned to keep it informed of any developments relating to the following 50 cases.

Case No.	Last examination on the merits	Last follow-up examination
2096 (Pakistan)	March 2004	October 2020
2603 (Argentina)	November 2008	November 2012
2715 (Democratic Republic of the Congo)	November 2011	June 2014
2756 (Mali)	March 2011	March 2023
2797 (Democratic Republic of the Congo)	March 2014	–
2807 (Islamic Republic of Iran)	March 2014	June 2019
2871 (El Salvador)	June 2014	June 2015
2889 (Pakistan)	March 2016	October 2020
2925 (Democratic Republic of the Congo)	March 2013	March 2014
3011 (Türkiye)	June 2014	November 2015
3018 (Pakistan)	June 2023	–
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	–
3104 (Algeria)	March 2017	November 2023
3167 (El Salvador)	November 2017	–
3180 (Thailand)	March 2017	March 2021
3182 (Romania)	November 2016	–

Case No.	Last examination on the merits	Last follow-up examination
3192 (Argentina)	November 2023	–
3202 (Liberia)	March 2018	–
3232 (Argentina)	November 2023	–
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
3313 (Russian Federation)	November 2021	–
3314 (Zimbabwe)	October 2019	November 2022
3326 (Guatemala)	November 2022	–
3339 (Zimbabwe)	March 2022	–
3360 (Argentina)	March 2023	–
3363 (Guatemala)	June 2023	–
3364 (Dominican Republic)	March 2022	–
3368 (Honduras)	November 2023	–
3369 (India)	November 2022	–
3370 (Pakistan)	November 2023	–
3376 (Sudan)	June 2023	–
3397 (Colombia)	June 2023	–
3399 (Hungary)	March 2022	–
3408 (Luxembourg)	November 2022	–
3415 (Belgium)	November 2022	–
3426 (Hungary)	March 2023	–
3427 (Togo)	November 2023	
3430 (Republic of Korea)	June 2023	–
3433 (Republic of Korea)	November 2023	–

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

66. In addition, the Committee has received information concerning the follow-up of Cases Nos 1787 (Colombia), 2362 and 2434 (Colombia), 2528 (Philippines), 2540 (Guatemala), 2566

(Islamic Republic of Iran), 2583 and 2595 (Colombia), 2637 (Malaysia), 2652 (Philippines), 2656 (Brazil), 2684 (Ecuador), 2699 (Uruguay), 2706 (Panama), 2716 (Philippines), 2719 (Colombia), 2723 (Fiji), 2745 (Philippines), 2749 (France), 2751 (Panama), 2753 (Djibouti), 2755 (Ecuador), 2758 (Russian Federation), 2763 (Bolivarian Republic of Venezuela), 2852 (Colombia), 2882 (Bahrain), 2896 (El Salvador), 2902 (Pakistan), 2946 (Colombia), 2948 (Guatemala), 2949 (Eswatini), 2952 (Lebanon), 2954 (Colombia), 2976 (Türkiye), 2979 (Argentina), 2980 (El Salvador), 2982 (Peru), 2985 (El Salvador), 2987 (Argentina), 2995 (Colombia), 2998 (Peru), 3006 (Bolivarian Republic of Venezuela), 3010 (Paraguay), 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 and 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), 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), 3342 (Peru), 3343 (Myanmar), 3347 (Ecuador), 3359 (Peru), 3374 (Bolivarian Republic of Venezuela), 3375 (Panama), 3378 (Ecuador), 3385 (Bolivarian Republic of Venezuela), 3386 (Kyrgyzstan), 3401 (Malaysia), 3404 (Serbia), 3407 (Uruguay), 3410 (Türkiye), 3412 (Sri Lanka), 3414 (Malaysia), 3420 (Uruguay) and 3437 (Ecuador) which it will examine as swiftly as possible.

Closure of follow-up cases

67. 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. 3399 (Hungary).

Case No. 3434

Interim report

Complaint against the Government of Algeria presented by
– The Trade Union Confederation of Productive Workers (COSYFOP) supported by
– Public Services International (PSI) and
– The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)

Allegations: The complainants allege that the authorities are interfering in the work of COSYFOP and hindering its trade union activities; anti-union measures and trade union harassment towards members of the organization; and amendments to the law that would result in criminal punishment for trade union activity in the case of the dissolution of an organization or even classifying certain trade union activities as terrorism.

68. The complaint is contained in communications from the Trade Union Confederation of Productive Workers (COSYFOP) dated 15 August 2022, 28 September 2023 and 22 December 2023, supported by a communication dated 2 September 2022 from Public Services International (PSI) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF).

69. The Government sent its observations in communications dated 27 October and 2 December 2022 and 23 January and 19 December 2023.

70. Algeria 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 complainants' allegations

Change in leadership of COSYFOP

71. In its communication dated 15 August 2022, COSYFOP stated that it was a trade union organization that had been duly registered with the Ministry of Labour, Employment and Social Security since 4 February 1991 and recognized by successive governments. In that capacity, the organization is included on the list of trade unions registered and accredited by the Ministry of Labour, Employment and Social Security, available online. In accordance with its statutes, COSYFOP elected its bureau during a general assembly held on 30 July 2018, the President of which is Mr Raouf Mellal, signatory to the complaint. The aforementioned general assembly was convened by Mr Moussa Meziani, Secretary-General of the National Industrial

Sector Union (SNSI), and Mr Zakaria Benhaddad, Secretary-General of the National Union of Energy Workers (SNT ENERGIE). The convocation was duly recorded in the minutes of the general assembly and authenticated by a court bailiff. The transfer of power from the founding members to the new leadership of COSYFOP, led by Mr Raouf Mellal, included the handover of the constitutional statement and the old statutes. The five-year term of the newly elected leadership ends in 2023.

72. COSYFOP notified the Ministry of Labour, Employment and Social Security of the change in its leadership, and the Ministry acknowledged receipt of the administrative file. This file included the minutes of the changeover general assembly, duly signed by a court bailiff, and the organization's new statutes. In addition, the restructuring of the organs of COSYFOP was published in a national daily newspaper, in accordance with article 17 of Act No. 90-14 on modalities for the exercise of the right to organize. COSYFOP has its own bank account and a registered office. Following this legal change in leadership, COSYFOP was recognized by a number of public bodies and now has more than 10,000 members across the country.

73. Nonetheless, since August 2018, COSYFOP has had to deal with the intent of the Government to hinder its activities. In the face of this situation, COSYFOP met with the high-level ILO mission that visited Algiers following the June 2018 conclusions of the Committee on the Application of Standards of the International Labour Conference. The situation has remained unchanged and COSYFOP has regularly submitted information on the anti-union measures to which it has been subjected to the ILO's supervisory bodies, which have made recommendations to the Government. Nonetheless, COSYFOP reports that the Government's repression of the organization and its members has only intensified.

74. In its communication dated December 2023, COSYFOP provides information about the organization of the Confederation's national congress on 4 March 2023, held remotely via a communication platform, chaired by Mr Ramzi Derder, who was elected President of the congress. A new national bureau was elected for a five-year term, until 2028. Among the members of the bureau, Mr Raouf Mellal was re-elected President of the Confederation and Mr Abdelmadjid Baby Hakim Bousane was re-elected Secretary-General of the Confederation. COSYFOP notes that it has provided copies of the minutes of the election of the new bureau, recorded by a court bailiff, the notice that appeared in a national daily newspaper and the letter informing the Ministry of Labour. COSYFOP requests that all members of its national governing body are able to exercise their trade union mandate without hindrance or threat.

75. Furthermore, COSYFOP convened an extraordinary congress on 20 October 2023, also held remotely via a communication platform, to amend its statutes and bring them into line with the new Act No. 23/02 of 25 April 2023 on the exercise of the right to freedom of association. The amendments that were made to the Confederation's statutes were, in accordance with the provisions of the law, published in an Arabic language daily newspaper, certified by a court bailiff and reported to the Ministry of Labour. COSYFOP reports that, to date, it has not received any observations from the Ministry of Labour about the amendments made to its statutes.

Cloning

76. The complainants report that, following the publication of the report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in February 2020, which contained observations on discriminatory measures against trade union leaders and members, in particular independent trade unionists, including the members of COSYFOP, the Government began setting up a parallel bureau within COSYFOP. In that regard, a pseudo COSYFOP general assembly was held on 16 February 2020, without a single trade union

representative or worker present, which elected a bureau under the supervision of one of the directors general of the enterprise SONELGAZ (hereafter the energy company).

77. The complainants recall that the Government has regularly used the technique known as "cloning", as previously with the National Autonomous Union of Public Administration Personnel (SNAPAP) and the Autonomous National Union of Electricity and Gas Workers (SNATEG). Since the 1990s and according to a similar scenario, a dissident faction made up of opportunistic militants or people who have been manipulated is set up within an independent trade union, which rapidly leads to a schism. The sole objective of the schism is the establishment of a new organization, a clone of the original, that is willing to compromise with the authorities.

78. The complainants recall that as a result of COSYFOP's new statutes (articles 25 and 17), adopted at the July 2018 general assembly, the Confederation's bureau has a mandate of five years which cannot be interrupted before the end of the term. They note that the pseudo general assembly in February 2020 was authorized by the administrative authorities in the Algiers *wilaya* (province), which would appear to confirm that the meeting was convened by the Government, and that it was held under the supervision of the director general of the private health insurance company of the energy company group, which has no links to COSYFOP, and under police protection. In addition, the complainants emphasize that no trade union representative or worker from COSYFOP was present at that pseudo general assembly, and several of the participants included in the minutes of the meeting were not members of COSYFOP. In addition, several leaders of the parallel bureau (Kelab Debih Nesrine, Houari Nessrine and Tebbi Belgacem) were not members of COSYFOP.

79. The complainants note that following the sham election of the parallel bureau, the new pseudo leaders sent messages to companies, ILO supervisory bodies and international trade union federations, stating that the COSYFOP bureau led by Mr Raouf Mellal was now illegal and that the new COSYFOP bureau was led by Mr Zakaria Benheddad (a worker dismissed by the energy company). In light of that situation, the legitimate COSYFOP national confederation council denounced such Government interference and reaffirmed its support for its President, Mr Raouf Mellal.

Closure of COSYFOP premises

80. The complainants deplore the fact that, in addition to cloning its leadership, the administrative and security authorities closed the entrance to the COSYFOP headquarters in Algiers, on 21 February 2020. The stated reason for that closure is the refusal of the authorities to recognize the results of the general assembly elections held on 30 July 2018. The complainants emphasize that the authorities did not even go through the courts to take the decision to close the union headquarters. Moreover, the complainants affirm that the COSYFOP headquarters had always been under constant surveillance by the authorities. Everybody who approached it was stopped by the security forces.

81. The complainants denounce the fact that, following the meeting between the leaders of COSYFOP and the high-level ILO mission in May 2019, in particular following the conclusions of the Committee on the Application of Standards in June 2019, the Ministry of Labour, Employment and Social Security sent letters to the various public bodies to disqualify and reprimand trade unions and members affiliated with the Confederation. Since July 2019, the Ministry of Labour, Employment and Social Security has incited the administrations, ministries, employers and security services to refuse to deal with COSYFOP. Therefore, the complainants allege that the Ministry of Labour, Employment and Social Security, the Ministry of Energy and

the Ministry of the Interior have requested all organs of State to oppose any form of activity by COSYFOP. All these difficulties have resulted in many people being laid off.

Criminalization of trade union activities

82. In addition, the complainants denounce the situation of escalation that has led to systematic accusations of terrorism made against members of COSYFOP since the amendment of the Criminal Code in June 2021, in particular its article 87 *bis* which broadened the definition of terrorism to include working towards or inciting change, to access power or to change the system of government by unconstitutional means. According to the complainants, this overly broad definition allows the authorities to criminalize calls to strike or worker protests, and all peaceful calls for a change in government. Following that amendment, the Government launched a widespread campaign of persecution against members of COSYFOP, which it now considers to be a terrorist organization. In July and September 2021, COSYFOP alerted the Office and the ILO supervisory bodies to the attacks made against several of its members and affiliates (Mr Ramzi Derder, Mr Nacer Hamitouche, Mr Mohamed Mecelti, Mr Nasredine Rarbo, Mr Hicham Khayat and Mr Hamza Kharroubi) who had been summoned by the police or the gendarmerie, detained and charged with belonging to a terrorist organization by virtue of article 87 *bis* of the new Criminal Code, which is being exploited in a scandalous manner and used against the independent trade union movement. In this regard, the complainants recall that a group of United Nations experts (the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders), in a communication sent to the Algerian Government on 27 December 2021, expressed great concern at this very broad definition of terrorism and the imprisonment of human rights activists and trade unionists in the framework of the so-called fight against terrorism.

Anti-union measures against COSYFOP and its members

83. The complainants denounce the fact that the Government has launched a fierce campaign against all trade unions affiliated with COSYFOP by sending letters to the administrative bodies affirming the illegality of the leaders of COSYFOP. The Government has urged these bodies to lay off the trade unionists concerned, thereby flagrantly hindering the exercise of the right to organize.

84. According to COSYFOP, these letters indeed resulted in the firing of the following leaders of the National Union of the Higher Institute of Management (STISG): (i) Ms Amel Chalabi, President of STISG; (ii) Mr Kerim Tarek Zinat, Secretary-General of STISG; and (iii) Mr Mohamed Ouslam, National Secretary of STISG. Following a call from COSYFOP, the labour inspectorate refused to order these trade union leaders to be reinstated to their posts. These workers were therefore fired for the sole reason of belonging to COSYFOP.

85. Moreover, the Commission for Electricity and Gas Regulation (CREG) issued memoranda about the illegality of the primary union affiliated to COSYFOP and threatened the workers with dismissal and criminal charges, which enabled the employers to impose serious restrictions on all members of the national Workers' Union of the Commission for Electricity and Gas Regulation (STCREG)

86. Lastly, COSYFOP alleges that 17 trade unionists affiliated with the National Union of Workers for the enterprise BATIMITAL (SNTSB-COSYFOP) – of whom it provides a detailed list – were dismissed on 24 October 2019 based solely on their affiliation with the Confederation. The administration blackmailed these workers, compelling them to resign from the Confederation in exchange for their reinstatement. The Confederation immediately called upon the labour inspectorate, requesting the enforcement of article 56 of Act No. 90-14 on modalities for the exercise of the right to organize. However, the inspectorate refused to respond to the request for the trade union members to be reinstated. On 2 February 2020, the 17 trade union members were summoned by the examining magistrate of the fifth chamber at the El Harrach tribunal in order to persuade them to withdraw from the union. They were reinstated to their posts after stating that they would resign from COSYFOP.

87. The complainants denounce the communications sent to the offices of the social security fund encouraging the dismissal of the members of the National Federation of Workers in Social Security Funds (FNTCSS), affiliated with COSYFOP, which resulted in the dismissal of the President of FNTCSS, Mr Ayoub Merine, and his resignation from the union shortly after his reinstatement.

88. In addition, the complainants denounce the harassment suffered by members of COSYFOP and their repression by means of the authorities' misuse of justice to their own advantage. They highlight in particular the serious situation of the following union leaders, as of the date the complaint was put before the Committee.

89. **Mr Raouf Mellal:** according to the complainants, the harassment that Mr Raouf Mellal, President of COSYFOP, has been subjected to a very dangerous turn after his meeting with the high-level ILO mission in Algiers in May 2019 and his statement to the Committee on the Application of Standards at the International Labour Conference in June 2019. Alongside several other trade unions and members of the Workers' group, he denounced the Government of Algeria's abuses and violations of the right to organize. Upon his return to Algeria, Mr Mellal was arrested at the airport. During the three hours that he was detained, Mr Mellal was assaulted, intimidated and threatened with prison by the police. He was forced to sign a statement concerning his trade union activities at COSYFOP and at SNATEG, and about his trip to Switzerland. Confronted with attempts to intimidate him and death threats, Mr Mellal moved house and decided to withdraw from public life for a period of time.

90. In November 2019, newspapers and social network pages with no relationship to COSYFOP relayed a complaint from COSYFOP addressed to the ILO concerning the arbitrary dismissals and prison sentences of its members. The media used this complaint in a campaign of propaganda against Mr Mellal, accusing him of being a traitor and a spy for foreign organizations. This campaign aimed to convince public opinion that the President of COSYFOP should be imprisoned and sentenced to death. On 28 November 2019, the national police descended on the COSYFOP headquarters and made Mr Amine Bouzerzour, President of the National Federation of Informal Economy Workers, who was on site, to sign the summons, forging the signature of Mr Mellal. After that, Mr Mellal's lawyer informed him of the risk that he would face by attending the summons, insofar as he was in danger of being arrested for espionage and treason. In Algeria, an accusation of espionage is extremely dangerous and can lead to the death penalty, in accordance with the Criminal Code. For these reasons, Mr Raouf Mellal did not turn himself in to the police, and decided to flee the country with his family. Mr Mellal obtained political refugee status in Switzerland and lives there. COSYFOP emphasizes that this refugee status is a recognition of the very real threats hanging over Mr Mellal and the fact that he and his family deserved protection.

91. **Mr Abdelkader Kouafi:** Secretary-General of COSYFOP, Mr Kouafi's residence was searched by the security services on 6 July 2023 and he was detained for more than a week from 6 to 14 July 2023. According to COSYFOP, Mr Kouafi was subjected to torture and threats during his detention and was interrogated about his activities at SNATEG, including the case before the Committee on Freedom of Association that had received conclusions and recommendations in June 2023 (Case No. 3210). Mr Kouafi was threatened with detention due to a defamation conviction handed down in February 2018 by the Blida Court of Appeal and informed that he was also being accused of espionage for foreign organizations. In order to secure his freedom, Mr Kouafi had to sign a statement affirming that he would no longer be a militant at SNATEG or COSYFOP. Mr Kouafi decided to flee the country and now lives in Europe.

92. **Mr Nacer Hamitouche:** COSYFOP representative for the Algiers *wilaya*, he was arrested on 18 September 2019 by the military security services and interrogated for ten hours. The military security services threatened him with imprisonment for harming national unity. He was also informed that all members of COSYFOP would be imprisoned. During his incarceration, he was advised to withdraw from the Confederation to avoid issues. On 3 January 2022, Mr Hamitouche was again arrested and detained for ten days in the Algiers police jail. He was subjected to psychological torture by means of a very long investigation of his trade union activities, his political beliefs, his relationship with the President of COSYFOP, Mr Raouf Mellal, who is exiled in Switzerland, and the information that had been sent to the ILO. After ten days of investigation, Mr Hamitouche was accused of suspected terrorism and harming national unity. Nonetheless, thanks to civil society mobilization, the examining magistrate ordered him to be released and put under judicial supervision, while also maintaining the threat of imprisonment if he continued to post on Facebook. On 3 February 2022, the indictments chamber of the Algiers court issued an arrest warrant and an order to annul the examining magistrate's ruling. The indictments chamber wanted to put Nacer Hamitouche back in prison. He decided to flee the country.

93. **Mr Hamza Kherroubi:** former President of the National Union of Personal-Care Workers (SNAS) and President of the Pharmaceutical Industry Workers' Union (STIP), he was arrested on 9 December 2019 in the Tipasa *wilaya* and detained for one night at the police station. This arrest happened even though the police had been informed of the seriousness of his illness and need to rest. The police investigation focussed on the call to strike on 8 December 2019 issued by COSYFOP. Mr Kherroubi reports that it was suggested that he give false testimony in exchange for his release, accusing Mr Mellal of being a spy for international institutions and of receiving money from foreign organizations. After he refused, Mr Kherroubi was accused of inciting a mob and of harming national unity and an official institution by means of Facebook posts. On 10 December 2019, after one night of detention and due to his poor health, the judge sentenced Mr Kherroubi to one year in prison without parole but with conditional release. Faced with that legal pressure, Mr Kherroubi decided to flee the country in February 2020 and seek political asylum abroad. He nonetheless decided to return to Algeria in December 2020. On 2 January 2022, the courts issued a search warrant against him. The police attempted to arrest him at his home in Tipasa, but were unable to find him. The situation once again became unbearable, Mr Kherroubi decided to leave the country again and to flee to Europe in July 2022.

94. **Mr Mohamed Essalih Bensdira:** President of the National Committee for the Unemployed, he was arrested on 5 September 2019 by the Guelma *wilaya* gendarmerie and assaulted during the arrest. He was forced to sign a statement resigning from COSYFOP. He was released and then summoned to the gendarmerie a second time on 7 October 2019. This harassment by the security forces led Mr Bensdira to flee the country.

95. **Mr Amine Felih:** founding member of COSYFOP's National Federation of Informal Economy Workers, he was arrested on 16 February 2022, then charged with membership of a terrorist organization and detained for a month and a half. He was released on 30 March 2022 following a big campaign led by Algerian civil society and after a letter of solidarity addressed to the President of the Algerian Republic was sent by international trade union federations (IUF, IndustriALL and PSI). He was arrested again on 16 March 2023 and served a one-year prison sentence in Blida before being released on 20 June 2023 after an appeals ruling and following international mobilization, including an intervention from the International Labour Office.

96. **Mr Omar Harid:** Secretary-General of the COSYFOP bureau in the Guelma *wilaya*, he was arrested by the internal security services on 3 October 2019. He was forced to sign a statement in which he committed to stop protesting and withdraw from the Confederation.

97. **Mr Mohamed Mecelti:** member of the COSYFOP communication department and journalist for a public daily newspaper, he was arrested on 11 January 2022 and put under judicial supervision on 13 January 2022 on suspicion of terrorism and harming national security. Mr Mecelti resigned from COSYFOP upon his release.

98. **Mr Nasredine Rarbo:** member of the communication department and contributor to COSYFOP's official Facebook page and website, he was arrested by the police on 7 January 2022 as part of the Government's campaign against the leaders of COSYFOP in Algiers. The examining magistrate ordered him to be put under judicial supervision on 13 January 2022 on suspicion of terrorism and harming national security. Mr Rarbo now lives in fear of being imprisoned at any moment.

99. **Ms Rym Kadri:** President of the National Federation of Education Workers affiliated with COSYFOP, she was arrested on 11 October 2019 by police in Ouargla *wilaya*. She was subjected to a very violent interrogation for more than five hours. Ms Kadri was released after being forced to sign a statement that was different to what she had reported to the police. She was then summoned before the Attorney-General of the Republic at the Ouargla tribunal, who threatened her with prison if she continued her trade union activities. Ms Kadri was arrested again on 24 November 2019 and detained for one day. She again appeared before the examining magistrate at the Ouargla tribunal, who ordered her to be placed under judicial supervision and imposed a travel ban. Ms Kadri was then charged with: (i) recruiting members (for COSYFOP) without authorization; (ii) harming national security, due to her having signed a declaration calling for a general strike in the education sector; (iii) unauthorized assembly, relating to the sit-in organized in front of the court demanding the release of the young people from the popular movement from the Ouargla *wilaya* who had been detained; (iv) hindering the elections; and (v) incitement of an assembly. Ms Kadri had her mobile telephone confiscated and suffered serious psychological pressure. After two days' imprisonment, intimidation and investigations, Ms Kadri was released on the condition that she resign from COSYFOP and was placed under judicial supervision.

100. **Mr Oussama Azizi:** following the resignation of Ms Rym Kadri from COSYFOP, Mr Azizi was elected by the Federal Council of the National Federation of Education Workers to replace her. However, shortly after the minutes of his election were sent to the national Ministry of Education, Mr Azizi was summoned by the police for an investigation into his trade union activities and his posts on social media. Mr Azizi was sentenced to six months in prison without parole and a fine of 100,000 Algerian dinars for inciting a mob and spreading false information. Mr Azizi had to resign from COSYFOP.

101. **Mr Ramzi Derder:** member of the national bureau of the National Federation of Informal Economy Workers, affiliated with COSYFOP, he was harassed by the police for two years for his

trade union activities and his involvement in Hirak movement demonstrations (a peaceful democratic people's movement). He continued to denounce anti-democratic and anti-union repression on social media after the demonstrations were stopped due to the COVID-19 pandemic health restrictions. Mr Ranzi Derder was arrested on Wednesday 30 June 2021 by agents from the national gendarmerie and his family home in the Batna *wilaya* was searched. He was assaulted by the national gendarmerie investigators in Batna for four consecutive days. The judicial enquiry was motivated by his posts on social media criticizing Government policy. The international trade union movement has mobilized in response to Mr Derder's situation, international trade union federations (IUF, PSI and IndustriALL) have called on the President of the Republic to release Mr Derder and the Office has approached the Government on two occasions. Nonetheless, the Government has responded by demonstrating its contempt for the presumption of innocence, for the exercise of the right to organize and for international organizations. Mr Derder went on hunger strike, which he had to abandon after one week. On 18 July 2021, the indictments chamber of the Court in Batna upheld the provisions of the order from the examining magistrate at the tribunal in Merouana and the committal order for Mr Derder. As of the date that the complaint was submitted to the Committee on Freedom of Association, Mr Derder was still in prison having been falsely accused. The Government refuses to release him or even to schedule a trial to enable him to defend himself.

102. **Mr Hicham Khayat:** leader member of the SNATEG trade union section of the Electricity and Gas Training Institute and representative for the *wilaya* of Blida, he was arrested by the police on 4 January 2022 and incarcerated until 10 January 2022. He then appeared before the examining magistrate, who ordered that he be placed under judicial supervision. He is accused of suspected terrorism and harming national security. The legal investigation relates to his trade union activities, in particular his membership of COSYFOP and SNATEG, his political views and his posts on Facebook. Falsely accused of terrorism, he resigned from COSYFOP after being blackmailed by the security services, in order to be acquitted of all the accusations made against him.

103. **Mr Ayoub Merine:** President of the Federation of Social Security Fund Workers, a defamation complaint was made against him by the social security service. According to COSYFOP, the motive for this complaint was his posting a copy of the summons to the disciplinary council that he had received on social media. He had posted the summons and called for support and solidarity from the workers. Nonetheless, the social security services considered this post to be divulging trade secrets and defamation of the employer. Mr Merine was eventually sentenced to two months imprisonment without parole for defamation of the administration.

104. **Mr Slimane Benzine:** member of the confederate bureau of COSYFOP, he has been sentenced to imprisonment without parole on several occasions for posting simple communiqués on social media, shedding light on the degrading socio-professional situation of the workers at the energy company. He is still regularly harassed by the police in the Tougourt *wilaya*, on the orders of the public prosecutor's office, for his comments on social media denouncing the deterioration of freedom of expression in Algeria. Mr Benzine was summoned to a judicial enquiry on two occasions, on 3 and 5 September 2020, and interrogated about his membership of COSYFOP and his activities on social media. Mr Benzine was released after eight hours of arbitrary detention.

105. **Mr Abdeldjebar Mustapha Bennouna:** member of the COSYFOP National Youth Committee and member of the Algiers *wilaya* bureau, he joined the National Federation of Informal Workers in March 2023 in order to establish a union dedicated to bus conductors. Mr Bennouna was arrested by the police on 24 September 2023 and sentenced in an immediate trial by the Larbaa tribunal to 18 months' imprisonment without parole for

offending the President of the Republic, inciting an illegal mob and offending the institutions of State on social media. After the intervention of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association with the Government, Mr Bennouna was released from prison on 4 December 2023 following a decision by the Blida court. However, he still has a one year suspended prison sentence. According to COSYFOP, this sentence hinders his trade union activities, in particular, in the establishment of an organization of workers in the informal sector. COSYFOP demands that the leaders of the Federation of Informal Workers, including Mr Bennouna, be able to carry out their activities without hindrance, in an environment free of threats or violence.

106. **Mr Moustapha Lahouiri:** elected to the national bureau of COSYFOP on 4 March 2023, Mr Lahouiri was verbally dismissed from his post as a contractual forestry agent for the Bordj Bou Arreridj forest Conservancy on 23 March 2023. He has also been subjected to judicial harassment by being summoned by an attorney-general of the Republic in a different jurisdiction every month by telephone message, in order to provide information about COSYFOP and the environmental protection committee affiliated with COSYFOP that he chairs.

107. In addition, the complainants denounce other forms of suppression of trade union activity, including the occupation of the COSYFOP premises in Algiers on 31 October 2019, while hundreds of thousands of protestors were calling for freedom and democracy in Algeria, and the questioning of 32 members and leaders of the union, in particular Mr Abdeljalil Rmidi, president of the Union of Workers at Tonic packaging, Mr Hamid Messaoudene and Mr Raouf Sassi, COSYFOP delegates in the Ouargla *wilaya*. They were all taken to the police station where they were advised to withdraw from the Confederation. According to those that were detained, police officers stated that the Confederation would soon be dissolved and all its members would be imprisoned for espionage and corresponding with foreign organizations. The leaders of COSYFOP were also accused of being part of a "Zionist" organization.

Amendment of legislation

108. COSYFOP recalls that in September 2019 it had made proposals to the Government regarding the amendment to the bill amending Act No. 90-14 on modalities for the exercise of the right to organize. Nonetheless, it notes that the Government shut the door to all dialogue and its proposals were not taken into consideration. Also recalling that the bill proposed by the Government contained several articles that violated Convention No. 87, COSYFOP observed that the Government launched a local media campaign in February 2022 without having previously consulted the independent trade union organizations. COSYFOP brought this to the attention of the ILO supervisory bodies, but the bill was adopted and creates several barriers to the exercise of freedom of association. COSYFOP draws particular attention to the maintenance of articles 60 and 61 of the Act, which punish any trade union member who opposes the dissolution of their union, even verbally. The punishment incurred can be up to two years imprisonment without parole. COSYFOP denounces the fact that the two articles could directly target members of SNATEG who oppose the dissolution of their unions. If that happens, it could legally block the conclusions of the Committee on the Application of Standards and the recommendations of the Committee on Freedom of Association in the case concerning SNATEG.

109. They request the Committee to recommend that the Government: (i) repeal articles 60 and 61 (dissolution of trade union organizations) of Act No. 90-14, as amended; (ii) take into account the recommendations and comments of the United Nations special rapporteurs about the "anti-terrorist" laws and regulations in the new Criminal Code, in particular article 87 *bis*, and adopt appropriate and transparent measures to ensure that that article is not used to punish

legitimate peaceful trade union activities, in accordance with international labour standards; (iii) stop misusing the legal system to criminalize peaceful and legitimate trade union activities and to persecute trade union leaders and members; (iv) respect the principle that Algerian trade unions' recourse to the ILO and its supervisory bodies is a recognized expression of freedom of association, protected by ILO Conventions Nos 87 and 98; (v) withdraw all charges, arbitrary prison sentences and threats against the President of COSYFOP, Mr Raouf Mellal, and the leaders of COSYFOP, including Mr Hamza Kherroubi and Mr Nacer Hamitouche, who have been forced into exile; (vi) guarantee the return to the country of Mr Raouf Mellal, Mr Hamza Kherroubi and Mr Nacer Hamitouche and their protection from injury once there, as well as their freedom to exercise their trade union rights in the organization of their choosing without fear; (vii) stop all interference in the affairs of trade unions, in particular the establishment of parallel pseudo-bureaus (cloning); (viii) restore the legitimate bureau of COSYFOP led by its President, Mr Raouf Mellal (elected on 30 July 2018 for a five-year mandate, according to the organization's statute) and recognize it as a legitimate organ of the trade union; (ix) lift the sealing of the COSYFOP headquarters in Algiers, as well as all the administrative obstacles imposed by the Ministry of Labour, Employment and Social Security, and provide compensation for all damages and losses incurred; and (x) reinstate and compensate all the members of COSYFOP who were dismissed because of their trade union activities.

110. Lastly, COSYFOP reaffirms its willingness to seek to engage in constructive dialogue with the Government, without preconditions, in order to draw up a road map to ensure the implementation of the recommendations and resolutions issued by the ILO supervisory bodies.

B. The Government's reply

Change in leadership of COSYFOP

111. In its response, the Government recalls that it has, on several occasions, provided all the information about COSYFOP to the International Labour Office. In that regard, since October 2018, the Government has reported to the Office that Mr Mellal fraudulently used the COSYFOP name after the Ministry of Labour, Employment and Social Security had published the list of registered trade union organizations. Mr Mellal had been informed by the Labour Relations Directorate, in letter No. 429/DRT/18 dated 27 September 2018, that the general assembly of 30 July 2018 did not comply with the provisions of Act No. 90-14 on the modalities of the exercise of the right to organize or the procedures established by the statutes of that trade union organization. Moreover, the Government had also made the Bureau aware that the people concerned had never been members of one of the constituent trade union organizations of COSYFOP, and that Mr Mellal does not have the authority or legal membership of that trade union organization, which has not recorded any trade union activity since its establishment in February 1991. The Government also recalls having provided all the necessary information to the high-level mission that visited Algiers in May 2019 and to the CEACR, to refute the allegations made by those who had seized the statute of COSYFOP without respecting the legal and statutory provisions of that union and without the presence of any members or affiliates of its constituent unions.

112. The Government recalls that COSYFOP was registered on 4 February 1991 as an organization covering the public productive sector, according to its statute deposited at the Ministry level. Its President was Mr Benzaid Ben Ibrir and the Confederation was made up of three unions that have not, to date, declared their withdrawal from that confederation: (i) the National Union for the Railway Sector (SNSTF); (ii) the National Union for the Ammonia/Fertilizer Sector

(SNSAE); and (iii) the National Union for the Marketing and Distribution of Petroleum Products Sector (SNSCDPP). However, these three trade union organizations did not attend the general assembly organized by Mr Mellal on 30 July 2018, at the end of which he and Mr Kouafi Abdelkader had supposedly been elected President and Secretary-General of COSYFOP. The Government notes that the COSYFOP file contained a document relating to the establishment of a presumed union between two trade unions that had been inactive for several years: the National Union of Energy Workers (SNT ENERGIE) and the National Union of Industrial Workers (SNSI). In this regard, letters (No. 430/DRT/18 dated 27 September 2018 and No. 431/DRT/18 dated September 2018) were sent to Mr Ben Haddad who had declared himself President of SNT ENERGIE and Mr Meziane Moussa who claimed to be the President of SNSI, respectively, to inform them of their non-compliance, particularly with the rules for convening the general assembly as listed in the statutes of COSYFOP. Moreover, according to the Government, COSYFOP never sent information regarding its trade union representativeness, in accordance with the legislation and regulations in place at the time, and that contradicts the information provided by Mr Mellal stating that there were 10,000 members.

113. In addition, with regard to the allegations that the receipt of the administrative dossier sent to the Ministry of Labour, Employment and Social Security had been duly acknowledged by the Minister's office, the Government recalls that current labour legislation does not state anywhere that the fact that a union deposits a dossier with the public authority recording the restructuring of its leadership bodies or the revision of its statutes constitutes an automatic recognition of the compliance of such changes with the law and the statutes of the union in question. Moreover, the minutes of the "changeover" general assembly sent by Mr Mellal did not mention the transfer of instructions with the founding members, as he indicated in his complaint.

114. The Government affirms that copies of the constitutional statement of COSYFOP and its old statutes were obtained fraudulently in order to obtain the status of leader of a trade union organization. These are not tangible proof of changes in the leadership bodies and the administration of the trade union organization in question. The minutes of the general assembly constitute the legal basis that record all modifications in the functioning of the trade union organization and serve as evidence in case of any dispute. These minutes have legal value, unlike the simple presentation of copies of wrongfully obtained documents.

115. The Government recalls that if the formalities relating to the establishment of trade union organizations, their composition and structure involve the collective rights of the unions, starting with the autonomy of the organizations, they must operate within the law. In this regard, the Government believes that the fact that the competent authority requires that the provisions of the statutes of the trade union be respected does not undermine the principle of freedom of association, particularly not when it comes to provisions concerning matters that affect the very existence or structure of a union (approval and amendment of statutes, changes in leadership bodies, dissolution, etc.), and this aims to guarantee the right of the organization's members to participate in a democratic manner.

116. In conclusion, the Government believes that COSYFOP, which had ceased its activities in 1991, has been illegally revived through a change in its leadership bureau and the amendment of its statutes by people who do not have any trade union affiliation, without respecting the statutory provisions of the trade union organization in question and the presence of its founding members. The Government recalls that recognition of the status of union leaders is assessed according to criteria established in law and by the statutes of the organization concerned, with recourse to judicial remedies in case of any dispute.

Closure of COSYFOP premises

117. With regard to the allegations concerning the closure and sealing of the COSYFOP headquarters, the Government states that these are measures taken by the competent public authorities in their missions to ensure respect for security and public order in relation to a trade union organization led by people appointed or elected illegally and without respect for the statutes of the organization in question. Moreover, the Government states that the measure was taken in accordance with decisions from the competent jurisdiction. In addition, the Government notes that the supposed members of COSYFOP have not made use of their constitutional right to have recourse to justice to request the cancellation of the decision to close the union organization's headquarters. In addition, the Government states that information gathered about the closure of the premises used as the union headquarters did not match the address contained on the receipt of the union's registration and no legal change of address document has been sent into the administration by the leaders. According to the Government, these were in fact premises rented by the supposed leaders of the union to use for the purposes of propaganda and distribution of false information to undermine public security and public order. These acts of incitement are punishable by law and have no relation to trade union activities.

118. With regard to COSYFOP's allegations of persecution of its members and leaders, including those accused of belonging to a terrorist organization, and of misusing justice to its own advantage, the Government observes that it is trying hard to defend national security and maintain public order. In that regard, members of organizations with links to terrorism, who take on the guise of trade union organizations, should not be used as a pretext against the country. The Government recalls that legally established unions of workers or employers are actively engaged in society and have total freedom in their activities. They participate as partners in social dialogue and collective bargaining. In addition, the freedom of union delegates and their right to organize activities promoting and defending the professional interests of the members of their organization are fully protected.

119. The Government states that the 1 November 2020 constitutional amendment established the rights and freedoms laid out in international human rights treaties and conventions, including the fundamental labour rights laid out in particular in the fundamental ILO Conventions ratified by Algeria. All citizens enjoy these rights and freedoms, which repeats national legislation, in particular that regarding the world of work in all its diversity. Article 69 of the constitution establishes, among other things, the right to organize. In the same way, the national constitution dedicated a heading to fundamental rights and public freedoms, laid out in the provisions of articles 34, 35, 37, 41, 44 and 52. These rights and freedoms are exercised within the framework of the laws governing them, in order to ensure that they are protected and can be enjoyed by all citizens, on an equal footing. However, everyone must respect the constitution, comply with the laws of the Republic and take responsibility for their own actions.

120. With regard to the allegations relating to the provisions of article 87 *bis* of the Criminal Code and its use to restrict the activities of trade unionists, the Government notes that it has been informed of a report in which the Special Rapporteurs from the Office of the United Nations High Commissioner for Human Rights shared their concerns about the definition of terrorism contained in Algerian law and believe that it does not comply with Security Council resolution 1566 published in October 2004, which defines acts of terrorism. The Government states that the legislator did not define the concept of terrorism, simply enumerating things that are considered to be terrorist acts, in article 87 *bis* of the Criminal Code, which reads as follows:

Any act targeting the security of the State, the integrity of the territory, the stability and normal functioning of institutions is considered to be a terrorist act or sabotage when the purpose of its action is:

(a) to spread terror in the population and create a climate of insecurity, morally or physically attacking people or endangering their life, their freedom, or their security, or by attacking their possessions;

(b) to obstruct traffic or freedom of movement on the roads and occupy public spaces in crowds;

(c) to attack symbols of the nation and the Republic and desecrate graves;

(d) to attack means of communication and transport, public and private property, by taking possession of them or unduly occupying them;

(e) to attack the environment or introduce into the atmosphere, on the land, under the ground or in the waters, including in the territorial sea a substance that endangers the health of humans or animals or the natural world;

(f) (to obstruct the action of the public authorities or the exercise of the freedom of worship and public freedoms, as well as the functioning of establishments that contribute to public service;

(g) to obstruct the functioning of public institutions or attach the life or property of its officials, or to obstruct the application of laws and regulations;

(h) the hijacking of aircraft, ships or any other means of transport;

(i) the damaging of installations for aerial, maritime or terrestrial navigation;

(j) the destruction or damage of means of communication;

(k) the taking of hostages;

(l) attacks using explosives or biological, chemical, nuclear or radioactive materials;

(m) financing of a terrorist or a terrorist organization;

(n) working towards or inciting, by any means, to access power or to change the system of government by unconstitutional means;

(o) to attack or incite an attack on the integrity of the national territory, by any means.

121. The Government notes that, in their observations, the Special Rapporteurs used Security Council resolution 1566 (2004) as the sole basis to affirm that the methods used should be deadly; they did not make any reference to resolutions 1617 (2005) and 2368 (2017), in which certain acts are designated as terrorist acts without the requirement that the methods used are necessarily lethal. These resolutions stipulate that these acts "are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature", which means that the Security Council left it up to States to determine which acts qualified as terrorism, which permits Algeria to consider acts affecting the security of the State, national unity, territorial integrity and stability and the normal functioning of institutions as acts of terrorism, just as the European Union considers as terrorism acts endangering people's lives or causing significant economic losses.

122. With regard to the concerns over the use of the final amendment to article 87 *bis* of the Criminal Code, in particular concerning the fact of "seeking by any means to access power or to change the system of government by unconstitutional means or inciting somebody to do so" as a means of taking legal action against opponents, political activists or human rights defenders, the Government believes these concerns to be unfounded, insofar as this article requires the method used to be unconstitutional. The Government recalls that opposing power is a constitutional right, as is political activity or activity related to human rights.

123. The Government notes that Act No. 90-14 of 2 June 1990, as amended and supplemented, on modalities for the exercise of the right to organize, guarantees registered trade union

organizations the free exercise of their right to organize and punishes any act of discrimination or interference, so that these rights and freedoms can be exercised in a healthy environment away from violence from any source. It also recalls that, apart from the right to seek judicial review for all acts and actions of the various public bodies, every person may also apply to the Constitutional Court if they believe that the public power has violated any of their fundamental rights and freedoms secured under the Constitution.

124. With regard to the allegations concerning the arrests of members of COSYFOP and its affiliated organizations, the Government notes that it has regularly sent information to the Bureau about certain cases that demonstrates that the people concerned have effective remedies before the competent jurisdictions. Nonetheless, the Government emphasizes that any trade union and its members are bound to respect the law, as stated in the provisions of article 8 of Convention No. 87. Therefore, exercising the right to organize should not lead these people to act counter to their duties and responsibilities, even if they have fundamental rights and freedoms recognized by the Constitution.

125. The Government states that, according to the competent jurisdictions, these people have been sentenced for their links to terrorist organizations and are using the trade union activity by using social networks to conceal their illegal acts. When these people are brought to justice, the pseudo union leaders present them to be trade unionists prosecuted due to their trade union activity. The Government wants to make clear that the people cited in the complaint, some of whom were not unionists or union leaders, have not been deprived of their freedom or imprisoned for their trade union activities, but for subversive activities unrelated to trade unionism. Therefore, the arrests were not incompatible with freedom of association but related to the application of the laws of the Republic to maintain security and public order.

126. With regard to the allegations that the authorities interfered in the affairs of COSYFOP, the Government recalls that the protection of workers' and employers' organizations from any and all acts of interference is guaranteed in law, in particular by the provisions of article 15 of Act No. 90-14, by virtue of which "except in cases expressly provided for by the law, it is prohibited for any legal or physical person to interfere in the functioning of a trade union organization". This provision clearly prohibits any act of interference, whatever the form or method used, by legal or physical persons (employer, trade union, administration), not just in the internal functioning of trade unions, but in any act would result in discrimination or influence over trade unions and their trade union activities. The law therefore allows punishments for interference.

Anti-union measures against COSYFOP and its members

127. The Government notes that some allegations relate to the behaviour of the security services and employers who were alleged to have tried to compel the leaders of COSYFOP bodies or affiliated organizations to resign. The Government emphasizes that Mr Mellal cannot be considered to be the legal COSYFOP representative due to his non-respect for the law and the statutes of the union in question, as indicated earlier. Moreover, since COSYFOP is not a representative organization it cannot legally establish union structures at the level of the employers' bodies or different workplaces. In addition, the Government has already had to inform the Bureau that Mr Mellal and certain people mentioned in the complaint have violated union ethics by turning to practices that depart from the democratic rules of trade union representation, by means of communiqués attacking State institutions, in which they call for political change and forceful disobedience, thereby presenting themselves as disruptors of public order, which is contrary to international norms on freedom of association, in particular Article 8 of Convention No. 87.

128. With regard to the allegations about the administrative correspondence sent to the offices of the social security fund describing COSYFOP as an illegitimate organization, the Government notes that this correspondence from the services of the Ministry of Labour, Employment and Social Security is within the scope of the application of the law and the provisions of Article 8 of Convention No. 87, and informed the offices of the social security fund that the procedure for changes in the leadership of COSYFOP was non-compliant.

129. With regard to the allegations of dismissals of worker members of COSYFOP, the Government notes that protection against anti-union dismissal is guaranteed and the services of the labour inspectorate play an important role in investigations and work to strengthen rapid and effective protection against anti-union dismissal and against any other form of break in the employment relationship because of union membership or engagement. The Government recalls that national labour legislation provides protection for workers and union delegates, as provided for in articles 50–57 of Act No. 90-14. For example, article 53 stipulates that no union delegate can be dismissed, transferred or subjected to disciplinary sanctions of any sort by their employer because of their union activities. Moreover, the Government also recalls that Act No. 90-14 devotes two chapters to the facilities afforded to workers and their representatives and to the protection of workers and their representatives, in particular the union delegates. Lastly, the Government provides details of planned measures to strengthen the protection of trade unionists against acts of anti-union discrimination, as part of its implementation of the conclusions made by the Committee on the Application of Standards in June 2019, with support from the Office, in particular a training workshop aiming to build the capacities of the labour inspection services on techniques and methods for identifying anti-union behaviour, in particular the dismissals of union delegates, or any type of reprisal or discrimination against workers because of their union membership or activities.

130. With regard to the complainants' allegations about the dismissals of the supposed members of the COSYFOP union structures at the Higher Institute for Management and Planning (ISGP), the Public Economic Society of Industrial Buildings (BATIMETAL) and the National Social Insurance Fund for Salaried Employees (CNAS), the Government provides the results of the investigations carried out by the services of the general labour inspectorate to determine the extent to which anti-union considerations were taken into account in these dismissals. The investigation revealed that except in the cases of four workers (Ms Amel Chalabi, Mr Mohamed Ouslam, Mr Djerbir Othmane and Mr Ayoub Merine), the supposed COSYFOP members cited in the complaint as having been the subject of abusive dismissals had not initiated judicial proceedings to request that these dismissal decisions be overturned.

131. With regard to the leaders of STISG, the Government reports that: (i) **Ms Amel Chalabi** had been subject to a disciplinary procedure on 18 April 2019 for serious professional misconduct (abandonment of post). She was summoned to the disciplinary council by her employer, with a decision to suspend her employment relationship as of 21 April 2019, as an interim measure. Having not presented herself before the disciplinary council, Ms Chalabi was dismissed for abandoning her post in a decision dated 17 June 2019. Ms Chalabi has lodged successive appeals in the framework of the individual labour dispute resolution procedures and at the level of the secretariat of the competent conciliation bureau sitting at the level of the Dar El Beida (Algiers) labour inspectorate, requesting reinstatement to her original post and payment of wages since her dismissal. Successive attempts at conciliation (July 2019 and December 2020) have failed; (ii) **Mr Kerim Tarek Zinat** was the subject of a complaint to the tribunal of Dar El Beida (Algiers) for forgery and the use of forgeries and acts of counterfeiting. He was notified of the suspension of his employment relationship as an interim measure on 15 July 2018 for having harmed the image of the Institute, and the decision to terminate his

employment relationship on 5 September 2019. He took his case to the conciliation bureau in Dar El Beida (Algiers) on 10 November 2019, aiming to be reinstated to his post, and receive payment of compensation for the duration of his suspension. The case was heard by the conciliation bureau on 16 December 2019 in the presence of both parties, and did not achieve conciliation. As a result, a report of non-conciliation was established as No. 902, dated 16 December 2019, and sent to Mr Zinat and his employer organization; and (iii) **Mr Mohamed Ouslam** was subject to a dismissal decision on 3 October 2019, which he contested. After legal proceedings, on 18 October 2020, the court ruled the dismissal to be abusive and ordered him reinstated. However, Mr Ouslam has not returned to work, in spite of two compliance warnings from a court bailiff. He was finally dismissed for abandonment of his post on 7 February 2021.

132. With regard to the allegations of the dismissal of 17 trade unionists affiliated to SNTSB-COSYFOP in the enterprise BATIMETAL, the Government states that 15 workers have not been subject to any disciplinary procedure. The Government provide information on the following two cases: (i) **Mr Gnounou Abdennour** submitted his resignation on 15 March 2021 and the employer ended his employment relationship as of 15 April 2021; (ii) **Mr Djerbir Othmane** was suspended by the employer due to an attack on the honour of the central director of human resources and violence. The court in El Harrach overturned the suspension decision and ordered his reinstatement in a ruling dated 22 September 2020. As a result of the refusal of the employer to reinstate Mr Othmane, another ruling was handed down on 30 March 2021 ordering the payment of 400,000 Algerian dinars in compensation. This compensation was paid by the employer in September 2021.

133. With regard to the measures taken against members of FNTCSS, the Government reports that the employer organization took disciplinary proceedings against **Mr Ayoub Merine** in August 2019 for not respecting his superiors, which constitutes professional misconduct. He posted the summons on social media alongside defamatory sentiments about the social security fund. His employer filed a complaint against Mr Merine with the public prosecutor's office at the Bab El Oued-Algiers court, for defamation and divulging professional secrets. The Bab El Oued-Algiers criminal court made its ruling on 19 December 2019, sentencing Mr Merine to pay a fine of 30,000 Algerian dinars for defamation. The ruling was upheld on appeal by the Algiers Court in October 2020. In a decision dated 24 December 2020, Mr Merine was transferred from the agency in Algiers to the agency in Tipaza.

134. With regard to the allegations of arrest and detention of certain members of COSYFOP, the Government states that these people were detained because of crimes unrelated to their trade union activity, some of these crimes were political in nature and came within the framework of combatting certain illegal entities. According to the Government, the people who were arrested and incarcerated were involved in political activities or had broken laws relating to State security. They were imprisoned in accordance with legal provisions and the criminal procedures in force. In addition, the Government emphasizes that it is not true to say that these people were arrested and imprisoned without recourse to the justice system.

135. In addition, the Government provides clarifications on the situation of the trade unionists listed in the complaint:

136. Case of **Mr Raouf Mellal**: the Government reports that Mr Mellal has been subject to proceedings in several cases. He is being prosecuted by the Office of the Public Prosecutor of the Republic in the Dar El Beida court on the basis of a complaint, accompanied by civil action taken by the Ministry of Labour, Employment and Social Security on 11 July 2018 for the offense of usurpation of office and abuse. A ruling was handed down in absentia, sentencing him to six months in prison without parole and a fine of 100,000 Algerian dinars. The civil action

pertains to his recording of a video that was broadcast on the internet, in which he presents himself as the President of a trade union that has been subject to a voluntary dissolution (formerly SNATEG) and, in the same way, in which he unduly presents himself in addressing the media. In the same video, he describes the Ministry responsible for labour in shameful terms, alleging that it does not respect the law and refuses to carry out legal rulings. It is worth noting that Mr Mellal appealed the aforementioned ruling, on 26 March 2020. A ruling was handed down, relating to the postponement of the decision in the case until the accused had been informed of the date of the hearing in person. The case is awaiting the finalization of the notification procedures.

137. In the court of Sidi M'Hamed, Mr Mellal is being prosecuted for defamation and has been convicted in a ruling dated 6 March 2018 and fined 20,000 Algerian dinars. An appeal decision upheld the ruling but modified the sentence by suspending the fine. As a result of the appeal decision being overturned by the Supreme Court, the Criminal Chamber of the court in Algiers handed down a decision upholding the appeal ruling. The case is awaiting the finalization of the notification procedure.

138. In the court of Guelma, Mr Mellal is being prosecuted in 28 cases between 2015 and 2022 for matters concerning invasion of privacy and defamation. In these cases, rulings have been made in absentia.

139. In the court of Biskra, Mr Mellal is being prosecuted by the Office of the Public Prosecutor at the court of Biskra for defamation for social media posts that the complaint considers abusive. The court of Biskra made a ruling in absentia sentencing Mr Mellal to three months in prison without parole and a fine of 25,000 Algerian dinars.

140. Case of **Mr Hamza Kherroubi**: the Government reports that Mr Kerroubi has been prosecuted in several cases. At the court in Koléa (*wilaya* of Tipaza), the case concerns the distribution of pamphlets calling for a general strike, in an effort to hamper the 2019 presidential elections. The Office of the Public Prosecutor of the Republic at the Koléa court found that these constitute actions worthy of criminal sanction. On 10 December 2019, the Koléa court issued a ruling sentencing Mr Kherroubi to one year in prison without parole and a fine of 20,000 Algerian dinars. After an appeal from the Public Prosecutor, the Tipaza court issued a decision in absentia, dated 9 November 2020, upholding the ruling. In a second case, Mr Kherroubi is accused of having published pamphlets containing comments aimed at the President of the Republic. The Office of the Public Prosecutor of the Republic at the court in Koléa found that these constitute actions worthy of criminal sanction. Mr Kherroubi was presented to the court for the following offenses: (i) offending the person of the President of the Republic; and (ii) harming the authorities. In a ruling dated 5 February 2020, the court in Koléa sentenced Mr Kherroubi to a fine of 500,000 Algerian dinars. However, the Tipaza court of appeal issued a decision in absentia on 7 December 2020 overturning the ruling. Lastly, in a third case, the judicial police working to combat cybercrime found offensive publications against several State institutions sent from Mr Kherroubi's account. He was prosecuted by the Office of the Public Prosecutor of the Republic at the court in Koléa and a judge ordered his arrest on 4 November 2021. The court issued a ruling in absentia sentencing Mr Kherroubi to 18 months in prison without parole and a fine of 100,000 Algerian dinars.

141. Case of **Mr Amine Felih**: the Government reports that the case concerns a preliminary investigation opened by the Office of the Public Prosecutor of the Republic at the court in Boufarik into surveillance of online publications sympathetic to the terrorist organization known as MAK and other publications abusive towards the presidency of the Republic. The investigations identified that the publications came from Mr Felih's account. On 20 February

2022, the suspect was brought before the Office of the Public Prosecutor of the Republic at the court in Boufarik for the crime of terrorist sympathizing and the offence of publishing false information that undermines public security and public order, the offense against the President of the Republic, in accordance with articles 87 *bis*, 87 *bis* 4, 144 *bis* and 196 *bis* of the Criminal Code. The examining magistrate dismissed the counts of sympathizing with terrorist acts and prosecuted Mr Felih for the offences. A ruling was issued on 14 July 2022 sentencing Mr Felih to one year in prison without parole and a fine of 50,000 Algerian dinars. On 5 April 2023, the Boufarik court issued a decision sentencing Mr Felih to one year in prison and a fine of 100,000 Algerian dinars. Following an appeal, the criminal chamber of the Blida court issued a ruling on 19 June 2023 that initially upheld the ruling on appeal, but amending the prison sentence to three months without parole and the remainder suspended. This ruling became final after the deadline for launching a cassation appeal passed.

142. Case of **Mr Omar Harid**: the Government reports that Mr Harid has been prosecuted in several cases. In a first case that dates back to April 2021, a former parliamentarian lodged a complaint against Mr Harid for having posted statements on the internet attacking his honour and consideration. After an investigation, it appeared that Mr Harid was the owner of the account used to post the statements. Mr Harid was prosecuted for the offence of defamation, in accordance with articles 296 and 298 of the Criminal Code. The public action came to an end with a ruling issued on 7 April 2021. In a second case, dating back to April 2022 when the judicial police Directorate investigated electronic accounts whose owners shared and published digital content of videos supporting acts of terrorism. On 31 August 2022, the Office of the Public Prosecutor at the court in Guelma launched proceedings against Mr Harid for recording videos expressing support for acts of terrorism and using the media and communication technologies to disseminate the ideas of a terrorist organization. On 13 November 2022, the examining magistrate issued an order to transfer the dossier to the Public Prosecutor of the Republic for the crime of voluntary broadcasting the recording of videos expressing support for acts of terrorism.

143. Case of **Ms Rym Kadri**: according to the Government, the case concerns the opening of a preliminary investigation by the Office of the Public Prosecutor of the Republic to the court of Ouargla into acts of vandalism and the destruction of signs reserved for the posting of photos of the candidates for the 2019 presidential elections. The investigations led to the identification of the suspects, including Ms Kadri. At the end of the preliminary investigation, Ms Kadri (alongside other people) was prosecuted for the offences of: (i) inciting an un-armed mob; (ii) attacking the integrity of the homeland; (iii) collecting donations without authorization; (iv) possession of pamphlets harmful to the national interest; and (v) inciting a boycott of the elections. On 27 April 2021, the Ouargla court issued a ruling acquitting Ms Kadri of all the charges. Following an appeal lodged by the Public Prosecutor, the court (criminal chamber) issued an order on 12 October 2021 upholding the court's ruling. The Public Prosecutor lodged a cassation appeal and the case is pending before the Supreme Court.

144. Case of **Mr Oussama Azizi**: according to the Government, Mr Azizi was the subject of a preliminary investigation by the Public Prosecutor of the Republic at the court of Ouled Rechache (Khenchela) for organizing a protest in solidarity with a person prosecuted by the judicial authorities. However, during the gathering, protestors took the opportunity to call on the people to boycott the elections and to wave banners insulting State institutions. At the end of the preliminary enquiry, Mr Azizi (and three other people) was prosecuted for the offence of inciting an unarmed mob, the offence of rallying to prevent somebody from exercising their right to vote, and the offence of publishing false information that undermines public order and public security, in accordance with articles 100-1, 102 and 196-1 of the Criminal Code. On

8 November 2021, the court in Ouled Rechache issued a ruling sentencing Mr Azizi to six months in prison without parole and a fine of 100,000 Algerian dinars for the offence of publishing false information and malicious lies that undermine public order and public security, in accordance with article 196 *bis* of the Criminal Code. He was, on the other hand, cleared of the offence of inciting an unarmed mob and the offence of rallying to prevent somebody from exercising their right to vote. On 18 April 2022, the Court of Appeal upheld the ruling but suspended the prison sentences and adjusted the fine to 20,000 Algerian dinars.

145. Case of **Mr Nacer Hamitouche**: according to the Government, the facts date back to 9 December 2021 as part of the investigation opened by the counter-terrorism and cross-border organized crime department of the court of Sidi M'Hamed in a case of Ms Manar Mansri's alleged membership of the terrorist organization known as Rachad. It was discovered that Mr Hamitouche, among other suspects, was in contact with Ms Mansri and was sympathetic to the terrorist group by relaying the content broadcast by its fugitive leaders. Mr Hamitouche was prosecuted for the crimes of membership of and participation in subversive terrorist organizations or groups, and for the use of information and communication technologies for the recruitment of persons for a terrorist organization, in accordance with articles 79, 87 *bis*, 87 *bis* 12 and 87 *bis* 3 of the Criminal Code. The examining magistrate maintained the criminal charges against Mr Hamitouche as sufficient evidence had been gathered against him. On 9 July 2023, the court decided to postpone the trial at the request of the accused, in order to prepare their defence.

146. Case of **Mr Hicham Khayat**: according to the Government, the facts date back to 9 December 2021 as part of the investigation opened by the counter-terrorism and cross-border organized crime department of the court of Sidi M'Hamed in a case of Ms Manar Mansri's alleged membership of the terrorist organization known as Rachad. Mr Khayat was prosecuted individually before the court in Blida for his membership of a terrorist organization. The court issued a ruling on 8 June 2022 amending the charges, from distribution of publications harmful to the national interest to insulting a public institution, sentencing Mr Khayat to six months in prison without parole and a fine of 200,000 Algerian dinars. Following an appeal, the court in Blida issued a ruling on 19 June 2023 convicting Mr Khayat for the offence of distribution of publications harmful to the national interest and inciting an unarmed mob, with a sentence of two years' imprisonment without parole and a fine of 50,000 Algerian dinars. The accused has sought a cassation appeal against this ruling.

147. Case of **Mr Ramzi Derder**: the Government notes that although the complaint indicates that Mr Derder is a member of the national bureau of the National Federation of Informal Economy Workers, this organization has no legal status and has not been registered by the Ministry responsible for Labour in accordance with the provisions of Act No. 90-14. In addition, the information received by the Justice Ministry in the case concerning Mr Ramzi Derder highlights that an investigation opened by the national gendarmerie brigade in Merouana (Batna *wilaya*) under instruction from the Public Prosecutor of the Republic at the court in Merouana, uncovered the existence of an organized group being used by the terrorist movement known as Rachad and Mr Derder was one of the group's seven members. After the dossier had been examined by the competent services of the judicial police, the accused were brought before an examining magistrate on charges of: (i) membership of a terrorist group; (ii) attacking the morale of the army in order to harm national defence; (iii) spreading false information to harm public order; and (iv) publishing photos and information on social networks with a view to creating and spreading discord in society. These acts are punished by the provisions of articles 75, 87 *bis* 3, 87 *bis* 13, 87 *bis* 14, 96 and 196 *bis* of the Criminal Code and the provisions of article 34 of Act No. 20-05 of 28 April 2020, on preventing and combatting discrimination

and hate speech. After hearing the accused, the examining magistrate ordered six of them into pre-trial detention, including Mr Derder, and ordered the arrest of the seventh, who was on the run. On 18 July 2021, the indictment chamber issued a ruling confirming the orders of the examining magistrate and the judicial inquiry into the case is still ongoing.

148. On 3 July 2022, the indictment chamber issued a decision sending the case to the criminal court of first instance. At its session on 10 November 2022, the court issued a ruling in which Mr Ramzi Derder was cleared of the charges against him, while the others accused were given prison sentences and fines. The Public Prosecutor has appealed this ruling.

149. Case of **Mr Benzine Slimane**: the Government notes that it has already informed the Committee on Freedom Association, in the context of Case No. 3210 concerning allegations from SNATEG, that the information provided by the employer "Shariket Amn el mounchaate el Takawiya-Ouargla (SAT)" concerning Mr Slimane's case states that the latter was dismissed for professional misconduct, in accordance with the provisions of article 222 of the Criminal Code. In this context, the Ouargla tribunal convicted him on 13 November 2018 of forgery and the use of forgeries and sentenced him to six months' imprisonment without parole and a fine of 20,000 Algerian dinars. In addition, another ruling from the Ouargla tribunal sentenced him on 12 March 2020 to six months' imprisonment without parole and a 100,000 Algerian dinar fine for defamation, in accordance with the provisions of articles 296 and 298 of the Criminal Code. There is no information from the employer about any appeal of the ruling from the Ouargla tribunal.

150. In addition, the Government reports that Mr Slimane has been prosecuted in several cases. At the court in Constantine, he was prosecuted by the Public Prosecutor of the Republic following a complaint and a civil action brought by the security and protection of energy installations company for the offence of defamation. He is alleged to have insulted the company's managers in terms that offended their honour and dignity by accusing them of harassment towards security agents. On 23 April 2018, the court issued a ruling sentencing him to a fine of 30,000 Algerian dinars and the payment of compensation. The court of appeal upheld the ruling.

151. At the court of Tougourt, in the first case, Mr Slimane was prosecuted in July 2017 for the offence of abuse, defamation and slander through social media. Convicted in the first instance and on appeal, a final ruling was given on 1 February 2019 declaring the case void. This last ruling became definitive after the deadline for appeal passed. In a second case, the judicial police services found publications that included insults towards the National Security Institution, in the context of the arrest of certain people. After an investigation, it was found that the account used for the publications belonged to Mr Slimane. Prosecuted for the offence of contempt against public officials, in accordance with article 144 of the Criminal Code, Mr Slimane was sentenced in absentia on 12 July 2021 to two years of prison without parole. After an appeal lodged on 31 October 2022, the case should be heard again and was scheduled for November 2022.

152. At the court of Ouargla, in a first case, the security and protection of energy installations company made a complaint against Mr Slimane in November 2017 for the offences of forgery, use of forgeries and defamation, for the publication of a document supposedly issued by the company. After a preliminary investigation, the Public Prosecutor decided to prosecute Mr Slimane in accordance with articles 222 and 298 of the Criminal Code. Mr Slimane appealed the first ruling issued in absentia on 7 November 2022 and the case should be heard on 29 December 2022. In a second case, the same security and protection of energy installations company made a complaint against Mr Slimane, who it accuses of having published a document inciting workers to a work stoppage and denouncing the harassment of female

security agents. After the investigation, the Public Prosecutor prosecuted him for defamation in accordance with articles 296 and 298 of the Criminal Code. On 12 March 2020, a ruling was issued in absentia, sentencing him to six months in prison without parole and a fine of 100,000 Algerian dinars. On 7 November 2022, the accused appealed the ruling, and the case should be heard on 29 December 2022.

153. Case of **Mr Hamoudi Fellah**: the Government notes that according to the information provided by the Ministry of Justice, Mr Hamoudi Fellah was arrested by the national gendarmerie and brought before the court in Tlemcen on 20 February 2022, which sentenced him to three years in prison without parole and a fine of 300,000 Algerian dinars for the following grievances: (i) relations with a terrorist group (Rachad); (ii) spreading false or slanderous information to the public, by any means, undermining security or public order; (iii) contempt against the authorities; and (iv) directing and administering an unrecognized association and organizing meetings of its members without authorization. These actions are punished by the provisions of articles 144 *bis*, 146 *bis* and 196 *bis* of order No. 66-156 of 8 June 1966, as amended and supplemented, issuing the Criminal Code, and the provisions of article 46 of Act No. 12-06 of 12 January 2012 on associations. Mr Hamoudi Fellah was heard by a sovereign court that rendered its verdict. The acts committed by Mr Fellah had no link at all with any trade union activity and as such the case does not involve any hindrance of freedom of association. Lastly, Mr Hamoudi Fellah can make use of his right to appeal to the Court in Tlemcen.

154. With regard to the allegations relating to legislative amendments without consultation of the trade unions and the insertion of articles that would punish trade union members who opposed the dissolution of their organization (articles 60 and 61 of Act No. 90-14), the Government notes that the amendments made to Act No. 90-14 implement the June 2019 conclusions of the Committee on the Application of Standards and were subject to consultation with the social partners, various ministerial departments and with assistance from Bureau experts, in a collaborative effort to improve the framing of the legal provisions relating to the right to freedom of association. This text (Act No. 22-06 of 24 Ramadhan 1443, corresponding to 25 April 2022, amending and supplementing Act No. 90-14 of 2 June 1990, on modalities for the exercise of the right to organize) amends in particular the provisions of article 4 of Act No. 90-14 in order to authorize federations, unions and confederations to be freely established. In addition, the law now authorizes foreign workers and employers to create representative organizations and exercise trade union rights. With regard to protection for union delegates, the law now provides that any redundancy or dismissal of a trade union delegate that violates the provisions of the law is null and void. The person is automatically reinstated to their post. In case of the employer's obvious refusal, the territorially competent labour inspector will draw up a refusal to comply report and send it to the union delegate and their trade union. Lastly, the law strengthens the criminal penalties, with a view to making them effective and dissuasive in cases of hindrances to the freedom to exercise the right to organize or any attack on the protection of trade union delegates.

155. With regard to criminal sanctions, the Government notes that the complainants request the repeal of articles 60 and 61, which have, however, existed since 1990, and Act No. 22-06 only strengthened the sanctions, on the one hand, to bring them into line with the criminal sanctions for labour matters and, on the other, to help strengthen the standard and the underlying fundamental universal values. The provisions of articles 60 and 61 of Act No. 90-14 provide that "anybody who leads, convenes or administrates a meeting of members of a trade union organization that is subject to dissolution, is punished with a prison sentence of six (6) months to two (2) years and a fine of 20,000 to 100,000 Algerian dinars or one of the two penalties" (article 60). "Without prejudice to the other legislative provisions in force, anybody

who obstructs the execution of a dissolution decision taken in accordance with the provisions of articles 31 to 33 above, is punished with imprisonment of three (3) months to one (1) year and a fine of 20,000 to 50,000 Algerian dinars and/or one of the two penalties" (article 61). The Government asserts that these amendments do not constitute measures that violate the principles of freedom of association and that the current labour legislation prevents trade unions from being susceptible to suspension or dissolution by administrative authority. Indeed, the suspension or dissolution of an employers' or workers' organization is only ordered by the competent jurisdiction or by the will of the members of the organization, in order to fully guarantee the rights of defence.

156. In light of the foregoing, the Government considers the observations made by the complainants to be incoherent, unfounded and not accompanied by any evidence to support their claims. The Government believes that the legislation and practice are fully aligned with the requirements of Conventions Nos 87 and 98, ratified by Algeria. The Government having provided all the documents in support of its arguments, believes that the case should be closed, taking into account all the supporting evidence presented.

C. The Committee's conclusions

157. *The Committee observes that the present case concerns allegations that the authorities are interfering in the work of COSYFOP and hindering its trade union activities, anti-union measures and trade union harassment towards members of the organization, as well as amendments to the law that would result in criminal punishment for trade union activity in the case of the dissolution of an organization or even classifying certain trade union activities as terrorism.*

158. *First of all, the Committee is bound to express concern at the seriousness of the allegations and the high number of trade unionists supposedly affected in the present case. The Committee must also recall that the ILO supervisory bodies have been very closely monitoring for several years the difficulties encountered by independent trade unions, including COSYFOP, in exercising their trade union rights in Algeria. This Committee has repeatedly drawn the Government's attention to the need for legal and practical measures to uphold the principles of freedom of association laid down in Convention No. 87. Also, the Committee of Experts on the Application of Conventions and Recommendations and the Committee on the Application of Standards of the International Labour Conference have repeatedly drawn the Government's attention to legal and practical measures to take to fully implement Convention No. 87.*

Change in leadership of COSYFOP

159. *The Committee notes that, according to the information provided by the complainants, COSYFOP is a trade union organization registered with the Ministry of Labour, Employment and Social Security since 4 February 1991 and, in that capacity, it was included on the list of trade unions registered and accredited by the Ministry of Labour, Employment and Social Security, established in 2018. After a period of inactivity, COSYFOP elected a new bureau during a general assembly held on 30 July 2018. The new leadership of COSYFOP was elected for five years, in accordance with the new statutes adopted, and is led by Mr Raouf Mellal, signatory to the complaint. The founding members of the Confederation transferred power to the new leadership and handed over the constitutional statement and the old statutes.*

160. *COSYFOP notified the Ministry of Labour, Employment and Social Security of the change in its leadership, and the Ministry acknowledged receipt of the administrative file. This file included the minutes of the changeover general assembly, duly signed by a court bailiff, and the organization's new statutes. In addition, the restructuring of the organs of COSYFOP was published in a national*

daily newspaper, in accordance with the provisions of Act No. 90-14 on modalities for the exercise of the right to organize. COSYFOP had its own bank account and a registered office. Following this legal change in leadership, COSYFOP was recognized by a number of public bodies and, according to its leaders, now has more than 10,000 members across the country.

161. *Furthermore, the Committee notes that COSYFOP elected a new executive bureau during a national congress held in March 2023 (remotely via a communication platform) and amended its statutes in October 2023 at an extraordinary congress (also held remotely) to bring them into line with the new Act No. 23/02 on the exercise of the right to freedom of association. In accordance with the law, the changes to the Confederation's executive bureau and the amendments to its statutes were published in a daily newspaper and reported to the Ministry of Labour, but left without a response from the authorities, according to the complainant.*

162. *The Committee notes that, from the Government's point of view, COSYFOP has not recorded any trade union activity since its establishment in February 1991 and was illegally revived in 2018 through a change in its leadership bureau and the amendment of its statutes by people who do not have any trade union affiliation and without respect for the statutory provisions of the trade union organization in question and the presence of its founding members. The Government recalls that it has, on several occasions, provided its observations on COSYFOP to the Bureau, in particular its belief that Mr Mellal fraudulently used the COSYFOP name after the Ministry of Labour, Employment and Social Security had published the list of registered trade union organizations. The Government recalls that Mr Mellal had been informed by the Labour Relations Directorate in September 2018 that the general assembly of 30 July 2018 did not comply with the provisions of Act No. 90-14 or the procedures established by the statutes of the trade union organization. Moreover, the Government had also made the Bureau aware that the people concerned had never been members of one of the constituent trade union organizations of COSYFOP, and that Mr Mellal does not have the authority or legal membership of that organization. In addition, the Government recalls that COSYFOP was registered in February 1991 as an organization covering the public productive sector and it was made up of three unions that have not, to date, declared their withdrawal from the Confederation: (i) the National Union for the Railway Sector (SNSTF); (ii) the National Union for the Ammonia/Fertilizer Sector (SNSAE); and (iii) the National Union for the Marketing and Distribution of Petroleum Products Sector (SNSCDPP). The Government observes that these three trade union organizations did not attend the general assembly organized on 30 July 2018, at the end of which Mr Mellal and Mr Kouafi Abdelkader had been elected President and Secretary-General of COSYFOP.*

163. *The Government observes, moreover, that the minutes of the changeover general assembly did not mention the transfer of instructions with the founding members. For the Government, copies of the constitutional statement of COSYFOP and its old statutes were obtained fraudulently and are not tangible proof of changes in the leadership bodies and the administration of the trade union organization in question. In the Government's view, the minutes of the general assembly should constitute the legal basis that record all modifications in the functioning of the trade union organization and serve as evidence in case of any dispute. Lastly, the Government reports that the file that COSYFOP deposited in the Ministry following the election of its new leaders contained a document relating to the establishment of a presumed union between two trade unions that had been inactive for several years: the National Union of Energy Workers (SNT ENERGIE) and the National Union of Industrial Workers (SNSI). In that regard, the Government recalls that the Ministry had informed the Presidents of those two unions in September 2018 of their non-compliance, particularly with the rules for convening the general assembly as listed in the statutes of COSYFOP. Lastly, the Government recalls that the recognition of the status of union leaders is assessed according to criteria established in law and by the statutes of the organization concerned, with recourse to judicial remedies in case of any dispute.*

164. *At the outset, the Committee recalls with concern that it has already examined many complaints in recent years relating to obstacles to the establishment of trade union organizations in Algeria, notably the refusal of the authorities to register new trade unions. In this regard, the Committee has always recommended the Government to ensure the strict application of national law and of the principles concerning the right to form trade unions. The present case is similar insofar as it concerns the refusal of the authorities to register the change in the leadership body of COSYFOP, an organization that is already registered, because it has not complied with the modalities laid down in its own statutes and in law.*

165. *Upon examination of the detailed information and the supporting documents provided by both the complainant and the Government on the holding of the general assembly of 30 July 2018 and the election of a new COSYFOP leadership (Act No. 90-14, old COSYFOP statutes, minutes of the general assembly, new statutes adopted during the general assembly, documents deposited with the Ministry), the Committee observes that the organization of the general assembly and the election of a new bureau did not infringe the union's statutes or the existing legislation. It further observes that all the documents required by the law appear to have been provided, according to the information received from the complainant and the Government. Nonetheless, the Committee takes note of the Government's arguments relating to the absence of the founding members and the original affiliated trade unions. Taking into account the difference in opinion between the Government and the complainant in this regard, the Committee requests both parties to provide detailed information about the obtaining of COSYFOP's constitutional statement and its old statutes. In addition, the Committee invites COSYFOP to provide information about the trade union organizations that are affiliated with it, and in particular to specify whether these include SNSTF, SNSAE, SNSCDPP, SNT ENERGIE and SNSI which, according to the Government, were part of COSYFOP.*

Cloning

166. *The Committee notes with concern the allegation that, under the supervision of the Director-General of the private health insurance company of gas group, which has no links to COSYFOP, and under police protection, a parallel COSYFOP general assembly was organized on 16 February 2020, without a single affiliated trade union representative present. This general assembly allegedly elected a new bureau led by a worker dismissed by the company in question (Mr Zakaria Benheddad). The complainants recall that the Government has regularly used the technique knowns as "cloning" since the 1990s and according to a similar scenario where a dissident faction made up of opportunistic militants or people who have been manipulated is set up within an independent trade union, which rapidly leads to a schism. According to the complainant, the sole objective of the schism is the establishment of a new organization, a clone of the original, that is willing to compromise with the authorities. Following the election of the parallel bureau, the leaders allegedly sent messages to companies, the ILO supervisory bodies and international trade union federations, stating that the COSYFOP bureau led by Mr Raouf Mellal was now illegal. The COSYFOP National Confederation Council denounced such interference and reaffirmed its support for its President, Mr Raouf Mellal.*

167. *The Committee recalls that internal disputes in a trade union organization are outside its competence. They should be resolved by the persons concerned (for example, by a vote), by appointing an independent mediator with the agreement of the parties concerned, or by intervention of the judicial authorities [see* ***Compilation of decisions and principles of the Committee on Freedom of Association****, sixth edition, 2018, para. 1621]. The Committee observes however that this case concerns allegations of interference over several years and ultimately of cloning an organization leading to the delegitimization of the COSYFOP bureau led by Mr Mellal. In these circumstances, the Committee underlines the importance of governments refraining from any interference which would restrict the right of workers' and employers' organizations to draw up their*

constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. The Committee requests the Government to provide information about the registration by the authorities of the COSYFOP bureau led by Mr Benheddad, specifying in particular whether this bureau includes representatives of the originally affiliated organizations or whether it has submitted the original statutes, like the administration required of the complainant organization. In addition, the Committee requests the complainant to provide any information available to it on the functioning of the two factions of COSYFOP and to detail any interference or intervention from the authorities in the conduct of their respective activities.

168. *The Committee notes with concern the indication that the COSYFOP headquarters had always been under constant surveillance by the authorities and that everybody who approached it was stopped by the security forces. It notes with concern that, on 21 February 2020, the administrative and security authorities ordered the closure of the entrance to the COSYFOP headquarters in Algiers, simply on the basis of the refusal of the authorities to recognize the results of the general assembly elections held on 30 July 2018. According to COSYFOP, which provides a copy of the administrative decision, the authorities did not even go through the courts to take such a decision. The Committee notes the Government's statement, according to which these are measures taken by the competent public authorities in their missions to ensure respect for security and public order in relation to a trade union organization led by people appointed or elected illegally. Moreover, the Government states that the measure was taken in accordance with decisions from the competent jurisdiction. In addition, the Government notes that COSYFOP has not made use of its constitutional right to have recourse to justice to request the cancellation of the decision to close the organization's headquarters. Lastly, the Government states that the premises were used for the purposes of propaganda and distribution of false information to harm public safety and public order.*

169. *The Committee recalls that the inviolability of trade union premises and property, including its mail, is a civil liberty which is essential to the exercise of trade union rights. The occupation or sealing of trade union premises should be subject to independent judicial review before being undertaken by the authorities in view of the significant risk that such measures may paralyse trade union activities. Lastly, the access of trade union members to their union premises should not be restricted by the state authorities [see* ***Compilation****, paras 276, 287 and 290]. The Committee therefore requests the Government to specify whether the closure of the COSYFOP headquarters was done with a legal warrant. If not, the Committee urges the Government to take immediate measures to permit COSYFOP to have free access to its headquarters and to hold trade union meetings there without any interference.*

170. *The Committee notes with deep concern the indication of COSYFOP that, following the meeting between its leaders and the high-level ILO mission in May 2019, in particular following the conclusions of the Committee on the Application of Standards in June 2019, the Ministry of Labour, Employment and Social Security, in July 2019, ordered the various public bodies and employers to disqualify and reprimand trade unions and members affiliated with the Confederation. According to COSYFOP, this relentless environment towards its members escalated after the amendment of the Criminal Code in June 2021, in particular its article 87 bis, which broadened the definition of terrorism to include working towards or inciting change, to access power or to change the system of government by unconstitutional means. According to the complainants, this overly broad definition allows the authorities to criminalize calls to strike or worker protests, and all peaceful calls for a change in government. The complainants also allege that, following that amendment, the Government launched a widespread campaign of persecution against members of COSYFOP, who were systematically subjected to accusations of terrorism. The Committee notes that the complainants refer to a communication dated 27 December 2021, sent to the Government by a*

group of United Nations experts (the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders) which expressed great concern at the very broad definition of terrorism and the so-called fight against terrorism.

171. *The Committee notes that, for its part, the Government recalls that legally established unions of workers or employers are actively engaged in society and have total freedom in their activities. They participate as partners in social dialogue and collective bargaining. Nonetheless, according to the Government, members of organizations with links to terrorism, who take on the guise of trade union organizations, should not be used as a pretext against the country. With regard to the allegations relating to the provisions of article 87 bis of the Criminal Code and its use to restrict the activities of trade unionists, the Government states that the legislator did not define the concept of terrorism, simply enumerating things that are considered to be terrorist acts. If it has been informed of a report in which the Special Rapporteurs from the Office of the United Nations High Commissioner for Human Rights shared their concerns about the definition of terrorism contained in Algerian law and believe that it does not comply with Security Council resolution 1566 published in October 2004, the Government notes that, in their observations, the Special Rapporteurs used Security Council resolution 1566 as the sole basis to affirm that the methods used should be deadly, not making any reference to previous United Nations resolutions, in which certain acts are designated as terrorist acts without the requirement that the methods used are necessarily lethal. These resolutions stipulate that these acts "are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature", which means that the Security Council left it up to States to determine which acts qualified as terrorism, which permits Algeria to consider acts affecting the security of the State, national unity, territorial integrity and stability and the normal functioning of institutions as acts of terrorism.*

172. *Lastly, with regard to the concerns over the use of the final amendment to article 87 bis of the Criminal Code, in particular concerning the fact of "seeking by any means to access power or to change the system of government by unconstitutional means or inciting somebody to do so" as a means of taking legal action against opponents, political activists or human rights defenders, the Government believes these concerns to be unfounded, insofar as this article requires the method used to be unconstitutional. The Government recalls that opposing power is a constitutional right, as is political activity or activity related to human rights.*

173. *The Government notes that Act No. 90-14 of 2 June 1990, as amended and supplemented, on modalities for the exercise of the right to organize, guarantees registered trade union organizations the free exercise of their right to organize and punishes any act of discrimination or interference, so that these rights and freedoms can be exercised in a healthy environment away from violence from any source. It also recalls that apart from the right to seek judicial review for all acts and actions of the various public bodies, every person may also apply to the Constitutional Court if they believe that the public power has violated any of their fundamental rights and freedoms secured under the Constitution.*

174. *While taking due note of the above, with regard to the wording of article 87 bis of the Criminal Code and its presumed impact on freedom of association, the Committee recalls that, in exercising freedom of association rights, workers and their organizations should respect the law of the land, which in turn should respect the principles of freedom of association [see **Compilation**, para. 66]. In that regard, freedom of association implies not only the right of workers and employers to form freely organizations of their own choosing, but also the right for the organizations themselves to*

*pursue lawful activities for the defence of their occupational interests [see **Compilation**, para. 716]. Any provision which gives the authorities, for example, the right to restrict the activities and objects pursued by trade unions for the furtherance and defence of the interests of their members would be incompatible with the principles of freedom of association [see **Compilation**, para. 718]. The right to express opinions, including those criticizing the Government's economic and social policy, is one of the essential elements of the rights of occupational organizations [see **Compilation**, para. 245]. The Committee urges the Government to ensure that article 87 bis of the Criminal Code is not applied to the normal activities of trade unions and employers' organizations, in particular when it comes to a call to strike, protests or peaceful industrial action concerning measures that affect their members. The Committee requests the Government, in consultation with the social partners, to monitor the impact that this provision has already had and is likely to have, to ensure that it does not affect the exercise of freedom of association.*

Anti-union measures against COSYFOP and its members

175. *The Committee notes with concern the allegations relating to a campaign by the authorities against all trade unions affiliated with COSYFOP by means of letters from the Ministry of Labour, Employment and Social Security to the administrative bodies affirming the illegality of the leaders of COSYFOP and resulting in anti-union measures against the trade unionists concerned who wanted to establish a structure in the workplace, and thereby hindering the exercise of freedom of association.*

176. *The Committee notes the Government's opinion that COSYFOP is not a representative organization and cannot legally establish union structures at the level of the employers' bodies or in different workplaces. With regard to the administrative correspondence sent to the offices of the social security fund describing COSYFOP as an illegitimate organization, the Government notes that this correspondence from the services of the Ministry of Labour, Employment and Social Security is within the scope of the application of the law and the provisions of Article 8 of Convention No. 87, and informed the offices of the social security fund that the procedure for changes in the leadership of COSYFOP was non-compliant.*

177. *In addition, the Government notes that certain people mentioned in the complaint have violated union ethics by turning to practices that depart from the democratic rules of trade union representation, by means of communiqués attacking State institutions, in which they call for political change and forceful disobedience, thereby presenting themselves as disruptors of public order, which is contrary to international norms on freedom of association, in particular Article 8 of Convention No. 87.*

178. *The Committee notes with serious concern the long list of COSYFOP leaders and affiliated organizations that, according to the complainants, have been subject to dismissal, arrest, detention with violence, torture, threats and legal harassment. In that regard, the Committee refers to the detailed information above concerning the individual cases (complainants' allegations and Government's reply). The Committee notes that legal proceedings were brought against the majority of the trade union leaders for social media posts or defamation and criminally charged for violating public order, offensive sentiments towards the President of the Republic or even supporting acts of terrorism.*

179. *Not having access to the posts for which the trade union leaders were convicted, the Committee is not able to express an opinion on whether the convictions in question represent a violation of freedom of association. However, the Committee observes that, overall, these convictions are related to the expression of opinions in the exercise of trade union mandates, even if the Government disputes the existence of the trade union in question. While emphasizing the need to respect the law, the Committee believes that the authorities' threatening to press criminal charges in response to*

*legitimate opinions of trade union representatives may have an intimidating and detrimental effect on the exercise of trade union rights [see **Compilation**, para. 237]. The Committee urges the Government to continue to provide information about the legal decisions taken with regard to the trade union leaders cited, in particular those who are subject to criminal proceedings, to provide copies of those decisions and to provide a detailed indication of the follow-up. The Committee also requests the Government to provide its observations concerning the situation of the trade union leaders cited in the most recent communication from the complainant, dated 22 December 2023 (Mr Bennouna and Mr Lahouiri).*

180. *The committee notes with deep concern that this context of intimidation hindering freedom of association has led trade unionists to resign their mandates [Mr Mohamed Essalih Bensdira (President of the National Committee for the Unemployed); Mr Omar Harid (Secretary-General of the COSYFOP bureau in the Guelma wilaya); Mr Mohamed Mecelti (member of the communication department of COSYFOP); Mr Hicham Khayat (member of SNATEG and COSYFOP); Ms Rym Kadri (President of the National Federation of Education Workers)] and some into exile [Mr Raouf Mellal (President of COSYFOP); Mr Abdelkader Kouafi (Secretary-General of COSYFOP); Mr Nacer Hamitouche (COSYFOP representative for the Algiers wilaya); Mr Hamza Kherroubi (former President of the National Union of Personal-Care Workers (SNAS) and President of the Pharmaceutical Industry Workers' Union (STIP)); Mr Mohamed Essalih Bensdira (President of the National Committee for the Unemployed)].*

181. *Noting that COSYFOP is calling for all charges, prison sentences and threats be withdrawn against Mr Mellal, Mr Kouafi and Mr Kherroubi, who have been forced into exile, and states that it is ready to engage in dialogue with the Government in order to permit them to return to the country to exercise their mandates as trade union leaders, the Committee urges the Government to commit to ensuring that Mr Mellal, Mr Kouafi and Mr Kherroubi can return to the country to carry out their trade union activities in an environment free of violence, pressure or threats. The Committee recalls in that regard that freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed [see **Compilation**, para. 82].*

182. *The Committee notes that COSYFOP made proposals to the Government regarding the amendment to the bill amending Act No. 90-14 but that they were not taken into consideration. COSYFOP regrets that the Government launched a local media campaign in February 2022 without having previously consulted the independent trade union organizations and deplores the fact that the bill that has since been adopted creates several barriers to the exercise of freedom of association. COSYFOP draws particular attention to the maintenance of articles 60 and 61 of the Act, which punish any trade union member who opposes the dissolution of their union, even verbally. The punishment incurred can be up to two years imprisonment without parole. COSYFOP denounces the fact that the two articles could be used to directly target members of SNATEG, an organization affiliated to COSYFOP, who oppose the dissolution of their unions. According to COSYFOP, the Government's objective is to legally block the conclusions of the Committee on the Application of Standards and the recommendations of the Committee on Freedom of Association in the case concerning SNATEG (Case No. 3210).*

183. *The Committee takes note of the Government's indication that the provisions of articles 60 and 61 of Act No. 90-14 (as amended by Act No. 22-06) provide that "anybody who leads, convenes or administrates a meeting of members of a trade union organization that is subject to dissolution, is punished with a prison sentence of six (6) months to two (2) years and a fine of 20,000 to 100,000 Algerian dinars or one of the two penalties" (article 60). "Without prejudice to the other legislative provisions in force, anybody who obstructs the execution of a dissolution decision taken in accordance with the provisions of articles 31 to 33 above, is punished with imprisonment of three*

(3) months to one (1) year and a fine of 20,000 to 50,000 Algerian dinars and/or one of the two penalties" (article 61). The Government asserts that these amendments do not constitute measures that violate the principles of freedom of association and that the current labour legislation prevents trade unions from being susceptible to suspension or dissolution by administrative authority. Indeed, the suspension or dissolution of an employers' or workers' organization is only ordered by the competent jurisdiction or by the will of the members of the organization, in order to fully guarantee the rights of defence.

184. *Considering all the above and mindful of the difficulties that the application of such provisions could cause in cases where there are diverging opinions regarding the voluntary dissolution of a trade union, like the situation under examination by the Committee in an Algerian case [see Case No. 3210, 392nd Report, paras 209–212], the Committee requests the Government to identify, in consultation with the social partners, the best way to guarantee that the penalties under article 60 cannot be imposed in cases of voluntary dissolution. The Committee requests the Government to indicate any measures taken or envisaged in this respect.*

185. *Recalling that the submission of the application for registration by the new leaders of COSYFOP was made in 2018, more than five years ago, and that the change in leadership in March 2023 also went without a response from the authorities, the Committee is bound to note its concern at what constitutes a restriction of the workers' right to choose their representatives and form the organization of its choice. The Committee firmly urges the Government to make contact with COSYFOP in order to find a way out of the difference of opinion concerning the election of its leaders, in order to facilitate the registration process. The Committee expects the Government to indicate any measures taken in this respect.*

186. *In general, the Committee wishes to express its deep concern about this case, which is characterized by the cumulative difficulties encountered by the leaders of COSYFOP in the exercise of their trade union rights and which have harmed the conduct of activities of an umbrella organization but also constituted intimidation that hindered the free exercise of freedom of association. Consequently, the Committee firmly urges the Government to implement its recommendations without delay in order to ensure an environment in which trade union rights are respected and guaranteed for all trade union organizations, and workers are able to join the union of their choice, elect their representatives and exercise their trade union rights without fear of reprisals and intimidation.*

187. *The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.*

The Committee's recommendations

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

(a) Taking into account the difference in opinion between the Government and the complainant with regard to the refusal of the authorities to register the change in the leadership body of COSYFOP, the Committee requests both parties to provide additional information about the obtaining of COSYFOP's constitutional statement and its old statutes.

(b) The Committee invites COSYFOP to provide information about the trade union organizations that are affiliated with it, in particular to specify whether these include SNSTF, SNSAE, SNSCDPP, SNT ENERGIE and SNSI.

(c) The Committee requests the Government to provide information about the registration by the authorities of the COSYFOP bureau led by Mr Benheddad,

specifying in particular whether this bureau includes representatives of the originally affiliated organizations or whether it has submitted the original statutes, like the administration required of the complainant organization.

(d) The Committee requests the complainant to provide any information available to it on the functioning of the two factions of COSYFOP and to detail any interference or intervention from the authorities in the conduct of their respective activities.

(e) The Committee requests the Government to specify whether the closure of the COSYFOP headquarters was done with a legal warrant. If not, the Committee urges the Government to take immediate measures to permit COSYFOP to have free access to its headquarters and to hold trade union meetings there without any interference.

(f) The Committee urges the Government to ensure that article 87 bis of the Criminal Code is not applied to the normal activities of trade unions and employers' organizations, in particular when it comes to a call to strike, protests or peaceful calls for a change in government. The Committee requests the Government, in consultation with the social partners, to monitor the impact that this provision has already had and is likely to have, to ensure that it does not affect the exercise of freedom of association.

(g) The Committee urges the Government to continue to provide information about the legal decisions taken with regard to the trade union leaders cited, in particular those who are subject to criminal proceedings, to provide copies of those decisions and to provide a detailed indication of the follow-up.

(h) The Committee requests the Government to provide its observations concerning the situation of the trade union leaders Mr Bennouna and Mr Lahouiri, cited in the communication from the complainant dated 22 December 2023.

(i) The Committee urges the Government to commit to ensuring that Mr Mellal, Mr Kouafi and Mr Kherroubi can return to the country to carry out their trade union activities in an environment free of violence, pressure or threats.

(j) The Committee requests the Government to identify, in consultation with the social partners, the best way to guarantee that the penalties under article 60 cannot be imposed in cases of voluntary dissolution. The Committee requests the Government to indicate any measures taken or envisaged in this respect.

(k) The Committee firmly urges the Government to make contact with COSYFOP in order to find a way out of the difference of opinion concerning the election of its leaders, in order to facilitate the registration process. The Committee expects the Government to indicate any measures taken in this respect.

(l) The Committee firmly urges the Government to implement its recommendations without delay in order to ensure an environment in which trade union rights are respected and guaranteed for all trade union organizations, and workers are able to join the union of their choice, elect their representatives and exercise their trade union rights without fear of reprisals and intimidation.

(m) The Committee refers the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations.

Case No. 3203

Interim report

Complaint against the Government of Bangladesh presented by the International Trade Union Confederation

Allegations: The complainant organization denounces the systematic violation of freedom of association rights by the Government, including through repeated acts of anti-union violence and other forms of retaliation. The complainant organization also denounces the lack of law enforcement

189. The Committee last examined this case (submitted in April 2016) at its March 2023 meeting, when it presented an interim report to the Governing Body [see 401st Report, paras 140–158 approved by the Governing Body at its 347th Session]. [4]

190. The International Trade Union Confederation (ITUC) sent new allegations in a communication dated 14 July 2023.

191. The Government provides its observations in communications dated 12 September 2023 and 8 January 2024.

192. Bangladesh 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

193. At its March 2023 meeting, the Committee made the following recommendations [see 401st Report, para. 158]:

(a) Noting that several cases of serious anti-union dismissals observed by the Government in this case did not result in any sanction or judicial remedy after lengthy judicial proceedings, the Committee expects that the Government's steps to bolster the number and resources of the labour courts will ensure in the future that rapid and effective protection against anti-union discrimination, including through penal sanctions, is provided to victims.

(b) The Committee deplores that no action was taken to conduct an independent judicial investigation into the serious allegations of the involvement of security forces in the abduction, torture and murder of Mr Aminul Islam and urges the Government to take the necessary measures to ensure that such an investigation is undertaken without further delay with a view to identifying the intellectual authors of this crime in order to ensure that the responsibility for such acts do not go unpunished. The Committee trusts that the

[4] Link to previous examination.

CFA Case Monitoring Committee will be able to ensure that necessary steps are taken for full investigation of this matter.

(c) The Committee urges the Government to take the necessary measures to ensure that a thorough and independent inquiry is conducted into the specific and serious allegations of threats and violence against trade union leaders and members in enterprises (b), (d), (e), (f), (g) and (h), with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. It requests the Government to keep it informed of the steps taken in this regard.

(d) The Committee expresses once again its firm expectation that decisions will be reached in the cases concerning the registration of two unions at enterprise (l) without further delay and requests the Government to keep it informed of the status of the cases and their outcome and to provide copies of the judgments once they are delivered.

(e) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.

B. New allegations

194. In a communication dated 14 July 2023, the ITUC submitted new allegations of the murder of another trade union activist, Mr Shahidul Islam, a union organizer for the Bangladesh Garment and Industrial Workers Federation (BGIWF). The ITUC alleges that on 25 June 2023, Mr Shahidul Islam and other BGIWF officials went to the Prince Jacquard Sweaters factory (enterprise (o)) in Gazipur to address, at the request of workers, a wage dispute concerning a two-month delay in payment of wages and the bonus of the Eid holiday. A gang violently attacked the trade unionist as soon as they left the factory. Mr Shahidul Islam was fatally injured and was declared dead at the hospital later in the evening.

C. The Government's reply

195. Concerning the murder of Mr Shahidul Islam, the Government indicates that during the police investigation, six persons were accused and five arrested. One of the individuals accused, Mr Sohel Rana, Publication Secretary of Bangladesh Readymade Garments Workers' Federation, Gazipur City, confessed to his involvement in the crime in the presence of a competent magistrate. Four other arrested persons also gave confessional statements. At the conclusion of the investigations, the police will submit a charge sheet to the court and the trial of the case will start. The Government will closely monitor the case and bring the killers to justice through due process.

196. Concerning the steps taken to bolster the number and resources of the labour courts with a view to ensuring rapid and effective protection against anti-union discrimination in the future, the Government indicates that in order to accelerate the resolution of pending cases, 6 new labour courts were established in 2019 and 2022 in Sylhet, Barishal, Rangpur, Narayangonj, Gazipur and Cumilla and currently there are 13 labour courts in the country. Additional labour courts will be established in the districts of Mymesingh and Cox's Bazar. An additional post of judge for Labour Appellate Tribunal was also created in August 2022 and three panel lawyers are being appointed to assist the Ministry of Labour and Employment (MOLE) in legal matters. In the 2022–23 fiscal year the resources allocated to 13 labour courts and one Labour Appellate Tribunal were increased. An online case management system is being designed with ILO support which is expected to strengthen labour courts and streamline the trial process. The Government indicates that of the ten cases reported in the present case, nine were fully settled

and only one case, concerning enterprise (n) [5] remains pending. The court has completed all processes concerning this case and only the judgment remains to be declared. The CFA Case Monitoring Committee has followed up this case and it is anticipated that the verdict will be pronounced soon. The Government affirms its commitment to reducing the duration of judicial proceedings and ensuring rapid and effective protection against anti-union discrimination.

197. Concerning the investigation requested by the Committee to identify the intellectual authors of the murder of Mr Aminul Islam in 2012 (recommendation b), the Government indicates that as per Bangladesh laws, judges exercise independent authority to accept or reject charge sheets and may request further investigation if necessary. The aggrieved party also has the right to raise an objection at any stage of trial if they perceive an injustice. However, in the case concerning the murder of Mr Aminul Islam, the charge sheet was not challenged, and the aggrieved family did not file an appeal. The accused was sentenced to the highest punishment of the land. The Government followed the case meticulously, so a proper investigation was conducted by the police department. The Government affirms that the rule of law prevailed without exception and requests the Committee to consider this complaint as resolved.

198. Regarding the Committee's request (recommendation c) concerning investigation into specific allegations of threats and violence against trade union leaders and members in enterprises (b), [6] (d), [7] (e), [8] (f), [9] (g) [10] and (h) [11] the Government again reiterates its reference to the amicable settlement of the cases concerning anti-union discrimination in enterprises (d), (e), (f) and (g) and to the acquittal of the three defendants in the case concerning enterprise (b). The Government has also sent a copy of the court ruling concerning anti-union dismissals at enterprise (b). Concerning enterprise (h), the Government sent a copy of the court order dismissing for default the suit brought by the management against the Department of Labour and the trade union leader, challenging the union's registration. More broadly, the Government indicates that it is committed to strengthening its legal system and institutions to prevent any forms of retaliation, intimidation or harassment against workers.

199. Regarding the judicial proceedings concerning the registration of two unions at enterprise (l) [12], the Government indicates that the Supreme Court of Bangladesh rendered its judgment on 17 November 2022 on the cases concerning both unions and shares a copy of the judgment. The apex court set aside the judgment and order of the Labour Court and the Labour Appellate Tribunal. Considering that in both instances, the petitioners were not employees of enterprise (l), but outsourced by other enterprises, the Supreme Court definitively rejected the registration of both unions.

200. The Government finally provides the following general indications: Bangladesh has made significant progress in ensuring the rights of workers. Over the past decade, the country has undergone a transformative change in its approach to the world of work, striving for universal decent work. Consequently, workers now have the freedom to participate in trade union activities, protecting their legal rights in accordance with national laws, and trade unionists are

[5] Accenture.

[6] Raaj RMG Washing Plant.

[7] Chunji Knit Ltd.

[8] BEO Apparels Manufacturing Ltd.

[9] Dress & Dismatic (Pvt.) Ltd.

[10] Panorama Apparels Ltd.

[11] Prime Sweaters Ltd.

[12] Grameenphone

free to exercise legitimate activities to claim their legal rights. As the present case refers to ten cases, nine of which have been resolved, and a verdict on the remaining case is expected to be pronounced soon, the Government expects that the significant progress will result in the closure of this case.

D. The Committee's conclusions

201. *The Committee notes that this case, which was first examined in 2017, concerns allegations of violation of freedom of association in particular through acts of violence, anti-union discrimination and other retaliatory acts against union leaders and members in numerous enterprises.*

202. *The Committee deplores the murder of Mr Shahidul Islam, a union organizer for the BGIWF, who was allegedly beaten to death on 25 June 2023, immediately after leaving a meeting at enterprise (o) where the demands of workers concerning their unpaid wages were discussed. The Committee recalls that "Freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed" and that "Facts imputable to individuals bring into play the State's responsibility owing to the State's obligation to prevent violations of human rights. Consequently, governments should endeavour to meet their obligations regarding the respect of individual rights and freedoms, as well as their obligation to guarantee the right to life of trade unionists". [**Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 82 and 91].*

203. *The Committee also notes the Government's indications in reply to its request to conduct an investigation to identify the intellectual authors of the abduction, torture and murder of Mr Aminul Islam in 2012. The Committee notes with deep regret that the Government considers that justice has prevailed, and this case is closed considering that one accused perpetrator was condemned to death in absentia and that the sentence has become final in the absence of an appeal on the part of Mr Aminul Islam's family. Noting that the judgment concerning this case clearly indicates that there were "other accomplices who had been kept behind the screen to cause the death of the deceased", the Committee notes that these other accomplices – as well as the convict who was never found – have benefited from a de facto impunity despite the police investigation and the judicial measures taken. The Committee is bound to note that this situation is not conducive to the prevention of similar crimes.*

204. *The Committee further notes the Government's position that the cases concerning allegations of threats and violence against trade union leaders in enterprises (d), (e), (f) and (g) were resolved by amicable settlement and its further indication that the case concerning enterprise (h) was dismissed for default while in the case concerning enterprise (b), the accused were acquitted. While the Committee had already noted these outcomes concerning the allegations of anti-union discrimination in the cited enterprises [see 401st Report, para. 147], it had distinguished the allegations of threats and violence from the general allegations of anti-union discrimination and had requested specific measures to address them in view of the distinct negative impact such acts can have on the exercise of freedom of association. The Committee regrets that no information has been provided by the Government on steps taken to review these specific allegations of violence.*

205. *Concerned that there may be persistent obstacles that impede the full investigation of recurrent acts of anti-union violence, the Committee urges the Government to take the necessary measures to investigate the allegations of physical violence, threats and murder of trade union leaders and members so as to ensure the identification and punishment of perpetrators of such acts in Bangladesh and an end to anti-union violence. The Committee requests the Government to provide detailed information on the measures taken to identify and address the obstacles that may impede*

full investigation of such allegations and reminds the Government that it can avail itself of the technical assistance of the Office in this respect.

206. *Specifically concerning the murder of Mr Shahidul Islam on 25 June 2023, as well as the violent attack against other unionists who accompanied him, the Committee, noting the information provided by the Government on the steps already taken, urges it to take any further measures necessary to shed full light on the facts and motive of this attack at the earliest date, to determine where responsibilities lie and punish the perpetrators and any instigators so as to avoid recurrence of such acts. The Committee requests the Government to continue to provide information on the measures taken and the evolution and outcome of the case.*

The Committee's recommendations

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

(a) Concerned that there may be persistent obstacles that impede the full investigation of recurrent acts of anti-union violence, the Committee urges the Government to take the necessary measures to investigate the allegations of physical violence, threats and murder of trade union leaders and members so as to ensure the identification and punishment of perpetrators of such acts in Bangladesh and an end to anti-union violence. The Committee requests the Government to provide detailed information on the measures taken to identify and address the obstacles that may impede full investigation of such allegations and reminds the Government that it can avail itself of the technical assistance of the Office in this respect.

(b) Deploring the murder of Mr Shahidul Islam, a union organizer for the Bangladesh Garment and Industrial Workers Federation, as well as the violent attack on other unionists accompanying him on 25 June 2023, and noting the information provided by the Government on the steps already taken, the Committee urges the Government to take any further measures necessary to shed full light on the facts and motive of this attack at the earliest date, to determine where responsibilities lie and punish the perpetrators and any instigators so as to avoid recurrence of such acts. The Committee requests the Government to continue to provide information on the measures taken and the evolution and outcome of the case.

(c) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgent nature of this case.

Case No. 2318

Interim report

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

Allegations: The complainant organization denounces the murder of three trade union leaders and the continuing repression of trade unionists in the country

208. The Committee has already examined the substance of this case (submitted in January 2004) on numerous occasions since June 2005, and most recently at its October–November 2022 meeting where it issued an interim report, approved by the Governing Body at its 346th Session [see 400th Report, paras 206–221]. [13]

209. The Committee, by virtue of its authority as set out in paragraph 69 of the procedures for the examination of complaints alleging violations of freedom of association, invited the Government to come before it to provide information on the steps taken in relation to the pending matters. The Government provided information in a written communication dated 28 October 2023 and made an oral presentation before the Committee during its October–November 2023 meeting.

210. 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

211. In its previous examination of the case, while deeply deploring the fact that, despite the time that had elapsed since it last examined the case, the Government had not provided any observation, the Committee made the following recommendations [see 400th Report, para. 221]:

(a) The Committee must once again firmly urge the Government to take all necessary measures to expedite the process of investigation into the murder of trade union leader Chea Vichea, and to keep the Committee duly informed of any concrete action in this regard.

(b) The Committee requests the Government to provide a copy of both the first instance court decision and the court decision releasing Chan Sophonn in order to enable the Committee to consider the interlinkages between the trade union activities of Hy Vuthy, violence in the country at the time of his murder, the efforts made to investigate the matter and the degree of impunity in the country. The Committee urges the Government to provide any further information available about the investigation into the circumstances of the murder of Hy Vuthy and its outcome which led to the conviction of Phal Vannak. The Committee

[13] Link to previous examination.

also requests the Government to provide any further information in relation to the situation of Phal Vannak.

(c) In the absence of information from the Government, the Committee is bound to, once again, urge the Government to indicate whether a full and independent investigation into the circumstances of the murder of Ros Sovannareth was carried out in order to bring all relevant information before the courts and, if so, to provide to the Committee details on its outcome.

(d) In the absence of information, the Committee again firmly urges the Government to ensure that an investigation into the allegations of torture and ill-treatment of Born Samnang and Sok Sam Oeun while in detention is thoroughly undertaken, under the monitoring of the NCRILC. It firmly urges the Government to provide tangible information on the outcome of the investigation and on any measure of redress provided for the wrongful imprisonment of those two men.

(e) The Committee must again express its deep concern over the apparent lack of efforts on the part of the Government to bring the requested investigations to a conclusion in a transparent and impartial manner, and to report satisfactorily to the Committee. The Committee must again express its firm expectation that the Government will take meaningful action in this regard and emphasizes the importance that it fully uncover the underlying facts and circumstances of these murders of trade union leaders, identify those responsible and punish the guilty parties, as this necessarily has an impact on the social climate and the exercise of freedom of association rights of all workers in the country.

(f) In light of the seriousness of the matters raised in this case and the lack of efforts on the part of the Government to bring the requested investigations to a conclusion in a transparent and impartial manner, the Committee invites the Government, by virtue of its authority as set out in paragraph 69 of the procedures for the examination of complaints alleging violations of freedom of association, to come before the Committee at its session in May–June 2023 so that it may obtain detailed information on the steps taken by the Government in relation to the pending matters.

(g) The Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.

B. The Government's reply

212. In its communication dated 28 October 2023 and during its oral presentation to the Committee, the Government reiterates that the reinvestigation on the murder of trade union leader Chea Vichea, under the authority of the Phnom Penh Municipal Police, is not yet completed due to its complexity compounded by the fact that it took place nearly two decades ago. The Government remains committed to make progress and expresses the hope that the family of the victim will cooperate fully with the police as it is of no interest to prolong the case.

213. Regarding the case of the murder of trade union leader Ros Sovannareth, the Government reiterates that the Court of Appeals issued in July 2019 a verdict sentencing Mr Thach Saveth to 15 years of imprisonment for the premediated murder. Since the perpetrator has been brought to justice, the Government requests for the removal of the case of the murder of Ros Sovannareth from the complaint.

214. With regard to the murder of trade union leader Hy Vuthy, the Government reiterates that Mr Phal Vannak is still under an arrest warrant; however, the latter is still at large.

215. In respect of the allegations that Mr Born Samnang and Mr Sok Sam Oeun (who were wrongfully convicted for Chea Vichea's murder and acquitted in September 2013) had been tortured during their detention, the Government reiterates that such case should have long been filed to the court for proceedings, if proven. Nevertheless, none of the individuals has

ever filed a complaint in this regard. Consequently, the court is unable to start any proceedings on these allegations.

216. The Government recalls that, as a follow-up to the direct contacts mission of 2017, it established a National Commission on Reviewing the Application of the International Labour Conventions Ratified by Cambodia (NCRILC) in 2018, which is a national tripartite mechanism for the resolution of the present case and for the implementation of the ILO Conventions ratified by Cambodia. However, the outbreak of the COVID-19 pandemic, late 2019, has hampered any progress in the work of the NCRILC on this issue. The Government intends to revitalize the NCRILC.

217. As a concluding remark, while it takes due note of the Committee's concern on the exercise of freedom of association, the Government emphasizes that what happened 20 years ago does not reflect the contemporary situation of freedom of association in the country. Meaningful progress was made in terms of protection and promotion of trade union rights and the trade union movement has matured and participates in many bipartite and tripartite mechanisms. In the same line, the Ministry of Labour and Vocational Training has set as priority under the Strategic Labour, Social Security, and Vocational Training Development Plan 2023–2028 (SDP 2023–2028) to hold quarterly meetings with all federations and confederations to discuss about challenges they may face.

218. Finally, the Government recalls the high increase in the number of professional organizations following the adoption of the Law on Trade Unions and its amendment in 2020. Presently, there are 6,222 professional organizations, including 5,890 local trade unions, 278 workers' federations, 42 workers' confederations, and 12 employers' associations, which represent an increase of 71.69 per cent compared to 2016 figures. In the Government's view, this is indisputable evidence that freedom of association is presently exercised in a conducive environment, in accordance with ILO Conventions.

C. The Committee's conclusions

219. *The Committee recalls that it has considered this serious case on numerous occasions which relates, inter alia, to the murder of the trade union leaders, Chea Vichea (January 2004), Ros Sovannareth (May 2004) and Hy Vuthy (February 2007), and to the prevailing situation of impunity with regard to acts of violence against trade unionists.*

220. *While regretting that it had to decide to apply a measure of special nature to obtain information from the Government on progress made on the present case, the Committee thanks the Cambodian Government for its engagement with the Committee's procedures providing a written communication and an oral presentation. The Committee recalls the importance for all governments of providing within a reasonable time frame complete replies concerning allegations made against them or in follow-up to the Committee's recommendations.*

221. *In relation to the murder of Chea Vichea, the Committee had previously expressed the hope that the appointment of the Phnom Penh Municipal Police to conduct a reinvestigation of this long-lasting case would bring a speedy conclusion to it. It however notes the Government's reiteration that the reinvestigation is not yet completed due to its complexity compounded by the fact that the murder took place nearly two decades ago. The Committee is compelled to express the firm hope that the investigation will be brought to a conclusion without further delay. The Committee recalls, once again, the need to bring to justice the perpetrators and the instigators of this crime in order to send an important message that any acts of violence against trade unionists will be punished and to prevent their recurrence [see 391st Report, para. 108; 396th Report, para. 168; and 400th Report, para. 215]. The absence of proper investigation or concrete decision from the authorities would*

create a situation of impunity, which may reinforce the atmosphere of mistrust and insecurity, prejudicial to the exercise of trade union activities. Consequently, the Committee must once again firmly urge the Government to take all necessary measures to expedite the process of investigation into the murder of trade union leader Chea Vichea, and to provide detailed information on the specific steps taken by the Phnom Penh Municipal Police to advance this investigation and how it proposes to resolve the obstacles encountered in the process.

222. *In the case of the murder of Hy Vuthy, the Committee recalls from the information previously provided by the Government that the Phnom Penh Court of First Instance had actually sentenced Mr Phal Vannak in absentia to 18 years' imprisonment and issued an arrest warrant in 2017. In its latest communication, the Government reiterates that to date Mr Phal Vannak remains at large. The Committee is compelled to reiterate its request that the Government provide a copy of both the Court of First Instance decision and the court decision releasing Chan Sophonn, this to enable the Committee to consider the interlinkages between the trade union activities of Hy Vuthy, violence in the country at the time of his murder, the efforts made to investigate the matter and the degree of impunity in the country (see 400th Report, para. 216). It also once again urges the Government to provide information available about the investigation into the* circumstances *of the murder of Hy Vuthy and its outcome which led to the conviction of Mr Phal Vannak.*

223. *In the case of the murder of Ros Sovannareth, the Committee recalls that it has previously referred to the trial of Mr Thach Saveth as being characterized by the absence of full guarantees of due process necessary to effectively combat impunity for violence against trade unionists. Following the release of Mr Thach Saveth on bail pursuant to the decision of the Supreme Court ordering the review of the case, the Committee requested that justice be carried out and that Mr Thach Saveth be able to exercise his right to a full appeal before the judicial authority. The Government then informed that the Court of Appeals issued on 14 July 2019 a verdict in absentia sentencing Mr Thach Saveth once again to 15 years of imprisonment subject to appeal. The Committee, observing that the proceedings of the Court of Appeals lasted nearly nine years before its conclusion, had urged the Government to provide a copy of the court decision sentencing Mr Thach Saveth and to inform of developments following the Court of Appeals' decision, including any appeal filed against it (see 396th Report, para. 169). The Committee notes that, in reply, the Government merely requests this case to be closed as, in its view, the perpetrator was brought to justice. The Committee is bound to reiterate its request and to urge the Government to provide a copy of the court decision of July 2019 sentencing in absentia Mr Thach Saveth to 15 years of imprisonment for premediated murder, and to indicate any appeal filed against it. It once again urges the Government to provide, inter alia, details of any investigation into the circumstances of the murder of Ros Sovannareth which was brought before the court and which led to the conviction of Mr Thach Saveth.*

224. *Additionally, with regard to the allegations that Born Samnang and Sok Sam Oeun – who were arrested in January 2004 for Chea Vichea's murder, wrongfully sentenced to 20 years' imprisonment and definitively acquitted in September 2013 by a judgment of appeal of the Supreme Court – were tortured and ill-treated by the police while in detention, the Committee recalls that it had previously requested the Government to conduct an independent and impartial investigation into their prosecution, including the allegations of torture and other ill-treatment, intimidation of witnesses and political interference with the judicial process regarding crimes against a trade unionist, and to inform of the outcome and the measures of redress provided for their wrongful imprisonment (see 374th Report, para. 122). The Government asserts that such case should have long been filed to the court for proceedings, if proven. Nevertheless, none of the individuals has ever filed a complaint in this regard. Consequently, the court is unable to start any proceedings on these allegations. In this regard, the Committee recalls 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 of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 112]. For many years, the Committee had regularly urged the Government to ensure that an independent investigation into these allegations is thoroughly undertaken, under the monitoring of the NCRILC, a body specifically setup to address inter alia the present case. Taking into consideration the time that has elapsed since the denunciation of the alleged acts of ill treatment and torture against those two men, the Committee expects that, in the event an investigation is requested by any of the parties to the NCRILC, the Government will take steps to ensure that such investigation is carried out without delay and that it will indicate any outcome and follow-up given.*

225. *While acknowledging the engagement of the Government to provide updated information on the pending matters in the present case and appreciating that the Government met with the Committee in person to address these matters, the Committee must, however, express its deep concern over the lack of tangible elements provided in reply to its previous requests, in particular the failure to provide the requested official documents in relation to the court cases or to eventual related investigations. The Committee emphasizes the importance in the present case to uncover the underlying facts and circumstances of these murders of trade union leaders, identify those responsible and punish the guilty parties, to remove doubt about the persistence of a climate of impunity and mistrust, thus paving the way for the exercise of freedom of association rights of all workers in an atmosphere conducive to harmonious industrial relations. The Committee firmly expects that the Government will take action in this regard without further delay.*

226. *Consequently, the Committee must once again draw the Governing Body's attention to the extremely serious and urgent nature of this case.*

The Committee's recommendations

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

(a) The Committee must once again firmly urge the Government to take all necessary measures to expedite the process of investigation into the murder of trade union leader Chea Vichea, and to provide detailed information on the specific steps taken by the Phnom Penh Municipal Police to advance this investigation and how it proposes to resolve the obstacles encountered in the process.

(b) The Committee is compelled to reiterate its request that the Government provide a copy of both the Court of First Instance decision and the court decision releasing Chan Sophonn, this to enable the Committee to consider the interlinkages between the trade union activities of Hy Vuthy, violence in the country at the time of his murder, the efforts made to investigate the matter and the degree of impunity in the country. It also once again urges the Government to provide information available about the investigation into the circumstances of the murder of Hy Vuthy and its outcome which led to the conviction of Mr Phal Vannak.

(c) The Committee is bound to reiterate its request and urge the Government to provide a copy of the court decision of July 2019 sentencing in absentia Mr Thach Saveth to 15 years of imprisonment for premediated murder, and to indicate any appeal filed against it. It, once again, urges the Government to provide, inter alia, details of any investigation into the circumstances of the murder of Ros Sovannareth which was brought before the court and which led to the conviction of Mr Thach Saveth.

(d) The Committee expects that, in the event an investigation into the alleged acts of ill treatment and torture against Born Samnang and Sok Sam Oeun is supported by any of the parties to the NCRILC, the Government will take steps to ensure that such investigation is carried out without delay and that it will indicate any outcome and follow-up given.

(e) The Committee once again draws the Governing Body's attention to the extremely serious and urgent nature of this case.

Case No. 3406

Interim report

Complaint against the Government of China – Hong Kong Special Administrative Region
presented by
– International Trade Union Confederation (ITUC) and
– International Transport Workers' Federation (ITF)

Allegations: The complainant organizations allege intimidation and harassment of workers in the context of public protests in 2019, a crackdown on civil liberties with the adoption of the National Security Law in 2020, the prohibition of public gatherings under the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation, adopted as part of the anti-COVID-19 measures in 2020 and prosecution of trade union leaders for their participation in demonstrations

228. The Committee last examined this case (submitted in March 2021) at its March 2023 meeting, when it presented an interim report to the Governing Body [see 401st Report, approved by the Governing Body at its 347th Session, paras 298–322]. [14]

229. The International Trade Union Confederation (ITUC) sent additional observations and new allegations in a communication dated 23 October 2023.

230. The Government sent its observations in a communication dated 22 January 2024.

231. China has declared the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), applicable in the territory of the Hong Kong Special Administrative Region (HKSAR) with modifications. It has declared the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), applicable without modifications.

[14] Link to previous examination.

A. Previous examination of the case

232. At its March 2023 meeting, the Committee made the following recommendations [see 401st Report, para. 322]:

(a) The Committee firmly urges the Government to take all appropriate measures to ensure that Mr Lee Cheuk Yan is not prosecuted and not imprisoned for having exercised legitimate trade union activities and requests the Government to provide information on all measures taken to that end. The Committee further urges the Government to provide detailed information on the remaining charges levelled against Mr Lee and the outcome of the court hearings.

(b) With reference to the ITUC's new allegations, the Committee requests the Government to indicate whether Messrs Joe Wong, Leo Tang and Chung Chung-fai are under investigation. Observing that Mr Lee is serving his prison sentence, the Committee requests the Government to indicate whether he is under additional investigation in connection with the requirements of the Societies Act Order.

(c) Noting the Government's indication that the respective hearings in cases of Ms Carol Ng and Ms Winnie Yu were scheduled for 3 and 8 November 2022, the Committee urges the Government to provide full and detailed information on the outcome of the judicial procedure and to transmit copies of the relevant court judgments. In the event the hearing in the case of Ms Yu has not yet taken place, the Committee requests the Government, to take measures to ensure that she is released pending trial. The Committee further requests the Government to confirm that Mr Cyrus Lau is no longer under investigation.

(d) The Committee once again firmly urges the Government to take all necessary measures to ensure in law and in practice the full enjoyment of trade union rights in a climate free of violence, threats and pressure in the HKSAR and to provide detailed information on all steps taken to that end. It firmly requests the Government, in consultation with the social partners, to monitor and provide information on the impact that the National Security Law has already had and may continue to have on the exercise of freedom of association rights so that the Committee has available to it all necessary information to examine the impact of this legislation in practice. The Committee also firmly urges the Government to provide the Committee of Experts on the Application of Conventions and Recommendations (CEACR), to which it refers the legislative aspects of this case, with detailed information on any legislative developments.

(e) The Committee reiterates its previous request and expects the Government to provide information on the engagement with the social partners in respect of any potential new extension of the Regulation on prohibition on group gatherings (Cap. 599G) under the Prevention and Control of Disease Ordinance.

B. The complainant's new allegations

233. In its communication dated 23 October 2023, the ITUC informs that on 18 October 2022, the Court of Appeal upheld the conviction of Mr Lee Cheuk Yan and seven other Hong Kong Confederation of Trade Unions (HKCTU) members and labour activists for breaching the ban on public assembly under the Disease Prevention and Control (Prohibition of Group Gathering) Ordinance (Cap. 599G) by holding a May Day protest in 2020.

234. The ITUC indicates that the use of the National Security Law (NSL) bail procedure has resulted in the excessive prolongation of the preventive detention of many of the 47 democrats arrested on subversion charges since 28 February 2021. The trial of the 47 democrats began on 6 February 2023 and was adjourned until 27 November 2023. Amongst them, two trade unionists, Ms Carol Ng and Ms Winnie Yu were charged with conspiracy to commit subversion

for taking part in the primary election of the democrats to stand in the Legislative Council Election in 2020 representing their unions.

235. The ITUC alleges that on 9 March 2023, the national security police arrested Ms Elizabeth Tang, General Secretary of the International Domestic Workers' Federation (IDWF) and wife of Lee Cheuk Yan, on suspicion of "colluding with a foreign country or external elements to endanger national security". Ms Elizabeth Tang had moved to the United Kingdom of Great Britain and Northern Ireland after the HKCTU disbanded and was returning to visit her imprisoned husband. She was released on 11 March 2023 on a cash bail of 200,000 Hong Kong dollars, with her phone and passport confiscated. She is required to regularly report to the police, making it impossible for her to travel and fully carry out her role as an international trade union leader. On the same day, her sister, Ms Marilyn Tang, who was also the director of the Trade Union Education Centre under the disbanded HKCTU, and lawyer Frederick Ho were arrested for allegedly removing evidence from Ms Elizabeth Tang's home. They were released on bail and charged with allegedly perverting the course of justice on 25 September. Within a month of these arrests, at least a dozen trade union and labour activists including ex-HKCTU staff had been taken by national security police officers from their home for questioning about their liaisons with international counterparts.

236. The ITUC further alleges that in an attempt to silence the dissident diaspora, on 3 July the HKSAR Government issued arrest warrants for eight Hong Kong activists, including the former general secretary of the defunct HKCTU, Mr Mung Siu Tat Christopher, accusing them of committing offences under the NSL. Mr Mung moved to the United Kingdom in September 2021 out of concern for his personal safety, amid a wave of dissolution of civil society organizations threatened by a smear campaign by Chinese state media. Through the UK-based Hong Kong Labour Rights Monitor, Mr Mung Siu Tat publishes online reports on the labour and trade union situation in Hong Kong, attends international trade union meetings and submits comments to UN treaty bodies. Mr Mung Siu Tat was charged with alleged secession under section 21 of the NSL for a speech he made at an international meeting in Paris in June 2022. Mr Mung and other relocated Hong Kong activists are wanted by the HKSAR Government on a 1 million Hong Kong dollars (US$127,700) bounty. The national security police have also taken in the family of Mr Mung's elder brother and sisters-in-law in Hong Kong for questioning.

237. The ITUC recalls that since May 2021, the Registry of Trade Unions (RTU) and the Secretary of Societies have used provisions under the Trade Union Ordinance (TUO) and the Societies Ordinance (SO) to impose information surveillance and outright deregistration on targeted independent trade unions. The labour authorities argued that these actions were part of the HKSAR Government's new duties under the NSL. The speeches and commentaries criticizing the NSL's legislation and the HKSAR Government's anti-COVID-19 measures, the solidarity campaigns calling for the release of imprisoned trade unionists, the June 4 commemorations and the foreign liaison of these unions were targeted. Letters of inquiry from the RTU, under section 10 of the TUO, were sent to: the Hong Kong White Collar (Administration and Clerical) Connect Union (HKWCCU) in December 2021; the Hong Kong Financial Industry Employees General Union (HKFIEGU) in December 2021; and the Hong Kong Journalists Association (HKJA) in January 2022, requesting an explanation of their activities since 2019. Warning letters were also sent to the Hospital Authority Employees Alliance (HAEA) in September 2021, the Environmental Education and Ecological Conservation Workers' Union on 11 March 2022, and the Hong Kong Music Industry Union on 7 March 2022, as well as the Accounting Bros' Sis Labour Union, the Construction Site Workers General Union, the Bar Bending Industry Workers Solidarity Union and the Catering and Hotels Industries Employees General Union, the New World First Bus Company Staff Union and the Citybus Limited Employees Union between

January and August 2022. They were accused of violating sections 10(1)(b), 33 and 34 of the TUO, which prohibits activities outside the union's stated objectives, as well as the use of trade union funding on activities with "political purposes", both of which could lead to deregistration proceedings.

238. The ITUC further recalls that on 17 February 2022, four former officers of the HKCTU were requested by the Secretary for Societies to provide detailed information about the defunct union under section 15 of Cap. 151 of the Societies Ordinance. Mr Lee Cheuk Yan, (who is currently in prison), Mr Joe Wong, Mr Leo Tang, and Mr Chung Chun Fai were asked to provide information on the union's activities in 2019 and 2020; its membership, finances, affiliations, and its cooperation with a list of international trade unions and solidarity organizations. On 31 March 2022, they were detained by the national security police for failing to provide this information. Except for Mr Lee Cheuk Yan, the three leaders were released the next day after surrendering their travel documents. Over the next two days, Chinese state-owned newspaper Wen Wei Po accused the defunct union of "still being active" and a threat to national security, and more former members of the defunct union were named. On 1 November 2022, Joe Wong, Leo Tang and Chung Chun Fai were found guilty by the courts and fined.

239. The ITUC indicates that in May 2022, the Secretary of Labour and Welfare inserted a catch-all offence of "(an offence) endangering national security" in the amended Social Workers Registration Ordinance (SWRO) under schedule 2, section 5. The offence is not defined in the amendment. Registration will be refused or cancelled if a social worker has been convicted of the offence. The same provision was being considered by the Labour Department to add to schedule 1 of the TUO under section 17(3) to impose a five-year ban or prohibition from taking office in a trade union. The Hong Kong Social Workers' General Union fears that the broad scope of the new offence allows for arbitrary interpretation that threatens social workers from assuming their legitimate role of defending social justice and human rights as protected under the SWRO. Their normal work to assist clients and criticize government policies, as well as participate in international exchange and receive foreign funding etc., could fall foul of the amended schedule. The ITUC recalls that similarly, the Labour Department requires a declaration for trade union registration, effective from 19 September 2022, which obliges the union to pledge that it will not "endanger national security" or engage in activities "contrary to the interests of national security". The required declaration is broadly open to arbitrary interpretation, which could trigger deregistration proceedings under the TUO.

240. The ITUC alleges that the overtly broad NSL and its application have had a chilling effect, leading to a wave of dissolution of trade unions and civil society organizations, estimated at 65 in 2021 alone, including the largest professional teachers' union and the HKCTU. The number of trade unions that were dissolved in 2022 reached 11,733. The ITUC refers to the following examples that illustrate the pattern of trade union dissolution as a result of judicial and non-judicial harassment by the Hong Kong authorities and Chinese state media. On 13 April 2022, the Hong Kong Journalists Association (HKJA) called an extraordinary general meeting to give the executive committee the power to dissolve the union. At the time, three independent news outlets had been forced to close and more than 20 journalists were facing charges of sedition, subversion and collusion. Members of the Hong Kong Journalists Association (HKJA) have worried about the crackdown on independent journalism and their personal safety since 2019, following intensive smear campaigns against the union and its president. In April 2022, Chinese state-owned newspapers, Takung Po and Wen Wei Po, named seven independent trade unions that were affiliates of the HKCTU, accusing them of trying to revive the defunct union. The Community Care and Nursing Home Workers General Union and the Confederation of Tertiary Institutes Staff Unions subsequently disbanded after assessing the risks to their

leaders. On 12 May 2022, the HKCTU Education Foundation Limited decided to dissolve itself due to unmitigated political risks and concerns for the safety of its members. The Education Foundation had been vilified by two newspapers, which accused it of receiving foreign donations from international trade unions and solidarity organizations.

241. The ITUC further alleges that the NSL has been used to arrest 260 people, including human rights defenders, pan-democrats, protesters, citizens and students; 161 have been charged, amongst them four are trade unionists, including Mung Siu Tat who has relocated to the United Kingdom. Of the 161 people charged, 79 have been convicted. The ITUC indicates that the HKSAR Government has revealed that local legislation on national security under section 23 of the Basic Law is expected to be completed by the end of 2024, and that further legislation is planned to "plug the loopholes in national security". The ITUC alleges that examples to illustrate the rapid deterioration of the environment for free exercise of fundamental rights and civil liberties are numerous. The Hong Kong Women Workers' Association was pressured by the police to 'voluntarily' withdraw from holding a demonstration that had been approved for International Women's Day in 2023. The police had cited messages posted by unknown individuals on the organization's Facebook page to claim that "some violent groups" were trying to join the demonstration and threatened that the organization should bear the consequences. Former president of the defunct HKCTU, Mr Joe Wong, and union member Mr Denny To, were questioned after notifying the police of their intention to hold the May Day rally. On 26 April 2023, Mr Joe Wong reportedly went missing for a few hours and had an emotional breakdown. He was believed to have been taken away by the national security police and later announced the cancellation of the rally without giving a reason. There was a heavy police presence on 4 June and 1 July 2023, preceded by threats from the police to warn the public against gathering for commemorations or protests on both days. On the eve of 1 July 2023, the anniversary of the handover, members of the League of Social Democrats, the only surviving pan democratic political group, were summoned by the national security police and the group subsequently decided not to organize a demonstration. In addition, a number of activists, civil society organizations and trade unions have had their assets and bank accounts frozen under the NSL's Implementing Rules.

242. According to the ITUC, in a further attempt to restrict access to funding for civil society organizations and initiatives, including trade unions, the HKSAR Government is seeking to impose strict regulations on crowdfunding activities in Hong Kong. According to the consultation paper released in December 2022, the Government plans to require the registration of crowdfunding platforms under a Crowdfunding Affairs Office (CAO), which will have broad administrative and prosecutorial powers (paragraphs 2.6 and 2.23). Detailed information will be required for registration and crowdfunding activities will be subject to close scrutiny, censorship, intervention and de-legalisation (paragraph 2.11–14) without judicial oversight if the CAO has "reason to believe that the continued conduct of the activity will jeopardise the public interest, public safety or national security" (paragraph 2.22). The Special Rapporteur has expressed concerns about the potential ramifications of the discretionary powers the CAO may have on the rights to freedom of opinion, expression, freedom of peaceful assembly and association. The restrictions on funding, especially foreign funding, may have a disproportionate impact on human rights organizations.

243. The ITUC requests the CFA to call on the HKSAR Government to: respect and fully implement the conclusions and recommendations of the ILO supervisory bodies in law and practice, including those regarding the NSL; release all arrested and imprisoned for the exercise of civil liberties including freedom of assembly, expression, press and association and those participating in pro-democracy activities; and drop all charges related to the activities of

independent trade unions or trade unionists in the exercise of their right to join or enjoy the solidarity of international workers' organizations. Given the rapid deteriorations and severe impact of the NSL in curtailing the rights protected under the Convention, and the prolonged preventive detention of the trade union leaders, the ITUC urges the Committee to declare this case "serious and urgent" and to recommend a direct contact mission so that the ILO can engage with the HKSAR Government on the various ways in which it violates basic principles of freedom of association in law and practice.

C. The Government's reply

244. In its communication dated 22 January 2024, the HKSAR Government points out that the legal proceedings in respect of some of the cases mentioned in this case are still ongoing. Given the legal principle of *sub judice*, no one should, and it is inappropriate for any person to, comment on or even attempt to interfere with the cases concerned. Whether the criminal charges against the individuals involved in those cases are established would be decided by the judiciary of the HKSAR based on independent and fair adjudication. The HKSAR Government further points out that fundamental rights and freedoms are fully protected in the HKSAR in accordance with the Basic Law of the HKSAR of the People's Republic of China (PRC); thus, the Committee should fairly and objectively perform its duties, respect the independent adjudication power of the HKSAR courts, and prevent anyone from abusing the Committee's mechanism to interfere with the ongoing legal proceedings in the HKSAR.

245. The HKSAR Government reiterates the information it had previously provided on the background of the adoption of the NSL and in particular, that it was enacted to restore stability and security which Hong Kong residents had been unable to enjoy during the period of unrest between June 2019 and early 2020, and to ensure improvement in the exercise of rights and freedoms by the citizens and the return to their peaceful and prosperous lives. The HKSAR Government emphasizes that section 4 of the NSL clearly provides that human rights shall be respected and protected in safeguarding national security in the HKSAR and that section 5 of the NSL provides that the principle of the rule of law shall be adhered to in preventing, suppressing, and imposing punishment for offences that endanger national security. These freedoms, however, are not absolute and to protect national security or public safety, public order, and the rights and freedoms of others, etc., reasonable and necessary restrictions may be imposed on the exercise of such rights, as provided for in the NSL. The HKSAR Government therefore disagrees that there has been any crackdown on civil liberties with the adoption of the NSL in 2020. Furthermore, the NSL provides for four categories of offences that endanger national security, namely "secession", "subversion", "terrorist activities", and "collusion with a foreign country or with external elements to endanger national security". The prosecution has the burden to prove beyond reasonable doubt the *actus reus* and *mens rea* of the offence before the defendant may be convicted by the court.

246. As for the Implementation Rules, the HKSAR Government indicates that they also clearly set out in detail: the powers to take the various measures, the procedural requirements, the circumstances that must be met, and the conditions for approval, and so on. The purpose is to ensure that when relevant officers apply the measures, the objective of effectively preventing, suppressing and imposing punishment for any act or activity that endangers national security can be achieved, while the NSL requirement to respect and protect human rights and to safeguard various rights and freedoms, can be complied with. The HKSAR Government informs that technical amendments were made to the Implementation Rules which are effective as of 15 December 2023. Under schedule 3 of the Implementation Rules, the Secretary for Security of the HKSAR may issue a 'freezing notice' to freeze offence-related property. The freezing

notice serves the purposes of preserving the property in question so that a confiscation or forfeiture order may be obtained (and enforced) in the future; thereby preventing the use of the property in financing or assisting any offence that endangers national security; and prevents any dealings with the property in a manner which may prejudice an ongoing investigation or proceedings concerning an offence that endangers national security. The amendments put it beyond doubt that a freezing notice issued under schedule 3 is valid while the proceedings to which it relates are pending and remains so until the conclusion of the proceedings. The amendments reflect the purposes of the freezing notice regime and can more effectively avoid the national security risks arising from improper dealings with offence-related property by the defendants in cases concerning offences endangering national security before conclusion of the proceedings. After the amendments, the property right of the suspects and defendants of cases concerning offences endangering national security remains protected in accordance with the law. Persons affected by the freezing notices may apply to the court for the revocation of the notices or for the grant of a licence or variation of a licence for dealing with the property under the Implementation Rules. The licence regime already strikes an appropriate balance between the prevention and suppression of acts or activities endangering national security and the protection of property rights.

247. The HKSAR Government strongly deplores the attempt to smear the actions taken by HKSAR law enforcement agencies by conflating criminal activities with lawful trade union activities and misrepresenting the proper law enforcement actions as ones targeting trade unionists. The HKSAR Government points out that a clear distinction must be drawn between legitimate trade union activities and unlawful acts committed by people who happen to be trade unionists. It is entirely legitimate for the latter to be subject to the criminal law of the HKSAR and to be dealt with accordingly. Under the fundamental principle of the rule of law and equality before the law, any suggestion that persons (such as trade unionists) or organizations with certain backgrounds should be immune from legal sanctions for their illegal acts and activities is tantamount to granting such persons or organizations privileges to break the law and is totally contrary to the spirit of the rule of law. The HKSAR Government considers the demand to release certain people who have been arrested, detained or sentenced, on account of the fact that those defendants happen to be trade union representatives, unreasonable. The HKSAR Government stresses that acts and activities that endanger national security could bring very serious consequences. Prompt action must be taken to prevent and suppress such acts and activities effectively.

248. The HKSAR Government indicates that since the legal proceedings or investigations of some of the cases mentioned in the present case are still ongoing, no one should comment thereon given the legal principle of *sub judice*. The HKSAR Government further indicates that while it is inappropriate for it to confirm or deny whether a person is under investigation – in order to avoid jeopardizing any anticipated or ongoing investigation – it nevertheless, provides the following information to enable CFA to have a better understanding of the cases in question. For the case concerning Ms Carol Ng and Ms Winnie Yu, the HKSAR Government recalls that they were arrested, and each charged with one count of "conspiracy to commit subversion" on 28 February 2021. Ms Winnie Yu pleaded not guilty to the charge while Ms Carol Ng pleaded guilty. They were respectively committed to the Court of First Instance for trial and sentence. The trial (with other defendants) commenced on 6 February 2023. On 29 November 2023, the Court began hearing closing submissions with 10 days reserved. A verdict is pending as of the end of 2023. Ms Winnie Yu was granted bail once by the Court of First Instance on 28 July 2021, but was rearrested on 7 March 2022 for violating the bail conditions. The magistrate accordingly revoked Ms Yu's bail on 8 March 2022. On 20 April 2022, the Court of First Instance refused Ms Yu's bail application. Ms Elizabeth Tang was arrested on 9 March 2023 for suspected

collusion with a foreign country or with external elements to endanger national security, contravening section 29 of the NLS. She was granted bail on 11 March 2023.

249. As concerns the HKCTU, the HKSAR Government indicates that in February 2022, the police requested the organization to hand over documents related to its operations, activities, income and expenses in accordance with sections 15 and 16 of the SO. The police took law enforcement actions on 31 March 2022 on account of HKCTU's failure to furnish the Societies Officer with the information required. Relevant premises were searched on the authorization of a court warrant. Three people, namely, Mr Tang Kin Wa, Mr Chung Chung Fai and Mr Wong Nai Yuen, were subsequently summoned for the offence of failure to comply with notice to furnish information under the SO. They pleaded guilty at the Eastern Magistracy in November 2022 and were each fined HK$8,000.

250. With regards to the leaders of the General Union of Hong Kong Speech Therapists (GUHKST), Ms Lai Man Ling, Ms Yeung Yat Yee Melody, Mr Ng Hau Yi Sidney, Mr Chan Yuen Sum Samuel and Mr Fong Tsz Ho, were sentenced to 19 months' imprisonment on 10 September 2022 on charges of "conspiracy to print, publish, distribute, display and/or reproduce seditious publication", the HKSAR Government indicates that some of the defendants had lodged appeals against their convictions and sentences, but all of the appeals were later withdrawn.

251. Ms Marilyn Tang was arrested on 11 March 2023, suspected of entering premises twice before the police's search and seizing Ms Elizabeth Tang's laptop and mobile phone. Ms Marilyn Tang was charged under the offence of perverting the course of justice on 24 March 2023. She was convicted – based on her own guilty plea – and sentenced to six months' imprisonment on 21 December 2023.

252. As for the actions taken in accordance with the law by the police to list persons at large as wanted persons, the HKSAR Government indicates that they were taken by the National Security Department of the Police against persons who have fled overseas and are suspected of having continued to commit offences under the NSL, including "incitement to secession" under section 21, "subversion" under section 22, "incitement to subversion" under section 23, and "collusion with a foreign country or with external elements to endanger national security" under section 29, thereby seriously endangering national security. The acts and activities endangering national security of the persons concerned include:

(1) urging foreign countries to impose "sanctions" against Government officials, personnel of the Judiciary and prosecutors of the HKSAR;

(2) meeting foreign politicians and government officials to call for "sanctions" or blockades, and other hostile activities against the PRC and the HKSAR;

(3) advocating "Taiwan independence", "Hong Kong independence" and overthrowing the basic system of the PRC established by the Constitution of the PRC; and

(4) inciting others to overthrow the body of central power of the PRC and the body of power of the HKSAR with unlawful means (or even "force").

253. As regards the arrangement for granting of bail and pre-trial detention, the Hong Kong Court of Final Appeal has made clear that the cardinal importance of safeguarding national security and preventing and suppressing acts endangering national security, explains why more stringent conditions to the granting of bail in relation to offences endangering national security have been introduced under the NSL. The court elaborated that in applying section 42(2) of the NSL when dealing with bail applications in cases involving offences endangering national security, the judge must first decide whether there are "sufficient

grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security". The judge makes a decision after considering all matters relating to the granting or refusal of bail. At the same time, the Court of Final Appeal ruled that as far as possible, section 42(2) of the NSL is to be given a meaning and effect compatible with the rights, freedoms and values guaranteed by sections 4 (protection of human rights) and 5 (adherence to the rule of law) of the NSL. If the defendant is dissatisfied with the magistrate's decision on bail (including the decision on bail conditions or revocation of bail), he or she may apply to the Court of First Instance of the High Court for review or variation. The Court of First Instance will similarly consider and decide on the application in strict accordance with the NSL and relevant local laws. The HKSAR Government points out that several defendants have been released on bail after the courts duly considered the requirements stipulated in the NSL and relevant local laws. For example, some defendants who were charged with conspiracy to commit subversion are currently free on court bail. As mentioned above, Winnie Yu was also once released on bail but had her bail revoked by the court following her violation of bail conditions.

254. Regarding the inclusion of offences endangering national security in the Social Workers Registration Ordinance, the HKSAR Government explains that social workers shoulder professional responsibility towards their service users, who are people in need of help in the society. As their relationship is built on trust, social workers could potentially exert significant influence on their clients. Permitting persons convicted of offences that endanger national security to discharge the duties of social workers would put the interest of their clients at stake and tarnish the professional image of social workers. It is therefore, important to include offences endangering national security in schedule 2 of the Social Workers Registration Ordinance to underline their seriousness, and to ensure that a person convicted of any offence specified in the schedule will not be entitled to be or continue to be a registered social worker. These specified offences include, but are not limited to, the offences of "secession", "subversion", "terrorist activities" and "collusion with a foreign country or with external elements to endanger national security" established in the NSL, and the offences of "treason" and "sedition" in the Crimes Ordinance. As threats to national security may vary in character and it is not feasible to list all such offences in schedule 2, the above formulation is adopted to ensure effective discharge of the HKSAR's duty under the NSL to prevent, suppress and impose punishment for offences that endanger national security.

255. The HKSAR Government expresses its firm commitment to upholding trade unions' rights to organize activities to promote and defend the occupational interests of their members. It refutes the allegation that the right to freedom of association has been drastically curbed since the enactment of NSL and indicates that trade union rights in Hong Kong are strong and fully intact after the implementation of the NSL. The marked increase of 56.5 per cent of registered trade unions and trade union federations from 928 as at December 2019 to 1,452 as at November 2023 bears testimony to HKSAR residents' free exercise of the rights to freedom of association and to organize.

256. According to the HKSAR Government, the Registry of Trade Unions (RTU) administers the TUO to foster sound trade union management and trade unionism. The operations of a trade union must comply with the NSL, the TUO and its regulations, other relevant Laws of Hong Kong, and the registered trade union rules. Promoters of trade unions intending to apply for registration under TUO are required to sign a declaration confirming that all the purposes and objects of the trade unions are lawful, and that the trade unions will not perform or engage in any acts or activities that may endanger national security or otherwise be contrary to the interests of national security and/or are in contravention of the TUO, their regulations or other relevant

legislation of Hong Kong. If a trade union contravenes the relevant laws or its rules, the RTU will follow up accordingly. Depending on the circumstances, the RTU may give verbal advice or issue inquiry/advisory/warning letters to the trade union concerned, and/or refer the case to relevant law enforcement agencies. In case of serious non-compliance, the RTU may cancel the trade union's registration in accordance with the law.

257. The HKSAR Government provides the following information regarding certain trade unions mentioned in the new allegations:

- The Hong Kong White Collar (Administration and Clerical) Connect Union (HKWCCU) was blatantly used for purposes inconsistent with its objects or rules. After objective and prudent assessments, the RTU issued a "Notice of Intention to Cancel the Registration of a Trade Union" to the HKWCCU on 16 December 2022, as a means of informing it of the RTU's intention to cancel its registration. Under the TUO, any voting member of the HKWCCU was entitled to appeal to the Court of First Instance against the notice. No appeal was lodged within the statutory 28-day deadline. The registrations of the HKWCCU was cancelled on 17 February 2023. The entire process was fair, open and just, with guaranteed channels for lodging appeals;

- The Hong Kong Financial Industry Employees General Union (HKFIEGU) and the Hospital Authority Employees Alliance (HAEA) respectively passed a resolution for dissolution at their general meetings on 8 January 2022 and 24 June 2022 in accordance with their union rules and initiated voluntary dissolution of their own accord. The Hong Kong Professional Teachers' Union (HKPTU) is undergoing relevant proceedings of its voluntary dissolution. The voluntary dissolutions of the HKFIEGU and HAEA were registered by the RTU on 28 March 2022 and 24 March 2023 respectively. The above trade unions enjoyed full autonomy in deciding and proceeding with their dissolution process without any interference from the RTU; and

- The RTU made inquiries with the Hong Kong Journalists Association (HKJA) in respect of its activities which were suspected to be inconsistent with its objects or rules. The RTU considered the HKJA's replies and relevant facts in an objective and prudent manner before taking legitimate follow-up action in accordance with the TUO.

258. The HKSAR Government reiterates its previous indications concerning the increase in the number of registered unions and the process of registration and appeal against RTU decisions. On dissolution of a trade union, the trade union concerned must obtain the consent of sufficient voting members as specified in its union rules. The entire process of deciding and proceeding with dissolution is initiated by the trade union concerned and free from any interference from the RTU. Concerning organizations that had ceased operation or been dissolved, the HKSAR Government considers that one should not speculate the reasons behind the decisions of individual organization to cease operation or dissolve.

259. The HKSAR Government will continue to progressively improve labour rights and benefits in the light of overall socio-economic development through tripartite consultations, considering the interests of employees and employers. As regards the Committee's request to monitor and provide information, in consultation with the social partners, on the impact of the NSL, the HKSAR Government appreciates that during the discussion at the Committee on the Application of Standards at the Conference in June 2021, the employee and employer representatives from the HKSAR shared the view that the Hong Kong National Security Law is necessary for restoring the HKSAR's stability. The HKSAR Government reiterates that one must observe the law in force in exercising his or her rights, including the freedom of association and right of peaceful assembly. Any arrest and prosecution is directed against the criminal act,

while the political stance, background or occupation of the person(s) concerned is irrelevant. The HKSAR Government reiterates that Mr Lee Cheuk Yan was prosecuted in connection with the unauthorized assemblies on 18 August 2019, 31 August 2019, 1 October 2019 and 4 June 2020, for breaching the social distancing measures imposed in light of the COVID-19 pandemic on 1 May 2020, and for contravening the Air Navigation (Hong Kong) Order 1995 and obstructing a public officer on 1 January 2021. The unlawful acts involved had nothing to do with the activities of trade unions nor defending labour rights. The HKSAR court, which enjoys independent adjudicating power, has made rulings and convicted Mr Lee in all six cases. This proves that the prosecution actions were fully justified by facts and legal reasons. The Hong Kong Alliance in Support of Patriotic Democratic Movements of China (Alliance), which the HKSAR Government points out is not a trade union, and three related individuals, including Mr Lee as the Chairperson of the Alliance, were charged on 9 September 2021 with the offence of "incitement to subversion" under sections 22 and 23 of the NSL. Mr Lee was brought to the West Kowloon Magistrates' Courts for mention on 10 September 2021. Mr Lee pleaded not guilty before the magistrate, who committed him to the High Court for trial. Mr Lee's application for bail was denied by the High Court in December 2022. Mr Lee is remanded in custody pending trial with a date yet to be fixed. As the legal proceedings or investigations of some of the cases mentioned in this case are still ongoing, no one should comment thereon given the legal principle of *sub judice*.

260. The HKSAR Government reiterates its previous indications concerning the non-political character of restrictions on group gatherings in public places, established to reduce the risks of transmission of COVID-19 and the enforcement measures taken accordingly. It further informs that the restrictions under the Prevention and Control of Disease (Prohibition on Gathering) Regulation were lifted from 29 December 2022 onwards, and the concerned Regulation as a public health emergency regulation expired on 31 March 2023 at midnight.

261. In respect of the proposed public meeting and procession organised by the Hong Kong Women Workers' Association in March 2023 and the proposed public meeting and procession organized by Mr Wong Nai Yuen, ex-chairperson of the HKCTU in May 2023, the police received notifications from the respective organizers that the public order events would not be held. The police respect the decisions of the organizers.

262. The HKSAR Government indicates that it will continue to comply with all its obligations under Convention No. 87 and provide timely responses and maintain communication with the ILO in this regard. The HKSAR Government submits that the allegations against the HKSAR are untrue and unsubstantiated. The HKSAR Government has continued to improve the employment rights and benefits of employees in the HKSAR. The freedoms and rights of trade union officials to organize activities to promote and defend the occupational interests of trade union members, have been and will continue to be, fully protected in accordance with the law. There is absolutely no retrogression or infringement of the rights and freedoms of association in the HKSAR. The isolated incidents quoted by the ITUC are associated with either suspected unlawful activities not related to the exercise of trade union rights in accordance with the law, or voluntary decisions of the trade unions concerned without interference from the HKSAR Government. In consideration of the above, the HKSAR Government firmly objects to ITUC's request to declare the case as "serious or urgent" or to send a direct contacts mission to the HKSAR. It calls on the Committee to consider putting an end to the examination of this Case.

D. The Committee's conclusions

263. *The Committee recalls that this case involves allegations of intimidation and harassment of workers in the context of public protests in 2019, a crackdown on civil liberties with the adoption of the*

National Security Law in 2020, and prosecution, sentencing and imprisonment of trade union leaders for their participation in demonstrations.

264. *The Committee notes the additional information and new allegations submitted by the complainant and the HKSAR Government's reply. Concerning the previously arrested and prosecuted trade unionists the Committee notes the following information:*

- *The ITUC submits that on 18 October 2022, the Court of Appeal upheld Mr Lee Cheuk Yan's conviction for participation in a May Day rally in 2020. The Committee recalls that this sentence was issued for breach of COVID 19 restrictions on gatherings in public places and provided for 14 days imprisonment suspended for 18 months. In view of the information previously submitted to it, the Committee notes that by October 2022, Mr Lee completed serving his sentence of 20 months imprisonment for charges of participation in four unauthorized demonstrations. Nevertheless, the Committee notes that he was not released and remains in preventive detention pending trial on the NSL related charge of "incitement to subversion" regarding which, the Committee recalls, he has pleaded not guilty. The Committee notes the HKSAR Government's indication that the date of Mr Lee's trial is not yet fixed.*

- *Ms Carol Ng, former chairperson of the HKCTU, has remained in preventive detention since her arrest in January 2021. Her trial on charges of conspiracy to commit subversion started on 6 February 2023. The HKSAR Government indicates that she pleaded guilty and adds that the court began hearing the closing submissions on 29 November 2023 and the verdict was pending at the end of 2023.*

- *Ms Winnie Yu, former chairperson of the Hospital Authority Employees Alliance (HAEA) also arrested in January 2021, was initially released on bail on 28 July 2021 but was rearrested on 7 March 2022 for having violated her bail conditions and has remained in preventive detention since then. The Committee notes the ITUC's allegation that her rearrest for violating the bail conditions related to her online criticism of the hospital authority's handling of the COVID-19 outbreak. The HKSAR Government indicates that she reapplied for bail, but her application was rejected on 20 April 2022. She is being tried alongside Ms Ng and 45 other individuals and the verdict was pending at the end of 2023. The HKSAR Government indicates that she pleaded not guilty.*

- *Messrs Joe Wong, Leo Tang and Chung Chung-fai, respectively the former chairperson, vice-chairperson and treasurer of the HKCTU who were interrogated on 31 March 2022 for having failed to provide information to the Societies Officer in accordance with the Societies Act Order, were, according to the complainant, released the next day after surrendering their travel documents. The Committee notes that the HKSAR Government and the complainant both indicate that they were found guilty in court and fined on 1 November 2022. The HKSAR Government indicates the amount of the fine as HK$8,000 (US$1,023).*

- *Concerning the former leaders of the General Union of Hong Kong Speech Therapists (GUHKST), Ms Lai Man Ling, Ms Yeung Yat Yee Melody, Mr Ng Hau Yi Sidney, Mr Chan Yuen Sum Samuel and Mr Fong Tsz who were sentenced to 19 months' imprisonment on 10 September 2022 on charges of "conspiracy to print, publish, distribute, display and/or reproduce seditious publication", the HKSAR Government indicates that some of them had initially lodged appeals, which they later withdrew.*

265. *The Committee recalls that in its previous recommendations concerning the present case, it had firmly urged the HKSAR Government to take measures to ensure that Mr Lee Cheuk Yan is not prosecuted and not imprisoned for having exercised legitimate trade union activities. The Committee notes the HKSAR Government's affirmation that the unlawful acts for which Mr Lee was convicted were unrelated to the activities of trade unions or defending labour rights, and an independent court*

convicted him. The HKSAR Government further affirms that the charges of "incitement to subversion" currently pending against Mr Lee, are related to his role as the chairperson of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China which is not a trade union. The Committee notes however that the HKSAR Government does not provide information concerning the concrete actions that have entailed the pending charges against Mr Lee. It therefore firmly urges the Government to take all appropriate measures to ensure that Mr Lee Cheuk Yan is not prosecuted and not imprisoned for having exercised legitimate trade union activities and requests the Government to provide information on all measures taken to that end. The Committee also urgently requests the HKSAR Government to provide precise information concerning the activities that have entailed Mr Lee's latest indictment, as well as any development concerning the proceedings, including the court judgment once rendered.

266. *The Committee further notes that Mr Lee has remained in preventive detention since October 2022, without interruption after the 20 months that he had previously spent in prison serving sentences for participation in unauthorized demonstrations. The Committee notes that the charges pending against Mr Lee are based on the NSL and hence a special, stricter bail procedure is applied to them. The Committee notes that the HKSAR Government confirms that the Hong Kong Court of Final Appeal has made clear that because of the cardinal importance of safeguarding national security, more stringent conditions apply to the grant of bail in relation to NSL offences. However, the HKSAR Government indicates that the Court has also ruled that as far as possible, section 42(2) of the NSL is to be given a meaning and effect compatible with the rights, freedoms and values guaranteed by sections 4 and 5 of the NSL concerning protection of human rights and adherence to the rule of law. Recalling that "preventive detention should be limited to very short periods of time intended solely to facilitate the course of a judicial inquiry" and that "although the exercise of trade union activity or the holding of trade union office does not provide immunity as regards the application of ordinary criminal law, the continued detention of trade unionists without bringing them to trial may constitute a serious impediment to the exercise of trade union rights" [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paras 140 and 144], the Committee notes that Mr Lee has been charged with "incitement to subversion" on 14 September 2022, and that according to the HKSAR Government the date of his trial is not yet fixed. The Committee therefore requests the HKSAR Government to take all possible measures to enable Mr Lee's release pending his next trial and to facilitate a speedy decision of his case.*

267. *Regarding the proceedings against Ms Yu and Ms Ng, the Committee notes the HKSAR Government's indication that the Court started hearing final submissions by the end of November 2023. It also notes that Ms Yu and Ms Ng have remained in preventive detention respectively since March 2022 and January 2021, which constitute protracted periods of preventive detention. The Committee urges the HKSAR Government to provide full and detailed information on the outcome of the proceedings and to transmit a copy of the judgment, which it trusts will be rendered expeditiously.*

268. *The Committee further notes that the ITUC submits allegations of new cases of arrest and/or prosecution of trade unionists, to which the HKSAR Government replies:*

- *The ITUC alleges that Ms Elizabeth Tang, the General Secretary of the International Domestic Workers' Federation (IDWF) was arrested on 9 March 2023 on suspicion of collusion with a foreign country to endanger national security. On 11 March 2023 she was released on a bail of HK$200,000 (US$25,580). Her phone and passport were confiscated, and she is required to regularly report to the police. The Committee notes that the HKSAR Government confirms the arrest and release on bail of Ms Tang, as well as the suspicion against her to have breached section 29 of the National Security Law concerning collusion with a foreign country or with external elements to endanger national security.*

- *In relation to Ms Elizabeth Tang's arrest, the ITUC alleges that her sister Ms Marilyn Tang – former director of the trade union education centre under the HKCTU – and her lawyer Mr Frederick Ho were both arrested. The ITUC states that they were released on bail and charged with "perverting the course of justice" on 25 September 2023 for allegedly removing evidence from Ms Elizabeth's home. The HKSAR Government indicates that Ms Marilyn was suspected of having entered the premises twice before the police's search and confirms her arrest on 11 March 2023 and her release on bail as well as her charges. The HKSAR Government adds that on 21 December 2023, she was convicted on her own guilty plea and sentenced to six months' imprisonment.*

- *The ITUC alleges that on 3 July 2023 an arrest warrant was issued against Mr Mung Siu Tat Christopher – former general secretary of the HKCTU – who lives abroad, on charges related to the NSL. The complainant alleges that this charge is related to what Mr Mung Siu Tat has said in a speech in Paris in 2022 and that the HKSAR Government has put a bounty of HK$1 million (US$127,700) on him. The HKSAR Government indicates that these decisions are taken by the national security department of the police, against persons suspected of continuing to commit offences under the NSL and specifies that the persons concerned had urged foreign countries to impose sanctions, advocated Taiwan and Hong Kong's independence and the overthrow of the basic system of the PRC.*

269. *The Committee notes the HKSAR Government's indication that Ms Elizabeth Tang is suspected of "collusion with a foreign country or with external elements to endanger national security", without however indicating the actions that have generated this "suspicion". The Committee recalls that in one of its previous examinations of the present case, it had expressed the expectation that the HKSAR Government ensure that the NSL will not be applied with respect to normal trade union and employer organization interactions and activities, including as regards their relations with international organizations of employers and workers [see 395th Report, para. 173(c)]. Noting that Ms Tang is the general secretary of an international trade union, a role that requires constant interaction with international and foreign organizations and entities, the Committee requests the HKSAR Government to ensure that no charges are brought against Ms Tang for legitimate trade union activities and to provide detailed information on any judicial measures taken, or decisions adopted concerning her.*

270. *The Committee recalls that in its last examination of this case, it had requested the HKSAR Government, in consultation with the social partners, to monitor and provide information on the impact that the National Security Law has already had and may continue to have on the exercise of freedom of association rights so that the Committee has available to it all necessary information to examine the impact of this legislation in practice. [see 401st Report, para. 322(d)]. The Committee notes that the HKSAR Government indicates that the Hong Kong National Security Law is necessary for restoring the HKSAR's stability and reiterates that one must observe the law in force in exercising his or her rights, including the freedom of association and right of peaceful assembly. The HKSAR Government affirms that any arrest and prosecution are directed against the criminal act, while the political stance, background or occupation of the person(s) concerned are irrelevant. The Committee regrets that the HKSAR Government provides no information on measures taken to consult the social partners concerning this critical issue or to monitor the impact of the NSL on the exercise of freedom of association rights. It therefore reiterates its previous request.*

271. *The Committee notes that the ITUC alleges that the Labour Department of the HKSAR requires the organizations applying for registration to make a declaration or a pledge not to endanger national security or engage in activities contrary to the interests of national security. The ITUC alleges that these declarations are open to arbitrary interpretation and could trigger de-registration proceedings. The Committee notes that the HKSAR Government confirms that these declarations are required and indicates that if a trade union contravenes the relevant laws or its own rules, the*

Registry of Trade Unions (RTU) will follow up accordingly. Depending on the circumstances, the RTU may give verbal advice or issue inquiry/advisory/warning letters to the trade union concerned, and/or refer the case to relevant law enforcement agencies. In case of serious non-compliance, the RTU may cancel the trade union's registration.

272. *The Committee further notes the allegations of the ITUC concerning the measures taken by the Registry of Trade Unions (RTU) against independent unions between December 2021 and August 2022, namely the communication of letters of inquiry and sending of warning letters to three and nine unions respectively. The ITUC alleges that these measures targeted activities such as speeches and commentaries criticizing anti-COVID measures and NSL legislation; commemoration of 4 June; solidarity campaigns calling for release of imprisoned unionists and, foreign liaison of the targeted organizations. The unions were accused of violating sections of the TUO prohibiting activities outside their stated objectives and use of union funding on political activities. The ITUC states that both accusations can lead to de-registration of the organizations concerned. The Committee notes that the HKSAR Government provides information concerning the three organizations that had allegedly received the RTU letters of inquiry: (1) the RTU cancelled the registration of the Hong Kong White Collar (Administration & Clerical) Connect Union (HKWCCU), considering that the organization was used for purposes inconsistent with its objects or rules; (2) the Hong Kong Financial Industry Employees General Union decided in full autonomy to dissolve itself and, (3) the RTU made inquiries concerning the activities of the Hong Kong Journalists' Association (HKJA) which were suspected to be inconsistent with its objects or rules. The HKSAR Government further indicates that that the RTU considered the HKJA's replies and relevant facts before taking follow-up action without however providing further information concerning the "follow-up actions" taken or envisaged.*

273. *The Committee notes the ITUC allegation concerning the "rapid deterioration of the environment for the free exercise of fundamental rights and civil liberties", especially the right to demonstration in 2023. The ITUC alleges that the police pressured the Hong Kong Women Workers' Association not to hold a demonstration for International Women's Day and that Messrs Joe Wong and Denny To, former HKCTU members, were questioned after notifying their intention to hold a May Day rally. The complainant alleges that on 26 April, Mr Wong disappeared during a few hours, after which the cancellation of the rally was announced. The complainant finally refers to heavy police presence on the days of 4 June and 1 July preceded by warnings against gatherings for commemoration on both days. The Committee notes the HKSAR Government's reply concerning the International Women's Day and the May Day rallies, indicating that in both cases, the police received notifications from the respective organizers that the public order events would not be held. The police respect the decisions of the organizers.*

274. *Noting the information provided by the complainant and the HKSAR Government the Committee recalls that "for the contribution of trade unions and employers' organizations to be properly useful and credible, they must be able to carry out their activities in a climate of freedom and security. This implies that, in so far as they may consider that they do not have the basic freedom to fulfil their mission directly, trade unions and employers' organizations would be justified in demanding that these freedoms and the right to exercise them be recognized and that these demands be considered as coming within the scope of legitimate trade union activities" [see* ***Compilation****, para. 75]. The Committee therefore expects that the RTU will evaluate the lawfulness of union activities taking into account the organizations' rights stated above, in line with relevant national legislation in force, the principles of freedom of association and its obligations under international law. It further requests the HKSAR Government to provide information on the follow-up actions taken with respect to the HKJA and to communicate a copy of the decision concerning the cancellation of registration of the HKWCCU. The Committee further requests the HKSAR Government to indicate whether the RTU has*

taken any measures concerning the nine organizations that have allegedly received RTU "warning letters".

The Committee's recommendations

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

(a) The Committee firmly urges the HKSAR Government to take all appropriate measures to ensure that Mr Lee Cheuk Yan is not prosecuted and not imprisoned for having exercised legitimate trade union activities and requests the Government to provide information on all measures taken to that end. The Committee urgently requests the HKSAR Government to provide precise information regarding the activities that have entailed Mr Lee's indictment for "incitement to subversion", as well as concerning the developments of the proceedings against him, including the Court's judgment once rendered. It further urges the HKSAR Government to take all possible measures to enable Mr Lee's release pending his next trial and to facilitate a speedy decision of his case.

(b) The Committee urges the HKSAR Government to provide full and detailed information on the outcome of the trial of Ms Carol Ng and Ms Winnie Yu and to transmit a copy of the judgment, which it trusts will be rendered expeditiously.

(c) The Committee requests the HKSAR Government to ensure that no charges are brought against Ms Elizabeth Tang for legitimate trade union activities and to provide detailed information on any judicial measures taken or decisions adopted concerning her.

(d) The Committee once again urges the HKSAR Government, in consultation with the social partners, to monitor and provide information on the impact that the National Security Law has already had and may continue to have on the exercise of freedom of association rights so that the Committee has available to it all necessary information to examine the impact of this legislation in practice.

(e) The Committee expects that the Hong Kong Registry of Trade Unions (RTU) will evaluate the lawfulness of union activities taking into account the organizations' right to demand the basic freedoms to exercise their activities in line with relevant national legislation in force, the principles of freedom of association and its obligations under international law. The Committee requests the HKSAR Government to provide information on the follow-up actions taken with respect to the Hong Kong Journalists' Association, and to communicate a copy of the decision concerning the cancellation of registration of the Hong Kong White Collar (Administration and Clerical) Connect Union. The Committee further requests the HKSAR Government to indicate whether the RTU has taken any measures concerning the nine organizations that have allegedly received "warning letters".

Case No. 3027

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

Complaint against the Government of Colombia presented by
– the General Confederation of Labour (CGT) and
– the Pricol Alimentos SA Workers' Union (SINTRAPRICOL)

Allegations: The complainant organizations allege that the liquidation of a food manufacturing company had the effect of destroying the trade union SINTRAPRICOL and of eradicating the trade union presence in the Facatativá production plant, owned by the Polar corporate group

276. The Committee examined this case at its October 2015 meeting [see 376th Report, paras 276– 300]. [15]

277. The complainants submitted additional information in communications dated June and October 2016, February 2018, 12 June 2019 and 5 September 2023.

278. The Government sent its observations in communications dated December 2017, 16 November 2017, 28 February 2019, 26 May 2023 and 4 January 2024.

279. 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), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

280. At its March 2015 meeting, the Committee made the following interim recommendations on the allegations submitted by the complainants [see 376th Report, para. 300]:

(a) The Committee requests the Government to take the necessary measures to ensure that, in future, the liquidation of companies involves consultations and negotiations with the relevant trade unions.

(b) The Committee requests the Government to: (i) conduct, in a short space of time, an exhaustive investigation into the possibility that the company's dismissal of its unionized workers, concomitant with its liquidation, was an anti-union act; and (ii) to inform it, soon, of the results of this investigation and, if acts of anti-union discrimination are identified, to punish these effectively and compensate the workers appropriately.

(c) The Committee additionally requests the Government to keep it informed of progress in legal proceedings related to this case.

[15] Link to previous examination.

B. The complainants' new allegations

281. In their various communications, the complainants refer to the implementation of the recommendations made by the Committee when it first examined the case. With regard to recommendation (a) on taking measures to ensure that, in future, the liquidation of companies involves consultations and negotiations with the relevant trade unions, the complainants allege that this recommendation has not been implemented, as the Government has not sought conciliation with the parties with a view to finding a peaceful solution to the dispute.

282. With regard to recommendation (b) in which the Committee requested the Government to conduct, in a short space of time, an exhaustive investigation into the possibility that the dismissal by the company Pricol Alimentos SA (hereinafter "the company") of its unionized workers, concomitant with its liquidation, was an anti-union act, the complainants indicate that the Ministry of Labour through the Territorial Directorate of Cundinamarca conducted an administrative labour investigation commissioned by Order No. 000006 of 12 February 2016. They claim, however, that notwithstanding the fact that in 2010 the decisions of the Ministry of Labour concerning the liquidation of the company did not involve investigations into the existence of acts infringing freedom of association, the Ministry argued that it could not conduct an exhaustive investigation into the alleged anti-union dismissals because of the *non bis in idem* principle and the statute of limitations.

283. The complainants state that, notwithstanding the above, the investigation proved that: (i) the company was closed and liquidated in December 2009 without the labour administration's authorization to close as required by Colombian law; (ii) although proceedings for judicial authorization for the dismissal of the company's workers who enjoyed trade union immunity were initiated, the workers were dismissed in December 2009 without the necessary judicial authorization, which constitutes an act of anti-union discrimination; (iii) the brands, patents and products previously manufactured by the company are now produced by the corporate group in the same plant and with the same equipment that was used by the liquidated company; (iv) five non-unionized employees of the company joined the corporate group to perform the same tasks in the plant, and had their seniority and acquired rights recognized (employer substitution), while no unionized employees of the company were given this opportunity; and (v) none of the 108 workers who process oats in the plant, an activity of the defunct company continued by the corporate group, are unionized, nor are any of the plant's 476 current employees.

284. The complainants claim that the above demonstrates the anti-union conduct of those who decided to close and liquidate the company, transferring all production and some employees to the corporate group. Stating that the company no longer exists after its illegal liquidation, the complainants claim that the corporate group, which continued the company's production in its Facatativá plant, is responsible for restoring the rights of the workers who are members of SINTRAPRICOL (hereafter the union).

285. In relation to the Ministry of Labour's decision of 2010 denying that the company and the corporate group formed a single business entity, the complainants state that: (i) the Ministry wrongly considered that a single business entity could not be declared if one of the two companies had already been liquidated; and (ii) it therefore did not take into consideration the illegal nature of the liquidation that took place without the administrative authorization required by law or the fact that the corporate group took over the company's equipment and products, effectively merging the two structures.

286. In relation to the Ministry of Labour's decision, in 2016, to close the investigation into the alleged anti-union acts, launched earlier that year, because the events were time-barred, the

complainants allege that there is still a violation of freedom of association, as there is still no judicial authorization for the dismissal of the company's workers who enjoyed trade union immunity and because members of the union continue to be excluded from the production processes at the Facatativá plant, which are now carried out by non-unionized workers.

287. The complainants lastly state that the anti-union policy of the company, which was supposedly liquidated in 2009, is still evident in its actions to put an end to the legal existence of the union before the courts, as it opposed the 2016 determination of the High Court of Cali in this regard.

C. The Government's reply

288. In its various communications, the Government provides information on the three recommendations made by the Committee when it first examined the case. With regard to recommendation (a), the Government states that: (i) as the consultations and negotiations referred to in the recommendation do not apply to the facts of the present case but to future cases of liquidation, it was not for the Government to bring the trade union and the company together to enter into negotiations or seek conciliation; and (ii) it complied with this recommendation by forwarding it, in File No. 245356 of 22 December 2015, to the Inspection, Oversight, Control and Territorial Management Directorate of the Ministry of Labour, which is responsible for guiding, coordinating and directing the plans for prevention and oversight in labour legislation.

289. With regard to the Committee's request for the Ministry of Labour to conduct an exhaustive investigation into the possibility that the company's dismissal of its unionized workers was an anti-union act, the Government states that on 26 February 2016, the Group on Prevention, Inspection, Oversight and Control – Dispute Settlement and Conciliations of the Territorial Directorate of Cundinamarca ordered a preliminary investigation to be conducted at the company (Facatativá plant) on 8 March 2016, including a general visit, as well as the verification of the following three points: (i) whether the productive activities undertaken by the company prior to its liquidation continued at the Facatativá plant; (ii) whether these activities were transferred to other establishments owned by the corporate group under which the company operated; and (iii) whether non-unionized company workers were maintained in employment by companies forming part of the corporate group The Government indicates that the above-mentioned visit took place and that the president of the union and a representative of the corporate group were interviewed on 26 March 2016, as well as several witnesses identified by the trade union during the month of April.

290. The Government also reports that on 14 September 2016, the Territorial Directorate of Cundinamarca decided to shelve the preliminary investigation and that this decision gave rise to a motion to set it aside and an appeal by the General Confederation of Labour (CGT), which were rejected on 23 November 2016 and 29 June 2017, respectively.

291. In its communication of 16 November 2017, the Government provides details on the content of the preliminary investigation and the decision to shelve the case. The Government points out that: (i) the decision to shelve the case, based on section 52 of Act No. 1437 of 2011, is a result of the statute of limitations, as the events under examination occurred more than three years before the initiation of the investigation, making it impossible to initiate administrative proceedings to impose penalties; (ii) the Ministry of Labour is thus complying with the rules of due process, as enshrined in the Constitution; and (iii) notwithstanding the above, in accordance with section 486 of the Substantive Labour Code, the courts may examine any issues involving termination of employment contracts, reinstatement and payment of wages that may arise.

292. In its communication, the Government includes the text of the decision of 14 September 2016 of the Territorial Directorate of Cundinamarca of the Ministry of Labour to shelve the preliminary investigation, which contains a detailed description of the findings of the labour inspectorate during its investigation, as well as the texts of the decisions rejecting the appeals filed by the CGT in response to the shelving.

293. The above-mentioned decision of 14 March 2016 of the Territorial Directorate of Cundinamarca describes the findings of the preliminary investigation, which took into consideration the three points that were highlighted in the Committee's conclusions. It states that: (i) the corporate group continues to operate in the Facatativá plant where the company operated; (ii) according to interviewed representatives of the corporate group, there has never been a trade union in the group, but there has been a collective accord (which, under Colombian legislation, is an agreement with non-unionized workers) for approximately 19 years; (iii) with respect to the relationship between the company and the group, the representatives stated that the company operated independently but that the group managed the company under a service contract; (iv) the company experienced economic difficulties that led to its liquidation and the termination of the service contract; (v) the company's activities, particularly oat production, resumed at the plant following its liquidation and were not transferred to any other company; (vi) five or six non-unionized employees of the company continued to work in the corporate group because of their excellent performance; (vii) there was no need to hire unionized workers, as the positions in which workers were transferred were of an administrative nature; (viii) according to two employees of the group who are members of the collective accord committee, roughly 25 people in the plant previously worked for the company; (ix) another representative of the corporate group interviewed below specified that the group leased the land where the Facatativá plant is located to the company and that the group provided the company with administrative and logistical support, as well as support in oat production, under a service contract; (x) the liquidation of the company was solely due to economic reasons that were unrelated to trade union issues; and (xi) between 2007 and 2009, with the agreement of the workers concerned, several employment contracts were transferred from the company to the corporate group, but this did not constitute employer substitution.

294. The Territorial Directorate considered that the above demonstrated that: (i) the company applied to the courts for permission to dismiss the workers who had trade union immunity; however, the decision to liquidate the company and the unilateral termination of the employment contracts took place prior to the court's decision, which is why the union representative opposed the granting of authorization; (ii) the company and the corporate group concluded a service contract, under which the group provided the company with administrative and logistical support while the company sold its products to the group; (iii) the group continues to produce oats at the plant that were previously produced by the liquidated company; this production was not transferred to any other company; (iv) some non-unionized employees of the company were transferred to the group because of their excellent performance; and (v) there was no need to hire unionized workers, as the positions in which workers were transferred were of an administrative nature.

295. The decisions rejecting the administrative appeals filed by the CGT against the decision to shelve the case state that: (i) following the liquidation of the company, the applications for judicial authorization of the union officials' immunity were turned down due to the lack of respondent, as requested by the workers themselves; (ii) for the same reason (the liquidation), the labour administration did not consider that the company and the corporate group formed a single business entity; (iii) the labour administration notes that, at the time of liquidation, the company's shareholders were paid through the transfer of brands, such as the one for its oat

production, which indicates that there was no employer succession from the company to the corporate group; (iv) between 2007 and 2009, several employment contracts were transferred from the company to the corporate group with the consent of the workers concerned, with the agreement stating that "the parties declare that this agreement does not constitute employer substitution; however, as there is no break in service, the employment contract shall continue to be considered a single contract and the worker's initial seniority shall be respected"; and (v) it is clear from all of the above that the events under investigation occurred between 2008 and 2010 and are thus time-barred under the law.

296. In its communications of 16 November 2017 and February 2019, the Government refers to the observations of the company, which states that: (i) it fully cooperated with the preliminary investigation conducted by the Ministry of Labour; (ii) the decision to shelve the preliminary investigation was due not only to the application of the *non bis in idem* principle in relation to the 2010 decision of the labour administration on the absence of a single business entity, but also to the absence of any finding of anti-union conduct in the company's liquidation process; and (iii) the right to due process, which is protected by the *non bis in idem* principle, is a fundamental right protected by the Constitution.

297. In its various communications, particularly those dated 26 May 2023 and 4 January 2024, the Government provides information on the outcome of various judicial proceedings relating to the facts of the present case, sending the texts of several cassation judgments as annexes. The Government points out that: (i) in seven ordinary labour proceedings initiated by former employees of the company against the company and/or the corporate group with a view to their reinstatement, the claims of the workers were rejected at first instance in six of the seven proceedings, and at second instance and at cassation in all the proceedings; (ii) the request to dissolve the union submitted by the company, while accepted at first instance, was rejected on 5 April 2017 by the Labour Chamber of the High Court of Cali, which found that the plea of lack of cause to bring an action was proven; and (iii) final judgments were handed down in all the aforementioned cases.

D. The Committee's conclusions

298. *The Committee recalls that the present case concerns the liquidation and closure in December 2009 of a company in the agri-food sector operating in a plant located in the city of Facatativá and the complainants' allegation that the purpose of the liquidation was to put an end to the trade union presence in the plant, which continued to be used by a group in the sector linked to the company. When it first examined the case, the Committee found that the closure of the company had taken place without prior consultation of the trade union, without authorization from the labour administration, and that the dismissals of 14 employees of the company with trade union immunity had taken place without judicial authorization. After recalling the importance of the liquidation and closure of companies being preceded by consultations and negotiations with the relevant trade unions, the Committee requested the Government to conduct an exhaustive examination into the allegation that the company's dismissal of its unionized workers was an anti-union act, and to inform it of the legal proceedings under way.*

299. *With regard to its recommendation (a), the Committee recalls and clarifies that it recommended that the Government take measures to ensure that, in future, the liquidation of companies involves prior consultations and negotiations with the relevant trade unions. The Committee notes the Government's indication that the recommendation was forwarded, in File No. 245356 of 22 December 2015, to the Inspection, Oversight, Control and Territorial Management Directorate of the Ministry of Labour, which is responsible for guiding, coordinating and directing the plans for*

prevention and oversight in labour legislation. The Committee hopes that the forwarding of this communication will suffice to ensure lasting compliance with this recommendation.

300. *With regard to its recommendation (b) requesting the Government to conduct, in a short space of time, an exhaustive investigation into the possibility that the company's dismissal of its unionized workers, concomitant with its liquidation, was an anti-union act, the Committee notes that the Government, the company and the complainants agree that: (i) the labour inspectorate conducted a preliminary investigation at the Facatativá plant in March 2016; (ii) the preliminary investigation was able to collect information on several points, particularly those specifically highlighted in the Committee's conclusions (whether the productive activities carried out by the company prior to its liquidation continued at the Facatativá plant, whether these activities were transferred to other establishments owned by the corporate group under which the company operated and whether non-unionized company workers were maintained in employment by companies forming part of the corporate group); (iii) on 14 March 2016, the inspectorate decided to shelve the case on the grounds that: on the one hand, the labour administration had already determined in 2010 that a single business entity could not be formed by a company that had already been liquidated and the corporate group, and that, in this respect, the* non bis in idem *principle should be respected; and on the other hand, administrative proceedings to impose penalties could not be initiated because the events under investigation dated back to 2008 and 2009 and were therefore time-barred in accordance with Act No. 1437 of 2011; and (iv) the administrative appeals filed by the CGT against the decision to shelve the case were rejected.*

301. *The Committee notes that the complainants disagree with the decision to close the case. The complainants allege in this regard that the labour administration did not take into consideration: (i) the fact that in 2010, the Ministry of Labour did not investigate the existence of acts infringing freedom of association; (ii) the illegal nature of the closure of the enterprise, which was carried out without the administrative authorization required by law; (iii) the information gathered by the labour inspectorate during the preliminary investigation that demonstrates the anti-union nature of the liquidation and closure of the company, the activities of which continued at the Facatativá plant by the corporate group using non-unionized workers; and (iv) the ongoing violation of the freedom of association of the workers who were unfairly dismissed in December 2009.*

302. *The Committee also notes the company's reply, forwarded by the Government, in which it states that the decision of the labour administration to shelve the preliminary investigation was based not only on the application of the* non bis in idem *principle (in relation to the 2010 decision of the labour administration on the absence of a single business entity) but also on the absence of any finding of anti-union conduct in the company's liquidation process.*

303. *The Committee lastly notes the information provided by the Government concerning the outcome of various judicial proceedings relating to the facts of the present case. The Government points out that: (i) in seven ordinary labour proceedings initiated by former employees of the company against the company and/or the corporate group with a view their reinstatement, the claims of the workers were rejected at first instance in six of the seven proceedings, and at second instance and at cassation in all the proceedings; and (ii) the request to dissolve the union submitted by the company, while accepted at first instance, was rejected on 5 April 2017 by the Labour Chamber of the High Court of Cali.*

304. *The Committee takes due note of the administrative and judicial decisions adopted since its previous examination of the case, as well as the texts of those decisions, which were provided by the Government. With regard to the action taken by the labour administration since its previous examination of the case, the Committee notes that the preliminary investigation conducted at the Facatativá plant in March 2016 revealed that: (i) prior to the liquidation, the company and the*

corporate group signed a lease and a service contract, under which the group provided the company with administrative and logistical support while the company sold its products to the group; (ii) the group continues to produce oats at the plant that were previously produced by the liquidated company; this production was not transferred to another plant; (iii) between 2007 and 2009, the contracts of some non-unionized workers were transferred from the company to the corporate group with the consent of the workers concerned, with the agreement stating that "the parties declare that this agreement does not constitute employer substitution; however, as there is no break in service, the employment contract shall continue to be considered a single contract and the worker's initial seniority shall be respected"; (iv) there was no need to hire unionized workers, as administrative positions were moved; and (v) according to interviewed representatives of the corporate group, there has never been a trade union in the group, but there is a collective agreement (under Colombian legislation, a collective agreement is an agreement between an employer and a group of non-unionized workers).

305. *With regard to the various judgments of the Labour Chamber of the Supreme Court, annexed by the Government, which rejected, in final judgments, the applications – to the liquidated company, to its procedural successors and to the corporate group – for the reinstatement of several employees of the company who were dismissed when the company was liquidated, the Committee notes that these judgments show that: (i) while the unjustified nature of the dismissal of several of the applicants was recognized due to the absence of administrative authorization prior to the closure of the company, their right to reinstatement in the corporate group was not recognized on the grounds that the company and the corporate group did not constitute a single business entity within the meaning of section 194 of the Substantive Labour Code; (ii) in this respect, although a number of direct and indirect links, both operational (a lease and a service contract prior to the liquidation; transfer of brands and production equipment after the liquidation) and corporate (particularly the fact that, six months after the liquidation, the main shareholder of the liquidated company acquired 40 per cent of the group's shares), were found to exist between the two entities, there was no evidence of economic predominance of one entity over the other (control of more than 50 per cent of the capital according to case law), which is the main criterion for a single business entity according to section 194 of the Substantive Labour Code; and (iii) for procedural reasons specific to the appeal on a point of law, the Supreme Court did not rule on the absence of judicial authorization prior to the dismissal of the workers who had trade union immunity, as the High Court had not ruled on the matter either, an omission that the applicants would have had to challenge before the High Court itself and not by means of an appeal on a point of law.*

306. *The Committee takes note of the content of these administrative and judicial decisions, particularly the fact that these bodies found that the criteria of the legal categories established by the Substantive Labour Code, which would have entailed the transfer of the company's employment contracts to the group after the liquidation of the company, had not been met. The Committee also notes with regret that, despite the recommendation it made when it first examined the case and the preliminary investigation conducted by the labour administration, the competent bodies did not rule on whether or not the liquidation of the company gave rise to acts aimed at eliminating the trade union presence at the Facatativá plant and, in particular, did not determine whether or not the unionized workers who were dismissed in December 2009 were the object of anti-union discrimination, even though the productive activity that they performed was continued by non-unionized workers.*

307. *The Committee once again recalls in this regard 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 of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1159]. The Committee also recalls, as it did when it first*

*examined the case, that the liquidation of a company and the fact that the legal person under which the company operated has ceased to exist should not be used as a pretext for anti-union discrimination nor should they be an obstacle to the competent authorities determining whether or not there were acts of anti-union discrimination and, if such practices are shown to have taken place, to sanctioning such illegal acts and ensuring that the affected workers are duly compensated [see **Compilation**, para. 1115]. In the light of the above, the Committee requests the Government to examine with the social partners the necessary measures to strengthen the mechanisms for protecting freedom of association in the event of liquidation of companies. The Committee requests the Government to keep it informed in this regard.*

The Committee's recommendation

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

The Committee requests the Government to examine with the social partners the necessary measures to strengthen the mechanisms for protecting freedom of association in the event of liquidation of companies. The Committee requests the Government to keep it informed in this regard.

Case No. 3429

Definitive report

Complaint against the Government of Ecuador presented by
– Public Services International (PSI) and
– the National Confederation of Public Servants of Ecuador (CONASEP)

Allegations: The complainant organizations allege the refusal of the Ministry of Labour to register a trade union and anti-union dismissals carried out by the Office of the President of the Republic

309. The complaint is contained in a communication dated 11 May 2022 presented by Public Services International (PSI) and the National Confederation of Public Servants of Ecuador (CONASEP).

310. The Government of Ecuador sent its comments on the allegations in three communications dated 3 February and 27 April 2023, and 10 January 2024.

311. 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. Allegations of the complainant organizations

312. In their communication of 11 May 2022, the complainants indicate that on 19 September 2020, the Trade Union of Workers of the Office of the President of the Republic of Ecuador (hereafter

the "trade union") was established by 34 workers, and that on 21 September 2020, the accreditation documents for the establishment of the trade union were sent to the Ministry of Labour (hereafter the "Ministry") to start the registration process. However, the complainants allege that they have not received a response from the Ministry, despite the change in Government in May 2021.

313. The complainants report that on 3 September 2021, Mr César Estrella Proaño, the Secretary-General of the trade union, filed an enforcement action for administrative silence against the Ministry and the Public Prosecutor with the District Administrative Court in the Metropolitan District of Quito.

314. The complainants claim that on 28 December 2021, the Office of the President of the Republic, citing restructuring and the introduction of processes for the optimization of human talent, carried out the sudden dismissal of 26 workers, 11 of whom were part of the founding group of the trade union. According to the complainants, while none of the dismissed workers are part of the elected executive board, the purpose of the dismissals is to disable and dissolve the union, the recognition of which currently hangs on the arbitrariness of the Government, as the minimum legal requirement of 30 workers to establish a union is no longer met. The complainants request the recognition and registration of the union, as well as the reinstatement of its 11 dismissed members.

B. The Government's reply

315. In its communication of 3 February 2023, the Government states that, following the change in Government on 24 May 2021, it found over 2,100 applications regarding the establishment of trade union organizations, registration of executive boards, inclusion and exclusion of members, and reforms of union statutes, which had not been duly addressed by the previous authorities. The Government claims, however, that as of the above date, the new administration immediately started to address these applications in chronological order.

316. The Government also indicates that, between 2020 and 2022, it issued a series of executive decrees postponing the deadlines for all administrative procedures under the Ministry, owing to the COVID-19 pandemic and the high contagion rates affecting all the private and public institutions in the country. It states that, in addition to the deferred procedures, there is a high demand regarding applications that are received on a daily basis by the Ministry's Labour Organizations Directorate but that, despite the limited number of public employees available, significant work is being undertaken in order to address the backlog of applications. The Government insists that the delays in responses are not a result of negligent or arbitrary actions of the current administration.

317. With respect to the application of 21 September 2020 in which the trade union requested approval of its statutes and the granting of legal status, the Government indicates that on 24 September 2020, the Labour Inspectorate of Pichincha erroneously identified the employer concerned in the registration process. It reports that this error was redressed through a memorandum issued on 2 February 2022 but that legal proceedings were under way regarding the application in question, as a result of the action filed by the trade union.

318. In its communications of 27 April 2023 and 10 January 2024, the Government indicates that, in a ruling of 11 November 2022, the District Administrative Court in the Metropolitan District of Quito ordered the registration of the union. The Government reports that the Ministry submitted an application for clarification and expansion of the ruling, alleging that the order could not be carried out as it violated the legislation since the material requirements for the establishment of a trade union organization had not been met, and that this application was

rejected by the above court in a decision of 19 January 2023. It reports that the Ministry applied for judicial review of this decision, and that the District Administrative Court in the Metropolitan District of Quito dismissed that application on 14 April 2023.

319. The Government indicates that the Ministry complied with the above court decisions as it provided registration of the trade union's statutes and granted it legal status on 21 November 2023, registering the list of its 39 founding members. It also reports that the Ministry registered the executive board of the trade union on 2 January 2024.

320. With regard to the alleged anti-union dismissals, the Government states that no complaint for anti-union dismissal has been submitted against the Office of the President of the Republic, nor any other type of complaint by the workers who were dismissed on 28 December 2021.

C. The Committee's conclusions

321. *The Committee notes that, in the present case, the complainants allege the refusal of the Ministry of Labour to register the Trade Union of Workers of the Office of the President of the Republic of Ecuador, as well as the anti-union dismissals of 11 workers who were part of the founding group of the above trade union by the Office of the President of the Republic of Ecuador. The Committee also notes that the Government provides information on the administrative and judicial procedures that resulted in the registration of the trade union on 21 November 2023 and also denies that the above-mentioned dismissals were of an anti-union nature.*

322. *The Committee notes that, according to the complainants: (i) on 19 September 2020, 34 workers of the Office of the President of the Republic established the trade union; (ii) on 21 September 2020, the accreditation documents for the establishment of the trade union were sent to the Ministry to start the registration process; (iii) on 3 September 2021, as it had not received a response from the Ministry, the trade union filed an enforcement action for administrative silence with the District Administrative Court in the Metropolitan District of Quito; (iv) on 28 December 2021, the Office of the President of the Republic dismissed 26 workers, 11 of whom were founding members of the trade union, citing restructuring in order to optimize human talent; and (v) the purpose of these dismissals is to disable and dissolve the union, as they prevent it from meeting the minimum legal requirement of 30 workers to establish a trade union.*

323. *With regard to the alleged refusal to register the trade union, the Committee notes that the Government states that: (i) in recent years, there have been delays in the processing of administrative applications by the Ministry, owing to the COVID-19 pandemic, the high number of applications and the lack of personnel; (ii) these delays are not related to any negligent or arbitrary action of the new Government, which took up office in May 2021 and immediately started to process the backlog of applications; (iii) during the trade union registration process, the Labour Inspectorate of Pichincha erroneously identified the employer in September 2020, and this error was rectified in February 2022 when the application had already been brought before the courts; (iv) in a decision of 11 November 2022, the District Administrative Court in the Metropolitan District of Quito ordered the registration of the trade union; (v) the Ministry submitted an application for clarification and expansion of the ruling, given that the order could not be carried out as it did not meet the material requirements for the establishment of a trade union organization, and the above-mentioned court rejected the application on 19 January 2023; (vi) the Ministry submitted an application for judicial review, which was dismissed by the same court on 14 April 2023, and (vii) the Ministry registered the trade union on 21 November 2023 and its executive board on 2 January 2024.*

324. *While noting the Government's indication that several factors, including the COVID-19 pandemic, the lack of resources of the Ministry and an error of the Labour Inspectorate, contributed to the delays in the treatment of the application for registration of the trade union, and that the Ministry*

subsequently submitted an appeal against a court order for registration issued on 11 November 2022, considering that the order could not be carried out as it violated the legislation since the material requirements for the establishment of a trade union organization had not been met, the Committee recalls that 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 [see ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 463]. It also recalls that the formalities prescribed by law for the establishment of a trade union should not be applied in such a manner as to delay or prevent the establishment of trade union organizations, and that any delay caused by authorities in registering a trade union constitutes an infringement of Article 2 of Convention No. 87 [see* ***Compilation****, para. 427]. Taking due note of the Government's indication that the trade union was finally registered on 21 November 2023, the Committee expects that the above-mentioned criteria will be duly taken into account in the future.*

325. *The Committee also notes that: (i) according to the complainants, the trade union failed to meet the requirement of 30 workers to be legally established after the dismissal of 11 of its members on 28 December 2021; and (ii) the Government invoked the failure to comply with material requirements in its appeal against the court order for registration of 11 November 2022. In this respect, the Committee recalls that it has already had the opportunity to indicate, in other cases related to Ecuador [see 371st Report, Case No. 2928, March 2014, para. 316], that the minimum number of 30 workers required to establish a trade union laid down in the Labour Code should be reduced. Recalling also the repeated requests of the Committee of Experts on the Application of Conventions and Recommendations in this regard, the Committee once again requests the Government to take the necessary measures, in consultation with the social partners, to amend the provisions of the Labour Code that lay down this requirement and to ensure that workers are protected against any act of anti-union discrimination.*

326. *With respect to the allegations of anti-union dismissals, the Committee notes that the complainants allege that the dismissals were carried out to prevent the trade union from having the sufficient number of members to be registered. In this regard, it 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 further notes that the Government states that the workers who were dismissed on 28 December 2021 have not submitted any type of complaint against their dismissals. Noting that the complainants do not refer to any type of appeal filed to question the validity of the above-mentioned dismissals, nor to grounds or circumstances which may have prevented the submission of such actions, the Committee will not pursue the examination of this allegation.*

The Committee's recommendations

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

(a) The Committee expects that the criteria concerning the registration procedure for trade unions referred to in the conclusions will be duly taken into account in the future.

(b) The Committee once again requests the Government to take the necessary measures, in consultation with the social partners, to amend the provisions of the Labour Code that require a minimum of 30 workers to establish a trade union and to ensure that workers are protected against any act of anti-union discrimination.

(c) The Committee requests the Government to ensure that where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention.

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

Case No. 3447

Definitive report

Complaint against the Government of Spain presented by the Association for the Defence of the Professional Rights of Registrars in the Administration of Justice (RECLAMALAJ)

Allegations: The complainant organization alleges violations of the right to collective bargaining and the right to strike of registrars in the administration of justice

328. The complaint is contained in communications dated 29 May and 4 July 2023 submitted by the Association for the Defence of the Professional Rights of Registrars in the Administration of Justice (RECLAMALAJ).

329. The Government sent its observations in a communication dated 10 October 2023.

330. Spain 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

331. In its communications of 29 May and 4 July 2023, the complainant organization alleges violations of ILO Conventions Nos 87, 98, 151 and 154 with regard to the collective bargaining, right to strike and wage adjustment of registrars in the administration of justice. To provide some context for its allegations, the organization indicates that the Spanish administration of justice consists of various bodies of officials: judges and magistrates, prosecutors, state lawyers and registrars in the administration of justice (all of whom have legal training), as well as other general bodies, which include administrators, case managers and assistants (staff with training that is not necessarily legal). The organization reports that, historically, the role of a registrar in the administration of justice ("*Letrado de la Administración de Justicia*", formerly known as "*secretario judicial*") was not clearly distinguishable from that of general staff; it was that of an official in the judicial office who, under the authority of the judge, was responsible for the authenticity of public acts, statistics and the control of the public accounts and registers, which could be delegated to the administrators of the office. Registrars in the administration of justice were thus included with general staff for collective bargaining purposes. The

organization then states that, as a result of various reforms to Spanish legislation, registrars in the administration of justice have been given specific, non-delegable and exclusive duties, as well as their own system of access, superior bodies and disciplinary system. It points out that these reforms have led to a distinction within the judicial office between registrars in the administration of justice and general staff (administrators, case managers and judicial assistants), making registrars in the administration of justice responsible for the supervision and technical and procedural management of this staff.

Collective bargaining

332. The complainant organization begins by alleging a violation of the right to collective bargaining of registrars in the administration of justice. It states, in this regard, that the organizations for this group do not have their own trade union representation, as few officials fall into this category and, therefore, cannot engage in collective bargaining on matters that are specific and exclusive to them.

333. The organization explains that, according to sections 31 to 36 of the Basic Statutes for Public Employees (EBEP), [16] the representative bodies of the officials are the staff representatives (in electoral units with less than 50 officials) and staff boards (in units with at least 50 officials). Referring to the various legal provisions governing collective bargaining in the administration of justice, the complainant organization points out that, under section 444.1 of Organic Act No. 6/1985 on the judiciary, [17] registrars in the administration of justice "shall have the same individual and collective rights and duties as those established in Book VI [of the Act], supplementing the provisions of the Basic Statutes for Public Employees and the other state regulations on the public service" and that section 496(e) of the Act adds that "the appropriate frameworks shall be established to allow broader and increased participation by the representatives of officials in the administration of justice, through working groups, roundtables or any other forum for dialogue and negotiation". In this regard, the complainant organization refers to the requirements of representativeness for collective bargaining provided for in sections 30 and 31 of Act No. 7/1990 on collective bargaining and participation in the determination of working conditions of public employees, [18] section 36.1 of EBEP and sections 6 and 7 of Organic Act No. 11/1985 on freedom of association. [19] In particular, it points out that, under these provisions, the most representative trade union organizations at the state and autonomous community level have the right to take part in bargaining tables, as well as any trade unions that have obtained at least 10 per cent of the representatives in the elections for staff representatives and staff boards in the electoral units included in the specific scope of each bargaining table.

334. The complainant organization alleges that the current interpretation of the criteria of representativeness effectively deprives registrars in the administration of justice of the right to collective bargaining.

335. The complainant organization explains that, currently, collective bargaining in the sector occurs at the sectoral bargaining table for staff in the administration of justice, which includes both registrars in the administration of justice (of whom there are few) and other staff in the

[16] Basic Statutes for Public Employees (EBEP).

[17] Organic Act No. 6/1985 on the judiciary.

[18] Act No. 7/1990 on collective bargaining and participation in the determination of the working conditions of public employees.

[19] Organic Act No. 11/1985 on freedom of association.

judicial office (who are their subordinates and of whom there are many). In this regard, it specifies that registrars in the administration of justice account for only 7.08 per cent of all officials in the administration of justice. According to the complainant organization, it is therefore the general unions, whose members are primarily administrators, case managers and judicial assistants, who are tasked with engaging in collective bargaining and safeguarding the professional interests of registrars in the administration of justice.

336. The organization alleges that this clearly renders registrars in the administration of justice defenceless: since they cannot have their own union representation because there are so few of them, they cannot engage in collective bargaining on matters that are specific and exclusive to them. It also alleges that there is a conflict of interest insofar as, on the one hand, registrars in the administration of justice are the directors of the judicial office and give instructions to the officials who report to them and, on the other hand, it is these officials, who are their subordinates, who represent registrars in the administration of justice and negotiate, for their hierarchical superiors, improvements to work that they are unfamiliar with, do not control or in which they have conflicting interests. The complainant organization adds that "the general unions have negotiated nothing at all in relation to the working conditions and development of duties of registrars in the administration of justice and have even contested the few wage increases obtained by the registrars, on the official pretext that they were not involved the so-called sectoral table". The organization also states that "the current situation, whereby the staff managed by [registrars in the administration of justice], namely the administrators, case managers and assistants in the general unions, are responsible [for negotiating working conditions] cannot continue. These unions have zero interest in the fate of judicial registrars, quite the contrary. They contest and sabotage any improvement in working conditions, no matter how small, that has been secured by registrars in the past 30 years".

337. The complainant organization also refers to the right to take part in "general bargaining tables" (to negotiate all matters and working conditions that apply to all officials, statutory and ordinary staff of each public administration). It indicates that, under section 36.3 of EBEP, one must obtain 10 per cent in the elections for the representatives of officials and ordinary staff. The organization alleges that the interpretation of this section under case law, which requires that the quota of 10 per cent be reached separately for officials and for ordinary staff, instead of 10 per cent for all staff, undermines the right to collective bargaining and that officials are under-represented.

338. The organization also indicates that there is a difference in organizational dependence between registrars in the administration of justice and general staff. While registrars in the administration of justice belong to the State Administration (Ministry of Justice), administrators, case managers and judicial assistants depend on the various autonomous administrations in the autonomous communities where the management of the competencies in the administration of justice has been transferred in terms of staff and material resources. The complainant organization refers, in this regard, to certain court decisions and arbitration proceedings that have considered excluding registrars in the administration of justice from the electoral list for the union elections in several autonomous communities, on grounds that they could not be properly represented because they do not depend on that administration, but on the Ministry of Justice.

339. In view of the foregoing, the complainant organization alleges the violation of Conventions Nos 98, 151, and 154. In this regard, it requests the recognition of a collective bargaining framework that is specifically and exclusively for registrars in the administration of justice.

340. The complainant organization also reports that on 24 January 2023, the registrars in the administration of justice began an indefinite strike with a view to securing their own collective bargaining agreement.

Right to strike

341. The complainant organization then provides a summary of events related to the organization of strikes by the registrars in the administration of justice. According to this information, they began a strike in early 2022, after which the Ministry of Justice published, in April 2022, a communique in which it undertook to link, proportionally, the remuneration of registrars in the administration of justice to that of judicial professions (judges and magistrates). The complainant organization states that on 24 January 2023, the registrars began an indefinite strike due to the failure of the Ministry of Justice to honour the commitments that it had made to them in April 2022 and with a view to securing their own collective bargaining agreement.

342. The complainant organization indicates that, in response to this strike, the Secretary-General of the Administration of Justice established, by Instruction No. 1/2023, that: (1) as of the entry into force of the strike, all pending leave and holidays for 2023 for registrars in the administration of justice can only be enjoyed on days when there are no reports (that is, acts that must be authenticated by a registrar, such as assistance with entries and registration or the removal of corpses), thus preventing officials from having full weeks of rest; and (2) a colleague from the judicial district who is not on strike must be designated to cover the holidays, which the complainant organization alleges is a direct attack on the free exercise of the right to strike, given that employees have no individual obligation to give prior notice of the days on which they are going to exercise their right to strike, once the strike committee has legally called the strike and given prior notice. The organization reports that an administrative appeal was filed against this Instruction on the grounds that it violated the fundamental right to strike.

343. The complainant organization requests that the indefinite strike of registrars in the administration of justice be authorized, and that leave, substitutions and holidays be guaranteed in accordance with the exercise of the right to strike, and without any cover, as this would entail a violation of the right to strike.

344. The organization points out in its additional information that on 28 March 2023, the strike committee and the State Administration signed an agreement to put an end to the strike of the registrars in the administration of justice. In this regard, the complainant organization attaches a note dated 20 June 2023, in which it states that the Government has failed to comply with the content of the agreement by paralysing, for no objective reason, the formalities for the reform of the system of remuneration for registrars in the administration of justice.

Wage adjustment

345. The complainant organization alleges that, although registrars in the administration of justice have taken on many procedural duties as a result of various legislative reforms, these have not been remunerated. The organization refers to several legislative provisions adopted to modify the systems of remuneration for registrars in the administration of justice and to bring them into line with those of judicial professions. It also provides a breakdown of remuneration levels according to the category of officials, indicating that, at present, the wages of judges exceed those of registrars in the administration of justice by more than 30 per cent (with registrars in the administration of justice and judges in category “A1”), while the wages of administrators,

who are managed by registrars in the administration of justice and belong to group "A2", and the wages of registrars in the administration of justice differ by less than 5 per cent, at most.

346. The complainant organization requests recognition of a legitimate salary adjustment for registrars in the administration of justice, and fulfilment of the commitments made in April 2022, linking the remuneration of registrars in the administration of justice to the remuneration of judicial and prosecutorial professions.

B. The Government's reply

347. In its communication of 10 October 2023, the Government submitted its observations. The Government begins by emphasizing that the problems put forward by the complainant association correspond to the arguments put forward by the main associations of registrars in the administration of justice in the early stages of the indefinite strike called by them on 24 January 2023, and that the complaint was based on incorrect analyses and conclusions.

348. The Government also draws attention to the signing of the agreement of 28 March 2023 between the State Administration and the strike committee of the registrars in the administration of justice. The Government states, in this respect, that the complaint presented should be considered resolved by the events that led the registrars to call off their strike following the agreement of 28 March 2023.

Collective bargaining

349. The Government states that, under sections 444.1 and 496(e), Organic Act No. 6/1985 on the judiciary, far from infringing registrars' right to collective bargaining, simply recognizes this right in a generic manner for all officials in the administration of justice.

350. The Government indicates that, in the absence of specific regulations, the right to collective bargaining is exercised through the bodies and systems regulated in EBEP and Organic Act No. 11/1985 on freedom of association. In this regard, the Government refers to section 33.1 of EBEP, according to which collective bargaining for public servants "shall be undertaken through the exercise of representative capacity", and specifies that this capacity is attributed, under the same provision, to "the most representative trade union organizations at state level, the most representative trade union organizations of the autonomous communities, as well as the trade unions that have obtained ten per cent or more of the representatives in the elections for staff representatives and staff boards, in the electoral units included in the specific scope of their constitution". In the light of these texts, the Government points out that the composition of the negotiating tables is based on the outcome of the elections for staff representatives and staff boards.

351. The Government therefore stresses that the trade union representation of registrars in the administration of justice for collective bargaining purposes is ensured by their participation as voters (and candidates) in trade union elections, the outcome of which determines the composition of the various bargaining tables and the representation of trade union organizations at such tables.

352. In this regard, the Government specifies that the fact that the number of officials in the body of registrars in the administration of justice is lower than that of other bodies does not prevent registrars from being duly represented by the trade unions present at the bargaining tables.

353. Moreover, the Government states that it does not see the conflict of interest alleged by the complainant organization, as the technical and procedural management of the judicial office should not prevent the most representative trade union organizations from defending the

interests of registrars and negotiating their working conditions as it does for general staff. The Government also indicates that the situation described is common to any other group of public employees where there is no separate bargaining for staff with management duties.

Right to strike

354. The Government recalls that, as a result of the strike of the registrars in the administration of justice, an agreement was reached with the strike committee on 28 March 2023, which demonstrates that the registrars in the administration of justice can effectively exercise the right to strike. The Government points out that, in this agreement, the signatory associations withdrew their appeal before the administrative dispute court against Instruction No. 1/2023 of the Secretary-General of the Administration of Justice, which established the circumstances in which holidays and leave should be granted during the strike. The Government also points out that this Instruction lost its purpose when the strike was called off.

355. With regard to the commitments made in April 2022 mentioned by the complainant organization, the Government specifies that the Ministry of Justice undertook only to promote regulatory changes in the area of remuneration, which it did within the scope of its powers, which do not extend to the adoption of laws.

Wage adjustment

356. The Government stresses that the agreement of 28 March 2023 contains a commitment to increasing the remuneration of registrars in the administration of justice, and thus the substantive demands have been met.

357. In this regard, the Government refers to the publication of Royal Decree No. 774/2023 of 3 October, which amends Royal Decree No. 1130/2003 of 5 September, regulating the system of remuneration for registrars, and Royal Decree No. 2033/2009 of 30 December, [20] determining the standard posts assigned to registrars for the purposes of the general post allowance, the initial allocation of the specific allowance and the remuneration for substitutions involving the joint performance of another duty, with a view to compliance with the agreement between the State Administration and the strike committee of the registrars in the administration of justice. This text establishes increases in the specific allowance in the remuneration of registrars in the administration of justice.

C. The Committee's conclusions

358. *The Committee notes that in the present case the complainant organization alleges a violation of the right to collective bargaining and the right to strike of registrars in the administration of justice. The Committee notes that the Government provides a response to these issues and claims that the present complaint, based on the arguments put forward by the associations in the early stages of the indefinite strike that began on 24 January 2023, should be considered resolved by the events that led the registrars to call off their strike following the agreement of 28 March 2023.*

Collective bargaining

359. *With regard to the right to collective bargaining, the Committee takes note of the complainant organization's allegations that there is a violation of the right to collective bargaining of registrars in the administration of justice, as there are too few of them to be represented by their own*

[20] Royal Decree No. 774/2023 of 3 October.

organizations in the negotiating bodies. The organization alleges that, as a result, they are represented by general unions which, when negotiating working conditions or work-related improvements, find themselves in a conflict of interest, as the unions primarily consist of administrators, case managers and judicial assistants, who are subordinate to registrars in the administration of justice. It also alleges that, in practice, these unions have acted against the interests of registrars in the administration of justice by contesting any improvements that they have secured to their wages and working conditions. In this respect, the Committee notes that the Government states that: (i) the trade union representation of registrars in the administration of justice for collective bargaining purposes is guaranteed by their participation in trade union elections, the outcome of which determines the composition of the various bargaining tables; (ii) the fact that the number of officials in the body of registrars in the administration of justice is lower than that of other bodies does not prevent registrars from being duly represented by the trade unions present at the bargaining tables; (iii) it does not see a conflict of interests, insofar as the technical and procedural management of the judicial office by the registrars in the administration of justice should not prevent trade union organizations from defending their interests; and (iv) the situation described is common to any other group of public employees where there is no separate bargaining for staff with management duties.

360. *The Committee notes that, according to the complainant organization's allegations and the Government's reply: (i) the Spanish legal system establishes a system of collective bargaining, whereby various bargaining tables are set up at different levels of the public administration; (ii) under the representation criteria established in the legislation, the trade union organizations participating in these tables are required to be considered the most representative at the state or autonomous community level, or to have obtained 10 per cent or more of the representatives in the elections for staff representative and staff boards; (iii) the bargaining tables for staff in the administration include registrars in the administration of justice and general staff in the administration of justice, such as administrators, case managers and assistants of the judicial office, in the same bargaining unit; (iv) as a result of various legal reforms, registrars have taken on new duties in the judicial office, including the technical procedural management of the office and its staff; and (v) registrars in the administration of justice make up a fraction of total staff in the administration of justice and, consequently, it is difficult for their own organizations to meet the criteria of representativeness required to participate directly in collective bargaining tables.*

361. *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. It also recalls that the granting of exclusive rights to the most representative organization should not mean that the existence of other unions to which certain involved workers might wish to belong is prohibited. Minority organizations 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 decision, paras 1360 and 1388]. Moreover, with regard to the criteria of representativeness, the Committee recalls that it has previously considered that a required 10-per-cent representation for a trade union organization to be able to participate in the negotiating commission is not in violation of the principles of freedom of association and collective bargaining [see* ***Compilation****, para. 1378].*

362. *As to the specific issue of the scope of the bargaining unit covering registrars and their demand to have their own bargaining table, the Committee duly notes that, in accordance with the legislation in force, bargaining tables in the Spanish public administration exist at the central, regional and local level and then by administration. The Committee also notes the Government's indication that the registrars' situation is common to any other group of public employees where there is no*

separate bargaining for staff with management duties The Committee nevertheless notes the complainant organization's allegations that, in practice, the interests of its members are not defended by the general unions in the administration of justice. In this respect, the Committee notes that: (i) this situation gave rise to the strike movement of January 2023; and (ii) the agreement signed by the strike committee and the administration of justice on 28 March 2023 provides, in its "fourth" point, for the establishment of joint working groups to address various issues relating to registrars in the administration of justice, including mechanisms to ensure that the registrars' associations are effectively heard on all matters relating to remuneration, statutes, organization of the judicial office or legal changes affecting their service. The Committee notes that the establishment of such working groups provides an additional opportunity for dialogue and for the registrars' associations to defend the interests of their members. In this context, the Committee encourages the Government to maintain an active dialogue with all stakeholders to ensure that, both through their associations and through more general trade union organizations, registrars in the administration of justice are truly able to voice their concerns and defend their interests in the bodies that concern them.

Right to strike

363. *With regard to the exercise of the right to strike, the Committee notes that the complainant organization alleges that the right to strike of registrars in the administration of justice was violated by the adoption, during the indefinite strike that began in January 2023, of Instruction No. 1/2023 restricting requests for leave and holidays during the strike. The complainant organization also points out that the strike ended with an agreement between the strike committee and the State Administration, signed on 28 March 2023. In this respect, the Committee also notes the Government's indications that: (i) Instruction No. 1/2023 lost its purpose when the strike was called off; (ii) the "sixth" point of the agreement of 28 March 2023 reflects the commitment of the signatory associations to withdraw the administrative appeal filed against Instruction No. 1/2023; and (iii) Royal Decree No. 774/2023 of 3 October was published, establishing certain increases in the system of remuneration for registrars in the administration of justice with a view to compliance with the agreement between the strike committee and the State Administration.*

364. *The Committee notes that, according to the complaint and the Government's reply: (i) the registrars in the administration of justice called an indefinite strike in January 2023; (ii) during the strike, the Secretary-General of the Administration of Justice issued Instruction No. 1/2023 on the system for taking leave on the strike days of the registrars in the administration of justice, the text of which established certain requirements for taking pending leave and holidays, and against which an administrative appeal was filed; (iii) the indefinite strike ended with the signing of an agreement between the strike committee and the Administration of Justice on 28 March 2023. The Committee notes that this agreement includes provisions to increase the remuneration of the registrars in the administration of justice, and to establish joint working groups to address various issues relating to this group.*

365. *The Committee notes that the registrars in the administration of justice effectively staged an indefinite strike, which was put to an end by an agreement between the strike committee and the State Administration, and that Instruction No. 1/2023 suddenly lost its purpose. In the light of the above, the Committee will not pursue its examination of this aspect of the complaint.*

Wage adjustment

366. *The Committee notes that the complainant organization requests recognition of a legitimate salary adjustment for registrars in the administration of justice, and fulfilment of the commitments made in April 2022, linking the remuneration of registrars in the administration of justice to the remuneration of judicial and prosecutorial professions. The Committee also takes note of the*

*Government's reply that: (i) in 2022, the Ministry of Justice undertook only to promote regulatory changes in the area of remuneration, which it did within the scope of its powers; and (ii) in accordance with the agreement reached with the strike committee on 28 March 2023, measures have been adopted to establish increases in the remuneration of registrars in the administration of justice through Royal Decree No. 774/2023 of 3 October 2023. Recalling that agreements should be binding on the parties [see **Compilation**, para. 1334], the Committee trusts that this Decree has given full effect to the agreements reached in March 2023.*

The Committee's recommendations

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

(a) The Committee encourages the Government to maintain an active dialogue with all stakeholders to ensure that, both through their associations and through more general trade union organizations, registrars in the administration of justice are truly able to voice their concerns and defend their interests in the bodies that concern them.

(b) The Committee trusts that Royal Decree No. 774/2023 of 3 October 2023 has given full effect to the agreements reached in March 2023 regarding wages.

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

Case No. 3042

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

Complaint against the Government of Guatemala presented by
– the Trade Union, Indigenous and Campesino Movement of Guatemala (MSICG)

Allegations: The complainant organization denounces numerous cases of unjustified refusal by the Ministry of Labour and Social Welfare to register trade unions, and also various cases of anti-union dismissals and anti-union acts in public institutions, most of them further to the establishment of trade union organizations

368. The Committee last examined this case at its October 2015 meeting, when it presented an interim report to the Governing Body [see 376th Report, adopted by the Governing Body at its 325th Session (29 October–12 November 2015), paras 488-568] [21].

[21] Link to previous examination.

369. The complainant submitted additional allegations in communications dated 15 December 2015; 3 and 30 January, 23 May and 1 June 2017; and 30 and 31 January, and 25 October 2018.

370. The Government sent its reply in communications dated 4 November 2015; 24 February, 13 and 29 April, and 21 December 2016; 7 March and 31 May 2018; 6 February, 3 and 22 May, 28 June, 5, 19 and 30 August, 3, 10 and 13 September 2019; 14, 17, 20 and 31 January, and 24 February 2020; 26 and 29 January, 5 and 15 February, 23 March, 5 April, 7 May (two communications), 7 and 18 October, and 19 November 2021; 16 December 2022; and 14 April, 12 May and 11 September 2023; and 5 January 2024.

371. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Bargaining Convention, 1981 (No. 154).

A. Previous examination of the case

372. At its meeting of October–November 2015, the Committee made the following recommendations [see 376th Report, para. 568]:

(a) The Committee again urges the Government to take the necessary steps to ensure recognition of the right to trade union membership of workers who provide services for the State on the basis of civil contracts and requests it to immediately recognize the validity of the provision in the constitution of the Autonomous Union of Teachers of Guatemala (SAMGUA) which envisages union membership for all workers at the Ministry of Education, regardless of the type of contract through which the employment relationship has been formalized. The Committee also requests the complainant to report on the rectification of the errors of form called for by the labour administration and requests the Government to keep it informed without delay on the finalization of the procedure for the registration of SAMGUA.

(b) The Committee urges the Government to proceed immediately with the registration of CETRAMACH. Furthermore, the Committee requests the Government to take the necessary steps to ensure that issues involving complex legal appraisals in certain cases, such as determining whether or not the union's founders occupy positions of trust, do not delay the registration process, since these could be dealt with after registration in the event of any objections. The Committee requests the Government to keep it informed in this respect.

(c) The Committee urges the Government to take all necessary measures to expedite considerably its internal registration procedures and to ensure that trade unions have access to rapid and effective administrative and judicial remedies if they are not registered. The Committee also invites the CCS to resubmit its application for registration and urges the Government to process it without delay. The Committee requests the Government to keep it informed in this regard.

(d) The Committee urges the Government to take the necessary steps, as a matter of urgency, to revise section 215(c) of the Labour Code so that it is possible to establish industrial trade unions. The Committee further requests the Government to proceed without delay with the registration of the Federation of Workers of the Export Processing Industry of Guatemala (CENTRIMAG), and to keep it informed in this respect.

(e) The Committee requests the Government to provide information on the types of modifications required to the statutes of the CICO and to ensure in the meantime that the latter is able to represent the workers envisaged in its constitution.

(f) The Committee requests the Government to send its observations without delay concerning the refusal to register the Authentic National Union of Workers at the Ministry of Public Health and Social Assistance and to ensure in the meantime that the latter is able

to represent workers at the aforementioned ministry even if they are employed in different workplaces.

(g) In relation to SITRAGFIT, the Committee requests the complainant to send its observations in relation to the Government's indications that several workers had complained that their affiliation was obtained improperly and that the union did not have members in three of the six companies covered by its statutes. Furthermore, the Committee expects that the pending judicial rulings relating to the dismissal of the founding members of SITRAGFIT will be handed down in the very near future, and that all existing and pending reinstatement orders will be complied with immediately. The Committee requests the Government to keep it informed in this respect.

(h) The Committee requests the Government to proceed with the registration of the Union of Workers and Employees at the Ministry of Education and Private Schools.

(i) The Committee urges the Government to proceed immediately with the registration of the Union of Education Workers at National Institutes for Secondary-Level Distance Learning in Jutiapa, while retaining the possibility that any complaints regarding dual membership at the same workplace may be examined subsequently. The Committee requests the Government to keep it informed in this respect.

(j) With regard to the Union of Workers of the Municipality of San Pedro Sacatepéquez in the Department of San Marcos, the Union of Workers of the Municipality of Palín in the Department of Escuintla and the Union of Workers at the Education Directorate of the Department of Alta Verapaz, on the one hand, and the Union of Workers of the Municipality of Pachulum, on the other, the Committee requests the complainant organization to send any observations it may wish to make regarding the Government's statements concerning the reasons for refusing to register the aforementioned unions.

(k) With regard to the shelving of registration applications from 13 trade unions because more than six months had elapsed since the last notification from the labour administration, the Committee requests the Government to provide information without delay on the reason for non-registration of the aforementioned unions and also on the content and dates of the notifications sent to them by the labour administration.

(l) With regard to the applications for registration from five trade union organizations in relation to which legal proceedings are still in progress, the Committee requests the Government to provide information without delay on the reasons for the aforementioned legal proceedings and on the outcome thereof.

(m) With regard to the failure to register the "Principles and Values" Workers' Union at the Tax Administration Supervisory Authority and the Union of Workers of the Municipality of San José El Rodeo (Department of San Marcos), the Committee requests the Government to review its decisions in the light of the principles underlined by the Committee relating to workers occupying positions of trust and to keep it informed in this respect.

(n) With regard to the list of 16 trade unions whose applications for registration submitted in 2010 were, according to the complainant, refused without justification, the Committee requests the Government to provide information without delay on the registration of the Union of the Education Ministry of the Department of Alta Verapaz, the Union of the Ixcan Quiché Health Sector and the Guatemalan Union of Labour Supporters and Defenders of Human Rights or, if applicable, to indicate the reasons that prevented registration. The Committee also urges the Government to provide, in the context of Case No. 2840, information without delay on the registration of the other 13 trade union organizations.

(o) The Committee expresses its concern at the large number of cases in which applications for trade union registration have been unsuccessful, at the lengthy periods of time that often elapsed before any decision is issued by the labour administration, and at the frequency of cases in which the labour administration calls for substantive amendments to a union constitution, thereby affecting the autonomy that should be enjoyed by trade union organizations by virtue of the principles of freedom of association. The Committee again urges the Government to eliminate, in consultation with the country's trade union

federations and employers' organizations, the various legal obstacles to the free establishment of trade union organizations referred to in the preceding paragraphs and to review the handling of registration applications, with a view to adopting an approach that enables the rapid resolution, in conjunction with the founders of trade union organizations, of issues of substance or form that arise and facilitating as far as possible the registration of trade union organizations. Recalling that technical assistance is available from the ILO, the Committee requests the Government to keep it informed without delay on the initiatives taken and the results achieved in this respect.

(p) With regard to the allegations concerning the Union of Workers at the Peace Secretariat of the Office of the President of the Republic (SITRASEPAZ), the Committee requests the Government to: (i) keep it informed of any court decisions relating to the validity of the termination of the contract of the union's general secretary, Mr Luis Antonio Mérida Ochoa; (ii) provide additional information on the total number of dismissals that have occurred because of the closure of the peace archives and requests the complainant to provide information on any court proceedings that exist in relation to those dismissals; (iii) ensure within the Peace Secretariat that all workers enjoy the right to freedom of association, regardless of their contractual relationship and that all workers not engaged in the administration of the State enjoy the right to collective bargaining, and to keep it informed in this respect; (iv) disseminate to public institutions the abovementioned principles; and (v) provide further details of the charges brought against Mr Luis Antonio Mérida Ochoa and to keep it informed of the outcome of the criminal proceedings instituted against him.

(q) The Committee requests the Government to provide its observations without delay concerning the alleged anti-union dismissals of members of the Union of Workers of the Guatemalan Heart Disease Association (SIDETRALICO) and of the Union of Workers at the Office of the Human Rights Ombudsman (SITRAPDH). The Committee expects that the various court actions brought in relation to the events described will result in prompt decisions which are implemented and respect the principles of freedom of association and are being complied with. The Committee requests the Government to keep it informed without delay in this regard.

(r) The Committee requests the Government to provide its observations without delay concerning the allegations of anti-union discrimination against the Union of Administrative and Education Service Workers of Guatemala (STAYSEG) and the Union of Workers at the Departmental Directorates of the Ministry of Education of the State of Guatemala (SITRADEMEG) and to ensure the free exercise of the right to collective bargaining within the Ministry of Education. The Committee expects that the various court actions brought in relation to the events described will result in prompt decisions which respect the principles of freedom of association and are being complied with.

(s) The Committee urges the Government to ensure, should the existence of the court orders referred to in the conclusions be substantiated, that the administration concerned immediately reinstates the dismissed workers in their posts, and to keep it informed in this respect.

B. New allegations

Allegations of obstruction of the registration of trade union organizations previously examined by the Committee

373. In its communication of 18 December 2015, the complainant alleges that: (i) after the Autonomous Union of Teachers of Guatemala (SAMGUA) obtained legal personality on 1 October 2015, three years after submitting its application, the Ministry of Education filed an appeal to revoke the Ministry of Labour's decision to grant SAMGUA legal personality so as to prevent it from being registered; (ii) the Ministry of Education made its anti-union policy against SAMGUA clear by declaring on 18 November 2015, before the Congress of the Republic

of Guatemala, that a majority union already existed and that, instead of forming another union, the members of SAMGUA should join the existing union; and (iii) the Government's anti-union policy was reflected in concrete anti-union acts, such as the dismissal of Mr Carlos Enrique Gómez from his teaching position, as well as the acts of anti-union discrimination in the workplace against union members Ms Ericka Morataya, Ms Ana María Villafuerte Barrera and Mr Milfred Zamora, who suffered wage cuts and were also charged and handed penalties without due process in the administrative investigation.

374. In its communication of 3 January 2017, the complainant alleges that, despite its clear requests, the Government has not complied with the Committee's recommendation urging it to proceed without delay with the registration of the Federation of Workers of the Export Processing Industry of Guatemala (CENTRIMAG). The complainant also alleges that, as of the drafting of its communication, the Government had not complied with the Committee's recommendation urging it to take the necessary steps to revise section 215(c) of the Labour Code so that it was possible to establish industrial trade unions.

375. The complainant alleges that, contrary to the Committee's recommendations, the Government has not proceeded with the registration of the Western Indigenous and Campesino Federation (CICO), ensured that it would be able represent the workers envisaged in its constitution, or provided the Committee with information on the types of modifications to the statutes that it had requested from CICO.

376. The complainant alleges that the Government has continued to refuse to register the "Principles and Values" Workers' Union at the Tax Administration Supervisory Authority (SITRAPVSAT), despite the Committee's recommendation that it review the issue of registering the union, taking into consideration that an excessively broad interpretation of the concept of "worker of confidence" [worker occupying a position of trust] may seriously limit trade union rights.

377. The complainant alleges that, despite the Committee's recommendation urging the Government to proceed immediately with the registration of the Teachers' Federation of Chiquimula (CETRAMACH), it was forced to turn to the courts, which ruled in its favour. However, the complainant alleges that the Government has yet to comply with the Committee's recommendations.

378. The complainant alleges that, in accordance with the Committee's recommendations, the Southern Campesino Federation (CCS) resubmitted its application for registration, amending its constitution to meet the arbitrary and discretionary requirements of the Government, and that, although the CCS was eventually registered, its constitution was drawn up by the labour administration, in violation of Convention No. 87.

New allegations concerning the registration of trade union organizations

379. In a communication dated 30 January 2017, the complainant alleges that, generally speaking, the State of Guatemala has continued and intensified the obstruction of the registration of trade union organizations that are not under its control, especially through the establishment of prerequisites and/or recommendations during the application process for registration, ordering the amendment of trade unions' constitutions, with both the requirements and the recommendations demanding changes to the applications for registration being clearly illegal. The complainant also alleges that whenever it has chosen to challenge these administrative decisions (prerequisites and/or recommendations) of the Ministry of Labour and Social Welfare by filing an administrative appeal, the appeal has been denied by the Ministry of Labour on the grounds that the contested decision is merely an order that cannot be challenged. This ensures

that the decision of the Ministry of Labour to impose arbitrary requirements is upheld at the administrative level, which has been backed by several decisions of the Constitutional Court, which has ruled that decisions ordering compliance with requirements and/or recommendations cannot not be challenged in administrative proceedings. Therefore, workers who wish to challenge an administrative decision that imposes illegal and arbitrary registration requirements must initiate ordinary proceedings, the resolution of which can take, on average, up to ten years. Moreover, the complainant alleges that the requirements (prerequisites and/or recommendations) of the Labour Directorate-General are of a de facto binding nature, as failure to comply with the prerequisites and/or recommendations will result in the shelving of the registration file. The practical and concrete effect of this shelving is that it violates the right to organize: given that such requirements cannot be challenged through administrative proceedings, the only option available to workers is judicial proceedings, which take an average of ten years, thus effectively creating "prior authorization" for the registration of trade unions in clear violation of Article 2 of Convention No. 87. The complainant specifically alleges that: (i) by means of an order dated 16 December 2016, the Worker Protection Department of the Labour Directorate-General ordered the Teachers' Federation of Retalhuleu (CENTRAMAGRETAL) to amend article 12 of its constitution to remove the branch executive committees from its organizational structure, as well as article 36, which allows the union to subsequently create any committees it deems appropriate, to instead refer to specific committees that must be established a priori. In this regard, the complainant alleges that should the Federation fail to satisfy this prerequisite, the file will be shelved, and given that the decision ordering the shelving of the registration file is not subject to administrative appeal, the Federation is in a state of total defencelessness; (ii) by means of an order issued by the Worker Protection Department of the Labour Directorate-General, the Union of Workers of Chiquimula of the Municipality of Villa de Santiago Jocotán in the Department of Chiquimula (SINDIOBREROJOCOTÁN) was ordered to remove the right to organize of several categories of workers from its constitution, and to remove article 20, which establishes a gender quota for managerial positions; (iii) the Worker Protection Department of the Labour Directorate-General ordered the Union of Technical Workers Specializing in Secondary-Level Distance Learning in Chiquimula (SITRATCHIQUI) to remove articles from its constitution that, in the opinion of the official who signed the decision, were unnecessary; and (iv) the Ministry of Labour and Social Welfare shelved a file by means of orders dated 19 January 2016 and 21 September 2016 because the Union of Workers of the Municipality of San Lucas Tolimán (SITRAMSALT) refused to exclude several workers from the list of workers eligible to join the union.

380. Furthermore, the complainant alleges that, in the public sector, the Government continues to deny the right to organize and bargain collectively to workers who are employed under budget items 021, 022, 029, 031 and 189 of the national budget. It states that the Ministry of Labour and Social Welfare continues to ask affiliated workers to indicate under which budget item they are employed in order to refuse the registration of the union. The complainant alleges that this has occurred with workers affiliated with the following trade union organizations: the Teachers' Federation of Quiché (CENTRAMGQUICHÉ), CENTRAMAGRETAL, the Union of Education Workers in Secondary-Level Education Distance Learning in Alta Verapaz (SITRATEAVERAPAZ), the Teachers' Federation of San Marcos (CENTRAMAR), SINDIOBREROJOCOTÁN and the Union of Education Workers in Secondary-Level Distance Learning in the Department of Petén (STETPETEN).

381. In a communication dated 23 May 2017, the complainant alleges that, in order to more effectively obstruct the registration of trade unions, the Ministry of Labour and Social Welfare, through the Labour Directorate-General, established a procedure instructing labour inspectors

to visit workplaces with lists of workers involved in the establishment of a union, so that their employers could indicate whether these workers were temporary or permanent and whether or not they were considered to be occupying positions of trust. The complainant alleges that although this practice is not provided for in the legislation, it was confirmed by the Constitutional Court in its judgment of 23 July 2015. The complainant also alleges that the Constitutional Court has set a serious precedent in terms of case law, through its decision of 5 December 2013, by recognizing the employer's right, albeit not provided for in the legislation, to challenge the registration of the union to be formed by its employees.

382. The complainant alleges that the measures described above were imposed on the following unions when applying for registration: (i) SITRATEAVERAPAZ, by means of Order No. 1439-2016 of 24 November 2016; (ii) STETPETEN, by means of Order No. 1438-2016 of 24 November 2016; and (iii) SITRATCHIQUI, by means of Order No. 449-2017 of 5 April 2017. The complainant further alleges that the refusal to recognize legal personality, approve constitutions and register is also not likely to be subject to *amparo* [protection of constitutional rights], since according to the judgment of the Constitutional Court dated 18 July 2012, inter alia, refusal for registration must first be challenged in ordinary proceedings before a labour and social welfare court, a procedure that can last many years.

383. The complainant then states that, in the light of the state policy of rejecting applications for registration and the inability to challenge decisions of the Ministry of Labour and Social Security, it has adopted a new strategy that involves promoting amparo actions against the Labour Directorate-General for its failure to process registration files, so that administrative silence is deemed to be favourable. It states that several amparo actions were initiated on 31 May 2017 by workers involved in the establishment of a union.

384. In a communication dated 30 January 2018, the complainant alleges that trade unions are obliged, inter alia, to send a certified roll of all their members, including their full names, personal ID numbers and occupation or trade, to the Labour Directorate-General once a year, and that failure to do so may lead to fines and even the dissolution of the trade union. It also alleges that the State of Guatemala has not only failed to bring its legislation into conformity with Convention No. 87 but has also obliged trade unions to fulfil this legal obligation (provided for in section 225(e) of the Labour Code) on an annual basis from the time of their conception. The complainant further alleges the above-mentioned data have been used to commit acts of anti-union discrimination against workers and, more specifically, have led to dismissals and various acts of anti-union violence. Moreover, the complainant alleges that during the months leading up to the drafting of the communication on 30 January 2018, the Labour Directorate-General began requiring trade unions, by means of "orders", to add the membership application of each new union member to their certified rolls in order to have their union rolls registered. The complainant alleges that such orders violate the legislation in force, which does not require the submission of membership applications of union members, and that such applications contain sensitive information about each member, such as their phone number, email and mailing address and emergency contacts. The complainant states that the following unions have been required to provide this type of additional information: (i) the Union of Workers at the Departmental Directorates of the Ministry of Education of the State of Guatemala (SITRADEMEG), by means of Order No. 1147-2016; (ii) the Union of Education Workers in Secondary-Level Distance Learning in Retalhuleu (STRETREU), by means of Order No. 003-2017; (iii) the Multisectoral Union of Independent Market Vendors in Chimaltenango Zone 2 (SUVIMECH), by means of Order No. 261-2017; (iv) the Union of Workers at the National Forensic Science Institute of Guatemala (SINTRAINACIF), by means of Order No. 315-2017; (v) the Caring Mothers' Workers' Union in the President's Wife's Social Work Secretariat

(SITRAMC), by means of Order No. 33-2018; (vi) the Union of Education Workers in Secondary-Level Distance Learning in Quiché (STETQUICH), by means of Order No. 29-2018; (vii) the Union of Education Workers at National Institutes for Secondary-Level Distance Learning in Jutiapa (S.T.E.B.I.N.T.J.), by means of Order No. 40-2018; and (viii) the Union of Workers in Secondary-Level Distance Learning in Santa Rosa (SINTRAT S.R.), by means of Order No. 41-2018. The complainant adds that, given that these "orders" cannot be challenged in administrative or judicial proceedings, the trade unions must fulfil any discretional requirements that are imposed on them, in accordance with several decisions issued by the Constitutional Court of Guatemala, such as its judgments dated 18 January 2018 and 13 January 2015. The complainant also alleges that should a trade union refuse to fulfil its obligation to send the membership application of every union member, the Labour Directorate-General will not update the union roll in the relevant registry or add the new members and will issue a new "order" for the shelving of the certified union roll, arguing that six months have passed since the trade union in question met its requirements. The complainant further alleges that the shelving of the registered union roll restricts the right of trade unions to freely elect their representatives: if a worker who is not registered on the latest roll is elected, his or her election will not be recognized.

385. In a communication dated 31 January 2018, the complainant alleges that the amparo actions filed by workers against cases in which the Ministry of Labour and Social Welfare issued "orders" imposing arbitrary requirements were rejected by the Constitutional Court. The object of these actions was to obtain a decision from the Constitutional Court declaring that, given that the orders were not considered administrative decisions, administrative silence – in the absence of challengeable decisions in cases of registration – should be considered as favourable and thus lead to the requested registration of the trade union. However, the Constitutional Court, in a judgment dated 18 January 2018, ruled that the absence of a decision that could be challenged by workers could not be considered a lack of decision. As there was an "order" in that case that reiterated that the newly formed union was required to amend certain articles in its draft constitution and to indicate each member's type of employment, the Court considered that there was no administrative silence. Moreover, the complainant alleges that the Constitutional Court handed down another judgment dated 25 January 2018, in which it endorsed the Government's anti-union practices by ruling that the applicants' (workers') own inaction had led to the shelving of the registration file, as they had failed to comply with the requirements set forth in the order issued by the Labour Directorate-General, and that if the applicants considered that the shelving of the file was an infringement of their rights, they should have sought amparo by pointing out that this action was detrimental to them. However, the complainant alleges that the same Constitutional Court had already ruled in other cases that the "orders" were not challengeable decisions, making it impossible for the applicants to file an amparo action. The complainant alleges that the blatant contradiction in the decisions of the Constitutional Court (in one ruling (a judgment dated 13 January 2015), it states that orders are not binding and are not challengeable and, in another (a judgment dated 18 January 2018), it establishes that compliance with the content of such orders, while not challengeable, is a prerequisite for access to free unionization) seeks to prevent all workers or certain categories of workers from exercising freedom of association, and to justify the intervention of the employer in the establishment of a trade union organization. In this connection, the complainant alleges that according to the judgment handed down by the Constitutional Court on 5 December 2013, in the context of Case No. 2633-2013, the workers' right to organize constitutes an act that affects the employer's legitimate right to prevent the existence of trade union organizations in its workplace, and also legitimizes the employer's supposed right to

oppose the unionization of its workers by opposing the registration of the trade union in question.

386. The complainant also alleges that the State of Guatemala still refuses to allow state workers hired under temporary contracts to freely unionize, even though the duties they perform are permanent in nature. In this context, the complainant refers to the situation of technical workers specializing in secondary-level distance learning.

387. The complainant states in this regard that: (i) as a result of the actions filed with its support, the labour courts issued judgments in favour of the technical workers specializing in secondary-level distance learning, declaring the continuous and uninterrupted nature of their employment relationship, judgments that became final when they were confirmed by the Chambers of the Court of Appeal; (ii) the Attorney-General's Office and the Ministry of Education challenged the constitutionality of each of these judgments before the Supreme Court of Justice of Guatemala; and (iii) in view of the countless judgments that have upheld the claims brought by the affected workers and thus declared that they had the right to job stability and to freedom of association, the Ministry of Labour and Social Welfare had no choice but to proceed with the registration of the various secondary-level distance learning unions that are members of the MSICG. Moreover, the complainant alleges that the Ministry of Labour and Social Welfare limited, in the decision ordering the registration of the various unions of technical workers specializing in secondary-level distance learning, the duration of the employment relationship of each worker, as it continued to consider them temporary workers, according to a summary investigation that the Ministry carried out in coordination with the employer, notwithstanding the judgments to the contrary.

Allegations previously examined by the Committee regarding acts of anti-union discrimination in the context of the establishment of trade union organizations

388. In its communication of 23 May 2017, the complainant alleges new violations of freedom of association and collective bargaining against the Union of Workers at the Peace Secretariat (SITRASEPAZ) and its members, namely: (i) in 2016, 22 workers affiliated with SITRASEPAZ were arbitrarily and illegally dismissed; (ii) the contracts of several workers affiliated with SITRASEPAZ, who worked in the National Reparations Programme, were not renewed for 2017 and while the immediate renewal of their contracts was requested, that request had yet to be granted as of the filing of the present complaint in May 2017; (iii) the authorities of the Peace Secretariat of the Office of the President of the Republic do not recognize the union, and refuse to engage in a dialogue with it, even though the Vice-President of the Republic was made aware of the situation on 16 December 2016 and asked to set up a round-table discussion, a request that had yet to be granted as of the filing of this complaint; (iv) the Deputy Minister of Labour informed the executive committee of the union that the round-table discussion could only continue if the union's inter-institutional coordination secretary, Mr Luis Antonio Mérida Ochoa, stepped down as director of conciliation at the Peace Secretariat, as it was a position of trust that could not be held by a union official; (v) several workers were arbitrarily and illegally dismissed, in violation of articles 17 and 33 of the above-mentioned collective agreement and the judicial summons dated 14 and 16 July 2017, which prohibit reprisals and the termination of the contracts of the 22 workers who were illegally dismissed; and (vi) the refusal by the State of Guatemala to negotiate the draft collective agreement on working conditions directly, alleging a presidential prohibition in this regard, set out in Memorandum No. 02-2017.

389. The complainant alleges, in relation to the Government's claims that several workers had complained that their affiliation to the Union of Workers of the Workers' Financial Group (SITRAGFIT) was obtained improperly, that as of the drafting of the communication, no

members had left the union, which shows that the Government's allegations are unfounded. As to the proceedings for the reinstatement of the workers dismissed for their participation in the establishment of the trade union, the complainant alleges that, following lengthy legal proceedings, final judgments calling for the reinstatement of the workers in question were eventually obtained. However, the complainant points out that upon the reinstatement of the workers, the employer dismissed them again as soon as the implementing minister had left. Furthermore, the complainant informs the Committee that the Government has continued to refuse to register the Guatemalan Union of Labour Supporters and Defenders of Human Rights.

New allegations of anti-union discrimination in the context of the establishment of trade union organizations

390. In its communication of 25 October 2018, the complainant alleges the following violations of freedom of association against the Union of Workers at the National Registry Office (SITRARENAP) and its members: (i) in November 2017, the management of the National Registry Office (RENAP) terminated the contracts of six members of (newly formed) SITRARENAP during an administrative investigation for the alleged misuse of a vehicle owned by RENAP, an act that was denied by the members concerned; (ii) on 23 November 2017, the six persons reported the incidents to the Public Prosecutor's Office of Guatemala; (iii) beginning in late December 2017, the affected workers filed applications for reinstatement with various labour and social welfare courts, which were granted; (iv) as at 21 December 2017, there had been an increase in the termination of contracts, with 55 terminations already recorded; (v) following the decision of the Labour Directorate-General of 12 March 2018, granting SITRARENAP legal personality, the executive director of RENAP resumed reprisals against the workers who were members of the union by ordering the transfer of Mr Melvin Estuardo Zacarías Velásquez, SITRARENAP's external and internal relations secretary, to another department of RENAP; although the court hearing the case ordered the reinstatement of Mr Zacarías Velásquez, as of the filing of the complaint, the board of directors of RENAP had yet to comply with the reinstatement order; and (vi) SITRARENAP fears that RENAP will terminate the contracts of all the workers who belong to the union, given that all RENAP workers have been employed under budget item 029 (civil employment) since 2007, despite the fact that the Constitutional Court has repeatedly ruled that due to the nature of the institution, all contracts should be fixed-term, a situation that the board of directors of RENAP has never regularized.

C. The Government's reply

391. In a number of communications sent between November 2015 and 5 September 2024, the Government provides its observations on the Committee's recommendations and the complainant's additional allegations.

Replies to the Committee's recommendations concerning the registration of a number of trade union organizations

392. With regard to the registration of SAMGUA (recommendation (a) of the Committee), in a communication dated 12 May 2023, the Government states that this organization was registered in the Public Trade Union Register on 21 September 2015.

393. With regard to the registration of CETRAMACH (recommendation (b) of the Committee), in a communication dated 22 May 2019, the Government states that this organization was registered in the Public Trade Union Register on 21 September 2015.

394. As regards the registration of the CCS (recommendation (c) of the Committee), in a communication dated 12 January 2023, the Government states that this organization was registered in the Public Trade Union Register on 8 January 2016.

395. In a communication dated 22 May 2019 (recommendation (d) of the Committee), the Government states that on 2 June 2014, the file of CENTRIMAG was shelved, in accordance with section 5 of the Administrative Litigation Act, and that no new application has been filed. In the same communication, the Government reports that: (i) on 18 January 2016, it proceeded with the registration of the Authentic National Union of Workers at the Ministry of Public Health and Social Assistance (SINATRAMS) (recommendation (f)); (ii) S.T.E.B.I.N.T.J. was registered on 15 December 2015 (recommendation (i)); and (iii) the registration application of SITRAPVSAT (recommendation (m)) was shelved due to irremediable flaws, and no new application to establish the union has been filed

396. As to the Committee's recommendation that it provide information on the types of modifications required to the statutes of CICO and that it ensure in the meantime that CICO is able to represent the workers envisaged in its constitution (recommendation (e)), in a communication dated 30 August 2019, the Government states that: (i) CICO was asked to remove the term "workers" and to indicate only the occupation or trade of its members, as well as their place of work; (ii) CICO was asked to modify the nature of the union, indicating whether it was of a "trade union" or "campesino" nature; (iii) CICO was asked to change "federation executive committee" to "executive committee"; (iv) the content of article 27 of the draft constitution was not approved, as section 225(a) of the Labour Code stipulates that only four books per union shall be approved, but the union members wish to have the book for each branch approved; (v) the content of article 30 was not approved on the grounds that, under section 223(d) of the Labour Code, only the members of the executive committee may be protected against dismissal, while the union members claim that the "branch executive committee" enjoys the same protection; and (vi) it guaranteed CICO that it would be able to represent workers envisaged in its constitution through its provisional executive committee members, who were always able to hold meetings to elect the provisional committee and advisory council, to hold meetings for these bodies, and to take steps to obtain the registration of the union's legal personality and constitution. However, even though the newly formed union was notified of the order permitting these activities, the administrative file does not contain any record of this, so it was shelved because more than six months had elapsed without any activity from the interested parties.

397. With regard to the Committee's recommendation requesting the Government to proceed with the registration of the Union of Workers and Employees at the Ministry of Education and Private Schools (recommendation (h)), in a communication dated 2 August 2018 (attached), the Government states that under the current legislation, the grounds for the refusal of the union's registration are provided for in section 215 of the Labour Code, which defines the various types of unions (that is, trade unions, company unions and sectoral unions), and section 3 of the Act on Unionization and Regulation of Strike Action by State Employees, which establishes the forms of trade union organizations permitted and states that unions may be established by state agencies, ministries, autonomous or decentralized entities or by branch or trade, and that the form of organization sought by the union in question is incompatible with these legal provisions. In addition, in a more recent communication dated 22 May 2019, the Government states that, as reported by the Labour Directorate-General of the Ministry of Labour and Social

Welfare, the file of the union in question was shelved on 3 March 2014 due to irremediable flaws, and that to date, no new application for registration has been filed.

398. The Government also provides information about the applications for registration from five trade union organizations in relation to which legal proceedings are still in progress (recommendation (l)). In communications dated January 2020 and 12 May 2023, the Government begins by referring to the situation of the Union of Workers at the Port of Santo Tomás de Castilla (SINTRAPSATCA), stating that: the amparo action filed by the port company Santo Tomás de Castilla against the Ministry of Labour and Social Welfare has concluded and been shelved as a result of a judgment of the Constitutional Court dated 11 November 2014, which dismissed the appeal filed by the company. The Government also indicates that the registration of the Union of Workers of the Directorate-General for Sports and Recreation at the Ministry of Sport (SINTRADIGEDERE) in February 2012 led to administrative appeals and then an amparo action by the Ministry of Culture and Sports on the grounds that the founding members of the union were fixed-term employees, some of whom were employed on the basis of civil contracts (budget item 029). The amparo action was upheld by both the Supreme Court and the Constitutional Court and, in accordance with those rulings, the Ministry of Labour and Social Welfare eventually cancelled the registration of SINTRADIGEDERE on 21 May 2015.

399. With regard to the Union of Workers at Ternium Internacional Guatemala SA (SITRATERNIUM), in a communication dated 16 January 2020, the Government states that: (i) the Labour Directorate-General ordered its registration in a decision dated 21 June 2012; (ii) the company filed an appeal for revocation, which was dismissed by the Ministry of Labour and Social Welfare on 21 March 2014; (iii) on 20 January 2015, the Supreme Court of Justice denied the amparo action filed by the company on the grounds that the contested decision was not final; and (iv) on 19 September 2014, the Constitutional Court dismissed the appeal filed by the company. Moreover, in a communication dated 16 January 2020, the Government provides information regarding the "Pro Dignity" Workers' Union at the Tax Administration Supervisory Authority (SIPROSAT), stating that: (i) on 29 November 2012, the Labour Directorate-General refused to register the union on the grounds that it did not meet the required number of members because some of them were considered to occupy positions of trust, and the appeal to revoke the decision was also rejected; and (ii) SIPROSAT filed an amparo action before the Supreme Court of Justice, which was denied on 30 September 2013, a decision that was appealed before the Constitutional Court, which also decided to deny the appeal in a judgment dated 25 September 2014.

400. With regard to the four trade union organizations mentioned in recommendation (j) of the Committee, in several communications from 2019, the Government states that: (i) the Union of Workers of the Municipality of San Pedro Sacatepéquez in the Department of San Marcos con Igualdad (SITRAUM) was registered in the Public Trade Union Register on 6 November 2018; (ii) the Union of Workers of the Municipality of Palín in the Department of Escuintla (SINEMUNIPAL) was registered in the Public Trade Union Register on 13 April 2012; (iii) the registration file of the Union of Workers at the Departmental Education Directorate of Alta Verapaz (SINDIDEDUCAV) was shelved due to the late submission of the application for its legal personality, approval of its constitution and registration, and no new application has been submitted since; and (iv) the registration file of the Union of Workers of the Municipality of Pachalum was shelved due to irremediable flaws, as four of its founding members were municipal police officers, which are not only considered to be positions of trust, but are also exempt from the right to organize under the Act on Unionization and Regulation of Strike Action by State Employees. The union has not filed a new application.

401. With regard to the alleged shelving of the registration applications from 13 trade unions (recommendation (k)), in a communication dated 3 September 2019, the Government states that: (i) the Union of Workers at SEAK HWA SA and the Union of Workers of the Municipality of Usumatlán were registered on 11 October 2012 and 26 March 2015, respectively; (ii) the file of the Union of Collection Agents at Cable Star SA was shelved due to its withdrawal by the union members; (iii) it was decided not to proceed with the registration of the General Union of Municipal Employees of Coatepeque, as its members worked in different municipalities; (iv) with regard to the Union of Workers of the Municipality of Santa Lucía Milpas Altas, a preliminary request was issued on 12 July 2011 in which the union members were asked to submit the charter and constitution signed by the secretary and the other members; the file was later shelved because more than six months had elapsed without compliance with the request; (v) in the four cases of the Union of Workers at Avandia SA, the Union of Education Workers at National Institutes for Secondary-Level Distance Learning in Izabal, the Union of Workers of the Municipality of Santa Cruz El Chol in the Department of Baja Verapaz and the Union of Workers of the Municipality of San Miguel Tucurú in the Department of Alta Verapaz, preliminary requests were issued; the files were later shelved, by means of decisions issued throughout 2012, because six months had elapsed without any activity; (vi) with regard to the Teachers' Union of Jalapa, a preliminary request to amend the charter and to attach the constitution for review was issued; the file was later shelved because six months had elapsed without any activity; and (vii) with regard to the Union of "Teachers for Change", the Union of Workers of the Municipality of Villa de Tejutla in the Department of San Marcos, the Union of Workers of the Municipality and Electricity Company of Guastatoya, El Progreso, preliminary requests to amend certain articles of the constitutions and/or certain aspects of the charters were issued; the files were later shelved, by means of decisions issued throughout 2012, because six months had elapsed without any activity.

402. With regard to the Committee's recommendation requesting the Government to review its decisions in the light of the principles underlined relating to the lack of registration of SITRAPVSAT and the Union of Workers of the Municipality of San José del Rodeo (Department of San Marcos) (SITRAMUNIRODEO) (recommendation (m) of the Committee), in a communication dated 22 May 2019, the Government states that: (i) no appeal has been filed against the order to shelve the registration of SITRAPVSAT and therefore the order is final; and (ii) after the registration of SITRAMUNIRODEO was refused, the union filed an appeal for revocation, which was dismissed on 18 October 2012.

403. With regard to recommendation (n) of the Committee requesting the Government to provide information without delay on the registration of the Union of the Education Ministry of the Department of Alta Verapaz, the Union of the Ixcan Quiché Health Sector and the Guatemalan Union of Labour Supporters and Defenders of Human Rights, in a communication dated 30 August 2019, the Government states that: (i) the file for the registration of the Union of the Education Ministry of the Department of Alta Verapaz was shelved, in accordance with section 5 of the Administrative Litigation Act, as two years had elapsed without any response to the preliminary request to amend certain articles of the constitution; and (ii) the Union of the Ixcan Quiché Health Sector was registered on 2 November 2010, as recorded in Trade Union Registration Book 22. Moreover, with regard to the registration of the Guatemalan Union of Labour Supporters and Defenders of Human Rights, in a communication dated 7 October 2021, the Government indicates that the Department of Worker Protection issued a request, dated 8 April 2022, to legally amend certain articles of the draft constitution. The newly formed trade union filed an appeal to revoke the decision issuing these requests, which was partially upheld. The Labour Directorate-General then issued formal requests, dated 15 November 2013, which were notified to the members of the newly formed trade union on

20 November 2013. However, due to the lack of response to these requests and the fact that the interested parties had ceased to take any action regarding the file, the file was shelved.

Replies to the Committee's general recommendations concerning union registration

404. With regard to the concern expressed by the Committee at the large number of cases in which applications for trade union registration have been unsuccessful and at the frequency of cases in which the labour administration calls for substantive amendments to a union constitution, thereby affecting the autonomy of trade union organizations (recommendation (o) of the Committee), in a communication dated 3 May 2019, the Government states that: (i) according to the statistical records of the Labour Directorate-General of the Ministry of Labour and Social Welfare, a high percentage of the applications submitted for the registration of trade unions are successful, which shows that there are no obstacles to the free establishment of trade unions; (ii) in order to make the formal requirements transparent and to shorten delays, the following actions are currently being taken, namely: (a) face-to-face meetings with the various trade union organizations; (b) direct communication by phone; (c) free advice and guidance to those wishing to form trade union organizations; (d) regular correspondence by email to answer any questions; and (e) publication of the "Trade Union Booklet", which contains clear and simple information on how to register trade unions; (iii) it has presented the results of the key indicators of the road map (including the unimpeded registration of trade union organizations in the trade union register of the Ministry of Labour and Social Welfare), as well as the tripartite dialogue that was held in the Subcommittee on the Implementation of the Road Map in 2018 to discuss the actions required for the implementation of the road map; (iv) on 3 December 2018, a tripartite meeting was held in the Subcommittee on the Implementation of the Road Map, in which the Labour Directorate-General and the Deputy Minister of Labour presented the "Trade Union Booklet" containing essential information on freedom of association rights, as well as the legal procedures for registering trade unions; and (v) the Government invited the workers' sector to a working meeting in May 2019 to discuss the process for establishing trade unions with a view to strengthening the process through dialogue. In addition, in a more recent communication dated 11 September 2023, the Government reiterates that, in accordance with the national legislation, particularly the Labour Code, and the Committee's recommendations, the registration of a trade union organization must fulfil a number of requirements established by law.

405. As to the Committee's recommendation urging the Government to take the necessary measures to expedite considerably its internal registration procedures and to ensure that trade unions have access to rapid and effective administrative and judicial remedies if they are not registered (recommendation (c)), in a communication received on 12 September 2023, the Government states that it has taken measures to expedite its internal registration procedures and, to that end, indicates that the Ministry of Labour and Social Welfare has issued Ministerial Agreement No. 214-2023, dated 12 May 2023, which regulates the procedure for issuing union identification cards to members of executive committees and advisory councils of trade unions, which will allow them to be quickly and simply identified when performing their duties through the use of a quick response (QR) code that validates the information provided on the union identification card, which is easy to carry.

406. With regard to the Committee's recommendation that the Government take the necessary steps, as a matter of urgency, to revise section 215(c) of the Labour Code so that it is possible to establish industrial trade unions (recommendation (d)), in a communication dated 22 May 2019, the Government refers to tripartite discussions held in 2018 to implement the legislative aspects of the road map on freedom of association adopted by the Government in 2013 as

follow-up to the complaint against Guatemala filed in 2012 under article 26 of the ILO Constitution. The Government states that, with a view to bringing the national legislation into line with Conventions Nos 87 and 98, the tripartite actors discussed the revision of section 215(c) of the Labour Code and, in particular, the thresholds applicable to the establishment of sectoral trade union organizations. In a communication dated 11 September 2023, the Government states that the Subcommittee on Legislation and Labour Policy of the National Tripartite Committee on Labour Relations and Freedom of Association has included follow-up on the issue of industrial unions in its 2022–23 work plan, for which it will require technical assistance from the ILO.

407. The Government states that, in the light of the allegations of the MSICG and the Committee's recommendations in paragraph 568 of its 376th Report, it signed, through the Ministry of Labour and Social Welfare, a letter of intent with the Ministry of Labour and Social Welfare of the Republic of Argentina on 8 June 2022, requesting support and assistance from the Argentine Ministry so that Guatemala can have a strengthened and more robust public trade union register in the Labour Directorate-General, similar to the one in Argentina, so that all acts initiated by trade union associations can be processed in accordance with the national legislation and the recommendations of the various ILO supervisory bodies.

408. In a communication dated 5 January 2024, the Government reports that the Guide to Freedom of Association, which replaces the booklet on freedom of association prepared in 2018, was adopted on 12 December 2023 by means of Ministerial Agreement No. 532-2023. The guide covers the following four points: (i) criteria, procedures and forms for trade union organizations; (ii) forms for trade union organization procedures; (iii) model trade union constitutions; and (iv) forms for downloading. The Government states that the purpose of the guide is to facilitate the registration of trade union organizations, strengthen legal certainty and reduce the discretion of the labour authorities.

Replies to the recommendations regarding allegations of anti-union dismissals

409. With regard to the pending judicial rulings on the dismissals of the founding members of SITRAGFIT and compliance with the reinstatement orders already issued (recommendation (g) of the Committee), in a communication dated 24 February 2016, the Government states that: (i) Ms Emily Zenaida Aguilar Álvarez, an employee of the company Plaxo SA, was reinstated on 7 August 2015 and given her unpaid wages as well as other employment benefits to which she was entitled; and (ii) in the case of Mr José Eduardo Estrada Chapetón, Mr Roberto Carlos Hidalgo Paul, Mr Elvis Gustavo Hernández Recinos and Mr Santos Augusto Sija Álvarez, employees of the Workers' Bank, due to a substantial error in the proceedings, an order to amend the procedure was issued; the applicants must therefore meet the requirements set forth before their reinstatements can be ordered. Moreover, in a more recent communication dated 31 January 2020, the Government states that: (i) Mr Eduardo Estrada Chapetón filed a withdrawal, which was approved in an order dated 25 November 2015; (ii) Mr Roberto Carlos Hidalgo Paul filed a complete withdrawal of the proceedings, which was approved in an order dated 4 February 2016; (iii) Mr Elvis Gustavo Hernández Recinos was reinstated by means of a reinstatement act dated 20 May 2014; (iv) the reinstatement of Mr Santos Augusto Sija Álvarez was ordered in a decision issued by the Fourth Chamber of the Labour and Social Welfare Court of Appeal on 14 December 2018; (v) with respect to the application for reinstatement filed by Ms Ingrid Janeth López Teni against the Workers' Bank, on 8 October 2018, the respondent was ordered to immediately reinstate the applicant, and the implementing minister drafted a report dated 18 October 2018 recording her reinstatement. The applicant has yet to respond to the content of the minister's report; (vi) with respect to the application for reinstatement

filed by Ms Odeth Julia Elena Roldán Ramírez, the Government states that, in an order dated 2 September 2013, the Court hearing the case ordered the applicant to provide documentary evidence that the newly formed trade union groups together with employees of the Workers' Bank, given the discrepancy between the name of the trade union and the name of the respondent; the applicant appealed this order, but her appeal was rejected by the Second Chamber of the Labour and Social Welfare Court of Appeal in an order dated 10 March 2014. Given that the applicant failed to comply with the order dated 2 September 2013, the file is currently on hold in the Court's internal archive; and (vii) with respect to the application for reinstatement filed by Ms Deysi Elisabeth López Mas de Góngora against the Workers' Bank, after the Jurisdictional Chamber upheld the reinstatement judgment issued by the Second Labour and Social Welfare Court, it was established that the applicant had been dismissed once again, and her reinstatement was ordered a second time. In a more recent communication dated 15 February 2021, the Government reports that, following several requests, the applicant has finally issued a written statement declaring that she has been reinstated and is still awaiting the payment of unpaid wages and benefits.

410. With regard to the alleged anti-union dismissals of members of the Union of Workers of the Guatemalan Heart Disease Association (SIDETRALICO), and compliance with the reinstatement orders issued at first instance (recommendation (q) of the Committee), in a communication dated 4 November 2015, the Government states that: (i) contrary to the allegations of the workers of SIDETRALICO, the Secretariat of the Ministry of Labour and Social Welfare determined that a union establishment notice dated 8 August 2012 was never filed; (ii) the registration file contains copies of notices filed by Mr Francisco Arroyave Morales (employer), dated 7 and 8 August 2012, with the General Labour Inspectorate informing it of the dismissal of 20 workers from the Guatemalan Heart Disease Association, 12 of whom were members of (the newly formed) SIDETRALICO; (iii) on 5 December 2012, the workers of SIDETRALICO complied with the requirements issued in Order No. 334-2012; however, an irremediable flaw was noted in the file, as 12 of the 27 members had been dismissed due to restructuring, lacking the right to protection against dismissal at the time, and thus they failed to meet the minimum number of members required for the establishment of a trade union provided for in section 216 of the Labour Code; (iv) consequently, the Labour Directorate-General, based on the legislation in force, decided to reject the application for registration from SIDETRALICO; (v) on 23 January 2013, the members of SIDETRALICO informed the Labour Directorate-General that they were filing an amparo action against it due to the state of permanent defencelessness caused by the lack of permanent protection against dismissal; (vi) on 12 August 2013, the Labour and Social Welfare Court of Appeal declared the amparo action to be inadmissible and subsequently decided not to allow the appeal filed by the applicants; and (vii) consequently, the Labour Directorate-General states that it has not violated the right to freedom of association of the workers of SIDETRALICO, that the unit of the Ministry of Labour and Social Welfare acted in accordance with the law in refusing to register SIDETRALICO, and requests the Committee not to pursue the examination of this allegation.

411. With regard to any court decisions relating to the validity of the termination of the contract of the general secretary of the trade union organization SITRASEPAZ, Mr Luis Antonio Mérida Ochoa (recommendation (p) of the Committee), in a communication dated 13 April 2016, the Government states that the action to obtain his reinstatement was denied by the Chamber of Amparo and Preliminary Proceedings of the Supreme Court of Justice, a decision that was appealed by Mr Mérida Ochoa before the Constitutional Court, and that as of drafting of the communication, the appeal had yet to be resolved. As to the additional information on the total number of dismissals that occurred because of the closure of the Peace Secretariat, the Government states that the total number of workers whose contracts were terminated was 15.

Of these 15 workers, 10 have initiated legal action with a view to their reinstatement. The Second Chamber of the Labour and Social Welfare Court of Appeal granted the reinstatement of the workers, but only for the remainder of their contracts. However, the applicants appealed to the Supreme Court of Justice to modify the judgment regarding the duration of their reinstatement, but this action was declared to be inadmissible in a judgment dated 30 July 2014. This judgment was also appealed before the Constitutional Court, an appeal that was rejected in a judgment dated 26 February 2015. The Government states that the above-mentioned judgments show that the termination of the contracts of the staff from the archives directorate at the Peace Secretariat was lawful, as there was no other area in the Peace Secretariat, following the closure of the archives directorate, to which these workers could be reassigned. Regarding the offences of which Mr Luis Antonio Mérida Ochoa has been accused, the Government states that the Peace Secretariat authorities filed a criminal complaint against Mr Mérida Ochoa for possibly committing the offences of fraud, a special case of fraud, abuse of authority, fraud and extortion, although the investigation into this complaint is being conducted by the Prosecutor's Office against Corruption in the Public Prosecutor's Office and, as of the drafting of this communication, was still under way. The Government also states that the purpose of this complaint was not to criminalize Mr Mérida Ochoa, but to safeguard the interests of the State, and that the criminal complaint against the official was the result of his irresponsible actions, which have been fully proven by the sanctions imposed on him by the Office of the Comptroller General. In a more recent communication dated 31 January 2020, the Government states that, with regard to the criminal case against Mr Luis Antonio Mérida Ochoa, according to the records of the Public Prosecutor's Office, the case has been closed because it was dismissed by the prosecution. In another recent communication dated 12 May 2023, the Government states that: (i) regarding the workers, Ms Adela Victorina Arreaga De León de Barrios or Adela Victorina De León, Ms María Tulia López Pérez, Mr Sergio Arnoldo García Mendoza, Ms Clemencia Verónica González Berdúo, Ms Mary Guadalupe Ismalej Chen and Ms Juana Francisca Aj González, who had been dismissed by the National Reparations Programme attached to the Peace Secretariat, they were all reinstated between 28 and 29 August 2016; (ii) complaint MP001-2017-40394 before the Prosecutor's Office for Crimes against Judicial Officials and Trade Unionists, filed by Mr Luis Antonio Mérida Ochoa, Mr Luis Adolfo Javier Gaytán and Mr César Augusto Arrecís Canelo of SITRASEPAZ, against the Peace Secretariat of the Office of the President of the Republic, in their capacity as former chair and chair, respectively, of the National Reparations Commission, for possible commission of the crimes of discrimination, abuse of authority, breach of duty and non-compliance, was dismissed in a decision dated 25 June 2018, and (iii) by means of Governmental Agreement No. 46-2022 dated 15 February 2022, the Government agreed to close the Peace Secretariat of the Office of the President of the Republic and appointed a liquidation board with a view to fulfilling, inter alia, the labour obligations of the workers.

412. As to the alleged anti-union dismissals of members of SITRAPDH (recommendation (q)), in a communication dated 5 April 2021, the Government states that: (i) the workers Ms Eva Luz Urízar Solís, Mr Julio Cesar Fernández Villagrán, Ms Karla Joanna García Santiago, Ms Ana Lucía del Carmen Carrascosa Barrera, Mr Julio Mizraim Tzul Hernández, Ms Sandra Bernarda Baquías Rojas de Yax and Ms Sonia Gabriela Quiroa Morales were dismissed on 29 May 2013 and instituted legal proceedings for reinstatement on 3 June 2013 before the Labour and Social and Economic Welfare Court of First Instance of the Department of Quetzaltenango; (ii) as the Court failed to issue an order to reinstate the applications, the workers filed an amparo action against the Judge of First Instance; (iii) on 29 December 2014, a judgment was handed down in favour of the applicants and thus the Court of First Instance had to issue the decision legally corresponding to the considerations of the judgment on merits; and (iv) the Judge of First

Instance, in an order dated 27 February 2015, ordered the reinstatement of the applicants, and on 22 June 2016, the Office of the Human Rights Ombudsman filed a petition containing the applicants' reinstatement agreements.

413. With regard to the alleged commission of acts of anti-union discrimination against members of the Union of Administrative and Education Service Workers of Guatemala (STAYSEG) and SITRADEMEG and the need to ensure the free exercise of the right to collective bargaining within the Ministry of Education (recommendation (r)), in communications dated 21 December 2016 and 30 August 2019, the Government states that: (i) on 1 July 2014, the Labour, Social Security and Family Court of First Instance of Chiquimula ordered the reinstatement of Mr Byron Rolando Fuentes León, a SITRADEMEG official, as well as the payment of unpaid wages and other unpaid benefits, a judgment that was subsequently upheld by the Second Chamber of the Labour and Social Welfare Court of Appeal of Guatemala; (ii) Ms María Magdalena Aju Upun, a member of the advisory council of STAYSEG, was reinstated and paid her unpaid wages and employment benefits; (iii) with regard to ordinary labour proceedings brought by the Ministry of Education with the aim of obtaining judicial authorization to dismiss Mr Jorge Byron Valencia Martínez, a judgment was handed down on 24 February 2014 dismissing the petition filed by the State, a decision that was upheld at second instance by the court that subsequently that heard the amparo action filed by the Government; and (iv) with regard to the criminal complaint filed by Mr Jorge Byron Valencia Martínez concerning two incidents in which he was threatened, after conducting a criminal investigation, the Public Prosecutor's Office deemed it appropriate to dismiss the criminal complaint in question until new evidence made it possible to resume the investigation.

414. As to the Committee's recommendation urging the Government to ensure, should the existence of the court orders referred to in the conclusions be substantiated, that the administration concerned immediately reinstates the dismissed workers in their posts (recommendation (s)), in a communication dated 11 September 2023, the Government states that: (i) on 10 February 2023, the judiciary created a court of justices of the peace in criminal matters based in Guatemala City and consisting of ten justices, with an annual operating budget of US$229,875, to hear cases of non-compliance with labour and social welfare decisions; (ii) the creation of this court came into effect by means of Agreement No. 33-2022 of the Supreme Court of Justice, which also provides that this court of justices of the peace in criminal matters of the municipality of Guatemala will be competent outside working hours to announce the grounds for arrests, hear the detainees and decide the legal situation of the persons brought before it; and (iii) the new court will have national jurisdiction.

Reply to new allegations

415. Regarding the alleged obstruction of the registration of CENTRAMAGRETAL, in a communication dated January 2018, the Government states that on 18 January 2018, the Constitutional Court rejected the appeal against the denial of the amparo action filed by the union, thus confirming the judgment that established that amparo proceedings are not appropriate for challenging the requirements set by the Labour Directorate-General during the registration process.

416. With respect to the registration of STETPETEN, in a communication dated June 2018, the Government states that the union was registered on 7 February 2018. As to the registration of SITRATEAVERAPAZ, in a communication dated June 2018, the Government states that the union has been registered since 9 February 2018. As regards SITRATCHIQUI, in a communication dated 23 March 2021, the Government states that the union was registered on 25 September 2017.

417. Moreover, in a communication dated 12 May 2023, the Government states that it has proceeded with the registration of the following trade union organizations, namely: (i) the Union of Secondary Education Workers of San Marcos on 8 January 2016; (ii) the Union of Secondary Education Workers of Izabal on 8 January 2016; (iii) the Union of Secondary Education Workers of Santa Rosa on 18 January 2016; (iv) the Union of Secondary Education Workers of Sacatepéquez on 8 January 2016; (v) the Union of Secondary Education Workers of Quiché on 18 January 2016; (vi) the Union of Secondary Education Workers of Guatemala on 4 April 2016; (vii) the Union of Secondary Education Workers of the Municipality of Ixcan on 6 August 2016; (viii) the Union of Secondary Education Workers of Suchitepéquez on 28 August 2016; (ix) the Union of Secondary Education Workers of Sololá on 27 February 2017; (x) the Union of Secondary Education Workers of Escuintla on 25 September 2017; (xi) the Union of Secondary Education Workers in the Department of Chiquimula on 25 August 2017; (xii) the Union of Secondary Education Workers of the National Institutes of Basic and Diversified Education of the West on 2 November 2017; (xiii) the Union of Workers of the Ministry of Education of Guatemala on 1 August 2017; and (xiv) the Union of Education Workers at National Level on 11 December 2019.

418. With regard to the new allegations concerning the situation of SITRARENAP, in a communication dated 5 August 2019, the Government states that: (i) the applications filed by Ms Sindy Mariela Morales Estrada, Mr Efraín Exequien Estupe López, Mr Kevin José Valiente Dávila, Mr Edgar Ernesto Oliva Leal and Ms Sandra Elizabeth Cifuentes de Pérez, against RENAP, before the Tenth Labour and Social Welfare Court, were granted on 4 January 2018 and the reinstatement of the applicants was ordered; (ii) on 13 June 2018, the Second Chamber of the Labour and Social Welfare Court of Appeal upheld the appealed decision and ordered RENAP to reinstate the workers and pay them their outstanding employment benefits. The Court considered the reinstatement order to have been complied with on 10 April 2019; and (iii) on 31 May 2019, RENAP was ordered to pay the workers' employment benefits, an order that was complied with by RENAP, according to an official letter dated 30 July 2019.

419. In a communication dated 28 June 2019, the Government states that the application filed by Mr Henry Neftalí Chacón y Cachón, against RENAP, before the Labour, Social Welfare and Family Multi-Judge Court of First Instance of the Department of Zacapa, was granted and the applicant's reinstatement was ordered, a decision that was unsuccessfully appealed by RENAP. As a result, RENAP filed an amparo action on 21 May 2019.

420. With regard to the new allegations concerning the situation of the Union of Workers Specializing in Secondary-Level Distance Learning of Escuintla (SITRATESCUINTLA) that the order to register the union limits the right to freedom of association while their employment relationship is in effect, in a communication dated 10 September 2019, the Government states that the ministerial decisions ordering the registration of unions do not constitute an act of retaliation or anti-union discrimination and that the text of the decision must be read in its entirety, which refers to the constitutional guarantee that workers have the right to freedom of association and which, in the operative part, orders the registration of SITRATESCUINTLA in the legal personality book of the Trade Union Register.

421. With regard to the MSICG's allegation that the Labour Directorate-General requires trade unions to send it copies of the membership application of each member, the Government states that the orders referred to in the complainant's new allegations are inconsistent with the records of the Labour Directorate-General, as the registration numbers and dates do not coincide, or correspond to different matters, and that the Government is therefore unable to provide any information in this regard.

D. The Committee's conclusions

422. *The Committee recalls that the present case, which led to an interim report in October 2015, refers to numerous allegations of violation by the public authorities of the right to register trade union organizations, as well as allegations of anti-union dismissals and anti-union acts against founding members of trade unions.*

423. *With regard to the specific allegations of obstacles to the registration of numerous organizations, the Committee had requested the Government to proceed immediately with the registration of a number of trade unions and to provide further information on the non-registration of others, as well as on the progress of several cases. The Committee had also requested the Government to take a series of general measures, including legislative measures, to ensure recognition of the right to trade union membership of various categories of workers, to respect union autonomy, to expedite considerably internal registration procedures, and to ensure that trade unions had access to rapid and effective administrative and judicial remedies if they were not registered.*

424. *The Committee notes that in new allegations, the complainant reports that the previously alleged violations persist, while the Government provides information on the progress made since 2015, both in relation to the registration of a number of trade unions and to several initiatives aimed at addressing the more general issues mentioned in the preceding paragraph.*

Allegations regarding the registration of certain trade union organizations

425. *The Committee first takes note of the information provided by the parties concerning the registration status of several trade union organizations in respect of which it had issued recommendations in its previous report.*

426. *With regard to its recommendation (a) concerning the registration of SAMGUA and the recognition of the validity of the provision in the constitution of that organization which envisaged union membership for all workers at the Ministry of Education, regardless of the type of contract through which the employment relationship had been formalized, the Committee notes that: (i) in a communication dated 13 December 2015, the complainant alleges that after SAMGUA obtained legal personality on 1 October 2015, three years after submitting its application, the Ministry of Education filed an appeal to revoke the Ministry of Labour's decision to grant SAMGUA legal personality in order to prevent it from being registered; and (ii) in a communication dated 22 May 2019, the Government states that SAMGUA was registered in the Public Trade Union Register on 21 September 2015. The Committee welcomes the registration of SAMGUA. The Committee requests the Government to provide information on the outcome of the appeal for revocation filed by the Ministry of Education and to confirm that all workers at the Ministry of Education may join SAMGUA, regardless of the type of contract through which the employment relationship has been formalized.*

427. *With regard to its recommendation (b) concerning the registration of CETRAMACH, the Committee notes that: (i) the complainant states that it had to turn to the courts to eventually obtain the registration of CETRAMACH; and (ii) the Government reports that CETRAMACH was registered on 21 September 2015. The Committee welcomes this registration and will not pursue its examination of this allegation. The Committee trusts that, in the future, registration processes will be expedited so that trade union organizations will not have to go through the courts to be registered.*

428. *With regard to its recommendation (c) inviting the CCS to resubmit its application for registration and urging the Government to process it without delay, the Committee notes that: (i) the complainant organization reports the registration of the CCS, but regrets that it had to amend its constitution to meet the illegal requirements of the Ministry of Labour and Social Welfare; and (ii) the Government*

reports that the CCS was registered on 21 September 2015. The Committee duly notes the registration of the CCS and will not pursue its examination of this allegation.

429. *With regard to its recommendation (d) requesting the Government to proceed without delay with the registration of CENTRIMAG, the Committee notes with regret that the Government and the complainant indicate that CENTRIMAG has not been registered.*

430. *With regard to recommendation (e) concerning the modifications required to the statutes of CICO and the guarantees requested by the Committee from the Government to ensure that CICO would be able to represent the workers envisaged in its constitution, the Committee notes that: (i) the complainant alleges that the Government did not register CICO or ensure that CICO would be able to represent the workers envisaged in its constitution; and (ii) the Government reports five modifications to the statutes of CICO requested by the labour administration, including: removal of the word "workers", indication of the occupation or trade of its members, as well as their place of work, and modification of the nature of the organization, indicating whether it was of an occupational or "campesino" nature; and (iii) in the absence of a response from CICO to the requested modifications, the application for registration was shelved after six months. The Committee takes note of this information. The Committee recalls that in its previous examination of the case, when it noted that the complainant had indicated that CICO was not an occupational union but an organization by branch of activity designed to group together farm workers from the departments of Huehuetenango, San Marcos, Quiché and Totonicapán, among others, and that the administration had required it to amend the categories of workers covered, the Committee had emphasized that the free exercise of the right to establish and join unions implies the free determination of the structure and composition of unions [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 502]. The Committee expresses concern about the amendments required to the categories of workers that CICO wished to group together. The Committee requests the Government to ensure, in the future, respect for the autonomy of newly formed trade union organizations concerning the categories of workers they intend to group together.*

431. *With regard to its recommendation (f) concerning the registration of SINATRAMS, the Committee notes with satisfaction that the Government reports that this organization was registered on 18 January 2016. The Committee will therefore not pursue its examination of this allegation.*

432. *With regard to recommendation (g) requesting the complainant to send its observations in relation to the Government's indications that several workers had complained that their affiliation was obtained improperly and that the union did not have members in three of the six companies covered by its statutes, the Committee notes that the complainant states that none of the members of the SITRAGFIT have left the union, which shows that the Government's allegations concerning the validity of the memberships is unfounded, and that the Government has not permitted the registration of the union. Noting that the complainant has not provided its observations on the alleged absence of members in three of the six companies covered by the statutes of SITRAGFIT, the Committee will not pursue its examination of this allegation.*

433. *With regard to recommendation (h) requesting the Government to proceed with the registration of the Union of Workers and Employees at the Ministry of Education and Private Schools, the Committee notes with regret that the Government reiterates that: (i) the file of the union in question was shelved on 3 March 2014 due to "irremediable flaws"; and (ii) this refusal to register the union was based on its non-compliance with section 215 of the Labour Code (which provides that unions must be occupational unions, company unions or industrial unions) and section 3 of the Act on Unionization and Regulation of Strike Action by State Employees (which provides that state employees may organize themselves by state agencies, ministries, autonomous or decentralized entities or by branch*

or trade), which establish the types and forms of trade union organizations permitted. In this respect, the Committee recalls that it had noted in its previous examination of the case that it should be possible for a trade union organization in the education sector to group together workers from both public and private schools, on the understanding that each group should conduct separate negotiations, being subject to a separate budget and separate regulations. Emphasizing once again that the free exercise of the right to establish and join unions implies the free determination of the structure and composition of unions, the Committee requests the Government to take the necessary measures, including legislative measures, if necessary, to grant greater autonomy to newly formed trade union organizations in the determination of their structure.

434. *With regard to recommendation (i) requesting the immediate registration of S.T.E.B.I.N.T.J., the Committee notes with satisfaction that the Government reports that this organization was registered on 15 December 2015. The Committee will therefore not pursue its examination of this allegation.*

435. *With regard to recommendation (j) requesting the complainant to provide its observations on the reasons given by the Government for the non-registration of four local public sector trade union organizations, the Committee notes that: (i) it has not received a reply from the complainant on this matter; (ii) the Government reports the registration of the Union of Workers of the Municipality of San Pedro Sacatepéquez in the Department of San Marcos on 16 January 2012, SINEMUNIPAL on 13 April 2012 and SITRAUM on 6 November 2018; and (iii) the Government reiterates that it did not register the Union of Workers of the Municipality of Pachalum because some of its founding members were municipal police officers. The Committee notes with satisfaction the registration of three organizations and, in the absence of information from the complainant concerning the non-registration of the fourth organization, will not pursue its examination of this allegation.*

436. *With regard to recommendation (k) requesting the Government to provide information on the dates and the reason for the shelving of registration applications from 13 trade unions because more than six months had elapsed since the last notification from the labour administration, the Committee notes that, in addition to providing the dates of the respective shelvings, the Government reports that: (i) two of these organizations (the Union of Workers of the Municipality of Usumatlán and the Union of Workers at SEAK HWA SA) were registered; (ii) with respect to the Union of Collection Agents at Cable Star SA, the file was shelved due to the resignation and withdrawal by the union members; (iii) with respect to the General Union of Municipal Employees of Coatepeque, its registration application was shelved due to the fact that the founding workers performed their duties in different municipalities; (iv) with regard to the Union of Workers of the Municipality of Santa Lucía Milpas Altas, its application for registration was shelved due to the lack of response to the preliminary request in which the union members were asked to submit the charter and constitution signed by the secretary and the other members; and (v) the applications for registration from eight other organizations (the Union of Workers at Avandia SA, the Union of Education Workers at National Institutes for Secondary-Level Distance Learning in Izabal, the Union of Workers of the Municipality of Santa Cruz El Chol in the Department of Baja Verapaz, the Union of Workers of the Municipality of San Miguel Tucurú in the Department of Alta Verapaz, the Teachers' Union of Jalapa, Union of "Teachers for Change", the Union of Workers of the Municipality of Villa de Tejutla in the Department of San Marcos and the Union of Workers of the Municipality and Electricity Company of Guastatoya) were shelved due to their failure to comply with the amendments required by the labour administration and because more than six months had elapsed since the last notification from the administration. The Committee takes note of this information. Noting that it does not have any specific information on the nature of the amendments requested by the labour administration to the eight newly formed trade union organizations whose registration applications have been shelved, the Committee again requests the Government to provide such information.*

437. *With regard to recommendation (l) requesting the Government to provide information on the reasons for and outcome of the legal proceedings still in progress concerning the applications for registration from five trade union organizations, the Committee notes that the Government reports that: (i) the legal proceedings initiated by the company against the Ministry of Labour and Social Welfare regarding the registration of the Union of Workers at the Port of Santo Tomás de Castilla (SINTRAPSATCA) were rejected by the competent courts; (ii) the legal proceedings against the registration of SITRATERNIUM instituted by the company concerned were also rejected; (iii) the registration of SIDETRALICO was refused by the courts on the grounds that it did not have the minimum number of members required by law, since 12 of the 27 founding workers of the organization had already been dismissed when the union was established; (iv) the various legal appeals filed to challenge the refusal to register SIPROSAT on the grounds it did not meet the required number of members because some of them were considered to occupy positions of trust were rejected. With regard to the Union of Workers of the Directorate-General for Sports and Recreation at the Ministry of Sport (SINTRADIGERE), the Committee notes that its initial registration was eventually revoked following administrative and judicial appeals filed by the Ministry of Culture and Sport on the grounds that the founding members of the union were fixed-term employees, some of whom were employed on the basis of civil contracts (budget item 029). As to the information provided by the Government concerning the non-registration of SIDETRALICO on the grounds that workers dismissed prior to joining the union should not be counted among its members, the Committee recalls that it has considered that a provision excluding dismissed workers of the right to union membership is incompatible with the principles of freedom of association since it deprives the persons concerned of joining the organization of their choice [see **Compilation**, para. 410]. The Committee requests the Government to take due account of the above-mentioned criterion in any administrative or judicial proceedings that may still be pending with respect to the registration of SIDETRALICO. With regard to the cancellation of the registration of SINTRADIGEDERE on the grounds that it was established by workers employed by the Ministry of Culture and Sports on the basis of fixed-term contracts and civil contracts, the Committee recalls that all workers must be able to enjoy the right to freedom of association regardless of the type of contract by which the employment relationship has been formalized [see **Compilation**, para. 327], and that it has already underlined, including in the context of the present case, the need for the Government of Guatemala to recognize the right to organize of workers who are hired by the State on the basis of civil contracts for professional services [see 363rd Report, Case No. 2768, March 2012, paras 641 and 644; 376th Report, Case No. 3042, October 2015, para. 532]. The Committee requests the Government to take the necessary measures in this respect.*

438. *With regard to recommendation (m) requesting the Government to review its decisions not to register SITRAPVSAT and SITRAMUNIRODEO in the light of the principles underlined by the Committee relating to workers occupying positions of trust, the Committee notes that: (i) the complainant states that the Government has continued to refused to register SITRAPVSAT, despite the Committee's recommendation; and (ii) the Government indicates that the administrative appeals filed in 2012 against the refusal to register SITRAPVSAT were rejected and that there is no other appeal pending. While taking note of this information, the Committee recalls once again that an excessively broad interpretation of the concept of "worker of confidence" [worker occupying a position of trust], which denies such workers their right of association, may seriously limit trade union rights and even, in small enterprises, prevent the establishment of trade unions, which is contrary to the principle of freedom of association [see **Compilation**, para. 385]. As stated in its previous examination of the case, the Committee also reiterates that, taking into consideration the numerous reported cases of delay in the registration of trade union organizations caused by the time spent by the labour administration on examining the types of employment relationship and the categories of job occupied by union founders, the Committee considers that issues involving complex legal appraisals*

in certain cases, such as determining whether or not the union's founders occupy positions of trust, should not delay the registration process. The Committee therefore requests the Government to take the necessary steps to ensure that such issues are dealt with after registration in the event of any objections.

439. *With regard to recommendation (n) requesting the Government to provide information without delay on the registration of the Union of the Education Ministry of the Department of Alta Verapaz, the Union of the Ixcan Quiché Health Sector and the Guatemalan Union of Labour Supporters and Defenders of Human Rights (or, if applicable, to indicate the reasons that prevented registration), the Committee notes, first, that the Government indicates that the Union of the Ixcan Quiché Health Sector has been registered. The Committee also notes that: (i) the complainant states that the Government has continued to refuse to register the Guatemalan Union of Labour Supporters and Defenders of Human Rights; (ii) the Government states that on 20 November 2013 the union was notified of several recommendations for the processing of its file and that the Labour Directorate-General shelved the file because more than six months had elapsed without any activity; and (iii) the Government states that the registration file of the Union of the Education Ministry of the Department of Alta Verapaz was shelved due to its late submission, as the application had been submitted more than 20 days after the constituent assembly, and that no new application had been submitted since. The Committee takes note of the information provided concerning the Union of the Education Ministry of the Department of Alta Verapaz. The Committee notes, however, that the Government has not clarified the content of the labour administration's recommendations to the Guatemalan Union of Labour Supporters and Defenders of Human Rights and requests it to do so.*

New allegations of obstruction of union registration

440. *The Committee takes note of the complainant's new allegations that the labour administration has continued to obstruct the registration of several trade union organizations by imposing inappropriate orders and recommendations making registration conditional on the amendment of substantive aspects of the organizations' constitutions. The Committee notes that the complainant specifically refers to the situation of the following organizations whose registration was allegedly obstructed in 2016 and 2017: SITRATEAVERAPAZ, SINDIOBREROJOCOTÁN, SITRATCHIQUI, CENTRAMAR, CENTRAMAGQUICHÉ and SITRAMSALT. The Committee notes in this respect that the Government reports the registration of SITRATCHIQUI in 2017 and of SITRATEAVERAPAZ and STETPETEN in 2018, as well as the denial of the amparo action filed by CENTRAMAGRETAL. The Committee notes that the Government has not provided its observations on the registration of the other four trade union organizations and requests it to do so.*

General allegations on the registration of trade union organizations

441. *The Committee had also requested the Government to take general steps: (i) to ensure recognition of the right to trade union membership of workers who provide services for the State on the basis of civil contracts; (ii) to ensure that issues involving complex legal appraisals in certain cases, such as determining whether or not the union's founders occupy positions of trust, do not delay the registration process, since these could be dealt with after registration in the event of any objections; (iii) to expedite considerably the handling of registration applications, with a view to adopting an approach that enables the rapid resolution, in conjunction with the founders of trade union organizations, of issues of substance or form that arise and to ensure that trade unions have access to rapid and effective administrative and judicial remedies if they are not registered; and (iv) eliminate, in consultation with the most representative social partners, the various legal obstacles to the free establishment of trade union organizations referred to in the preceding paragraphs*

(taking the necessary steps, as a matter of urgency, to revise section 215(c) of the Labour Code so that it is possible to establish industrial trade unions).

442. *With regard to the need to recognize the right to trade union membership of workers who provide services for the State on the basis of civil contracts (recommendation (a)), the Committee notes that the complainant states in its additional allegations that the Ministry of Labour and Social Welfare continues to ask affiliated workers to indicate under which budget item they are employed in order to refuse the registration of the organizations concerned and cites several organizations whose specific situations have already been examined in preceding paragraphs of these conclusions (CENTRAMGQUICHÉ, CENTRAMAGRETAL, SITRATEAVERAPAZ, CENTRAMAR, SINDIOBREROJOCOTÁN and STETPETEN). The Committee also notes that, with respect to workers in secondary-level distance learning (workers providing distance public education services), the organization alleges that the Ministry of Labour and Social Welfare only recognizes a temporary right to trade union membership, which is strictly limited to the duration of their fixed-term contracts. The Committee notes that, for its part, the Government states that: (i) in the context of the implementation of the road map on freedom of association adopted by the Government in 2013 as part of the follow-up to the complaint filed in 2012 under article 26 of the ILO Constitution for the alleged violation of Convention No. 87, a letter was sent on 7 March 2018, at the request of the members of the National Tripartite Committee on Labour Relations and Freedom of Association, to the Labour Commission of the Congress of the Republic, informing it of the tripartite agreement on the application of labour legislation to temporary contracts and special schemes in the public sector; and (ii) the Ministry of Labour and Social Welfare has registered several unions of workers in secondary-level distance learning, such as SITRATESCUINTLA, thus recognizing such workers' constitutional right to freedom of association.*

443. *The Committee notes the information provided by the parties. At the legislative level, the Committee takes due note of the tripartite agreement reached in 2018 to explicitly recognize in legislation the applicability of labour legislation to temporary contracts and special schemes in the public sector. The Committee notes with regret, however, that more than five years later, the legislative reform that was agreed on a tripartite basis has yet to occur. The Committee therefore once again urges the Government to take all the necessary steps to amend the national legislation without delay so as to fully recognize in the legislation the right to trade union membership of workers employed by the administration on the basis of civil contracts. Noting that this issue is being specifically monitored by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its supervision of the application of Convention No. 87, the Committee refers this legislative aspect of the case to the CEACR.*

444. *On a practical level, the Committee notes both the complainant's allegations concerning the continued obstruction of the right to trade union membership of workers who provide services for the State on the basis of civil contracts and the information provided by the Government concerning the registration of a large number of trade unions in the public sector. The Committee notes, however, that in its various communications, the Government does not specifically refer to the alleged disregard for the trade union membership rights of the above-mentioned categories of workers in the public sector and that it has not provided information on the registration of several organizations in respect of which the complainant alleges a violation of the trade union rights of workers employed by the public administration on the basis of civil contracts. Recalling that all workers must be able to enjoy the right to freedom of association regardless of the type of contract by which the employment relationship has been formalized [see* ***Compilation****, para. 327], the Committee once again urges the Government to take all the necessary steps to ensure that the Ministry of Labour and Social Welfare recognizes in practice the right to trade union membership of*

workers who provide services for the State on the basis of civil contracts. The Committee requests the Government to keep it informed in this regard.

445. *With regard to the need to take the necessary steps, as a matter of urgency, to revise section 215(c) of the Labour Code so that it is possible to establish industrial trade unions (recommendation (d)), the Committee notes that the complainant states that no progress has been made in this regard, while the Government refers to the initiatives taken in the context of the implementation of the 2013 road map as part of the follow-up to the complaint filed in 2012 under article 26 of the ILO Constitution. The Committee takes particular note in this regard of: (i) the tripartite agreements on a series of principles reached in 2018 with respect to the requirements for establishing industrial unions; and (ii) the inclusion of the issue of industrial unions in the work plan of the Subcommittee on Legislation and Labour Policy of the National Tripartite Committee on Labour Relations and Freedom of Association, and the planning of ILO technical assistance in this regard.*

446. *While taking due note of this information, the Committee notes with regret that more than five years after a tripartite agreement on a series of principles to revise the requirements for the establishment of an industrial union was concluded, section 215(c) of the Labour Code has still not been revised. The Committee recalls that, under the section in question, the establishment of an industrial union requires the affiliation of 50 per cent plus one of the workers in a given sector. Recalling that the legally required minimum number of members must not be so high as to hinder in practice the establishment of trade union organizations [see **Compilation**, para. 435], the Committee notes with concern that, in the context of the numerous cases of newly formed trade unions which are examined in the present case, it has not been informed of the registration of any sectoral trade unions despite several attempts in this regard. Recalling once again that the free exercise of the right to establish and join unions implies the free determination of the structure and composition of unions [see **Compilation**, para. 502], the Committee once again urges the Government to take the necessary steps to revise section 215(c) without delay. Noting that this issue is being specifically monitored by the CEACR in its supervision of the application of Convention No. 87, the Committee refers this legislative aspect to the CEACR in its supervision of the application of Convention No. 87. In addition, the Committee once again urges the Government to take the necessary steps to proceed with the registration of trade union organizations that seek to group together workers from different companies in the same sector.*

447. *With regard to the Committee's request to the Government to expedite considerably its internal registration procedures, adopting an approach that enables the rapid resolution, in conjunction with the founders of trade union organizations, of issues of substance or form that arise, and to ensure that trade unions have access to rapid and effective administrative and judicial remedies (recommendations (c) and (o)), the Committee notes the complainant's new allegations that: (i) the Ministry of Labour and Social Welfare continues its widespread practice of imposing inappropriate "prerequisites" and "recommendations" requesting substantial revisions of the constitutions of newly formed trade union organizations; (ii) the effect of this practice of the Ministry of Labour and Social Welfare combined with the case law of the Constitutional Court is twofold: on the one hand, refusal to comply with such "prerequisites/recommendations" results in the shelving of the application for registration while, on the other, neither administrative nor amparo appeals can be filed against these requests for amendments because these orders are not considered administrative decisions; and (iii) as a result of the above, the only option available to newly formed trade union organizations is to challenge the shelving of the application for registration before the labour courts, a procedure which can take several years . The Committee notes that, for its part, the Government states that: (i) according to the statistical records of the Ministry of Labour and Social Welfare, a high percentage of the applications submitted for the registration of trade unions are successful, which shows that there are no obstacles to the free establishment of trade unions; (ii) the Ministry of Labour and Social*

Welfare is always available by telephone, email or appointment to answer any questions the newly formed unions may have; (iii) the Ministry of Labour and Social Welfare published the "Trade Union Booklet" in December 2018, containing clear and simple information on how to obtain union registration, following its presentation to the National Tripartite Committee on Labour Relations and Freedom of Association; (iv) in the framework of the National Tripartite Committee on Labour Relations and Freedom of Association, the Government sent the workers' sector an invitation to a working meeting in May 2019 to discuss the process for establishing trade union organizations and to strengthen that process through dialogue; (v) on 8 June 2022, the Ministry of Labour and Social Welfare signed a letter of intent with the Ministry of Labour and Social Welfare of the Republic of Argentina, requesting support and assistance from the Argentine Ministry so that Guatemala can have a strengthened and more robust Public Trade Union Register in the Labour Directorate-General, similar to the one in Argentina; (vi) the Ministry of Labour and Social Welfare has issued Ministerial Agreement No. 214-2023 of 12 May 2023, which regulates the procedure for issuing union identification cards to members of executive committees and advisory councils of trade unions, which will allow them to be quickly and simply identified when performing their duties, through the use of a quick response (QR) code; and (vii) on 12 December 2023, the Guide to Freedom of Association, replacing the Trade Union Booklet of 2018, was adopted with a view to facilitating the registration of trade union organizations, strengthening legal certainty and reducing the discretion of the labour authorities.

448. *The Committee welcomes the steps taken by the Government to expedite the various administrative formalities of the registration process, particularly through electronic tools. The Committee also welcomes the initiatives to address the issues relating to the registration of trade unions through social dialogue in the National Tripartite Committee on Labour Relations and Freedom of Association. The Committee also notes that, according to the data submitted by the Government to the CEACR in 2022, between 1 January 2021 and 15 August 2022, out of the 76 applications received, 74 trade union organizations were registered by the Ministry of Labour and Social Welfare. The Committee nevertheless notes that allegations of obstacles to the registration of certain organizations persist, and that the Government has failed to provide the reasons for the non-registration of several of them. In the light of the above and the first initiatives taken in this respect, the Committee requests the Government to take the necessary steps to ensure that the issues surrounding the registration of trade union organizations are regularly monitored, discussed with the representative national federations and addressed in a tripartite dialogue in the National Tripartite Committee on Labour Relations and Freedom of Association. The Committee requests the Government to keep it informed in this regard.*

449. *With regard to the allegation that it is impossible to file rapid and effective appeals against requirements to amend constitutions of newly formed trade union organizations, the Committee notes that it has not received the Government's specific observations in this regard. The Committee is therefore compelled to once again request the Government to take the necessary steps to ensure that trade unions have access to rapid and effective administrative and judicial remedies if they are not registered.*

450. *With regard to the request that issues involving complex legal appraisals, such as determining whether the union's founders occupy positions of trust, do not delay organizations' registration process (recommendation (b)), the Committee refers first to the conclusions reached in paragraph 71 of the present case when examining the registration of certain trade unions in particular. The Committee also notes that the complainant alleges that the Constitutional Court has endorsed the labour administration's practice of informing employers of applications for the registration of trade unions in their company so that the employers can, on the one hand, identify any workers occupying positions of trust or other categories of workers who, according to the administration, should not*

have the right to organize and, on the other, contest the application for the registration of the trade union. The Committee notes with regret that the Government has not provided its observations in this regard. Noting that, in its supervision of the application of Convention No. 87, the CEACR has requested the Government to provide specific information in this respect, the Committee refers this matter to the CEACR.

451. *The Committee lastly takes note of the complainant's new allegations that: (i) under section 225(e) of the Labour Code, trade unions must send a certified roll of all their members, including their full names, personal ID numbers and occupation or trade, to the Labour Directorate-General once a year; (ii) these data have been used to commit acts of anti-union discrimination against workers and, more specifically, have resulted in dismissals and various acts of anti-union violence; (iii) since 2016, the labour administration has also started to illegally require trade unions to add the membership application of each new union member in order to have their union rolls registered, knowing that the membership application contains sensitive information about each member, such as their phone number, email and mailing address; and (iv) seven unions received such requests between 2016 and 2018. The Committee notes that, for its part, the Government states that the orders referred to in the complainant's new allegations are inconsistent with the records of the Labour Directorate-General, as the registration numbers and dates do not coincide, or correspond to different matters, and that the Government is therefore unable to provide any information in this regard. The Committee takes due note of this reply but observes that the Government does not comment on the alleged practice of requiring the personal data of all members of trade union organizations. Recalling the risk of reprisals and anti-union discrimination inherent in demands for lists of the names of members of an organization and copies of their membership cards for the determination of the representativity of the organization [see **Compilation**, para. 535], the Committee requests the Government to provide its observations in this regard.*

452. *In general, the Committee notes the initiatives taken by the Government to expedite registration processes and observes that, according to the information provided by the Government covering the period from 1 January 2021 to 15 August 2022, the proportion of applications for trade union registration that have been granted has increased significantly. The Committee nevertheless notes that substantive legislative and institutional difficulties that could significantly restrict the exercise of freedom of association (inability to establish sectoral unions, obstacles to the registration of organizations affiliating workers employed by the public administration on the basis of civil contracts, impact of workers considered to be occupying positions of trust on the registration process, access by unregistered trade unions to effective remedies) remain. Noting that the registration of trade unions forms part of the complaint filed against Guatemala in June 2023 under article 26 of the ILO Constitution by several Workers' delegates to the International Labour Conference, the Committee requests the Government to give due consideration to the points raised in these conclusions and recommendations and to take all the necessary steps in this regard without delay.*

Allegations regarding acts of anti-union discrimination in the context of the establishment of trade union organizations

453. *With regard to recommendation (p) concerning allegations of a series of acts of anti-union discrimination against officials and members of SITRASEPAZ, the Committee first takes note of the complainant's additional allegations that: (i) 22 members of SITRASEPAZ were illegally dismissed, ignoring the judicial summons issued by the courts on 14 and 16 July 2017; (ii) in 2017, the fixed-term contracts of several union members were arbitrarily terminated; (iii) the Ministry of Labour and Social Welfare demanded, as a condition for holding a round-table discussion with the union, that Mr Luis Antonio Mérida Ochoa step down as director of conciliation at the Peace Secretariat, on the*

grounds that it was a position of trust that could not be held by a union official; (iv) the public authorities have refused to negotiate the draft collective agreement submitted by SITRASEPAZ, citing the presidential prohibition on collective bargaining in the public administration set out in Presidential Memorandum No. 02-2017. The Committee then notes that, for its part, the Government stated in communications in 2016 and 2020 that: (i) the action for reinstatement initiated by Mr Mérida Ochoa following the termination of his contract was rejected by the courts, and the final decision on the appeal filed by him is pending; (ii) 15 workers were dismissed following the closure of the archives directorate of the Peace Secretariat; 10 of these workers filed an action for reinstatement, which was granted but only for the remainder of their contracts, as there were no other positions available in the Peace Secretariat following the closure of the archives directorate; and (iii) the criminal case against Mr Luis Antonio Mérida Ochoa was closed, as it had been dismissed by the prosecution. While taking due note of these various elements, the Committee also notes that, according to publicly available information, the Peace Secretariat was dissolved on 1 August 2020. The Committee requests the Government to provide information on the final outcome of the action to reinstate Mr Mérida Ochoa and trusts that the Government has ensured that the operations to close the Secretariat and any reassignment of its workers have been free of any anti-union treatment.

454. *With regard to the part of recommendation (q) concerning the alleged anti-union dismissals of members of SIDETRALICO, the Committee notes that the Government reports that: (i) on 7 and 8 August 2012, the Heart Disease Association dismissed 20 workers due to restructuring, prior to receiving notice of the establishment of a trade union; (ii) 12 of the dismissed workers were subsequently involved in the establishment of SDETRALICO; and (iii) the various courts hearing the case found that, at the time of their dismissal, the 12 workers did not enjoy special protection against dismissal. The Committee takes note of this information and will not pursue its examination of this allegation.*

455. *With regard to the part of recommendation (q) concerning the alleged anti-union dismissals of members of SITRAPDH, the Committee notes that the Government states that seven members of SITRAPDH were eventually reinstated in 2016 by the Office of the Human Rights Ombudsman after lengthy proceedings due to the filing of an amparo action by that Office. The Committee takes due note of this information, which is consistent with the Committee's findings in this regard in Case No. 3139 [see 396th Report of the Committee, October 2021, para. 380]. In the light of the above, the Committee will not pursue its examination of this allegation.*

456. *With regard to recommendation (r) concerning the allegations of anti-union discrimination against STAYSEG and SITRADEMEG, the Committee notes that the Government states that: (i) Mr Byron Rolando Fuentes León, a SITRADEMEG official, obtained first and second-instance judgments ordering his reinstatement and that the amparo actions filed by the Ministry of Education against these decisions were rejected; (ii) Ms María Magdalena Aju Upun, a member of the advisory council of STAYSEG, was reinstated in her post on 28 July 2016; and (iii) the request for judicial authorization to dismiss Mr Jorge Byron Valencia Martínez, general secretary of STAYSEG, was rejected by the courts at every instance. The Committee takes due note of this information and will not pursue its examination of these allegations.*

457. *The Committee notes that, since it last examined the present case, the complainant has submitted additional allegations of acts of anti-union discrimination allegedly committed against officials or members of trade union organizations in the context of their efforts to obtain union registration. The Committee notes, first of all, that the complainant alleges the commission of several anti-union acts against members of SAMGUA, including the dismissal of a teacher. The Committee notes that the Government has not provided its observations in this regard and requests it to do so without delay. The Committee also takes note of the complainant's allegations concerning SITRARENAP officials and members that: (i) in November 2017, the contracts of six workers who were members*

of the newly formed union were terminated and these workers subsequently obtained judicial decisions ordering their reinstatement; (ii) on 21 December 2017, the administration terminated the contracts of 55 additional workers; and (iii) following the registration of the union in March 2018, the administration arranged the anti-union transfer of Mr Melvin Estuardo Zacarías Velásquez, the union's internal relations secretary; this transfer was annulled by the courts, but RENAP did not comply with the order to reinstate the worker in his original post. The Committee notes that the complainant further states that it fears that RENAP will terminate the contracts of all the workers in the union, since all its workers are employed under budget item 029 (civil employment). The Committee notes that, for its part, the Government states that: (i) five members of the newly formed trade union who filed a legal action against the termination of their contracts in November 2017 obtained first and second-instance judgments in their favour and were effectively reinstated, as found by the courts in April 2019; and (ii) the sixth person, Mr Henry Neftalí Chacón y Cachón, obtained first and second-instance judgments ordering his reinstatement, in response to which RENAP filed an amparo action on 21 May 2019. While noting this information, the Committee requests the Government to: (i) provide information on the outcome of the above-mentioned amparo action; (ii) report on compliance with the reinstatement of the union's internal relations secretary to his former post; and (iii) take the necessary steps to ensure full respect for freedom of association in RENAP.

458. *The Committee further notes the additional allegations of anti-union discrimination against officials and members of SITRAGFIT. The Committee recalls that in its recommendation (g) it expected that the pending judicial rulings relating to the dismissal of the founding members of SITRAGFIT would be handed down in the very near future, and that all existing and pending reinstatement orders would be complied with immediately. In this regard, the Committee notes that the complainant alleges that: (i) after lengthy legal proceedings, final judgments calling for the reinstatement of the workers in question were finally obtained; and (ii) however, the complainant points out that upon the reinstatement of the workers, the employer dismissed them again as soon as the implementing minister had left. The Committee notes that the Government, for its part, states that: (i) a founding worker member of SITRAGFIT was reinstated by the company Plaxo SA on 7 August 2015; (ii) three SITRAGFIT members and employees of the Workers' Bank (hereinafter the Bank) withdrew their legal actions, while two other workers were reinstated in 2014 and 2018, respectively; (iii) with regard to the reinstatement of Ms Ingrid Janeth López Teni, her immediate reinstatement was ordered on 8 October 2018, but the worker had yet to confirm the implementing minister's report recording her reinstatement; (iv) the application for reinstatement filed by Ms Odeth Julia Elena Roldán Ramírez against the Bank was shelved after the court asked her to prove that the newly formed union (SITRAGFIT) was indeed a union of the Bank due to a discrepancy in the names, and the worker unsuccessfully appealed the order; and (v) Ms Deysi Elisabeth López Mas de Góngora was initially reinstated by the Bank, by court order, before being dismissed again, and her reinstatement was ordered once again, which was implemented after a series of appeals, and the worker claims that she has yet to be paid her unpaid wages and benefits. The Committee takes note of these various reports. While noting that several founding members of SITRAGFIT were eventually reinstated, the Committee notes with concern that most of these reinstatements took place several years after the dismissals and that in one case the reinstatement had to be ordered a second time following another dismissal. While noting with interest the establishment, on 10 February 2023, of a collegial peace court in criminal matters that will hear cases of non-compliance with labour and social welfare decisions and non-compliance with reinstatement orders in the public administration, the Committee requests the Government to step up its efforts to ensure the immediate and effective enforcement of court orders for reinstatement in response to anti-union dismissals.*

The Committee's recommendations

459. 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 outcome of the appeal for revocation filed by the Ministry of Education and to confirm that all workers at the Ministry of Education may join the Autonomous Union of Teachers of Guatemala, regardless of the type of contract through which the employment relationship has been formalized.

(b) The Committee requests the Government to take the necessary measures, including legislative measures, if necessary, to grant greater autonomy to newly formed trade union organizations in the determination of their structure, and to ensure respect for the autonomy of newly formed trade union organizations concerning the categories of workers they intend to group together.

(c) The Committee once again requests the Government to provide information on the nature of the amendments requested by the labour administration to the constitutions of the eight newly formed trade union organizations whose registration applications have been shelved.

(d) The Committee once again requests the Government to take the necessary steps to ensure that issues involving complex legal appraisals in certain cases, such as determining whether or not the union's founders occupy positions of trust, do not delay the registration process, since these could be dealt with after registration in the event of any objections. The Committee requests the Government to keep it informed in this regard.

(e) The Committee requests the Government to provide information without delay on the recommendations of the labour administration to the Union of Labour Supporters and Defenders of Human Rights.

(f) The Committee requests the Government to send its observations on the registration of the Union of Workers of Chiquimula of the Municipality of Villa de Santiago Jocotán in the Department of Chiquimula, the Teachers' Federation of San Marcos, the Teachers' Federation of Quiché and the Union of Workers of the Municipality of San Lucas Tolimán.

(g) The Committee once again urges the Government to take all the necessary steps to amend the national legislation without delay so as to explicitly recognize the right to trade union membership of workers employed by the public administration on the basis of temporary and civil contracts, and to ensure continued recognition of this right in practice by the Ministry of Labour and Social Welfare for these categories of workers. The Committee refers this legislative aspect of the matter to the CEACR.

(h) The Committee once again urges the Government to take the necessary steps, as a matter of urgency, to revise section 215(c) of the Labour Code so that it is possible to establish industrial trade unions. The Committee also requests the Government to take the necessary steps to proceed with the registration of trade union organizations that seek to group together workers from different companies in the same sector. The Committee refers this legislative aspect of the matter to the CEACR.

(i) In the light of the first initiatives taken in this respect, the Committee requests the Government to take the necessary steps to ensure that the issues surrounding the registration of trade union organizations are regularly monitored, discussed with the representative national trade unions and addressed in a tripartite dialogue in the National Tripartite Committee on Labour Relations and Freedom of Association. The Committee requests the Government to keep it informed in this regard.

(j) The Committee once again requests the Government to take the necessary steps to ensure that trade unions have access to rapid and effective administrative and judicial remedies if they are not registered. The Committee requests the Government to keep it informed in this regard.

(k) The Committee requests the Government to provide its observations on the alleged practice of requiring the personal data of all members of trade union organizations.

(l) The Committee requests the Government to provide its observation on the allegations of the commission of various anti-union acts against members of the Autonomous Union of Teachers of Guatemala.

(m) The Committee requests the Government to provide information on the final outcome of the action to reinstate Mr Mérida Ochoa

(n) The Committee requests the Government to provide information on the outcome of the amparo action filed by the administration against the reinstatement of Mr Henry Neftalí Chacón y Cachón, an official of the Union of Workers at the National Registry Office; report on compliance with the reinstatement of the internal relations secretary of the Union of Workers at the National Registry Office to his former post; and take the necessary steps to ensure full respect for freedom of association in the National Registry Office.

(o) The Committee requests the Government to step up its efforts to ensure the immediate and effective enforcement of court orders for reinstatement in response to anti-union dismissals.

Case No. 3199

Definitive report

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

Allegations: The complainant organization alleges anti-union discrimination (dismissals, transfers and changes to hours) and obstacles to collective bargaining in an enterprise in the private security sector. It also alleges that the Government has failed to strengthen the entities responsible for ensuring compliance with social and labour standards

460. The complaint is contained in a communication from the Autonomous Workers' Confederation of Peru (CATP) dated 21 December 2015.

461. The Government sent its observations in communications dated 22 December 2016, 13 January and 21 July 2017 and 8 January 2024.

462. 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

463. In its communication dated 21 December 2015, the CATP states that, in 2012, the enterprise Risk Control SAC ("the enterprise"), which has provided private security services since 1997, was acquired by Securitas Group SAC ("the corporate group"), which in turn belongs to a transnational corporate group, and alleges that, between then and the presentation of the complaint, the corporate group carried out hostile and discriminatory acts against the enterprise's unionized workers. Specifically, the complainant organization alleges that the corporate group: (i) dismissed some 30 unionized workers with permanent positions on the grounds that their specified task employment contracts had expired (ten unionized workers were dismissed in 2011, 14 were dismissed on 1 January 2013 and another six were dismissed on 31 December 2014); (ii) renewed the contracts of non-unionized workers without any issues; (iii) transferred unionized workers to remote areas, changed their hours and/or moved them to less well paid positions, while at the same time obstructing and hindering their trade union leave and rejecting their annual leave requests; and (iv) blocked the establishment of the committee responsible for negotiating the list of outstanding demands. The CATP further alleges that, on 10 January 2014, the corporate group dismissed those union leaders who were members of the negotiating committee but that these individuals went to court and obtained an injunction, as a result of which in July 2014 they were reinstated.

464. The complainant organization alleges that hostilities increased when the enterprise's workers' union began invoking the labour rights of its members and that the union proposed discussing

these issues in working groups but never received a favourable response. The complainant organization adds that the enterprise's workers' union filed a complaint with the National Labour Inspection Authority (SUNAFIL) and referred the matter to the Labour Administrative Authority (AAT), that these two authorities punished the corporate group and issued arbitration awards in favour of the workers, but that the corporate group failed to comply with the terms of these awards on the grounds that it lacked the capital to do so. The complainant organization states that, even though the enterprise was profitable, it preferred to suspend its operations rather than negotiate and, in early 2015, it launched a fictitious liquidation process in order to get rid of the union.

465. The complainant organization also alleges that not only has the Government failed to strengthen the entities responsible for ensuring compliance with social and labour standards, the labour inspection system has also been weakened. The complainant organization also refers to the Government's lack of willingness to establish regional offices of SUNAFIL, which it believes has resulted in violations of workers' labour rights in the various regions not being investigated in a timely manner or in inspections simply not being carried out, which in turn makes it easier for employers to launch fictitious bankruptcy proceedings in order to intimidate their workers by making them think they could lose their jobs. The complainant organization states that this prevents workers from enjoying adequate protection against acts of anti-union discrimination, as called for in Articles 1 and 3 of Convention No. 98.

B. The Government's reply

466. In its communications dated 22 December 2016, 13 January and 21 July 2017, the Government sends the observations of SUNAFIL, the Regional Labour and Employment Promotion Directorate of Piura and the enterprise. The enterprise denies the facts alleged in the complaint and states that it has always respected the freedom of association and collective bargaining rights of its workers. The enterprise states that: (i) all of its workers received the same treatment and enjoyed the same rights regardless of whether they belonged to the union or not; (ii) the decision to change workers' shifts, days and hours and to move workers to other positions of the same category and with the same pay and working conditions was based on the needs of the workplace and the rights of the workers, in accordance with the principle of reasonableness; (iii) such decisions were not the result of anti-union discrimination and, moreover, it had challenged the AAT's ruling that its decision to change the way in which services were provided was unlawful and filed an administrative appeal; and (iv) it complied with the legislation in force concerning the granting of annual leave to workers who belonged to the union.

467. The enterprise states that unionized workers were not dismissed, rather they stopped working for the enterprise because their fixed-term employment contracts had expired. The enterprise points out that the complainant organization has not provided more specific information or proof in this regard. With respect to the dismissal of union leaders who were members of the negotiating committee, the enterprise states that: (i) this decision was taken independently by the enterprise and had nothing to do with the corporate group; and (ii) the individuals concerned were dismissed because they were guilty of serious misconduct (failure to carry out their duties and participation in a strike that was declared illegal by the AAT in Directive No. 049–2013 of December 2013), not because the leaders were members of the enterprise's workers' union or of the negotiating committee.

468. With respect to negotiations on the list of demands, the enterprise states that it found itself in a difficult economic situation and that it acted transparently by handing its accounting and financial documents to the union for verification, after which the general assembly of

shareholders approved the dissolution and liquidation of the enterprise. The enterprise states that it wanted to resolve the demands of workers through dialogue but this was not reciprocated by the union representatives.

469. For its part, SUNAFIL states that, in 2015, the Talara Area Office for Labour and Employment Promotion carried out several inspections at the enterprise and found evidence of hostile acts and a deterioration in labour relations with respect to working hours but only in relation to those workers who belonged to the enterprise's workers' union. SUNAFIL states that, as a result of the above, the AAT fined the enterprise for these practices and that, after confirming that the infractions relating to working hours continued, it asked the Regional Labour and Employment Promotion Directorate of Piura to carry out additional inspections. The Directorate states that: (i) the complaints filed by the enterprise's workers' union were duly addressed and labour inspections were carried out in line with the labour legislation in force; and (ii) the enterprise underwent a process of liquidation, after which its employees were employed with other security enterprises.

470. In its communication sent on 8 January 2024, SUNAFIL states that the aforementioned inspections resulted in an infringement and, consequently, in disciplinary proceedings, which in turn culminated in definitive rulings being handed down. In addition, SUNAFIL provides information on the prevention and promotion activities that have been carried out in recent years and which have helped strengthen labour inspections relating to freedom of association and states that: (i) between 2014 and 2023, freedom of association training was given to 27,754 people via 963 training programmes, with a view to promoting adequate compliance with the legislation in force; (ii) between 2020 and 2023, SUNAFIL provided technical assistance relating to fundamental rights to 302 employers and assistance relating to freedom of association to 24 employers via 22 technical assistance programmes; and (iii) between 2018 and 2023, five conferences on the subject of freedom of association were held involving 378 people.

C. The Committee's conclusions

471. *The Committee observes that in the present case the complainant organization alleges that in 2012 a corporate group acquired an enterprise that provides private security services in the country and that, from then on, it carried out discriminatory acts against workers belonging to the enterprise's union, including dismissing union leaders in 2014 and some 30 union members between 2011 and 2014, transferring union members to remote areas and changing their hours, and blocking negotiations on the list of demands presented by the union. The complainant organization alleges that these acts were reported, that SUNAFIL and the AAT punished the corporate group and issued arbitration awards in favour of the workers, but that the enterprise failed to comply with the terms of these awards and continued to commit anti-union acts. The complainant organization also alleges that the Government has failed to strengthen the entities responsible for ensuring compliance with social and labour standards with a view to protecting the exercise of fundamental rights, referring in particular to SUNAFIL.*

472. *The Committee takes note of the fact that, according to the communications sent by the Government, the enterprise: (i) denies that the decision to dismiss some 30 unionized workers between 2011 and 2014 constituted an anti-union act, claiming instead that these individuals stopped working for the enterprise because their fixed-term employment contracts had expired; (ii) denies that the decision to transfer unionized workers to remote areas and to change their hours constituted an anti-union act, claiming instead that these decisions were based on the needs of the workplace and the rights of the workers; (iii) claims that it has complied with the legislation in force concerning the granting of annual leave to unionized workers; (iv) states that the decision in January 2014 to dismiss those union leaders who were members of the committee responsible for negotiating the list of demands*

was taken by the enterprise, not by the corporate group, and that these individuals were dismissed because they were guilty of serious misconduct (failure to carry out their duties and participation in a strike that was declared illegal by the AAT in December 2013); and (v) had challenged a ruling by the AAT that its decision to change the way in which services were provided was unlawful and filed an administrative appeal in this regard.

473. *While taking due note of the information provided by the enterprise, the Committee takes note of the fact that, according to SUNAFIL, several inspections were carried out at the enterprise, resulting in* infringement *and, consequently, in disciplinary proceedings, which in turn culminated in definitive rulings being handed down. According to SUNAFIL, these inspections found evidence of hostile acts and a deterioration of labour relations with respect to working hours but only in relation to those workers who were members of the enterprise's workers' union and, consequently, the AAT fined the corporate group for these practices. The Committee observes that, according to the documents provided by the Government, in 2015 the enterprise was given a fine for unilateral modification of contract and late payment of renumeration and employment benefits in relation to the union's secretary-general, Mr Nelson Tinedo Olaya. The Committee also observes that, according to the aforementioned documents, a SUNAFIL investigation into the dismissal of 20 unionized workers that was launched in 2013 was closed after the parties reached an agreement. Moreover, even though the complainant organization stated that the union leaders dismissed in January 2014 had been reinstated as a result of an injunction issued in July of the same year, the Committee regrets that, despite the time that has passed since the presentation of the complaint, it has not received any more information on the definitive resolution of this legal process. Lastly, the Committee observes that the enterprise claims to have found itself in a difficult economic situation, which prevented it from negotiating the list of demands and further observes that, according to the Regional Labour and Employment Promotion Directorate of Piura, the enterprise underwent a process of liquidation, after which its employees were employed with other security enterprises.*

474. *The Committee takes due note of all the information provided. Recalling that no person should be prejudiced in employment by reason of legitimate trade union activities and that cases of anti-union discrimination should be dealt with promptly and effectively by the competent institutions [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 1077] and taking note of the various actions and decisions taken by SUNAFIL in relation to the facts alleged in the present case, the Committee expects the Government to continue taking the measures necessary to ensure full respect for freedom of association.*

475. *With respect to the complainant organization's allegation that the labour inspection system has been weakened to the detriment of State protection against anti-union discrimination, the Committee, while taking due note of the prevention and promotion activities which, according to the Government, SUNAFIL has carried out in recent years, reiterates its invitation to the Government to provide information to the Committee of Experts on the Application of Conventions and Recommendations on the measures adopted to improve the effectiveness of inspection activities in the area of trade union rights [see 404th Report, Case No. 3373, para. 578].*

The Committee's recommendations

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

(a) The Committee expects the Government to continue taking the measures necessary to ensure full respect for freedom of association.

(b) The Committee reiterates its invitation to the Government to provide information to the Committee of Experts on the Application of Conventions and

Recommendations on the measures adopted to improve the effectiveness of inspection activities in the area of trade union rights.

(c) The Committee considers that the present case is closed and does not call for further examination.

Case No. 3185

Interim report

Complaint against the Government of the Philippines presented by

- the National Confederation of Transport Workers' Unions of the Philippines (NCTU)
- the Center of United and Progressive Workers of the Philippines (SENTRO)
- the International Transport Workers' Federation (ITF)
- the Federation of Agricultural Workers Philippines (UMA)
- the National Federation of Sugar Workers – Food and General Trade (NFSW–FGT) and
- the Kilusang Mayo Uno (KMU)

Allegations: The complainant organizations allege a labour rights situation in the country, characterized by numerous incidents of extra-judicial killings of trade union leaders and members, attempted assassinations, illegal arrests and detention, red-tagging, harassment, intimidation and threats against unionists, as well as trade union repression and intervention in union affairs. The complainants denounce the Government's failure to adequately investigate these cases and bring the perpetrators to justice, reinforcing the climate of impunity, violence and insecurity with its damaging effect on the exercise of trade union rights

477. 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 639–671, approved by the Governing Body at its 347th Session]. [22]

478. The Government provided its observations in two communications dated 1 September 2023 and 8 January 2024.

[22] Link to previous examination.

479. The Philippines 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

480. At its March 2023 meeting, the Committee made the following recommendations [see 401st Report, para. 671]:

(a) Recalling that the murders of Antonio "Dodong" Petalcorin, Emilio Rivera and Kagi Alimudin Lucman took place in 2013 and that the Government has indicated that they were, or continue to be, investigated through the regular processes of criminal investigation and prosecution, the Committee must once again express its firm expectation that the perpetrators in the mentioned cases will be brought to trial and convicted without further delay, so as to avoid impunity for these serious crimes. The Committee urges the Government to continue to make every effort in this regard and to keep it informed of any progress made.

(b) With regard to the allegations of trade union repression reported by the ITF, the UMA and the NFSW-FGT in March and June 2021 (allegations of extra-judicial killings, illegal arrests, detention, false criminal charges, intimidation, harassment, red-tagging and threats against trade union members and leaders), the Committee firmly expects the ongoing investigations and judicial proceedings to give full consideration to any possible direct or indirect relation that the violent acts may have with trade union activities of the victims. The Committee firmly expects the Government to prioritize investigations into all of the serious incidents and the perpetrators of violence against trade unionists to be identified and brought to justice, irrespective of whether they are private persons or state agents, so as to combat impunity and prevent the repetition of such acts. The Committee urges the Government to provide updated information on any progress made, including in relation to the alleged extra-judicial killing of Jose Jerry Catalogo and Antonio "Cano" Arellano, for which the Government has not yet provided any details.

(c) The Committee urges the Government to take the necessary measures to ensure that all alleged instances of killings and attempted killings reported by the complainants in September 2021 are fully investigated by an independent mechanism so as to identify and punish the perpetrators and to report on the progress made in this regard. Observing that no information was provided in relation to the incidents concerning the killing of Danny Boy Bautista and Reynaldo Malaborbor, the Committee urges the Government to provide details on any measures taken to address and investigate these incidents.

(d) The Committee urges the Government to provide detailed and concrete observations on the serious additional allegations of trade union repression and criminalization of trade union activities reported by the KMU in September 2021. The Committee urges the Government to ensure that all alleged instances of physical violence, arrests, detention, threats and intimidation are rapidly and thoroughly investigated and perpetrators of violence against unionists identified and brought to justice, including when they are state agents, so as to combat impunity and prevent the repetition of such acts.

(e) The Committee urges the Government to ensure that any pending criminal charges are dropped and any detained trade unionists immediately released, should their arrest or detention be connected to the legitimate exercise of their trade union rights.

(f) The Committee also urges the Government to take the necessary measures to address the alleged coercion of trade unionists to withdraw their union membership, so as to prevent the repetition of such incidents, and to ensure that workers' strikes, as long as they remain peaceful, are not met with disproportionate use of force by the police or the military.

(g) Finally, emphasizing the Government's responsibility with regard to investigations into allegations of violence against workers who are organizing or otherwise defending

workers' interests, the Committee urges the Government to do everything in its power, including through direct, genuine and constructive engagement with labour organizations, to adequately address and remedy the extremely serious allegations that trade union violence and repression are conducted in the framework of a state-sponsored scheme to silence legitimate trade unions, allegations which, if found to be true, would seriously hinder the development of a genuine trade union movement in the country. In this respect, the Committee urges the Government to reinforce its efforts in combating violence against trade unionists by designing and implementing any necessary measures to this effect, including clear guidance and instructions to all state officials and full operationalization of national monitoring and investigative mechanisms, so as to prevent recurring incidents of violence against trade union members and leaders and to ensure that they are not indiscriminately linked to insurgency or other paramilitary groups, considering the stigmatizing effect this may have on the exercise of legitimate trade union activities.

(h) The Committee draws the special attention of the Governing Body to the extreme seriousness and urgency of this case.

B. The Government's reply

481. In its communications dated 1 September 2023 and 8 January 2024, the Government provides information on the investigation of the murders of Mr Antonio "Dodong" Petalcorin, Mr Emilio Rivera and Mr Kagi Alimudin Lucman, which were at the origin of this case. It also responds to the additional allegations made by the International Transport Workers' Federation (ITF), the Federation of Agricultural Workers Philippines (UMA), the National Federation of Sugar Workers – Food and General Trade (NFSW–FGT) and the Kilusang Mayo Uno (KMU) in 2021, and provides information regarding the investigation of some the reported incidents.

482. As regards the murders of Mr Antonio "Dodong" Petalcorin, Mr Emilio Rivera and Mr Kagi Alimudin Lucman, the Government indicates that they were not classified as extrajudicial killings by the Inter-Agency Committee (IAC) under Administrative Order No. 35. It states, however, that those cases are being continuously addressed by national authorities.

483. Concerning Mr Petalcorin and Mr Rivera, the Government indicates that separate criminal charges for their killings were filed with regular courts; that arrest warrants were issued against the suspects; and that the Talomo Police Station and the Davao City Police Office attempted to coordinate with other law enforcement units to apprehend them. However, as the suspects have remained at large, the courts archived the cases, without prejudice to the possibility of reopening them should new developments arise.

484. Concerning Mr Lucman, the Government states that the police investigation is ongoing, and that the Department of Labor and Employment (DOLE) has facilitated coordination with the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM), to which territorial authority over the case was transferred on 15 December 2020. It indicates, however, that the investigation is confronted with a lack of material witnesses and the difficulty of contacting the victim's family, who migrated to an undisclosed location since the incident.

485. The Government further indicates that the Commission on Human Rights (CHR), which has also investigated those allegations in its role as an independent, constitutionally mandated body to inquire into alleged human rights violations: (i) made no determination as to whether the killings of Mr Petalcorin and Mr Rivera were connected with their trade union membership or activities, but continues to monitor those cases; and (ii) decided to close the case of Mr Lucman

on 25 January 2023, as no interested party was pursuing it and the police had no clear leads as to the assailants.

486. The Government states that it is committed to continuing to make every effort to bring the perpetrators of these incidents to justice, as it actively implements mechanisms and policies to monitor alleged violations of freedom of association, expedite the service of arrest warrants, and improve case build-up with a view to ensuring conviction. The Government also points out, however, that factors beyond its control can affect the progress of the cases, referring in particular to the significant time elapsed since the incidents and the victims' families' reluctance in pursuing the cases or cooperating with the investigation.

487. With respect to the allegations presented by the ITF on 2 March 2021, by the UMA and the NFSW–FGT on 22 June 2021, and by the KMU on 1 September 2021, the Government argues that they should have been deemed inadmissible, as the complainants had the burden of providing satisfactory evidence to support them, and failed to prove that specific infringements of trade union rights had been committed. The Government also reiterates that they concern incidents which are distinct from those initially submitted in this case and should not be examined as part of it.

488. In the Government's view, these additional allegations do not genuinely arise from or relate to the exercise of freedom of association and the right to organize. It affirms that while the Committee's competence is limited to examining specific allegations concerning these topics, it has observed a tendency to include common crimes or incidents of violence or harassment where trade unionists were not specifically targeted.

489. With regard to the ten alleged incidents of extrajudicial killings reported by the ITF, the UMA and the NFSW–FGT, the Government indicates that they are under monitoring by the Regional Tripartite Monitoring Bodies (RTMBs). It informs that seven of these incidents (those concerning Mr Leonardo Escala, Mr Alexander Ceballos, Ms Flora Gemola, Mr Ronald Manlanat, Mr Felipe Dacal-Dacal, Mr Jose Jerry Catalogo and Mr Antonio "Cano" Arellano) are under police investigation.

490. The Government states that the *lack* of material witnesses and the disinterest or unwillingness of the victims' families to cooperate with the police continue to hamper these investigations. It indicates, however, that in the cases of Mr Ceballos, Ms Gemola, Mr Manlanat and Mr Arellano, the investigation has revealed that the possible motive for the killing was the victim's involvement in a land dispute, and that the killing of Mr Arellano could be an act of retaliation by the New People's Army.

491. The Government also states that for the other three incidents (those concerning Mr Ariel Diaz, Mr Julius Broce Barellano and the nine farmers known as "Sagay 9"), criminal cases have been filed in court. It informs that: (i) in the case of Mr Barellano, a criminal trial for murder is ongoing; (ii) in the case Mr Diaz, the Philippines National Police (PNP) stated that the motive for the crime was a land dispute, and the Regional Trial Court of Cabagan ordered that an arrest warrant be issued and that the case be archived and revived once the accused is apprehended; and (iii) in the case of the Sagay 9 farmers, an arrest warrant is pending against two identified and several unidentified individuals, who remain at large.

492. As regards the 13 alleged incidents of illegal arrests reported by the ITF, the UMA and the NFSW–FGT, the Government indicates that they are also under monitoring by the RTMBs, and that charges were filed in relation with some of them based on probable cause that a crime had been committed. The Government affirms, however, that none of these 13 incidents

appear to have any connection with freedom of association, and that no arrest occurred because of membership in a trade union organization.

493. The Government indicates in particular, on the basis of information obtained from the RTMB-X, that: (i) Ms Julie Balvastamen and Ms Susanu Aguaron were placed under custody because they failed to present a valid identification card at a checkpoint during martial law in Mindanao; (ii) Mr Ricky Omandam and Mr Alfredo Omandam were arrested for illegal possession of explosives and ammunition, and sentenced to prison penalties on 10 October 2019 after pleading guilty to lesser offences; (iii) Ms Angelica Pavorada Regasajo was arrested for illegal possession of ammunition but the case against her was dismissed on 24 May 2021 for absence of evidence; (iv) Mr Ariel Ronido and Mr Edgardo Andales, who are both beneficiaries of the Government's Comprehensive Local Integration Program (E-CLIP) voluntarily surrendered and reported to the Philippine Army assigned in Madaya for monitoring and evaluation, and were not detained; and (v) no incident involving six women members of OGYON was documented in relation to the exercise of the right to organize.

494. The Government further indicates, on the basis of information obtained from the RTMB-VI, that: (i) Mr Ricky Cañete was arrested on charges of murder and frustrated murder, and his criminal trial is ongoing; (ii) Mr Edilberto Sangga was convicted for violating a gun ban imposed by the Commission on Elections; (iii) the eight members of the NFSW–Teatro Obrero were arrested for violating the Comprehensive Firearms and Ammunition Regulation Act, and the case is pending in court; (iv) the criminal cases against Mr John Milton Lozande and Mr Roberto Lachica for violating the Comprehensive Firearms and Ammunition Regulation Act were dismissed by the trial court on 24 March 2021 and 3 January 2020, respectively, and the complaint against Mr Lozande for violating the Expanded Anti-Trafficking in Persons Act was dismissed on 28 February 2020; (v) the criminal trial of Mr Danilo Tabura for violating the Comprehensive Firearms and Ammunition Regulation Act is ongoing; (vi) Mr Gaspar Davao is currently detained in Cadiz City for violating the Republic Act No. 9516 and his trial is ongoing, but the other case against him for violating the Republic Act No. 11332 was dismissed for insufficiency of evidence; (vii) the criminal trial of Ms Imelda Sultan for violating the Comprehensive Firearms and Ammunition Regulation Act and the Republic Act No. 9516 is ongoing; and (viii) arrest warrants have been issued against Mr Rene Manlangit and Mr Rogelio Arquillo Jr., who are accused of the murders of the Sagay 9 farmers in nine criminal cases.

495. With respect to the alleged 21 incidents of harassment and labelling reported by the ITF, the UMA and the NFSW–FGT, the Government states that: (i) in the cases involving the Aidsisa Farmers and Farm Workers Association (AFFWA–NFSW) and the Hacienda San Herman Farm Workers Union–NFSW, the acts of harassment were intended to incite the farmers to withdraw their application for land reform coverage, and did not happen by reason of their union membership or activities; (ii) the Armed Forces of the Philippines (AFP) did not encamp near the residence of Mr Hasil Delima, but merely harboured in the area after a long combat operation; (iii) Mr Godfrey Palahang voluntarily surrendered to the Quezon Municipal Police Station on 7 April 2021, and was not forced to do so; (iv) a criminal case was filed against Mr Teddy Canillo in relation to an armed encounter with the Philippine Army which resulted in the death of a soldier and the wounding of several others, but the case was archived on 25 August 2020; (v) a criminal case for the violation of the Comprehensive Firearms and Ammunition Regulation Act was filed against Mr Jose Rex Escapalao, who was found guilty on 21 September 2021 and sentenced to prison; (vi) a criminal trial for usurpation of authority against Mr Ariel Casilao is ongoing; (vii) several members of UMA-Isabela voluntarily withdrew their membership from that union, and the Santa Maria Police Station and the Philippine Army

did not receive any complaint against their personnel in this regard; and (viii) Mr Guillermo "Ka Gimo" Hernandez and the five members of the Kaisahan ng mga Manggagawang Bukid sa Batangas (KAISAHAN) filed a complaint for harassment in 2017.

496. The Government also informs that, in relation to the cases involving Ms Theresa Aloquina, a member of the NFSW–FGT known as "Dingding", Ms Rebecca Bucabal, Mr Tioliza Iwayan, Ms Arjie Marangga, Ms Susan Pabalate, the members of the Pakigdaet sa Kalambuan (PSK)–NFSW, the members of the PAMALAKAYA and NFSW–FGT, Ms Grace Parreno, Ms Anilyn Serrondo, Ms Chen-Chen Serrondo, Mr Joenel Timplado, and Mr Eulando Serrondo, and the 113 farmers from 28 farmers' associations, the secretariat of the RTMB-VI tried to reach Mr Mario Tapi-on, chairperson of the NFSW, on five occasions to obtain information that could help in the investigations, but to no avail.

497. As regards the allegations of trade union repression and criminalization of trade union activities reported by the KMU, the Government indicates that: (i) the case of Mr Dandy Miguel is under continuous follow-up investigation, but the victim's wife refused to authorize the Regional Anti-Cybercrime Unit 4A to conduct digital forensic examination of the victim's two cellphone units recovered from the crime scene; (ii) in the case of Mr Ariel Evangelista and Mr Chai Evangelista, the Department of Justice (DOJ) dismissed the murder complaint against the 17 police officers, and denied the motion for reconsideration filed by Mr Chai Evangelista's mother, as it failed to offer sufficient evidence to prove conspiracy and the identity of the perpetrator; and (iii) in the case of Mr Emmanuel "Manny" Asuncion, the DOJ also dismissed the murder complaint against the 17 police officers on the ground of the complainant's failure to discharge the obligation to prove the existence of a crime and identify the perpetrators thereof, so the records of the case were returned to the National Bureau of Investigation for the conduct of further investigations.

498. The Government finally states that it does not condone any act of violence or intimidation against trade unions and their members, and remains committed to ensuring accountability and bringing perpetrators to justice. In this regard, it informs that Executive Order No. 23, which was issued on 30 April 2023, constituted an Inter-Agency Committee with a view to strengthening coordination among agencies, monitoring actions taken, and expediting the investigation, prosecution and resolution of cases related to freedom of association and the right to organize.

499. The Government also indicates that it continued its discussions with the social partners on the adoption of a tripartite road map structured along the four areas of action identified by the 2019 Conference Committee on the Application of Standards, and that, on 23 August 2023, the National Tripartite Industrial Peace Council (NTIPC) convened to consider a draft road map. The Government further indicates that the DOLE, through a letter dated 19 July 2023, endorsed the allegations of extrajudicial killings and harassment which are the subject of the present case to the CHR for investigation and determination of possible human rights violations for the possible compensation of victims or their family.

C. The Committee's conclusions

500. *The Committee recalls that the present case concerns allegations of a labour rights situation in the country, characterized by numerous incidents of extrajudicial killings of trade union leaders and members, attempted assassinations, illegal arrests and detention, red-tagging, harassment, intimidation and threats against unionists, as well as allegations of trade union repression and interference in union affairs, and the Government's failure to adequately investigate these cases and*

bring the perpetrators to justice, reinforcing the climate of impunity, violence and insecurity and its damaging effect on the exercise of trade union rights.

501. *As regards the initial allegations presented by the National Confederation of Transport Workers' Unions of the Philippines (NCTU), the Center of United and Progressive Workers of the Philippines (SENTRO) and the ITF, and the status of the cases concerning the murders of Mr Antonio "Dodong" Petalcorin and Mr Kagi Alimudin Lucman, leaders of the NCTU, and Mr Emilio Rivera, Chairperson of the Matina Aplaya Transport Cooperative (recommendation (a)), the Committee recalls that the murders took place in 2013 and that the Government has indicated on several occasions that they continue to be investigated through the regular processes of criminal investigation and prosecution, and that measures have been put in place to facilitate the tracking of suspects. The Committee notes the Government's indication that: (i) in the cases concerning Mr Petalcorin and Mr Rivera, although criminal charges and arrest warrants were filed, and attempts were made to apprehend the suspects, they have remained at large, which led the courts to archive the cases, without prejudice to the possibility of reopening them in the event of new developments; (ii) in the case concerning Mr Lucman, the police investigation is still ongoing; (iii) the CHR has also investigated those allegations but made no determination as to whether the killings of Mr Petalcorin and Mr Rivera were connected with their trade union membership or activities, and decided to close the case of Mr Lucman due to the lack of leads and interested party to pursue it; and (iv) certain factors beyond the Government's control, such as the significant time elapsed since the incidents and the reluctance of the victims' families to cooperate with the investigations, have hindered the resolution of these cases. While taking due note of the above-mentioned constraints, the Committee deeply regrets the archiving of the cases involving Mr Petalcorin and Mr Rivera. The Committee once again firmly urges the Government to make every effort to bring to trial and convict the perpetrators of the three cases, and, should this no longer be possible with respect to the archiving of the cases of Mr Petalcorin and Mr Rivera, to engage with the trade unions concerned with a view to ensuring their full review by a specialized, eminent, independent non-judicial body for the consideration of any appropriate compensation. The Committee urges the Government to provide information on any progress made in this regard.*

502. *The Committee notes that the Government raises objections concerning the admissibility of the additional allegations submitted in 2021 which were included in the case in the framework of its last two examinations by the Committee, stating that: (i) the complainants failed to provide satisfactory evidence that trade union rights had been violated; and (ii) although the Committee's competence is limited to examining specific allegations concerning freedom of association and the right to organize, it has a tendency to examine incidents of violence and harassment in which trade unionists are not specifically targeted. In this regard, the Committee recalls that it is within the mandate of the Committee to examine whether, and to what extent, satisfactory evidence is presented to support allegations, and that this appreciation goes to the merits of the case and cannot support a finding of irreceivability [see* ***Compilation of decisions of the Committee on Freedom of Association****, sixth edition, 2018, para. 14]. It further recalls that within the terms of its mandate, the Committee is empowered to examine to what extent the exercise of trade union rights may be affected in cases of allegations of the infringement of civil liberties [see* ***Compilation****, para. 22].*

503. *With respect to the allegations communicated by the ITF, the UMA and the NFSW–FGT in March and June 2021 (recommendation (b)), the Committee recalls that these refer to a policy of trade union repression and criminalization which has resulted in practice in serious violations of human and trade union rights, including 18 cases of extrajudicial killings of trade union members and leaders since 2016, illegal arrests, detention and false criminal charges against more than 100 workers, human rights activists and unionists, as well as numerous incidents of intimidation, harassment, red-tagging and threats against trade union members and leaders, most of which were*

characterized by some degree of involvement of state agents, in particular members of the police, the armed forces or other organizations under their control. Regarding the alleged extrajudicial killings, the Committee notes that the Government indicates that: (i) they are being monitored by the Regional Tripartite Monitoring Bodies (RTMBs); (ii) for seven of these incidents – the cases involving Mr Leonardo Escala, Mr Alexander Ceballos, Ms Flora Gemola, Mr Ronald Manlanat, Mr Felipe Dacal-Dacal, Mr Jose Jerry Catalogo and Mr Antonio "Cano" Arellano – the investigation is ongoing, and for the other three incidents – the cases involving Mr Ariel Diaz, Mr Julius Broce Barellano and the nine farmers known as "Sagay 9" – criminal cases were brought before the courts; (iii) in the cases of Mr Diaz and the Sagay 9 farmers, arrest warrants have been issued but the suspects remain at large; and (iv) the motives for the killings of Mr Ceballos, Ms Gemola, Mr Manlanat, Mr Arellano and Mr Diaz appear to be their involvement in a land dispute. Concerning the alleged illegal arrests, detention and false criminal charges, the Committee notes that the Government: (i) indicates that charges were filed in relation to most cases and that some of the accused individuals were convicted; and (ii) states that none of these incidents appear to have any connection with freedom of association. Regarding the alleged intimidation, harassment, red-tagging and threats, the Committee notes that the Government also provides its views on the incidents reported, which it considers happened for reasons which have nothing to do with trade union rights.

504. *Noting that none of the above-mentioned 18 cases of extrajudicial killings have been resolved, and that arrest warrants were issued with regard to only two of the ten reported incidents, the Committee recalls that it is important that investigations into the murders of trade unionists should 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]. Further noting the diverging opinions expressed by the complainants and by the Government regarding the anti-union nature of the other incidents reported by the ITF, the UMA and the NFSW–FGT, the Committee recalls that the mere absence of a labour dispute or trade union campaign does not necessarily preclude any connection of the crime with the exercise of trade union activities, membership or office [see **Compilation**, para. 92]. The Committee once again firmly expects that the ongoing investigations and judicial proceedings will fully consider any possible direct or indirect relation between the violent acts and the trade union activities of the victims, and that the perpetrators of violence against trade unionists will be identified and brought to justice as soon as possible, irrespective of whether they are private persons or state agents, with a view to combating impunity and preventing the repetition of such acts. The Committee urges the Government to continue to provide updated information on any progress achieved in this regard.*

505. *With regard to the allegations communicated by the KMU in September 2021 concerning an increase in trade union repression and deprivation of workers' right to organize since 2017 (recommendation (c)), the Committee recalls that these refer in particular to the killings of six unionists – Mr Danny Boy Bautista, Mr Reynaldo Malaborbor, Mr Emmanuel "Manny" Asuncion, Mr Melvin Dasigao, Mr Mark Lee Bacasno and Mr Dandy Miguel – and six other activists, as well as the attempted assassination of four other union leaders and members, during raids conducted by the military and the police between October 2018 and March 2021, which, according to the complainants, are part of a state policy to prevent workers from organizing and to hinder genuine trade unionism in the country. The Committee notes the Government's indication that: (i) the case of Mr Miguel is under continuous follow-up investigation, but the victim's wife did not authorize the Regional Anti-Cybercrime Unit 4A to conduct digital forensic examination of cellphone units recovered from the crime scene; (ii) in the case of Mr Asuncion, the DOJ dismissed the murder complaint against 17 police officers, as it determined that the complainant had failed to prove the existence of a crime and identify the perpetrators thereof, and therefore returned the case to the National Bureau of Investigation for further investigations; and (iii) in the cases of Mr Ariel*

Evangelista and Mr Chai Evangelista, who were killed during the same "Bloody Sunday" incident as Mr Asuncion, the DOJ dismissed the murder complaints on the same grounds. Regretting to observe that no progress has been made in bringing the perpetrators of the reported incidents to justice, the Committee firmly urges the Government to take the necessary measures to ensure that all alleged instances of killings and attempted killings reported by the KMU in September 2021 are fully investigated by an independent mechanism with a view to identifying and punishing the perpetrators, and to provide information on any progress achieved in this regard. Observing that the Government has not yet provided any information in relation to the incidents concerning the killing of Mr Bautista and Mr Malaborbor, the Committee urges it to provide details on any measures taken to address and investigate these incidents.

506. *As regards its other requests for action and information in relation to the allegations made by the KMU (recommendations (d), (e) and (f)), the Committee observes that they are not addressed in the Government's reply. The Committee therefore finds itself obliged to reiterate its recommendations and requests the Government to provide information in this regard without delay.*

507. *Finally, with respect to the general climate of violence and insecurity previously alleged in this case (recommendation (g)), the Committee notes that the Government: (i) reiterates its commitment to bringing the perpetrators of any acts of violence or intimidation against trade unions and their members to justice; (ii) indicates that, through the issuance of Executive Order No. 23 in April 2023, it created an Inter-Agency Committee in order to strengthen coordination among agencies, monitor actions taken, and expedite the investigation, prosecution and resolution of cases related to freedom of association and the right to organize; and (iii) informs that the DOLE endorsed the allegations of extrajudicial killings and harassment which were made in the present case to the CHR for investigation with a view to possibly compensating the victims or their family. While it takes due note of these measures, the Committee recalls that a genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty [see **Compilation**, para. 86]. In view of the above, the Committee urges the Government to continue to do everything in its power, in full consultation with workers' and employers' organizations, to address and remedy the extremely serious allegations that trade union violence and repression are carried out as part of a state-sponsored scheme to silence legitimate trade unions. It also urges the Government to further intensify its efforts to combat violence against trade unionists by adopting, including within the framework of the Inter-Agency Committee created under Executive Order No. 23, any necessary measures to this effect, such as the dissemination of clear guidance and instructions to all state officials and the full operationalization of national monitoring and investigative mechanisms. The Committee requests the Government to continue to provide information on any progress made in this regard.*

508. *The Committee draws the particular attention of the Governing Body to the extreme seriousness and urgency of this case.*

The Committee's recommendations

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

(a) The Committee once again firmly urges the Government to make every effort to bring to trial and convict the perpetrators of the murder cases of Mr Antonio "Dodong" Petalcorin, Mr Emilio Rivera and Mr Kagi Alimudin Lucman, and, should this no longer be possible with respect to the archiving of the cases of Mr Petalcorin and Mr Rivera, to engage with the trade unions concerned with a view to ensuring their full review by a specialized, eminent, independent non-judicial

body for the consideration of any appropriate compensation. The Committee urges the Government to provide information on any progress made in this regard.

(b) With respect to the allegations of trade union repression reported by the ITF, the UMA and the NFSW–FGT in March and June 2021 (allegations of extrajudicial killings, illegal arrests, detention, false criminal charges, intimidation, harassment, red-tagging and threats against trade union members and leaders), the Committee once again firmly expects that the ongoing investigations and judicial proceedings will fully consider any possible direct or indirect relation between the violent acts and the trade union activities of the victims, and that the perpetrators of violence against trade unionists will be identified and brought to justice as soon as possible, irrespective of whether they are private persons or state agents, with a view to combating impunity and preventing the repetition of such acts. The Committee urges the Government to continue to provide updated information on any progress achieved in this regard.

(c) The Committee firmly urges the Government to take the necessary measures to ensure that all alleged instances of killings and attempted killings reported by the KMU in September 2021 are fully investigated by an independent mechanism with a view to identifying and punishing the perpetrators, and to provide information on any progress achieved in this regard. Observing that the Government has not yet provided any information in relation to the incidents concerning the killing of Mr Danny Boy Bautista and Mr Reynaldo Malaborbor, the Committee urges it to provide details on any measures taken to address and investigate these incidents.

(d) The Committee once again urges the Government to provide detailed and concrete observations on the serious additional allegations of trade union repression and criminalization of trade union activities reported by the KMU in September 2021. The Committee urges the Government to ensure that all alleged instances of physical violence, arrests, detention, threats and intimidation are rapidly and thoroughly investigated and perpetrators of violence against unionists identified and brought to justice, including when they are state agents, so as to combat impunity and prevent the repetition of such acts.

(e) The Committee once again urges the Government to ensure that any pending criminal charges are dropped and any detained trade unionists immediately released, should their arrest or detention be connected to the legitimate exercise of their trade union rights.

(f) The Committee also urges the Government once again to take the necessary measures to address the alleged coercion of trade unionists to withdraw their union membership, so as to prevent the repetition of such incidents, and to ensure that workers' strikes, as long as they remain peaceful, are not met with disproportionate use of force by the police or the military.

(g) The Committee urges the Government to continue to do everything in its power, in full consultation with workers' and employers' organizations, to address and remedy the extremely serious allegations that trade union violence and repression are carried out as part of a state-sponsored scheme to silence legitimate trade unions. It also urges the Government to further intensify its efforts to combat violence against trade unionists by adopting, including within the framework of the Inter-Agency Committee created under Executive Order No. 23, any necessary measures to this effect, such as the dissemination of clear guidance and instructions to all

state officials and the full operationalization of national monitoring and investigative mechanisms. The Committee requests the Government to continue to provide information on any progress made in this regard.

(h) The Committee draws the particular attention of the Governing Body to the extreme seriousness and urgency of this case.

Case No. 3439

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

Complaint against the Government of the Republic of Korea presented by
- the Korean Public Service and Transport Workers' Union (KPTU)
- the Korean Confederation of Trade Unions (KCTU)
- the International Transport Workers' Federation (ITF)
- Public Services International (PSI) and
- the International Trade Union Confederation (ITUC)

Allegations: The complainant organizations allege that the Government does not recognize the trade union status of the KPTU sectoral division TruckSol and has infringed the freedom of association of its members by issuing Commencement of Work Orders to striking truck drivers and using military vehicles and personnel to carry out replacement transport during the TruckSol national strike of 24 November to 8 December 2022. They further denounce acts of interference, anti-union discrimination and retaliatory measures against truck drivers in the aftermath of the strike

510. The complaint is contained in a communication dated 19 December 2022 from the Korean Public Service and Transport Workers' Union (KPTU), the Korean Confederation of Trade Unions (KCTU), the International Transport Workers' Federation (ITF), Public Services International (PSI) and the International Trade Union Confederation (ITUC). In communications dated 3 February and 5 April 2023, the complainants sent new allegations and additional information.

511. The Government provided its observations in a communication dated 9 January 2024.

512. 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 complainants' allegations

513. In their communications, the KPTU, the KCTU, the ITF, PSI and ITUC allege that the Government's response to a strike held between 24 November and 8 December 2022 by KPTU Cargo Truckers' Solidarity Division (KPTU-TruckSol) in the road freight transport sector infringed the freedom of association of the striking workers and their organization. The complainants state that this was the truck drivers' second strike action in 2022 in relation to the "Safe Rates system" which set basic minimum rates of pay for owner truck drivers in container and bulk cement trailer transport. The covered drivers were legally classified as "specially employed" or "independent contractors". The Safe Rates system was scheduled to expire at the end of 2022 by virtue of a sunset clause in the legislation. KPTU-TruckSol demanded the repealing of this sunset clause to make the Safe Rate system permanent and the expansion of its coverage to more transport sectors. The complainants specify that pursuant to section 2.13 of the Trucking Transport Business Act (TTBA), the Safe Rates system sought to prevent overwork, speeding, and overloading by guaranteeing cost recovery and payment for all time worked and provided a basic safeguard against rising fuel prices and cost of living for covered truck drivers. The system was consistent with recommendations on 'sustainable payments' set forth in paragraphs 76–77 of the ILO Guidelines on the promotion of decent work and road safety in the transport sector.

514. The complainants state that KPTU-TruckSol members and other truck drivers engaged in a first strike action from 7 to 14 June 2022, demanding the continuation of the Safe Rates system and the expansion of its coverage. This strike was called off and drivers returned to work because the Ministry of Land, Infrastructure and Transport (MoLIT) and KPTU-TruckSol reached an agreement where the MoLIT committed "to propel forward the existing Safe Rates system and discuss expansion to other freight types". However, the Government did not uphold this agreement, as the Minister and Vice-Minister of Land, Infrastructure, and Transport both stated immediately after the strike was called off that the sunset clause could not be repealed, and the Vice Minister affirmed that the Safe Rates system was not fit for a market economy. The complainants further allege that on 29 September 2022, the MoLIT submitted a report to the National Assembly which, based on inaccurate and incomplete data, concluded that the Safe Rates system had not had a clear impact on road safety and proposed the repeal of the cargo owners' obligations to ensure compliance with safe rates, the weakening of penalties for violations and other changes that would weaken trade union involvement and make the system unenforceable. On 30 September, KPTU-TruckSol representatives went to the MoLIT to protest this report. Concerning the expansion of coverage, the MoLIT held no discussions with KPTU-TruckSol or other stakeholders until the union declared its intention to organize a national strike on 14 November. On 15 November negotiations took place between MoLIT representatives and the union, during which the Government representatives stated that they would not accept expansion of Safe Rates for fear that this would lead to the expansion of the union's membership in newly covered sectors. The complainants allege that outside these two meetings of 30 September and 15 November, the MoLIT refused to engage in meaningful dialogue with the union.

515. According to the complainants, while before the strike Democratic Party lawmakers had proposed legislation that would have made the Safe Rate system permanent and expanded it to the steel, dangerous goods, automobile, grain and feed and parcel delivery transport, on 22 and 23 November other bills were proposed by the ruling People Power Party which revised the legislation in different ways, making it less protective of the drivers, including by removing the obligations on cargo owners and changes to how the minimum rates were calculated, strengthening the power of the Government in this regard. In this context, the KPTU-TruckSol's

demands in the strike were that no "regressive revisions" be made to the Safe Rates system; that the sunset clause be repealed, and the application of the system be expanded to more sectors.

516. The complainants indicate that the Government started preparing its response immediately after the union announced its intention to go on strike by raising crisis alert levels as of 15 November. On 23 November, the MoLIT Minister announced the Government ministries' joint plan to respond through measures such as introduction of replacement transport, the exemption of non-participant drivers from highway tolls, the suspension of fuel subsidies for strikers and the possibility of issuing commencement of work orders should the strike become prolonged. MoLIT representatives called the strike illegal, unjustified and self-interested and referred to it as a "collective refusal to transport".

517. The complainants allege that as of 24 November 2022, the first day of the strike, the Government stationed police forces at strike sites around the country and began using army trucks and other vehicles to carry out replacement transport. MoLIT representatives met with cargo owner and transport company representatives and visited local production and logistics hubs to monitor the response to strike. On 27 November the Government defined the strike as a "social accident" under the Framework Act on the Management of Disasters and Safety, on the grounds that it could cause a "crisis in the national economy" and convened a meeting of the Central Disaster and Safety Countermeasure Headquarters. On 28 November talks were held between the MoLIT and the union which did not deliver any progress and on 29 November after a Cabinet meeting and Government approval, the MoLIT issued commencement of work orders addressed to trucking companies and 2,500 drivers in the cement sector. The complainants affirm that this was the first time that commencement of work orders were issued to truck drivers since the authority to do so was granted to the MoLIT through amendment of the TTBA in 2004. On 30 November, the second round of talks between the union and the Ministry did not result in any progress.

518. The complainants state that the Fair Trade Commission (FTC) issued a press release on 29 November 2022, stating that it had begun examining whether KPTU-TruckSol had committed illegal cartel conduct and/or acts prohibited for trade associations under the Monopoly Regulation and Fair Trade Act (FTA) and on 2 December, FTC officials attempted an investigation at the KPTU-TruckSol Seoul and Busan branch offices. According to the complainants, the FTC officials demanded the submission of a wide range of irrelevant materials such as a list of union members. On 4 December, the Minister of Economy and Finance declared that measures will be taken against those who refuse to return to work in violation of commencement of work orders and those who incite or assist these violations. He further indicated that KPTU-TruckSol will be held accountable and expressed regret that the union had blocked the FTC on-site investigation. On 5 December, TruckSol submitted a written opinion to the FTC to raise questions about the purpose, scope and method of the investigation and the documents to be submitted. The union indicated that it would review and reply to the FTC's official request of on-site investigation. In their communication dated 3 February 2023, the complainants state that pursuant to a press release dated 18 January 2023, the FTC pressed criminal charges against TruckSol for interference with an investigation by preventing the FTC officials from entering the union offices in violation of sections 124(1) and 13 of the FTA. The complainants indicate that this offence is punishable by a maximum of three years' imprisonment, or a maximum fine of 200 million South Korean won (US$1,400,000).

519. The complainants allege that on 7 December 2022 a complaint was filed with the police against a cement truck driver who had not returned to work despite the commencement of work order and a request for an administrative measure against him was filed with the competent local

government. In their communication of 3 February 2023, the complainants further allege that the MoLIT filed charges with the police against several truck drivers who had not complied with the commencement of work orders. The police sent one case to the prosecution with an opinion of "sufficient to indict", while the other worker was still under investigation. The complainants affirm that if prosecutors choose to file charges, the workers will face lengthy trials, and if convicted, their cargo transport licences may be cancelled depending on the type of sentence. The complainants finally allege that one of accused drivers was notified of an administrative sanction of a 30-day licence suspension for non-compliance with the commencement of work order.

520. According to the complainants, on 2 December 2022 the Korea Land and Housing Corporation (LH) announced that it would consider a claim for damages suit against KPTU-TruckSol should damages occur. On 6 December, the MoLIT announced that it would support companies' suits for damages against the union and on 7 December, a meeting of the Central Disaster and Safety Countermeasure Headquarters was held to share the status of each industry's damage in relation to the KPTU-TruckSol strike and discuss countermeasures. The complainants request the Committee to urge the Government not to proceed with claims for damages against the legitimate exercise of the right to strike.

521. On 8 December, after an extraordinary cabinet meeting the second round of commencement of work orders were issued, covering 6,000 drivers in the steel and 4,500 drivers in the petrochemicals sector. The complainants state that in view of all the strict measures taken by the Government against strikers and the union, on 8 December the Central Executive Committee of KPTU-TruckSol decided to hold a general membership vote on whether to end the strike. Subsequently on 9 December, 61.8 per cent of the participants voted to end the national strike and return to work. The complainants argue that in view of the harshness of the measures taken by the authorities, most truck drivers could not overcome the threat of sanctions and punishments, were forced to stop exercising their right and returned to work. The complainants also cite allegedly intimidating announcements of several high-ranking Government officials, including the President of the Republic, the Prime Minister, and several Ministers affirming that strict measures shall be taken against non-compliers. They further state that while certain Ministries affirmed that the strike was illegal, the Ministry of Employment and Labour had announced that it didn't see the collective action itself as illegal and that the Ministry of Economy and Finance had also stated that the refusal of transport was essentially legal.

522. The complainants further indicate that section 14 of the TTBA, the legal basis for the issuance of commencement of work orders, allows such a measure if "reasonable grounds exist to believe that an unjust collective refusal of transport has caused or could cause a serious crisis in the national economy by greatly disrupting the transport of freight." Non-compliance with commencement of work orders is a criminal offence, punishable by a maximum fine of 30 million won (US$22,500) or up to three years' imprisonment. The commencement of work orders issued also indicated possible administrative sanctions such as suspension and cancellation of licences in case of non-compliance. The complainants reject the Government's position that the strike constituted an emergency for the national economy and indicate that in the petrochemical sector, only 0.8 per cent of gas stations reported that their inventory was out of stock after the strike. They also claim that the requirements of section 14 were not duly respected, as the Government had decided to issue the orders before the strike started and issued the first set of orders only five days after its beginning, which shows that they had made an arbitrary judgement on the likeliness to cause a very serious crisis in the national economy.

Finally, the situation did not correspond to an "acute crisis" that would justify restrictions on strike action in accordance with ILO standards.

523. The complainants further state that section 14 of the TTBA was first introduced by the Government in response to two TruckSol strikes in 2003, which occurred shortly after the union was formed. At the time when the legislation was considered in the National Assembly, lawyers' and civil society organizations raised concerns about it and noted that unlike national civil servants or doctors, for whom commencement of work orders were also legal, truck drivers could not be seen as carrying out work involving a duty to the public. They also pointed out that on one hand truck drivers were denied the right to association and collective bargaining based on their status as independent contractors, and on the other hand a legal system was introduced by which the Government could force them to work. The complainants argue that in the present case, the issuing of the commencement of work orders against a legitimate strike action by a trade union, as well as the attempt during the strike to investigate and punish it as illegal cartel conduct under economic law are violations of the principle of freedom of association. The complainants allege that the TTBA provisions which allow the use of commencement of work orders are inconsistent with the principle of freedom of association and prohibition of forced labour. In their communication dated 3 February 2023, the complainants indicate that on 19 December 2022, Mr Choi, a bulk cement trailer driver from the Busan area, presented an application to Seoul Administrative Court, challenging the constitutionality of sections 14(1) and 4 of the TTBA.

524. The complainants also refer to the statement of the Minister of Economy and Finance on 8 December 2022, indicating that the action was not a strike but a "refusal to transport" and immediate return to work was the priority. Furthermore, according to the complainants, on 2 December 2022 the chairperson of the FTC had indicated in a press conference that TruckSol members were individual business owners. Finally, the complainants refer to leaflets distributed by the Government in reaction to the ILO intervention in relation to the November–December 2022 strike, where it was indicated that no violation of ILO principles had taken place as it was difficult to view TruckSol as a trade union under the law since it has not obtained a certificate of union establishment and has not complied with procedures outlined in labour law. The complainants affirm in this respect that due to the refusal of the Government and employers to recognize TruckSol's trade union status, it is not possible for TruckSol to follow procedures laid out in the Trade Union and Labour Relations Adjustment Act (TULRAA). Nonetheless, they allege that TruckSol's strike action, which concerned the workers' occupational and economic interests and sought the solution to economic and social policy questions and problems of direct concern to the workers, was consistent with international labour standards.

525. Regarding the denial of recognition of labour union status of KPTU-TruckSol under the TULRAA on the grounds that its members were individual business owners, and that TruckSol itself had not been issued a certificate of union, the complainants affirm that: (a) TruckSol is a sectoral division of the KPTU, which is an industrial union and has been issued a certificate of union establishment and therefore TruckSol is not required to apply for a separate certificate of establishment, based on the principle that unions are free to define their structure and organization. Furthermore, legitimate trade union activities should not depend on registration; (b) TruckSol members who, as owner-drivers, are economically dependent on those for whom they work in the trucking industry, can be recognised as workers in light of the recent rulings of the Korean Supreme Court which provide that the definition of a worker under the TULRAA should be based on whether the actual substance of the relationship through which labour is provided necessitates the protection of fundamental labour rights.

526. Concerning the structure of the road freight industry and the situation of truck drivers within this structure, the complainants allege that the Safe Rates system was created to improve the reality faced by truck drivers who must carry out transport at low rates in order to make a living within the context of the exploiting structure of the freight transport market where cargo owners, mostly large conglomerates called chaebol, push down transport rates to an unreasonably low level; transport companies and freight forwarders impose excessive fees on drivers and, all costs incurred in the process of transport are shifted to truck drivers who are at the bottom of the structure. The complainants state that since its establishment in 2002, KPTU-TruckSol has made great efforts to improve the unfair structure of the freight transportation market through the introduction of the Safe Rates system.

527. The complainants further allege that during and in the aftermath of the strike, some transport companies took retaliatory measures and committed acts of anti-union discrimination and interference against the KPTU-TruckSol and its members who had participated in the strike: (a) on 2 December, when the strike was in progress, union members of the Cheonan Chapter received a text message from their transport companies asking them to "quickly reveal whether they intend to return to work," and were notified again of a "seven-day suspension of work" for not replying to the message; (b) on 9 December, tank lorry driver members of the TruckSol Cheonan and Daesan Chapters were notified by their transport companies that they could return to work only when they brought a confirmation that they had withdrawn from the union. The transport companies told workers to bring confirmation that they had left the union as quickly as possible, so that they could report this to the lead firms (cargo owners) and assign them work again; (c) media reports confirmed on 11 December that some transport companies told workers who participated in the strike that they would be allowed to return to work on the condition that they leave the union or that union leaders resigned. Companies also notified workers they would not be given work for a certain period or face other disadvantageous measures for having joined the strike; and (d) a TruckSol leader of the Daesan Chapter received a notice saying: "other union members will be allowed to return to work only when union leaders resign". Another union member said that his transport company told union leaders to "quit the company and the company will deal with your truck". With respect to the latter incident, the complainants cite the director of the KPTU-TruckSol Incheon Branch indicating that the FTC set a guideline in 2019 to protect especially employed workers, which was clearly violated in certain cases.

528. Concerning the fate of the Safe Rates system in the aftermath of the strike, in their communication dated 5 April 2023 the complainants referred to a Government proposal to replace the Safe Rates system with a "Minimum Rates System", which would allegedly repeal the obligations put on cargo owners and remove penalty provisions making the law effectively unenforceable. According to the complainants the proposal also took the authority for setting cost models and fair income levels away from the tripartite Safe Rates Committee and placed it with the Government. Furthermore, it gave the Government the ability to limit the level of pay rates and prevent the publication of rates' standards. In other words, the Government proposal effectively meant the abolition of the Safe Rate System. The bill was only discussed with the ruling party and reflected solely the Government's position. The complainants affirm that there was no actual communication or consultation with KPTU-TruckSol. The complainants indicate that the meetings that the Government claims to have had with the union including those within the Safe Rates Committee, the formation of the "Logistics Industry Development Council" with the union and a public hearing by the Logistics Industry Council on 18 January 2023, were merely a formality and were not a meaningful dialogue, considering that during these meetings, the Government 'pretended' to hear the opinions of stakeholder groups on several issues related to trucking transport regulation, one of which was the Safe Rates system.

However, according to the complainants the Government made no attempt to reflect the position of KPTU-TruckSol or associations representing transport companies concerning the continuation of the Safe Rates system, and instead put forward its own proposal at the conclusion of these meetings.

529. In their communication dated 5 April 2023, the complainants also responded to the Government's statements that during the June 2022 strike, KPTU-TruckSol committed illegal actions such as transport disruptions, violent assaults and threats, and that during the November strike its members engaged in acts of violence and the destruction of infrastructure as well as threats towards non-striking members of KPTU-TruckSol and non-member truckers. The complainants confirm that regrettable incidents of violation of law took place during the strike; but affirm that these were individual acts of a very small number of drivers and contrary to the Government's allegations, violence and intimidation during strike actions had never been an organized policy of KPTU-TruckSol.

B. The Government's reply

530. In its communication of 9 January 2024, the Government indicates that the complainants' allegations of violation of Conventions Nos 87 and 98 are unfounded; that KPTU-TruckSol's November 2022 collective refusal to transport had severe social and economic consequences and that, contrary to the complainants' allegations, in addressing this acute crisis, the Government respected ILO standards.

531. The Government provides its account of the facts concerning the background, the response to the November–December 2022 strike – which it designates as the "collective refusal to transport" – and its aftermath. The Government specifies that according to the Safe Rates system, a shipper must pay freight rates that are not lower than the safe trucking freight rates, to a transport business operator or truck owner-operator. In addition, a transport business operator must pay safe-entrusted trucking freight rates to a truck owner-operator. The Government indicates that the TTBA establishes a Committee on Safe Freight Rates for Trucks (CSFRT) to determine and adjust safe trucking costs and safe trucking freight rates as well as their scope of application. The 13 Committee members represent truck owner-operators, transport business operators, shippers, and public interests. The CSFRT reviews the following matters: (1) fixed costs including personnel expenses and depreciation and amortization costs; (2) variable costs including fuel and parts costs; and (3) other matters prescribed by Presidential Decree such as waiting charges and level of services offered by transport service providers.

532. Concerning the 7–14 June 2022 "collective refusal of cargo transportation", the Government indicates that it caused a reduction in container traffic to 32.4 per cent of the usual levels and led to damages amounting to US$1.24 billion. According to the Government during the process, KPTU-TruckSol engaged in illegal activities, such as transport disruptions, violent assaults, and threats against non-member drivers and members who did not participate in the collective action. During this collective action the Government held five meetings with KPTU-TruckSol and in response to the Government proposal to "continue discussions" regarding the system's continued implementation and its expansion to other freight types, the organization's members resumed transportation services on 14 June. The Government affirms that no agreement was reached between the Government and KPTU-TruckSol at that time, as the continuation of the Safe Rates system required a legislative amendment of the TTBA in the National Assembly and was therefore beyond the power of the Government. The Government indicates that following these events it continued its dialogue with relevant stakeholders including those participating in the CSFRT and the "Cargo Transport Industry Council".

According to the Government, between the first collective refusal to transport in June 2022 and the second in November 2022, the Government held a total of five one-on-one meetings with KPTU-TruckSol.

533. The Government indicates that only five months later, KPTU-TruckSol commenced a second nationwide indefinite "collective refusal to transport" despite the Government's endeavour to engage in dialogue. The second "refusal" had a significant social and economic impact, due to Korea's geographic location as well as its predominant dependence, for imports and exports, on ports and for domestic cargo transportation, on road transport. Moreover, the collective refusal was marked by violence, vandalism and intimidation against non-participants, which led to work stoppages among the latter, further aggravating the cargo transportation situation. The Government further confirms the complainants' account of events, concerning the declaration of a red-level crisis alert, the two unsuccessful meetings between the Government and KPTU-Truck-Sol, the issuance of back-to-work orders and the union's calling off the collective action on 9 December 2022.

534. The Government indicates that it recognizes trade unions as key policy partners and promotes various policies that respect the value of labour. It refers to the ratification of Conventions Nos 87 and 98 on 20 April 2021, and to several amendments made to national legislation in preparation of these ratifications. It further refers to its promotion of labour reform aimed at the creation of a sustainable labour market that includes global standards such as ILO standards and the best practices of major countries; as well as efforts to address unfair wage gaps and labour market dualism. The Government further mentions the agreement signed between prime contractors and subcontractors in the shipbuilding industry in February 2023 and its continuing efforts to transpose this initiative to other industries.

535. Concerning the status of KPTU-TruckSol, the Government affirms that the TULRAA protects the freedom of association and collective bargaining rights of cargo truckers. It indicates that people in special types of employment, who are classified as workers under the TULRAA, such as delivery workers, designated chauffeur drivers, parcel delivery workers, professional bicyclists, cargo transportation drivers (separate from KPTU-TruckSol), after-school tutors, life insurance planners, and work-book teachers, have established various trade unions and are engaging in union activities lawfully. Nevertheless, the Government distinguishes most truck-owner operators who are members of the KPTU-TruckSol from the previous categories, considering that they own their vehicles and are registered as individual business entities operating their cargo transportation business under their own business license with their own name. Therefore, according to the Government, KPTU-TruckSol is a trade association composed of individual business entities, and the collective transport refusal of KPTU-TruckSol is not a strike protected under the Constitution of Korea or international labour standards, but an unfair refusal of transaction by an "interest association".

536. Furthermore, the Government indicates that KPTU-TruckSol's activities are different from those of trade unions under the TULRAA, as it has not submitted a report on its establishment, nor has it followed the minimum procedures for collective bargaining and industrial actions as required in the TULRAA. Therefore, the Government concludes that these activities are not protected by the right to collective action and collective bargaining under the TULRAA. The Government affirms in this respect that the trade union registration system in the Republic of Korea (the trade union establishment reporting system) is not a form of licensing because administrative authorities do not have discretionary power and must accept the application and issue the certificate on union establishment if the application meets the requirements. The Government emphasizes that legal registration is the primary step for trade unions to gain

protection under the TULRAA, and that despite this, KPTU-TruckSol has not exercised its right to formal recognition through legal registration in recent years.

537. Concerning the objective of the "collective refusal to transport" in the present case, the Government indicates that the continuation and expansion of the Safe Rates system demanded by KPTU-TruckSol caused concern over negative social impacts, considering that objective calculation of freight rates through this system was not possible. The Government specifies in this respect that : (i) costing processes lacked objectivity considering that 17 out of 25 cost items were examined through surveys without objective data; (ii) truck owner-operators' income was determined through negotiations between members of the CSFRT, which was structured in favour of transport business operators and truck owner-operators who received guaranteed income and whose interests are aligned, and this was unfavourable to shippers who pay the freight; and (iii) the profit of transport business operators – not truck owner-operators – was guaranteed uniformly (at around 12 per cent), which was contrary to the principle of market competition and caused an increase in logistics costs and was a burden on businesses and the public.

538. Concerning the social and economic impact of the KPTU-TruckSol's "collective refusal to transport" the Government indicates that Korea effectively functions as an island nation, and therefore relies on air and sea transport for the import and export of all critical goods, including food, medical supplies and oil, which are vital to the Korean population's life and safety. As a result of the November 2022 collective refusal to transport, the volume of container cargo entering and leaving Korean ports fell to 60 per cent of its usual volume. The share of road freight transport in Korea is very high (92.9 per cent as of 2021). As a result, any prolonged interruption of road freight transport services results in a significant negative impact on people's lives, health, and personal safety across the country. The Government indicates that for example, according to some medical professionals, the refusal could lead to a shortage of imported medicines. The Government further indicates that the November 2022 collective refusal to transport blocked the shipment of major industrial goods such as cement, steel and petrochemicals. Shipments of cement fell by 95 per cent. This affected 55 per cent of all construction sites across the country and consequently raised serious concerns about the jobs and livelihoods of daily workers at those sites. Also, the construction of 71.3 per cent of the public housing units for low-income groups was disrupted, which delayed the move-in dates by up to five months. The Government adds that shipping in steel and petrochemical sectors fell by 50 and 70–80 per cent respectively. This reduced the storing space within factories and if the collective refusal to transport had continued much longer, petrochemical factories would have had to close for at least 15 days. The refusal also affected oil refineries. According to the Government, if petroleum products were not supplied on time, the livelihood and health of the Korean population during the winter season would have been affected, with particularly grave consequences for the most vulnerable groups of the population. According to industry estimates, shipment disruptions of produced goods resulting from the 16-day collective refusal to transport caused a total of US$3.4 billion in damage, with US$1.3 billion in the steel and 1.1 billion in the petrochemical sector.

539. The Government also indicates that the refusal to transport was qualified as a "social disaster" under the Framework Act on the Management of Disasters and Safety because it effectively paralysed the nation's core infrastructure. The refusal affected major logistics hubs including the steel and refinery sectors, as well as major ports. As a result, damages to construction sites became visible, while other industries, including steel, began to be affected. The MoLIT, operating as the disaster management supervision agency for land cargo transportation accidents, determined that the crisis had reached the highest level of emergency and issued a

red alert on 28 November, which entailed the intervention of the Central Disaster and Safety Countermeasure Headquarters to manage the crisis.

540. The Government further argues that its issuance of commencement of work orders and use of replacement of transport services in response to KPTU-TruckSol's "collective refusal to transport" were in conformity with the ILO Conventions Nos 87 and 98 and the principle of freedom of association. The Government indicates in this respect that the right to strike is not absolute and that the Committee on Freedom of Association (CFA) has held that back-to-work orders and replacement services may be applied in certain circumstances, in particular if the strike is in an essential service sector in the strict sense of the term or if it may cause an acute national crisis. The Government states that although the CFA does not consider freight transport services as essential services, and in line with this approach they were not included in the list of essential services under the TULRAA, the specific circumstances of the present case required the issuance of commencement of work orders and the use of replacement services to ensure minimum service. In this regard, the Government underlines that this was the second nation-wide strike of truckers in a six-month period and reiterates the points raised concerning the reliance of the country on inland road transportation and the impact of the strike on the on the economy and society as a whole. The Government further indicates that after the issuance of the red alert it had no choice but to issue commencement of work orders to a limited number of transport companies and cargo truckers in the cement sectors on 28 November and to a limited number of truckers in the steel and petrochemical sectors on 8 December. According to the Government, KPTU-TruckSol's repeated and prolonged refusal to transport, combined with the acts of violence committed by KPTU-TruckSol's members against non-participating truckers, caused an acute national crisis which required the Government to intervene with a view to ensuring minimum service.

541. Concerning the scope of the commencement of work orders issued, the Government indicates that out of a total of 445,000 cargo truckers, the Government limited commencement of work orders to 12,500 truckers in the cement, steel and petrochemicals sectors. In practice, the orders were issued according to strict procedures and were limited to cases where (i) a trucking site was inspected and investigated by a public official in person and (ii) a request for transport was rejected. As a result, the number of truckers who effectively received commencement of work orders was strictly limited to 932 individuals, representing only 4.2 per cent of 22,000 KPTU-TruckSol's affiliated truck drivers (or 0.02 per cent of the total 445,000 cargo truckers). This confirms that the Government issued the commencement of work orders in a strictly limited manner for the specific purpose of ensuring minimum service.

542. The Government also indicates that the issuance of commencement of work orders were in conformity with the Forced Labour Convention, 1930 (No. 29), and national law and procedure.

543. Concerning the use of replacement transport services, the Government indicates that it found it necessary to deploy a limited number of vehicles from public agencies to mitigate the disruptions resulting from acts of intimidation and violence of the participants in the collective refusal to transport and their obstruction of access of non-participating drivers to key logistic hubs. The Government provided 69 container trucks (serviced by 150 drivers) managed by the Ministry of National Defense (MOD); 24 vehicles (serviced by 50 drivers) owned by MOD; 18 trucks (serviced by 45 drivers) managed by the Regional Office of Construction and Management of the MoLIT; and 4 trucks (serviced by 10 drivers) from Korea Expressway Corporation. These vehicles were deployed to key logistics hubs for transporting emergency import and export cargo, handling a total of 2,678 cases. The Government specifies that the volume of shipments handled was very small compared to that in normal times and concludes

that the use of replacement services in the present case has been in line with the applicable ILO standards and the CFA practice.

544. Concerning the FTC investigation of KPTU-TruckSol's alleged illegal cartel conduct and/or prohibited acts of trade associations, the Government provides details concerning the scope and content of the Korean Monopoly Regulation and Fair Trade Act (FTA), and indicates that investigation is a legitimate law enforcement measure in that framework. The FTA aims at promoting fair and free competition by regulating illegal cartel conduct and unfair trade practices. The FTA applies to acts of "business entities" and "trade associations" and can apply to entities that are simultaneously deemed as trade unions or workers under the TULRAA. The Government explains that in assessing whether a person qualifies as a business entity or a trade association, the FTC considers whether they offer services or products and receive counter-payments in each individual case, regardless of the business type or organizational structure. The Government refers to the cases of the Korean Construction Workers' Union (KCWU) and Korean Federation of Port and Transport Workers' Unions (KFPTWU), both legitimate trade unions under the TULRAA, which were sanctioned for violations of the FTA. The Governments adds that the Supreme Court of Korea ruled that the FTA could be applied to trade unions. Specifically, in a decision dated 13 July 2023, the Supreme Court qualified the Ulsan Port and Transport Workers' Union, which obstructed the loading and unloading done by a competing trade union, as a "business entity". The ruling provided that a trade union which had received a worker supply business licensing had both the status of a trade union and a business entity and therefore found it justifiable to apply the FTA to that trade union.

545. Concerning the grounds for the FTC investigation of KPTU-TruckSol, the Government indicates that most members of this organization are registered as individual business entities that either directly operate cargo transportation services or do so on consignment. KPTU-TruckSol is therefore considered a trade association established to promote the common interests of these cargo truck business entities. The investigation concerned alleged violation of section 51 of FTA, including coercing associated members into refusing to provide transport services and obstructing the transportation operations of business entities not associated with KPTU-TruckSol by using violence or the occupation of distribution hubs. The Government affirms that the investigation does not relate to the refusal to transport as such.

546. The Government further indicates that pursuant to section 81 of the FTA, investigations by the FTC are administrative investigations and do not require a court warrant or police presence. In accordance with the same provision, the FTC requested the minimum materials necessary for its investigations and also requested a list of business entities associated with KPTU-TruckSol was justified for the purpose of investigating possibly prohibited acts of the trade association. No police mobilization or illegal search of a union premises was conducted. The Government adds that KPTU-TruckSol refused cooperation by intentionally blocking access of FTC officials, and thereby refusing to participate in a lawful and peaceful FTC investigation and offering no valid reasons for their non-compliance. As the FTA contains penalty provisions concerning interference with an investigation (section 124), the FTC filed a complaint of obstruction of investigation and on 9 August 2023, the Prosecutors Office charged KPTU-TruckSol with violation of the FTA. The Government confirms the complainants' indications concerning the punishment that KPTU-TruckSol would incur if convicted.

547. Concerning the presence of police forces at strike sites, the Government indicates that it was necessary to maintain public order and refers to illegal acts during the November 2022 collective refusal to transport, resulting in 781 cases being reported through 112 police emergency calls. The Government indicates that acts of obstruction of business and public administration were carried out and that KPTU-TruckSol's executive officials fired iron balls at

some cargo vehicles, resulting in damage to the vehicles and injury to the drivers. The Government affirms that these incidents were not isolated acts of a few drivers and posed a significant threat to public order and security and therefore the presence of the police forces could not be qualified as restricting the strikers' civil liberties or the right to strike. The Government further refers to certain penal measures taken against KPTU-TruckSol officers and members who had committed acts of violence, threat and intimidation against other drivers: on 26 November 2022, three officers of TruckSol fired iron balls at two cargo vehicles operating at Busan New Port, damaging the vehicles and injuring the drivers. One was sentenced to two years and the two others to eighteen-month prison terms. In March 2023, the first-instance court sentenced a truck driver member of TruckSol who scattered more than 700, 9-centimeter-long steel spikes on the road, damaging the tyres of six vehicles, to eight months in prison and two years' probation. In addition, between 30 November and 1 December, a truck owner-driver who sent text messages to transport business operators threatening them with "retaliation when the strike is over" was detained. The Government indicates that According to the National Police Agency, there were investigations against 66 individuals for allegations of violence, intimidation and property damage linked to the two KPTU-TruckSol's collective refusals to transport in June and November of 2022. The Government finally indicates that only truck drivers who committed illegal acts faced the risk of being subject to criminal sanctions.

548. Concerning the complainants' request that the Government should be urged not to proceed with claims for damages against the legitimate exercise of the right to strike, the Government indicates that in its view, nothing in the ILO Conventions or the CFA practice requires ILO Members to forbid all civil law remedies, especially where companies are affected by a breach of contract due to the unlawful prolonged refusal to transport.

549. Concerning the allegations of anti-union discrimination and acts of interference, the Government indicates that under the FTA, the FTC prohibits the abuse of business positions in trade and specifically regulates unfair trade practices by business entities against labour providers through the "Guidelines for Examining Abuse of the Business Position for Labour Providers". According to the Government these Guidelines provide that business entities who exploit their position in trade to unfairly terminate a contract thereby rejecting transactions, violate the FTA. The Government adds however that no violation of this type has been reported to the FTC.

550. Concerning the fate of the Safe Rates system, the Government rejects the complainants' allegation that its alternative proposal for a "Standard Freight Rates System" effectively abolishes the existing Safe Rates system and indicates that the proposed alternative maintains the rate structure, while ensuring that transport business operators guarantee the payment of freight rates to truck owner-operators. Under this system, the parties responsible for paying freight charges to truck owner-operators are not shippers, but the transport business operators. The rates are determined by the CSFRT and the Government publicly announces those rates. The Government affirms that the alternative proposed aims at overcoming the limitations of the Safe Rates system by using objective data instead of data collected through questionnaires to calculate costs. Furthermore, the structure of the CSFRT will be modified: the number of public interest members with a neutral position will be expanded, and the number of transport business operators and truck owner-drivers will be adjusted to the number of shipper members. The Standard Freight Rate System provides guidelines for shippers and transport business operators, but ensures free contracting, while truck owner-drivers are guaranteed a certain level of freight rate. The Government indicates that after the submission to the National Assembly of the proposal of amendment of TTBA on 9 February 2023, the Government has maintained ongoing communication with the National Assembly and various

stakeholders, including KPTU-TruckSol. According to the Government, on 31 October 2023 KPTU-TruckSol requested an expedited discussion on the Government's amendment proposal and on 3 November 2023 it sent the same opinion to the opposition. The Government considers that this represents a change in KPTU-TruckSol's position and requests the Committee to take full account of its efforts to resolve the issues through communication and the evolutions of the situation. The Government finally indicates that its proposed bill remains pending in the National Assembly and in response to this legislative delay the MoLIT is preparing a set of "Standard Freight Rate Guidelines". Additionally, to protect truck owner-operators from unfair treatment by transportation companies, the MoLIT intends to include unfair practices such as unreasonable financial demands by transportation companies in the Enforcement Decree of the TTBA and introduce penalties for such violations.

C. The Committee's conclusions

551. *The Committee notes that this case concerns the Government's refusal to recognize the trade union status of KPTU-TruckSol and its response to the work stoppage held by this organization between 24 November and 9 December 2022.*

552. *The Committee notes the complainants' references to various Government officials' statements, indicating that KPTU-TruckSol members are not workers, but individual business-owners, and that the collective action organized by KPTU-TruckSol is not a strike, but a "collective refusal to transport". The Committee notes that the Government response confirms the alleged refusal to recognize KPTU-TruckSol's status as a trade union, considering that it affirms that this organization is a trade association composed of individual business entities, and that the collective transport refusal of KPTU-TruckSol is not a strike protected under the Constitution of Korea and international labour standards, but an "unfair refusal to transaction" by an interest association. The Committee notes that to support its position the Government also indicates that KPTU-TruckSol has not applied for a union certificate in recent years and has not followed the procedure indicated in the TULRAA for initiating a strike. The Committee notes the complainants' response to these arguments, indicating that TruckSol defines itself as a sectoral division of the KPTU and as such does not consider that it has to apply for a separate union certificate; and that the members of the organization are economically dependent on those for whom they work in the trucking industry, namely cargo-owners and transport companies, and therefore should be recognized as workers under the TULRAA.*

553. *The Committee recalls that the question of the Korean Government and employers' refusal to recognize individual truck-owner drivers, especially cement/concrete bulk transport truckers as workers, and the Government's instruction to trade unions to exclude these persons from their membership was previously raised in 2009 in Case No. 2602 [see 355th Report, para. 636 and 359th Report, paras 348–49]. At that time, the Committee had requested the Government "to take the necessary measures to ensure that all workers, including "self-employed" workers, such as heavy goods vehicle drivers, can fully enjoy freedom of association rights with the organizations of their own choosing for the furtherance and defence of their interest, including the right to join federations and confederations of their own choosing subject to the rules of the organization concerned and without any previous authorization", and "to hold consultations with all the parties involved with the aim of finding a mutually acceptable solution so as to ensure that, on the one hand, workers who are self-employed could fully enjoy trade union rights under Conventions Nos 87 and 98 for the purpose of furthering and defending their interest, including by the means of collective bargaining" [359th Report, para. 370(b) and (d)].*

554. *The Committee further recalls that in Case No. 3237 (2018), certain allegations were related to a national strike organized by KPTU-TruckSol and the complainants had explained by way of background that "most truck drivers in the Republic of Korea work under a form of disguised*

employment. They purchase their own trucks but are in fact in a highly dependent contractual relationship with transport companies and clients (cargo owners) who contract with the transport companies. They are designated as 'specially employed' and as such are not recognized as workers with rights to association, collective bargaining or collective action that are guaranteed by the Constitution" [see 386th Report, para. 172]. At the time the Government had replied that "the TULRAA applies only to employees. Those in special employment arrangements, including owner drivers of heavy goods vehicles (those whose trucks are registered under the name of a transport company, but owned by drivers), have the characteristics of self-employed and employees at the same time, making it difficult to consider them all to be employees. The court decides on their exact status on a case-by-case basis. While the number of those in a special employment arrangement continues to grow, they face poor working conditions with little legal protection for basic labour rights. To address this, the Government has set 'guaranteeing basic labour rights for those in special employment arrangement' as one of its policy priorities and plans to establish and implement specific protective measures after broad discussions with the tripartite partners and experts" [see 386th Report, para. 190]. The Committee had noted with interest the priority attached by the Government to this matter and had requested the Government to keep it informed of the measures taken in this regard [386th Report, para. 209].

555. *The Committee notes that all the issues raised in the present case flow from the continuous denial of recognizing as trade unions, organizations of "especially-employed" or "self-employed" truck driver-owners. It therefore reiterates its previous recommendation and urges the Government to take all the necessary measures to ensure that these workers can fully exercise their freedom of association rights.*

556. *Concerning the qualification and legitimacy of the KPTU-TruckSol's collective action, the Committee notes the Government's indication that the organization has not followed the minimal procedures for collective bargaining and industrial actions as provided in the TULRAA and the complainants' response that in view of the Government's refusal to recognize KPTU-TruckSol as a union, they could not follow the procedures. The Committee notes these indications but also recalls that it has previously noted in a case concerning the Republic of Korea that the legitimate goals of strike action are narrowly interpreted and limited to matters related to industrial disputes between workers and employers [see 404th Report, paras 69(f) and 76]. The Committee notes in this regard that the collective action in this case, concerned the position of the truckers on the imminent expiration of the Safe Rates system, demanding the continuation and expansion of the protection of wages and living conditions that this system ensured them. As such, the collective action was not part of a collective bargaining process strictly speaking but was used to support the position of the workers concerning a major social and economic policy and legislation. Therefore, the Committee notes that in these circumstances the KPTU-TruckSol could not organize a strike concerning this issue in full conformity with the current legislation in the Republic of Korea. Nevertheless, considering that "the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests" [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 766], the Committee considers that KPTU-TruckSol should be able to exercise fully its trade union rights, including those of legitimate collective action in the defence of their members' interests.*

557. *Concerning the Government response to the collective action organized by KPTU-TruckSol, the Committee notes that the complainants allege that the issuance of commencement of work orders and use of replacement transport services infringed the right of truckers to strike, while the Government responds that its measures were justified, considering that KPTU-TruckSol's repeated*

*and prolonged refusal to transport, combined with the acts of violence committed by KPTU-TruckSol's members against non-participating truckers, caused an acute national crisis which required the Government to intervene with a view to ensuring minimum service. The Committee recalls in this respect that "a certain minimum service may be requested in the event of strikes whose scope and duration would cause an acute national crisis, but in this case, the trade union organizations should be able to participate, along with employers and the public authorities, in defining the minimum service" [see **Compilation**, para. 871]. The Committee therefore considers that efforts should have been made to identify relevant minimum services with the unions concerned prior to issuing any limited back-to-work orders.*

558. *The Committee notes that in its account of the impact of the November–December 2022 collective action, the Government indicates that in view of the important share of road freight in Korea (92.2 per cent as of 2021), any prolonged interruption of road freight transportation services results in a significant negative impact on people's lives, health and personal safety across the country. The Government further refers to the impact of the collective action on the construction sector, which would have entailed a delaying of the move-in date for public housing applicants and would have impacted the livelihood of daily workers in the sector; its potential impact on the supply of imported medicines, as well as its impact on the supply of petroleum products and its potential consequences for the livelihoods and health of the population during winter. The Government also emphasizes the economic damage caused to the construction, steel and petrochemical sectors.*

559. *Concerning the issuance of "commencement of work orders", the Committee recalls that "whenever a total and prolonged strike in a vital sector of the economy might cause a situation in which the life, health or personal safety of the population might be endangered, a back-to-work order might be lawful, if applied to a specific category of staff in the event of a strike whose scope and duration could cause such a situation. However, a back-to-work requirement outside such cases is contrary to the principles of freedom of association" [see **Compilation**, para. 920]. The Committee notes that in the present case, the first set of orders issued on 29 November were addressed to the truckers transporting cement. Noting the Government's indications concerning the impact of the "collective refusal to transport" on the construction sector, the Committee does not consider that the work stoppage of cement transporters would fall into such a category. Furthermore, the Committee notes that these orders were addressed to 2,500 truckers, which, according to the information submitted by the complainants on 3 February 2023, is equal to the total number of the KPTU-TruckSol members who transport cement. Therefore, the Committee notes that the issuance of these back-to-work orders was in reality a ban on the KPTU-TruckSol strike in the cement sector.*

560. *The Committee notes that the second round of back-to-work orders was issued on 8 December and addressed to truckers in the steel and petrochemical sectors. Again, the Committee notes that the Government does not indicate in what way the work stoppage of truckers in the steel sector would have endangered the life, health or safety of the population. As to the petrochemical sector, the Government indicates that if petroleum products were not supplied on time, the livelihood and health of the Korean population during the winter season would have been affected, with particularly grave consequences for the most vulnerable groups of the population without addressing more specifically the scope and duration of the particular strike. In view of the above, and noting that non-compliers were exposed to up to three years' imprisonment or a fine that can amount to 30 million won (US$22,500), the Committee considers that the issuance of commencement of work orders on 24 November and 8 December 2022 infringed the freedom of association of the striking workers concerned as well as the trade union rights of KPTU-TruckSol. In view of the above, the Committee requests the Government to refrain from imposing penal sanctions against the participants in the strike for mere non-compliance with the commencement of work orders.*

561. *The Committee notes the complainants' allegation concerning the prosecution of KPTU-TruckSol under the FTA for non-cooperation with the FTC investigation and the Government reply thereto. It notes that the union incurs a fine that can amount to US$1,400,000 if convicted. The Committee notes that the investigation concerned allegations of illegal cartel conduct and/or acts prohibited for trade associations, and that the FTC officials had requested, among other things, the submission of the list of union members. The Committee recalls in this respect that it has considered in the past that "the confidentiality of trade union membership should be ensured. A code of conduct should be established between trade unions, governing the conditions in which membership data is to be supplied, through appropriate means of personal data processing, with guarantees of absolute confidentiality" [see* ***Compilation****, para. 272]. The Committee therefore requests the Government to ensure the absolute confidentiality of the information on the membership of this organization.*

562. *As regards the question of the FTA more generally, the Committee notes the Government's indication that in certain circumstances, trade unions that also are business entities or trade associations can be subject to the FTA and their conduct be examined as "illegal cartel conduct" or acts prohibited for trade associations". The Committee notes that according to the Government, KPTU-TruckSol is governed by the FTA as a "trade association" because its members are "individual business entities". The Committee notes that again this issue is related to lack of recognition of the members of the union as "workers". The Committee further notes the Government's indication that in the present case, the investigation concerned alleged violation of section 51 of the FTA, including coercing associated members into refusing to provide transport services and obstructing the transportation operations of business entities not associated with KPTU-TruckSol using violence or occupation of distribution hubs. The Government affirms that the investigation does not relate to the refusal to transport as such. The Committee also notes the Government's indications concerning violent and illegal conduct of certain strikers and the penal sanctions imposed on them.*

563. *The Committee recalls that taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work; such acts constitute criminal offences in many countries [see* ***Compilation****, para. 939]. It notes the complainants' confirmation that in the present case, regrettable incidents of violation of law took place during the strike. The Committee also notes that the allegations of the complainants do not concern sanctions imposed against such criminal conduct and that the complainants affirm that these were individual acts of a very small number of drivers and that violence and intimidation during strike actions had never been an organized policy of KPTU-TruckSol. In view of the foregoing and considering that criminal sanctions have been used against perpetrators of criminal acts during the strike as appropriate, the Committee notes with concern the criminal lawsuit against the union, at the outcome of which it may be convicted to a hefty fine, merely for having refused cooperation with an investigation for "illegal cartel conduct" and sharing the list of its members. The Committee recalls in this respect that "any sentences passed on trade unionists on the basis of the ordinary criminal law should not cause the authorities to adopt a negative attitude towards the organization of which these persons and others are members" [see* ***Compilation****, para. 159] and requests the Government to ensure that any sanctions against KPTU-Trucksol for actions of its individual members are not inconsistent with freedom of association.*

564. *The Committee notes the complainants' denunciation of retaliatory measures taken by certain transport companies against strikers and acts of anti-union discrimination and interference in this context. The Committee notes that the Government qualifies these acts as potential violations of the FTA but indicates that the FTC has not received any reports denouncing such acts. The Committee notes that from the Government's point of view, the non-recognition of the union status of the KPTU-TruckSol seems to exclude the application of the rules concerning prohibition of anti-union*

*discrimination and acts of interference to the retaliatory measures taken against KPTU-TruckSol members. The Committee recalls that acts of anti-union discrimination may vary in nature and are not confined to discharge, dismissal, retrenchment or termination of service, but also include all actions taken in retaliation against a worker exercising trade union activities, such as suspension [see **Compilation**, para. 1088]. In addition, a Government allowing employment to be conditioned upon relinquishing trade union membership is not consistent with effective recognition of the right to collective bargaining. The Committee therefore requests the Government to ensure that any such actions are appropriately sanctioned so as to avoid recurrence.*

The Committee's recommendations

565. 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 all the necessary measures to ensure that all workers, including "self-employed" workers, such as heavy goods vehicle drivers, can fully enjoy the principles of freedom of association and collective bargaining for the purpose of furthering and defending their interest and to keep it informed of the measures taken in this respect.

(b) The Committee requests the Government to refrain from imposing penal sanctions against the participants in the Korean Public Service and Transport Workers' Union – Cargo Truckers' Solidarity Division (KPTU-TruckSol) strike of November–December 2022 for mere non-compliance with the commencement of work orders.

(c) The Committee requests the Government to ensure the absolute confidentiality of the information on the membership of KPTU-TruckSol.

(d) The Committee requests the Government to ensure that any sanctions against KPTU-Trucksol for actions of its individual members are not inconsistent with freedom of association.

(e) The Committee requests the Government to ensure any retaliatory measures and acts of anti-union discrimination or interference against members of the KPTU-Trucksol in relation to their participation in the November–December 2022 strike are appropriately sanctioned so as to avoid recurrence.

Case No. 3178

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

Complaint against the Government of the Bolivarian Republic of Venezuela presented by
- the International Organisation of Employers (IOE) and
- the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS)

Allegations: Interference in collective bargaining, in the form of imposing negotiations relating to proposals presented by a minority trade union linked to the governing party; acts of violence obstructing access to the workplace in the context of a strike; illegal imposition of compulsory arbitration, interference and irregularities in the arbitration proceedings, and illegal extension of the resulting award; intimidation and harassment of the enterprise, its corporate group, its president and FEDECAMARAS, including threats, harassment, invasion of privacy, cases of confiscation and detention of managers

566. The Committee last examined this case (submitted in December 2015) at its March 2017 meeting when it presented an interim report to the Governing Body [see 381st Report, approved by the Governing Body at its 329th Session (March 2017) paras 624–674]. [23]

567. The Government sent its observations in communications dated 19 May 2017 and 27 April 2023.

568. The Committee recalls that it suspended its consideration of this case after its last examination in the light of the complaint made under article 26 of the ILO Constitution by various Employers' delegates to the 104th Session of the International Labour Conference against the Bolivarian Republic of Venezuela and the decision of the Governing Body to appoint a Commission of Inquiry to examine the country's non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), among other Conventions. At its 337th Session in October–November 2019, the Governing Body took note of the Report of the Commission of Inquiry. The Committee observes that the Commission of Inquiry established in its report that, in the light of the gravity of the issues raised, the situation and the progress achieved on its recommendations should be the subject of active supervision by the ILO supervisory bodies concerned. The Committee also observes that several of the pending recommendations of the Commission of Inquiry concern matters raised in this case,

[23] Link to previous examination.

the examination of which may now be reactivated. The Committee further observes that the Governing Body discusses at each of its sessions the periodic progress report on developments relating to the Social Dialogue Forum established to give effect to the recommendations of the Commission of Inquiry with respect to the Government of the Bolivarian Republic of Venezuela.

A. Previous examination of the case

569. At its March 2017 meeting, the Committee made the following recommendations [see 381st Report, para. 674]:

(a) The Committee requests the Government to take the necessary steps to ensure, in accordance with the principles of freedom of association and collective bargaining: (i) that voluntary collective bargaining is fully respected, ensuring that, when arbitration is appropriate, its proceedings are impartial and the parties have confidence in them, and that the enterprise can engage in free and voluntary negotiation with the representative workers' organizations; and (ii) that the will of the majority of the workers at the enterprise regarding their representation in collective bargaining and, accordingly, the will of the trade union deemed the most representative on the basis of an objective assessment of representativeness, are respected. The Committee requests the Government to keep it informed in this respect.

(b) Expressing its deep concern at the seriousness of the allegations made, the Committee requests the Government to take the necessary steps to avoid interference of any kind in industrial relations between the enterprise and the workers' organizations operating there. The Committee requests the Government to keep it informed in this respect.

(c) The Committee requests the Government to keep it informed with regard to any proceedings initiated or decisions taken in relation to the allegations of acts of violence obstructing access to the workplace in the context of a strike, including the action taken in response to the complaint referred to by the complainant organizations.

(d) In view of the fact that the Bolivarian Republic of Venezuela has ratified Convention No. 98, the Committee is referring the legislative aspects of this case to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and requests the Government to send the CEACR any additional information of relevance to the allegations that certain provisions of the Basic Act on Labour and Men and Women Workers (LOTTT) (sections 449 and 493) enable interference by the authorities in collective bargaining and in the composition of arbitration boards.

(e) The Committee requests the Government to send detailed observations concerning the allegations of seizure of the corporate group's property by violent factions and also concerning cases of confiscation and expropriation (or threats of expropriation), and accordingly invites the complainant organizations to provide any additional information at their disposal, particularly regarding any complaint or other legal action brought in this respect; the Committee also invites the complainants to provide the Government and the Committee with any additional information at their disposal concerning the allegations of cases of detention and restrictions on the freedom of workers with management responsibilities in the corporate group to which the enterprise belongs, especially relating to any complaint or legal action brought, and requests the Government to report in detail on the outcome of any administrative or judicial proceedings instituted in this respect, particularly with regard to the alleged cases of deprivation of freedom.

(f) The Committee requests the Government to send its observations concerning the latest allegations made by the complainant organizations, dated 8 November 2016 (reported continuation of the campaign of defamation and stigmatization; 19 new cases in which managers from the corporate group were detained by the police; and persecution and harassment through the presence of armed officials of the Bolivarian National Intelligence Service in the vicinity of the corporate group's facilities in Caracas and the group chairman's home).

(g) The Committee requests the Government to take firm measures both to ensure that any kind of statement, threat, harassment or intimidation against the corporate group to which the enterprise belongs, its chairman and FEDECAMARAS is avoided, and to ensure that a climate of constructive dialogue for promoting harmonious labour relations is restored.

B. The Government's reply

570. In its communications dated 19 May 2017 and 27 April 2023, the Government states that the exercise of freedom of association and collective bargaining are fully safeguarded and further notes that the complainant organizations have sent no new information since the previous examination of the case. With regard to the first part of the Committee's recommendation (a) requesting the Government to take measures to ensure that voluntary collective bargaining is fully respected, ensuring that, when arbitration is appropriate, its proceedings are impartial and the parties have confidence in them, and that the enterprise can engage in free and voluntary negotiation with the representative workers' organizations, the Government indicates that such guarantees are reflected both in article 96 of the Constitution of the Bolivarian Republic of Venezuela, which recognizes the right to voluntary collective bargaining and to conclude collective bargaining agreements with no further requirements than those established by law, and sections 431 and 493–496 of the LOTTT. The Government indicates that these sections of the LOTTT guarantee full respect for voluntary collective bargaining and ensure that, where arbitration is necessary, arbitration procedures are conducted in an impartial manner, particularly since they are conducted by an arbitration board with which neither the parties nor the administration can interfere since its decisions are made by a majority vote of its members, that has broad investigative powers and holds public hearings, which makes its decisions credible for the parties involved.

571. With regard to the second part of the Committee's recommendation (a) requesting the Government to ensure that the will of the majority of the workers at the enterprise regarding their representation in collective bargaining and, accordingly, the will of the trade union deemed the most representative on the basis of an objective assessment of representativeness are respected, the Government indicates that section 438 of the LOTTT safeguards the will of the majority of workers employed in a workplace and provides for mechanisms to determine eligibility to negotiate a collective labour agreement with the most representative union organization in the enterprise, establishing how that will be ascertained, whether by reference to the list of affiliated workers or by consulting workers directly by means of a referendum.

572. With regard to recommendation (b) relating to taking the necessary steps to avoid interference of any kind in industrial relations between the enterprise and the workers' organizations operating there, the Government states that the enterprise voluntarily negotiated a collective agreement with the Single Union of Workers in Industries Producing Beer, Soft Drinks and Nutritional Drinks in the State of Carabobo (SUTRABA–CARABOBO). The Government indicates that the said collective agreement was approved on 30 November 2017, is valid for 30 months (from 1 November 2017 to 30 April 2020) and benefits 880 workers. The Government further indicates that no application to the Labour Inspectorate has been made by SUTRABA–CARABOBO requesting the negotiation of a new collective agreement, hence the benefits under the above-mentioned agreement remain in force (that is to say, in force until at least April 2023, which is when the Government provided this information).

573. With regard to recommendation (d) requesting the Government to send the CEACR any additional information of relevance to the allegations that certain provisions of the LOTTT (sections 449 and 493) enable interference by the authorities in collective bargaining and in the

composition of arbitration boards, the Government indicates that the content of these articles of the LOTTT cannot be considered interference by the authorities in collective bargaining and in the composition of arbitration boards since the role played by the labour official in the discussions regarding the collective agreement is that of mediator and conciliator to provide guidance to the parties with a view to reaching agreements that benefit the group in the shortest possible time. The Government points out that the purpose of this provision is for the official to contribute to the attainment of the objectives and that his position can, therefore, hardly be described as mandatory, indispensable or interfering in the exercise of the right to collective bargaining. The Government further indicates that the parties can negotiate and hold meetings without the labour official being present and that the latter's participation or the fact that they are not present is optional and not a requirement. The Government indicates that in the negotiations between the Single Regional Workers' Union of the Polar Group Central Zone (SINTRATERRICENTROPOLAR) and Cervecería Polar, C.A. (hereinafter, the enterprise), the parties held meetings without the official being present on various occasions between April and May 2014.

574. With regard to recommendation (f) requesting the Government to send its observations concerning the alleged continuation of the campaign of defamation and stigmatization, the detention of 19 managers from the corporate group and persecution and harassment through the presence of armed officials of the Bolivarian National Intelligence Service in the vicinity of the corporate group's facilities in Caracas and the group chairman's home, the Government states that it respects freedom of expression and indicates that the judicial system establishes rules and institutions so that persons who feel that they have been defamed or injured can resort to the competent courts to exercise and protect their rights.

575. With regard to recommendation (g) requesting the Government to take firm measures to ensure that any kind of statement, threat, harassment or intimidation against the corporate group to which the enterprise belongs, its chairman and FEDECAMARAS is avoided, and to ensure that a climate of constructive dialogue for promoting harmonious labour relations is restored, the Government indicates that it provides spaces for exchange and social dialogue with all employers' and workers' organizations, including FEDECAMARAS, and that such dialogue has recently been conducted with the participation of the ILO. The Government states that since 2022, the ILO has provided technical assistance for holding the "Social Dialogue Forum", which has been held on three occasions and in which most workers' and employers' organizations from the world of work participate, including FEDECAMARAS. The Government indicates that the foregoing demonstrates that it is not the policy of the Government, nor that of its public officials, to conduct a campaign of defamation, stigmatization, threat, harassment or intimidation against any corporate group or organization. The Government further indicates that FEDECAMARAS and its affiliated organizations participated in dialogues, consultations, technical discussions, agreements and negotiations and other exchanges with different government agencies, an example of which is its inclusion in the National Council on the Productive Economy. Lastly, the Government states that these forums for dialogue took place in a climate of respect and harmony and that significant progress was made on the proposals put forward by the social partners.

C. The Committee's conclusions

576. *The Committee recalls that that the present complaint, submitted in 2015 and examined in 2017, concerns allegations of interference by the public authorities in voluntary collective bargaining (imposition on the enterprise of negotiations with a minority trade union linked to the governing party) in addition to acts of violence in the context of a strike; illegal imposition of compulsory*

arbitration (although essential services were not affected), interference and irregularities in the arbitration proceedings; intimidation, harassment and defamation of the enterprise, its corporate group, its president and FEDECAMARAS by the governing party and pro-government organizations, including threats, harassment, invasion of privacy, cases of confiscation and detention of workers with management responsibilities.

577. *The Committee takes note of the Report of the Commission of Inquiry appointed by the Governing Body to examine allegations of non-observance by the Bolivarian Republic of Venezuela of Convention No. 87, among other Conventions, which was adopted on 17 September 2019. The Committee notes that some matters in the present case were examined by the Commission of Inquiry which, after a detailed examination, confirmed a number of the concerns raised by the Committee in the present case. Duly noting the fact that the Commission of Inquiry indicated that the situation and the progress achieved on its recommendations should be the subject of active supervision by the ILO supervisory bodies concerned, the Committee will pursue its examination of the present case in the light of the conclusions and recommendations of the Commission of Inquiry.*

578. *The Committee notes that the Commission of Inquiry states in its report that "it did not enter into the examination of additional allegations of other forms of interference in the relations between employers and workers and anti-union practices, because they went beyond the purpose of the complaint". The Commission indicates that "[s]everal of these allegations have been dealt with by the ILO supervisory bodies, which have emphasized their concern about interference with and violations of the exercise of freedom of association" (Report of the Commission of Inquiry, paragraph 492). The Committee notes that this is the situation in Cases Nos 3172 (complaint submitted by workers' organizations) and 3178 (complaint submitted by employers' organizations) which refer, among other allegations, to acts of interference by the authorities in voluntary negotiation within a corporate group. The Committee recalls from its previous examination of this case that it noted that a number of the allegations concerning interference by the authorities in voluntary bargaining coincided with those raised in Case No. 3172.*

579. *The Committee deems it relevant to recall that the Commission of Inquiry noted "the existence of a complex institutional and informal web of interference in the freedom of association of employers' and workers' organizations in the country. This network of institutions and practices relies on a variety of elements outlined in the report (legal, political, institutional, social, etc.), some of which reflect systemic problems in the functioning of the rule of law in the country, the proper functioning of which is essential for the observance of the Conventions that are the subject of the complaint. As a result, the independent functioning of employers' and workers' organizations their ability to defend the interests of their members and the independence of collective relations between employers and workers have been undermined. In the light of the foregoing conclusions, the Commission considers that the independence of employers' and workers' organizations has been violated and that this has seriously undermined the rights enshrined in Convention No. 87, in particular the right of employers and workers to establish and join organizations of their own choosing, the right of those organizations to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes" (Report of the Commission of Inquiry, paragraph 493).*

580. *The Committee notes that the Government has sent two communications since the last examination of the present case, containing certain information relating to the Committee's recommendations concerning allegations of interference by public authorities in voluntary collective bargaining (recommendations (a) and (b)). In this respect, the Committee notes the Government's indication that: (i) both the Constitution of the Republic and sections 431 and 493–496 of the LOTTT guarantee full respect for voluntary collective bargaining and ensure that, where arbitration is necessary, arbitration procedures are conducted in an impartial manner, since they are conducted by an arbitration board with which neither the parties nor the administration can interfere; (ii) section 438*

of the LOTTT provides for mechanisms to determine eligibility to negotiate a collective labour agreement with the most representative union organization in the enterprise, establishing how that will be ascertained; and (iii) sections 449 and 493 of the LOTTT, which, according to the allegations made by the complainant organizations, enable interference by the authorities in collective bargaining and in the composition of arbitration boards, are not contrary to free and voluntary collective bargaining.

581. *While noting the Government's indications concerning the constitutional and legislative provisions which, it states, guarantee full respect for free collective bargaining, the Committee recalls that in its previous examination of the case it referred the legislative aspects of the present case to the CEACR, in particular section 449 of the LOTTT, which establishes the requirement for the presence of a labour official during collective bargaining (the CEACR requested the Government to make the corresponding amendments to bring it into conformity with the Convention) and section 493 of the LOTTT, which establishes that the arbitration board for the settlement of the dispute shall be composed of one employer, one worker and one government representative (the CEACR requested the Government to take measures to ensure that the composition of the arbitration board enjoys the confidence of the parties) for examination in the context of supervision of the application of the Right to Organise and Collective Bargaining Convention, 1948 (No. 98) (recommendation (d)).*

582. *The Committee further notes the Government's indication in its most recent communication that: (i) the enterprise voluntarily negotiated a collective agreement with SUTRABA–CARABOBO; (ii) the said collective agreement was approved on 30 November 2017, is valid for 30 months (from 1 November 2017 to 30 April 2020) and benefits 880 workers; and (iii) no application to the Labour Inspectorate has been made by SUTRABA–CARABOBO requesting the negotiation of a new collective agreement, hence the benefits under the above-mentioned agreement remain in force.*

583. *The Committee takes note of the conclusion of the collective agreement with SUTRABA–CARABOBO, which, as the complainant organizations indicated in the complaint, was the most representative trade union. The Committee recalls that one of the aspects examined in the complaint had to do with the territorial scope of the SUTRABA–CARABOBO negotiation and the applicability of the collective bargaining agreements that it negotiated (whether the effects were limited to the state of Carabobo or extended to the other states concerned, as had been the practice in the past). Taking into account that the Committee does not have information on the scope of application of the collective agreement signed in November 2017, the Committee expects that, in the event that the said agreement applies solely to the state of Carabobo, collective bargaining in the other states was conducted with the most representative workers' organization, and that an objective verification of representativeness was carried out for that purpose. The Committee also expects that the Government will take measures to promote the voluntary negotiation of collective agreements in all sectors of activity in the national territory with the most representative organizations of employers and workers. Additionally, the Committee recalls once again the importance of guaranteeing that voluntary collective bargaining is fully respected, ensuring that, where arbitration is applicable, the proceedings are impartial and have the confidence of the parties. Taking into account that the CEACR examines the legislative aspect of these matters and that since examining the complaint the Committee has not received information relating to any other arbitration proceeding, the Committee will not pursue its examination of this aspect of the case.*

584. *With regard to recommendation (c), the Committee requested the Government to provide information with regard to any proceedings initiated in relation to acts of violence reportedly carried out by a group of persons unconnected with the enterprise in April 2015, who, supported and accompanied by the president of SINTRATERRICENTROPOLAR (an organization alleged to be close to the governing party) obstructed access to the workplace in the context of a strike. The Committee also requested the Government to keep it informed with regard to the treatment of a complaint in*

this respect to which the complainant organizations had referred. The Committee recalls that in its previous examination of the case, it expressed regret that the Government had not provided any information in this respect. The Committee deplores that the Government, in its communications sent following the consideration of the case, also failed to provide any information in this regard. Taking into account that the Committee has no information enabling it to revisit these issues, the Committee once again requests the Government to provide the aforementioned information.

585. *With regard to recommendation (e), the Committee requested the Government to send detailed observations concerning the allegations of seizure of the corporate group's property by violent factions, and also concerning cases of confiscation or expropriation (or threats of expropriation). The Committee recalls that, with a view to the Government sending such observations, it invited the complainant organizations to provide any additional information at their disposal, particularly regarding any complaint or other legal action brought in this respect. The Committee also invited the complainants to provide the Government and the Committee with any additional information at their disposal concerning their allegations of detentions and restrictions on the freedom of workers with management responsibilities of the corporate group to which the enterprise belongs, especially relating to any complaint or legal action brought, and requested the Government to provide detailed information on the outcome of any administrative or judicial proceedings instituted in this respect, particularly with regard to the alleged cases of deprivation of freedom. The Committee notes that it has not received the aforementioned information either from the complainant organizations or from the Government. In the light of the foregoing, unless the complainant organizations provide the aforementioned elements, reporting in particular on any complaint or other legal action brought in respect of the acts that, allegedly, took place between 2015 and 2016, the Committee will not pursue its examination of these allegations.*

586. *The Committee notes the Government's reply to recommendations (f) and (g) relating to the complainant organizations' allegations concerning: (i) a campaign of defamation and stigmatization, detention by the police of managers of the corporate group and persecution and harassment through the presence of armed officials of the Bolivarian National Intelligence Service in the vicinity of the corporate group's facilities in Caracas and the group chairman's home, and (ii) statements, threats, harassment or intimidation against the corporate group to which the enterprise belongs, its chairman and FEDECAMARAS. The Committee notes the Government's indication concerning the existence of rules and institutions in the country so that persons who feel that they have been defamed or injured can resort to the competent courts to exercise and protect their rights.*

587. *The Committee also notes the Government's indication that: (i) it provides spaces for exchange and social dialogue with all employers' and workers' organizations, including FEDECAMARAS, and that such dialogue has recently been conducted with the participation of the ILO; (ii) since 2022, the ILO has provided technical assistance for holding the "Social Dialogue Forum", which has been held on three occasions and in which most workers' and employers' organizations from the world of work participate; and (iii) FEDECAMARAS and its affiliated organizations participated in dialogues, consultations, technical discussions, agreements, negotiations and other exchanges with different government agencies, an example of which is its inclusion in the National Council on the Productive Economy. The Committee notes the Government's indication that the foregoing demonstrates that it is not the policy of the Government, nor that of its public officials, to conduct a campaign of defamation, stigmatization, threat, harassment or intimidation against any corporate group or organization. The Committee notes the Government's indication that these forums for dialogue took place in a climate of respect and harmony and that significant progress was made on the proposals put forward by the social partners.*

588. *The Committee also notes that the Commission of Inquiry, in its report, examined other measures detrimental to the private business sector organized around FEDECAMARAS, including the Polar Empresas group that are consistent with those examined in the present case (Report of the Commission of Inquiry, paragraphs 316, 317 and 318). The Committee recalls that, on the basis of the above, the Commission of Inquiry expressed deep regret at the persistent and serious harassment of the representative action of FEDECAMARAS and its members, and recommended the immediate cessation of all acts of violence, threats, persecution, stigmatization, intimidation or other forms of aggression against persons or organizations in relation to the exercise of legitimate employers' or trade union activities, and the adoption of measures to ensure that such acts do not recur in future (Report of the Commission of Inquiry, paragraph 497(1)(i)).*

589. *As part of follow-up to the conclusions and recommendations of the Commission of Inquiry, the Committee notes that the third in-person session of the Social Dialogue Forum was held on Margarita Island from 30 January to 1 February 2023, with tripartite participation and that the fourth in-person session of the Forum, also with tripartite participation, was held on Caracas on 1 and 2 February 2024. Both sessions of the Forum were chaired by the Minister of People's Power for the Social Process of Labour (MPPPST) and included workers' and employers' organizations, including FEDECAMARAS (Report to the Governing Body at its 347th Session GB.347/INS/13(Rev.1) as well as at its 350th Session GB.350/INS/12). During the sessions, participants agreed on various measures for follow-up to and updating of the plan of action, consisting of a timetable of activities relating to compliance with the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) agreed at the first in-person session of the Forum (March 2022). The participants agreed that "as part of cooperation between the authorities, the MPPPST will request meetings between the Office of the Public Prosecutor and employers' and workers' organizations to report on cases of arrest and judicial proceedings or preventive/non-custodial measures presumed to relate to the exercise of legitimate trade union activities". The Committee notes that the plan of action adopted at the third Social Dialogue Forum and updates thereto includes, inter alia, the following expected results in connection with this case, as a follow-up to the decisions of the Governing Body and relating to the recommendations of the Commission of Inquiry:*

- *handling of allegations of stigmatization and discrediting, including submission to the relevant authorities, by the organizations concerned, of updated lists with information identifying cases of allegations relating to the Government, and the holding of bipartite meetings between the Government and employers' and workers' organizations to consider, take and follow up on relevant measures; and*
- *effective handling of allegations relating to cases of detentions and judicial proceedings or preventive/non-custodial measures presumed to relate to the exercise of legitimate trade union activities.*

590. *The Committee recalls that employers' and workers' organizations must be allowed to conduct their activities in a climate that is free from pressure, intimidation, harassment, threats or efforts to discredit them or their leaders, which includes the adulteration of documents [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 719]. The Committee notes that the plan of action, updated in February 2023, includes measures for the effective handling of acts of violence, threats, persecution, stigmatization, and intimidation as well as for detentions and judicial proceedings or preventive/non-custodial measures presumed to relate to the exercise of legitimate trade union activities. Noting that the participants, at the fourth session of the Social Dialogue Forum also agreed to hold bimonthly technical meetings and bilateral*

meetings at the request of the parties, during the year 2024, on compliance with Convention No 87, the Committee expects that the allegations of this kind to which the present case refers can be dealt with in the framework of the said meetings. The Committee requests the Government to keep it informed in this regard and invites the Government to continue to avail itself of technical assistance from the Office, especially through the assistance of the ILO special adviser on social dialogue.

591. *The Committee notes that at its meeting of October–November 2023, the Governing Body: (i) urged the Government to accelerate the implementation of the commitments adopted in the action plan updated by the Social Dialogue Forum in February 2023; and (ii) noted that the fourth session of the Social Dialogue Forum would be held at the beginning of February 2024. Taking due note of the celebration of the fourth session of the Social Dialogue Forum and of what it has been agreed therein, the Committee strongly encourages the Government to continue, in accordance with the process under way before the competent bodies of the Organization, to take all necessary measures without delay to fully comply with the requirements of the Commission of Inquiry and other supervisory bodies and requests the Government to keep it informed in respect of the points referred to by those bodies.*

The Committee's recommendations

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

(a) The Committee expects that, if the collective agreement signed with the SUTRABA–CARABOBO in November 2017 applies solely to the state of Carabobo, collective bargaining in the other states was conducted with the most representative workers' organization, and that an objective verification of representativeness was carried out for that purpose. The Committee also expects the Government to take measures to promote the voluntary negotiation of collective agreements in all sectors of activity on the national territory with the most representative organizations of employers and workers.

(b) The Committee once again requests the Government to provide information with regard to any proceedings initiated in relation to the acts of violence reportedly carried out by a group of persons unconnected with the enterprise in April 2015, who, supported and accompanied by the president of the SINTRATERRICENTROPOLAR obstructed access to the workplace in the context of a strike.

(c) Noting that the updated plan of action adopted at the Social Dialogue Forum includes measures for the effective handling of acts of violence, threats, persecution, stigmatization, and intimidation as well as for detentions and judicial proceedings or preventive/non-custodial measures presumed to relate to the exercise of legitimate trade union activities, the Committee expects that the allegations of this kind to which the present case refers can be dealt with in the framework of the meetings that the participants of the Social Dialogue Forum agreed to hold during the year 2024 on compliance with Convention No 87. The Committee requests the Government to keep it informed in this respect and invites the Government to continue to avail itself of technical assistance from the Office, especially through the assistance of the ILO special adviser on social dialogue.

(d) The Committee strongly encourages the Government to continue, in accordance with the process under way before the competent bodies of the Organization, to take all necessary measures without delay to fully comply with the requirements of the Commission of Inquiry and other supervisory bodies and requests the Government to keep it informed in respect of the points referred to by those bodies

Case No. 3441

Interim report

Complaint against the Government of the Bolivarian Republic of Venezuela presented by
– the Federation of University Teachers' Associations of Venezuela

Allegations: The complainant organization alleges: (i) the withholding by the Government of union dues and its failure to transfer them to the trade union organizations in the university sector; (ii) exclusion from and denial of the right to collective bargaining in the education sector, as well as favouritism in collective bargaining towards an organization close to the Government; and (iii) acts of persecution, intimidation and harassment against Mr Julio García, a university teacher and president of the Carabobo College of Nursing

593. The complaint is contained in communications from the Federation of University Teachers' Associations of Venezuela (FAPUV) dated 1 and 9 December 2022, as well as 28 January and 7 April 2023.

594. In a communication dated 31 May 2023, the Government stated that it was establishing appropriate contact with the competent national bodies with a view to compiling detailed information on the issues raised in the complaint. At its October 2023 meeting [see 404th Report, para. 7], the Committee issued an urgent appeal to the Government, indicating that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body (1971), it could present a report on the substance of the case at its next meeting even if the information or observations requested had not been received in due time. To date, the Government has not sent any information.

595. The Bolivarian Republic of Venezuela 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

596. In its communications dated 1 and 9 December 2022, and 28 January and 7 April 2023, the Federation of University Teachers' Associations of Venezuela (FAPUV) alleges: the withholding by the Government of union dues and its failure to transfer them to the trade union

organizations in the university sector; (ii) exclusion from and denial of the right to collective bargaining in the education sector, as well as favouritism in collective bargaining towards an organization close to the Government; and (iii) acts of persecution, intimidation and harassment by the Bolivarian National Intelligence Service (SEBIN) against Mr Julio García, a university teacher and president of the Carabobo College of Nursing.

597. First, the complainant organization alleges that, in 2022 and until at least April 2023, when the Committee received the complainant organization's last communication, the Government did not transfer a single bolivar to the trade union organizations in the university sector from the trade union and social security contributions levied from the workers, which has had a serious impact on the finances and operations of these organizations. The complainant organization further alleges that, in 2022 and 2023, the Government also failed to pay employers' contributions into each university's savings plans, which are social security entities that are essential for the workers, leading to their collapse.

598. The complainant organization states that, while on 1 November 2022, its representatives, together with representatives of the Federation of Higher Education Workers of Venezuela (FETRAESUV), the National Federation of Administrative Professionals and Technicians of the Universities of Venezuela (FENASIPRUV) and the National Federation of Labour Unions of Higher Education of Venezuela (FENASOESV), reached an agreement with the director of the University Sector Planning Office (OPSU), who made a commitment to pay the amounts owed by the end of 2022, that commitment was not fulfilled. The complainant organization considers that the Government is aware of the irreversible damage that it is causing to the organizations and that the intention is to wipe out independent unionism, because para-governmental workers' organizations do not depend on the contributions of their members. The complainant organization states that even though the universities in the past, in their capacity as employers, managed the payroll of their staff and made the deductions, the Government took that role away from the universities and, in 2021, took over and centralized the payrolls of all public sector bodies through an electronic platform known as the "sistema patria".

599. Second, the complainant organization alleges that the Government refuses to bargain collectively with it, despite it being the legitimate trade union representative of university teachers and a traditional interlocutor in the bargaining process with universities. The complainant organization states that the Government has removed it from the negotiating table and has entered into simulated agreements with the Federation of University Workers of Venezuela (FTUV), which was established in 2015 in the offices of the Ministry of Labour, is controlled, dominated and financially supported by the Government, and does not represent the vast majority of workers, employees, professionals and teachers in the country's public universities.

600. The complainant organization alleges that: (i) the Government has signed agreements with that para-governmental organization that violate historical and progressive labour rights in the sector, and that, on 28 July 2021, it announced the signing of the latest such agreement, the fourth collective agreement for the university sector, in whose negotiation the organizations representing more than 90 per cent of university workers did not participate; (ii) the provisions of this collective agreement were not shared with the workers after the alleged discussion and the final text was published in the Official Gazette only when the agreement was about to expire; (iii) in the alleged negotiation, there was no discussion of the salary clause, as the salary scale is the same as the one that has been imposed by the Government since 2018, and this "collective agreement" without a negotiated salary clause has been rejected by all university workers; and (iv) the Government ignored the legitimate trade union leadership of the universities in imposing a collective agreement that violates the right

to a living wage, destroys academic careers and puts an end to the labour gains made in the sector.

601. Third, the complainant organization alleges the harassment and persecution of Mr Julio García, a university teacher and president of the College of Nursing of Carabobo State. It alleges that: (i) an extraordinary assembly that took place on 11 January 2023 at the headquarters of the College of Nursing of Carabobo State (the meeting place for all the trade union organizations mobilizing in support of labour rights) was besieged from 7 a.m. to 12.30 p.m. by police forces identified as members of the National Guard and intelligence service who, in addition to photographing the premises and people, entered the headquarters, took pictures and recorded conversations of those participating in the assembly; (ii) on 12 January 2023, in the context of a protest by health workers, state security chiefs, led by the Secretary of Security of Carabobo State, started to accuse Mr Julio García of being responsible for alleged disruptions in the context of the labour protests, owing to supposed political interests; and (iii) on 20 January 2023, SEBIN agents went to the area around Mr Julio García's home and remained there for 90 minutes, a situation that was reflected in the respective complaints.

602. The complainant organization states that, in the context of the protests and other union activities carried out in 2022 and 2023, Mr Julio García was unduly followed by people wearing civilian clothes in cars without license plates, presumed to be intelligence officers. The complaint organization recalls that, in 2017, Mr Julio García was wrongfully detained by SEBIN, tried in criminal proceedings in a military court and transferred to the National Centre for Military Detainees (CENAPROMIL). The complainant organization states that his case, which ended up being dismissed, was reported in 2019 to the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance by the Government of the Bolivarian Republic of Venezuela of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), among other Conventions.

603. The organization highlights that, in its report, the Commission of Inquiry recommended the immediate cessation of all acts of violence, threats, persecution, stigmatization, intimidation or other forms of aggression against persons or organizations in relation to the exercise of legitimate employers' or trade union activities, and the adoption of measures to ensure that such acts do not recur in future. The complainant organization alleges that, despite these recommendations, the Government's political security agencies continue to harass the president of the College of Nursing of Carabobo State and university teacher Mr Julio García, putting his physical integrity and that of his family at risk, which constitutes a serious violation of the freedom of association and a serious failure to give effect to the recommendations of the Commission of Inquiry. The complainant organization requests that the security agencies immediately cease the harassment of Mr Julio García.

B. The Committee's conclusions

604. *The Committee regrets the fact that, despite the time that has elapsed since the presentation of the complaint, the Government has still not provided its observations, even though it has been asked to do so several times, including through an urgent appeal made at its meeting in October–November 2023. Under these circumstances and in accordance with the applicable procedural rule [see 127th Report, approved by the Governing Body at its 184th Session (1972)], the Committee is obliged to present a report on the substance of the case without being able to take account of the information that it hoped to receive from the Government.*

605. *The Committee reminds the Government that the purpose of the whole procedure established by the International Labour Organization for the examination of allegations of violations of freedom of*

association is to ensure respect for trade union rights in law and in practice. While this procedure protects governments against unreasonable accusations, they must recognize the importance of formulating, for objective examination, detailed replies concerning allegations brought against them [see First Report of the Committee, 1952, para. 31].

606. *The Committee observes that, in the present complaint, the FAPUV alleges: (i) the withholding by the Government of union dues and its failure to transfer them to the trade union organizations in the university sector; (ii) exclusion from and denial of the right to collective bargaining in the education sector, as well as favouritism in collective bargaining towards an organization close to the Government; and (iii) acts of persecution, intimidation and harassment by SEBIN against Mr Julio García, a university teacher and president of the College of Nursing of Carabobo State.*

607. *The Committee notes first of all that, according to the complainant organization, in 2022 and 2023, the Government did not transfer a single bolivar to the trade union organizations in the university sector from the trade union and social security contributions levied from the workers, which has had a serious impact on the finances and operations of these organizations. The Committee notes that, although it is mentioned in the complaint that the director of OPSU made a commitment to pay the amounts owed, he did not fulfil that commitment.*

608. *The Committee requests the Government to send its observations on the matter without delay. The Committee recalls that it considers that trade union dues do not belong to the authorities, nor are they public funds, but rather they are an amount on deposit that the authorities may not use for any reason other than to remit them to the organization concerned without delay [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 699].*

609. *The Committee also notes that: (i) at each of its sessions, the Governing Body discusses the periodic progress report on developments in respect of the Social Dialogue Forum set up to give effect to the recommendations made by the Commission of Inquiry to the Government of the Bolivarian Republic of Venezuela; (ii) in the plan of action updated at the third in-person session of the Forum, held in February 2023, it was agreed that the workers' confederations would submit to the Ministry of People's Power for the Social Process of Labour lists of union organizations related to the withholding and payment of union dues and (iii) in the fourth-in person session of the Social Dialogue Forum, the participants agreed to hold meetings with the Ministry of People's Power for the Social Process of Labour and the trade union confederations to discuss and follow up on issues related to the withholding of trade union dues in order to regularize the deduction and payment of such dues. In the light of the foregoing and along the above lines, the Committee strongly encourages the Government and the complainant organization to urgently address these issues in the framework of the abovementioned meetings and requests them to keep it informed of any steps taken to resolve the situation raised in the present case as soon as possible.*

610. *The Committee also requests the Government to communicate without delay its observations regarding the alleged exclusion from and denial of the right to collective bargaining of both the complainant organization and any other trade union organization in the university sector that is not close to the Government. The Committee notes that, according to the complainant organization, the organizations representing more than 90 per cent of university workers did not participate in the negotiation of the fourth collective agreement for the university sector, which, according to the Official Gazette, the document in which it was published, covered the period 2021–23. The Committee recalls in this respect that, in order to maintain harmonious professional relationships in the public sector, respect of the principles of non-interference, the recognition of the most representative organizations and party autonomy in negotiations is required [see **Compilation**, para. 1472]. The Committee also recalls that employers, including governmental authorities in the capacity of employers, should recognize for collective bargaining purposes the organizations representative of*

*the workers employed by them [see **Compilation**, para. 1354] and that it is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties [see **Compilation**, para. 1328]. In the light of the foregoing, the Committee urges the Government to take the necessary measures to ensure that the most representative organizations in the university sector participate in collective bargaining on the working conditions of workers in this sector. The Committee requests the Government and the complainant organization to keep it informed in this regard.*

611. *The Committee also takes note of the allegations of harassment and persecution of Mr Julio García, a university teacher and president of the College of Nursing of Carabobo State. The Committee notes that the complainant organization alleges in particular that, in January 2023: (i) members of the National Guard and intelligence service entered the College headquarters, took pictures and recorded conversations of those participating in an assembly; (ii) state security chiefs accused the teacher of being responsible for the alleged disruptions in the context of health workers' protests; and (iii) SEBIN agents remained in the area around Mr Julio García's home for 90 minutes. The Committee notes that, as recalled by the complainant organization, in 2019 it was reported to the Commission of Inquiry that in 2017 the teacher had been detained by SEBIN, tried in criminal proceedings in a military court and transferred to the National Centre for Military Detainees, after which his case was dismissed. The Committee notes that the complainant organization alleges that, despite the recommendations made by the Commission of Inquiry, the Government's political security agencies continue to harass the teacher.*

612. *The Committee notes that the plan of action agreed upon at the third and fourth-in person sessions of the Social Dialogue Forum includes measures for the effective handling of acts of violence, threats, persecution, stigmatization and intimidation, as well as detentions and legal proceedings or precautionary/alternative measures allegedly related to the exercise of legitimate trade union activities. Taking due note of the above, the Committee firmly requests the Government to ensure that the allegations concerning Mr Julio García are addressed as soon as possible in this context and that urgent measures are taken to guarantee the exercise of freedom of association and to ensure the cessation of the alleged harassment. The Committee requests the complainant organization and the Government to keep it informed in this regard. The Committee also invites the Government to continue to avail itself of technical assistance from the Office, especially through the assistance of the ILO special adviser on social dialogue.*

The Committee's recommendations

613. 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 to provide it without further delay with its observations on the complainant organization's allegations so that it can examine the different issues raised in the complaint in full knowledge of the facts.

(b) The Committee strongly encourages the Government and the complainant organization to urgently address the issues related to the withholding of union dues in the framework of the meetings to be held between the Ministry of People's Power for the Social Process of Labour and the trade union confederations, as agreed at the fourth session of the Social Dialogue Forum. The Committee requests the Government and the complainant to keep it informed of any measures taken to resolve the situation as soon as possible.

(c) The Committee urges the Government to take the necessary measures to ensure that the most representative organizations in the university sector participate in collective bargaining on the working conditions of workers in this sector. The Committee requests the Government and the complainant organization to keep it informed in this regard.

(d) The Committee firmly requests the Government to ensure that the allegations concerning Mr Julio Garcia are addressed as soon as possible in the context of the actions being taken in follow-up to the Social Dialogue Forum and that urgent measures are taken to guarantee the exercise of freedom of association and to ensure the cessation of the alleged harassment. The Committee requests the complainant organization and the Government to keep it informed in this regard.

(e) The Committee invites the Government to continue to avail itself of technical assistance from the Office, especially through the assistance of the ILO special adviser on social dialogue.

Geneva, 7 March 2024

(Signed) Professor Evance Kalula
President

Points for decision:

paragraph 188
paragraph 207
paragraph 227
paragraph 275
paragraph 308
paragraph 327
paragraph 367
paragraph 459
paragraph 476
paragraph 509
paragraph 565
paragraph 592
paragraph 613